

# Preparing for The Day After Treaty

*A conference for First Nations*

## *Conference Presentations*

November 14–16, 2007  
Vancouver, British Columbia

Hosted by the BC Treaty Commission  
in partnership with the  
Nisga'a Lisims Government



BC TREATY COMMISSION



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# Introduction: *Are treaties the answer?*

That was the question posed by the BC Treaty Commission at a three-day forum held in November at the Hyatt Regency, Vancouver. In 2007, six First Nations ratified two final agreements under the BC treaty process. Three other First Nations are expected to conclude final agreement negotiations soon, and others are expected to conclude agreement in principle negotiations. The Treaty Commission felt it was a good time to look at what will happen the day after treaties are achieved in British Columbia.

69 First Nations and First Nation organizations from across Canada gathered November 14th–16th to discuss *Preparing for the Day After Treaties*. The conference hosted by the BC Treaty Commission in partnership with the Nisga’a Lisims Government, brought together 217 delegates to share their experiences with modern-day treaty making and lessons learned in achieving and implementing those agreements.

Among the speakers was Nelson Leeson, elected President of the Nisga’a Lisims Government, who shared the Nisga’a experience negotiating over 20 years the first modern-day treaty in British Columbia.

“For those of you who think we had some kind of special device or knowledge: we didn’t,” said Leeson in his keynote address opening the conference. “We did it through hard work, determination and unwavering perseverance.

“And we negotiated. We believe that only through negotiation can you find a way to agree on something where before you were miles apart.”

Forum participants also heard from Lieutenant Governor Steven Point, Paul Kaludjak, President of Nunavut Tunngavik Inc.; Matthew Coon Come, Council of Crees; Jim Aldridge, legal council for the Nisga’a

Lisims Government; Robert Morales, Chief Negotiator for the Hul’qumi’num Treaty Group; Chief Bill Cranmer of the ‘Namgis Nation; and Marvin George of the Lheidli T’enneh, to name just a few.

Acting Chief Commissioner Jack Weisgerber, in summing up the conference said, “This was a great opportunity for First Nations that have achieved treaties to share their experience with First Nations that are still seeking a treaty.”

A publication of the proceedings from this event is also available at [www.bctreaty.net](http://www.bctreaty.net)

## What They Said:

“Very informative; gave me a little more insight in what to expect in the implementation stage and the importance of capacity building/development of our younger generation.”

“I believe that I got enough tools to help our people sit up and take notice of the job that we have at hand with our treaty.”

“The conference overall was very valuable as it has put perspective to the Nations who are in current ongoing negotiations.”

# Keynote Speakers

## Speakers:

Nelson Leeson, President Nisga'a Nation  
Paul Kaludjak, President Nunavut Tunngavik Inc.  
Joseph Arvay, Q.C., Arvay Findlay Barristers  
Matthew Coon Come, Grand Council of Crees  
Thomas Berger, Q.C., Berger & Company  
Steven L. Point, Lieutenant Governor of BC

## Speaker: Nelson Leeson

Simigat, Sigidim haanak', k'uba wilskihlkw,  
ganshl txaa n'itkwshl k'uba tk'ihlkw.

Good evening, ladies and gentlemen, commissioners, chiefs, matriarchs, respected elders, honoured guests and youth. On behalf of the Nisga'a Nation, I thank you for attending this conference that we are co-hosting with the BC Treaty Commission.

First, I would like to acknowledge and thank the Coast Salish people whose interests are vested in the traditional territories we stand on today.

I would like to take a small amount of time this evening to talk about something that I'm extremely excited about — opportunity.

For so many years all I talked about and dreamed about was hope. Indeed, I stand here today as president of our nation, but truly I represent a generation who grew old, who wanted opportunity and never lost sight of hope.

There's a quote on the cover of one of our annual reports that says, "Some were young when they joined the cause, but grew old seeking an agreement that would benefit future generations." Truer words were never spoken.

I also represent a new generation who seek — no — demand, opportunity. Opportunity that, we believe, our treaty gives them.

Let me be clear, we never said that our treaty's a perfect model for everyone else. It is our treaty and we believe it will work for us.

When Dr. Joseph Gosnell spoke to the BC legislature on December 2, 1998, he said that our agreement is, "a beacon of hope for aboriginal people around the world."

If we have in any way inspired others to seek a better way of life for themselves and their children through peaceful negotiation, I can tell you I am quite proud of that and so are our people, many of them who are here today.

How did we get here?

Well, it has been well documented, well discussed and I might add, well argued. I won't go into specific details of our journey as we don't have another 113 years, but I will share with you our fundamental philosophy.

We did it through hard work, determination, and unwavering perseverance. We negotiated. We worked together — our chiefs, matriarchs, respected elders, the negotiating team, a long standing dedicated law firm, and our people. We sorted through all of the areas and issues that are addressed in our treaty.

I must stop here and reinforce something for those of you who may think we had some kind of special device or knowledge. We didn't, we worked together.

We knew we would fail if we could not overcome our individual perceptions, egos and biases. In a sense we negotiated with a collective wisdom.

During those years of negotiations we tested our common bowl philosophy, many, many times. And it has taken us through those difficult times.

What is a treaty?

A treaty is an agreement, an understanding between parties who may start out agreeing on not much of anything.

But, by the very act of negotiating they are in agreement on one thing — their desire to seek agreement, to come to mutual understanding, to settle an issue, to resolve a difference.

Describe it any way you want, but we believe that only through negotiation can you find ways to agree on something, where before, simply put, you were miles apart.

When the federal and provincial governments agreed to negotiate with us, we were on a path where “hope could become opportunity.”

The Nisga’a have always said, “We want to negotiate our way into Canada, not out of it.”

Our leaders have said that from day one, and I’m referring to a time long before the formulation of the Nisga’a Tribal Council in 1955. Our nation was demanding negotiations even before 1890, when we established our first Land Committee.

We believed in our people and we supported our negotiators.

We backed them up, we helped them out, we listened to them and trusted in their ability to work in their areas of expertise.

We also listened to what the other side had to say, and did not immediately discount what they were saying.

We looked at what we could take from it, or make from it. That is what our negotiations were all about. No one said it would be easy, and we certainly can attest to that.

But as the late, great James Gosnell used to remind us, the really hard work starts the day after the land question is settled. How right he was.

We are now in our eighth year of implementation of our treaty.

What is implementation?

I said earlier that I was excited to talk about opportunity. I am speaking about implementation in the broader sense, not only the complex mechanisms for setting up a government, laws and such.

I’m talking about the best way of realizing the opportunities that we fought for and achieved — the best way to achieving the mutual objectives that led the Nisga’a Nation and the federal and provincial governments to enter into our new relationship.

The Nisga’a never wanted the treaty so we could close our doors. No, we wanted to open them. We are open, open to opportunities, challenges and partnerships.

Our primary focus is to train our people so we can build an economic base.

Education is vital — our school system and our University of Wilp Wilxo’oskwhl Nisga’a are providing us with that.

Self-government allows us to look at our natural advantages — resources, people — and develop them responsibly, as we decide.

Free of the *Indian Act*, hope becomes opportunity.

We want to create an environment that fosters sustainable economic growth, environmental stewardship and a rich cultural life. We have worked hard to ensure that there is a separation of politics and business. Run a business like a business, make it accountable.

We are working to establish a well thought out economic plan, one that can take advantage of our strengths. Our fisheries is in good shape — the Nass River is second-to-none. It is one of the best kept river systems in the world.

We have nurtured that resource for the benefit of everyone, not just Nisga'a.

We have strength in the forest industry. Our people are experienced in that area of forestry and sound management should provide opportunity in the future.

Our great strength of course is our people. It always has been.

Recently the Village of Gingolx, located on the coast, was reconnected to our other villages by way of the Nisga'a Highway Extension Project. The project created jobs, Nisga'a jobs. Now access to all the villages and access to Terrace via the Nisga'a Highway 113, will allow us to develop in the area of tourism.

Our people are excited to show the people of the world our pristine river system. The youngest lava beds in Canada, a rich living culture. Hike, camp, boat, explore, come on in, we invite you.

Things are changing, we are moving ahead. I remember when we finally got telephones, and when some of our roads were finally paved.

Now we have high speed internet. Nisga'a Lisims Government has developed a new company, enTel

Communications Incorporated, and we now have broadband internet access to the Nass Valley.

Our young people are seizing opportunity. This gets me excited.

However, for our opportunities to be realized, for our objectives to be met, we also need a similar commitment to the full and proper implementation of our treaty by our partners, the federal and provincial governments.

Unfortunately, as we have learned, there are significant differences between the way in which the federal government views implementation of modern treaties and the views of aboriginal signatories.

For us, implementation is more than merely completing a check list of narrowly defined legal obligations set out in the treaties.

Implementation requires a mutual commitment to making the treaties work, to achieving shared objectives. The federal government apparently does not agree.

This is why the Nisga'a Nation and every other aboriginal government and organization that has achieved a modern treaty have formed the Land Claims Agreement Coalition.

The sole purpose of this unique coalition is to endeavour to persuade the Government of Canada of the need for a new federal land claims agreement implementation policy — a policy that recognizes that our treaties are with the Crown not the department of Indian Affairs; a policy that focuses on achieving objectives not merely for filling narrow obligations.

We need to have senior federal officials responsible for ensuring our treaties are properly implemented. And we believe that there should

be an independent body that will be accountable to parliament and which will assess the extent to which the objectives of our agreements are being achieved.

