

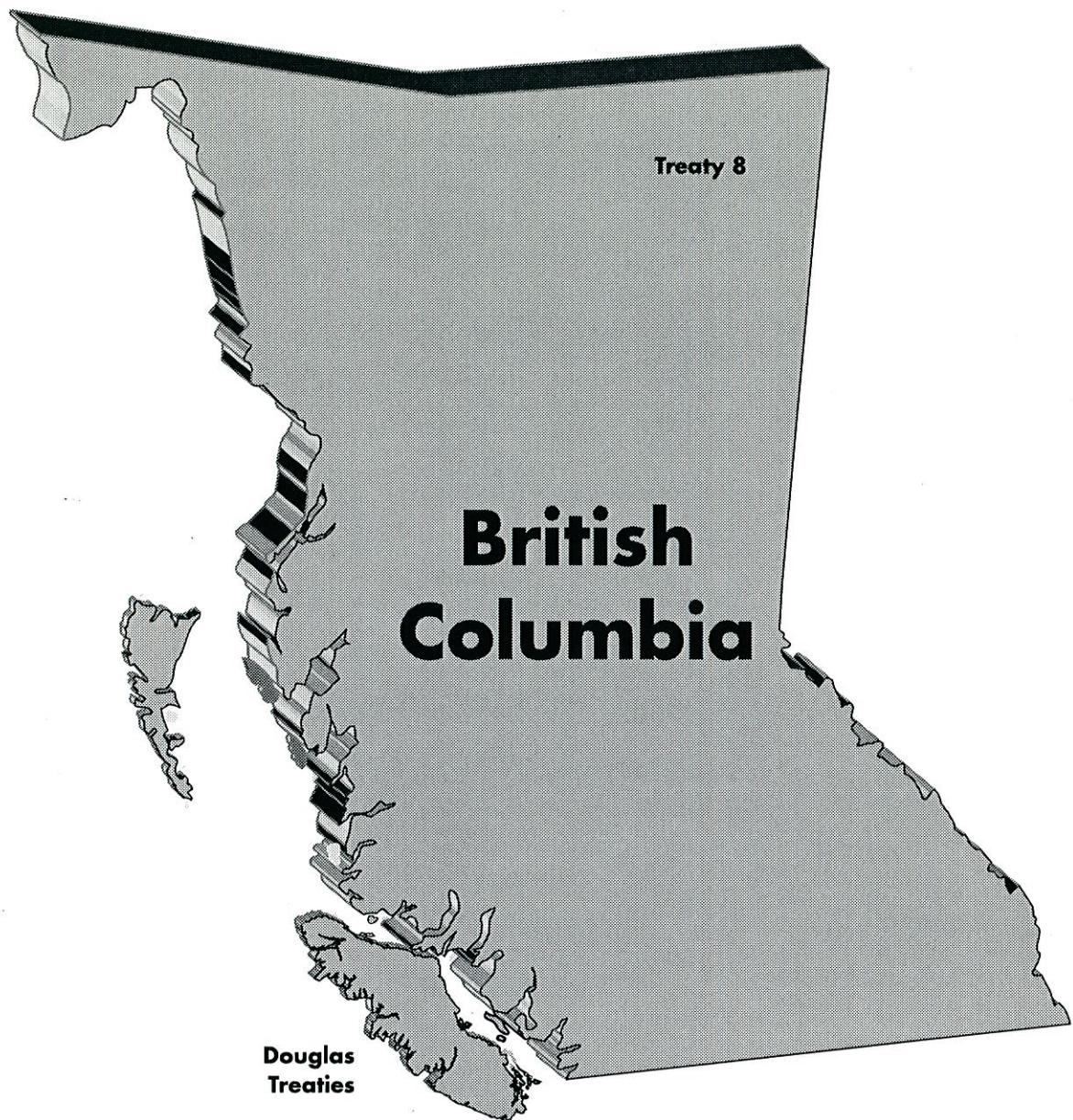


THE FIRST ANNUAL REPORT OF THE

BRITISH COLUMBIA

TREATY COMMISSION

FOR THE YEAR 1993-1994



*I*n the 140 years since European settlement began in what now is British Columbia, the First Nations signed only 15 treaties covering a small portion of the province.

James Douglas, Chief Factor for the Hudson's Bay Company, arranged 14 of them. They cover just 358 square miles of Vancouver Island.

The only post-Confederation treaty in British Columbia is Treaty Eight. It was extended into the Peace River region from Athabasca (Northern Alberta) in 1899.

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Table of Contents

| | Page |
|---|------|
| I. Introduction | 1 |
| II. Executive Summary | 3 |
| III. The Need For A Made-in-B.C. Treaty Making Process: <i>An Historical Perspective</i> | 5 |
| IV. The Birth of the British Columbia Treaty Commission Process..... | 7 |
| V. The B.C. Treaty Commission Members | 9 |
| VI. A Six-Stage Process for Treaty-Making in British Columbia..... | 11 |
| VII. B.C. Treaty Commission Services | 13 |
| VIII. The Commission Start-up | 15 |
| IX. Statements of Intent | 17 |
| X. Initial Meetings | 19 |
| XI. Evaluation of the Process | 21 |
| XII. The Future | 27 |

*As a separate document, bound together with the text document, for submission to the Principals:
 The Financial Statements for the fiscal year ended March 31, 1994*

I. INTRODUCTION

The British Columbia Treaty Commission was appointed on April 15, 1993 under terms of an agreement between the Government of Canada, the Government of British Columbia and the Summit of First Nations, whose members represent the majority of First Nations in British Columbia.

The terms of that agreement require the Treaty Commission to submit at least annually to the Parliament of Canada, the Legislative Assembly of British Columbia and the First Nations Summit "a report on the progress of negotiations and an evaluation of the process."

In preparing this first report to the Principals involved in the treaty-making process, the Commission has chosen to describe events of its first 14 months, from the date of its appointment through June 15, 1994.

The annual financial data has been prepared to coincide with the March 31, 1994 fiscal year-end of the Governments of Canada and British Columbia and is submitted as a separate document.


