Issues Being Considered -- Education

Among the key issues being considered in treaty negotiations are those related to governance and jurisdiction for government services. As described above, First Nations have been consistently asserting their right to self-government, which has been recognized and affirmed in Section 35 of the *Constitution Act, 1982*.

Education is clearly an important aspect of the right to self-government, and as such will be an issue for discussion during treaty negotiations.

Many people support the perspective that the needs of First Nations learners have not been adequately met in the past. The 1972 National Indian Brotherhood Report -- *Indian Control of Indian Education* -- was one of the most significant reports which argued for First Nations control of education. That report was followed by a series of studies and papers also calling for greater input from First Nations people into the education of their young people. The provincial Royal Commission on Education, which published its findings in 1988, was among the strongest proponents of First Nations educational self-determination, support for First Nations designed and operated schools, and greater cooperative arrangements and close working relationships between the public school system and First Nations people.

Treaty making may represent an important mechanism for responding to the many calls which have been made for increased First Nations control of their education.

First Nations people generally want the opportunity to educate their children according to their own cultures and traditions. They also strongly believe that their children should have the opportunity to learn First Nations languages and values. Fundamentally, First Nations people want an education system which allows their young people to participate fully and effectively in meeting the goals of their communities.

Each First Nation involved in the treaty process likely has its own specific goals related to education. Some may have a good working relationship with their local school district, and may want to have their children continue to attend provincial schools. In such situations, treaties may formalize aspects of that relationship, and clearly establish the rights and responsibilities of each party. In other cases, First Nations may want to continue to work with the provincial system, but with stronger decision-making capabilities and greater influence over the education being provided to their children. Some First Nations, however, may want to establish their own education authorities, schools, and, in some cases, school boards. The discussion of education issues will vary, depending upon the needs and circumstances of each First Nation.

Additional Information

- Williams, C. 1997. *Building Strong Communities Through Education and Treaties*. Vancouver: First Nations Education Steering Committee.

Participants in the B.C. Treaty Process

As of May 30, 1997

(from the B.C. Treaty Commission Annual Report, 1997)

1	Alkali Lake Indian Band	Stage 4
2	Burrard Band (Tsleil-Waututh Nation)	Stage 4
3	Cariboo Tribal Council	Stage 4
4	Carrier Sekani Tribal Council	Stage 4
5	Champagne and Aishihik First Nations	Stage 4
6	Cheslatta Carrier Nation	Stage 3
7	Council of the Haida Nation	Stage 2
8	Ditidaht First Nation	Stage 4
9	Gitanyow Hereditary Chiefs	Stage 4
10	Gitxsan Hereditary Chiefs	Stage 4
11	Gwa'Sala - 'Nakwaxda'xw	Stage 2
12	Haisla Nation	Stage 4
13	Heiltsuk Nation	Stage 4
14	Homalco First Nation	Stage 4
15	Hul'qumi'num Tribes	Stage 4
16	In-SHUCK-ch/N'Quatqua	Stage 4
17	Kaska Dena Council	Stage 4
18	Katzie Indian Band	Stage 2
19	Klahoose Indian Band	Stage 4
20	Ktunaxa/Kinbasket Tribal Council	Stage 3
21	Kwakiutl First Nation	Stage 2
22	Kwakiutl Laich-Kwil-Tach Council of Chiefs	Stage 3
23	Lake Babine Nation	Stage 3
24	Lheidli T'enneh Nation	Stage 4
25	Musqueam Nation	Stage 3
26	Nanaimo First Nation	Stage 4
27	'Namgis First Nation	Stage 2
28	Nazko Indian Band	Stage 3
29	Nuu-chah-nulth Tribal Council	Stage 4
30	Oweekeno Nation	Stage 4
31	Pacheedaht Band	Stage 4
32	Quatsino First Nation	Stage 2
33	Sechelt Indian Band	Stage 4
34	Sliammon Indian Band	Stage 4
35	Squamish Nation	Stage 3
36	Sto:lo Nation	Stage 4
37	Taku River Tlingit First Nation	Stage 4
38	Tanakteuk First Nation	Stage 2
39	Te'Mexw Treaty Association	Stage 4
40	Teslin Tlingit Council	Stage 4
41	Tlatlasikwala First Nation	Stage 2
42	Tsawwassen First Nation	Stage 4
43	Tsay Keh Dene Band	Stage 4
44	Tsimshian Nation	Stage 4
45	Ts'kw'aylaxw First Nation (Pavilion Indian Band)	Stage 4
46	Westbank Indian Band	Stage 4
47	Wet'suwet'en Nation	Stage 4
48	Xaxli'p First Nation (Fountain Indian Band)	Stage 4
49	Yale First Nation	Stage 4
50	Yekooche Nation	Stage 4
51	Carcross/Tagish	Stage 2

Map Showing Participants

Map Adapted from the *B.C. Treaty Commission Annual Report, 1997*
Map is not to scale.