Many of you have seen the Auditor General of Canada has again issued a report in which she points out, this time in the context of the Inuvialuit Agreement, that the department of Indian Affairs is being reluctant to try to achieve the objectives of land claims agreements. As she wrote in her report, INAC

“has taken no action to develop performance indicators or to ensure measurements of progress towards achievement of the principles that the Agreement embodies. Department officials describe these as being Inuvialuit principles, not principles to which Canada adheres. INAC officials emphasize that the Agreement does not impart any federal obligation to realize those goals. On the contrary, department officials have expressed reluctance to monitor and report progress towards achieving the principles of the Agreement. They explained that doing so would imply that those obligations exist, where no obligation is written into the Agreement. The Department also expressed concern that monitoring progress may lead to the expectation that it would take responsibility for achieving those principles.

...We are concerned that the Department is not focused on achieving the goals expressed in the Agreement. We are also concerned by the argument presented by the department officials that there is no obligation in the Agreement that requires them to monitor progress. Their argument implies that the Department is willing to carry out only those activities specifically identified as obligations in the Agreement. We find this approach to be inconsistent with the federal government's emphasis on managing well to achieve better results.”

Surely we can ask for better from the federal government and together with our partners in the Land Claims Agreement Coalition and with the benefit of the Auditor General's advice, we will continue to urge Canada to adopt a new policy for implementing our modern treaties.

The way I see it implementation is a way down a path that will allow our future generations to do and become whatever they choose.

The Nisga'a have never been afraid of hard work, failure has never been a part of our language.

Our government has reinforced the ancient Nisga'a philosophy, Sayt-K'il'im-Goot, which means one heart, one path, one nation. You see we aren't afraid to adapt, we can dance and walk in both worlds.

In closing I ask you to take a look at the quote attributed to me in your program. “For those of you who are still at the treaty table, negotiate hard to get the best settlement possible for your communities. However, work just as hard or even harder to prepare for the day after. It'll take time, but hope will lead to opportunity.”

T'oyaksiy N'isim'! Thank you.

**Speaker: Paul Kaludjak**

Good evening, glad to be here once again. My name is Paul Kaludjak. I'm president of Nunavut Tunngavik Inc. (NTI). Nunavut means “our land” and Tunngavik means “our foundation” in inuktitut. And this conference is all about our land and our rights in relation to our land.

It gives me great pleasure to speak here this evening with Nelson Leeson of the Nisga'a government. Nelson and I currently are co-chairs of the Land Claims Agreement Coalition which was established in 2003.



As aboriginal people who have signed land claims agreements, we have found there is strength in working together because we face very similar challenges with implementation. In Nunavut we recognize that our land claims agreement is the outcome of a long process involving the other aboriginal groups in Canada and of course, especially here in British Columbia.

Last year Frank Calder passed away and we remembered him at our annual general meeting. Frank Calder went to the Supreme Court of Canada with the basic question of whether or not aboriginal people's rights exist in Canada. It was probably the most important land claims case in Canadian history. So Frank Calder and his Nisga'a Nation changed the policies of the Government of Canada. Land claims agreements followed, including our Nunavut Land Claims Agreement.

Our land claims agreement was filed with the Government of Canada in 1976, just after the James Bay and Northern Quebec agreement was negotiated. Actual negotiation of our claim went on until 1993.

NTI is a land claims organization representing eighty-five percent of the people of Nunavut. We are distinct from the Government of Nunavut, and it is our mandate to secure implementation of our land claims agreement.

You may have heard that last year NTI filed a Statement of Claim in the Nunavut Court of Justice, seeking damages of one billion dollars, against the Government of Canada for breaching our agreement and for breaches of their fiduciary responsibilities and obligations.

In light of this, you might have wondered whether or not we negotiated a good agreement. We did negotiate a good agreement. But it's not being implemented as it should. Our agreement is still a major accomplishment and is something to be proud of.

I would like to mention some of our accomplishments in negotiating this agreement. First, we managed to create a new government in Canada.

The idea of dividing the Northwest Territories was first put forward in the 1970s. The basic idea was that NWT was too large and diverse to meet our cultural and social needs. A new government for Nunavut was needed, alongside Yukon and the NWT. Getting the federal government to agree to this was not easy. It was only in the final stages of negotiations of our agreement that the federal government agreed to include Article 4 in our claims agreement. This is the article providing for the setting up of the new Nunavut government.

Through Article 4 we have pursued different goals from many First Nations. We are eighty-five percent of the population of Nunavut, and a public government that corresponds to the area our people live in is what we wanted. We describe our arrangement to be self-determination through public government.

The federal government would not agree to include the creation of a Nunavut territory in our land claims agreement. In fact in the early stages of negotiations they did not even want to use the word "Nunavut" in our agreement. That was one of the first small victories. They must have seen it as the thin edge of a wedge; and it was.

We got Nunavut established by working outside the claims framework. We held a referendum across NWT and won a majority for division. We put the goal forward in the national constitutional discussions. We got some political acceptance, but not a definite commitment. It came down to the wire in 1992, when most of the agreement had been negotiated, and the federal government realized that we wouldn't sign our claim agreement without a definite commitment to the territory of Nunavut. So we achieved article 4 in our claim.



There were other areas in which the federal government claim policies were too limited to meet our needs, and here we managed to get changes. In 1986 a coalition of aboriginal groups was set up to lobby our changes in the federal government's policy. The revised federal policy of 1987, although only a partial answer to what the aboriginal groups wanted, did make some important changes.

One change that was important to us was to include marine areas in our land claims. Like the coastal people of British Columbia, we are marine people. All but one of our communities in Nunavut was coastal. As a result, it was important for us to include marine areas within the Nunavut settlement area. The federal government changed its policy, in this respect, in 1987. Of the 42 Articles in our land claims agreement, about one-third included references to marine areas.

Another important area of change was that of resource management boards. Under our agreement, management boards are established to do things like: issue water licences, prepare regional and territorial-wide land use plans, review the environmental impacts of development and manage wildlife. These boards have government responsibilities and operate independently. Half of their members are nominated by Inuit and half by government.

Under our agreement we secured surface title to almost 18% of Nunavut and subsurface title to 1.8%. Sometimes we are asked: why only 18%? Or especially why only 1.8%? There are two main reasons: Inuit decided that it was more important to have an effective role in the management of the entire settlement area than to have outright ownership of a particular percentage of it. We saw the management boards as giving us this management role. The subsurface lands we chose may be, relatively, a small area, but they were

selected with the advantage of good geological knowledge. The mining development now taking place in Nunavut are all on, or adjacent to, Inuit-owned lands.

In reviewing the implementation of our land claims agreement, we could say that setting up Nunavut Government, the management boards, and the payment of our cash compensation of \$1.1 billion dollars have all occurred. These are important, substantial implementation accomplishments of our agreement.

But there have been important areas in which implementation has been partial or has not occurred at all. As I mentioned, we have filed a statement of claim on this. I won't go into details of all the breaches that occurred. You can find those in our statement of claim on our website.

I will mention Article 24 as one example. Article 24 concerns government contracts with the Nunavut and under it the two governments are to develop procurement policies for Inuit firms regarding government contracts.

The Government of Nunavut has done this with us. Under the Nunavut Government Contracting Policy Inuit firms receive a seven percent bid adjustment on government contracts. Other bid contracts up to a maximum of 21% are also available. This is a good example of cooperation on implementation of one article from our land claims agreement.

On the federal side we have been unable to secure a procurement policy, for Inuit firms, for government contracts. This is 14 years after the agreement was signed. It is not simply NTI's view. A 2005 review by Price Waterhouse Cooper states in plain language "the obligations of this section were not being met."

But it's worth giving credit to one federal department which has bucked the trend. In 2002 National Defence reached an economic agreement with the NTI for the clean up of abandoned DEW-line warning sites. Under this agreement Inuit employment has been achieved at levels of over 70% on these sites, and the Inuit share in contracting value has also been over 70%. This is a good example of what can be done with a commitment to the right approach.

Another important area of our claim where there have been serious implementation problems is the joint management boards that I referred to earlier.

Proper funding has not been provided to the Nunavut Planning Commission, the Nunavut Impact Review Board, the Nunavut Water Board, the Nunavut Wildlife Management Board and the Surface Rights Tribunal. These are all boards under the claim and agreement.

Our inability to reach agreements with INAC on funding required for these boards eventually led to former Justice Thomas Berger being brought in as a conciliator. In January 2006, with his assistance, we reached agreement with the federal and Nunavut governments on the funding levels for these boards.

That was almost two years ago, but the agreed funding still had not been provided. These are the kinds of problems that have led NTI, as a last resort, to go to litigation.

We are not the only land claims organization that has had to do this. Recently the Grand Council of Cree's of Quebec agreed to a \$1.4 billion out-of-court settlement with the federal government on implementation issues from their agreement.

The Sahut and the Gwich'in have also had to go to court on certain issues.

Our agreement, like other agreements, was meant to begin a new relationship with the Government of Canada.

How do we go ahead from here? We should not give up. We did not get Nunavut by giving up. We should not lower our expectation. Our expectation is: to receive what we were promised when we signed our agreement; well-being in our communities; a stable, secure relationship with the Government of Canada; and that the honour of the Crown will be upheld for all to see.

We will work towards these ends with other aboriginal peoples, especially with the Land Claims Agreement Coalition. We support the coalition's 4-10 declaration

Our relationship is a treaty with the Crown. It is not an administrative arrangement with the Department of Indian Affairs and Northern Development.

We need an independent authority such as a commissioner for land claims agreements: to review the implementation of land claims agreements; to ensure the honour of the Crown is being met; and to report directly to parliament.

