

British Columbia Environmental Assessment Revitalization

ANALYSIS OF DISCUSSION PAPER &
RECOMMENDATIONS

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Introduction

Who are the Stó:lō?

Today, in continuity with thousands of years of history, Stó:lō (the People of the River') occupy and use their traditional territory, *S'ólh Téméxw*, which is in the lower Fraser River watershed of southwestern British Columbia. As Halq'eméylem-speaking Coast Salish people, we are culturally interlinked with many Coast Salish referring to themselves as Stó:lō or tribes of Stó:lō (e.g., Ts'elxwéyeqw). We are culturally, spiritually, physically, psychologically, and economically interconnected with the land and *sxexó:mes* ('gifts of the creator;' the resources of S'ólh Téméxw), as a long-standing and deep-seated relationship with, defense and protection of, and continued management and use throughout their territory, S'ólh Téméxw.

Our occupation of S'ólh Téméxw extends back thousands of years to time immemorial. Evidence of thousands of years of continuous occupation by the Stó:lō and their ancestors is documented through a range of disciplines including oral history, written history, ethnography, and archaeology (Schaepe 2006; 2009) as well as a wide range of sources including scholarly publications, reports, maps, and oral histories.

We maintain a wide range of political, socio-cultural, and economic ties including occupation, use, and management of the land and resources within S'ólh Téméxw. Stó:lō-Coast Salish have a long history of defending our lands from unwelcome outsiders (Angelbeck 2009; Angelbeck and McLay 2012; Richards 2011; Schaepe 2001; 2006; Supernant 2011). Stó:lō identity and societal health, including an interconnected set of spiritual, mental, physical and emotional relations are linked to and dependent upon the integrity of the land, air, water, and resources constituting S'ólh Téméxw and the Stó:lō cultural landscape (see Carlson 2006, 2010; McHalsie 2007; Schaepe 2007; Schaepe et al 2003). Our activities within S'ólh Téméxw provide a holistic view of economic, social, political, environmental, and spiritual connectivity; one cannot be successful or healthy without the other, for all things have *shxwelí* ('spirit') and all things are interconnected.

Our longstanding socio-cultural and socio-economic relations, values, and behaviours are factors of our deep connections to our ancestors, land, air, water, resources, and the cultural places of S'ólh Téméxw. Our identity, as Stó:lō is not limited to tangible heritage or a geographically grounded place, but is based in enduring activities, such as fishing, language (Halq'eméylem), stories, songs, storytelling, and the protection of cultural practices from 'others' (i.e., non-Stó:lō). Many aspects of Stó:lō intangible heritage and traditional cultural expressions, including transformer narratives, songs, spiritual and cultural principles and practices, are shared among individuals and families living throughout S'ólh Téméxw creating our collective identity that has both spatial and non-spatial linkages and connections. As a result, impacts to our people and culture cannot be assessed or understood simply as a factor of 'spatial proximity.' Direct spatial relations between the location of a resource or place of practice (i.e. site) and an area of impact or a particular community (i.e., reserve or Band) cannot simply be generalized as a linear distance.

The sixteen Stó:lō First Nation Bands who collectively form the S'ólh Téméxw Stewardship Alliance (STSA) share many concerns regarding the existing processes governed under the

British Columbia Environmental Assessment Act with several other Indigenous and non-Indigenous groups, and we feel confident that given the large number of submissions you will receive during the review that they will be well covered. Therefore, given our limited time and resources, we have chosen to provide some actual examples of the problems or issues that our communities have experienced with the existing Act and highlight key principles that would help avoid or address these problems.

British Columbia Environmental Assessment – the Issues

Partnership and Joint Decision-Making with Indigenous Peoples

The BC Environmental Assessment does not consider all the impacts to Indigenous lands, such as cumulative effects and sustainability. Currently the Environmental Assessment processes does not recognize indigenous jurisdiction, the UN Declaration on the Rights of Indigenous Peoples (“the UN Declaration”), the Calls to Action of the Truth and Reconciliation Commission, or the Tsilhqot’in Supreme Court of Canada decision (“Tsilhqot’in Decision”). All project assessments should include the concept of partnership and joint decision-making with Indigenous Peoples, which would be founded in a Nation-to-Nation relationship, recognizing the unique rights and interests of Indigenous Peoples in Canada. A core component of this would be the use of Indigenous Knowledge (TK)¹ and Western scientific knowledge as equally relevant ways of knowing. The use of TK and Western science should be used together to enhance and deepen the level of understanding of environmental, social, and cultural impact issues raised by activities reviewed under the Act. This key principle should also integrate the concepts within the UN Declaration and particularly the obligation to secure free, prior, and informed consent (FPIC). Under the UN Declaration, there is a requirement to build the Government to Government relationship. Current practices leave Indigenous governments as *stakeholders*, rather than as equals, if not superior, governments. This takes decision-making away from the Indigenous leadership, making it secondary to that of the Provincial government. BC’s failure to recognize Indigenous Government bodies and Indigenous Rights and Title as a foundational aspect of Environmental Assessment leads to distrust and increased frustration with the processes and the BC Environmental Assessment Agency (the “Agency”).

