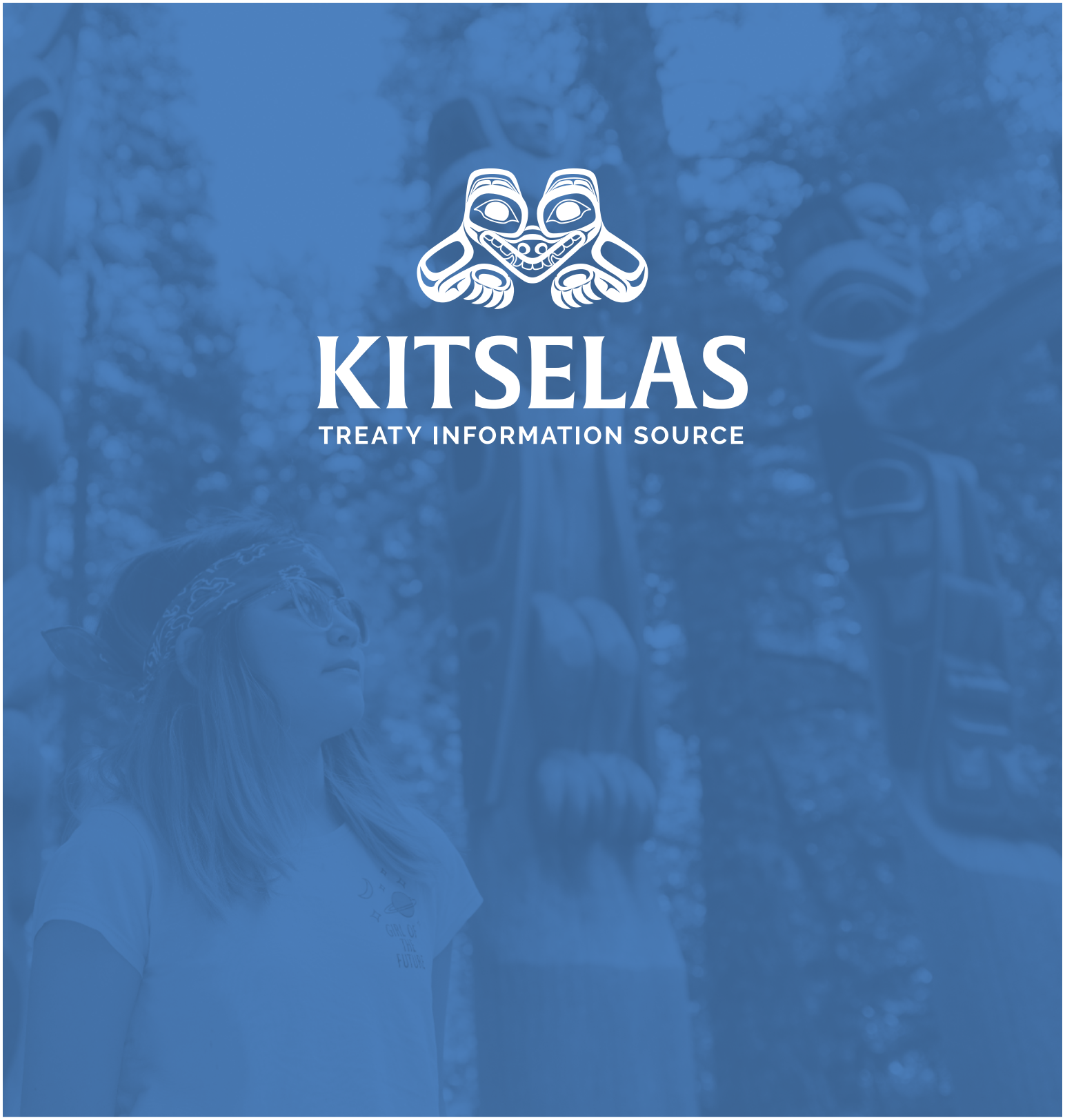
KITSELAS

TREATY INFORMATION SOURCE



Increasing Accountability to the People

BOOKLET 12 | SEPTEMBER 2022

Niit dala'waan

This booklet is a part of a series that will explain topic areas or chapters of the Kitselas Treaty. This booklet focuses on the broad topic area of **Treaty: Increasing Accountability to the People**.