We need the Government of Canada: to adopt a comprehensive land claims implementation policy; to provide the resources needed to implement land claims agreements effectively and in a timely manner; to establish a government structure that can deliver on what had been promised in a constitutionally protected agreement.

We want to see our land claims agreement fully implemented. That means: we will get what we really voted for when we ratified our agreement; well being in our communities.

Then we can say that our agreement really has established a new relationship between ourselves and the Government of Canada. That is what we signed our land claim agreement for, and that is what we want.

Ma'na.

**Speaker: Joseph Arvay**

Thank you and good morning everyone, chiefs, elders, all members of First Nations, distinguished guests, any members of the bar.

As just indicated, I've acted now for at least three First Nations who are in the very final stages of the treaty making process: the Lheidli T'enneh, the Huu-ay-aht and most recently the Tsawwassen First Nation.

Each of these First Nations have had their final agreements challenged in court by neighbouring First Nations on the basis of overlapping claims. Both Lheidli T'enneh and the Huu-ay-aht have been successful in fending off those lawsuits but it will probably be the Tsawwassen litigation that is likely to establish the more enduring legal principles that apply in this area of the law.

When I was asked to give this talk a few weeks ago I'd hoped that by this time there would have been a judgment from the British Columbia Supreme Court in the Tsawwassen case. As counsel for the Tsawwassen I was, and obviously am still, hoping that the outcome would be favourable to my clients. But perhaps more than that, I had hoped that I could convey to you what would be the wisdom of an impartial judge whose message to the First Nations community would be: "Do not fear overlaps, they can be resolved in time, they need not hold up treaty making."

Now judgment has not come down yet. Instead, the message that I convey to you will be my message not the judge's, and I appreciate that this message comes from what you will rightly say is a biased place. I am an advocate for my clients. I am not impartial and as such, you're entitled to discount my views if they seem to you to be too sanguine or rosy for your own good. But I'm going to try real hard to give you the facts and laws candidly and as fairly as I can.

The first question is just how did the situation of overlaps arise? The present problem of overlapping territorial claims actually might have a number of reasons and I don't purport to be exhaustive.

One reason is that the treaty process is deliberately one that is not what's called "evidence based." A First Nation is not required to prove by evidence of the sort that would be required in court that they have aboriginal rights or aboriginal title in order to enter into the treaty making process.

A First Nation is required at the first stage of the treaty making process to file a Statement of Intent and with it a description of the First Nation's traditional territory. That description is supposed to be territory that is "generally recognized as their own."

My understanding of the process is that a First Nation is not required to and does not produce any evidence in support of that territorial claim with a possible exception of when they seek to amend their statement of intent.

At the same time, it's my understanding that all First Nations take very seriously their obligations to assert only their territorial boundaries and they consult with their elders and their own experts in mapping out their traditional territory. It is probably nevertheless the case that some overreaching might occur.

But by far the main reason for the overlaps is because of the historical reality that traditional territories of First Nations did, in fact, overlap. This point needs to be emphasized. In the case of the Tsawwassen First Nation alone, there were at least 53 other First Nations whose claimed traditional territory overlapped with the Tsawwassen.

And if you examine the map with all the statements of intents filed with the Treaty Commission, just about every First Nation has many, many overlaps.

Now, are overlaps something to fear? As one of the elders who is a member of one of the First Nations who was actually challenging the Tsawwassen in court, said “I don’t think that overlapping is as bad as people think. Overlap is the white man’s way.”

Clearly, in my respectful view, this wise elder had not lost sight of the traditional First Nation practises of sharing their natural resources with each other. To him, the language of overlap was a foreign concept to British Columbia First Nations. To him, sharing was reflective of their traditional relationships.

And what this means, of course, is that treaties in British Columbia will necessarily involve overlapping territories and that in turn means that the treaties themselves will overlap and there’s nothing wrong with that. I accept that once a treaty is entered into the overlap becomes more worrisome; for instance if a treaty was to extend to one First Nation’s areas over which they obtained some exclusivity where before there was a sharing of resources.

But my experience, and I accept it’s limited, suggests that treaties that are close to being ratified now provide exclusivity only in those areas where the First Nations had historically had exclusive use or occupation such as their village sites or adjacent land. But for the vast

majority of the territory that’s covered by the treaty the harvesting and gathering rights given under the treaty are non-exclusive just as they were historically.

I don’t think I can emphasize this point enough. There’s a lot of fear that once, for instance, the Tsawwassen First Nation have their treaty and with it the right to harvest fish and wildlife or gather plants in the treaty area, that this excludes their neighbouring First Nations from either continuing with their aboriginal rights to harvest fish or wildlife in the same area or somehow precludes the neighbouring First Nations from entering into a treaty that gives them those same harvesting rights. But that’s simply not the case. If the court dismisses the challenge to the Tsawwassen First Nation’s treaty I predict it will be mainly for this reason.

In other words, in the cases that are presently before the courts there seems little, if any, risk that the Tsawwassen First Nation treaty will, when it comes into force, have any adverse affects on the claims of the neighbouring First Nations. It’s also important to add that in the event the Tsawwassen treaty does have some adverse affect on the neighbouring First Nations that it can be rectified without preventing the ratification of the treaty and without causing any harm to the neighbouring First Nations. There are many reasons for this.

First of all, ratification of a treaty is not the same as implementation. Until the treaty is implemented on its effective day, which is a date to be agreed to by the parties and with respect to the Tsawwassen treaty, it will probably be in early 2009, there is nothing that the Tsawwassen First Nation can do that will affect any neighbouring First Nation’s interest. So there’s still time for the First Nations and the Crown and likewise with the Tsawwassen, to engage in meaningful consultations to resolve the overlap dispute without needing the intervention of the courts.

Some of you may or may not know, that on the eve of their court case the Cowichan, who was challenging the Tsawwassen, reached an agreement with the Tsawwassen which provided that these two First Nations would enter into good faith, meaningful negotiations to resolve their overlap claim with respect to very specific aspects of the treaty that were troubling them and with respect to just the overlap area and they agreed that they would bring in a facilitator, probably someone from the Treaty Commission, and they even agreed that if there was an impasse in the negotiations they would bring in a mediator to help resolve the impasse. And then they agreed that if three months prior to the effective date, i.e. “the implementation,” there was a consensus they were making great progress but weren’t quite there yet, then the Tsawwassen would consider actually delaying implementation of the treaty in order to allow the negotiations to bear fruit. And failing that, then the Cowichan would be able to go back to court.

The Sencoten Alliance, who was also one of the petitioners in the court were very critical of this arrangement between the Tsawwassen and the Cowichan. The Sencoten say that not only must the court prevent the Tsawwassen from having their treaty, but that any negotiations undertaken between the Cowichan tribes and the Tsawwassen cannot be recognized by either the Treaty Commission or by the Crown until the Sencoten interest had been confirmed and accommodated.

With the greatest respect to the Sencoten, this can’t be right. I appreciate that the Sencoten and others say that it is the Crown and not the Tsawwassen who had the duty to consult with them in order to resolve overlaps. Ultimately, I agree that this is so. But the BCTC process has as one of its fundamental precepts that First Nations resolve issues relating to overlapping traditional territories amongst themselves. This reflects the recommendation of the Task Force which was comprised of representatives of not only the BC and federal government but of the

First Nations of British Columbia. This seems to me to make a lot of sense. It’s an approach that seems highly respectful of First Nations and their ability to resolve overlaps on a nation-to-nation basis and through processes and protocols that are uniquely their own. To say that the Crown had a duty to resolve the overlaps for the First Nations, as I’ve heard it argued in court, struck me as very paternalistic and maybe not even honourable.

I hasten to add that I have no apologies for the Crown. I spend most of my professional life these days battling the Crown in court including cases where I say the Crown failed in its duty to consult. And I accept that if First Nations are not able to resolve overlaps amongst themselves, then the Crown has the ultimate duty to consult with all First Nations involved in order to assist in the resolution, and in some cases to ensure the accommodations are made to reflect their legitimate concerns.

And one kind of accommodation might even be to require that the treaty be amended if that is the only honourable way to resolve the overlap issue.

I think the Crown recognizes this duty lies on it as well and if the Crown fails in that duty then the court has an important role to play to enforce it. But it does seem wrong, to me, to say that the Crown has abdicated its duty to consult by allowing each First Nation to attempt to resolve the overlaps themselves, especially since the Crown has insisted that all treaties contain what are called non-derogation clauses to ensure that no lasting harm can come to anyone because of overlaps. Something I’ll touch on below.

I have argued in court that the court challenges either come too late or they come too soon. What one of my learned friends on the other side of the courtroom claims is “sucking and blowing” at the same time. My point, though, is simply this. If it is true that the Crown did

have the duty to consult at an earlier time in the process than is presently thought to be the case, then those First Nations who are challenging the treaty should have brought their challenges much earlier and at a time when it wouldn't have been as destructive or harmful to the interest of the Tsawwassen First Nations and the other First Nations in the final stages of treaty making.

But on the other hand, if the Crown's duty has not yet crystallized to the point of requiring action then those court challenges are premature.

But even if I'm wrong and the Crown has failed in its duty to consult with the neighbouring First Nations the question still is: is the fair and proper remedy to enjoin the Crown from ratifying the treaty? I'll repeat that again. Even if I'm wrong, and the Crown has failed in its duty to consult with the neighbouring First Nations, is the fair and proper remedy to enjoin the Crown today from ratifying the treaty? It's been my argument that this is not the fair, just or necessary solution.

