

Openness Protocol for the Homalco First Nation Treaty Negotiations

Among:
the Homalco First Nation,
the Province of British Columbia
and the Government of Canada
(THE "PARTIES")

The Homalco First Nation, the Province of British Columbia, and the Government of Canada agree on the following principles of openness:

The Parties recognize the need to consult with third parties and to provide information to the public if treaties are to be lasting and beneficial agreements for the Homalco First Nation, British Columbians, and all Canadians;

The Parties recognize the need to strike a balance between developing trust at the treaty tables and the need to ensure public confidence in the treaty process;

The Parties recognize that public confidence in the process will facilitate implementation;

The Parties recognize that building trust at the treaty tables and ensuring public confidence in the treaty process may be achieved through effective information and consultation mechanisms, public access to the process and regular flow of information among the parties and to the public;

The Parties recognize the need to have an open treaty process where strict confidentiality is the exception and where the parameters for the application of restrictions on openness are expressly made known;

The Parties recognize the need to balance the need for an open process with the need for a practical and effective negotiating environment;

The Parties recognize that information that will be disclosed to the public must accurately reflect the Parties respective and/or joint interests.

In keeping with these principles, the parties agree:

1. Public Information and Education, Community Meetings and Forums

- a. The Chief Negotiators for the Parties will ensure that an effective and regular public information and education process is established.

- b. A tri-partite public information and education working group will be established and will report to the Main Table.
- c. This working group will develop a workplan for all stages of the negotiation process and will include dates, times and location of community meetings and forums.
- d. Notices of the meeting and forums will be issued to the local media at least two weeks prior to a meeting or forum whenever practical.
- e. The Parties will update the general public at these meetings and forums on the progress of negotiations and any other information that the Parties consider to be relevant.
- f. Members of the general public in attendance at the community meeting and forums will be encouraged to express their views and ask questions.
- g. Nothing in this section shall be construed to prevent the Parties from pursuing bilateral or independent public information and education activities.

2. Consultation with Third Parties

- a. The Parties will notify and share information with each other, and with the general public, concerning their respective consultation activities with affected third parties, including the Regional Advisory Committee and Treaty Advisory Committee.
- b. The Parties will undertake joint consultation, as appropriate.
- c. Provincial and federal negotiators will report regularly to affected third parties. As part of this reporting, provincial and federal negotiators will explain how third party views were taken into account.

3. Public Attendance at Main Table Sessions

- a. All Main Table sessions will be assumed to be open to members of the general public, subject to available space, unless openness would harm the process or progress of the negotiations as specified in clauses 3(b) to 3(f).
- b. In setting the agenda for each Main Table session, the Chief Negotiators will determine whether the entire session, or portions of the session does not lend itself to attendance by members of the public.
- c. In making a determination about whether or not a Main Table session is to be open to the general public, the Chief Negotiators will assess whether attendance by individuals other than members of the negotiating teams would:
 - i. interfere with the effectiveness of the process;
 - ii. increase the effectiveness of the session;
 - iii. prejudice the positions or strategies of the negotiating Parties; and/or harm the conduct of the negotiations.
 - iv. Notices of all open Main Table sessions will be issued to the local media at least two weeks prior to a Main Table session whenever practical.
 - v. The Chief Negotiators of the Parties are responsible for the overall conduct of the negotiations. Members of the public in attendance at any Main Table session will participate as observers only.

- vi. The Chief Negotiators will be entitled to adjourn open Main Table sessions if observers are disruptive to the negotiations or for safety and security reasons.

4. Public Record of Main Table Sessions

- a. A joint record of decisions of the proceedings of Main Table sessions will be kept and will be made available to the public unless the Parties otherwise agree in accordance with clause 4(c).
- b. The record of decisions will include the time and location of a Main Table session, the agenda for the session, a description of actions taken or to be taken on matters discussed, an attendance list, and the names and phone numbers of contact persons for each of the Parties.
- c. If prior to the end of a closed Main Table session, the Parties determine that the release of particular types of information arising from the negotiating session, and contained in the record of decisions, would be harmful to the negotiations, the Parties will agree on whether and/or when the information is to be released.
- d. Recording, videotaping and photographing of open Main Table sessions will be allowed upon the approval of the Parties. Any such recordings or video tapes of sessions may be used for historical, educational, and archival purposes only, and will have no status as admissions or records of decisions.

