

What Are Your Rights?

Rights are things that a person is (or should be) allowed to do, have or get.

Most human rights are about treating all people fairly and with respect. There are different types of rights. Here are three of them: Children's rights, rights of Canadians, and universal rights of all humans. As long as you are a human Canadian child, you should have all these rights.

Did You Know?

Everyone under the age of 18 is considered by law to be a child.

Children's Rights

- The right to go to school
- The right to practice a religion
- The right to a decent home
- The right to eat
- The right to medical care
- The right to play
- The right to express your ideas
- The right to safety
- The right to rest
- The right to a clean environment
- The right to live with your parents
- The right to privacy

Canadian Charter of Rights and Freedoms

2. Fundamental Rights

- a) freedom of conscience and religion;
- (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
- (c) freedom of peaceful assembly; and
- (d) freedom of association.

(There are more specific rights listed in the charter.)

United Nations Charter of Human Rights

(Selected rights - There are more!)

- You have the right to own property
- You have the right to voice your opinions to others
- You have the right to privacy
- You are innocent until proven guilty
- You have the right to an education
- You have the right to a fair and public trial
- Every adult has a right to a job and a fair wage
- Every adult has the right to vote for their government

Indigenous Rights and Title

Indigenous Rights are inherent, collective rights rooted in the original occupation of the land we now call Canada,

Inherent means something that is built in, permanent or essential. Indigenous Rights have always existed. They have not been given to First Nations by anyone else.

Collective means belonging to a group. Indigenous Rights are held collectively by the members of a First Nation..

Indigenous Rights are protected in Canada's Constitution and Charter of Rights and Freedoms.

Indigenous Rights are also known as **Aboriginal Rights**. This is important because Section 35 of Canada's Constitution officially recognizes and affirms "aboriginal and treaty rights."

Therefore, Aboriginal Rights are protected in Canada's Constitution and Charter of Rights and Freedoms under Section 35.

Indigenous Title is a collective right to the exclusive use and occupation of land held by an Indigenous Nation. It is based on the traditional territories that have been occupied by their ancestors.

The Delgamuukw decision by the Supreme Court of Canada in 1997 ruled that Indigenous title is a property right to the land.

First Nations are diverse and distinct. As such, their respective Indigenous Rights may vary between groups.

Here are some common Indigenous Rights:

- The right to the land (Indigenous title)
- The rights to use the resources of their land (hunting, fishing, gathering)
- The right of self-determination and self-government
- The right to practice one's own culture and customs including language and religion
- The right to enter into treaties

The doctrine of Aboriginal rights exists, and is recognized and affirmed by s. 35 (1) [of the Canadian Charter of Rights and Freedom] because of one simple fact: when Europeans arrived in North America, Aboriginal peoples were already here, living in communities on the land, and participating in distinctive cultures, as they had done for centuries.

*Chief Justice Lamarr, Supreme Court of Canada
R. v. Van der Peet, paragraph 30*

What's the Story of Treaties?

The story of treaties in British Columbia is different from most of Canada. Most treaties in Canada were signed more than 100 years ago. Not in British Columbia.

A few small treaties were made on Vancouver Island by James Douglas. He was the governor of the Colony of Vancouver Island.

Douglas believed it was right to sign treaties with First Nations. Between 1850 and 1854 he negotiated a few treaties. Then, for some reason, he stopped making treaties.

In the 1890s a large treaty was made with First Nations in Alberta, Northwest Territories and part of BC. This was the Peace River region. It is now part of Treaty 8. In the rest of the province, the Aboriginal Rights of First Nations were ignored or denied by governments.

But the story of treaties starts long before those times.

The Times of Oral Treaties

For thousands of years First Nations lived in the land we now call British Columbia. Each Nation lived in its own territory. Each Nation had its own laws and governments.

The relationships that First Nations had with each other were very important. Each First Nation respected the rights of other Nations to have its own laws and governments.

First Nations often made agreements with each other. These agreements helped people get along with each other. Usually the people had feasts or potlatches to approve the agreement. The agreement became an oral treaty.

