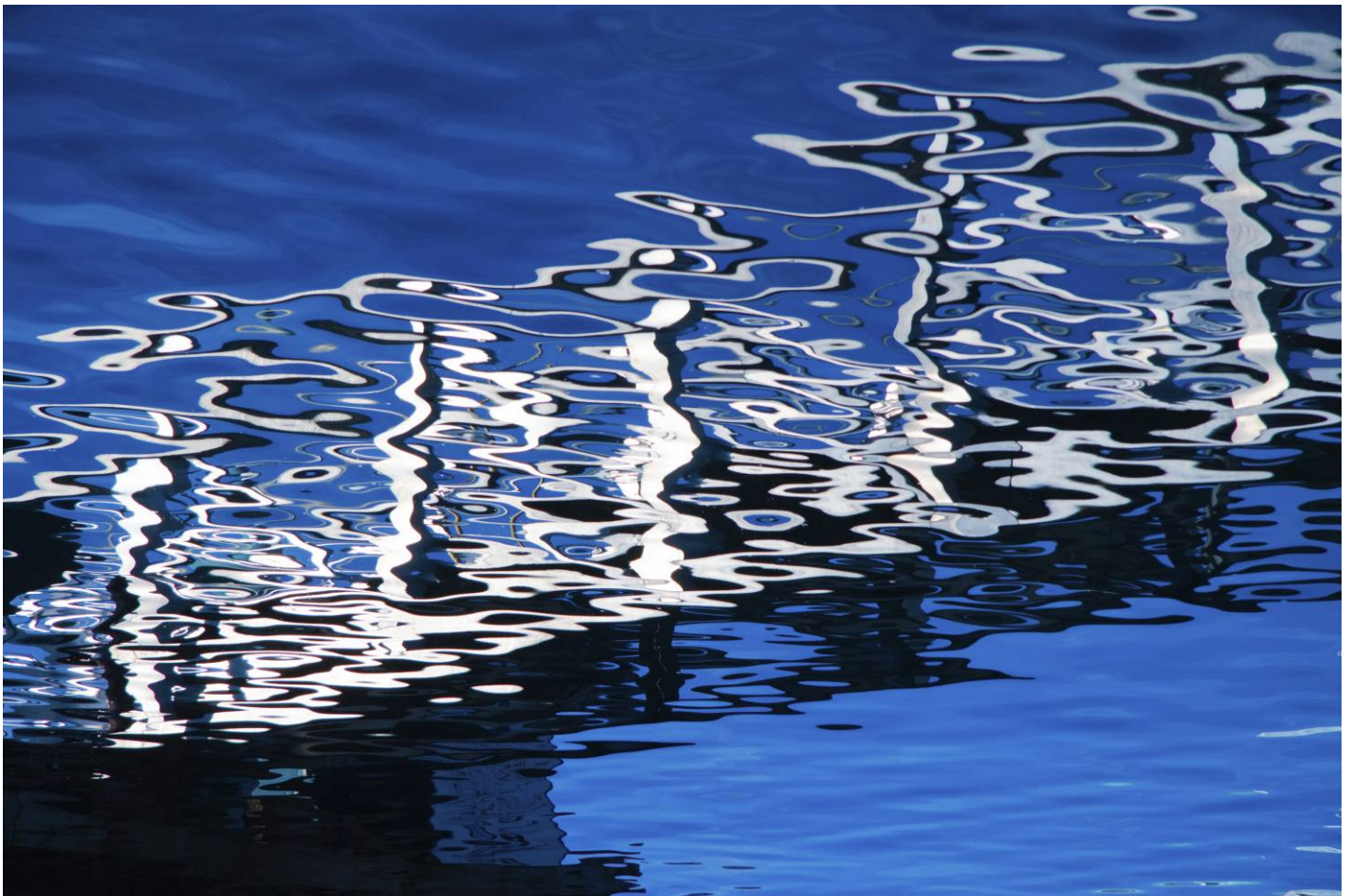


BC Treaty Commission

# Financial and Economic Impacts of Treaty Settlements in BC

November 2009





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# Executive Summary

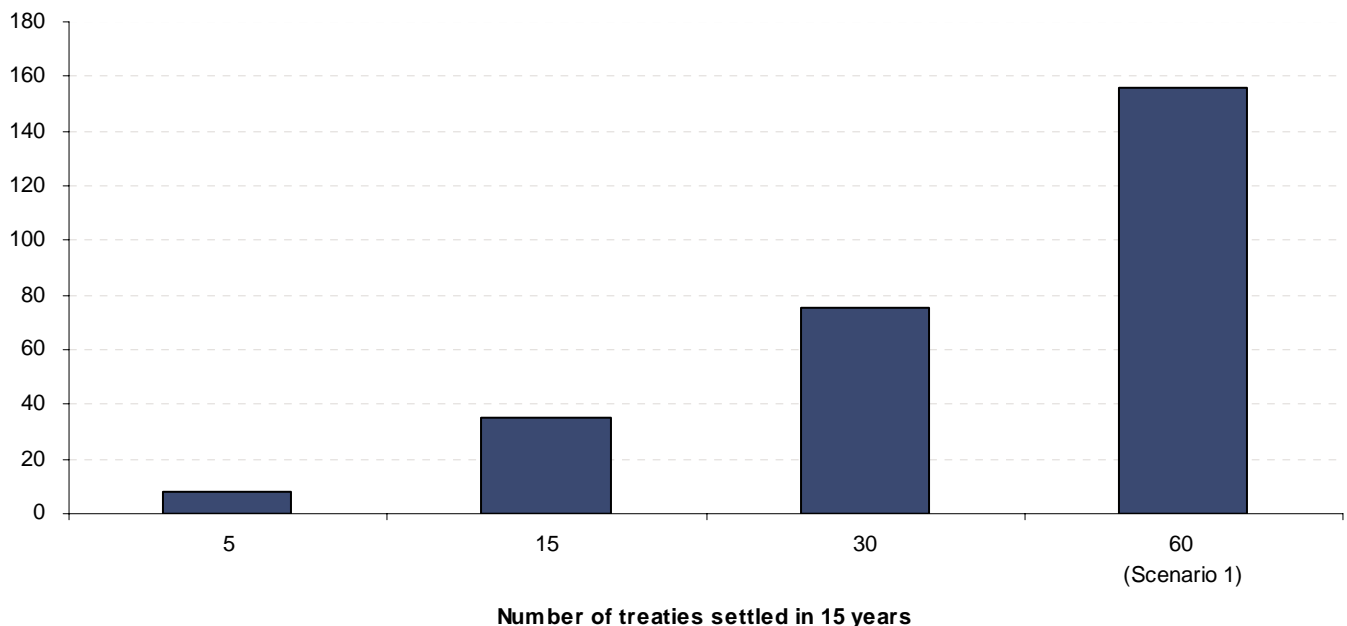
There have been four studies examining the economic and/or financial impacts of treaty settlements in British Columbia since the British Columbia Treaty Commission and the treaty process were established in 1992.<sup>1</sup>

Previous studies have concluded that treaty settlements provide significant benefits for First Nations and all British Columbians. Those studies, as with any forward-looking study, were based on assumptions regarding the pace of treaty settlements, negotiation terms and other key factors.

The purpose of this report was to assess the degree to which the conclusions of the four previous studies would hold given the actual experience of treaty settlement. This analysis takes into account the two treaties most recently settled, final agreements under negotiation as well as a variety of other factors and developments that have impacted treaty negotiations since the last study was completed in 2004.

In this report, a further update of the assumptions, information and estimates of the financial and economic impacts of treaty settlements is provided. In each study, different scenarios were used to test the effect of the pace of treaty settlements and number of treaty settlements over time. While not directly comparable, the results from all studies indicate that settling treaties earlier results in greater benefits being delivered sooner to First Nations and all British Columbians.

**Figure 1: Average net benefit per year for scenarios involving a fixed settlement period (\$m, 2009 dollars)**



Source: PricewaterhouseCoopers estimates

Key differences in the assumptions used to estimate financial and economic benefits from previous studies:

<sup>1</sup> Price Waterhouse (1990) Economic Value of Uncertainty Associated with Native Claims in B.C., KPMG: (1996) The Benefits and Costs of Treaty Settlements in British Columbia, Grant Thornton (1999) Financial and Economic Analysis of Treaty Settlements in British Columbia, Grant Thornton (2004) An Update to the Financial and Economic Analysis of Treaty Settlements in British Columbia.

- Cash settlement amounts are higher in this study than previous studies because of a higher cash per person assumption and different timeframes. This study assumes a cash settlement payment of \$53,200 per First Nation beneficiary compared with \$42,100 in the 2004 Grant Thornton Report. The amount in this study is based on recent final agreements, including the Tswwassen First Nation Final Agreement, Maanulth First Nations Final Agreement and the Lheidli T'enneh Final Agreement. Greater cash amounts imply a greater land allocation than in previous studies.
- Benefits to First Nations are higher given the inclusion of Resource Revenue Sharing (RRS) agreements, which has increased the cost to the Government of British Columbia. In this study we have assumed that RRS agreements will be put into place for all future treaties. RRS agreements provide for the sharing of annual mineral tax revenue from new mines with First Nation people over a set period of years. For the purposes of this study, it has been assumed that \$600 per beneficiary is paid each year for 25 years from the settlement date of a treaty.
- Third party compensation for forest tenures is lower in this study. Part of the treaty settlement process involves the buying back of tenures for forestry operators. This study estimates the value of forestry tenures at \$30 per cubic metre of Annual Allowable Cut based on recent transactions in the timber industry. This figure is substantially less than that used in previous studies (\$80 to \$120) given the collapse in prices due to the pine beetle infestation and global financial recession.
- Net present value amounts are higher in this study than previous studies partly as a result of a lower discount rate (the interest rate used in determining the present value of future cash flows). A lower discount rate of 4.1% (nominal) was used to reflect the realities of the current global economic situation. Previous studies had used a 6.2% (real) discount rate.

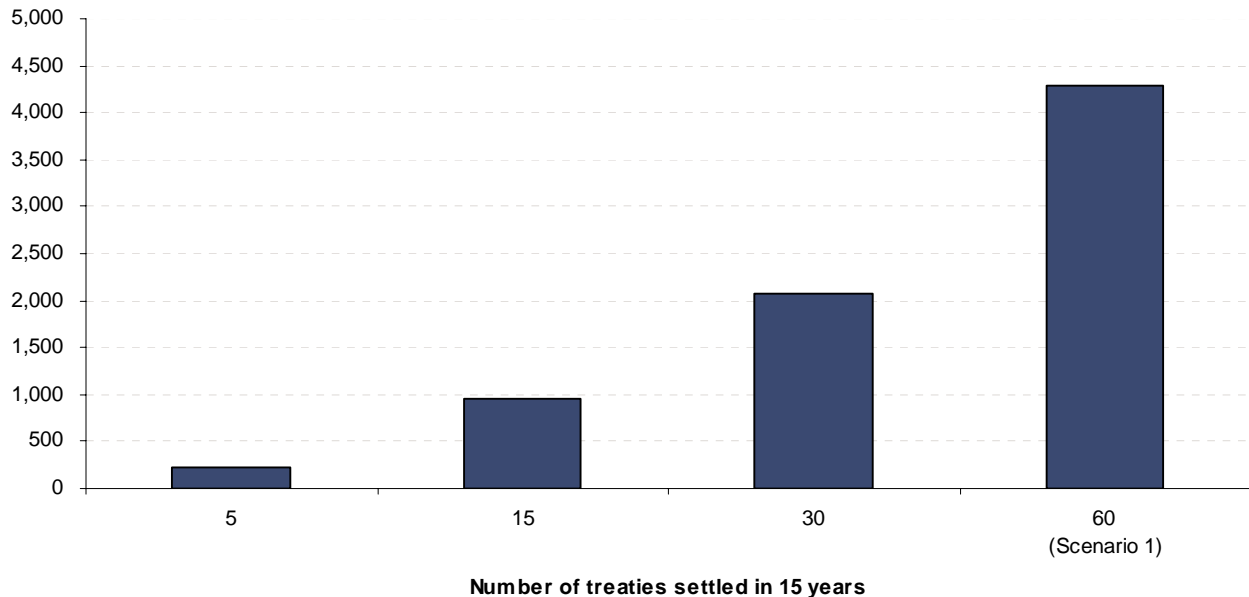
### **The Impact of the Pace on Treaty Settlements**

The second purpose of this report was to assess the effect that an accelerated pace of treaty settlement would have on benefits.

A sensitivity analysis of modeling different numbers of treaty settlements over a fixed period of time indicated that benefits to First Nations and British Columbians increase when greater numbers of treaties are settled sooner. Figure 1 below illustrates the estimated Net Present Value (NPV) benefits when five, 15, 30 and 60 treaties are settled over 15 years.

Results of the sensitivity analysis indicate that the pace of treaty settlements does have an impact on when the net financial and economic benefits will be received. The sooner treaty settlements occur the sooner benefits will flow to First Nation people and all British Columbians including investments, jobs and economic development.

Figure 2: Net present value of benefits for scenarios involving a fixed settlement period (\$m)



Source: PricewaterhouseCoopers estimates

The results of this study have also been compared to those of the 1996 KPMG and 1999 Grant Thornton reports. The benefit estimates of the previous studies have been moved into 2009 dollars to make comparison between studies more relevant. It is important to note though, that while this study attempts to replicate the methodology used in previous studies, there are modelling differences. As a result, there will naturally be differences between studies.

- **Net benefits:** The results indicate that the cash payment and land allocated to First Nations is similar under various scenarios. The benefits to First Nations are higher in this report than earlier reports, primarily as a result of the inclusion of resource revenue sharing agreements and a higher per person cash payment. Similarly, costs to British Columbia are higher in this study than previous work given the cost of resource revenue sharing agreements. It is important to note that net benefit results are not directly comparable between scenarios or studies given the different settlement periods assumed in each scenario.
- **Net present value benefits:** Net present value amounts are higher in the scenarios considered in this study as opposed to those of earlier studies. It is important to note that a lower discount rate (4.1% nominal) was used in this study compared to previous studies (6.2% real rate used in previous studies), which would account for some of the difference.
- **Wage income impacts:** The wage income created over a 40 year period in the three scenarios in this report are near those estimated in previous studies.

**Table 1 Comparison of results to previous studies**

Results summary	PricewaterhouseCoopers report (2009)			Grant Thornton report (1999)		KPMG report (1996)	
	Scenario 1	Scenario 2	Scenario 3	Scenario 1	Scenario 2	Scenario 1	Scenario 2
Cash settlement (\$m)	7,718	7,922	8,492	6,851	7,657	6,956	7,875
Land allocated (ha)	2.8m	2.9m	3.1m	2.9m	2.4m	2.9m	2.4m
Years until all treaties settled	15	20	30	20	20	25	25
<b>Net financial benefits (\$m)</b>							
Benefits to First Nations	10,280	10,618	11,503	7,908	8,513	7,901	8,701
Costs to other British Columbians	3,886	3,956	4,172	3,123	2,619	2,769	1,798
Net financial benefits to British Columbia	6,394	6,662	7,332	4,785	5,894	5,132	6,903
Net financial benefits per year	156	145	131				
<b>Net present value of benefits (\$m)</b>	4,289	4,231	4,065	2,317	2,506	2,599	2,966
<b>Increase in wage incomes (\$m)</b>	14,382	13,741	11,704	8,790	14,595	8,833	14,962

Source: PricewaterhouseCoopers estimates, Grant Thornton estimates, KPMG estimates



# 1 Introduction

## 1.1 Introduction

In 1992, the governments of Canada, British Columbia (BC) and the First Nations Summit established the BC Treaty Commission (BCTC) to oversee and facilitate the six-stage treaty process, administer funding to First Nations involved in the process, monitor and report on progress and assist in resolving disputes.

The BC treaty process was set up to encourage First Nation, Provincial and Federal governments to negotiate treaty settlements outside of the judicial system. For First Nations, a treaty settlement was envisioned to lead to financial, economic and social benefits for their communities. Benefits for British Columbians were envisioned to include increased certainty around how land is owned and managed that could lead to opportunities for business investment and other economic prospects.

