
What is the B.C. Treaty Commission?

The Keeper of the Process

The BC Treaty Commission was established in order to facilitate treaty negotiations between Canada, B.C., and First Nations in British Columbia. The BC Treaty Commission is an independent body with five Commissioners appointed by the federal government, the provincial government, and the First Nations Summit. The First Nations Summit appoints two Commissioners, and the federal and provincial governments each appoint one. A Chief Commissioner is appointed by all three Principals.

As outlined in its *1997 Annual Report*, the Treaty Commission's independence is reflected in both its composition and in the way it makes decisions. Once appointed, Commissioners do not represent any one principal. All decisions require both a quorum and the support of one appointee of each of the Principals.

The Commission is not an arm of any government, and it does not negotiate treaties. Rather, the Commission is responsible for accepting First Nations into the treaty process, and assesses when the parties are ready to start negotiations. The Commission also develops policies and procedures applicable to the six-stage treaty process (described on pages 22 - 23), and it reports on the progress of negotiations, identifies problems, offers advice, and may assist the parties in resolving disputes. It also allocates funding, primarily in the form of loans, to First Nations.

In addition to the five Commissioners, the Treaty Commission employs a full-time staff of 12 and a part-time staff of five. Commissioners and staff regularly travel to all regions of British Columbia, and its operating budget for the last fiscal year was \$1.86 million.

How Are Negotiations Proceeding?

The Process and the Progress

The treaty process established in British Columbia involves six stages. That process is described on pages 22 and 23 of this handbook. The negotiations are voluntary, and not all First Nations in the province have chosen to enter the B.C. Treaty Process. A majority, however, have chosen to do so. A map illustrating the 50 First Nations currently involved in the process is included on page 31.

Interest in the treaty process is generally very high. This has, to some extent, made the task of negotiating treaties more complex, as increasing numbers of First Nations submit statements of intent and join the process, and as the need for public education grows.

As the *1997 Annual Report of the B.C. Treaty Commission* indicates, by June, 1994, 41 First Nations had joined the process. Currently, 50 First Nations are involved.

Significant progress is being made in the negotiations taking place throughout British Columbia. The rate of the progress has varied, depending upon the issues needing to be resolved in each area. According to the *1997 B.C. Treaty Commission Annual Report*, generally progress is being made more rapidly than estimated in 1991. Most parties have moved quite quickly through Stage 2. There are 12 tables in Stage 3, and 27 in Stage 4 agreement-in-principle negotiations. At least 8 more tables are expected to be in Stage 4 in the coming year. That is a substantial increase from just one year earlier, at which time there were 22 First Nations in Stage 3, and 11 in Stage 4. In the year ahead, most of the First Nations involved in the process are expected to be in Stage 3 or 4, and some agreements-in-principle may be signed.

There are, of course, significant challenges to be met. The increase in participation has put strain on the resources of the federal and provincial governments. The federal government has hired additional staff to address that situation. In addition, in the past year a special committee was appointed by the Principals and chaired by the Treaty Commission. That committee was to address the issue of "system overload," and the committee's report is now being considered by the Principals.

Discussions have also taken place regarding the possibility of negotiating some issues on a regional basis, and some First Nations are beginning to work together and are negotiating common issues at common tables. In some cases, this may present a viable mechanism for addressing issues; it can only take place, however, if all parties in the negotiations agree.

Funding of the process also continues to be a key issue. Funding arrangements must ensure that the process is fair -- an aspect which is particularly significant as more First Nations move into Stage 4, the most costly stage in the process to date.

There is also a need to establish a balance between openness and confidentiality. While there is a need to explore some issues in a confidential environment, most main table discussions have been open to the public and a great deal of information about the treaty process is available.

In addition, the federal and provincial governments, having responsibility to represent non-Aboriginal interests in the negotiations, have established a Treaty Negotiation Advisory Committee, various regional committees, treaty advisory committees, and local advisory committees. Those committees are intended to offer an opportunity for people interested in the negotiations to have input into the process and to have their perspectives taken into account.

Regular meetings, workshops, seminars and public meetings will continue to be held throughout the province. In some cases, negotiations are also broadcast on the local cable television station. The Treaty Commission has also made a commitment to assume an expanded role in public information.

Further information about specific treaty negotiations taking place can be obtained by contacting local First Nations, treaty offices and Tribal Councils directly, or by contacting the B.C. Treaty Commission or local advisory committees. In addition, many First Nations involved in the treaty process have developed their own Web Sites to provide more detailed information.

The Six Stage Negotiation Process

Stage 1 -- Statement of Intent

A First Nation files with the Commission a Statement of Intent to negotiate a treaty. To be accepted, the Statement of Intent must identify for treaty purposes the First Nation's governing body and the people it represents and show that it has a mandate from those people to enter the process. The Statement must also describe the geographic area of the First Nation's distinct traditional territory in B.C. and identify any overlaps with other First Nations. The First Nation must also have a formal contact person.

