

British Columbia Treaty Commission

**An Update to the Financial and Economic Analysis of
Treaty Settlements in British Columbia**

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Executive Summary

Background

The BC Treaty Commission and the modern day treaty process in British Columbia were established in 1992 by agreement among Canada, British Columbia and the First Nations Summit. The Treaty Commission's primary purposes are to advance negotiations of land claims and to facilitate fair and durable treaties using the six-stage treaty process.

In the past 14 years there have been three principle studies looking at the economic impacts of treaty settlements in British Columbia. These studies are:

- The 1990 Price Waterhouse (PW) study entitled *Economic Value of Uncertainty Associated with Native Claims in British Columbia*;
- The 1996 KPMG study entitled *Benefits and Costs of Treaty Settlement in British Columbia A Financial and Economic Perspective*; and
- The 1999 Grant Thornton (GT) study entitled *Financial and Economic Analysis of Treaty Settlements in BC*.

Since the most recent study, there have been a number of key developments in the treaty process, including the signing of several Agreements in Principle, recent court decisions, and changes in Provincial Government policy. As a result, the Treaty Commission has engaged Grant Thornton LLP to review the financial and economic conclusions of the previous studies in light of these recent developments.

Previous Study Overview

1990 PW Study

The 1990 PW study was based on the results of a survey of businesses and organizations in British Columbia, and attempted to assess the value of economic uncertainty and magnitude of investment premiums as a result of unresolved treaties. The study found that a significant amount of capital investment was lost each year and that an investment premium existed.

The study's key findings were:

- Uncertainty was associated with a \$1 Billion impact and affected 1,500 jobs.
- Lost capital expenditures in the mining industry were estimated to be \$50M per year, and a further \$75M per year of expenditures were delayed an average of three years.
- Approximately 100 jobs per year were lost as a result of unsettled land claims.
- An investment premium of less than 1% was needed to compensate for the uncertainty of unsettled land claims.

1996 KPMG and 1999 GT Studies

Both the 1996 KPMG study and the 1999 GT study attempted to quantify the financial and economic impact of treaty settlements in British Columbia, and both employed similar analysis methodologies. The studies relied on detailed financial models that incorporated factors unique to the treaty settlement process, such as pre-treaty and implementation costs. The key assumptions used in these models were:

- Cash transfers to British Columbia were incremental funding that would not otherwise be transferred to British Columbia.
- Settlement funds received would be invested wisely and would generate reasonable returns.
- A reduction in uncertainty would result in increased investment in British Columbia.
- Cost-sharing allocations established by the 1993 Memorandum of Understanding between the Province and Canada would be reflective of realized cost sharing.
- The pace of treaty settlement would be constant, with all claims settled by 2020.

The key conclusions of these studies (as summarized in the 1999 GT study) were:

- As a result of the treaty process, First Nations would accrue a financial benefit of \$6.28 Billion to \$6.76 Billion in 1998 constant dollars over a forty year time horizon.
- Net financial benefits to British Columbia were estimated to be \$3.80 Billion to \$4.68 Billion dollars in 1998 constant dollars over a forty year time horizon.

Summary of the 1990 PW, 1996 KPMG and 1999 GT Studies

The table below summarizes the main assumptions and findings of the 1990 PW, 1996 KPMG and the 1999 GT studies.

Exhibit 1. Study Summary

Study	Key Assumptions	Key Findings
<p><i>1990 PW – Economic Value of Uncertainty Associated with Native Claims in BC</i></p>	<ul style="list-style-type: none"> • Survey responses accurately reflected lost investment and investment premiums. • Results could be extrapolated to the province-wide level 	<ul style="list-style-type: none"> • \$1Billion impact and 1,500 jobs affected. • \$50M per year in lost capital expenditures in the mining industry. • \$75M per year of expenditures in mining delayed 3 years. • 100 jobs per year were lost as a result of unsettled land claims. • A <1% investment premium of is needed to compensate for the uncertainty.
<p><i>1996 KPMG – Benefits and Costs of Treaty Settlement in British Columbia – A Financial and Economic Perspective</i></p>	<ul style="list-style-type: none"> • Cash transfers to British Columbia are incremental funding that would not otherwise be transferred to British Columbia. • Settlement funds received would be invested wisely, and would generate reasonable returns. • A reduction in uncertainty would result in increased investment in British Columbia. • A discount rate of 6.2% was used to summarize benefits and costs in net present value terms. • The pace of treaty settlement would vary between 3-4 claims settled per year, with all claims settled by 2019. 	<ul style="list-style-type: none"> • First Nations would accrue a financial benefit of \$6.02 Billion to \$6.63 Billion (\$1995). • Non-First Nations British Columbians would incur a financial cost of between \$1.37 Billion to \$2.11 Billion (\$1995). • Net financial benefits to British Columbia were estimated to be \$3.91 Billion to \$5.26 Billion (\$1995).

Study	Key Assumptions	Key Findings
<p><i>1999 Grant Thornton LLP – Financial and Economic Analysis of Treaty Settlements in BC</i></p>	<ul style="list-style-type: none"> • Cash transfers to British Columbia are incremental funding that would not otherwise have been transferred to British Columbia. • Settlement funds received would be invested wisely and would generate reasonable returns. • A reduction in uncertainty would result in increased investment in British Columbia. • A discount rate of 6.2% was used to summarize benefits and costs in net present value terms. • The pace of treaty settlement would be constant with 5% per year, with all claims settled by 2020. 	<ul style="list-style-type: none"> • First Nations would accrue a financial benefit of \$6.28 Billion to \$6.76 Billion (\$1998). • Non-First Nations British Columbians would incur a financial cost between \$2.08 Billion to \$2.48 Billion (\$1998). • Net financial benefits to British Columbia were estimated to be \$3.80 Billion to \$4.68 Billion (\$1998).

Key Developments Since 1999

New Agreements in Principle

The Tsawwassen, Lheidli T’enneh, Maa-nulth, and Sliammon Agreements in Principle were reviewed in this study. The existence of the Agreements in Principle leads to more certainty with respect to investment, as the details with respect to land and capital transfers are specified. This increased certainty can be expected to lead to increased investment that will, in turn, produce financial and economic benefits.

Court Decisions: Taku River Tlingit and Haida

The Taku River Tlingit and the Haida court decisions of 2002 led to the development of *The Provincial Policy on Consultation* in October 2002, which reflects the duty to consult and seek to accommodate aboriginal interests that arose through the two cases. The court decisions have influenced how the Province and third parties must consider aboriginal interests prior to undertaking projects on traditional lands. To the degree that this leads to positive relationships between First Nations and the Province, one would expect that the time required to complete treaty negotiations would be reduced. All else equal, this would shift the net benefits and economic impacts of treaty settlements forward in time, resulting in increased net benefits and economic impacts in net present value terms.

New Government Policy and Programs

The new government policy and programs that we reviewed focus on economic development and land use planning. Specifically we examined the Economic Measures Fund, the Turning Point Agreement, and forest revenue sharing initiatives. Through these initiatives the Province and First Nations establish and maintain potentially positive working relationships that may lead to a less lengthy treaty negotiation process. In the case of the Turning Point Agreement, First Nations and the Province are able to make specific independent arrangements while in the treaty negotiation process, thus enabling certainty and economic development to occur before treaty negotiations conclude. The other two policies enhance economic development opportunities for First Nations, prior to settlement of treaties. Such economic development may increase the likely rate of business success, increase taxation revenues and decrease the need for social assistance. The new policies and programs allow for the realization of benefits sooner than projected in the 1996 KPMG and the 1999 GT studies, which would result in increased net financial and economic benefits in net present value terms.

Summary of Key Developments

Below is a table summarizing the recent key developments and the likely impacts that they have on the financial and economic conclusions of the previous studies.

Exhibit 2. New Development Summary

Area of Development	Key Elements of Development	Key Conclusions and Implications
New Agreements in Principle	<ul style="list-style-type: none"> The Sliammon, Lheidli T'enneh, Tsawwassen, and Maa-Nulth have all signed agreements in principle. 	<ul style="list-style-type: none"> Per capita land and capital transfer is \$54,730 on average, slightly lower than the \$58,950 in the 1999 GT study. Per capita land and capital transfers may vary significantly between agreements.
Haida and Taku River Tlingit Court Decisions	<ul style="list-style-type: none"> There is a responsibility to consult with and seek to accommodate First Nations interests with respect to developments on traditional lands. 	<ul style="list-style-type: none"> Certainty may be increased as First Nations are engaged in the development and land use planning process. First Nations may improve negotiation skills leading to quicker processes. First Nations have an additional incentive to enter the treaty process as a means to assert title.
Economic development initiatives	<ul style="list-style-type: none"> The Economic Development Fund and the BC Economic Partnerships Initiative will contribute over \$40 Million in funding over 4 years. 	<ul style="list-style-type: none"> Small business success rates and average return on investment of capital transfers may increase.

Area of Development	Key Elements of Development	Key Conclusions and Implications
Turning Point Agreement	<ul style="list-style-type: none"> Land use planning decisions and developments along the Northern Coast can proceed with agreement from signatory First Nations. 	<ul style="list-style-type: none"> Certainty is increased, decreasing lost investment. Negotiation skills and relationships between First Nations, Government and Industry are improved, efficiency is improved. Impacts of delayed treaties are reduced.

Our Conclusions

1. Negative Impacts on the Financial and Economic Estimates of the Earlier Studies

The following developments are expected to have had a negative impact on the value of treaty settlements:

- The slower pace of treaty settlements, relative to the pace assumed in the 1996 KPMG and the 1999 GT studies, has reduced the benefit to making treaties in net present value terms. As the benefits of treaty settlements occur further into the future, the more they are discounted to account for the delay. The effect of the delay is an approximately 17% decrease in net present value benefits, using the original discount rate of 6.2%, or an approximately 5.3% decrease in net present value benefits using a revised discount rate of 5.2%.
- Slightly lower average per capita land and capital transfers reduce the value of the incremental transfers to British Columbia relative to the estimates in the 1996 KPMG and the 1999 GT studies. As land and capital transfers are 7.1% lower on average than the Nisga'a agreement in the four new Agreements in Principle and the Federal government is responsible for most of the cost associated with treaty settlements in British Columbia, the net expected benefits to British Columbia are reduced.
- Reduced activity in the forestry industry as a result of the Softwood Lumber Dispute and the increased likelihood of future trade disputes reduces the expected amount of resource revenue and incomes of First Nations as well as stumpage and taxation to the Province. Consequently, to the degree that treaties confer tenures to First Nations the benefit may be limited.

2. Positive Impacts on the Financial and Economic Estimates of the Earlier Studies

Conversely, there have also been developments that are expected to have had a positive effect on the net benefits associated with treaty settlements:

- A lower realized discount rate (5.2% vs. 6.2%) has mitigated the effect of delayed settlement and has increased the net present value of treaty settlements.

- The Turning Point Agreement has facilitated land use planning in areas where treaties have not been negotiated, mitigating lost investment and enabling economic development to occur. This may lead to increased incomes of First Nations, which would increase tax revenues after settlement occurs and decrease reliance on social assistance programs both before and after settlement occurs. The experience that First Nations gain through these negotiations may lead to more efficient treaty negotiations, which in turn, may result in lower treaty negotiation costs. Overall, these effects will increase the value of treaty settlement.
- The Taku River Tlingit and Haida court decisions require the BC government and third parties to consult and seek to accommodate the interests of First Nations with respect to land use planning and development. The decisions also provide an incentive for First Nations to be involved in the treaty process as a way to assert aboriginal title and gain access to the right of consultation. The policy may facilitate a better working relationship between First Nations and the government and may also foster increased investment as a result of increased certainty. Consequently, it is expected to have a positive impact on the value of treaty settlement.
- The Economic Development Fund and the BC Economic Partnership Initiative are focussed on developing business skills in First Nations. To the degree that these programs are effective, the expected rate of return on local investment made by First Nations using capital transfers received through treaty settlement would increase. First Nations incomes would increase as a result, increasing tax revenues after settlements and reducing reliance on social assistance. These effects are expected to increase the value of treaty settlement.
- Increased activity in the oil and gas sector may increase incomes of First Nations, increasing expected tax returns after settlement and decreasing reliance on social assistance. This is also expected to increase the value of treaty settlement.

3. Overall Financial and Economic Benefits Remain Similar to those Projected in the 1999 GT Report

Treaty settlements remain a large net positive financial and economic benefit for British Columbia. While some developments have acted to decrease the net expected value of treaty settlements, these appear to be compensated by other developments that increase the net expected value. As such, the estimates of the financial and economic impacts associated with treaty settlements in British Columbia remain similar to those found in the 1999 GT study.

Introduction

Purpose

Since 1990, three principal studies have examined the financial and economic impacts of treaty settlements in British Columbia. These studies are the 1990 Price Waterhouse (PW) study entitled *Economic Value of Uncertainty Associated with Native Claims in BC*; the 1996 KPMG study entitled *Benefits and Costs of Treaty Settlement in British Columbia – A Financial and Economic Perspective*; and, the 1999 Grant Thornton (GT) study entitled *Financial and Economic Analysis of Treaty Settlements in BC*.

