What's the deal with treaties?

A lay person's guide to treaty making in British Columbia

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Introduction

Before Canada was a country Britain recognized that aboriginal people living here had title to land: the *Royal Proclamation, 1763* declared that only the British Crown could acquire land from First Nations, and that was typically done through treaties. In most parts of Canada, the British Crown established treaties with First Nations before Confederation. The new Dominion of Canada continued this policy of making treaties before the west was opened for settlement, but in BC this process was never completed.

When BC joined Confederation in 1871, only 14 treaties on Vancouver Island had been signed, and land title to the rest of the province was left unresolved. It wasn't until 1970 that Canada's aboriginal peoples could pursue aboriginal rights in the Supreme Court of Canada. With the exception of Treaty 8 in the northeastern corner of the province and negotiations with the Nisga'a Nation, most First Nations had to wait until 1993 to pursue their aboriginal rights through a made-in-BC treaty process.

Cover:
Waiting for the Lieutenant Governor on the BC Packers Dock at 'Yalis (Alert Bay), 1934.
Royal British Columbia Museum, PN 1865-B

Following page:
Shuswap people drying Salmon, circa 1870s.
BC Archives, A-08313

Why are we negotiating treaties?

POLITICAL FACTORS

By 1990, there was both a political need and appetite for beginning treaty negotiations with First Nations.

Direct action by First Nations was prominent throughout the 1970s and 1980s, with sit-ins, blockades and rallies. In the 1980s these actions were aimed at asserting aboriginal title and halting specific resource development projects.

First Nations political organizations evolved and consolidated during these two decades. Various bodies became active at provincial and national levels, and tribal councils began to take root. Demands for recognition of an inherent right to self government became more forceful.

By the late 1980s, political support for the resolution of First Nation issues had grown, in part because of the activities of First Nation organizations and several court judgments favourable to First Nations' aspirations. As a result, the BC Government made the decision to join First Nations and Canada in resolving long-standing issues through negotiations.

ECONOMIC FACTORS

By 1990 the economic cost of the province's refusal to participate in negotiations was beginning to tell.

Direct action and court rulings had delayed resource development projects pending the outcome of disputes over aboriginal rights and title. Economic activity was disrupted and investment in the province was down. In 1990, Price Waterhouse calculated the cost to British Columbia of not settling land claims to be $1 billion in lost investment and 1,500 jobs a year in the mining and forestry sectors alone.

LEGAL FACTORS

Since 1973 a series of landmark judgments have addressed the issues of aboriginal rights and title.

The *Delgamuukw* case is widely seen as a turning point for negotiations. In 1997, the Supreme Court of Canada ruled in the *Delgamuukw* case that aboriginal title is a right to the land itself — not just the right to hunt, fish and gather. Crown title refers to the provincial or the federal government's interest in land. The province holds almost all Crown land in BC. *Delgamuukw* confirmed that aboriginal title was never extinguished in BC and therefore still exists; it is a burden on Crown title; and when dealing with Crown land the government must consult with and may have to compensate First Nations whose rights are affected.

Two Supreme Court decisions in 2005 — *Haida* and *Taku* — confirm the provincial government must consult with, and if necessary, accommodate First Nations before proceeding with development that may have an impact on their traditional territory. The duty to consult and accommodate arises from the need to deal with aboriginal rights in the interim until the rights have been dealt with in a treaty or by a decision of the court. The rulings reaffirm the *Report of the BC Claims Task Force*, which stated in 1991 that "to protect interests prior to the beginning of negotiations, the federal and provincial governments must provide notice to First Nations of proposed developments in their traditional territories, and where required, initiate negotiations for an interim measures agreement."

On the one hand, court rulings have confirmed aboriginal rights and title and deepened our understanding of their content — not 'giving' rights to First Nations, but recognizing and protecting continuing rights.

On the other hand, major questions remain unanswered. Although the Supreme Court of Canada confirmed that aboriginal title still exists in BC, it did not indicate where it exists. That will either be determined through a treaty process or decided by the courts case by case. The courts have also raised serious doubts about whether provincial laws relating to mining, forestry and other land uses can directly apply to aboriginal title lands.

Broadly speaking, the courts have over time confirmed that:

- aboriginal rights exist in law;

- they are distinct and different from the rights of other Canadians;

- they include unique property rights (aboriginal title), which are communally held rights;

- they take priority over the rights of others subject only to conservation needs;

- the legal and constitutional status of aboriginal people derives not from their race but from the fact they are the descendants of the peoples and societies that existed in North America long before settlers arrived; and

- aboriginal rights and title cannot be extinguished by simple legislation because they are constitutionally protected. Any such legislation would have to meet strict legal tests and would be unlikely to succeed.

