



TWO RETIRED SUPREME COURT OF CANADA JUSTICES AND A RETIRED BC APPEAL COURT JUSTICE ALL AGREE THAT PARTS OF THE NISGA'A TREATY AGREEMENT ARE UNCONSTITUTIONAL.

"... it is clear that the Agreement provides for the transfer from the governments of Canada and British Columbia to the Nisga'a nation very significant sovereign powers presently possessed by Canada and British Columbia in accordance with the Constitution of Canada."

"This transfer is, by itself, unconstitutional."

— see *McEvoy v. Attorney General of Canada* [1983] 1 S.C.R. 70

"THERE IS NOTHING IN THE AGREEMENT WHICH ACKNOWLEDGES THE SOVEREIGNTY OF CANADA OR REQUIRES ANY OATH OF ALLEGIANCE TO CANADA OR TO HER MAJESTY AS A CONDITION OF NISGA'A CITIZENSHIP."



Justice Estey

"There is good authority for the proposition that the approval of this Agreement without a constitutional amendment in accordance with Part V of the *Constitution Act, 1982*...

... would be unconstitutional."

"THERE IS GOOD REASON TO CONCLUDE THAT THE NISGA'A AGREEMENT AND THE STATUTORY PROVISIONS CONCERNING ITS RATIFICATION CONTRAVENE THE PROVISIONS OF THE CANADIAN CONSTITUTION AND ACCORDINGLY CANNOT HAVE THE FORCE OF LAW."

Justice Willard Estey (Supreme Court of Canada)
Justice W.R. McIntyre (Supreme Court of Canada)
Justice D.M.M. Goldie Q.C. (BC Court of Appeal)

On March 23, 2000, Justice Willard Estey, retired at the time and thus able to take part in a political process, stood before a Canadian Senate hearing giving evidence—at his own expense and time—about the Nisga'a Treaty legislation. The above quotes were taken from a brief he submitted; the brief was co-signed by Mr. Justice W.R. McIntyre at the Supreme Court of Canada and B.C. Appeal Court Justice D.M.M. Goldie, Q.C., both of whom were also retired at the time. The full text of the brief is attached.

There is more... please turn to the next page...



*“The Agreement... purports to cede to the Nisga’a Nation sovereign powers of such nature that at the very least a **third order of government will be created in Canada** which will have virtually all the powers of an independent sovereign state... From the foregoing it is clear that **the Nisga’a will have received virtually all the attributes of an independent state...** An independent, self-governing, nation state will be created within the boundaries of Canada... If this Agreement is approved, **another arm of government with its own allocation of powers will be created...**”*



Justice Estey

WILLARD ESTEY — IN BRIEF:

Mr. Estey began practicing law in Ontario in 1947. He was appointed to the Ontario Court of Appeal in 1973. In 1975, he was named Chief Justice of the High Court of Ontario; the following year, he became Chief Justice of the province. In 1977, he was appointed to the Supreme Court of Canada. He drafted the first major judgment on the Canadian Charter of Rights & Freedoms, known as the Skapinker judgment, in 1984. He retired in 1988. A little known fact: he was appointed a trustee of the Stanley Cup in 1984 on the nomination of Red Dutton, succeeding Clarence Campbell, and remained as a trustee until he died at the age of 82 on January 25, 2002. He was succeeded by “Scotty” Morrison.



Justice Estey

WILLIAM MCINTYRE — IN BRIEF:

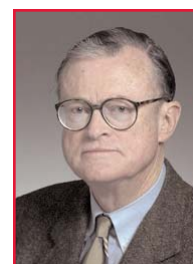
Mr. McIntyre also began practicing law in 1947 in Victoria, BC. He was appointed to the BC Supreme Court in 1967 and to the BC Court of Appeal in 1973. In 1979, he was to the Supreme Court of Canada, where he served for 10 years, until he retired in 1989. Justice McIntyre has always felt that the Charter of Rights & Freedoms was better than common law principles. A proponent of freedom of expression, he framed the key definition of “equality rights” in s.15 of the Charter when writing his decision in the “Andrews” case; that definition is often quoted in Canadian courts.



