



# Indigenous Legal Lodge (ILL)

A Proposed Model for Addressing  
Indigenous Conflict

# INTRODUCTION/ BACKGROUND

- In 2005, I began working with Val Napoleon, June McCue, Dawn Mills and Gordon Christie and on the Treaty 8 Governance Research Initiative (GRI).
- The T8GRI is funded through a 3 year Science and Humanities Research Council (SSHRC) Grant that involves the UBC, CIILS and the BC T8 Communities of Doig River, Halfway River, Prophet River and Saulteau and West Moberly lake First Nations.

# Objectives of Project

- \* Research, record and articulate the customary laws of the Dane-Zaa, Dene Tsaa K'nai, Slavey, Cree and Sauteau groups of the Treaty 8 in British Columbia.

- \* These include:

- the customary leadership structures, roles and responsibilities;
- historical mechanisms for building consensus and settling disputes;
- traditional access rules and methods of determining boundaries; and
- laws governing the land, i.e., how subsistence/commercial activities were conducted;



# Purpose

- It is hoped that this research will not only create a better understanding of Dunne-za, Slavey, Cree and Saulteau customary laws, but may provide alternative tools for contemporary leadership and decision-makers, so they may effectively manage conflict and draw upon former practices and customary laws to guide governance issue and decisions.

# How does the T8GRI relate to the proposed ILL?

- As we were initiating community based research and literature review for the T8GRI, the Lheidl T'enneh was in the process of negotiating a modern-day treaty with BC and Canada.

- \*Northern boundaries of proposed Lheidli T'enneh treaty area overlapped with the southern boundaries of the historic 1899 Treaty #8.

- \*West Moberly and Saulteau First Nations sought an injunction to delay the ratification of the Treaty. In the end, it was denied.

# Lheidli T'enneh and BC Treaty 8 Communities

- From our research with the T8GRI, it was clear that in the past, Aboriginal Nations had conflict but also had many solutions and there was a process for achieving these solutions.

\*The Peace River is result of historic peace between Cree and Dunne-za people; hence, its name the Unchaga, or Peace River.

Furthermore, history has shown us that external boundaries have always been the sites of negotiations in accordance to each indigenous group's laws and political structures.



# Before Contact and Early Treaties

- Indigenous people deliberately negotiated arrangements for recognition of lands, trade, marriage, resource sharing and access.

- \*Through these processes they established enduring political and legal relationships.

- \*For Treaty 8 and the Lheidli T'enneh peoples, their historic international relationship included intermarriage and extensive trade. Today that means families are related with close ties throughout the region.

# In Recent History

- \* Indigenous peoples have begun to turn to the courts to settle disputes between and among ourselves.
- \* While there are often good reasons to litigate, Canadian courts are limited by the jurisdiction and law.
- \* And all legal proceedings are expensive, costing at least \$10,000 per day of trial.
- \* Not a reflection of the skill of the legal counsel but rather a recognition that they will be operating within the constraints of Canadian law, according to rules of Canadian law.



# What is the Alternative?

## We are Proposing the Indigenous Legal Lodge (ILL)

\*Several people involved with the T8GRI were thinking about the overlap issues and possible solutions when the Lheidl T'enneh treaty was defeated. Still this overlap issue is serious and remains to be resolved.

It was at that time that Val Napoleon and others came up with the Indigenous Legal lodge model – which consequently, these seven first nation communities have agreed to utilize to try to resolve their boundary dispute and other related issues.

# Indigenous Legal Lodge Model

\*Theory underlying the ILL is that it is possible to develop a flexible, overall legal framework that indigenous peoples might use to express and describe their legal orders and laws so that they can be applied to present-day problems.

\*Framework:

1. reflect legal orders and laws of decentralized indigenous peoples and
2. allow for diverse ways that each society's culture is reflected in their legal orders and laws.

# It is Expected that this model will,

- \*Once designed and tested, be useful in other legal and political disputes between indigenous people.

For example the overlap between the Lheidl T'enneh and the Shuswap people. And the ongoing overlap dispute between the Nisga'a people and the Gitksan community of Gitanyow.

These are enormously costly disputes that damage historically neighbourly relationships and undermine efforts to negotiate just relationships between the Crown and Indigenous people.

- \* the ILL is not intended to establish a time when there was not overlap – only assuming that there were close international political relationships established over time.



# How does it Differ from Litigation?

\*Rather than focus on the legal rights of each party flowing from historical use and occupancy, the ILL will focus on social and political relations between parties, i.e., marriage, kinship, being neighbours, trade, and other arrangements, both historic and modern.

\*This approach will consider how various social and political relationships generate ongoing obligations for each party.

\* Far more inclusive than simply considering how to reconcile competing legal rights.

# Structure

\*Proposed that the ILL be established to:

1. inquire into boundary disputes and overlap areas,
2. hear information submitted by either party,
3. work with the parties to discuss and develop optional agreements, and
4. facilitate agreements between the parties around one or more of the options.

# The ILL will include:

1. A panel with three members from a neutral indigenous group with no direct interest in the dispute.
2. A legal expert in Canadian law to provide advice and support to the panel.
3. Three facilitators with knowledge and experience with indigenous legal orders and law.
4. A number of individuals from each of the nations who will be selected to tell the panel about their experience and knowledge of the overlap area, their understanding of the historic and current relationships, and how legal traditions might be drawn upon to deal with the overlap issue.



# Duration

- \*ILL would sit for a minimum of 5 days to hear the parties and facilitate the development of an overlap or other agreement.

- \*If not consensus around the agreement, the facilitator will make non-binding recommendations to the parties within 30 days.

- \*Recommendations will not focus on rights based upon historic use and occupancy, but on interests, relationships and reconciliation.

- \*Panel will work with parties to draft an agreement on managing joint interests in and on future political affirmation and commitment requirements (for 10 year periods).

# Several Possible Outcomes

- \*Shared jurisdictions of the overlap area and an agreement to mutual recognition of joint interests.
- \* Joint Management arrangements.
- \* Draft and negotiate and adhesion to Treaty 8 that sets out the terms and conditions for Lheidl T'enneh' s use of the overlap area. [this would be very complicated]
- \*Draft and negotiate a Aboriginal (Nation to Nation) treaty for the overlap area.
- \*Express priority use areas.