



## BC TREATY COMMISSION

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Annual Report 1999

## Executive Summary

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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 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.

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.

Now in its sixth year overseeing the treaty process, the Treaty Commission has accepted 51 Statements of Intent from First Nations to negotiate treaties. There is one First Nation in Stage 5; 37 First Nations in Stage 4; 12 First Nations in Stage 3; and one First Nation in Stage 2.

Through treaties, largely undefined aboriginal rights and title are clearly defined. Each First Nation, Canada and BC will have a full understanding of their 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.

This past year was unusual because the Treaty Commission was without a Chief Commissioner for six months. The Chief Commissioner is the main spokesperson and is responsible for directing public information and education initiatives. The four part-time commissioners made monitoring treaty negotiations their priority. As a consequence, public information and education activities were more limited than anticipated.

Consultation and the release of accurate and timely information, will, the Treaty Commission believes, help to dispel misconceptions and concerns that people have about treaty negotiations. This will ensure that there will be wider public understanding and support for the final agreements.

First Nations in the treaty process need adequate funding to negotiate on an equal footing with Canada and British Columbia. Since opening its doors in May 1993, the Treaty Commission has allocated \$122.5 million in negotiation support funding to First Nations, \$97.7 million as loans.

The Treaty Commission has informed Canada and BC that, without more funding, many First Nation treaty offices and research efforts will falter. Even those First Nations nearing completion of agreements in principle or otherwise making progress in negotiations will find it difficult if not impossible to sustain the pace of negotiations.

First Nations in the treaty process now have access to tools that can help to determine their preparedness for treaty negotiations and for the new responsibilities that will come with a treaty. These three tools can provide a community with an internal capacity 'snapshot' and encourage discussion about the steps required to develop or enhance capacity. The survey itself includes questions on organizational strategy, governance, organizational structure, human resources, community human resources, economy and community infrastructure. Communities can use part or all of the survey or modify it according to their needs.

In tandem with this initiative, funding support for capacity building has been boosted. In April 1999, federal Indian Affairs Minister Jane Stewart committed \$15 million over three years towards First Nation capacity building in BC. The provincial government has also contributed \$2 million to the initiative for the 1999-2000 fiscal year.

The initiative is focused on building present and future capacity for lands and resource negotiations and consultations.

This funding will be administered by the Capacity Initiative Council.

It is important to successful negotiations that the First Nation has a clear vision of what it wants and needs from a treaty. The treaty process, particularly its funding arrangements, does not provide for those who need to stand back from active negotiations in order to develop their treaty visions or to build their capacity to negotiate or implement a treaty. The opportunity to do so would benefit individual First Nations and help alleviate some of the resource problems caused by the entry of 51 First Nations into a process originally designed with 30 in mind.

The Sechelt Indian Band and the federal and provincial governments made history on April 16, 1999 when they signed the first agreement in principle to come out of the treaty making process overseen by the Treaty Commission.

A high level of public support for the Sechelt agreement in principle has been apparent. This support is the direct result of the Sechelt Indian Band's deliberate communication efforts and cooperation with surrounding local governments as well as federal and provincial government consultation efforts. This approach to consultation within the community is not unique, but is a good working example of a practice that has been adopted at other tables.

Over the past year First Nations, primarily from Vancouver Island, have come together to form the First Nations Treaty Negotiation Alliance. The Alliance is a voluntary forum where members share information and work together on common issues. The Treaty Commission has played a facilitating role in negotiations involving the Alliance, Canada and BC.

The Supreme Court of Canada decision in the Delgamuukw case in December 1997 and its confirmation of aboriginal title heightened First Nations' expectations that their concerns

would be addressed. Resolving issues around land and resources sooner rather than later will restore confidence in the treaty process.

Even if treaty negotiations can be accelerated as is hoped, they will still take time. Meanwhile, trees are still being cut, ore is being mined and fish are being caught. First Nations, who are taking on substantial debt to negotiate treaties, are increasingly frustrated that they are not sharing enough in the benefits of those resources in their traditional territories.

Interim measures are a tool for ensuring continuing economic development in the province while respecting First Nations' aboriginal rights and title while treaties are being concluded. Over the past several years, as negotiations proceed and frustrations and expectations rise, the need for interim measures that protect First Nations interests in land has become more pressing.

The Treaty Commission has seen an increase in the political will of public governments to address land-related interim measures. There need to more such examples in the near future if First Nations are to continue to have faith in negotiation.



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## Role and Composition

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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 relevant 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 fiscal year covered by this report was \$1.86 million.



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### **Six Stage**

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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.



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## About Treaty Negotiations

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For more than 150 years First Nations in BC have consistently sought recognition of their aboriginal rights and title -- through petition, protest, litigation and negotiation.

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

The courts, historically, have had an important role to play in clarifying aboriginal rights and urging governments to negotiate. They have increasingly clarified the nature of aboriginal rights and title, 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 generally been favourable to First Nations.

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.

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.

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. Then it has to prove some degree of continuity from that occupation until today. The government of Canada cannot pass a law to do away with aboriginal title.

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.



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## History and Progress

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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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Annual Report 1999

## Public Information a Priority

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The Treaty Commission anticipates British Columbians will require more information as the parties at the tables strive to conclude agreements in principle and treaties. The responsibility for providing this information rests with the Treaty Commission and also with the governments of Canada, British Columbia and First Nations.

Aboriginal people, like non-aboriginal people, have wide-ranging views on treaty issues. The Treaty Commission recognizes the importance of addressing the specific questions and concerns of aboriginal people about the treaty process.

Canada and BC support the Treaty Commission's endeavours to inform British Columbians about the treaty process and treaty negotiations. The Treaty Commission is an independent and neutral voice on treaty making, and as part of its responsibilities, has at various times been critical of each of the three parties -- Canada, BC and individual First Nations.

This past year was unusual because the Treaty Commission was without a Chief Commissioner for six months. The Chief Commissioner is the main spokesperson and is responsible for directing public information and education initiatives. The four part-time commissioners made monitoring treaty negotiations their priority. As a consequence, public information and education activities were more limited than anticipated.

This annual report is an important source of information on the treaty process, the Treaty Commission and treaty negotiations. As well, the Treaty Commission publishes the newsletter Update to keep people informed on the status of negotiations.

The Treaty Commission web site at [www.bctreaty.net](http://www.bctreaty.net) has become a useful source of current information for news reporters, teachers, students, researchers and anyone interested in learning more about the treaty process. There were close to 11,000 unique visits to the web site in 1998 and 324,000 hits. This means a large amount of information was disseminated.

The Treaty Commission maintains a toll-free telephone inquiry line at 1 800 665-8330 and an email inquiry line at [info@bctreaty.net](mailto:info@bctreaty.net) and can respond to questions and requests for information. Anyone interested in receiving information will be added to the Treaty Commission mailing list.

A resource directory of information available from the Treaty Commission, the governments of Canada and British Columbia and the First Nations Summit is available at [www.bctreaty.net](http://www.bctreaty.net) or in a booklet from the Treaty Commission.

Making Treaties in BC, a one-hour television documentary focusing on the issues in treaty negotiations, was aired on the Global Television Network in December. It will be re-broadcast on the Knowledge Network in the fall. The documentary was produced by an independent film-maker with support from the Treaty Commission and others. Free VHS

copies of the documentary are available from the Treaty Commission to non-profit community groups and organizations.

Public and media attention during the past year was on the Nisga'a Final Agreement, the first treaty concluded in this province in 100 years. Although the Nisga'a negotiations were conducted outside the BC treaty process, the Treaty Commission did report on its impact on the 42 sets of negotiations that it currently oversees. In summary, the Treaty Commission expects the Nisga'a Final Agreement will help to quicken the pace of treaty negotiations with other First Nations in the province.

