

TREATY COMMISSION

update

*The independent
voice of treaty
making in
British Columbia*

Lheidli T'enneh first to conclude treaty negotiations



Procession of Lheidli T'enneh members

The path is now clear for the Lheidli T'enneh First Nation to be the first to ratify a treaty through the BC treaty process.

Lheidli T'enneh First Nation Chief Dominic Frederick, Premier Gordon Campbell, and federal Indian Affairs Minister Jim Prentice witnessed the initialling ceremony of the Lheidli T'enneh Final Agreement in Prince George October 29. Provincial Minister of Aboriginal Relations and Reconciliation Michael de Jong was one of many dignitaries attending the event that included Chief Commissioner Steven Point and Commissioner Jody Wilson.

"This is a historic day," said Chief Commissioner Point. "It marks the reconciliation of three governments — Canada, BC and Lheidli T'enneh."

"Today we witnessed a significant milestone in the history of reconciliation of First Nations rights and title in British Columbia," said Premier Campbell. "We are building a new relationship with the

Lheidli T'enneh Band, one that will create economic certainty in the region, and provide opportunities, independence and prosperity for generations to come."

"Today's initialling represents what can be achieved through community leadership and through cooperation among aboriginal and non-aboriginal communities," said Minister Prentice.

"The Final Agreement represents a lot of hard work, sacrifice and compromises by all parties," said Chief Frederick. "The negotiators have taken it to this point, now it is in the hands of the community to accept or reject it."

The agreement provides a capital transfer of \$13.2 million over 10 years, one-time funding of \$12.1 million for implementation and transition costs, as well as \$400,000 a year, indexed to inflation, for the next 50 years in resource revenue sharing. The land package comprises 4,330 hectares, a sizeable portion within the City of Prince George.

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Shared Territory *Discussions Intensify*

All parties in treaty negotiations should be paying greater attention to shared territory issues.

Chief Commissioner Steven Point, in the Treaty Commission's 2006 Annual Report, noted, "The concern, as we get closer to treaties, is with contested overlaps between neighbouring First Nations. Assisting First Nations to address overlaps is a priority for the Treaty Commission in the year ahead."

It is for First Nations to resolve territorial issues and shared territory discussions have increased, with the Treaty Commission assisting at numerous meetings among neighbouring First Nations, as well as among First Nations and the governments of Canada and British Columbia.

The Treaty Commission is stepping up its efforts and considering various approaches to dispute resolution, primarily as a result of First Nations reaching agreements in principle and approaching final agreements.

While the details of land, resource and governance issues become clearer as First Nations conclude agreements, thereby clarifying which shared territory issues need to be addressed on a priority basis, early resolution is still preferred.

A notable example is the agreement reached by the Tsimshian and the Nisga'a Nation while the Tsimshian were still in the early stages of the treaty process. The memorandum of understanding, signed in November

1996, defined the relationship between the First Nations with respect to boundary issues, access to natural resources and common development activities.

Also of note is the agreement among the Huu-ay-aht First Nation, Tseshaht and the Uchucklesaht Tribe over the area between Coleman Creek and Bernard Point on Vancouver Island signed in July 2000.

These agreements are good examples of the principle set out in the BC Claims Task Force Report that "First Nations resolve issues related to overlapping traditional territories among themselves." They were also helpful in moving the treaty negotiations forward at these tables.

If these issues are left unresolved, the courts may have to address them. As early as 1998, the BC Supreme Court was challenged with this issue in the *Luuxhon* (BCSC 0921) case. The court, in a procedural ruling, refused to permit a claim for a declaration that the Crown may not conclude a treaty with the Nisga'a without the consent of the neighbouring First Nation.

The court stated that, "While it is reasonable to argue overlapping claims must be taken into account in concluding a treaty, plainly s. 35(1) of the Constitution Act cannot be said to bestow upon one Aboriginal nation a right to a veto over agreements between the Crown and other first nations."

The court went on to note that, "Court applications seem inevitable unless the treaty negotiation process deals with

overlapping claims ... if the parties fail to deal with the conspicuous problem of overlapping claims, they may well face Court imposed settlements which are less likely to be acceptable to them than negotiated solutions."

We are also seeing that the uncertainty arising from unresolved territory issues can be damaging to a First Nation's attempts to defend its traditional territory from the negative impacts of development. An example of this was seen in *Heiltsuk Tribal Council v. British Columbia (Minister of Sustainable Resource Management)*, where the BC Supreme Court was unable to find that the Heiltsuk Nation had proven a prima facie claim to the land in question as a result of the overlapping claim to title by the Nuxalk Nation.