Justice McIntyre

MICHAEL GOLDIE — IN BRIEF:

Mr. D. Michael M. Goldie began his work in the law in 1950. He was in private practice until 1956, when he became corporate counsel with the British Columbia Power Corporation Limited group of companies. The group was later expropriated by the BC government, and became the forerunner to BC Hydro. He joined the law firm of Russell & DuMoulin in Vancouver following the expropriation. He was appointed Queen’s Counsel in 1972 and in 1991 he was named to the British Columbia Court of Appeal, where he served until he retired in 1999. He is still a consultant with Russell & Dumoulin, now known as Fasken Martineau.



Justice Goldie

The Estey Testimony to the Standing Senate Committee On Aboriginal Peoples

Submission of W.Z. Estey, Q.C., with concurrence by W.R. McIntyre, Q.C., and D.M.M. Goldie, Q.C.

1. It is not the purpose of this submission to question the policy adopted by the Federal Parliament and the Legislature of British Columbia concerning aboriginal land claims or the governance of Nisga'a lands. It is for Parliament and the British Columbia Legislature to decide upon such questions. It is submitted, however, that whatever the policy, it should be implemented lawfully, that is, in accordance with the established law of the Constitution.

2. There is good reason to conclude that the Nisga'a Agreement and the statutory provisions concerning its ratification contravene the provisions of the Canadian Constitution and accordingly cannot have the force of law.

"There is good reason to conclude that the Nisga'a Agreement and the statutory provisions concerning its ratification contravene the provisions of the Canadian Constitution and accordingly cannot have the force of law..."

3. The Agreement provides in Chap. 11 for the establishment of a Nisga'a Constitution and purports to cede to the Nisga'a Nation sovereign powers of such nature that at the very least a third order of government will be created in Canada which will have virtually all the powers of an independent sovereign state including the power to make laws which will take precedence over the long established laws of Canada and British Columbia: see Chap. 1, para. 13(a) and (b). This Constitution will replace the Constitution which has served Canada well since 1867.

4. Under the Agreement the Nisga'a Government will exercise powers in accordance with:

- (a) The Agreement;
- (b) the Nisga'a Constitution; and
- (c) Nisga'a laws (Chap. 11, para. 6).

The Canadian Constitution may be amended by the formula set forth in Part V of the *Constitution Act, 1982*. An amendment may be achieved only with some difficulty and upon a broad consensus of Canadian opinion. It is so defined to ensure stability in the most basic of Canadian institutions. The Nisga'a Constitution may be amended if 70% of those Nisga'a citizens voting in a referendum approve. This then supplants the amending formula in the Canadian Constitution and there will be a part of Canada living under a Constitution over which neither Parliament nor a Provincial Legislature will have any power of amendment.

5. The Agreement eliminates the supervisory power of the superior courts of the Province whose judges are

appointed by the Governor-in-Council until all Nisga'a procedures for appeals or review are exhausted (Chap. 11, para. 17). An appeal process in a Nisga'a court is substituted. The Nisga'a court judge or judges are appointed by the Nisga'a Government (Chap. 12, para. 37). This provision would seem to be in direct conflict with Section 96 of the *Constitution Act, 1867*, requiring that superior court judges be appointed by the Governor-in-Council, a provision designed to ensure the independence and impartiality of the Canadian judiciary. The supervisory powers of the federally appointed superior court judges over inferior courts and tribunals

has long guaranteed the rule of law in Canada.

6. The Nisga'a government will have the power to establish a police force and compel the Lieutenant-Governor-in-Council to approve the structure of the force and to appoint to the governing Police Board only those recommended by the Nisga'a government.

7. From the foregoing, it is clear that the Nisga'a will have received virtually all the attributes of an independent state. They will have a government with paramount powers to make laws concerning the rights and obligations of citizens and a power to amend its Constitution from time to time, a separate judiciary appointed and removable by that Government, and a police force appointed and directed by its Board. At present, the totality of the sovereign powers over the Nisga'a rests exclusively with the Parliament of Canada and the Provincial Legislatures. If the Agreement is approved, the terms of any authority conferred on the Nisga'a nation state may not be changed by Parliament or the Legislatures acting singly or in concert. An independent, self-governing nation state will be created within the boundaries of Canada.