Much has been talked about in the litigation about the Crown's duty to consult. The Crown, indeed, is said to be the target of that litigation. The "doctrine of the duty to consult" as recognized and confirmed by the Supreme Court of Canada in such important cases as *Haida*, *Taku River* and *Mikisew Cree*, is a new and powerful weapon in the First Nations' arsenal when it comes to fighting off Crown initiatives that threaten First Nations' aboriginal and treaty rights. Its purpose is to help First Nations obtain what are, in effect, interim measures or accommodations while the First Nations pursue its treaty claims with the Crown or even its title claims in court.

But the duty to consult doctrine was never intended to be used by one First Nation against another. No First Nation has a constitutional

duty to consult with the other and yet that is how this duty to consult is being used in every real and practical sense in the courtroom in this overlap litigation.

If the court agrees that the Crown has breached its duty to consult when it failed to resolve the overlap, then it is not just the Crown that gets punished, it's the First Nation that wants its treaty ratified. The First Nation is clearly the meat in the sandwich. It's the one who is getting caught in the crossfire between the neighbouring First Nations and the Crown and that just seems very wrong.

In my respectful submission, it seems a perversion of that great doctrine for it to be used by a First Nation against a First Nation. It should only ever be used against the Crown.

I want to canvass with you a few scenarios to try to drive the point home that there's no reason to use overlaps as a reason to prevent the ratification of the treaty.

Before I do, I acknowledge the point of the First Nations who are challenging the treaty who say if you leave the consultations until after the treaty is ratified or implemented that the consultation will be illusory or not meaningful. I don't accept that. At most the treaty may complicate the range of accommodation options that the Crown has once it's ratified. It's true that the Crown will not be able to amend the treaty, in the case of the Tsawwassen, without the Tsawwassen's consent. But that's been the case ever since the final agreement was initialled a year ago in December. And the case law is very clear: First Nations who evoke the duty to consult doctrine cannot demand any particular form of accommodation prior to proof of aboriginal title. The issue in any case where there's a duty to consult is whether the Crown



acted honourably and whether the consultations and any accommodation with the First Nations are reasonable having regard to all the circumstances.

So I want you to consider this first scenario. Let's assume that the court dismisses the present petitions that are brought against the Tsawwassen treaty and the treaty is ratified by both the provincial and federal Crowns. After the treaty is ratified, the Crown will still be required to consult with neighbouring First Nations on the issue of overlap. Assume that the Crown engages in deep consultation with the neighbouring First Nations and then offers an accommodation agreement but one that does not require an amendment to the treaty. And let us assume that the neighbouring First Nations reject this accommodation agreement. The First Nations could, at that time, commence a lawsuit claiming that they were still properly not consulted and accommodated. The court would have to decide at that time if the Crown acted honourably.

If the neighbouring First Nations are able to demonstrate following consultations that the only honourable and reasonable form of accommodation is an amendment to the treaty then the court might direct the Crown to pursue an amendment. And if the Crown was unable or unwilling to amend the treaty, as a last resort, the court might be able to strike down those provisions of the treaty which are inconsistent with the overlapping rights. This is at least what Justice Wilson suggested in the *Lheidli T'enneh* case.

In that scenario though, if it comes to that, there's no prejudice to the neighbouring First Nations to allow the treaty to be ratified now. They can get their remedy later.

Consider a second scenario. The petitions are dismissed and the treaties are ratified. If following ratification and this process of consultation, the court held that the Crown had actually met its constitutional duties to the neighbouring

First Nations then at that point the neighbouring First Nations would be left with the right to commence an aboriginal title or rights case if they disagreed with the result.

While this may be regrettable, because no one wants to have to start an aboriginal rights or title case, in the end, that's the only option. But it flows completely from the jurisprudence. First Nations are never provided with a veto under the doctrine of the duty to consult. It's only when a First Nation proves in court, in its aboriginal rights and title case, that the treaty conflicts with their aboriginal rights and title would they get a veto.

And indeed, the treaty itself contains what are called non derogation clauses which ensure that if after such aboriginal title case the neighbouring First Nations prove that the treaty conflicts with their aboriginal rights and title, then the treaty is of no force and effect to that extent.

So, built into the treaty is a protection for those First Nations who, after they go through the consultation process and they don't like what the end result is and they're forced to litigate then, if they win in court the treaty itself provides them with the assurance that the treaty itself will be of no force and effect to the extent of the conflict.

Another scenario, maybe the worst case scenario, but also maybe the most unlikely scenario is this. The petitions are dismissed, the Crown engages in consultation with the neighbouring First Nations as it has said it intends to do.

If after consultation the Crown decided that it needed to accommodate the neighbouring First Nations and the only way it could do so was by an amendment of, say the Tsawwassen treaty, it would first approach the Tsawwassen to seek their consent to amend the treaty. The Tsawwassen may or may not consent. As a condition of any consent it may in turn seek some consultation and further accommodation from



the Crown. If the Tsawwassen refuse to consent, the Crown could enact legislation that unilaterally amended the treaty. Just as no aboriginal right or aboriginal title is absolute, neither is any treaty right. Infringements of aboriginal treaty rights are allowed if they can be justified in accordance with the test handed down by the Supreme Court of Canada in *Sparrow* and other cases.

A court might eventually have to decide if the new legislation enacted by the Crown to meet its duty of acting honourably to one First Nation, i.e., the neighbouring First Nations, was a justifiable infringement of another First Nation's, say the Tsawwassen's, treaty right. It's certainly possible, maybe even likely that the court would so conclude. For the same reason, it is likely that the Tsawwassen would never force the Crown to take that step.

Again, this is all to try to paint different scenarios to say there's no need to stop ratification of treaties now. If you look down the road, any possible scenario, no matter how bleak, has an end point in which the neighbouring First Nations' interests are protected.

And perhaps a final, and maybe a more constructive scenario, is where one of the neighbouring First Nations would actually prefer to enter into its own treaty with the Crown and devote its energy to resources there rather than negotiating, let alone litigating, the overlaps with its neighbours. As long as the treaties continue to deal with harvesting of resources on a non-exclusive basis, then the treaties themselves can overlap and operate perfectly well. But in the event that the new treaty with the neighbour does conflict with the treaty, of for instance the Tsawwassen, then the provisions of the treaty itself provides that the Tsawwassen can insist on replacement rights in their treaty and this, too, as it should be.

Most likely, no amendments of any treaties will be necessary as First Nations can resolve overlaps with side agreements and other protocols if they are determined to do so.

So what I tried to do by running through these scenarios is to quell the fears of those who think that the only fair and effective way of resolving overlaps is to stop the ratification of the TFN, of the Tsawwassen treaty. I say that no irreparable harm will come to the neighbouring First Nations if ratification is to proceed.

I'd like to try to defuse what might be the rather unproductive process of finger pointing or blame casting. I think it's fair to say that everyone could have done more and done it sooner. I have mentioned the Crown, but it also includes First Nations on either side of the overlap issue. At the same time, my sense is that there was no deliberate foot dragging on anyone's part although there may have been some very different views as to how the overlap should be resolved, some irreconcilable differences and maybe even some intransigence on the part of some.

For my clients, who are in the very final stage of the treaty making process, the reality is that treaty making is a very long, complicated and time consuming process. And there's also only so much time, resources and energy that could be devoted to that process. It's hard enough to get a deal with the Crowns, to get a deal done with all one's neighbours is challenging at best; indeed, at some point it might not even be possible.

I do say that for those First Nations who have been critical of my clients in not doing enough, they, too, have to acknowledge that they may have not been as diligent as they might have been in seeing that the overlaps were resolved sooner. Certainly for those that are in the treaty process themselves, the duty is reciprocal. Even those outside the treaty process have some responsibility, I think, to let their neighbours know that

there's an overlap problem and try to resolve it. That they have not been resolved is a function of probably many factors — lack of resources, the usual political and bureaucratic inertia, even within the First Nations community, and maybe even a disbelief that anyone was ever really going to have a treaty or as soon as has now occurred and I obviously emphasize the irony of those words: “as soon.”

But what about the BC Treaty Commission? As the independent and impartial keeper of the process, should it take responsibility for the fact that the overlaps have not been resolved with respect to those First Nations who are now about to have their final agreement ratified?

A review of the Treaty Commission's annual reports over the last 10 years demonstrates that the issue of overlaps has always been a concern of the Commission. The Commission has made various recommendations to fix the problem, but in the end all the Commission can do is plead and cajole, which I think it has done fairly well since the BCTC has no coercive powers under the *Treaty Commission Act*. The various policy statements and admonitions of the Commission in its various reports are just that and of no legal significance. The most it is required to do is to assess the readiness of the parties to commence negotiations of a framework agreement and to that end, to ensure that First Nations have identified and begun to address any overlapping territorial issues with neighbouring First Nations. But in the cases that I was involved with, that was all clearly done.

But I make this suggestion to you that perhaps the *Treaty Commission Act* should be amended to give the Commission more coercive powers. I know that idea requires careful consideration before it was to be embraced as it would have transformed the Commission from a “facilitator” to an “enforcer” of sorts. And I leave it to others more knowledgeable than I as to whether that is a good or bad thing.

But to the extent that the Commission has pled lack of funds or resources to be a better facilitator as I understand it has, then in my view that plea should have been recognized and remedied long ago.

I don't want to end on a sour note, but I feel compelled to inject this dose of reality into the discussion. If the court enjoins the provincial Crown from ratifying the First Nation final agreement, and especially if it does so for the reasons that were advanced by the parties in that case, then there is a very real concern that the treaty process will collapse and fail and I say that would be tragic indeed.