Consultation and the release of accurate and timely information will, the Treaty Commission believes, help to dispel misconceptions and concerns that people have about treaty negotiations. This will ensure that there will be wider public understanding and support for the final agreements.



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## Negotiation Funding Inadequate

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First Nations in the treaty process need adequate funding to negotiate on an equal footing with Canada and British Columbia.

Since opening its doors in May 1993, the Treaty Commission has allocated \$122.5 million in negotiation support funding to First Nations, \$97.7 million as loans.

The Treaty Commission receives a fixed amount of money from Canada and BC each year to allocate to First Nations in the treaty process:

- 80 per cent through loans from Canada; and
- 20 per cent through grants from Canada and BC.

Canada provides 60 per cent of the grant funding. BC provides the remainder.

Under funding guidelines developed by Canada and BC, First Nations in Stage 4 receive more funding than in previous stages. This is to meet the increased level of research and work required and the complexity of agreement-in-principle negotiations. When a First Nation reaches Stage 5, funding should increase again to reflect the time and legal complexities involved in finalizing a treaty.

Negotiations support funding available in 1998-99 was \$30 million. The budget for the 1999-00 fiscal year is \$28.55 million. The Treaty Commission estimates loan and grant funding should be more than \$9 million higher to comply with the funding guidelines and meet the current needs of First Nations.

This year the Principals must consider the amount of negotiation support funding required in the future. The Treaty Commission forecasts that \$38.4 million is required to support First Nations in during fiscal 2000-01.

Currently, there are 37 First Nations in Stage 4, agreement-in-principle negotiations and there could be 44 in this stage in this fiscal year, with two or three in Stage 5.

The increase in First Nations in Stage 4 and the shrinking total budget, has resulted in significantly decreased allocations. This will limit the work First Nations can do and will slow the progress of negotiations.

The Treaty Commission has informed Canada and BC that, without more funding, many First Nation treaty offices and research efforts will falter. Even those First Nations nearing completion of agreements in principle or otherwise making negotiation progress will find it difficult if not impossible to sustain the pace of negotiations.



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## Projects Support First Nations

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First Nations in the treaty process now have access to tools that can help determine their preparedness for treaty negotiations and for the new responsibilities that will come with a treaty.

As reported in last year's annual report, a group of First Nations leaders with an interest in capacity building met with the Treaty Commission in January 1998. They discussed the development of tools for First Nations to identify their capacity needs and determine how best to meet these needs. A steering committee was formed to oversee the year-long project to produce a self-assessment survey, model resource plan and guidebook.

These three tools can provide a community with an internal capacity 'snapshot' and encourage discussion about the steps required to develop or enhance capacity. The survey itself includes questions on organizational strategy, governance, organizational structure, human resources, community human resources, economy and community infrastructure. Communities can use part or all of the survey or modify it according to their needs.

A consultant developed the self-assessment tools in cooperation with the committee and four volunteer communities -- Heiltsuk, Hupacasath, Sto:lo and Ts'kw'aylaxw. These First Nations assisted the committee by testing the draft survey and guidebook in their respective communities and providing helpful critiques.

The project was completed early this year, and in March the self-assessment tools were made available to all First Nations in the treaty process. Additional copies can be obtained from the Treaty Commission.

In tandem with this initiative, funding support for capacity building has been boosted. In April 1999, federal Indian Affairs Minister Jane Stewart committed \$15 million over three years towards First Nation capacity building in British Columbia. The provincial government has also contributed \$2 million to the initiative for the 1999-2000 fiscal year.

The initiative is focused on building capacity for lands and resource negotiations and consultations.

Acting on one of the recommendations from an interim Capacity Panel, the Minister has created a Capacity Initiative Council to assess project proposals and make recommendations to Indian Affairs officials regarding these funds. A call for proposals recently went out to First Nations.

The Council comprises representatives from BC First Nations, the Treaty Commission, industry and labour organizations and is chaired by Chief Lydia Hwitsum of Cowichan.



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## Progress Report

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

Total in Stage 2: 1  
Total in Stage 3: 12  
Total in Stage 4: 37  
Total in Stage 5: 1

First Nations in Stage 2  
Council of the Haida Nation

First Nations in Stage 3  
Cheslatta Carrier Nation  
Katzie Indian Band  
Lake Babine Nation  
Musqueam Nation  
Nazko Indian Band  
Squamish Nation

Member of the Winalagalis Treaty Group  
Kwakiutl First Nation  
'Namgis First Nation  
Da'naxda'xw First Nation  
Gwa'Sala Nakawaxda'xw First Nation  
Tlatlasikwala First Nation  
Quatsino First Nation

First Nations in Stage 4

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  
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  
Tseil-Waututh Nation  
Westbank First Nation  
Wet'suwet'en Nation  
Xaxli'p First Nation  
Yale First Nation  
Yekooche Nation

First Nations in Stage 5

Sechelt Indian Band

\*Several groups of First Nations are negotiating at common tables.



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## First Nations In Stage 5

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### SECHELT INDIAN BAND

The Sechelt Indian Band and the federal and provincial governments made history on April 16, 1999 when they signed the first agreement in principle to come out of the treaty process overseen by the Treaty Commission. After more than four years of negotiations, and with vocal support from local government and various interested parties, Chief Garry Feschuk, federal Minister of Indian Affairs Jane Stewart, Premier Glen Clark and provincial Minister of Aboriginal Affairs Gordon Wilson signed the agreement.

The parties faced the challenge of negotiating a treaty in an area where there is a large amount of privately-held land, natural resources are scarce and the economy is diversified. Without precedents to follow, the negotiators for the three parties developed a comprehensive package which took into account: high land values, the benefit to the First Nation of the current tax exemption under the Indian Act and the fact that the Sechelt Indian Band community is within the town of Sechelt.

The task was made easier because the Sechelt Indian Band has been operating its own self-government according to delegated law-making powers since October 1986. At that time, the band took over ownership and control of its 33 reserves. The success of this arrangement was apparent to the negotiators, who acknowledged in the agreement in principle that Sechelt will continue to exercise that form of self-government after treaty.

A high level of public support for the Sechelt agreement in principle has been apparent. This support is a direct result of Sechelt Indian Band's deliberate communication efforts and cooperation with surrounding local governments as well as federal and provincial government consultation efforts.

A strong relationship, built on success, has been forged between the band and local governments on the Sunshine Coast over the last several years. During the agreement-in-principle negotiations, the federal and provincial governments ensured that the people in the District of Sechelt and other interested parties had information about the negotiations and input into the agreement. They established the Sunshine Coast Local Advisory Committee consisting of representatives of third-party community and sectoral interests on the Sunshine Coast.

The provincial government included the mayor of Sechelt on its negotiating team. The mayor reported back to other local government representatives of the District of Sechelt, the Sunshine Coast Regional District, the Town of Gibsons, the District of Powell River and the Powell River Regional District through the Sechelt Treaty Advisory Committee. Most negotiating sessions were well attended by the public and many sessions were aired on the local cable channel. All those interested in the Sechelt treaty negotiations had their questions answered or their ideas considered.

This approach to consultation within the community is not unique, but is a good working example of a practice that has been adopted at other tables.

Based on the agreement in principle, the three parties are now working on the Sechelt final agreement which will be a treaty protected under section 35 of the Constitution Act, 1982. They anticipate completion by April 2000. Key to the final agreement will be a companion implementation plan detailing how the treaty will work on the ground and guided by the principles of accountability, efficiency and economy.

