

**Analysis of the “Alternative Governance Model”  
Proposed to serve as treaty model  
Between Gitxsan, Canada, and BC**

In July, 2007 the Gitxsan Treaty Office, without the knowledge or consent of Gitxsan people, released, through national and regional news media, the *Alternative Governance Model* dated May 15<sup>th</sup> 2008. The Model proposes terms under which the Gitxsan Hereditary Chiefs will seek a treaty with the Provincial and Federal Governments.

The Alternative Governance paper proposes, among other things, that once a treaty is finalized under the new Model:

1. Band Governments established under the Indian Act will disappear
2. Membership in bands will cease
3. Reserve lands established under the Indian Act will be eliminated
4. No treaty settlement lands will be selected
5. Programs and services now provided by Bands will be provided by the provincial and federal governments
6. Gitxsan people will pay taxes and local governments will not collect taxes

The Gitksan Government Commission (“GGC”), representing the elected Band Councils of Kispiox, Glen Vowell, Gitanmaax, and Gitwangak oppose the proposed Model as the terms could have significant and long lasting impacts on Gitxsan members, communities and government. Gitanyow, which conducts its own treaty negotiations, will be affected as it is a member of the GGC and receives funding and technical assistance from the Commission.

The GGC arranged for an independent legal analysis of the *Alternative Governance Model*. The analysis does not reflect the views of the GGC Board of Directors or member bands. However, it summarizes some of the most critical issues raised by Gitxsan in attendance at a public forum held on July 24<sup>th</sup>, 2008 at Gitanmaax. The Model proposes what the Gitxsan would give up in exchange for a treaty, but there is no clear explanation about what may be gained in exchange. Therefore, it is not possible to make an assessment about whether or not there is a fair bargain. The following is a summary of the most severe impacts:

### **Loss of Gitksan Ties to History and Identity**

Gitksan lived in communities such as Gitwangak, Gitsegukla, Gitanmaax, Kispiox, Glen Vowell, Kisegas, and Kuldo for thousands of years therefore membership and ties to these communities goes to the core of Gitksan identity. The *Alternative Governance Model* proposes that lands on which these communities are located would be removed from the *Indian Act* and become part of the B.C. land holding system.

This has two affects. First, the *Constitution Act 1867* as well as the Supreme Court of Canada, in *Delgamuukw v. B.C.*, and other cases, held that Canada has a fiduciary obligation to protect Aboriginal lands and rights. Under the *Alternative Governance Model* Canada would no longer have any special relationship to Gitksan and the province would also not have any obligation to protect land for the Gitksan.

Second, those lands that presently exist within reserve boundaries will become registered under the *B.C. Land Titles Act* and therefore available for purchase by non-Gitksan. Lands with special value, for example, due to scenic or agricultural value, or its location, would be lost first while those of lesser value will likely remain in Gitksan hands. Lands with historical or cultural value, such as the villages of Kuldo and Kisegas, will be also lost as they are not protected by occupancy or by Band Councils. There is likely to be immediate interest and demand for Gitanmaax and Gitwangak reserve lands due to their locations. In the long term future generations will their ties to their communities which were once Gitksan.

### **Possible Loss of Fishing Sites**

When lands were being set aside as reserve lands in the 1870's the Gitksan chose locations which were used a fishing sites. These lands would no longer be protected or set apart, and could be become the property of non Gitksan. As a result access to fishing sites could be lost.

### **Language and Culture Threatened**

As people stop living in groups due to loss of reserve land, both language and culture are threatened. With the loss of community, the numbers of people speaking the Gitksan language will likely decline as there is no longer the "critical mass" needed to maintain day-to-day language usage. Given the close tie between language and culture, a loss of one could lead to a decline and loss of the other.

### **Loss of Band Governments**

The right to self government is part of Aboriginal people's inherent rights. Gitksan government is made up the hereditary chief system and Band Councils which are elected under the *Indian Act*. Both forms of

government are expressions of the right to self government and both carry out different responsibilities. Band Councils are elected by registered band members and have assumed all responsibility for programs and services to members; have responsibility for managing funds on behalf of their members and are also responsible for protecting reserve lands which have been set aside for present and future generations. The Alternative Model proposes that Band Councils be eliminated and therefore an integral part of Gitxsan capacity for self government will be lost. In the short term there will be severe negative economic impacts as band administrations and GGC programs are the major employer in the area which already has over a 70% unemployment rate.

### **Loss of Membership**

Gitxsan who are registered members of Gitwangak, Gitsegukla, Gitanmaax, Glen Vowell, and Kispiox Bands will lose their registered status. (Gitxsan registered with other bands may not be affected as they can choose to opt out of a Gitxsan treaty). Those who do lose their membership become a Canadian citizen but with ties to specific Gitxsan houses; that is they will be similar to non status Indians. Those who have lost their ties to the feast and house system and rely on band membership to maintain their identity could suffer greatest loss unless there is a strong effort to bring them back into the Gitxsan houses. In addition to providing ties to specific Gitxsan communities, band membership also gives the people an opportunity to participate in government and voice concerns which they cannot do in the hereditary system. For example, in 2006, 69% of Gitanmaax band members voted in a referendum that the GTO should not represent them any more in treaty negotiations.

### **Loss of Specific Rights - Protection against Tax**

The Alternative Governance Model proposes that Gitxsan will give up their right to protection from taxes, protection provided through the Constitution Act and various court decisions. With loss of Indian status, Gitxsan will pay:

1. Tax on property situated on reserve, including income earned on reserve.
2. GST and PST taxes on personal and real property on-reserve
3. Property taxes to help the district or village finance its water, sewer, transportation and other essential services. Failure to pay property taxes could result in forced sale of the property.

### **Loss of Protection against Seizure of Property**

The *Indian Act* protects reserve lands from falling into the hands of others who are not a band member. The *Act* also prevents real and personal property from being used as security and so cannot be seized for

payment. (To address this GGC bands have given guarantees on many homes on reserve.) These protections would be lost.

### **Loss of Programs and Services**

The Gitksan have access to on-reserve programs and services based on their membership with the Band. Bands and the Gitksan Government Commission are now able to develop policies and programs that may take a more lenient and compassionate approach to assessing need. Without membership and on-reserve status, the Gitksan could expect to pay for many things, as follows:

- Pay for health insurance premiums, ambulance services and local ground travel including costs of an escort, some physician services, and certain hospital expenses that are not medically necessary.
- Pay for post-secondary education - tuition, books and living expenses.
- Pay for housing and costs to renovate and maintain the house

Education will be seriously impacted. Presently, the bands and GGC/GWES receive funds from INAC which is used to negotiate Local Service Agreements with the School Board. Negotiated services and programs would be lost or severely cut resulting in higher rates of drop out. The School District would likely close down band-operated schools to help balance their budget. Fewer Gitksan will be able to attend university.

### **Problems with the Alternative Governance Process**

The Alternative Governance Model fails in the following ways:

- It is not consistent with the Chiefs' position in *Delgamuukw*
- The Hereditary Chiefs and the GTO have a fiduciary duty to protect Gitksan rights; the Governance Model does not do this
- The Elected Chiefs and Council have a duty to protect band assets and band land however the Model does not recognize this.
- The Gitksan have a right to be involved in deciding their future; the Governance Model does not do this.
- Funds are borrowed by the GTO on behalf of Gitksan however there does not appear to be any transparency or accountability; as Gitksan learned about the Governance model through the media.