BC TREATY COMMISSION

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Annual Report 1995

Former Commissioners' Remarks

The British Columbia Treaty Commission has entered its third year as the facilitator of treaty making in British Columbia. Under an agreement signed by three Principals-the Governments of Canada and British Columbia and the First Nations Summit-the Treaty Commission is required to submit an annual report to the Principals on the progress of negotiations and on the operations of the Commission. This Annual Report also serves to provide information to the public about the role of the B.C. Treaty Commission and the status of the treaty negotiation process in British Columbia.

Annual financial statements have been prepared to coincide with the March 31 fiscal year-end of the Governments of Canada and British Columbia. The financial statements for the fiscal year ended March 31, 1995 are submitted as a separate document.

The process provides a solid structure for negotiations, but the relationships upon which this process is based are fragile.

It is our pleasure to submit this second Annual Report of the British Columbia Treaty Commission.

This is an historic process. Finally, First Nations have been able to sit at a table with senior representatives of Canada and British Columbia, and begin to discuss issues which have been unresolved for over 140 years.

The process provides a solid structure for negotiations, but the relationships upon which this process is based are fragile. This makes the process itself fragile, and all parties must be very careful about how they proceed down this difficult path.

First Nations have expressed their clear goals to preserve and protect their cultures. All cultures are based on the past, and the past can never be forgotten. But all parties must be able to build on the foundations of the past towards new and better relationships.

All of the Commissioners believe in this process, and that the challenges we face now and in the future can be met with clear resolve, mutual respect, cooperation and understanding among all those involved.

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1994 – 1995 in Review

The role of the B.C. Treaty Commission is to facilitate and manage a six-stage process to negotiate treaties in British Columbia. The process is to be voluntary, fair, impartial, effective and understandable.

THE COMMISSIONERS

The first Commissioners were appointed on April 15, 1993. First they established the Commission's policies, initial procedures and priorities. Then the Commission invited First Nations to enter the process, starting December 15, 1993. By June 15, 1994, six months after the process was opened, 41 First Nations had chosen to come to the negotiating table. These First Nations were identified in the first Annual Report of the Commission.

A number of changes took place within the Commission:

- CJ. (Chuck) Connaghan, who served as the first Chief Commissioner, retired from that post on December 31, 1994.
- Mr. Connaghan was succeeded by Alec C. Robertson, Q.C., who took office on May 15,1995. In the interim, Barbara L. Fisher served as Acting Chief Commissioner;
- Commissioners Dr. Lorne Greenaway and Art Sterritt retired from the Commission on April 14, 1995, at the end of their terms of appointment;
- Dr. Peter Lusztig was appointed to the Commission by Canada, Wilf Adam was elected and Carole Corcoran was re-elected by the First Nations Summit; and,
- Barbara Fisher was reappointed by B.C.

THE SIX STAGES

The process has six stages as follows:

1. The Statement of Intent
2. Preparation for Negotiations
3. Negotiation of a Framework Agreement
4. Negotiation of an Agreement in Principle

5. Negotiation to Finalize a Treaty

6. Implementation of the Treaty

STATUS OF THE PROCESS

There are 43 First Nations in the process. This number reflects several changes in the composition of some First Nations since the first Annual Report. The Commissioners expect more First Nations to enter the process in the year ahead.

At the end of the Commission's second year of operation, all Commissioners agree that, overall, significant progress has been made. In less than 18 months, representatives of over 65% of the First Nations' population in the province have come to the table to begin negotiating treaties with the Governments of Canada and British Columbia. Until this time, only one First Nation, the Nisga'a, had been at a modern treaty table. The Nisga'a were the first to begin negotiating under Canada's Comprehensive Claims Policy (1976), and they continue in their negotiations outside the Treaty Commission process.

Of the 43 First Nations in this process, seven have completed Stage 2 preparations and have progressed with the other two parties into Stage 3, Framework Agreement negotiations. Eleven other First Nations have substantially completed Stage 2 and are working with the federal and provincial negotiators to complete procedural arrangements. Most of these 18 First Nations are expecting to move into Stage 4, substantive Agreement in Principle negotiations, during 1995 - 96. The remaining 25 First Nations in the process are proceeding through Stage 2 and most expect to reach Stage 3 during the year ahead.

This is solid evidence that the B.C. Treaty Commission process is working. At the same time, significant challenges have faced the Commission, the Principals and the parties to the negotiations. These challenges include:

- Ways to negotiate interim measures agreements so that First Nations interests which may be affected have adequate protection while treaty negotiations proceed;
- The need for further public information and education;
- The need for continuing consultation by the Governments of Canada and British Columbia with non-aboriginal interests;
- A funding program which must allow First Nations to prepare for and negotiate on an equal footing with Canada and British Columbia;
- How to manage a process effectively where so many negotiations will be conducted at the same time; and
- The need for the Government of Canada to enact legislation creating the B.C. Treaty Commission as a legal entity.

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Why Are We Negotiating Treaties?

An Historical View

It is important for the public to understand the Commission's role in an historic context. In carrying out their duties during the past year, the Commissioners traveled widely in the province and met many individuals and groups of British Columbians. Time and again, Commissioners found people much more willing to accept and support this treaty-making process once they became familiar with the history of the relationship between First Nations and the federal and provincial governments.

That relationship has been a troubled one. This was noted in the historic 1991 Report of the British Columbia Claims Task Force.