Indigenous Assessments, Laws, Policies, and Strength-of-Claim analysis

Current BC Environmental Assessments (“EAs”) do not include Indigenous-led assessments as providing equally-weighted science and knowledge. Indigenous-led assessments are only “considered” under the consultation processes of the BC-led assessments, appearing as part of the consultation and accommodation reports. Indigenous-led assessments are oftentimes not appropriately weighed, if at all, in the decision-making process of the Minister or regulatory groups. STSA member communities want to develop their own standards. Provincial standards may be different than Indigenous standards. For example, water turbidity levels, generally considered only in relation to fish, may have a different

¹ Problems with the current definition of Traditional Knowledge are discussed further in this paper.

standard limit when considered in relation to spiritual practices. These types of Indigenous standards need to be examined, weighed, and considered in any environmental assessment process.

Indigenous laws and policies, based in cultural *and* scientific perspectives are not included in the current regulatory decision-making process. They are not considered when looking at feasibility, project need, or project viability. Nor are they considered in any type of comprehensive review of a project, which should also be examining cumulative effects and effects on Indigenous Rights and Title. Quite often, STSA member communities' land use plans, land use policy, land code, and regulatory policies are ignored by both the proponent and the Agency.

Current Provincial strength-of-claim analyses are based on consultative areas and do not include the ancestral territories of Indigenous Peoples. Based on the Tsilhqot'in Decision, Strength of Claim and Consultation policies need to undergo a revision to include the Nation (peoples') perspective rather than being entrenched in the antiquated Indian Act Band and reserve understandings of "Indigenous communities." Current Provincial standards and policies ignore the STSA's consultation and environmental policies which reflect STSA member communities' own understandings of their traditional areas and the associated stewardship responsibilities. Indigenous communities' understandings are the only perspective which should be used when deciding on appropriate consultative areas.

Schedules and Timelines for Review

Current timelines do not allow sufficient time for Indigenous review and decision-making on the majority of projects. Under the current legislation, the timelines between project planning, assessment, and decision-making is limited and does not allow for appropriate review through an Indigenous and scientific perspective by Indigenous communities.

Often, consultation fails to be included at the planning and assessment stages and is only included near the end of the environmental assessment. This leads to significant misinformation regarding Indigenous knowledge and how it is included and weighed. The short timeline for consultation with Indigenous communities therefore increases the mistrust in the processes. To remedy this, the Agency should include participation by Indigenous communities within the project planning phase, the full environmental assessment phase, and the decision-making phase. This will include providing timely and adequate information about the project and extending the timelines for each phase to give enough time for sufficient participation by Indigenous communities.

Scope of Environmental Assessment

Current Environmental Assessment legislation is narrow in focus and does not include cumulative effects or an understanding of the potential impacts of climate change, which inherently have a more significant impact on Indigenous communities than non-Indigenous communities. Baselines for assessments are understood from a recent historical past (less than 100 years ago), and do not include the impacts of colonization, Indian Act and related policy, settlement and the many developments that have occurred within ancestral lands. These past policies and developments still have significant impacts to Indigenous communities at present, and these impacts must be understood and considered in assessment of proposed development. Currently, assessments are done as project one-offs in lieu of an overall development and needs analysis, and do not include the negative economic impact to the environment. The scope of environmental assessment to being limited to just the project footprint reduces the reliability of any cumulative impact assessment, diminishing public and Indigenous trust in such processes and outcomes.

