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A 'seismic shift'? Most certainly

Shortly before his re-election, B. C. Premier Gordon Campbell backed away from his controversial plan to give aboriginal peoples de facto control over the province's land and resources. But a fresh mandate from voters will likely have the Premier trying to revive the plan, which was announced in the government's Throne Speech in February.

In February, the provincial government and the First Nations Leadership Council agreed in a joint discussion paper to support new legislation to recognize 30 "reconstituted" indigenous (aboriginal) nations, and divide B. C. into 30 aboriginal territories, each with its own aboriginal government and aboriginal laws. This "Recognition and Reconciliation Act" would also recognize that these indigenous nations have aboriginal title throughout British Columbia, including the power to make laws.

British Columbia lacks the constitutional jurisdiction to accomplish Mr. Campbell's proposals. His plans amount to a constitutional amendment creating a new order of government that is neither federal nor provincial nor municipal; the plans are directed at aboriginal matters, which are an exclusively federal area of jurisdiction.

The proposed act would extend aboriginal title over all or most of the province. Aboriginal title includes the right to exclusive occupation and land management, and entitlement to rents, such that 30 indigenous nations would have effective ownership over most of B. C. This is fatally flawed because aboriginal title, as defined by the Supreme Court of Canada, gives aboriginal peoples only a fraction of the province's land base: those areas over which they can prove continuing and exclusive occupation. Moreover, aboriginal title does not include the power to make laws.

Every provincial government ministry and agency would be subject to the act, which will take priority over all provincial statutes concerning land and resources. In the result, the act would require British Columbia to treat aboriginal peoples as if they had ownership of the province and their own tier of government with law-making powers.

It is one thing for the provincial government to refer to aboriginal peoples as "nations" in the ethnic or cultural sense of that word. But it is another thing entirely for the provincial government to recognize the existence of aboriginal governments and aboriginal laws passed by those governments, and to establish "government-to-government" relations

peoples would be treated as if they had ownership of the province as called for in the Throne Speech and the discussion paper.

Gordon Campbell's proposed act would also give these new aboriginal governments shared decision making power with the provincial government regarding economic development of land and resources. This power would be very real, providing the new layer of aboriginal government with a potential veto over new economic activity anywhere in B. C. The legislation would lay the foundation for a whole new set of compensation claims, and would create mechanisms for "revenue sharing" to divert revenues from taxes and royalties to the aboriginal governments.

Supporters of this new act may argue that this legislation is no more than a symbolic gesture of recognition that facilitates consultations. It is much more than that. The existing legal rights of British Columbians under current law, including property law, will inevitably be denied, infringed or diminished. And there will of course be massive confusion and uncertainty in business circles.

It would indeed be the "seismic shift" promised by Michael de Jong, British Columbia's Minister for Aboriginal Affairs.

The act would create a system of dual competing governments. First, British Columbia's constitutionally valid government and law. Second, an extra-constitutional network of aboriginal government and its laws. The first would subject itself, and thereby all British Columbians, to the claims and powers of the second, thereby creating a real-life catch-22 situation for public officials, investors, industry leaders and citizens. Virtually all economic activities in British Columbia would be affected, because the land title and decisionmaking powers given to the "reconstituted nations" and their governments would strike at the heart of property rights, the rule of law and other fundamental pillars of prosperity.

While the act will almost certainly be struck down by the courts for violating Canada's constitution, it would bring long-standing damage to British Columbia's reputation as a good place to invest and create new jobs.

Citizens should equip themselves with knowledge of their Constitution in order to prevent governments from embarking on destructive adventures like this one.

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