



**For immediate release
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**SPEECH BY THE CHIEF COMMISSIONER ON PROPOSALS FOR A REFERENDUM
ON TREATY MANDATES**

I have been asked to speak on the proposal which you may have seen in the newspaper or heard on radio that there be a province-wide referendum upon the provincial government's mandate for treaty negotiations. The Treaty Commission has already spoken out on this proposal and I welcome the opportunity to explain why we did so.

Calls for a referendum have surfaced periodically over the past two and one half years and appeared in some of the submissions made to the Select Standing Committee on Aboriginal Affairs when it conducted its province-wide hearings. However, it did not appear to be a proposal that was being taken seriously and did not arise during the Treaty Commission's appearance before the Committee.

The Select Standing Committee's Report was released at the beginning of July this year. It consisted of a majority report and a minority report. Only the minority proposed a referendum, a proposal rejected by the majority. At that point in time one could fairly assume that the minority proposal would go no further.

A few days later, a private organization took out full page ads in several newspapers announcing the beginning of a campaign for a province-wide referendum on a blueprint for treaties in British Columbia. That was followed by a brochure setting out its criticism of the Nisga'a agreement and the reasons why a referendum applicable to all treaties was necessary. The organization appears to be well financed, speaks through a skilled publicist, and actively seeks every opportunity to publicize its views. That is, of course, the right of every Canadian, a right protected by our Charter of Rights and Freedoms.

What troubled the Treaty Commissioners as this campaign continued was that important information was missing. It is information the public needs in order to assess the merits of this proposal.

The Treaty Commission is in a sensitive position. We do not negotiate at the treaty table, we facilitate. We are expected to be the 'keepers of the process' for treaty negotiations that the three principals have agreed to. Therefore we can and do comment on issues that affect the treaty process, but we must not take a position on the substantive issues that the parties are negotiating. Above all, we must remain impartial and apolitical.

However, we do have a duty, within our limited resources, to inform and to educate the public regarding treaty negotiations, and we decided to provide the media with information that we thought the public needed. We did so with some misgivings, as we knew we would be accused of entering a political debate. Also, it is a debate based principally on rhetoric, and our reasons are somewhat technical and require some reflection.

Our essential point is a simple one. Within the Treaty Commission process, the provincial government has committed to a procedure for the final approval of treaties that precludes holding a referendum.

At each treaty table, the parties must disclose their ratification procedures before negotiations begin. This is done by an exchange of letters. The Governments of Canada and British Columbia have consistently said that a treaty would receive final approval by cabinet decision followed by legislation. The letter delivered by the B.C. Minister of Aboriginal Affairs to each First Nation states, and I quote, "The provincial legal ratification procedure for treaties will be to obtain an Executive Decision from Cabinet and to pass enabling legislation in the House."

There is a sound reason for disclosing ratification procedures at the outset.

Treaties take years to negotiate and demand an enormous commitment of human and financial resources. For First Nations it is particularly onerous because most must borrow to build the capacity to negotiate, to hire the expertise they need, and to consult with their people on and off reserve throughout the negotiations. With that much at stake, the parties must find out each others' procedures for approving the final treaty. It is essential that the people who will approve the final treaty are the same people who are telling their negotiators what to negotiate. If any of the negotiators are getting their instructions from a different source than the body that finally approves the treaty, the negotiations are likely to be a monumental waste of time, money and effort.

29 First Nations are negotiating agreements in principle under the Treaty Commission process relying on the fact that government negotiators have obtained, and will continue to obtain, their mandates from federal and provincial cabinets, and that those same cabinets will approve the resulting treaties.

It is, we think, self evident that the provincial government must honour the commitments it has made to First Nations and to the process. The provincial government cannot agree to hold a referendum because the cabinet would be bound by the results of the referendum which might well be different from the mandates cabinet has already approved. The public has the right to know this, and to know that a referendum would be a breach of faith by the provincial government that would disrupt treaty negotiations in this province and leave First Nations without an alternative to confrontation and litigation.

The Treaty Commission is also concerned by the claim that a referendum is the proper democratic tool to establish a provincial mandate for treaties. Referendums are indeed useful to bring finality to an issue for which a government does not have a mandate; but it should be an issue that can be framed as a simple question to be answered by 'yes' or 'no'. Provincial negotiating mandates are not that kind of an issue. Mandates for treaties must cover a wide variety of topics and must be flexible so that they can evolve over the course of negotiations. A referendum restricts voters to saying yes or no to a proposition; there is no opportunity to explore options that might make the proposition more acceptable. If the current negotiating mandates were rejected by referendum, how would the government know which part of the mandate was unacceptable to a majority of voters? How would the government find out what adjustments to its mandate would make it acceptable? Indeed, how would a rejection enable the government to give any direction to its negotiators?

Surely the appropriate democratic tool for mandates is the same as that for any significant provincial undertaking: consultation, consultation and more consultation.

I must note that the provincial government has already rejected a referendum on its mandate and has put in place an extensive mechanism for consultation.

Lastly, the Treaty Commission is concerned that the promotional material being distributed to the public by this organization contains arguments based on incorrect information.

This group believes a compelling argument for a referendum is that the Nisga'a will have a vote on their treaty. "So", they argue, "its only fair that all British Columbians have an equal chance to have their say." They imply that the Nisga'a are exercising a right denied to non-aboriginals. This is misleading. The Nisga'a are not exercising a right, they are meeting an obligation. Aboriginal rights are collectively held by aboriginal people, not by band councils or tribal councils created since contact with Europeans. The treaty will not be legally binding until approved by the aboriginal members. However, the governments of Canada and British Columbia have the constitutional authority and responsibility to negotiate and approve treaties with First Nations. It is those governments, and not non-aboriginal people, who must approve a treaty before it is legally binding.

I hope that my remarks will have helped you to a better understanding of some of the principles on which treaty negotiations are based, and why the Treaty Commission has spoken out in defence of those principles.

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For more information contact:
Brian Mitchell
Communications Manager
British Columbia Treaty Commission
604 482-9215
info@bctreaty.net