

TREATY COMMISSION

update

*The independent
voice of treaty
making in
British Columbia*

'Common table' established

The formation of a common table to advance treaty negotiations took another step with an agreement to move forward.

It has been agreed a common table comprising representatives from the governments of Canada, BC and First Nations will identify the issues and obstacles to progress and seek options that may be applied at individual treaty tables to expedite treaty negotiations. The Treaty Commission will chair meetings of the common table.

A/Chief Commissioner Jody Wilson says credit for establishment of the common table must be given to the First Nation Summit through its chief negotiators' forum, and unity protocol group. "They demonstrated vision and a commitment to work together to achieve changes to the provisions that the governments of Canada and BC bring to the table," she said. "However,

it will take commitment from all parties if these discussions are to have a positive impact on the treaty process."

All parties agreed the issues for consideration include: recognition/certainty, including shared territory issues; constitutional status of treaty lands; governance; co-management, including structures for shared decision-making; fiscal relations including own source revenue and taxation; and fisheries.

Also established is the Treaty Revitalization Working Group, comprising senior officials for the governments of Canada and BC and First Nations that will examine process issues, for example, the role of the Treaty Commission.

The Treaty Commission has allocated \$400,000 in contribution funding to support First Nations in preparing for Common Table Working Group meetings with the federal and provincial governments. ☉

New commissioners bring wealth of experience



Jerry Lampert

Two new commissioners with a wealth of experience in British Columbia will help guide the Treaty Commission.

Jerry Lampert, the new federal appointee and Dave Haggard, the new provincial appointee are known for their contributions in business and industry.

Drawing on 15 years of fostering relationships among businesses and First Nations in BC, Lampert will focus

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BC TREATY COMMISSION

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Jack Weisgerber farewell – A legacy of commitment

Wrapping up six successful years as the provincially appointed representative of the BC Treaty Commission, Jack Weisgerber leaves behind a reputation as a knowledgeable and insightful adviser who was strongly dedicated to resolving issues and moving negotiations forward.



Jack Weisgerber

Jody Wilson, acting chief commissioner agrees, "It has been a pleasure to work with Commissioner Weisgerber over the last number of years. He has

been a valued member of the Treaty Commission and will be missed for his leadership and genuine commitment to the Commission and the treaty process."

"On a personal note, I will miss Jack, not only for his guidance and support, but for his kindness and generosity as a trusted friend. In the face of the challenges that come with the role of commissioner, Jack was always there to lend an ear and assist in finding solutions."

Weisgerber was appointed to the Treaty Commission in February 2002 by the Government of British Columbia and served three two-year terms. He brought to the table a unique perspective of issues important to both government and First Nations.


This knowledge was acquired during his 15 years as a member of the BC legislature during which time he became BC's first minister of aboriginal affairs. His leadership was key to the formation of the BC Claims Task Force, and he was recognized by many as one of the architects of the treaty process.

Weisgerber believes there has been a change in perspective by all parties

since then, especially over the past 10 years. "There has been an increased understanding, support and endorsement of the need to resolve issues with First Nations, and recognition that treaties are the best way to achieve reconciliation," he explains.

One of his fondest memories was of the signing ceremony of the Maa-nulth Agreement in Principle. "The atmosphere was celebratory, full of emotion; a feeling of hope," he said. "People understood that history was being made in that room, changing their future for the better."

Weisgerber believes there is hope for more success in the future. The exploration of the Common Table approach and the associated treaty revitalization approach are potentially one of the biggest opportunities he has seen for progress in the treaty negotiation process.

"There are still fundamental issues deeply entrenched that are holding back treaty negotiations," he says. "The Common Table has the potential, with a commitment at the highest level by all parties, to achieve mutually agreeable resolutions that could be the impetus for First Nations to move forward." 

Comings and goings *Recent changes at the Treaty Commission*

Deena Tokaryk joined the Treaty Commission as communications officer in February 2008. She was a communications specialist at Telus prior to her appointment.

Alexis Cole joined the Treaty Commission in December 2007 as funding assistant. Alexis is a band member of Kwanlin Dun First Nation in Whitehorse, Yukon.

Rebecca Lutz joined the Treaty Commission in November 2007 as receptionist.

