

TREATY COMMISSION

# update

*The independent  
voice of treaty  
making in  
British Columbia*

## Emphasis shifts back to negotiations

**P**rogress in individual treaty negotiations will determine the success of a year of high level talks that have produced new options and tools for negotiators.

That's the view of Chief Commissioner Miles Richardson following high level talks held in Ottawa in November 2002.

"If an agreement in principle is reached within the next few months, it will confirm our collective efforts in high level talks over the past year have been worthwhile," Richardson said. "I am optimistic that we will make progress."

The Treaty Commission entered the Ottawa talks with high expectations having kick-started a re-examination of treaty negotiations by conducting its own review of the treaty process in the

summer of 2001. Those recommendations were the starting point for high level talks that continued throughout 2002 involving the ministers for Canada and BC, First Nations

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## Agreements expected early in 2003

**S**pring will usher in agreements in principle for four First Nations if negotiators meet their target dates for initialing agreements in preparation for ratification votes. Snuneymuxw, Lheidli T'enneh, Tsawwassen and Sliammon have set their sights on March to reach agreement. Gitanyow hopes to initial an agreement by summer 2003.

Treaty negotiations at Snuneymuxw are attracting the most attention as optimism remains high an agreement is near. Negotiations have resumed following a much-needed break and are expected to conclude in early 2003. Prior to Christmas, the negotiation teams had

been engaged in intense negotiations as well as three community information sessions.

Nanaimo Mayor Gary Korpan, in a December newspaper interview, said there is reason for optimism that a deal is not only close, but likely to be beneficial for the entire community.

Draft chapters for the Lheidli T'enneh treaty will be made public in late January or early February following intense talks in Prince George and Victoria over the past few months. (Check [www.bcteaty.net](http://www.bcteaty.net) for details.)

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# Supreme Court to hear BC government appeal

The Supreme Court of Canada has agreed to hear the BC government's appeal of the landmark ruling in the Taku River Tlingit case.

In *Taku*, the BC Court of Appeal ruled the Province must consult the Taku River Tlingit First Nation before re-issuing a project permit to Redfern Resources to reopen the Tulsequah Chief Mine in northwest B.C.

The Province is also appealing the decision of the BC Court of Appeal in *Haida Nation v. B.C. and Weyerhaeuser*.

In *Haida*, the BC government is arguing the Supreme Court should hear the appeal as the case raises questions of significant national importance. The Province wants clarification of its constitutional powers and duties for the management of Crown lands and natural resources, and its duties to provide for the needs of all British Columbians, and how these are to be reconciled with the yet-to-be-proven claims of aboriginal rights and title. The government is questioning the duty to

consult and accommodate First Nations prior to the judicial determination of aboriginal rights.

Weyerhaeuser is also asking the Supreme Court to hear the case. The company is arguing there are questions of public importance regarding the legal obligation of a private person or company operating on Crown land claimed by a First Nation to consult with that First Nation and make reasonable efforts to accommodate their asserted interests.


Weyerhaeuser is arguing that companies should be able to rely on the authority of the Crown to deal with Crown land or purchase resource rights.

## Title case being heard

Arguments are now being heard in one of the first aboriginal title cases since *Delgamuukw*. Roger William on behalf of the members of the Xeni Gwet'in and Tsilhqot'in First Nations, is claiming title to areas within the Cariboo Forest Region. He is seeking damages for infringement of aboriginal rights and

title, as well as compensation for breach of fiduciary duty, and is seeking to halt clearcut logging on these lands.

Last summer the BC Court of Appeal upheld a lower court decision granting the First Nation an order for costs in advance which means the governments of Canada and BC must fund the case. The two governments argued the Xeni Gwet'in did not qualify for court ordered legal funding as they could have had their concerns addressed through the treaty process, and the funding available for treaty negotiations. The Court of Appeal disagreed, noting that because of the Province's failure to respond to the First Nations' concerns, the treaty process was not a viable alternative for resolution in this case.

The court cited the 1999 *Marshall* decision in underscoring the importance of effective negotiations: where a mutually satisfactory solution to aboriginal and treaty rights-related issues is not attainable through negotiation or consultation, the courts will resolve the conflicts. 