8. The authority for this is said to be found in s. 35 of the *Constitution Act, 1982* and rests wholly on the meaning and effect of the word "treaty." It is clear those who are in favour of *Bill C-9* believe the Nisga'a Agreement is a treaty that binds Canada and all the Provinces in a manner that places it beyond the law as it is administered in the Courts of Canada. If they are right—and no court has said they are—no change in this Agreement may be made without the consent of the Nisga'a. This momentous step should not be taken until the Supreme Court of Canada rules on the effect of this document. A simple way to do this is to postpone the effect of ratification until the Court has been given that opportunity.

9. Suggestions have been made that the arrangement contemplated in the Agreement does no more than create a government institution by the delegation of powers. In other words, it is said that what is contemplated here is no more than what occurs when Provincial Legislatures create municipal governments within the Province for cities. There is, however, no analogy whatever with the municipal illustration. What is contemplated in the Agreement is not a delegation of powers, it is an abdication of the powers granted in the Canadian Constitution to Parliament and the British Columbia Legislature. When a Provincial government creates a municipal government within its boundaries, it is exercising its own powers conferred in Head 8 of Section 92 of the *Constitution Act, 1867* (formerly the *British North America Act*). The municipal government so created is merely the means by which the Provincial Legislature exercises its constitutional power within the Province. The powers so delegated may be amended, withdrawn and even abolished by the Province.

"What is contemplated in the Agreement is not a delegation of powers, it is an abdication of the powers granted in the Canadian Constitution to Parliament and the British Columbia Legislature. "

10. The rights of the Nisga'a nation are to be exercised according to the Agreement, the Nisga'a Constitution and the Nisga'a laws (Chap. 11, para. 6). Note that the only reference to revocation of a delegation of authority is in Chap. 2, paras. 11 and 12, which refers to delegation as between Canada and British Columbia. These provisions do not recognize any right in Canada or British Columbia to revoke or amend any power created by the Agreement in the Nisga'a nation or Constitution. There is no power reserved to Canada or British Columbia comparable to the power of disallowance which was frequently used in the early years of Canada to prevent injustices. And in order to limit the effectiveness of any proceeding questioning the validity of the Agreement, Canada and British Columbia agree not to exercise the right to appear by counsel in such a proceeding or to support (that would include paying the legal fees of an intervenor) a claim of invalidity. This deprives the courts of Canada of the assistance of Attorneys General in constitutional cases and constitutes a total abdication of a constitutional responsibility on the part of Canada.

11. The *Constitution Act, 1867* sets out in Sections 91 and 92 the allocation of legislative powers with a residual power in the Parliament of Canada as may be necessary for the peace, order and good government of Canada. For over 125 years, the courts have decided questions arising out of this allocation of legislative powers. If this Agreement is approved, another arm of government with its own allocation of powers will be created. Attached to this [submission] is a three part

analysis of where in the Agreement Nisga'a laws are paramount; where they are not paramount; and, finally, where it is left to the judicial process to determine paramountcy. A glance at Chap. 11, para. 36 illustrates the first; para. 52 of Chap. 11, the second; and the third speaks for itself.

12. Nothing illustrates better the complexity of establishing a third level of government with sovereign powers than these appendices. The prospect is for endless litigation. The dispute resolution, Chap. 19, cannot alter the fact that a private arbitration cannot affect the rights of third parties and this well-meant process will wind up creating more, not less, work for the Courts.

13. Finally, it has been suggested that this Agreement is unique and would have no effect beyond a remote area in British Columbia. It is indeed unique in the

Canadian experience. We find however in the draft Taxation Side Agreement evidence that the Nisga'a themselves want the financial benefit of any future Treaty settlement, see para. 37. It is reasonable to assume that this Agreement with its Side Agreements will become the starting point for the claims of every native group in Canada and it ought to be observed that this Agreement cannot be terminated by Canada or British Columbia. In Chap. 11, para. 4, the following appears under sub number (4):

The exercise of the Nisga'a government's jurisdiction and authority set out in this Agreement will evolve over time.

What can this comment mean? Of course we all know that written constitutions of sovereign states evolve and change with time. This was demonstrated in Canada in the famous *Persons* case involving membership in the Senate. There, the court interpreting the meaning of "persons" to include women said that the *British North America Act* (now the *Constitution Act, 1867*) planted in Canada a living tree capable of growth and expansion and quoted with approval the words of a former Prime Minister of Canada:

Like all written constitutions it has been subject to development through usage and conviction.