The Kitselas Treaty Office hopes to provide a general understanding of what the Treaty will contain and what the Kitselas people and future Kitselas Government will have to do to prepare for the Treaty.

The Treaty will bring increased opportunities, ownership, law-making authority, improved programs & services, control over our future, a large financial settlement, greater influence over our education, self-government and freedom from all the constraints of the Indian Act.

Within the six stages of the Treaty process, Kitselas First Nation is currently in Stage 5: Negotiation to Finalize a Treaty, with a final Treaty vote estimated to occur in late 2024.

Treaty: Increasing Accountability to the People

When Treaty breaks us free from the dysfunction of the Indian Act, Kitselas must then stand for ourselves as a modern 21st century community: a community with assets and resources, delivering programs and services to meet our needs, and ultimately accountable to Citizens for our choices and actions. And, for there to be real accountability, there must also be somebody who is responsible for enforcing standards (i.e., holding people's feet to the fire).

The legacy of colonization, with its lack of rights and systemic racism, has resulted in Indigenous communities all too often lacking adequate systems to ensure meaningful accountability and transparency. This is going to change.

One of the goals of Treaty is increasing accountability. Through the Kitselas Treaty, Constitution, laws, enforcement tools and trusts Kitselas will increase accountability to our Citizens.

PART 1 **will explore gaps in accountability under the Indian Act.**

PART 2 **will explore tools that Treaty offers to improve accountability and transparency to our People.**

What Is Accountability?
Accountability is an acceptance of responsibility for one's actions; this includes the responsibility for honest and ethical conduct towards others.

What is transparency?
Transparency is acting openly without secrets. For government, this means acting openly, so citizens are aware of the decisions that leaders are making,

How do accountability and transparency work together?
Transparency can help promote accountability. It provides information to citizens about what their government is doing, and helps hold the government responsible to the people for their decisions, actions, and outcomes.

Accountability is missing under the Indian Act

Accountability under the Indian Act is simple: no one is accountable to our Members. Instead, Kitselas's elected Chief and Council and Kitselas Administration are accountable to the federal Minister of Indian Affairs. For many aspects of your life today, you are still ruled by the Indian Act.

SURPRISING FACT
The Royal Commission on Aboriginal Peoples White paper counted nearly 90 provisions that give the Minister of Indian Affairs absolute powers over Kitselas.

It is obvious that the original Indian Act was not created to assist with accountability, transparency, or good government of any kind, but rather to permit federal officials' control of First Nations. Why? To support the forced integration of Indigenous peoples into Canada.

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How does the Indian Act fail to address accountability?

Firstly, the Indian Act breaks the direct accountability between you and Chief and Council.

Instead, the Minister of Indian Affairs is responsible to the people of Canada, through Parliament, for the governance and government of Indian Bands (see the diagram on Pg 8).

In terms of the principles of democracy, this approach is shocking. Ultimate power and responsibility are kept with the Minister, not the members of the Band, nor the officials you elect to lead Kitselas. If Kitselas elects a rogue Councillor, who acts in their own best interests at the expense of the Band, there is nothing Kitselas can do. Only the Minister can terminate an unethical Councillor.

Secondly, the Indian Act reverses the normal balance of power and influence in a democracy, where the executive (Cabinet or Legislature) must do the will of the electorate (the people).

While Kitselas First Nation must answer to Canada, the normal democratic checks and balances that limit the abuse of powers are absent: Canada does not answer to the Kitselas people. The Indian Act gives Cabinet powers to regulate a wide range of areas on reserve with no requirement that the Band Council or Citizens be consulted or referred to for a decision.