This report assesses the results of these studies in light of recent developments that may have impacted the treaty settlement process. In the first half of the report we review the principal approach, methods, assumptions and conclusions of the previous studies. In the second half of the report we review key developments that have occurred since the 1999 GT study was completed (these include four new Agreements in Principle, two major court decisions and new government policies and programs), and go on to assess their effect on the financial and economic conclusions of the earlier studies.

Structure of this report

This report is divided into six main sections. In the first section we examine the 1990 PW study. In the second section we examine the KPMG and GT studies concurrently due to their similarities in terms of goals and methodology. In the third section we begin our review of key developments with a review of the four Agreements in Principle signed since 1999. The fourth section provides analysis of two key court decisions. The fifth section discusses key new government policies and programs that have financial and economic impacts on First Nations communities. In the final section we provide an economic overview of the British Columbia resource sector and developments specific to the Nisga'a.

Study Limitations

It is important to note that this study is not intended as a comprehensive re-examination of the treaty process or its financial and economic consequences. Rather, it is intended as a concise review of previous work and as an overview of how recent key developments may have impacted the conclusions of these earlier studies.

1990 PW Report

Scope

The 1990 Price Waterhouse (PW) report attempted to measure the economic value of uncertainty associated with outstanding First Nations' land claims. The 1990 PW study considered comprehensive land claims only and not specific claims. The central hypotheses of the 1990 PW study were that the uncertainty associated with land claims required an investment premium, led to lower economic rents being paid on resources, and resulted in the loss or deferral of economic activity. The 1990 PW study collected and analysed information from primary industry sectors (forestry, mining, oil and gas, and fishing) and financial institutions on the magnitude of the investment premium, the value of foregone economic rents, and the value of projects delayed or cancelled.

Approach

The study was a qualitative and quantitative examination of the economic impacts and uncertainty caused by unsettled land claims in British Columbia. To conduct the study, PW:

- Designed and administered a survey to collect information on economic uncertainty, degree of investment premiums and impacts on capital investment and resource based operations.
- Assessed legal, administrative, and other deadweight costs¹ related to land claims.
- Undertook comparative analysis of survey results, and extrapolated from the survey results to estimate total effects on the province.

Sixty-one of eighty-five resource and service companies contacted responded to the survey. Thirty of the respondents were forest product companies, twenty were mining and exploration companies and eleven were in other sectors including utilities, oil and gas and financial services. Six regional development officers completed the survey, and the Council of Forest Industries of British Columbia, The Mining Association of British Columbia, The British Columbia and Yukon Chamber of Mines, and the Fisheries Council of British Columbia also participated.

¹ For the purpose of the 1990 study, deadweight costs refer to the primarily legal costs associated with comprehensive land claims.

The survey questionnaire addressed the effects of unsettled claims on:

- Existing operations:
 - Location of claims.
 - Project delays, road blockages, legal proceedings, and lobbying.
 - Activities undertaken to mitigate future risks related to land claims.
- Planning decisions:
 - Size of capital projects under consideration.
 - Likelihood of delay or cancellation of projects due to comprehensive claims.
 - Overall impact on investment decisions.
- Investment premium required to compensate for unsettled claims:
 - Value of investment premium required to invest in British Columbia rather than other provinces or other countries.
 - Factors influencing the investment premium such as possible disruptions to production, and anticipated legal costs.
 - Need for government provision of incentives to compensate for land claims uncertainty.

Assumptions

The key assumptions of the PW study included the following:

- Survey respondents were able to accurately quantify uncertainty and its impact on expenditures.
- Survey results were representative and could be extrapolated to the provincial level.
- Only comprehensive land claims were of importance.
- Provincial legal and administrative costs reflected Federal legal and administrative costs.

Key Conclusions

Forestry, Wood Product Manufacturing and Pulp and Paper Sector

Very minor economic impacts on this industry were found to be related to First Nations land claims, as fibre could be obtained by operators from areas of the province unaffected by land claims. Some capital investment and project delays were reported to be a result of First Nations land claims and some respondents indicated that they needed a premium to invest in British Columbia rather than in other provinces or countries.

Mining Sector

Exploration programs did not seem to be impacted by comprehensive land claims. However, development stage mining operations seemed to be somewhat affected. Some companies reported needing a premium to invest in British Columbia rather than in other provinces or countries.

Fishing Sector

Fishing industry respondents were concerned that claims would be settled with an inadequate amount of compensation and consideration for biological and economic characteristics of the resource. Respondents were more concerned with low salmon prices, GATT issues respecting salmon processing, recreational and commercial fisheries salmon allocation and competition from aquaculture in other countries. Fish processing companies were neither cancelling nor delaying capital investment decisions and did not require a investment premium.

Other Sectors

Respondents indicated that project assessment was not affected by land claims. However, banks were reluctant to invest in projects located on First Nations reserves because reserve lands could not be used as collateral in the event of business failure. Companies with projects expected to be affected by land claims anticipated delays of between one and five years.

General Findings

PW estimated that land claims uncertainty had a \$1B impact and affected 1,500 jobs in British Columbia. The mining industry was estimated to have lost \$50M a year in capital expenditure and delayed \$75M a year in expenditure for three years on average. The study also concluded that 100 jobs a year were lost as a result of unsettled land claims. Uncertainty associated with unsettled claims needed to be compensated by an investment premium of less than 1%. Costs associated with the uncertainty of unsettled land claims were likely to increase in the future.

Our Review

Our comments on the 1990 PW study are:

- The 1990 PW study attempted to be comprehensive by surveying a range of industry sectors that were expected to be most affected by outstanding claims.
- The response rate to the survey was high (71.7%), however the total sample size was small (85). As the number of responses for any individual sector was low, the results may not have been representative of each sector as a whole.
- The study relied upon accurate quantification by respondents of investment premiums, lost expenditures and delay. To the degree that respondents were unable to accurately quantify these elements, the results may be inaccurate.
- Small numbers of respondents were relied upon to extrapolate estimates of costs and impacts to the provincial level.
- Progress in the treaty process since the production of the PW study may have significantly altered perceptions of business leaders on the effects of uncertainty. However, to date, there has been no comparable survey data available upon which to base an updated quantitative assessment. Until such survey data is available, the PW study remains the sole source for this type of information.

1996 KPMG Report and 1999 GT Report

Both the 1996 KPMG and the 1999 GT studies followed similar methodologies and goals. Consequently, we have reviewed these two studies together.

Scope

The 1996 KPMG study assessed financial and economic impacts of treaty settlements within British Columbia from the perspective of the province as a whole. The study presented net financial benefits for the province and estimated impacts on employment for both First Nations and for non-First Nations communities.

The scope of the 1999 GT study was similar to the 1996 KPMG report and also examined financial and economic impacts of treaty settlements in British Columbia from the perspective of the province as a whole. The 1999 GT study updated the 1996 KPMG report, incorporated new information relating to the Nisga'a agreement and determined potential implications for treaty settlements in British Columbia. The GT study also incorporated updated information on financial and economic variables and on tax changes.

Approach

The centrepiece of the 1999 GT study was a combined financial and economic model that closely followed the model used in the 1996 KPMG report. The 1999 GT study incorporated information gained from the Nisga'a Final Agreement and changes to economic and financial variables into the model.

Both studies developed two scenarios that were based on a number of assumptions, including:

- Number of negotiated treaties in British Columbia.
- Number of First Nations beneficiaries in British Columbia.
- Average transfer of cash and land per beneficiary.
- Extent of natural resources (forestry and commercial salmon fishery) to be transferred.
- Future provincial levels of harvest (forestry and commercial salmon fishery).
- Average time to settle each treaty.
- Post-settlement conditions of cash and land transfers.
- Nature and extent of third party compensation.

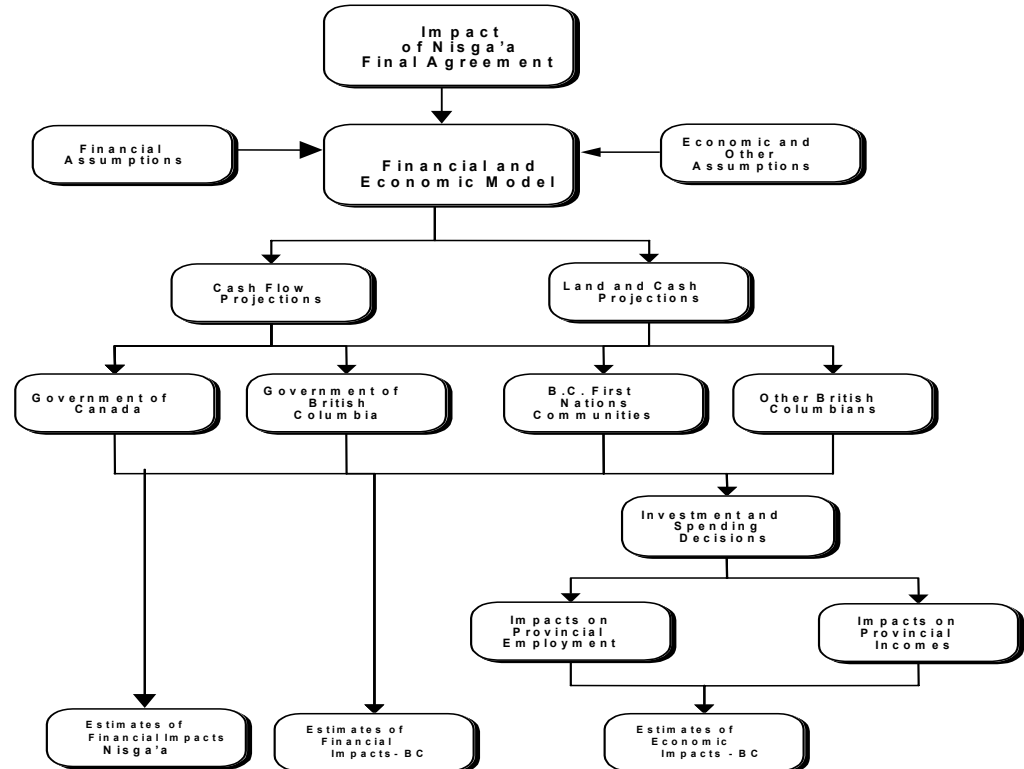
- Process costs incurred by Federal and Provincial governments and First Nations.
- First Nations' expenditure and investment decisions.
- Business success rates and rates of return.
- Jurisdictional transfers resulting from self-government negotiations.

Both studies produced conclusions regarding:

- Financial impacts to First Nations, the Provincial government, and non-First Nations British Columbians (based on cash flow projections).
- Economic impact of projected allocations of cash, land, and cash equivalents on incomes of First Nations and non-First Nations British Columbians.
- Employment income and employment level (based on application of ratios and multipliers) for First Nations communities and for other British Columbians.

The structure of the combined financial and economic model is outlined in Figure 1. As mentioned previously, the 1996 KPMG model did not include the impact of the Nisga'a Final Agreement or estimates of the financial impacts for the Nisga'a. These elements were additions to the model in the 1999 GT report.

Figure 1. Financial and Economic Model (1996 KPMG Study and 1999 GT Report)



A number of assumptions were applied to the model inputs, and changes in the model from the 1996 KPMG study to the 1999 GT study were largely due to changes in assumptions based on new information on key variables. The changes were not structural or methodological in nature. (Table A1 in Appendix A outlines key assumptions used in the models and draws comparisons between them.)

Assumptions

Key assumptions used in the models included:

- In the GT model, eligible First Nations beneficiaries increased over the expected time horizon from an initial population of 118,000 to a population of 140,000. In the KPMG model, population growth was assumed to grow from an initial 125,000 to population of 146,000.
- The provincial share of the cash settlement was 12% to 22% in both the 1996 KPMG model and the 1999 GT model.
- Both the 1996 KPMG model and the 1999 GT model included the transfer of 2.4 million to 2.9 million representative hectares of land² to First Nations. This is approximately 3% of Crown land in British Columbia.
- The 1999 GT model projected that starting in 2000, three treaties would be negotiated per year with sixty treaties negotiated by 2019. The 1996 KPMG model projected that starting in 1998, sixty treaties would be negotiated by 2018.
- Both the 1996 KPMG and 1999 GT models assumed capital transfers would be structured as annuity payments over fifteen years.
- Both models assumed British Columbian taxpayers would pay a proportionate share (13.5% in the 1999 GT model and 13% in the 1996 KPMG model) of net costs incurred by the Federal government.

Key assumptions for the economic impact estimates included:

- Forestry and commercial fishery sectors would be affected by the transfer of tenures and licenses to First Nations. Current owners of tenures and licenses would be compensated.
- Both the KPMG and GT models incorporated adjustment programs and funding. The Nisga'a Final Agreement outlined time restrictions for establishing salmon and timber processing facilities.
- A higher level of investment was expected due to increased certainty associated with the settlement of treaties.

²A representative hectare is a concept used by the Provincial government to compare land and resources provided as compensation to First Nations to an average profile of the lands and resources of British Columbia. A representative hectare is equivalent to one hectare having an average mix of land quality and forest resources.