The living-tree doctrine was developed by and its application regulated by independent courts. Under the Agreement it is the Nisga'a Government not the courts that will utilize the principle. Canada and British Columbia will be powerless to interfere since they will have agreed to this process for all time. There is nothing in the Agreement which acknowledges the sover-

eignty of Canada or requires any oath of allegiance to Canada or to Her Majesty as a condition of Nisga'a citizenship. The alienation of mineral and forest resources is permanent and the financial obligations of Canada and British Columbia are irrevocable while the Nisga'a jurisdiction and authority will "evolve over time."

14. Nothing is mentioned above in the comment under paragraph 4 of the ambiguity and confusion which will arise upon implementation of the Agreement with respect to the Treaty obligations of Canada in the fields of trade, taxation, immigration, etc. The Canadian economy is presently deeply engaged in Treaty-regulated matters. The Agreement is totally inadequate in fitting this new arrangement of government into our national undertakings in our international treaties and protocols.

15. From the foregoing, it is clear that the Agreement provides for the transfer from the governments of Canada and British Columbia to the Nisga'a nation very significant sovereign powers presently possessed by Canada and British Columbia in accordance with the Constitution of Canada. This transfer is, by itself, unconstitutional; see *McEvoy v. Attorney General of Canada* [1983] 1 S.C.R. 704. There is also good authority for the proposition that the approval of this Agreement without a constitutional amendment in accordance with Part V of the *Constitution Act, 1982* would be unconstitutional, and at the end of possibly five years or so when the Supreme Court of Canada pronounces invalidity in dealing with one of the several cases already in progress in the courts of British Columbia

"...it is clear that the Agreement provides for the transfer from the governments of Canada and British Columbia to the Nisga'a nation very significant sovereign powers presently possessed by Canada and British Columbia in accordance with the Constitution of Canada. This transfer is, by itself, unconstitutional..."

challenging the constitutional validity of the Agreement, the time, trouble and cost would be a rebuke to us all. It would be the part of responsibility to let the present litigation proceed before implementation of the Agreement and let the traditional methods of village governments in the Nisga'a territory continue before they are finally swept away.

16. In conclusion, it is not the purpose of this submission to seek the total rejection of the proposals now before you. However, since it is in the interests of all the parties concerned that any steps involving the creation of the new Nisga'a state or nation be taken lawfully, we ask that an amendment be made to Section 27 of *Bill C-9* (the Nisga'a Final Agreement) by the addition of the following:

which day shall not be earlier than the date upon which the Supreme Court of Canada pronounces on the validity of the Nisga'a Agreement or on the 1st day of January, 2005, whichever date is the earlier.

ALL OF WHICH IS RESPECTFULLY SUBMITTED:

W.Z. Estey, Q.C.

WE ENDORSE THE FOREGOING:

W.R. McIntyre, Q.C.
D.M.M. Goldie, Q.C.

March 22, 2000, Toronto, Ontario

Nisga'a Agreement			Part 1: Legislative Subject Matters where Nisga'a Laws are Paramount
Chap.	Para.	Page	
8	69	112	The Nisga'a may make laws in respect to their rights and obligations over fish and aquatic plants.
8	70	113	The Nisga'a may make laws in respect to licensing requirements, identification, and documentation in regards to the harvest of fish or aquatic plants.
9	37	138	The Nisga'a may make laws as to the distribution of their wildlife entitlements, licensing, documentation, and other matters related to their wildlife entitlements.
11	34	156	<p>Nisga'a may make laws in respect of the administration, management and operations of Nisga'a Government, including:</p> <ul style="list-style-type: none"> • the establishment of Nisga'a public institutions, including their respective powers, duties, composition and membership; • powers, duties, responsibilities, remuneration, and indemnification of members, officials, employees, and appointees; • the establishment of Nisga'a corporations; • the delegation of Nisga'a Government authority; • financial administration of Nisga'a public bodies; • elections, by-elections, and referenda.
11	35	160	<p>Each Nisga'a village may make laws in respect of the administration, management, and operation of that Nisga'a village, including:</p> <ul style="list-style-type: none"> • the establishment of Nisga'a public institutions, including their respective powers, duties, composition, and membership; • powers, duties, responsibilities, remuneration, and indemnification of members, officials, employees, and appointees; and • the delegation of Nisga'a Government authority.
11	37	166	The Nisga'a may make laws in respect of the creation, continuation, amalgamation, dissolution, naming, or renaming of Nisga'a villages and urban locales.
11	39	167	The Nisga'a may make laws in respect of Nisga'a citizenship.
11	41	167	The Nisga'a may make laws to preserve, promote, and develop Nisga'a culture and Nisga'a language, including laws to authorize or accredit the use, reproduction, and representation of Nisga'a cultural symbols and practices, and the teaching of Nisga'a language.
11	44	167-168	The Nisga'a may make laws in respect of:

