

# FIRST NATIONS Edition

November 11, 2011 Twice monthly summary of news reports from throughout British Columbia on First Nations, rights & title issues, and Aboriginal communities.

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## AROUND THE PROVINCE

**Ruling to Pay First Nations' Legal Fees Overturned**

A three-judge panel of the B.C. Court of Appeal recently set aside a previous trial judge's ruling to award special costs to the five First Nations plaintiffs in the case known as Ahousaht Indian Band and Nation vs. Canada. The First Nations, consisting of the Ahousaht, Ehattesaht, Hesquiaht, Mowachaht/Muchalaht and Tla-o-qui-aht, successfully argued that regulations and policies of the Fisheries Act infringed their Aboriginal rights to fish commercially during the original trial, which started in 2006 and ended in 2009. At that time, the B.C. Supreme Court judge also decided there were "exceptional circumstances" to award them special costs. The federal government appealed, arguing that awarding special costs "would open the door to such an award in all Aboriginal rights cases." The appeals court judge ruled that "this case did not break novel ground in establishing legal principles" and replaced the award with an "order for increased costs on Scale C," which will only cover \$663,120 of the estimated \$3.1-million legal fees.

*(Vancouver Sun, November 7)*

**Squamish Nation Purchases Crown Land**

On November 2, a joint statement issued by the Squamish Nation and the B.C. Ministry of Forests, Lands and Natural Resource Operations announced that the band is purchasing five parcels of Crown land (467 hectares) within the Squamish-Lillooet Regional District. The Squamish intend to have the land added to their reserve lands and to use them for future housing needs. The nation is paying approximately \$16-million for the land, and the purchase supports the band's community development objectives. The purchase includes three parcels of land in the upper Squamish/Cheakamus area, one above Quest University, and one south of Valleycliffe.

*(Squamish Chief, November 4)*

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## Tsleil-Waututh Oppose Pipeline Expansion

Chief Justin George, of the Tsleil-Waututh Nation (TWN), recently announced that his band intends to oppose any expansion plans of Kinder Morgan's Trans Mountain oil pipeline, which runs from Alberta to Burnaby and through TWN traditional territory around the Burrard Inlet. The pipeline's current capacity is 300,000 barrels per day but with the expansion could increase to 700,000. At this time, Kinder Morgan is just testing for market interest and any expansion would depend on positive results. However, George said the risks associate with the project or "too great to accept" and cited a 2007 Kinder Morgan oil spill when city workers ruptured a pipeline and approximately 1,500 barrels of oil seeped into the inlet. "Our inlet has been scarred by the impacts... and we have seen firsthand the inadequacies of emergency response and clean-up efforts," said George. Kinder Morgan spokesperson Lexa Hobenshield said the company is disappointed by the announcement and extends an "open invite to Tsleil-Waututh to meet with us." If the market interest proves successful the company would then initiate a comprehensive consultation process with all affected First Nations, communities, and stakeholders, said Hobenshield.

(Burnaby Now, November 2)

## Hul'qumi'num Case Heard in International Court

The Hul'qumi'num Treaty Group (HTG) presented their human rights case against the Canadian government at an Inter-American Commission on Human Rights hearing held in Washington, DC on October 28. HTG claim the federal government failed to recognize and protect their rights to property when 810,000 hectares of traditional territory was confiscated from the group as part of an 1884 land grant given to the Dunsmuir Company to build a railway on Vancouver Island. The Department of Justice Canada is handling the case for the Canadian government, which maintains that the privately-owned lands are "off the table" for negotiations. Canada has long argued that the case should not be heard outside of the country because HTG has not utilized all legal options in Canadian courts. Robert Morales, lead negotiator for HTG, which consists of the Chemainus, Halalt, Lake Cowichan and Lyackson First Nations and the Cowichan and Penelakut Tribes, said the hearing "went well" and expects a final decision to be handed down as early as March. The commission doesn't have the power to force Canada to comply with any of its decisions, but a favourable decision could shame the government into recognizing the longstanding land claims, said Morales.

(Daily News, October 29;  
Indian Country, October 31)

## First Nations Partnership Pleased about Gas Export License

The First Nations Limited Partnership (FNLP) is pleased that the Kitimat LNG project has been granted a 20-year license to export natural gas to international markets from the National Energy Board. FNLP, which is a partnership of 15 First Nations, represents the Pacific Trail Pipelines (PTP) component of the project and holds an option to acquire a 30 per cent equity interest in the pipeline. The Partnership is also currently in negotiations with Apache Canada, EOG Resources, and Encana Corporation to reconcile agreements made with the previous proponents of the PTP project and with the province.

