



**Hupacasath First Nation**  
**Ph. (250) 724-4041**  
**Fx. (250) 724-1232**

judiths@island.net  
5323 River Rd.  
Box 211  
Port Alberni, BC, Canada  
V9Y 7M7



**UNITED NATIONS**  
**PERMANENT FORUM ON INDIGENOUS ISSUES**  
First Session  
13 May – 24 May, 2002  
General Comments  
21 May 2002

My name is Ke-ke-in-is-uks, Chief Judith Sayers from the Hupacasath First Nation which is part of the Nuu-chah-nulth Nation situated on the west coast of Vancouver Island in British Columbia. I would like to inform this forum in its founding assembly about a matter which is occurring to all First Nations in British Columbia of which you should be aware

Unlike the rest of Canada, most of British Columbia has not concluded treaties with First Nations even though one hundred per cent of British Columbia is within the traditional territories of First Nations. Our territories were unilaterally incorporated into British Columbia and the state of Canada. These governments say they own our lands because they passed laws that say they are the owners of the lands and resources. We consider this legalized theft and are continually working towards a just and equitable settlement regarding our lands and resources.

In 1992 a process was established to negotiate treaties in BC. Nineteen principles were agreed to that would guide the negotiations. Negotiations began in 1994 and continued until just prior to the provincial elections last spring. In order to conduct negotiations, First Nations have taken out loans that we must pay back when we settle treaties, or within 12 years from the start of negotiations. Collectively, First nations have borrowed over 200 million dollars.

In May 2001, the people of British Columbia elected a new liberal government under the leadership of Gordon Campbell. The new premier during the election promised the people of British Columbia that a referendum would be held on the principles for treaty negotiations that would guide provincial negotiations. He did not recognize that negotiations had already taken place for 9 years of the 19 principles already agreed on.

On April 2 of this year, the provincial government sent out 2.2 million mail in ballots to voters in British Columbia that set out 8 questions to be answered regarding the negotiation of treaties. The referendum's results are legally binding on this government and future governments. Binding mandates do not allow for good faith negotiations. When voting ended on the referendum, only 30% of eligible voters actually cast their ballots. This is the lowest voter turnout in the history of British Columbia. The government has repeatedly stated they do not care how many people vote, that if only 2 out of 3 people vote yes, they would be legally bound by the results. Whether people voted yes or no will not be known until July 3, 2002.

The questions on the referendum were one-sided, leading, ambiguous and designed to elicit yes responses from the voter as well as to spread fear and racism for Indigenous Peoples. There is a question concerning private property. We are a peoples who never released, extinguished or ceded our lands to the settlers. In Miguel Alfonso-Martinez's Study on Treaties (E/CN.4/Sub.2/1999/20), he makes reference to Peoples who have not entered into any arrangement concerning their lands and resources. In the study, he pointed out the need to enter into agreements to protect our rights into the future. With respect to private property, you can only have private property rights if the lands in question have been ceded, surrendered or released to the settler state. There are no such arrangements in our territory. As a result, there is a violation of international law that our territories were incorporated into the state through an illegal doctrine of *terra nullius*, or discovery. None of these doctrines have any validity in domestic or international law as stated by the International Court of Justice in the decision of the *Western Sahara*.

Another questions deals with our right to self government. The province is asking people to give us delegated local style governments. This is less than we have today, and is in violation of our right of self determination and far less than what is envisioned in the Declaration of Indigenous Rights. The Premier and several of his Ministers had brought a court case to challenge the Nisga'a treaty stating that the powers elaborated in the treaty were too broad. The courts refused to do so. Now these same people are trying to get the people of British Columbia to do what they could not get the courts to do.

There is also a question that seeks to protect licences given to corporation for such things as forest resources. Through this question the government seeks to give priority to big corporations while not recognizing our rights to these resources. As you are all aware, there is a huge dispute going on between the United States and Canada over Softwood Lumber. The US accuses British Columbia of subsidizing wood leaving BC. What no one has recognized is that we as First Nations own this wood, and are not being compensated. The true value of the subsidy is not being reflected because both Canada and BC are not including any compensation to First Nations. While we are trying to settle treaties, the government of British Columbia continues to alienate our lands and resources at an accelerated rate leaving little or nothing to be returned to First Nations through treaty. This question on licences only helps prevent equitable settlements.

To date, the Federal Government has declined to stop this process although asked to do so by First Nations in the Province. They have publicly stated they do not agree with the

process but refuse to intervene even though they have the jurisdiction over First Nation Matters, and a fiduciary obligation to First Nations. The Government of Canada is signatory to many international laws to Prevent Discrimination and uphold human rights. They have not fulfilled their international obligations.

In two separate legal actions, ourselves and a group of 44 Nations attempted to use the courts to stop the referendum. Both attempts were unsuccessful. One judge recognized people would suffer racism, but felt that taxpayers money was more important than the racism we would suffer. Legally proving the kind of racism we are currently suffering due to the referendum is not possible.

The referendum has created the most contentious, public display of emotion that has ever been seen in the province. There have been public demonstrations, forums, and extensive media coverage. BC is polarized and divided over this referendum. Letters to the Editor and cartoon depictions, show the racist attitudes of those people who are opposed to First Nations and want this referendum to proceed. School authorities are warning principals and teachers to be aware of bullying and violence in the schools due to the increased tensions in the province caused by this referendum. A white supremacist group passed around pamphlets and issued a website directly targeting Indigenous peoples and the referendum.

We have raised this issue with you, to let you know how unfairly we are being treated. Where are we to go now? We have tried the court system, we have appealed to the Nation State of Canada to intervene, we have asked the provincial government to stop the referendum, but we have not achieved any measure of protection from the state or the province in Canada. Indigenous peoples need to have an independent body with mechanisms to bring our issues directly to the United Nations for intervention. Otherwise Nation States will continue to get away with these kind of abuses.

This issue need to be highlighted the world over. Canada prides itself on being proponents of human rights, yet, they allow this referendum on treaties to proceed and leave our people to be subjected to the negativity it creates. The province of British Columbia has no international legal status to take away our rights yet they are attempting to do so. The state of Canada has a trust responsibility to us as Indigenous Peoples has reneged in its obligations and duties.

We ask for your attention to this matter for it has far reaching implications on indigenous and non-indigenous relations. Everyone is being affected in a negative away by this provincial Government's attempts to destroy relations and negotiations that have been built over the years. Thank you for your attention to these matters.

Chief Judith Sayers  
Hupacasath First Nation