# Chief Commissioner addresses UNBC students



**Miles Richardson**  
Chief Commissioner

The limited range of powers available under the *Indian Act* do not adequately equip First Nation governments with the tools necessary to develop effective governing institutions, Chief Commissioner Miles Richardson said in a speech to about 200 students at the University of Northern British Columbia

Richardson said existing governance authorities are not sufficient to resolve


the social and economic problems facing so many First Nation communities.

"We can continue to resolve the scope of First Nation governance powers through the courts on a case-by-case basis or we can do it through treaty negotiations. A negotiated resolution taking into account the interests of all parties – rather than a solution imposed by the courts – is obviously the preferred approach."

Richardson said the act of treaty making gives recognition to First Nations on their traditional territories as legitimate

governments representing the interests of their constituents.

Speaking to a packed lecture hall, Richardson said treaty negotiations are a unique opportunity to clarify the obligations, rights and responsibilities of each government and establish a new relationship among First Nations and the governments of Canada and BC.

"The price will be high if we fail to build on the progress of the past year. Failure to resolve land and governance issues in the past has been a cost borne primarily by First Nations. Our failure now will be a higher cost borne by all British Columbians." 

# Treaty Commission to undergo review

**H**ow effective is the Treaty Commission? That question will be addressed following a decision by governments of Canada and BC and the First Nations Summit to conduct a review.

In response, Chief Commissioner Miles Richardson said, "The Treaty Commission welcomes the review. We recommended in 2001 that the Principals undertake a review."

## Emphasis shifts back to negotiations

*Continued from front cover*

Summit leaders, their senior officials and the Treaty Commission.

High level talks are seen by the Treaty Commission as an important forum to smooth the way for broader exploration at tables, while providing information, insight and options for negotiators.

Individual treaty tables are now free to explore solutions for land status, governance, compensation, cooperative land management and resource revenue sharing while some issues will also continued to be explored in high level talks. (See "Negotiators to tackle major issues" Page 6)

An acceptable technique to secure a sufficient degree of certainty in treaties remains an issue for resolution. Options will be set out in time for the next round of high level talks expected to occur early in 2003.

Minister Responsible for Treaty Negotiations Geoff Plant, in a presentation to Cabinet in November 2002, said that "certainty lies in the strength and stability of the entire treaty, so we're not looking for just one single method to achieve certainty. We think

The agreement that established the Treaty Commission calls for a review "at least once every three years." There has not been a review of the Treaty Commission in the nine years since its inception.

Senior officials for Canada, BC and the First Nations Summit will develop a proposal setting out the details of the review including who will conduct the review, its scope and timing.

we can achieve certainty in a variety of arrangements that correspond to particular issues or circumstances.

"We reject the use or idea of extinguishment of rights. We reject the tool of ceding, releasing or surrendering rights." (See "What was said" Page 4)

Funding issues also remain to be dealt with including: First Nations' negotiation debts, due dates for loans, and interest on those loans. Indian Affairs Minister Robert Nault has indicated funding will be forthcoming – the Government of Canada provides the loans to First Nations for treaty negotiations. As the BC government shares liability for uncollected loans, there would have to be an agreement between the two governments to enact these types of changes.

The Treaty Commission, comprising a full-time chief commissioner and four part-time commissioners, currently employs a staff of 12 to carry out its three main tasks – facilitation, funding, and public information and education. The operating budget for the past fiscal year was \$1.9 million. ☉

Work will continue on options for fiscal relations with a final report due in March 2003. ☉

## Agreements expected early in 2003

*Continued from front cover*

All parties in the Tsawwassen negotiations are optimistic an agreement in principle will be initialled in March as a result of more intensive talks as 2002 came to a close. The public got a first hand look at the progress being made during a December main table negotiation session in the community.

Sliammon First Nation Chief Maynard Harry expects to have a revised and initialled agreement in principle in March and a community vote in September. Sliammon members narrowly defeated an earlier agreement initialled by negotiators. ☉

## update

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# What was said

The following excerpts are from a presentation to the provincial Cabinet by Minister Responsible for Treaty Negotiations Geoff Plant on Friday, November 22, 2002 at Victoria, B.C.