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




Carole T. Corcoran
Commissioner



Barbara L. Fisher
Commissioner



Dr. Lorne E. Greenaway
Commissioner



Arthur W. Sterritt
Commissioner



C.J. Connaghan
Chief Commissioner

As Chief Commissioner, I wish to express my thanks to my fellow Commissioners, and to the men and women who comprise the Commission's small staff, for their hard work, dedication and support during the challenging start-up period. — CJC

II. EXECUTIVE SUMMARY

In the historic 1991 *Report of the British Columbia Claims Task Force*, which ultimately gave birth to the British Columbia Treaty Commission, the authors identified the need for fair and honourable modern-day treaties between the First Nations of B.C. and the Governments of Canada and British Columbia.

Only 15 treaties covering a small portion of the province have been signed with British Columbia First Nations, leaving the treaty-making process incomplete for 140 years and leading to an often-troubled relationship between the aboriginal and non-aboriginal communities.

The Claims Task Force report calls for "a new relationship which recognizes the unique place of aboriginal people and First Nations in Canada" to be developed and nurtured and says:

"Whatever the issues may be, it is crystal clear that any new relationship must be achieved through voluntary negotiations, fairly conducted, in which the First Nations, Canada, and British Columbia are equal participants."

It is still early in the development of this unique, made-in-B.C., treaty-making process. But 14 months into its mandate, the British Columbia Treaty Commission is confident that the process is workable and can achieve fair and durable treaties. The Commissioners believe an honourable start has been made at building the new relationship envisaged by the Task Force.

The Treaty Commission was established under terms of the September 21, 1992 *B.C. Treaty Commission Agreement*. In signing it, the three Principals—the Summit of First Nations, Canada and British Columbia—gave formal endorsement to their acceptance of all 19 recommendations made by the B.C. Claims Task Force, including *Recommendation #3* which called for a British Columbia Treaty Commission to be established "to facilitate the process of negotiations."

The *Agreement* sets out the role and mandate of the Commission. The Commission operates under its terms and with authority from a resolution of the Summit of First Nations and Orders-in-Council by the governments of Canada and British Columbia, the latter pending legislation. The B.C. legislation was passed on May 26, 1993, but had not been proclaimed at the date of this report, because Federal legislation has yet to be enacted.

Following their appointment on April 15, 1993, the five members of the British Columbia

Treaty Commission spent the initial months carefully considering the Commission's mandate, adopting appropriate policies and procedures under which to fulfill that mandate, and putting in place the required office, staffing and public access arrangements.

The Commissioners have taken seriously their responsibilities and their role as a unique, independent and neutral co-ordinator of this important treaty-making process. The Commission mandate has been described as the 'keeper of the process' with two important elements. The first is the 'gate keeper' function, which determines when to start the process in each case. The other element is that of co-ordinator and monitor of the negotiations and of assisting the parties during negotiations to ensure the process advances.

A further responsibility assigned to the Commission is the allocation of funds to First Nations to help ensure that they are able to prepare for, and participate in, negotiations on an equal footing with Canada and British Columbia. Canada and British Columbia were able to agree in June, 1993, on how the two governments will share the cost of negotiating and concluding treaties in B.C. but were less timely in committing funds.

One year later, the three Principals were able to agree on criteria to be used by the Commission in allocating funds to First Nations. They concluded negotiations on the amount to be allocated in fiscal 1994-95 and the three subsequent years.

The first of six stages in the Treaty Commission process is the filing by a First Nation of a *Statement of Intent* to negotiate. After eight months of deliberation that established the basic ground rules for its operations, the Commission began accepting *Statements of Intent* on December 15, 1993.

The Treaty Commission, feeling that it is important to the entire process there be no inordinate delays, 'opened the gate' before the funding criteria and allocations were settled.

Twenty-nine *Statements of Intent* were filed on December 15 and the total has continued to rise. The *Statements of Intent* were immediately reviewed by the Commission and—by June 15, 1994—the Commission had accepted 41 as complete. Also by that date, the Commissioners had organized and chaired 38 Initial Meetings. Most of these meetings took place within the traditional territory of the First Nation involved, a step which gave a boost to communications with members of



Fourteen months into its mandate, the British Columbia Treaty Commission is confident that the process is workable and can achieve fair and durable treaties.



To date, the process has dealt with preliminary matters essential to the treaty negotiations. Full-fledged negotiations of substantive issues have not yet begun.

the First Nation and which recognized that many First Nations did not have resources to travel to Vancouver.

The Initial Meeting, required to be held within 45 days of acceptance of the *Statements of Intent*, brings negotiators from the First Nation, Canada and British Columbia together for the first time to exchange information and address procedural matters to facilitate future discussions.

To date, the process has dealt with preliminary matters essential to the treaty negotiations. Full-fledged negotiations of substantive issues have not yet begun. Discussions at Initial Meetings have dealt in part with controversial long-standing government policy matters not acceptable to First Nations in the past—and these discussions have demonstrated a willingness to review seemingly entrenched positions.

But the bargaining agenda of the parties is still being defined and the Commissioners are mindful of the importance of ensuring that the necessary preparation is done before substantial negotiation begins.

Evidence of the state of readiness of the parties is being accumulated for Commission assessment and, from experience to date, the Commissioners are confident that several First Nations will be ready to start *Framework Agreement* negotiations by the end of 1994.

Throughout the start-up period, the Treaty Commission has taken scrupulous pains to demonstrate its objective, independent approach to the great challenge presented to it by the three Principals. The Commission also has been frank in bringing matters of importance to the attention of the Principals.

Among them is the whole question of funding for the First Nations. There is a strong sentiment among First Nations that insufficient funding has been provided to them to negotiate on an equal footing with Canada and British Columbia. As of the June 15, 1994 date of this report, however, the funding agreement had not been executed, so the Commission has been unable to determine the validity and extent of this concern.

The Commission also has a concern about the response of the Principals to their obligation to inform the public about the historic need for treaty making in British Columbia and about the ways in which this need is being addressed. In the view of the Commission, the three Principals have been slow to proceed in this regard. It is clear that the absence of accurate information from the Principals has led, and will continue to lead, to apprehension and resistance from interest groups and the public.

The Commissioners recognize that the treaty-making process holds great importance for the future of the province and the country; that building new relationships after 140 years of inaction requires patience, goodwill, trust and understanding.

The Commissioners wish to express their thanks to all parties for the level of trust and respect shown for the Treaty Commission process, and for the patience and goodwill expressed by everyone involved, from both the aboriginal and non-aboriginal communities.