Stage 2 -- Preparation for Negotiations

Within 45 days of accepting a Statement of Intent, the Commission must convene an initial meeting of the three parties. For many First Nations, this will be the first occasion on which they sit down at a treaty table with representatives of Canada and British Columbia. This meeting allows the Commission and the parties to exchange information, consider the criteria that will determine the parties' readiness to negotiate, and generally identify issues of concern. These meetings usually take place in the traditional territory of the First Nation. When the Commission determines that all three parties have met the criteria for readiness, it will confirm that the table is ready to begin the negotiation of a framework agreement.

Stage 3 -- Negotiation of a Framework Agreement

The framework agreement is, in effect, the "table of contents" for the negotiation of a comprehensive treaty. The three parties identify the subjects to be negotiated, the goals of the negotiation process, procedural arrangements, and a timetable for negotiations. They may also identify milestones that should be reached at specified stages in the process. At this stage, the parties are expected to embark upon a program of public information pertinent to their table that will continue throughout the negotiations. Canada and B.C. engage in public consultations at the regional and local levels through Regional Advisory Committees and sometimes through Local Advisory Committees. Municipal governments participate through Treaty Advisory Committees. At the provincial level, a Treaty Negotiation Advisory Committee also represents the interests of business, labour, environmental, recreation, fish and wildlife groups.

The Six Stage Negotiation Process

Stage 4 -- Negotiation of an Agreement in Principle

This is the stage at which the parties begin substantive negotiations. During this stage, the parties examine in detail the elements of the framework agreement. The goal is to reach the major agreements that will form the basis of the treaty. The agreement in principle will identify and define a range of rights and obligations, including existing and future interests in land, sea and resources, structures and authorities of governments, regulatory processes, amending processes, dispute resolution, fiscal arrangements, and others. The Agreement-in-Principle will also confirm the ratification process for each party and lay the groundwork for an implementation plan. The ratification process allows each party to review the emerging agreement and to approve, reject, or seek amendments to it. The process is also intended to provide the negotiators with a mandate to conclude a treaty.

Stage 5 -- Negotiation to Finalize a Treaty

The treaty will formalize the new relationship among the parties and embody the agreements reached in the agreement in principle. Technical and legal issues will be resolved. A treaty is a unique constitutional instrument to be signed and formally ratified at the conclusion of this stage.

Stage 6 -- Implementation of a Treaty

Long-term implementation plans need to be tailored to specific agreements. Plans to implement the treaty will be carried out. All aspects of the treaty will be realized and with continuing goodwill, commitment and effort by all parties, the new relationship will be brought to maturity.

Issues Being Considered -- Lands and Resources

Among the most important issues being considered in the treaty process are those related to lands and resources. Land has economic and political significance for First Nations peoples, but it is also connected to their values, their way of life, and land is generally viewed in profoundly spiritual terms. First Nations ownership of land is also tied to resource development and income generation, as their territories often contain valuable resource generating capacities. For all of these reasons, First Nations people view lands and resources as fundamental components of modern treaties, and most treaties will involve more than simple cash settlements.

Lands and resources, however, are also important to non-First Nations people. Many people are concerned about their ability to own property, develop resources, establish businesses, and enjoy recreational pursuits following the implementation of treaties.

As the B.C. Claims Task Force notes, the fundamental importance of lands and resources to First Nations and non-First Nations peoples has meant that they have been at the centre of contention between First Nations, federal and provincial governments, sometimes leading to disputes and serious confrontations.

A resolution of issues related to lands and resources is therefore critical to treaty negotiations, and is a key aspect of the new relationship being developed. Some treaties will likely include the transfer of ownership of and authority for some settlement lands to First Nations.

In addition, past agreements have usually included other lands which, although still owned and managed by the provincial government, may allow for specific treaty rights for First Nations peoples, such as fishing and hunting rights.

In none of the land claims signed to date, however, were private lands allocated under settlement or were lease arrangements of existing title holders transferred. In all cases, the transfer of resources was based strictly on a transfer of Crown properties. In addition, Aboriginal groups which have signed agreements have all demonstrated a desire to allow projects and developments to take place when benefits will be returned to the community, and they have not imposed significant restrictions on access to their lands.

As outlined in a study of the *Benefits and Costs of Treaty Settlements in British Columbia* by KPMG consultants, increased control over lands and resources by First Nations peoples will increase their self-sufficiency and independence. It will also likely result in a strong investment in resource industries and improvements in the skills and abilities associated with resource management. While this may result in some displacement of non-Aboriginal employees, over time First Nations control over lands and resources will allow them to invest and develop successful businesses, which will have spin-off benefits for other British Columbians and result in opportunities for joint ventures. Previous settlements have indeed resulted in numerous joint venture and partnership opportunities.

