Final Paper

**Land Rights & Recognition**

Chloé Chiasson

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Professor Marcel Mitrasca

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# General Presentation

## History

The challenges faced by First Nation populations in Canada can be traced back to colonial times. British and French colonizers conquered the country in their quest to expand in the New World. At first, their relationship was complex but interdependent as they practiced mutually beneficial trade. (Government of Canada, 2017, part 2) However, once the settler colonies expanded and outnumbered the indigenous population, this coexistence ceased. In 1876, they created the *Indian Act* which aimed to control these communities and force upon them the mainstream European values. (The Canadian Encyclopedia, 2006, par. 1) This led to extreme oppression and to what is known as the cultural genocide of First Nations, especially with the establishment of residential schools. Over 150,000 indigenous children were forcefully taken away from their loved ones and stripped of their identity. (Limmena, 2021, par. 3) Many never returned home and passed away within the establishments from the abuse they experienced. Since the closing of the last school in 1996, efforts have been put towards reconciliation. This includes the founding of the *Truth and Reconciliation Commission*, monetary compensation, and the creation of *National Aboriginal Day*. (Government of Canada, 2017, part 6) Nonetheless, First Nations continue to suffer from the repercussions of colonization and still deal with countless systemic issues.

## Current issues

The historical experiences of the First Nations had direct effects on their current social conditions. They struggle with heavy intergenerational trauma from residential schools. As a result, many individuals live with psychological distress which has led to high numbers of substance abuse and suicides. (Limmena, 2021, par. 8) Moreover, the communities lack government funding for access to proper healthcare systems to manage their medical needs. (Roache, 2015, par. 15) For the same reason, they don’t have access to proper education services, which creates low-income levels and increases unemployment rates. Additionally, First Nation populations are overrepresented in the country’s prisons, which can once again be attributed to past factors as well as the unfit justice system. (Department of Justice, 2023, par. 13) Within their reserves, they also don’t have access to many essential resources, specifically drinking water. Most of the water on their territories is considered poisonous. (Luo, 2021, par. 1) These are only a few of the realities that the First Nation populations in Canada are confronted to. They are multidimensional problems that call for initiatives aimed at reconciliation.

# Land rights & recognition

## Acknowledgment of inherent rights

One of the main aspects of reconciliation concerns the respect of inherent rights. Amongst other things, these are rights to have self-governance, to practice ancestral customs, and especially rights to land. (University of British Columbia, n.d., par. 1) The importance of territory for First Nations goes beyond the idea of physical ground. Indeed, they have a special relationship with land as it encompasses their spirituality, tradition, identity, and sense of community. (Wastesicoot, 2019, par. 1) For this reason, they lead an ongoing fight to protect their land that was once taken away by colonizers. This was recognized around the world by institutions including the United Nations. They adopted the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP), in which they explain that Indigenous communities can rightfully have their traditionally owned lands, that shall be protected and respected by others. (United Nations, 2018, Article 26) The problem lies in the fact that this is not always respected everywhere and remains a work in progress.

## Land entitlements

In Canada, the issues concerning land rights are very large but can be narrowed down to the following topics: sovereignty reclamation and resource protection. On one hand, First Nations are fighting to reclaim the territory that is rightfully theirs. They want the restoration of land ownership through comprehensive land claims and policies. (Gamblin, n.d., par. 5) On the other hand, it refers to the protection of lands against developmental projects that use their precious resources. Native territories are rich in natural resources, which makes them economic targets for governments and corporations. This directly harms the communities’ ecosystems and vital systems. (Veit, 2018, par. 2) Consequently, they are fighting for more power and control over their territories. These components have been at the heart of Canadian politics regarding First Nations. It is a matter that involves all levels of government in the country. Therefore, to analyze this widespread issue, this paper will delve into how it has been handled at the federal, Quebec provincial, and British-Columbia provincial level over the past couple of years.

# Federal Government Handling

## Past laws & treaties

Over time, the federal government has set many treaties and laws concerning indigenous land ownership. In *The Constitution Act* of 1982, the First Nations’ inherent rights to land were recognized and affirmed. (University of British Columbia, n.d., par. 7) The Supreme Court has since then reviewed this section and established that First Nations have the right to manage, control, and use their land as well as its resources. (Department of Justice Canada, 2021, p.12) It also means that they have rights to practice fishing, hunting, and other traditional activities, which had been specified in the *Marshall Decisions* of 1993. This being said, it is worth noting that because Canada is a constitutional monarchy, it has both crown land and private land. The crown land, which occupies 89% of Canadas land area, is owned by the federal or provincial governments. The private land, which covers only 11% of Canadas land area, is privately owned. (Neimanis, 2013, par. 2) For this reason, it is the government who can legally retrocede a part of the Crown land to First Nations, which is what many communities are fighting for.