Nisga'a Agreement			Part 1: Legislative Subject Matters where Nisga'a Laws are Paramount
Chap.	Para.	Page	
			<ul style="list-style-type: none"> • the use and management of Nisga'a Lands owned by the Nisga'a; • the possession of Nisga'a Lands owned by the Nisga'a, including the granting of rights of possession in Nisga'a Lands and any conditions or restrictions on those rights; • the disposition of an estate or interest of the Nisga'a Nation in any parcel or Nisga'a Lands, including the disposition of the whole estate or interest; • the creation or disposition of any lesser estate or interest; and • the creation of rights of way and covenants similar to sections 216 and 219 of the Land Title Act; • the conditions for the Nisga'a Nation to create or dispose of its estates or interests in any parcel of Nisga'a lands; • the conditions in respect of any subsequent disposition of Nisga'a lands; • the reservation or exception of interests or titles from any creation or disposition of an estate in Nisga'a lands; and • other similar matters relating to the property interests of the Nisga'a Nation.
11	47	168-169	<p>The Nisga'a Lisims Government may make laws in respect of:</p> <ul style="list-style-type: none"> • the use, management, planning, zoning, and development of Nisga'a Lands; • regulation, licensing, and prohibition of the operation on Nisga'a Lands of businesses, professions, and trades, including the imposition of licence fees or other fees, other than laws in respect of the accreditation, certification, or professional conduct of professions and trades, and; • other similar matters related to the regulation and administrations of Nisga'a Lands.
11	48	169	<p>The Nisga'a Village Government may make laws in respect of:</p> <ul style="list-style-type: none"> • the use, management, planning, zoning, and development of Nisga'a Lands; • regulation, licensing, and prohibition of the operation on Nisga'a Lands of businesses, professions, and trades, including the imposition of licence fees or other fees, other than laws in respect of the accreditation, certification, or professional conduct of professions and trades, and; • other similar matters related to the regulation and administrations of Nisga'a Lands.

Nisga'a Agreement			Part 1: Legislative Subject Matters where Nisga'a Laws are Paramount
Chap.	Para.	Page	
11	50	169-170	<p>The Nisga'a Lisims Government may make laws in respect of:</p> <ul style="list-style-type: none"> • the establishment of a land title system for Nisga'a Lands, including the establishment of a requirement similar to subsection 20(1) of the Land Title Act; • designation of any parcel of Nisga'a Lands as Nisga'a Private Lands or Nisga'a Village Lands; • expropriation by Nisga'a Government for public purposes and public works; and • other similar matters related to the regulation and administration of Nisga'a Lands.
11	53	170	<p>Nisga'a Lisims Government may make laws in respect of:</p> <ul style="list-style-type: none"> • the use, possession, and management of the assets, other than real property on Nisga'a Lands; • the imposition of conditions on, and restrictions subject to which, Nisga'a government may authorize the disposition of the assets, other than real property, within Nisga'a lands; and • other similar matters relating to the property interests of the Nisga'a Nation.
11	54	170	<p>Nisga'a Village Government may make laws in respect of:</p> <ul style="list-style-type: none"> • the use, possession, and management of the assets, other than real property on Nisga'a Lands; • the imposition of conditions on, and restrictions subject to which, Nisga'a government may authorize the disposition of the assets, other than real property, within Nisga'a Lands; and • other similar matters relating to the property interests of the Nisga'a Nation.
11	54	174	<p>Nisga'a law determining the organization and structure for the delivery of health services on Nisga'a Lands are paramount over federal and provincial law.</p>
11	85	174	<p>Nisga'a Lisims Government may make laws in respect of the authorization or licensing of individuals who practice as aboriginal healers on Nisga'a Lands.</p>
11	89	174	<p>Nisga'a Lisims Government may make laws in respect of child and family services on Nisga'a Lands.</p>
11	96	175	<p>Nisga'a Lisims Government may make laws in respect of the adoption of Nisga'a Children.</p>
11	100	176	<p>Nisga'a Lisims Government may make laws in respect of pre-school to grade 12</p>