The assorted list of Canada's powers over reserves covers astonishingly broad areas. In Canada, normally, these functions are distributed across different levels of government. For example:

- **garbage and recycling collection** – *municipal bylaws*
- **vehicle speeds** – *municipal and provincial responsibility*
- **health care** – *provincial responsibility*
- **protection and preservation of animals, fish and game (part of what is we now call environmental protection)** – *provincial and federal responsibility*

The Indian Act is entirely silent on any division of powers: everything goes to Canada. And, Canada is accountable to itself.

For Kitselas, Chief and Council can only pass laws that are consistent with Cabinet-issued decisions and regulations. Ultimately, Canada and the Minister's powers always overshadow, and at any time may override, Chief and Council's authority. Unsurprisingly, the Indian Act contains no suggestion that Canada should be equally accountable or transparent in their responsibilities for lands and monies that Canada holds for the common benefit of the Band.

Thirdly, the Indian Act is completely silent on most things considered core government services for their citizens: social assistance, child welfare, child care, health, education, policing, and emergency services—key services for individual and community well-being.

Typically, Canadians receive programs and services from government, which establishes the eligibility and levels of service citizens may expect to receive, thus ensuring accountability in program design and delivery. This is not the case on Indian Reserves, where programs are developed, coordinated, and monitored by Indian and Northern Affairs Canada. This concentrates accountability between Indian and Northern Affairs Canada bureaucrats and Kitselas Administration, and weakens linkages between Kitselas Members and Council and between Kitselas Council and Kitselas Administration.

Ultimately, what Canada calls accountability under the Indian Act is basically report-writing with teeth: no reports, no money next year. It's the people who get punished when services are cut.

There is very little, if anything, governing financial administration in the Indian Act; nothing speaks to a First Nation government's budgeting process, accountability, or reporting to its Members on how we invest or borrow, use our monies, and so on. Similarly, there is nothing governing the use of our own-source (non-government) revenues unless we take control ourselves.

There is simply no meaningful accountability by Canada to Indigenous People on Reserve. This might also explain why the majority of Kitselas membership lives off-reserve. We can call it "integration by walking away".

How does Treaty increase accountability?

Kitselas Treaty and Constitution

The Treaty process will transfer accountability to where it should be: from Chief and Council and Kitselas Administration to the People.

This will require real transparency and reporting to Kitselas Citizens on the responsible use of money, program delivery, care of land and resources, jobs, housing, opportunities, and what was achieved (i.e., the outcomes).

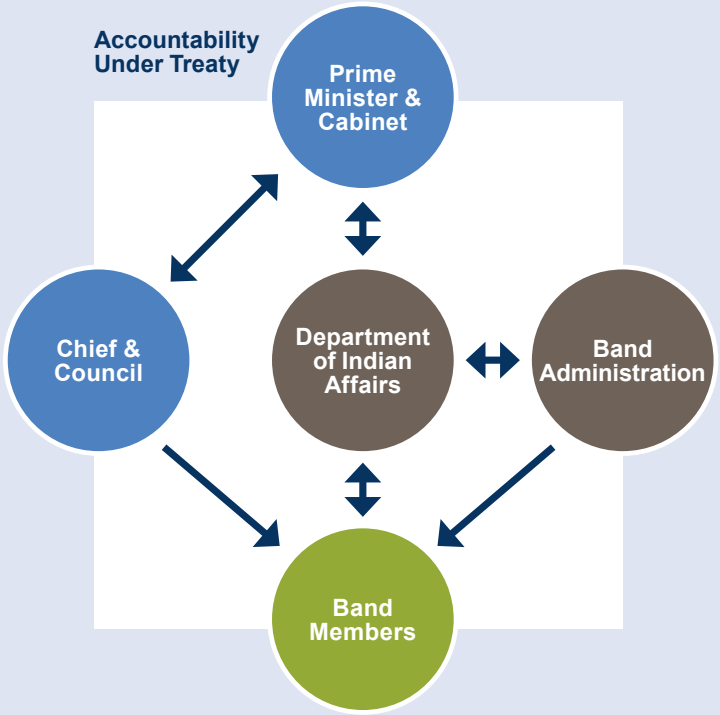
The Kitselas Treaty process offers Kitselas the opportunity for increased accountability through the creation of a Constitution, which legally binds both Kitselas Council and Administration, and will be more easily enforceable through provisions set out in the Treaty.