The Task Force Report called for "a new relationship which recognizes the unique place of aboriginal people and First Nations in Canada," a relationship which must be achieved through fair and voluntary negotiations among equal participants. The report adds:

" THE STATUS QUO HAS BEEN COSTLY. ENERGIES AND RESOURCES HAVE BEEN SPENT IN LEGAL BATTLES AND OTHER STRATEGIES. IT IS TIME TO PUT THESE RESOURCES AND ENERGIES INTO THE NEGOTIATION OF A CONSTRUCTIVE RELATIONSHIP. "

Here is some of the history which led to those conclusions:

When European settlers arrived in what became British Columbia, the land was inhabited by many nations of people. Each nation had its own language, its own economy, its own system of laws and government and its own spiritual tradition.

The British government's policy in North America, as set out in the Royal Proclamation of 1763, was that only the Crown could acquire land from the aboriginal people, and only by treaty. In eastern Canada and across the prairies, this policy resulted in major treaties by which various First Nations ceded title to their land to the Crown in exchange for substantial land reserves and other rights. On the prairies, the foundations for settling the land question were laid before Confederation.

West of the Rockies, James Douglas was directed by the Colonial Office to purchase First Nations lands, first in his capacity as chief factor of the Hudson's Bay Company, and later as Governor of the colony. He arranged fourteen purchases, known as the Douglas Treaties, mostly on southern Vancouver Island.

Then money ran out and there were no further purchases. Instead, Governor Douglas made the aboriginal people the same offer that he made to the settlers: if they would leave their homes, acquire Crown land and become farmers, they would be given equal treatment. But

traditionally, aboriginal people were not farmers and their values and traditional ways of life made assimilation unlikely.

After Governor Douglas retired, the colonial government removed the right of the aboriginal people to acquire Crown land and denied that they had ever owned the land. These issues were not resolved when British Columbia negotiated the Terms of Union with Canada in 1871. Federal negotiators did not consult with the aboriginal people. They wrongly assumed that the 'Indian question' had been resolved by treaties.

The Terms of Union gave the province control over the creation of further Indian reserves and gave Canada responsibility for 'Indians and lands reserved for Indians.' This responsibility was carried out through the Indian Act, which imposed the 'band' system of administration on First Nations.

Over the decades, First Nations leaders demanded treaties to safeguard the territories of their people. However, the only treaty signed in B.C. after the Douglas Treaties was Treaty Eight in 1899, which extended into the northeast corner of the province. The treaty was signed with the federal government; the province took no part.

Earlier this century, when a province-wide First Nations organization was formed to secure treaties, Parliament responded by amending the Indian Act in 1927 to outlaw the raising or spending of money by Indians to pursue their claims.

When this restriction was lifted in 1951, political activity, quickly restarted. The 1960s, 1970s and 1980s saw a proliferation of lawsuits, rallies, road and rail blockades. Regionally based tribal councils increasingly were the bodies that expressed the aspirations of their people.

In 1969, the Nisga'a Tribal Council began litigation to determine whether their aboriginal title over their traditional territory had been extinguished. This litigation is known as the Calder case. This case was eventually concluded by a decision in 1973 of the Supreme Court of Canada.

Six judges of the Supreme Court were evenly divided on whether the aboriginal title of the Nisga'a people had ever been extinguished. The Government of Canada then adopted a policy to enter negotiations to resolve comprehensive land claims. British Columbia did not participate. Its position was that whatever rights to land and resources aboriginal people may once have had were extinguished long ago.

In 1982, with the patriation of the British North America Act, Canada's Constitution recognized and affirmed existing aboriginal and treaty rights of Canada's Indians, Inuit and Metis.

With growing support for aboriginal claims in the non-aboriginal community, the provincial government began to respond, first by creating the Ministry of Native Affairs and then, in 1989, the Premier's Council on Native Affairs. At the same time, the courts of this province were also responding to long and expensive lawsuits over aboriginal claims by saying that these matters should be resolved through negotiations.

In 1990, as some of B.C.'s First Nations again turned to blockades and other actions to support their demands, the Government of British Columbia agreed to join Canada in the Nisga'a negotiations. In the same year, the Premier's Council recommended that the province establish a process to receive aboriginal land claims and place them on the negotiating table. Later that year, the federal and provincial governments and the leaders of

First Nations agreed to a task force that would map out a negotiation process that could accommodate the many First Nations in B.C. which wanted to negotiate settlements.

The Task Force reported on June 28, 1991 with 19 recommendations. All of them were accepted by the First Nations Summit, Canada and British Columbia. One of the key recommendations was to establish the British Columbia Treaty Commission as an independent Keeper of the Process.

On September 21, 1992, the Commission was created when the Prime Minister of Canada, the Premier of British Columbia and the leaders of the First Nations Summit signed the British Columbia Treaty Commission Agreement.

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The BC Treaty Commission Members

There are five Commissioners, one of them being Chief Commissioner. The First Nations Summit nominates two Commissioners and the federal and provincial governments nominate one each. Together, the three Principals nominate the Chief Commissioner, who serves as the full-time chief executive officer of the Commission. Commissioners are appointed for two-year terms and the Chief Commissioner for three. Where a Chief Commissioner resigns before the end of the three year term, the Commissioners may unanimously agree to designate one of them as acting Chief Commissioner until the Principals appoint a new Chief Commissioner.