The Way Ahead

Fundamentally, treaties between First Nations and non-Aboriginal people and governments represent one mechanism for addressing issues which have been outstanding since the earliest contact between First Nations people and European settlers. First Nations peoples have consistently asserted their rights and have attempted to resolve the relationship between Aboriginal and Crown title. Many non-Aboriginal people have also urged the federal and provincial governments to reach agreement with First Nations people in order to provide a more stable and cooperative environment.

The current treaty process in this province represents an opportunity to move ahead in that direction. Treaties can provide for a new relationship based on mutual respect, and for a recognition of the need to work in partnership to ensure that everyone living in British Columbia has the opportunity to lead fulfilling lives. Treaties can also create the certainty needed to provide comfort to First Nations and non-Aboriginal people and governments.

A significant effort has been made to ensure that the B.C. Treaty Process is fair and effective, and that it will result in useful agreements that address the concerns and needs of all people. Widespread support for that process is needed, however, to ensure that it continues to move forward in a positive manner. That support can only come with a good understanding of the purpose of treaties and the process of negotiations, and through continued dialogue and open communication about the issues being considered. This handbook is intended to offer an opportunity for people to become more informed about a process which has such tremendous significance for all British Columbians.

How Does the Nisga'a Agreement Relate?

Concluding a period of negotiations which began long before the Treaty Process was established, in 1996 the Nisga'a signed a land claims Agreement-in-Principle (AIP) with the federal and BC governments. That agreement, however, was negotiated outside of the B.C. Treaty Process.

Attempts by the Nisga'a to have issues of Aboriginal title addressed began more than a century ago. For decades, however, there was no effective mechanism for bringing their claims forward. The Nisga'a filed a law suit in 1967 with the Supreme Court of British Columbia, claiming that their title had never been lawfully extinguished, and asking the courts for a declaration supporting that assertion. Their trial opened in 1969, but the trial judge dismissed their claim.

The Nisga'a then carried their case to the British Columbia Court of Appeal and, following an unfavourable verdict there, to the Supreme Court of Canada -- representing the first opportunity for a First Nation to ask the Supreme Court to rule on the status of Aboriginal title.

The Nisga'a Chiefs and elders travelled to Ottawa, where their case -- *Calder* (1973) -- was heard by seven judges. Six of the seven judges hearing their case found that the Nisga'a had held Aboriginal title before the arrival of Europeans. Those six judges, however, were split in their decision regarding whether that title had or had not been extinguished by the policies of the colonial government. The seventh judge would not break the tie, ruling that the court action was improper because the law required that British Columbia consent to be sued. Technically, then, the Nisga'a lost their case, but in its pursuit they had a tremendous impact on Canadian government policy.

The Nisga'a decision moved the issue of Aboriginal title into the political arena, and in 1973 the federal government announced its intention to settle native land claims in all parts of Canada where no treaties existed. The process of land claims negotiations then became official when the Office of Native Claims opened in Ottawa in 1974 and began to receive proposals for negotiations. In 1983, a First Minister's Conference resulted in a Constitutional amendment that confirmed modern-day land claims agreements as treaties.

The Nisga'a agreement was negotiated through the federal land claims negotiation process, rather than within the B.C. Treaty Process. The final Nisga'a agreement, therefore, will have the legal status of a "treaty," but it is not directly related to the six-stage process recommended by the B.C. Claims Task Force. It has been clearly indicated that the terms of the Nisga'a AIP will not serve as the model for the other treaties currently being negotiated, but it does give a sense of some of the key components of a treaty.

Further information related to the Nisga'a Agreement in Principle is available in:

- MacKenzie, I. 1996. *Without Surrender Without Consent. A History of the Nisga'a Land Claim*. Vancouver: Douglas and McIntyre.

Information is also available on the Internet.

What Does the Nisga'a Agreement Include?

The Nisga'a Agreement-in-Principle (AIP) is a very lengthy document, and only a brief summary will be included here. A copy of the AIP can be found in many libraries, and is also available on the Internet. Many of the provisions included in the Nisga'a AIP are similar to those included in other land claim agreements signed with Aboriginal peoples elsewhere in Canada. Some of the key points in the AIP include:

- The Nisga'a will gain communal ownership of about 1,930 square kilometres of Nisga'a Lands in the Lower Nass Valley. In addition, 56 Nisga'a reserves in the region will become Nisga'a owned lands, and 18 reserves located outside of Nisga'a Lands will become fee simple lands owned communally by the Nisga'a people.
- Non-Nisga'a people will have unimpeded access to their lands. In addition, there will be reasonable public access to Nisga'a Lands for non-commercial and recreational purposes, including hunting and fishing.
- Existing legal interests on Nisga'a Lands will continue on their current terms. These interests include rights of way, angling and guide outfitter licences, and traplines.
- Regarding fisheries, conservation will be the primary consideration. A trust will be established to safeguard the long-term survival of Nass area fish resources. The salmon harvest provisions outline 2 components: i) a treaty entitlement; and ii) a supplemental harvest. The supplemental harvest will be delivered through a separate agreement, and will provide fish for food as well as some commercial opportunities. The Nisga'a will be entitled to harvest fish species for domestic purposes.
- Following a transition period to allow for existing licensees to adjust their operations, the Nisga'a will own and manage all forest resources on Nisga'a Lands. The Nisga'a will establish and implement their own forest management standards, but those standards must meet or exceed provincial standards.
- Within a designated wildlife management area, the Nisga'a will be entitled to hunt wildlife for domestic purposes. The Nisga'a will not be able to sell wildlife, but they will be able to trade or barter among themselves or with other Aboriginal peoples.