(Market Watch, October 26)

## First Nations Join Partnership in Marine Company

The Ralmax Group of Companies, Ruskin Construction, and the Esquimalt and Songhees First Nations have become full equity partners in a new enterprise near Point Hope Shipyard. The new company will do marine dredging, pile driving and various related work, which will provide more opportunities for the First Nations' members to participate directly in the marine services sector.

(Times Colonist, October 28)

## B.C.'s Métis Sign On for Economic Development

The B.C. Métis Assembly of Natural Resources, Métis Nation British Columbia (MNBC), and Silvatech Consulting Ltd. have signed a memorandum of understanding (MOU) that includes the establishment of Niché Environmental Ltd., an economic development company. MNBC and Silvatech will share ownership (51 per cent and 49 per cent respectively) and the new company will immediately begin to pursue procurement opportunities in the private sector, industry, provincial and federal governments, and Aboriginal communities across the country. Niché will also provide professional support mandated within the MNBC Natural Resource Act (NRA). Another key objective of the MOU is to pursue a mutually beneficial working relationship to work towards meeting the obligations set out in the NRA, which includes training, employment, and work experience opportunities by securing revenue generating environmental and resource management contracts.

*(Nation Talk, October 31)*



## B.C. First Nations Develop Strategies for Chinese Investors

In 2010, B.C.'s First Nations leaders of the First Nations Summit (FNS) agreed to start developing a strategy to build a mutually beneficial relationship with China, which has a growing interest in investing and operating in British Columbia. FNS political executive Grand Chief Ed John said there is a need to educate Chinese investors about Aboriginal rights and of the need to interact with First Nations communities when pursuing resource opportunities within their traditional territories. During the period that John, as part of a Canadian delegation, visited the earthquake damaged Chinese province of Sichuan, FNS invited representatives from PetroChina to visit First Nations communities for a firsthand look at their way of life. The new First Nations – China Strategy involves developing a set of best practices for consultation and collaboration as well as annual visits from both sides to China and British Columbia.

*(Pipeline News North, September 30)*

## Tsilhqot'in Take Mine Opposition to Ottawa

Representatives from the Tsilhqot'in National Government (TNG) recently travelled to Ottawa to meet with various agencies and groups to relay their reasons for opposing the New Prosperity Mine project, which is currently being reviewed by the federal

Environmental Assessment Agency. TNG chair Joe Alphonse, along with several other B.C. First Nations leaders, the president of the Union of B.C. Indian Chiefs, and representatives from the B.C. Assembly of First Nations, met with the NDP's B.C. caucus and its mining and Aboriginal affairs critic as well as members of the Liberal party. However, Alphonse was disappointed that the group was unable to meet with members of the Conservative party.

*(Williams Lake Tribune, October 25)*

## Workshop Explores Ethics in Aboriginal Workplace

The Aboriginal Financial Officers Association of Canada is hosting a workshop in Vancouver on December 6 and 7. Values and Ethics in the Aboriginal Workplace will provide participants with a better understanding of how to create and maintain good values and ethics. The two-day workshop will include examining how business ethics relate to Aboriginal traditions, fundamentals of human resource management, how to develop a code of ethics, and how ethics impacts governance, accountability, community, and economic development activities.

*(Nation Talk, November 1)*



## Sentencing Hearing Resumes for Fraud Case

The sentencing hearing has resumed for Craig Ashley Morrison and Dennis James Wells, both of whom pleaded guilty in the B.C. Supreme Court to defrauding two Aboriginal organizations. Halfway through the sentencing last June, Morrison “lost confidence” in his lawyer and discharged him causing the case to be adjourned. Prosecutor Brian McKinley is calling for a four-year jail term for Morrison and a 30-month jail term for Wells. The two men perpetrated 199 fraudulent transactions while Morrison was working as a bookkeeper for the Aboriginal Council of B.C. and the B.C. Aboriginal Fisheries Commission. Over a three-year period, Morrison diverted almost \$1-million to an account held by Wells through direct bank transfers and forged cheques. The fraud was only discovered after Morrison was laid off and a review of finances was conducted. Following the discovery, federal funding to the organizations was cut off and both groups eventually collapsed. Several victim-impact statements were heard by the court, including one from Ken Malloway, co-chair for both organizations.