Sometimes the agreements were about sharing resources. Neighbours might share resource areas. This was always done with respect. Neighbours followed proper protocols.

For example, one family might ask if they could fish in a good fishing spot on another Nation's territory. If the chief agreed, the people could fish there. But the visitors had to make a promise. They promised to give some of the fish to the Chief and his people.

Sometimes agreements were about trading. People might agree to be trading partners for valuable goods.

What's the Story of Treaties?

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Some oral treaties were Peace treaties. Sometimes two Nations made peace after being at war. They made a peace treaty. They promised not to fight anymore.

People followed protocols when they travelled through the territories of other First Nations. They wouldn't cross other territories unless they had permission.

Some oral treaties are still in place today. For example, the Sylix people of the Upper Nicola Band and Tk'emlups people of the Secwépemc Nation still meet to reaffirm the promises made by their ancestors. Their oral treaty is known today as the Fish Lake Accord.

First Nations have always had important relationships with each other. They acknowledge the independence of each other. They have always made agreements and treaties between each other.

The Royal Proclamation of 1763.

The next part of the story of treaties begins when people from Europe began to settle what we now call North America.

In the 1700s European countries fought with each other for control of what they called the New World.

After years of war, Britain took control of most of North America in 1763. First Nations had played a role in the final battles. Some were allies and helped Britain win.

After 1763 the colonies were ruled by the government of Britain. The First Nations had no say in the matter, even though they had been allies.

Many settlers were moving onto First Nations lands. They didn't buy it or rent, but moved in without their consent.

The British government wanted to keep control of all the lands. So it made a law that said First Nations lands could only be bought by and given to the British government. This law was part of the Royal Proclamation of 1763.

Indigenous Rights and Title

The words of the Royal Proclamation say that the land belonged to First Nations when Europeans came. The land was theirs until they sold it or signed a treaty passing it to the British government.

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Today we say that the Royal Proclamation proves that the British government recognized that First Nations had title to their lands. In Western law, when you have title to land, that means you own it. So, the Royal Proclamation recognized First Nations as owning their traditional territories. Based on this understanding, the British government needed to have treaties with First Nations so they could get ownership of lands from them.

Different Views of Land Ownership

First Nations people found themselves forced into new relationships with colonizers. They learned that the newcomers had different customs. They had different ways of dressing and speaking. They also had different ideas about land ownership.

Most First Nations believe that it is their responsibility to look after the lands of their ancestors. They are not owners of the land just for themselves, but have a relationship with the land. They are stewards. They use and take care of the resources to survive. They pass the care of the lands onto their children.

Most settlers had a European view of the land. One person can own a piece of land for themselves. They can give it to their children, or they can sell it for a profit. They can sell the resources taken from the land to make money.

Soon First Nations watched their traditional territories being taken over by settlers. From the beginning they did what they could to keep control of their lands, but were up against powerful forces of the colonizers..

Canada and Treaties

Canada became a country in 1867. Soon after, the Canadian government made the Indian Act to control the lives of First Nations people.

But as far as European settlers were concerned, something had to be done about the First Nations lands.

Canada seemed to follow the ideas of the Royal Proclamation of 1763. They seemed to agree that the land belonged to the First Nations until it had been sold or a treaty was made. So Canada and some provinces made treaties with many First Nations. But this was not the case in British Columbia.

What's the Story of Treaties?

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Different Views of Treaty

Canada and the First Nations that made treaties had different understandings about what they were signing. They spoke different languages. They had different histories, worldviews and values.

They also had very different ideas of land ownership. First Nations believed they were agreeing to share the land. Canada believed First Nations were giving away or selling the land.

To Canada, treaties meant that Indigenous Title to the land ended. The word used for this is extinguishment.

The treaties gave First Nations a few benefits in return. Treaties gave them things such as small areas of reserve lands, farming equipment, and some hunting and fishing rights. But they did not give them any share in the value of the resources that they gave up.

Meanwhile, in British Columbia...

The settlers in BC had a different view of land issues. The Province outright denied that Indigenous Rights and Title existed.

For more than 100 years, government after government in BC denied Indigenous Rights and Title. They claimed that nobody owned the land before settlers came. They claimed that the land was *terra nullius*, which is Latin for “nobody’s land.”