The Commissioners recognize the enormous challenge of their mandate and proceed each day confident that, with public understanding, success can be achieved, to the benefit of all British Columbians and Canadians.

That benefit will come as treaties with British Columbia First Nations lead to greater economic certainty, for aboriginal and non-aboriginal people, and to the social advances a strong economy can support.

III. THE NEED FOR A MADE-IN-B.C.

TREATY-MAKING PROCESS

"The status quo has been costly. Energies and resources have been spent in legal battles and other strategies. It is time to put these resources and energies into the negotiation of a constructive relationship."

—The Report of the British Columbia Claims Task Force, June 28, 1991.

In this, the *First Annual Report of the British Columbia Treaty Commission*, it is appropriate to provide an historical perspective to the need for a made-in-British Columbia treaty-making process.

The *B.C. Treaty Commission Agreement* was signed on September 21, 1992, in an historic ceremony at the Squamish Nation reserve in North Vancouver. Signatories were Prime Minister Brian Mulroney and Indian and Northern Affairs Minister Tom Siddon for Canada; Premier Michael Harcourt and Aboriginal Affairs Minister Andrew Petter for British Columbia; and First Nations Summit leaders Grand Chief Edward John, Chief Joe Mathias, Sophie Pierre, Miles Richardson and Tom Sampson.

The road to that *Agreement*—and to the treaty-making process being co-ordinated by the B.C. Treaty Commission—is a long one.

From time immemorial, the area now known as British Columbia has comprised the territories of many nations of people, each with its own unique language, culture, system of government and spiritual tradition.

This particular part of the North American continent is unique. It was once one of the most heavily-populated regions of the continent. The linguistic, cultural and economic diversity of aboriginal peoples in British Columbia is unparalleled in Canada.

Similarly, the history of non-aboriginal settlement in British Columbia is unique among Canadian provinces. British Columbia entered Confederation in 1871 with no clear resolution to the question of 'the Indian title', as it was once known.

The Royal Proclamation of 1763 acknowledged the Crown's obligations to treat First Nations as self-governing communities with the power to conclude treaties with other nations. The treaty-making process began early in British North America. It continued as non-aboriginal settlers spread westward across the prairies. In much of Canada, European settlers signed treaties with the aboriginal people.

But by 1871, only 14 colonial treaties covering 358 square miles had been concluded on Vancou-

ver Island. These documents provided little more than some small reserves and the recognition of aboriginal hunting and fishing rights in return for the rights of non-aboriginals to acquire land, mainly on Southern Vancouver Island. The only post-Confederation treaty in B.C. is *Treaty Eight*, which was extended into the Peace River country from Athabasca (Northern Alberta) in 1899 after aboriginal people, demanding a treaty, halted traffic to the Yukon goldfields.

To this time, only 15 treaties covering a small portion of the province have been signed with British Columbia First Nations, leaving the treaty-making process incomplete for 140 years.

Through the years, the unfinished business of treaty-making in the province remained the primary concern of First Nations leaders. Chiefs travelled to London to petition the King. They travelled to Ottawa to demand recognition of their rights. They pleaded their cases through the courts.

Unanswered, the 'Indian land question' refused to go away, despite attempts by successive federal and provincial governments to make it go away. These attempts included making it unlawful to press land claims in the courts or organize around the matter, between 1927 and 1951.

First Nations found themselves with little support among the newcomers. Aboriginal people were confined to reserves, denied the vote (until 1949 in British Columbia, 1960 in Canada), cut off from their traditions, and their institutions were banned.

However, aboriginal people continued to practice their traditions, often in defiance of legislation. British Columbia opposed negotiations, arguing that whatever rights to land and resources aboriginal people may have once had were extinguished long ago.

Support for First Nations' concerns was growing among non-aboriginal people. Protests, road blockades and sit-ins became a feature of aboriginal political activity. In 1973, six judges of the Supreme Court of Canada were evenly divided on whether the aboriginal title of the Nisga'a people had ever been extinguished.

The Government of Canada responded to that decision with a policy of entering into negotiations to resolve land claims. British Columbia's position remained unchanged.

In 1982, with the patriation of the *British North America Act*, Canada's Constitution was amended to recognize and affirm the existence of



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the aboriginal and treaty rights of Canada's Indians, Inuit and Metis.

Rallies, road blockades, court actions and increasing political activity in British Columbia prompted the provincial government to establish a Ministry of Native Affairs. It was followed, in 1989, by the formation of the Premier's Council on Native Affairs.

In 1990, after 14 years of refusal, the Government of British Columbia agreed to join Canada in the Nisga'a land claims negotiations. In the same year, the Premier's Council on Native Affairs urged the B.C. government to change its 120-year-old policy and enter negotiations to resolve B.C.'s land claims problems.



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IV. THE BIRTH OF THE BRITISH COLUMBIA TREATY COMMISSION PROCESS

On December 3, 1990, the British Columbia Claims Task Force was established by agreement among Canada, British Columbia and the Summit of First Nations.

The Task Force was established to recommend ways that Canada, British Columbia and First Nations could arrive at negotiated solutions to B.C.'s controversial 'native land claims' problem. Its terms of reference stated:

"The Task Force shall define the scope of negotiations, the organization and process of negotiations including the time frames for negotiations; the need for and value of interim measures and public education."

The Task Force was a tripartite body. Its members were Chief Joe Mathias, hereditary chief of the Squamish Nation; Miles Richardson, president of the Council of the Haida Nation; Tony Sheridan, former B.C. assistant deputy minister of native affairs; Audrey Stewart, a senior federal official involved in negotiations with First Nations; Grand Chief Edward John of the Tl'azt'en Nation; Murray Coolican, president of Eastern Forestry Resources and former chairman of the Task Force to review the federal Comprehensive Land Claims Policy; and Allan Williams, former B.C. Attorney-General, Labour Minister and Minister Responsible for Native Affairs.

The conclusions reached by the Task Force members were published in the B.C. Claims Task Force Report, released June 28, 1991. The Report contained 19 recommendations, each of which was supported unanimously by the Task Force members, and each of which subsequently was accepted by the Governments of Canada and British Columbia as well as the First Nations Summit.

The Task Force called for the negotiation and implementation of modern-day treaties in British Columbia. To facilitate these actions, it recommended the establishment of a made-in-B.C. process co-ordinated by an independent and impartial B.C. Treaty Commission.