It is the Crown's responsibility to ensure these kinds of cumulative, and potential climate change, effects are appropriately considered in environmental assessments and that adequate follow-up monitoring is in

place to verify predictions made in EAs. Understanding these impacts requires a multi-disciplined approach. It also requires that appropriate baselines are set which understand the full impacts of historical developments, that appropriate environmental, socio-cultural and economic indicators are selected, and that there is appropriate consideration of cumulative effects across different scales. Too often EAs fail to adequately address impacts to health, socio-economic conditions, culture and land use when assessing environmental effects caused by development. Cumulative impacts to Indigenous communities must include a multi-scale review of impacts. These reviews must not be limited, reserve-based, but rather inclusive of the worldview of the Indigenous community's direct connection to their land, water, air, flora, fauna within their ancestral lands.

To date, there has been great conflict of interest in the level/quality of assessment work, who is carrying out the assessment, and the quality control of such assessments. EA requires a multi-disciplinary approach to adequately include all Indigenous interests within the discussion of environmental impacts. By demanding a greater, layered scope of EA, Indigenous interests will be better included and will be more adequately represented and considered in the EA process.

Finally, there is not always a need to do a comprehensive environmental assessment depending upon the project. There is ample opportunity for the BCEAO to investigate a tiered project review, wherein a small-scale project may trigger a project-scale environmental assessment (i.e. footprint of the project), while larger-scale projects may trigger a regional-scale environmental assessment. This would save costs and time, while also increasing the efficiency and trust within the process. This tiered scoping of projects, would also ensure that smaller-scale developments are able to trigger an environmental assessment, particularly if in a contentious location, and further protect the environment from cumulative effects.

Entering Environmental Assessment

Finally, it is our argument that through the assessment there needs to be improved representation of thresholds, what they are, and how they are utilized. It is easy for projects to skirt certain regulatory thresholds. Aggregates are based on volume of product shipped out, and a proponent can start off small and keep it below the threshold to start with, and increase over time, without follow-up. There is a propensity to not have an environmental assessment if a proposed project is in fact a portion of or expansion of a larger scale development, as the scope of the proposed project is not viewed under cumulative effects or cumulative threshold. For example, the STSA were not engaged during the Fortis Tilbury LNG Facility Expansion project, an expansion of the Tilbury Island LNG, which did not trigger an environmental assessment due to it being below the threshold for outputs. However; in the perspective of the potential impacts to Stó:lō rights and title, the *whole* project needed to be reassessed.

It is necessary to review the spatial and geographic location, and environmental values, of small scale developments that may not reach the threshold for outputs, to ensure that they are not within protected areas, whether for cultural or environmental protection, as they have a higher environmental impact and may require an environmental assessment.

In light of the UN Declaration, it is also critical to ensure that Indigenous communities have the power to invoke an Environmental Assessment, whether on their own or through the BCEAO, given the impact on cultural sites, spiritual well-being, environmental and social health and well-being. In this case the Environmental Assessment would require a strong rationale from the Indigenous group, and funding from the proponent.

Definition of “Indigenous Knowledge”

This definition, defined through the Canadian Environmental Assessment Act, is a limiting and bounded definition of Indigenous knowledge as it applies to Indigenous communities. It is bounded by “close contact with nature” not considering the spiritual, cultural, and physical connectivity, use, and gratitude of the land, air, water, animals, fish, and plants that are used in daily practice, their World View.

Indigenous knowledge should be the foundation of environmental assessments and the baseline information that sets out the study. Collection of Indigenous knowledge requires an ever-evolving process, and we believe strongly in the power of community-based engagement and on-the ground assessments.

Indigenous knowledge is living within, among, surrounded by, and interwoven with nature. It gained through tacit learning, understanding, adapting, and inherited and learned knowledge. It is not to be considered less than practical western science; they are different but equally valid ways of knowing and need to be intertwined. A critical aspect of conducting assessments from a *xwélmexw*² worldview, is the inclusion of individuals with local indigenous knowledge on the ground collecting information.

It is the Crown’s responsibility to ensure proponents meet community standards and protocols for Indigenous Knowledge during environmental assessment.

Case Example – Integrated Cultural Assessment

The Integrated Cultural Assessment (ICA) carried out for the Trans Mountain Expansion Project, incorporates a Stó:lō cultural model that is based on Stó:lō principles of culture, health, well-being, future generations, and cultural teachings, that are reflected in specific values that further inform cultural practices and expressions through specific cultural activities. See below for Figure 1: Stó:lō Cultural Model, a pictorial representation of the base framework underpinning the ICA.