Since 1992, there have been a series of reports that have quantified the financial and economic impacts of treaty settlements in BC on First Nations and on other British Columbians. These include:

- *Economic Value of Uncertainty Associated with Native Claims in British Columbia*, Price Waterhouse, 1990
- *Benefits and Costs of Treaty Settlement in British Columbia, a Financial and Economic Perspective*, KPMG, 1996
- *Financial and Economic Analysis of Treaty Settlements in BC*, Grant Thornton, 1999
- *An Update to the Financial and Economic Analysis of Treaty Settlements in British Columbia*, Grant Thornton, 2004

Each of these reports was based on the best available information existing at the time and on assumptions based on anticipated future developments. This report represents a continuation of those early works by updating the information and revising assumptions in light of recent developments.

PricewaterhouseCoopers LLP was engaged by the BC Treaty Commission to update the information and cumulative findings of the earlier studies taking into account modern-day treaties that have recently been settled, Final Agreements under negotiation and a variety of other factors and developments that have impacted treaty negotiations since the last study was completed in 2004.

In addition, we were asked to assess the impacts of alternative paces of treaty settlements on the benefits that would be available to First Nation and British Columbia communities.

## 1.2 Project scope

To undertake this work our approach was as follows:

- Development of a model to replicate the financial and economic model used by Grant Thornton.
- Review of the substantive factors that have changed in the last five years, including the assumptions used in previous studies and judicial, legislative and policy actions that may be impacting the treaty process.

## 1.3 Data collection, availability, and reliability

In general, the data used is publicly available. However, for the purposes of updating the assumptions we have discussed these with the BC Treaty Commission to ensure reliability.

Information reported on the recent changes in policy, legislation, and judicial decisions was collected through discussion with the BC Treaty Commission, industry stakeholders, and government agencies. Additional material was collected through the review of publicly available articles and reports.

## 1.4 Organization of the report

The remaining sections of the report are organized as follows:

- **Section 2** outlines the costs and benefits of the treaty settlement process for First Nations, British Columbia and Canada.
- **Section 3** discusses the treaty settlement model and the methodology used to generate the estimates of financial and economic benefits.
- **Section 4** provides the results of our analysis showing the financial and economic impacts of treaty settlements under three scenarios. A comparison of the results with earlier studies.
- **Section 5** demonstrates the impact of pace on treaty settlements by using sensitivity analysis to alter the number and the time over which treaties are settled.
- **Appendix A** is a list of the sources used to conduct the study.
- **Appendix B** provides a comparative table of the economic assumptions and modelling approach by variable used in the Grant Thornton studies and this document with an explanation of the differences between the two modelling approaches. A more detailed discussion of the economic and financial assumptions used to develop the model follows. This section concludes with a comparison of the variances between the assumptions used in this study and those used in previous studies.
- **Appendix C** is a summary of the assumptions used in earlier studies (KPMG 1996 and Grant Thornton 1999) to estimate the costs and benefits of First Nation treaty settlements. This information is included to provide continuity as to how the assumptions have changed over time.
- **Appendix D** provides an update on the status of treaty negotiations as of August 2009. In addition, an overview of the policy, legislative and judicial decisions that are considered to have affected the treaty process as originally intended is presented. The section also summarizes what other developments may have affected the treaty process.

## 1.5 Report limitations

PwC has relied upon the completeness, accuracy and fair presentation of all the information, data, advice, opinion or representations obtained from public sources and the Client (collectively, the "Information"). The findings in the Report are conditional upon such completeness, accuracy and fair presentation of the Information. PwC has not verified independently the completeness, accuracy and fair presentation of the Information.

PwC reserves the right at its discretion to withdraw or make revisions to the Report should PwC be made aware of facts existing at the date of the report which were not known to PwC when it prepared the Report. The conclusions and recommendations are given as of the date hereof and PwC is under no obligation to advise any person of any change or matter brought to its attention after such date, which would affect the findings and conclusions, and PwC reserves the right to change or withdraw the Report.

We understand this report may be provided to First Nation, provincial and federal government representatives. The report findings may also be used in certain BC Treaty Commission corporate publications and communications.

## 2 Costs and Benefits of Treaty Settlement Process

### 2.1 Overview of costs

There are a variety of costs associated with the treaty settlement process, some of which are split between the Federal and Provincial governments, and some of which are to be paid exclusively by either Canada or British Columbia.

- **Cash and land costs.** The main costs associated with the treaty settlement process revolve around cash and land transfers to First Nation people. The Federal and Provincial governments have agreed that British Columbia will provide most of the land to be transferred to First Nations, while the Federal Government will provide most of the cash settlement. British Columbia's contribution to the cash settlement will be limited to 10% to 25% of the total cash payment. The higher the cash contribution by British Columbia, the lower the amount of land transferred. The amount of land (in terms of representative hectares) transferred to First Nations has been calculated using the land-cash ratios outlined in the memorandum of understanding on cost sharing between the Federal and Provincial Governments.
- **Compensations payable to third parties.** Part of the settlement process also involves the transfer of forestry and fishery licences back to First Nations. As a result, forestry and fisheries licence will need to be purchased from existing licence holders. The cost of purchasing third party tenures is shared evenly between the Federal and Provincial Governments.
- **Pre-treaty costs.** Pre-treaty costs are those required to progress a treaty to its conclusion. Pre-treaty costs include the cost of public education programs, land survey costs, enrolment and ratification costs, federal and provincial negotiating costs, and third-party consultation costs. For the purposes of this study, adjustment program costs are also included here. Adjustment programs are aimed at providing assistance to communities, municipalities and individuals adversely impacted by treaty settlements.
- **Negotiating loans and non-repayable contributions.** First Nations are also entitled to receive a loan from the Federal Government to cover their negotiating costs over time. In addition, non-repayable contributions are also available to First Nations. British Columbia will share some of the costs of negotiating grants.
- **Time-limited and ongoing costs.** First Nations are also entitled to receive funding for core institutions and time-limited and incremental ongoing funding for self-governance.
- **Resource revenue sharing.** Resource Revenue Sharing (RRS) agreements have become common in both final agreements and agreements in principle. As a result, this report attempts to estimate the cost of RRS agreements. This study uses the Maa-nulth First Nations Final Agreement to estimate the potential cost implications of RRS agreements.

The cost sharing arrangements used in this study are based on the previous KPMG and Grant Thornton reports as well as the memorandum of understanding between Canada and British Columbia on cost sharing.

**Table 1: Assumed cost sharing between Federal and Provincial Governments**

	Provincial share	Federal share
<b>Settlement costs</b>		
Cash settlement	17%	83%
Land contribution	100%	0%
<b>Non-settlement costs</b>		
Third party compensation	50%	50%
Public education costs	40%	60%
Costs to survey land	90%	10%
Enrolment and ratification costs	40%	60%
Federal negotiation costs	0%	100%
Provincial negotiation costs	100%	0%
Third party consultation	40%	60%
Negotiating loans	0%	100%
Non-repayable contributions	40%	60%
Core institutions	0%	100%
Treaty Commission funding	40%	60%
Time-limited and ongoing funding	50%	50%
Adjustment programs	50%	50%
Resource Revenue Sharing	50%	50%

Source: PricewaterhouseCoopers estimates, *MOU between Canada and British Columbia respecting the sharing of pre-treaty costs, settlement costs, implementation costs and the cost of self-government* (1993), KPMG: 1996 *The Benefits and Costs of Treaty Settlements in British Columbia*, Grant Thornton (1999) *Financial and Economic Analysis of Treaty Settlements in British Columbia*.

## 2.2 Benefits for First Nations

In earlier studies<sup>2</sup>, KPMG and Grant Thornton assumed that the benefits that would accrue to First Nations arose primarily from the use of capital and land transferred from the Federal and Provincial Governments to First Nations communities. This study follows a similar approach and attempts to replicate, where possible, the methodology of earlier studies. Consistent with previous studies, it is assumed that First Nations benefit from cash settlement amounts through the prudent investment of these funds. Investments in local First Nation businesses and community infrastructure projects are assumed to lift employment and income levels amongst the First Nation population. Additional infrastructure should also lift socio-economic conditions in First Nation communities.

The KPMG and Grant Thornton studies also assumed that the settlement process would provide more certainty around land rights. Previous studies assumed that added certainty would encourage additional investment in British Columbia, which would, in turn, create additional jobs. This study adopts the same assumption to be consistent with previous studies.

This study attempts to quantify the benefits to First Nations from RRS agreements. RRS agreements have been negotiated in recent final agreements. It is possible that such agreements will become common in future treaty settlements, providing an additional source of funding for First Nations.

In addition to financial and economic benefits, First Nations people will also negotiate self-government arrangements. Self-government agreements within treaty settlements enable First Nations to make laws and draw up their own constitutions. In some instances, First Nations will also be entitled to funds to support cultural preservation and promotion. First Nations may also negotiate with museums around the custodial arrangements regarding their cultural artifacts.

<sup>2</sup> KPMG: 1996 *The Benefits and Costs of Treaty Settlements in British Columbia*, Grant Thornton (1999) *Financial and Economic Analysis of Treaty Settlements in British Columbia*

## 2.3 Benefits for British Columbia

The benefits to British Columbia from treaty settlements are assumed to flow from the injection of Federal funds that, potentially, would not have been available otherwise. As in previous studies, this report assumes that the investment of settlement funds by First Nations creates jobs for both First Nations and non-First Nations people. While much of the funds will likely be invested in treaty settlement lands, it is also likely that external expertise and contractors will be brought in to provide assistance in building local businesses and infrastructure projects.

Previous studies have also indicated that as treaties are settled, First Nation communities are likely to become less reliant on government funding. This study adopts the same assumption and assumes that own source revenue generated by First Nations will offset the ongoing implementation funding obligations of the Provincial Government.

In addition, treaty settlements will strengthen the Provincial government's policy objectives of building new relationships with Aboriginal people.

## 2.4 Benefits for Canada

The benefits for Canada are similar to those for British Columbia. As First Nations become more self-reliant, it is assumed that their dependence on Federal funding will be reduced over time. As a result, the Federal Government is assumed to benefit from lower social program payments to First Nations as employment and incomes increase.

In addition, treaty settlement will facilitate reconciliation among all levels of government, reduce conflict over resources and jurisdiction, and confirm constitutional protection of title and rights. Certainty around land rights and title would likely be viewed favourably by foreign investors. The perception amongst foreign investors that land rights are being settled in British Columbia could create the perception that firm land rights are being or will be established in other parts of the country. As a result, it is possible that additional investment funds could flow to other parts of Canada, not just British Columbia.

## 3 Treaty Settlement Model

### 3.1 Methodology

We describe in this section the general approach and some of the key assumptions used in modelling the benefits of treaty settlements. It is important to note that the modelling approach of this report has been based on the underlying principles and assumptions employed in the 1996 KPMG and 1999 Grant Thornton reports.

The modelling approach used in this study attempts to estimate the net financial benefits, net present value of benefits and the employment impacts of treaty settlements, in a manner that is consistent with previous studies. Costs are assumed to be shared between the Federal and Provincial Governments in the same proportions as used in previous studies. Similarly, this report assumes that benefits to First Nations flow from cash settlement payments, compensation for third party tenures, non-repayable contributions and funding for core institutions, inline with the previous studies. However, different to previous studies, this report has included the repayment of negotiating loans by First Nations as a cost to First Nations since loan repayment amounts would be subtracted from cash settlement payments. In addition, this study has attempted to quantify the potential benefits from revenue resource sharing agreements for the first time. The main differences in modelling approach between this study and previous work is outlined in Appendix B.

Similar to previous reports, this study examines a number of different scenarios leading to different financial and economic benefits. In particular, this report has attempted to highlight the impact on benefits of the pace of treaty settlements. Previous studies have also considered various scenarios, but where each scenario assumes that treaties are settled over the same length of time. The 1996 KPMG report assumed two scenarios where treaties are settled over 25 years. The 1999 Grant Thornton report examined two scenarios where settlement of all treaties is assumed to be concluded in 20 years. Given that the pace of treaty settlements has not been regular, this study examines three scenarios where the main difference is the pace of treaty settlement. The three scenarios used in this report are as follows:

- **Scenario 1:** 15 treaties are settled in five years starting in 2011, with the remaining 45 treaties settled over the 10 years following (i.e., all treaties settled after 15 years).
- **Scenario 2:** 60 treaties are settled over 20 years (3 each year) starting in 2011.
- **Scenario 3:** 60 treaties are settled uniformly over 30 years (2 each year) starting in 2011.

This report also considers additional scenarios where the number of treaties settled changes but the settlement period is fixed. These additional scenarios were considered in order to further highlight the impact of treaty settlements and the pace of settlement on benefits. However, the three scenarios highlighted above are considered in the main analysis. Consistent with previous reports, this study attempts to first quantify the net benefits to First Nations and all British Columbians from the settlement of treaties in 2009 dollars. The net present value (NPV) of benefits is also examined given the different timelines of the various scenarios. Next, the economic impacts of jobs creation are examined by studying the impacts on wage incomes to British Columbia and First Nations over a set 40-year period.

#### Definitions of economic impacts

Economic impacts arise as a result of jobs created by investment of settlement funds in First Nation businesses and community projects. This study assumes that a portion (40%) of settlement funds is allocated to fund First Nation businesses which create jobs for both First Nations and non-First Nations people. A certain proportion (10%) of settlement funds is also assumed to be invested in community projects which are also likely to create jobs. The remaining settlement funds are assumed to be either invested in financial instruments or allocated for consumption by First Nation's people.

The economic impacts are assessed by examining the potential wage income generated by the allocation of capital towards business development and community projects. Economic impacts are assessed over a set 40-year period under all scenarios in order to gauge the impacts of longer settlement time periods on wage incomes.

## 4 Financial and Economic Impacts

### 4.1 Background

In this section, we begin by describing the key financial and non-financial terms that are found in a typical Final Agreement. Included in the descriptions are key assumptions used in the modeling scenarios that follow in later sections. A Final Agreement signals the end of the negotiation process and embodies the technical and legal issues agreed upon among the First Nation, Provincial and Federal governments. A Final Agreement is the precursor to the signed and ratified treaty.

Following the descriptions of terms, the results of the estimated financial benefits and economic impacts are presented.

### 4.2 Financial terms of a typical final agreement

The main financial terms of a typical final agreement are discussed here.

- **Cash and land contributions.** Treaty settlement agreements include schedules outlining the timing and size of settlement payments. In this study, it is assumed that cash settlement payments are made evenly over a period of 10 years.
- **Resource revenue sharing (RRS).** Financial terms also outline any RRS agreements. These agreements involve the sharing of natural resource revenues between First Nations, the Province and the Federal Government. RRS agreements outline the minimum and maximum payment to be made to First Nations each year for a defined number of years. The annual costs are shared evenly between the Provincial and Federal Governments. In this study, it is assumed that RRS agreements run for 25 years.
- **Own source revenue (OSR).** A key part of the treaty settlement process is to promote the self-sustainability of First Nation communities. As a result, treaties are constructed in such a way as to progressively transfer financial independence to First Nations. Own source revenue is a measure of a First Nation's ability to fund its governance and social programs otherwise funded by the Provincial and Federal Governments. OSR, therefore, represents potential savings to the Provincial and Federal Governments for programs and services supplied to First Nations. OSR includes the investment income from First Nations investments, taxes levied by First Nation governments on First Nation and non-aboriginal people and fees and charges. Over time, OSR amounts will be subtracted from Provincial and Federal funding as First Nations become more financially independent. This study assumes that the proportion of OSR offset against ongoing implementation funding will increase from 0% in year one of settlement to 100% 12 years after the date of the first settlement payment.
- **Tax agreements.** Under Section 87 of the Indian Act, First Nation people living on reserve lands are exempt from paying income and transaction taxes. Part of treaty settlements involves First Nations agreeing to change their tax exempt status over a period of time. However, part of the treaty settlement process involves increasing the financial independence of First Nations partly through the taxation of their own communities. As a result, it is assumed that tax sharing agreements will be negotiated between First Nations and the Federal and Provincial Governments. This study assumes that income tax exemptions will remain in place for 12 years following the first settlement payment. Similarly, transaction tax exemptions are assumed to remain in place for eight years following the first settlement payment. It is assumed that 95% of income tax and 75% of transaction taxes will be returned to First Nations after the tax exemption periods expire. Tax revenue returned to First Nations is assumed to contribute to a First Nation's own source revenue. The Federal income tax rate is assumed to be 12% while the Provincial income tax rate is assumed to be 6%. The harmonised sales tax (HST) rate is assumed to be 12%.
- **Negotiation loans.** Treaty agreements provide for loans to First Nation communities to cover First Nation negotiating costs. These interest free loans are repayable from the date of the first settlement payment. This study assumes that negotiating loans are repaid evenly over 10 years from the date of the first settlement payment.



