

Indian Act vs. Aboriginal Title Declaration vs. Treaty: Some Pros and Cons

We have done our best to provide a fair summary. For each comparison in this document we can provide detailed reasons and give examples. However, it is important for We Wai Kai Members to get as much information from as many reliable sources as possible. The Treaty Office, and Chief and Council will work with Members to bring speakers from other First Nations who have direct experience and can talk about the pros and cons of Treaty and Aboriginal Title.

This document was compiled by the Laich-Kwil-Tach Treaty Society with input and direction from legal counsel.

Interest	<i>Indian Act</i> The Current Situation	Aboriginal Title Declaration	Treaty
Funding for programs and services (health, education, SA, etc.)	No guarantees. Canada can cut back funding for nearly any program at any time (although First Nations can apply legal and political pressure).	No guarantees. Canada can cut back funding for nearly any program at any time (although First Nations can apply legal and political pressure).	Some base funding. Canada has committed in Treaty to negotiate Fiscal Funding Agreements every 5 years, but is likely moving to a model of longer term, more certain funding arrangements. Typically, First Nations in Treaty get similar or slightly better program funding than First Nations outside of Treaty.
Tax Exemptions	No guarantees. WWK members have a tax exemption under the <i>Indian Act</i> but Canada could remove this benefit from the <i>Act</i> at any time.	No guarantees. First Nations have a tax exemption under the <i>Indian Act</i> but Canada could remove it at any time. Tax exemption would continue on Reserve land but not on title lands.	The tax exemption under the <i>Indian Act</i> would be gradually phased out, meaning that WWK citizens would lose their tax exemption in 8 and 12 years. WWK citizens would pay sales tax after 8 years and those who do not qualify for exemptions would pay income tax after 12 years (or vice versa).
Taxation collected by the First Nation	WWK could collect property tax if any non-members lease on	It is unclear what taxes First Nations can collect on aboriginal title lands.	WWK would be able to collect and keep a large share of sales tax and

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	Reserve. If WWK qualifies, it may be able to collect a share of sales tax from non-member purchases on Reserve land.	The answer is likely yes for property taxes but similar to the situation on Reserves for sales taxes and income taxes.	income tax from citizens and non-citizens living within Treaty Lands. This is a major potential revenue source and we determine how to manage the funds.
Status	WWK Members keep their status unless Canada changes the rules.	WWK Members would keep their status unless Canada changes the rules.	WWK citizens would keep their status unless Canada changes the rules. Treaty First Nation members would still have a status card.
Land Base	<p>Small Reserve land base. WWK has 684.73 or 1692 acres of Reserve land over 5 Indian Reserves.</p> <p>Currently, B.C. does not recognize WWK title and has handed over large parts of WWK territory to forestry companies, mining companies, guide outfitters, fishers etc. Also BC has agreed to transfer land within the We Wai Kai territory to the Homalco for Homalco's treaty. WWK is bringing this to court.</p> <p>If WWK does nothing but stick with the <i>Indian Act</i>, WWK territory will be stripped or alienated to other First Nations and third parties of most lands and resources over the next few</p>	<p>WWK will most likely have to pursue a Land Title case as a member of the Laich-Kwil-Tach Nation, which means its title would have to be shared with Wei Wai Kum and Kwiakah as part of the Laich-Kwil-Tach Nation. Potentially larger land base, and could include lands that the Crown was unwilling to provide through Treaty (e.g. foreshore or parks). However, aboriginal title would exclude areas that were not part of the traditional territory in 1846.</p> <p>If WWK loses an aboriginal title case, all of the areas lost are lost forever. In other words, if the courts decide there is no Laich-Kwil-Tach title to our Indian Reserves because we could not prove we were in the Campbell River and Quadra areas by 1846, these areas would not have</p>	WWK has not received an offer from government yet; WWK is seeking a large enough Land base to address the future of WWK such as residence, economic growth and revenue source to sustain its self-governance; the lands secured by WWK will be owned by the WWK, governed and constitutionally protected so that it cannot be alienated from WWK without the citizens' consent;