Acting Chief Commissioner:
Barbara L. Fisher

First Nations Summit Commissioners:
Carole T. Corcoran & Art Sterritt

Government of Canada Commissioner:
Dr. Lorne Greenaway

Province of British Columbia Commissioner:
Barbara Fisher

The Treaty Commission has five members:

a full-time Chief Commissioner chosen by the Principals for three years
*
two Commissioners selected by the First Nations Summit
*
a Commissioner appointed by Canada
*
a Commissioner appointed by B.C.
*
Commissioners serve two-year terms.

During 1994-95, the Commissioners were:

Barbara L. Fisher, Acting Chief Commissioner and Government of B.C. Appointee. She earned her LL.B. (1981), her B. Fine Arts (1976) and her Diploma in Education (1977) from the University of Victoria, and her A.R.C.T. from the Royal Conservatory of Music. She was formerly General Counsel and Vancouver Director, Office of the Ombudsman. Ms. Fisher currently practices part-time as counsel to the B.C; Information and Privacy Commissioner. She has been re-appointed by the Government of B.C. effective from April 14, 1995.

Carole T. Corcoran, First Nations Summit Appointee, is a Dene, born and raised in Fort Nelson, B.C. She has extensive experience working with First Nations at the local, regional and provincial level. A graduate of the University of British Columbia (LL.B., 1990), Ms. Corcoran sat as a Commissioner on the Royal Commission on Canada's Future in 1990-91. She has been a Commissioner with the federal Indian Claims Commission and, since July 1992, a member of the Board of Governors of the University of Northern British Columbia. She was elected by the First Nations Summit as one of its first Treaty Commissioners and has been reappointed effective from April 14, 1995.

Dr. Lorne Greenaway, Government of Canada Appointee. He is a former Member of Parliament for Cariboo-Chilcotin and B.C. caucus chair, a veterinary surgeon with practices in Kamloops and Richmond, B.C., a former Deputy Minister of Agriculture and Fisheries and former Chair of the Provincial Agricultural Land Commission. He spent a year (1992-93) as an advisor to the Comprehensive Claims Branch of the federal Department of Indian Affairs and Northern Development.

Art Sterritt, First Nations Summit Appointee, born Gitxsan and adopted into the Eagle Clan of the Gitga'ata Tribe of the Tsimshian Nation. He has considerable experience in negotiating and of Summit processes in B.C. Formerly a commercial fisherman, he was the founding Chair and Past President of the Tsimshian Tribal Council, the elected President of the North Coast Tribal Council and a member of the B.C. Constitutional Working Committee. He has been involved with the Heritage Language and Culture Trust Fund and the Lillian Brown Trust Fund.

The Commissioners who will again hold office during 1995-96 include: Barbara Fisher, who was re-appointed by British Columbia, and Carole Corcoran, who was re-elected by the First Nations Summit.

The following new appointees will also hold office during 1995-96:

Alec C. Robertson, Q.C., Chief Commissioner, was born in Victoria, earned a Bachelor of Commerce and a Bachelor of Law from the University of British Columbia, and a Master of Law from Harvard University. He was admitted to practice in B.C. in 1959 and was a partner with Davis and Co. from 1971 until his appointment as Chief Commissioner, effective from May 15, 1995. Among his many community activities, Mr. Robertson has served as President of the B.C. Branch of the Canadian Bar Association, Chairman of the Law Foundation of B.C. and as member of the Gender Equality Task Force of the Canadian Bar Association.

Wilf Adam, First Nations Summit appointee, is a former Chief Councilor of the Lake Babine Band. He was born in Burns Lake and raised at Pendleton Bay. He includes among his many activities the chairmanship of the Burns Lake Native Development Corporation and he is a co-founder of the Burns Lake Law Centre.

Peter A. Lusztig, Government of Canada appointee, earned his Ph.D. from Stanford University after graduating in commerce from the University of British Columbia and earning a Masters in Business Administration from the University of Western Ontario. He served as Dean Commission, he was a professor of finance at UBC. He is a founding director of the Insurance Corporation of B.C., and has served on numerous community and business boards and commissions.

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The Role of the BC Treaty Commission

The role of the Treaty Commission is to facilitate the negotiation of treaties and, where the parties agree, other related agreements. The Commission does not negotiate treaties. The parties at each table-the First Nation, Canada, and British Columbia conduct their own negotiations.

First the Commission accepts First Nations into the process and brings the parties together for initial meeting. It then ensures that there is a table set for negotiations once the First Nation, Canada and British Columbia are ready. When negotiations start, the Commission must keep them moving forward. It fulfills its role by:

- Allocating funds provided by Canada and British Columbia through loans and contributions to enable First Nations to participate in negotiations
- Monitoring progress of each negotiation through the several stages of the process and assisting the parties to obtain dispute resolution services where requested; and
- Reporting to the Principals and the pubic.

"In carrying out this role, the Commission functions as Keeper of the Process".

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A Six-Stage Process for Treaty-Making in BC

A six stage process has been adopted by the B C Treaty Commission for negotiating treaties.

1. The Statement of Intent
2. Preparation for Negotiations
3. Negotiation of a Framework Agreement
4. Negotiation of an Agreement in Principle
5. Negotiation to Finalize a Treaty
6. Implementation of the Treaty

The process is voluntary and is open to all First Nations in British Columbia.