## New Legal Framework

Justin Trudeau has been the head of Canada’s federal government as part of the liberal party since 2015. He is an advocate for First Nation rights and has been working towards reconciliation in the past years. At the start of his second mandate, his government proposed changes in the legal framework concerning the respect of indigenous rights. This new legislation aimed to alter the relationship between the Crown and Indigenous populations to create a nation-to-nation affiliation based on mutual respect. It would ensure their autonomy through self-government and would offer changes in existing land claims. (King & Pasternak, 2018, p. 1-2) This ongoing process shows his acknowledgment of First Nations issues, including land ownership challenges. (Tasker, 2018, par. 9)

## Investments

A crucial approach employed by the Prime Minister to address land rights issues has been through investments in different provinces. In 2022, he signed one of the largest claim settlements in the history of the country with First Nations in Alberta. Indeed, the federal government promised to provide $1.3 billion in compensation to Siksika First Nations to address unresolved land claims. (Graveland, 2022, par. 7) This money was not only to help correct past errors, but to help the communities grow on their land. Moreover, that same year, the government promised $800 million in funding over the upcoming seven years to be used for land protection projects in Nunavut, the Northwest Territories, Ontario, and British-Columbia. (Zimonjic, 2022, par 1) The aim is to protect the natural resources in the country, to progress towards climate change and consequently, to protect First Nations land rights.

## Contradicting actions

Despite the facts above, some of the federal government’s environmental actions have been contradictory to the values they promote concerning First Nations. The Trans Mountain Pipeline Expansion Project is the perfect example. This pipeline goes through First Nation lands, which has prompted many communities to put forth their disapproval as their sacred territory is being compromised. (Khelsilem, 2018, par. 4) Justin Trudeau, however, has continued the construction despite the objections. For his government, the goal is to progress environmentally and economically. (Liberal Party of Canada, 2019, p.1) These communities also argued that they were not properly consulted for this project and that many voiced their disagreement. (Khelsilem, 2018, par. 13f) Therefore, this demonstrates that even though the federal government promotes the reconciliation of land rights, they have not always acted accordingly when larger projects are at scale.

# Quebec Government Handling

## Viens Report

Under Phillipe Couillard’s government, the “Public Inquiry Commission on relations between Indigenous Peoples and certain public services in Québec: listening, reconciliation and progress” was established. The Commission’s aim was to investigate the issues faced by the Indigenous populations within the province and to offer recommendations based on the analyses. (Gouvernement du Québec, 2019, chapter 2) In 2019, their official report was published, and it put forth a list of 142 recommendations. Francois Legault, the current prime minister, was already the leader of the government at that time. He immediately made the first call to action, which was to present a public apology to the indigenous populations for the past and present suffering they have lived. (Lévesque, 2020, par. 5) However, he has not done much else since then. The prime minister has not recognized the importance and the severity of the matters. The concern of land rights is no exception. Although the report doesn’t put forth a direct recommendation about territorial injustices, they are realities that are detailed throughout the different sections. (Gouvernement du Québec, 2019, chapter 3) Just like in the other areas, Legault has made no comments about land rights.

## Economic endeavors

Instead of addressing First Nation issues, the provincial government focuses on the province’s economic growth and prosperity, which is often at the expense of the communities. Quebec is home to the biggest hydropower industry in Canada, known as Hydro-Québec. This company is owned and managed by the provincial government. (Hydro-Québec, n.d., par. 2) Over the years, there have been many tensions with the First Nations as proposed projects often involve their land. Some of the dams have destroyed parts of the population’s sacred territory and used its vital natural resources. (Bever, 2021, par. 5) This harms the communities’ ecosystems and overall natural environment. Prime Minister Legault does state that First Nations have a right to be involved as it impacts their land but presents the project as business opportunities and as ways to reach climate change goals. (Bell & Stewart, 2022, par. 11) This reveals how First Nations land rights are afterthoughts for the provincial government of Québec.

# British-Columbia Government Handling

Note that the provincial government of British-Columbia has had two leaders in the past five years. John Horgan first had power from 2017 until 2022, and David Eby has been elected since then. (The Canadian Encyclopedia, 2022, par. 1) Both are members of the New Democratic Party (NDP), so their visions and actions concerning First Nation land rights coincide.

## Declaration Act Action Plan

In 2019, the provincial government of B.C. was the first jurisdiction in Canada that adopted UNDRIP into law. Three years later, the government released an action plan to specifically implement the declaration. (British-Columbia Government, 2022, p. 1) The plan outlines four specific themes under which actions are proposed, one of them being the titles and rights of indigenous communities. It declares that the goal is for First Nations to fully have the right to manage, use, and own their inherent lands as well as its resources. Specific outcomes are also highlighted, such as the recognition of land rights through constructive arrangements and the benefit of First Nations from their natural resources. (British-Columbia Government, 2022, p. 14) While the action plan has only recently been established, it is a monumental action from the provincial government towards progress with indigenous communities. It not only shows that they recognize their inherent rights to land, but also that they are prepared to give the communities more access to the territories and sovereignty.

