

RECOMMENDATION 8:

First Nations resolve issues related
to overlapping traditional territories
among themselves

REPORT OF THE BRITISH COLUMBIA CLAIMS TASK FORCE, JUNE 28, 1991

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First Nations resolve issues related to overlapping traditional territories among themselves

This was one of 19 recommendations from the Task Force Report that provide the framework for the BC treaty negotiations process. The process was given legal force through the British Columbia Treaty Commission Agreement, 1992 and legislation establishing the Treaty Commission.

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LETTER FROM THE CHIEF COMMISSIONER

On June 19, 2014 the Tla'amin Final Agreement received Royal Assent in the House of Commons. Tla'amin Nation has set April 5, 2016 as the effective date for the implementation of their treaty. This brings the BC treaty negotiations process to eight fully ratified or implemented Final Agreements, seven First Nations in Final Agreement negotiations or with completed Agreements-in-Principle (AIP) and 11 First Nations in advanced AIP negotiations.

The made-in-BC treaty negotiations process remains a viable option for First Nations wanting to leave the *Indian Act* and the Indian reservation system behind and pursue full self-determination.

As I reflect on the activities of the BC Treaty Commission these past five years that I've had the privilege of being the Chief Commissioner, I'm happy to see that many of the recommendations that we have made are being implemented, including specific recommendations that the Federal Government is now addressing. I will come back to these later.

Some of the dialogue in this country around aboriginal issues remains the same, especially around reconciliation. The greatest expression of reconciliation is a modern treaty, fairly negotiated and honourably implemented.

This year's annual report is a very in-depth examination of the on-going and thorny question of overlapping claims and shared territory. The Commission has supported the efforts of First Nations in trying to reach agreements within their nation and with neighbouring nations. We have consistently identified overlapping claims as one of the biggest challenges that a First Nation, reaching Final Agreement, must overcome. This is also an issue that impacts both Canada and British Columbia.

We have been somewhat successful in convincing these two Principals of the necessity to provide the multi-year funding required to complete this work. I believe the ground-breaking Supreme Court of Canada decision in *Tsilhqot'in* should destroy any lingering thoughts that this issue is not of the utmost importance and provide the necessary investment, both financial and time commitment, to reach satisfactory conclusions. I hope that the recommendations we have made in this report will support the on-going resolution of this question, which affects all First Nations, whether in treaty negotiations or not, and the Federal and Provincial governments.

As I mentioned earlier, year after year BCTC has pointed out the significant stumbling blocks to successful treaty negotiations created by heavily limited federal mandates. On July 28, Minister Valcourt made a special announcement, partly in response to the Eyford Report tabled November 29, 2013, and to many other reports over the years, including the Senate Standing Committee Special Report on improving the federal mandate for treaty negotiations. It was good news in four specific areas:

1. Changes to the Own Source Revenue policy;
2. A mandate to negotiate fish, finally, after seven years of study and internal review;
3. Certainty language that is jointly developed by all three Principals; although it may have to be re-visited now in light of the *Tsilhqot'in* decision;
4. the re-appointment of Douglas Eyford as a Ministerial Special Representative to lead discussions for renewing and reforming the Comprehensive Land

Claims Policy. BCTC's message to this discussion will remain the same: We have a made-in-BC treaty negotiations process that is proven to work, hence the Tsawwassen and Maa-nulth Treaties, and the growing number of tables reaching important milestones towards completion of treaty negotiations. However, the process still needs the commitment of the Principals to maintain the momentum by having effective mandates and efficient teams ready to get the job done.

In last year's annual report, we questioned the Provincial government's readiness to negotiate as well as to implement existing treaties. The flurry of activity this past summer in reaction to the *Tsilhqot'in* decision and the commitments from the Premier and the Cabinet are encouraging. We specifically recommend that the Province strengthen its core negotiation teams to concentrate on finalizing treaty negotiations, separate from short-term resource negotiations.

The one matter that has not been fully addressed by the Principals is an exit strategy for those negotiation tables where, for a number of reasons, the parties no longer seem able to conclude a treaty. Any exit strategy must deal with the existing debt — everyone knows that — but the standard response from the Federal and Provincial governments is “there's no appetite within our systems to deal with this”. Well folks, we need a new menu and the first item on that menu is debt forgiveness. Those First Nations who entered negotiations, in good faith, accepted the only option open to them in terms of funding the negotiations; 80% debt, 20% contributions. Implementing a negotiated treaty is no longer an option for these First Nations, but neither is pursuing economic and social development opportunities while carrying tremendous debt. This is like recognizing aboriginal title — there comes a time when we can no longer avoid it!

There is a lot of other good on-going work around treaty revitalization and the role of BCTC. This should be completed by the end of the fiscal year, which is also the time I will be leaving the Commission. I came for 3 years and stayed for 6. It's time for me to go home. I am pleased with the progress we as a Commission have been able to accomplish. But there's still work to be done, and I wish the next Chief Commissioner much success in this role.

I am grateful for the energy and the support I have received from my colleagues on the Commission. It is good news that the Province has re-appointed Dave Haggard for an additional 18 months to provide continuity within the Commission as we approach changes in the next 6 months.

And as always, I am deeply grateful to the incredibly hard-working staff at the Commission office. This team is without doubt the reason the Commission has been as effective as possible. Like I've said before, you have made my life as Chief Commissioner much easier than I ever expected! Thank You.



Sophie Pierre OBC
Chief Commissioner



INTERVIEWS:

Following are interviews with three Chief Commissioners. They provide their unique perspectives on First Nations overlapping and shared territories, and how to support and implement Recommendation 8.

MILES G. RICHARDSON, OC 1998–2004

JUDGE STEVEN POINT, OBC 2005–2007

SOPHIE PIERRE, OBC 2009–PRESENT

THE TREATY COMMISSION ACKNOWLEDGES THE CONTRIBUTIONS OF THE FIRST TWO CHIEF COMMISSIONERS, WHO ALSO PROVIDED LEADERSHIP TO THE TREATY NEGOTIATIONS PROCESS, BUT ARE NO LONGER WITH US:

C.J. [CHUCK] CONNAGHAN [1993–1994] Chuck is best remembered for establishing the Treaty Commission and opening its doors to the many First Nations who first submitted their statements of intent to negotiate treaties.

ALEC C. ROBERTSON [1995–1998] Alec led the Treaty Commission in developing policies on issues confronting the treaty negotiations process, including territorial overlaps. Under his leadership, the Treaty Commission established a strong foundation for nation-to-nation resolution, within the context of supporting treaty negotiations and moving forward by grounding the overlap policy in a best-efforts framework.



CHIEF COMMISSIONER / 1998 – 2004

MILES G. RICHARDSON, OC

Miles G. Richardson was appointed Chief Commissioner in November 1998 and reappointed in November 2001. Prior to this appointment, Richardson served three years as First Nations Summit appointee to the Treaty Commission. Richardson served on the First Nations Summit Task Group from 1991–1993 and the BC Claims Task Force. In 2007, he was named an Officer of the Order of Canada. He is a citizen of the Haida Nation.

Q: *Overlaps: What is the issue?*

Now let's address what this issue is, it's referred to as overlaps, and overlaps is a misnomer. It's about First Nation definition, who are the appropriate title and rights holders in any particular area.

It's a paradigm that is different than the colonial *Indian Act* situation. And to find a solution we have to cast the problem in the right light. That is how I see it, we're trying to re-establish a political paradigm in which First Nations base relations with the Crown on First Nations continuing title.

Who has the title, and who decides?

First Nations definition is up to each First Nation. This was agreed to in recommendations 7 and 8 of the BC Claims Task Force Report, and underpins treaty negotiations in BC. First Nations have to sort this out, but they need help.

On *Indian Act* Bands entering treaty negotiations as First Nations.

Within the process of defining their nationhood, if a First Nation chooses an *Indian Act* band as their governing process, that is their business. As long as it is properly ratified by their nation. What was thought to be a really stringent ratification process, is not stringent enough and that is part of the problem.

Who is the proper rights and title holder?

Well, that's the debate of nationhood. The approach I take is that First Nations assert their jurisdiction through governing mechanisms such as their land use plans, business plans or economic plans based

on their knowledge of the extent of their title. That's how they view their world, how they plan their world, and that's how you breathe life into your title.

The ultimate answer to who has title will require sorting through recollections of the past and making tough choices about the realities of today. First Nations need to put their heads to this issue and come up with a strong commitment on a framework process for First Nation self-definition. That whole *Indian Act* colonial paradigm did serious damage to our recollection of our traditional ways. We need something that's legitimate and functional today — reality isn't 150 years ago, and it requires determined political will to resolve this.

Reality is right now. So I think some province-wide First Nation authority needs to come together — the Leadership Council would seem well suited — and really focus on encouraging a resolution of this so that we get to the point where we have First Nations agreement on a comprehensive map of BC.

Here's what I think you should do. I'm not pretending I have the answer but I'm en route to the answer. Number one, you the Treaty Commission should underline and emphasize the importance of the principle of First Nations self-definition. That's what was agreed to by the Principals in the BC Claims Task Force report. It's still appropriate. Having said that, it's holding up the whole process of negotiation. We cannot tolerate this any longer. We have to take serious action to address this issue.

The Crown resolving the dispute, assuming a higher authority and coming in and imposing a solution — that is worse. First Nations have to weigh that as a cost of their intransigence, their inability to resolve these differences. These are tough issues.

The Treaty Commission as the keeper of the process should be appealing to First Nations collectively and in their respective nations, to address and come up with a comprehensive definition of nationhood for each nation. State the enormity of the challenge and call on the First Nations Leadership Council to step forward and work with the Treaty Commission. And call on Canada and BC to be totally supportive both in deed, and in their policies and in whatever support is needed to get this done. I don't think there's an answer beyond that at this moment. I don't think you can decree a solution.

Can one First Nation veto a neighbouring First Nation's treaty on the basis of unresolved territorial disputes?

If you want to resolve that claim, don't make it worse by signing a final agreement with someone where there's a serious dispute. However you dress it up it's going to be tough. But, the Treaty Commission is well suited and has the respect on the First Nations side to bring them together, first around process, apply the process and once that course of action is chosen or recommended, to apply pressure to get them to resolve this. Finalizing a treaty with one party is not healthy pressure in my view.

To get to a solution we must identify and assess the dispute. Is there a substantial dispute? Answering that question is really important to determine best efforts. The Treaty Commission should do this review or cause it to be done under the Treaty Commission's authority. If there is not enough depth, the Treaty Commission should say so and negotiations should proceed.

If there is a process of facilitation — basically a mediation where a recommendation is made —

it should be put in place by the agreement of the parties. The two positions are heard, evidence is brought forward from all legitimate interests, and then put all the evidence in front of the facilitation authority and they make a recommendation. Once that recommendation comes out, the Treaty Commission uses its influence to facilitate a political resolution based on that recommendation.

If there is no resolution — then suspend negotiations. Or proceed with an asterisk, that's basically what's been going on, isn't it?

Way forward

You need some sort of dispute resolution with teeth — the Treaty Commission ought to be providing that.

Process is important. The Treaty Commission's past recommendations regarding the use of a tribunal is still relevant. It was for the tripartite treaty process generally. So we put out a process which just framed out the principles that guided it.

Mediators would hear all parties in a clearly designed mutually acceptable process that could be adapted to the local issue at hand. They would take evidence, hear proposals and the mediator would write a recommendation. Not a binding one, but when the mediator/facilitator wrote their report the parties had to know that if they rejected the recommendations and went to court, that report was going to be 'exhibit A' in front of the court. The parties ignore it at their peril. They need to know that for this process to be effective.

If someone is dragging their feet and not trying, there has got to be a determination of that. That is one of the key things the keeper of the proceedings would make — a determination of best efforts. That is in the tribunal outline [previous BCTC paper and

recommendations], that is one of the key roles, and that is one of the key impetuses. If a party is consciously trying to block negotiations, then call them on it.

For overlaps between First Nations in treaty negotiations and those that are not, well that's where Canada and BC have to support the principles that they agreed to. They basically agreed that First Nations resolve these issues. Well then, what is the other side of it? The Crown resolving the dispute, assuming a higher authority and coming in and imposing a solution — that is worse. First Nations have to weigh that as a cost of their intransigence, their inability to resolve these differences. These are tough issues.

Say there is a First Nation in Stage 5, and there is a dispute with another nation in the treaty process. Pare it down, and describe the dispute. The parties have to provide their best case, and then make a determination on the legitimacy of the conflict. I do not see how you would get away from that. Why should the Treaty Commission make a determination at that stage? Because the next step is to make an investment in a process to resolve this dispute. The Treaty Commission affords that option. Because the Treaty Commission is there you can have that.

It's like a menu, describe the disputants, describe the conflict, now you design a process based on this framework. A specific process where they agree to address that conflict and then appoint one of your own or another facilitator and begin to hash it out; you lay it out in the full light of day with rigid accountability criteria.

The facilitator will make a recommendation and then use the office of the Treaty Commission to push toward an agreement. That is a raw political initiative. There is no other way to do it. The final record of the proceedings will stand for the next generations as well.

I recall on one occasion we brought in the elders and the politicians and just let them start talking, they resolved it themselves. They are relatives and they would start saying things like, "Oh we know

you have come into our territory — we go into your territory to pick clams, sure that's part of who we are but we acknowledge it's your territory. That's why we give you clams." Here we are facilitating, we did not have to do anything. It was so beautiful to watch, they were solving it themselves. If you give them the space and the impetus, they will resolve it.

These disputes are not new. Over 200 years ago, my people, the Haida Nation, had a dispute with our neighbours across the Sound, the Heiltsuk Nation. The dispute was about access to fish in a particular part of the ocean. This was a cause of conflict for years. Finally, the leaders tired of fighting — they realized they each had interests in the area. They decided that their respective titles were intermingling and they would develop protocols for stewardship and sharing of resources. Recently, in the face of serious external threats to the marine environment, the present generations of the Heiltsuk and Haida nations renewed their commitment to an old treaty.

Clearly it can be done.

Miles G. Richardson was interviewed on Musqueam territory, August 21, 2014 by Chief Commissioner Sophie Pierre.



CHIEF COMMISSIONER / 2005 – 2007

STEVEN POINT, OBC

The Honourable Steven Point (Xwě lī qwěł tēl) OBC, was a judge of the Provincial Court prior to being appointed Chief Commissioner from 2005–2007. He left the Treaty Commission to become British Columbia’s first Aboriginal Lieutenant Governor. Point also previously served as Chief of the Skowkale First Nation for 15 years, was tribal chair of the Stó:lō Nation Government, and was made a Grand Chief by the Stó:lō Tribal Council Chiefs. Point has returned to the Provincial Court and is presently a sitting judge.