Stage 1 – Statement of Intent

This begins the process. A First Nation files with the Commission a Statement of Intent to negotiate a treaty. After the Commission accepts the Statement of Intent as complete, it forwards the Statement to the federal and provincial governments.

The Statement need not be lengthy but it must do three things: identity! the First Nation and the people it represents, describe the geographic area of the First Nation's traditional territory in British Columbia and identity the First Nation's formal contact person for communications.

Stage 2 – Preparation For Negotiations

Within 45 days of receiving 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 the Governments of Canada and British Columbia.

The meeting allows the Commission and the parties to exchange information, consider the criteria that will determine the parties' readiness to negotiate, discuss research they intend to do in preparation for negotiations and generally identity the issues of concern to each party.

These meetings usually take place in the traditional territory of the First Nation to give the community the chance to be directly invoked at this 'ground breaking' stage. Traditional ceremonies, which recognize the significance of beginning a long-awaited process, lend an historic dimension to many first meetings.

After the initial meeting, the parties begin the work of preparing for the third stage of the process.

The British Columbia Treaty Commission Agreement lists the criteria the Commission must use to determine whether the parties are ready to begin negotiation of a Framework Agreement. Each party must have:

- Appointed a negotiator;
- Confirmed that it has given its negotiator a comprehensive and clear mandate;
- Sufficient resources to carry out negotiations;
- Adopted a ratification procedure; and
- Identified the substantive and procedural matters to be negotiated.

In addition, each First Nation must have identified and begun to address any issues of overlapping territory with neighboring First Nations.

The Canadian and British Columbia governments must have:

- Obtained background information on the communities, people and interests likely to be affected by negotiations; and
- Established mechanisms for consultation with non-aboriginal interests.

When the Commission determines that all three parties have met the criteria for readiness, it will confirm that the table is ready to begin negotiation of a Framework Agreement.

Stage 3 -- Negotiation of a Framework Agreement

The Framework Agreement is, in effect, the 'table of contents' for a treaty negotiation. It is a negotiated agenda that identifies the issues to be negotiated, the goals of the negotiation process, any special procedural arrangements and a timetable for negotiations.

No tables have completed Stage 3; therefore the full range of subjects under negotiation throughout the province have not been determined. This is why the public does not yet have a clear idea of what will be 'on the table.' It is anticipated that these subjects will develop throughout 1995 and into 1996.

At this stage, the parties are expected to proceed with a program of public information that will continue throughout the negotiations.

Stage 4 -- Negotiation of an Agreement in Principle

This is the stage at which the parties begin substantive negotiations. The goal is to reach the major agreements that will form the basis of the treaty. During this stage, the parties examine in detail the elements of the Framework Agreement. The Agreement in Principle will confirm the ratification process for each party and lay the groundwork for an implementation plan.

The ratification process allows the parties to review the emerging agreement and to approve, reject or seek amendments to it. British Columbia has announced that Agreements in Principle will be subject to public review before ratification. The process also gives the negotiators 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 at this stage, but issues already settled will not be reopened. The treaty will be signed and formally ratified at the conclusion of this stage.

Stage 6 -- Implementation of the Treaty

Long-term implementation plans need to be tailored to specific agreements. With continuing goodwill, commitment and efforts by all parties, the new relationship will be brought to life at this stage.

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First Nations in the Process

The Commission has accepted 43 statements of Intent from First Nations. Because negotiations are, by definition, voluntary, not all First Nations in B.C. have chosen to enter the process. However, a majority of B.C. First Nations have done so. The following list gives the name of each First Nation in the process, and the stage it has reached.

Negotiation Tables in Stage 2

Alkali Lake Indian Band
Burrard Band (Tsleil-Waututh First Nation)
Cariboo Tribal Council
Carrier Sekani Tribal Council
Champagne and Aishihik First Nations

Council of the Haida Nation
Haisla Nation
Heiltsuk Nation
Homalco Indian Band
Hul'qumi'num Tribes
In-SHUCK-ch/N'Quatqua
Kaska Dena Council
Katzie Indian Band
Klahoose Band
Ktunaxa/Kinbasket Tribal Council
Kwakiutl First Nations
Lheit-Lit'en Nation
Musqueam Nation
Nanaimo First Nations
Nat'oot'en Nation
Nazko Indian Band
Oweekeno Nation
Pavilion Indian Band
Sliammon Indian Band
Spallumcheen Indian Band
Taku River Tlingit First Nations
Te'Mexw Treaty Association
Teslin Tlingit Council
Treaty 8 Tribal Association
Tsawwassen First Nation
Tsay Keh Dene Band
Tsimshian Nation
Westbank Indian Band

Because negotiations are, by definition, voluntary, not all First Nations in B.C. have chosen to enter the process. However, a majority of B.C. First Nations have done so.

Xaxli'p (Fountain Indian Band)
Yale First Nation
Yekooche First Nation

Total Stage 2 = 36

Negotiation Tables in Stage 3

Ditidaht First Nation
Gitanyow Hereditary Chiefs
Gitxsan Hereditary Chiefs
Nuu-chah-nulth Tribal Council
Sechelt Indian Band
Squamish Nation
Wet'suwet'en Nation

Total Stage 3 = 7

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Recommendations to the Principals

As described in Part II of this report, there is solid evidence that the B.C. Treaty Commission process is working. At the same time, significant challenges have faced the Commission, the Principals and the parties. These challenges will continue, and everyone must carry on with a firm resolve to address them.