Given the progress at the negotiating table over the past four years and the pragmatic approach of each of the negotiating teams, the Treaty Commission is confident that it will be able to report next year on the first final agreement in this treaty process.



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# Sechelt Agreement In Principle

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## AGREEMENT IN PRINCIPLE SUMMARY

### General Provisions

- The Canadian Charter of Rights and Freedoms will continue to apply to the Sechelt government. The final agreement will not alter the Constitution of Canada.
- The final agreement will constitute the full and final settlement of all Sechelt claims to aboriginal rights and aboriginal title in Canada.

### Sechelt Treaty Land

- On the effective date, Sechelt Treaty Land will amount to approximately 1,988 hectares.
- Current Sechelt lands, about 1,031 hectares, will become Sechelt Treaty Land. The Sechelt Indian Band also owns another 25 hectares which will become Sechelt Treaty Land.
- The Sechelt Indian Band will receive about 933 hectares of new lands. This will include about 288 hectares of rural land and 645 hectares of urban land.
- On one of the urban parcels (District Lot 7613), the Sechelt Indian Band will share gravel and timber revenues with the province. Each will receive 50 per cent of the forestry and gravel revenues from the effective date of the final agreement until 52,222,810 metric tonnes of aggregate material and 143,342 cubic metres of merchantable timber have been taken. The Sechelt Indian Band will then receive 100 per cent of the forest and gravel revenues.
- The Sechelt Indian Band will own surface and subsurface resources on Sechelt Treaty Land.

### Fiscal Arrangements

- The Sechelt Indian Band will receive \$42 million in cash: \$40 million goes to the Sechelt Prosperity Fund and \$2 million to a Sechelt Transition Fund. During final-agreement negotiations, the parties will agree to a schedule of payments over a number of years.

### **Interests on Sechelt Land**

- Existing interests on Sechelt Treaty Land such as: road and cutting permits; guide outfitter licences; traplines; rights of way; and licences of occupation will continue on their current terms.
- The gravel lease with Construction Aggregates will also continue on its current terms.

### **Future Additions to Sechelt Treaty Land**

- For 24 years after the effective date, the Sechelt Indian Band may propose to Canada and BC to add to Sechelt Treaty Land, land that the band has acquired or optioned.
- The total area of the Sechelt Treaty Land will not be more than 3,055 hectares. The Sechelt Indian Band will not own subsurface resources on lands acquired after the effective date unless, agreed to by BC.
- Any lands to be added must meet certain defined criteria and be approved by Canada and BC. For example, added lands must be within a defined area and must not result in any cost to Canada or BC.
- To ensure that municipal interests are considered, lands within municipal boundaries may not be added unless the municipality agrees. Similarly, lands acquired within an area of overlap with another First Nation may not be added to Treaty Lands unless that First Nation agrees.

### **Fisheries**

- The relevant minister will retain overall responsibility for conservation and management of the fisheries and fish habitat.
- The Sechelt people have the right to harvest fish and marine plants for food, social and ceremonial purposes, subject to conservation, public health and safety considerations. The Sechelt Indian Band will also receive 11 existing commercial fishing licences to assist the band's participation in the general commercial fishery. The licences will operate on the same basis as all other commercial licences.

### **Wildlife and Migratory Birds**

- Provincial and federal laws with respect to wildlife and wildlife management will apply on Sechelt Treaty Land.
- The Sechelt will receive entitlements to hunt designated species of wildlife. The band will develop an annual harvest plan that will require provincial government approval.
- The Sechelt will also have the right to harvest migratory birds subject to applicable federal and provincial laws.

## **Forestry**

- The Sechelt Indian Band will manage forest resources on Sechelt Treaty Land and will be responsible for conservation and protection. Standards for management of the forest resources will meet or exceed established provincial forest practices, standards and laws.

## **Water**

- The Sechelt Indian Band may participate in any local government institution that can regulate water within the Sunshine Coast Regional District boundary.
- The Sechelt Indian Band will participate in any public water management process affecting the Sechelt Area.

## **Environmental Assessment and Protection**

- Federal and provincial environmental assessment processes and protection laws will apply to Sechelt Treaty Land.

## **Taxation**

- Existing Indian Act taxation exemptions will end. Sechelt members will begin paying transaction taxes eight years after the final treaty and income tax after 12 years.

## **Governance**

- The parties agree that the existing Sechelt Indian Band governance arrangements, which have been in place for nearly 13 years, have been

practical and successful. This governance model will continue after the final treaty.

## **Culture and Heritage**

- BC will return to the Sechelt Indian Band specified cultural artifacts.
- Federal and provincial laws relating to the establishment, management and protection of heritage resources will apply on Sechelt Treaty Land. The band may participate in any public process for planning or managing heritage resources affecting the Sechelt area.
- Sechelt members will have the right to gather some traditional items on provincial Crown land for sustenance, medicinal or ceremonial purposes of a non-commercial nature. These items include traditionally used plants, herbs, roots, berries, moss, ferns and bark. Before gathering traditionally used trees, Sechelt will make arrangements with the appropriate Crown authority.
- This gathering right will apply on lands within the Sechelt area until those lands are sold or leased to a third party or required for federal or provincial uses incompatible with gathering.

## **Implementation**

- A Sechelt treaty implementation plan will be developed and concluded prior to ratification of the final agreement.

## **OTHER ARRANGEMENTS**

***The following initiatives fall outside the terms of the Sechelt AIP and will remain outside the final treaty.***

## **Economic Development**

- In order to assist the Sechelt Indian Band prepare for and assume the new responsibilities it will acquire under a final agreement, Canada will pay \$1.5 million for economic development initiatives and planning.

## **Loan Guarantee**

- BC will provide the Sechelt Indian Band with a loan guarantee for \$4 million on the effective date of the treaty. Repayment will be secured by

the Sechelt share of forestry and gravel revenues from Lot 7613.



## **BC TREATY COMMISSION**

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## **First Nations In Stage 4**

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### **Agreement in Principle Negotiations**

#### **CARCROSS/TAGISH FIRST NATION CHAMPAGNE & AISHIHIK FIRST NATIONS TESLIN TLINGIT COUNCIL TAKU RIVER TLINGIT FIRST NATION**

Carcross/Tagish First Nation, Champagne & Aishihik First Nations, and the Teslin Tlingit Council formed the Transboundary table in 1996, and were joined late in 1998 by their neighbour to the southwest, the Taku River Tlingit First Nation. These four First Nations represent approximately 2,000 people. The First Nations and Taku are negotiating together at the Northern Regional Negotiations table.

The original three transboundary groups largely reside in the Yukon Territory and have negotiated treaties there, or are in the process of negotiating them. But their traditional territories extend into northwestern British Columbia and their interests in this province must be addressed. This table, which faces unique challenges given that the three Yukon First Nations already have treaties, has been making progress in Stage 4. The parties to the table are hopeful that they will be able to agree on the elements of an agreement in principle by the end of 1999.

#### **DITIDAHT FIRST NATION PACHEEDAHT BAND**

These two First Nations are among the frontrunners in the treaty process. At the time of writing, it was anticipated that Canada and BC would make a comprehensive offer for an agreement in principle by mid-year. The First Nations will then spend much of the summer evaluating and consulting their members about the offer. Ditidaht has been in Stage 4 since January 1996 and Pacheedaht since August 1997. They work together at a shared treaty table which allows for a more efficient use of resources, expertise and time. Both First Nations are active members of the First Nations Treaty Negotiation Alliance. They are located on the southwest corner of Vancouver Island. Ditidaht has approximately 550 members and Pacheedaht approximately 225 members.