Now I suppose I may have just stepped on a land mine, and maybe even departed from my promise to stick to the facts and the law. For some of you in this room, I know certainly in the larger First Nations community, derailing the treaty process would not be a bad thing at all. I don't want to get political in this speech, but then again I do want to declare my bias.

I firmly believe that treaty making is the only way First Nations will achieve any lasting sense of economic prosperity and self determination in this province. I accept that for some First Nations the treaty that the Tsawwassen First Nation or other First Nations are close to having may not be the treaty that others would want. I accept that the treaty process can be improved. Indeed, I acknowledge my utter ignorance about the treaty process except for the little bit I've learned in the context of this overlap litigation, but I believe like so many others that it is treaty making and not litigation that is the way to advance the noble goal of recognizing the interests of First Nations with the interests of the Crown.

But if the court decides against the First Nations in the overlap litigation it will make it near impossible for a First Nation to have a treaty until all the overlaps are resolved. Given this nature of overlaps, as I said for the TFN there were 53 overlapping claims and then multiply

that by the hundred or so bands participating in the treaty process you get some sense of the dimensions of the problem. The difficulty of resolving these overlaps will take many, many years before there is ever a treaty in the process and by then the political will and momentum for treaty making may have been lost.

There's also something, finally, most ironic and most unfortunate about this overlap litigation. Ironic because a number of years ago I acted for the Attorney General of British Columbia, then under the NDP administration alongside with the Nisga'a who was represented by Thomas Berger to fend off a challenge by the then leader of the opposition Gordon Campbell to the Nisga'a treaty. That challenge was seen as representing the view of a significant percentage of the non-aboriginal population that treaties with First Nations, especially those with vested rights of self-government, ought to be stopped by the courts.

Even though I thought then as I do now that that challenge to the Nisga'a treaty by Mr. Campbell was most unfortunate as it seemed to fan the fires of intolerance and fear against First Nations, there was something, at least, understandable about it. It was clearly a political initiative directed as much against the government as the Nisga'a and there was nothing surprising about the non-aboriginal population doing what they had to do to protect what they thought was their land and jurisdiction, however misguided or misinformed they were about their entitlement and their own history.

But that treaties today are being championed by the same Gordon Campbell is one of the ironies, of course, sweet ironies for some. But it is the unfortunate aspects of this litigation that I'm more concerned about.

What is most unfortunate, of course, is that First Nations such as the Tsawwassen, the Huu-ay-aht, having waited over 150 years to have the Crown

enter into a treaty with them, are now being attacked, not by non-aboriginal people, but by other First Nations. This seems very wrong to me. And given the necessary geographical proximity of the neighbouring First Nations in an overlap case, there are often members of First Nations on either side of the courtroom who are actually related, members of the same family fighting amongst themselves, it's not a civil war, but it's starting to get worrisome, if not ugly.

And even if my predictions about there being dire consequences if the court enjoins the Crown from ratifying the Tsawwassen are wrong, you need to know at least this: if the court decides against the Tsawwassen in this litigation, then there's a very real concern that the court will become the new and super Treaty Commission in this province.

While I obviously have a high regard for our judiciary and the judicial system, I do not think that First Nations should want to relinquish the control they presently have in the treaty process to the court even if the court's role is only to monitor and oversee the negotiations. Treaty making is and ought to remain a political process; to invite the court to oversee and supervise that process of negotiations on the overlap — overlap today who knows what tomorrow — is to transform the treaty process from one that is a political process, a nation-to-nation process, to one that is rights-based. That may not be the outcome that is in any First Nations interests. The BCTC is said to be the independent and impartial keeper of the process. That is as it should be. And maybe, as I noted earlier, the BCTC should be given more coercive powers or at least should become more proactive than it has in the past in facilitating the resolution of overlaps so that what has occurred with respect to the Tsawwassen First Nation agreement won't repeat itself. This, too, would be a good outcome. But what I don't think First Nations should want is to substitute the Treaty Commission with the courts when it comes to treaty making.

In closing, if the First Nations who are bringing the overlap cases do so because they genuinely fear for their own land and resources and aboriginal and treaty rights, (which I believe is their motivation in bringing this litigation, and not to bring down the treaty process,) then I can only hope that I have been the voice of some reassurance that allowing the Tsawwassen First Nation and other First Nation treaties to be ratified will not cause the neighbours any lasting harm and that in the end all will end well.

Of course, the last word now belongs to the judge and we should have our Reasons next week.

Thank you.

(Since delivering this talk the British Columbia Supreme Court rendered its decision in the Tsawwassen First Nation overlap case and dismissed the petitions of the neighbouring First Nations that sought to prevent the ratification of the TFN treaty. The reasons are available on line at <http://www.courts.gov.bc.ca/jdb-txt/sc/07/17/2007bcsc1722.htm>.

**Speaker: Matthew Coon Come**

It is an honour and a pleasure for me to be addressing this session of the Preparing for the Day After Treaty conference. I wish to emphasize at the outset that while I am attending this conference as the Grand Council of the Cree's official, the views I am about to express are mine as a First Nations citizen. They do not necessarily represent the official position of the Grand Council. In other words, I can say anything I want.

As you may know, the eastern James Bay Cree people of which I am a proud member entered into Canada's first modern land claims agreement

in 1975, approximately 32 years ago this month. That makes me about 20, give or take more. So we James Bay Crees have a bit of experience in the so-called treaty business.

Since making treaty, we have been trying to implement treaty. We have been complaining about not implementing treaty; we have been going to the United Nations and to the Vatican to whine about not implementing treaty; we have been suing about treaty; we have been meeting with the minister about treaty, and the next minister and the minister after that. We have been making other treaty about not suing about treaty, yet we have even been refusing to make another treaty that would undermine and extinguish our present treaty. We have also now been making treaty to implement our original treaty. God, it's confusing.

Actually, when I think about it, we James Bay Crees have been preparing for the day after treaty every day for more than 30 years. Oh, excuse me, just a minute okay? Thanks. As you can see I'm having fun I'm not running for an office.

It's lunch and the food was good so a little ancient history is in order.

In 1701, at the end of 60 years of war with the French and English, the five Iroquois Nations made treaties of peace and accommodation with two European Crowns at Albany, New York and Montreal in return for very solemn promises of exclusive territory, peace, ally status and non molestation, the French and the English Crowns admit their presence in North America.

The Iroquois people kept their side of the deal, including the War of Independence and the American invasion of 1812 and in return, for their solemn promises, especially regarding the lands and resources six miles on either side of the Grand River from Lake Erie to its source were made.

Few, if any, of these promises were honoured and it appears that the land or its trust benefit was taken from them.

Three hundred years later at Caledonia in Ontario, there was an Iroquois occupation and we are witnessing the unfortunate but inevitable consequences of a gross failure to implement historic treaties.

In the 1820s, the Chippewa in what is now southwestern Ontario entered into a treaty with the English Crown whereby in return for permitting English settlement in over two million acres of their traditional lands they were promised that they would have three reserves guaranteed to them forever. The Chippewa kept their side of the treaty, but in 1941 the entire reserve at Stoney Point was taken from them by the Crown. More than 50 years later, in 1995, Dudley George and a few other courageous protestors gave up waiting for their reserve lands to be returned as promised at the end of World War II. They reoccupied the last small part of their reserve land. As we all well remember, Dudley was shot and killed by the Ontario Police. Again, we were seeing the consequences of gross failure to implement these historic treaties.

These are two typical stories of the so-called historic treaties between aboriginal peoples in Canada and the Crown. As reported by the Royal Commission on Aboriginal peoples a decade ago, and it is still true today, the historic treaties have overall been neglected and ignored. As a result, many of our people are now nations without resources and dispossessed. Some people might conclude that inadequate preparations were made in these historic contexts for the day after treaty.

I think it would be more accurate to say that the Crown made very deliberate preparations for the day after treaty. The Crown made very deliberate preparations to forget, violate, ignore, suspend and even extinguish the treaty rights in favour of

other peoples that the historic treaties contain. The Crown prepared to take what it got from treaty but to not deliver to the Indians what they got from treaty.

These days the treaties between aboriginal peoples and the Crown are referred to as the modern land claims agreements. I was in my late teens when I learned that my community in Northern Quebec was going to be flooded for a hydro mega-project. I was attending school down south and one day in the early '70s we picked up a newspaper and we saw the proposed hydro electric development called James Bay I Project. Bourassa called it a project of the century. I saw on that map the Mistasni Lake and my community would be flooded under water.

I have always wondered what was modern about the circumstances in the 1970s in which we negotiate our treaty, the James Bay Northern Quebec agreement. At that time the federal Crown and the Government of Quebec were holding the gun of massive hydro electric flooding to our peoples' head. In the negotiations our leaders were threatened, funding was withheld, terrible deadlines were imposed and our political leaders had little experience with these things. There was nothing that was modern about these take-it or leave-it circumstances of duress.

Our treaty, the James Bay Northern Quebec Agreement, contains many important benefits of which our leaders and people are still proud. Promises of economic development, housing, education and training, community infrastructure and housing, environmental and social protection and health care, to name a few.

These were and still are very modern and essential benefits. Since the signing of our agreement in 1975, our people have made incredible progress in terms of employment and training and housing. We own our own airlines, Air Quebec, we own



our own construction companies that administer millions and millions of dollars; we don't even have a Cree word for million let alone a Cree word for billion.