*(The Province, October 30)*

## Lake Babine Nation Hosts Aboriginal BEST

The Lake Babine Nation was chosen to host the Aboriginal Business Entrepreneurship Skills Training (BEST) program after submitting an application to the B.C. Ministry of Aboriginal Relations and Reconciliation in July. BEST provides job creation and skills training with 12 sessions that focus on helping to identify viable business ideas and determining their feasibility. Participants conduct market research, write business plans, explore financing options, and learn how to make money through self-employment. The free two-week program is open to those with solid business ideas as well as those with no specific idea but have an interest in business.

*(Gulf Islands Driftwood, October 26)*

## Aboriginal Business Award Recipients Revealed

The selected recipients of the third annual British Columbia Aboriginal Business Awards (BCABA) were announced November 3. Award winners will be honoured at a ceremony on December 1 in Vancouver. BCABA was created to honour and celebrate business excellence with awards given in seven categories as well as an additional eleven Aboriginal businesses noted for their outstanding achievement. The 2011 recipients are:

- Lara Yanik, Vernon – Young Female Aboriginal Entrepreneur of the Year
- Brady Erixon, Kamloops – Young Male Aboriginal Entrepreneur of the Year
- Knotty By Nature, Victoria – Business of the Year (one or two person enterprise)
- 3 Rivers Contracting, Glen Vowell – Business of the Year (two to ten person enterprise)
- CSC Electric Ltd., Kamloops – Business of the Year (ten or more person enterprise)
- Tseshah Market, Port Alberni – Community-Owned Business of the Year
- Takaya Developments Ltd., North Vancouver – Joint Venture Business of the Year

The awards are presented by the B.C. Achievement Foundation in partnership with the Ministry of Aboriginal Relations and Reconciliation and supported by New Relationship Trust, BC Hydro, Teck, Encana, and Spectra Energy.

*(Nation Talk, November 3)*

## ACROSS THE NATION

**Report Shows RCMP's Involvement in Residential Schools**

RCMP released a report during the recent Halifax session of the national Truth and Reconciliation Commission that found the RCMP had a major involvement in bringing students from First Nations communities to residential schools. Data for the report was collected over a 30-month period between 2007 and 2009 to determine the RCMP's relationship with schools, students, federal agencies and departments. The report concluded that at times RCMP withheld information from parents about what was happening to the residential schools' students and also acted like truant officers. However, the report also stressed that RCMP did not know about the abuse that was going on within the schools across the country, and that they were "trying to act in the best interest with the information they knew at the time." Residential school survivors have shown mixed reactions to the release of the report. Some say it provides validation to the stories that have surfaced throughout the years, while others say the report is worthless and won't help with the healing. The minister for Aboriginal Affairs and Northern Development recently announced that a memorial stained-glass window commemorating the residential school survivors would be installed across from the entrance to the House of Commons. The window will be designed through a joint effort of an artists' panel and is scheduled to be installed in 2012.

*(Vancouver Sun, October 28; CBC News, October 29)*

**Child Rights Advocates Tell UN Canada's Aboriginal Children Face Inequities**

The First Nations Child and Family Caring Society of Canada and the ecumenical group KAIROS have submitted a report to the commission for the United Nations Convention on the Rights of the Child (UNCRC) hoping to shame Canada into providing concrete improvements for Aboriginal children on reserves. The report states that federal funding for Aboriginal health, education, housing and child welfare is not adequate and is also lower than funding for non-Aboriginal children. First Nations schools receive between \$2000 and \$3000 less per student than provincially run schools, the report notes. Canada signed the UNCRC in 1991, which requires nations to act in the best interests of their children and subjects, and is up for review next year. Ottawa has already submitted a report on its adherence to the convention. However, the society and KAIROS claim Canada's report glosses over the terrible conditions that many Aboriginal children live in. The Canadian Council of Child and Youth Advocates has also submitted their report to the UN committee, called Canada Must Do Better, which says Aboriginal children in Canada are in crisis. A problem identified in their report is that there isn't enough accurate data and research done specifically on Aboriginal children. "In our opinion, Canada's report does not portray the actual poor state of Aboriginal children's health," the advocates said. The report provides 40 recommendations for Canada, including establishing an Aboriginal Children's Institute for Research, a monitored and evaluated national Aboriginal children's plan aimed at reducing poverty, and improved health infrastructure in remote communities.