Additional Information

- ARA Consulting Group. 1995. *Social and Economic Impacts of Aboriginal Land Claim Settlements: A Case Study Analysis*. Victoria.
- Cassidy, F. and N. Dale. 1988. *After Native Claims? The Implications of Comprehensive Claims Settlements for Natural Resources in British Columbia*. Lantzville, B.C.: Oolican Books and the Institute on Research on Public Policy.
- KPMG. 1996. *Benefits and Costs of Treaty Settlements in British Columbia -- A Financial and Economic Perspective*. Victoria, British Columbia. February.
- Notzke, C. 1994. *Aboriginal Peoples and Natural Resources in Canada*. North York, Ontario: Centre for Aboriginal Management Education and Training and Captud Press Inc.
- The Royal Commission on Aboriginal Peoples. 1993. *Sharing the Harvest. The Road to Self-Reliance*. Report of the National Round Table on Aboriginal Economic Development and Resources. Ottawa: Minister of Supply and Services.

Issues Being Considered -- Parks and Protected Areas

In 1989, the World Wildlife Fund Canada and the Canadian Parks and Wildlife Society launched the endangered species campaign. The goal of that campaign is to complete a network of protected areas which represent each of the ecological regions of Canada. Canada's Green Plan supports the key elements of this campaign, and further establishes the idea of protecting 12 per cent of Canada as a national goal.

Many British Columbians support the protection of existing and the creation of additional parks and protected areas. Parks are valued for the recreational opportunities they present, as well as for the protection they offer plant and animal species.

The concepts of "parks" and "protected" areas are somewhat alien to First Nations traditions. However, as pressures on lands and resources have increasingly threatened the traditional territories of many First Nations, the idea of isolating specific areas to protect them from human intervention has gained support from many First Nations people. Support has been particularly strong when First Nations have been included in plans for the development and management of parks, and when the areas being set aside are of particular cultural and spiritual importance.

Treaties will likely address issues related to parks and protected areas. Many existing land claims agreements provide for the maintenance of existing parks and for the protection of additional areas. In most of these cases, Aboriginal peoples are to be directly involved in the planning and operation of the parks, and provisions are included related to the employment of Aboriginal peoples. It is quite likely that some future agreements will also include a portion of settlement lands being set aside and protected.

Issues Being Considered -- The Fishery

In British Columbia, perhaps no resource is seen to be more important than the fishery. The fishery has significance for the livelihood and lifestyles of many British Columbians, and has particular relevance for First Nations people. Almost all First Nations communities have an interest in fish for food, trade, employment and commercial purposes, and fish are an important aspect of their histories and values.

Jurisdiction for the fishery is more complex than is the case for most other renewable resources. The federal government has legislative jurisdiction for the “seacoast and inland fisheries,” and this jurisdiction is exercised through the *Fisheries Act*. The province, however, generally owns the bed of non-tidal waters, as well as the areas of fish habitat and the surrounding uplands. In addition, the federal government delegates some powers related to the fishery to the provincial government, such as controls on gear and the timing of fishing.

At the same time, most First Nations in British Columbia have never signed treaties or in any other form relinquished their rights to the fishery. And as the *Calder* (1973) court case made clear, fishing rights are an aspect of Aboriginal title. In that case, Justice Hall described Aboriginal title as “a right to occupy the lands and to enjoy the fruits of the soil, the forest and of the rivers and streams” (cited in Notzke, 1994). In the *Sparrow* case, (1986) the courts further ruled that Aboriginal people have an unextinguished right to fish for food, and that “food fishery” should be broadly interpreted.

Clarifying jurisdiction for the fishery is made more complicated by the general state of the resource, which many people perceive to be precarious. Concern about a depletion of fish stocks is quite widespread, which substantially increases sensitivity surrounding fisheries issues.

In that context, addressing the fisheries resource in treaty negotiations will likely be quite challenging. Based on previous land claims settlements, it is likely that agreements will allocate to each First Nation a portion of the Total Allowable Catch -- the surplus in excess of conservation requirements and Aboriginal food requirements. This may be included as a final amount, a percentage, or a figure that will vary depending upon current conditions.

As the 1996 KPMG study of the *Benefits and Costs of Treaty Settlements in British Columbia* points out, such an allocation may cause concern for non-Aboriginal fisher groups, as they may fear that it will result in mismanagement, reduced quality and over-fishing. However, KPMG notes that settlements of the past have demonstrated that Aboriginal people recognize the importance of conservation and are interested in preserving fishing stocks. Also, as is the case with other resources, treaty agreements will likely result in greater certainty regarding the ownership of and jurisdiction over the fisheries resource, which will be of general benefit to the industry. It should also reduce conflicts and litigation, which have proven to be costly for everyone interested in the fishery.