- In the long run, non-aboriginal employers and businesses may be displaced by aboriginal employers and businesses.
- Realized economic impacts are dependent on how settlement funds are utilized by the First Nations. It was expected that a mix of investment and consumption would occur.
- Development of core institutions would be paid for by the Federal government. The costs of social programs and services are shared by the Federal and Provincial governments.
- Funding for First Nations governance would be reduced by tax revenues. Increased incomes of First Nations would also reduce social program costs.

The 1999 GT study assumed details from the Nisga'a agreement would apply to other treaty settlements and used them as key assumptions in the model. This was limited by possible differences between the Nisga'a settlement and future settlements including:

- The rural setting of the Nisga'a lands. Other settlements may involve urban lands or their objectives may be better met through cash transfers.
- The scope of self-government may vary across agreements.
- Pre-treaty costs are expected to decrease after learning from previous negotiations.

The model assumptions are outlined in more detail in Table A1 of Appendix A.

The models in the 1996 KPMG and 1999 GT studies also relied on the 1993 Memorandum of Understanding between the Provincial and Federal government regarding shares of treaty settlement costs. Under the Memorandum of Understanding, the Province is primarily responsible for the transfer of land, resources, and foregone resource revenues, while the Federal government is primarily responsible for cash transfers and the costs of self-government and support funding. These allocations are summarized in Table 1 below.

Table 1. Anticipated Provincial-Federal Cost-Sharing Allocations

	Provincial Share	Federal Share
Third-party Compensation	50%	50%
Pre-treaty Costs		
Interim protection - forgone revenues ³	100%	0%
Interim measures - co-management costs ³	70%	30%
Public education	40%	60%
Surveys of land ³	90%	10%
Enrolment & ratification	40%	60%
Federal negotiation costs	0%	100%
Provincial negotiation costs	100%	0%
Third Party Consultation	40%	60%
Other pre-treaty costs	40%	60%
Support Funding		
First Nations interest-free loans ⁴	0%	100%
First Nations negotiation grants	40%	60%
Treaty Commission	40%	60%
Self-government mechanisms	40%	60%
Implementation Costs		
Co-management costs	50%	50%
Adjustment programs ⁵	50%	50%
One-time and ongoing implementation costs ³	50%	50%
Incremental Self-Government Costs		
Core institutions	0%	100%

Note: Anticipated cost-sharing allocations are the same for the 1996 KPMG study and the 1999 GT study.

Key Conclusions

Financial Benefits and Costs

The settlement of treaties results in benefits to First Nations, benefits to non-First Nations British Columbians, and costs to other British Columbians and Canadians. A macro approach was used and claims were considered on an overall average basis. This was necessary due to the lack of information on specific treaties within British Columbia.

The financial benefits to First Nations included:

- Transfers of cash, resource revenues, and cash equivalents. This also includes the value of transferred lands (Federal reserve lands and Provincial Crown lands).
- Purchase of third parties' resource interests, including the value of licenses and tenures purchased in forestry and commercial fishing.

³Estimated shares based on probable costs; other shares are specified in the Federal-Provincial sharing agreement.

⁴ If First Nations default, then interest-free loans become 50% the responsibility of the Province in the 1996 KPMG model, and 40% the responsibility of the Province in the 1999 GT model.

⁵ The Memorandum of Understanding states that "in recognition of the fact that British Columbia may be required to provide extraordinary assistance over and above that available under extant programs of the Parties, to communities, including municipalities, and to individuals adversely affected by treaties, Canada shall provide funds to British Columbia for adjustment purposes... The 1993 net present value of all payments totals \$40 million".

- Interest-free grants and loans to finance negotiation costs and ensure requirements for treaty settlement are met.
- Funding of core institutions to support self-government.

The financial costs to non-First Nations British Columbians, borne by the Provincial government included:

- The Province's share of cash, resource revenues, and cash equivalents transferred.
- Pre-treaty costs associated with provincial negotiation, consultation with third parties, interim measures, public information, eligibility and enrolment, and ratification.
- Implementation costs including land surveys, co-management boards, adjustment programs, and training.
- Third party costs including compensation to private sector interests in forestry and commercial fisheries for the purchase of rights to allocations of timber and fish.

There were also additional costs to British Columbians based on British Columbia's contribution to Federal tax revenues.

The financial benefits to non-First Nations British Columbians included:

- Reduced Provincial government costs associated with programs targeted to First Nations. This includes reduced income assistance costs and increased taxation revenues as a result of increased employment levels.

Net Financial Benefits

The estimated financial benefits and costs from treaty settlements in British Columbia were:

- Financial benefits to First Nations were \$6.28B to \$6.76B (1998 constant dollars) in the 1999 GT study and \$6.02B to \$6.63B (1995 constant dollars) in the 1996 KPMG study.
- Financial costs to non-First Nations British Columbians were \$2.08B to \$2.48M (1998 constant dollars) in the 1999 GT study and \$1.37B to \$2.11B (1995 constant dollars) in the 1996 KPMG study.
- Net financial benefits were estimated at \$3.80B to \$4.68B (1998 constant dollars) in the 1999 GT study and \$3.91B to \$5.26B (1995 constant dollars) in the 1996 KPMG study.

Table 2 below summarizes the net financial benefits to British Columbia for both scenarios of the 1996 KPMG study and the 1999 GT study in 2003 constant dollar terms.

Table 2. Total Net Financial Benefits to British Columbia, 1996 KPMG Study and 1999 GT Report, in 2003 Constant Dollars

	1996 KPMG		1999 GT	
	Scenario 1	Scenario 2	Scenario 1	Scenario 2
Benefits to British Columbia	(\$ Millions, 2003 Constant Dollars)	(\$ Millions, 2003 Constant Dollars)	(\$ Millions, 2003 Constant Dollars)	(\$ Millions, 2003 Constant Dollars)
Total Financial Benefits to First Nations	\$ 6,717	\$ 7,398	\$ 6,874	\$ 7,399
Total Financial Costs to other British Columbians	\$ 2,354	\$ 1,529	\$ 2,714	\$ 2,277
Total Net Financial Benefits to British Columbia	\$ 4,363	\$ 5,869	\$ 4,159	\$ 5,122

Economic Benefits

Both models estimated economic impacts using assumed changes in employment incomes from the settlement of claims. Variables that were expected to have an economic impact included:

- First Nations' business activity funded with capital transfers.
- Possible displacement of existing interests in forestry and fishery.
- Increased investment as a result of increased certainty.

The estimated economic impacts for the 1996 KPMG and 1999 GT models, for each of the two scenarios are presented in Table 3 below, with values in 2003 constant dollars respectively.

Table 3. Estimated Economic Impact on Provincial Incomes, 1996 KPMG Study and 1999 GT Report, in 2003 Constant Dollars

	1996 KPMG		1999 GT	
	Scenario 1	Scenario 2	Scenario 1	Scenario 2
Impact on Provincial Incomes	(\$ Millions, 2003 Constant Dollars)	(\$ Millions, 2003 Constant Dollars)	(\$ Millions, 2003 Constant Dollars)	(\$ Millions, 2003 Constant Dollars)
Increased Incomes—First Nations	\$ 6,093	\$ 8,547	\$ 5,744	\$ 8,031
Increased Incomes—Other British Columbians	\$ 1,417	\$ 4,173	\$ 1,750	\$ 4,413
Total Increase in Provincial Incomes	\$ 7,510	\$ 12,721	\$ 7,494	\$ 12,444

Our Review

Our comments on the 1996 KPMG and the 1999 GT studies are:

- Both the 1996 KPMG and 1999 GT studies relied upon a sound approach that resulted in financial and economic estimates that appear reasonable for the time period studied.
- The models incorporated existing information on treaty settlements and effectively applied economic and demographic characteristics.
- The macro approach that considers claims overall was sound given the lack of past treaty settlements and the fact that settlements may vary among agreements.
- Both the possible displacement of workers and the likely increased employment of First Nations in both forestry and fisheries were incorporated into the models.
- Sensitivity testing was done by including two scenarios with differing land/cash ratios.
- The 1999 model maintained the general structure of the 1996 model, using updated information on the variables.
- The analysis of the Nisga'a settlement similarly used the information available and applied it to the 1999 model.
- The models incorporated estimates for adjustment programs and funding; however, the need for these programs is difficult to predict as it depends on the level of displacement that occurs.
- The models did not include potential First Nations involvement in other resource industries. This may become important with the recent activity in the oil and gas sector.
- Both studies assumed that the transfer of cash to First Nations is incremental funding that would not otherwise have been transferred to British Columbia.
- Both studies assumed that capital transfers to First Nations would be invested in a reasonably favourable investment climate.
- Both studies assumed that treaty settlement in British Columbia leads to increased investment within the province as a result of increased certainty.
- Both studies assumed that cost-sharing allocations between the Provincial and Federal governments would be based on the Memorandum of Understanding between the Provincial and Federal governments.
- Since the studies were completed, the pace of treaty settlement has been slower than the projected rates.
- Since the studies were completed, real interest rates have been lower than projected, and a lower discount rate, of approximately 5.2%, may be more appropriate than those assumed in the earlier studies.

- Increased incomes and the timing of the increase in incomes would depend upon how the settlement funds are used (investment vs. consumption) and the nature of investments made.
- Less cost and less time may be needed to negotiate future treaties as the process becomes more efficient.
- Both 1996 KPMG and 1999 GT studies consider a time horizon of forty years. The actual time horizon may be much longer as fundamental shifts in First Nations governance and relations occur and are likely to have significant long run implications.

New Agreements In Principle

Tsawwassen First Nation Agreement in Principle

Overview

The Tsawwassen First Nation is located in the Lower Mainland region of BC and has 235 members.⁶ The Tsawwassen First Nation began the treaty process in December of 1993 and is scheduled to sign an Agreement in Principle on March 14, 2004 that will form the framework for a final agreement that will become the basis of a treaty. It is the result of Stage 4 of the Treaty Negotiation process.

Agreement Details

The known economic and financial details of the Agreement in Principle are as follows:

- 755 hectares of land including 365 hectares of Provincial Crown lands and 390 hectares of existing reserves transferred in fee simple including ownership of subsurface resources.
- The land is located in the densely populated region of the Lower Mainland and has a market value \$32 million.⁷
- \$10.1 million in capital transfers in 2004 dollars.
- \$1 million contribution to an Economic Development Fund.
- \$1 million contribution to a Tsawwassen Fisheries Fund.
- \$1 million to increase commercial fishing capabilities.
- \$100 thousand to acquire forest resources.

⁶ Registered Indian Population by Sex and Residence 2003, Indian and Northern Affairs Canada

⁷ Since the lands are located in the Lower Mainland, the methodology that was used to calculate value in the Sliammon, Maa-nulth, Lheidli T'enneh Agreements in Principle is not appropriate. Instead, we have estimated the market value of Tsawwassen lands based on information from BC Assessment about the value of an average hectare of land used for agricultural purposes in the same region. Caution should be exercised in comparing the land values presented here to those in other agreements, since the methodologies applied differ. As market value depends greatly on a wide array of factors including developed land use and specific location, the values stated in this report should be taken as an *estimate* of the value of the lands in question.

- Timber salvage license at no cost to the Tsawwassen First Nation within ten years of the agreement.
- 0.78% of the Total Allowable Catch of Fraser River sockeye.
- 3.27% of the Total Allowable Catch of Fraser River chum salmon.
- 0.78% of the Total Allowable Catch of the Fraser River pink salmon.

Several of the details are either not yet known or are the subject of negotiations that will lead to a final agreement in Stage 5 of the process. These details include the following:

- Timeframe for payments of the capital transfer.
- Taxation treatment of the Tsawwassen First Nation, its subsidiaries, its members and transfers between them.
- Implementation costs including land surveying.
- Negotiation costs.
- Public relations and communications costs.
- Eligibility and enrolment costs.
- Ratification funding costs.
- Interim protections and measures.
- Self-government fiscal financing agreement.

As these details are not yet known we have assumed them to be substantially similar to the costs that were associated with the Nisga'a agreement on a per-capita basis.

Lheidli T'enneh First Nation Agreement In Principle

Overview

The Lheidli T'enneh First Nation is comprised of 304 members⁸ located in the Prince George area and extending to the Alberta border. The Lheidli T'enneh First Nation began the treaty process in December of 1993 and signed an Agreement in Principle on July 26, 2003 that will form the framework for a final agreement that will become the basis of a treaty. It is the result of Stage 4 of the Treaty Negotiation process. The Lheidli T'enneh First Nation is currently in Stage 5 of the treaty negotiation process.

Agreement Details

The economic and financial details of the Agreement in Principle are as follows:

⁸ Registered Indian Population by Sex and Residence 2003, Indian and Northern Affairs Canada

- 4,027 hectares of land including Provincial Crown land, Federal Crown land, and Indian Reserves transferred to Lheidli T'enneh in fee simple including ownership of subsurface resources, subject to existing interests.
- The land has a notional value of \$1.9 million.
- \$12.8 million in capital transfers in 2004 dollars.

