



## Through treaties aboriginal rights and title are clearly defined

First Nations in BC have consistently sought recognition of their aboriginal rights and title — through petition, protest, litigation and negotiation.

First Nations view their title as including ownership, jurisdiction and governance over their land, resources and people. This perspective of aboriginal title is based on the fact that First Nation communities with well-established governing systems existed long before contact with non-aboriginal people.

The courts, historically, have had an important role to play in clarifying aboriginal rights and urging governments to negotiate, most significantly in the Supreme Court of Canada decision in the Delgamuukw case in December 1997. The Supreme Court characterized aboriginal rights and title as: a constitutionally protected right; a right to exclusive use and occupation of land; and a burden on Crown title. Other recent decisions have been favourable to First Nations.

First Nations have sought to protect their interests in land, sea and resources through negotiations, or direct action, or by asserting their authority over their entire traditional territory.

British Columbians overwhelmingly agree that the matters in dispute can only be resolved through negotiations, not by confrontation and not by going to court.

If a First Nation does decide to go to court to establish title to lands, it will have to prove that it occupied the land to the exclusion of others prior to 1846, the year British sovereignty was established over the area that became British Columbia.

The government of Canada cannot pass a law to do away with aboriginal

title. In Canada, the constitution is the highest authority in the land, not Parliament. Parliament can, in certain circumstances, pass laws that conflict with constitutional rights, but only in ways that can meet a strict test of justification set down by the courts. A law to extinguish aboriginal title would be unlikely to meet that test. Also, the clause in the constitution that permits governments to override certain constitutional rights does not apply to aboriginal rights. Aboriginal title is an aboriginal right.

The treaty process was set up as a voluntary process based on political negotiations, not legal interpretations. In treaty negotiations, a First Nation does not have to prove aboriginal title. To be accepted into the treaty process, a First Nation must be an aboriginal governing body, however organized and established by aboriginal people within their traditional territory in BC, which has been mandated by its constituents to enter into treaty negotiations on their behalf with the governments of Canada and BC.

Through treaties, largely undefined aboriginal rights and title are clearly defined. Each First Nation, Canada and BC will have a full understanding of their respective authorities and responsibilities. No one party can dictate the terms of the new relationship that will be captured in a treaty: all three must agree.

Once concluded, these treaties and the rights defined in them are protected under section 35 of the Constitution Act, 1982. They cannot be unilaterally amended. This is a fundamental principle of the new relationship — only those who make the treaty can change it.

# Six Stage Treaty Process

*The six stage treaty process is set out in the BC Claims Task Force Report of 1991 and incorporated in the tripartite Treaty Commission Agreement of 1992.*

## Stage 1 — Statement of Intent to Negotiate

A First Nation files with the Treaty Commission a Statement of Intent (SOI) to negotiate a treaty with Canada and British Columbia. To be accepted by the Treaty Commission, the SOI must meet several criteria. It must identify, for treaty purposes, the First Nation's governing body and the people that body represents and show that the governing body has a mandate from those people to enter the process.

The Statement must describe the geographic area of the First Nation's distinct traditional territory in BC and identify any overlaps with other First Nations. The First Nation must also name a formal contact person.

## Stage 2 — Readiness to Negotiate

The Treaty Commission must convene an initial meeting of the three parties within 45 days of accepting a Statement of Intent. 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 Treaty Commission and the parties to exchange information, consider the criteria for determining the parties' readiness to negotiate and generally

identify issues of concern. The meeting usually takes place in the traditional territory of the First Nation.

The Treaty Commission must determine that all three parties are ready to negotiate. The three parties must each have:

a commitment to negotiate; a qualified negotiator; sufficient resources to undertake negotiations; a mandate and a process to develop that mandate; and confirmation of ratification procedures. The First Nation must have a plan for addressing any overlaps. The two public governments must have a formal means of consulting with third parties, including local governments, interest groups and the public at large.

If the three parties have everything in place, the Treaty Commission will declare the table ready to begin negotiating a framework agreement.

## Stage 3 — Negotiation of a Framework Agreement

The framework agreement is, in effect, the "table of contents" of a comprehensive treaty. The three parties agree on the subjects to be negotiated, goals, procedural arrangements and an agenda for negotiations.