The *B.C. Treaty Commission Agreement* signed on September 21, 1992 implemented the Task Force recommendations. The *Agreement* provides for the appointment of the Treaty Commission and sets out the role and mandate of the Commission.

That role is to manage a voluntary process to facilitate the negotiation of treaties in British Columbia, a process that is fair, impartial, effective and understandable. The Commission's role does not include the actual negotiation of treaties. That

responsibility lies with the First Nations, Canada and British Columbia.

The appointment of the Chief Commissioner and four Commissioners was announced April 15, 1993. The Chief Commissioner was jointly appointed by the Summit of First Nations, Canada and British Columbia. Two of the Commissioners were named by the Summit and one was named by each of Canada and British Columbia.

The Commission operates under the terms of the *British Columbia Treaty Commission Agreement* with authority from a resolution of the First Nations Summit and from Orders-In-Council by the governments of Canada and British Columbia, the latter pending legislation in Parliament and in the British Columbia Legislature.

The British Columbia legislation was passed by the Legislative Assembly on May 26, 1993, but had not been proclaimed as of the date of this report.

The Federal legislation has yet to be introduced in Parliament.



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V. THE B.C. TREATY COMMISSION MEMBERS

The five current members of the B.C. Treaty Commission are identified below. There has been one change since the appointment of the Commissioners was announced in April 1993.

Douglas C. Kelly, a Sto:lo from Soowahlie, near Chilliwack, served as a First Nations Commissioner for one year before resigning to devote his full time to duties as Manager of Operations for the Sto:lo Tribal Council. The First Nations Summit elected Arthur W. Sterritt to succeed Mr. Kelly.

The Commission members are:

Charles J. (Chuck) Connaghan, Chief Commissioner, BA (1959) and Master of Arts (1960), University of B.C., was the founding chairman of the British Columbia Roundtable on the Environment and the Economy.

He is a former president of Construction Labour Relations Assn. of B.C. and former Vice-President, Administration, UBC, and has extensive experience in industrial relations, most recently as an independent consultant.

Carole T. Corcoran, First Nations appointee, LL.B. (1990) University of B.C., is a Dene, born and raised in Fort Nelson, B.C.

She has extensive experience in First Nations government, having worked with Band and Tribal Councils as a Councillor, Program Director, Band Manager and Tribal Council President. Mrs. Corcoran has been a Commissioner to the Federal Indian Claims Commission since July 1992.

Barbara L. Fisher, Government of B.C. appointee, LL.B. (1981) University of Victoria, B.Fine Arts (1976) and Diploma in Education (1977), University of Victoria; A.R.C.T., Royal Conservatory of Music.

She was formerly General Counsel and Vancouver Director, Office of the Ombudsman.

For six months in 1992, she was Acting Deputy Ombudsman and in 1991-92 she co-chaired the Special Committee on Physician Sexual Misconduct, which reported publicly to the College of Physicians and Surgeons of B.C.

She has had experience with court administration, was in private law practice until 1989, and currently practices part time as counsel to the B.C. Information and Privacy Commissioner.

Dr. Lorne E. Greenaway, Government of Canada appointee, is a former Member of Parliament for Cariboo-Chilcotin and B.C. caucus chair, a veterinary surgeon with practices in Kamloops and Richmond, B.C., a former B.C. Deputy Minis-

ter of Agriculture and Fisheries and former Chair of the Provincial Agricultural Land Commission.

He spent a year (1992-93) as an advisor to the Comprehensive Claims Branch of the Federal Department of Indian Affairs and Northern Development.

Arthur W. Sterritt, First Nations appointee, born Gitksan and adopted into the Eagle Clan of the Gitga'ata Tribe of the Tsimshian Nation, has considerable experience in negotiating and Summit processes in British Columbia.

Formerly a commercial fisherman, he was the founding Chair and past President of the Tsimshian Tribal Council, the elected President of the North Coast Tribal Council and a member of the B.C. Constitutional Working Committee.

He is currently involved with the Heritage Language and Culture Trust Fund and the Lillian Brown Trust Fund.



VI. A SIX-STAGE PROCESS FOR TREATY-MAKING IN BRITISH COLUMBIA

In recommending a made-in-B.C. treaty-making process, the B.C. Claims Task Force noted that successful negotiations must rest on the “*serious resolve and commitment*” of all three parties to treaty talks—Canada, British Columbia and the First Nation.

The Task Force set out a six-stage process for the Treaty Commission to administer as a means to help ensure that such resolve and commitment are brought to the negotiating table.

In summary, the process is as follows:

Stage 1 A First Nation submits a *Statement of Intent* to negotiate a Treaty.

Stage 2 Preparation for Negotiation, which includes an Initial Meeting of the parties and, with reference to criteria established by the Task Force Report, a Treaty Commission assessment of whether the parties are ready to negotiate.

Stage 3 Negotiation of a Framework Agreement, which will identify the subjects for and objectives of the negotiations and establish procedures and a time table.

Stage 4 Negotiation of an Agreement in Principle in which the parties reach the major agreements which form the basis of the treaty.

Stage 5 Negotiation to Finalize a Treaty, which will formally embody the principles which underpin the new relationship and the agreements reached in Stage 4 and will provide the implementation plan.

Stage 6 Implementation of the Treaty, including legislation by the parties where required.



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VII. B.C. TREATY COMMISSION SERVICES

While the onus for negotiations rests solely with the parties, the British Columbia Treaty Commission's role includes provision of a number of services to facilitate the negotiations. These services include:

- ❑ *Co-ordinating the schedule for Initial Meetings and for the start of negotiations and monitoring progress.*

The Treaty Commission's role has been described as that of the 'Keeper of the Process' whose job essentially is to co-ordinate the treaty-making process and to assist the parties in keeping the process moving forward. As a part of this, the Commission is the 'gate keeper' determining when to start the process in each case and is the 'monitor' observing and reporting publicly on progress.

- ❑ *Assessing First Nations' funding requirements and distributing those funds.*

The Commission responsibilities include administering funds to assist the First Nations with preparation for negotiations. Financing for this purpose is to come from Canada and British Columbia. The objective is to ensure that the First Nations are able to prepare for and carry out negotiations on an equal footing with federal and provincial governments.

The Commission will allocate funds to address budget requests filed by the First Nations. Eighty per cent of the funds allocated will be in the form of a loan to be repaid in due course by First Nations.