Q: Overlaps: What is the issue?

We have to stop saying that they are unresolvable issues, as if boundaries did not exist years ago. They did exist. Boundaries were clear, and politically were changed from wars and sometimes intermarriages. You know, we have to take into account that Indian people have personal rights that have nothing to do with the traditional territorial right of the nation; sometimes these things get entirely wrapped up in this problem.

These issues have always been there, but now we are having to address them because some of the tribes are embarking upon treaty negotiations. This has been around for a long time, and it just floated to the surface. Overlapping territories did not start with the Treaty Commission.

People say that all these problems arose when the chiefs sat down and started talking about how we have got to put boundaries between us. Well the boundary was always there, but it does not negate your personal rights to fish over there. When we look at the issue from a traditional legal perspective, it begins to clear up a little. These are not traditional boundary disputes — they are about legal rights that need to be clarified.

This is an issue that First Nations should have been resolving internally a long time ago, protocol arrangements between tribes to say, do we agree where a traditional boundary was? If we don’t, then we better do that. If we cannot, then we need to figure out if this is some sort of traditional area that

we will share and that we need to come up with a management agreement. Personal rights, do not get disturbed simply by the fact that we acknowledge that the boundary is here. That should actually be said in the protocol agreement.

Q: Who has the title, and who decides?

This is a big stumbling block, and I understand why people want to know who the rights and title holders are.

If the Crown had written treaties with First Nations the way it had written treaties with the Cree and the Blackfoot, they would have been sitting there with the chiefs who were there at the time. Let’s ask ourselves how we are organized right now. The descendants of your tribe that were here a hundred or so years ago, those are the people that hold the rights and title, however they are organized now. The rights and title are actually born into the blood of the people, and how they’re politically organized after that is none of my business. It’s not anybody else’s business either.

To say that the band representatives do not speak for the people, that is totally false, especially if the communities elect them and send them up to speak for them. You do not have to do away with hereditary leadership, but if the people are bent on electoral processes, you can just build a constitution that identifies how you are going to govern yourself, and maintain your cultural identity with your past.

The original recommendation that First Nations resolve overlaps themselves is actually valid. The reason that was done was to prevent the governments from imposing boundaries, and to allow the First Nations the opportunity to confirm their territories with each other.

This is why I have encouraged nations to look at constitution building. Develop a model that addresses that distinction between traditional and hereditary and elected leaders.

Q: Can one First Nation veto a neighbouring First Nation's treaty on the basis of unresolved territorial disputes?

I firmly believe that even in cases where you have unresolved overlapping claims, communities have to proceed with the treaty negotiations. How do you protect the aboriginal rights? Oh, now we've got to go to court. We've got to stand in a line and fight for them. Treaty rights are protected in the constitution — it is absolutely necessary to write a treaty.

Nisga'a claimed for their whole territory. They ended up with some lands exclusively theirs, and with rights in the other parts of the territory. And because of the nature of aboriginal rights, specifically fishing and resource gathering, they are not exclusive rights anyway.

What's happened is you've got a square called aboriginal rights. You've got a square called treaty rights. We are just moving over to treaty rights. Still recognized and honoured under section 35. It is not extinguishing in any way. What happens is now it's defined. That is the difference.

Logically, First Nations do not have a claim yet if it is not defined. You do not really have a claim if everybody has a say in the same area. It's not really a claim. It is a claim in dispute.

For example, if I was to go to register a mining claim, and there were two of us standing there with the same area claim, the registrar would say, you do not have a claim yet. Go and resolve this. The claims would probably never be registered until they resolve their own rival claims.

Q: Way forward

What are we really talking about here? Maybe overlap is not the right way of describing what is actually going on and it is time to actually rethink that question, because if we do maybe we are going to get to different answers.

We probably need to have some dialogue around this issue. I would welcome a conference personally. It is probably useful to go back to our own traditional understandings of property. First of all, to arrive at what is the problem, and then we are going to find that the solution will actually present itself. Recharacterizing, in other words, what we mean by overlapping territories.

I think the other answer is that First Nations need to, if they can agree, enter into a protocol agreement. The protocol agreement would just say we acknowledge that we need to define for ourselves where our territories are, and we agree upon a process where the Treaty Commission comes in or a traditional territory commission panel to hear both sides and to make either recommendations or a decision.

Now, the only question is if the Treaty Commission is authorized to do this, and I think underneath your legislation you are. Any recommendation or decision would be final, and then it is up to the parties to either accept or reject it, but at least they have got a mechanism.

Maybe from there they would actually take it to the Supreme Court of BC or someone else to resolve it. But it would help if you had a panel that just hears the dispute and says look, this is what your history is. We think this is your territory, we think that there is a shared territory here, and this is our suggestion. This is the way we would resolve it. Now they have an independent third party and a record.

The important thing, though, is that the record would come forward. The elders, whoever, would say well this is why we think our boundary is here. You have got a written record that now you can build on in order to resolve this dispute.

The problem would be the cost of having this done. I often thought that we ought to build into the treaty negotiations budget the cost of resolving overlapping claims. Now these tables should be given priority in negotiating the next stage of treaties because they resolved their overlapping claims. So there is an incentive to get it done.

It could be made a requirement that First Nations resolve their overlapping claims before proceeding in treaty negotiations. One option would be to get some retired judges to come and sit with elders on a panel. They will hear your case and come forward with a decision and some recommendations to resolve the overlap dispute.

The next step after the agreement is to take those recommendations and actually write a treaty between the two groups. The question is what is the status of these treaties? I often thought that maybe the Treaty Commission ought to establish a registry for treaties. The parties would have a treaty that both sides have agreed upon. If it's been breached, the treaty itself can provide that appeals be made to the BC Supreme Court.

The original recommendation that First Nations resolve overlaps themselves is actually valid. The reason that was done was to prevent the governments from imposing boundaries, and to allow the First Nations the opportunity to confirm their territories with each other. If everybody still has a say in each other's claim, then it weakens it — they defeat each other's claims.

How to proceed? You just create the process by which to start resolving the conflicts and the Treaty Commission determines that where you have not been able to resolve your overlaps you cannot proceed to the next stage. But if you begin the process now, and get people used to the new saddle, I think a lot of them will do it.

Steven Point was interviewed on Stó:lō territory, August 14, 2014 by Chief Commissioner Sophie Pierre.



CHIEF COMMISSIONER / 2009 – PRESENT

SOPHIE PIERRE, OBC

Sophie Pierre has been Chief Commissioner since 2009 and will serve until the end of March 2015. She is a member of the Ktunaxa Nation, and served her community of St. Mary's Indian Band for 30 years as elected chief and was the administrator of the Ktunaxa/Kinbasket Tribal Council for 25 years. Rooted in the language and culture of her nation, she is an important voice for the strength of Aboriginal tradition to shape the future.

Q: What is your view on First Nations overlapping and/or shared territory claims?

The issue is historic. It is not something that was created by the treaty process. To some extent, it has been exacerbated by the creation of Indian reserve lands.

We really need to have clarity in our understanding of what is territory that is shared among a nation, and by that I mean people who are of the same cultural and language background. If I can use my people as an example, as Ktunaxa Nation, we have a traditional territory and then within that, we have shared territory amongst our five reserve-created bands, or band communities. But the overall traditional territory belongs to the nation. As Ktunaxa Nation there is shared territory with our neighbours as well.

That is an external nation-to-nation issue. It needs a different approach than the internal community and family-to-family issue. We need to look at solutions, understanding that there are really two parts to this issue.

Given that, I see us addressing this in two different ways. Within a cultural grouping we need a process that supports the traditional ways families dealt with sharing. This is an historic issue. It's a responsibility to share resources. Where you have a responsibility for a particular watershed you share that resource with a bunch of other families.

There is a way of working that out internally within that language group, that particular culture.

Then when you get to the periphery where overlaps are with another nation, with a different language and culture — there are also cultural ways of dealing with that. But I think that is a bit more difficult. You need more diplomacy.

Families within a fishing area have rules and regulations about how to share so all get their fair share and no one is left out. You are disciplined if you go against what your people have as *Kítnumuḡtiit* (laws). There are consequences. There are very strong laws within each nation. We have not been honouring our own laws and I think that's part of the problem.

Our role is to support those communities in being able to bring back their own cultural dispute resolution as opposed to the communities running off to the courts, spending millions of dollars on lawyers who really do not have an understanding of what it is that needs to be done.

When you go to court, you have a winner and a loser. It is a big question. It is going to be tough, particularly where there has been so much influence from the colonial structure and where the culture has really been beaten down or pushed underground. I know that it's still there. Even those chiefs that have said we don't have it, we don't do those cultural things anymore, I doubt that. You would not still be here if you did not have some cultural ties left.

Now, between nations it's really not so different because we are talking about the knowledge holders.

In many ways the Tsilhqot'in were more true to Recommendation 8 than most First Nations in the treaty process. First Nations know what needs to be done. And in that case, they did the work, they did it properly. They had agreements with their neighbours.

We are talking about supporting people who still hold onto that cultural knowledge, being able to record that, being able to support that within the communities so that it continues.

Q: Who do we need to turn to for resolution on the inter-tribal overlap question?

It is the knowledge holders. We cannot continue to just battle each other on a political level where there is no accountability for the kind of comments that are being made. Irresponsible political talk, dismissive of a whole nation of people, is certainly not going to help. As First Nations, we need to figure out how we get beyond that. And the only way you do that is bring in your knowledge holders.

Q: Is it possible for First Nations to resolve these issues themselves?

First Nations are the only ones that can deal with shared territory. Sure, somebody can go to court and some judge can make a decision. As I said, then there are going to be winners and losers. And I just do not see how that helps anybody in the long run.

It's been a long process getting us to where we are — it's taken 150 years. So it's not going away in just a few years. Not in the lifetime of the Treaty Commission. It is going to take a long time, and we need to support First Nations in resolving these issues.

Q: Can one First Nation veto a neighbouring First Nation's treaty on the basis of unresolved territorial disputes?

Our mandate is the keeper of a process. There are three parties that, with full consent of the people they represent, have come to the table and committed to negotiating a treaty. And I think that needs to be honoured. There are overlapping issues which may not be resolved by the time the treaty is ready to be implemented. There really is no choice here

other than going forward with the treaty. That is what we have agreed to do.

I think that we need to give support earlier and we as a Commission have to set some boundaries or guidelines about milestones and having protocols or agreements between neighbouring nations. Or if it is internal, they also need to have agreements in place. We just have to give as much support as we can to that. I do not believe that one nation has the right to veto a treaty of another nation.

In terms of timelines, we should consider only funding negotiations that are actually putting in best efforts. We have to keep the two problems separate — one is internal, within the nation. You are talking amongst families. For the inter-tribal, nation-to-nation, there should be a timeline, and milestones for best efforts, and keep a record. Keep a paper trail and monitor for lack of response and cooperation from the other nation.

If the negotiations were to stop there or if there was to be no implementation because of that, then clearly that is a veto by that nation. If we are going to allow that to happen, then I think it should be really clear and upfront, that if you do not get agreement with your neighbours, then you are not going to have a treaty. I do not think anybody's prepared to say that. What we say is that if you can prove best efforts, then we go forward and we implement a treaty. The other nation will probably want to go to court, but that is really expensive and not a lasting solution.

On the court process, you know, on the one hand we complain about colonialism, and then whenever we have a problem within our own, our own internal problems, we go running off back to the colonials — the courts, to give us a response. It just never resonated with me. I have never understood why.

I understand why as a nation we want to have a treaty with Canada, and we've got to include British Columbia. I have always understood that. If we have some issues with our neighbours, I would prefer that we sat our knowledge holders down and figure out how to share the land as we always did.

How we can continue to share that land that we have in common into the future. Rather than having some common law, European, or Eurocentric judge that's going to decide that for us. It just doesn't make sense to me.

Q: Who has the title and who decides?

It is the nations themselves that need to be looking at title. That is where I talk about the knowledge holders. I hear a political description of proper rights and title holders, and I do not know that political description clarifies things, because I also hear proper rights and title holders to reserve lands.

All these different phrases get thrown out, I do not know what is meant by that. I know what is meant for our people: it's every single individual. That person that is here today, was here yesterday, and is going to be here tomorrow. They are the proper rights and title holders. It is not a single Indian band, nor a band council — it is the people that hold title.

The *Tsilhqot'in* decision made it clear that in order for First Nations to have clear title, any overlapping claims have to be dealt with. It showed that it is possible to do that because the *Tsilhqot'in* had agreement with their neighbours on what lands they were going to be pursuing through the court system.

In many ways the *Tsilhqot'in* were more true to Recommendation 8 than most First Nations in the treaty process. First Nations know what needs to be done. And in that case, they did the work, they did it properly. They had agreements with their neighbours.

We know our nation's traditional territories and the cultural/linguistic group where our people come from, because we have place names. These place names did not happen flippantly — they were brought forward from thousands of years. It has to do with our creation story and how we got to where we are. The areas where you have a shared territory

or an overlapping claim also have place names. Our neighbouring nations also have place names. Putting those place names one on top of the other makes our nations stronger, as opposed to ripping each nation apart. Sharing our territory brings us together.

This is where I am worried about the *Tsilhqot'in* decision, if it brings us down that road where we do not recognize place names or we do not recognize a place that has been shared and has two or three, maybe five names to that one place — that we do not recognize the strength of that and we say instead that because it has five names, well then it does not belong to anybody.

Canadians talk about how crazy it is that First Nations have claimed 110% of the province because we have shared territory areas. If the courts start to say they will not recognize that because there are too many claims declared in an area, why would we allow that to happen? We have much more strength when we put our place names together one on top of the other. It just makes it stronger.