- The Crown must properly consult with and accommodate the interests of First Nations, pre-treaty, before proceeding with development on their traditional territory.

In the Supreme Courts' view, the challenge facing aboriginal and non-aboriginal governments is to "reconcile the pre-existence of aboriginal societies with the sovereignty of the Crown." Good-faith negotiations, with give and take on all sides, are the way the Supreme Court of Canada has suggested this be done.

Following page:
Members of a Nlaka'pamux community, circa 1914.
Canadian Museum of Civilization, 27000

What is the BC treaty process?

The current BC treaty process began in 1990 when Canada, British Columbia and First Nations established the BC Claims Task Force to make recommendations on the scope of treaty negotiations, the organization and processes to be used, interim measures and public education. In its report the task force made 19 recommendations, which the three parties accepted.[1]

Subsequently, First Nations, Canada and British Columbia signed an agreement in September 1992 to establish the BC Treaty Commission. The *BC Treaty Commission Agreement* is supported by federal and provincial legislation and by a resolution of the First Nations Summit.

The BC treaty process is a voluntary process of political negotiations among First Nations, Canada and British Columbia. It is intended as a constructive alternative to litigation and direct action.

Through political negotiations, the parties are attempting to "establish a new relationship based on mutual respect, trust, and understanding." This is a key recommendation of the *BC Claims Task Force Report.*

In December 1993 the Treaty Commission began receiving statements of intent from First Nations wanting to negotiate a treaty with Canada and British Columbia.

1 See Appendix I, Recommendations of the BC Claims Task Force, number 1.

HOW MANY FIRST NATIONS ARE IN THE BC TREATY PROCESS?

There are 58 First Nations currently engaged in the BC treaty process, representing a majority of the province's aboriginal people.

It is up to First Nations to decide how they will organize themselves for the purposes of treaty negotiations. The *BC Treaty Commission Agreement* defines a First Nation for treaty purposes as:

An aboriginal governing body, however organized and established by aboriginal people within their traditional territory in British Columbia, which has been mandated by its constituents to enter into treaty negotiations on their behalf with Canada and British Columbia.

The BC treaty process is open to all First Nations in BC but not all First Nation groups have chosen to engage in treaty negotiations with Canada and BC. Some First Nations prefer instead to negotiate separately and directly with the federal and provincial governments. Other First Nations will enter the process as they become organized to do so. Still others will wait and see what can be achieved before committing themselves.

WHAT WILL TREATIES ACCOMPLISH?

Reconciliation: Treaties are intended to reconcile the interests of First Nations, Canada and BC by establishing new relationships based on mutual trust, respect and understanding through political negotiations.

Certainty: If economic and community development is to take place, people need to know who owns a piece of land, who has the right to the resources on it and who has law-making authority over it. Treaties will provide that certainty.

Reduced conflict: Treaties aim to end conflicts over lands and resources between First Nations and others. When disputes do arise in the future, treaties will provide an agreed-upon process for resolving them.

Constitutional protection: Defining rights in a treaty provides clarity about the rights and obligations that will receive constitutional protection under s. 35 of the *Constitution Act, 1982*. Changes to the treaty would have to be agreed upon by the First Nation and the governments of Canada and BC.

Economic Development: Treaties will pump billions of dollars into the BC economy making the biggest impact where the investment is needed most — in the hands of First Nations and their neighbours in small-town British Columbia.

First Nations will receive as much as $7 billion according to an economic analysis undertaken by Grant Thornton for the Treaty Commission.

Province-wide, treaties will bring certainty to land ownership and jurisdiction, a major cash injection and new investment. Total benefits from treaties, including increased investment, could be as high as $50 billion — $1 billion to $2 billion each year for the next 20-25 years.

What is the Role of the Treaty Commission?

The Treaty Commission is the independent and neutral body responsible for facilitating treaty negotiations among the governments of Canada, BC and First Nations in BC. The Treaty Commission is not an arm of any government — it is an independent body and does not negotiate treaties. Negotiating is the responsibility of the three parties at each negotiation table: the First Nation and Canada and British Columbia.

The three facets of the Treaty Commission — facilitation, funding and public information — together promote constructive and effective negotiations.

FACILITATION

The Treaty Commission's primary responsibility is to facilitate the negotiation of treaties. It is responsible for accepting First Nations into the treaty process and assessing when the parties are ready to start negotiations. The Treaty Commission also develops policies and procedures applicable to the six-stage treaty process, monitors and reports on the progress of negotiations, identifies problems, offers advice and assists the parties in resolving disputes.

PUBLIC INFORMATION

The Treaty Commission provides public information and education in British Columbia through its web site, annual reports, newsletters, speaking engagements, documentaries, treaty handbooks and other displays and educational resources for use in schools.

