

British Columbia TREATY COMMISSION

Independent Facilitator for Treaty Negotiations in British Columbia

U P D A T E

NOVEMBER 2001

Recommendations starting point for talks

The Treaty Commission's review of the treaty process has prompted the First Nations Summit and the governments of Canada and BC to consider changes as early as January.

"The Principals are committed to making the treaty process more effective using the Treaty Commission's review as a starting point for the discussions," said Chief Commissioner Miles Richardson.

The decision to take action comes just one month after the findings from the review of the treaty process were published as a companion document to the Treaty Commission's annual report. It is the first major review since the treaty process began in 1993.

When the review was announced in June, Richardson said he hoped it would help shape the future of treaty negotiations in this province. But he said it is the parties who will ultimately decide what they do with the Treaty Commission's recommendations.

Indian and Northern Affairs Minister Robert Nault, BC's Minister Responsible for Treaty Negotiations Geoff Plant and First Nations Summit Task Group members

Kathryn Teneese, Gerald Wesley and Bill Wilson agreed to have their senior officials work on options for changes that they will consider when they next meet in January. They also agreed that, through the senior officials, each of them would raise any additional issues they feel are necessary to improve the process and hasten progress.

While comprehensive treaties remain the goal, the Treaty Commission has recommended, as a result of its review, that treaties will be best accomplished through a series of incremental steps, or building blocks.

Building treaties incrementally means: negotiate more interim protection measures; intensify high level talks on major issues common to all tables; negotiate 'slim' agreements in principle; give priority to governance initiatives; and allow First Nations 'time-outs' to develop their governance and vision for treaty.

Recommendations also call for the Principals to: be candid in negotiations; respect the tripartite treaty process; address urban land issues; and improve public

information and consultation.

In its review the Treaty Commission noted that BC had instructed its negotiators not to negotiate on a wide range of issues — including First Nations self government, fiscal relations, and the constitutional status of lands — until after the results of next year's referendum are known. The Treaty Commission recommended that BC extend as far as possible the range of issues that can be addressed pending the outcome of the referendum.

In response to these concerns, BC has asked Canada and First Nations to give notice in writing of any particular problems that have arisen at negotiating tables as a result of the instructions given to provincial negotiators.

I N S I D E

> Fiscal issues	2
> Referendum	3
> Building relationships	4
> Interim measures	6
> Progress report	8



Principals tackle fiscal issues

Financial arrangements between levels of government are complex. Taxation authorities, responsibility for delivery of services, and many other issues have to be resolved.

Finding workable solutions for taxation and fiscal relations at individual negotiation tables is a time consuming process.

Realizing this, the First Nations Summit Task Group and the governments of Canada and BC last fall established a tripartite working group to explore the entire field of post-treaty fiscal relations between First Nations and other governments in Canada. For example, the Fiscal

Relations Working Group is considering which tax powers First Nations will exercise, how First Nation governments will be financed and how they will work with other levels of government.

These discussions are intended to support, but not replace fiscal relations negotiations at individual treaty tables. Negotiators at each treaty table may elect to adopt, modify or reject the options developed by the working group.

Fiscal Relations Secretariat established

The First Nations Summit has established, with funding from Canada, a Fiscal Relations Secretariat to help articulate First Nations' interests at

the Fiscal Relations Working Group. In addition, the Secretariat provides information and technical expertise to individual First Nations. The Secretariat will explore options on fiscal issues that are common to all First Nations in the treaty process. It does not negotiate on behalf of individual First Nations.

The Treaty Commission has urged the Principals to use the Fiscal Relations Working Group as a model for an approach to other issues that are common to all or most treaty tables. The Principals now have agreed to tackle the issues of certainty and compensation in high-level discussions.

Treaties flow cash, funding for First Nations governance

Many First Nations will receive through treaties a one-time cash payment, ongoing funding for operations, programs, services and infrastructure, and funding to make the change to self government.

The following financial components of a treaty are offered for illustrative purposes only, and are based on the Nisga'a experience. Each First Nation will negotiate a financial package that meets the requirements of its people.