New laws will create a regime for strengthened accountability for money (finances), programs, land and resources, fairness (equity), procedural respect (passing laws), and outcomes.

To do this, the Constitution will set the legal basis and a requirement for creation of many new laws, establish the People's Assembly, and form a Kitselas Court to enforce these laws.

Comparing Accountability

ACCOUNTABILITY UNDER THE INDIAN ACT VS. ACCOUNTABILITY UNDER TREATY



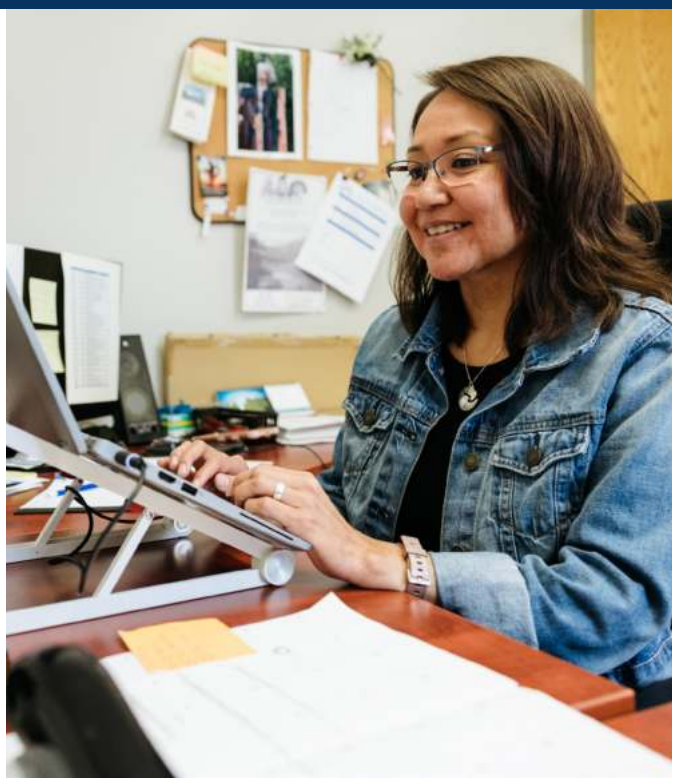
Transparency and Reporting

It is difficult to see how someone can be accountable without a strong degree of transparency. This is a key of good governance.

Information will be readily available on the Kitselas website, perhaps in a Members-only section, similar to Treaty's website. Information will also be available for review in person at Administration Offices during normal business hours. The goal is to provide Kitselas Citizens with open access to all records, decisions and actions of Kitselas Council and Administration.

Program and activity reporting is a key part of transparency. Unfortunately, reporting as it is currently practiced, is limited to a burdensome cycle of annual reporting to Canada, confirming that funds were spent appropriately. Generally, reports are not available to community members. At best, limited attention is given to whether programs have had an impact.

After Treaty, existing federally-funded programs (e.g., health and post-secondary) will continue, basically unchanged. Naturally, Kitselas will continue to be accountable to funders (Canada or BC), but also ultimately to taxpayers and our Citizens for the responsible use of this money.



However, it is not enough to be accountable for spending alone. It must be clear who is responsible to the People for achieving specific levels of services and improved outcomes (e.g. more student graduates). Kitselas must do the hard work, ourselves, to identify desired outcomes; provide input into new Kitselas laws and programs; develop effective, accountable governance and service standards within our communities; and determine how those standards will be monitored and enforced.

Enforcement (with Teeth)

Accountability without enforcement does not give the community a viable solution, when a government does not meet the goals, needs and expectations of citizens.