Q: Way forward

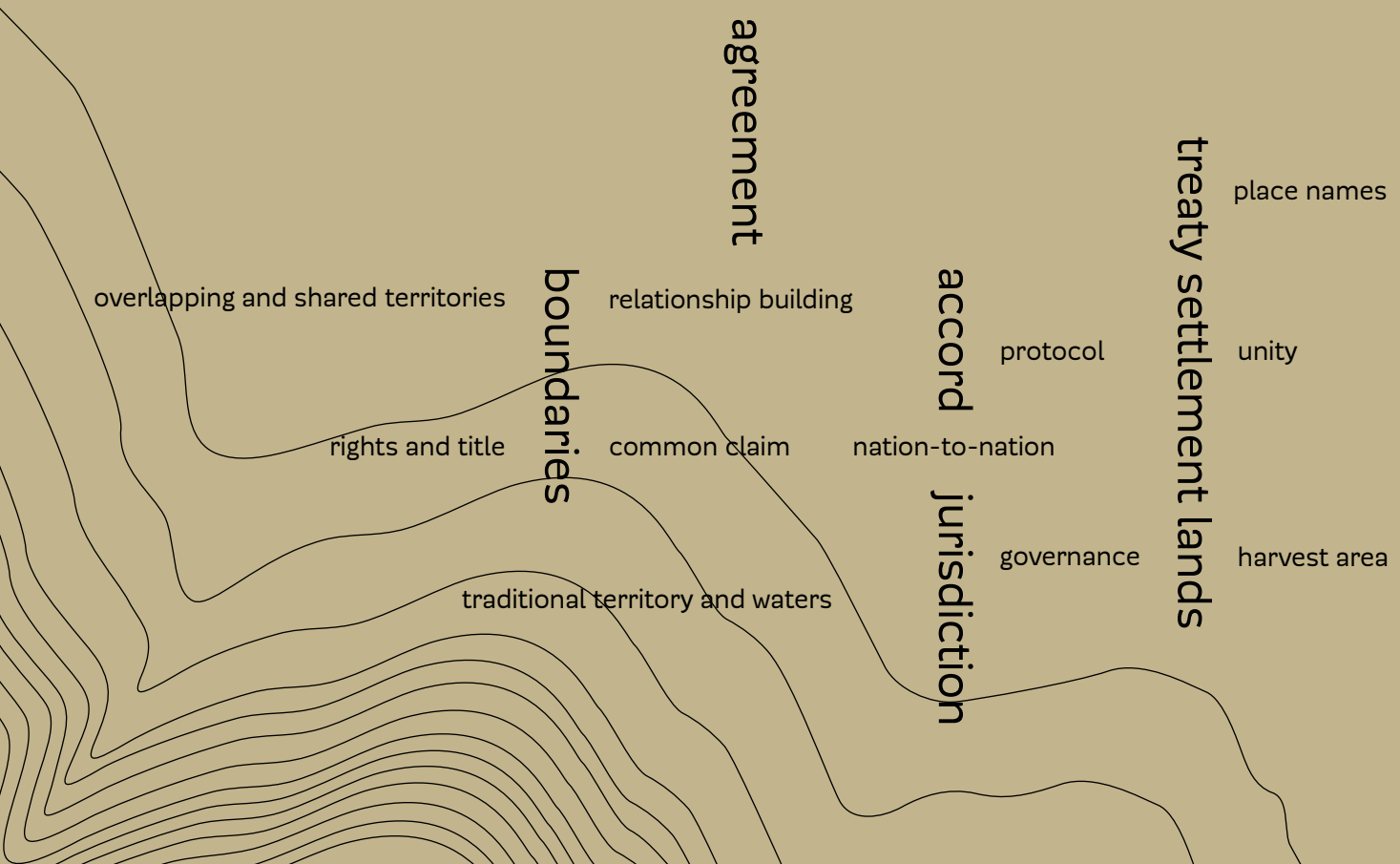
We have the historical cultural solutions already for dispute resolution. You cannot have shared territory without governance. It is our governance — our traditional methods of dispute resolution amongst families and inter-tribally.

We need to bring First Nations together in a structured manner. There needs to be agreement that both sides are going to listen to each other. We have to listen to each other as a start and we need to provide that environment. Both sides have to agree that we are going to work together towards a solution. Everyone has to agree that when our knowledge holders reach a solution, we are going to honour it, because we are an honourable people. We are looking for ways to go into the future knowing that there are areas that we share. If we are so colonized that we are no longer honourable, then let's just go back to court, let the courts decide.

Chief Commissioner Sophie Pierre was interviewed on Coast Salish territory, September 10, 2014 by Mark Smith.

BEST PRACTICES — IMPLEMENTING RECOMMENDATION 8:

Following are two feature articles on First Nations reaching resolution of their overlap issues and a collection of interviews with experts in mediation and dispute resolution



PROTOCOLS AND AGREEMENTS

FIRST NATION TO FIRST NATION

In the following two examples, highlighting best practices, the First Nations carried out overlap work primarily on their own — demonstrating the validity of Recommendation 8. These are only two examples — there are other overlap and shared territory protocols and agreements that have been achieved in British Columbia. More examples can be found at the back of this report.

TLA'AMIN NATION SHARED TERRITORY EFFORTS

The *Tla'amin Final Agreement Act* received Royal Assent on June 19, 2014. This milestone was achieved with the hard work and dedication of the treaty negotiation teams from Tla'amin, Canada, and BC, and with the support of their neighbouring First Nations through shared territory agreements and protocols.

Tla'amin began overlapping and shared territory work early on in their treaty process. Tla'amin entered the process in 1993 and signed their first agreement with Sechelt (Shíshálh) First Nation in 1995. Tla'amin Chief Negotiator Roy Francis says: **“We knew this work was important and that it needed to be done. It’s about relationship building with your neighbours. Acknowledging our traditional ways, our unwritten protocols. It’s about getting permission and giving permission to hunt and gather and fostering ongoing cooperation and collaboration to share.”**

Historically Tla'amin and two of its neighbours were one nation, but were separated into three *Indian Act* bands after colonization. When entering the treaty negotiations process, Tla'amin, like other First Nations, had a choice on how they would organize themselves. Tla'amin considered joining with their close neighbours as one nation for the purposes of treaty negotiations, but decided to proceed on their own to a treaty. Along the way they entered into protocols and agreements with those same First Nation neighbours, thereby

demonstrating that in many ways overlapping and shared territory issues are as much about families and relations, and that overlap resolution can play a role in governance and nationhood by uniting and strengthening the bonds between First Nations.

Tla'amin achieved shared territory agreements with Homalco, Klahoose, K'ómoks, Nanoose, and Shíshálh First Nations. The agreements and protocols acknowledge and support each First Nation's aboriginal rights and title and any treaty rights to their respective traditional territories, including within their shared areas. They support a collaborative decision-making process to proactively address matters that might impact or affect the shared territory with the goal of reaching consensus decisions.

Tla'amin protocol agreements range from broad understandings to detailed agreements, such as with K'ómoks. Their agreement confirms the area in which both nations may exercise aboriginal or treaty resource harvesting rights; confirming the areas in which they may select Treaty Settlement Lands; clarifying responsibilities respecting consultation and accommodation for s. 35 harvesting rights; and ensuring that other matters related to shared territories are resolved through a detailed dispute resolution process with prescribed timelines. The nations agree that each shall have primary responsibility for all consultations, referrals, and accommodations in the core areas that they have identified, and recognize certain exclusive interests of each nation to harvest surplus salmon, shellfish beaches, and aquaculture tenures in specific areas.

Tla'amin has subsequently negotiated follow-up agreements with some of their neighbouring First Nations, which re-affirm continued support, and go into greater operational detail on how their relationship will be maintained. In the process of negotiating agreements with neighbours, the concept of exclusivity, or rather non-exclusivity, is often a stumbling block in nation-to-nation engagement.

Francis explains: "We need to be able to talk about it together, and what it means. I think rights that are gained by one nation, don't exclude other nations from those overlap areas. Our histories are connected and we share those areas, we need to work through it together."

A unique aspect of the Tla'amin Final Agreement is that the First Nation achieved harvesting treaty rights beyond its territories with the permission of their neighbours. Francis explains: "The DFO model did not work for Tla'amin. And that it was more important to get permission from our neighbouring First Nations than getting it from governments." So they worked hard to reach agreements with Homalco and Klahoose that are recognized in the Tla'amin Final Agreement.

This element of the Tla'amin Final Agreement is significant, as it involved the other negotiating parties changing their mandates so as to recognize the efforts of Tla'amin to reach protocols with their neighbours. Otherwise, Tla'amin was faced with the decision that it might have to expand its traditional territorial map to encompass these other rights, transforming the matter into an overlap conflict.

KITSELAS AND METLAKATLA TREATY SETTLEMENT LANDS AGREEMENT

This past year Kitselas and Metlakatla reached an understanding on their Treaty Settlement Lands (TSL). On April 3, 2014, Kitselas Chief Joe Bevan and Metlakatla Chief Harold Leighton signed the Kitselas and Metlakatla Treaty Settlement Lands

Agreement and exchanged gifts to honour each other's nations and their respective efforts.

The agreement emphasizes that these two Tsimshian nations "have shared interests in regards to lands, resources, and Aboriginal rights and desire to work together and in cooperation ... and have engaged in good faith negotiations with each other in an effort to reach agreement in their shared interests." The parties used a "non-objection" technique to support their proposed TSL, and Metlakatla also agreed not to oppose the transfer of Incremental Treaty Lands to Kitselas.

Chief Joe Bevan says "Kitselas is proud of the accomplishment and the signing of a shared territory agreement with Metlakatla. We hope that this gains the interest of the neighbouring first nations. And hope that we can come to an agreement with the other nations."

These two First Nations have traditional territory in and around Prince Rupert and Terrace, where LNG activity adds another level of complexity to territorial issues. This agreement demonstrates that First Nations can work together to achieve recognition of their shared interests, even in areas undergoing intensive resource development.

"It took years of meetings, determination and mutual respect for Metlakatla and Kitselas to finalize and sign the shared territory agreement. We hope to use this agreement as a template for similar agreements with our other neighbouring First Nations," says Chief Harold Leighton.

Kitselas and Metlakatla continue their mutual efforts to reach agreement with regard to harvesting. Both First Nations are currently engaging with Kitsumkalum to reach a similar agreement on their shared and overlapping interests. The Treaty Commission provided these First Nations with overlap contribution funding and will continue to support their ongoing First Nation to First Nation efforts.

Kitselas and Metlakatla are advancing in the treaty negotiations process and this agreement will assist them in reaching a final treaty.

INTERVIEWS

RESOLVING DISPUTES

The following is a collection of interviews with dispute resolution professionals — experts in mediation, arbitration and facilitation, who have all worked with First Nations in resolving conflicts. They share their insights into the complex issue of First Nations overlapping and shared territory disputes.

> ARLENE H. HENRY, QC

> BARRY D. STUART, LL.B., LL.M.

> DAN GEORGE, M.A., C.P.F.

> GLENN SIGURDSON, LL.B.

> GORDON SLOAN, LL.B.

> VINCE READY AND CORINN BELL, LL.B

PERSPECTIVES ON OVERLAPS

VINCE: I remember meeting with the Treaty Commission some time ago and talking about mediation, and almost falling asleep listening to how long the process takes.

Parties sitting around the table for many years, they become very entrenched in their positions. There has to be a mechanism to shoot them out of that much more expeditiously. There is frustration built into the process. Timeframes have to be built into the process to bring some sort of finality to the issues. These are tried and true mechanisms that we use in labour, and they work.

When you go into pre-meetings, pre-hearings, the quicker you can focus on the elements of a solution, the more meaningful the discussions. History is important, but you have to get through that. That is where the third party is so important, for case management. Lawyers can be there to help, and they understand that process. However, they would also benefit from building timeframes into the system. Somebody has to keep the focus on what the dispute is about, and get past the history.

DAN: The inability to think strategically complicates the notion of overlaps. Overlaps are about co-labour. It's a common vision, it's distributed leadership, and that's shared power at its very core — and it's very difficult to get our people there. Many have grown

up in a culture of 'no' — we have said 'no' for so long that we forgot how to say 'yes.' We have become very adept at labelling what is wrong and listening for differences, rather than listening for similarities, and we end up missing out on opportunities to move us forward.

BARRY: I became initially involved in Yukon overlap issues, as the chief negotiator for the Yukon government. The federal policy required resolving overlaps before treaties could be signed off.

There was no way 14 First Nations, especially with four recently emerging from an internal split, could reach a timely resolution of overlaps to complete negotiations.

GLENN: I use the word protocol differently, not as an outcome, but as what we are going to agree to, about how we talk to each other, before we even start talking. The way you begin is fundamental to whether you get there or not. The beginning is everything — the end is the detail. The end is really the beginning again, because you still have to live together.

ARLENE: It's the timepiece that I find interesting. The work that we're doing [under the federal mediation roster] was intended for Specific Claims, where you have one or two nations, maybe a government agency, or an individual company. It's something identifiable. We're now using that same model with an urgency to do something far more comprehensive. Things are more amorphous — it's not as finite.

It's about changing people's expectation that this will be a much longer journey.

BARRY: It is not a legal problem. But has been framed as a legal problem ... really a problem of relationships, of cultures and aboriginal traditions that have broken down. It's about rebuilding constructive partnerships. First Nations have to talk together about how to start building good relationships again, since relationships are not what they once were when overlaps were resolvable.

PROCESS DESIGN

DAN: In process design, I have a conceptual framework that has '5Ps.' What is the *purpose* of the engagement? What are the *products* that we hope to produce (agreement, protocol, or letter of understanding)? Who are the *participants* — do we have the right people in the room to enable us to move forward? And what are the *probable issues* that people are going to raise? The answers to these fundamental questions allow the parties to design a *process* that, at its foundation, is anticipatory, inclusive, respectful, and considerate of differing worldviews.

GORDON: You can have a template in mind as a third party, but that's not been the case in my experience with First Nations. I think it is essential to have a convening session to do some process design with the group. My preference is to spend more time privately with each party doing that process design rather than having an initial formal meeting.

VINCE & CORINN: We do a lot of this type of engagement when we are working in multi-faceted mediation disputes in labour. We have exploratory meetings in advance of negotiations to try to determine, to the extent that you can anticipate, the real challenges facing the parties. We try to build a process/mechanism to support the parties moving through these challenges to facilitate, mediate, and sometimes binding mediation, to adjudicate the process to assist in breaking any such impasses.

In First Nations disputes, it has to be conducted in a respectful and cooperative manner, and in accordance with cultural traditions and teachings, and with the involvement of elders and youth — all necessary members. And in any such dispute you have to be cognizant of any legitimate aboriginal rights or existing claims — those things have to be respected and considered.

ARLENE: A great deal of time goes into designing process. Something like note taking is important. Commitment to reporting to the community, maintaining confidentiality for work in progress, and timely reporting back to the mediation table all contribute to keeping a process going. It can be very fragile.

BARRY: In one area you can have many different kinds of overlaps all on top of each other, family overlaps, band overlaps, and nation overlaps. Overlaps are now compounded by a variety of third party interests — my sense is that working from the bottom-up is as important as top-down. A top-down process must be in place, but it is best to start with the overlaps between families.

GORDON: One approach is to create a parallel technical table that does the work alongside the political table. These technical groups can help to get past personality conflicts and acrimony that might exist at the political table.

VINCE & CORINN: There has to be an agreed-upon reasonable timeframe for triggering a facilitation, adjudication, and the facilitator/mediator be required to file a report on the matter — within a prescribed timeframe, like 60 days or so. There needs to be some way to bring finality to the issue.

