



Liard First Nation
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The Honourable Maryann Mihychuk
Chairperson
Standing Committee on Indigenous and Northern Affairs

October 26, 2017

Dear Madam Chairperson and committee members,

Regarding: Reconciliation with Indigenous people, modern treaties and self-government arrangements

I write to the House of Commons Standing Committee on Indigenous and Northern Affairs (the committee) in my capacity as the Chief of the Liard First Nation. It is our hope that my people's decades of experience with the aforementioned matters will assist the Government of Canada (Canada) to more effectively achieve reconciliation with First Nations through the negotiation of self-government agreements.

Background

The Liard First Nation (LFN) is one of four Kaska First Nations who are the rights holders with respect to our collective asserted aboriginal rights and interests, including aboriginal title, in parts of Yukon Territory, Northwest Territories (NWT) and British Columbia. These assertions apply throughout an area of approximately 240,000 square kilometers in northwestern Canada. These asserted aboriginal rights and interests, including aboriginal title, formed the basis for a comprehensive land claim and self-government negotiation with Canada, and with the Governments of British Columbia and Yukon, that began decades ago. Negotiating success remains elusive.

Almost thirty years ago, after careful consideration and strong direction from our elders, our people and two other Yukon First Nations rejected the proposed settlement. The proposal included a parallel Self-Government Agreement between LFN, Canada and Yukon Government. The two-part settlement offer was presented as a package to be considered together.

Over the last quarter century, the surrounding First Nations that agreed to this settlement package prospered economically, fiscally, politically, socially and

culturally. Despite great challenges, they continue to successfully implement these agreements, relying to a large extent on the political, legal and fiscal capacity available in their self-government agreements – not the land claim.

In the same period of time LFN, and other First Nations that were unable to negotiate a self-government agreement were thrust back into the dysfunction that comes from having relationships with Canada and other governments encumbered by the *Indian Act*. For example, under the *Indian Act*, that legislation's governance and land management provisions do not apply in the Yukon on "land set aside." This results in an unregulated governance and regulatory environment. Such an environment puts LFN a disadvantage relative to most other First Nations in Canada.

For example, our neighbor First Nations with self-government agreements built the capacity to codify and pass and amend their own modern laws, crafted in unique ways to meet their particular needs, and harmonized with the related laws of other governments. Those First Nation governments design and deliver a wide spectrum of unique programs and services. They established modern, culturally appropriate governance systems, and successful business and economic development ventures and structures. All of this good governance is done within the legal and political scope of their own recognized jurisdictions.

Because of policy decisions made by Canada, and the Governments of Yukon and British Columbia, the opportunity to negotiate a modern self-government agreement outside of a land claim agreement was withheld from LFN.

LFN citizens are denied the fundamental self-government tools necessary for good governance and resultant prosperity. Consequently, many of our members fall into despair and poor health. Our students drop out of school. Substance abuse and family violence is alarming. Unemployment is extremely high. In far too many instances many of our people die young. The contrast between the comparative well-being of Canadians and LFN citizens is extreme.

The challenges and trauma endured by LFN citizens are not a result of turning down a proposed land claim package that other First Nations were prepared to accept. The suffering by LFN citizens may partially be a result of government acting punitively in the face of a rejected settlement package by withholding the opportunity to negotiate a self-government agreement outside of a particular land claim agreement.

A self-government agreement would enable the governance, fiscal and public service capacity necessary for realizing our citizens' right to self-determination. For too long Canada has remained unwilling to establish an Inherent Right to Self-Government Policy, inside or outside a land claim or treaty, that has kept pace with the evolution of Canadian constitutional and common law, and international and human rights law.

Twenty-six of the more than five hundred First Nations in Canada have successfully concluded modern self-government agreements -- five percent. Ninety-five percent of First Nations in Canada remain under the *Indian Act*; their basic human right to self-determination disabled by that law and associated federal policy. This is indicative of a fundamentally failed policy and negotiating mandate.

This national and international embarrassment could be expeditiously resolved.

The Way Forward

A successful resolution will require political courage, close and coordinated direct scrutiny of progress by relevant Ministers of the federal Crown, and the creation of a new federal mandate that gives life to the Inherent Right to self-govern. The new mandate must also enable the right of self-determination as recognized in international law and by the United Nations in multiple ways, not the least of which is that august body's Declaration On the Rights of Indigenous People.

The LFN respectfully suggests that if Canada is committed to reconciliation then it should commit to a new Inherent Right mandate, and government-to-government agreements that will enable fresh political, legal and fiscal relationships with Indigenous governments across Canada – especially for those suffering in unregulated political and administrative environments like LFN. Once committed, Canada must ensure that the mandate is developed differently.

Those inside of the institutions that have historically stood in the way of Canada having an effective, progressive mandate cannot lead the analysis and development of this new mandate. Their important role will be to support the work of others that can lead a new way forward.

While there are necessary roles for officials from the Ministries of Crown-Indigenous Relations and Northern Affairs and Justice, the process for creating this new mandate must be led by a prominent, well qualified individual, operating independent of, but collaborating with those ministries. This individual, politically appointed at the highest level, should, in LFN's view, report directly to a sub-group of Canada's Cabinet, comprising the Ministers most affected by this change in policy and negotiating mandate.

Fortunately, eleven of the twenty-six existing self-government agreements entered into by Canada are in the Yukon Territory. These agreements are relevant to Kaska interests, from which there is much to learn and consider. It will be with this legal, fiscal and political context that LFN expects find its unique self-governance interests appropriately blended.

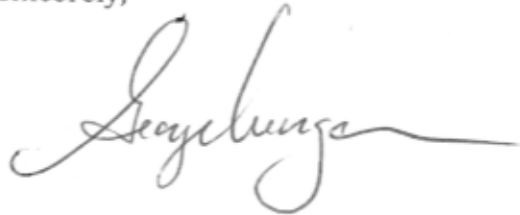
LFN believes that it would be a perpetuation of injustice and a continued failure of the honour of the Crown if the Ministers responsible did not meet with LFN to

prepare clear commitments and plan, and clear commitment resulting in an opportunity to negotiate a modern self-government arrangement with Canada and other relevant governments outside of a land claim.

This collective achievement in self-determination will result in new, respectful relationships between LFN and Canada, Yukon, Northwest Territories, British Columbia that are mindful of Crown indigenous government arrangements in place all around LFN. It will also provide the rule of law and human resources necessary to field a more fulsome public service able to cover off many of the responsibilities not addressed under the *Indian Act*.

Given LFN's and other government's advanced state of knowledge and experience in these matters, negotiations with LFN could advance quickly, anticipating and informing the development of a new national Inherent Right policy and negotiating mandate -- without waiting any longer for them to emerge.

Sincerely,

A handwritten signature in cursive script, appearing to read "George Morgan". The signature is written in black ink and is positioned below the word "Sincerely,".

Chief George Morgan
Liard First Nation

Cc; Honourable Carolyn Bennett, Minister of Crown-Indigenous Relations and Northern Affairs

The Honourable Jody Wilson-Raybould, Minister of Justice and Attorney General of Canada.

Larry Bagnell, Member of Parliament, Yukon

Dionne Savill, Regional Director General, Yukon, INAC