Raymond Lamont joined the Treaty Commission as a treaty advisor in September 2007. Previously, he was a doctoral candidate in the faculty of law at the University of Victoria and research director of a project concerning aboriginal justice strategies.

Kenzie Andrews who joined the Treaty Commission in June 2004, left after 3½ years as communications officer to pursue another career.

Stephanie Yucesoy is on maternity leave as of January 2008. She joined the Treaty Commission in May 2000 as a funding clerk and was subsequently appointed funding assistant.

update

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K'omoks well into substantive negotiations

K'omoks First Nation has officially entered Stage 4 of the BC treaty process following federal approval of the framework agreement.

Good progress has been made by K'omoks, BC, and Canada in negotiations on substantive issues over the past year. Attaining this milestone bodes well for continued success in negotiations and the achievement of an agreement in principle.

The Treaty Commission, at their meeting February 27, 2008, formally accepted the K'omoks Framework Agreement. K'omoks Chief Ernie Hardy and British Columbia Minister of Aboriginal Relations and Reconciliation Michael De Jong had signed the Agreement in 2007 and the parties were awaiting the signature of Indian Affairs Minister Chuck Strahl, who added his signature in early 2008. The Framework Agreement identifies treaty issues the parties intend to negotiate.


Moving the process forward is a priority for K'omoks, as they are facing pressure from increasing demand for land and resources in the Comox Valley on central Vancouver Island where the First Nation is located.

"It's imperative K'omoks achieve a treaty as quickly as possible to establish title to the land and resources," explains Ron Frank, a technical negotiator with the First Nation.

This motivation prompted K'omoks to separate from the Hamatla Treaty Society in late 2006 to move ahead in negotiations on their own. K'omoks filed a separate Statement of Intent (SOI) which was accepted by the Treaty Commission in early 2007. While awaiting final approval of the framework agreement, the parties began drafting chapters for the agreement in principle (AIP). Significant progress has since been made, with several chapters of the AIP substantially complete.

K'omoks is also developing shared territory agreements with a number of neighbouring First Nations, including the Sliammon (Tla'amin) First Nation in Powell River. Sliammon is in the Final Agreement or Stage 5 of the BC treaty process and is currently working to finalize their treaty. Sliammon and K'omoks successfully completed and signed a shared territory agreement between their two nations in February 2008.

K'omoks is striving for completion of an AIP in 2009, and will seek ratification by community members. Frank says maintaining two-way communication between the treaty team and community members to ensure they understand what's on the table and feel they've had a say is key to the success of this initiative.

"Our ultimate goal is to ensure the community makes an informed choice," he said. "We plan to maintain an open dialogue as we progress through the final stages of negotiation." 

North Vancouver Island pressing for treaties

Communication, regional cooperation and strategic action can make a difference for northern Vancouver Island, participants agreed at a forum entitled Regional Opportunities and the BC Treaty Process.

First Nation, local and regional government participants agreed it is important to:

- > Exchange information regionally regarding treaties, economic activities and development;
- > Choose communication for resolving differences;

- > Establish regular communication mechanisms, such as periodic meetings and updates;
- > Recognize that decisions have implications for each other;
- > Recognize that pooling resources using economies of scale and other cooperative action can facilitate regional initiatives;
- > Look for potential projects that can take advantage of synergies; and
- > Look for vehicles outside the treaty process to fund or facilitate regional projects.

Participants agreed there were a number of actions they could take to press their concerns:

- > Convey to senior governments the importance regionally of settling treaties, removing obstacles to meaningful negotiation and of the costs of delay;
- > Convey to media and the public the importance regionally of settling treaties, and examples of best practices and benefits elsewhere;
- > Urge the Principals in the BC treaty process to resume regular meetings;

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Success of treaty making questioned

Conference brings

Are treaties the answer? That was a question posed by the Treaty Commission at a three-day conference held in Vancouver.

Jim Aldridge, lawyer to the Nisga'a, told conference participants, "Treaties are not a panacea. They are not a one-time, fix-all. They do not and they cannot solve all of the problems and challenges that aboriginal people face.

"What they can do is provide opportunity. What happens to that opportunity, in my respectful view, is far more dependent on the efforts and the decisions of the aboriginal people than could ever be the case if they remained under the *Indian Act*."

