



BC Treaty Commission Presentation
To
**STANDING COMMITTEE ON ABORIGINAL AFFAIRS
AND NORTHERN DEVELOPMENT**

Tuesday, October 25, 2011

Check against delivery

The Government of Canada has a unique constitutional obligation to aboriginal people.

Under our Constitution, aboriginal rights and treaty rights, those that exist now and those that may be acquired, are recognized and affirmed. That is our starting point.

The reality in Canadian law is that aboriginal land title, and the rights that go along with it, exist whether or not there is a treaty. But without a treaty there is uncertainty about how and where those rights apply. That is our situation in British Columbia. There is uncertainty.

Through treaties the free, prior and informed consent of the First Nation citizens in British Columbia is achieved. There is certainty of ownership and jurisdiction.

There are compelling legal, historical and economic reasons, as well as practical reasons, for the made-in-BC approach to treaty making.

The BC treaty process is the result of a tripartite agreement between the First Nations Summit and governments of Canada and British Columbia.

The Government of Canada committed in September 1992 to this unique, made-in-BC treaty process. As such, treaty making in British Columbia is distinct and different from other processes to reconcile aboriginal rights issues in other provinces and territories.

But given the time and money spent on the made-in-BC treaty process, Canadians should be asking whether there has been a sufficient return on the investment. Has it been worth it?

We believe the simple answer is the return on investment is yet to be fully realized but it will be significant and it will benefit all British Columbians and Canadians.

The state of the economy worldwide is on everyone's mind. Understandably, the Government of Canada has to be strategic in its investments.

The Canadian Chamber of Commerce report *The Business Case for Investing in Canada's Remote Communities* makes a strong case for strategic investments in remote communities. We believe the same case can be made for First Nation communities. Many of these communities are remote or rural.

The Canada – First Nations Joint Action Plan aims to unlock the economic potential of First Nations. That is not only the right thing to do; it makes economic sense for the country.

The Treaty Commission believes that settling treaties is an effective way to ensure there is economic growth in all regions of British Columbia. Treaties are an untapped source of economic growth and when a First Nation prospers the whole region prospers.

While First Nations have been at the centre of the debate over natural resource, energy and transportation development in British Columbia, they have often been outsiders in the decision making process and not among the beneficiaries.

The Government of British Columbia has unveiled their plan to ensure the economy remains strong for all British Columbians including First Nations.

Priority is being given to short-term arrangements with First Nations that will allow some natural resource, energy and transportation developments to proceed.

While long term reconciliation with First Nations remains the stated goal of the provincial government, practical considerations favour agreements that provide short-term certainty on the land where the Crown and a First Nation share an interest.

The federal government, for the most part, has not been a party to these bilateral negotiations between the BC government and various First Nations. While we applaud bilateral agreements that provide immediate benefits to First Nations, it will be helpful if there is a stronger link to treaties.

For its part, the federal government has provided funding to First Nations for Treaty-Related Measures or TRMs. More than a third of the funding has gone to First Nations that are completing final agreements, which is a good thing. The majority of TRMs are for governance or economic development – actually 55% for governance capacity, 14% for economic development and the remaining 31% for lands and resources.

The social agenda has always been the focus of federal spending across the country. It is clear there needs to be a greater emphasis on an economic agenda for First Nations.

The Mining Association of BC has said that while treaties are not perfect “treaties are one of the best ways of providing a level of certainty on the land base and a vehicle for reconciliation with First Nations.” In its view “the federal commitment to the BC treaty-making process has waned in recent years.”

However, the Government of Canada has demonstrated it can move quickly on treaties, for example, parliament’s passage in 2009 of the Maa-nulth First Nations Final Agreement. The Maa-nulth Final Agreement made its way through the House of Commons, the Senate, the Standing Senate Committee on Aboriginal Peoples and received royal assent in just four days.

The opposite has also been true. For example, the federal government took more than 16 months to initial the Sliammon First Nation Final Agreement that was completed in June 2010. There was a similar delay in initialling the Yale First Nation Final Agreement.

Some confidence may be restored as a result of the federal decision to finally initial the Sliammon agreement last week. But questions remain in British Columbia about the federal commitment to treaty making.