Capital Transfer

One-time cash payments from the governments of Canada and BC are referred to as the capital transfers detailed in a treaty. Based on the payment schedule negotiated and then constitutionally protected by

the treaty, the capital transfer may be made to the First Nation government over several years. For example, in the Nisga'a Final Agreement, payment of \$190 million* to the Nisga'a is made over 14 years. BC's portion is \$14.4 million.

Funding for First Nation government operations

The three parties may also negotiate funding for the First Nation's government operations, programs and services. The amount of money for these government activities is settled during final treaty negotiations. In treaties concluded in BC and other parts of Canada, funding for First Nation government operations typically cover several years at

a time, are renegotiated periodically and are not usually constitutionally protected.

Generally, funding provided by Canada for all First Nation government operations, programs and services to members will be combined and forwarded to the First Nation government. These funding agreements are intended to provide stability and predictability and allow for longer-term planning and budgeting. For example, in the Nisga'a Final Agreement, it is agreed the parties will negotiate and attempt to reach agreement on a funding agreement every five years or as agreed. Funding for the first five years is \$16.1 million.

Treaty Commission issues warning

The Select Standing Committee on Aboriginal Affairs faces a daunting challenge, according to the Treaty Commission in its submission to the committee.

Chief Commissioner Miles Richardson speaking to the 10 Liberal MLAs in Vancouver said the committee has been asked to frame a question, or questions, that will engage the public in the complex arena of treaty negotiations and elicit meaningful input.

Reading from a prepared statement Richardson said that as the committee undertakes its task it should bear in mind that the issues treaty negotiations must address have largely been laid down in law.

The submission also contains a warning for committee members: “If you should fail in your task, you will pit people against one another and threaten not only the treaty process but also peace in this province.”

If the committee succeeds, the Treaty Commission believes the referendum and the committee’s work leading up to the vote could provide an opportunity to inform

many more British Columbians about treaty negotiations. “We trust a major communication effort will be initiated by the BC government to do just that.

If the provincial government is to achieve its stated goal of engaging British Columbians in this historic exercise, the Treaty Commission says the government will need to strengthen the processes now in place for public consultation and participation.

The Treaty Commission points out that it is entirely appropriate, and even healthy, for any party to refine its mandate and guiding principles and to build support among its constituents. However, if the BC government’s commitment to the treaty process is to change in a fundamental way, or violate agreements already reached, the Treaty Commission says there could be irreparable damage to the negotiation process and ramifications for the honour of the Crown.

The submission acknowledges that change will be needed to make the treaty process more effective. But change must come as the result of tripartite agreement achieved through full, open and honest discussion, not through unilateral action.

The Treaty Commission has repeatedly called for more creativity and flexibility in negotiations to address the gap between First Nations’ expectations and the offers put forward by the governments of Canada and British Columbia.

“We strongly urge this committee to discard any suggestions that would diminish those opportunities for creativity and flexibility. In other words, do not unnecessarily tie the hands of the government. Be constructive in your approach so that we can build on the support we already have for treaty making in this province.”

Ultimately, the BC government must have the authority to balance the various interests in this province when it enters into agreements with First Nations and the Government of Canada. There can be no guarantee that each party to a set of negotiations will get everything it wants. Treaty making is about change that can be achieved through the give-and-take of government-to-government negotiations. At the end of the day the Treaty Commission believes there can be treaties that give the parties enough of what they do want so that there can be agreements.

The submission asks the Government of British Columbia to consider seeking a permissive mandate that allows for the kind of creativity and flexibility the Treaty Commission thinks is necessary for treaty negotiations to be successful.

“And when you are thinking about what the question or questions should be, we urge you to think long and hard about where the responses will lead. Any ambiguity around the referendum result may lead to litigation, further delay and disruption in negotiations.”

TREATY UPDATE

Treaty Update is published by the British Columbia Treaty Commission, #203 - 1155 West Pender Street, Vancouver, BC V6E 2P4.

Contact us by
telephone at (604) 482-9200 or
toll-free 1-800-665-8330; or
fax (604) 482-9222 or
email info@bctreaty.net

Treaty Update is distributed to organizations and individuals interested in treaty negotiations in British Columbia. Please feel free to circulate or reprint the material in this newsletter.