Issues Being Considered -- Forestry

It would be difficult to overstate the importance of British Columbia's forests. Forestry is a key component of the province's economy, an important source of jobs, and British Columbia's forests have recreational and spiritual relevance. The importance of the forests is particularly true for the First Nations people of the province.

Like the fisheries resource, however, there are tremendous pressures on the province's forestry resources. Given fears about a crisis in a sector on which the province depends so heavily, it is not surprising that significant forestry related conflicts and challenges have arisen in the past. The uncertainty resulting from unresolved First Nations rights has added to the volatility of this situation.

Incidents of the past have raised some concerns about the results of treaties, and a fear that a transfer of land ownership and resource control to First Nations will result in the elimination of timber harvesting and processing on settlement lands.

This situation is addressed by KPMG in their study of the benefits and costs of treaty settlements. KPMG concludes that, while the ultimate outcome will vary depending upon the unique circumstances and priorities of each First Nation involved in the negotiations, most First Nations will likely consider both conservation and extraction when developing their forest management plans. Examples from throughout the province demonstrate that First Na-

tions are interested in taking advantage of the economic opportunities the forestry resource represents, but that they are interested in doing so in ways which do not threaten the long term viability of the resource.

Following treaty settlements there may be a transition period in which some interests will be displaced. However, there will also likely be a range of new opportunities for cooperative efforts to manage and harvest forestry resources.

The ARA Consulting Group undertook a study of the impacts of Aboriginal land claim settlements, reviewing the implementation and outcomes of land claims agreements in northern Canada. The ARA group determined that, generally, the climate for investment in resource development improved or stayed the same following settlements, due to increased certainty. A variety of land and resource management structures were formed following settlements, including a range of co-management structures which generally resulted in a productive and cooperative environment. The Aboriginal groups also undertook a variety of joint venture initiatives.

Many past forestry related confrontations have not been caused entirely by opposition to logging; many, at least to some extent, have been a result of First Nations peoples' desire to be adequately involved in the management of the resources on their traditional territories. Treaties, therefore, may help to lessen the frequency of disputes, and may provide an opportunity for more cooperative efforts.

Issues Being Considered -- Governance

Eligibility and Enrolment

Central to treaties will be the determination of who is eligible to be enrolled under the agreements. In other words, each treaty will include an indication of who is to be considered a member of the First Nation. Agreements signed in the past have included a variety of eligibility criteria, usually including some indication that an individual is to be of relevant Aboriginal ancestry, and accepted as a member by the Aboriginal community. All of the agreements have also included a provision that an individual can be enrolled under only one agreement.

Governance and Social Services

Issues of jurisdiction and responsibility for the delivery of social services will likely be an important component of treaties. A recent study by the ARA consulting group points out that through past settlements, Aboriginal groups have achieved the economic and organizational means to deliver social services in ways considered culturally appropriate. In many cases, Aboriginal cultures and values are also more appreciated as a result of settlements. Past settlements have resulted in a greater mix of responsibility for program administration through co-operation, self-government, and contracting arrangements. Traditional lifestyles in social service management and delivery are a subject of focus, as are concepts of “wellness” and “healing.” The general opinion is that Aboriginal communities should deliver social services, a change from the paternalistic approach of the past. Many First Nations have also indicated that they want the opportunities for economic development in order to pay a reasonable share of their government responsibilities.

Culture, Language and Heritage

In addition to the inclusion of language and cultural issues in the governance provisions, treaties may also include other specific provisions related to the importance of language and culture issues for First Nations people. For example, treaties may provide for a repatriation of cultural artifacts, for the protection of archeological and other heritage sites, and for the use of First Nations names and references.

Financing

The ability of First Nations to finance their activities and services will be a crucial aspect of the success of treaty agreements. First Nations will therefore require the ability to access revenues, to borrow, to receive transfers from other governments, and possibly to levy taxes. The capacity to undertake these activities will likely be addressed in treaties, as will other economic development mechanisms, such as training needs and opportunities to bid for contracts.

A Memorandum of Understanding between the federal and provincial governments indicates that the current treaty process may involve financial settlements made up of cash, cash equivalents (the market value of urban lands), and forgone resource revenues. B.C. and Canada will each contribute a portion of the financial settlement.

In past agreements, transfer payments to the Aboriginal party have taken place over a number of years, according to an agreed upon schedule of payments. In addition, those agreements have often included provisions related to revenue sharing, and have provided opportunities for Aboriginal people to generate revenue from their own resource developments.