



BC TREATY COMMISSION

203 –1155 W. Pender St.
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Newsletter Update: October 2000

Progress being made in treaty process

A province-wide fiscal relations secretariat is being established to support treaty negotiations at individual tables as a result of the September meeting of federal and provincial ministers and the First Nations Summit Task Group.

Under the existing cost-sharing agreement, the federal and provincial governments will jointly fund the secretariat through the Treaty Commission. The federal government will fund First Nation Summit participation.

The secretariat will support the negotiation of the fiscal relations component of treaties, including taxation, at individual treaty tables. It will act as a clearinghouse for information, provide access to expertise, and support capacity building on fiscal issues and the development of fiscal approaches for consideration by treaty tables.

The Principals also agreed that, in addition to the important work underway at treaty tables to conclude treaties, there will be a substantial focus on interim measures over the next several months. These interim agreements will protect and provide access to land and resources, as well as provide economic development opportunities in the areas of lands, fisheries and forests.

Chief Treaty Commissioner Miles Richardson said following the meeting that the Principals have re-affirmed their commitment to treaty negotiations and announced steps to work cooperatively to address the immediate challenges facing the treaty process.

Richardson said there continues to be a wide gap between First Nations' expectations and offers from Canada and BC. There is also First Nation frustration with the lack of progress, mounting loans for negotiations and continued alienation of land and resources. He said the public is also expressing frustration with the cost of negotiations and the time it takes.

The Treaty Commission has agreed to monitor interim measures negotiations, including those on treaty-related measures (TRMs), throughout the province and to provide regular progress reports to the Principals. In increasing their efforts to conclude interim measures agreements and promote economic opportunities in First Nation communities, the Principals are building upon their "Statement on Interim Measures Principles for Treaty Negotiations in British Columbia" (April 28, 2000).

In its 2000 Annual Report the Treaty Commission urged the parties at each negotiation table to identify appropriate interim measures and to put them in place immediately to demonstrate that the new relationship being sought in treaties has begun.

The failure to put adequate interim measures in place has been identified by the Treaty Commission as a key obstacle to progress in treaty talks.

This and other obstacles are the subject of ongoing meetings between the First Nations Summit Task Group, the federal minister of Indian and Northern Affairs and the provincial minister of Aboriginal Affairs. The Principals will continue to hold quarterly meetings to review the progress being made and the steps required to further advance treaty negotiations.



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Seventh treaty offer made, more expected

The Lheidli T'enneh Band has become the seventh First Nation to receive an offer from the governments of Canada and British Columbia through the BC treaty process. All of the offers have been rejected.

Four more offers are expected within the next several months. The Nuu-chah-nulth Tribal Council is expected to receive an offer this fall and the Tsay Keh Dene Band expects to receive an offer this year. Other likely candidates are the Tsawwassen First Nation and Yekooche Nation.

Tsawwassen First Nation continues to negotiate, building on a comprehensive treaty proposal it made in July 1999. A response from Canada and BC is expected later this year.

Yekooche Nation expects an offer from Canada and BC early in 2001. The First Nation resumed negotiations earlier this year after adopting an electoral code and holding elections, appointing a new negotiating team and conducting community consultations on treaty negotiations.

Negotiations are continuing at four of the five tables where offers were made earlier this year and in 1999:

- Ditidaht First Nation/Pacheedaht Band;
- Gitanyow Hereditary Chiefs;
- Sliammon Indian Band; and
- Snuneymuxw First Nation.

There are no negotiations taking place with In-SHUCK-ch following the decision by N'Quat'qua to withdraw from the table.

The Katzie table is close to completing its framework agreement, setting the stage for negotiations toward an agreement in principle. The framework agreement outlines the issues the parties have identified for negotiations and protocols they will follow during negotiation of an agreement in principle.

A ceremony to initial the agreement was held September 20th on the Katzie Indian Reserve, near the municipality of Pitt Meadows in the Lower Mainland. At the ceremony, provincial Minister of Aboriginal Affairs Dale Lovick took the step of signing the agreement, indicating

that BC has completed its ratification procedure. Katzie members casting ballots October 23 overwhelmingly ratified the Framework Agreement. Canada should complete its ratification soon. Stage 4 negotiations should begin later this year.

Five of the six First Nations comprising the Winalagalis Treaty Group have signed their framework agreements. The Kwakiutl Nation, 'Namgis Nation, Da'Naxda'xw/Awaetlala Nation, Gwa-'Sala-'Nakwaxda'xw Nation, and Tlatlasikwala Nation ratified and signed their framework agreements this past spring. Canada and BC ratified and signed the agreements over the course of the summer. Stage 4 Agreement in Principle negotiations were to begin in October.