The foundation behind the ICA is the recognition that traditional activities (including spiritual or cultural practices) may be modified or threatened by external agents that impact the land, air, water, flora, fauna, or the socio-economic fabric of an area. This modification of activities thereby affects traditional values and impacts the meanings or values with which the activities are associated. “Activities” are simply the things we do in our daily lives. Examples of activities can include fishing, going to school, praying, hunting, working, sharing meals, raising children, etc. In addition, activities may be modified over time as a result of technological change, environmental changes, or external pressures; which makes them a useful surrogate for culture within the context of an impact assessment.

The ICA was developed using participatory methods with over 250 Stó:lō members participating in interviews, focus groups, field studies, and research, within a period of less than 12 months. Given the high level of participation, the ICA established a perspective of the *xwélmexw* or Stó:lō world view and was able to consider cultural values and aboriginal perspectives into the impact rating criteria. The framework developed is holistic, cumulative, and grass roots. Stó:lō communities believe this framework can be used to accurately and effectively assess impacts on Stó:lō culture, rights, title, tradition, at a dynamic and integrative level.

² means people who can demonstrate meaningful social, ceremonial, or economic ties with Fraser River families or resources, whether through a kinship tie (extended family, kin group, a tribe) or through important social/economic affiliation (Carlson, 2010).

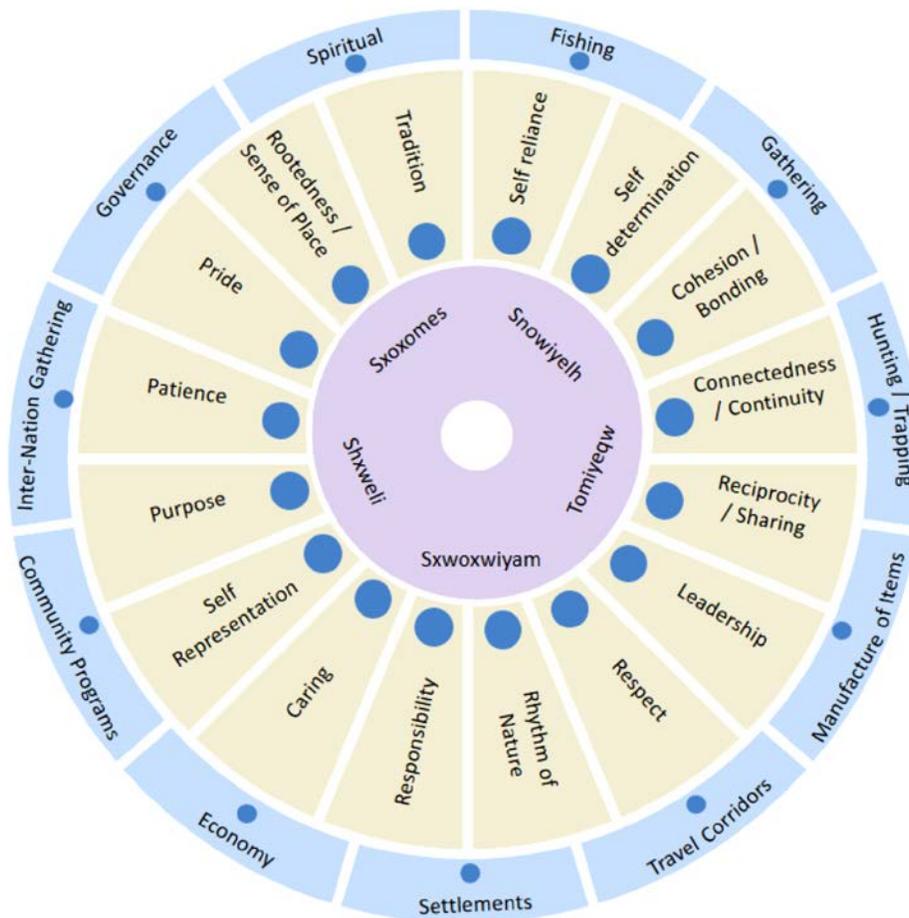


FIGURE 1 STÓ:LŌ CULTURAL MODEL

Questions and Recommendations

At the outset of recommendations, the S'ólh Téméxw Stewardship Alliance identifies the critical need for Indigenous representatives to be present and actively participating in the drafting, editing, and reviewing of the new BC Environmental Assessment legislation as British Columbia moves to fulfill its promises of the implementation of the UN Declaration and Truth and Reconciliation Calls to Action and 10 Principles.

What should Environmental Legislation be designed to protect or achieve?