**Geoff Plant**

Minister Responsible for  
Treaty Negotiations

## On building a new relationship...

"I think that as we watch what the courts have told us, as we listen carefully to what First Nations are saying and as we listen to what all British Columbians want from the treaty process, the reality is that treaties are and ought to be about building respectful relationships between First Nations and other British Columbians."

## On achieving certainty...

"In practical terms treaties need to provide us with a clear understanding of relationships that have to do with the ownership of lands and resources, the responsibility for providing government programs and services, and the interactions between and among the various levels of government. If we develop clarity in those relationships and if we understand our respective rights and obligations with clarity, we have created certainty. Certainty is the goal that is, if not the principal goal, certainly from the province's perspective one of the critical goals in the treaty process."

"...In Treaty 8 country, some people think the cede, release and surrender language in Treaty 8 should provide certainty for oil and gas exploration. It does not, and the reason is the relationship isn't working. It's time for a new approach to certainty. I think it's time for an approach that recognizes our obligation to serve our own interests as a province but also to accommodate the interest of others."

"First Nations have told us that they will not accept an extinguishment of rights to achieve certainty. We acknowledge the validity of this position. British Columbia therefore rejects the use of extinguishment or the technique known as cede, release and surrender."


## On self government...

"I think we need to recognize, first of all, that if flexibility is key to good government and if in fact accountability and responsibility are critical elements to good government, then the core authorities that deal with the day-to-day operations of aboriginal government should be set out in a delegated agreement. By setting it out in a delegated agreement, we will permit evolution and change to take place."

"When it comes to the issue of cultural identity and when it comes to the issue of how First Nations can effectively manage the lands that will be an inseparable component of treaties, we think there will need to be treaty authorities that ensure that we can bring those issues into a treaty."

## On economic development...

"Increasingly, it's my view that the treaty process and the treaty project, if you will, are an essential economic development tool."

"The fact is that First Nations have today constitutional rights they are not prepared to give up through treaty making. However, government also requires treaty arrangements that will allow it to proceed in an effective and an efficient management of Crown assets such as forests or oil and gas. As one of the other partners in this overall enterprise, business, to be successful, needs clarity about the legal and regulatory regime in which it must operate. Companies are not likely to invest in mining or forestry projects if they are uncertain about their rights, about government rights or about how aboriginal or treaty rights will affect their operations. First Nations have the aspiration to participate in mainstream economic activity. Treaties need to recognize and give affect to that aspiration." 

## comings goings Recent changes at the Treaty Commission

**Jody Wilson** joined the Treaty Commission in June 2002 as treaty process advisor. Jody holds a Bachelor of Laws from UBC (1999) and spent two years of practice as a provincial crown prosecutor. She is a member of the We Wai Kai First Nation of the Laich-Kwil-Tach K'omoks Tlowitsis Council of Chiefs.

**Patrice Drouin** has accepted a position as funding services officer with Indian and Northern Affairs Canada in Vancouver. Patrice served the Treaty Commission as funding analyst for two years.

# Teaching tools explore treaties

As British Columbians move closer to a post-treaty world, teachers are taking a lead in promoting understanding of the made-in-BC treaty process.

The Treaty Commission in October provided teaching tools for the Social Studies 4 curriculum that will enable teachers to promote awareness of treaty making in elementary schools.

In Fall 2000 the Treaty Commission provided the *What's the Deal with Treaties?* educational kit – now in its second print run – to Social Studies 10 and First Nations 12 classes across the province.

Providing tools to help teachers address treaty making in their classrooms is an important part of the Treaty Commission's ongoing public information responsibilities.

Working with aboriginal teacher and author Diane Silvey and independent BC publisher Pacific Edge Publishing, the Treaty Commission expanded the Teacher's Guide, *From Time Immemorial: The First People of the Pacific Northwest Coast*, to include background information and lesson plans on treaty making and self government. The Treaty Commission has provided the Teacher's Guide, recommended by the Ministry of Education, to every elementary school.

Joanie Proske, librarian and grade 4 and 6 teacher at James Hill Elementary School in Langley, B.C. ordered a classroom set of the *From Time Immemorial* text and teacher's guide three years ago. "Reading through the expanded units this year, I feel that I have a better understanding of treaty making in B.C."