The flip side to this is that First Nations with traditional territories that have no overlap issues, or have territories where the issues have been resolved, can strengthen their claims to territory. For example, in *The Squamish Nation et al v. The Minister of Sustainable Resource Management et al*, the Squamish Nation claimed there was a lack of consultation for a resort development expansion in an area of cultural and spiritual significance to the Squamish. The court, in finding in their favour, noted the Squamish had repeatedly asserted aboriginal rights and title to its traditional territory, including the area in question (Mount Garibaldi and the Brohm Ridge area), that it is engaged in


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Premier Campbell presents gift to Chief Dominic Frederick as Minister Prentice looks on

The agreement will now go to all three parties for formal ratification, first by the Lheidli T'enneh members, then by the provincial legislature, and finally by the federal parliament. For the treaty to be ratified by the Lheidli T'enneh it must be approved by 70 per cent of those members who cast a vote, according to the wishes of the community.

Lheidli T'enneh, "the people from the confluence of two rivers," is a Carrier-speaking First Nation that has traditionally occupied and used the land around Prince George, east to the Alberta border. Their main community is the Shelley Reserve, 20km northeast of Prince George. 

In-SHUCK-ch Nation, BC conclude agreement

In-SHUCK-ch Nation has become the eighth First Nation to conclude an agreement in principle in the BC treaty process.

Community members approved the agreement in April and the BC government endorsed it at a signing ceremony in Mission on October 28. The federal government has yet to sign the agreement.


"There is always a great sense of accomplishment when negotiations reach this stage and I applaud the parties for achieving this milestone."

Commenting on the agreement, Minister of Aboriginal Relations and Reconciliation Michael de Jong said, "There is always a great sense of accomplishment when negotiations reach this stage and I applaud the parties for achieving this milestone."

Samahquam Nation Chief Keith Smith said, "The treaty should allow us to begin to deal with our own problems. Isolation, poor roads, no connection to the BC Hydro grid, and no landline telephones mean that we can't compete in the marketplace. With no markets, you can't build a sustainable economy."

Chief Commissioner Steven Point congratulated In-SHUCK-ch members on the agreement and wished them well in their negotiations for a final agreement.

The agreement sets the foundation for negotiating a final agreement with provisions on land, governance, capital transfer, resources and culture. The agreement provides 14,577 hectares of treaty settlement land and \$21 million.

The In-SHUCK-ch Nation represents approximately 900 members from the Douglas First Nation, Samahquam Nation and Skatin First Nation in the Lillooet River Valley. 

update

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History limits *Hul'qumi'num*

The Hul'qumi'num First Nations are caught between Canada's nation-building policies of the late-1800s and the BC government's efforts to build a new relationship with First Nations today.

"I guess the place to start is the land," says Robert Morales, chief negotiator for the Hul'qumi'num Treaty Group (HTG). "When British Columbia negotiated with Canada to enter Confederation [in 1871], part of the negotiation centred around the railway."

At the time, BC would agree to union only if the Government of Canada agreed to complete a road link connecting the province to the rest of the country.

So anxious was the government to extend Canada's borders to the Pacific that it readily agreed to BC's demands, and committed to building within 12 years a railway that reached all the way to Victoria.

As part of the deal, however, BC was required to grant to the federal government a sizeable portion of public land along either side of the railway line. The land would be granted to private companies contracted to build the railway.

On Vancouver Island, local coal baron Robert Dunsmuir expressed an interest in taking on the railway project. In 1883, the BC government signed a contract with Dunsmuir to build a railway between Esquimalt and Nanaimo in exchange for 800,000 acres (3,200 sq. km) of land plus a cash grant of \$750,000 from the federal government.



Casper Kapiell and Wife of Comiakien, 1913 Royal BC Museum Photographic Collections, PN 6173

That land grant comprised about 20 per cent of all of Vancouver Island and included all known coal deposits. Much of that land was within the traditional territory of the Hul'qumi'num First Nations.

"There was this large land grant that was made that put the land in the hands of third parties," says Morales. "The east coast of Vancouver Island, from Victoria to Campbell River represents the largest single block of Crown land that was alienated to third parties in the province. And that effectively wiped out 95 per cent of the Hul'qumi'num's traditional territory."

The Hul'qumi'num Treaty Group represents approximately 6,300 people and six communities: Chemainus, Cowichan, Halalt, Lake Cowichan, Lyackson and Penelakut. Their traditional territory encompasses the area around

Duncan, north to Ladysmith, east to the Gulf Islands and the lower Fraser River and west to Cowichan Lake.

The Hul'qumi'num traditionally used and occupied this vast territory for hunting, gathering, fishing, trading, spiritual practices, sacred ceremonies, and a host of cultural activities. For example, family names are derived from Hul'qumi'num ancestor legends and stories that in turn are linked to different locations throughout the territory. Hul'qumi'num ancestors are said to have fallen from the sky at these locations.

Today, there are over 1000 registered archaeological sites throughout the territory marking the Hul'qumi'num's many uses of the land. And nearly all of these locations fall within Robert Dunsmuir's E&N railway land grant.