“We need to protect EVERYTHING that we protect and must take care of – and for people to have a clear understanding of that stance.”

- Environmental legislation needs to ensure there is ongoing representation of Indigenous lifeways.
 - Elders knowledge currently is received for free, i.e. no payment. It needs to be equal to the scientists’ knowledge and should be a paid service.
 - Impact assessment, particularly as it relates to habitat and Indigenous world view, needs to be done at a larger, regional scale.
 - The Crown needs to fulfill its obligation under the UN Declaration to gain/obtain consent from Indigenous Peoples. This will ensure that the Crown is meeting its constitutional obligation to protect Aboriginal rights.
- It is critical that there is an understanding of the processes and impacts by the Indigenous peoples, and that there is a mutually agreed upon definition and understanding of “environment” that is reflective of the worldviews of impacted Indigenous peoples.
 - Additionally, there is a need to understand the Stó:lō principle of *Shxwelí* and the interconnectedness of all things, both organic and inorganic, to fully define the impacts of projects on Stó:lō lifeways and culture. Such understanding would be formed by Stó:lō principles throughout Stó:lō ancestral lands.
 - When and as developed, the BC Environmental Assessment should defer to the Indigenous Environmental Assessment, one that is founded in a holistic approach to systems analysis and principle of protection and is separate and distinct from BC Environmental policies and legislations.
 - Reconciliation and the UN Declaration should be the guiding principles to Environmental legislation, as concrete measure of BC’s commitment to implement the UN Declaration and the TRC Calls to Action. The Environmental legislation should spell out how it will work towards rights recognition and inclusion and provide related standards.

How should the UN Declaration, including the principles of *Free Prior Informed Consent* and Indigenous self-determination and jurisdiction, be included and given effect in Environmental Assessment processes and outcomes?

- The UN Declaration supports the ability of Indigenous Governments making decisions over the ancestral lands under self-determination, which is a superior government wherein Rights and Title override the State’s determination of the “public good.” The fundamental principle of Free, Prior and Informed Consent is the recognition of the Indigenous Governments.
- The Environmental Assessment Legislation must make explicit reference to the UN Declaration as a foundational aspect of the legislation.
- The inclusion of Indigenous peoples’ decision-making processes needs to be clearly identified as a necessary outcome. Our legislation, policy and procedures must be included, i.e. permits, or an environmental certificate superior to the existing BC process, and into the specific permits that are issued after an assessment is completed and a project green-lit.

“The provincial government should not be superior to our (Stó:lō) government, but equal or inferior to it.”

- It is critical that Indigenous Nations are active participants in co-management and legislation over lands and resources to include Indigenous World Views.
- Indigenous policies must be specifically referenced within Consultation and Accommodation Reports. These reports should be jointly written by the Proponent and Indigenous groups; unilateral descriptions and understandings of the effectiveness of consultation and engagement processes will no longer be tolerated.
- The timing of applications and proposals should be comprehensively reviewed and revised to ensure that there is adequate time for review (at this preliminary stage) by affected Indigenous communities. This must include a requirement for the proponent to provide funding for capacity, policy development, and project review.
- It is mandatory in the pre-engagement phase (early planning phase) that the proponent, Indigenous communities and the BC Government work out agreements for “*restitution or when this is not possible, just, fair, and equitable, compensation*”³ in the case wherein there are irreparable damages and loss to Indigenous communities.

What is needed to ensure that Indigenous communities are supported in their own reviews under their own laws and procedures?

- Some of the critical factors to support Indigenous-led environmental assessments:
 - **funding** for review, capacity building, and representation;
 - **time** to review, meet with proponents, work with others, and carry out Indigenous-led assessments;
 - **respect and inclusion of Indigenous laws and procedures;**
 - **inclusion of Stó:lō’s own definition of environment;** and,
 - a requirement that the **proponent ensures the readiness of the community**, by giving the community an appropriate amount of time to prepare, develop processes, review the proposal, and undertake an environmental assessment of a proposal.
- The onus for ensuring that communities have the adequate financial resources is on the Proponents. Indigenous communities should not be shouldering the financial burden of assessing the impacts of development in their territories.

What is the role of the Government-to-Government agreements and Impact Benefit Agreements in the Environmental Assessment processes?

“An Impact Benefit Agreement does NOT belong to ANY process. Those agreements are with Indian Act Bands developed by the colonizing government, not our government, our Nation, which is NOT in accordance with the UN Declaration.”