Several of the details pertinent to making a comprehensive financial and economic analysis of the agreement in principle are either not yet known or the subject of ongoing negotiations. These details are important to a comprehensive analysis and include the following:

- Timeframe for payments of the capital transfer.
- Taxation treatment of the Lheidli T'enneh First Nation, its subsidiaries, its members and transfers between them.
- Timeframe for taxation exemptions phase out.
- Implementation costs including land surveying.
- Negotiation costs.
- Public relations and communications costs.
- Eligibility and enrolment costs.
- Ratification funding costs.
- Interim protections and measures.
- Self-government fiscal financing agreement.

For the purpose of this study, we have ascribed a notional value of the land. We have assumed that the ratio of all lands is 10% Benchmark lands⁹, 28% Forest lands, and 62% other lands. We have then calculated the number of 'representative hectares' using the indices specified for the given zone and forest district. Each representative hectare was then ascribed a value of \$2,263.43 which was derived by adjusting the value of a representative hectare used in the 1999 GT report by the Consumer Price Index (CPI).

Maa-Nulth First Nations Agreement In Principle

Overview

The Maa-nulth First Nations are a group of First Nations from the west coast of Vancouver Island that are negotiating together and have a combined population of 1,934 members.¹⁰ The

⁹ The 1993 Memorandum of Understanding defines Benchmark lands as "Provincial Crown lands generally of a flat or gently rolling topography, with or without water frontage, highway frontage or other features which would add to the value of the land, which could be suitable for agriculture including use as range land, for settlement or other habitation or for commercial use but excluding any lands which are Forest Lands, Urban Lands, Non-Urban Federal Lands, Exceptional Forest Lands or Other Lands."

¹⁰ Registered Indian Population by Sex and Residence 2003, Indian and Northern Affairs Canada

Maa-nulth First Nations signed an Agreement in Principle on October 3, 2003 that will form the framework for a final agreement that will become the basis of a treaty. It is the result of Stage 4 of the Treaty Negotiation process.

Agreement Details

The financial and economic details of the Agreement in Principle are as follows:

- 22,722.8 hectares of land, including Provincial Crown lands and existing reserves transferred in fee simple, including ownership of subsurface and mineral resources in fee simple except for Crown lands where the subsurface and mineral resources are not owned by the Crown.
- The land has a notional value of \$23 million.
- \$68.75 million in capital transfers in 2004 dollars.
- Commercial fishing licenses for salmon, halibut and rockfish.

Several of the details are either not yet known or are the subject of ongoing discussions. These include:

- Timeframe for payments of the capital transfer.
- Taxation treatment of the Maa-nulth First Nation, its subsidiaries, its members and transfers between them.
- Implementation costs including land surveying.
- Negotiation costs.
- Public relations and communications costs.
- Eligibility and enrolment costs.
- Ratification funding costs.
- Interim protections and measures.
- Self-government fiscal financing agreement.

For the purpose of this study, we have ascribed a notional value of the land. We have assumed that the ratio of all lands is 10% Benchmark lands, 28% Forest lands, and 62% other lands. We have then calculated the number of 'representative hectares' using the indices specified for the given zone and forest district. Each representative hectare was then ascribed a value of \$2,263.43 which was derived by adjusting the value of a representative hectare used in the 1999 GT report by the Consumer Price Index (CPI).

It should be noted that the Maa-Nulth are negotiating as a group and not as individual First Nations. This implies that the administrative costs of settlement have been distributed over a larger number of people. This characteristic also makes the Maa-nulth Agreement in Principle unique as it is the first multiple First Nation Agreement in Principle to be made.

Sliammon First Nation Agreement In Principle

Overview

The Sliammon's traditional territory spans the Powell River area, including Sliammon, Powell Lake, the Gulf Islands, Courtenay and the Desolation Sound area. The Sliammon have approximately 904 members¹¹ and began the treaty process in May of 1994. The Sliammon First Nation signed an Agreement in Principle on December 6, 2003. It is the result of Stage 4 of the Treaty Negotiation process. The Sliammon are now in Stage 5 of the Treaty process.

Agreement Details

The known economic and financial details of the Agreement in Principle include:

- 7,907 hectares of land including Provincial Crown lands and existing reserves transferred in fee simple including ownership of subsurface resources.
- The land has a notional value of \$7.1 million.
- \$26 million in capital transfers in 2004 dollars.
- Forestry resources including 50,000m³ in annual allowable cut (AAC).
- Fishery allocations for sockeye, chum, chinook, coho, and pink salmon.

Several details are either not yet known or the subject of on-going negotiations. These include:

- Timeframe for payments of the capital transfer.
- Taxation treatment of the Sliammon First Nation, its subsidiaries, its members and transfers between them.
- Timeframe for phase out of income and transaction taxes.
- Implementation costs including land surveying.
- Negotiation costs.
- Public relations and communications costs.
- Eligibility and enrolment costs.
- Ratification funding costs.
- Interim protections and measures.
- Self-government fiscal financing agreement.

For the purpose of this study, we have ascribed a notional value of the land. We have assumed that the ratio of all lands is 10% Benchmark lands, 28% Forest lands, and 62% other lands. We have then calculated the number of 'representative hectares' using the indices specified for the

¹¹ Registered Indian Population by Sex and Residence 2003, Indian and Northern Affairs Canada

given zone and forest district. Each representative hectare was then ascribed a value of \$2,263.43 which was derived by adjusting the value of a representative hectare used in the 1999 GT report by the Consumer Price Index (CPI).

Implications of the New Agreements in Principle

The four Agreements in Principle described here are the result of Stage 4 of the treaty process and as such are not as detailed as was the Nisga'a agreement at the time of the 1999 GT report. As such, comparisons between the Nisga'a agreement and the new Agreements in Principle have been limited to the land and capital transfers that are involved. However, the new Agreements in Principle contain some new information with implications for treaty settlements and their economic and financial impacts in British Columbia.

Table 5 compares the capital transfers and land settlements of the Nisga'a Final Agreement to the capital transfers and land settlements of the Agreements in Principle of the Tsawwassen, Lheidli T'enneh, Sliammon, and Maa-nulth First Nations.

Table 5. Per-Capita Comparison of Capital Transfers and Land Settlements of New Agreements in Principle (000's) to the Nisga'a Final Agreement

	Nisga'a Per Capita	Tsawwassen Per Capita	Lheidli T'enneh Per Capita	Sliammon Per Capita	Maa-nulth Per Capita
First Nation Members	5500	235	304	904	1934
Land Settlement					
- hectares	36.71ha	3.21ha	13.24ha	8.74ha	11.75ha
- notional \$ value	\$19.39	\$136.55	\$6.25	\$7.88	\$11.91
Capital Transfer	\$35.65	\$42.97	\$41.97	\$28.76	\$35.54
Payment for Forest Resources		\$0.42			
Payment to Fisheries Fund	\$3.91	\$4.26			
Payment to Economic Development		\$4.26			
Payment to expand Commercial Fisheries		\$4.26			
Total Payments	\$58.95	\$192.73	\$48.22	\$36.64	\$47.45

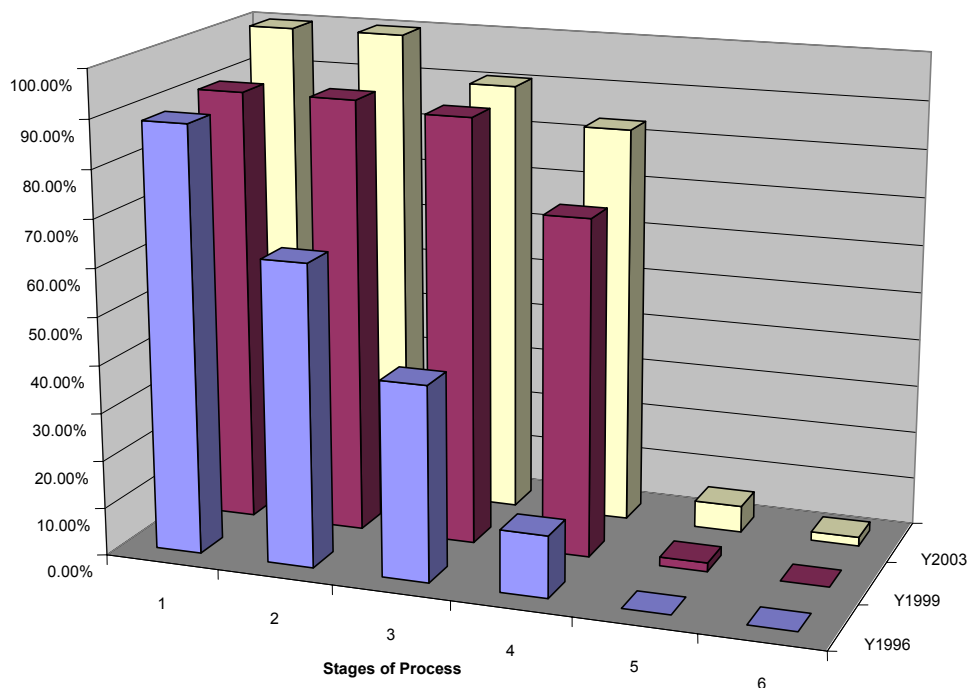
Note: The Tsawwassen notional value of land has been derived using a market based methodology with information from BC Assessment and should not be directly compared to the other agreements as the methodology used to derive their notional values is entirely different.

When the terms respecting land and capital transfers of the new Agreements in Principle are compared with the land and capital transfer terms of the Nisga'a agreement the following conclusions may be drawn:

- Agreements vary substantially between First Nations. This may be a result of other transfers that will occur with respect to other details of the agreements that have not yet been finalized. This may also be a result of the fixed costs of negotiation and settlement being spread over a different number of people.
- The weighted average per capita cost of the new Agreements in Principle (excluding Tsawwassen) is \$54.74. This suggests that the land and capital transfer terms assumed in the 1999 GT report may have decreased by approximately 5%.
- First Nations that decide to negotiate as a group may come to agreements that are similar in terms of land and capital transfers as agreements made with larger first nations.
- Land transfers tend to be in fee simple and, as a result, are less encumbered by restrictions on development, sale or additions to the First Nation land base.

A key assumption of the 1999 GT model was that treaties would be settled at a rate of 5% per year. The new Agreements in Principle in conjunction with the general rate of progress of the fifty-four groups currently involved in the various stages of the treaty settlement process provides insight into the validity of this assumption. Actual progress to date in the treaty process is illustrated in the following graph.

Graph 1. Percentage of 2003 Participants at or Completed Various Stages of the Treaty Process



Given this information it appears that the following may be said about the actual pace of treaty settlement in British Columbia:

- The pace of final settlement since 2000 has been zero treaties in each year. The 1999 GT Report estimated that by the end of 2004, twelve treaties would be implemented.
- It also appears that large numbers of participants are currently in Stage 4 of the process. As such it may be reasonable to assume that treaty settlement will occur at an increasing rate once more treaties are negotiated.

Given these two observations the following conclusions may be drawn:

- The constant rate of settlement assumed in the 1999 GT report may be inappropriate. Rather a settlement rate that increases with the number of treaties already negotiated may be more appropriate. (ie: 0% of treaties in years 0-4, 5% in years 6-8, 8% in years 9-11, etc.)
- The net financial and economic benefits that were forecasted in the 1999 GT report need to be revised downward slightly as the benefits are accruing further in the future than the 1999 GT report assumed. The pace of treaty settlement suggests a revision in the range of 17% downward. However, this has been mitigated by a much lower discount rate of 5.2%. Consequently the net reduction the net present value of benefits is approximately 5.3%.

Court Decisions: Taku River Tlingit and Haida

Background

Two recent court rulings in British Columbia have outlined the Province's responsibility to consult with and seek to accommodate First Nations interests with respect to developments on traditional lands. The responsibility applies, although not exclusively, to First Nations that have entered the treaty negotiation process, and is derived from the trust-like relationship between the Province and First Nations.

Taku River Tlingit

The Court of Appeal ruled in January 2002 that the Province must consult the Taku River Tlingit First Nation prior to re-issuing a project permit to a resource company (Redfern Resources) to reopen the Tulsequah Chief Mine in northwestern British Columbia. The related BC Supreme Court decision had quashed the initial Project Approval Certificate, indicating that the consultation process did not adequately address the rights and concerns of the Taku River Tlingit First Nation, who were engaged in treaty negotiations. The Court noted that evidence of the First Nation's interest was expressed during treaty negotiations.

Haida

The BC Court of Appeal decision, in February 2002, stated that the Crown and Weyerhaeuser did not properly consult the Council of the Haida Nation when a tree farm license on Haida Gwaii (Queen Charlotte Islands) was renewed. The decision also ruled that the Province and Weyerhaeuser have duties to accommodate the rights of the Haida Nation with respect to logging in the Haida Gwaii area. The BC Court of Appeal did not, however, grant an order that the license replacements were invalid, or that the license replacements be quashed.

The Court stated that the duty to consult is legally enforceable and will continue until Haida title and rights are determined by treaty or by a court. The duty to consult follows from the case that the Haida have to aboriginal title in the Queen Charlotte Islands. The Haida Nation wanted to protect old growth forests from clear-cutting, and the tree farm license was in an area with old growth red cedar, a species that has cultural significance to the Haida Nation.

Both the Taku River Tlingit case and the Haida case are scheduled to be appealed to the Supreme Court of Canada.