Quick passage of the Yale First Nation Final Agreement by Parliament this fall will also help. The agreement has already been ratified by Yale First Nation members and the BC legislature.

Federal government attempts at BC treaty tables to rescind or significantly alter that which has already been negotiated and agreed upon elsewhere in BC or the country will further erode trust.

The Treaty Commission recognizes that court decisions will continue to inform the parties in treaty negotiations. While negotiations are preferred to litigation, court action is sometimes seen as a means to further define the aboriginal rights which First Nations seek to have recognized in treaties.

As an alternative to litigation, the Treaty Commission will be more aggressive in proposing dispute resolution at tables where there is no progress in negotiations.

Territorial issues between First Nations have the potential to derail treaty negotiations and economic opportunities. The Treaty Commission will continue to assist First Nations in resolving overlaps on shared territory as time and resources permit.

Human resource planning is essential as First Nations prepare to become self governing. The Treaty Commission has developed a tool which can assist First Nations, and as time and resources permit, will host workshops to familiarize community members with the tool.

In undertaking these initiatives – helping to resolve territorial issues among First Nations, and helping them to prepare for self government – the Treaty Commission is addressing the very real needs of First Nations.

But our priority is treaty completion.

The Treaty Commission is asking for a recommitment from all three parties – the governments of Canada and British Columbia and First Nations – to treaty completion.

The Prime Minister, the Premier and First Nation leaders must signal that they have the willingness to overcome obstacles and reach lasting reconciliation. Without a recommitment at the highest levels the parties may not have the political will to resolve issues that stand in the way of modern-day treaties with many more First Nations.

The Prime Minister, in particular, has an opportunity on the national stage to show that the Government of Canada is committed to reconciliation with First Nations and has the political will to conclude fair and honourable treaties in British Columbia.

What does recommitment mean?

Recommitment means making treaty completion a priority in British Columbia.

It means a recommitment to the made-in-BC treaty process that is distinct and different from other processes in other parts of country. The treaty process is open to all First Nations in BC who are ready to negotiate; no proof of claim is required; and the open-ended process is facilitated by an independent treaty commission.

Recommitment means replacing the lack of urgency among federal departments with a sense of purpose to complete treaties – to set targets for treaty completion.

There is concern in British Columbia about the impact on the BC treaty process of pan-Canadian, federal reviews including the Comprehensive Claims Policy, Capacity Initiatives for First Nations, and Fiscal Transfers for First Nations. The current five-year federal budget for its participation in the BC treaty process, which expires in 2014, is under review. Salmon management and allocation has been under review on the west coast for several years. The

Cohen Commission of inquiry will add its findings next year, which is likely to result in a further review by the federal government followed by recommendations.

Current reviews within federal departments mean Canada's chief negotiators in British Columbia do not now have a mandate to complete treaties. What is required is a broad mandate that will allow federal negotiators to complete treaties.

The federal freeze on fish negotiations, in the wake of the Cohen Commission of inquiry, is a major obstacle. More must be done to overcome this delay, which is not likely to end when the Cohen inquiry is completed. It is more likely the federal government will require a lengthy period of review to consider the findings and recommendations of the commission.

We have asked the federal government to deliver a new mandate on fish for treaty negotiations or provide an immediate exemption to First Nations close to completing agreements. We support the federal government's proposal to 'carve out' fish from the treaty, so that an agreement can be completed. Fish would be dealt with after the final agreement is completed.

The BC Claims Task Force made the recommendations to create the BC treaty process. The members of that task force understood that no process for negotiations can be successful without the serious resolve and commitment of all three parties to reach agreement.

A recommitment to treaty negotiations will be an important expression of that resolve as we approach the 20th anniversary of the treaty process.

Ultimately, it is the responsibility of the governments of Canada, British Columbia and First Nations to answer the question: How can we realize a significant return on the investment we have made in treaty making in BC.

We believe the answer is straightforward. Recommit to treaty making, complete final agreements, conclude agreements in principle, and resolve First Nation overlaps on shared territory.

Success in these areas will ensure there is a return on investment the parties have made in the BC treaty process over the past 19 years.

Thank you.