For more than 100 years First Nations fought to have Indigenous Rights and Title recognized. Time after time they tried to have their rights recognized and respected.

Then a big change came to the country. Canada got a new Constitution in 1982. It says in Section 35, “The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.”

These were powerful words. But what did they really mean? People weren’t sure.

Finally, First Nations took Canada and British Columbia to court. First Nations won many significant court cases confirming that they did, indeed, have Indigenous Rights and Title.

Finally, Canada and British Columbia agreed that there should be treaties for First Nations in BC.

The BC Treaty Process began in 1992 but it has made slow progress so far. As of 2019, only four modern day treaties are in effect.

Summarizing the Treaty Story

Use this organizer to record your summaries of the article What's the story of Treaties?

The Times of Oral Treaties

The Royal Proclamation of 1763

Indigenous Rights and Title

Different View of Land Ownership

Canada and Treaties

Different Views of Treaty

Meanwhile, in British Columbia...

Summarizing the Treaty Story

Use this organizer to record your summaries of the article *What's the story of Treaties?*

The Times of Oral Treaties

In the past First Nations made oral agreements and treaties with each other. These could be peace treaties or sharing resources. They followed protocols in public ceremonies such as feasts and potlaches.

The Royal Proclamation of 1763

The Royal Proclamation was made when Britain first took control of North America. It stated that the land belonged First Nations before settlers arrived.

Indigenous Rights and Title

This is the understanding that Indigenous people were the first ones here and they have rights to the land that cannot be taken away.

Different View of Land Ownership

Most First People believe they have the responsibility to look after the land and no one can own it for themselves. Europeans view land as something that can be bought and sold by individuals.

Canada and Treaties

When the country of Canada was formed the government made treaties with many First Nations, but not in most of British Columbia.

Different Views of Treaty

First Nations understood the treaties to be agreements to share the land a resources. Canada understood it to mean the extinguishment of Indigenous Rights and Title.

Meanwhile, in British Columbia...

Many politicians and BC citizens denied Indigenous Rights and Title for many years, and would not agree to make treaties. First Nations fought for nearly 150 years to have their rights recognized. Finally in 1992 the BC Treaty Process was begun.

Treaties Awareness Quiz

How much do you know about treaties in BC and Canada?

1. Whose traditional territories do you live on? Is it treaty land?

2. What are nation-to-nation agreements?

3. How did First Nations make nation-to-nation treaties before European contact?

4. Where and when were the first treaties signed in British Columbia?

5. About how many years passed between these treaties and the first modern day treaty in British Columbia?

6. What Canadian law recognizes and affirms Aboriginal and treaty rights?

7. How many stages are there in the BC Treaty Process?

8. The Nisga'a Treaty was the first treaty under the BC Treaty Process - true or false?

Blackline Master T-5 SAMPLE RESPONSE KEY

Treaties Awareness Quiz

How much do you know about treaties in BC?

1. Whose traditional territories do you live on? Is it treaty land?

Answer depends on your location.

2. What are nation-to-nation agreements?

Agreements like treaties between two or more sovereign groups; the nation to nation approach recognizes the sovereignty and autonomy of each nation.

3. How did First Nations make nation-to-nation treaties before European contact?

Usually through oral traditions and ceremony; although some used symbolic objects such as wampum belts.

4. Where and when were the first treaties signed in British Columbia?

On Vancouver Island between 1850 and 1854. These are the Vancouver Island Treaties, also known as the Douglas Treaties or the Fort Victoria Treaties.

5. About how many years passed between these treaties and the first modern day treaty in British Columbia?

About 150 years; 146 years between 1854 and 2000, when the Nisga'a treaty went into effect.

6. What Canadian law recognizes and affirms Aboriginal and treaty rights?

Constitution Act, 1982, Section 35.