AGREEMENTS AND PROTOCOLS TAKE MANY FORMS

GORDON: The design of the agreement is also important. Some groups focus on a territorial agreement, others on economic benefits and how to divide this over shared territory. Are the parties trying to work out an overlap agreement like a specific agreement, or a memorandum of understanding? They may start

on a statement of principles but it works out being an overlap agreement about traditional fishing rights. That should be part of the design process: what are you aiming for? The purpose of the overlap discussion has to be thought about at the beginning, and that can really range.

DAN: Processes at the outset must promote and support the identification of core concerns and culturally supported means of gathering information to address the stated concerns. Information can come from many sources, including elder statements, historical/contemporary literature reviews, consideration of territorial mapping, as well as creative engagement and inclusion of both elected and hereditary leadership. In our communities, ceremony must always be used that brings forth our traditions, practices, customs, histories, and ancestral laws.

GORDON: Interestingly, I've seen an agreement between two nations about how they will regard Canada and BC's actions in the future, and how they will regard future court decisions. They define between them equitable and fair treatment with distribution and resources, and allocations of hunt. In other words, they're creating their own law, their own contractual arrangements that will address whatever Canada and BC do according to their jurisdictions and make it work.

ARLENE: Many nations have laid a foundation for success with many resource agreements in shared territories. The looming question for many is how these agreements are to be recognized in a treaty settlement.

BRINGING NATIONS TOGETHER — FIRST NATIONS IN AND OUT OF THE PROCESS

ARLENE: My observation of one group in and one group out [of the process] is that there's a group that doesn't trust the overall process generally, and so there's a level of mistrust. There is lots of misinformation and so you're often working against myth.

ARLENE: It takes a great deal of time and energy to begin chipping away at the misinformation. The journey can seem like you're inching along. No matter what stage they are in, groups have a different appreciation about the treaty process in general.

Parties outside the process do not want to be driven by the process schedule. It is important to address misconceptions that the issues are finite, and allow time for the comprehensive nature of the issues to be resolved, and start at a grounded level in the community.

GORDON: One way I got at this misinformation was to have a side meeting of legal counsel from Canada, BC, and the two nations to address expectations about Canada's obligations post-treaty, and to get statements from Canada that those won't change. There's this conviction that groups outside the process are treated second. I think that distrust is still there. This way it's on the record, and clearly, that Canada has the same obligations, the same fiduciary duty — and BC says, us too — and so at least that information is shared. How do you cut through layers and layers of distrust? It takes time.

REPRESENTATION AT THE TABLE

ARLENE: One thing that was done at the very beginning of one mediation was to start with an inclusive community meeting and feast — a healing ceremony. Every chief spoke. Each group identified elders to speak. It gave us principles to come back to when the mediation process hit impasses.

By having that initial feast, the leaders got the permission from all of their community members to be at the table. So that was used as a way of getting that tacit community approval.

GORDON: There's so many wonderful emeritus First Nations people in BC. They may or may not be elders of their own nations. But they know the law code, they've dealt with BC and Canada all their lives. They know the politics of First Nations. And they're sitting there, and they could bring huge order to bear on these overlap problems.

ARLENE: The elders are very important, especially in the front end, but it is not necessarily an advantage to subject them to the day-to-day grind.

At the other end of the spectrum, the youth have energy that can be harnessed for the work to be done. Their buy-in is important. Even when you've got strong leader personalities — if they hear from their own children, there is a greater urgency to get it done.

ARLENE: One of the First Nations interestingly established a quorum so that mediation sessions would not be disrupted if one of their team members couldn't attend.

MOVING FORWARD TO RESOLUTION

DAN: We have to unpack what we have in common rather than focusing on our differences. These areas of commonality can then be used to buttress negotiations and provide confidence for the parties to address sticky points in their relationship. An example could be that two nations that have similar governance systems use this common governance lens as the basis for proactive, productive dialogue, debate, and discourse.

It is important to not lock-on to a particular way of viewing and addressing the dispute and lock-out other emerging methods or ideas. People need to see themselves reflected in the process and in the agreement, otherwise the outcomes will not be broadly supported or implemented.

VINCE: In tough disputes/high profile disputes, as a mediator, I would never tie myself to a completely confidential process. Because often your ability to use your mediator report can be a tool that can be utilized at the appropriate time to move the parties and to advance the dispute.

Otherwise, there is no point in writing a report that will just go to the parties about the two positions that they already know about. That won't go anywhere.

In order to move the parties along, often we do a fact finding, and produce a report in factual terms that describes the reasons why the dispute has not settled. This establishes which issues are the stumbling blocks and whether or not one party is being overly intransigent. Then we make recommendations to narrow the differences, and it moves the dispute along — it has a chilling effect and sometimes it has a sobering effect. Subsequently, the parties will use the report as a basis to renew negotiations.

DAN: It's important to encourage resolution at the lowest level and by the least adversarial means possible. Negotiators should be encouraged to begin with the end in mind — full resolution and then work backwards identifying early wins that serve to build success into the process. Early wins may involve getting youth and elders on the territory learning about one another and sharing oral histories. Our elders come alive when they are on the territory imparting their teachings to our youth.

DAN: A key concept to understand in dispute resolution is 'conflict ripeness.' The conflict needs to reach a point where the parties are sufficiently uncomfortable that they are motivated to seek agreement and move away from entrenched positions. This is an important concept to understand, and is very applicable to the overlap issue. Negotiation requires willing and able parties. Negotiations often fail when only one party wants to move forward.

DIFFERENT PERSPECTIVE — DIFFERENT PROCESS

GORDON: I'm wondering if there might be a process that is binding in the sense that it's adjudicatory. What if the make-up of this body is just politically irresistible? Something like an elder from each community and three people — an important body to rule on overlaps. I mentioned including elders, in the way like a tripartite board in arbitration. You have the two nominees, the panel members, and then the elders bring wisdom and intuition into that discussion. Maybe there's three regionally or even provincially trusted people who would be the judges, who take everything into account.

VINCE & CORINN: It seems to us that the process needs to be revisited, now that there has been some experience in this, tighten up and put in a more structured process for engagement between nations. There seems to be more incentive to have this long drawn-out process of overlap engagement than getting down to hard negotiations, because this is what is going on. It's almost a meaningless process if parties, including government, are not willing to do anything but sit on their heels. It needs serious timeframes and maybe even a legislative framework in place.

If a party does not come to the table in good faith, proactively, then that party needs to know that the process will continue without them. Right now it is in the interests of some parties to do nothing and not really engage. And there is nothing wrong in using funding as leverage, if you do so in good faith. The Treaty Commission should require that certain stages be met at a certain point in time and that things be done, or you put the funding on hold until the negotiations get to that stage. You need some leverage over these discussions or they just carry on.

DAN: How can we use our young demographic to help move us forward? Their energy, skills, and abilities must be capitalized on. They are hungry for involvement. Many of us older people would be wise to step aside and turn the reins over to our youth, rather than speaking about youth without actually

engaging them at their level. If we were to do this, I am confident that we would be amazed with their brilliance.

As indigenous people we have a deep relationship with our territories. We are taught that if we take care of the land, the land will take care of us. Culture, ceremony, and our shared histories must be used to amplify the fact that, as indigenous peoples, we have more in common than differences.

BARRY: Calling it overlapping claims — drives it to claims based on drawing lines. Calling for lines to be drawn before talking about shared principles and visions promotes divisive adversarial debates and mistrust. I believe First Nations need to work together to identify shared principles based on shared values as a guide, for negotiation. It is important for First Nations to design their own resolution process based on their shared principles.

Beginning with a focus on lines and legal documents overlooks the importance of rebuilding relationships — the primary building material of any sustainable agreement.

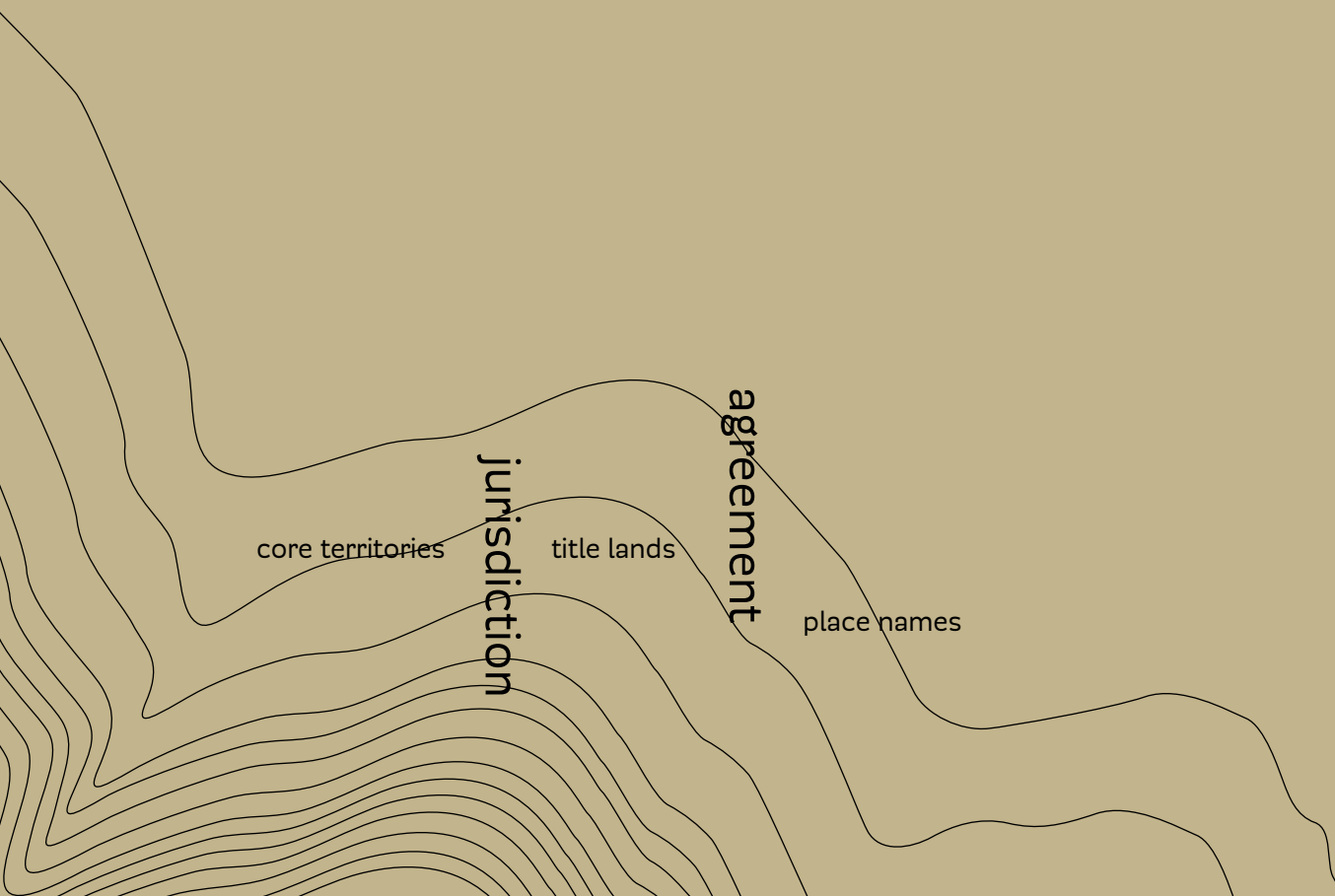
GLENN: I don't think that we have the right words and language right now. When people hear relationships they immediately think of interpersonal relationships not relationships between organizations and groups. In other words, nation-to-nation relationships. It's about building a structure to provide a continuous support for relationships, because people and generations will come and go and inevitably problems will arise. So, we have to develop a sustaining way on how to interact, notwithstanding to the people here now, but a sustainable structure.

BARRY: I agree — it brings us to the aboriginal notion "All my Relations." This captures the principle that we are all connected, it calls on all to connect to others with respect, to seek ways that do not advance one's interests to the detriment of others ... not an outcome of court processes. "All my Relations" reduces the current adversarial nature of overlap challenges.

WAY FORWARD:

This case demonstrates how the court, confined by the issues raised in the pleadings and the jurisprudence on aboriginal rights and title, is ill equipped to effect a reconciliation of competing interests. That must be reserved for a treaty negotiation process.

TSILHQOT'IN NATION V. BRITISH COLUMBIA, 2008 BCSC 600, 1357.



OVERLAPS IMPACT TITLE

On June 26, 2014, the Supreme Court of Canada released its decision in *Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44 (“*Tsilhqot'in*”). The case is the first in which any Canadian court has formally declared the existence of aboriginal title lands, and for that reason it is a landmark decision. From the Treaty Commission’s perspective, this affirms the basis for the treaty negotiations process: First Nations have rights and title to lands in British Columbia. *Tsilhqot'in* also illustrates that while the treaty process takes time, the litigation process has not proven to be a faster route to reconciliation.

Given the importance of the *Tsilhqot'in* decision, the Treaty Commission had Blake, Cassels & Graydon LLP provide a legal opinion, by lawyers Marvin R.V. Storrow, QC, legal counsel in some of the seminal Section 35 Aboriginal law cases in Canada, and Roy Millen, who clerked with Chief Justice McLachlin and is a leading practitioner in Aboriginal law. This section of the Annual Report relies on this legal opinion.

While *Tsilhqot'in* affirms the viability of aboriginal title claims in British Columbia, it should not be taken to represent the courts’ endorsement of litigation as the preferred means of settling those claims. Quite the contrary: Canadian courts have consistently emphasized that their role is to provide “a framework to facilitate negotiations and reconciliation of Aboriginal interests with those of the broader public.”¹ While litigation is undoubtedly valuable in some cases, it is inherently adversarial and therefore a difficult means of achieving reconciliation. The final results are imposed by the courts, not via consensus among the parties.

Exclusivity of title and the impact of overlapping claims

Tsilhqot'in affirmed that a successful aboriginal title claim requires proof of exclusive control of the title lands, and that overlapping claims may result in the denial of title.

In *Delgamuukw v. BC*, the court recognized that the requirement of exclusive occupation could

be established notwithstanding overlapping title claims, if the overlapping claimants exercised “shared exclusive possession.”² However, there has not been any legal case to date in which a claim of shared exclusive possession has been advanced, and it is unlikely that a court would recognize title based on shared exclusive possession unless the claiming First Nations agree amongst themselves on the scope of the joint area.

The application of the test for aboriginal title is very fact specific.³ *Tsilhqot'in* was uncommon in that 1. the claim was confined to a sparsely populated area amounting to approximately 5 percent of what the *Tsilhqot'in* Nation regards as its traditional territory; 2. there were no “overlapping” aboriginal title claims or other adverse claims with respect to the area in question by other First Nations; and 3. the *Tsilhqot'in* claim to aboriginal title was supported by the handful of non-Aboriginal people who resided in the area in question.⁴

These aspects make *Tsilhqot'in* a relatively “straight-forward” case when compared to the more common circumstances in British Columbia, where various First Nations seek title to lands that are subject to overlapping claims by other First Nations.