The duty to consult derives from the trust-like relationship between the Province and First Nations and is established, although not exclusively, where a First Nation has entered the treaty process (and therefore asserts title) and continues after treaty signing or after aboriginal rights and title are defined by the Courts. The extent of the duty to consult relies on the degree to which the First Nation is connected to the land, and is considered on a case by case basis.

Policy Reaction to Haida and Taku River

In October 2002, the province developed *The Provincial Policy on Consultation with First Nations*. The policy has two main purposes:

- Ensure that aboriginal interests are considered in decision-making processes.
- Ensure that attempts are made to accommodate aboriginal concerns related to impacts of Provincial decisions on aboriginal interests are proportionate to the soundness of the interests.

In the policy, aboriginal interests are assertions of aboriginal rights or title made by First Nations but that have not been proven through a court process. Aboriginal interests invoke the duty to consult when the asserted right is capable of being exercised and the asserted title is capable of being enjoyed on the land in question. A further restriction is that to be considered an aboriginal right, the practice or custom must be a significant component of the First Nations culture. To invoke the obligation to consult, there must be a possibility of an impact to the aboriginal right. This implies that if Provincial ministries, agencies, or Crown corporations are asked to authorize a project in a given area where aboriginal title is asserted, the Provincial ministry, agency, or Crown Corporation is required to consider the interest prior to project authorization.

There are four steps in the consultative process:

- Initiate consultation.
- Consideration of the impact of the decision on aboriginal interests.
- Possible justification (of infringement of aboriginal interests).
- Attempt to address and/or accommodate aboriginal interests.

The Provincial Policy for Consultation with First Nations Applied

The Ministry of Forests announced the Forestry Revitalization Plan in March 2003, which involves the Ministry entering into agreements with First Nations in areas where there is an undercut of the current allowable cut that can be reapportioned to First Nations. Under the agreements, the First Nations will receive access to timber volume and revenue sharing, in exchange for agreement from the First Nations that there has been an adequate level of consultation and accommodation with respect to administrative level decisions. Forest revenue sharing is discussed in more detail in a later section of this report.

In June 2003, legislation was enacted to allow the Minister of Forests more time to consult with First Nations before he must offer replacement forest licenses.

More Recent Applications of Consultation Decisions

The following four legal decisions demonstrate the application of the previous Taku River Tlingit and Haida decisions:

- Skeena Cellulose, December 2002 - Three petitioners alleged that they were not adequately consulted or accommodated when the Minister of Forests transferred control of Skeena to NWBC Pulp and Paper, and they requested that the Minister's consent be quashed. The Court did not quash the consent, although it was found that the Province did not adequately consult or seek accommodation. The Court did not provide guidance on what an adequate level of consultation would be, or requirements on accommodation.
- Heiltsuk Decision, September 2003 - This case reviewed decisions by various Provincial agencies that approved construction of a dryland fish hatchery. The Court did not quash the permits for the hatchery, stating that the Heiltsuk Tribal Council had not demonstrated that the hatchery would infringe on their aboriginal rights. The decision recognizes that industry has an interest in initiating discussions with First Nations that have asserted an interest related to proposed projects. The discussion should be initiated at an early stage of the project and should be maintained even under a zero tolerance policy of the First Nation. Meanwhile, First Nations should not avoid their obligation to consult.
- Apsassin Decision, January 2004 - In this BC Supreme Court case, the Sauteau First Nation's application to quash a decision by the British Columbia Oil and Gas Commission that granted permission to Vintage Petroleum Canada to develop an exploratory well site was dismissed. The Sauteau First Nation argued that the British Columbia Oil and Gas Commission did not meet its duty to consult and accommodate them, but the Court ruled that the duty was met. As in the Heiltsuk decision, the decision is consistent with the idea that consultation is a two-way process.
- Husby Decision, February 2004 - Main conclusions from this case are that when a First Nation alleges that a decision will infringe on its aboriginal rights, it is the responsibility of the First Nation to provide evidence to the decision maker of the existence of the right and the extent to which their rights are infringed upon. In other words, there must be evidence of infringement before the duty to consult is enforceable.

Implications of the Decisions to Treaty Settlements in British Columbia

These legal decisions impact the treaty settlement process in the following ways:

- Improvements in the relationship between First Nations and the Province and/or industry could result in a more efficient treaty process.
- The consultation process increases certainty, which may lead to increased investment.

- The decisions provide an incentive for First Nations to enter into treaty negotiations and therefore assert aboriginal rights or title. This assertion requires the Province and industry to consult with First Nations and seek accommodation on projects that potentially infringe upon right or title.
- The consultation process may expedite the negotiation of some treaty settlement benefits.

Government Policy Changes

Economic Measures Fund¹²

Policy Overview

The Treaty Negotiations Office administers the Economic Measures Fund on behalf of the Government of BC. The fund is designed to be spent over the span of four years to support First Nations' economic development projects. Projects that are supported are with individual First Nations and groups of First Nations inside and outside the British Columbia treaty process. The policy goal of the Economic Measures Fund is to create new economic opportunities for First Nations' participation in a wide variety of sectors and initiatives including:

- Oil and gas.
- Shellfish aquaculture.
- Tourism.
- The 2010 Olympic and Paralympic Games.

Examples of initiatives focused on First Nations that have been supported by this fund include those designed to:

- Improve access to training.
- Expand business skills and knowledge.
- Encourage entrepreneurship.
- Encourage participation and integration in the economy.
- Expand access to resource tenures.
- Include First Nations in strategic land use planning and address land and resource issues.

¹² Treaty Negotiations Office Backgrounder dated October 11, 2003 and the Treaty Negotiation Office Service Plan 2004/2005 – 2005/2006.

Policy Details

The Economic Measures Fund is a \$40 million initiative to support First Nations' economic development projects and provides \$10 million per year in funding for four years. Groups work directly with Provincial government staff to determine whether their ideas, projects and initiatives align with government's strategic priorities.

To date, over \$26 million has been awarded to First Nations and allocated to 124 projects throughout BC that are scheduled to be completed by the end of March 2005. Some of the projects that have been supported by the Economic Measures Fund include¹³:

- Two Ktunaxa Kinbasket Tribal Council projects to support a forestry and land-use planning accord and coalbed methane development.
- A mining partnership between Yale First Nation and Qualark Resources Inc.
- The Squamish and Lil'wat First Nations Cultural Centre in Whistler.
- The Upper Similkameen Indian Band projects to support development of a major tourist attraction at the historic Mascot Mine site at Hedley, construct an industrial park and determine the viability of establishing an electrical cogeneration facility near Princeton.
- The Aboriginal Employment Partnership Initiative, to develop partnerships with the private sector to enhance aboriginal employment opportunities.
- Forestry research to determine the social and economic viability of alternative timber harvesting.
- Esquimalt First Nation training that will build skills for the commercial development of reserve land.
- The Mount Currie and Douglas First Nations independent power projects.

Policy Implications

The Economic Measures Fund could result in some combination of the following:

- Improved relationships between the Province and the First Nations may lead to more efficient negotiations.
- Improved participation rates in the economy may mean higher employment rates for First Nations.
- Improved integration and engagement in the economy may mean higher income levels for First Nations.
- Improved business skills and knowledge of First Nations may lead to better investment decisions and increased business success rates.

¹³ www.gov.bc.ca/tno/popt/background_information.htm

As a result of these implications and depending on the degree of participation by First Nations that are involved in the treaty process in the Economic Measures Fund there could be changes to some of the assumptions and conclusions of the 1999 GT Report. These changes may include:

- Revising the estimates of taxation revenues upward as both employment rate and income rates of First Nations are improved.
- Revising the estimates of social assistance to First Nations downwards as employment rates improve.
- Revising the rate of business success upwards as First Nations improved business acumen and experience decreases the likelihood of business failure.
- Revising the rate of return on investment upwards as First Nations may be better equipped to make more profitable investment decisions.

These effects are likely to be limited by both the time frame of the fund and the limited amount of resources available to distribute to First Nations.

The Turning Point Agreement^{14 15}

Policy Overview

On April 4, 2001 eight central and north coastal First Nations signed the *General Protocol Agreement on Land Use Planning and Interim Measures* with the Provincial Government. The agreement provides the framework for the First Nation signatories to negotiate specific independent agreements that are separate from the treaty process while the treaty process is underway. The negotiations include initiatives dealing with forestry, tourism, land use and fisheries. These initiatives are known as the “Turning Point Initiatives”.

Policy Details

The *General Protocol Agreement on Land Use Planning and Interim Measures* gives guidance to negotiating agreements between British Columbia and First Nation signatories regarding:

- Land Use Planning.
- Forestry and Tourism Interim Measures.

Its main principles include a commitment to land use planning that adheres to ecological and socio-economic principles. The main tenets of the agreement include:

- A commitment by the Province to work with signatory First Nations when a land use planning process is to be undertaken in a designated geographic area to determine the principles, scope and outcomes of the land use planning process.

¹⁴ www.davidsuzuki.org/Forests/Turning_Point.asp

¹⁵ www.coastforestconservationinitiative.com/pdf/finalprotocol.pdf

- Land use planning recommendations that are developed in an inclusive manner that is committed to seeking consensus from First Nations, communities, government and stakeholders.
- Use of the Ecosystem Based Management Framework to guide the development of Land Use Plans by First Nations and British Columbia.
- Recognition and respect for First Nations signatories by committing to resolve outstanding matters via a government-to-government process.

An example of a Turning Point Initiative is the Gitga'at agreement.¹⁶ The Gitga'at agreement is an interim measure that enables the Gitga'at to share in forestry revenues of \$1.57 million over the next five years, receive a direct invitation from the Minister to apply for a forest licence in the North Coast Timber Supply Area of 125,000 cubic metres over the next five years and receive a second invitation for another forest licence of up to 165,000 cubic metres upon completion of the province-wide timber reallocation process.

Policy Implications

The *General Protocol Agreement on Land Use Planning and Interim Measures* has the following implications:

- Improved relationships between the government and the First Nations may lead to more efficient treaty negotiations.
- The agreement is a framework that may be used with other First Nations to reduce uncertainty and reduce costs associated with lengthy treaty negotiations.
- Recognition and respect for ecologically sound practices that preserve land values while generating economic output.

Due to the limited scope and application of the policy date, there are limited impacts on the assumptions and conclusions of the 1999 GT Report. However to the degree that the agreement may be implemented elsewhere in BC the following could be expected:

- Revising the assumption concerning the rate of treaty making upward as the parties become more accustomed to negotiating together and establish a climate of trust and respect towards one another.

Forest Revitalization Plan (Forest Revenue Sharing)¹⁷

Policy Overview

In March 2003, the province announced the introduction of the Forestry Revitalization Plan as part of the BC Heartlands Economic Strategy. The Forestry Revitalization Plan is a response to

¹⁶ Minister of Forests Press Release dated October 13, 2003.

¹⁷ Ministry of Forests Background

recent challenges faced in the forestry sector, such as the closure of twenty-seven mills and the loss of 13,000 jobs since 1997.

The plan has three principal goals:

- Creation of new opportunities in the forest sector.
- Opening up markets for British Columbia forest products.
- Ensuring sustainable forest practices.

Within the plan are a number of measures specifically directed at First Nations, including:

- Increasing First Nations share of allowable annual cut to 8% from 3%.
- Forest revenue sharing of approximately \$95 million over three years.

First Nations will also be eligible to receive transfers of long-term timber licenses. Our discussion focuses on the forest revenue sharing components of the agreements.

Policy Details

Since the announcement of the Forestry Revitalization Plan, ten agreements have been signed that address forest revenue sharing. Each agreement acknowledges that the related economic benefits are a workable interim accommodation of First Nations aboriginal interests in forestry development. A consultation process is also addressed in each agreement.

The following table summarizes the revenue sharing arrangements of the Forestry Agreements made with First Nations since October 2003. To date, the Province has committed to forest revenue sharing of \$38.6 million in these agreements.

Table 6. Forest Revenue Sharing Agreements

Date	First Nation	Revenue Sharing
October 2003	Lax Kw'alaams	\$6.85M
October 2003	Gitga'at	\$1.57M
November 2003	Saik'uz	\$1.88M
December 2003	Metlakatla	\$1.725M
January 2004	Kitselas/Kitsumkalum	\$2.79M
February 2004	Cowichan Tribes*	\$13M
February 2004	Haisla	\$3.79M
February 2004	Heiltsuk	\$5.17M
February 2004	Kitasoo	\$1.2M
February 2004	Wuikinuxv	\$625,000
		\$38.6M

**Note: Each of the revenue sharing agreements, with the exception of the Cowichan Tribes, is over a five year period. The Cowichan Tribes agreement extends over six years.*

Policy Implications

Several benefits to the province and First Nations stem from the Forestry Revitalization Plan. These may include:

- Strengthening and development of relationships between First Nations and the Province.
- Increased certainty over the land base.
- Improved investment climate.
- Meaningful First Nations entry into the forestry sector.
- Increased job opportunities for First Nations.
- Development of sustainable economic base for First Nations.

With respect to the treaty settlement process, the agreements and their resulting benefits will likely improve the relationship of First Nations and the Provincial government at the treaty negotiating table. This may make the treaty negotiation process more efficient, potentially leading to agreements within a shorter time frame.