Quatsino First Nation, of the Winalagalis Treaty Group, has not yet achieved a framework agreement with Canada and BC. The parties are at an impasse on the issue of compensation. Quatsino wants to negotiate "compensation," while Canada and BC want to negotiate a "fiscal component." No talks are currently scheduled to resolve the impasse.

Ts'kw'aylaxw First Nation has given notice it will officially withdraw from the BC treaty process on Oct. 26 when it will ask the Treaty Commission to return its statement of intent to negotiate a treaty.

Negotiations are expected to resume with Westbank First Nation. There have been no meetings since Brian Eli was elected chief in August. In May, the previous chief, Ron Derrickson signed a political accord with Canada and BC which was expected to kick start the negotiations.

The Sechelt Indian Band will meet later this month with negotiators for Canada and BC to determine if there is a basis for continuing negotiations. The band had signed an agreement in principle with Canada and BC in April 1999, but backed away from it and announced in May 2000 that it would be considering court action to obtain title to lands on the Sunshine Coast. Since the announcement, the parties have met once and agreed to meet again but scheduling difficulties have pushed the meeting into late October.



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Lheidli T'enneh reject land and cash offer

The Lheidli T'enneh Band is disappointed with the land and cash offer from the governments of Canada and British Columbia.

Lheidli T'enneh's preliminary analysis of the offer is that the quantity and quality of lands is inadequate to sustain its community over the longer term. The actual land offered is 2,219 ha, plus current reserves or 0.00048 % of what the band sees as its traditional territory. Of the land offered, 74% is in the Agricultural Land Reserve. The cash offer of \$7.5 million was considered insufficient to make up for the low amount of land.

Lheidli T'enneh also rejected the proposed woodlot licence of up to 600 ha. It suggested that 280,000 ha of productive forest land is required for a self-sustaining community.

Despite the difference in views, negotiations are continuing with the parties hoping to reach an agreement in principle by March 2001.

Canada and BC presented their joint land and cash proposal to the Lheidli T'enneh on August 2, 2000. Key elements of the proposal include:

- 2,903 ha of treaty settlement land including
 - 684 ha of existing reserve lands
 - 1,978 ha of provincial Crown land adjacent to the Shelley reserve
 - 240 ha of the former federal experimental farm near the Prince George airport
 - 1 ha of the Fort George Cemetery reserve as fee simple land.
- Resources on these lands would be owned and managed by Lheidli T'enneh;
- A woodlot licence of up to 600 ha was proposed either on private lands or Timber Supply Area;
- Canada and BC are willing to negotiate Lheidli T'enneh participation in planning processes for fisheries, water, wildlife and environmental assessment over a larger area;
- A water reservation, licensed under the BC Water Act;
- Specific treaty rights, such as hunting and fishing, would be negotiated in an agreed area and;

- aboriginal rights not set out in the treaty would be released as well as any claim of infringed rights either past or future;
- \$7.5 million cash transfer, to be paid out over time.



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Students invited to answer the question: What's the deal with treaties?

A video on treaty making developed for secondary school students is now available from the Treaty Commission.

What's the deal with treaties? A video about treaty making in British Columbia follows four students on a journey of discovery as they prepare a school project on the BC treaty process. Teachers can use an accompanying viewer's guide to stimulate discussion of the issues in treaty making.

Completing the education package is a treaty handbook that answers many of the questions people have about treaty making and treaty negotiations. The book is illustrated with archival photographs that capture the diversity of First Nations in British Columbia.

"Teachers tell us there is a lack of up-to-date teaching materials on treaty making appropriate for high school students," said Communications Manager Brian Mitchell. "This education package addresses that need."



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Second edition for 'Prospering Together'

A second edition of the book *Prospering Together, The Economic Impact of the Aboriginal Title Settlements in B.C.* will be published by the Laurier Institution if its fundraising effort is successful.

First published in 1998, *Prospering Together* deals with tough questions such as: What should settlements cost? How could they be paid for? How will First Nations self government work and will it fit into Canada's existing legal framework?

The new edition would include a chapter addressing what has happened in the treaty process in the two years since the first publication.

The 2,000 copies of the first edition were all sold.



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UBC Press publishes 2nd 'Treaty Talks'

A second edition of Christopher McKee's Treaty Talks in British Columbia was released by UBCPress in October 2000. It deals with many of the issues that have arisen since the first edition was published in 1996.

The first edition of Treaty Talks, popular as course material in colleges and universities, received praise for being succinct, informative and easy to read. The additional material will help to ensure the book continues to be useful and topical for students and the wider public.

Treaty Talks now covers the impact of the landmark Delgamuukw judgment of the Supreme Court of Canada, the Nisga'a Final Agreement (including the legal challenges to its constitutionality), and the Sechelt Agreement in Principle. McKee also discusses the possible effect of a change of provincial government, overlaps, and the costs of treaties on the future of the treaty process.