*(Canadian Press, October 24; Vancouver Sun, November 6)*

## TREATIES

## Premier Clark Takes Focus Off Treaty Making

B.C. Premier Christy Clark said the treaty process has failed to deliver either economic growth for Aboriginal communities or security for business investors and is now directing her government to instead focus on economic development deals with First Nations. Agreements with the province may include land transfers or revenue sharing on resources, or the brokering of deals between private investors and First Nations on a project-by-project basis. Similar deals have taken place in recent years, but the strategy has now been formally adopted. Clark said First Nation leaders and the province are fed up with waiting for treaties and she is content to seek small but practical outcomes, creating jobs within First Nations communities. However, some First Nations leaders are concerned this policy will leave behind communities where there are no ready investment opportunities. Chief Douglas White, of the Snuneymuxw First Nation, doesn't believe this is the best way to unleash the potential of the province. Although there will be times when a proponent's project lines up with a First Nation's interests, "for the most part, uncertainty and conflict will remain," said White. Canada's Aboriginal Affairs Minister John Duncan said he shares the concerns over the slow-moving treaty process but rejects the argument that it can't be salvaged. Duncan said he'll take responsibility for improving the situation and is "prepared to try and make changes." He said he's waiting for a report from a special advisor before moving ahead with encouraging some First Nations at "unproductive tables" to abandon talks and to proceed with the more successful negotiations.

*(Globe and Mail, November 4; Vancouver Sun, November 5)*



## FORESTRY

## New Ruling Opens Door to Negotiate Logging Rights

Chief Byron Louis believes that the recent B.C. Supreme Court ruling, which allows the Okanagan Indian Band (OIB) to proceed with legal action questioning the province's decision-making authority of forested land, could lead to a resolution to the band's ongoing land titles dispute. The dispute began in 1999 after OIB claimed an Aboriginal right to harvest trees and started logging at Browns Creek. The Ministry of Forests issued a stop-work order and took legal action to enforce the order. Multiple court decisions followed in both parties' favour. In 2009, the band blocked commercial logging after Tolko Industries applied to log in the same area, which set off another court challenge when the band sought an injunction. The Supreme Court ruled in Tolko's favour in that case, allowing the company to begin logging. However, to date, they have not returned to do any logging. The new ruling found the stop-work order against OIB invalid and opens the door to negotiate title with the province.

*(Morning Star, October 26; Kelowna Daily Courier, October 26)*



## LOCAL GOVERNMENT

## Band Forest Company Says Competing Timber Claims are Unfair

Ulkatcho Indian Band's West Chilcotin Forest Products (WCFP), a small mill operating in the West Chilcotin, say the province is allowing West Fraser Timber and Tolko Industries to unfairly secure timber supplies within their traditional territory. The company was in the middle of negotiations with the province for a long-term tenure licence to secure timber supply near the mill when the two forestry companies began marking off sections in the area. Central Cariboo-Chilcotin district manager for resource operations Mike Pedersen confirmed that B.C. Timber Sales is also marking off sections for its needs. The process is called ribboning and involves claiming tree stands for future harvesting. However, it does not mean that the timber has been officially allocated. Pedersen said ribboning is legal and noted that WCFP doesn't have any special rights to the area, which forces them to compete for tenure. WCFP interim general manager Gary Arnold said the company is negotiating with BC Hydro to build a small biomass power plant but the agreement hinges on a long-term timber supply contract.

*(Business in Vancouver, October 31)*

## Metro Vancouver Cuts Funding to Treaty Advisory

Metro Vancouver is pulling out of the Lower Mainland Treaty Advisory Committee (LMTAC) and plans to take control of local Aboriginal issues in the region through its own Aboriginal relations committee. The Metro committee will monitor Aboriginal issues and observe treaty talks and then report more directly to area mayors. LMTAC had urged the Metro board to defer cancelling their funding for another six months until June, arguing that other districts had not been told of Metro's plans. Metro provided approximately \$340,000 a year to LMTAC for research and advisory information and although there have been benefits, they found themselves paying the "lion's share for the service," said Metro board chairwoman Lois Jackson.

*(Vancouver Sun, October 31; Nanaimo & Qualicum Beach Daily, November 2)*

## EDUCATION

## Record Attendance at New Penticton Band School

The Penticton Indian Band's (PIB) new Outma Squilx'w Cultural School opened for the 2011/2012 school year. The school, which is the result of collaboration between the PIB project team and the federal and provincial governments, is already reporting record attendance, said Chief Jonathan Kruger. The goal of the school was to create a contemporary space that incorporates technologies for learning and sustainability, such as smart boards, video conferencing, geothermal systems, and natural lighting, in a way that captivates students and encourages curiosity and pride for culture. The design is an artistic interpretation of the traditional pit house and includes an atrium dedicated to teaching the Okanagan people's language, history, and art.