The Commissioners believe that it is necessary to make certain recommendations to the First Nations Summit, Canada and British Columbia, to help ensure that the process is effective, efficient and consistent with the fundamental principles of fairness and respect upon which the process is based.

The following six recommendations address these issues: interim measures, public information and education, consultation, funding, management and legislation.

- Interim Measures
- Public Information and Education
- Consultation
- Funding
- Management
- Legislation

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The following six recommendations address these issues: interim measures, public information and education, consultation, funding, management and legislation.

Interim Measures

The Commissioners recommend that interim measures agreements be negotiated in a meaningful and timely manner so that the treaty negotiation process is not undermined.

Recommendation #16 of the Task Force Report was that:

THE PARTIES NEGOTIATE INTERIM MEASURES AGREEMENTS BEFORE OR DURING THE TREATY NEGOTIATIONS WHEN AN INTEREST IS BEING AFFECTED WHICH COULD UNDERMINE THE PROCESS.

Interim measures agreements are meant to provide some protection for First Nations interests while treaty negotiations are taking place. The Commissioners are of the view, and the Task Force Report recognized, that interim measures are of critical importance to First Nations and should be included as a necessary element in a coordinated treaty-making process.

Before this process was established, First Nations used litigation and sometimes confrontation to pressure federal and provincial governments to recognize aboriginal rights and title. When they agreed to this process, First Nations understood that interim measures would provide them with adequate protection of their affected interests until a treaty was in place.

The Task Force said:

INTERIM MEASURES AGREEMENTS ARE AN IMPORTANT EARLY INDICATOR OF THE SINCERITY AND COMMITMENT OF THE PARTIES TO THE NEGOTIATION OF TREATIES. TO PROTECT INTERESTS PRIOR TO THE BEGINNING OF NEGOTIATIONS, THE FEDERAL AND PROVINCIAL GOVERNMENTS MUST PROVIDE NOTICE TO

FIRST NATIONS OF PROPOSED DEVELOPMENTS IN THEIR TRADITIONAL TERRITORIES AND, WHERE REQUIRED, INITIATE NEGOTIATIONS FOR AN INTERIM MEASURES AGREEMENT.

The Task Force recognized that the current legislative framework does not protect aboriginal interests in a meaningful way, and this is another reason why interim measures are of particular importance to First Nations.

It was also recognized that:

THESE INTERIM MEASURES AGREEMENTS ARE NOT INTENDED AS SUBSTITUTES FOR THE TERMS OF THE TREATY. THE PARTIES MUST BE CAREFUL THAT THE NEGOTIATION OF THESE AGREEMENTS DOES NOT DISPLACE THE NEGOTIATIONS TOWARD A TREATY.

The Task Force suggested that interim measures might include a range of options, such as:

- Notice to affected parties, before action is taken, on matters that are or may be the subject of negotiations
- Consultation with parties affected by the proposed action;
- Consent of one of the parties before action is taken;
- Joint management processes requiring consensus of all the parties; or
- Restriction or moratorium on the alienation of land or resources.

First Nations are very concerned that developments which could alienate resources in their traditional territories during treaty negotiations are occurring with little or no regard to their interests. British Columbia is concerned about maintaining ongoing economic development in the province, balancing the interests of all parties and providing certainty about the use and management of lands and resources. Both British Columbia and Canada have expressed the view that interim measures should be specific; potentially complex interim measures negotiations may further delay treaty negotiations.

The Commission has not played a major role in interim measures so far, because it has considered that they deal with substantive issues which should be negotiated by the parties. However, conflicts over interim measures are beginning to have a negative effect on the treaty process and the Commission has a duty to safeguard that process.

So far, British Columbia and Canada have delegated authority to individual government ministries and departments for many interim measures issues, primarily those which have arisen early in the process. The implementation of these policies, mainly by British Columbia, has been inconsistent.

A large number of interim-measures agreements have been negotiated between British Columbia and various First Nations on a wide range of issues. Most of these agreements relate to the provincial government's obligation to consult First Nations and fall outside the treaty process. For those First Nations which have entered treaty negotiations, many have not been able to engage the relevant ministry officials in constructive discussions.

While both governments have committed to negotiating more specific interim measures at the treaty tables, none of these treaty related interim agreements has yet been negotiated.

Treaty negotiators of all parties have been working hard to build respectful and productive relationships with each other. Failure to resolve concerns about interim measures will have an impact on the progress which has been made. The federal and provincial treaty negotiators, as those who are at the table with First Nations, must be able to ensure that these issues are addressed in a timely and meaningful way.

There has been confusion and fear about interim-measures agreements In the non-aboriginal communities, which see their interests also being affected. However, if these agreements are made in the spirit of the Task Force Recommendation #16, and if their terms and the reasons for them are explained, the confusion and fear should be put to rest.

The Commission intends to monitor the process of negotiating interim-measures agreements to ensure that treaty negotiations continue to be conducted fairly and that public confidence is maintained. The Commissioners firmly believe that interim measures are critical to the success of this process.

Public Information and Education

The Commissioners recommend that the Principals and the parties to the negotiations continue to commit extraordinary effort to public information, and that the Principals take a greater role in public education. These initiatives should be province-wide, regional and local.

The Task Force made three recommendations about public information and education:

Recommendation #17:

CANADA, BRITISH COLUMBIA, AND THE FIRST NATIONS JOINTLY UNDERTAKE PUBLIC EDUCATION AND INFORMATION PROGRAMS.