The primary objectives of the Treaty Commission's public information effort are: raising public awareness and understanding of the historical and legal reasons for treaty making and the Treaty Commission's role in the BC treaty process; and providing public information on the treaty process, the Treaty Commission and the status of each negotiation.

FUNDING

The Treaty Commission allocates support funding, primarily in the form of loans, to First Nations so that they can prepare for and carry out negotiations on a more even footing with the governments of Canada and British Columbia.

The Negotiations

The task force report listed elements it considered essential to successful treaty negotiations in BC:

- the parties should be committed to the treaty process and have adequate resources to reach agreements;
- the process should be managed in BC;
- it should provide a level playing field for all parties;
- Canada, BC and First Nations should be equal partners in the management of the process; and
- the treaty process should encourage effective and efficient negotiations.

Toward these ends, the parties have generally attempted to adopt an interest-based approach to negotiations. They try to explore, understand and creatively accommodate the interests and needs that underlie each other's positions.

WHAT IS BEING NEGOTIATED?

Treaties will differ from table to table. However, they are generally expected to cover three broad subject areas:

- First Nations government structures and related financial arrangements;
- jurisdiction over and ownership of lands, waters and resources; and
- cash settlements.

Treaties will also have to set out the processes for resolving disputes and making changes to the treaty.

HOW MUCH PROGRESS HAS BEEN MADE IN THE BC TREATY PROCESS?

Ten years ago blockades and legal battles dominated the news. Today we have a treaty process to reconcile land ownership and jurisdiction constructively.
Of the 58 First Nations in the treaty process, eight have advanced to final agreement negotiations in Stage 5 with three having concluded final agreement negotiations. Another 39 First Nations are seeking agreements in principle in Stage 4.

HOW MUCH WILL TREATY NEGOTIATIONS COST?

Since opening its doors in May 1993, the Treaty Commission has allocated approximately $362 million in negotiation support funding to more than 50 First Nations — $289 million in loans and $73 million in non-repayable contributions.

The Treaty Commission has 13 full-time staff in addition to five commissioners — a full-time chief commissioner and four part-time commissioners. The Treaty Commission's operating budget for 2005/06 was $2.19 million. Total operating costs from inception up until the fiscal year ending March 31, 2006 are $26.41 million. Effective April 1, 2006, the federal and provincial governments entered into a three-year agreement to provide the Treaty Commission with $2.52 million per year to meet its operating costs.

Funding for land and cash settlements are borne jointly by the provincial and federal governments. The federal government is responsible for 72 per cent of the total cost of treaties and the provincial government is responsible for 28 per cent.

Members of a Kootenay community, circa 1914.
BC Archives, F-08990

The Issues

ABORIGINAL RIGHTS

Aboriginal rights and treaty rights, both existing and those that may be acquired, are recognized and affirmed in Section 35 of the *Constitution Act, 1982*. The courts did not create these rights but recognized that these rights continue to exist whether or not they are set out in a treaty. But without a treaty there is uncertainty about how and where these rights apply. Continued uncertainty about how and where aboriginal rights apply discourages investment and economic development in BC.

Aboriginal rights refer to practices, traditions and customs that distinguish the unique culture of each First Nation and were practised prior to European contact. Aboriginal title is an aboriginal property right to land.

Treaty rights refer to aboriginal rights that are set out in a treaty. For example, the Nisga'a Lisims Government is an expression of the aboriginal right to self government.

There is concern that treaties will give aboriginal people special rights and status based on race, that treaties would create inequality. Treaty negotiations need to take place so that these rights can be defined in a way that creates certainty and ends conflict for both aboriginal and non-aboriginal people.

SELF GOVERNMENT

Prior to European settlement, aboriginal people were living in communities as distinct and self-sufficient nations. Each nation had its own language, its own system of law and government and its own territory.

The subsequent imposition of the *Indian Act*, the creation of reserves and the adoption of assimilationist policies undermined these traditional governments and led to growing social dislocation, poverty and dependence.

In spite of these policies, the traditional values, identities and allegiances of the aboriginal peoples endured. First Nations have long demanded constitutional recognition of their inherent right to govern themselves according to their traditions, not European traditions.

It had been determined in 1991 that self government would be a subject for negotiation in the BC treaty process. In 1995 the federal government announced its policy to implement the inherent right to aboriginal self government, paving the way for self government negotiations to occur across Canada. Then, in July 2000, the BC Supreme Court ruled that self government is an aboriginal right.