- **Funds to support natural resources and culture.** In some instances, the governments of Canada and British Columbia will agree to contribute cash to establish funds required for certain purposes. In a number of cases (Lheidli T'enneh, Tsawwassen, Maa-nulth) a fisheries fund was established to support ongoing fisheries management and conservation. In some cases (Tsawwassen) cultural funds are established to ensure the preservation of First Nation heritage and language. These costs have not been explicitly modelled given that these types of funds are likely to be negotiated on a case-by-case basis.
- **Fiscal Relations.** Each final agreement will include a section outlining the fiscal relations between the First Nations and the Federal and Provincial Governments. The Fiscal Relations section of an agreement describes how funding for services and public programs previously supplied by the Federal and Provincial Government will proceed after treaty settlement. Funding arrangements will be negotiated periodically (generally once every five years) with the intent that First Nations become less reliant on government funding and more self-funded through own source revenue generation. Incremental ongoing implementation costs to support interactions between First Nations and Provincial and Federal governments are modelled through time-limited support funding and ongoing support funding.
- **Other costs.** Canada and British Columbia will fund the costs of land surveying. Under a final agreement, Canada and British Columbia will agree to pay for the Enrolment Committee and the Enrolment Appeal Board to carry out the enrolment of First Nation people. Funding will also be available to support the Ratification Committee, responsible for distributing a final agreement to eligible voters and conducting the ratification vote. These and other pre-treaty costs not mentioned in a final agreement are modelled under pre-treaty costs.

### 4.3 Non-financial terms of a typical final agreement

The key non-financial terms of a final agreement are outlined here.

- **Self-government.** Under the treaty process, First Nations can negotiate self-government arrangements. The final agreement sets out the principles to be used in constructing a constitution and rules under which the First Nation will govern itself. The agreement stipulates that First Nations will be able to make laws regarding the election, administration, management and operation of the First Nation government. The First Nation government will be able to make laws regarding citizenship, the use of First Nation assets, adoption in British Columbia, child services, child custody and child protection. Additionally, First Nations will have authorization to make laws around health services, marriages, social services, liquor control, education and the regulation of businesses.
- **Governance of natural resources.** Part of the self-government agreements involve the ability of First Nations to make laws around the use of their lands, roads, forests, water resources, fisheries, wildlife, environmental and cultural concerns. Final agreements will outline the rules by which forest, fisheries and water resources will be managed. The final agreement will also likely include rules around the management, hunting and trapping of wildlife on First Nation territories.

### 4.4 Estimated financial benefits and economic impacts

The benefits to the settlement of treaties have been examined on three fronts, in line with previous studies. Firstly, the net financial benefits to British Columbia have been estimated. The net financial benefits subtract the costs to British Columbia from the benefits to First Nations. Net financial benefits arise primarily as a result of the large cash payment paid to First Nations. The cash amount paid to First Nations is funded primarily by the Federal Government (this study assumes 83% of the cash payment is funded by the Federal Government) so the benefits to British Columbia are disproportionately higher than the costs incurred by the Province.

Secondly, the financial benefits have also been examined using a net present value approach. Given that the scenarios considered in this report cover different lengths of time, examining net present value of benefits over the same length of time allows a like-for-like comparison of results.

Thirdly, economic benefits arise from treaty settlement in the form of job creation and the associated increase in provincial incomes. The prudent investment of settlement funds by the First Nation communities is likely to



support a number of new jobs, which would act to increase overall incomes in British Columbia. The economic impacts are examined over a 40-year period under all three scenarios in order to obtain comparable results and to distinguish trends in wage incomes.

The impacts on benefits from altering the pace of treaty settlements are discussed in section 4.5.

### Summary of results

A brief summary of the results is provided in Table 2. More detail is provided in sections 4.4.1 and 4.4.2. The results show that the sooner treaties are settled, the sooner the benefits are realized. The results indicate that the cash settlement payment funded by the Federal and Provincial Governments increases as the length of time taken to settle treaties increases. This is primarily the result of population growth amongst First Nations as more people need to be compensated over time.

- **Net benefits in 2009 dollars.** The net benefits in 2009 dollars increase with each scenario. However, it is important to note that each of the scenarios considers a different settlement period so net benefits between scenarios are not directly comparable. This study, therefore, examines the average net benefits per year under each scenario. The results show that the net benefits per year are indeed higher in scenarios where treaties are settled at a faster pace.
- **Net present value of benefits.** The net present value of benefits is also informative and presents a similar picture. The net present value of benefits to British Columbia decreases as the time to settle all treaties increases. As it takes longer to settle treaties, the benefits to British Columbia and First Nation people is delayed, reducing the overall net present value of future benefits. It is worth noting that the discount rate used in this study (4% nominal) is markedly lower than that used in previous studies (6% real). As a result, a return to more regular interest rate levels would see the net present value of longer settlement period scenarios decrease more dramatically.
- **Wage income impacts.** An examination of wage income created over 40 years in each scenario again highlights the benefits of settling treaties sooner rather than later. The sooner settlement funds are received by First Nations, the sooner investment of those funds can occur and the sooner jobs can be created. Therefore, over the same 40 year period, the results indicate that the longer it takes to create jobs, the longer it takes to create additional wages. As a result, lower wage incomes are generated over the same 40 year period for scenarios with longer settlement periods.

**Table 2: Summary of results under various scenarios**

	Scenario 1	Scenario 2	Scenario 3
Cash settlement (\$m)	7,718	7,922	8,492
Land allocated (ha)	2.8m	2.9m	3.1m
Years until all treaties settled	15	20	30
<b>Net financial benefits (\$m)</b>			
Benefits to First Nations	10,280	10,618	11,503
Costs to other British Columbians	3,886	3,956	4,172
Net financial benefits to British Columbia	6,394	6,662	7,332
Net financial benefits per year	156	145	131
<b>Net present value of benefits (\$m)</b>			
	4,289	4,231	4,065
<b>Increase in wage incomes (\$m)</b>			
	14,382	13,741	11,704

Source: PricewaterhouseCoopers estimates

#### 4.4.1 Estimated financial benefits

The financial benefits to British Columbia are examined in terms of net financial benefits in 2009 dollars as well as the net present value of benefits.

#### Net financial benefits (2009 dollars)

The financial benefits of settling treaties are examined here in terms of 2009 dollars. The benefits are estimated under each of the three scenarios outlined previously. It is important to note that the results presented for the different scenarios are not directly comparable since each scenario assumes a different length of time until treaties are settled. In each scenario, benefits are calculated out to 15 years after payment of the final settlement amount. Scenario 1 produces net benefits of \$6.4bn, Scenario 2 yields benefits of \$6.7bn while Scenario 3 estimates net benefits of \$7.3bn.

**Table 3: Financial benefits of treaty settlements in British Columbia (\$m, 2009 dollars)**

<b>(2009, \$m)</b>	<b>Scenario 1</b>	<b>Scenario 2</b>	<b>Scenario 3</b>
<b>First Nations</b>			
Cash compensation	7,718	7,922	8,492
Third party compensation for tenures	427	429	434
Negotiating grants	100	100	100
Funding for core institutions	255	330	480
Resource revenue sharing	2,179	2,236	2,397
Repayment of negotiating loans	(399)	(399)	(399)
<b>Total benefits to First Nations</b>	<b>10,280</b>	<b>10,618</b>	<b>11,503</b>
<b>Costs to non-First Nations British Columbians</b>			
BC share of cash compensation	1,312	1,347	1,444
BC share of third party compensation	214	215	217
Pre-treaty and implementation costs net OSR contribution	1,133	1,240	1,451
Program savings	(869)	(1,000)	(1,251)
Resource revenue sharing	1,089	1,118	1,198
BC taxpayers' share of net Federal costs	1,008	1,036	1,113
<b>Total costs to British Columbia</b>	<b>3,886</b>	<b>3,956</b>	<b>4,172</b>
<b>Total net financial benefits to British Columbia</b>	<b>6,394</b>	<b>6,662</b>	<b>7,332</b>

Source: PricewaterhouseCoopers estimates

#### Net present value of benefits

Table 4 illustrates the estimated net present value of the three scenarios considered in this study. Net present values are estimated over the same period (i.e., until all benefits are paid under scenario 3). The results indicate that as the timeframe for treaty settlements increases, the net present value of benefits to British Columbia decreases. Pushing financial benefits further into the future reduces the net present value of benefits. It is important to note that the discount rate used has a strong influence on the net present value of longer settlement period scenarios. This study assumes a nominal discount rate of 4% based on the 10-year bond rate, compared to previous studies which have used 6% real discount rates.

**Table 4: Net benefits to British Columbia on a net present value basis (\$m)**

(\$m)	Scenario 1	Scenario 2	Scenario 3
<b>First Nations</b>			
Cash compensation	5,324	5,255	5,074
Third party compensation for tenures	353	342	315
Negotiating grants	82	79	72
Funding for core institutions	218	269	356
Resource revenue sharing	1,416	1,397	1,349
Repayment of negotiating loans	(276)	(267)	(243)
<b>Total benefits to First Nations</b>	<b>7,116</b>	<b>7,075</b>	<b>6,924</b>
<b>Costs to non-First Nations British Columbians</b>			
BC share of cash compensation	905	893	863
BC share of third party compensation	176	171	157
Pre-treaty and implementation costs net OSR contribution	954	1,006	1,077
Program savings	(654)	(659)	(636)
Resource revenue sharing	708	699	675
BC taxpayers' share of net Federal costs	737	734	723
<b>Total costs to British Columbia</b>	<b>2,827</b>	<b>2,844</b>	<b>2,859</b>
<b>Total NPV benefits to British Columbia</b>	<b>4,289</b>	<b>4,231</b>	<b>4,065</b>

Source: PricewaterhouseCoopers estimates

#### 4.4.2 Estimated economic impact benefits

The impact on British Columbia's employment incomes is estimated here in an effort to uncover the economic benefits of treaty settlements. The economic impacts from treaty settlements are felt on a number of levels but most significantly from investment of settlement funds. As First Nations invest funds into local businesses and community projects, jobs should be created for both First Nations and non-First Nations people. This study assumes that First Nation businesses will be involved in forestry, fisheries and other industries.

There are potentially additional economic benefits from an increase in investment from non-First Nation businesses as land rights and titles become clearer. Finally, there is a potential negative impact on income levels from the displacement of existing workers from the resource industry by First Nations people. It is assumed that current jobs in forestry and fisheries are lost to First Nations as a result of displacement. However, it is further assumed that all of the displaced are able to find work paying the average wage in British Columbia. Therefore, the net wage impact on non-First Nations workers is the difference in wage incomes between forestry and fisheries jobs and the average wage income in British Columbia. First Nation people are assumed to occupy 80% of the forestry and fisheries jobs on treaty settlement lands originally occupied by non-First Nation people, assuming that some non-aboriginal people are retained to transfer skills and knowledge. Table 5 presents the economic impacts on British Columbia's incomes over the next 40 years under the three scenarios outlined previously. The results indicate that the wage incomes produced falls with the length of time take to settle treaties.

**Table 5: Estimated economic impacts on British Columbia's incomes over 40 years (\$m, 2009 dollars)**

(\$m)	Scenario 1	Scenario 2	Scenario 3
<b>First Nation incomes</b>			
Community projects	3,724	3,466	2,745
First Nation businesses	5,407	5,032	3,986
Increased certainty	53	47	36
Natural resources	646	940	1,474
<b>Increased income to First Nations</b>	<b>9,830</b>	<b>9,486</b>	<b>8,241</b>
<b>Other British Columbians</b>			
Community projects	1,541	1,507	1,346
First Nation businesses	2,238	2,187	1,954
Increased certainty	1,004	900	691
Natural resources	(232)	(338)	(529)
<b>Increase income to other British Columbians</b>	<b>4,552</b>	<b>4,256</b>	<b>3,462</b>
<b>Total increase in British Columbian incomes</b>	<b>14,382</b>	<b>13,741</b>	<b>11,704</b>

Source: PricewaterhouseCoopers estimates

## 4.5 Comparison to Previous Studies

In this section the results of this study are compared to those of the 1996 KPMG and 1999 Grant Thornton reports. The benefit estimates of the previous studies have been moved into 2009 dollars to make comparison between studies more relevant. It is important to note though, that while this study attempts to replicate the methodology used in previous studies, there are modelling differences. As a result, there will naturally be differences between studies.

- **Net benefits.** The results indicate that the cash payment and land allocated to First Nations is similar under various scenarios. The benefits to First Nations are higher in this report than earlier reports, primarily as a result of the inclusion of resource revenue sharing agreements and a higher per person cash payment. Similarly, costs to British Columbia are higher in this study than previous work given the cost of resource revenue sharing agreements. It is important to note that net benefit results are not directly comparable between scenarios or studies given the different settlement periods assumed in each scenario.
- **Net present value benefits.** Net present value amounts are higher in the scenarios considered in this study as opposed to those of earlier studies. It is important to note that a lower discount rate (4.1% nominal) was used in this study compared to previous studies (6.2% real rate used in previous studies), which would account for some of the difference.
- **Wage income impacts.** The wage income created over a 40 year period in the three scenarios in this report are near those estimated in previous studies.

**Table 6: Comparison of results between studies (in 2009 dollars)**

Results summary	PricewaterhouseCoopers report (2009)			Grant Thornton report (1999)		KPMG report (1996)	
	Scenario 1	Scenario 2	Scenario 3	Scenario 1	Scenario 2	Scenario 1	Scenario 2
Cash settlement (\$m)	7,718	7,922	8,492	6,851	7,657	6,956	7,875
Land allocated (ha)	2.8m	2.9m	3.1m	2.9m	2.4m	2.9m	2.4m
Years until all treaties settled	15	20	30	20	20	25	25
<b>Net financial benefits (\$m)</b>							
Benefits to First Nations	10,280	10,618	11,503	7,908	8,513	7,901	8,701
Costs to other British Columbians	3,886	3,956	4,172	3,123	2,619	2,769	1,798
Net financial benefits to British Columbia	6,394	6,662	7,332	4,785	5,894	5,132	6,903
Net financial benefits per year	156	145	131				
<b>Net present value of benefits (\$m)</b>	4,289	4,231	4,065	2,317	2,506	2,599	2,966
<b>Increase in wage incomes (\$m)</b>	14,382	13,741	11,704	8,790	14,595	8,833	14,962

Source: PricewaterhouseCoopers estimates, KPMG estimates, Grant Thornton estimates

## 5 The Impact of the Pace on Treaty Settlements

This section examines the impacts of the pace of treaty settlement on benefits. Here two cases are considered. The first involves keeping the settlement period at 15 years but altering the number of treaties settled in that time. The second involves keeping the number of treaties settled constant at 60 but alters the number of years it takes to settle treaties.