Recognizing the need for a book of this sort, the Treaty Commission provided funding support for both editions. It retained an arm's length relationship with the author, who was free to explore those issues that he believed needed further attention.

Dr. McKee taught political science at UBC and is now president and CEO of BCN International.

More information on the book can be obtained from:

UBCPress
University of British Columbia
2029 West Mall
Vancouver BC V6T 1Z2
tel (604) 822 6083
email info@ubcpres.ubc.ca

Christopher McKee, 2000, Treaty Talks in British Columbia: Negotiating a Mutually Beneficial Future, 2nd ed., (Vancouver and Toronto: UBCPress), ISBN 0-7748-0824-1



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Displays raise awareness of treaty process

Two interactive displays are raising public awareness of the Treaty Commission and providing information on the treaty process to British Columbians.

Visitors to the national historic sites of Fort Langley and Fort St. James this summer used the displays' touch screen technology to get answers to six basic questions about treaty negotiations. The displays are now touring Lower Mainland and Vancouver Island locations.

The University of Victoria and Royal Roads University hosted the display in September. Other Victoria locations are: Eaton Centre from October 4 -11, Tillicum Mall from October 11-18 and Mayfair Mall from October 18-25.

The Treaty Commission is receiving assistance from the Lower Mainland Treaty Advisory Committee to place a display in high traffic areas in municipal government facilities. It was recently at North Vancouver City Hall and is scheduled to be in the West Vancouver Public Library from October 16-27, Surrey City Hall from October 30 - November 10 and the New Westminster Public Library from November 14-24.



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Interim Measures Watch

INTERIM MEASURES WATCH IS A LOOK AT WHAT IS HAPPENING CURRENTLY WITH INTERIM MEASURES IN THE BC TREATY PROCESS.

Progress is being made in negotiating interim measures, including treaty-related measures, but more is needed.

In its Annual Report 2000 and its previous Update, the Treaty Commission emphasized the need for an increased and urgent commitment to interim measures agreements.

Since then, representatives of Canada, BC and the First Nations Summit have been developing a common understanding of what an "interim measure" is and what they can do to create more agreements.

The parties agreed that interim measures agreements need to offer "on the ground" benefits to First Nation communities. Interim measures could include, but not be limited to, such things as protection of land and resources, economic development and governance agreements.

To help sustain the political will to conclude interim measures, the Treaty Commission has begun canvassing First Nations in the treaty process to identify interim measures that they are currently working on. The Commission is using this information to hold the parties accountable, at a senior level, for progress at individual tables.

There have been some promising developments in recent months. In July 2000, Canada, BC and **Westbank First Nation** negotiated a solution to their recent conflict in the courts over harvesting by Westbank. With the co-operation of local timber licensees, Canada and BC have secured up to 55,000 cubic metres of timber for the Westbank to harvest, with all timber going to local mills. Westbank also received \$300,00 to build their capacity in the forest industry. All parties have committed to resuming treaty negotiations.

The **Haisla Nation** and **Klahoose Indian Band** are also working on forestry interim measures involving economic development components similar to what was negotiated with Westbank First Nation. No deal has yet been reached with either First Nation.

The treaty related measures (TRM) initiative that Canada and BC developed in late 1999 is starting to see results at the tables. Almost a dozen tables have been negotiating TRMs on a range of issues for several months. Canada and BC recently concluded TRMs with the following First Nations:

Gitanyow Hereditary Chiefs has received funding to conduct an economic analysis of the offer it received from Canada and BC in November 1999. It has also received funding to conduct a study of potential government structures for treaty purposes, as well as funding to explore the economic opportunities from pine mushrooms.

Kaska Dena Council has received funding to conduct a study of land use options within their traditional territory.

Tsawwassen First Nation has received funding to conduct a study to identify its sites of cultural importance on federal and provincial Crown lands within its traditional territory.



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Self government a constitutionally protected aboriginal right

Self government is an aboriginal right, the BC Supreme Court has ruled.

Ruling in July, Justice Paul Williamson concluded that "although the right of aboriginal people to govern themselves was diminished, it was not extinguished." Further, these rights may be defined (given content) in a treaty.

By ruling the Nisga'a treaty and enacting legislation are constitutionally valid, Justice Williamson reinforces the validity of the BC treaty process. The decision says the treaty puts content to undefined aboriginal rights, a fundamentally valid thing for treaties to do.

Self government is fundamental to treaty negotiations in British Columbia. Through comprehensive treaties being negotiated in the province now, agreements covering many aspects of self government will be possible. Self government provisions will differ among treaties but will generally aim to see First Nations have control over those matters that are integral to their cultural survival and that are necessary to manage their lands and resources.