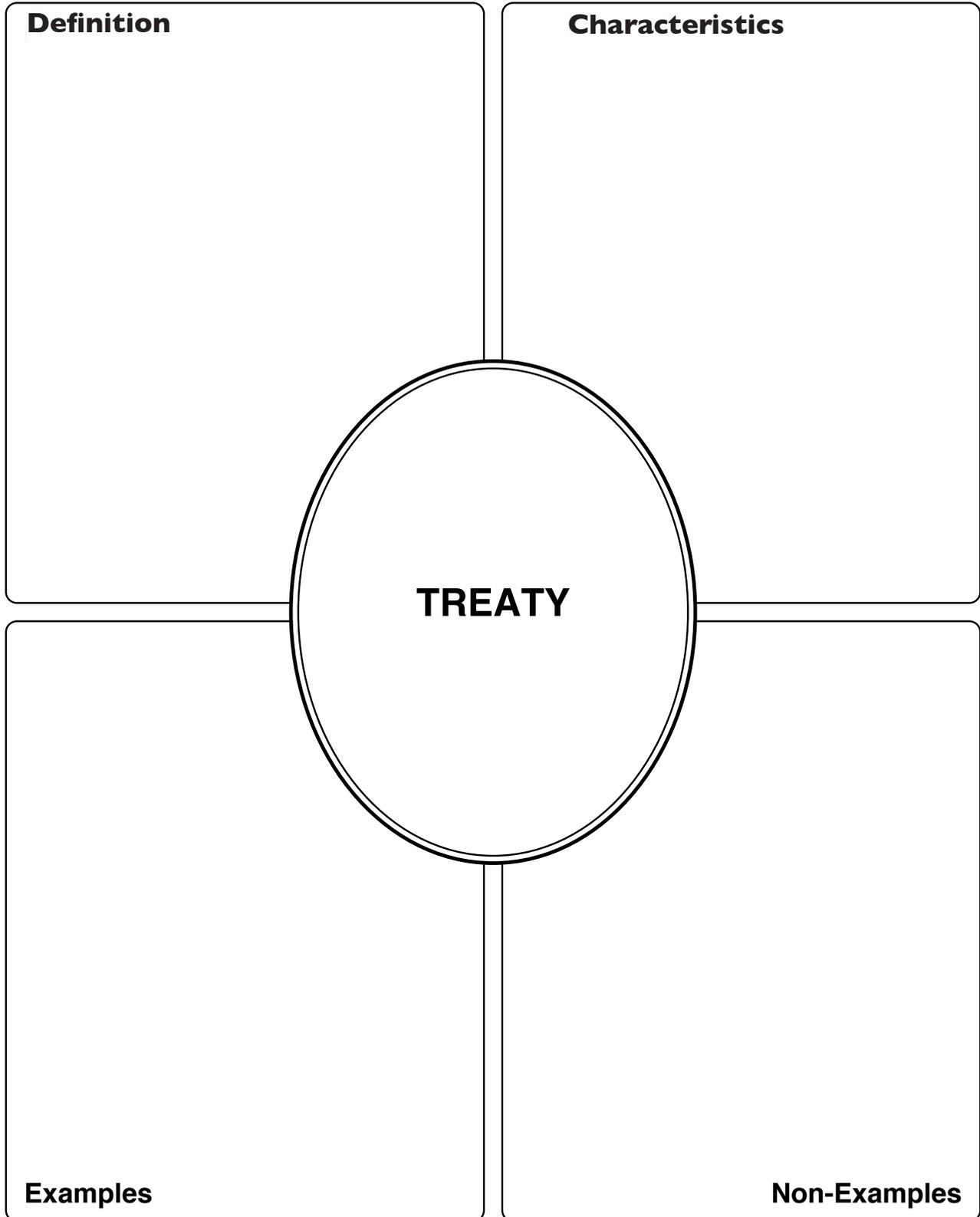
7. How many stages are there in the BC Treaty Process?