### 5.1.1 Constant settlement period with different number of treaties settled

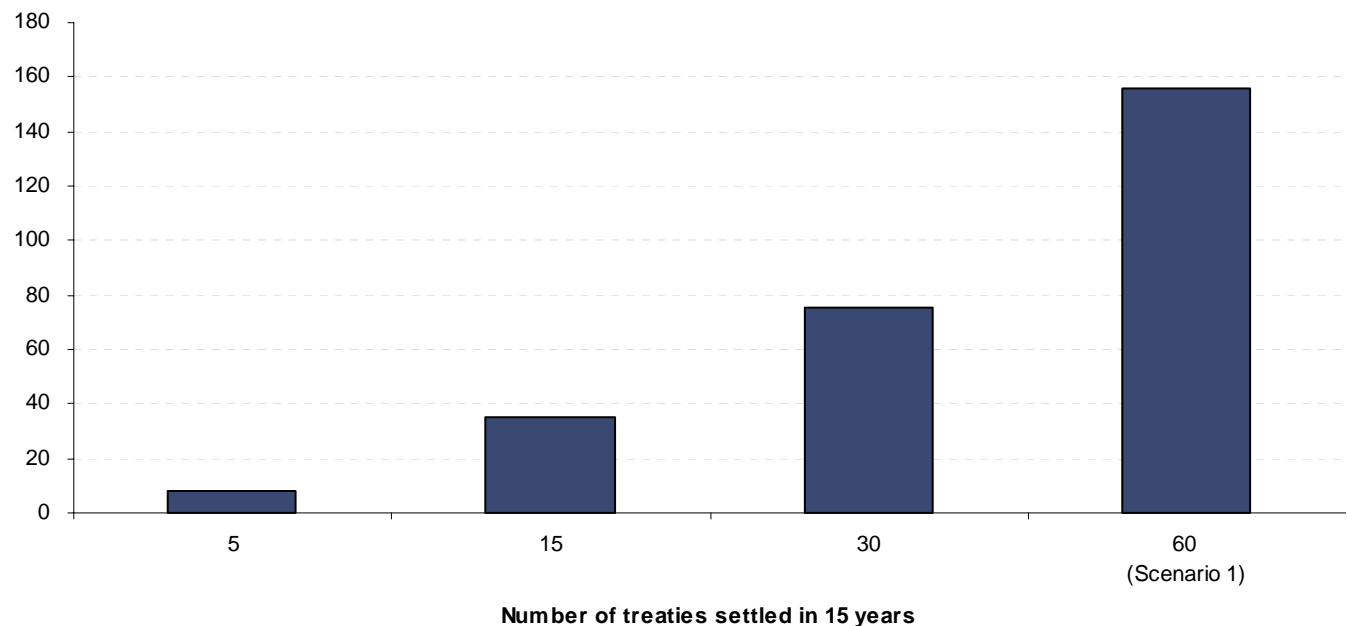
In this section we consider the first case as outlined above. Here, the settlement period is kept fixed at 15 years while the number of treaties settled is altered. Benefits are estimated for scenarios where five, 15, 30 and 60 treaties are settled over 15 years. The results indicate that the benefits to British Columbia are significantly higher in cases where more treaties are settled over the same length of time. Results suggest that the benefits to British Columbia would be much greater if greater numbers of treaties were settled.

**Table 7: Benefits in scenarios where settlement occurs over 15 years**

	60 treaties			
(\$m)	(Scenario 1)	30 treaties	15 treaties	5 treaties
Net benefits	6,394	3,076	1,437	344
Net benefits per year	156	75	35	8
NPV	4,289	2,076	959	214
Wage income	14,382	7,863	4,163	1,916

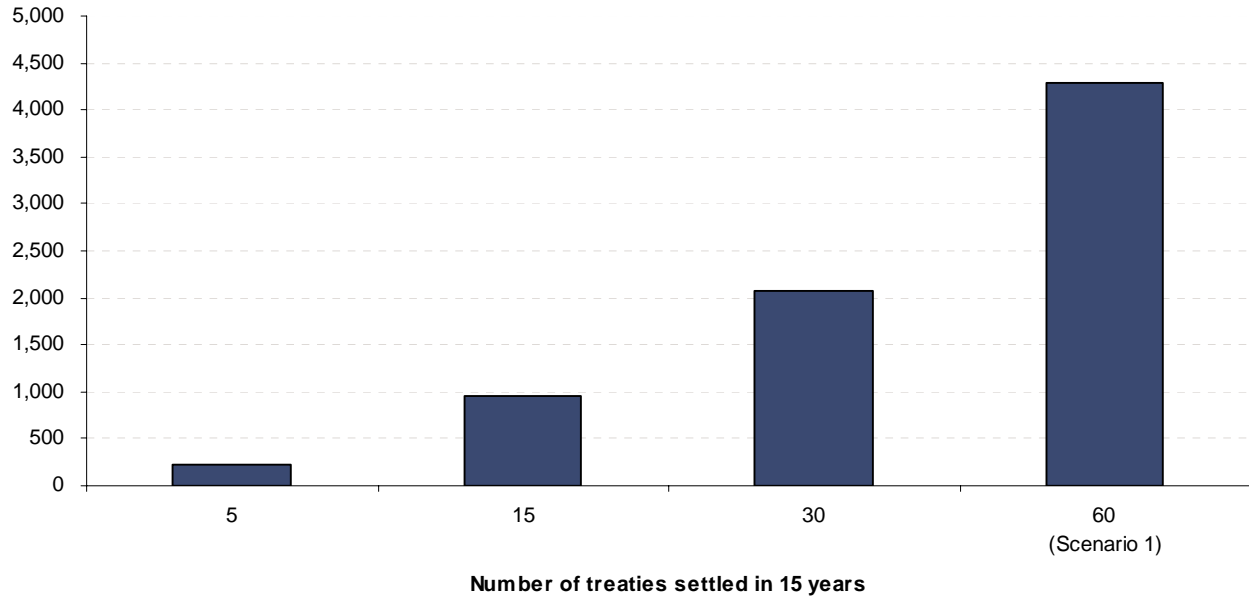
Source: PricewaterhouseCoopers estimates

**Figure 3: Average net benefit per year for scenarios involving a fixed settlement period (\$m, 2009 dollars)**



Source: PricewaterhouseCoopers estimates

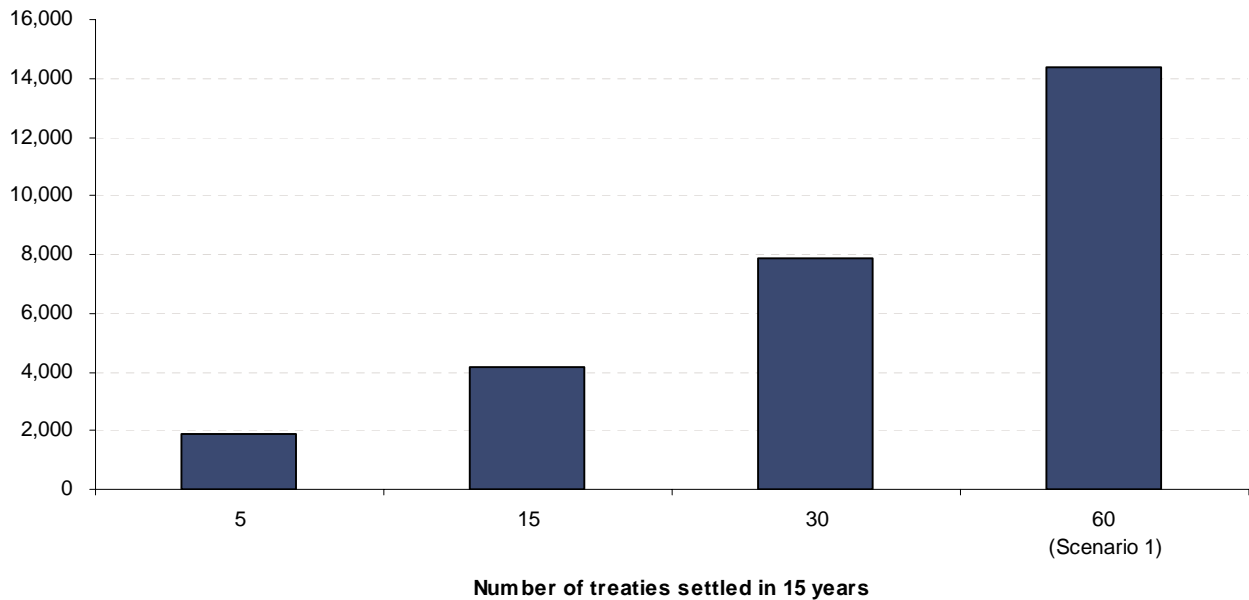
Figure 4: Net present value of benefits for scenarios involving a fixed settlement period (\$m)



Source: PricewaterhouseCoopers estimates

S

Figure 5: Wage incomes created over 40 years for scenarios involving a fixed settlement period (\$m)



Source: PricewaterhouseCoopers estimates

### 5.1.2 Constant number of treaties with different settlement periods

The scenarios considered here are similar in concept to the three main scenarios discussed in this report. Here, the length of time taken to settle treaties is altered but the number of treaties to be settled remains the same. In addition to the three scenarios considered previously, two more scenarios are included. The first additional scenario considers 60 treaties being settled over 6 years. The second additional scenario examines the impacts of 60 treaties being settled over 70 years. As with the results in section 5.1.1, the results indicate that the benefits to British Columbia are larger in cases where treaties are settled at a faster pace. Net benefits per year are 60% lower in a scenario involving 70 years of settlement than in a scenario involving a six year settlement period. Similarly, the net present value of benefits is 19% lower in a 70 year scenario than in the six year scenario (note that the difference would be larger if a higher discount rate were used). Wage incomes created over the next 40 years is also much lower in the 70 year scenario than the six year scenario indicating that as job creation is pushed further into the future, the near term benefits on wages are much reduced.

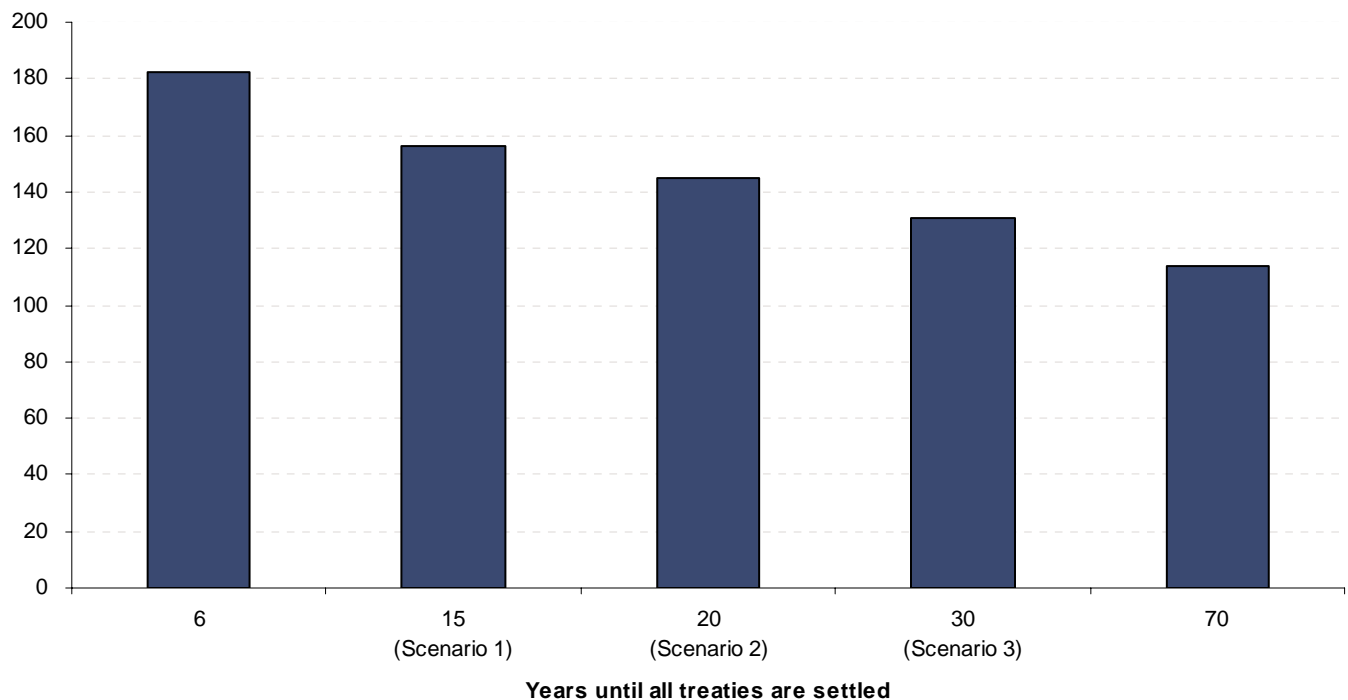
**Figure 6: Benefits from scenarios involving a fixed number of treaties and different settlement periods**

(\$m)	6 years	15 year (Scenario 1)	20 year (Scenario 2)	30 year (Scenario 3)	70 years*
Net benefits per year	183	156	145	131	114
NPV	4,454	4,289	4,231	4,065	3,753
Wage income	15,726	14,382	13,741	11,704	5,987

Source: PricewaterhouseCoopers estimates

\* 70 year scenario NPV estimated to 15 years after payment of final settlement amount

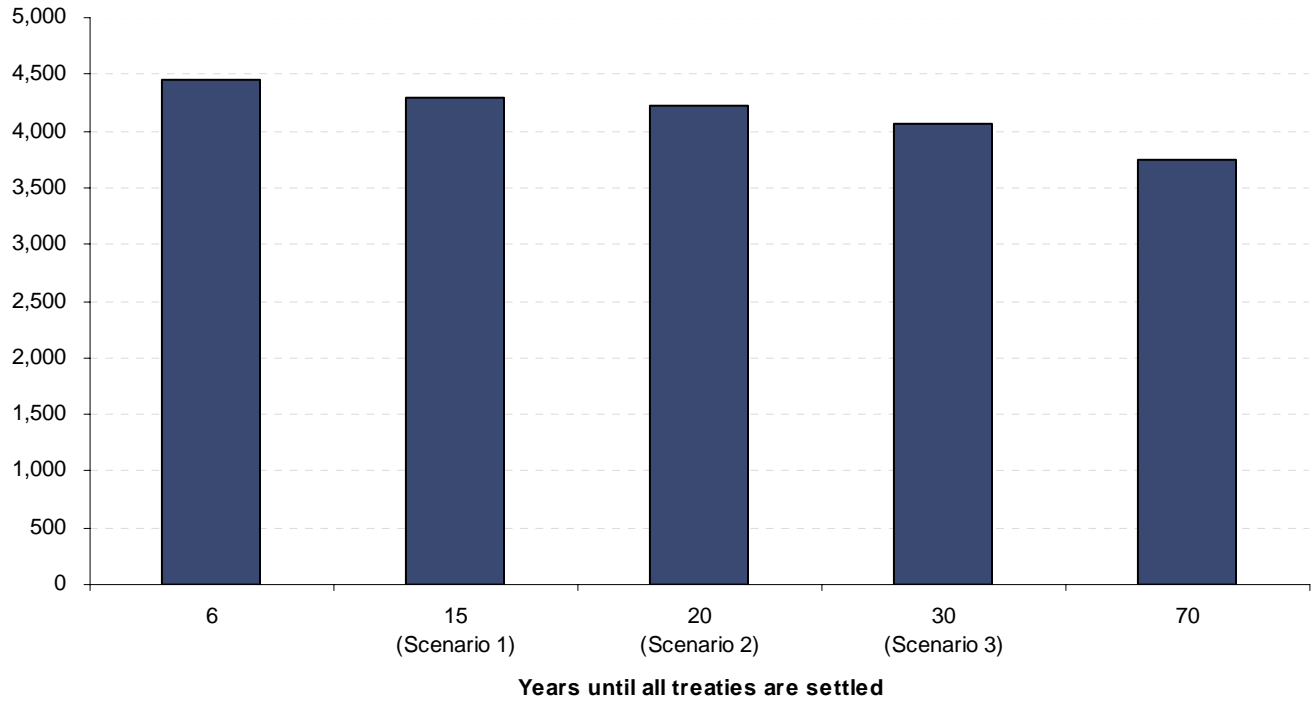
**Figure 7: Average net benefits per year for scenarios involving different settlement periods (\$m, 2009 dollars)**