- Recognition of Government to Government Agreements i.e. Stó:lō Strategic Engagement Agreement (SSEA):
 - Supported and funded in ADVANCE of the EA process.
 - Structure of roles and relations between governments identified as clear points of connection.

³ Article 28 UN Declaration on the Rights of Indigenous Peoples

- Decision-making is the role and responsibility of the STSA member communities' Governance structure as outlined in policy, including the Stó:lō Declaration (See Appendix 1).
- First Nation-to-First Nation Government relations are also necessary to protect all Rights and Title of all Indigenous groups, and these relations must be respected and be able to grow and develop under the capacity of the communities involved, without interference by the proponent or the Provincial Government.
- Impact Benefit Agreements (IBAs) are not a factor for the Crown or proponent to consider as part of **any** environmental assessment process. IBAs are made with individual Indian Act Bands, not at the Nation level, and the Environmental Assessment legislation should be seeking consent from Nations, not bands, in keeping with the Supreme Court of Canada's direction in the Tsilhqot'in Decision, which sets out that Aboriginal rights are collective and held at the Nation level. Therefore: **IBAs do not equate to giving consent**. They are simply agreements to receive money from the project.

What is the best way to view the “big picture” of project impacts?

- In the case of Stó:lō, the Stó:lō World view and Stó:lō Declaration must be included as factors of both the assessment process and any final decisions within the EA process.
- Cumulative effects are a necessary component of environmental assessment.
- Baseline data should be relative to the time-scale of continuous occupation and use.

How can the Environmental Assessment achieve more effective monitoring and enforcement and what role do First Nations play?

- Representatives from each “band” need to be included, as each has a stewardship role within the larger nation.
- Funding and capacity for guardians programs, monitoring and enforcement, which must connect to and follow up on the decision-making for the life-cycle of the project. This monitoring must include enforcement of laws (including court actions where necessary), including Indigenous laws, through legislation and policy with linkages established between Indigenous Policies and justice systems and BC's laws and enforcement.

What funding should be in place to ensure Indigenous participation in Environmental Assessment processes – how and by whom?

- Funding should be on a “proponent pays” basis, as they are seeking the approval and development of their project. Funding is tied to factors, including, but not limited to:
 - project dependent on size, duration, and so forth;
 - Indigenous identification of needs; and
 - general funding to build capacity and mechanisms within the community.

Conclusion

Our report outlines many of the concerns and issues regarding the current environmental assessment process from both a technical and a cultural perspective. The key message we want to share is that each Indigenous community has its own worldview, with some similarities and with some differences. In order

to reach reconciliation, Nation-to-Nation relations, and respect Indigenous Rights and Title, the environmental assessment process must reflect the value of the original peoples of the lands and remember that our laws and beliefs are reflected in and come from the lands we have inhabited for millennia.

We must be considered scientists of our land, stewards of our land, knowledge holders of our land, protectors and guardians of all that is within our lands, water, and air. We must be fully included throughout the processes of environmental assessment, and most especially during the time of recognition of need for the project, when the development is first identified. Our voices, our knowledge, our decision-making, and our practices must be incorporated in the processes of assessment. Through that assessment, it is critical that the environmental, social, cultural, economic, and spiritual well-being of all living creatures be investigated to ensure that our future generations may have full use of the land, air, and water, as we have in the past, and to maintain their connection to their ancestors, relatives, and spirituality for their own spiritual, physical, psychological, and social health and wellness.

Appendix 1 – Stó:lō Declaration, 1975

In 1975 twenty-four Stó:lō Chiefs affirmed the Stó:lō Declaration, which stated the values and principles that informed the treaty negotiations and have led to this Constitution. It reads in part, as follows:

Stó:lō Declaration, 1975

- The Creator gave us laws that govern all our relationships to live in harmony with nature and mankind.
- The laws of the Creator defined our rights and responsibilities. The Creator gave us our Spiritual Beliefs, our language, our culture, and a place on Mother Earth, which provided us with all our needs.
- The people of the Stó:lō Tribes have held and still hold Aboriginal Title and Aboriginal Rights to all the land and resources within our Tribal Territory.
- The people of the Stó:lō Tribes declare and affirm our inalienable right of Aboriginal Title and Aboriginal Rights of the land, the rivers, the streams, the sea, the air, and other resources of our land.

We declare that our Aboriginal Title and Aboriginal Rights have existed from time immemorial, exist at the present time and shall exist for all future time.