Nisga'a Agreement			Part 1: Legislative Subject Matters where Nisga'a Laws are Paramount
Chap.	Para.	Page	
			education on Nisga'a Lands of Nisga'a citizens.
11	103	177	Nisga'a Lisims Government may make laws in respect of post-secondary education within Nisga'a Lands, including: <ul style="list-style-type: none"> • the establishment of degree-granting post-secondary institutions; • the determination of the curriculum; • the accreditation and certification of individuals who teach or research Nisga'a language and culture, and • the provision of all adult education programs.
11	116	179	Nisga'a Lisims Government may make laws in respect of the devolution of cultural property of a Nisga'a citizen who dies intestate.

Nisga'a Agreement			Part 2: Legislative Subject Matters where Nisga'a Laws are NOT Paramount
Chap.	Para.	Page	
8	72	113	The Nisga'a may make laws in respect of the sale of fish or aquatic plants harvested under the Agreement.
9	39	139	The Nisga'a may make laws in respect of any sale of wildlife, migratory birds, or the inedible by-products of migratory birds harvested under the Agreement.
10	3	155	The Nisga'a may make laws in respect of the environmental assessment of projects on Nisga'a Lands.
10	11	157	The Nisga'a may make laws in respect of environmental protection on Nisga'a Lands.
11	52	170	In any conflict arising out of a Nisga'a law in regards to prospecting for, production of, refining, and handling of uranium or other materials capable of releasing atomic energy, federal law prevails to the extent of the conflict.
11	57	170	Nisga'a Village Governments may make laws in respect of the use, possession, and management of Nisga'a assets that are located off of Nisga'a Lands.
11	59	171	Nisga'a Lisims Government may make laws in respect of the regulation, control, or prohibitions of any actions on Nisga'a Lands that constitute, or may constitute, a nuisance, trespass, a danger to public health, or a threat to public order, peace, or safety.
11	60	171	Nisga'a Village Governments may make laws in respect of the regulation, control, or prohibitions of any actions on Nisga'a Lands that constitute, or may constitute, a nuisance, trespass, a danger to public health, or a threat to public order, peace, or safety.
11	69	172	Nisga'a Lisims Government may make laws in respect of the design, construction, maintenance, repair, and demolition of buildings, structures, and public works on Nisga'a Lands.
11	70	172	Nisga'a Village Governments may make laws in respect of the design, construction, maintenance, repair, and demolition of buildings, structures and public works on Nisga'a Village Lands.
11	72	172	Nisga'a Village Governments may make laws in respect of the regulation of traffic and transportation on Nisga'a Roads within its village, to the same extent as municipal governments.
11	73	172-173	Nisga'a Lisims Government may make laws in respect of the regulation of traffic and transportation on Nisga'a Roads, other than those within Nisga'a villages, to the same extent as municipal governments.
11	75	173	Nisga'a Lisims Government may make laws in respect of solemnization of marriages within British Columbia, including prescribing conditions under which individuals appointed by the Nisga'a may solemnize marriages.

Nisga'a Agreement			Part 2: Legislative Subject Matters where Nisga'a Laws are NOT Paramount
Chap.	Para.	Page	
11	76	173	Nisga'a Lisims Government may make laws in respect of the provision of social services.
11	82	174	The Nisga'a Lisims Government may make laws in respect of health services on Nisga'a Lands.
11	110	178	Nisga'a Government may make laws in respect of the prohibition of, and the terms and conditions for, the sale, exchange, possession, or consumption of intoxicants on Nisga'a Lands.
11	123	180	Nisga'a Lisims Government may make laws in respect of emergency preparedness and emergency measures, to the same extent as a local authority.
15	21	218	The Nisga'a Lisims Government may make laws that impose an obligation on the Nisga'a Nation, Nisga'a Villages, Nisga'a settlement trusts, or Nisga'a government corporations to enable the Nisga'a to recover from those entities amounts in respect of the own source revenue capacity.