#### **CARIBOO TRIBAL COUNCIL**

The Cariboo Tribal Council table entered Stage 4 in December 1997. Over the past year the parties have set up side tables on interim measures and lands and resources at which the topics under discussion include forestry and environmental assessment protection. The

parties are also in the process of establishing a side table for governance issues. An important development happened in late April, when the chief negotiators met to discuss progress and their respective visions for a treaty. They agreed to discuss the potential components of the treaty this fall. The four member communities of the tribal council, located in and around Williams Lake, have a combined membership of 1,890.

### **CARRIER SEKANI TRIBAL COUNCIL**

The Carrier Sekani Tribal Council table entered Stage 4 in May 1997 and negotiations are proceeding slowly. The Treaty Commission has been playing an active role as chair and facilitator at the table. The tribal council's interest in interim measures to protect and better manage lands and resources while a treaty is being negotiated occupies most of the table's time. The tribal council represents seven communities located northwest of Prince George, and has a combined membership of 5,000.

### **ESKETEMC FIRST NATION**

Since entering Stage 4 in December 1997, the Esketemc First Nation table has focused its substantive negotiations on lands and resources. Esketemc has identified several areas of interest for protection under interim measures and in this context the parties have been exploring ideas and options regarding lands. A main table is set for late June in the community, at which Canada and BC will present interests on key issues like interim measures and certainty. The First Nation, located southwest of Williams Lake, has approximately 650 members.

### **GITANYOW HEREDITARY CHIEFS**

Negotiations at this table have been overshadowed by the overlap dispute between the Nisga'a and the Gitanyow. Over the past year the Gitanyow have looked to the courts to protect their interests in the overlap area. Attempts have been made by the two First Nations, Canada and BC to mediate a resolution of the overlap.

In separate rulings, the court refused to order a delay in the finalization of the Nisga'a agreement but did hold that in negotiations with the Gitanyow Canada and BC are obliged to negotiate in good faith. Canada and BC have appealed the latter ruling. The court has yet to decide whether the signing of the Nisga'a treaty would be contrary to the Crown's duty to negotiate in good faith. The parties have agreed to place this part of the action in abeyance and in early June agreed to resume active treaty negotiations on an accelerated basis.

The Gitanyow traditional territory straddles the middle reaches of the Nass River. The First Nation has approximately 630 members.

### **GITXSAN HEREDITARY CHIEFS**

The Gitxsan Hereditary Chiefs were appellants in the Delgamuukw case, which was decided by the Supreme Court of Canada in December 1997. Since that time, the Gitxsan have not resumed tripartite treaty negotiations. Instead, they have concentrated on bilateral negotiations with BC on matters such as forestry, wildlife, other resource management issues, training, etc. A Reconciliation Agreement on these subjects was signed by BC and

the Gitksan Hereditary Chiefs in October 1998. The Gitksan comprise approximately 5,150 members. Their traditional territories cover a large area in the upper reaches of the Skeena and Nass rivers.

#### **HAISLA NATION**

The Haisla Nation table entered Stage 4 in December 1996. Negotiations have touched on most issues but the parties have yet to reach closure on many of the major issues. The table hopes to conclude negotiation of an environmental management pilot project by mid-1999. This could show how management could work once the treaty is concluded. The First Nation, located near Kitimat, has approximately 1,430 members.

#### **HEILTSUK NATION**

The Heiltsuk Nation table entered Stage 4 in April 1997. The parties are approaching a pivotal point in their negotiations. They have been focussing their attention on fisheries discussions -- a key area of interest for the First Nation. The Heiltsuk Nation is taking the first half of 1999 to present a series of position papers on fish and fisheries. Canada and BC will then respond. The First Nation, located on the Central Coast, has approximately 2,000 members.

#### **HOMALCO FIRST NATION**

The Homalco First Nation table entered Stage 4 in May 1996 and negotiations have been proceeding slowly. The First Nation is continuing to do internal work. There have been a number of changes in the federal and provincial negotiators assigned to this table. The parties are scheduled to meet at a main table in July. The nation, located near Campbell River and with a traditional territory extending to Chilko Lake, has approximately 400 members.

#### **HUL'QUMI'NUM TREATY GROUP**

The Hul'qumi'num Treaty Group table entered Stage 4 in December 1997. The First Nation has taken a 'time out' from negotiations and has hired a new executive director with the goal of reorganizing their treaty negotiation team. The First Nation expects to return to negotiations by the end of the summer. The six-member Hul'qumi'num Treaty Group, a member of the First Nations Treaty Negotiation Alliance, is located on Vancouver Island between Duncan and Ladysmith. It has a combined membership of 5,400.

#### **IN-SHUCK-CH N'QUAT'QUA FIRST NATION**

The In-SHUCK-Ch N'Quat'qua First Nation entered Stage 4 in August 1996. The table is hoping to reach an agreement in principle by the end of 1999. The table has addressed all topics, reached agreement on many and is constructively dealing with the remaining issues. The major challenges for this table centre on land and on overlapping or shared territories with other First Nations. The four-community nation, located near the Lillooet Valley and Anderson Lake, has 1,055 members.

## **KASKA DENA COUNCIL**

The Kaska Dena Council table entered Stage 4 in January 1996. It represents the approximately 1,000 members of the Kaska Nation residing in British Columbia. Kaska Nation territory spans portions of the Yukon, Northwest Territories and north central BC. The three different jurisdictions create special considerations for the Kaska Dena Council in its negotiations in British Columbia. The Kaska must work closely with their relatives in the north to ensure that a treaty reached in British Columbia is compatible with the laws and terms arrived at in the northern treaties. The table has drafted portions of many of the chapters that will form the agreement in principle. The parties should be able to complete Stage 4 quickly, once negotiators have found solutions to the fundamental issues raised by the multi-jurisdictional nature of the Kaska Nation territory.

## **KLAHOOSE INDIAN BAND**

The Klahoose Indian Band table entered Stage 4 in February 1997. Klahoose, Canada and BC have dramatically different ideas of the amount of land they would be prepared to see in a treaty. The Treaty Commission has been facilitating at this table since the fall of 1997 but the differences have created a stalemate. Located north of Sechelt on the south coast, the nation has 280 members.

## **KTUNAXA/KINBASKET TRIBAL COUNCIL**

The Ktunaxa Kinbasket Tribal Council table entered Stage 4 negotiations in May 1998. For some time now, the general side table has been developing common principles documents on wildlife and cultural resources. The parties are also pursuing solutions to the First Nation's concerns about forest development within their traditional territory including the development of a regional consultation protocol between the Ministry of Forests and the tribal council. The table's meeting schedule has been set up well into the year 2000, with main table meetings occurring throughout the territory about once every three months. The tribal council represents five communities and has a combined membership of approximately 1,100.

## **KWAKIUTL LAICH-KWIL-TACH COUNCIL OF CHIEFS**

The parties at the Kwakiutl Laich-Kwil-Tach Council of Chiefs table entered Stage 4 in August 1998. Since that time, they have begun substantive discussions on lands and resources. The table plans to begin fisheries discussions shortly. The Council of Chiefs continues with internal mandate development on these and other issues. The most recent example of this occurred at a general assembly for all members in early May. Located in the area around Campbell River, the five member communities have a combined membership of approximately 2,000.

## **LHEIDLI T'ENNEH BAND**

The Lheidli T'enneh Band table entered Stage 4 in August 1996. The parties are making significant progress at the negotiation table and have reached substantial completion of seven chapters and have submitted those chapters for consultation. The table is aiming to

complete an agreement in principle by the end of December 1999. Located in the Prince George region, the band has approximately 265 members.