Six

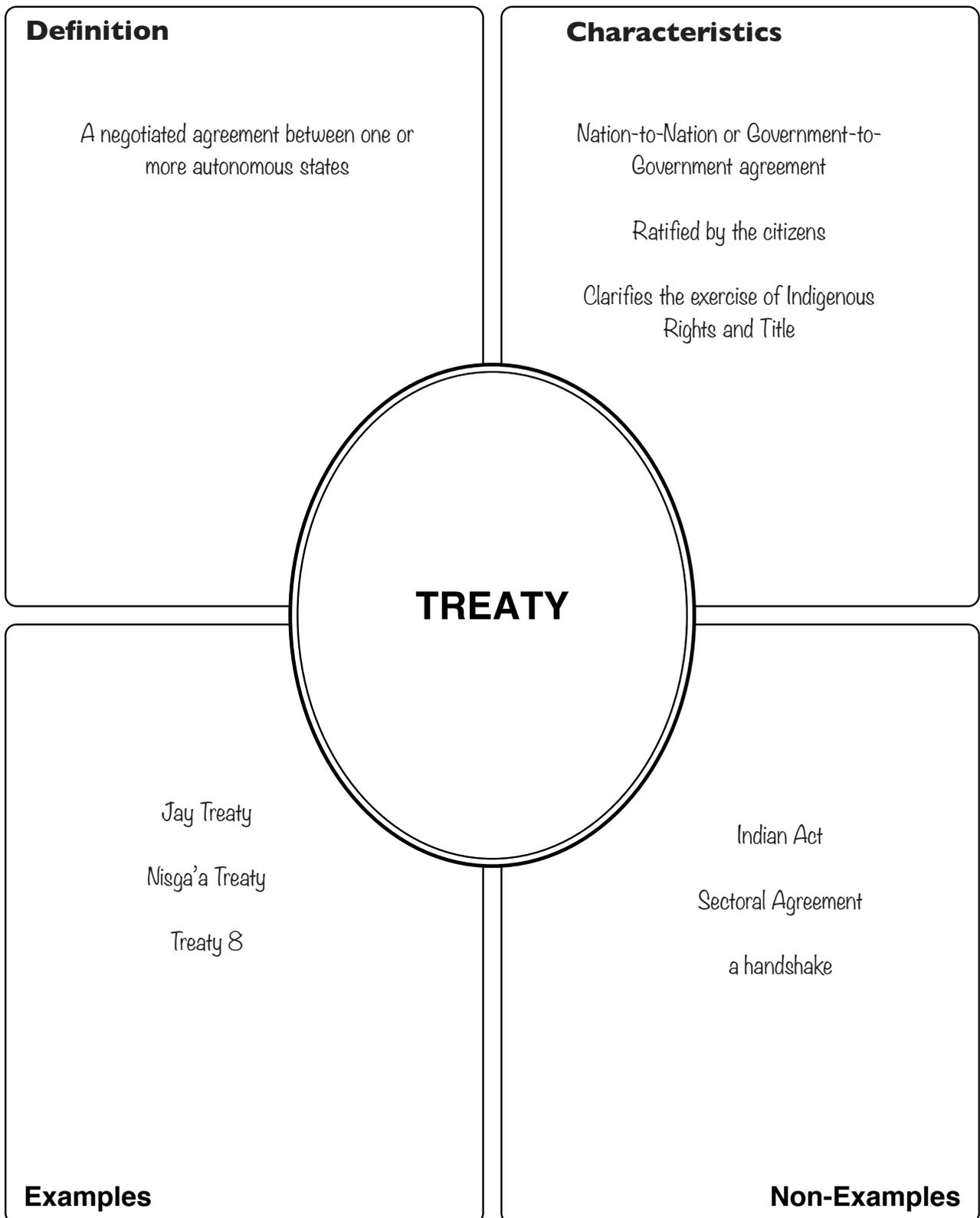
8. The Nisga'a Treaty was the first treaty under the BC Treaty Process - true or false?

False. It was the first modern day treaty, but it was negotiated before the BC Treaty Process began. Note that the Calder v. BC (1973) court decision, which confirmed that Aboriginal title land existed prior to the colonization of North America was impetus behind Canada and British Columbia entering into negotiations with the Nisga'a.

Exploring the Concept of Treaty



Exploring the Concept of Treaty



Nation to Nation Relationships Before Contact

For thousands of years First Nations lived in the land we now call British Columbia. Each Nation lived on its own part of the land, in its own territory. Each Nation was autonomous, with its own laws and governments, its own political and economic structures.