We also pushed for individual entrepreneurs and we improve the well being of our communities and there's still much more to do. However, there was nothing modern about the fact that in 1975 unlike all other Canadians, we were forced to surrender and undergo extinguishment of our aboriginal title to our lands and resources before the Crown would give us benefits that all non aboriginal Canadians simply take for granted.

There's nothing modern about the ongoing Crown policy and practise of extracting surrenders and extinguishments in the course of these agreements.

These days government officials say that extinguishment is no longer required but it is plain to see if you read the text of all modern agreements, they still require extinguishment under another name — code words like certainty, conversion, non assertion and fall back release. It is important to note that most recent United Nations Human Rights reports and concluding observations stated that the practise of extinguishing inherent aboriginal rights is incompatible with Article 1 of the International Covenant on Civil and Political Rights.

This international covenant is universal and applies to humans everywhere, even aboriginal peoples in Canada. There is also nothing modern about the idea of land claims. This phrase proclaims that our indigenous title is inferior to the Crown's; that we must come forward and make claims to what every aboriginal elder knows has always been ours. This terminology perpetuates the notion that requiring indigenous peoples to give up our title to most of our traditional lands and resources in the context of claiming our birthright is legitimate and modern.

However, no matter what we get promised in return, this is not modern. I stated in 2005 by the United Nations Special Rapporteur on the Human Rights of Indigenous Peoples, and I quote:

"In addition to adequate lands and resources, Aboriginal peoples also require certainty and predictability concerning the non-extinguishment of their inherent rights."

Importantly, UN Special Rapporteur Dr. Stefan Hagen then declared that from a human rights perspective it should be clearly established in the text and spirit of any agreement between an aboriginal people and the Government of Canada and supported by relevant legislation that no matter what is negotiated, the inherent and constitutional rights of aboriginal peoples are inalienable and cannot be relinquished, ceded or released, that aboriginal peoples should not be requested to agree to such measures in whatever form or wording.

The word inalienable means cannot be given away no matter what. If our treaties and agreements are really modern, why are the federal and provincial governments still insisting in the east and the west and the north that aboriginal peoples must relinquish, cede, surrender or not assert our inherent and fundamental constitutional rights in order to enter into and implement so-called modern agreements with the Crown.

If our agreements are modern, why does it take 30 or more years for them to begin to be properly or meaningfully implemented? Incredibly, in September the Government of Canada voted against the adoption of the Declaration on the Rights of Indigenous Peoples by the UN General Assembly. The delegations of indigenous peoples from every corner of the earth had put decades into developing the declaration; each clause is a proper response to real issues including genocide, landlessness, oppression, marginalization, discrimination and terrible socio-economic

disparities affecting indigenous peoples everywhere. Yet, the federal government decided to join the few hold-out states at the UN and opposed this very important human rights instrument.

The declaration is particularly important to our treaties and their proper implementation. It makes clear, for example, that our treaties and agreements are matters of international concern, interest, responsibility and character. The declaration also affirms that indigenous peoples everywhere have the right of self-determination and have the right to maintain and straighten our relationship with our traditional lands and resources. The declaration also makes clear of our rights to education, health services and socio-economic development, to name a few — our fundamental human rights of all indigenous peoples.

The governments of Canada and other countries may wish to ignore the declaration, but as long as the right it contains remains strong in our heads and our hearts, these governments will not succeed.

I am still not ashamed of the indigenous rights agenda. In the end, the only thing indigenous peoples can need are our fundamental rights. Any other approaches rest on charity.

As the Kelowna Accord approach now shows, programs and benefits are not rights, can get minimized and extinguished. Programs and benefits are mostly only given to us when governments or non-native Canadians take pity on us. Under these circumstances, the programs are inadequate and the benefits are stingy. On the other hand, rights lead to entitlements. Aboriginal peoples are fully entitled to a full and proper share of the great wealth of this land, our land.

All is not lost if our so-called modern agreements contain extinguishments that are imposed upon us against our will in whatever form or

by whatever new name. I know that these extinguishments are violations of fundamental human rights. I believe the extinguishments are not consistent with the honour of the Crown. These extinguishments will not stand the test of time as long as we continue to assert that we never gave up and we'll never give up our fundamental human rights.

The 1975 James Bay Northern Quebec Agreement, of which I and my people are beneficiaries, contain many oppressive, purported extinguishments including some whose meaning only became clear when the Crown asserted them against us. The Crown purported to extinguish our title to our traditional lands and also to all future resource revenues, all in the name of the so-called certainty. Twenty-six years later, in 2001, the Government of Quebec found that instead of getting certainty that it had endless social conflict with the Crees and the ongoing uncertainty. So it finally asked the Crees to re-visit the earlier purported extinguishments of resource revenues and our economic relationship with all of our traditional lands. So the Cree and Quebec entered into the La Paix des Braves under which the Crees have regained a significant share of all resource revenues from all of our traditional lands.

The 2001 La Paix des Braves agreement set an acceptably high standard for treaty relations concerning the 50 per cent of our treaty that is between Quebec and the James Bay Crees.

The Government of Quebec understood that the standards of the 1970s were unacceptably low, that the only way to retain its self respect as a modern provincial government was through fairness, generosity and equity. It took another six years for the Government of Canada to understand that the same standards must apply to half of our treaty that concern the federal Crown.

You may have heard that the James Bay Crees just entered into and ratified a new relationship agreement with the federal government. This



agreement settles past court cases, and at long last, substantially implements part of our 1975 treaty by transferring responsibility and resources to the James Bay Crees for a period of 20 years and there was no extinguishment.

So the James Bay Crees, my people, went through — and I personally went through — seven negotiators over 32 years and now, at last, we have a Cree Federal New Relationship Agreement one that finally begins to implement our treaty.

But I ask myself: why did it take an epidemic, mass poverty and unemployment and endless negotiations and so many years to begin to implement the first modern land claims agreement in Canada? And in order to do so, why do we, an aboriginal people, have to sign another agreement to implement our treaty? Our people have been very, very patient.

In the meantime, 20 per cent of our youth are encountering problems of alcohol and drugs and family relationships. They should have been able to become productive members with choices and contribute towards nation building of our nation. We Crees now have the highest rates of family separations. Grandparents are raising their children's children. There's high teenage pregnancy, we have had a range of illness, diabetes and other serious problems. Could we have avoided all this if we had had the resources as originally provided for under the James Bay Northern Quebec Agreement? The training dollars, the facilities, the transfer of knowledge, the access to contracts, the housing, the government funding and the building capacity to name a few. I believe so.

The only path to certainty, social peace and indigenous people developing in Canada is fairness, generosity and equity. If our treaties do not deliver fairly an equitable relief for our people, it does not matter what is written in there. There cannot be certainty or social peace. The writing's on the wall and the days are numbered

for policies and practises of any kind that force us to surrender or to alienate or to not assert or to give up or to indemnify the Crown regarding our inalienable and inherent rights.

As is stated in the land claims agreement coalition, historic 410 Declaration, our treaty rights are human rights. They must be honoured, upheld and fully implemented.

The federal and provincial governments are obligated to uphold the honour of the Crown in regard to all past and present and future dealings with our peoples. It is not honourable and it is no longer consistent with our human rights to impose extinguishments. This includes the kind of extinguishment that occurs when benefits are promised but the promises are forgotten before the ink is dry and the day after treaty stretches into decades of disappointment and dashed hopes.

No province and no other group in this country is asked to give up its fundamental rights in return for getting full benefit from the wealth of the land. It is not honourable and it is inconsistent with our human rights to insist that as a result of historic treaties, the Indians got nothing and the Crown got it all. Our peoples did not agree in the 17th, 18th, 19th or 20th centuries or this century to be dispossessed or to be conquered or to be vanquished. To say we got nothing is dishonourable and absurd.

Our peoples agreed to share and in return perpetual, evolving assurances were made of peace and of friendship and of economic futures for our people. Our treaties will be as economically meaningful as we insist that they are. The alternative is perpetual social conflict and uncertainty.

I remain optimistic about our treaty relationships with Canada. I believe that with focus, vision, determination, unity, clarity and strength of purpose, adherence to the 410 Declaration of the land claims agreement coalition, and on occasion

principled refusal to accept the very low standards that are still being proposed to us by the Crown, that all of our treaties can and will be meaningfully negotiated, advanced and implemented.

If and when that occurs, our peoples' lives will improve, our nations will once again begin to thrive, the honour of the Crown will be restored and the sun will rise on a bright day for our peoples the day after treaty.

In closing, I leave you with some thoughts. You can call these Matthew's 10 treaty thoughts. Yesterday, the co-chair of the Land Claims Agreement Coalition, Paul, referred to the 410 principles and talked about maybe changing that to a 12 gauge with a slug, well I figure I'll use a 10 gauge this time, it's a little bit more powerful, if you know about guns, than a 12 gauge.

So here's my Matthew's 10 treaty thoughts:

1. Negotiate hard. If at all possible, walk away from any fundamentally unfair and inequitable deals that are being proposed to you. There will be another minister, another negotiator, another policy, another government and another day.
2. Aboriginal treaty rights are human rights and our human rights cannot be legitimately extinguished.
3. If your treaty contains extinguishment of any kind, you can legitimately oppose and ignore them. Nobody has to accept violation of their human rights even if your signature is on them.
4. The Crown is generally not honourable because it will try to take what it wants and give little or nothing in return.
5. The Crown will try to forget, deny and extinguish the promises it made. That's true.

