

**Speaking Notes for
Kathleen Keating, Commissioner and Debra Hanuse, Commissioner
to
The Prime Minister's Caucus Task Force on
the Four Western Provinces**

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Check against delivery



**BC Treaty
Commission**

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INTRODUCTION

Members of the Task Force, the Treaty Commission appreciates the opportunity to appear before you this afternoon to talk about the progress being made in treaty making in British Columbia and to ask that the Government of Canada take a greater leadership role.

CURRENT STATUS OF NEGOTIATIONS

The Treaty Commission believes the status report I am about to give you does show that the governments of Canada, British Columbia and First Nations are making progress at the negotiating table.

There are **51 First Nations** in the BC treaty process.

These First Nations represent **65%** of the aboriginal people in the province.

The Nisga'a treaty negotiations started long before the Treaty Commission was established and were outside this process.

37 First Nations are currently negotiating Agreements in Principle.

At least **3 or 4 First Nations** may complete agreements in this fiscal year.

And there could be as many as **10 First Nations** negotiating **Final Agreements** by the end of next year.

Most significantly, together with the Sechelt First Nation, Canada and British Columbia signed the first Agreement in Principle in the BC treaty process last month. The openness of the Sechelt treaty process resulted in strong local and third party support for the Sechelt AIP. The Treaty Commission views this as a signal to British Columbians that community support for treaties is possible when people work together to reach solutions. The Sechelt AIP is proof that this **treaty process can deliver** in an honourable and respectful way.

There have been complaints that the treaty process in BC is **too slow**. But what I have just told you about the number of First Nations close to reaching agreements indicates **this is not so**. While no one will argue against more rapid progress, we have to remember that the BC treaty process is only five years old. Until the BC treaty process began, only one First Nation – the Nisga'a - were negotiating a treaty in BC. Today, 51 First Nations have taken that opportunity. The Nisga'a treaty took over 20 years.

Northern treaties were 13 to 17 years in negotiations.

Just last week, the Agreement in Principle with the Labrador Inuit was initialled. The Labrador Inuit Association filed its claim in 1977 and has been in tripartite negotiations since 1988. And, there will likely be another two years of negotiations to finalize the treaty. There have also been complaints that the treaty process is **too expensive**.

By March 31, 2000, the Treaty Commission will have administered just over \$150 million in negotiation support funding to the more than four dozen First Nations, **80%** of which is in the form of repayable loans.

Compared with other treaty negotiation efforts in Canada, the BC treaty process is **quite frugal**.

THE PRINCIPALS' REVIEW

Even though treaty making in BC is making progress, the process must respond to changes made necessary by the December 1997, Supreme Court of Canada decision in *Delgamuukw* and to respond to obstacles we have identified over the past five years. *Delgamuukw* brought legal clarity to a number of aspects of the treaty process. To deal with the legal reality and adapt to the challenges of the success of the treaty process (51 First Nations in a process designed with 30 First Nations in mind), the Treaty Commission recommended that the Principals – Canada, BC and the First Nations Summit – undertake a review.

With the Treaty Commission's Chief Commissioner in the chair, this review began last fall and continued in intensive discussions over the winter.

The focus of the review has been on finding ways to accelerate negotiations on land, resources and the financial components of treaties. Resolving issues around land and resources, sooner rather than later, will restore First Nations' confidence in the treaty process.

The Principals developed a series of recommendations in late January. The governments of Canada, BC and First Nations are now considering these recommendations aimed at reinvigorating the treaty process.

It's time to get on with that task.

SOME THINGS WE KNOW

The Treaty Commission believes there is agreement in British Columbia on the fundamentals of treaty making.

A **majority** of British Columbians...

... **agree** it's necessary to negotiate treaties with First Nations.

... **agree** it's time to get on with resolving these issues.

... **agree** there is no real alternative to treaty negotiations.

British Columbians have an opportunity now, with this treaty process, to finally address the issues that have divided us - those whose families have been here for thousands of years and those who are more recent arrivals.

It's an opportunity we shouldn't take for granted.

Even the harshest critics of the Nisga'a Final Agreement agree that **treaties are necessary**.

ADDRESSING THE POPULAR MISCONCEPTIONS

Josh Billings, the 19th century American humourist was fond of saying:

"The trouble with people is not that they don't know, but that they know so much that ain't so."

There are many things that people know about the BC treaty process that, unfortunately, "ain't so".

The Treaty Commission believes that the **Government of Canada** should more assertively move to correct these popular misconceptions.

It is a popular misconception that British Columbians have not been consulted or represented adequately in treaty making.

The fact is the BC treaty process is the most open treaty making process ever undertaken in Canada, and perhaps the world.

- Every treaty table is required to have an Openness Protocol that sets out times that the general public may attend negotiations.
- Every main table is advertised in the local media and listed on the Treaty Commission's web site. Local media and, sometimes, community cable cover treaty sessions.
- Tables have established Local Advisory Committees with direct access to the negotiating teams.
- Municipalities affected by treaty negotiations have established Treaty Advisory Committees with a representative on the provincial negotiating team.
- There is a Treaty Negotiation Advisory Committee where representatives of all major sectors of the BC economy advise BC and Canada on treaty mandates, interim measures and related matters.
- Framework Agreements and Agreements in Principle are public documents.

There is a popular misconception that treaties won't be final. There will continue to be disputes over land and resources.

The fact is the primary purpose of treaty making is to provide certainty of jurisdictions among Canada, BC and First Nations.

- Treaties are agreements between three parties. As such they can establish structures and mechanisms to deal with disputes and changing circumstances. This is somewhat analogous to the flexibility built into municipal financial arrangements.
- Aboriginal rights and title are defined and set out in treaties. This modification removes uncertainty.
- To demand that treaties provide a level of certainty so that they could never be challenged would set the bar impossibly high; higher than Canadians demand of their own laws and constitution.
- History has proven that court actions do not resolve these issues. In fact, the court has left more questions open than answered and has often implored the parties to resolve their disputes through good faith negotiations.

There is a popular misconception that treaties give rights to people based on race and establish race-based governments, and this conflicts with the concept of "one law for all".

The fact is treaties are about rights, not race.

- There is one law in Canada, the Constitution, which recognizes and protects aboriginal rights and title.
- The governments established (or re-established) through treaties are based on First Nations' existing rights and title.
- First Nations see these rights as essential to the survival of their language, culture and society.
- Given First Nations' experiences with the Indian Act, residential schools and repressive laws and policies, it is not surprising that they seek law-making authorities in these areas to protect themselves from the whims of future governments.

CONCLUSION

Task Force Members, these are just a few of the many misconceptions that have been given life in British Columbia. The Treaty Commission **accepts the challenge** of correcting these misconceptions and is doing what it can.

We trust the Prime Minister will use the resources of the federal government to help engender a **full, democratic and fact-based debate** on this extremely important topic. The Government of **Canada**, as the senior government, **must take a leadership role** on this issue for the benefit of all Canadians.

Informed people may disagree over the amount of land, resources, cash and governance that should be in a specific treaty. The Treaty Commission looks forward to the day that British Columbians and Canadians **seek out the facts and this informed debate begins**.