### **NUU-CHAH-NULTH TRIBAL COUNCIL**

The Nuu-chah-nulth Tribal Council, with approximately 6,500 members, is one of the most populous First Nations in the BC treaty process. Negotiations at the Nuu-chah-nulth table have gathered momentum since early 1999. The parties are working towards a late 2000 completion date for the agreement in principle. BC and Canada hope to make an offer by late 1999 or early-2000. One of the major subject areas currently being addressed is fisheries. Lands and specific resource issues are negotiated with the 13 individual nations in the tribal council; other issues (for example, self-government, law-making authority, fiscal arrangements, taxation, fisheries management and allocation, forest resources) with the tribal council. The Nuu-chah-nulth territories span most of the west coast of Vancouver Island. Nuu-chah-nulth entered Stage 4 in March 1996.

### **OWEEKENO NATION**

The Oweekeno Nation table entered Stage 4 in March 1998. During 1998, the First Nation continued its focus on capacity building initiatives. The tripartite table has not met for some time. Located south of Bella Coola on the Central Coast, the nation has approximately 220 members.

### **SLIAMMON INDIAN BAND**

The Sliammon Indian Band Table entered Stage 4 in May 1996. Engaged in intense treaty negotiations, the table is at a pivotal point that may see either an agreement in principle in the near future or prolonged negotiations. Located near Powell River, the band has approximately 845.

### **SNUNEYMUXW FIRST NATION**

The Snuneymuxw First Nation table has made rapid progress since it entered Stage 4 negotiations in September 1996. The parties are hopeful that an agreement in principle can be reached sometime in late 1999 or early-2000, and accordingly have increased the number of monthly working groups to between eight and 10. The First Nation continues to play an active role in the First Nations Treaty Negotiation Alliance, where it hopes to address some of the more challenging issues facing it such as land quantum and taxation. Located in Nanaimo, the First Nation has approximately 1,250 members.

### **STO:LO NATION**

The Sto:Lo Nation table entered Stage 4 in January 1998. The First Nation is currently taking time out from negotiations. They are in the process of choosing a new chief negotiator and restructuring their internal government. After hiring a chief negotiator the Sto:Lo Nation anticipates resuming negotiations shortly. Located in the Fraser Valley, the 18 members of the nation in negotiations have a combined population of approximately 3,750.

## **TE'MEXW TREATY ASSOCIATION**

The Te'Mexw Treaty Association table entered Stage 4 negotiations in December 1996. Negotiations are proceeding slowly, with a focus on land selection. The First Nation and Canada are also engaged in bilateral fisheries negotiations. Canada and BC recently responded to the First Nation's draft agreement-in-principle paper. While the parties differ on some issues, the chief negotiators have agreed to meet through July to explore ways to make progress on issues such as land and taxation. Located on the south end of Vancouver Island, the five-member association has a combined membership of 1,215. The Te'Mexw Treaty Association is unusual in that all of its members signed treaties with the colonial authorities in the 1850's, referred to as the Douglas Treaties.

## **TS'KW'AYLAXW FIRST NATION**

The Ts'kw'aylaxw First Nation table entered Stage 4 in October 1996. Over the past year, the First Nation has done considerable internal work reviewing its goals for treaty and developing its capacity to negotiate and eventually implement a treaty. Ts'kw'aylaxw has recently begun meeting with the federal and provincial governments to work on a faster process for resolving land and resource issues and potentially putting off some self-government negotiations until a later date. Resource development within the traditional territory has made it imperative to resolve the land aspects of the treaty sooner rather than later. Located in the Pavilion area near Lillooet, the First Nation has approximately 445 members.

## **TSAWWASSEN FIRST NATION**

The Tsawwassen First Nation table entered Stage 4 in August 1997. Canada and BC presented their interests on key issues such as taxation and certainty at a meeting in March 1999, the first meeting since late 1997. Tsawwassen First Nation plans to respond with its vision of a treaty, based on consultations with members, at a July main table meeting. The public governments are scheduled to respond to the First Nation's presentation some time in the fall. Based on the outcome of this tripartite scoping exercise, the parties anticipate that negotiations could accelerate by year's end. The First Nation, located in the Lower Mainland, has approximately 215 members.

## **TSAY KEH DENE BAND**

The Tsay Keh Dene Band table entered Stage 4 in November 1996. After a long absence from treaty negotiations, the First Nation in January 1999 presented Canada and BC with a comprehensive proposal for reaching an agreement in principle. The proposal has provided the catalyst for the table to engage in intensive negotiations. The band, located in the Williston Lake area north of Mackenzie, has approximately 300 members.

The Tsay Keh Dene Band has launched a court action relating to the flooding of Williston Lake by BC Hydro, but is preparing to place the proceeding in abeyance to allow treaty negotiations to continue.

## **TSIMSHIAN NATION**

The Tsimshian Nation table entered Stage 4 in February 1997. The seven nations that comprise the Tsimshian Nation are starting to see the products of their extensive research and are beginning to develop clear visions of their interests in a Tsimshian Nation agreement in principle. In addition to the main table negotiation sessions held with the Tsimshian Nation, the federal and provincial negotiators have begun meeting with the seven nations individually, in the presence of the other Tsimshian nations, to discuss issues that are specific to the individual First Nations such as local land and resources. These recent developments promise an increased rate of progress. The Tsimshian nations, located in the Terrace-Prince Rupert region of the northwest coast, have approximately 7,000 members.

#### **TSLEIL-WAUTUTH NATION**

The Tsleil-Waututh Nation is among the frontrunners in treaty negotiations in the Lower Mainland. To meet the challenge of forging a treaty in a highly urbanized setting -- its territories span much of Greater Vancouver -- the First Nation has evolved a "Variable Interest Model." This model envisions a spectrum of rights and activities throughout the traditional territory, ranging from ownership and jurisdiction at one end of the spectrum to economic partnerships at the other. The First Nation has made several presentations of its model to local government, other First Nations and the public over the past year. The parties are exploring the elements of this model to establish how compatible their treaty visions are. They hope to complete this exercise over the next few months. Tsleil-Waututh has approximately 360 members.

#### **WESTBANK FIRST NATION**

The Westbank First Nation table entered Stage 4 in March 1997. In September of 1998 the First Nation stepped back from formal negotiations to review its vision of a treaty and its participation in the treaty making process. The Westbank First Nation is part of the broader Okanagan Nation and discussions are underway between them, as well as with the federal and provincial governments to address how negotiations might proceed. Westbank First Nation, located in the Kelowna area, has approximately 550 members.

#### **WET'SUWET'EN NATION**

The Wet'suwet'en Nation entered Stage 4 in July 1995. Between September 1996 and June 1997, Canada suspended negotiations, citing the active recommencement of the Delgamuukw case in the Supreme Court of Canada. For much of the period since June 1997, negotiations have focused on self-government issues, such as human and social service needs and plans. Since early 1999, the parties have begun to focus on land and resource-related issues, starting with wildlife. At the end of each day of the main table meetings, the parties actively encourage questions from the public.

The house territories of the Wet'suwet'en chiefs cover the greater part of the Bulkley River drainage area in northwestern BC. The First Nation has approximately 2,000 members.

#### **XAXLI'P FIRST NATION**

The Xaxli'p First Nation table entered Stage 4 in November 1997 but has not yet begun formal agreement-in-principle negotiations. The First Nation is focusing on completing

research that will enable it to develop its vision and mandates for what it wants to see in the treaty. The First Nation has approximately 800 members. Its traditional territory is in the Fountain Valley north of Lytton.