The relationships that First Nations had with each other were very important. These relationships were sometimes peaceful, sometimes not so peaceful. But they all involved some kind of agreement between the Nations. Both sides of the relationship understood its nature. Many times the agreement was formalized in a public ceremony between both Nations. It became an oral treaty.

Often people had trading relationships with each other. They exchanged goods that they had produced, or traded from another group. Neighbouring nations often made trading agreements with each other.

Peaceful relationships were also created through marriage. An alliance of two families through marriage could benefit both their nations through by sharing knowledge and resources.

Sometimes relationships revolved around war and peace. If two Nations were at war with each other, they understood the state of hostilities. But often Nations that had been warring would make peace, and this frequently was formalized as a peace treaty.

Agreements also concerned the use of the land and resources. Sometimes

neighbouring Nations shared resource areas. But this was always done with respect and proper protocols.

For example, one family might ask if they could fish in a good fishing spot on another Nation's territory. If the chief agreed, the people would be allowed to fish, but they were required to give some of the fish to the chief and his people.

Sometimes these arrangements were influenced by marriage. Agreements could be made between families

When people travelled through the territories of other First Nations, there was – and still are – strict protocols to be followed. These reflect the relationships that the two Nations had with each other. Visitors request permission before entering the territories

So, before European contact, First Nations had valued relationships between each other that acknowledged their individual sovereignty to their territories, and diverse ways of making agreements and treaties between each other.

Today, these Nation to Nation relationships continue. For example, when people enter the territories of another Nation in a formal visit, they first ask permission and indicate their respect for the host Nation's territories. Some old oral treaties and agreements are still recognized.

Fish Lake Accord

In the late 1700s a peace treaty was made between the Chiefs of the Tkemlups Secwepemc (Kamloops) and the Syilx (Okanagan) to end wars between the two Nations.

The two chiefs were Kwolila of the Tkemlups division of the Secwepemc, and Pelkamulox, head Chief of the Douglas Lake Okanagan division. The two men were half-brothers, sons of another Chief Pelkamulox from different mothers.

There had been several generations of warfare between the groups. Pelkamulox built a stone fort in northern Okanagan territories as headquarters. Eventually, however, the two brothers agreed it was time for peace.

Because they were so closely related, the protocols of the day allowed them make a peace treaty. It was the blood relationship that solidified the political relationship between their Nations.

Each of the Chiefs had responsibilities and rights associated with the treaty. Kwolila agreed to give part of his territory to Pelkamulox and his Syilx people. This is the area around Douglas Lake in the Upper Nicola Valley.

Pelkamulox agreed to allow Kwolila to adopt his daughter Kokoimalks. She would marry into the Tkemlups Secwepemc community. This ensured that future generations of both Nations would be related.

Both Chiefs agreed on overlapping boundaries where their territories met. This meant they shared in the harvest and management of the resources. It also meant that they lived and worked close to each other during the harvesting seasons. This helped keep the peaceful relationship between the people.

Today this treaty is known as the Fish Lake Accord, and is still regularly respected and honoured today. Usually the Upper Nicola Band and Tkemlups communities alternate hosting the ceremonies.

For example, on October 15, 2014, 200 people gathered at Qumqnatkwu (Fish Lake) to witness the reaffirmation of the Accord. This included Secwepemc and Syilx leaders from throughout their territories as well as First Nations leaders from neighbouring Nations.

Gifts were exchanged, including two horses given by the Syilx people to Tk'emlups. Stories were told and the children performed. Later a feast was held in N'kwala School. Among the foods served were barbecued salmon and pit-cooked deer.

Source of Information:
Marianne Ignace and Ronald E. Ignace.
Secwépmc People, Land and Laws. McGill-Queen's University Press 2017.

The Road to Recognizing Indigenous Rights and Title

Before the BC Treaty Process began, some key Supreme Court cases were needed to force governments to recognize Indigenous Rights and Title. Find out about these key steps on the path to recognition.

