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**TREATIES ARE ABOUT RIGHTS, NOT RACE  
OPINION: BC TREATY COMMISSION**

Some people are critical of treaty rights which they see as creating inequality. They argue that Canada is built on the principle of "one country, one law". True. Canada is one country. Canada has one law, the Constitution, which recognizes and protects aboriginal rights including title.

The Supreme Court of Canada has made it clear that aboriginal rights are distinct and different from the rights of other Canadians and include unique property rights. The court didn't create these rights, it recognized that these rights continue to exist.

The high court said aboriginal people have special constitutional and legal status because they were living here when Europeans first arrived in North America.

"the fact is that when the settlers came, the Indians were there, organized in societies and occupying the land as their forefathers had done for centuries. This is what Indian title means . . . ." Supreme Court Justice J. Judson in *Calder v. Attorney-General of British Columbia*, 1973.

This fact makes aboriginal people different from minority groups in Canada and is the source of their unique status. Common law in the United States and Canada has long recognized that First Nations have a unique interest in the land. And, unlike interests in land given by a Crown grant, First Nations' interests stem from their own possession, occupation and governing of the land before the arrival of Europeans.

The Constitution Act protects existing aboriginal and treaty rights in Section 35 (1). It extends that protection to rights set out in future treaties in Section 35 (3). That means the rights set out in a new, modern day treaty are given constitutional protection when ratified by the First Nation, Canada and British Columbia. Aboriginal rights, including title, exist whether or not they are set out in a treaty. But without a treaty there is uncertainty about how and where those rights apply.

The majority of British Columbians agree it is necessary and important to negotiate treaties with First Nations to bring certainty to land ownership and jurisdiction. Informed people may disagree over the amount of land, resources, cash and jurisdiction that should be in a specific treaty. But treaties must address these issues, especially self government, if they are to be successful. These elements of a treaty relate to the aboriginal rights that First Nations see as essential to the survival of their language and culture, and ultimately their society.

Given First Nations' experiences with the Indian Act, residential schools, forced adoptions, laws forbidding cultural practices and the use of local resources by others, it is not surprising that they seek jurisdiction in these areas, to protect themselves from the whims of future governments.

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