- ❑ *Determining the readiness of each of the parties to begin negotiations.*

The Commission is to ensure that there is no delay of the process but also must ensure that negotiations do not begin until all parties are adequately prepared. That preparation for each party includes identifying subject matters to be negotiated, appointment of negotiators with adequate resources and with a comprehensive and clear mandate, and adopting of a ratification procedure.

The readiness criteria for the First Nation also includes evidence of having consulted its communities and identified and begun a process to address any overlapping territorial issues with neighbouring First Nations.

The readiness criteria for Canada and British Columbia includes evidence that a mechanism is in place for consultation with non-aboriginal interests and that they have researched the background of the communities, people, and interests likely to be affected by the negotiations.

In addition, the Treaty Commission has prepared a 'readiness checklist' which reflects many helpful observations by First Nations, Canada and British Columbia during Initial Meeting discussions.

- ❑ *Encouraging timely negotiations by assisting the parties to establish a negotiating schedule, and monitoring the progress of treaty talks.*
- ❑ *Providing dispute-resolution services when the parties request such services.*
- ❑ *Submitting an annual report to Canada, British Columbia and the Summit of First Nations.*
- ❑ *Developing an information base to assist the parties.*
- ❑ *Providing a public record on the status of each negotiation.*



The Treaty Commission's role is 'Keeper of the Process' whose job is to co-ordinate the treaty-making process and to assist the parties in keeping the process moving forward.



VIII. THE COMMISSION START-UP

In the wake of the announcement of the members of the Treaty Commission, the Commissioners moved quickly into the work of establishing clear and effective operating policies and procedures, within the framework of the *British Columbia Treaty Commission Agreement*. The development of these policies and procedures included consultation and review with representatives of Canada, British Columbia and the First Nations Summit.

The Commissioners also travelled throughout British Columbia to meet with First Nations and other groups and undertook speaking engagements and media interviews to generate public awareness and encourage understanding and goodwill towards this important process.

In June, 1993, the Commission opened its office in Vancouver. Public access was set up through a province-wide toll-free telephone service (1-800-665-8330). Staff members were employed.

In the same month—on June 21, 1993—Canada and British Columbia announced an agreement on how the two governments will share the cost of negotiating and concluding treaties in British Columbia. Commitment of financing for the negotiating process, however, was less timely.

Ideally, financing by Canada and British Columbia and agreement between Canada, B.C. and the First Nations Summit on funding guidelines and criteria, would have been in place before the gate was opened to *Statements of Intent*. That was not to be.

The Treaty Commission felt it was important to the entire process that there be no inordinate delays in receiving and reviewing *Statements of Intent* from B.C. First Nations. Therefore, despite the absence of a final agreement on negotiations financing and funding, on November 16, 1993, the Commission announced that *Statements of Intent* could be filed starting December 15, 1993. The first filings were received when the Commission office opened on that Wednesday morning. By the end of the day, 29 *Statements* had been received. The Commission moved immediately to review of *Statements of Intent*.



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X. INITIAL MEETINGS

One of the Commission's primary duties is to give written notice and convene an Initial Meeting of the parties within 45 days of acceptance of a *Statement of Intent* to negotiate a treaty.

The purpose of this meeting is to provide the parties with an opportunity to formally commit themselves to negotiate a treaty, exchange information, discuss necessary background studies and consider the criteria the Commission will use to determine the parties' readiness to negotiate.

The Commission's policy is to convene Initial Meetings, where possible, in a timely manner and in the traditional territory of the First Nation concerned. There are two basic reasons for this policy. One is the fact that such a meeting presents an opportunity for communications within the First Nation's own community. In addition, the First Na-

tions did not have resources to travel.

The schedule of meetings, often in locales that do not lend themselves to easy access from urban centres, presented a challenge not only to the individual Commissioners who chaired the meetings, but to federal and provincial negotiating teams and support staff from those teams and the Commission. The challenge was met in each case without fail.

These meetings often had a ceremonial component where people recognized and understood the historical importance of starting a process that has been waiting for 140 years to begin.

All Initial Meetings achieved their objectives of bringing the parties together to discuss important matters. By June 15, 1994, the Commission had organized and conducted 37 Initial Meetings, each chaired by a Commissioner, as follows:

| First Nation | Date | Meeting Location |
|---------------------------------|-------------|---------------------------|
| Ka:yu:k't'h' /Che:k:tl'es7et'h' | January 20 | Port Alberni |
| Ditidaht | January 20 | Opetchesah (Port Alberni) |
| Nuu-chah-Nulth | January 21 | Port Alberni |
| Lheit-Lit'en | January 26 | Prince George |
| Carrier-Sekani | January 26 | Prince George |
| Cheslatta | January 27 | Prince George |
| Gitanyow | February 1 | Terrace |
| Haisla | February 2 | Prince Rupert |
| Westbank | February 2 | Kelowna |
| Tsimshian | February 2 | Prince Rupert |
| Haida | February 4 | Skidegate |
| In-Shuck-ch | February 7 | Vancouver |
| Kwakiutl/Musgamagw | February 8 | Cape Mudge |
| Nanoose | February 8 | Nanaimo |
| Nanaimo | February 9 | Nanaimo |
| Homalco | February 9 | Nanaimo |
| Hul'qumi'num | February 10 | Duncan |
| Songhees | February 11 | Victoria |
| Taku River Tlingit | February 11 | Whitehorse |
| Champagne and Aishihik | February 10 | Whitehorse |
| Cariboo | February 15 | Williams Lake |
| Gitksan and Wet'suwet'en | February 15 | Terrace |
| Ktunaxa-Kinbasket | February 15 | Cranbrook |
| Musqueam | February 17 | Vancouver |
| Heiltsuk | February 21 | Port Hardy |
| Beecher Bay | February 22 | Sooke |
| Owekeeno | February 22 | Port Hardy |
| Tsawwassen | February 23 | Delta |
| Kaska Dena | February 25 | Prince George |
| Xaxli'p | March 2 | Fountain Valley |
| Squamish | March 3 | North Vancouver |
| Nat'oot'en | March 4 | Burns Lake |
| Esketemc | March 7 | Alkali Lake |
| Treaty Eight | March 11 | Fort St. John |
| Tahltan | April 6 | Dease Lake |
| Burrard | April 8 | North Vancouver |
| Katzie | April 19 | Pitt Meadows |
| Yale | May 24 | Chilliwack |



All Initial Meetings achieved their objectives of bringing the parties together to discuss important matters

XI. EVALUATION OF THE PROCESS

The experience of the first 14 months of the Commission's work has reinforced the Commissioners' belief that the process is workable and can achieve fair and durable treaties.