#### **YALE FIRST NATION**

The Yale First Nation table entered Stage 4 in February 1997. Negotiations at this table have been progressing slowly. The Treaty Commission has chaired most meetings since May 1998 but there continue to be obstacles at the negotiation table. Currently, Canada is attempting to reach an agreement with the Yale First Nation to stop its court action against the federal Department of Fisheries and Oceans. Without agreement to set aside court action it may be difficult to carry on with substantive negotiations. Yale First Nation, located northeast of Hope on the Fraser River, has approximately 135 members.

#### **YEKOOCHÉ NATION**

The Yekooche Nation table entered Stage 4 in October 1996. The parties have been involved in intense negotiations and have submitted several draft chapters for consultation. They include: Eligibility and Enrolment, Access, Culture and Heritage, Environmental Assessment Management Protection, Forests, and Sub-Surface and Mineral Resources. It is expected that progress will slow while the First Nation re-examines its governing structure. Located northwest of Fort St. James, the First Nation has approximately 130 members.



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## **First Nations In Stage 3**

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### **Negotiation of a Framework Agreement**

#### **CHESLATTA CARRIER NATION**

The Cheslatta Carrier Nation table entered Stage 3 in May 1997 but has not engaged in tripartite negotiations since. Recently, Cheslatta has expressed interest in returning to the negotiation table. Located south of Burns Lake, the nation has approximately 230 members.

#### **KATZIE INDIAN BAND**

The Katzie Indian Band table entered Stage 3 in January 1999, but has not yet met to negotiate a framework agreement. The Katzie Indian Band is taking time to consult its constituents and develop mandates. The band, located near Pitt Meadows in the Lower Mainland, has a membership of approximately 430.

#### **LAKE BABINE NATION**

The Lake Babine Nation is taking time to re-assess its mandates and constituent support for the framework agreement, which was negotiated in early 1998 but is not yet signed. No negotiations are scheduled at present. The nation, located near Burns Lake, has approximately 1,850 members.

#### **MUSQUEAM NATION**

The Musqueam Nation table has been in Stage 3 since August 1995. After making notable progress in the first half of 1998, this table has stalled over the issue of compensation. The First Nation wants assurances from Canada and BC that compensation can be considered in Stage 4 even though it was not specifically agreed to be a negotiable issue in Stage 3. Canada and BC, while acknowledging that compensation is important to Musqueam, see treaties as a means of building new, forward-looking relationships. The Treaty Commission is exploring ways to resolve this impasse. Located in the city of Vancouver, the Musqueam Nation comprises approximately 1,000 members. Its traditional territory covers much of the Lower Mainland.

#### **NAZKO INDIAN BAND**

The Nazko Indian Band table is about to enter Stage 4 agreement-in-principle negotiations. The framework agreement is now complete and should soon be signed by all three parties. The table has not met for some time, as the First Nation stepped away from negotiations to undertake consultations with its members including seeking their approval to sign the framework agreement. The chief negotiators met in early May to discuss the next steps for this table. The First Nation has indicated an interest in beginning with negotiations on wildlife and forestry, and has begun consultations with its members to obtain mandates in these areas. Located west of Quesnel, the band has approximately 275 members.

### **SQUAMISH NATION**

The Squamish Nation table entered Stage 3 in October 1995. The table last met in January 1998 to finalize the framework agreement. In April 1999, the First Nation indicated that it wished to sign this agreement and proceed to Stage 4 negotiations. The traditional territory of the Squamish Nation covers much of the Greater Vancouver area as well as the Squamish valley. The Squamish Nation has approximately 3,000 members.

### **WINALAGALIS TREATY GROUP**

Six nations form the Winalagalis Treaty Group: Kwakiutl, 'Namgis, Da'Naxda'xw, Gwa'Sala-Nakwadaxw, Tlatalasikwala and Quatsino. Winalagalis entered Stage 3 in the spring of 1998 and is expecting to complete negotiation of framework agreements by mid-1999. The six member nations are located on northern Vancouver Island and adjacent to Johnstone Strait and have a combined membership of approximately 3,150.



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## **First Nations In Stage 2**

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### **Readiness to Negotiate**

#### **COUNCIL OF THE HAIDA NATION**

Tripartite negotiations towards a treaty have not yet begun at the Council of the Haida Nation table. The focus of the Council of Haida Nation over the past four years has been to build a strong government with a clear focus on the peoples' goals and visions for a treaty. In the meantime, the Haida have entered into negotiations with the provincial and federal governments to make arrangements for Haida input and participation in forest activity in Haida traditional territory. Located on Haida Gwaii, also known as the Queen Charlotte Islands, the council represents approximately 3,500 people.



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## **First Nations Treaty Negotiation Alliance**

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Over the past year, First Nations primarily from Vancouver Island, have come together to form the First Nations Treaty Negotiation Alliance. The Alliance is a voluntary forum where members share information and work together on common issues.

The Alliance began negotiations with Canada and BC in May 1999 on key principles and objectives on land and resources. The Alliance believes these principles and objectives, which address certainty, land valuations, resource-sharing and interim measures, represent the basis from which they will negotiate treaties. Further negotiation sessions on these and other subjects are planned.

First Nations in the Alliance are: Pacheedaht, Ditidaht, Snuneymuxw, Winalagalis Treaty Group, Hul'qumi'num Treaty Group, Kwakiutl Laich-Kwil-Tach Council of Chiefs, and Sliammon Indian Band. The combined population of First Nations in the Alliance is more than 12,000 people.

The Alliance is not a tribal council or a substitute for the First Nations Summit. It is a regional body bound together by shared interests and respect for the autonomy of its members.

The Treaty Commission has played a facilitating role in negotiations involving the Alliance, Canada and BC.



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# The Legal & Political Landscape After-Delgamuukw

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## A Year and a half Later, where are we?

The Supreme Court of Canada decision in late 1997 was widely seen as a turning point for treaty negotiations. The decision confirmed that aboriginal title does exist in BC, that it's a right to the land itself -- not just the right to hunt or fish -- and that when dealing with Crown land, the government must consult with and may have to compensate First Nations whose titles are affected. Everyone involved in treaty negotiations recognized that the decision could have major impacts on policies, on positions and on mandates. It's still too early to know what its full impact will be.

### THE DELGAMUUKW DECISION

The decision strongly favours negotiation as the way to resolve conflicting claims to the land. There are complex issues at stake, the court said, and the negotiating table is the place to resolve them -- not the courtroom. Treaties can settle who owns what land, who has rights on the land and who manages the land.

The Supreme Court told us aboriginal title exists in BC and is:

- a right to exclusive use and occupation of land;
- a constitutionally protected right; and
- a burden on Crown title.

But it did not say where in BC aboriginal title exists. That would have to be proven in each case. Depending on the history of a particular First Nation and its use and occupation of its traditional territory, this may or may not be easy to do. The Supreme Court also said that aboriginal title can be infringed by BC or Canada, for certain limited purposes.

One result of the decision is enough uncertainty on all sides to make treaty negotiations a more attractive option than litigation.

### THE TRIPARTITE REVIEW

A review of the treaty process was undertaken by the three Principals in the wake of the Delgamuukw decision. The First Nations Summit and the governments of BC and Canada set out, in a series of meetings, to exchange views on the meaning of the decision and to

see if they could find ways to improve the treaty negotiation process. The Treaty Commission in its 1998 annual report described the review process as "at a standstill." It urged the Principals to resume the review process and invigorate treaty negotiations.