Nelson Leeson, Nisga'a Lisims Government president, said, "For those of you who think we had some kind of special device or knowledge, we didn't. We did it through hard work, determination and unwavering perseverance.

"And we negotiated. We believe that only through negotiation can you find a way to agree on something where before we were miles apart."

Valerie Cross Blackett, of Tsawwassen First Nation, said, "Our collective objective as a First Nation is to have the tools to become self sustaining. We wanted our treaty to provide us with enough land, cash and resources to rebuild our wealth, and it will. More importantly, we have



L-R: Panelists Robert Louie, Westbank First Nation chief; Robert Morales, Hul'qumi'num Treaty Group chief negotiator; and facilitator Leah George-Wilson, Tsleil-Waututh Nation chief, at conference panel session.

a need for autonomy so we can end the cycle of dependency that the *Indian Act* has perpetuated. That autonomy will come only from self governance. The treaty provides us with these tools."

Overlaps 'nothing to fear' says lawyer for First Nations

In three separate court cases, First Nations have been unsuccessful in stopping treaty ratification votes until territorial disputes are resolved.



Joseph Arvay

Lawyer Joseph Arvay, counsel in all three cases, believes "no irreparable harm will come to the neighbouring First Nations if ratification is to proceed."

Each of the First Nations, Lheidli T'enneh, Huu-ayaht and Tsawwassen had their agreements challenged in court by neighbouring First Nations on the basis of overlapping claims. For Tsawwassen

First Nation there were at least 53 other First Nations whose claimed territory overlapped with the Tsawwassen.

Arvay, speaking at a Treaty Commission-sponsored conference, said the treaties that are close to being ratified now provide exclusivity only in those areas where the First Nations had historically had exclusive use or occupation such as their village sites or adjacent land.

But for the vast majority of the territory that's covered by the treaty, he said the harvesting and gathering rights in the treaty are non-exclusive just as they were historically.

"There is a lot of fear that once... the Tsawwassen First Nation have their treaty

and with it the right to harvest fish and wildlife or gather plants in the treaty area, that this excludes their neighbouring First Nations from either continuing with their aboriginal rights to harvest fish or wildlife in the same area or somehow precludes the neighbouring First Nations from entering into a treaty that gives them those same harvesting rights.

"It's also important to add that in the event the Tsawwassen treaty does have some adverse affect on the neighbouring First Nations that it can be rectified without preventing the ratification of the treaty and without causing any harm to the neighbouring First Nations.

together treaty First Nations in Canada

Chief Robert Dennis, of Huu-ay-aht First Nation, said, "Ninety per cent of our people approved the treaty. That's an incredible result and I believe that result came about because we went out and asked the people: what do you want to see in the treaty?"

"So, is the treaty the answer for us? Absolutely, yes, because the people have decided it is the right thing for us."

Westbank First Nation Chief Robert Louie said, "I believe the vast majority of First Nations in this province are vastly disappointed with the treaty process."

"Simply put, Canada and BC are asking First Nations to give up far too much." He said self government is limited


by British Columbia through concurrence of law making authority and positions on delegation. "They want jurisdiction on reserve lands."

Chief Louie said compensation amounts are limited and both governments want concurrent taxation jurisdiction and to assess the tax revenues of First Nation citizens.

The provincial government wants all treaty settlement lands registered in the provincial lands systems, Chief Louie said, and treaty settlement land is determined by land values that are quickly rising and are not based on the amount of land needed or due the First Nation. As for fisheries, he said, "There isn't enough being put on the table...we hear that time and time again."

The conference, *Preparing for The Day After Treaty*, brought together more than 200 delegates to share their experiences with modern-day treaty making and lessons learned in achieving and implementing these agreements.

Co-hosted by the Treaty Commission and the Nisga'a Lisims Government, the conference attracted speakers from treaty First Nations in BC, Yukon Territory, Northwest Territories, Nunavut, Ontario and Quebec.

Presentations from six keynote speakers, eight panelists and 14 workshops presenters are available at www.bctreaty.net, the Treaty Commission website. 