The level of official acceptance of the voluntary B.C. Treaty Commission process appears evident in the commitments being made by Canada and British Columbia and in the significant numbers of First Nations who have decided to participate and who have demonstrated that decision by filing Statements of Intent.

To evaluate the Treaty Commission process, particularly at this early stage of its development, we believe it is appropriate to look at the mandate of work of the Commission in light of the recommendations of the 1991 *Report of the B.C. Claims Task Force*. It is this document, reflecting an historic consensus reached by representatives of Canada, British Columbia and the First Nations, which forms the foundation upon which the Treaty Commission mandate is based.

We set out here the recommendations of the Task Force and follow each one with the Commission's comments.

Recommendation #1

First Nations, Canada and British Columbia establish a new relationship based on mutual trust, respect and understanding, through political negotiations.

- ☐ While it is still very early in the development of the process, a start has been made at building a new and honourable relationship between First Nations, Canada and British Columbia through the Initial Meetings, co-ordinated by the Treaty Commission.
- ☐ Negotiations have been concluded at the political level—the level of the three Principals—on such important issues as:
 - a) Criteria to be used by the Commission in allocating funds to First Nations for negotiations; and
 - b) The amount of funds available for allocation to First Nations in fiscal 1994-95 and the three subsequent years.

Recommendation #2

Each of the parties be at liberty to introduce any issue at the negotiation table which it views as significant to the new relationship.

- ☐ Since full-fledged negotiations have not yet begun it is difficult to respond to this. The bargaining agenda of the parties is not yet known.

Nevertheless, discussions at Initial Meetings have dealt with controversial long-standing governmental policy matters not acceptable to First Nations in the past. These discussions have demonstrated a willingness to review seemingly entrenched positions.

- ☐ It must also be noted that in some cases the governments, in particular British Columbia, have been prepared to discuss interim protection measures, particularly on resource issues, when initiated by First Nations. The Commission also notes that the governments, in dealing with these measures, do not appear to have a consistent approach.
- ☐ There appears to be a clear understanding among the parties that there is no restriction on what can be negotiated.

Recommendation #3

A British Columbia Treaty Commission be established by agreement among the First Nations, Canada and British Columbia to facilitate the process of negotiations.

- ☐ The British Columbia Treaty Commission has been established by the Principals. Its mandate has been spelled out in the British Columbia Treaty Commission Agreement and it is operating under the auspices of this agreement, Orders-in-Council of Canada and British Columbia, and by resolution of the First Nations Summit.

The B.C. Treaty Commission has not yet been established through legislation. The Province of British Columbia moved quickly to provide a legislative base for the Commission and the B.C. Legislature passed the necessary legislation May 26, 1993. This legislation, however, has not been proclaimed, since the Government of Canada has not yet introduced companion legislation in the House of Commons. At the time of this report, the Commission has had little indication from the Federal government of a proposed date for the introduction of such legislation.

Recommendation #4

The Commission consist of a full-time chairperson and four Commissioners—of whom two are appointed by the First Nations, and one each by the federal and provincial governments.

- ☐ A five-person Commission has been in place since April 15, 1993. One of the original two First



There appears to be a clear understanding among the parties that there is no restriction on what can be negotiated.

Resolution of overlaps is not necessary prior to the parties entering negotiation. What is required is that the First Nations have a procedure in place for resolving overlaps.

Nations appointees resigned in April 1994 to return to work for his community on a full-time basis. The background and experience of the Commissioners is set out earlier in this report.

Recommendation #5

A six-stage process for negotiating treaties.

- ☐ The Treaty Commission has moved 41 First Nations into Stage 2—*Preparation for Negotiation*—of the six-stage process.

Recommendation #6

The treaty negotiation process be open to all First Nations in British Columbia.

- ☐ The 41 First Nations who have joined the treaty-making process are part of the Summit of First Nations, an umbrella coordinating body of First Nations established for treaty-negotiating. Notwithstanding that fact, the B.C. Treaty Commission has made information about the treaty-making process available to all First Nations, whether or not affiliated with the Summit of First Nations.
- ☐ As of June 15, 1994, 60.2% of Indian Bands representing 65.0% of the total First Nations population in B.C. were part of the treaty-making process.
- ☐ Since participating in the process is voluntary, First Nations are free to remain outside the process. Some have, as of the date of this report.

Recommendation #7

The organization of First Nations for the negotiations is a decision to be made by each First Nation.

- ☐ It is clear that the intent of the *B.C. Treaty Commission Agreement's* definition of First Nation is one of self-definition. The *Agreement* states: "First Nation" means an aboriginal governing body, however organized and established by aboriginal people within their traditional territory in British Columbia, which has been mandated by its constituents to enter into treaty negotiations on their behalf with Canada and British Columbia."

The B.C. Treaty Commission has followed this definition in accepting *Statements of Intent* and this may, in part, be responsible for having 41 First Nation participants in the negotiation process rather than the 30 First Nations anticipated by the Claims Task Force. Since the process has started, a small number of bands have separated from Tribal Councils in order to undertake negotiations on their own.

Recommendation #8

First Nations resolve issues related to overlapping traditional territories among themselves.

- ☐ An overlap occurs when two or more First Nations claim the same territory. The framers of

the process wisely recognized that overlap issues, sometimes spanning many years, are best resolved by the First Nations themselves.

Under this process, it has been agreed by the Principals that resolution of overlaps is not necessary prior to the parties entering negotiation. What is required is that the First Nations have a procedure in place for resolving overlaps. Otherwise, the First Nation will not be deemed to have achieved readiness to proceed into negotiations.

Recommendation #9

Federal and provincial governments start negotiations as soon as First Nations are ready.

- ☐ This is one of the features that makes this approach different from other comprehensive treaty-making processes in Canada. Under the previous system only six sets of negotiations were allowed to proceed at any one time. Under the B.C. Treaty Commission process, there is no such restriction.