Recommendation #18:

THE PARTIES IN EACH NEGOTIATION JOINTLY UNDERTAKE A PUBLIC INFORMATION PROGRAM.

Recommendation #19:

BRITISH COLUMBIA, CANADA, AND THE FIRST NATIONS REQUEST THE FIRST NATIONS EDUCATION SECRETARIAT, AND VARIOUS EDUCATIONAL ORGANIZATIONS IN BRITISH COLUMBIA, TO PREPARE RESOURCE MATERIALS FOR USE IN THE SCHOOLS AND BY THE PUBLIC.

Treaty negotiations will succeed if both aboriginal and non-aboriginal communities understand why we need treaties and what treaties mean. The public must have confidence that they are being well informed about what is happening at the negotiating tables.

In other words, there is a critical need for both education and the dissemination of information. An important distinction is made between public information and education. Information refers to knowledge about the process as it develops. For example, it is important for the public to be informed generally about which parties are negotiating and what issues are being discussed. Education refers to a broader level of knowledge. In this context, it is aimed at generating public awareness of First Nations history and the underlying need to build new relationships.

Education is a long-term task which can only be accomplished with a determined and sustained effort by all three Principals, working in cooperation with many other agencies. This effort is essential to setting the foundation for a new relationship of recognition and respect between aboriginal and non-aboriginal peoples of the province.

Information is a more immediate but equally important task. The public must be kept advised of what is on the table and the progress of the negotiations so that undue fears will not undermine the process. Information, coupled with education, will lead to an awareness and understanding that will enable British Columbians to assess the merits and implications of the new relationship and contribute to its realization.

What Progress Has Been Made?

In its first Annual Report the Commissioners were critical of the Principals for not fulfilling their obligations to inform the public about the need for treaty-making and the process to which they were committed. Since then substantial progress has been made in the area of public information. The Principals have made considerable efforts to inform the public about the process and the issues, all in a spirit of openness.

Through the Tripartite Public Education Committee (TPEC), the Principals have sponsored and conducted many public forums throughout the province. Public meetings in areas where the parties are more advanced in the process have been dynamic and useful. Less interest has been shown in communities where the parties are still in the preparatory stage, but that is understandable. TPEC is planning a strategy for further information programs to reach more of the British Columbia public. At the same time, the parties at many of the tables in Stage 3: Framework Negotiations have agreed to provide public access to their main table negotiating sessions.

There have also been many local tripartite initiatives. An example of a local initiative that is working well is the Nuu-chah-nulth Tripartite Public Information Committee. This group includes representatives from the tribal council and the provincial and federal governments. It began by developing a public information strategy, then a detailed work plan.

The committee organized a number of well-publicized community meetings and provided written material to those who attended. It has plans for open houses within the traditional territories, displays at malls and conferences, and meetings with community groups and educational institutions. Other negotiation tables, such as Sechelt, Gitxsan and Wet'suwet'en, are pursuing similar programs and the results are positive.

However, there has been much less progress in the area of education. The Ministry of Aboriginal Affairs is developing educational materials for use in schools and communities. The Ministry of Education has recently approved a new Grade 12 curriculum in aboriginal studies. These are important and positive developments, but more work needs to be done. The Commission encourages the Principals to build on their information efforts and move towards programs which provide factual material on the history leading up to the treaty process. Use of television and video would allow the Principals to reach a broader audience.

The Commission also has an important role to play. It has been and must remain focused on creating understanding of the treaty negotiation process, the Commission's role in managing the process, as well as on current information about the status of the negotiations. During the period under review, the Commission published four issues of its newsletter, Update. In addition, the Commissioners participated in all the public forums sponsored by TPEC, and made many public presentations to service clubs, chambers of commerce, labor

organizations, university and college groups, First Nations, local government representatives and a wide variety of interested groups across the province.

The Commission also organized and sponsored two programs with the Knowledge Network. One was a group discussion which was aired on December 14, 1994 and again on January 29, 1995. The other was a public forum, first broadcast live from North Vancouver on February 5, 1995 and replayed on May 7, 1995. Tapes of these programs are available.

Throughout the past year, the Commissioners have found that the public continues to question the federal and provincial governments, as well as the First Nations, about their respective commitments to negotiate treaties and the underlying reasons for their actions. Only the Principals and the parties can properly address these concerns.

The Commission will continue to carry out its role to inform the public and to participate with the Principals in their public information and education initiatives. It will also continue to monitor these activities.

Consultation

The Commissioners recommend that Canada and British Columbia make full use of their consultation processes so that the community at large will be confident that their voices are heard and their concerns are considered.

Recommendation #10 of the Claims Task Force was that:

NON-ABORIGINAL INTERESTS BE REPRESENTED AT THE NEGOTIATING TABLE BY THE FEDERAL AND PROVINCIAL GOVERNMENTS.

As they prepare to negotiate a Framework Agreement, negotiators for the federal and provincial governments must:

- Obtain background information on the communities, people and interests likely to be affected by negotiations; and
- Establish mechanisms for consultation with non-aboriginal interests.

These are among the criteria the Commission considers when it assesses the readiness of parties to begin working towards a Framework Agreement.

What Mechanisms Are In Place?

To achieve this consultation, the federal and provincial governments have agreed to cooperate in a province-wide Treaty Negotiation Advisory Committee (TNAC).