Judy Dallin, aboriginal education coordinator with the Langley School District, has found that the guide is not only useful to grade four teachers, but also to grade five teachers and even to high school teachers for background information.

"As a teacher I noticed that many classrooms were using outdated and limited social studies texts," says Diane Silvey. "In writing *From Time Immemorial*, I wanted to share the rich histories of the first people of the Pacific Northwest and provide a guide for easy unit planning. The lessons were created to be interactive and develop understanding and empathy."

Silvey maintains that although treaty making is a complex subject, grade four students can relate to the concepts of fairness, justice and human rights. Further, the teacher's guide is designed to allow teachers to adapt units according to students' learning styles and abilities.

Silvey, a member of Sechelt Indian Band, recently retired from a 23-year teaching career. She is author of five books, 42 mini readers for non-readers, 18 curriculum books and two teacher's guides. Her son Joe Silvey, an aboriginal support worker with the Surrey School District, illustrated *From Time Immemorial*.

Additional copies and copies of the accompanying textbook may be purchased by contacting Pacific Edge Publishing at 1800 668 8806 or [orders@classroomresources.com](mailto:orders@classroomresources.com).

To request the *What's the Deal with Treaties?* educational kit, free of charge, contact the Treaty Commission at 1800 665 8330 or [info@bctreaty.net](mailto:info@bctreaty.net). Or, visit the "Education" section of the Treaty Commission's web site – [www.bctreaty.net](http://www.bctreaty.net) – to view the handbook and video. 



## Kennedy Trail Elementary School/Surrey

Joe Silvey, aboriginal support worker with students

# Negotiators to tackle major issues

The outcome of recent high level talks is approval for treaty tables to explore a range of substantive issues where not much progress has been made in the past. The following is a brief explanation of the issues.

## Certainty

Treaty negotiations will determine certainty of ownership and jurisdiction and clarify governance responsibilities and authorities.

Certainty in a treaty means ownership and the rights, responsibilities and authorities of all parties are clear and predictable. The process for reviewing and amending the treaty must also be fair and predictable.

The challenge is to achieve certainty without extinguishing or impairing those aboriginal rights not specifically dealt with in a treaty. The governments of Canada and BC agree that extinguishment is not an option.

## Compensation

The BC Claims Task Force noted “negotiations will likely include consideration of a financial component to recognize past use of land and resources and First Nations’ ongoing interests, and to provide capital for community and economic development.

“...The financial component could take different forms, such as cash payments, resource revenue sharing, or credit ...Although recognition of past and current uses is important, detailed calculations would be technically difficult, costly and time-consuming. The task force encourages the parties to reach a negotiated solution by bargaining with good will and good faith in the determination of compensation.

“The allocation of resource revenues offers an opportunity to resolve the issue of financial compensation. At the same time, it could provide an important tool for building First Nations’ self sufficiency in the future and enable them to benefit from development activities within traditional territories.”

## Cooperative management/revenue sharing

These two issues are closely linked to certainty and compensation as set out above. Cooperative management and revenue sharing are ways First Nations retain their attachment to their traditional territories through cooperative decision-making and by obtaining economic and other benefits from those lands and resources.

## Land status

Reserve lands fall under federal jurisdiction, which means the land cannot be sold except to the Government of Canada. The Indian Act imposes a set of restrictions that have not served First Nations.

A central question in treaty negotiations is whether treaty settlement land, which would include land held in reserves, will fall under federal, provincial or First Nation jurisdiction or some combination of all three jurisdictions.

In the Nisga’a treaty, Nisga’a laws prevail generally in respect of matters that are internal to their lands and people. Federal and provincial laws prevail over matters of broader application, such as peace, order, public safety, construction of buildings, health services and environmental protection.

## Governance


While governance provisions are being actively negotiated at some treaty tables, no self-government arrangements have yet been concluded under the BC treaty process.

Governance negotiations typically address First Nation law-making powers, their source of authority and harmonization with the laws of Canada and British Columbia. Negotiations will determine the powers the First Nation has within the treaty – these powers have constitutional protection – and the powers the First Nation has outside the treaty which do not have constitutional protection.

First Nations assert their right to govern themselves is an inherent aboriginal right protected by the constitution – the right is not given or delegated, but is based on their existence as organized societies in this country for thousands of years.