The Principals did continue the review in the autumn and in an intensive round of meetings developed a series of recommendations. They are now considering these recommendations.

The focus of the review has been to find ways to accelerate negotiations around land, resources, cash and the financial components of treaties. First Nations who are borrowing large sums of money to finance their treaty talks have become frustrated. As negotiations drag on, they see the resources in their territories being depleted or alienated and they fear there will be little left with which to meet their treaty expectations. They are seeking assurance that treaties will leave them better off than they are now. Delgamuukw and its confirmation of aboriginal title heightened First Nations' expectations that their concerns would be addressed. Resolving issues around land and resources sooner rather than later will restore confidence in the treaty process.

### ***The Treaty Commission's role in the review***

The Treaty Commission played an active role in this review. The Chief Commissioner chaired the meetings and Commissioners attended as observers. As issues arose that needed further analysis, the Treaty Commission undertook to produce working papers, including recommendations, for consideration by the Principals.

At the request of the Principals, the Treaty Commission identified and described certain obstacles to the completion of treaties and suggested ways of surmounting those obstacles. For example:

- The Delgamuukw decision made it clear that treaty negotiations must find a way to reconcile aboriginal title with Crown title. A statement of mutual recognition is a starting point. A joint statement from the governments of Canada and BC and the First Nations Summit is expected soon.
- Interim protection measures are a more practical step. If a First Nation has an interest in a parcel of land, then it makes sense to allow that First Nation to share in the benefits from the land while negotiations proceed to define exactly where and how that title will be recognized. When that doesn't happen and First Nations watch loaded logging trucks rolling past the offices where they sit negotiating - then litigation may loom as a more attractive option.
- It's important to successful negotiations that the First Nation has a clear vision of what it wants and needs from a treaty. The treaty process, and particularly its funding arrangements, does not provide for those who need to stand back from active negotiations in order to develop their treaty visions or to build their capacity to negotiate or implement a treaty. The opportunity to do so would benefit individual First Nations and help alleviate some of the resource problems caused by the entry of 51 First Nations into a process originally designed with 30 in mind.

## **SUPPORTING LARGER INITIATIVES**

Could negotiations progress more efficiently if they were undertaken by larger groupings of First Nations? First Nations in the past have rejected the idea of provincial or regional negotiations because they wish to maintain the autonomy of their own negotiations. But the Treaty Commission has continued to look for ways to encourage more efficient and effective negotiations. In recent months, a group of more than 20 First Nations, mostly on Vancouver Island, has come together as the First Nations Treaty Negotiation Alliance to develop a common set of negotiating principles. The Treaty Commission has supported this initiative and is chairing a round of meetings involving chief negotiators from Canada and BC and representatives of the First Nations. The Treaty Commission has also prepared a working paper setting out other approaches that could generate efficiencies for all parties.

## **THE NISGA'A TREATY**

The first modern treaty in British Columbia was signed last summer at New Aiyansh. Although not part of the BC treaty process (it was in negotiation long before the establishment of the Treaty Commission), the Nisga'a agreement proved that treaties can be achieved. It was celebrated by many as the culmination of the work of generations of Nisga'a negotiators and the fulfillment of a people's aspirations. But the celebration was not unanimous. Some First Nations people felt that the treaty left the Nisga'a with too little land. Some non-aboriginal people felt that the treaty is too costly for Canada and BC to bear. In many ways, the Nisga'a treaty served as a lightning rod for concerns about treaties themselves and about the negotiation process.

### ***Public debate***

A rigorous public debate developed around the issue of whether a referendum should be used to gauge public opinion. The Treaty Commission publicly opposed this use of a referendum for several reasons, including these:

- The governments had already agreed with the Nisga'a on a ratification process that did not include a referendum. To change the rules at the end of the game would undermine the integrity of the process and be inconsistent with the honour of the Crown.
- A referendum cannot accurately reflect public opinion on a complex issue. Most people are likely to find at least one item in a treaty with which they disagree. Since people generally feel more strongly about those issues they disagree with, they will tend to vote 'No', even where most of them agree with most of what is in a treaty.

Some people have argued that treaties should be settled by a one-time cash payment to each aboriginal person. The Delgamuukw decision makes it clear that this is not an option. The reason is aboriginal title. Aboriginal title is found in many parts of the world and it is older than property systems based on common law or civil law. One of the characteristics of aboriginal title is that it is held by groups and not by individuals. So when the Supreme Court of Canada confirmed that aboriginal title exists in BC it was clear that governments would have to settle claims with First Nations -- the holders of that title -- and not with individual members.

### ***Court challenges***

The BC Liberal Party and the BC Fisheries Survival Coalition have challenged the Nisga'a Final Agreement in separate lawsuits filed in the fall of 1998. In general terms, they argue that the Nisga'a Final Agreement is unconstitutional.

The BC Supreme Court ruled in the spring that the applications were premature. They would have to wait until the treaty becomes law before they could be heard.

### ***Ratification***

The treaty was ratified by the members of the Nisga'a, and then by the BC legislature, after lengthy debate -- the longest in the legislature's history -- and after the imposition of closure. Canada initially was expected to ratify the treaty before Parliament's summer recess but it will not now do so before the fall.

### **SECHELT: THE FIRST AGREEMENT IN PRINCIPLE**

In April the Sechelt Indian Band became the first to sign an agreement in principle through the BC treaty process. (See Page 16)

Far less controversy and debate surrounded the signing of the Sechelt agreement than had marked the Nisga'a signing. The high level of public acceptance may be due, at least in part, to the long experience the First Nation and its neighbours have had with Sechelt self-governance. Another factor may be the openness with which the negotiation process was conducted and the involvement of the local community. For example, the local mayor was a member of BC's negotiating team.

### **"GOOD FAITH BARGAINING" AND THE GITANYOW CASE**

The Chief Justice of Canada said in the Delgamuukw case that the Crown "is under a moral, if not a legal, duty to enter into and conduct those negotiations in good faith." In the Gitanyow case that went to the BC Supreme Court this year, the Court was asked to take this statement a step further and declare that the duty is indeed a legal one.

The Gitanyow Hereditary Chiefs are neighbours of the Nisga'a. Part of the lands covered by the Nisga'a treaty are also claimed by the Gitanyow. They say that by signing the Nisga'a treaty while continuing to negotiate the Gitanyow claim, the governments of Canada and BC are negotiating in bad faith.

The Gitanyow Hereditary Chiefs have asked the BC Supreme Court to declare that:

- 1. the governments of Canada and BC are legally bound to negotiate a treaty with them in good faith; and
- 2. the governments have breached that duty.

The second part of the application was put off until after the first could be determined.

The Court ruled that, having entered into the treaty negotiation process, the governments -- both BC and Canada -- are legally bound to negotiate in good faith. However, the process is

voluntary and so there is no legal duty to enter into negotiations or to actually conclude a treaty.

That decision is being appealed by Canada and BC but the appeal has not yet been heard.

Canada agreed in court that as a matter of honour it must -- and will -- conduct its negotiations with First Nations in good faith. But it also took the position that the treaty process is not subject to supervision by the courts.

The Province agreed that it is not permitted to enter into negotiations "in bad faith", but it argues that the BC treaty process is a unique regime: the parties enter it voluntarily and in doing so, agree on the role that each will play. It said that supervision of the process is to be by the Treaty Commission and the courts should not interfere.

In making its ruling, the Court did not define what is meant by "good faith" in treaty negotiations. The Treaty Commission, at the request of the Principals, has prepared a preliminary analysis of what "good faith" might mean in this context and some options for enforcing such a standard.