This committee includes one cross-sectoral committee with an impartial chair and a number of sectoral advisory committees. They provide advice on fisheries, energy, petroleum and mineral resources, lands and forests, wildlife, and governance. Members of all committees are nominated by the organizations they represent and are jointly appointed by federal and provincial ministers.

A similar process is being organized at the regional level, with Regional Advisory Committees (PACs), and at the local level, with Treaty Advisory Committees (TACs) or local government advisory committees. These committees are becoming more and more active as parties move into Framework negotiations.

There has been public criticism of the consultation process, based mainly on a lack of trust that non-aboriginal interests will be properly represented at the table. Some interests have expressed their wish to be not only consulted but to have 'third parties' present at the table as part of the negotiating team. However, there are many 'third parties' and their interests do not always coincide.

In order to dispel many of these concerns, federal and provincial representatives have made significant efforts to convey information about the process and to notify local communities about the consultation committees being formed in their area. The Commissioners are of the view that the people in the communities where negotiations take place will have the opportunity to participate in these consultations.

In keeping with Recommendation #10, the Treaty Commission process makes governments responsible for representing non -aboriginal interests at the table. It is the role of government to listen to all these interests, consider their positions and views, and develop a balanced negotiating strategy that fairly represents the interests of the communities involved, as well as the province and Canada as a whole.

A consultation process that works effectively is critical to the success of the treaty-making process. Canada and British Columbia must ensure that these mechanisms are implemented effectively. This will be necessary to reduce the present level of discontent and to address ongoing public concerns as negotiations proceed and become more complex.

Funding

The Commissioners recommend that the Principals review the current funding program to ensure that:

- First Nations have adequate funds to prepare for and carry out treaty negotiations, and
- The Commission is able to carry out its responsibilities for allocating funds in an independent and effective manner.

Recommendation #11 of the Task Force:

THE FIRST NATION, CANADIAN AND BRITISH COLUMBIAN NEGOTIATING TEAMS BE SUFFICIENTLY FUNDED TO MEET THE REQUIREMENTS OF NEGOTIATIONS.

The Commissioners are concerned that the funds made available to First Nations over the long term fall short of what is necessary to conduct effective and efficient negotiations.

The Task Force emphasized the importance of ensuring that First Nations have the resources they need to prepare for and carry out negotiations on an equal footing with the

federal and provincial governments. It noted that "agreements that are negotiated without proper preparation will lead to further disputes, delays and wasting of resources."

It was recognized that if a First Nation is preoccupied with funding concerns, it cannot focus effectively on the task of negotiating.

The funding issue has several aspects. The level of funding must be adequate to allow First Nations to be effective negotiators, and First Nations must be able to manage their own resources without having their expenditures reviewed by other parties to the negotiations, namely the federal or provincial governments.

The First Nations Summit, Canada and British Columbia therefore gave the Commission, as part of its role as Keeper of the Process, the responsibility for allocating funds to First Nations to enable them to participate in negotiations. The three Principals agreed to a funding program and criteria to be applied by the Commission.

These funds are provided by Canada and British Columbia. Eighty per cent of the funding is in the form of a loan from Canada, and 20% is a contribution, which comes 60% from Canada and 40% from British Columbia.

Serious concerns arose during this first year that the Commission allocated funds to First Nations. The most critical of these were the amount of funding available over the long term, the timing of the allocations and distribution, a lack of resolution on issues arising where negotiations break down and a number of administrative issues which created inefficiencies and delay.

How Much Money Is Involved?

For the fiscal year ended March 31, 1995, the funding totalled $18,896,644. Of this, Canada provided $14,950,400 for loans, $2,242,600 for contributions and $209,644 advanced to one First Nation for governance-only funding. British Columbia provided $1,495,000 for contributions. For the next three years, the two governments have agreed to provide $23.8 million for 1995-96, $16.8 million for 1996-97 and $17 million for 1997-98.

Sufficiency Over The Long Term

The funding process requires First Nations to submit budgets and work plans detailing their financial requirements for the negotiations. In the 1994-95 fiscal year, funds requested by the First Nations in the Treaty Commission process substantially exceeded the available funds. In no case could the Commission provide the level of funding requested by any First Nation.

The amount of funds provided over the long term does not appear to be sufficient to accomplish the goals expressed by the Task Force. Even with savings through such steps as information-sharing, the gap between First Nations needs and available funds will widen because the financial needs of First Nations are expected to increase as they progress through the process. At the same time, the number of First Nations in the process is expected to grow by as many as 10 in 1995-96.

The impact of any shortfall in 1995-96 may be cushioned by the distribution of a portion of the previous year's funding late in the 1994-95 fiscal year. However, this does not resolve the issue, which the Commission believes will become increasingly critical as negotiations progress.

Issues Arising If Negotiations Break Down

While all parties share a common interest in concluding treaties, the possibility that some negotiations may terminate before this is accomplished raises issues which impact on the process.

Termination seriously affects all parties to a negotiation. Time, energy and significant resources will have been spent on the process. However, termination will have a particularly heavy impact on First Nations which have loan obligations. Under the loan agreements, loans are repayable to Canada 12 years from the date of the first loan advance, if negotiations terminate before an agreement in principle is reached.

Throughout 1994-95, First Nations expressed widespread concern about this issue. Therefore, the Principals struck a tripartite working group, chaired by a Commissioner, to examine the issues with a goal to developing options for resolution.