Treaty Update is also available on the Treaty Commission’s web site at www.bctreaty.net

Treaties flow

(continued from page 2)

Funding to implement the treaty

Funding First Nation governments to make the change from operating under the federal Indian Act to self government may also form part of the financial arrangements agreed to in a treaty. For example, funding may be negotiated to develop local laws and a First Nation constitution, provide training, or to determine eligibility for treaty benefits, and undertake enrolment and ratification for treaty purposes. Including funds for training and transition, the Nisga'a Nation received for treaty implementation, \$40.6 million (1999 dollars).

Funding for infrastructure

There may be one-time costs established in the treaty for physical infrastructure. An example is the BC government's commitment of \$41 million to pave the Nisga'a Highway.

First Nations must repay loans

Each year, most First Nations in the BC treaty process obtain negotiation support funding from the governments of Canada and BC to mount an effective negotiation. The Treaty Commission allocates the funds, 80 per cent as a loan and 20 per cent as non-repayable contributions. Canada provides the loan and 60 per cent of the contribution while BC provides 40 per cent of the contribution.

Loans generally become repayable once a treaty is signed and may be deducted from the capital transfer or paid over time.



George Atamanenko Co-chair, Cariboo-Chilcotin Regional Treaty Negotiation Advisory Committee

It's a mild summer day in Cariboo-Chilcotin country and George Keener is doing one of his favourite things — sharing the traditional ways of the Northern Secwepemc people. Gathered around the sweat lodge at Xatsu'll Heritage Village, aboriginal and non-aboriginal neighbours embark together on a walk into the old world and a journey into the new.

Wandering through the reconstructed riverside village, the 70-year old respected aboriginal elder explains the significance of healing, medicinal, spiritual and straight 'sweats' to an attentive group of local community and business leaders. As he leads his guests through the village cooking pits, guest teepees, pit houses and drying racks, Keener unravels a fascinating glimpse at an intricate way of life.

Comm

Close to eighty people will experience the magic of Xatsu'll today. By nightfall, sharing a traditional feast of salmon, bannock, rice and fruit, a neighbourly spirit emerges. Tomorrow aboriginal and non-aboriginal people will begin to see the common ground among them.

Learning to work together

The Northern Secwepemc te Qelmucw Nation (NStQ) comprises 1,900 people and four communities: Tsq'escen' (Canim Lake), Stweem'c /Xatl'tem (Canoe Creek/Dog Creek), Xatsu'll/Cmetem' (Soda Creek /DeepCreek) and T'exelc (Williams Lake Indian Band). Together, the four communities belong to the Cariboo Tribal Council.

The Xatsu'll Tour is part of ongoing, cooperative efforts by the Cariboo Tribal Council, Canada and BC to build bridges between aboriginal and non-aboriginal people living in Cariboo-Chilcotin. The three parties work together on this goal, and on providing information on treaty negotiations, through the NStQ Public Information Working Group (PIWG).

"We have to work together; cross this bridge together; learn each other's histories," says Cheryl Chapman, Councillor, Soda Creek Band.

on Ground

In June, the PIWG organized “Treaty Awareness Month” in response to a proclamation made by Williams Lake, 100 Mile House, Wells, Quesnel and the Cariboo Regional District. In addition to the Xatsu’ll Tour, treaty awareness month featured displays and information booths at the Cariboo Regional District libraries and an open house at the Cariboo Tribal Council offices on National Aboriginal Day (June 21).

“Our goal in making the proclamation was to communicate to aboriginal and non-aboriginal people living in the Williams Lake community that Williams Lake supports the resolution of aboriginal rights and title,” said Williams Lake Mayor Ivan Bonnell.



Neighbours Meeting Neighbours

Building from the Xatsu’ll Tour, the PIWG organized a ‘Neighbours Meeting Neighbours’ event at 100 Mile House. Instead of taking participants on a journey into the past, this event focused on a modern theme — ‘Treaty Olympics’.

Participants were organized into groups with people they had never met to cooperate on a unique challenge. The treaty teams set out on a scavenger hunt to create symbols with which they could illustrate various issues in treaty negotiations such as forestry, wildlife, health, justice and fish.

Other Olympic events included croquet, frisbee and lahal, a traditional aboriginal game.

The event attracted eighty people representing a wide range of organizations including the Cariboo Lumber Manufacturers Association, Taseko Mines Ltd., ranchers, the District of 100 Mile House, the Cariboo School District and various community and business leaders. As with the Xatsu’ll tour, the Northern Secwepemc community and the Cariboo Tribal Council were on hand to answer participants’ questions.