## **INTERIM MEASURES**

Even if treaty negotiations can be accelerated as is hoped, they still take time. Meanwhile, trees are still being cut, ore is being mined and fish are being caught. First Nations, who are taking on substantial debt to negotiate treaties, are increasingly frustrated that they are not sharing enough in the benefits of those resources in their traditional territories.

Interim measures are a tool for ensuring continuing economic development in the province while respecting First Nations' aboriginal rights and title while treaties are being concluded.

The BC Claims Task Force made it clear that interim measures could take many forms. Land use moratoriums and "set-asides" were just one option.

Over the past several years, as negotiations proceed and frustrations and expectations rise, the need for interim measures that protect First Nations' interests in land has become more pressing.

In confirming the existence of aboriginal title, the Delgamuukw decision underscored the importance of effective interim measures and escalated First Nations' demands for a role in any government dealings with resources within their traditional territories.

In that decision, the Supreme Court of Canada described a continuum that would range from mere consultation at one end, to the requirement of consent by the First Nation at the other. What's required in any given situation will depend on the nature of the First Nation's right and the activity that is being contemplated by government. Interim measures can take many different shapes.

The Treaty Commission has seen an increase in the political will of public governments to address land-related interim measures. Some examples of interim measures agreements concluded during the past year:

- The provincial government and the Tsawwassen First Nation concluded a

protocol over the Roberts Bank backup lands in Delta, freeing 1,085 hectares for farmers and holding 769 hectares aside for possible consideration in treaty negotiations. Tsawwassen also received \$1 million as part of the agreement.

- The Snuneymuxw First Nation has an agreement with the Department of National Defence and Canada Lands Corporation that reserves about 86 hectares of land until December 31, 2000 or until a treaty is concluded in an area known as old Camp Nanaimo. The First Nation also has an agreement with the Department of National Defence and the Canada Forest Service that gives it an opportunity to develop its forest management expertise through co-management of forest resources on lands within the Nanaimo rifle range.

There is a need for more such examples in the near future, if First Nations are to continue to put their faith in the negotiation process.

The Treaty Commission sometimes is asked to facilitate discussions among the parties on interim measures issues and has been active at a number of these negotiations throughout the province. Political will, compromise and creative solutions are required to resolve these issues and they can be difficult. Land and resources are fundamental to the BC economy. They are also at the heart of First Nations' views around aboriginal rights and title. Ultimately, these sometimes competing interests will be reconciled in comprehensive treaty negotiations.

Meanwhile, the Treaty Commission continues to encourage the parties in their negotiations so that economic development can continue, First Nation rights and title are respected and the parties can build on the relationships that will form the basis of the treaty.



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Annual Report 1999

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## **Publications**

BC Treaty Commission newsletter Update  
Available at [www.bctreaty.net](http://www.bctreaty.net),  
or by calling 1 800 665-8330 or 604 482-9200

Federal Treaty Negotiation Office newsletter Treaty News  
Available at [www.inac.gc.ca](http://www.inac.gc.ca) or by calling 1 800 665 9320 or 604 775-7114

Understanding the B.C. Treaty Process, 2nd edition  
Available by calling the First Nations Summit at 604 990-9939

## **Videos**

Making Treaties in BC, Motion Visual Productions, 1998

Whose Land is This?, Motion Visual Productions, 1997

Pulling Together Series, BC HYdro, 1997

Treaty Making in BC II, Treaty Commission, 1997  
Available at your local library

## **Recommended reading**

Prospering Together: The Economic Impact of the Aboriginal Title Settlements in B.C., edited by Roslyn Kunin, Laurier Institution, 1998

The First Nations of British Columbia, Robert J. Muckle, UBC Press 1998

Report of the Royal Commission on Aboriginal Peoples, Minister of Supply & Services, 1996

Treaty Talks in British Columbia, Chris McKee, UBC Press, 1996

Aboriginal Peoples and Politics, Paul Tennant, UBC Press, 1990

Contact and Conflict, Robin Fisher, UBC Press, 1977



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Annual Report 1999

## Commissioners

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When the last annual report was published the Treaty Commission was without a permanent Chief Commissioner. For six months, between May and November, the four part-time Commissioners were required to take turns serving as Acting Chief Commissioner.

The Commissioners' first responsibility is to monitor treaty negotiations. Each of the four, part-time Commissioners is responsible for at least 10 sets of negotiations. Taking on the Chief Commissioner's role in addition, even on a temporary rotating basis, proved to be a difficult task for Commissioners and hindered the Treaty Commission's ability to monitor and assist with treaty negotiations.

In November, Commissioner Miles Richardson was appointed Chief Commissioner by agreement of Canada, BC and the First Nations Summit. He is the Treaty Commission's third Chief Commissioner. A week later, the Treaty Commission was restored to full membership with the appointment of Debra Hanuse to fill the position left vacant when Mr. Richardson accepted the appointment of Chief Commissioner.

### **Miles Richardson**

Miles Richardson was appointed Chief Commissioner on November 19, 1998 for a three-year term ending November 18, 2001. He had been serving as a Commissioner since November 1995. Formerly President of the Council of the Haida Nation, he was a member of the First Nations Summit Task Group from 1991 to 1993. Mr. Richardson was a member of the BC Claims Task Force, whose report and recommendations are the blueprint for the treaty negotiation process. He holds a Bachelor of Arts (1979) from the University of Victoria.

### **Wilf Adam**

Wilf Adam became a Commissioner in April 1995. He was re-elected for further two-year terms in April 1997 and April 1999. He is a former Chief Councillor of the Lake Babine Nation and former chair of the Burns Lake Native Development Corporation. Mr. Adam is a co-founder of the Burns Lake Law Centre. He was born in Burns Lake and raised at Pendleton Bay. In 1985, he completed a course in Business Management at the College of New Caledonia in Prince George.

### **Debra Hanuse**

Debra Hanuse was appointed Commissioner on November 26, 1998 to serve the remainder of Miles Richardson's term. She was then elected for a two-year term in April 1999. Raised in Alert Bay, Ms. Hanuse is a member of the 'Namgis First Nation of the Winalagalis Treaty Group. She holds a Bachelor of Arts in Political Science from Simon Fraser University (1986), and a Bachelor of Laws from the University of British Columbia (1990). She was admitted to the Bar in 1991. For four years, she practiced corporate, commercial and

aboriginal law with the firm of Davis and Company. In 1995, Ms. Hanuse began her own practice and became involved in treaty negotiations on behalf of First Nations.

### **Kathleen Keatingwas**

Kathleen Keatingwas appointed to the Treaty Commission in April 1998 for a two-year term. Ms. Keating is a lawyer, writer, trainer and consultant in the areas of court process and plain language drafting. She is a member of the Council of the Commonwealth Lawyers Association and has served as a member of the Vancouver Police Board, where she chaired public inquiries and disciplinary hearings. Ms. Keating is also a former member of the Public Library Board and a founding member of the BC Society for Translators. She earned her Bachelor of Laws (1976) from the University of British Columbia.

### **Peter Lusztig**

Peter Lusztig was first appointed to the Commission in April 1995 and to a third, two-year term in April 1999. A former Professor of Finance at the University of British Columbia, he served as Dean of the Faculty of Commerce and Business Administration. In addition to his academic experience, Mr. Lusztig has played an active role in public affairs as a member of one Royal Commission and one Commission of Inquiry and has served on numerous community and business boards. Mr. Lusztig earned his Bachelor of Commerce from the University of British Columbia (1954), his MBA from the University of Western Ontario (1955) and his PhD from Stanford University (1965).