Self government provisions will differ among treaties. This will allow First Nation communities to shed the dependency created by the *Indian Act* and increase their self-sufficiency. There is no template for self government; each First Nation establishes its own unique self government arrangement. Self government provisions may include education, language and culture, health care and social services, police services, housing, property rights and child welfare. Law making powers will pertain to treaty land and the provision of public service, including health care, education and social services. It is expected that the Canadian *Charter of Rights and Freedoms* and the *Criminal Code of Canada* will apply to aboriginal governments as they do to all other governments in Canada.

First Nations will be required to consult with non-aboriginal residents living on treaty land on decisions that directly affect them.

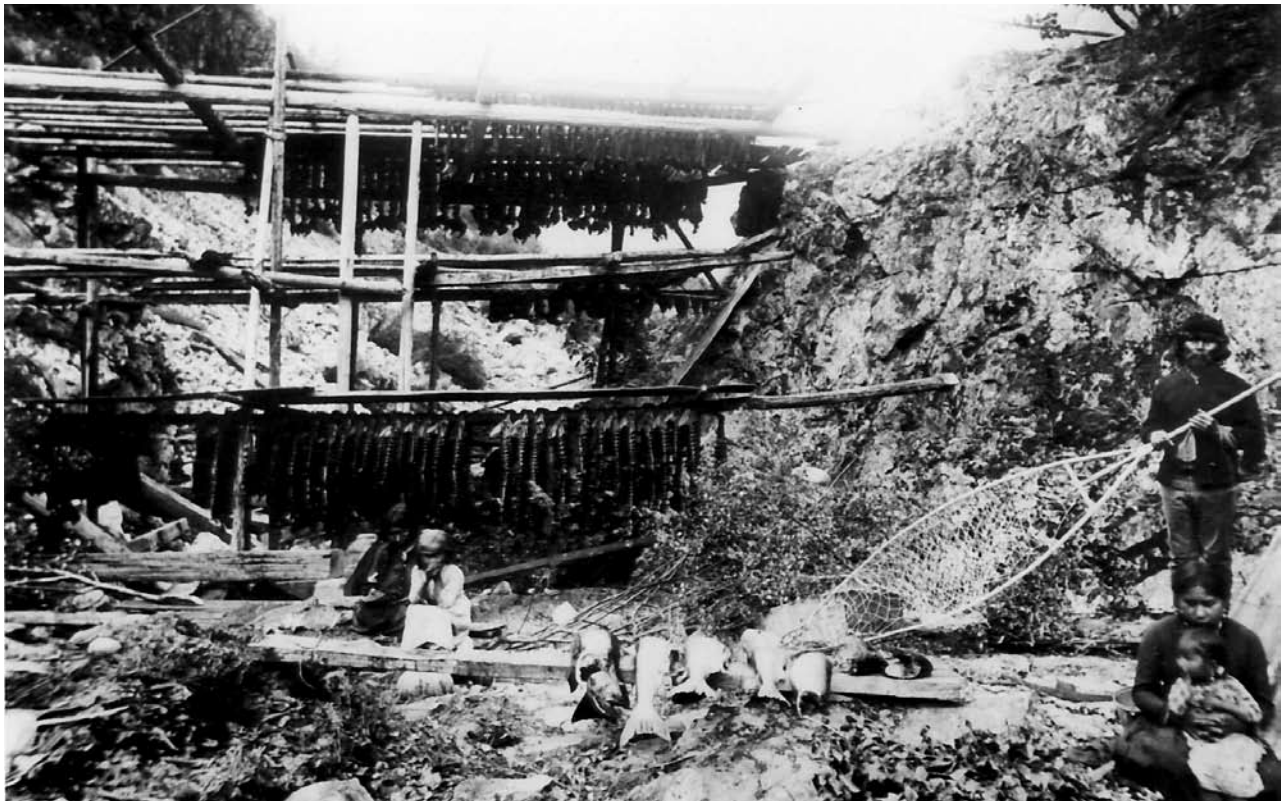
LAND AND RESOURCES

Land has spiritual, economic and political significance for First Nations peoples. First Nations traditional territory — land occupied and used historically — is integral to their identity and survival as a distinct nation.

Under the *Indian Act*, First Nations are wards of the federal government, living on reserve land to which they have no ownership. Indian reserves cover just 0.4 per cent of the BC land base — a tiny portion of First Nations' traditional territories. In some cases, reserve land is not even within a nation's traditional territory. When a First Nation enters the BC treaty process a statement of intent is submitted outlining their traditional territory. This describes the parameters for land to be included in a final treaty.

For most First Nations, treaty settlement lands — the area of land that will be owned and managed by First Nations pursuant to a treaty — will likely comprise only a percentage of their traditional territory. For example, land owned and managed by the Nisg̲a'a as the result of their treaty comprises approximately eight per cent of the nation's traditional territory.