Source: PricewaterhouseCoopers estimates

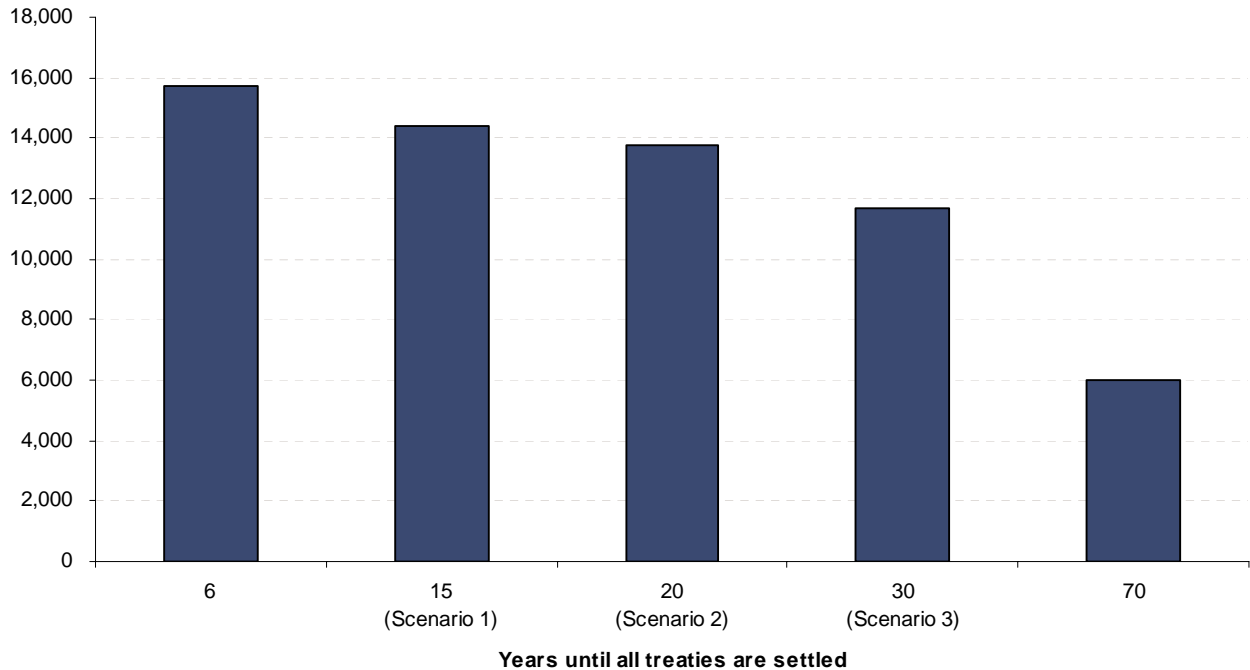


Figure 8: Net present value of benefits for scenarios involving different settlement periods (\$m)



Source: PricewaterhouseCoopers estimates

Figure 9: Wage income created over the next 40 years for scenarios involving different settlement periods (\$m)



Source: PricewaterhouseCoopers estimates

# Appendix A

## Economic Assumptions and Modelling Approach

Variable	Grant Thornton (1999 study)	PricewaterhouseCoopers	Difference/Explanation
<b>General assumptions</b>			
<b>Inflation rate</b>		2% per annum	Based on Bank of Canada's target inflation rate.
<b>Settlement cash payment schedule</b>	Assume cash settlement is paid over 15 years	Assume cash settlement is paid over 10 years	PwC number based on recent agreements and agreements in principle.
<b>Loan repayment schedule</b>		Assume loans to First Nations repaid over 10 years	PwC number based on recent agreements and agreements in principle.
<b>Number of treaties to be settled</b>	60	60	GT and PwC estimates
<b>Years until all treaties are settled</b>	20	Scenario 1: 15 years starting in 2011  Scenario 2: 20 years starting in 2011  Scenario 3: 30 years starting in 2011	The pace of treaties has slowed dramatically since the GT reports were published. It appears more likely that it will take longer than 20 years to settle all treaties.
<b>Number of treaties settled each year</b>	3 each year	Scenario 1: 3 each year for the first 5 years then 4.5 each year for 10 years  Scenario 2: 2.4 each year for 20 years  Scenario 3: 2 each year for 30 years.	The pace of settlements is not steady. It appears that a more lumpy profile of settlements is likely.
<b>Years until 100% of OSR contributes to First Nation self governance funding</b>		12 years	Based on recent agreements and agreements in principle.
<b>Discount rate</b>	6.2% real  (5.2% real in 2004 GT study)	4.1% nominal	PwC number based on 10-year bond rate.

Variable	Grant Thornton (1999 study)	PricewaterhouseCoopers	Difference/Explanation
<b>Cost assumptions</b>			
<b>Cash settlement</b>	\$42,100 per beneficiary	\$53,200 per beneficiary	GT uses the Nisga'a settlement, PwC uses the average per beneficiary cost of Lheidli T'enneh, Maa-nulth, and Tsawwassen final agreements.
<b>Land allocation</b>	Scenario 1: 577 ha per \$1m cash Scenario 2: 420 ha per \$1m cash	495 ha per \$1m cash	Both GT and PwC use land-cash split from federal-provincial cost sharing agreement.
<b>Purchase of third-party tenures</b>	\$80/m <sup>3</sup> to \$120/m <sup>3</sup> of AAC \$9m per 1% of TAC	\$30/m <sup>3</sup> of AAC \$480,000 per 1% of TAC per treaty	GT based on previous transactions. PwC AAC assumptions based on previous transactions and consultation with industry contacts.  GT TAC numbers based on EB Economics report. PwC based on \$5m cost for fisheries third-party licences in Nisga'a agreement outlined in GT 1999 report.
<b>Interim measures</b>	\$170,000 per year per treaty for four years		GT estimate
<b>Negotiating loans and non-repayable contributions</b>	\$6m loan per treaty \$290,000 grant per treaty for 5 years	\$6.6 loan per treaty \$1.7m grant per treaty	PwC numbers based on BC Treaty Commission 2008 annual report.
<b>Treaty Commission funding</b>		\$2.5m each year	Based on BC Treaty Commission annual budget.
<b>Adjustment programs</b>	Scenario 1: \$120m Scenario 2: \$40m	\$4m per treaty	GT assumes costs in Scenario 1 are higher than Scenario 2 because more land is allocated in Scenario 1. PwC estimate is based on MOU on cost sharing between Canada and British Columbia.
<b>Time limited funding</b>		\$9m per treaty paid over five years	PwC estimates based 20% of time limited funding in Maa-nulth final agreement to take in to account treaty specific amount such as fisheries, cultural and other funds not modelled in this study.
<b>Incremental ongoing funding</b>	\$0.8 per treaty, per year	\$2m per treaty, per year	GT estimate based on the Council of Yukon Indians settlement agreements. PwC estimate based on 20% of Maa-nulth ongoing costs in Maa-nulth Final Agreement.
<b>Core institutions</b>	Scenario 1: \$230m Scenario 2: \$340m	\$15m per year until all treaties are settled.	GT numbers based on federal funding allocated to "Indian government/Band management". PwC numbers based on federal budget for "First Nations Governance over land, resources and

Variable	Grant Thornton (1999 study)	PricewaterhouseCoopers	Difference/Explanation
			environment".
<b>Public information costs</b>	\$4m each year until all treaties are settled	\$5m each year until all treaties are settled	PwC numbers are based on GT numbers adjusted for inflation.
<b>Cost of land surveying</b>	\$50m	\$20 per hectare	GT numbers based on just under \$10m per treaty. PwC numbers based on GT calculated survey costs for Nisga'a, adjusted for inflation.
<b>Enrolment and ratification</b>	\$225 per beneficiary	\$252 per beneficiary	GT numbers based on Nisga'a Treaty. PwC numbers based on GT number adjusted for inflation.
<b>Provincial negotiating costs</b>	\$25m per year until all treaties are settled	\$18m per year until all treaties are settled	PwC numbers based on Auditor General of British Columbia 2006/2007 Report 3 of Treaty Negotiations in British Columbia, adjusted for inflation.
<b>Federal negotiating costs</b>	\$12.5m per year until all treaties are settled	\$8.3m per year until all treaties are settled	GT assumes federal negotiating costs are 50% that of provincial costs. PwC assumes 25% of annual planned federal funding costs between 2006 and 2008 (\$66.7m) were negotiating costs
<b>Third party consultation</b>	\$2m per year until all treaties are settled	\$2.5m per year until all treaties are settled	PwC numbers are based on GT numbers adjusted for inflation.
<b>Population and wage assumptions</b>			
<b>First Nation beneficiary population</b>	118,000 in 1998	127,627 in 2009	Both use the number of Status Indians from INAC statistics
<b>Population growth</b>		1.3% per annum	Based on INAC estimates and forecasts.
<b>First Nation participation rate</b>		65%	Based on Statistics Canada data.
<b>First Nation employment rate</b>		55%	Based on Statistics Canada data.
<b>Percentage of First Nation population on reserve in BC</b>		48%	Based on INAC 2003 data
<b>Future percentage of First Nation population on reserve in BC</b>		63%	Based on INAC forecasts.
<b>Average income of First Nation people</b>		\$27,000	Statistics Canada
<b>Average wage in forestry and fishing</b>		\$58,000	BC Statistics data annualised

Variable	Grant Thornton (1999 study)	PricewaterhouseCoopers	Difference/Explanation
Average wage in construction		\$50,400	BC Statistics data annualised
Average wage in retail and wholesale		\$31,000	BC Statistics data annualised
Average wage in British Columbia		\$41,000	BC Statistics data annualised
Number of jobs in forestry and wood manufacture		51,700	BC Statistics
Number of jobs in fishing		2,200	BC Statistics
Forestry and logging multiplier		4.4	Statistics Canada
Fishing multiplier		1.9	Statistics Canada
Construction multiplier		6.0	Statistics Canada
Wholesale multiplier		9.5	Statistics Canada
<b>Tax assumptions</b>			
HST rate		12%	Ministry of Finance
Federal income tax rate	16% (includes transaction tax)	12%	Based on British Columbia tax statistics
Provincial income tax rate	11% (includes transaction tax)	6%	Based on British Columbia tax statistics
Transaction tax exemption period		8 years from first settlement payment	Based on previous agreements and agreements in principle
BC contribution to federal taxes	13.5%	12.9%	PwC number based on tax statistics for 2007 year.
Community leakage	50%	50%	PwC figure consistent with GT figure.
Income tax exemption period		12 years from first settlement payment	Based on previous agreements and agreements in principle
Proportion of federal income tax from on reserve incomes attributable to First Nations		95%	PwC assumption
Proportion of provincial income tax from on reserve incomes attributable to First Nations		50%	PwC assumption
Proportion of HST from on reserve spending attributable to First Nations		75%	PwC assumption

Variable	Grant Thornton (1999 study)	PricewaterhouseCoopers	Difference/Explanation
<b>Investment of settlement funds assumptions</b>			
<b>Proportion invested in financial instruments</b>	Scenario 1: 20% in the first 10 years and 50% after Scenario 2: 35% in the first 10 years and 40% after	20%	GT estimates PwC estimate
<b>Proportion invested in local businesses</b>	Scenario 1: 40% in the first 10 years and 10% after Scenario 2: 25% in the first 10 years and 20% after	40%	GT estimates PwC estimate
<b>Proportion invested in community projects</b>	Scenario 1: 10% in the first 10 years and 20% after Scenario 2: 10% in the first 10 years and 10% after	10%	GT estimates PwC estimate
<b>Proportion allocated for consumption</b>	Scenario 1: 30% in the first 10 years and 20% after Scenario 2: 30% in the first 10 years and 30% after	30%	GT estimates PwC estimate
<b>Investment return on financial instruments</b>	6% real	6% nominal	PwC estimate based on the average return of a Canadian balanced equity fund.
<b>Investment return on local businesses</b>	6% real	6% nominal	PwC estimate
<b>Investment return on community projects</b>		4% nominal	PwC estimate based on a 2% premium to the long run rate of inflation (2%)
<b>Success rate of First Nation businesses</b>	50%	50%	GT number based on various studies and articles. PwC numbers based on Industry Canada report "Profile of Growth Firms: A Summary of Industry Canada Research".
<b>Investment return on Resource Revenue Sharing (RRS) funds</b>	NA	6% nominal	PwC assumption based on the average return of a Canadian balanced equity fund.
<b>Proportion of RRS funds allocated for consumption in first 10 years</b>	NA	20%	PwC assumption
<b>Proportion of RRS funds allocated for consumption after 10 years</b>	NA	5.5%	PwC assumption

Variable	Grant Thornton (1999 study)	PricewaterhouseCoopers	Difference/Explanation
<b>Land assumptions</b>			
<b>Total land in BC</b>		94.8 million hectares	Ministry of Forest and Range, Ministry of Agriculture and Lands.
<b>Crown land in BC</b>		89.1 million hectares	Ministry of Forest and Range, Ministry of Agriculture and Lands.
<b>Total forests in BC</b>		57 million hectares	Ministry of Forest and Range, Ministry of Agriculture and Lands.
<b>Average AAC over last 10 years in BC</b>		68 million cubic metres	Ministry of Forest and Range, Ministry of Agriculture and Lands.

## Economic assumptions

A number of economic assumptions have been made in building the model and in estimating benefits and costs. The key economic assumptions are set out in the sections that follow.

## Population and employment assumptions

- This study assumes that the population of First Nation beneficiaries is 127,627, consistent with INAC population statistics. This study assumes that the First Nation population will grow by 1.3% each year, again consistent with INAC forecasts.
- The study assumes that as treaties are settled, First Nation people will start to migrate back towards their traditional lands. This report assumes that 48% of the First Nation population is currently living on-reserve. It is assumed that the on-reserve population will grow to 63% over 30 years, starting from the time of the first settlement payment.
- It is assumed that the employment rate of First Nations will increase to the same level as British Columbia over time as treaties are settled. It is further assumed that jobs for First Nations and other British Columbians will be created from the investment of settlement funds in First Nation businesses and community projects. This study assumes that the employment rate of First Nation people increases from 55% to 61% over 10 years from the time of the first settlement payment. Jobs to non-First Nation people are also assumed to be created as a result of First Nation investment. It is further assumed that there will be some dislocation of jobs in the forestry and fisheries industries as third party tenures are bought back. It is assumed that current jobs in forestry and fisheries are lost as a result of displacement by First Nations. However, it is further assumed that all of the displaced are able to find work paying the average wage in British Columbia. Therefore, the net wage impact on non-First Nations works is the difference in wage incomes between forestry and fisheries jobs and the average wage income in British Columbia. First Nation people are assumed to occupy 80% of the forestry and fisheries jobs originally occupied by non-First Nation people, assuming that some non-aboriginal workers are retained to transfer skills and knowledge.
- Non-First nation jobs are calculated by using a multiplier approach. Employment multipliers are applied to amounts assumed to be invested in First Nation businesses and community infrastructure projects.
- The average First Nation wage is assumed to be \$27,000 per year. It is assumed that as a result of increased benefits to First Nation people from settlement that wages will increase by 3% per annum. The improvement of First Nation wage incomes is used to calculate tax contributions by First Nations to own source revenue.

## Investment assumptions

- This study assumes that cash received as part of the treaty settlement will be used for two broad purposes, namely consumption and investment. This study assumes that 40% of each net payment is invested in a First Nation business that earns a 6% per annum nominal rate of return. It is assumed that 20% of the payment is invested in financial instruments which earn 6% per annum (nominal), and that 10% is invested in community projects that earn 3% per annum (nominal). The remaining 30% is assumed to be consumed. Consistent with previous studies, it is assumed that 50% of First Nation businesses are successful, in line with Industry Canada research.<sup>3</sup>
- It is assumed that the added certainty around land rights and title will encourage additional investment in the resource sector. Under Scenario 1, it has been assumed that new resource investment will increase to \$45 million per year in 40 years. Under Scenario 2, it has been assumed that investment will increase to \$40 million per year in 40 years to account for a slower pace of settlement. Scenario 3

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<sup>3</sup> Source: Industry Canada: 2008, Profile of Growth Firms: A Summary of Industry Canada Research



assumes that \$30 million will be invested after 40 years, again to account for an even slower pace of settlement.