The Government of Canada recognizes that aboriginal people have an inherent, constitutionally protected right to self government – the right to manage their own affairs. The BC Government has indicated a desire to negotiate a delegated form of self government.

## Fiscal relations

Fiscal relations are the financial arrangements that secure for a First Nation government sufficient funding to meet its peoples’ own priorities including its service and development needs. Arrangements may include transfers from other governments, taxes, and revenues collected by the First Nation. When combined, these sources define the fiscal relationship between a First Nation and the governments of Canada and BC. 

# Interim

## MEASURES WATCH

*Interim measures agreements (IMAs) provide for the protection, management or use of land and resources before treaties are concluded. The agreements are designed to deliver immediate benefits to First Nations; serve as building blocks for final treaties; and provide a greater degree of certainty for land management and for business development.*

### New Agreements

January 2003

#### Ktunaxa/Kinbasket Tribal Council

(KKTC) signed a forestry and land-use planning accord to implement and sustain a KKTC Lands and Resources Agency. Under the agreement, KKTC will identify business and employment opportunities related to forestry, recreation and tourism; develop land-use planning and consultation protocols with the Ministry of Forests and the Ministry of Sustainable Resource Management; and establish and implement a co-operative forest management model for the Dominion Coal Blocks area. KKTC also plans to prepare for a forest tenure application and to explore a working partnership with Tembec, a forestry company operating in the Dominion Coal Blocks area.

October 2002

A two-year agreement signed by **Hul'qumi'num Treaty Group** (HTG) and the Ministry of Water, Land and Air Protection provides funding to expand economic and employment opportunities related to shellfish aquaculture. In addition to identifying sites with the best potential for commercial aquaculture, HTG will develop business plans so its members can apply for shellfish tenures.

Following the agreement, Hul'qumi'num Chief Negotiator Robert Morales said "our communities need results now and this economic measure will ensure that that happens."

**Westbank First Nation** and the Ministry of Forests signed a five-year interim measures agreement to promote the First Nation's participation in the forestry sector. A community forest pilot award, signed as part of the agreement, will allow Westbank to harvest 55,000 cubic metres of timber per year. Under the agreement, Westbank First Nation will begin harvesting once a business plan has been submitted and approved by the Ministry of Forests. The agreement also provides for the creation of a joint forestry council, including members from Westbank and the Ministry of Forests, to discuss forestry management within Westbank's traditional territory.

"Today's agreement will lead to new opportunities for the Westbank First Nation and provide a basis for working relationships between government, Westbank and local forest companies," said Forests Minister Michael de Jong in a public statement.

### Update on Turning Point


In April 2001, Gitga'at First Nation, Haida Nation, Haisla Nation, Heiltsuk Nation, Kitasoo/Xaixais First Nation and Metlakatla First Nation signed the General Protocol Agreement – 'Turning Point' – with BC to promote First Nation involvement in provincial land use planning processes and to help conclude interim measures agreements.

Through the protocol framework, land and resource management planning processes, including the Central Coast Land and Resource Management Plan

(LRMP), were endorsed by First Nations, forestry companies, community groups, environmentalists and truck loggers. As part of the process, BC has protected 441,256 hectares of Crown land ranging from Knight Inlet to Princess Royal Island – home of the Kermodé Spirit Bear – and deferred logging on an additional 533,838 hectares. First Nations comprise more than half the population in the plan area.

### Fish and Aquatic Resources Framework

As part of Turning Point discussions, Gitga'at First Nation, Haida Nation Haisla Nation, Heiltsuk Nation, Kitasoo (Xaixais) First Nation, Metlakatla First Nation, and Wuikinuxv (Oweekeno) Nation endorsed a framework for future agreements on fish and aquatic resources agreement. The agreement, signed with the Department of Fisheries and Oceans and Indian and Northern Affairs Canada in November, will help facilitate agreements on fish and aquatic economic development opportunities and skill development, participation in marine use planning, exploration of cooperative fisheries management arrangements and testing for potential treaty arrangements. The framework also commits the parties to develop work plans related to the marine use planning, economic opportunities and cooperative fisheries management.