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Resources (forestry, water, etc.)	<p>years.</p> <p>Little government recognition of WWK rights to manage or gain benefits from resources in the Territory. Governments hand over most resources to forestry companies and non-members.</p> <p>WWK has some forestry revenue-sharing under provincial formula and is trying to assert rights and title and get more control over resources. However, under the current system most forestry resources, water, etc. will be given away to companies.</p>	<p>aboriginal title.</p> <p>WWK would own all forestry, mineral and likely water and other resources within title lands. This is a major advantage of aboriginal title.</p>	<p>WWK would own all forestry and mineral resources within Treaty lands.</p> <p>WWK would also have extensive water rights.</p> <p>Will also provide greater access to resources within the territory, as well as greater resource revenue sharing.</p>
Fisheries	<p>WWK fishing rights are mostly not recognized and is governed under the <i>Fisheries Act</i> through food fish permits.</p>	<p>Aboriginal title would not deliver fishing rights. WWK would need to go to court on a separate fishing rights case. The Nuu-chah-nulth won a fishing case that gives them the right to sell fish and they are back in court attempting to enforce their court order.</p>	<p>WWK fishing rights would be constitutionally protected throughout WWK Territory.</p> <p>WWK may have exclusive fishing areas or some protection against non-member harvesting.</p> <p>WWK will access to commercial opportunities for all species.</p>
Costs/ Net Financial Benefits	<p>Staying with the <i>Indian Act</i> is low cost and does not require expensive legal bills or Treaty negotiation loans.</p> <p>However, there are no new</p>	<p>Title litigation would be very expensive. Costs of negotiating implementation of a successful Aboriginal title action would likely be funded by Crown.</p>	<p>Treaty negotiation loan is over \$4 million. Financial benefits under Treaty would be significant including Capital Transfer, resource revenue-sharing, economic development funds, and opportunities to collect taxes from</p>

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	<p>revenue sources or financial benefits. Due to cuts in program funding and increasing costs for housing arrears and mould housing. People will keep their tax exemption as long as they can qualify for being a status Indian, which is subject to government policy and can be revoked at any time by government.</p>	<p>There is a potential for negotiating good financial benefits including settlement of a claim for damages for past infringement of Aboriginal title. The Tsilhqot'in Nation successfully obtained a declaration of aboriginal title from the courts and now in the midst of negotiating what it means to have title. It will include all the benefits from their titled lands. The negotiations will also have to deal with the continued Provincial jurisdiction over aboriginal titled lands.</p>	<p>third parties.</p> <p>Treaty also includes Treaty Related Measures (TRM) agreements and other funding outside of negotiation loans. Some FNs have received over \$6 million for studies, capacity building and projects through TRMs.</p> <p>The treaty loan is likely to be “offset” by a significant capital investment.</p>
Risk Level	<p>High risk of losing lands and resources in the territory and losing opportunities for a better future.</p>	<p>High Risk: If WWK loses an aboriginal title case, all of the areas lost are lost forever. In other words, if the courts decide there is no WWK title to the lower part of our territory, i.e. Campbell River area and Quadra Island area, these areas will not have aboriginal title.</p> <p>However, it is likely WWK could prove title to at least some areas e.g. Topaz Harbour, Salmon River northern part of Quadra island and islands north of Quadra.</p>	<p>Low risk of losing core areas. The Treaty would include our reserves, land in and around Quadra Island and Campbell River and land in the Topaze Harbour area.</p> <p>Because Wei Wai Kum and Kwiakah share most of our territory we are working to coordinate the land selection so that we can support one another's treaty.</p>
Timeline	No timeline.	The court case between WWK and	WWK has been consulting with its

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		WWKM over the Campbell River Reserve and Quinsam Reserve took 15 years. Aboriginal title cases can take more than 20 years. Based on experiences in the <i>Tsilhqot'in</i> case, it may be possible to do a title case in 10 years or less but nobody knows for sure.	citizens over the last 20 years and is in the process of putting a land package together to present to the citizens this fall. It would likely take 2 years to get an Agreement in Principle in place and then another 3 years for a vote on the final treaty package after that.
Certainty over WWK Jurisdiction	The WWK Chief and Council has jurisdiction through the Indian Act and other federal legislation for governance and lands but is restricted to the Indian Reserves under the We Wai Kai Indian Band.	<i>Tsilhqot'in</i> decision says that provincial laws that do not infringe Aboriginal title apply on title lands. Crown laws may also apply if they infringe Aboriginal title but the infringement is justified. So some uncertainty as to which federal and provincial laws apply on title lands.	Treaty spells out clearly which government's laws take priority on which issues and on which lands, including WWK government laws. WWK would have extensive governance authorities and clear jurisdiction in many areas.
Role outside of Treaty/ Title Lands	Current situation. Unless WWK blockades, negotiates or goes to court, the governments will continue to give away lands and resources to forest companies and non-members in WWK Territory. WWK will have no role in decision-making outside of Reserve lands.	If WWK loses a title claim to part of its Territory, the governments will likely say there is a low duty to consult and no reason for shared decision-making. If WWK only claims strategic title areas and leaves open more possible title areas, there is a good chance of negotiating some form of shared decision-making or enhanced consultation.	Treaty will provide for a greater role for We Wai Kai in decision making throughout the territory. This will likely take the form of collaborative decision making in some areas and heightened consultation in others.