Recommendation #10

Non-aboriginal interests be represented at the negotiating table by the federal and provincial governments.

- ☐ In developing this recommendation, the architects of the process clearly realized that both the federal and provincial governments would face major challenges in representing the full range of non-aboriginal interests within British Columbia society.

It was foreseen that it would be essential for these non-aboriginal groups to have the opportunity to contribute to the development of new working relationships between the Crown and First Nations and between the non-aboriginal and aboriginal communities in B.C.

It was also foreseen that there would be demands for involvement by non-aboriginal groups in the actual negotiating process. This was considered by the Claims Task Force to be impractical and an impediment to successful negotiations.

However, it was suggested that the parties might wish to consider special procedural arrangements for involving non-aboriginal interests during negotiations at the *Framework Agreement* step—Stage 3 of the six-stage process.

- ☐ In July 1993, Canada and British Columbia announced the establishment of the Treaty Negotiation Advisory Committee (TNAC). This body has a membership of 31 and is comprised of representatives of a broad cross-section of interest groups, including the province's primary land and resource users. Its function is to pro-

vide advice to the two governments on treaty matters.

In a similar initiative, the B.C. government reached agreement with the Union of B.C. Municipalities to provide a consultative mechanism with local governments when municipal interests are potentially affected in treaty negotiations.

- Under the terms of the B.C. Treaty Commission Agreement, the governments are obligated, as part of their preparation responsibilities, to establish mechanisms for consultation with non-aboriginal interests for each negotiation in which they are to participate. Whether this obligation has been met will be an important criterion in determining the readiness of the governments to proceed to the *Framework* stage.

Recommendation #11

The First Nation, Canadian, and British Columbian negotiating teams be sufficiently funded to meet the requirements of the negotiations.

- It was agreed that adequate funding for the three parties in negotiations is critical to the success of the process. Concurrence was also reached on the importance of First Nations being able to prepare and carry out negotiations on an equal footing with the federal and provincial governments.

This, it was felt, can only be achieved if First Nations have adequate financial resources available to them and if they are allowed to manage their expenditures without interference from either of the governments. The Treaty Commission was given the responsibility for allocation of funds to the First Nations and for managing the related financial accountability, recognizing that First Nations will be accountable to their own people for specific expenditures.

It was foreseen that the financial requirements and circumstances of First Nations would vary considerably. This would be influenced by such factors as availability of resources and expertise, diversity of membership, geographic location and travel requirements, current degree of readiness, and experience in negotiations.

A major concern of First Nations is their ability to compete on an equal footing at the bargaining table with Canada and British Columbia, since the governments have access to the expertise and the resources of the many ministries and departments within the government bureaucracies. To assist in this, the First Nations looked to the Treaty Commission—as ‘Keeper of the Process’—to maintain a level playing field.

Recommendation #12

The Commission be responsible for allocating funds to the First Nations.

- Under the terms of the B.C. Treaty Commission Agreement, the Commission is to allocate to First Nations the funding provided by Canada and British Columbia. Further, the allocation of financial resources is to follow a set of Allocation Criteria which have been developed by the Summit, Canada and British Columbia.

The negotiations between the Principals for the allocation criteria and the amount of funds available in Fiscal 1994-95 and each fiscal year for the following three years was a long, drawn-out process. Indeed, reaching agreement took much longer than had been anticipated.

The funds available are comprised of 80% in the form of loans and 20% contributions. Each First Nation seeking funding to prepare and conduct negotiations must enter into a loan agreement with Canada for the loan portion. The contribution portion will be provided by the Commission under an agreement entered into by the Commission and the First Nation.

The management of the funding agreements is the responsibility of the Commission, including receiving audit information for both loans and contributions.

- There is a strong sentiment among First Nations that insufficient funding has been provided to them to negotiate on an equal footing with Canada and British Columbia. This was reinforced by early budgetary requests from a group of First Nations which indicated funding expectations are much higher than was anticipated by Canada and British Columbia.

As of June 15, 1994, the funding agreements had not been executed. Thus, to the time of this report, the Commission is unable to determine whether the First Nations’ concern about insufficient funding is valid. However, the Commissioners will have much harder evidence by year-end and will, at that time, offer its views on this matter.

- In the view of some people, the Commission has been placed in an unenviable position. On the one hand, as ‘Keeper of the Process’, it must oversee and facilitate the negotiating process. At the same time, it must act as paymaster when it allocates finances to First Nations. To some, this places the Commission in a contradictory, no-win situation.

The Commissioners, however, realize that under the terms of the *B.C. Treaty Commission Agreement*, they are responsible for funding al-



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location and are determined to do this job in a fair and equitable manner.

- The Commission is acutely aware that lack of financial resources has left some First Nations with considerable pre-negotiation work before they are ready for negotiations. With this in mind, the Commission has discussed with Canada and British Columbia means of sharing with the First Nations information which the governments have on record in such areas as resources. Such a co-operative gesture will overcome the need for First Nations to undertake expensive and lengthy research.

Recommendation #13

The parties develop ratification procedures which are confirmed in the *Framework Agreement* and in the *Agreement in Principle*.

- It was contemplated that each party's ratification process would be dealt with in negotiations at Stages 3 and 4. It is vital that each party understand the other's ratification process. The parties also must have confidence that agreements reached have been fully considered and approved and that once a treaty has been ratified it will be binding on the parties.

First Nations may have different ratification procedures because they have different and distinctive organizations and political structures. The Commission has indicated strongly to First Nations, Canada and British Columbia that an appropriate ratification procedure must be clearly spelled out and be in place before the parties will be allowed to progress to *Framework Agreement*—Stage 3.

Recommendation #14

The Commission provide advice and assistance in dispute resolution as agreed by the parties.

- The responsibility for resolving disputes that arise in negotiations rests with the parties. However, it has been recognized that where disputes are of a continuing nature, the parties may invite the Commission to offer advice. The Commission is prepared to respond to requests from the parties to assist with dispute resolution.

Recommendation #15

The parties select skilled negotiators and provide them with a clear mandate, and training as required.

- A key consideration for the Commission in determining readiness of the parties resides in the negotiating mandate given to the negotiators. The Commission believes that negotiators must have clear mandates. Negotiators also should have a well-considered mechanism for

modifying mandates and ready access to their policy leadership.