Canada and BC engage in public

consultation 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, consultation occurs through the 31-member Treaty Negotiation Advisory Committee, which represents the interests of business, industry, labour, environmental, recreation, fish and wildlife groups.

The parties at each negotiating table must establish a public information program that will continue throughout the negotiations.

## Stage 4 — Negotiation of an Agreement in Principle

This is where substantive treaty negotiations begin. The three parties examine in detail the elements outlined in their framework agreement. The goal is to reach agreements in principle on each of the topics that will form the basis of the treaty.

These agreements will identify and define a range of rights and obligations, including: existing and future interests in land, sea and resources; structures and authorities of government; relationships of laws;

regulatory processes; amending processes; dispute resolution; financial compensation; fiscal relations and so on.

The agreement in principle also lays the groundwork for the implementation of the treaty.

First Nations are expected to have resolved overlaps before completing Stage 4.

## Stage 5 — Negotiation to finalize a treaty

The treaty formalizes the new relationship among the parties and embodies the agreements reached in the agreement in principle. Technical and legal issues are resolved at this stage. A treaty is a unique constitutional instrument to be signed and formally ratified at the conclusion of Stage 5.

## Stage 6 — Implementation of the treaty

Long-term implementation plans need to be tailored to specific agreements. The plans to implement the treaty are put into effect or phased in as agreed. With time, all aspects of the treaty will be realized and with continuing goodwill, commitment and effort by all parties, the new relationship will come to maturity.

*As of August 31, 1999 there are 51 First Nations, in 42\* sets of negotiations, participating in the BC treaty process*

### First Nations in Stage 2: 1

Council of the Haida Nation

### First Nations in Stage 3 : 11

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

### Members of the

#### Winalgalis Treaty Group:

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

### First Nations in Stage 4: 38

#### Members of the Northern Regional Negotiations

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

#### At One Table

Ditidaht First Nation  
Pacheedaht Band  
  
Cariboo Tribal Council  
Carrier Sekani Tribal Council  
Esketemc First Nation  
(formerly Alkali Lake)  
Gitanyow Hereditary Chiefs  
Gitxsan Hereditary Chiefs

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  
Naxko Indian Band  
Nuu-chah-nulth Tribal Council  
Oweekeno Nation  
Sliammon Indian Band  
Snuneymuxw First Nation  
(formerly Nanaimo)  
Sto:Lo Nation  
Te'Mexw Treaty Association

Ts'kw'aylaxw First Nation  
Tsawwassen First Nation  
Tsay Keh Dene Band  
Tsimshian Nation  
Tsilil-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 groups of First Nations are negotiating at common tables.**

# Role and Composition

The Treaty Commission is the independent, neutral body responsible for facilitating treaty negotiations among Canada, British Columbia and First Nations in BC. It oversees the treaty negotiation process to make sure the parties are being effective and making progress in negotiations.

Canada, BC and First Nation governments have no say in its decisions and the Treaty Commission is not a part of any government. It does not negotiate treaties — that is done by the three parties at each negotiating table: each First Nation, Canada and BC.

The treaty process and the Treaty Commission were established in September 1992 by agreement among the Canada, BC and the First Nations Summit. They are guided by those agreements and modeled on the recommendations in the 1991 BC Claims Task Force report. The Treaty Commission and the six stage treaty process were designed to advance treaty negotiations among Canada, BC and BC First Nations.

Responsible for accepting First Nations into the treaty process, the Treaty Commission also assesses when the parties are ready to start negotiations. It develops policy and procedures applicable to the six stage treaty process, monitors and reports on the progress of negotiations, identifies problems, offers advice and sometimes assists the parties in

resolving disputes. It allocates negotiation support funding, primarily in the form of loans, to First Nations in the treaty process.

The Treaty Commission has a major role to play in public information and education. Its first objective is to raise public awareness and understanding of the historical and legal reasons for treaty making and the Treaty Commission's role in the BC treaty process. Its second objective is to provide public information on the treaty process, the Treaty Commission and the status of negotiations at each table.

Five commissioners guide the Treaty Commission. Of the four part-time commissioners, two are selected by the First Nations Summit, one is appointed by Canada and one is appointed by British Columbia. The Principals — Canada, BC and the First Nations Summit — act together in appointing a full-time Chief Commissioner.