Arvay said there is still time between now and the effective date of the Tsawwassen treaty for the First Nations to negotiate a solution among them and if those negotiations are not successful, there is a clause in the treaty that protects other First Nations from harm, anyway.

A declaration by more than 120 First Nation leaders in BC entitled *All Our Relations*, "acknowledges the interdependence we have with one another and respectfully honours our commitment with one another where we share lands, waters and resources. We commit to resolving these shared lands, waters and resources based on our historical relationship through ceremonies and reconciliation agreements."


The Treaty Commission's role in resolving overlaps was also examined by Arvay in his keynote address. "As the independent and impartial keeper of the process, should it take responsibility for the fact that the overlaps have not been resolved with respect to those First Nations who are now about to have their final agreements ratified?"

His review of the Treaty Commission's annual reports over the last 10 years demonstrates that the issue of overlaps has always been a concern of the Treaty Commission.

"The Treaty Commission has made various recommendations to fix the problem, but in the end all the commission can do is plead and cajole which I think it has done fairly well since the Treaty

Commission has no coercive powers under the *Treaty Commission Act*."

Over the past year the Treaty Commission has been increasingly drawn into discussion of overlap issues involving not only First Nations, but also the Crown, as part of the Crown's obligation to consult and accommodate First Nations. The Crown's involvement in these discussions had added another layer of complexity to an already complicated situation.

The Treaty Commission has undertaken a shared territory resolution project with First Nations on northern Vancouver Island as a first step in looking at alternatives to court action when talks between First Nations break down. 

Conference attendees discover

Good relationships a factor in effective negotiations

First Nation treaty negotiators agree relationships can make or break the negotiations.

Relationships are as important as any other thing in negotiating a treaty, negotiators told attendees at the Treaty Commission-sponsored conference in Vancouver. Relationships are as important as legal theory, as important as anything else the First Nation may want to do.

Workshop attendees learned it is important for First Nations to start by building relationships within their own community. Over and over again the message came back, 'build trust in your own community, engage with your members, clarify objectives, build your team, let the team grow, let it do its job.'

Communicate to members; help them to get a grip on what some of the expectations were and, at the same time, build capacity in the First Nation.

Build relationships with those on the other side of the table. There is a whole range of confidence building measures that could be used to build trust across the table. After all, negotiators are going to be looking at one another for a very, very long time as they put together what has been described as a social contract.

Negotiators are going to have to get through the long haul; are going to have to comport themselves in such a way as to give the others confidence that it is worthwhile for them to take risks, to burn political capital, to narrow the gaps between them and the parties they represent.

The relationships built in negotiating a treaty will help to carry the First Nation through the challenges of implementing their treaty. They are going to be dealing with many of the same people across the room and they need to have them as allies.

What happens when all that doesn't work? Build relationships with other First Nations and First Nation organizations and that includes dealing with things like overlaps. Build relationships with other government departments, non-governmental organizations; and local governments — these are all potential allies.

Build relationships with the public and at the political level and, if necessary, go international.

The newest Treaty Commission publication underscores the compelling case for good relations among neighbour governments.

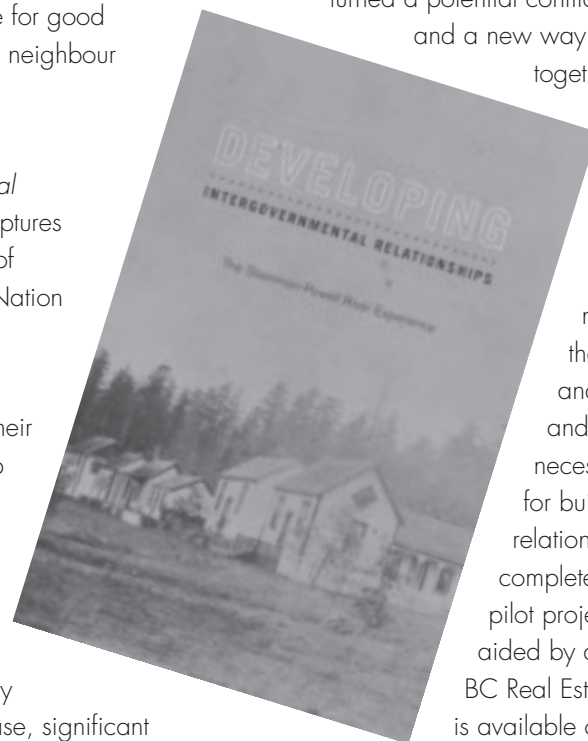
Developing Intergovernmental Relationships captures the experience of Sliammon First Nation and the City of Powell River.