5. Public Access to Documents Used in the Negotiations

- a. "Documents" for the purposes of this section means: discussion papers, reports, sub-agreements or agreements and any document tabled or exchanged among the Parties at a Main Table session.
- b. The Chief Negotiator for a Party introducing a document to the table will decide whether the document is to be made public, or is to be held confidential.
- c. Where two or more of the Parties jointly produce a document, the document will be assumed to be available to the public unless all the Parties expressly determine and agree that the release of a particular document would harm the negotiations. Where a document is not to be released, the Parties will agree on a time frame during which the document will be kept confidential.
- d. Correspondence among Parties to the treaty table relating to negotiations would be available to the Parties only, unless the Parties agree to make any specific piece of correspondence more widely available.
- e. The provincial Freedom of Information and Protection of Privacy Act, and the federal Access to Information Act, and Privacy Act will apply.
- f. Notice of written requests for documents submitted to any Party in the course of the negotiations must be shared with the other Parties.
- g. At the conclusion of each stage of the negotiations initialled Agreements will be made available to the public.
- h. Prior to the conclusion of each stage the content of agreements which are substantially agreed to by the Chief Negotiators for the three Parties will be made available:
 - i. by the provincial and federal Chief Negotiators, to:
 - the local consultation body for the area (Regional Advisory Committee);
 - the local government consultation body (Treaty Advisory Committee);

- the province-wide consultation body (Treaty Negotiations Advisory Committee); and
- ii. by the Homalco First Nation Chief Negotiator, to:
 - Homalco First Nation Elders
 - Homalco First Nation Elected Council
 - Homalco First Nation Members
- i. Nothing in this section is meant to undermine the Information Sharing Principles for Treaty Negotiations agreed to by the Parties.

6. Local Government Treaty Advisory Committee Representation

- a. The Parties acknowledge that British Columbia will include as a member of the British Columbia team, a local government representative from the Treaty Advisory Committee for the Homalco First Nation Treaty negotiations.
- b. All members of the three negotiating teams, including the local government representative from the Treaty Advisory Committee, will be subject to all rules of confidentiality agreed to by Canada, British Columbia and the Homalco First Nation for the full duration of the negotiations.
- c. The Provincial Chief Negotiator will complete Terms of Reference for the Treaty Advisory Committee, consistent with this Protocol, and will provide copies to the Homalco First Nation and to Canada.
- d. The TAC and its members shall only:
 - i. Receive information and documents available only to the Parties and which affects local government interests, in accordance with this Protocol; and
 - ii. Receive information and documents not available for public distribution as described in this Protocol if each member of the TAC agrees on behalf of their local government
 - to confine discussion of this information to "in camera" sessions of their local government; and
 - not to disclose this information to anyone else.

7. Media Relations

- a. Media coverage of open Main Table sessions will be allowed.
- b. Chief Negotiators of all three Parties, or their named delegates, will actively seek invitations to make presentations or participate in discussion panels through the broadcasting and/or print media.
- c. Tri-partite reports to the local media may follow each Main Table session. Reports may include records of decisions, the date, time and location of the next Main Table session and any other information deemed to be relevant by the Parties.

8. Review of this Openness Protocol

This Openness Protocol applies to the Framework Agreement, Agreement in Principle and Final

Agreement (Stages Three, Four and Five respectively) of the B.C. Treaty Negotiation Process. This protocol may be reviewed and may be amended by consensus of the Parties at the conclusion of any of these stages.

This Openness Protocol for the Homalco First Nation Treaty Negotiations is agreed to this *24th* day of *October*, 1995.

on behalf of the Homalco First Nation:

Chief Richard Harry
Chief Negotiator

on behalf of the Province of British Columbia:

Linda Jolson
Treaty Negotiator

on behalf of the Government of Canada:

Ross McKinnon
Senior Negotiator