The BC treaty process has always been guided by the principle that private property (fee simple land) is not on the negotiation table, except on a willing seller — willing buyer basis. In urban areas where Crown land is limited, private property available from willing sellers will be critical to achieving final treaties.



Curing salmon on the Fraser River, circa 1880.

Vancouver Public Library, Special Collections, VPL 3257

FISHERIES

First Nations have for thousands of years sustained vibrant and rich cultural identities profoundly linked to BC's land and waters. It is said that the Nisg̲a'a, people of the mighty river, are so connected to fish that their bones are made of salmon. Living in balance with the land and the water is an integral part of First Nations' cultures, and fishing is regulated by long-standing cultural laws around conservation and preservation for future generations.

Long before there was an official commercial fishery in British Columbia, First Nations had been trading fish among themselves and with European settlers. As commercial fishing evolved, aboriginal people had less and less access to fish as a means of maintaining their livelihoods.

The Supreme Court of Canada's decision in *Sparrow* (*1990*) was a major turning point for aboriginal rights, and specifically aboriginal fishing rights. In this case, the Musqueam Nation was asserting an aboriginal right to fish; the Government of Canada argued that First Nations had only those rights granted by the *Fisheries Act* and regulations. The court ruled that aboriginal rights could only be taken away by clear and explicit legislation, and the *Fisheries Act* had never extinguished aboriginal or treaty rights.

Concerns have been raised that there will be job losses and economic decline among non-aboriginal fishers and supporting industries — that treaties will take away part of somebody else's livelihood. Treaty negotiations strive to find a balance between providing First Nations with a greater role in the management and commercial use of fish, while protecting the interests of non-aboriginal fishers. Aboriginal and non-aboriginal fisheries co-exist and will continue to do so.

For example, the Nisg̲a'a Treaty and Harvest Agreement set out an annual allocation of salmon catch. This right is subject to conservation and allocations may be reduced comprising, on average,

approximately 26 per cent of the Canadian Nass River total allowable stock. The treaty also established a Joint Fisheries Management Committee to facilitate the cooperative planning and conduct of Nisga'a fisheries and enhancement activities.

FORESTRY

Forests are an integral part of First Nations culture, economy and spirituality. For more than a century First Nations across Canada have watched the depletion of forests in their traditional territories, while having limited opportunities to participate in forestry jobs and business development.

Before the treaty process was established in 1992 many First Nations had no choice but to seek court injunctions or participate in blockades to prevent logging in their traditional territories. The treaty process provides a constructive means to address First Nation interests in forestry.

Treaties may provide First Nations with a greater role in the management and commercial use of forests within their traditional territories.

Concerns have been raised that transferring land ownership and resource control to First Nations will reduce timber harvesting and processing on settlement lands and eliminate non-aboriginal jobs in forestry. However, organizations like the Council of Forest Industries, and forest companies International Forest Products (Interfor) and Weyerhaeuser Company agree that providing a clear definition of forestry ownership, roles and responsibilities will benefit all British Columbians.

As treaty negotiations continue, more and more First Nations and forestry companies are developing joint ventures, which provide employment opportunities for First Nations and increased certainty for business.

In addition, the provincial government has entered into over 100 Forest and Range Agreements, which provide First Nations with access to timber and/or a share of forestry revenues during the term of the agreement.

Studies into the impacts of aboriginal land claims settlements elsewhere have concluded that because of this increased certainty, resource development improved or stayed the same following settlements.

COSTS AND BENEFITS

The cost of not settling treaties is far greater than the cost of treaty making.

A study conducted by Price Waterhouse estimated that uncertainty surrounding unresolved aboriginal rights and land title could cost BC $1 billion in lost investment. The BC Government's share of the overall cost is estimated at $2 billion, or $50 million annually over 40 years, plus rural Crown land with a notional value of $2.8 billion to $3.5 billion. BC's annual portion is equal to approximately 25 cents of every $100 in the provincial budget.

A 1996 KPMG Report estimated that BC can expect about $3 worth of total financial benefit for every $1 of provincial financial cost. The net financial benefit will be between $3.9 billion and $5.3 billion over 40 years.

The *Indian Act* has made economic development on reserves difficult. Because it stipulates that reserve lands cannot be seized to enforce payment of a debt, they are generally not available for use as collateral. The same is true of all real and personal property of aboriginal people or bands on a reserve. While these provisions protect reserve lands and therefore have widespread support within reserve communities, they also stand in the way of projects that require loans from banks or other outside sources.

Negotiated cash and land settlements will provide First Nations people with the capital they need to begin businesses and create jobs and industries. The money invested and new jobs created will benefit communities throughout British Columbia.