## Development projects

 As British-Columbia is a province that contains vast natural resources, it also faces dilemmas with First Nations concerning land exploitation for economic projects. The Coastal Gaslink Pipeline has been the principal issue in the past years. It consists of a 670-kilometer pipeline that crosses the whole territory, including Wet'suwet'en First Nation lands. (Follet Hosgood, 2022, par. 4) The government took the time to get approval from the communities affected and band councils signed an agreement with the project. However, once the project started indigenous protestors and their allies blocked railways to manifest against it. The reason being that the communities land was unceded, so the protesters claimed that the provincial government had no right to approve the project. (CBC News, 2023, par. 8) The Royal Canadian Mountain Police (RCMP) was then called to forcibly stop the manifestations, which created more issues as the First Nations felt disrespected. (Isaac, 2022, p. 26) This being said, the British Columbia government continued with the project as they had all permits issued and they believed to be respecting UNDRIP. (Follet Hosgood, 2022, par. 11)

## Land Settlement

B.C. is one of the four regions of Canada to benefit from Justin Trudeau’s promise to give $800 dollars in funding for the protection of resources on indigenous lands. (Zimonjic, 2022, par 4) This was already a significant advancement regarding land rights issues, but David Eby’s government decided to add to this by retroceding 44,266 hectares of Crown land to the First Nations. (Matassa-Fung, 2023, par. 1) The settlement aims to resolve deep-rooted issues related to Treaty 8. Signed in 1899, this treaty promised acres of land to First Nations, but it was never respected, and the communities were deprived of their rightful territory. (Matassa-Fung, 2023, par. 2) This decision is both a way of trying to fix past mistakes and a way to help First Nations in the province claim their land.

# Comparison

## Best government management

In the past five years, the government that has most effectively dealt with the First Nation land rights issues is the provincial government of British-Columbia. This statement can be supported by their efforts in the following criteria’s: legal initiatives, resource conservation, and land ownership recognition. Firstly, their adoption of the *Declaration Act Action Plan* before any other province in Canada shows their desire for progress in the area. Not much has been done yet as it was implemented a year ago, but if the goals described are reached, the challenges regarding native territories will significantly decrease. (British-Columbia Government, 2022, p. 3) What distinguishes this action from the federal government’s decision to change the legal frameworks concerning First Nation, is that specific goals are outlined. According to Tasker (2018, par. 26), Trudeau’s opposition pointed out that although his announcement is a considerable effort for reconciliation, it might be too ambitious and unrealistic. This is why the B.C. governments action plan seems better for true change, as it proposes reachable outcomes. Secondly, the government of B.C. took proper approaches to its development projects. Just like all other provinces in Canada, British-Columbia is confronted to dilemmas from these projects as they are essential for economic growth, but they also harm First Nation communities and lands. As opposed to Hydro-Québec’s ventures controlled by its provincial government, B.C. has been properly consulting with the affected communities. For the Coastal Gaslink Pipeline project, the provincial government says that UNDRIP measures were followed, and that band members were consulted. (Follett, 2022, par. 7) This being said, the management of the protest situation through the RCMP demonstrated a certain disregard for the First Nations’ desires and proved that they are not perfect when it comes to land rights reconciliation. From the community’s perspective, this demonstrates that problems regarding land rights remain unresolved, despite some of the positive changes. (Isaac, 2022, p. 30) Thirdly, the B.C. government’s recent land settlement decision, added to the monetary compensation from the federal government, exemplifies their commitment to recognizing inherent land rights. It is key to point out that in his context, Trudeau’s government deserves appreciation as it was their decision to give $800 million in compensation for preservation projects in different regions of the country. (Zimonjic, 2022, par 1) Their government in general has been good in managing the First Nation land rights issues. However, Matassa-Fung (2023, par. 7) highlights that for these communities, the settlement is an extra step towards the recognition of traditional territory. It shows that the B.C. government is trying to fix past mistakes, which is already more than what some other governments are doing.