Currently, there is no effective way to require accountability from officials or Council, aside from elections. Accountability requires neutral and independent observers.

Here are three options that Kitselas will explore:

1. COURTS

Canada and BC have courts, including their respective Supreme Courts. Kitselas will improve access to these Courts under Treaty. In addition, the Kitselas Constitution will create a Kitselas Court with an independent judge who can rule on Kitselas Laws and administrative decisions. Failure to comply with a Kitselas Court order can lead to fines or even short jail sentence—real teeth. A Council that refuses to be accountable, can be terminated by the People.

2. LEGISLATIVE SPEAKER

Elected leadership (the Kitselas Legislature) will have one key difference from current Chief and Council: the addition of a non-voting Speaker of the Legislature with real power to compel respect for the Kitselas Constitution, Laws, and Treaty.

3. KITSELAS OMBUDSPERSON AND AUDITOR GENERAL

Kitselas will also explore the possibility of having a Kitselas Ombudsperson, Auditor General, and a stronger Financial Administrative Law.

Financial Accountability

Currently, there is very limited legal accountability with respect to money received from non-government sources and own-source revenue.

Because of that, accountability for own-source revenue is a huge problem in many First Nations communities. Treaty will require Kitselas to give a full accounting of own-source revenue and use to Kitselas Citizens.

Additionally, the Constitution sets out that (legal) Trusts will be developed, which will remove control of some Kitselas assets (e.g., settlement funds and maybe others) from government and place them in the hands of independent trustees with strict rules on how and for what purposes money in trust and the annual interest can be spent. These trust documents will be developed before the effective date of the Treaty in collaboration with the Kitselas People.

With significantly increased own-source revenue and trust interest, Kitselas will undertake community consultations to establish our priorities and develop or expand existing programs to better meet our needs.

At the same time, Kitselas must also develop accountability systems to transparently report on how and where the own-source revenue and trust income is spent.

Conclusion

As Treaty leads us out from under the Indian Act, this is Kitselas's moment to define how we wish to be governed. Treaty presents us with an opportunity to create our own unique system of accountability for our actions, spending, and results, allowing Kitselas People to hold their government accountable, and prevent the sorts of abuses which flourished under the Indian Act system.

Ultimately, in a democratic society, accountability means a lot. It can only be built through the open sharing of information. Where there is information, there is enlightenment. When there is debate, there are solutions. Where there is no sharing of power, no rule of law, no accountability, history has repeatedly shown us the rise of abuse, corruption, subjugations, and indignation.

As Kitselas becomes a nation, we must make choices—sometimes hard choices—but, ultimately, Treaty makes these *our* choices.

FAQ & Glossary

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Q Will the Indian Act still exist after Treaty?

A Yes, the Indian Act will still exist; however, after Treaty, Kitselas will no longer be governed by the Indian Act. Treaty will provide tools for greater transparency and accountability to our People through the Kitselas Constitution, laws, trusts and leadership.

Q Who will be accountable to Kitselas Citizens after Treaty?

A After Treaty, Kitselas leaders will be accountable to Kitselas Citizens, who elect them. The Constitution will define how leaders are elected and how long their terms will be. New Kitselas laws will hold Citizens and leaders accountable, and will be enforceable through fines and a court system. Financial administration laws and trusts will help hold Kitselas accountable for how revenue is spent or invested.

"Constitution" is a statement created by a people on how they will be governed. The Kitselas Constitution sets out the legal foundation of being the Kitselas First Nation, including the basic rights and responsibilities of citizens and the Kitselas Government.