TAXATION

It's important to clarify that only aboriginal people living on reserves receive tax exemptions; most aboriginal people pay the same taxes as other Canadians. The *Indian Act* confers special tax status on aboriginal people who live and work on reserves.

When the tax exemption came into effect under the 1876 *Indian Act*, First Nations did not have the right to vote, own property or practise many cultural traditions. First Nations did not gain the right to vote in federal elections until 1960.

Through treaties, First Nations will acquire a land base and establish a government with powers to access revenues, borrow, receive transfers from other governments and levy taxes. The governments of Canada and BC seek to gradually eliminate tax exemptions as First Nations move towards greater economic self-sufficiency. For example, under the Nisga'a Treaty transaction taxes such as sales tax will be eliminated eight years after the effective date and all other taxes, including income tax, after 12 years.

Following page:
A pack train near Quesnel, circa 1890s.
BC Archives, A-05277

CONSULTATION/OPENNESS

In the past people expressed concern that:

- the provincial mandate, which guides the BC Government's approach in treaty negotiations, does not take into account what British Columbians want in a treaty;

- the public is not represented at the negotiating table; and

- there is little knowledge of what is being negotiated until the treaty is completed.

Between 1991 and early 2002, the BC Government funded a structured consultation process as part of the BC treaty process. This included the provincial Treaty Negotiations Advisory Council (TNAC), regional advisory committees (RACs) and local treaty advisory committees (TACs).

Since 2002 on an ad hoc basis, the federal and provincial governments solicit input from numerous groups to inform and refine their mandates. Municipal and regional governments have a voice on provincial negotiating teams to advise provincial negotiators on local government issues and to participate in negotiations. In the process of negotiations closer ties have often been forged between First Nations and local governments in the area.

Individual tables are also responsible for mounting their own public information initiatives such as: public forums, events, displays, newspaper inserts and question-and-answer sessions. The parties are required to periodically advise the Treaty Commission of their joint public information program.

Most main-table negotiations are open to the public and media, and there is a full public record of those meetings. Members of the public are invited to attend and observe these sessions through advertisements in local media and listing on the Treaty Commission's web site. Many sessions include an open question-and-answer period.

However, sometimes negotiators need closed sessions where the parties can exchange information frankly, brainstorm, explore options and look for solutions in a safe environment away from the spotlight.

TREATY APPROVAL

Treaties define and set out the collective rights of First Nations. The individual holders of those collective rights must agree to the terms of the treaty if it is to have any legal effect and achieve the objective of certainty. This is why First Nations people must vote to ratify their treaty.

Ratification vote procedures are unique to each First Nation. For example, some First Nations require majority consensus from each of their communities to approve an agreement, while others may require the consensus of family representatives.

OVERLAPS

Overlaps are areas of land identified by more than one First Nation as part of their traditional territories. Overlaps result from a variety of situations, including a tradition of sharing territories for resources, movements of families or tribes and boundary disputes. If the First Nations claiming the area acknowledge that the territory is shared by mutual consent and clearly define how they share the area, there is no conflict.

Under the BC treaty process, where there are competing interests the First Nations must resolve the overlaps before agreements in principle are finalized. Failure to do so leads to court challenges, such as that brought by the Gitanyow Hereditary Chiefs against the Nisga'a Final Agreement.

First Nations are responsible for resolving overlaps. Many First Nations have set up processes to resolve overlaps, and a number of overlap agreements have already been finalized.

Members of an Okanagan community.
Okanagan Indian Band, Historic O'Keefe Ranch, F36-2

CERTAINTY

Canada, BC and First Nations all want certainty of ownership and jurisdiction over lands and resources and the authorities each will administer. Some people worry that treaties will not be final and that First Nations might make subsequent claims or look for bigger settlements because of subsequent treaties signed by other First Nations.

In the past, certainty was achieved by blanket extinguishment of First Nations' rights, title and privileges. The *BC Claims Task Force* rejected that approach in its 1991 report to Canada, BC and First Nations, while warning that absolute certainty in all matters is unlikely stated, "Section 35 of the *Constitution Act, 1982* gives express recognition and affirmation to aboriginal title and treaty rights. First Nations should not be required to abandon fundamental constitutional rights simply to achieve certainty for others. Certainty can be achieved without extinguishment. The parties must strive to achieve certainty through treaties which state precisely each party's rights, duties and jurisdiction. The negotiations will inevitably alter rights and jurisdictions. Those aboriginal rights not specifically dealt with in a treaty should not be considered extinguished or impaired."

The governments of Canada and BC now agree that blanket extinguishment is not an option; the challenge is to achieve certainty without impairing those aboriginal rights not specifically dealt with in a treaty.

There is no such thing as absolute certainty in complex relationships. But hard work and skilled negotiations can produce reasonable certainty and predictable procedures for revision and amendment.