*(Nation Talk, November 2)*



## EDITORIAL

**Outlook West Vancouver, October 6 – Editorial, in part:**

“A report now circulating among Metro Vancouver municipalities from the Lower Mainland Treaty Advisory Committee warns that a likely future influx of non-Aboriginal people onto reserve lands, could destabilize the governments of ruling band councils and their service provider municipalities.

Under current First Nations agreements, non-member reserve dwellers pay taxes to the band. They can, however, vote in district or city municipal elections – as can band members – but aside from providing services like police, fire, water and sanitation, the municipal governments of North and West Van have no legislative or bylaw authority on First Nations lands. The result is that all those who live on the reserve and vote in district or city elections have no real responsibility to those governments they help elect.

Across the country in places like Manitoba for instance, this problem has mobilized the federal government to exclude First Nations reserves from municipal elections, which has the unintended effect of formalizing these as islands of non-representation for any non-members who live there.

The Westbank First Nation, formerly of West Kelowna, was

recently excluded from that municipality and several thousand non-members are left without much say in their local government.

‘The short-term fix around the voting issue might be to simply remove the band lands formally from the municipalities,’ says councillor Roger Bassam. ‘Then there’s no issue around who has a jurisdictional residency to participate in the elections and referendums.’

While carving up further the already split-hair territorial governments of the North Shore may seem like an unnecessary compounding of the current divides, it may eventually prove necessary to accommodate everyone; from the First Nations, the municipalities and all those who are coming to the North Shore but aren’t here yet.”

**Vancouver Sun, November 7 – Daphne Bramham wrote, in part:**

“Aboriginal children in Canada are in crisis.

That’s the message that the Canadian Council of Child and Youth Advocates is sending to the UN committee on children’s rights in a special report called Canada Must Do Better.

Among the myriad problems identified by the child and youth advocates is that there is not enough

data and not enough research done on Aboriginal children.

Multi-million-dollar programs aimed specifically at Aboriginal children are not monitored for outcomes. So, no one is certain whether they are accomplishing their goals. And without that, it’s impossible to establish best practices.

The justice act changes will have their greatest effect on Aboriginal youth. Shockingly, as the advocates note, an Aboriginal youth is more likely to be sentenced to youth custody than to graduate from high school.

More than 27,000 Aboriginal youth were sentenced to custody in 2007 and 2008. Another 47,000 were put on probation. Those numbers are almost certain to rise under the proposed legislation because of the emphasis on incarceration and mandatory sentences which don’t account for special circumstances such as fetal alcohol syndrome.

Canada has much to do for all children to meet the UN Convention’s minimum standards. But of greater urgency is paying specific attention to Aboriginal children, who are the most vulnerable of all.”

### North Shore News, October 14 – Editorial, in part:

“Ironic or serendipitous? You decide. One day after the B.C. Treaty Commission’s chief commissioner suggested that this province’s treaty talks be shut down entirely if they cannot be sped up, a major health agreement is signed between B.C. First Nations and the provincial and federal governments?

The decision, made outside of and separately from ongoing treaty talks, creates a governance structure that will ultimately be responsible for itself, however it interfaces with provincial health services.

Meanwhile, treaty commissioner Sophie Pierre is clearly frustrated with what she has not achieved in her three-year term and is asking for a one-year extension to her mandate. She told other media Wednesday that if problems cannot be fixed within that time frame, it should signal the end of a process that has lasted 19 years and produced just two signed treaties.

Like Pierre, we believe in the economic benefits of treaties, but wonder if the federal government is more interested in a social agenda.”

### Ucwalmicw, November 2011 – Eppa (Gerard Peters), In-SHUCK-ch Chief Negotiator, wrote, in part:

“We met recently with NDP leader Adrian Dix. We explained that In-SHUCK-ch supported the Campbell Liberals in the last general election because of the contrary position the NDP had on IPP [independent power producers] developments. We always saw these potential power projects as a critical part of our economic strategy ever since we entered the B.C. treaty.

We explained that in late 2009, B.C.’s negotiator agreed to our request for (IPP) water reservations on certain creeks in the Skatin and Samahquam territories. What followed was hard lobbying from the Independent Power Producers...who lobbied the Liberals and the water reservations were taken off the table.

With water reservations denied to us, In-SHUCK-ch responded by placing IPP lands on the table. We said that we wanted to have these transferred to us upon ratification of treaty. The remaining treaty lands would transfer on Effective Date of treaty. B.C. (and Canada) agreed. This meant that we could now negotiate with IPP proponents as owners of the land upon which the IPP’s would be built.”

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