What Does the Nisga'a Agreement Include?

- The Nisga'a will set environmental protection standards for Nisga'a Lands, but those standards must meet or exceed provincial and federal standards.
- A Nisga'a Government will be established, and a Constitution will be designed to ensure an open and democratic government. The Nisga'a will be able to make laws pertaining to, among other matters, culture, language, the solemnization of marriage, public works, traffic and transportation, and land use.
- The criteria for Nisga'a enrolment will reflect Nisga'a traditional laws.
- Non-Nisga'a people who live on Nisga'a lands will be consulted about and may appeal any decisions which directly affect them. They will also be able to participate in elected bodies which directly affect them.
- The Nisga'a will be able to establish a Nisga'a court with jurisdiction over Nisga'a laws on Nisga'a Lands, with the approval of the province.
- The Canadian Charter of Rights and Freedoms will apply to Nisga'a government and institutions.
- The Indian Tax Exemption will be eliminated after a transitional period of 8 years (for sales taxes) and 12 years (for income taxes).
- The Nisga'a will receive $190 million over a period of several years. Those funds are to be used to provide services at levels comparable to other jurisdictions in B.C.'s northwest region.
- The *Indian Act* will eventually no longer apply to the Nisga'a.

What is Delgamuukw, and What Are Its Implications?

On December 11, 1997, the Supreme Court of Canada rendered its decision in the case of *Delgamuukw v. Her Majesty the Queen in Right of British Columbia*. The *Delgamuukw* case was brought to the Supreme Court by the Gitksan and Wet'suwet'en peoples, and it focused on a recognition of their Aboriginal title to their traditional territories. The Court found that a new trial was necessary to determine some specifics of the case, and it did not rule on self-government. The decision, however, makes several significant comments about the nature of Aboriginal rights which are relevant to negotiations.

The *Delgamuukw* decision begins to provide greater clarity regarding what is protected by Section 35 of the *Canadian Constitution*. The Court characterizes Aboriginal title as "a right to the land itself," which derives from their original occupation and possession at the time the Crown asserted sovereignty. Aboriginal title is said to encompasses the right to exclusive use and occupation of land for a variety of purposes. Those purposes are not restricted to activities which are aspects of practices, traditions or cultures integral to the Aboriginal group; the purposes are framed in broad terms, and include contemporary economic activities. According to the judgement, however, Aboriginal title lands cannot be used for purposes that would result in a destruction of their inherent and unique values which are to be enjoyed by the community, and if the lands are to be used for purposes which Aboriginal title does not permit, they must be converted to non-title lands. The decision also states that Aboriginal title is held communally.

The decision states that Aboriginal title can be transferred to the Crown in exchange for valuable consideration, but it cannot be transferred, sold, or surrendered to anyone but the Crown. It is also characterized as proprietary, and able to be shared by groups.

While recognizing Constitutional protection for Aboriginal title, the *Delgamuukw* decision maintains that Aboriginal rights and title are not absolute. The federal and provincial governments may infringe upon or interfere with Aboriginal title if justified. The Court holds that an infringement is permissable if: (1) there is a compelling and substantial legislative objective to the infringement, such as conservation, general economic or infrastructure development, or environmental protection; and (2) the infringement is consistent with the fiduciary relationship between the Crown and Aboriginal peoples. Issues relevant to infringement include the accommodation of Aboriginal peoples' interests. Aboriginal peoples must be involved in decisions about their lands in a way which is "significantly deeper then mere consultation," including, in some cases, consent. There must also be fair compensation when Aboriginal title is infringed.

There will undoubtedly be numerous and varied interpretations of the implications of the Delgamuukw case. One immediate challenge rasied by the Supreme Court in the *Delgamuukw* decision is its encouragement that all parties negotiate, and its insistence that the Crown is under a moral, if not a legal, duty to enter into and conduct negotiations in good faith.

Additional Information

- Plain, F. 1985. A treatise on the rights of the Aboriginal peoples of the continent of North America. In Boldt, M. and J. A. Long (Editors), *The Quest for Justice*. Toronto: University of Toronto Press.
- The Royal Commission on Aboriginal Peoples. 1995. *Treaty Making in the Spirit of Co-existence*. Ottawa: Minister of Supply and Services.
- The Task Force to Review Comprehensive Claims Policy. 1985. *Report of the Task Force (Coolican Report)*. Ottawa: Minister of Supply and Services.

Making Additional Copies

The First Nations Education Steering Committee, the B.C. Teachers' Federation, and the Tripartite Public Education Committee welcome teachers to share this paper with their students, and to make additional copies as required in order to do so.