INTERIM MEASURES AGREEMENTS

Treaty negotiations in BC will take time, and the parties must balance their conflicting interests until these negotiations are concluded. One method is the use of interim measures agreements.

Interim measures are a practical step to further the process of reconciliation. If a First Nation has a special interest in a particular parcel of land, then it makes sense to allow that First Nation to share in the benefits from that parcel while negotiations proceed to define exactly where and how title will be recognized.

Among the solutions for improving treaty negotiations being offered by the provincial and federal governments are a type of interim measure known as treaty-related measures. They may protect Crown lands for treaty settlements, provide for land purchases from willing sellers, widen First Nation participation in land and resource management, support cultural heritage initiatives and provide for First Nation economic development.

Treaty related measures (TRMs), a type of interim measures agreement, must be directly linked to a treaty and signed by all three parties: Canada, BC and a First Nation. TRMs address matters critical to the resolution of final treaties and are cost shared by BC and Canada.

A salmon weir and dugout canoe at Quamichan Village on the Cowichan River, Vancouver Island, circa 1866.

Frederick Dally, National Archives of Canada, C-065097

1763 Royal Proclamation decrees that Indian peoples should not be disturbed in their use and enjoyment of the land. The proclamation also states that any land held by Indians is to be purchased by the Crown only — not by individuals — and that all purchases have to be agreed on by the Indian people and only after an open negotiating session.

1850s James Douglas, as Chief Factor of the Hudson's Bay Company and then as governor of the Crown colony of Vancouver Island, arranges 14 treaties to buy 358 square miles of land on Vancouver Island.

1860s Lands commissioner Joseph Trutch prohibits the pre-emption of Crown land by aboriginal people and denies the existence of aboriginal rights or need for treaties.

1876 Canada's Parliament passes the Indian Act to regulate most aspects of aboriginal peoples' lives.

1880 Government begins to remove aboriginal children from their families, placing them in residential schools.

1884 Parliament outlaws the potlatch, the primary social, economic and political expression of some aboriginal cultures.

1887 Nisg̲a'a and Tsimshian chiefs travel to Victoria to press for treaties and self government. They were turned away.

1890 Nisg̲a'a create the first Nisg̲a'a Lands Committee.

1899 First Nations in northeastern BC sign on to Treaty 8, extended from Alberta.

1913 The Nisg̲a'a Nation petitions the British Privy Council to resolve the Land Question.

1927 The Canadian government makes it illegal for aboriginal people to organize to discuss land claims.

1931 The Native Brotherhood of BC forms to secretly discuss land claims.

1949 British Columbia extends the provincial right to vote to male native Indians, two years after it adopted otherwise-universal male suffrage and dropped property requirements.

1951 Responding to international human rights criticism, the Canadian government amends the Indian Act to remove anti-potlatch and anti-land claims provisions.

1960 Aboriginal people gain the right to vote in federal elections. The phasing-out of residential schools begins.

1973 In a landmark decision in the Calder case, the Supreme Court of Canada holds that aboriginal title did exist but is split on whether it continues to exist. The federal government establishes its "comprehensive claims policy" to address the issue of the continued existence of aboriginal title and initiates negotiations with the Nisg̲a'a.

1982 The Constitution Act recognizes and affirms aboriginal and treaty rights — both those that exist and those that may be acquired through a treaty.

1991 BC Claims Task Force recommends a six-step treaty negotiation process. British Columbia recognizes the existence of aboriginal rights.

1992 Federal and provincial governments and First Nations Summit establish BC Treaty Commission.

1994 Canada recognizes the inherent right to self government as an existing aboriginal right within the Canadian Constitution.

1996 The Nisg̲a'a Tribal Council and the governments of Canada and BC sign an agreement in principle as a foundation for negotiating BC's first modern treaty. (These negotiations occur outside the BC treaty process.)

1997 The Supreme Court of Canada issues the landmark Delgamuukw decision, which confirms that aboriginal land title is a right to the land itself — not just the right to hunt, fish and gather.

1998 Nisga'a approve Final Agreement but face criticism from some of BC's non-aboriginal population and also court challenges from the BC Liberals and the BC Fisheries Survival Coalition.

1999 BC and Canada ratify the Nisga'a Final Agreement. Sechelt Agreement in Principle is signed, marking the beginning of talks to conclude a treaty.

2000 The Nisga'a treaty becomes law. BC Supreme Court rules Nisga'a treaty and enacting legislation are constitutionally valid. BC Supreme Court rules that self government is a constitutionally-protected aboriginal right.

2003 First Nations Lheidli T'enneh First Nation, Maa-nulth First Nations and Sliammon Indian Band ratify agreements in principle with the governments of Canada and British Columbia.