's options

"There's a term called 'unfinished business'," says Joey Caro, HTG communications officer. "And when I started with this organization that was a term being used here at the table — that we were addressing the unfinished business about aboriginal land issues and resources."

"There was never any discussion [of the land grant] with the Hul'qumi'num people," says Morales. "They then constructed the railway, and did do some negotiations [over] a little strip of land that was right near the railway tracks. But the big land grant was never ever dealt with."

That decision has had a huge impact on Hul'qumi'num territory and culture.

"If you look at our territory now, all these logging companies have taken over the land within our territory," says Caro. "Hancock Timber, TimberWest and Brascan. They put up gates so we can't even get into the woods now and up into the mountains. They have all these grandfathered E&N Railway mining claims all through our territory that we can't even touch. And now they've made it so that you can go on the Internet and get mining licences and what have you, really simple.

"Sacred bathing sites are getting compromised by way of pesticide use, traffic exhaust, foot traffic. Our people believe that once it gets compromised by pollution or by pesticides that it loses that sacredness and we can't use it any more," says Caro.

At the Hul'qumi'num treaty table, there are many unresolved issues, and they all stem for the E&N Railway land grant.

"The government of Canada and the government of British Columbia came to the table saying no, we're not going to expropriate land for two purposes, even though the land was effectively expropriated away from the Hul'qumi'num people," says Morales.

"You come to this table and we're told that the past is not on the table. We're told that these are forward looking treaties and as such we have to look forward," says Caro. "We hear private property is not on the table, compensation is not on the table. But they've got an indemnity clause in each one of those treaties that says that we'll forgive the government for any past infringement on our rights and title and we'll bring no future claims against the governments.

"So how do they do that? How do they say the past is not on the table but we want you to forgive us for the past and bring no future claims? It seems like a pretty nice deal for them, but an incredibly terrible arrangement for us," continues Caro.


"We certainly are not prepared to accept that 85 per cent of the territory is off the table simply because it was a decision made by the government in the 1800s," adds Morales. "Canada and British Columbia both participated in that decision. Both levels of government knew what they were doing, knew the legal requirements they were under."

Of course, the Hul'qumi'num know it's very unlikely they will ever get 100 per cent of their territory back. Instead, the Hul'qumi'num want to discuss co-management of their traditional territories, decision-making participation in the region, and compensation for expropriated lands.

"That whole thing about we have to bring people around to see that this deal is the deal — that is not negotiating," says Caro. "We're looking at a sack of groceries that somebody brought to our table and somebody else put the groceries in that bag and we don't want to accept delivery. We want to have a say in what goes in that bag."

So is a treaty possible at the Hul'qumi'num treaty table? Morales thinks so.

"The traditional land/cash way of dealing with treaties and comparability; it's just got to be thrown out the window," says Morales. "We've got to sit down and we've got to talk about this unique situation that exists in Canada because I don't think there are very many situations like this across the country.

"The Hul'qumi'num want a treaty, the Hul'qumi'num people want a treaty. The leadership has said that. But we've said it and Canada said it: it's not a treaty at all costs," continues Morales. "That's true for all the parties and now the challenge is how are we going to find the comfortable middle ground, rather than entrenching these positions. And I think we are prepared to look at the options." 

Preparing for treaties: The role of

As the parties get closer to treaties in British Columbia, the Treaty Commission is turning more of its attention to treaty implementation.

Contemplating life after treaty is a new experience here in BC, but with seven First Nations negotiating final agreements and several more ready to move into Stage 5 with comprehensive agreements in principle, that will soon change. Of the lessons learned from the Nisga'a, perhaps the most important is to be prepared for treaties.

Are First Nations and the governments of Canada and British Columbia ready for life after treaty? Unfortunately the answer generally is not yet. Regional and local governments and businesses

in our province, too, have work to do to get ready. Planning is a key undertaking in any successful project and planning for a treaty is no exception.

One planning tool the Treaty Commission feels is particularly suited to First Nations in BC, and actively endorses, is Comprehensive Community Planning (CCP). Originating in the School of Planning at Dalhousie University, this approach to planning encourages communities to understand current circumstances, collectively determine the need for change, and clearly define future possibilities.

Indian and Northern Affairs Canada (INAC), building on the important work Dalhousie and First Nation communities

in Atlantic Canada began in 1999, introduced a CCP pilot program in BC in 2004. Five First Nations with diverse circumstances and geographies were invited to participate and by most accounts the pilot projects were a success. The parties, through these projects, learned a great deal and they are sharing their experiences with other First Nations interested in community planning in BC.