In previous studies, resource revenue sharing would not occur until treaties were finalized. Consequently these benefits are being realized sooner than otherwise anticipated. This suggests that in terms of net present value benefits of treaty settlements would be higher as they are realized sooner.

If the Forestry Revitalization Plan also leads to increased employment of First Nations people, then reductions to social assistance payments would also be realized prior to the settlement of treaties.

Federal-Provincial Resource Revenue Sharing in Treaty Settlements

In October 2003, the governments of British Columbia and Canada signed an agreement on cost-sharing of resource revenues as part of First Nations treaty settlements. The *Cost Sharing Understanding Respecting the Sharing of Resource Revenue Sharing Arrangement Costs* outlines how the Provincial and Federal governments will fund the costs of resource revenue sharing with First Nations.

Under the Cost Sharing Understanding, the Provincial and Federal governments are each responsible for 50% of the costs of resource revenue sharing. Payments will be made in cash annually (or at other predetermined intervals) directly to the First Nation. The payment amounts will be 50% of the resource revenue payments that are agreed to by the Provincial and Federal governments. A Resource Revenue Sharing Arrangement is an arrangement made between a First Nation, British Columbia, and Canada that forms (or is expected to form) part of a final agreement. Each arrangement may be unique and will be determined through individual treaty negotiations.

The resources included under the Cost Sharing Understanding are forestry, oil and natural gas, minerals, and other natural resources.

Economic Overview

As the Agreements in Principle that have been signed since the 1999 GT and 1996 KPMG reports have had a significant interest in resource based industries including forestry and subsurface mineral rights we have undertaken a brief economic overview to highlight the softwood lumber dispute, increased activity in oil and gas, and Nisga'a specific developments. This information should be kept in mind when considering the relative economic impacts of treaty settlements in British Columbia. In the 1996 KPMG and the 1999 GT report, variables identified as potentially having an economic impact included:

- Use by First Nations of capital transfers to fund local business activities.
- Displacement of existing businesses by First Nations enterprises in both forestry and commercial salmon fisheries.
- Additional business investment as a result of increased certainty.

Both the 1996 KPMG and the 1999 GT reports identified specific impacts on Provincial incomes as a result of treaty making in the following areas.

- Natural resources (forestry, salmon).
- Community infrastructure projects.
- Other business opportunities funded by First Nations settlement funds.
- Increased investment as a result of certainty.

The British Columbia Ministry of Management Services, through BC Stats, produces economic dependencies for 63 local areas within British Columbia.¹⁸ Income dependency ratios are available for 2001, 1996, and 1991 and are presented below for the following local areas:

- Alberni, where the Maa-nulth First Nations are located.
- Powell River, where the Sliammon are located.
- Prince George, where the Lheidli T'enneh are located.
- Kitimat-Terrace, where the Nisga'a are located.

¹⁸ British Columbia Ministry of Management Services, *British Columbia's Heartland at the Dawn of the 21st Century: 2001 Economic Dependencies and Ratios for 63 Local Areas*, January 2004

The Tsawwassen First Nation is not included in this discussion, as they are located in the GVRD, which is not considered in the local area analysis because much of the methodology may not apply to a large urban area.

Income dependencies indicate how income within the local area is attributable to different sectors of the economy. Consequently, they may be used to clarify the likely economic impacts of shifts to different sectors of the economy as well as impacts related to positive or negative shocks to different sectors of the economy. The sectors are broadly defined so as to include both direct and indirect employment within the sector. Each of the local areas examined derives a large share of its income from the forestry sector, which may be reflective of the desire to incorporate First Nations into this industry.

Table 7. Income Dependencies for Selected Local Areas

Local Area	Percent Income Dependencies			
	Forestry	Fishing & Trapping & Related Processing	Mining, Oil & Gas & Related Processing	Government Transfers
Alberni				
2001	31	2	0	18
1996	36	3	0	16
1991	31	4	1	14
Powell River				
2001	27	1	2	21
1996	34	1	3	17
1991	35	2	3	11
Prince George				
2001	31	11	1	18
1996	33	15	1	13
1991	30	18	3	16
Kitimat-Terrace				
2001	19	0	20	13
1996	24	0	17	11
1991	21	1	14	15

Source: British Columbia's Heartland at the Dawn of the 21st Century: 2001 Economic Dependencies and Ratios for 63 Local Areas

Forestry is also the dominant income source for each local area in each time period, with the exception of Kitimat-Terrace where in 2001 the public sector comprised the greatest share of income. This may be a consequence of the self-governance provisions in the Nisga'a agreement.

Relative to 1991, the share of government transfers in total income in the Kitimat-Terrace area has decreased, which may provide support for the argument that Federal and Provincial transfers through program funding and social assistance payments would decrease as a result of treaty settlement.

We have identified both the softwood lumber dispute and increased activity in the oil and gas sector as likely to have significant consequences for the economic impacts identified and explored in the 1999 GT report. In the discussion below, we address how these larger economic developments that have occurred since 1999 potentially affect the economic impacts to treaty making.

The recent softwood lumber dispute began in 2001 with heavy duties being imposed on Canadian lumber that is exported to the US. Consequently, billions of dollars have been paid in duties, several mills have been closed, and thousands of jobs have been lost. The dispute and its effects on the Canadian industry were acutely felt in BC and had not been anticipated in the earlier 1996 KPMG and the 1999 GT reports. As a result, the economic benefits to First Nations anticipated from the forestry sector may have been less than indicated in the earlier reports. A reduction in economic benefit associated with First Nations involvement in the forestry industry may be partially offset by initiatives such as forest revenue sharing and the Turing Point Agreement.

A community's vulnerability to fluctuations in the forestry industry, including those that are the result of a trade dispute, is measured by the Forestry Vulnerability Index (FVI). Forestry vulnerability indices are calculated by BC Stats for the local areas where the Nisga'a, Sliammon, Maa-nulth, and Lheidli T'enneh reside. These are presented in the table below for each of the four regions. A FVI of 100 indicates that the region is the most vulnerable to potential contractions in the forestry sector, while a value of zero indicates that the region is least vulnerable to contractions, relative to other areas in the province. The higher a community's dependence is on the forestry sector and the lower its ability to substitute to other areas, the greater the value of its forest vulnerability index.

It is important to note that each of the four areas where either a treaty or an Agreement in Principle is in place with a First Nation has an FVI that is higher than the average FVI for British Columbia. This supports the notion that the impact of the softwood lumber dispute may have been more acutely felt in these areas as they derive a higher share of income from the forestry sector and have fewer alternative sources of income available.

Table 8. Forest Vulnerability Indices for Selected Local Areas

Local Area	Forest Vulnerability Index
Alberni (Maa-Nulth)	
2001	65
1996	63
1991	71
Powell River (Sliammon)	
2001	67
1996	65
1991	67
Prince George (Lheidli T'enneh)	
2001	64
1996	65
1991	68
Kitimat-Terrace (Nisga'a)	
2001	70
1996	71
1991	75

Source: British Columbia's Heartland at the Dawn of the 21st Century: 2001 Economic Dependencies and Ratios for 63 Local Areas

Another major economic development that has occurred since the 1999 GT report is increased activity in the oil and gas sector and the potential lifting of the moratorium on offshore oil and gas exploration. In September 2003, BC recorded its largest single sale of gas rights on record, nearly equivalent to what would be expected in an entire year. Consequently, there may be significant positive direct and indirect economic benefits for both Northern and Coastal First Nations. It may be that involvement of First Nations in the oil and gas industry will increase in the future. This is particularly true in light of the recent court decisions that require third parties and government to consult and seek to accommodate First Nations in development projects.

The 1996 KPMG and the 1999 GT reports did not consider First Nations activity in the oil and gas sector due to the uncertainty surrounding these activities. Recent developments suggest there is potential for First Nations to participate in oil and gas activities both on shore and off shore. If the certainty associated with treaties brings increased investment in this sector and First Nations are active participants in the exploration and development process it is reasonable to expect that First Nations would stand to benefit through increased investment, employment and multiplier effects.

Nisga'a Final Agreement Implementation

The 2001-2002 Nisga'a Final Agreement Implementation Report documents economic activity related to the Nisga'a¹⁹. Highlights of the report include:

¹⁹ Nisga'a Lisims government, <http://www.nisgaalisims.ca/nisgaa%20release.html>

- In the 2001 fishing season, more than 100 people were employed by Nisga'a Fisheries.
- The Laxgalt'sap Forest Corporation, owned by the Nisga'a community, employed thirty people.
- Eight Nisga'a people were employed by the Wilp Sy'oon fishing lodge.
- Highway construction and upgrade projects employed forty people.

To illustrate the additional indirect and induced employment generated in the community, we have estimated the additional indirect and induced employment generated in the community, using the employment ratios for the Kitimat-Terrace local area, assuming no migration, for the direct employment indicated above. Note that these estimates are a selection of the employment of the Nisga'a and are meant to illustrate the nature of employment of the Nisga'a following implementation of the final agreement and estimates of the additional employment resulting from the direct jobs.

Table 9. Selected employment impacts of the Nisga'a

	Direct Employment	Indirect Employment	Induced Employment (Safety Net/No Migration)	Total Employment
Nisga'a fisheries	100	14.0	18.0	132.0
Laxgalt'sap Forest Corporation	30	5.4	8.7	44.1
Wilp Sy'oon fishing lodge	8	0.6	1.0	9.5
Highway construction and upgrade projects	40	1.34	13.6	63.6

Notes: We have assumed that the employment figures from the 2001-2002 Nisga'a Final Agreement Implementation Report refer to full-time positions.

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Appendix A: 1996 and 1999 Model Assumptions

Table A1. Model Assumptions in the 1996 KPMG Study and the 1999 GT Report
 1996 KPMG Report²⁰ 1999 GT Report²¹

FINANCIAL		
General financial		
Time horizon – treaty negotiations	25 years (beginning in 1998)	20 years (beginning in 2000)
Pace of Settlement	Claims Settled	Claims Settled
1998	7%	0%
1999	13%	0%
2000	20%	5%
2001	27%	10%
2002	30%	15%
2003	37%	20%
2004	40%	25%
2005	43%	30%
2006	50%	35%
2007	53%	40%
2008	57%	45%
2009	63%	50%
2010	67%	55%
2011	70%	60%
2012	77%	65%
2013	80%	70%
2014	83%	75%
2015	90%	80%
2016	93%	85%
2017	97%	90%
2018	100%	95%
2019		100%

²⁰ Unless indicated otherwise, all dollar values reported under the 1996 study are in 1995 constant dollars.

²¹ Unless indicated otherwise, all dollar values reported under the 1999 study are in 1998 constant dollars.

	1996 KPMG Report ²⁰	1999 GT Report ²¹
Time horizon – payment of cash settlement	15 years	15 years
Real interest rate on unpaid settlement amounts	6%	6.2%
Total number of First Nations beneficiaries	146,000	140,000
Number of settlements over settlement period	60	60
BC share of Federal income taxes	12.9%	13.5%
Land/cash mix		
Cash payments to each First Nations beneficiary	\$39,000	\$42,100
Provincial share of cash payments	12% in Scenario 1 22% in Scenario 2	12% in Scenario 1 22% in Scenario 2
Transfer of rural land - number of representative hectares	2.9M ha (577 ha per \$1M cash) in Scenario 1 2.4M ha (420 ha per \$1M cash) in Scenario 2	2.9M ha (577 ha per \$1M cash) in Scenario 1 2.4M ha (420 ha per \$1M cash) in Scenario 2
Pre-treaty costs²²		
Public information	\$100M	\$108M
Consultation with third parties	\$50M	\$54M
Interim measures (foregone revenues)	\$30M in Scenario 1 \$25M in Scenario 2	\$32M in Scenario 1 \$26M in Scenario 2
Interim measures (co-management)	\$40M	\$41M
Provincial negotiation costs	\$660M	\$675M
Federal negotiation costs	\$330M	\$337M
Enrolment and ratification	\$110M	\$31M
Implementation Costs		
Co-management and training	\$1,520M	\$1,370M
Adjustment programs	\$120M in scenario 1 \$40M in scenario 2	\$120M in Scenario 1 \$40M in Scenario 2
Land surveys	\$50M	\$50M
Other costs	\$260M	\$270M
Support Funding for First Nations		
Grants	\$90M	\$87M
Loans	\$360M	\$360M

