

BC Treaty Commission

Commissioner Jack Weisgerber

Speaking Notes

The Continuing Legal Education Society
of British Columbia Presentation

June 11, 2004

Check Against Delivery



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Commission**

203-1155 W. Pender St., Vancouver, B.C. V6E 2p4. Tel 604 482 9200. info@bctreaty.net www.bctreaty.net

First Nations have for thousands of years sustained vibrant and rich cultural identities profoundly linked to the lands and water that now form British Columbia.

There is a growing recognition of the aboriginal rights that First Nations continue to have in their traditional territories.

These rights are being defined through both negotiation and litigation.

The Treaty Commission has witnessed firsthand the need for a delicate balance between the two - between negotiation and litigation.

We have been critical of the federal government for their at times inflexible "litigate or negotiate" policy. We also recognize that in other spheres of life, litigation and negotiation go hand-in-hand. We have all heard about the out of court settlements negotiated on the steps of the courthouse.

But, the Commission knows first-hand how the threat of litigation can stall negotiations rather than provide an incentive to the parties to move forward on critical issues.

The conundrum is this: First Nations may feel they are forced to take legal action to protect their rights. And then they cannot negotiate a resolution of their rights because they have taken legal action. It seems like a catch-22 situation.

In our facilitation efforts to date we have encouraged Canada to be more flexible in its policy around litigation. In acknowledging the First Nation's rationale for filing a writ, we have also encouraged the parties to put in place an abeyance agreement in tandem with a negotiation work plan that sets out to address the issues that are the subject of the writ or to conclude interim measures that temporarily protect the First Nation's interest pending resolution.

I suspect, though, that there is much more to be said on the relationship between litigation and negotiation in the treaty process.

But in the end, in our view there really is no alternative to negotiations. Litigation may be seen as an alternative. While it is certainly true that litigation can inform negotiations, at the end of the day a government-to-government relationship, with all of its complexities, must be negotiated.

Relationships cannot be built in court. And ultimately, treaty making is about building new relationships.

The treaty process, as it was originally conceived, is sound and the fundamental commitments were fair and appropriate for resolving the land claims in British Columbia.

For the treaty process to succeed the parties must adhere to those fundamental commitments. That's essential. And that means following the agreed-to negotiation process. Political will and commitment is required to ensure the process for recognition and reconciliation is fair and effective and results in agreements.

As many of you know, there has in the past been a wide gap between the parties in negotiations. To a greater degree than is perhaps recognized, this gap is narrowing. There are four First Nations moving ever closer to treaties, having signed agreements in principle over the last 11 months.

There are other First Nation leaders who say that aboriginal rights continue to be denied. With respect, this view appears to underestimate the degree of recognition that has been achieved.

The governments of British Columbia and Canada are recognizing these rights through:

- o Consultation and Accommodation agreements;
- o Land use planning protocols;
- o Cooperative resource management; and
- o A variety of other interim measures.

Treaties, of course, provide the broadest recognition of authorities for First Nations and, by the same token, a greater degree of certainty for all British Columbians.

The broadest recognition for First Nations will come in the form of:

- o Ownership of treaty settlement land;
- o Capital transfers for investment;
- o Revenue sharing;
- o Harvest Agreements;
- o Cooperative management to get the most from the resource; and, of course, the other terms of the treaty itself.

A treaty, with all of its components, should be an effective tool for achieving a prosperous and self-sustaining future for First Nation communities.

So, where are we now?

Four First Nations expect to conclude final agreements in 2004 or 2005 if they are able to maintain the current pace of intensive negotiations.

Another half dozen First Nations hope to achieve agreements in principle in late 2004 or 2005.

Flexibility and creativity are essential if the parties are to reconcile their interests through the give-and-take of good faith negotiations.

The draft agreements in principle we have today leave a number of major issues to be negotiated. Nonetheless, there is even in these punted terms a reflection of the greater recognition of First Nations interests that I noted earlier, for example, the commitment to revenue-sharing, and new approaches to certainty.

The four agreements in principle do provide a degree of clarity over future treaty settlement land and resources, and a cash amount. They are important milestones.

Negotiators are currently working towards agreement on the issues of governance, certainty, cooperative management, revenue sharing, fiscal and financing arrangements, taxation and fish.

In closing, I want to share a quote from Chief Kim Baird, which is taken from the video Sharing Our Experience:

"I don't think we can get improved community conditions under the Indian Act. I don't think we can necessarily get it through litigating these issues. I think that negotiation is a practical way of advancing our interests as a community without losing our identity or without giving up anything."

We, at the Treaty commission couldn't agree more.