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**REFERENDUM IS THE WRONG WAY TO RATIFY TREATIES
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A public referendum is the wrong tool to use for ratification of treaties, for these reasons:

- The parties have agreed otherwise.
- Treaties are about rights, not about voter preferences.
- A referendum is too blunt an instrument to deliver meaningful input on an issue as complex as a treaty.

The Nisga'a Treaty was negotiated outside the BC Treaty Process overseen by the Treaty Commission and so the Commission has no direct involvement in the current controversy over whether it should be ratified by public referendum. But the Treaty Commission does have a vital interest in protecting the BC treaty process - for the sake of the 46 other negotiating tables where all parties have invested so much.

The Treaty Commission does not negotiate treaties; we facilitate negotiations. We are the impartial keepers of the process that was agreed to by the federal and provincial governments and the First Nations Summit. It is our duty to protect and advance that process, and to inform the public about treaty negotiations. This is why we have entered into this highly politicized debate.

1. What have the parties agreed?

At each treaty table, the parties agree on how the final treaty will be ratified before negotiations begin. In the case of the Nisga'a, and in the case of all negotiations within the BC treaty process, the governments of Canada and British Columbia have committed to a process for ratification that precludes holding a referendum. They have agreed to final approval by cabinet decision, followed by legislation.

It makes sense to do it this way.

The people who tell their negotiators what to negotiate must be the same people who will approve the final treaty. Treaty negotiations are costly in time, money and human effort. First Nations will make the enormous commitment that serious negotiations require only if there is reasonable certainty that the deal arrived at in the end can be

delivered. And if First Nations lose faith in negotiations, we know in BC that the alternatives are litigation and confrontation.

2. Treaties & rights

It is beyond argument that there is such a thing in Canada as aboriginal rights and title. The parties have agreed to give effect to them through treaties, as the Supreme Court of Canada has repeatedly urged. These rights cannot be denied, no matter what the result of a referendum may be. If a referendum resulted in a 'No' vote, what would that mean? Aboriginal rights and title would still exist and would still require definition, through the courts or otherwise, on a case by case basis.

Canadian democracy means more than 'majority rules'. It also means the protection of fundamental rights and entitlements by the rule of law. That is part of our modern culture and it does not mean putting the rights of every First Nation, as defined by a treaty, to a country-wide or even province-wide vote.

3. A blunt instrument

A referendum is useful for questions to which there is a Yes or No answer. The Nisga'a Treaty is a complex document running to many chapters and encompassing subject areas from adoption to fisheries and forests. If it were rejected by a referendum, what information would that convey? How would governments know which part of their mandates needed to be adjusted?

Because a treaty contains so many distinct provisions, an overwhelming No vote may simply mean that each voter takes exception to only one of hundreds of provisions. Even so, it would be read as rejection of the entire agreement.

The BC Treaty Process provides many opportunities for British Columbians to learn about and become involved in treaty negotiations as they proceed. Main table meetings are open to the public, and through consultative committees at several levels, citizens can provide constructive input into the development of government mandates at the front end of negotiations, where they can make a real difference.

Why the Nisga'a will vote

The referendum among the Nisga'a is another matter. Aboriginal rights are collective rights, held by aboriginal people, not by band councils or tribal councils. The treaty will not be legally binding until approved by those aboriginal people. And the federal government, which has a legal obligation to deal with First Nations in the context of a relationship of trust, needs the ratification of individual members in order to protect its own position. So, the fact that the treaty will be ratified by Nisga'a members is not an argument for ratification by voters at large, whose governments have the authority and responsibility to enter into treaties on their behalf.

Referendum would be wrong

Others have spoken about why a referendum is not required by law. The Treaty Commission goes further and says that the honour of the Crown requires adherence to the ratification process that was agreed to, and that a referendum would mark the end of the negotiation of modern day treaties throughout British Columbia.

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