²² Pre-treaty costs are assumed to extend over 40 years

	1996 KPMG Report ²⁰	1999 GT Report ²¹
Self-government and Savings in Provincial Programs		
Core Institutions ²³	\$250M in Scenario 1 \$380M in Scenario 2	\$230M in Scenario 1 \$340M in Scenario 2
Own Source Revenue		
Value of Indian Act tax exemption	50% of total tax capacity	50% of total tax capacity
First Nations exercise of tax capacity	100% within 10 years after settlement	100% within 12 years after settlement
Annual reduction in income assistance costs per person becoming employed	\$10,000	\$10,000
Savings in targeted programs costs	30% in Scenario 1 80% in Scenario 2 (of \$85M annually)	30% in Scenario 1 80% in Scenario 2 (of \$68M annually)
ECONOMIC IMPACT		
Investment Choices and Climate		
Purposes of Financial Resources	<ul style="list-style-type: none"> • Community business investment • Conservative financial investment • Spending on discretionary government services or construction • Distribution among membership 	<ul style="list-style-type: none"> • Community business investment • Conservative financial investment • Spending on discretionary government services or construction • Distribution among membership
Amount invested in local businesses	40% from 1998 to 2007, 10% thereafter in Scenario 1 25% from 1998 to 2007, 20% thereafter in Scenario 2	40% from 2000 to 2011, 10% thereafter in Scenario 1 25% from 2000 to 2011, 20% thereafter in Scenario 2
Average small business success rate (same as for Canada)	50%	50%
Real rate of return on investment	8%	6%

²³ Core Institutions costs are assumed to extend over 40 years

	1996 KPMG Report²⁰	1999 GT Report²¹
Investment in conservative financial investments	20% in 1998 to 2007, 50% thereafter in Scenario 1 35% in 1998 to 2007, 40% thereafter in Scenario 2	20% in 2000 to 2011, 50% thereafter in Scenario 1 35% in 2000 to 2011, 40% thereafter in Scenario 2
Spending on discretionary community activities	10% in 1998 to 2007, 20% thereafter in Scenario 1 10% in 1998 to 2007, 10% thereafter in Scenario 2	10% in 2000 to 2011, 20% thereafter in Scenario 1 10% in 2000 to 2011, 10% thereafter in Scenario 2
Distribution to members or local consumption	30% in 1998 to 2007, 20% thereafter in Scenario 1 30% in 1998 to 2007, 30% thereafter in Scenario 2 • Members consume provincial average “basket” of goods and services	30% in 2000 to 2011, 20% thereafter in Scenario 1 30% in 2000 to 2011, 30% thereafter in Scenario 2 • Members consume provincial average “basket” of goods and services
Community leakage factor	0.50	0.50
Investment climate – gain in capital investment due to reduction in uncertainty	\$30M beginning in 2018 in Scenario 1 \$60M beginning in 2003 in Scenario 2	\$30M beginning in 2019 in Scenario 1 \$60M beginning in 2005 in Scenario 2
Land use/resource management		
Extraction and royalty rates	Same resource extraction rate at equivalent royalty rates as previously mandated	Same resource extraction rate at equivalent royalty rates as previously mandated
Resource revenues, extraction and processing		
Forestry		
Average Resource Revenue Value (Forestry and Mining)	\$21/ representative hectare	\$21.35/ representative hectare

	1996 KPMG Report ²⁰	1999 GT Report ²¹																																
Use of resource revenue	Funding of First Nations land management and resource stewardship activities	Funding of First Nations land management and resource stewardship activities																																
Forestry harvest rate	At provincial rate, with 20% province-wide decline in harvest rate (AAC) over next nine decades	At provincial rate, with 20% province-wide decline in harvest rate (AAC) over next nine decades																																
AAC Scaling	<table border="1"> <tr><td>1996-2005</td><td>95%</td></tr> <tr><td>2006-2014</td><td>92%</td></tr> <tr><td>2015-2024</td><td>89%</td></tr> <tr><td>2025-2034</td><td>86%</td></tr> <tr><td>2035-2044</td><td>83%</td></tr> <tr><td>2045-2054</td><td>82%</td></tr> <tr><td>2055-2058</td><td>81%</td></tr> <tr><td>2059-2068</td><td>80%</td></tr> </table>	1996-2005	95%	2006-2014	92%	2015-2024	89%	2025-2034	86%	2035-2044	83%	2045-2054	82%	2055-2058	81%	2059-2068	80%	<table border="1"> <tr><td>1996-2005</td><td>95%</td></tr> <tr><td>2006-2014</td><td>92%</td></tr> <tr><td>2015-2024</td><td>89%</td></tr> <tr><td>2025-2034</td><td>86%</td></tr> <tr><td>2035-2044</td><td>83%</td></tr> <tr><td>2045-2054</td><td>82%</td></tr> <tr><td>2055-2058</td><td>81%</td></tr> <tr><td>2059-2068</td><td>80%</td></tr> </table>	1996-2005	95%	2006-2014	92%	2015-2024	89%	2025-2034	86%	2035-2044	83%	2045-2054	82%	2055-2058	81%	2059-2068	80%
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2045-2054	82%																																	
2055-2058	81%																																	
2059-2068	80%																																	
Extent of harvesting activity	First Nations harvesting 2/3 of settlement land in Scenario 1 Existing interests harvesting 2/3 of settlement land in Scenario 2	First Nations harvesting 2/3 of settlement land in Scenario 1 Existing interests harvesting 2/3 of settlement land in Scenario 2																																
Logging																																		
Crown lands	70M cubic metres	67.6M cubic metres																																
Total (crown and private) lands	79M cubic metres	75.2M cubic metres																																
Value for purchasing tenures	\$240 per cubic metre of AAC	\$80 to \$120 per cubic metre of AAC																																
First Nations assumption of harvesting rights	50% include harvesting operations, while fibre supply agreements provide continuity for existing processors for remaining 50%	50% include harvesting operations, while fibre supply agreements provide continuity for existing processors for remaining 50%																																

	1996 KPMG Report ²⁰		1999 GT Report ²¹	
Commercial salmon fishery				
Additional percentage of TAC granted to First Nations	20% in Scenario 1 5% in Scenario 2		25% in Scenario 1 10% in Scenario 2	
Decline in available salmon resource	5% every 5 years and levelling off at 40% below current levels		5% every 5 years and levelling off at 40% below current levels	
TAC Scaling	1998	100%	1998	100%
	1999-2003	95%	1999-2003	95%
	2004-2008	90%	2004-2008	90%
	2009-2013	85%	2009-2013	85%
	2014-2018	80%	2014-2018	80%
	2019-2023	75%	2019-2023	75%
	2024-2028	70%	2024-2028	70%
	2029-2033	65%	2029-2033	65%
	2034-2047	60%	2034-2047	60%
Location of fish processing	Existing facilities		Existing facilities	
Transfer of vessels and licenses	\$9M per 1% of TAC transferred to First Nations		\$9M per 1% of TAC transferred to First Nations	
General Economic Variables				
Average Annual Wages	1994		1997	
Logging	\$43,342		\$47,923	
Wood Manufacturing	\$39,321		\$43,788	
Fishing	\$20,273		\$20,273	
Services	\$28,560		\$28,255	
Public Administration	\$42,024		\$40,789	
Wage/Assets	Ratio		Ratio	
Logging	0.36		0.31	
Wood Manufacturing	0.32		0.55	
Fishing	0.09		0.09	
Services	0.41		0.39	
Province Wide Employment Levels	Jobs		Jobs	
Logging	32,000		30,000	
Wood Manufacturing	53,000		49,000	
Salmon Fishing	4,000		3,500	
Local Administration	34,000		29,000	
Retail	210,000		228,000	
Multipliers	Ratio		Ratio	
Forestry	0.452		-	
Forest Manufacturing	-		0.800	
Logging	-		0.670	

	1996 KPMG Report ²⁰	1999 GT Report ²¹
Fishing	0.34	0.610
Services and local business investments	0.462	0.740
Wages/ Expenditure	Ratio	Ratio
Services sector (local consumption)	0.20	0.20
Public Administration (local administration)	0.60	0.60
Taxes		
Average Federal Tax Ratio	17.1%	16.0%
Average Provincial Tax Ratio	10.2%	11.0%
BC Share of Federal Income Taxes	12.9%	13.5%

Appendix B: Nisga'a Agreement

The 1999 GT study also examined the net financial benefits of the Nisga'a settlement. We have not reviewed this analysis in our report, but provide the following summary for information purposes.

Financial Benefits and Costs

Following a similar approach as the models that studied the financial impacts of treaty settlements in British Columbia, but using information particular to the details of the Nisga'a settlement, the financial benefits and costs of the Nisga'a treaty were assessed in the 1999 GT study. Economic impacts were not considered in the analysis.

A summary of the financial terms and land settlements of the Nisga'a agreement are presented in Table B1 below.

Table B1. Summary of Financial Terms and Land Settlement Associated with the Nisga'a Final Agreement (000's, 1998 constant dollars)

	BC Cost	Canada Cost	Nisga'a Benefit	Nisga'a Cost
Land Settlement				
- hectares	194,500 ha	7,400 ha	201,900 ha	
- notional \$ value	\$106,660		\$106,660	
Capital Transfer	14,830	180,270	195,100	
Resource Revenue from Settlement Land				
Forestry Transition	4,350		4,350	
Foregone Forestry Revenue	32,300		32,300	
Third Party Interests				
Commercial Fishing Funding	5,905	5,905	11,810	
Third Party Compensation				
Fisheries	2,500	2,500		
Forestry	13,750	13,750		
Implementation				
Land Surveying & Other Implementation	2,800	291		

	BC Cost	Canada Cost	Nisga'a Benefit	Nisga'a Cost
Pre-Treaty Costs				
Negotiation Costs and Other Funding	12,550	*	*	
Public Relations/Communications	5,000			
Eligibility & Enrolment Funding	212	318	530	
Ratification Funding	240	360	600	
Interim Protection Measures	2,425		2,425	
Self-government				
Fiscal Financing Agreement				
Annual Funding	1,206/yr	30,544/yr	31,750/yr	
Limited Funding	1,224	6,263	7,487	
Lisims Fisheries Conservation Trust				
Trust Funds		10,270		
Trust Supplement		2,000	12,270	3,080
Federal Infrastructure Agreement				
Transition Training		14,600	14,600	
Cultural Artifacts		400	400	
Government Buildings		3,000	3,000	
Other Projects		12,000	12,000	
Roadwork**	41,000			

*Federal and Nisga'a costs of negotiation were not available for the purposes of this study.

**Roadwork costs shown are for the Nisga'a Highway upgrade and exclude the extension to Kincolith, which is estimated at \$30 million.

Notes: The terms in this table cannot be added to determine the financial impact of the settlement.

Direct Federal and Provincial settlement costs of the Nisga'a settlement include:

- Cash transfers to the Nisga'a, including capital transfer, foregone forestry revenues, and third party interests for commercial fisheries funding.
- Cash transfers to others as third party compensation to forestry and fisheries.
- Land settlement.

The estimated value of cash settlement per beneficiary is \$44,300 in 1998 constant dollars.

The estimated net financial benefits of the Nisga'a settlement from the 1999 GT study are summarized in Table B2 below.

Table B2. Net Financial Benefits to British Columbia
1998 constant dollars, \$ millions

<u>Benefits to Nisga'a</u>	
Capital Transfer	195.1
Foregone Revenue - Forestry Transition	4.4
Foregone Forestry Revenue	32.3
Third Party Interests – Commercial Fisheries Funding	11.8
Third Party Compensation - Fisheries	5.0
- Forestry	27.5
Funding of Nisga'a Self-government	
Fiscal Financing Agreement Incremental Annual Funding	64.9
Fiscal Financing Agreement Incremental One Time Funding	5.0
Fisheries Studies One Time Funding	2.5
Lisims Fisheries Conservation Trust & Supplement	12.3
Federal Infrastructure Agreement Funding	30.0
New Tax Revenues and Own Source Revenue Contributions	(43.2)
Financial Benefits to Nisga'a	\$347.5
<u>Costs to Other British Columbians</u>	
<u>Provincial Government Costs</u>	
Cash	14.8
Foregone Revenue - Forestry Transition	4.4
Foregone Forestry Revenue	32.3
Third Party Interests - Commercial Fisheries Funding	5.9
Provincial Funding of Nisga'a Self-government	
Fiscal Financing Agreement Annual Funding	24.8
Fiscal Financing Agreement One Time Funding	1.2
Reduction in provincial program costs	(24.4)
New Tax Revenues and Own Source Revenue Deductions	(12.5)
Pre-Treaty Costs	20.4
Implementation Costs	2.8
Third Party Compensation	
Fisheries	2.5
Forestry	13.8
Provincial Roadwork (Nisga'a Highway upgrades)	41.0
<u>Other British Columbian Costs</u>	
Taxpayers' share of net federal costs	32.3
Financial Costs to Other British Columbians	\$159.3
Direct Net Financial Benefits to British Columbia	\$188.2

Assumptions and Risks Related to Net Financial Benefits

The 1999 GT study notes how the actual net benefits of the Nisga'a settlement may vary from the estimated net benefits based on several factors, as described below:

- Pre-treaty costs accruing to the Federal government and to the Nisga'a are not included in the estimates.
- Projected financial impacts are based on the assumption that the Nisga'a will be efficient and effective in their self-government activities.
- Utilization of capital trusts and the associated returns on investment affect the revenues of the Nisga'a, which in turn influences the level of funding received by the Nisga'a through the Fiscal Financial Agreement.
- Estimates of own source revenue are based on generalized assumptions on economic development and spending strategies, and the level of own source revenue also affects the level of government funding received.
- Agreement by the Nisga'a to maintain or exceed provincial standards of management of environmental and resource resources.
- Compensation to the fishing and forestry sectors is based on estimates rather than actual negotiated values.
- Third party compensation figures exclude any costs related to adjustment programs such as re-employment and retraining.