6. The Crown will have to be forced to do what it promised.

7. The Crown does not naturally behave in a generous, fair and equitable way.

8. Our treaties are only a foundation for our rights and entitlements in confederation.

9. The Crown will tell you that your treaty is the limit of your rights and entitlements, that's the limit to what your people can get. Not true. Move the goalposts. Demand more. Raise the standards. Behave just like the provinces do.

10. The day after treaty is every day of your life and your children's and grandchildren's lives for generations to come.

**Speaker: Thomas Berger**

My history with the Nisga'a goes back to the 60's. Back in the early 60's I had represented two young men in Nanaimo — Clifford White and David Bob — who were charged with hunting out of season under the *Game Act*. I went to see them. They were in prison. They couldn't pay their fine. I went to see their relatives and others at the reserve in Nanaimo, and they talked about a treaty. And in fact, we discovered that we had treaties on Vancouver Island that had been made by Governor Douglas, the first governor, when he opened up settlement on lower Vancouver Island and made treaties in the 1850's with the Indian's along the east coast of the island. He had a form, a one page form that constituted the treaty. And when he got to Nanaimo he had run out of forms. The forms came from the colonial office in London and they usually read— and they used them all over the world, in New Zealand, and in Africa and in Canada — and they said, for blank many blankets, we agree to surrender all our land but it is agreed we will keep our village sites and that we will have the right to hunt and fish as formerly.

So the archivists in Victoria took me to see these treaties. Well, there were 13 treaties, but the one at Nanaimo just had the 'x' marks of 159 Indian men of various Nanaimo tribes. Then we found a dispatch from Governor Douglas to London saying, I've made treaties with everybody but I ran out of these forms when I got to Nanaimo, so I just had everybody put their x mark on a blank piece of paper. But, he said, I want you know that I did make them the usual promises. So we went all the way to the Supreme Court of Canada in 1965 and the Supreme Court of Canada said, that's a treaty, and those rights of hunting and fishing as formerly are as enforceable today as they were in 1850's.

Those treaties that had slept for 100 years had now been revived, and they are cited in court often now and some very important rights have been developed based on those treaties. Well anyway, that led, I think, it led Frank Calder and James Gosnell and William McKay and the other leaders of the Nisga'a to come in to see me at my office in Vancouver. I was a young lawyer, hadn't been practising very long, had very few clients. I had a little office not much bigger than a couple of these tables pushed together. I remember the rent was \$120 dollars a month, and my mother was my secretary.

So these very important folks, these statesmen, came in to see me and I thought what on earth must they think, but they said, "You're the guy that won that *White and Bob* case. I said, "Yes." They said, "Well, we want you to take our case; we want to sue the government of BC to affirm that our aboriginal title has never been extinguished."

I look back on that meeting in our office. We didn't even have enough chairs for everybody to sit down. And, I think of the line of statesman that the Nisga'a have had over the years, right until the present day, and one of the great honours

they've bestowed on me over the years was that I was made an honorary member of the Nisga'a people with the name Haidam cloweet [ph].

I should say that though these were very serious folks, these Nisga'a statesman. One of them, the leader at the time, Frank Calder, had a kind of playful attitude. He called everybody 'pardner.' I don't know whether you remember that. He was not very tall. He lived until he was 89 and only died a couple of years ago, but he remained active.

I remember just before he died he came in to see me in Vancouver and I said, "Well what are you doing now, Frank?" And he said, "I'm a consultant, here's my card." I looked at it and it said consultant and I'd heard a lot about this line of business and I thought – I said, "Well Frank what does this mean, consultant?" He said, "Well pardner, it means that if you want to know what the weather's going to be like tomorrow it's going to cost you."

So, let me tell you that when we took on the *Nisga'a* case, Frank Calder and I were invited to go to various First Nations meetings around the province. I remember one at Seabird Island, just about all the coastal peoples were represented, and they said, "Don't go ahead with this case, you'll lose and then nobody will ever listen to us, we'll be dead, that will be the end of it." But the Nisga'a said no, it didn't matter that everybody on the coast was against them we're going to go ahead with it and they did. And in 1973, of course, the Supreme Court of Canada affirmed the concept of aboriginal title in Canadian law. That led to the negotiations that went on for many years culminating in the Nisga'a treaty of 2000.

Well, I had nothing to do with those negotiations. Jim Aldridge was the legal advisor to the Nisga'a throughout that period, because after I argued the *Nisga'a* case in 1973, in 1971 — the judgment didn't come down until 1973 — I was appointed to the bench, so I was out of action for quite a

few years. But as a judge I was asked to conduct the McKenzie Valley Pipeline Inquiry and you know, your conference, I looked over the agenda and I said to Jim Aldridge, I said, "This is the story of my life." When we went to the McKenzie Valley in the mid-70's we held hearings and eventually I wrote a report in which I recommended that land claims should be settled before a pipeline was built in the McKenzie Valley. And that report I completed in 1977, which is thirty years ago, and some of you who may remember those days will recall that I visited every community, every village, every town in the McKenzie Valley and the Western Arctic. About 1,000 aboriginal people spoke to the hearings that I held and we heard about 300 experts at the main hearings in Yellowknife. My report came out in 1977 and it was followed by the Government of Canada. They said, yes, we're not going to build that pipeline and they said, yes, we're going to settle those land claims and they sat down with the Inuvialuit and the Dene peoples and over the last 30 years they have worked out a series of treaties.

Well I should tell you that two years ago, I went down the McKenzie River again with David Suzuki and the *Nature of Things* on a three-week trip to some of those villages I had been to 30 years ago. And we wound up camping for four days at the Arctic National Wildlife Range in the vicinity of the calving grounds of the porcupine caribou herd. But what I found was that these Dene and Inuvialuit folks like me may be getting old but they don't recall precisely what happened 30 years ago. Because we stayed in those communities each of them for two, three, four days until everyone had had their say. This time when I went to some of those communities some of the old timers would say yes, we remember you Judge Berger. And they even showed me the place where we'd held the hearings and we had some good chats, and then somebody would come along about 35 years old and say, "Yeah, I remember those hearings and I spoke to you then." Well I refrained from saying, "If you did

you must have been a very eloquent five-year old." And I do recall at Fort Good Hope 30 years ago some children carrying banners that said no pipeline, Berger. Perhaps it was some of them who claimed that.

Anyway, what was interesting was that when I was there two years ago it was clear that under the land claims agreements, hundreds of thousands of hectares of land had been set aside — both the surface and subsurface resources for the Inuvialuit, the Gwich'in, the Sahtu, and the — I'm leaving somebody out here. But there are a series of land claims agreements there, and the Deh cho, I think, are not so far from completing their land claims agreements. And when I looked at those land claims agreements, I thought this is marvellous because they had not only protected their land base, their hunting, fishing, trapping rights but they had protected the environment.

The Inuvialuit and the Gwich'in, together had established, under their land claims agreements, two national parks in the Northern Yukon, Ivvavik and Vuntut which protect the range of the porcupine caribou herd and the staging grounds of 500,000 snow geese that migrate there each year. These were documents of historic significance.

Could I also say that in the measures taken to protect, for all time, those hunting, fishing, and trapping rights, it is sometimes said by opponents of these treaties that these are race-based documents, race-based rights. Well they're not, and don't let anybody ever tell you that they are. They are rights based on the single fact that when the European's came here this land was occupied by aboriginal people with political communities of their own, their own religions, their own economy, their own culture, their own way of life, their own civilization and it is because those political communities are still in our midst that we are bound to make treaties with them that offer them a fair and distinct and contemporary place in the life of Canada, nothing to do with race.

I mean nobody can blame the aboriginal people for the fact that when the Europeans came the aboriginal people were more or less all of one race. You can't then impose a regime on them and when they say look we want to assert our own rights, they say no, no, no you're all, you're all one race, this is — we're racially blind here, we can't have that. And I urge you never to listen to that. This is because you are the current day representatives of political communities that go back hundreds and hundreds of years. And that's why under international law and under the law that we've developed in Canada, we're bound to make these treaties.

Now, lurking behind this issue of treaty making and land and access to resources, was always the issue of self-government, because if you acknowledge that aboriginal people have the right to land and resources and to develop those resources and to access those resources and the right to their own culture and their own language and their own history, then you get to the question, well then, they have to govern themselves under the umbrella of the Canadian constitution. And, that's why those treaties all contain measures for a self-measure of self-government — the Nisga'a treaty does as well.

But self-government was opposed by some very important figures in this province and across the country. And Joe Gosnell will remember that when the Nisga'a treaty was signed in 2000 the then leader of the opposition in BC, Gordon Campbell, brought a lawsuit to set aside the self-government provisions of the treaty as unconstitutional, and the Nisga'a brought me out of the bull pen to argue that case, and we were successful. The Supreme Court of BC held that, no, these provisions for aboriginal self-government and the Nisga'a treaty, and by implication in the other treaties, are entirely within the constitution of Canada, that they cannot be attacked as unconstitutional. And, the interesting thing of course, is that Mr. Campbell, having lost the case, was then as a

kind of consolation prize elected premier. And after a year of thinking about the issue, as you know, as is well known and to his great credit, he changed his mind, and he abandoned the stand he had taken for quite a long time in opposition. He had opposed the Nisga'a treaty vehemently in the provincial house and he has sought to establish a new relationship.

I only mention our experience with Mr. Campbell because it shows that reasonable people once they understand the issue can be persuaded, that it's essential to the peace and harmony and fairness of Canadian life to adopt it.