2004 Tsawwassen First Nation ratifies an agreement in principle with the governments of Canada and British Columbia.

2005 Yekooche Nation ratifies an agreement in principle with the governments of Canada and British Columbia.

2005 The Supreme Court decisions in Haida and Taku confirm the BC government must consult with, and if necessary, accommodate First Nations before proceeding with development that may have an impact on their traditional territories.

2006 The Lheidli T'enneh First Nation, the Tsawwassen First Nation and the Maa-nulth First Nations conclude final agreement negotiations.

Appendix I

RECOMMENDATIONS OF THE BC CLAIMS TASK FORCE

The Task Force recommends that:

1. The First Nations, Canada, and British Columbia establish a new relationship based on mutual trust, respect and understanding — through political negotiations.

2. Each of the parties be at liberty to introduce any issue at the negotiation table that it views as significant to the new relationship.

3. A British Columbia Treaty Commission be established by agreement among the First Nations, Canada and British Columbia to facilitate the process of negotiations.

4. The commission consists of a full-time chairperson and four commissioners — of whom two are appointed by the First Nations and one each by the federal and provincial governments.

5. A six-stage process be followed in negotiating treaties.

6. The treaty negotiation process be open to all First Nations in British Columbia.

7. The organization of First Nations for the negotiations is a decision to be made by each First Nation.

8. First Nations resolve issues related to overlapping traditional territories among themselves.

9. Federal and provincial governments start negotiations as soon as First Nations are ready.

10. Non-aboriginal interests be represented at the negotiating table by the federal and provincial governments.

Daniel Wiigak, High Gitxsan Chief, circa 1923.
Canadian Museum of Civilization, 59502.

11 The First Nations, Canadian and British Columbian negotiating teams be sufficiently funded to meet the requirements of the negotiations.

12 The commission be responsible for allocating funds to the First Nations.

13 The parties develop ratification procedures that are confirmed in the Framework Agreement and in the Agreement in Principle.

14 The commission provides advice and assistance in dispute resolution as agreed by the parties.

15 The parties select skilled negotiators and provide them with a clear mandate, and training as required.

16 The parties negotiate interim measures agreements before or during the treaty negotiations when an interest is being affected that could undermine the process.

17 Canada, British Columbia and the First Nations jointly undertake public education and information programs.

18 The parties in each negotiation jointly undertake a public information program.

19 British Columbia, Canada and the First Nations request the First Nations Education Secretariat and various educational organizations in British Columbia to prepare resource materials for use in the schools and by the public.

Appendix II

There are 58 First Nations participating in the BC treaty process at 48 negotiation tables:

8 FIRST NATIONS IN STAGE 5

In-SHUCK-ch Nation
Lheidli T'enneh Band
Maa-nulth First Nations
Sechelt Indian Band
Sliammon Indian Band
Tsawwassen First Nation
Yekooche Nation
Yale First Nation

39 FIRST NATIONS IN STAGE 4

Carcross / Tagish First Nation
Cariboo Tribal Council
Carrier Sekani Tribal Council
Champagne and Aishihik First Nations
Da'naxda'xw Awaetlatla Nation
Ditidaht First Nation
Esketemc First Nation
Gitanyow Hereditary Chiefs
Gitxsan Hereditary Chiefs
Gwa'Sala-'Nakwaxda'xw Nation
Haisla Nation
Heiltsuk Nation
Homalco Indian Band
Hul'qumi'num Treaty Group
Kaska Dena Council
Katzie Indian Band
Klahoose Indian Band
Ktunaxa/Kinbasket Treaty Council
Kwakiutl Nation (in suspension)
Laich-Kwil-Tach Council of Chiefs
Lake Babine Nation
Musqueam Nation
'Namgis Nation
Nazko Indian Band
Nuu-chah-nulth Tribal Council
Oweekeno Nation
Pacheedaht Band
Quatsino First Nation
Snuneymuxw First Nation
Sto:Lo Nation
Taku River Tlingit First Nation
Te'Mexw Treaty Association
Teslin Tlingit Council
Tlatlasikwala Nation
Tsay Keh Dene Band
Tsimshian First Nations
Tsleil-Waututh Nation
Westbank First Nation
Wet'suwet'en Nation

5 FIRST NATIONS IN STAGE 3

Cheslatta Carrier Nation
Hupacasath First Nation
K'omoks First Nation
Squamish Nation
Tlowitsis Nation

6 FIRST NATIONS IN STAGE 2

Acho Dene Koe First Nation
Allied Tribes of Lax Kw'alaams
Council of the Haida Nation
Liard First Nation
McLeod Lake Indian Band
Ross River Dena Council

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