Nisga'a Agreement			Part 3: Legislative Subject Matters where Paramountcy is Unclear or Not Stated
Chap.	Para.	Page	
5	6	66	Nisga'a will make laws in respect of the management of timber resources that meet or exceed provincial and federal forest practices legislation.
5	11	67	Nisga'a may make laws in respect of non-timber forests resources that meet or exceed provincial and federal standards for harvesting and conservation applicable to private land.
5	14	68	Nisga'a may make laws compatible with provincial laws in respect of timber scaling.
6	3	79	Nisga'a may make laws regulating public access to and onto Nisga'a public lands.
7	6	85-87	Subject to certain restrictions, Nisga'a laws apply to secondary provincial road rights of way areas, public utility rights of way areas, and works under licence to British Columbia or a public utility.
7	44	95	Subject to certain provisions, B.C. has no authority to zone or otherwise regulate land use on Nisga'a Lands adjacent to provincial road rights-of-way areas.
8	74	113	The Nisga'a will make laws to require that fish transported outside Nisga'a Lands for the purpose of trade or barter be identified as such and that Nisga'a citizens or authorized agents comply with Nisga'a annual fishing plans.
8	92	116	The Nisga'a annual fishing plan is paramount over federal and provincial laws of general application
9	41	139	The Nisga'a will make laws to require any meat or wildlife transported outside Nisga'a Lands for the purpose of trade or barter be identified as such and to require Nisga'a citizens to comply with the annual wildlife management plan.
9	67	145	The annual management plan, as approved by B.C., prevails in any conflict between it and federal or provincial laws of general application.
9	70	145	Any Nisga'a laws in respect of the sale of wildlife or wildlife parts, must be in accordance with federal and provincial laws of general application.
9	79	148	Construction of cabins or other structures associated with traplines is subject to Nisga'a laws.
11	1	159	The Nisga'a have the right to self-government and the authority to make laws, as set out in the agreement.
11	63	171	Nisga'a Lisims Government may make laws prescribing the aspects of Nisga'a culture to be accommodated in accordance with federal and provincial employment laws of general application.

Nisga'a Agreement			Part 3: Legislative Subject Matters where Paramountcy is Unclear or Not Stated
Chap.	Para.	Page	
11	121	179	In addition to the laws that Nisga'a Government may make under this Chapter, Nisga'a Government may make laws in respect of matters within Nisga'a Government jurisdiction as set out in the Agreement.
11	126	180	For greater certainty, the authority of Nisga'a Government to make laws in respect of a subject matter as set out in this Agreement includes the Authority to make laws and to do other things as may be necessarily incidental to exercising its authority.
11	127	180	Nisga'a Government may make laws and do other things that may be necessary to enable each of the Nisga'a Nation, a Nisga'a Village, and Nisga'a Government to exercise its rights, or to carry out its responsibilities, under this Agreement.
12	3	185	If the Nisga'a decide to establish their own police service, the Nisga'a government will make laws to provide for the establishment, organization, composition, indemnification, and roles and responsibilities of a Nisga'a Police Board and a Nisga'a Police Service.
12	30	191	Nisga'a Lisims Government may make laws to provide for the constitution, maintenance, and organization of a Nisga'a Court for the better administration of Nisga'a laws.
12	33	191	If the Nisga'a decide to establish a Nisga'a Court, the Nisga'a will make laws to: <ul style="list-style-type: none"> • ensure that the court and its judges comply with generally recognized principles in respect of fairness, independence, and impartiality; • provide for means of supervision of judges; and • provide procedures for appeals of Nisga'a Court decisions.
16	1	217	Nisga'a Lisims Government may make laws in respect of direct taxation of Nisga'a citizens on Nisga'a lands.
16	4	217	Nisga'a Government may make laws in respect of the implementation of any taxation agreement entered into with Canada or British Columbia.