The Treaty Commission's independence and neutrality are reflected in its composition and in the way it makes decisions. Commissioners do not represent the Principals that appoint them, but act independently. Every decision requires the support of one appointee of each of the Principals and the Chief Commissioner.

Commissioners and staff regularly travel to all regions in British Columbia to monitor treaty negotiations and the parties' compliance with commitments they have made to the treaty process. In addition to the five Commissioners, the Treaty Commission employs a staff of 14. The operating budget for the 1998/1999 fiscal year is \$1.86 million.

***The BC Treaty Commission was set up to keep everyone honest at the table.***

Grand Chief Ed John, *Making Treaties in BC*

# History and Progress

**December 1990** BC Claims Task Force formed.

**June 1991** BC Claims Task Force makes its report. The report recommends that a new relationship among First Nations, Canada and BC be established through political negotiations and makes recommendations for the achievement of that goal.

**September 21, 1992** BC Treaty Commission Agreement among First Nations Summit, Canada and BC.

**April 1993** First Treaty Commissioners appointed.

**May 1993** First Nations Summit Consent Resolution establishing BC Treaty Commission.

**May 1993** Treaty Commission Act passed by the BC Legislature.

**December 1993** Treaty Commission begins receiving Statements of Intent. 29 First Nations file statements to negotiate treaties.

**June 1994** Treaty Commission releases its first Annual Report: has accepted 41 Statements of Intent from First Nations to negotiate treaties.

**June 1995** Treaty Commission releases its second Annual Report: has accepted 43 Statements of Intent from First Nations to negotiate treaties; 7 First Nations in Stage 3.

**December 1995** BC Treaty Commission Act passed by federal Parliament.

**March 1, 1996** BC Treaty Commission Act proclaimed by Canada, BC and First Nations Summit resolution.

**June 1996** Treaty Commission releases its third Annual Report: has accepted 47 Statements of Intent from First Nations to negotiate treaties; 14 First Nations in Stage 2; 22 First Nations in Stage 3; 11 First Nations in Stage 4.

**June 1997** Treaty Commission releases its fourth Annual Report: has accepted 50 Statements of Intent from First Nations to negotiate treaties; 11 First Nations in Stage 2; 12 First Nations in Stage 3; and 27 First Nations in Stage 4.

**December 11, 1997** Supreme Court of Canada decision in the *Delgamuukw* case confirms aboriginal title exists in British Columbia, describes its content, requirements for proof, and the limits on its infringement and extinguishment by public governments.

**April 1998** At the urging of the Treaty Commission, the Principals begin a series of meetings to address major issues required to reinvigorate the treaty negotiation process in the wake of *Delgamuukw* case. Principals agree that tripartite negotiations within the BC treaty process will continue while the review is underway.

**May 1998** Representatives of the three Principals agree to reappoint Chief Commissioner for a further two-year term. The reappointment is not approved by the provincial Cabinet. The Chief Commissioner's appointment expires May 14, 1998. Commissioners take turns serving as Acting Chief Commissioner.

**June 1998** Treaty Commission releases its fifth Annual Report: has accepted 51 Statements of Intent from First Nations to negotiate treaties; 3 First Nations in Stage 2; 12 First Nations in Stage 3; and 36 First Nations in Stage 4.

**August 4, 1998** Negotiated outside of the BC Treaty Process, the Nisga'a Nation, Canada and BC sign first modern treaty in BC.

**November 19, 1998** Miles Richardson appointed Chief Commissioner for a three-year term by Canada, BC and the First Nations Summit.

**March 1999** BC Supreme Court decision in the Gitanyow case confirms that when the federal and provincial governments enter into treaty negotiations, they are obliged to conduct those negotiations in good faith.

**April 16, 1999** Sechelt Indian Band, Canada and BC sign first agreement in principle under the BC treaty process.

**June 1999** Treaty Commission releases its sixth Annual Report: has accepted 51 Statements of Intent from First Nations to negotiate treaties; 1 First Nation in Stage 2; 12 First Nations in Stage 3; 37 First Nations in Stage 4; and 1 First Nation in Stage 5.



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