Starting in May and through November 2006, INAC and a First Nation partner have hosted three CCP workshops, the first in Vernon, followed by another in Prince George and the most recent in Sidney. The turnout for all was excellent and many participants

What was said



Wallace Henry welcomes Minister de Jong to In-SHUCK-ch territory

Michael de Jong, Minister of Aboriginal Relations and Reconciliation

"Premier Campbell has dedicated himself and the government he leads to working cooperatively in a spirit of mutual respect and civility, towards achieving the goals of reconciliation and recognition of the rights that exist for aboriginal peoples and First Nations in the Province of British Columbia.

That spirit is an emphasis, a sentiment, an emotion that now transcends every aspect of government."

"We are at a unique stage in our evolving history as it relates to treaties. We've just heard from all five of the BC treaty commissioners prior to this segment of the program. There are treaty tables that are showing very promising prospects for achieving something that in 14 years we simply have not achieved — the emergence of a comprehensive treaty settlement package from the BC Treaty Commission process. That will be, for all parties involved, a day of great celebration. And I hope it is a day that comes very soon. And I believe it may come within a matter of weeks.

comprehensive community planning

expressed an interest in championing a comprehensive community planning initiative in their community.

The development and implementation of a comprehensive community planning process will enable First Nations to engage with their citizens and to be better prepared for self government and self-sufficiency. It will assist in capacity and infrastructure development, providing a sound basis for communities to grow and prosper. It will support First Nations in the treaty process by informing negotiations and identifying priority areas and issues for treaty implementation, and areas that will need pre-implementation attention.

If you would like more information on the INAC BC CCP initiative, access:

http://www.ainc-inac.gc.ca/bc/proser/fna/ccp/ccp_e.html

There is good information available including general information on CCP, the stories of BC First Nations who have participated in CCP, a CCP handbook and links to information, tools and resources.

Communities in Transition (CIT) Partnership Initiative

In 2004 the Treaty Commission joined a partnership funded by the Real Estate Foundation of BC called *Communities in Transition (CIT)*. This partnership brings together non-profit organizations,

government agencies, and institutions with mandates related to planning for social, economic, and environmental sustainability, and real estate and land use issues.

The mission of CIT is to support values-based planning processes that balance social, environmental, economic and governance concerns in addressing regional and local land and conservation issues in non-metropolitan areas of BC.

If you would like more information on the CIT initiative and their funding application process, please visit the Real Estate Foundation website:

www.realestatefoundation.com 

“For others, the process continues to be fraught with frustration, and I believe that is reflected as well, in the Treaty Commission’s annual report that became public just a few days ago.

“This will be my first opportunity to emphasize to you and commit to you the desire of the provincial government under Premier Gordon Campbell to ensure that the opportunities to move ahead through the treaty process extend to all who wish to participate. And yes, there are challenges around capacity on the part of all three parties. But our objective is to ensure and do


everything we can to ensure that all who wish to move forward are able to do so in a timely and expeditious way. That is something that is easy to say. I do understand that it’s more difficult to put into effect on the ground.”

Address to First Nations Summit, Kamloops, BC September 28, 2006

Jim Prentice, Minister of Indian Affairs

“I can assure everyone that Canada’s new government is trying to find ways to accelerate the resolution of land claims

so that other First Nation communities in British Columbia can conclude final agreements of their own and celebrate historic days such as this one — a day on which the Lheidli T’enneh takes an important step toward self government and assumes their rightful place in British Columbia and Canada.”

Address at the initialling of the Lheidli T’enneh Final Agreement, Prince George, October 29, 2006 

Status

REPORT

There are 57 First Nations participating in the BC treaty process. Because some First Nations negotiate at a common table, there are 47 sets of negotiations. There are 39 First Nations in Stage 4 agreement-in-principle negotiations and eight First Nations in Stage 5 negotiations to finalize a treaty.

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

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 K'omoks
Council of Chiefs
Lake Babine Nation
Musqueam Nation
'Nqmgis 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

4 First Nations in Stage 3

Cheslatta Carrier Nation
Hupacasath First Nation
Squamish Nation
Tlowitsis 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

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

Local governments receive treaty negotiation funding

Municipal and regional governments have access to \$100,000 from the BC government to assist them in participating in treaty negotiations.

In announcing the fund at the annual Union BC Municipalities convention, Aboriginal Relations and Reconciliation Minister Michael de Jong said, "Local governments are critical to the success of treaty negotiations."

He said the fund would ensure that local governments are part of the negotiations. "The relationship between local governments and First Nations is critical in ensuring that we achieve our overall goal of negotiating workable treaties."

The BC government had spent \$305,000 on treaty advisory committees and local government activities since September 2005. 

Shared Territory Discussions Intensify

Continued from page 2

the treaty process, that it had produced a land use plan which designates the area as sensitive, and most importantly, that this area is in the heart of the Squamish territory and is not subject to any significant overlap with other First Nations.

The Treaty Commission is offering First Nations an opportunity to deal with these issues to protect the integrity of their traditional territories. 