"We are taking the same approach to aquatic resources as we are with the Central Coast Land Management Plan," says Percy Starr, Chief, Kitasoo (Xaixais) First Nation. "All we want is enough access to resources to create and sustain jobs today, while protecting our traditional territory for future generations. That's our vision." 

# Status

## REPORT

There are now 53 First Nations participating in the BC treaty process, representing 122 Indian Act bands (114 in B.C. and eight in the Yukon) and two-thirds of all aboriginal people in B.C. Because some First Nations negotiate at a common table, there are 42 sets of negotiations underway. The treaty process is voluntary and open to all First Nations in B.C.

There are 42 First Nations (34 treaty tables) in Stage 4 agreement-in-principle negotiations and one First Nation in Stage 5 negotiations to finalize a treaty.

### 5 First Nations in Stage 2

Acho Dene Koe First Nation  
Council of the Haida Nation  
Hupacasath First Nation

### Members of the Kaska Nation

Liard First Nation  
Ross River Dena Council

### 5 First Nations in Stage 3

Cheslatta Carrier Nation  
In-SHUCK-ch Council  
Musqueam Nation  
Squamish Nation  
Quatsino First Nation (member,  
Winalagalis Treaty Group)

### 42 First Nations in Stage 4

Ditidaht First Nation and  
Pacheedaht Band

Cariboo Tribal Council  
Carrier Sekani Tribal Council  
Esketemc First Nation  
Gitanyow Hereditary Chiefs  
Gitxsan Hereditary Chiefs  
Haisla Nation  
Heiltsuk Nation  
Homalco Indian Band  
Hul'qumi'num Treaty Group

### Member of the Kaska Nation

Kaska Dena Council

Katzie Indian Band  
Klahoose Indian Band  
Ktunaxa/Kinbasket Treaty  
Council  
Laich-Kwil-Tach K'omoks  
Tlowitsis Council of Chiefs  
Lake Babine Nation

Lheidli T'enneh Band  
Nazko Indian Band

### Northern Regional Negotiation Table Members

Carcross/Tagish First  
Nation  
Champagne and Aishihik  
First Nations  
Taku River Tlingit First  
Nation  
Teslin Tlingit Council

Nuu-chah-nulth Tribal Council  
Oweekeno Nation  
Siammon Indian Band  
Snuneymuxw First Nation  
Sto:Lo Nation  
Te'Mexw Treaty Association  
Tsawwassen First Nation  
Tsay Keh Dene Band

Tsimshian Nation  
Tsleil-Waututh Nation  
Westbank First Nation  
Wet'suwet'en Nation

### Winalagalis Treaty Group Members

Kwakiutl Nation  
'Ngmgis Nation  
Da'naxda'xw Awaetlatla  
Nation  
Gwa'Sala-'Nakwaxda'xw  
Nation  
Tlatlasikwala Nation

Yale First Nation  
Yekooche Nation

### 1 First Nation in Stage 5

Sechelt Indian Band

## Cariboo sets sight on tourism vision

**A** boriginal tourism is a multi-million dollar industry in Canada with plenty of growth potential in B.C.

The Cariboo Tribal Council is seeking ways to tap into that growing tourism market through a coordinated Cariboo approach involving its neighbours.

With support from the Treaty Commission's regional visioning project, Cariboo Tribal Council played host to approximately 70 people with an interest in tourism including people involved in aboriginal tourism ventures and non-aboriginal operators. The goal is to develop a regional aboriginal and cultural tourism strategy – an idea that arose at an earlier regional visioning event.

Facilitators Terry Hood, a BC Tourism director and Sandra White, a board member of the Canadian Tourism Commission, outlined for participants the challenges and opportunities in creating new tourism ventures. Cheryl Chapman, manager of Xatsull Heritage Village and Tom Schoen, owner of a historic B&B in Barkerville, shared their experiences and lessons learned in developing successful ventures in the region.

Participants were then challenged to create their own dream ventures and to brainstorm opportunities for regional cooperation and planning in tourism development – taking as their inspiration the Cariboo's unique character, history and culture. A summary of the findings

will be the first step in building a comprehensive plan. Volunteers from several Cariboo communities hope to continue the dialogue among First Nations and stakeholders in the region. Indian and Northern Affairs Canada provided support to the regional visioning project. [🔗](#)



### Regional Visioning

Participants develop a tourism strategy