The court held in *Tsilhqot'in* that the requirement of exclusivity should be understood in the sense of intention and capacity to control the lands over

² *Delgamuukw v. British Columbia*, [1997] 3 SCR 1010, ¶158.

³ *Tsilhqot'in*, ¶52.

⁴ *Ibid.*, ¶6.

¹ *Tsilhqot'in*, ¶118.

which title is claimed.⁵ Whether a First Nation possessed sufficient intention and capacity to control claimed lands will depend on, among other things, the following legal factors:

[...] the characteristics of the claimant group, the nature of other groups in the area, and the characteristics of the land in question. Exclusivity can be established by proof that others were excluded from the land, or by proof that others were only allowed access to the land with the permission of the claimant group. The fact that permission was requested and granted or refused, or that treaties were made with other groups, may show intention and capacity to control the land. Even the lack of challenges to occupancy may support an inference of an established group's intention and capacity to control.⁶

While the historical presence of various First Nations on lands subject to a title claim will not eliminate the possibility of title being proven, the assertion of competing claims to exclusive occupation of title lands poses significant challenges.

Aboriginal title, certainty and the Crown duty to negotiate

Once proven, aboriginal title remains subject to considerable uncertainty as to the interaction between the laws and interests of title-holding First Nations, BC and Canada.

The *Tsilhqot'in* decision makes it clear that the rights associated with aboriginal title are subject to three broad restrictions that render them much less certain in scope than either fee simple or lands held as treaty settlement lands in a modern treaty. *Tsilhqot'in* does not determine how and to what extent the *Tsilhqot'in* title lands will be managed by the Federal and Provincial governments. Nor has the court provided a clear set of rules for how the *Tsilhqot'in* Nation will be able to assert its title rights through self-government, or how such rights will work with the powers and jurisdictions of other government levels.

In this respect, the uncertainty of the rights flowing from aboriginal title can be contrasted with the increasing certainty associated with modern treaties, which provide a First Nation with, among other things: defined treaty rights in respect of land tenure, a quantum of settlement land, access to Crown lands, fish and wildlife harvesting, heritage resources, financial compensation, and participation in the management of public resources. A modern treaty also affirms important institutions of self-government and regulatory authorities whose members are jointly nominated by the First Nation and the government.⁷

The courts have on several occasions prior to *Tsilhqot'in* emphasized their preference for First Nations and the Crown resolving title claims outside of the court process through negotiation. The relevant case law expressing the judicial position in this regard is summarized in the last section of the trial judge's decision in *Tsilhqot'in*, entitled "Reconciliation."⁸ Based on the principles established in the case law, the trial judge made the following observation about the challenges posed by litigating title claims:

This case demonstrates how the Court, confined by the issues raised in the pleadings and the jurisprudence on Aboriginal rights and title, is ill equipped to effect a reconciliation of competing interests. That must be reserved for a treaty negotiation process.⁹

Given what the court described in *Tsilhqot'in* as the "herculean task" of drawing conclusions from the huge body of evidence required in title cases, as well as the uncertainties of the scope of the rights flowing from aboriginal title noted above, it is likely that the courts will continue to urge First Nations and the Crown to resolve title claims through negotiation outside the court process. To this end, the court affirmed its prior findings that the Crown has a moral and legal duty to negotiate in good faith to resolve land claims.¹⁰

⁵ *Ibid.*, ¶48.

⁶ *Ibid.*, ¶48.

⁷ *Beckman v. Little Salmon/Carmacks First Nation*, 2010 SCC 53, ¶19.

⁸ 2008 BCSC 600, ¶¶1338-1382.

⁹ *Ibid.*, ¶1357.

¹⁰ *Ibid.*, ¶17.

WAY FORWARD

Overlapping claims and shared territory issues continue to attract significant attention from all the parties. The issues are complex and each initiative is different, requiring flexibility, substantial resources, and options for facilitation or mediation.

Douglas R. Eyford, in his report to the Prime Minister, *Forging Partnerships — Building Relationships — Aboriginal Canadians and Energy Development*, November 29, 2013, notes:

The impact of overlapping claims should not be underestimated ... Ultimately, shared territory disputes are best resolved by Aboriginal communities, whether through negotiations or an acceptable dispute resolution process.

...

If Aboriginal communities are unable or unwilling to resolve disputes, Canada may be compelled to intervene by undertaking strength of claim assessments ... and potentially advise on the apportionment of benefits. The Crown's assessment may also have longer-term implications in other areas for those Aboriginal groups. However, collaborative approaches are preferred because they place solutions in the hands of the participants and do not require determinations of territorial boundaries or government intervention.

All the Chief Commissioners in their interviews earlier in this report note that Crown-imposed solutions are not the solution. As Miles Richardson noted: "First Nations have to weigh that as a cost of their intransigence." There is also the cost to First Nations title, as *Tsilhqot'in* establishes.

The preferred methods to resolve these issues are First Nation to First Nation. How do we do this? All the parties need to support Recommendation 8. How to proceed? As Steven Point notes: "You just create the process by which to start resolving the conflicts and the Treaty Commission determines that where you have not been able to resolve your overlaps you cannot proceed to the next stage. But if you begin the process now, and get people used to the new saddle, I think a lot of them will do it."

The Treaty Commission is taking the valuable information shared by all the individuals covered in our annual report — who are respected and experienced leaders in their careers and practices — and will be moving forward in implementing processes to support First Nations in resolving their overlapping and shared territory issues by means of culturally appropriate dispute-resolution mechanisms.

Eyford makes three recommendations to address overlapping and shared territory issues, most importantly that "Canada should encourage and support Aboriginal initiatives that have the potential to address shared territory disputes including processes between Aboriginal groups and broader proposals from Aboriginal organizations."

The Treaty Commission will continue to work with Canada and British Columbia to implement the above recommendation.

STATUS REPORT:

There are 65 First Nations, representing 104 *Indian Act* Bands, which are participating in or which have completed treaties through the BC treaty negotiations process.

FIRST NATIONS IMPLEMENTING TREATY AGREEMENTS [6]

Maa-nulth First Nations [Huu-ay-aht, Ka:’yu:’k’t’h’/Che:k’tles7et’h’, Toquaht, Uchucklesaht, Ucluelet]
Tsawwassen First Nation

FIRST NATIONS WITH COMPLETED FINAL AGREEMENTS [3]

Lheidli T’enneh First Nation
Tla’amin Nation
Yale First Nation

FIRST NATIONS IN FINAL AGREEMENT NEGOTIATIONS OR COMPLETED AGREEMENTS IN PRINCIPLE [5]

In-SHUCK-ch Nation
K’ómoks First Nation
Tsimshian First Nations [Kitselas and Kitsumkalum]
Wuikinuxv Nation
Yekooche First Nation

FIRST NATIONS IN ADVANCED AGREEMENT-IN-PRINCIPLE NEGOTIATIONS [11]

Ditidaht/Pacheedaht First Nations
Gwa’Sala-’Nakwaxda’xw Nation
Homalco Indian Band
Katzie Indian Band
Ktunaxa/Kinbasket Treaty Council
’Nangis Nation
Nazko First Nation
Northern Shuswap Tribal Council
Te’Mexw Treaty Association
Tla-o-qui-aht First Nations
Tsimshian First Nations [Metlakatla]

FIRST NATIONS IN ACTIVE NEGOTIATIONS [22]

Acho Dene Koe First Nation
Allied Tribes of Lax Kw’alaams
Council of the Haida Nation
Da’naxda’xw/Awaetlala Nation
Esk’etemc First Nation
Gitanyow Hereditary Chiefs

Gitxsan Hereditary Chiefs
Haisla Nation
Hul’qumi’num Treaty Group
Kaska Dena Council
Klahoose First Nation
Laich-Kwil-Tach Council of Chiefs
Lake Babine Nation
Snuneymuxw First Nation
Stó:lō Xwexwilmexw Treaty Association
Taku River Tlingit First Nation
Tlatlasikwala Nation
Tlowitsis First Nation
Tsay Keh Dene Band
Tsimshian First Nations [Gitga’at, Kitasoo/XaiXais]
Tseil-Waututh Nation
Wei Wai Kum/Kwiahah First Nations
Wet’suwet’en Hereditary Chiefs

FIRST NATIONS NOT CURRENTLY NEGOTIATING A TREATY [18]

Carcross/Tagish First Nation
Carrier Sekani Tribal Council
Champagne and Aishihik First Nations
Cheslatta Carrier Nation
Heiltsuk Nation
Hupacasath First Nation
Hwilitsum First Nation
Kwakiutl Nation
Liard First Nation
McLeod Lake Indian Band
Musqueam Nation
Nuu-chah-nulth Tribal Council
Quatsino First Nation
Ross River Dena Council
Sechelt Indian Band
Squamish Nation
Teslin Tlingit Council
Westbank First Nation

TABLE STATUS REPORTS

COMPLETED TREATIES

FIRST NATIONS IMPLEMENTING TREATY AGREEMENTS [6]

Maa-nulth First Nations

The Maa-nulth First Nations Final Agreement was implemented on April 1, 2011 and implementation by the five First Nations has begun.

The Maa-nulth has approximately 2,260 citizens from Huu-ay-aht, Ka:yu:k't'h'/Chek'tles7et'h', Toquaht, Uchucklesaht and Ucluelet. Their traditional territories and waters are located on the west coast of Vancouver Island surrounding Barkley and Kyuquot Sounds. Maa-nulth has overlapping and/or shared territory with their First Nation neighbours: Ditidaht, Tla-o-qui-aht and Tseshah.

Tsawwassen First Nation

The Tsawwassen First Nation Final Agreement was implemented on April 2, 2009 and implementation of the treaty has begun.

There are approximately 350 Tsawwassen citizens, with traditional territory and waters in the Lower Mainland, from the watersheds that feed into Pitt Lake to Burns Bog to the Salish Sea, including Saltspring, Pender and Saturna Islands. Tsawwassen has overlapping and/or shared territory with their First Nation neighbours: Cowichan Tribe, Hwlitsum, Musqueam, Tsleil-Waututh and Semiahmoo.

COMPLETED FINAL AGREEMENTS

FIRST NATIONS WITH COMPLETED FINAL AGREEMENTS [3]

Lheidli T'enneh First Nation

The Lheidli T'enneh treaty table is in Stage 5. The final agreement was completed in 2006 and in 2007 the Lheidli T'enneh membership voted not to accept the agreement. Lheidli T'enneh continues to engage the community about a second vote.

There are approximately 400 Lheidli T'enneh members, with traditional lands and waters around Prince George, including the Nechako and Fraser River areas, to the Alberta border. Lheidli T'enneh has overlapping and/or shared territory with their First Nation neighbours: McLeod Lake, Lhtako Dene, Nak'azdli, Sai-Kuz, Simpcw and Treaty 8 Tribal Council.

Tla'amin Nation

The Tla'amin treaty table concluded Stage 5 negotiations. On June 19, 2014, the Tla'amin Final Agreement received Royal Assent and the parties have set the effective date for April 2016.

There are approximately 1,050 Tla'amin citizens, with traditional territory and water around the Powell River area, including Lesqueti and Texada Islands, and down through Cortes Island and Comox. Tla'amin has overlapping and/or shared territory with their First Nation neighbours: K'ómoks, Klahoose, Homalco, Sechelt and Qualicum.

Yale First Nation

The Yale First Nation treaty table concluded Stage 5 negotiations. On June 19, 2013 the Yale First Nation Final Agreement received Royal Assent and the parties have set the effective date for April 2016.

There are approximately 160 Yale citizens, with traditional lands and waters located around Yale and in the Fraser Canyon, north of Hope. Yale has overlapping and/or shared territory with their First Nation neighbours: Stó:lō communities from Stó:lō (SXTA), Stó:lō Nation and Stó:lō Tribal Council.

FINAL AGREEMENTS

FIRST NATIONS IN FINAL AGREEMENT NEGOTIATIONS OR COMPLETED FINAL AGREEMENTS IN PRINCIPLE [5]

In-SHUCK-ch Nation

The In-SHUCK-ch treaty table is in Stage 5. The parties signed a letter of understanding in April 2013 indicating completion of Stage 5 negotiations. How the treaty will address In-SHUCK-ch hydro power interests in their territory is the only significant outstanding issue. Once this is addressed, the First Nation will prepare its citizens for the ratification vote, expected in the summer or fall of 2015. This past year In-SHUCK-ch engaged their neighbours on their final agreement, including discussions with Douglas First Nation, which had separated from In-SHUCK-ch in 2009. In-SHUCK-ch recently completed a unique Nation Building TRM, which will prepare the nation for governance under a modern treaty.

There are approximately 780 In-SHUCK-ch members from the two communities of Skatin and Samahquam. In-SHUCK-ch traditional lands and waters are located between the middle point of Harrison Lake, northward to the middle point of Lillooet Lake. In-SHUCK-ch Nation has overlapping and/or shared territory with their First Nation neighbours: Chehalis, Douglas, Katzie, Lil'wat, Squamish, Stó:lō and Tseil-Waututh.

K'ómoks First Nation

The K'ómoks treaty table is in Stage 5 negotiations. The parties continue to make progress on their final agreement. The table is exploring options for shared decision making on watersheds and estuaries in the area, and is addressing the First Nation's and the Department of National Defence's interests in Goose Spit. TRM funding supported capacity building, community engagement and research for economic opportunities. This year K'ómoks hosted a treaty forum about the impacts of modern treaties and continues to engage membership, other First Nations and local governments.

There are approximately 330 K'ómoks members, with traditional territory and waters spanning the central eastern part of Vancouver Island, extending into Johnstone Strait. K'ómoks has overlapping and/or shared territory with their First Nation neighbours: Homalco, Hul'qumi'num Treaty Group, Nanoose, Nuuchahnulth Tribal Council, Sechelt, Snuneymuxw, Tla'amin, Te'mexw Treaty Association, We Wai Kai, Wei Wai Kum and Kwíakah.

Tsimshian First Nations

The Tsimshian First Nations are in Stage 4 negotiations. Kitselas and Kitsumkalum negotiate together and are transitioning into Stage 5 negotiations. Metlakatla is in advance Stage 4 negotiations, and Gita'at and Kitasoo have been inactive. Kitselas and Kitsumkalum both ratified their AIP in the spring of 2013, and are waiting for Canada and BC to sign the agreements. Kitselas and Kitsumkalum received early transfers of lands through ITAs with BC. Metlakatla continues to advance treaty negotiations, while the Prince Rupert area undergoes intensive economic development, and a land and cash offer is expected in the near future.