- This study assumes that funds received as part of a RRS agreement are invested at a nominal rate of 6% per annum. It is further assumed that for the first 10 years, 20% of RRS payments will be allocated for consumption. After 10 years it is assumed that 5.5% of RRS funds are allocated for consumption.

### Financial assumptions

Financial assumptions are used to calculate total settlement costs and land allocated to First Nation people. A number of other cost assumptions associated with the settlement process are outlined in this section.

- **Cash settlement amount:** This study assumes a cash settlement payment of \$53,200 per First Nation beneficiary. This amount is based on recent final agreements. In particular, reference has been made to the Lheildi T'enneh, Maa-nulth and Tsawwassen final agreements. Agreements in principle (AIP) have been excluded from the calculation since cash settlement amounts in final agreements tend to be higher than those in the AIP stage. This study assumes that British Columbia will contribute 17% of cash settlement costs and that the Federal Government will contribute the rest. Cash transfers are assumed to occur over 10 years, consistent with recent final agreements with First Nations.
- **Land settlement amount:** The amount of land allocated to First Nations has been estimated according to the memorandum of understanding (MOU) between the Federal and Provincial Governments on cost sharing arrangements. Under the MOU, the land to be transferred to First Nations is estimated by applying a land-cash ratio to the total cash payment to First Nations. The land-cash ratio varies with the split of cash costs between the Federal and Provincial Governments. As the proportion of cash contributed by British Columbia increases, the contribution of land by British Columbia decreases (i.e.: the land-cash ratio decreases). This study assumes that British Columbia will contribute 17% of cash settlement costs. As a result, a land-cash ratio of 495 hectares per \$1million has been assumed, consistent with the MOU on cost sharing. The land allocated to First Nations ranges from 2.8 million hectares to 3.1 million hectares under the three scenarios considered in this report.
- **Resource Revenue Sharing agreements:** In this study we have assumed that Resource Revenue Sharing (RRS) agreements are put in place for all future treaties. RRS agreements provide for the sharing of annual natural resource revenue with First Nation people over a set period of years. The annual costs are split evenly between the Provincial and Federal governments. It is important to note that the annual payments to First Nations from RRS agreements will likely vary substantially between treaties. Complicating factors such as overlapping land claims amongst First Nation groups could also limit benefits to certain First Nations. However, for the purposes of this study, it has been assumed that \$600 per beneficiary is paid each year for 25 years from the settlement date of a treaty. The \$600 figure is based on the Maa-nulth Final Agreement.
- **Third party compensation for tenures:** Part of the treaty settlement process involves the buying back of tenures of existing forestry and fishery operators. This study estimates the value of forestry tenures by estimating the annual allowable cut (AAC) of timber on First Nation lands and applying a value per cubic metre of AAC. It has been assumed that one cubic metre of AAC is worth \$30 based on recent transactions in the timber industry as well as consultation with industry participants. It is worth noting that the \$30 figure is substantially less than that used in previous studies (\$80 to \$120) given the collapse in prices due to the pine beetle infestation and after the global financial crisis. On the fisheries side, third party costs are estimated based on a cost of \$480,000 per 1% of total allowable catch (TAC) per treaty (based on the Nisga'a agreement). It has been assumed that an average 12.5% of TAC would be transferred under each treaty, based on the average TAC allocated for Sockeye Salmon in the final agreements of the Lheildi T'enneh, Maa-nulth, Tsawwassen and Nisga'a First Nations. The costs of third party compensation are expected to be split evenly between British Columbia and the Federal Government.

- **Negotiation loans and grants.** First Nations receive loans and grants intended to fund their negotiation costs throughout the settlement process. This study assumes that each treaty will be given a \$6.6 million loan and a \$1.7 million non-repayable contribution. The loan is provided by the Federal Government while the Provincial Government contributes 40% to the non-repayable contribution with the Federal Government contributing the rest.
- **Funding for core institutions:** Funding for core institutions of governance is expected to cost \$15 million per year based on Federal Budget figures. Funding for core institutions is payable by the Federal Government.
- **Tax assumption:** This study has assumed that tax sharing arrangements will be reached between First Nations and the Provincial and Federal governments.
- **Pre-treaty costs:** Pre-treaty costs include costs associated with public education programs (assumed \$5 million per year), land surveys (assumed \$15 per hectare), enrolment and ratification of treaties (assumed \$250 per beneficiary), third party consultations (assumed \$2.5 million per year) and the costs to the Provincial and Federal Governments of negotiating treaties (assumed \$18 million per year and \$8 million per year respectively). The costs of adjustment programs (assumed \$4 million per treaty) are also considered.
- **Self-governance time-limited and ongoing funding:** Time-limited and ongoing funding is intended to cover the costs of self-governance and other programs. It is assumed that these costs are split evenly between the Provincial and Federal Governments. This study estimates time-limited funding of \$9 million per treaty to be paid out over five years from the date of the first settlement payment. Ongoing incremental funding is assumed to be \$2 million per year, per treaty. Own source revenue contributions by First Nations are assumed to offset ongoing annual payments.
- **Savings to the Provincial and Federal Governments.** Own source revenue to First Nations originates from taxes levied by First Nations on their people and non-aboriginal residents, investment income from investment of settlement funds and fees and charges. Own source revenue is assumed to offset incremental ongoing funding provided by Provincial and Federal Governments. The percentage of First Nation own source revenue offset against ongoing governance funding is assumed to increase from 0% to 100% over 12 years from the date of the first settlement payment. Consistent with previous reports, this study also assumes savings will result from lower social assistance payments to First Nations.
- **Provincial share of Federal costs:** It is assumed that British Columbian tax payers will indirectly fund 12.9% of the Federal Government net costs given that British Columbia accounts for around 12.9% of total Canadian tax revenue.

### Variations from assumptions in previous studies

A comparison of the assumptions used in this report with those of the 1999 Grant Thornton report is presented in Appendix B. Wherever possible, this study attempts to use similar assumptions and methodologies as previous reports. An overview of the main difference is provided here.

- **Cash payment assumption:** This study has assumed a cash payment per beneficiary of \$53,200 based on recent final agreements. The 1999 Grant Thornton report assumed a cash payment per person of \$42,000 per person based on the Nisga'a agreement.
- **Third party compensation assumption:** The payment to third parties for compensation of tenures is lower in this study when compared to previous reports. The main reason for the difference is that this study assumes a much lower cost per cubic metre of annual allowable cut (AAC) than was assumed in previous studies. Since the 1999 Grant Thornton study, the timber industry has been negatively impacted by internal and external market events including the Softwood Lumber Agreement and most recently, the global financial crisis. With a slowdown in global growth has come a drop in demand for construction materials such as lumber. As a result, prices in the timber industry have dropped. In addition, the pine beetle infestation has also lowered the value of certain areas contributing to lower

overall prices. As a result, this study assumes a \$30 price per cubic metre of AAC compared to \$80 to \$120 per cubic metre assumed in earlier studies.

- **Investment allocation assumption:** There are also differences in the investment assumptions used in this report compared to previous studies. This report assumes certain investment allocations for each settlement payment. That is, investment allocations are made for the 10 years that settlement payments are received. Previous studies have assumed two stages in the investment allocation decision, the first applying to the first 10 years with the second set of investment assumptions applying thereafter.
- **Resource Revenue Sharing assumption:** This report also attempts to estimate the potential value of RRS agreements, which were not previously included in past studies. It is assumed that RRS arrangements will become common to treaty settlements.
- **Employment income approach:** This study assumes that First Nation jobs will be created over time as employment levels of First Nation people rises to that of the British Columbia economy over time. Multipliers are used to calculate additional jobs created to non-First Nations individuals as a result of First Nation investment decisions. The number of jobs created is then multiplied by average wage incomes from various industries in order to estimate the increase in Provincial employment incomes. Previous studies appear to have used a combination of multipliers in order to estimate the number of jobs and amount of wage income created.
- **Loan repayments:** The negotiation loans to First Nations have been reported as a cost to First Nations in this report. Previous reports do not appear to include loan repayments made by First Nations as a cost to First Nations.
- **Savings to the Provincial and Federal Governments.** In this study, the contribution from own source revenue have been used to offset incremental ongoing funding provided by the Federal and Provincial Governments. In addition and consistent with previous studies, this report takes into account potential savings to British Columbia from lower social assistance payments. This report assumes \$5,600<sup>4</sup> in savings per First Nation Person becoming employed. Federal savings are estimated at \$5,000 per First Nation person based on INAC income assistance payments made to First Nations.

### The main differences in modelling approaches

We have attempted to follow the modelling methodology of previous studies as closely as possible. However, there are some differences in the modelling approach adopted in this study as compared to previous research. We highlight here the main areas in which modelling methodologies may differ from previous studies.

### Differences in the Scenarios

In this study we have considered three scenarios which are slightly different to those presented in previous studies. Previous studies have examined scenarios where treaties are settled over the same length of time (25 years in the 1996 KPMG report and 20 years in the 1999 Grant Thornton report). Given that the pace of treaty settlements has not been regular since the 1999 and 2004 Grant Thornton reports were published, this study tries to uncover the impacts on benefits from settling treaties over various lengths of time. As a result, three scenarios have been considered in this study, each assuming a different profile of treaty settlements over different lengths of time. Scenario 1 of this report assumes that all treaties are settled over 15 years (15 treaties settled at 3 per year for the first 5 years, then 4.5 treaties settled per year for the remaining 10 years). Scenario 2 is consistent with the 1999 Grant Thornton report, which assumed that treaties were settled evenly over a 20-year timeframe (3 treaties settled each year). Finally, Scenario 3 assumes that treaties are settled evenly over 30 years (2 treaties settled each year).

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<sup>4</sup> Based on the estimated average per person amount of Provincial social assistance, income maintenance assistance paid in British Columbia

### **Investment allocation assumptions applied to settlement funds**

One area in which modelling methods and assumptions differ revolves around the investment of settlement funds over time. Previous studies have assumed two stages in the investment allocation decision, where we have assumed one. In this study we have assumed that the allocation of settlement funds between consumption, investment, First Nation businesses and community projects occurs only as long as annual settlement payments are being made. As a result, we have assumed that for each settlement payment, 40% is invested in First Nation businesses, 20% is invested in financial instruments, 10% is invested in community projects and 30% is allocated for consumption. We have assumed that after settlement payments have stopped, First Nation businesses and investments are left to provide a stream of income.

Previous studies have assumed different allocations of settlement funds over time. For instance, Scenario 1 of the 1999 Grant Thornton study assumed that, for the first 10 years, 40% of settlement funds are invested in First Nation businesses, 20% is invested in financial instruments, 10% is invested in community projects and 30% is allocated to consumption. The study goes on to assume that after 10 years, 10% is invested in First Nation businesses, 50% is invested in financial instruments, 20% is invested in community projects and 20% is allocated for consumption. The Grant Thornton studies, therefore, assume two stages in the investment allocation decision.

### **Employment impact modelling**

The treaties are assumed to have a positive impact on employment figures for both First Nation people and other British Columbians. The investment of settlement funds in First Nation businesses and local community projects is assumed to create jobs over time for First Nations people with some spill-over impact into the broader British Columbian economy.

The approach taken in this study to determine employment impacts has used a combination of methods. Previous studies appear to have made use of a variety of multipliers in order to determine the impact on employment in First Nations communities and amongst other British Columbians. This study has also used multipliers along with population growth assumptions and assumed migration patterns of First Nation people to calculate employment impacts.

This reports assumed that once treaty settlements occur, there will be a migration of First Nation people back to their land, thereby increasing the population of on-reserve First Nation people over time. The study assumes that for each treaty, the proportion of on-reserve First Nation people will increase from 48% currently to 63% over 30 years, starting from the time of the first settlement payment. In addition to the migration of First Nation people back to reserve, the study assumes a population growth rate of 1.3% each year. Over time, it is assumed that the employment rate of First Nation people on reserve will increase as settlement funds are invested in First Nation businesses and community projects. We have assumed that the employment rate amongst First Nation people will increase from 55% currently to 61% over 10 years starting from the date of the first settlement payment. The increase in on-reserve First Nation people, coupled with an increase in employment rates over time is used to calculate the jobs created for First Nation people.

Multipliers are used in order to calculate the total number of jobs created in the British Columbian economy. The First Nation jobs that are assumed to be created are subtracted from the total figure to estimate the jobs created for other British Columbians from the investment of settlement funds.

### **Resource Revenue Sharing arrangements have been included for the first time**

RRS agreements have become a standard inclusion in recent final agreements and agreements in principle. As a result, we have attempted to include the impact of RRS agreements into our analysis. We have assumed the annual payments to First Nations as part of a RRS agreement are shared equally between the British Columbian and Federal governments, consistent with recent agreements. We have assumed that an annual payment of \$600 per beneficiary per treaty will be paid for a period of 25 years from the date of the first settlement payment. In addition, we have assumed that 20% of RRS payments are allocated for consumption

in the first 10 years and 5% thereafter. The remaining funds are assumed to be invested in financial instruments to earn an annual return of 6% each year.

### **Savings to British Columbia**

The 1996 and 1999 Grant Thornton reports assumed Federal savings of \$10,000 per person becoming employed would result as a result of improved employment conditions following treaty settlements. Grant Thornton assumed that Provincial savings arose from targeted programs aimed at aboriginal people and that 30% to 80% of the total targeted savings were realised depending on the scenario assumed. This study also attempts to estimate the potential program savings to the Federal and Provincial Government. This report has assumed Provincial savings of \$5,600 per person becoming employed based on social assistance payments made in British Columbia. Federal savings are estimated at \$5,000 per person based on income assistance payments made by INAC to First Nations. This report further assumes that ongoing incremental funding costs are offset by OSR contributions.

# Appendix B

## Overview of Previous Studies

A number of studies have attempted to estimate the costs and benefits of First Nation treaty settlements in British Columbia. In general, all previous studies adopt a similar approach in estimating net benefits and economic impacts. We summarise here the key outcomes of previous studies.

### The 1996 KPMG and 1999 Grant Thornton studies

The 1996 KPMG and 1999 Grant Thornton reports are examined together given their close similarities. Both studies follow the same model methodology but differ on some assumptions. Both reports attempt to quantify the net benefits to British Columbia and to First Nations people of treaty settlements. The studies also present the impacts on wage income for both First Nations people and other British Columbians as a result of treaty settlements. Both reports examine the net benefits of treaty negotiation based on two scenarios. The main assumptions of the scenarios in each study are listed here.

**Table 8: Selected assumptions used in the 1996 KPMG and 1999 Grant Thornton studies**

Variable	1996 KPMG report (1995 dollars)	1999 Grant Thornton report (1998 dollars)
<b>Number of treaties to be settled</b>	60	60
<b>Settlement period</b>	25 years	20 years
<b>Time horizon for cash payments</b>	15 years	15 years
<b>Cash payment per beneficiary</b>	\$39,000	\$42,100
<b>Provincial share of cash payment</b>	Scenario 1: 12% Scenario 2: 22%	Scenario 1: 12% Scenario 2: 22%
<b>Transfer of land (ha)</b>	Scenario 1: 2.9m (577 ha per \$1m cash) Scenario 2: 2.4m (420 ha per \$1m cash)	Scenario 1: 2.9m (577 ha per \$1m cash) Scenario 2: 2.4m (420 ha per \$1m cash)
<b>Discount rate</b>	6% real	6.2% real
<b>First Nation beneficiaries</b>	146,000	140,000
<b>Proportion invested in financial instruments</b>	Scenario 1: 20% in 1998 to 2007 and 50% after Scenario 2: 35% in 1998 to 2007 and 40% after	Scenario 1: 20% in 2000 to 2011 and 50% after Scenario 2: 35% in 2000 to 2011 and 40% after
<b>Proportion invested in local businesses</b>	Scenario 1: 40% in 1998 to 2007 and 10% after Scenario 2: 25% in 1998 to 2007 and 20% after	Scenario 1: 40% in 1998 to 2007 and 10% after Scenario 2: 25% in 2000 to 2011 and 20% after
<b>Proportion invested in community projects</b>	Scenario 1: 10% in 1998 to 2007 and 20% after	Scenario 1: 10% in 2000 to 2011 and 20% after

Variable	1996 KPMG report (1995 dollars)	1999 Grant Thornton report (1998 dollars)
	Scenario 2: 10% in 1998 to 2007 and 10% after	Scenario 2: 10% in 2000 to 2011 and 10% after
<b>Proportion allocated for consumption</b>	Scenario 1: 30% in 1998 to 2007 and 20% after Scenario 2: 30% in 1998 to 2007 and 30% after	Scenario 1: 30% in 2000 to 2011 and 20% after Scenario 2: 30% in 2000 to 2011 and 30% after
<b>Value of purchasing tenures</b>	\$240 per cubic metre of AAC	\$80 to \$120 per cubic metre of AAC
<b>Percentage of TAC granted to First Nations</b>	Scenario 1: 20% Scenario 2: 5%	Scenario 1: 25% Scenario 2: 10%
<b>Transfer of vessels and licences</b>	\$9m per 1% of TAC transferred to First Nations	\$9m per 1% of TAC transferred to First Nations

Source: 1996 KPMG report, 1999 Grant Thornton report

The key findings of the two reports are outlined in the following table.