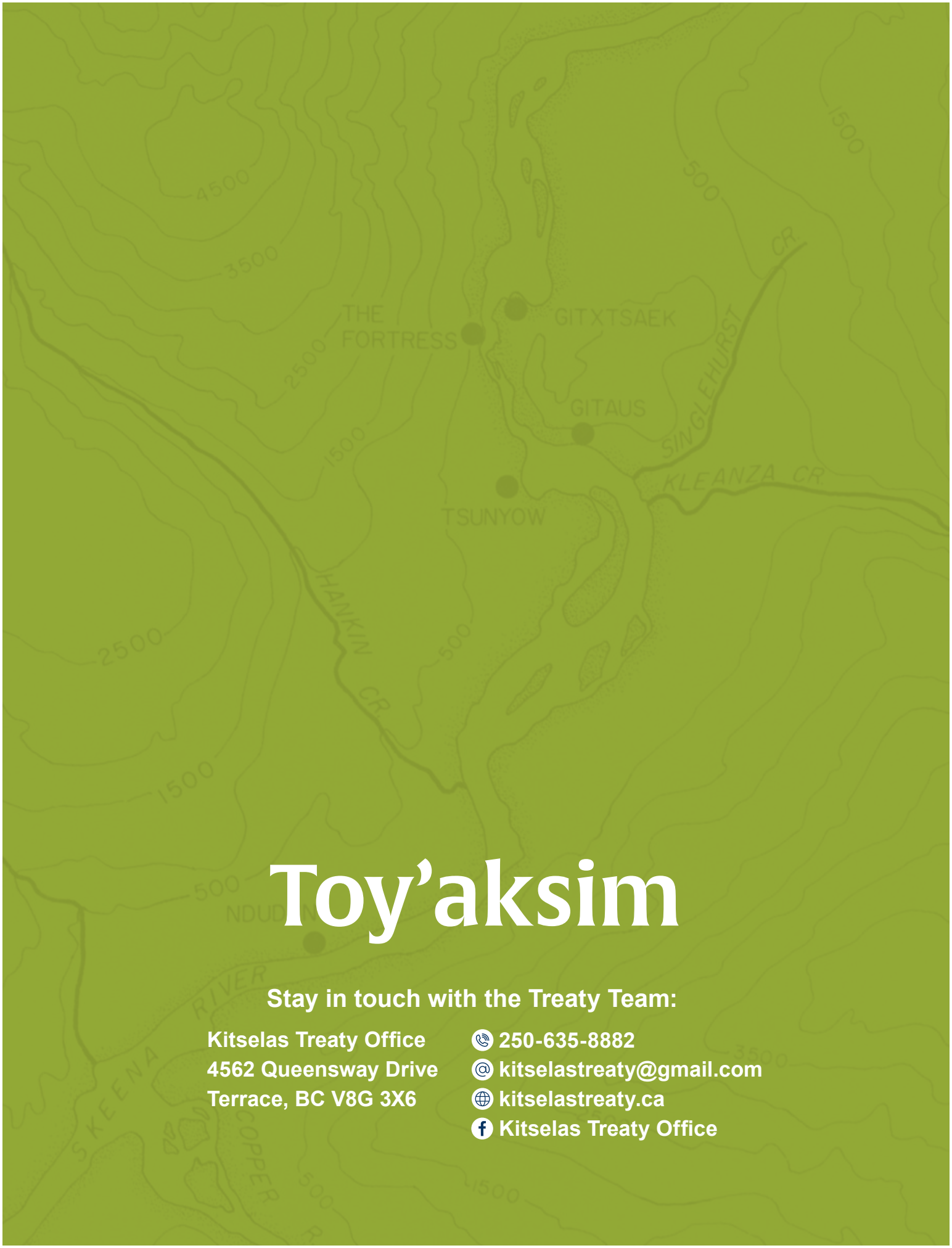
"Indian Act" is a Canadian federal law that governs all matters relating to Indian status, bands and reserves. First passed in 1876, this law has been oppressive and destructive to Indigenous communities. It allows the Canadian federal government to regulate and administer the affairs and day-to-day lives of registered Indians and reserve communities.

"Own-source Revenue" is revenue that Kitselas generates from business activities, leasing or taxes (in the future). This is differentiated from money that the First Nation receives from Canada or BC.

"Self-government" is the power to govern without requiring the approval of someone else.

"Treaty" is a final settlement of Kitselas land claims between the Kitselas people and Canada.

Notes



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