The five Tsimshian First Nations total approximately 3,460 members. Their traditional territories and waters span the northwest coast, including Prince Rupert and Terrace areas. The Tsimshian First Nations territories have overlapping and/or shared territories with their First Nation neighbours: Gitxsan Hereditary Chiefs, Haida, Heiltsuk, Allied Tribes of Lax Kw'alaams and Gitxaala.

Wuikinuxv Nation

The Wuikinuxv treaty table is in Stage 4 negotiations. The parties initialled an AIP in December 2012 and Wuikinuxv approved the AIP in July 2013. Canada and BC are seeking approvals to sign the agreement. Wuikinuxv is completing several TRMs: economic development, human resource, water availability, and the parties are negotiating certain matters, while the table transitions to Stage 5.

There are approximately 290 Wuikinuxv members, with traditional territory and waters located around their main community on the north side of Wannock River, between Owikeno Lake and the head of Rivers Inlet on BC's mid coast. Wuikinuxv has overlapping and/or shared territory with their First Nation neighbours: Gwa'Sala-'Nakwaxda'xw and Heiltsuk.

Yekooche First Nation

The Yekooche treaty table is in Stage 5 negotiations. The parties recently re-engaged after several years of delay due to Canada's suspension of fisheries negotiations.

There are approximately 225 Yekooche members, with traditional lands and waters near Stuart Lake, Cunningham Lake and Lake Babine. Yekooche has overlapping and/or shared territory with their First Nation neighbours: Lake Babine, McLeod, Nadleh Whut'en, Nak'azdli, Saik'uz, Stellat'en, Takla, Tl'azt'en, Ts'il Kaz Koh and Treaty 8 Tribal Council.

ADVANCED

FIRST NATIONS IN ADVANCED AGREEMENTS-IN-PRINCIPLE NEGOTIATIONS [11]

Ditidaht and Pacheedaht First Nations

Ditidaht and Pacheedaht First Nations negotiate together and the treaty table is in advanced Stage 4 negotiations. In March 2013, BC signed ITAs with both First Nations. The parties are developing a treaty settlement land package that also incorporates early transfer of lands from the ITAs. Pacheedaht and Canada continue to engage on federal parks, and the two First Nations continue to negotiate a Strategic Engagement Agreement with BC. Ditidaht and Pacheedaht both received TRM funding to complete work on lands and traditional use.

There are approximately 770 Ditidaht members and approximately 280 Pacheedaht members. Ditidaht and Pacheedaht traditional territories and waters span the southwestern corner of Vancouver Island. Ditidaht and Pacheedaht share a boundary. Ditidaht has overlapping and/or shared territory with their First Nation neighbours: Huu-ay-aht and Cowichan, and Pacheedaht has overlapping and/or shared territory with their First Nation neighbours: T'Souke and Cowichan Lake.

Gwa'Sala-'Nakwaxda'xw Nation

The Gwa'Sala-'Nakwaxda'xw treaty table is in advanced Stage 4 negotiations. The parties continue to address outstanding chapter work in their near complete AIP. Gwa'Sala-'Nakwaxda'xw completed extensive community engagement on treaty and also explored economic opportunities through TRM funding. The treaty table completed substantial work on land selection and an offer is expected in the fall.

There are approximately 940 Gwa'Sala-'Nakwaxda'xw members, many reside at the Tsulquate reserve where they were relocated. Gwa'Sala-'Nakwaxda'xw traditional lands and waters are located on the mainland across from northern tip of Vancouver Island. Gwa'Sala-'Nakwaxda'xw has overlapping and/

or shared territory with their First Nation neighbours: Kwicksutaineuk, Kwa-wa-aineuk, Kwakiutl, 'N̓am̓gis, Tlatlasikwala, Tsawataineuk and Wuikinuxv.

Homalco Indian Band

The Homalco treaty table is in Stage 4 negotiations. This past year, Homalco presented a land proposal to Canada and BC as a basis for a land offer. The parties are aiming to formalize an offer this fall. In August 2014, BC and Homalco signed an ITA that provides economic development opportunities on Sonora and East Thurlow Islands.

There are approximately 465 Homalco members, with traditional lands and waters extending from Phillips Arm, west of the mouth of Bute Inlet, to Raza Passage and Quantum River and to Stuart Island and Bute Inlet and its watershed. Homalco has overlapping and/or shared territory with their First Nation neighbours: K'ómoks, Klahoose, Qualicum, Tla'amin, Wei Wai Kum, We Wai Kai and Kwiakah.

Katzie Indian Band

The Katzie treaty table is in Stage 4 negotiations. The parties are close to completing all the language for the AIP and expect a land and cash offer in the near future. Katzie continues to engage the membership and local governments as they move forward, including a community-to-community forum with Metro Vancouver.

There are approximately 550 Katzie members, with traditional lands and waters around Pitt Meadows, Maple Ridge, Coquitlam, Surrey, Langley and New Westminster. Katzie has overlapping and/or shared territory with their First Nation neighbours: Kwikwetlem, Kwantlen, Musqueam and Tsawwassen.

Ktunaxa Kinbasket Treaty Council

The Ktunaxa (KKTC) treaty table is in Stage 4 negotiations. In March 2013, BC and KKTC signed an ITA for the early transfer of 242 hectares of Crown land to KKTC in the area of Wensley Bench in the Arrow Lakes region. The parties are focused on completing a few substantial remaining provisions to conclude the AIP. KKTC completed a community engagement TRM, and continues to hold community workshops with its citizens on the proposed treaty.

There are approximately 1,090 Ktunaxa members. Ktunaxa traditional territory and waters in BC include the Kootenay, Flathead and Columbia River watersheds within the area that extends from the Arrow and Kinbasket Lakes east to the Alberta border. KKTC represents: ?akisq̓nuk (Columbia Lake), ?aqam (St. Mary's Indian Band), ?akinkum̓tasnuq̓i?it (Tobacco Plains Band) and Yaqan nu?kiy (Lower Kootenay Band). Ktunaxa has overlapping and/or shared territory with their First Nation neighbours: Osoyoos, Okanagan, Penticton, Shuswap Nation Tribal Council, Spallumcheen, Upper and Lower Similkameen, Upper Nicola and Westbank.

'N̓am̓gis Nation

The 'N̓am̓gis treaty table is in Stage 4 negotiations. In March 2013, 'N̓am̓gis voted not to accept the AIP. Since then, the 'N̓am̓gis treaty team has been engaging the community on next steps, and the possibility of another vote.

There are approximately 1,790 'N̓am̓gis members, with traditional territory and waters at the north end of Vancouver Island, extending from the Nimpkish watershed to the east and west. 'N̓am̓gis Nation has overlapping and/or shared territory with their First Nation neighbours: Kwakiutl, Tlowitsis, Tlatlasikwala, Mamalilikulla-Qwe'Qwa'Sot'Em, Kwikwasut'inuxw Haxwa'mis, Da'naxda'xw/Awaetlala, Mowachah/Muchalaht, Gwawaenuk, Gwa'sala-'Nakwaxda'xw and Dzawada'enuxw.

Nazko First Nation

The Nazko treaty table is in Stage 4 negotiations. Canada and BC made a land and cash offer in March 2013 and Nazko made a counter-offer in November 2013. The parties continue to negotiate and attempt to reach an agreement. Nazko received two TRMs: constitution development and human resource development.

There are approximately 370 Nazko members, with traditional territory and waters extending from Quesnel to Prince George. Nazko has overlapping and/or shared territory with their First Nation neighbours: Lhtako Dene, Lhoozk'us Dene and Alexandria.

Northern Shuswap Tribal Council

The Northern Shuswap Tribal Council (NStQ) treaty table is in Stage 4 negotiations. In 2009, NStQ rejected a land and cash offer. The parties continued to collaboratively develop a second land and cash package and Canada and BC made an official offer in August 2014. NStQ is considering the offer and the parties are targeting early fall to conclude AIP negotiations. NStQ continues to work on three multi-year TRMs: community engagement, economic development and a water study.

There are approximately 2,505 NStQ members, with traditional territory and waters in the central Cariboo from Valemont and McBride in the northeast, to the Fraser River in the west. NStQ represents four communities: T'exelc, Xat'sū ll/ Cm'etem, Stswecem'c/Xgat'tem and Tsq'escen'. NStQ has overlapping and/or shared territory with their First Nation neighbours: Lheidli T'enneh, Lhtako Dene Nation, the Secwepemc Nations and the Tsilhqot'in National Government.

Te'mexw Treaty Association

The Te'mexw (TTA) treaty table concluded Stage 4 negotiations. The AIP was approved by TTA via band council resolutions in March 2014 and was initialled by BC in April 2014 and by Canada in June 2014. The parties are waiting for approvals to sign the AIP. The Te'mexw First Nations are also Douglas Treaty beneficiaries. Te'mexw is developing constitutions for each of its five member First Nations and is addressing the transition of landholdings (such as Certificates of Possession) post-treaty.

There are approximately 1,625 Te'mexw members. TTA represents five First Nations: Malahat, Beecher Bay, T'sou-ke, Snaw-naw-AS and Songhees. Te'mexw traditional territories and waters are located in two main areas: on the southern part of Vancouver Island, and on the east coast of Vancouver Island around Nanoose Bay. Te'mexw member First Nations have overlapping and/or shared territory with their First Nation neighbours: Esquimalt, Saanich, Sechelt, Qualicum, Nanaimo, some of the Nuu-chah-nulth and Hul'qumi'num First Nations.

Tla-o-qui-aht First Nations

The Tla-o-qui-aht treaty table is in Stage 4 negotiations. The parties completed an AIP and in November 2012 the Tla-o-qui-aht membership voted not to accept the agreement. Tla-o-qui-aht continues to engage the community to determine if a second vote should take place.

There are approximately 1,041 Tla-o-qui-aht members, with traditional territory (*hahoulethee*) and waters extending from Tofino, including the ocean, to Kennedy Lake in the south, Adder Mountain in the east, and Rhine Peak to the north. Tla-o-qui-aht has overlapping and/or shared territory with their First Nation neighbours: Ahousaht, Ucluelet, Hupacasath and Toquaht.

ACTIVE

FIRST NATIONS IN ACTIVE NEGOTIATIONS [22]

Acho Dene Koe First Nation

The Acho Dene Koe (ADK) treaty table is in Stage 2 negotiations. ADK is a trans-boundary First Nation, which has not been able to engage BC in treaty negotiations to date. ADK signed an AIP with Canada and the Northwest Territories in February 2014. It is expected that this milestone will enable BC to obtain a mandate to negotiate with ADK.

There are approximately 675 ADK members, with traditional territory and waters spanning three jurisdictions: BC, Yukon and Northwest Territories. ADK's main community is Fort Liard, north of the BC-Northwest Territories border, and maintains a small settlement at Francois Lake in northern BC. ADK has overlapping and/or shared territory in BC with their First Nation neighbours: Kaska Dena Council and Fort Nelson.

Allied Tribes of Lax Kw'alaams

The Lax Kw'alaams treaty table is in Stage 2 transitioning into AIP negotiations. Lax Kw'alaams was once part of the Tsimshian Tribal Council, but

separated and re-engaged in treaty negotiations independently. The table completed a Stage 3 Framework Agreement in June 2014 and has started AIP land discussions.

There are approximately 3,685 Lax Kw'alaams members. Lax Kw'alaams traditional lands and waters are located on the northwest coast of BC around Port Simpson, Prince Rupert and the Skeena. Lax Kw'alaams has overlapping and/or shared territory with their First Nation neighbours: Gitxaala, Kitselas, Kitsumkalum, Metlakatla and Nisga'a.

Council of the Haida Nation

The Haida treaty table is in Stage 4 negotiations. The parties are exploring with the Crown ways to expand the reconciliation model to address Haida title and rights over Haida Gwaii, including shared decision making in areas of federal jurisdiction such as fisheries and marine management. Haida and BC are implementing and renewing the Kunst'aa guu-Kunst'aayah Reconciliation Protocol.

There are approximately 5,000 Haida members from the two communities of Masset and Skidegate. Haida traditional lands and waters encompass Haida Gwaii. Haida has overlapping and/or shared territory with their neighbouring First Nations: Heiltsuk and Tsimshian.

Da'naxda'xw/Awaetlala Nation

The Da'naxda'xw/Awaetlala treaty table is in Stage 4 negotiations. The parties continue to make progress on AIP chapter work. The table is identifying land parcels for a future land and cash offer. Da'naxda'xw/Awaetlala is finalizing a multi-year governance TRM.

There are approximately 220 Da'naxda'xw/Awaetlala members, with traditional lands and waters on the mainland across from northern Vancouver Island. Da'naxda'xw/Awaetlala has overlapping and/or shared territory with their First Nation neighbours: Mamaleqala Qwe'qwa'sot'Enox and Mumtagila.

Esk'etemc First Nation

The Esk'etemc treaty table is in Stage 4 negotiations. Esk'etemc is meeting with family groups and elders to prepare for negotiations on governance and land.

There are approximately 945 Esk'etemc members, with traditional territory and waters centred around Alkali Lake, southwest of Williams Lake. Esk'etemc has overlapping and/or shared territory with their First Nation neighbours the Secwepemc Nations.

Gitanyow Hereditary Chiefs

The Gitanyow treaty table is in Stage 4 negotiations. The parties resumed tripartite negotiations this year with a focus on negotiating the land and resource chapters. Gitanyow continues implementing their reconciliation agreement with BC.

There are approximately 830 Gitanyow members, with traditional territory and waters in areas of the Kitwanga and the Nass watersheds and the upper Kispiox River in the Swan Lakes area. Gitanyow has overlapping and/or shared territory with their First Nation neighbours: Gitksan Hereditary Chiefs and Nisga'a.

Gitksan Hereditary Chiefs

The Gitksan treaty table is in Stage 4 negotiations. The tripartite table has not met since the fall of 2011, because Canada and BC will not engage due to litigation brought by members of the Gitksan community against the Gitksan Treaty Society (GTS). On June 18, 2014, the case was dismissed, on the grounds that it amounted to dissenting political views, and it was not appropriate for the court to impose a solution on the First Nation. The Treaty Commission has supported governance efforts by the Gitksan Hereditary Chiefs, and this mandate issue is not an obstacle to resuming tripartite negotiations in the fall.

The Gitksan Hereditary Chiefs are addressing membership concerns about the administration of the GTS, and a forensic audit has found no financial impropriety.

There are approximately 6,565 Gitksan members. In treaty negotiations, the Gitksan Hereditary Chiefs represent the majority of the house groups and

membership. Gitxsan traditional lands and water are located in the Hazelton area and watersheds of the upper Skeena and Nass rivers. Gitxsan has overlapping and/or shared territory with their First Nation neighbours: Carrier Sekani Tribal Council, Gitanyow Hereditary Chiefs, Nisga'a, Tahltan, Tsimshian First Nations, and Wet'suwet'en Hereditary Chiefs.