**Table 9: Key estimates from the 1996 KPMG report and 1999 Grant Thornton report**

Variable	1996 KPMG report (1995 dollars)	1999 Grant Thornton report (1998 dollars)
<b>Cash transferred to First Nations</b>	Scenario 1: \$5.3bn Scenario 2: \$6.0bn	Scenario 1: \$5.4bn Scenario 2: \$6.1bn
<b>Land transferred to First Nations (ha)</b>	Scenario 1: 2.9m Scenario 2: 2.4m	Scenario 1: 2.9m Scenario 2: 2.4m
<b>Financial benefits to First Nations</b>	Scenario 1: \$6.0bn Scenario 2: \$6.6bn	Scenario 1: \$6.3bn Scenario 2: \$6.8bn
<b>Financial costs to non-First Nation British Columbians</b>	Scenario 1: \$2.1bn Scenario 2: \$1.4bn	Scenario 1: \$2.5bn Scenario 2: \$2.1bn
<b>Net financial benefits to British Columbia</b>	Scenario 1: \$3.9bn Scenario 2: \$5.3bn	Scenario 1: \$3.8bn Scenario 2: \$4.7bn
<b>Net present value of benefits to British Columbia</b>	Scenario 1: \$3.3bn Scenario 2: \$3.6bn	Scenario 1: \$1.8bn Scenario 2: \$2.0bn
<b>Increase in provincial incomes</b>	Scenario 1: \$6.7bn Scenario 2: \$11.4bn	Scenario 1: \$7.0bn Scenario 2: \$11.6bn

Source: 1996 KPMG report, 1999 Grant Thornton report



## 2004 Grant Thornton study

The 2004 Grant Thornton study provided an update on treaty settlements and relevant developments in British Columbia since the 1999 Grant Thornton report. The study outlined the key factors in new agreements in principle signed since the 1999 study.

The report outlined the cash settlement amounts and land transfers under the Tsawwassen, Lheidli T'enneh, Sliammon and Maa-nulth agreements in principle. The cash settlement and land transfers were then compared to the Nisga'a final agreement. The report concluded that since the 1999 Grant Thornton report, per beneficiary cash payments may have decreased by 5%. In addition, the study indicated that those First Nation groups that chose to negotiate together may receive similar settlement terms as larger First Nation groups negotiating individually.

### **The pace of treaty settlement**

The study also acknowledges that the pace of treaty settlements has been slower than assumed in previous studies. The study suggests a profile of treaty settlements that is slow to begin with but that speeds up as time passes. The report goes on to suggest that the net benefits outlined in the 1999 Grant Thornton report may have been too high considering that treaty settlements would likely take longer to materialise. The observation is consistent with the results of this report.

### **Important court decisions**

The report also outlines a number of important court decisions which have had an impact on First Nation issues and negotiations. The Taku River Tlingit (2002) and Haida (2002) court decisions were put forward as examples illustrating the Province's responsibility to negotiate with First Nations with respect to the development of First Nation territories. The report highlights that better relations between the Province and First Nations could potentially lead to added certainty and investment as well as a faster pace of settlements.

### **Important policy changes**

The 2004 Grant Thornton report also examined a number of changes to Government policy that were relevant to First Nations negotiations. The Economic Measures Fund was designed to support First Nation development projects over a term of four years. The report highlights that such funds could improve relations between the Province and First Nation people, potentially improving the climate for treaty settlements. The study suggests that such funds could lead to higher employment rates, and better skilled First Nations people, which in turn could lead to better investment decisions. The Turning Point Agreement was also outlined as having the potential to improve relations between First Nations and Governments and increase certainty in British Columbia. Under the Turning Point Agreement a negotiating framework was established so that eight First Nations could negotiate independent agreements separate to the treaty process. The Forest Revenue Sharing Agreement was established to increase First Nation participation in the forestry industry and share forestry revenues. Grant Thornton highlighted that such agreements could result in benefits to First Nations being realised sooner than otherwise anticipated, potentially increasing the net present value to First Nations. Grant Thornton also indicated that Resource Revenue Sharing agreements were also a potential consideration in future studies.



## Appendix C

# Recent Events Impacting the Treaty Process

### Background

Treaty negotiations in BC are taking place in an evolving legal, political and economic landscape. Since 2004, a number of factors internal and external to the treaty process have impacted negotiations, in some cases leading to delays in the process and in other cases providing momentum for negotiations.

As a result of this evolving landscape, new initiatives, policies and options have emerged that may provide First Nations with attractive practical alternatives to negotiations, including revenue sharing and/or land management agreements with the Province of BC (“the province,” ”BC”), participation in sectoral self government and other agreements with the Government of Canada (“Canada”) and negotiation of benefit agreements with the private sector.

Other actions have been taken by the governments of Canada, BC and First Nations (the Parties) to help treaty negotiations evolve and move forward, including strategies to focus negotiations on those tables most likely to achieve Final Agreements and introducing tools such as Incremental Treaty Agreements (ITAs) to provide First Nations with tangible benefits prior to concluding a treaty. The achievement of two treaty settlements (“Final Agreements”) under the process may also act as a catalyst for conclusion of other Final Agreements and Agreements in Principle.

The resolution of other issues in areas such as negotiating mandates and overlapping territories is viewed by the Parties as being critical to concluding other Final Agreements. The degree to which these issues and new developments continue to impact treaty negotiations will affect the pace of negotiations and the timeframe for financial and economic benefits to be realized by First Nations and all residents of BC.

### Recent treaty settlements

Since 2004, two treaties have been settled in British Columbia. The Tsawwassen First Nation Final Agreement came into effect on April 3, 2009, and is the first final agreement to be ratified and implemented under the BC treaty process. The Tsawwassen First Nation became the first to enter Stage 6 of the process, implementation of a treaty. The Maa-nulth First Nations Final Agreement, representing the claims of five First Nations, received royal assent from Canada on June 18, 2009, and is anticipated to come into effect in early 2010. It became the first modern treaty on Vancouver Island and will be the second to enter Stage 6 once it comes into effect. The key financial and economic elements of these two Final Agreements have been incorporated into the PwC treaty settlement model (Section 4).

### Status of other treaty negotiations

As of August 2009, 54 BC First Nations representing 107 of the 193<sup>5</sup> eligible First Nations in BC, or 76,824 of 121,260 BC First Nation members were involved in Stages 2 to 6 of the BC treaty process. This represents 55% of eligible BC First Nations and 63% of the population. There are also six First Nations located in the

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<sup>5</sup> Statistics do not include the Tsawwassen First Nation or the Nisga'a Villages of Gingolx, Gitwinksihlkw, Laxgalt'sap and New Aiyansh or their populations, totalling 6,027 members.

Yukon seeking trans-boundary agreements under the BC treaty process, representing a population of 4,182. There are 49 sets of actual negotiations, as some First Nations have chosen to negotiate together.

The following table summarizes the number of First Nations at each stage of the process.

**Table 10: Status of BC Treaty Negotiations in 2009 compared to 2004**

Stage of Treaty Negotiation	BC First Nations	Eligible Communities represented	Trans Boundary First Nations	Total	2004
<b>Stage 6 – Implementation</b>	1	1	0	1	0
<b>Stage 5 – Final Agreement Negotiations</b>	7	13	0	7	5
<b>Stage 4 – Agreement in Principle Negotiations</b>	40	86	3	43	41
<b>Stage 3 – Framework for an Agreement</b>	3	4	0	3	3
<b>Stage 2 – Preparations, declaration of issues</b>	3 <sup>6</sup>	2	3	6	6
	<b>54</b>	<b>106</b>	<b>6</b>	<b>60</b>	<b>55</b>

- In Stage 5, six of the seven First Nations representing eight BC communities are still in Stage 5 of the process, negotiating a Final Agreement. Of these, four tables representing six communities have been identified by the BC Treaty Commission as potentially moving to the Final Agreement stage in 2010, pending approval by First Nation members. The Lheidli T'enneh Final Agreement was not ratified by the First Nation membership in a vote that took place in March 2007. There have been three new Agreements in Principle negotiated since 2004 with the In-SHUCK-ch, Yale and Yekooche First Nations.
- In Stage 4, a total of 40 First Nations representing 87 BC First Nation communities are in the process of negotiating Agreements in Principle, of which eight tables representing 19 First Nation communities have been identified by the BCTC as being closest to concluding an AIP. The remaining 33 negotiating First Nations representing 68 communities are inactive, stalled for various reasons and/or pursuing other initiatives.
- The six BC First Nations in Stages 2 and 3 representing six BC First Nation communities have all been inactive for at least a year.

The actual pace of negotiations varies with the negotiating group, the items to be negotiated and issues requiring resolution. There is no standard length of time for concluding either an Agreement in Principle or a Final Agreement, and many have been in these stages for a number of years. The length of time between the signing of the Tsawwassen Agreement in Principle and the coming into effect of the Final Agreement was 5 years. It took just under 6 years for the Maa-nulth treaty to receive federal royal assent from the date the Agreement in Principle was signed.

Given this information, the following may be said about the pace of treaty settlement in British Columbia:

- There were no Final Agreements between 1999 and 2004 (the dates of first and second Grant Thornton reports). Between 2004 and 2009 there were two Final Agreements, the first to be concluded under the BC treaty process, representing 3.7% of claimant groups. One of the assumptions in the 1999 Grant Thornton report was that 50% of treaties would be concluded by 2009.
- Of the groups in currently Stage 5, four might or might not conclude Final Agreements by the end of 2010.
- The constant rate of settlement assumed in the earlier reports has not materialized.

<sup>6</sup> Although a Statement of Intent has been accepted for Hwilitsum First Nation, it is not yet a recognized Indian Band; BC and Canada have not yet committed to negotiations.

## Judicial rulings and/or legislative changes

Landmark court cases have, in the past, acted as catalysts for treaty negotiations, and Aboriginal rights continue to be defined through litigation as well as negotiation. Court decisions have continued to clarify issues relating to Aboriginal title and rights and have added further definition to the Crown's duty to consult and potentially accommodate First Nation interests with respect to development on traditional territory.

The 2004 Grant Thornton report contained a summary of two Supreme Court of Canada rulings, *Rinstad v. Taku River Tlingit* and *Haida v. BC and Weyerhaeuser*. In summary, the SCC confirmed the existence of the Crown's legal duty to consult and potentially accommodate First Nations interests with respect to developments on traditional territory, pending resolution of treaty or other agreements. This obligation does not extend to private sector proponents, although the Crown can delegate some procedural aspects to proponents seeking licences or other approvals. The court decision also affirmed the goal of treaty making as reconciling Aboriginal rights with other rights, and not extinguishing or replacing rights. At that time, the development and application of policies relating to the court decisions included implementation of the provincial Policy on Consultation with First Nations and establishment of the Ministry of Forest's Forest Revitalization Plan.

The impact of these two court decisions on the BC treaty process was anticipated to include:

- Improved relationships between First Nations, BC and/or industry, possibly leading to increased efficiency in treaty negotiations
- Increased certainty resulting from the provincial consultation policy leading to increased investment
- A greater incentive for First Nations to enter into treaty negotiations to assert Aboriginal rights or title as this assertion requires the Crown to consult
- Expedited settlement of some treaty settlement benefits.

However, these and subsequent court rulings may have also resulted in new and different approaches to reconciliation with First Nations, including a wider range of options available to all First Nations, whether they are participating in treaty negotiations or not.

### Judicial Rulings since 2004

Several court decisions since 2004 have provided further clarification on the Crown's duty to consult and potentially accommodate Aboriginal interests, including:

- ***Musqueam Indian Band v. BC (Ministry of Sustainability and Resource Management), Musqueam Indian Band v. City of Richmond (2005)***. The Musqueam won three BC court cases relating to the disposal of Crown lands in their traditional territory (the federal transfer of Garden City lands in Richmond, provincial transfer of golf course land to UBC, and provincial approval of the expansion of River Rock Casino on the Bridgeport lands), and were successful in halting the sale of the Sinclair Centre and 401 Burrard Street in Vancouver by the federal government.
- ***Hupacasath First Nation v. BC 2005***. The BC Supreme Court decision extended the Crown's duty to consult to private land, in cases where actions contemplated by the Crown might adversely affect Aboriginal title and rights; however, the required level of consultation may not be as "deep" in cases involving private land as it is for Crown land.
- ***Wii'litswx v. British Columbia (Minister of Forests) 2008***. The process used to discharge the Crown's duty to consult must recognize the distinct features of the Aboriginal people engaged in consultation.

Still other decisions have been helpful in clarifying some of the issues around treaty negotiations relating to competing claims, overlaps and shared territories (*Hupacasath v. BC, Heiltsuk Tribal Council v. BC*). The Court ruled that a case for Aboriginal title may not be established or might be weakened if there are competing claims to territory. In 2007, the Tseshaht First Nation sought an injunction to stop one of the First Nations

involved in the Maa-nulth negotiations from carrying out a ratification vote, stating that the Maa-nulth were encroaching on lands claimed by the Tseshah. In this case, the Court noted that non-derogation language in treaties does not limit the claim of other First Nations to land included in the treaty. These decisions may result in an increased incentive for First Nations to resolve territorial disputes, as such agreements could serve to expedite the conclusion of treaties.

Finally, two significant Court Cases relating to Aboriginal title and rights may have an impact on treaty negotiations:

- ***R. v. Marshall; R. v. Bernard 2005***. This case was the first significant test of Aboriginal title. The Court held that the Mi'kmaq do not have a treaty right to commercial logging or Aboriginal title to the lands that they logged and that seasonal use of land by an Aboriginal group is not a sufficient basis for Aboriginal title. The Court decision underscored the high threshold required for proving Aboriginal title and affirmed the ability of the Crown to infringe for the good of society.
- ***Tsilhqo'tin Nation v. BC 2007***. The decision of the BC Supreme Court represents a significant judgement on Aboriginal title and rights, as it is the first case to conclude that evidence provided is sufficient to prove Aboriginal title over specific lands. The case was brought by the Xeni Gwet'in First Nation on behalf of the members of the Tsilhqot'in Nation, claiming Aboriginal title to the Nemiah Valley near Williams Lake. The Court held that it could not make a declaration of Aboriginal title because of the "all or nothing" nature of the plaintiff's case. However, in a non-binding opinion, the judge found that the Xeni Gwet'in have title to a significant portion of the claim area, approximately 50% of the Nemiah Valley. Moreover, he concluded that the BC Forest Act does not apply to lands over which Aboriginal title has been proven; by extension, this ruling could apply to other BC legislation. He also encouraged the parties to negotiate a resolution, as the Court is not equipped to achieve a reconciliation of interests.

### Potential Implications of the Decisions on Treaty Negotiations

In 2006, the Auditors General of Canada and British Columbia tabled separate reports on the management of the BC treaty process<sup>7</sup> which contained some observations on the possible impacts of court decisions at that time:

- Some court decisions may make litigation a more attractive option than negotiations.
- Court decisions can slow down negotiations while the impacts of these decisions are analyzed.
- Court-ordered funding (accessible by First Nations to pursue certain Aboriginal rights and title cases) may make it less expensive for some First Nations to litigate rather than negotiate, since they usually have to borrow money to negotiate treaties.
- The common law on many issues related to Aboriginal rights is continuing to develop.
- These changes will have an impact on whether the parties believe they are better or worse off entering a treaty, and whether or not they should continue to focus their energies on treaty negotiation.