- Since the B.C. treaty-making process is one of a kind covering many more First Nations than in any other modern treaty-making approach, the parties will require a large number of experienced negotiators.
- The training of negotiators is a serious issue for the parties and some have developed appropriate training procedures.

During early fiscal 1994-95, the Commission provided funding to First Nations for the development of a First Nations' training seminar and for development of negotiating materials.

Recommendation #16

The parties negotiate interim measures agreements before or during the treaty negotiations when an interest is being affected which could undermine the process.

- Interim measures were considered necessary since treaty negotiations could take considerable time. Interim measures are not contemplated to be substitutes for treaties and care must be exercised to ensure that interim measures discussions do not replace or impede treaty negotiations.

A number of interim measures have been entered into by First Nations and the British Columbia government. Not all are within the treaty process. A number of interim measures discussions have been held as a result of discussions at the Initial Meetings and these are continuing.

Recommendation #17

Canada, British Columbia, and the First Nations jointly undertake public education and information programs.

- The treaty-making process holds great importance for the future of the province and the country. The Task Force clearly recognized that building new relationships after 140 years of neglect requires patience and goodwill. To the Commissioners, it is essential that the public be as fully informed as possible on the historic need for treaty making in British Columbia and on the ways in which this need is being addressed.

The three Principals, in the view of the Commission, have not carried out their obligations to inform the public.

Since the establishment of the B.C. Treaty Commission on April 15, 1993, the Principals have been slow to move on this issue. Only in June 1994, in a public forum in Prince George, did they launch their public information process—14 months after the Commission was established and 22 months after the

B.C. Treaty Commission Agreement was signed by the Principals.

It is clear that the absence of accurate information from the Principals has led and will continue to lead to apprehension and resistance from interest groups and the public.

The B.C. Treaty Commission has an obligation to inform the public about the treaty-making process and has done this in the past and will continue to do so in the future. However, the primary communications responsibility rests with the Principals—Canada, British Columbia and the First Nations Summit.

The process has progressed to the point where the public is seeking answers which cannot be provided by the Commission. The level of public acceptance of the process will reflect the success in delivering accurate and objective information upon which members of the public can make their own judgment. This communication becomes increasingly important as the Treaty Commission process moves forward into Framework negotiations.

The Treaty Commission believes there is an urgent need for the Principals to launch a more comprehensive information program than has been evident to date and urges the Principals to expend considerable effort in this regard.

Recommendation #18

The parties in each negotiation jointly undertake a public information program.

- ☐ Once negotiations get under way at the local level, it will be essential for the three parties to develop a continuing means of communicating with local interest groups and the public. The Commission readiness criteria states that it will require Canada and British Columbia, in particular, to have established communications mechanisms in the local areas.

Recommendation #19

British Columbia, Canada, and the First Nations request the First Nations Education Secretariat, and various educational organizations in British Columbia, to prepare resource materials for use in the schools and by the public.

- ☐ The Commission has no knowledge of this obligation having been undertaken by the Principals 14 months into the process. In the Commission's view, this should begin immediately.

An important benefit to all British Columbians when treaties are concluded should be a new relationship between the non-aboriginal and aboriginal communities based on an understanding of each other. In the absence of

accurate information to assist people to understand each other, the hope for a new relationship will fade.



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XII. THE FUTURE

The challenges facing the B.C. Treaty Commission in the year ahead are substantial and highly predictable.

An immediate task of the Treaty Commission is to allocate finances to a large number of First Nations so that they can complete the work necessary to meet the readiness criteria to enter negotiations. The Commission also will have to allocate finances for those First Nations who are considered ready and prepared to enter *Stage 3—Negotiation of a Framework Agreement*. In doing so, the Commission, as keeper of the process, must allocate available funds in a fair and equitable manner. That is vital to ensure the integrity of the process.

Another critical task facing the Treaty Commission relates to readiness. The Commissioners are aware of the importance of having Canada, British Columbia and First Nations fully prepared before they enter negotiations so that they can proceed towards a treaty in a timely fashion. The Treaty Commission mandate includes determining the state of readiness and the level of preparation of all of the parties to enter negotiations.

This task—and the allocation of finances in a fair and equitable manner, to cover a potential of 40 or more First Nations in the treaty-making process—is a formidable challenge.

The Commission has additional responsibilities, including the monitoring of negotiations and providing assistance to the parties in dispute resolution when negotiations are under way.

At the time of this *Annual Report*, no full-fledged negotiations have begun in any case proceeding under the Treaty Commission process.

Public understanding of, and support for, the Treaty Commission process and its potential benefits for all British Columbians and Canadians will be of great help to the Commissioners in meeting this challenge. From experience to date, the Commissioners are confident that, by the end of 1994, several of the First Nations will be ready to start *Stage 3—Negotiation of a Framework Agreement*. The Commissioners are equally confident that, given the will on the part of all parties and the communities they represent, all of the First Nations in this process in British Columbia can be into negotiations through this treaty-making process within two to three years.

This, in itself, is likely to generate benefits to the people of British Columbia and the rest of Canada because it can reduce the level of uncertainty that

exists when the courts and confrontation are the chosen options to settling long-standing issues.

What is less clear to the Commission—and, the Commissioners believe, less clear to the public—is just what will be on the negotiating table in terms of the detailed bargaining agenda of the First Nations and the likely offerings of Canada and British Columbia.

The Commission, of course, is not in a position to respond to such questions; nor is it likely at this time that any of the negotiators can respond in terms of details, dollar amounts, jurisdiction over lands, resources and political decisions.

Ultimately, those details must be determined by society as a whole, both aboriginal and non-aboriginal, through their representatives at the negotiating table. To facilitate that, there must be effective and ongoing communication—from the Commission, as required by the responsibilities assigned it by the *Treaty Commission Agreement*—and between the parties and their constituents.

The Treaty Commission will monitor progress and report to the public as fully as possible without harming negotiations. The balance of the communication equation rests with the parties and the Principals—the First Nations, the First Nations Summit, British Columbia and Canada.

There can be no doubt that treaty-making on a scale as large as that currently under way in British Columbia will require considerable commitment of resources, political will, persistence and a clear set of goals and objectives.

In addition, for the Treaty Commission process to succeed in building the new relationships between First Nations, British Columbia and Canada that are envisaged in the *Report of the British Columbia Claims Task Force*, there must be continued patience, understanding and goodwill on the part of all Canadians.



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