The genesis of their new relationship was a dispute in 2002 over the city's plans to construct a sea walk. In the early construction phase, significant cultural sites of Sliammon, including

petroglyphs and shell middens, were unwittingly disturbed, destroyed or buried. The city had not shared its plans with Sliammon and, in fact, was unaware of the First Nation's cultural sites.

Sliammon leaders and citizens were upset about the impacts on their cultural sites and lack of consultation. Sliammon leaders expressed in strong words their concerns to the mayor and indicated the possibility of taking legal action.

Such a situation could easily have spiraled into a heated conflict. Instead, the parties chose to continue talking to one another in search of a resolution. In government-to-government meetings, they resolved to jointly develop the waterfront park. The city and Sliammon used the incident as an opportunity to start working together more closely, and turned a potential conflict into a success and a new way of working together.



This new publication, also available at www.bctreaty.net, highlights their challenges and successes and sets out some necessary ingredients for building relationships. The complete report on this pilot project, which was aided by a grant from the BC Real Estate Foundation, is available on the Treaty Commission website. 

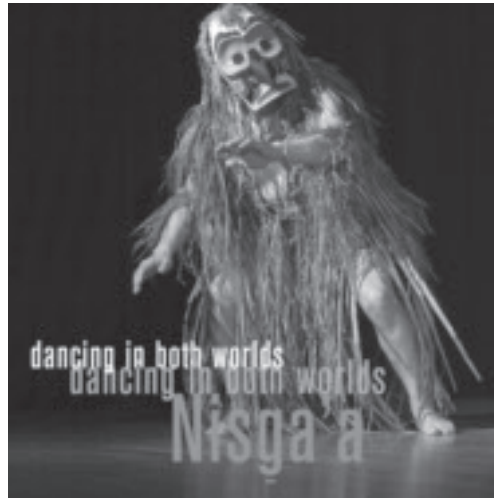
Nisga'a DVD recommended for schools

The DVD *Nisga'a Dancing in Both Worlds* has received the BC ministry of education's seal of approval for use in secondary schools.

The Nisga'a Nation journey to a treaty and beyond is the work of Toronto filmmakers John Bassett and Rosalind Farber. The duo documents the history of the Nisga'a and their journey that culminated with the first modern treaty in British Columbia.

Nisga'a Dancing in Both Worlds is now a recommended resource for First Nation's Studies 12, Law 12, Civic Studies 11 and Social Studies 11.

A distribution agreement with the filmmakers for BC schools is being finalized by the Treaty Commission and the ministry has agreed to assist with the



distribution and promotion of *Nisga'a Dancing in Both Worlds*.

Financial support for the project was provided by the Treaty Commission, Indian and Northern Affairs Canada and the BC Ministry of Aboriginal Relations and Reconciliation. ☉

New commissioners...

Continued from cover

on re-energizing the treaty negotiation process. Appointed in December by Chuck Strahl, minister of Indian affairs, he was previously the Business Council of British Columbia president and CEO.

Combining his business expertise and knowledge of First Nations, Lampert wants to renew enthusiasm and hope into the treaty negotiation process. He believes there has been a lot of progress made in the relationships between business, government and First Nations over the last decade, but knows there is still a long way to go.

"Our ultimate goal is to reach treaties," he says. "But my hope is that in the process, we further build trust and respect with the First Nations communities, and at the end of the day First Nations and all British Columbians believe the processes and the outcomes were achieved fairly."

Many know Dave Haggard as a tough talking union boss, but few know he spent much of the past year working in Maa-nulth First Nations communities as they sought to ratify their treaties.

Haggard, appointed in February, is a former local and national union leader. He has worked with a number of Vancouver Island First Nations, including



Dave Haggard

in 2007 with Maa-nulth First Nations.