The BC Liberal Party had challenged the Nisga'a Final Agreement in the BC Supreme Court arguing the treaty violates the constitution by setting up a Nisga'a government with sweeping powers that are legally reserved for the federal and provincial governments.

The court was asked to decide whether the Nisga'a treaty created a new order of government so as to require an amendment of Canada's constitution. Sections 91 and 92 of the British North America Act, it was argued, divide all law-making power between the federal and provincial governments.

The court rejected that argument, saying that the Preamble to the Constitution Act, 1867 imports a number of unwritten constitutional principles and powers into the Canadian constitution. One of those principles is the recognition by British imperial policy during colonial times of "a continued form, albeit diminished, of aboriginal self-government."

The court went on to say that sections 91 and 92 of the British North America Act distributed all of - but no more than - the powers which until then had belonged to the colonies. The aboriginal right to self government was one of the underlying values of the constitution that remained outside of the powers that were distributed to Parliament and the provincial legislatures in 1867, the court said.



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Status Report as of September 30, 2000

As of September 30, 2000 there are 51 First Nations, in 42* sets of negotiations, participating in the BC treaty process. There are 43 First Nations in Stage 4 agreement-in-principle negotiations and one First Nation in Stage 5 negotiations to finalize a treaty. A table refers to a negotiation table at which three parties sit - one or more First Nations, Canada and BC.

First Nations in Stage 2: 1

Council of Haida Nation

First Nations in Stage 3: 6

Cheslatta Carrier Nation
Katzie Indian Band
Lake Babine Nation
Musqueam Nation
Squamish Nation
Quatsino First Nation

First Nations in Stage 4: 43

At one table:

Ditidaht First Nation
Pacheedaht First Nation

At one table:

Carcross/Tagish First Nation
Champagne and Aishihik First Nations
Taku River Tlingit First Nation
Teslin Tlingit Council

At one table: Winalagalis

Kwakiutl First Nation
Namgis First Nation
Da'naxda'xw/Awaetlala First Nation
Gwa'Sala - 'Nakwaxda'xw First Nation
Tlatlasikwala First Nation

Cariboo Tribal Council
Carrier Sekani Tribal Council
Esketemc First Nation

Gitanyow Hereditary Chiefs
Gitxsan Hereditary Chiefs (in suspension)
Haisla Nation
Heiltsuk Nation
Homalco Indian Band
Hul'qumi'num Treaty Group
In-SHUCK-ch/N'Quat'qua
Kaska Dena Council
Klahoose Indian Band
Ktunaxa/Kinbasket Tribal Council
Kwakiutl Laich-Kwil-Tach 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
Ts'kw'aylaxw First Nation
Tseil-Waututh Nation
Westbank First Nation
Wet'suwet'en Nation
Xaxli'p First Nation
Yale First Nation
Yekooche Nation

First Nations in Stage 5: 1

Sechelt Indian Band

* Several First Nations are negotiating at common tables.



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Recent changes at the Treaty Commission

Comings:

Isabel Budke has been appointed to the position of process analyst. In addition to an MA in Geography and a Master of Resource Management from Simon Fraser University, Budke has experience as treaty and First Nations issues researcher with Parks Canada, Western Canada Service Centre.

Melissa Kane has been appointed to the Treaty Commission as communications officer. Kane holds a BA in Communication Co-op with a minor in Sociology from Simon Fraser University (2000) and previous experience with the Public Affairs Branch of Natural Resources Canada.

Patrice Drouin has been appointed to the Treaty Commission as funding analyst. Prior to this appointment, he was Director of Finance for the Metis National Council in Ottawa and coordinator of tripartite self-government negotiations for the Metis Provincial Council of BC. Drouin holds a Bcom in Accounting from the Université du Québec à Chicoutimi.

Linda Froehlich has been promoted to the position of office manager. Froehlich joined the Treaty Commission in August of 1993 as financial/system administrator.

Diane Ryan joins the Treaty Commission as receptionist. Ryan served as receptionist for 10 years with the Native Courtworker and Counseling Association of B.C.

The Treaty Commission appointed **Lloyd Roberts** to the position of process advisor. In previous posts, Roberts served as Director of Land Claims for the Liard First Nation and Chief Executive Officer for Kaska Forest Resources. Roberts holds a BscF in Forest Management from the University of British Columbia (1997).

Mark Smith has been appointed to the position of process advisor. Smith holds a Bachelor of Laws from the University of Alberta (1994) and a Masters of Laws from the University of British Columbia (1996). From 1997 to January of 2001, Smith practised aboriginal law with the firm of Blake, Cassels & Graydon.

Goings

Chris Roine, senior process advisor, recently left the Treaty Commission to resume legal practice with Fast & Corcoran.

Karl Freeborn, formerly communications and research coordinator, has accepted a position as communications officer at Indian and Northern Affairs Canada in Vancouver.