The legal context has continued to evolve, and these observations on the potential impacts of court decisions are still relevant in 2009. In addition, recent decisions could also act as an additional catalyst for industry to develop relationships with First Nations when proposing developments on First Nation traditional territory, as most underscore the depth of the Crown's duty to consult and potentially accommodate Aboriginal interests. These relationships would include First Nations not participating in the treaty process.

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<sup>7</sup> Report of the Auditor General of Canada to the House of Commons: 2006, *Chapter 7, Federal Participation in the British Columbia Treaty Process – Indian and Northern Affairs Canada*; and Office of the Auditor General of British Columbia: 2006, *Treaty Negotiations in British Columbia: An Assessment of the Effectiveness of British Columbia's Management and Administrative Processes*

The Tsilhqot'n decision may act as a further disincentive for First Nations not currently participating in the treaty process. The perception among some First Nations might be that resolution of Aboriginal title to other areas of BC could be more effectively achieved through litigation.

## British Columbia Provincial Government developments

In 2006 the Auditor General of British Columbia observed that the province had introduced two strategies to reconcile with First Nations: focus negotiation resources on lead tables closest to signing a treaty and engage all First Nations, both in and outside of the treaty process, in a “new relationship” offering other options for reconciliation. BC has also introduced specific measures, in the form of Incremental Treaty Agreements, to help facilitate the conclusion of treaties. As noted in the Auditor General’s report, “although numerous Interim Measures Agreements have been negotiated within the treaty process...the pursuit of benefits outside the treaty process can have both positive and negative effects on the process of treaty negotiations.”

### Continuation of the Provincial Strategy to Focus Negotiations on “Breakthrough” Tables

In 2002, the province adopted a strategy designed to help the evolution of treaty negotiations as part of its Core Services Review. The strategy involves focusing negotiation resources and efforts on the treaty tables most likely to conclude treaties, maximizing the potential for these tables to achieve Final Agreements. The thinking was that these lead tables would overcome barriers and resolve issues in ways that could then be utilized by other tables, potentially resulting in a faster pace of negotiations. It was also felt that the conclusion of several treaties would provide momentum for the treaty process. While this strategy is one of the factors that may have facilitated the conclusion of the Tsawwassen and Maa-nulth treaties and the progress on 4 Final Agreement negotiations, it has also meant a slower pace of negotiations at the majority of the other tables. In 2006, the Auditor General of BC noted that “the government only has effective and administrative management processes in place to successfully negotiate treaties for the few First Nations at the breakthrough tables,” which would negatively impact the ability of negotiators at the other tables to secure specific mandates or resources, leading to even greater delays in progress at other tables.

### Incremental Treaty Agreements and Other Interim Measures

Interim measures, treaty related measures and incremental treaty agreements are mechanisms designed to facilitate the conclusion of treaties.

Interim measures (IM) agreements provide for the protection or use of lands and resources prior to the conclusion of a treaty, in order to deliver early benefits to First Nations in areas such as land protection, land use planning, governance development and economic studies. There is no requirement that interim measures be directly linked to a treaty, and they can be negotiated apart from the treaty table.

Treaty related measures (TRMs), a type of interim measure, are agreements linked directly to topics under negotiation at the treaty table and are designed to remove barriers to concluding treaties by addressing First Nation concerns at the treaty table. They are cost shared by Canada and BC, and must be negotiated by all three parties at the treaty table. Since their introduction in the late 1990s, over 175 TRMs had been negotiated and implemented by 2008.

Incremental treaty Agreements (ITAs) were introduced by BC in 2008 as a mechanism for stimulating progress towards achieving a Final Agreement. ITAs allow for the negotiation and implementation of components of the treaty before the Final Agreement is signed, providing tangible benefits to the First Nation in advance of treaty. In 2008, BC and the Tla-o-qui-aht First Nations entered into the first-ever ITA, which provided pre-treaty benefits in the form of 63 hectares of land to be transferred in stages, as specific milestones in treaty negotiations are achieved (e.g., AIP signed, FA initialled, FA signed, etc.). The land becomes part of the Final Agreement, and is transferred through a First Nation company, which holds the land in fee simple until the effective date of the treaty. A second ITA was signed in 2009 with the Klahoose First Nation, also in Stage 4 of the BC treaty process. Under the agreement, the First Nation has been provided with \$2.1 million towards the purchase of a tree farm licence in Klahoose traditional territory and an additional



\$150,000 for business opportunity development. A third ITA negotiated with the Haisla First Nation was not ratified in a vote by community members.

It is possible that ITAs could become a factor in advancing negotiations with First Nations in Stage 4 of the process, potentially increasing the pace of settlements.

### The New Relationship

Following the 2004 Supreme Court of Canada decisions on *Haida* and *Taku*, the First Nations Leadership Council (the executive of the First Nations Summit, Union of BC Indian Chiefs and BC Assembly of First Nations) and the Premier of BC began meeting to develop new approaches to consultation with accommodation of First Nations' interests. The resulting "New Relationship" document established a framework for a new government-to-government relationship based on respect, recognition and reconciliation of Aboriginal title. A main objective was to close the gap between Aboriginal and non-Aboriginal people in areas such as education, housing, health and economic development. In support of the New Relationship, BC passed the New Relationship Trust Act in 2006, creating \$100 million trust Fund to be managed by a First Nations entity outside government, and a policy framework to implement the New Relationship.

In the 2009 Throne Speech, BC pledged to further implement the vision of the New Relationship by working with First Nations on new legislation, a *Recognition and Reconciliation Act*. Proposed contents of the legislation were outlined in a discussion paper, and included recognition of Aboriginal title and rights as well as provisions to enable mechanisms for shared decision making and benefit sharing agreements on land within First Nation traditional territories. The legislation was a cornerstone of BC's strategy to offer reconciliation options to all First Nations in BC. They could have potentially complemented the treaty process by resolving conflicts and reducing litigation, although it would also have provided alternatives that might have impacted the interest of First Nations in participating in the treaty process. On August 28, 2009 the proposed content of the legislation as outlined in the discussion paper was rejected by First Nations at an all-Chiefs Assembly. The implications of this decision are not yet clear; if new approaches are pursued in the future it would be important to clarify how these might harmonize with and complement the treaty process.

### Other Provincial Developments

In 2006, the Auditor General of BC pointed out that since treaty negotiations take many years and because of the evolving legal and economic context, "the province has responded by providing First Nations with options such as economic incentives" and other agreements. Although these agreements are generally short term and do not provide the same kind of long-term reconciliation, "they can also have negative effects on successful treaty negotiations, because First Nations can achieve some of their goals outside the process." Some examples:

- BC's *Forest Revitalization Act* resulted in policy changes designed to provide opportunities for First Nations to share in the economic benefits from the forest sector, through negotiated agreements with the province. These Forest Range Agreements (FRAs) formed part of the Ministry of Forests' strategic policy approach to accommodation of a First Nation's potential Aboriginal title and rights interests when making forest management decisions. Since 2004, the province has entered into over 100 FRAs with BC First Nations, for a total of approximately 140 agreements since the policy was introduced in 2003. Direct award of forest tenures associated with these agreements are usually for a five-year period; since 2002 approximately 85 forest licences have been awarded to First Nations under the Ministry of Forest's Direct Award Policy.
- Economic Benefit Agreements (EBAs) are revenue sharing agreements with some of the First Nations Signatories to Treaty 8, relating mainly to oil and gas, forestry and mining. The EBAs provide the First Nations with a share of economic benefits from resource development in their traditional territories. In 2008, the province and Blueberry River First Nations signed a Final Agreement bringing an EBA and seven other Resource Management Agreements under one umbrella agreement. EBAs were also signed with four other Treaty 8 First Nations.

- In October of 2008, the Province of BC announced a new approach to the sharing of direct revenue from mining with First Nations in BC. Policy development appeared to be linked to the New Relationship initiative.
- On November 29, 2007 the *First Nations Education Jurisdiction Act* was passed in the BC Legislature, a year after the *First Nations Jurisdiction over Education Act* received federal royal assent. The legislation followed years of negotiations and the signing of a Framework Agreement by Canada, BC and BC First Nations, represented by the First Nations Education Steering Committee, and enables interested First Nations to assume jurisdiction over kindergarten-to-grade-12 education on reserve. This type of “sectoral” self-government agreement provides a mechanism for First Nations to opt out of the specific education provisions of the Indian Act apart from self-government negotiations through the treaty process. As of February 2009, 63 BC First Nations had formally expressed an interest in this option, and 13 are in active negotiations.

## Federal Government developments

At the federal level, Indian and Northern Affairs Canada (INAC) represents Canada in treaty negotiations with BC First Nations, through the Treaty and Aboriginal Governance (TAG) West office in Vancouver (formerly known as FTNO). Up to 40 other federal departments and agencies are involved, through the provision of assistance to INAC. The federal government’s strategy since 2002 has also been to focus negotiations on tables where progress is being made and results (Final Agreement) are most likely to be achieved.

### Federal Consultation Policy and Interim Guidelines

Since the Supreme Court of Canada *Haida* and *Taku* decisions, the government of Canada has implemented a strategy to address its legal duty to consult and potentially accommodate when the Crown contemplates actions that might impact Aboriginal rights under Section 35 of the *Constitution Act (1982)*. This duty could be triggered by any federal activity (licence, disposition of Crown land, etc.) that could affect Aboriginal or treaty rights. In response, the federal government implemented a strategy and action plan to engage Aboriginal groups in discussions on a federal policy, carry out discussions with provinces and territories to coordinate consultation and accommodation approaches to the degree possible and establish mechanisms to coordinate and monitor policies/processes. In 2008, Canada released Interim Guidelines on Aboriginal Consultation and Accommodation, to provide practical direction to federal departments and agencies. It is not yet clear what direct or indirect impact the strategy and guidelines will have on the BC treaty process; the guidelines will evolve with Court decisions (e.g., Musqueam), which could ultimately result in changes to federal policies and procedures in areas such as disposal of Crown land.

### Federal Negotiating Mandates and Support to INAC by other Federal Departments

Mandates are government instructions provided to federal and provincial negotiators on the content of treaty offers. They include generic mandates common to all negotiations, and specific mandates, which deal with the amount of land, resources, financial transfer, etc. available to be offered to a First Nation approaching a Final Agreement. The federal process for obtaining and changing mandates is complex and time consuming, especially as it involves multiple federal departments and agencies. As noted in the Auditor General of Canada’s 2006 report, “the process of seeking a specific mandate (the federal government’s detailed instructions for each treaty) or revisions to a mandate, is lengthy which can slow the pace of negotiations with First Nations.”

In some cases, treaty negotiations in BC appear stalled or inactive because of First Nations’ disagreements with the federal mandate. In other cases, there are fundamental disagreements on aspects of financing; for example, the requirement for First Nations to give up taxation exemptions.

Also, the Auditor General observed that “departments and agencies supporting INAC in treaty negotiations do not always provide timely responses about their treaty positions to INAC”, for a variety of reasons, including the need to strike a balance between negotiations and other competing interests. For example, the federal

government, through the Department of Fisheries and Oceans, must consider broader interests in its responsibility for managing and protecting the fish habitat before finalizing the fisheries provisions of a treaty. However, the current pause in the ability of the federal government to negotiate salmon allocations is impeding progress at several tables. Until this issue can be resolved, it could be difficult to make progress in negotiations at these and possibly other tables.

### Federal Alternatives

All First Nations are eligible for the array of social, education, health, economic, business development and other programs available through INAC and other departments. The \$12 billion in new funding announced in the federal economic stimulus package includes \$515 million for First Nation infrastructure projects and an additional \$400 million was announced in the 2009 federal budget for housing on reserve. First Nations in the treaty process have access to resources that are not available to First Nations outside the process, including funding to support treaty-related measures and implementation funding.

There are also several legislative initiatives that provide First Nations with options for dealing with elements of Aboriginal title and rights without negotiating treaties. When First Nations opt into these initiatives, the relevant provisions of the Indian Act no longer apply:

- The *First Nations Land Management Act*, implemented in 1999, provides for participating First Nations to opt out of the land management provisions of the Indian Act and develop their own laws and land codes in relation to reserve land. Five BC First Nations were among the initial 14 signatories to the Act. Since then an additional 24 BC First Nations have opted in; BC First Nations now represent 50% of total signatories.<sup>8</sup> This is an example of an opportunity for First Nations to implement self-government on a sectoral basis, outside self-government negotiations at the treaty table.
- The *First Nations Jurisdiction over Education in BC Act* received federal royal assent on December 12, 2006. The legislation followed years of negotiations and the signing of a Framework Agreement by Canada, BC and BC First Nations, represented by the First Nations Education Steering Committee, and enables interested First Nations to assume jurisdiction over kindergarten-to-grade-12 education on reserve by negotiating *Canada-First Nation Education Jurisdiction Agreements* with Canada. This type of “sectoral” self-government agreement provides a mechanism for First Nations to opt out of the specific education provisions of the Indian Act apart from self-government negotiations through the treaty process. Over time, participating First Nations can pass their own education laws, establish their own school systems and education governance structures. As of February 2009, 63 First Nations had formally expressed an interest in this option, and 13 are in active negotiations.

### Other developments that may have affected the treaty process

Over the years, the parties have identified issues or developments that have impacted or are impacting the treaty process in ways that either impede progress or provide momentum for negotiations:

#### Common Table Approach

In support of moving the process forward, a “common table” session was held in 2008, involving more than sixty First Nations communities, Canada and BC. The discussions allowed representatives from Canada, BC and First Nations to identify issues and obstacles to progress at the treaty tables and talk about opportunities for collectively negotiating certain aspects of treaties. Six key issues were discussed, all proving to be too difficult to resolve at the individual negotiating table. These were:

- Recognition/certainty, including overlapping claims/shared territories
- Constitutional status of lands

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<sup>8</sup> Information obtained from Framework Agreement on First Nations Land Management website, [www.fafnlm.com](http://www.fafnlm.com)



- Governance
- Co-management throughout traditional territories, including structures for shared decision making
- Fiscal relations, including own-source revenue and taxation, and
- Fisheries.

The BC Treaty commission prepared a report from the common table discussions, summarizing current impediments and opportunities for moving forward, with the expectation that Canada and BC will review the ideas and determine options for “something tangible” that can be brought to the table to expedite the conclusion of treaties.<sup>9</sup>

### Overlapping Territories

Overlapping claims occur for a variety of reasons, including a First Nation tradition of sharing the land and resources in question, longstanding disputes and/or movement of communities and people. Territorial disputes have arisen during the course of treaty negotiations at some tables, involving neighbouring First Nations both within and outside the treaty process. These must be resolved or addressed if progress is to be made. Mechanisms for resolution include neutral mediation or facilitation, shared territory agreements, or non-derogation language in settlement agreements.

As outlined earlier, some recent court decisions have been helpful in clarifying some of the issues relating to competing claims, overlaps and shared territories. In one case, the Court ruled that a case for Aboriginal title may not be established or might be weakened if there are competing claims to territory. In another case, the Court noted that non-derogation language in treaties does not limit the claim of other First Nations to land included in the treaty. These decisions may result in an increased incentive for First Nations to resolve territorial disputes as such agreements could serve to expedite the conclusion of treaties. In its 2008 Annual Report, the BC Treaty Commission noted that “assertions of Aboriginal rights and title are strengthened where First Nations have territorial protocols in place, and are weakened where competing claims are unresolved. The Commission has become more involved in supporting First Nations’ efforts to resolve territorial disputes as a way of facilitating progress in negotiations. Resolution of territorial disputes could potentially speed up the pace of treaty settlements at those tables.

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<sup>9</sup> Common Table Report, prepared by the British Columbia Treaty Commission based upon discussions among Canada, British Columbia, and the First Nations participating at the Common Table, August 1, 2008, confidential and without prejudice

# Appendix D

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