Haisla Nation

The Haisla treaty table is in Stage 4 negotiations. Haisla Nation continues to focus internally to determine how to proceed in negotiations while addressing Haisla rights and title.

There are approximately 1,810 Haisla members, with traditional lands and waters on the west coast of BC near Kitimat. Haisla has overlapping and/or shared territory with their First Nation neighbours: Allied Tribes of Lax Kw'alaams, Gitxsan Hereditary Chiefs, Gitxaala, Heiltsuk, Nisga'a, Nuxalk, Tsimshian First Nations, and Wet'suwet'en Hereditary Chiefs.

Hul'qumi'num Treaty Group

The Hul'qumi'num (HTG) treaty table is in Stage 4 negotiations. Tripartite activity has been intermittent this year as HTG takes time to engage with member communities on a governance structure. The parties will reconvene in the fall to discuss next steps.

There are approximately 7,365 HTG members. HTG represents six communities: Cowichan Tribes, Halalt, Lake Cowichan, Lyackson, Penelakut and Stz'uminus (not currently negotiating). HTG traditional lands and waters encompass part of southern Vancouver Island, a narrow corridor on the mainland to Yale in the east, and sections of the Salish Sea. HTG has overlapping and/or shared territory with their First Nation neighbours: Ditidaht, Katzie, Musqueam, Snuneymuxw, Te'mexw Treaty Association, Tsawwassen, and Yale.

Kaska Dena Council

The Kaska Dena treaty table is in Stage 4 negotiations. The parties continue to negotiate outstanding chapters and their 18-month AIP workplan, committed to last year, is on track. BC and Kaska signed a Strategic Engagement Agreement and an ITA and

the parties are implementing both agreements. Kaska received TRM funding to complete constitution and tourism work.

There are approximately 1,010 Kaska Dena members representing the communities of Kwadacha, Daylu Dena Council and Dease River First Nations. Kaska Dena Council traditional territory and waters stretch from north-central BC into Yukon and the Northwest Territories. Kaska Dena Council has overlapping and/or shared territory with their First Nation neighbours: Carrier Sekani Tribal Council, Liard, Ross River Dena and Tahltan.

Klahoose First Nation

The Klahoose treaty table is in Stage 4 negotiations. The parties continue to review and negotiate chapter language. Klahoose is taking time this year to engage with the community to develop land proposals to table in future months.

There are approximately 385 Klahoose members, with traditional territory and waters around their main community on Cortez Island, opposite Quadra Island, near Campbell River. Klahoose has overlapping and/or shared territory with their First Nation neighbours: Homalco, Kwakiutl and Tla'amin.

Laich-Kwil-Tach Council of Chiefs

The Laich-Kwil-Tach Council of Chiefs (LCC) treaty table is in Stage 4 negotiations. LCC now represents We Wai Kai, as Wei Wai Kum and Kwiakah have formed a separate treaty negotiations table. The pace of negotiations slowed during this transition. With the Treaty Commission's assistance, We Wai Kai, Wei Wai Kum and Kwiakah signed a Communications Protocol in April 2014 to assist and support their respective land negotiations.

There are approximately 1,100 LCC members from We Wai Kai, with traditional lands and waters around Campbell River, Quadra Island and surrounding inlets. LCC has overlapping and/or shared territory with their First Nation neighbours: D'anateuk, Homalco, Klahoose, K'ómoks, Kwiakah, Mamalilikulla-Qwe-Qwa-Sot'em, 'Nāmgis, Nanoose, Qualicum, Tla'amin, Tlowitsis, Snuneymuxw and Wei Wai Kum and Kwiakah.

Lake Babine Nation

The Lake Babine (LBN) treaty table is in Stage 4 negotiations. In March 2014, BC and LBN signed an ITA, which will transfer four land parcels for economic opportunities and funding to support capacity development. LBN underwent governance restructuring and strengthening during the year, while continuing to engage the membership on treaty.

There are approximately 2,425 Lake Babine Nation members representing the communities of Woyenne, Old Fort, Tache, Donald's Landing and Fort Babine. LBN traditional territory and waters spans the area from Burns Lake in the south to the Babine and Nilkitaw rivers to the north, including most of Lake Babine. LBN has overlapping and/or shared territory with their First Nation neighbours: Carrier Sekani Tribal Council, Wet'suwet'en Hereditary Chiefs and Yekooche.

Snuneymuxw First Nation

The Snuneymuxw treaty table is in Stage 4 negotiations. The tripartite treaty table has not met for some time, as the parties disagree on how to reconcile Snuneymuxw's Douglas treaty rights with a modern treaty.

There are approximately 1,715 Snuneymuxw members, with traditional territory and waters extending across eastern Vancouver Island, including Nanaimo, Gabriola and Mudge Islands and other islands in the Nanaimo watershed. Snuneymuxw has overlapping and/or shared territory with their First Nation neighbours: Nanoose, Nuu-chah-nulth Tribal Council and Stz'uminus.

Stó:lō Xwexwilmexw Treaty Association

The Stó:lō (SXTA) treaty table is in Stage 4 negotiations. The parties maintained significant progress on chapter language. SXTA made a comprehensive land selection presentation to Canada and BC in fall 2013 as the first step towards developing a collaborative land and cash package. TRM funding assisted SXTA to draft a constitution and engage their membership in its development. The SXTA also continued TRM-funded research on economic development and lands.

There are approximately 1,600 Stó:lō members represented by SXTA from Aitchelitz, Leq'á:mel, Popkum, Skowkale, Skawahlook, Tzeachten and Yakwekwioose. The SXTA traditional territory and waters include the Lower Mainland of south-western BC, centralized around the upper Fraser and Chilliwack River Valleys, lower Harrison Lake and lower Fraser Canyon.

SXTA has overlapping and/or shared territory with their First Nation neighbours: Chawathil, Cheam, Peters, Chehalis, Katzie, Kwantlen, Kwawkwawapilt, Kwikwetlem, In-SHUCK-ch, Matsqui, Musqueam, New Westminster, Nl'akapamux, Semiahmoo, Scowlitz, Seabird, Shxw'owhámél, Soowahlie, Sumas, Skwah, Skway, Squamish, Squiala, Tsawwassen, Tsleil-Waututh, Union Bar and Yale.

Taku River Tlingit First Nation

The Taku River Tlingit (Taku) treaty table is in Stage 4 negotiations. The parties are addressing outstanding issues, and there remain significant differences on their positions on land, shared decision making and governance. Taku is engaging the community and is seeking a renewed mandate in September to determine next steps in treaty negotiations. Taku undertook a TRM project to identify and map areas of interest for treaty negotiations.

There are approximately 400 Taku River members, with traditional territory and waters in northwest BC and southwest Yukon. Taku has overlapping and/or shared territory with their First Nation neighbours: Carcross/Tagish and Teslin Tlingit Council.

Tlatlasikwala Nation

The Tlatlasikwala treaty table is in Stage 4 negotiations. The table has met infrequently due to issues that Canada raised about the viability of a conventional self-government treaty model for a small First Nation. The parties have been discussing options to address these issues, but have not reached agreement or a process to move forward. Canada is working internally on this issue and the Treaty Commission has encouraged the parties to address it at the tripartite table.

There are approximately 70 Tlatlasikwala members, with traditional lands and waters located on the northern tip of Vancouver Island. Tlatlasikwala Nation has overlapping and/or shared territory with their First Nation neighbours: Kwakiutl and Quatsino.

Thlowitsis First Nation

The Thlowitsis treaty table is in Stage 4 negotiations. The Treaty Commission supported the re-engagement of the tripartite table. The Parties are addressing outstanding issues and moving forward to complete their AIP.

There are approximately 400 Thlowitsis members, with traditional territory and waters spanning part of northeastern Vancouver Island and an area on the mainland just northwest of Sayward. Thlowitsis has overlapping and/or shared territory with their First Nation neighbours: Da'naxda'xw/Awaetlala, Tnak-teuk, 'Nangis, Homalco, K'ómoks and Mamalaqualla, and We Wai Kai.

Tsay Keh Dene Band

The Tsay Keh Dene (TKD) treaty table is in Stage 4 negotiations. The critical issues are shared decision making and resource revenue sharing. TKD is completing their two-year lands TRM to determine the community's areas of interest for treaty.

There are approximately 465 TKD members, with traditional territory and waters from Mount Trace in the north, South Pass Peak in the west, the Nation River and Mount Laurier in the east. TKD has overlapping and/or shared territory with their First Nation neighbours: Carrier Sekani Tribal Council Nations, Kaska Dena Council, Gitksan Hereditary Chiefs, Wet'suwet'en Hereditary Chiefs, Tahltan and Treaty 8 Tribal Council.

Tsleil-Waututh Nation

The Tsleil-Waututh treaty table is in Stage 4 negotiations. The treaty table has completed most of its chapter work, but has challenges on reaching agreement on a land package. The availability of urban lands is a significant issue, but the table is working on a land and cash offer for the near future. Tsleil-Waututh continues to engage the community as well as local government.

There are approximately 560 Tsleil-Waututh members, with traditional lands and waters around North Vancouver and the Lower Mainland. Tsleil-Waututh has overlapping and/or shared territory with their First Nation neighbours: Katzie, Kwikwetlem, Musqueam, Squamish and Stó:lō communities.

Wei Wai Kum and Kwiakah First Nations

Wei Wai Kum/Kwiakah First Nations (WKTS) treaty table is in Stage 2. WKTS separated from Laich Kwil Tach Council of Chiefs and submitted their own Statement of Intent in January 2014. The parties had the initial meeting in September 2014 and are completing their readiness documents. The Treaty Commission worked with WKTS on developing a Communications Protocol with We Wai Kai to assist the nations in cooperating and supporting each other as they transition to separate governing structures.

There are approximately 810 Wei Wai Kum/Kwiakah members. WKTS traditional lands and waters are located around the east-central area of Vancouver Island and mainland coastal watersheds. WKTS has overlapping and/or shared territory with their First Nation neighbours: Homalco, Klahoose, K'ómoks, Mamalilikulla-Qwe-Qwa-Sot'em, Mowachaht, Muchalaht, 'Nangis, Nanoose, Qualicum, Snuney-muxw, Tanakteuk, Tla'amgis and We Wai Kai.

Wet'suwet'en Hereditary Chiefs

The Wet'suwet'en treaty table is in Stage 4 negotiations. The parties continue to advance their discussions on governance with a focus on continuing and integrating Wet'suwet'en's hereditary system. Wet'suwet'en is engaging with community members as part of their multi-year TRM on governance and constitutional development.

There are approximately 2,900 Wet'suwet'en members, with traditional lands and waters in the Bulkley River drainage area in northwest BC. Wet'suwet'en Hereditary Chiefs have overlapping and/or shared territory with their First Nation neighbours: Carrier Sekani Tribal Council, Gitksan and Lake Babine.

NOT NEGOTIATING**FIRST NATIONS NOT CURRENTLY
NEGOTIATING A TREATY [18]**

The following First Nations have had no significant tripartite activity in the last fiscal year or longer:

Carcross/Tagish First Nation

There are approximately 640 Carcross/Tagish members, with traditional territory and waters spanning the Yukon/BC border. Carcross/Tagish has overlapping and/or shared territory with their First Nation neighbours: Aishihik, Champagne and Taku River Tlingit.

Carrier Sekani Tribal Council

There are approximately 6,730 Carrier Sekani members. The Carrier Sekani traditional territory and waters in north-central BC. The eight Tribal Council communities include Ts'il Kaz Koh, Nadleh Whut'en, Nak'azdli, Saik'uz, Stellat'en, Takla, Tl'azten and Wet'suwet'en First Nation. The Carrier Sekani Tribal Council has overlapping and/or shared territory with their First Nation neighbours: Gitksan, Kaska Dena Council, Lake Babine, Lheidli T'enneh, Wet'suwet'en Hereditary Chiefs and Yekooche.

Champagne and Aishihik First Nations

There are approximately 875 Champagne and Aishihik members. Champagne and Aishihik traditional territory and waters span the Yukon/BC border. Champagne and Aishihik have overlapping and/or shared territory with their First Nation neighbours: Carcross/Tagish First Nation and Taku River Tlingit.

Cheslatta Carrier Nation

There are approximately 345 Cheslatta members. Cheslatta traditional territory and waters encompass the area around Ootsa and Eutsuk lakes in central BC. Cheslatta has overlapping and/or shared territory with their First Nation neighbours: Carrier Sekani Tribal Council, Lake Babine, Yekooche.

Heiltsuk Nation

There are approximately 2,370 Heiltsuk members. Heiltsuk is based on Campbell Island, with traditional territory and waters extending across the central coast. Heiltsuk has overlapping and/or shared territory with their First Nation neighbours: Haida, Haisla, Nuxalk, and Wuikinuxv.

Hupacasath First Nation

There are approximately 315 Hupacasath members. Hupacasath traditional territory and waters are located in the Port Alberni area. Hupacasath has overlapping and/or shared territory with their First Nation neighbours: Uchucklesaht, Ucluelet and Tseshaht.

Hwiltsum First Nation

There are approximately 230 Hwiltsum members. Hwiltsum traditional territory and waters are located in the lower mainland, Gulf Islands and a portion of Vancouver Island. Hwiltsum has overlapping and/or shared territory with their First Nation neighbours: Cowichan, Halalt, Lyackson, Musqueam, Penelakut, Semiahmoo, Sencot'en, Stz'uminus and Tsawwassen.

Kwakiutl Nation

There are approximately 760 Kwakiutl members. The Kwakiutl Band's main community is in Fort Rupert and their traditional territory and waters lie along the northeastern shores of Vancouver Island. The Kwakiutl have overlapping and/or shared territory with their First Nation neighbours: Gwa'Sala-Nakwaxda'xw, 'N̓amgis, Quatsino, Tanakteuk and Tlatlasikwala.

Liard First Nation

There are approximately 300 Liard members, located primarily in the Yukon. Liard traditional territory and waters span southeast Yukon, extending into north-central BC and the Northwest Territories. Liard First Nation has overlapping and/or shared territory with their First Nation neighbours: Carrier Sekani Tribal Council, Kaska Dena Council, Ross River and Tahltan.

McLeod Lake Indian Band

There are approximately 530 McLeod Lake members, with traditional lands and waters north of Prince George. McLeod Lake Indian Band has overlapping and/or shared territory with their First Nation neighbours: Lheidli T'enneh, Necoslie, West Moberly, Salteaux and Halfway River.