"I bring to the table negotiation, facilitation and mediation skills that I learned in the labour movement," says

Haggard. "I hope to have a positive impact on the relationship between aboriginal people and the governments of this country as we move forward." ☉

Maa-nulth First Nations co-host conference

Effective treaty implementation is the focus for a conference being co-hosted by Maa-nulth First Nations and the National Centre for First Nations Governance.

Learning from Experience: In pursuit of Effective Implementation builds on the Treaty Commission conference *Preparing for The Day After Treaty* that was held in November.

"The Treaty Commission is pleased to support this conference that begins to address in some detail the challenges of treaty implementation," said A/

Chief Commissioner Jody Wilson. "First Nations have been generous in sharing their experience with treaty implementation and this conference is another example of First Nations working together for everyone's benefit."

The conference for First Nations being held in Port Alberni April 9 and 10 is funded in part by the Treaty Commission. Sessions will address the transition, from *Indian Act* band to treaty First Nation, in programs and services, law making, land use and institutional capacity. ☉

Status

REPORT

There are 58 First Nations participating in the BC treaty process. Because some First Nations negotiate at a common table, there are 48 sets of negotiations. There are 8 First Nations in Stage 5 and 40 First Nations in Stage 4.

8 First Nations in Stage 5

In-SHUCK-ch Nation
Lheidli T'enneh Band
Maa-nulth First Nations*
Sechelt Indian Band
Sliammon Indian Band
Tsawwassen First Nation*
Yekooche Nation
Yale First Nation

*Ratified Final Agreements

41 First Nations in Stage 4

Carcross/Tagish First Nation
Cariboo Tribal Council
Carrier Sekani Tribal Council
Champagne and Aishihik
First Nations
Da'naxda'xw Awaetlatla
Nation

Ditidaht First Nation
Esketemc First Nation
Gitanyow Hereditary Chiefs
Gitxsan Hereditary Chiefs
Gwa'Sala'Nakwaxda'xw
Nation
Haisla Nation
Heiltsuk Nation
Homalco Indian Band
Hul'qumi'num Treaty Group
Hupacasath First Nation
Kaska Dena Council
Katzie Indian Band
Klahoose Indian Band
K'omoks First Nation
Ktunaxa/Kinbasket
Treaty Council
Kwakiutl Nation
(in suspension)

Laich-Kwil-Tach K'omoks
Council of Chiefs
Lake Babine Nation
Musqueam Nation
'Nqmgis Nation
Nazko Indian Band
Nuu-chah-nulth Tribal Council
Oweekeno Nation
Pacheedaht Band
Quatsino First Nation
Snuneymuxw First Nation
Sto:Lo Nation
Taku River Tlingit First Nation
Te'Mexw Treaty Association
Teslin Tlingit Council
Tlatlasikwala Nation
Tsay Keh Dene Band
Tsimshian First Nations
Tseil-Waututh Nation

Westbank First Nation
Wet'suwet'en Nation

3 First Nations in Stage 3

Cheslatta Carrier Nation
Squamish Nation
Tlowitsis First Nation

6 First Nations in Stage 2

Acho Dene Koe First Nation
Allied Tribes of Lax Kw'alaams
Council of the Haida Nation
Liard First Nation
McLeod Lake Indian Band
Ross River Dena Council

North Vancouver Island...

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- > Urge the BC Treaty Commission to lobby for means to help resolve key issues;
- > Urge the provincial government to reinstate regular treaty process communication with regional and local governments;
- > Inform senior governments about forward-looking initiatives backed by all regional parties that would benefit from progress in the treaty process; and

- > Contact others with a view to having them join in pressing their concerns.

The one-day event in November was co-sponsored by the Regional District of Mount Waddington and the Winalagalis Treaty Group.

The Regional District of Mount Waddington has since urged the negotiators for Canada and BC to "expedite the process to complete the agreement in principle with the Winalagalis Treaty Group" on Vancouver Island.

The Principals in the BC treaty process are seeking to resume regular quarterly meetings and have struck working groups to prepare a common table as the route to advance treaty negotiations currently on hold for many First Nations. ☉



Merging past and present, the Treaty Commission symbol represents the three Principals in modern-day treaty making – the governments of Canada and British Columbia and First Nations. Pointing in an upward and forward direction, the symbol implies a "coming together" pivotal to successful negotiations and treaty making.