

# Resolving Territorial Issues a Priority

*Says Treaty Commission.*

**F**irst Nations seeking treaties through the B.C. treaty process are being challenged in court by neighbouring First Nations on the basis of overlapping claims to territory.

Some First Nations believe the way to deal with overlaps is to stop the ratification of a treaty until the issues are resolved by the B.C. government or by a court after a full hearing of the issues. No First Nation has been successful in court in stopping a treaty from being ratified, but the legal action is a distraction for the parties in treaty negotiations. It is also damaging to relations among First Nation neighbours.

Court rulings suggest First Nations should deal with overlapping claims at an early stage of treaty negotiations. First Nations will be better able to protect their interests through an early resolution of overlapping claims than by waiting for Crown consultation that may not occur in any substantive way until agreement is reached on the terms of the treaty. Protocol agreements on shared territories have the potential to build partnerships among First Nation neighbours and strengthen their say on what happens on the land. Conversely, conflict amongst First Nations weakens their place on the land.

The Crown's obligation to consult is proportionate to the strength of the First Nation's claim, as well

as the impact of the proposed development or activity on that claim. The weaker the claim, the less consultation required. So, where overlaps exist, the Crown may be obliged only to notify the claimant First Nations and seek their views without engaging in the extensive consultation that is necessary where a First Nation has a strong *prima facie* claim. Litigation amongst First Nations over territorial issues has not been an effective means of increasing the Crown's obligation to consult.

The Crown's duty to consult First Nations extends to the treaty process. When the Crown agrees to a treaty settlement that provides lands and rights to one First Nation, other First Nations with claims in the same area may be affected. Accordingly, the Crown must consult those other First Nations concerning the impact of the treaty on their rights and, where appropriate, accommodate them.

Treaties are about reconciling First Nations, Canada's and British Columbia's respective interests, jurisdictions and use of resources. First Nations, too, must reconcile their interests, jurisdictions and use of resources amongst themselves.

There is a long history of protocols being reached among First Nations on territorial issues

stretching back hundreds of years. The Treaty Commission with its limited resources has been exploring old and new approaches to shared territory issues and overlaps, including dispute resolution and early resolution.

Building upon these types of initiatives and experience, the long-standing experiences of First Nations, and other approaches, and by examining new developments, the Treaty Commission is building a valuable bank of information and resources for First Nations to use in resolving territorial issues.

The Treaty Commission recently hosted a panel of experts for a two-day round table that included

First Nations leaders and former judges with a special interest and experience in resolving territorial issues among First Nations. The Treaty

Commission is also involved in and supporting a number of discussions among First Nations in their efforts to resolve territorial issues.

Treaty Commission policies are being evaluated and the processes used are being reviewed as part of the initiative to find workable solutions for territorial issues. Commissioners are becoming involved in a much more significant way in working directly with First Nations to find solutions.

While the Treaty Commission has no coercive powers under the *Treaty Commission Act*, First Nations may be motivated to resolve overlaps by a desire to strengthen their claims. The Treaty Commission is proposing to bring greater resources to bear on the problem this year.