At the end of the day, sitting amongst neighbours at an informal

barbeque, each participant had the opportunity to share a bit about themselves. As a memento of this unique exchange, participants received a poster featuring photos from the day’s events.

George Atamanenko, rancher and co-chair of the Cariboo-Chilcotin Regional Treaty Negotiation Advisory Committee, feels that the events like Neighbours Meeting Neighbours are critical. “When people are uncertain about treaty negotiations, it’s important to see each other as human beings and start working together.”

Keener echoes this point. “We can learn from each other — care and share for each other. This is an old tradition. The tour made people realize that both aboriginal and non-aboriginal people have something to offer, something to share.”

PUBLIC INFORMATION

The BC Treaty Commission, Canada, BC and the First Nations Summit share responsibility for delivering information on the BC treaty process and treaty negotiations. The three parties in each set of negotiations – Canada, BC and First Nations – participate in Public Information Working Groups to provide specific information on their negotiation tables.

For more information on the Northern Secwepemc te Qelmucw PIWG, please contact:

Donnella Sellars
Cariboo Tribal Council
250-392-7361

*< Quesnel Mayer Steve Wallace
at Xatsu’ll dinner tour*

Interim Measures Watch

A look at recent interim measure developments – agreements enabling First Nations to manage or use land and resources in the interim before treaties are concluded.

One of the most important lessons of the last eight years in treaty negotiations is that a treaty, like any new relationship, must be built step-by-step over time. The Treaty Commission has urged Canada and BC to negotiate interim agreements that can serve as building blocks of treaties, and to provide sufficient funding for their implementation.

Interim measures negotiations resumed in July following the provincial election, but BC is not expected to commit funding necessary to conclude agreements until later this year. While there are no new interim agreements to report since June 2001, the Treaty Commission continues to track developments in the 59 interim agreements signed to date and to facilitate negotiations for future interim agreements.

Agreements underway with Tsleil-Waututh Nation and Katzie Indian Band demonstrate how First Nations are using interim funding to deliver benefits to their communities today and build better opportunities for tomorrow.

Tsleil-Waututh spearheads full-scale eco-tourism venture

Tsleil-Waututh Nation had a vision — a full-scale eco-tourism venture combining scenic features of the North Shore with the nation's rich cultural traditions.

The project had great potential, but it required substantial up-front costs. As part of on-going negotiations with Tsleil-Waututh, Canada and BC stepped in with interim measures funding to put the project into motion.

Tsleil-Waututh's first order of business was to assess the feasibility of a kayaking operation for Belcarra Regional Park — the nation's traditional winter village site. With solid research in hand, Tsleil-Waututh launched Belcarra Paddling Centre, offering kayaking tours, lessons, rentals and corporate team building. The kayaking operation was a logical spin-off from Tsleil-Waututh's successful Deep Cove canoe tours,

Takaya Tours, which offers a 'paddle back in time.' Accompanied by guides from the Tsleil Waututh Nation, kayaking and canoe tours paddle through ancient village sites. In addition to a variety of day-trip and overnight canoe and kayaking tours, Tsleil-Waututh offers customized tour packages. Tours operate from May through October.

With the Belcarra Paddling Centre underway, Tsleil-Waututh entered discussions with the District of North Vancouver (DNV) to develop a cooperative business relationship for Cates Park — a culturally significant area for the nation. In March 2001, Tsleil-Waututh signed a cultural agreement



with DNV to protect archaeological resources in the park and work towards mutually beneficial economic opportunities.

This summer Tsleil-Waututh developed an interpretation guide, which will allow Cates Park workers and kayaking operators to share the nation’s history and culture. Working together, Tsleil-Waututh and the DNV plan to replace totems in the park, restore or replace the Salish canoe and construct a canoe shed.

For the 375-member Tsleil-Waututh community, the cultural agreement represents an important step. “It is the way we as a First Nation can preserve some of our history and culture.”



Katzie lays governance groundwork

Katzie Indian Band, a small First Nation with approximately 460 members, is working with local municipalities to build their governance in preparation for a final treaty.