Musqueam Nation

There are approximately 1,335 Musqueam members, with traditional territory and waters spanning the Greater Vancouver area. Musqueam has overlapping and/or shared territory with their First Nation neighbours: Kwikwetlem, Squamish, Tsawwassen and Tsleil-Waututh.

Nuu-chah-nulth Tribal Council

There are approximately 2,990 Nuu-chah-nulth members. Nuu-chah-nulth Tribal Council comprises of Ehattesaht, Hesquiaht, Mowachacht/Muchalaht, Nuchatlaht and Tseshaht First Nations. Their traditional territories and waters span much of the west coast of Vancouver Island. Nuu-chah-nulth Tribal Council has overlapping and/or shared territory with their First Nation neighbours: Ditidaht, Hupacasath, Huu-ay-aht, Ka:'yu:'k't'h'/Che:k'tle-syet'h', Toquaht, Uchucklesaht and Ucluelet.

Quatsino First Nation

There are approximately 520 Quatsino members, with traditional lands and waters around the north end of Vancouver Island. Quatsino has overlapping and/or shared territory with their First Nation neighbours: Kwakiutl, Laich-Kwil-Tach, Nuu-chah-nulth Tribal Council and Tlatlasikwala.

Ross River Dena Council

There are approximately 535 Ross River Dena Council members, with traditional territory and waters ranging from southeast Yukon, extending into north central BC and the Northwest Territories. Ross River Dena Council has overlapping and/or shared territory with their First Nation neighbours: Carrier Sekani Tribal Council, Kaska Dena Council, Liard and Tahltan.

Sechelt Indian Band

There are approximately 1,355 Sechelt members with traditional lands and waters located around the Sechelt Peninsula. Sechelt has overlapping and/or shared territory with their First Nation neighbours: Nanoose, Squamish and Tla'amin.

Squamish Nation

There are approximately 4,115 Squamish members, with traditional territory and waters ranging from the Lower Mainland to Howe Sound and the Squamish valley watershed. Squamish has overlapping and/or shared territory with their First Nation neighbours: Katzie, Musqueam, Tsleil-Waututh and Lil'wat.

Teslin Tlingit Council

There are approximately 605 Teslin Tlingit members, with traditional territory and waters spanning the Yukon/BC border. The Teslin Tlingit has overlapping and/or shared territory with their First Nation neighbours: Liard, Ross River, Tahltan and Taku River Tlingit.

Westbank First Nation

There are approximately 815 Westbank members. Westbank traditional lands and waters are located in the Kelowna area. Westbank has overlapping and/or shared territory with their First Nation neighbours: Lower Nicola, Penticton and Okanagan Nation Alliance.

OUR THREE ROLES

FACILITATING RECONCILIATION

Since 1993, the BC Treaty Commission has been the independent facilitator for treaty negotiations among the governments of Canada, British Columbia and First Nations in BC. As keeper of the process, the Treaty Commission does not negotiate treaties — that is done by the three parties at each negotiation table.

THE TREATY COMMISSION HAS THREE ROLES

- > Facilitation
- > Funding
- > Public information and education

The 1991 Report of the BC Claims Task Force is the blueprint for the made-in-BC treaty negotiations process. Canada, British Columbia, and the First Nations Summit (the “Principals”) embraced the Report and its 19 recommendations, committing to a process of reconciliation that would lead to recognition of and respect for aboriginal title and rights, while upholding the honour of the Crown.

The Principals’ commitment to good faith tripartite negotiations was given legal force through the British Columbia Treaty Commission Agreement, 1992 and legislation establishing the Treaty Commission. The Treaty Commission was mandated to facilitate the completion of fair and durable treaties. The process is voluntary and open to all First Nations in BC.

The Treaty Commission continues to uphold its role as the “Independent Facilitator for Treaty Negotiations.” We are working with the Principals through the “Role of BCTC” discussions in the Treaty Negotiations Treaty Revitalization process in order to strengthen its mandate.

Funding from the Federal and Provincial governments for the operating costs of the Treaty Commission for the 2013–2014 fiscal year was \$2.55 million. Total funding for operations from 1993 to March 31, 2014 is approximately \$45.6 million. The government of Canada contributes 60% of the Treaty Commission’s budget and the BC government contributes 40%.

The Treaty Commission comprises a Chief Commissioner, four Commissioners and 10 staff.

FACILITATION

The Treaty Commission’s primary role is to oversee the negotiations process and to make sure the parties are being effective and making progress. In carrying out this role, the Treaty Commission:

- > Accepts First Nations into the treaty negotiations process and assesses when the parties are ready to start;
- > Monitors and reports on progress and encourages timely negotiations;
- > Chairs key meetings and offers advice to the parties;
- > Assists the parties in developing solutions and in resolving disputes;

The British Columbia Treaty Commission is the independent facilitator of treaty negotiations.

-
- > Reports publicly on opportunities and key obstacles to progress (for example, on mandates, resources, capacity);
 - > Works with the Principals on improving the treaty negotiations process;
 - > Supports projects that promote progress in negotiations; and
 - > Develops and applies policies and procedures for the six-stage treaty process.

Commissioners and staff are involved in an increasing variety of facilitation initiatives. This increased demand has arisen from a number of circumstances, including:

- > Intensified treaty negotiations at Stage 5 and Stage 4 tables;
- > Completion of final agreement negotiations and the ratification requirements for First Nations;
- > Stalled treaty negotiations;
- > Intensified inter-First Nation dialogue on overlapping and shared territories, particularly where treaty negotiations are approaching final agreement;
- > Intensified internal First Nations dialogue, especially in multi-community First Nations, on issues of shared territory, governance, and capacity;

- > Consultations between the Crown and First Nations affected by overlaps; and
- > Principal-level and senior official-level discussions on common issues through processes such as the Treaty Negotiations Process Revitalization Table.

The Treaty Commission is also applying its knowledge and experience to special initiatives that will benefit the treaty negotiations process and provide the parties with broader tools, such as:

- > The Human Resource Capacity Tool, to assist First Nations in preparing for self-government;
- > Resources to address overlapping and shared territory issues, and to support First Nations in the early resolution of these issues; and
- > Support First Nations on treaty ratification through conferences and best practice tools.

FUNDING

The Treaty Commission allocates negotiation support funding so that First Nations can prepare for and carry out treaty negotiations on a more even footing with the governments of Canada and BC. In general, for every \$100 of negotiation support funding allocated, \$80 is a loan from Canada, \$12 is a contribution from Canada and \$8 is a contribution from BC.

Since April 2004, First Nations have been able to accept just the non-repayable contribution or take any portion of their loan allocation. In every year since this change, several First Nations have chosen to accept fewer loan dollars than would have been required previously.

Contribution funding continues to be available to a First Nation until the effective date of a treaty. However, loan advances must stop at least 30 days prior to all three parties signing the final agreement.

Since opening its doors in May 1993, the Treaty Commission has allocated approximately \$627 million in negotiation support funding to more than 50 First Nations — approximately \$493 million in loans and \$134 million in non-repayable contributions.

Outstanding negotiations loans totalled approximately \$486 million (excluding accrued interest) at March 31, 2014. The Tsawwassen and Maa-nulth First Nations have begun to repay their negotiation loans, under the terms of their final agreements.

PUBLIC INFORMATION AND EDUCATION

In its independent role as keeper of the process, the Treaty Commission provides public information and education on treaty making in British Columbia. The Treaty Commission reports annually on the status of negotiations in our annual report and also provides other related information on our website, and through online newsletters, special publications, DVDs and teaching materials for elementary, secondary and post-secondary schools in order to increase awareness and understanding of the treaty negotiations process. The Treaty Commission is delivering more of its publications, materials, and current information online.

In 2013–2014 the Treaty Commission re-branded, launched a new website, and increased its social media participation — YouTube, LinkedIn, and Facebook. The Treaty Commission also created a “Treaty 101” video on its website explaining the history of aboriginal rights, why treaty negotiations are taking place in BC, the role of the Treaty Commission, and an overview of the stages of the treaty negotiations process.

As part of our public information mandate, the Treaty Commission delivers presentations at conferences, special events, community forums, and to business organizations, schools, and post-secondary institutions.

The parties to the negotiations — the governments of Canada and BC, and the individual First Nations — also share this responsibility for public information by providing specific information on their treaty negotiations.

TREATY COMMISSIONERS

The Chief Commissioner is appointed by agreement of the three Principals. One Commissioner is appointed by Canada and one is appointed by British Columbia. The First Nations Summit elects two Commissioners. Commissioners do not represent the Principals who appoint them, but act independently.



SOPHIE PIERRE

was appointed Chief Commissioner in April 2009 by agreement of the governments of Canada and British Columbia

and the First Nations Summit. Pierre served the St. Mary's Indian Band for 30 years, 26 as elected chief, and was the administrator of the Ktunaxa/Kinbasket Tribal Council for 25 years. She also served as the tribal chair of the Ktunaxa Nation Council, chairperson of the First Nations Finance Authority, president of St. Eugene Mission Holdings Ltd. and co-chair of the International Advisory Committee to the Indigenous Nations Institute for Leadership, Management, and Policy for the University of Arizona. Pierre was involved in the work of the British Columbia Claims Task Force and served as a co-chair of the First Nations Summit. She has also served on several boards and committees, including the Environmental and Aboriginal Relations Committee of the BC Hydro & Power Authority and the First Nations Congress. Pierre was recognized with the Order of British Columbia in 1994 and the National Aboriginal Achievement Award in the business category in 2003. During her tenure as Chief Commissioner, Sophie Pierre has been awarded two honorary Doctorates of Law — in 2010 by the University of Canada West and in 2012 by the University of British Columbia.



JERRY LAMPERT

was re-appointed in December 2011 to a third two-year term by the Government of Canada. Prior to this appointment,

Lampert served for 15 years as president and chief executive officer of the Business Council of British Columbia, where he was a vocal advocate for developing better business relationships with First Nations. Lampert served as chief of staff to two BC premiers and managed two successful provincial election campaigns in BC. He currently sits on the Board of Directors of the United Way of the Lower Mainland.



DAVE HAGGARD

was re-appointed in September 2014 to an 18-month extension by British Columbia. He has served as Commissioner since

February 2008. He has facilitated negotiations with industry, labour, and governments including First Nations governments. Haggard has worked with the Maa-nulth First Nations among others. He was national president of the Industrial, Wood and Allied Workers of Canada and served as vice president of the Canadian Labour Congress and the BC Federation of Labour. Born in Kamloops and raised in Barriere, Haggard's grandmother was a member of the Simpcw First Nation. His late wife Eileen was a member of the Tseshah First Nation, and together they raised two children, Ted and Linsey.



CELESTE HALDANE

was elected by the First Nation Summit delegates for a second two-year term in March 2013.

Celeste is a practising lawyer

and holds a LL.M. in Constitutional Law from Osgoode Hall Law School, York University, a LL.B. and B.A. in Anthropology both granted by the University of British Columbia. She is appointed by the Provincial Government to serve on the UBC's Board of Governors. Celeste is an active member of the Canadian Bar Association and is on the Executive of both the National Constitutional & Human Rights Forum and the National Women's Lawyer Forum. She volunteers on the Special Council Working Group to develop Musqueam's Matrimonial Real Property laws. Celeste previously served four years as Chair of the Musqueam Land Code Committee, successfully leading the Land Code process through development and community ratification. Celeste is a member of the Sparrow family from Musqueam and is Tsimshian through Metlakatla. She and her husband Conrad have three children and one grandson.



DAN SMITH

was elected by the First Nations Summit delegates in September 2013 to serve a two-year term. Smith is a

member of the Wei Wai Kum of the Laich-Kwil-Tach First Nation. He has an extensive history of working with First Nations, Aboriginal organizations and the federal government. His involvement has included serving as Vice President of the Native Council of Canada, President of the United Native Nations, member of the BC Human Rights Commission, as well as numerous other boards and committees. He has worked in senior positions with the Department of Fisheries and Oceans, Indian and Northern Affairs Canada, Heritage Canada, and Canada Employment and Immigration. Smith was elected to the political executive of the First Nations Summit, the Summit Task Group, and served from 2008–2013.

THE FOLLOWING ARE OVERLAP PROTOCOLS AND AGREEMENTS THAT THE TREATY COMMISSION IS AWARE OF. THERE ARE ALSO NUMEROUS ORAL AND UNWRITTEN PROTOCOLS BETWEEN NATIONS.

Overlap and Shared Territory Agreements in British Columbia:

- > Gitga'at/Haisla/Heiltsuk/Kitasoo/Xaixais/Metlakatla/Wuikinuxv [Land and Resource Protocol Agreement](#).
- > Haida/Heiltsuk [Treaty of Peace, Respect and Responsibility](#).
- > Hamatla/Sliammon [Shared Resource Harvest Area](#).
- > Huu-ayaht/Tseshah/ Uchucklesaht [Agreement Regarding Tzartus Island](#).
- > K'ómoks/Homalco [Shared Resource Area Harvest Agreement](#).
- > Kitselas/Metlakatla [Treaty Settlement Lands Agreement](#).
- > Klahoose/Sliammon [Agreement Respecting Territorial Overlap as it applies to Land Selection for the Treaty Process](#).
- > Nisga'a/Tsimishian [Memorandum of Understanding](#).
- > Shísháhlh/Tla'amin [Shared Territory Memorandum of Agreement](#).
- > Splatsin/T'exelc/Sk'atsin/Xats'úll/Tk'emlups/Tsq'escen/Simpcw/St'swecem'c-Xgat'tem/Sexqeltqin/St'uxwtéws/Skeetchestn/Pellt'iq't/Skwłax/Ts'kw'ayłaxw/Kenpesq't/Llenlleny'ten/Esk'et [Secwepemc Nation Unity Declaration](#).
- > Squamish/Lil'wat [Protocol Agreement](#).
- > Tla'amin/Homalco [Shared Resource Harvest Area Protocol](#).
- > Tla'amin/K'ómoks/Sechelt/Klahoose/Homalco/Hamatla [Tla'amin Final Agreement, \(Protocol Agreements\)](#).
- > Tla'amin/K'ómoks [Shared Territory Protocol](#).
- > Tsawwassen/Cowichan [Overlap Agreement](#).
- > Tseshah/Maa-nulth [Accord on Barkley Sound](#).
- > Tseil-Waututh/Squamish/Musqueam Band [Protocol Agreement](#).
- > Xwemalhkwa/Tsilhqot'in [Agreement](#).

The Treaty Commission will provide these links and links to other overlap agreements and resolutions on our website in the future.

Putting those place names one on top
of the other makes our nations stronger,
as opposed to ripping each nation apart.
Sharing our territory brings us together.

— CHIEF COMMISSIONER SOPHIE PIERRE

THE INDEPENDENT FACILITATOR FOR TREATY NEGOTIATIONS

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