Table B3 below outlines the assumptions of the 1996 KPMG study and the 1999 GT study as compared to the details of the Nisga'a Agreement used in the analysis of the Nisga'a settlement in the 1999 GT study.

Table B3. Comparison of 1996 KPMG Study and 1999 GT Study to Terms of the Nisga'a Agreement

	1996 KPMG Report ²⁴	1999 GT Report ²⁵	Nisga'a Agreement
FINANCIAL			1998 dollars
General financial			
Time horizon – payment of cash settlement	15 years	15 years	15 years
Capital transfer			\$195.1M – BC: \$14.8M Canada: \$180.3M
Real interest rate on unpaid settlement amounts	6%	6.2%	6.2%
Total number of First Nations beneficiaries	146,000	140,000	5,500
Number of settlements over settlement period	60	60	
BC share of Federal income taxes	12.9%	13.5%	
Land/cash mix			
Cash payments to each First Nations beneficiary	\$39,000	\$42,100	\$44,300
Provincial share of cash payments	12% in Scenario 1 22% in Scenario 2	12% in Scenario 1 22% in Scenario 2	
Transfer of rural land - number of representative hectares	2.9M ha (577 ha per \$1M cash) in Scenario 1 2.4M ha (420 ha per \$1M cash) in Scenario 2	2.9M ha (577 ha per \$1M cash) in Scenario 1 2.4M ha (420 ha per \$1M cash) in Scenario 2	2,019 km ² of land – BC: 194,500 ha of Crown (notional value of \$106.7M) Canada: 7,400 ha of federal reserve lands
Pre-treaty costs²⁶			
Public information	\$100M	\$108M	BC: \$5M

²⁴ Unless indicated otherwise, all dollar values reported under the 1996 study are in 1995 constant dollars.

²⁵ Unless indicated otherwise, all dollar values reported under the 1999 study are in 1998 constant dollars.

²⁶ Pre-treaty costs are assumed to extend over 40 years

	1996 KPMG Report ²⁴	1999 GT Report ²⁵	Nisga'a Agreement
Consultation with third parties	\$50M	\$54M	
Interim measures (forgone revenues)	\$30M in scenario 1 \$25M in scenario 2	\$32M in Scenario 1 \$26M in Scenario 2	
Interim measures (co-management)	\$40M	\$41M	BC: \$2.4M
Provincial negotiation costs	\$660M	\$675M	BC: \$17.6M (negotiation and communication)
Federal negotiation costs	\$330M	\$337M	
Enrolment and ratification	\$110M	\$31M	\$1.1M - BC: \$452,000 Canada: \$678,000
Implementation Costs			
Co-management and training	\$1,520M	\$1,370M	BC: \$1.2M
Adjustment programs	\$120M in scenario 1 \$40M in scenario 2	\$120M in Scenario 1 \$40M in Scenario 2	
Enrolment and ratification	\$110M		
Land surveys	\$50M	\$50M	\$3.1M – BC: \$2.8M Canada: \$291,000
Other costs	\$260M	\$270M	
Self-government initiatives ²⁷			\$159M paid over five years: BC: \$6M Canada: \$153M
Fish conservation management			Lisims Fisheries Conservation Trust BC: \$2M over 5 years Canada: \$10.3M
Support Funding for First Nations			
Grants	\$90M	\$87M	
Loans	\$360M	\$360M	

²⁷ Self-government initiatives include health, social services, education, housing, land and resource management and other government and local services.

	1996 KPMG Report ²⁴	1999 GT Report ²⁵	Nisga'a Agreement
Self-government and Savings in Provincial Programs			
Core Institutions ²⁸	\$250M in Scenario 1 \$380M in Scenario 2	\$230M in Scenario 1 \$340M in Scenario 2	Canada: \$30M
Self-government ²⁹			\$7.5M – BC: \$1.2M Canada: \$6.3M
Additional Costs			
Roadwork-upgrade			BC: \$41M over 7 years
Roadwork-extension			BC: \$15M Canada: \$10M
Own Source Revenue			
Value of Indian Act tax exemption	50% of total tax capacity	50% of total tax capacity	
First Nations exercise of tax capacity	100% within 10 years after settlement	100% within 12 years after settlement	100% within 12 years
Annual reduction in income assistance costs per person becoming employed	\$10,000	\$10,000	
Savings in targeted programs costs	30% in Scenario 1 80% in Scenario 2 (of \$85M annually)	30% in Scenario 1 80% in Scenario 2 (of \$68M annually)	
New taxes and OSR			\$43.2M over 20 years
ECONOMIC IMPACT			
Investment Choices and Climate			
	<ul style="list-style-type: none"> • Community business investment • Conservative financial investment 	<ul style="list-style-type: none"> • Community business investment • Conservative financial investment 	

²⁸ Core Institutions costs are assumed to extend over 40 years

²⁹ Includes funds designated for development of a land management program, training, development of core laws, communications and capital projects.

	1996 KPMG Report ²⁴	1999 GT Report ²⁵	Nisga'a Agreement
Purposes of Financial Resources	<ul style="list-style-type: none"> • Spending on discretionary government services or construction • Distribution among membership 	<ul style="list-style-type: none"> • Spending on discretionary government services or construction • Distribution among membership 	
Amount invested in local businesses	40% from 1998 to 2007, 10% thereafter in Scenario 1 25% from 1998 to 2007, 20% thereafter in Scenario 2	40% from 2000 to 2011, 10% thereafter in Scenario 1 25% from 2000 to 2011, 20% thereafter in Scenario 2	
Average small business success rate (same as for Canada)	50%	50%	
Real rate of return on investment	8%	6%	
Investment in conservative financial investments	20% in 1998 to 2007, 50% thereafter in Scenario 1 35% in 1998 to 2007, 40% thereafter in Scenario 2	20% in 2000 to 2011, 50% thereafter in Scenario 1 35% in 2000 to 2011, 40% thereafter in Scenario 2	
Spending on discretionary community activities	10% in 1998 to 2007, 20% thereafter in Scenario 1 10% in 1998 to 2007, 10% thereafter in Scenario 2	10% in 2000 to 2011, 20% thereafter in Scenario 1 10% in 2000 to 2011, 10% thereafter in Scenario 2	
Distribution to members or local consumption	30% in 1998 to 2007, 20% thereafter in Scenario 1 30% in 1998 to 2007, 30% thereafter in Scenario 2 • Members consume provincial average "basket" of goods and services	30% in 2000 to 2011, 20% thereafter in Scenario 1 30% in 2000 to 2011, 30% thereafter in Scenario 2 • Members consume provincial average "basket" of goods and services	
Community leakage factor	0.50	0.50	

	1996 KPMG Report²⁴	1999 GT Report²⁵	Nisga'a Agreement
	\$30M beginning in 2018 in Scenario 1	\$30M beginning in 2019 in Scenario 1	
Investment climate – gain in capital investment due to reduction in uncertainty	\$60M beginning in 2003 in Scenario 2	\$60M beginning in 2005 in Scenario 2	
Land use/resource management			
Extraction and royalty rates	Same resource extraction rate at equivalent royalty rates as previously mandated	Same resource extraction rate at equivalent royalty rates as previously mandated	
Resource revenues, extraction and processing			
Forestry			
Foregone resource revenues of Province			BC: \$36.7M, \$4.4 of which paid as cash over 5 year period, \$32.3M is non-cash transfer of foregone revenues
Average Resource Revenue Value (Forestry and Mining)	\$21/ representative hectare	\$21.35/ representative hectare	
Use of resource revenue	Funding of First Nations land management and resource stewardship activities	Funding of First Nations land management and resource stewardship activities	
Forestry harvest rate	At provincial rate, with 20% province-wide decline in harvest rate (AAC) over next nine decades	At provincial rate, with 20% province-wide decline in harvest rate (AAC) over next nine decades	

	1996 KPMG Report ²⁴	1999 GT Report ²⁵	Nisga'a Agreement	
	1996-2005	95%	1996-2005	95%
	2006-2014	92%	2006-2014	92%
	2015-2024	89%	2015-2024	89%
	2025-2034	86%	2025-2034	86%
	2035-2044	83%	2035-2044	83%
	2045-2054	82%	2045-2054	82%
	2055-2058	81%	2055-2058	81%
	2059-2068	80%	2059-2068	80%
AAC Scaling				
	First Nations	First Nations		
	harvesting 2/3 of	harvesting 2/3 of		
	settlement land in	settlement land in		
	Scenario 1 Existing	Scenario 1 Existing		
	interests harvesting	interests harvesting		
Extent of harvesting	2/3 of settlement land	2/3 of settlement land		
activity	in Scenario 2	in Scenario 2		
Logging				
Crown lands	70M cubic metres	67.6M cubic metres		
Total (crown and private)	79M cubic metres	75.2M cubic metres		
lands				
Value for purchasing	\$240 per cubic metre	\$80 to \$120 per cubic		
tenures	of AAC	metre of AAC		
	50% include	50% include		
	harvesting operations,	harvesting operations,		
	while fibre supply	while fibre supply		
	agreements provide	agreements provide		
	continuity for	continuity for		
First Nations assumption	existing processors	existing processors		
of harvesting rights	for remaining 50%	for remaining 50%		
Compensation to forestry			\$27.5M -	
sector			BC: \$13.8M	
			Canada: \$13.8M	
Commercial salmon fishery				
Additional percentage of				
TAC granted to First	20% in Scenario 1	25% in Scenario 1		
Nations	5% in Scenario 2	10% in Scenario 2		
Decline in available	5% every 5 years and	5% every 5 years and		
salmon resource	leveling off at 40%	leveling off at 40%		
	below current levels	below current levels		

	1996 KPMG Report ²⁴		1999 GT Report ²⁵		Nisga'a Agreement
TAC Scaling	1998	100%	1998	100%	
	1999-2003	95%	1999-2003	95%	
	2004-2008	90%	2004-2008	90%	
	2009-2013	85%	2009-2013	85%	
	2014-2018	80%	2014-2018	80%	
	2019-2023	75%	2019-2023	75%	
	2024-2028	70%	2024-2028	70%	
	2029-2033	65%	2029-2033	65%	
	2034-2047	60%	2034-2047	60%	
Location of fish processing	Existing facilities		Existing facilities		
Transfer of vessels and licenses	\$9M per 1% of TAC transferred to First Nations		\$9M per 1% of TAC transferred to First Nations		\$11.8M funding to purchase vessels and licenses from existing holders BC: \$5.9M Canada: \$5.9M
Compensation to fishery sector					\$5M – BC: \$2.5M Canada: \$2.5M

Appendix C: British Columbia Economic Partnerships Initiative

British Columbia Economic Partnerships Initiative

It is our understanding that the British Columbia Economic Partnerships Initiative (BCEPI) is viewed as a key policy initiative that was introduced subsequent to the 1999 GT report. The BCEPI may affect the assumptions and conclusions of the earlier report. Due to the limited information available on this initiative, however, we have chosen to discuss the BCEPI in an appendix rather than in the main body of the report.

Policy Overview

Established in 2000-2001, the British Columbia Economic Partnerships Initiative (BCEPI) is a partnership of Indian and Northern Affairs Canada and the Province of British Columbia. The initiative is intended to allow for joint Federal-Provincial funding of First Nations economic development projects in British Columbia. The BCEPI funding is provided by Indian and Northern Affairs Canada for First Nations economic development projects in British Columbia.

Policy Details

In the fiscal year 2002-2003, Indian and Northern Affairs Canada contributed \$1.9M in BCEPI projects. Between April 2002 and October 2003, Indian and Northern Affairs Canada has provided \$2.7M in funding through the BCEPI.

Recipients of funding include the Nuu-chah-nulth tribal council for the development of skills to establish shellfish operations. The \$255,000 in funding received in March 2003 was intended to assist twelve Nuu-chah-nulth First Nations develop shellfish businesses, that will attract local investment and create jobs.

In April 2003, the Campbell River Indian Band received \$200,000 from the BCEPI to develop a cruise ship port, with the objective of participating in the cruise industry to generate tourism revenues and stimulate employment.

Policy Implications

As with the provincial Economic Measures Fund, the BCEPI has the following implications:

- Improved relationships between the Province and the First Nations may lead to more efficient negotiations.
- Improved participation rates in the economy may mean higher employment rates for First Nations.
- Improved integration and engagement in the economy may mean higher income levels for First Nations.
- Improved business skills and knowledge of First Nations may lead to better investment decisions and increased business success rates.

As a result of these implications and depending on the degree of participation by First Nations that are involved in the treaty process, there could be changes to some of the assumptions and conclusions of the 1999 GT Report due to the introduction of the BCEPI. These changes may include:

- Revising the estimates of taxation revenues upward as both employment rate and income rates of First Nations are improved.
- Revising the estimates of social assistance to First Nations downwards as employment rates improve.
- Revising the rate of business success upwards as First Nations improved business acumen and experience decreases the likelihood of business failure.
- Revising the rate of return on investment upwards as First Nations may be better equipped to make more profitable investment decisions.

These effects are likely to be constrained by the limited amount of resources available to distribute to First Nations.