Using interim measures funding provided by Canada and BC, Katzie has a series of workshops underway to analyze their current governance and seek direction for future development. The first of this series convened in June with participants from the Katzie council and general community.

“During the workshop, we discovered that education is crucial to effective governance,” said Debbie Miller, Chief Negotiator, Katzie Indian Band and a participant at the workshop. “We also identified a need to restructure our council to promote better delivery of services.”

To provide community members with exposure to working governance systems, Katzie is exploring the possibility of using interim funding for internships and job shadowing opportunities with local governments and local businesses. These internships would build upon Katzie’s travelling intergovernmental working group, which has already convened informational sessions with the District of Maple Ridge, the District of Pitt Meadows and the Village of Belcarra. Katzie plans to develop similar working

relationships with the City of Surrey and the District of Langley.

In conjunction with governance workshops and internships, Katzie is conducting a community consultation project and a governance study. The consultation project, facilitated by two young women within the Katzie community, will explore Katzie’s governance vision. The governance study will allow Katzie to develop one or more post-treaty governance models.

“During the workshop, we discovered that education is crucial to effective governance.”

While tapping into the knowledge of local municipalities to seek direction for their own governance, Katzie is developing important relationships within their regional district. As a small First Nation spread across five separate Lower Mainland municipalities — Maple Ridge, Port Coquitlam, Pitt Meadows, Langley and Barnston Island — Katzie’s ability to work effectively with local governments is particularly important.

PROGRESS REPORT

There are 49 First Nations participating at 41 sets of negotiations in BC the treaty process.

There are 42 First Nations in stage four agreement-in-principle negotiations and one First Nation in stage five negotiations to finalize a treaty. Several First Nations are negotiating together.

2 First Nations in Stage 2

Council of the Haida Nation
Hupacasath First Nation

Taku River Tlingit First Nation
Teslin Tlingit Council

Winalagalis Treaty Group

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

Gitxsan Hereditary Chiefs
Haisla Nation
Heiltsuk Nation
Homalco Indian Band
Hul'qumi'num Treaty Group
Kaska Dena Council
Katzie Indian Band
Klahoose Indian Band
Ktunaxa/Kinbasket Treaty Council
Laich-Kwil-Tach K'omoks
Tlowitsis Council of Chiefs
Lheidli T'enneh Band
Nazko Indian Band
Nuu-chah-nulth Tribal Council
Oweekeno Nation
Sliammon 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
Yale First Nation
Yekooche Nation

4 First Nations in Stage 3

Cheslatta Carrier Nation
Musqueam Nation
Squamish Nation
Quatsino First Nation (member,
Winalagalis Treaty Group)

Ditidaht First Nation, and

Pacheedaht Band

42 First Nations in Stage 4

Northern Regional Negotiations

Carcross / Tagish First Nation
Champagne and Aishihik
First Nations

Cariboo Tribal Council

Carrier Sekani Tribal Council

Esketemc First Nation

Gitanyow Hereditary Chiefs

1 First Nation in Stage 5

Sechelt Indian Band

Strategies for governance

Government structures and land use topped the agenda when the Taku River Tlingit recently hosted a two-day workshop in Atlin.

About 40 people attended the workshop, including local community members, Teslin Tlingit representatives, guest speakers and treaty teams. Together, participants examined federal and provincial governance structures as well as those of Northern Regional Negotiation (NRN) First Nations. Key issues at the NRN table, including mineral tenure, parks and historic sites, were also discussed.

At the end of the two days people parted with a greater understanding of each other's political systems, which reflect the differences in their cultural realities,

and of each other. Treaty teams can use this information in future negotiations while community members can use it to provide direction to treaty negotiators.

The Treaty Commission has urged the Principals to allow 'time-outs' for the development of governance and vision. The workshop in Atlin is a beginning step on the path to good governance.

The Northern Regional Negotiation Table includes Taku River Tlingit First Nation, Teslin Tlingit Council, Champagne-Aishihik First Nations and Carcross / Tagish First Nation.

Correction

Annual Report 2001 contains two errors with respect to First Nation population numbers. Correct population numbers are as follows: Tsleil-Waututh Nation 375; and Northern Regional Negotiations member nations 2,600.

British Columbia
Treaty Commission
Update November 2001