## Worst government management

From the First Nations’ point of view, the provincial government of Québec has been the least effective in the management of land right issues. This is based on two main indicators: their general insensitivity to indigenous matters and their disregard for resource conservation. The *Viens Report* was an opportunity for Legault’s government to help indigenous communities progress, but he did not apply most of the recommendations. (Lévesque, 2020, par. 3) This demonstrates the government’s carelessness of First Nations issues compared to the federal and the B.C. government. As mentioned above, the British-Columbia government’s *Declaration Act Action Plan* alone is proof of their desire for improvement. The same thing goes for Trudeau’s legal framework changes, which although a little unrealistic, show that he has interest in reconciliation. Moreover, Legault’s government presents developmental projects with a lack of sensitivity for First Nations. Just like the British-Columbia and the federal government, Quebec’s government is subject to controversies as the development projects necessary for the prosperity of the provinces often create issues with indigenous communities. In all these cases, the projects are often announced as economic opportunities and have created issues regarding proper consultation. This is the case for the Trans Mountain Expansion Project, which is presented by the federal government as a way to create jobs and help work against poverty. (Liberal Party of Canada, 2019, p.1) However, Francois Legault’s government only puts forth the projects as business plans and does not seem to understand the land rights complexities. Bell & Steward (2022) explain that for the Prime Minister “We are talking about enormous economic benefits" with these projects. From a First Nations perspective, this is a complete negligence of their territory rights. Combined with his overall disengagement in indigenous matters, this makes the Québec Provincial government the worst in handling and understanding land rights issues.

## Political Orientation Influence

The fact the B.C. government seems to be the best at handling the land issues can be justified by their political views. The New Democratic Party (NDP) supports diversity, equity, as well as sustainability. (Université de Sherbrooke, n.d., par. 14) These left-wing visions are applied to relations with the First Nation population in the province and therefore can explain the government’s success in managing land rights. It also explains why the First Nations might believe that they have accomplished more than others in this sector. This is a similar case for the federal government, which is led by the Liberal Party. They promote freedom and human rights, which defends their desire to work for reconciliation. (Université de Sherbrooke, n.d., par. 3) It also justifies why their promises concerning land rights sometimes seem unrealistic and idealist, as they are known to have very progressive ideas. Regarding the provincial government of Québec, it is led by the Coalition Avenir Québec (CAQ), who mainly promotes economic growth. (Université de Sherbrooke, n.d., par. 2) This vision combined with the fact that Francois Legault is a businessman by nature who focuses on finances over anything else, explains his disregard for this First Nation issue. This is also why the communities perceive this government as less effective in dealing with their land rights.

# Contribution

## Federal Government Recommendations

As mentioned above, the federal government of Canada has made many promises and actions for First Nation land rights. It is crucial that the government keeps going in that direction and continues to promote reconciliation. However, Trudeau’s government needs to be less ambitious for the commitments to come into action. For this reason, the federals should make priorities among their promises. (Tasker, 2018, par. 26) This would avoid creating false expectations for the First Nations. An example of a specific focus area could be Crown land retrocession. Realistic limitations are to be kept in mind for this topic though, as many Crown lands are now urban sectors and cities, making it impossible to return them to indigenous communities. Another action the federal government needs to keep up is funding for the protection of natural resources on First Nation lands. Nevertheless, in future years, they need to verify that these investments have helped not only the government attain their objectives, but especially the First Nations. They should make sure that this money actually has improved their long-term well-being and not only short-term. (Zimonjic, 2022, par. 6)

## Quebec Provincial Government Recommendations

Overall, François Legault’s government needs to start showing more interest in the issues faced by First Nations, including land rights difficulties. To do so, they should start by applying more of the recommendations found in the *Viens Report*. A comprehensive strategy plan might be needed to ensure the call to action is put forth. (Côté, 2023, par. 4) Beyond this, the provincial government should recognize that there are no recommendations in the report that directly touch the issues of land rights. The Prime Minister should therefore both acknowledge that fact and propose recommendations himself. The government should also get inspired by provinces like British-Columbia, that are actively finding ways to reconcile with First Nations. They could specifically use their *Declaration Act Action Plan* as inspiration to make the province better for the First Nation populations. (British-Columbia Government, 2022, p. 3)

## British-Columbia Government Recommendations

The British-Columbia government need to keep their hard work aimed at reconciliation and at the maintaining of good relationships with First Nations. Although they are still making mistakes, they are doing considerable progress in the land rights area. Therefore, as has already been mentioned, they should help provinces such as Quebec to do the same. This could be by promoting the use of their *Declaration Act Action Plan* or by encouraging their actions of land settlements. In other words, they should raise awareness of the goals behind their actions. (British-Columbia Government, 2022, p. 3)

Regarding the land settlements, the government should make sure that the First Nations have the means necessary to preserve the territories they gave back. There have been many environmental tragedies in the Western provinces recently, such as severe wildfires, and the B.C. government should make sure that the communities are equipped to deal with such realities on their retroceded lands. (Owen, 2023, par. 1) Within the same idea, the government should verify, in a few years, that the land settlements had lasting impacts on the First Nations. The aim should be to make sure that their well-being improved and that it helped resolve land claims.

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