In December 1994, the Commission presented a report to the Principals. It examined a number of options which provide the basis for further discussion by them. The Commissioners urge the Principals to proceed with those discussions.

Administration Of The Funding Program

The overall funding agreements need to be reviewed by the Principals with a view to improving the administration of the funding program. Funds are currently allocated by stages but they are also limited by fiscal year commitments.

This combined year-to-year and stage-by-stage approach to funding is complex, and inhibits long-term planning. It also creates additional paper work, because new budgets and work plans have to be filed every year, and for every stage. First Nations find that excessive amounts of paper work and a cumbersome process unduly distract them from the immediate task of preparing for negotiations.

Canada and British Columbia are concerned that public funds are properly accounted for. The Commissioners agree with this objective, but are of the view that accountability can be achieved in a simpler manner. The fact that most of these funds are in the form of loans should also be taken into consideration.

Funding issues affect the fairness of the process, and clearly have an impact on the Commission's role as the independent Keeper of the Process.

The Commissioners have brought these concerns to the attention of the Principals, who have agreed to begin a review of the funding program. The Principals are urged to resolve these issues. They continue to dominate the agenda, and it is important for all parties to be able to focus on the immediate task at hand negotiating treaties.

Management

The Commissioners recommend that the Principals address ways to effectively manage a treaty-making process where more than 43 First Nations will be involved in negotiations.

The following recommendations from the Task Force are important in relation to this issue:

Recommendation #6:

THE TREATY NEGOTIATION PROCESS BE OPEN TO ALL FIRST NATIONS IN BRITISH COLUMBIA.

Recommendation #7:

THE ORGANIZATION OF FIRST NATIONS FOR THE NEGOTIATIONS IS A DECISION TO BE MADE BY EACH FIRST NATION.

Recommendation #9:

FEDERAL AND PROVINCIAL GOVERNMENTS START NEGOTIATIONS AS SOON AS FIRST NATIONS ARE READY.

From the outset, therefore, the Treaty Commission has sought as a basic principle to accommodate every First Nations group wishing to negotiate and to have that negotiation proceed as soon as the parties are ready. This poses the question of the ability of Canada and British Columbia, as the other two parties, to accommodate negotiations with all the First Nations in the process. Canada and British Columbia have raised this issue, expressing serious concerns in respect of issue management and overall cost.

Traditionally, many First Nations in British Columbia organized their societies through houses or clans which formed the basis for larger political units, often referred to as tribes or nations. In due course, the federal government imposed the "band council" system under the Indian Act. Today, both forms of government exist side by side as First Nations political structures continue to evolve. In addition, alliances have been forged among "tribal councils."

It is up to the people who will ratify the treaty to determine how they wish to be represented in the negotiation process, whether by traditional government, tribal council, band or some combination of these.

'First Nation' is defined in the British Columbia Treaty Commission Agreement as "an aboriginal governing body, however organized and established by aboriginal people within their traditional territory in British Columbia, which has been mandated by its constituents to enter into treaty negotiations on their behalf with Canada and British Columbia."

Since first contact between aboriginals and settlers in British Columbia, only 15 treaties have been made and these cover a relatively small area of the province. The Task Force suggested that, with the Treaty Commission process in place, as "many as 30 separate negotiations may take place, with many occurring at the same time." That expectation has already been exceeded.

Forty-three First Nations have now entered the Treaty Commission process and the Commissioners see signs that there will be more by the end of the 1995-96 fiscal year. The Principals must engage in constructive dialogue with each other and with the Commission to find creative ways to manage these complex negotiations, while respecting the principles of the Task Force recommendations.

Legislation

The Commissioners recommend that federal legislation be enacted and that both federal and provincial legislation be proclaimed as soon as possible in order to establish the B.C. Treaty Commission as a legal entity.

The Treaty Commission has been operating under the mandate set out in the British Columbia Treaty Commission Agreement signed in 1992, and under the authorization of Orders-in-Council of Canada and British Columbia and a resolution of the First Nations Summit.

By the Agreement, the federal and provincial governments committed themselves to introduce legislation to establish the Commission as a legal entity and the First Nations Summit agreed to establish the Commission by a Resolution of its members. The Summit took that action on May 10, 1993 and the British Columbia Legislative Assembly passed the necessary legislation on May 26, 1993. However, the British Columbia legislation has not been proclaimed pending Canada's companion legislation.

As the Commission entered its third year of operation, the federal government had not yet introduced legislation. Fortunately, it has recently begun the process of introducing the legislation some time during 1995.

The delay in the formal legislative establishment of the Commission has been of concern to the Commissioners for several reasons. First, while the Commission has been able to carry out its functions and responsibilities effectively, legislation provides a more permanent structure on which to build this complex treaty negotiation process. The extended absence of legislation does not provide the Commission with this firm base on which to build its experience.

Second, the major funding agreements, as well as the contribution agreements with First Nations, must presently be signed by individual Commissioners in their personal capacities. Any amendments to these agreements must also be signed by each Commissioner. When a Commissioner leaves and is replaced, all agreements to which the former Commissioner was a party must be redone. This occurred twice during 1994-95, with a resultant flood of new documents to be agreed to, produced and signed. This caused significant delays in delivering approved funding to First Nations.

Enacting and proclaiming legislation creating the B.C. Treaty Commission will eliminate many administrative inefficiencies and, more importantly, will confirm and validate the Commission's role as Keeper of the Process.