Steps to Recognition	First Nations involved	Major findings
Calder v BC [1973]		
Constitution Act, 1982 s. 35(1)	Not a court case	
R v Guerin [1984]		
R v Sparrow [1990]		
Delgamuukw v BC [1997]		
Tsilhqot'in Nation v BC [2014]		

The Road to Recognizing Indigenous Rights and Title

Before the BC Treaty Process began, some key Supreme Court cases were needed to bring governments to recognize Indigenous Rights and Title. Find out about these key steps on the path to recognition.

Steps to Recognition	First Nations involved	Major findings
Calder v BC [1973]	Nisga'a	Aboriginal title to land is based on historic occupation and possession of traditional territories
Constitution Act, 1982	Not a court case	"35. (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed." (But Aboriginal rights not defined.)
R v Guerin [1984]	Musqueam	The Crown has a fiduciary duty to First Nations Aboriginal title is a sui generis (unique) right
R v Sparrow [1990]	Musqueam	Fishing rights were inherent Aboriginal rights protected by Section 35(1) Established the "Sparrow Test" for Aboriginal Rights
Delgamuukw v BC [1997]	Gitksan and Wet'suwet'en	Affirmed the unique nature of Aboriginal title. Validated use of oral histories as testimony. Encouraged governments to negotiate settlements of Aboriginal Rights and Title.
Tsilhqot'in Nation v BC [2014]	Tsilhqot'in Nation	Established Aboriginal Title to a large area of Tsilhqot'in traditional territories. Consultation required on land and resource use, but set conditions for Crown to override title.

Blackline Master T-10

Agreements Outside of Treaty

Many First Nations are involved in negotiating agreements that set out who makes decisions about resources or projects in the First Nations traditional territory. Agreements with the provincial and/or federal governments make clear the respective decision-making powers.

In 2005 the BC government and First Nations leaders agreed on a vision called The New Relationship. It set the stage for a diversity of agreements outside treaty. They provide an alternative to the treaty process.

The New Relationship set the stage for new kinds of agreements. They involve varying levels of co-management and shared decision making between First Nations, government and businesses. There are three main types of agreements:

Project Agreements

When a project takes place in the traditional territories of a First Nation. The agreement ensures they are consulted and may also participate economically. For example:

- 2010 Olympic Legacy Agreements with Musqueam, Tsleil-Waututh First Nations, Lil'Wat and Squamish First Nations
- Tahltan Nation and BC Hydro construction of the Northwest Transmission Line (2011)

Sectoral Agreements

Broader agreements that apply to one resource sector, such as forestry. They may apply to some or all of the First Nations traditional territory (not just reserve lands). For example:

- Forest Consultation and Revenue Sharing Agreements. First Nations communities consult on use of forests in their territories and receive economic benefit. More than 130 BC First Nations communities have such agreements, including those involved in treaty and those who are not.

The New Relationship Vision Statement

We are all here to stay. We agree to a new government-to-government relationship based on respect, recognition and accommodation of aboriginal title and rights. Our shared vision includes respect for our respective laws and responsibilities. Through this new relationship, we commit to reconciliation of Aboriginal and Crown titles and jurisdictions.

We agree to establish processes and institutions for shared decision-making about the land and resources and for revenue and benefit sharing, recognizing, as has been determined in court decisions, that the right to aboriginal title "in its full form", including the inherent right for the community to make decisions as to the use of the land and therefore the right to have a political structure for making those decisions, is constitutionally guaranteed by Section 35. These inherent rights flow from First Nations' historical and sacred relationship with their territories.

- Tsilhqot'in Moose Co-Management Agreement

Comprehensive Agreements

These broad agreements establish government-to-government relationships in a number of sectors. They are often called Reconciliation Agreements. They include land use planning and management but also other areas significant to a First Nation, such as heritage and archaeology, economic benefits, culture and wellness. These include First Nations negotiating treaties, and those who are not participating. Some examples are:

- Stó:lo First Nations Strategic Engagement Agreement (SEA)
- Secwepemc Reconciliation Framework Agreement
- Kunst'aa Guu – Kunst'aaya Reconciliation Protocol (Haida and BC)
- Shíshálh Nation/British Columbia Foundation Agreement

