

**Speaking Notes for
Miles Richardson, Chief Commissioner, BC Treaty Commission
to
Standing Committee on Aboriginal Affairs and Northern Development**

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**BC Treaty
Commission**

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The Treaty Commission appreciates this opportunity to appear before the Standing Committee on Aboriginal Affairs and Northern Development.

The Treaty Commission was established in 1993 to facilitate treaty negotiations in British Columbia. Though not involved in the Nisga'a negotiations, the Treaty Commission has watched carefully those negotiations over the past six years.

The Nisga'a negotiations were well underway when the Treaty Commission was established and are therefore not part of the treaty process. However, when the Province of British Columbia joined the Nisga'a negotiations in 1990, the modern era of treaty making in this province had begun.

At about the same time, the BC First Nations Congress and the governments of Canada and British Columbia struck the BC Claims Task Force to recommend an approach to the negotiation of modern treaties in BC. The 19 recommendations contained within the report were accepted by Canada, BC and First Nations in 1991. The report and the recommendations contained in it are the blueprint for the BC treaty process that the Treaty Commission facilitates.

In accepting those 19 recommendations, the parties made fundamental commitments to each other, to the people of British Columbia and of Canada. A primary responsibility of the Treaty Commission is ensuring the parties honour those commitments.

The BC Claims Task Force Report provides, for your committee, an insight into those commitments, particularly the anticipated scope of negotiations.

Some people have argued the public didn't know what we were getting into in these negotiations and that elements of the Nisga'a Final Agreement are a surprise. Nothing could be further from the truth.

The task force report was clear about the scope of negotiations in 1991. Looking at the Nisga'a Final Agreement, you may conclude the task force presented an accurate picture of what people could expect in treaty negotiations and in agreements.

The public did know what to expect, if not in 1991 when there was considerable public interest in aboriginal issues following a period of heightened social unrest, then in 1993 when the BC treaty process was launched.

Since that time treaty negotiations have been wide open – the most open and accessible process of its kind that the Treaty Commission is aware of.

The Nisga'a have led the way in treaty negotiations, but the Nisga'a Final Agreement is not a template for treaties in British Columbia. Many First Nations say it falls short of their expectations. That is for individual First Nations to determine, and not for us to judge.

The Nisga'a Final Agreement is for the Nisga'a people and the people of Canada and BC. It honours the commitments of the parties to negotiate, voluntarily, a treaty with full and informed consent. By its nature the treaty is an arrangement reached through political negotiations, not strict legal interpretations. But it also addresses Canada and BC's legal obligations to the Nisga'a people in a mutually acceptable way.

Referring again to the task force, its report says “Treaty negotiations in British Columbia provide an opportunity to recognize First Nation governments on their traditional territories. It is important that the treaties, which will receive constitutional protection, be explicit on matters of jurisdiction.”

An element of the historical basis of First Nation entitlement to participate in treaty negotiations lies in the fact that First Nations were once distinct and self-sufficient nations each having their own language, their own economy, their own system of law and government, and their own territory.

This entitlement does not simply arise because First Nations owned land, but because they also governed it.

While it is true that the courts have not yet been asked to determine if self government is an aboriginal right, their pronouncements on the nature of aboriginal title give some indication of their thinking. In describing aboriginal title as belonging to the community that has the ownership of the land, the Supreme Court appears to imply that aboriginal title requires some form of collective jurisdictional arrangement for its very exercise and regulation. It logically follows that some form of self government is a necessary component of aboriginal rights and title.

British Columbia’s history is one of a denial of aboriginal title and rights.

The Supreme Court of Canada has clearly said this must change. Aboriginal title and rights are no longer a subject for debate or inquiry. Our highest court pushed the issue – the land question: the conflict between Crown title and aboriginal title – into the political realm, by urging negotiations. That preference for political negotiations over litigation has been underscored repeatedly in recent judgments of the court.

The Nisga’a self government provisions were achieved through the give and take of political negotiations.

Some people have argued that, if we must have treaties, that they be settled by a one-time cash payment to each aboriginal person.

The Delgamuukw decision of the Supreme Court makes it clear that this is not an option. The reason is aboriginal title. Aboriginal title is found in many parts of the world and is older than property systems based on common law or civil law.

Aboriginal title is based on the fundamental principle that the people who occupy and use a land have title to it.

One of the characteristics of aboriginal title is that it is held by groups and not by individuals. So when the Supreme Court of Canada confirmed that aboriginal title exists in BC it was clear that governments would have to respond to the needs of First Nations – the holders of that title – and not to individual members.

An overwhelming majority of British Columbians agree it is necessary to negotiate treaties with First Nations to resolve the issues of land ownership and jurisdiction in this province. Most people agree that for too long these issues have been ignored or denied. For too long, the

people of this Province have borne the costs of economic uncertainty.

There is a treaty process in place to deal with the issues. It is a process that has informed the Nisga'a negotiations, as the Nisga'a negotiations have informed the BC treaty process.

Let's remember that treaty negotiations are about change. Treaties mean change in fundamental aspects of our lives - who owns the land, who exercises jurisdiction over the land and who manages the land. Treaties also mean change in the allocation of resources and revenues from resources.

As a result of special interest politics, there has been an attempt to ensure there are no changes in these areas and that has been destructive to treaty making. If the process unfolds with millions of dollars being spent, and if it is taking too long to reach agreements, it will erode relationships and seriously threaten First Nations' willingness to negotiate.

The Government of Canada must remain true to the commitments it has made in entering treaty negotiations with First Nations in British Columbia and it must honour the agreements it has entered into in good faith.

First Nations, at this tense time in treaty making in BC, need to know that Canada and this Province remain committed to treaty making. The Nisga'a Final Agreement is an expression of that commitment.

We must stay the course in this journey which began when the Government of British Columbia joined with the Government of Canada in negotiations with the Nisga'a in 1990. It's a journey that, for First Nations, began over 150 years ago.

For more than 150 years First Nations in BC have consistently sought recognition of their aboriginal rights and title - through petition, protest, litigation and negotiation.

The days of denial are behind us. Canadians have chosen the route of political negotiations. There are also compelling legal reasons for concluding treaties now. And there have always been strong historical and economic reasons for concluding treaties. It is time to get on with that job.

There is an agreement among the Nisga'a and the federal and provincial governments on how to do that. It was an agreement that was difficult to achieve, as future treaties will be difficult to achieve if they are to meet the needs and interests of each of the parties.

The Treaty Commission asks the Committee to recommend the Nisga'a treaty be ratified at the earliest opportunity so that treaty making in British Columbia will not be delayed or derailed.

A failure to ratify the Nisga'a treaty will seriously harm the honour of the Crown. And it would make it difficult, if not impossible, for Canada to continue with treaty negotiations in British Columbia.

A failure to ratify the Nisga'a treaty will make other options such as litigation and direct action by First Nations much more attractive.

Thank you for allowing the Treaty Commission to express its views here today. My four fellow commissioners join me in wishing you well in your deliberations.