Now could I just say that everything I've done is not in the ancient past. In 2005 and 2006 I was in Nunavut because the Government of Nunavut and NTI and the minister of Indian Affairs agreed that I should conciliate issues arising under their land claims agreement. As you know they signed a land claims agreement in 1993, and in 1999 under that land claims agreement the Government of Nunavut was established. And I had to deal with a number of things, but I just want to say a word about the dispute in Nunavut under article 23. Article 23 provided that in the Government of Nunavut, when it was established, 85% of the jobs should go to the Inuit, and that was because the Inuit are 85% of the population of Nunavut. It was what's called an equity clause usually used to preserve the rights of minorities, but here to preserve the rights of a majority. And it wasn't just any job or jobs, it provided that the Inuit should receive their proportionate share of jobs in the new Government of Nunavut over all occupational and grade levels.

Now, that meant that throughout the government in all levels there should be 85% Inuit. And the Government of Nunavut, I don't know how many employees it has today, but last year I think it was 3,200; the population of Nunavut is 30,000, so you can see that that government payroll is a key engine of economic life in Nunavut. And last



year the percentage of Inuit employed in that government was about 45%, this is after seven years since the establishment of that government.

Now the reason is, and nobody argues about this, that there weren't enough qualified Inuit to assume those jobs - that's the difficulty. And I just want to tell you why, it must be obvious, but it's because in the executive and management and professional and technical areas and often in the trades areas of employment in the Government of Nunavut there aren't enough qualified Inuit. And that has to do with the manner in which they have been educated because in the high schools in Nunavut only 25% of the kids graduate, 75% dropout.

Now in British Columbia, if you want the other side of this coin, 80% of the kids graduate from high school, 20% dropout. And, at the same time the over crowded state of housing in Nunavut, and the housing in Nunavut is more overcrowded than in any other aboriginal group in Canada. There was a piece in the paper yesterday morning that the waiting list for social housing in Nunavut consists of a thousand families and that all over the three northern territories there are about a thousand homeless women and a thousand homeless children.

Now given the populations in those areas this is remarkable, it's staggering. And those over crowded housing, and they're usually over heated because we've never mastered any form of northern architecture, even though we have this vast northern interlard, make the Inuit uniquely susceptible to chronic otitis media. And teachers, people in the education department, told me that one-half to one-third of the children going to school in Nunavut have chronic otitis media. And that means they're hearing impaired, and that means teachers have to use microphones and they have to amplify the sound in all the schools.

Now this also has something to do with the dropout rate. And of course, when you keep

that figure in your mind about the dropout rate it leads you to the question of social pathology, family violence, use of drugs, the levels of crime and the rate of teenage suicide, all of these things in very large measure are the result of those unconscionable dropout rates. And, let me just tell you briefly what I decided in my report. I wrote a report in March 2006 for the Minister and the people of the Government of Nunavut and for Nunavut Tunngavik Inc. They were the people who asked me to do this, and it covered a lot of subjects, but may I just say a word about this subject because it was the most important I dealt with.

These children, something like 75% of them, speak Inuktitut in the home and when they go to school for the first four years they are taught in Inuktitut, and then in about grade five they switch to English. Well, Inuktitut's a written language and it means they acquire some proficiency in their own language between grades one and five, but then they switch to English, and it's like starting all over in a new language. And it means that as they move on towards grade 12 they realize, because they didn't have the first four years in English, and then they drop their own language, they realize many of them that they're not going to make it. Now 25% of them do, a magnificent achievement considering the way the odds are stacked against them. But those 75% don't make it, they just can't handle it. They know they're starting four years behind all of the non-Inuit contemporaries and they dropout.

I don't want to pretend that I comprehended this issue in its entirety but I consulted the people in Nunavut, the best people I could find at Indian Affairs, experts at the University of Toronto, and I recommended that they have a bilingual program of education, Inuktitut and English from grade one through to grade 12. And I said that this should be the first priority of the federal government because we have to produce in Nunavut, and I'm telling you this at some

length because I wouldn't be surprised if some of these same lessons pertain to other aboriginal communities in the country, but I just want to say that we need to do this because the north is opening up with global warming. They talk about the Northwest Passage opening up, a sheet of ice the size of Ontario disappeared between '05 and '06, there is going to be industrial development in Nunavut, and we want to see that those Inuit kids come out of high school where they are suited to, they take post-secondary education and they take their place as administrators, as managers, as technical people in their own government. And they take their place in the private sector, as miners, as mariners, and geologists and engineers.

In my view, it's something that all of the land claims and the self-government measures have to be based on. That is, it seems to me the next stage in all of this, you had to get those land claims agreements, you had to get those self-government agreements in order to preserve the land, to preserve the culture of the Nisga'a and the people of the Mackenzie Valley and the people in Nunavut and to preserve political autonomy. But the next steps have to be, in my view, the emphasis — I know the emphasis now on education and employment — but it has to be a tremendous emphasis because we have to educate. It's something all Canadians have to realize, the next generation of First Nations people and Dene and Inuit in this country. It means that in Nunavut, the Inuit whose occupation of the Arctic is the basis for the assertion by Canada of Arctic sovereignty, but it means that they can be full partners in the opening up of the north. It means that all over this country to the extent that the land claims agreements and the governments of the First Nations are inhabited by aboriginal people, they will truly make them their own and will be jumping off space for ensuring that as the next generation matures they will be able to take their places in the employment opportunities that are offered.

I just want to close by saying that I haven't quite worked all of this out myself, but I've had the opportunity since the early 60's of thinking about these issues and of being of some help to the organizations represented by the people in this room. And standing back now at an age when I'm even older than Joe Gosnell, I can see the future. Who would've thought 40 years ago that we would have treaties, modern treaties covering half the land mass of Canada? Who would have thought we would have a Treaty Commission in BC that was encouraging the development of treaties all over the province when until 1990 every government of the colony of BC and of the province of BC fought the whole thing tooth and nail? Who would have thought we would have had a Government of Nunavut, with authority over one-fifth of the Canadian land mass? Who would have thought we would have had all those treaties in the McKenzie Valley? When I went to the McKenzie Valley in 1974 to start my work, the idea of aboriginal title had hardly surfaced. And as the commissioner at the time told me it was a dirty word.

We've made a lot of progress, we really have, and you folks have achieved it. I am simply saying you know the issue better than I do, but I am saying that the next big push, and it's going to take a generation or more, will have to be with the emphasis on education and employment. I thank you for asking me here, it's so nice to see so many old friends.

**Speaker: The Honourable Steven L. Point**

First of all, I'd like to thank the Treaty Commission and the Nisga'a for having me at their conference.

Dr. Gosnell, it's a pleasure to see you. Of course it's a pleasure to be here with all of you. We're living in tremendously interesting times in this province. We're seeing treaties finally progressing after the tremendous windfall of the Nisga'a



agreement. We see two more treaties now coming through. And we see for, perhaps not the very first time, but we see an aboriginal person stepping into the shoes of the Lieutenant Governor of this province.

I keep thinking back to all those speeches that I made about the lieutenant governors, including Joseph Trutch. And all of those times that we went to conferences and passed resolutions and went on demonstrations. I remember 1982 standing at the edge of the Anthropology Museum with George Manuel. George was making a speech about the implementation of aboriginal title and rights into the Canadian Constitution and how it'd just been taken out. And I was standing there listening in awe of the words that he had to say and the attention that he was being given by the media. There were three or four cameras there. I was a student. I had long hair and I had one of those Billy Jack hats on. I'd been swept into this whole movement with the drums that were being played like they'd stepped off an old yellow bus. And the union of chief's staff and their many, many followers were drumming their way over to the museum and they were intent on taking the building over, which I found out once I got there that that's what they were going to do.

I was standing next to George and after making his final statement George said, "Now Steve Point wants to make a statement too." Oh, man I was looking at those cameras much like I'm looking at you today wondering what the hell am I going to say that's going to impress anybody.

But all I can think about saying is we've come a tremendous distance, you and I. We've seen a lot of failures, a lot of losses, but we're beginning to see some tremendous victories, as well. I think we're in a threshold of a tremendous change in the attitudes, of not just government people, not just people in the churches but people at the everyday community level. We're no longer invisible, we're no longer that reservation, that

reserve, those people. We're coming out of our communities and taking our rightful place in this country. A place that's been there for a long time, a place that we dearly deserve to take and one that, I think, is absolutely necessary to do so.

Treaties can and must reconcile the extension of sovereignty by the government of this country, to the aboriginal title of our people and their rights that have never been extinguished. But can true reconciliation happen just through treaties? Can a group of people sitting in a room negotiating the legal documents really bring two groups of people together that have such a tremendous history, a history torn by violence in many cases, a history wrought with poverty, ignorance and prejudice?

I remember my son when he went to school, he was five-years old and as a young man he didn't know who he was, where he was going to go in his life and what he wanted to do with his life. But after being at school for a couple of days he came back and he knew one thing, he said to me, Dad, I'm not an Indian. That's what he said to me.

How is it that we can send our children to school for just a few days and they come back feeling badly about who they are. It's because we still have gaps in our community that have not been filled. We still have barriers out there that have got to be broken down. Not just in our education system, but in our health care system and policing.

Treaties will unravel the tremendous dilemma that we've been in, in relation to the issue of land title and in relation to the legal status that we enjoy in this country under Section 35 of the Constitution. They will enshrine the jurisdictions that we ought to have in terms of our own self-determination to decide for ourselves who and what we want to be in the future. But can they mend the fences that have been broken down, the awful relationships that we sometimes have in our communities? Will they resolve the poverty that exists?

I looked at the word reconciliation, and then as my experience tells me as a lawyer, I used to get clients coming into the room wanting reconciliation, they want compensation, they want to be put back to the position they would have been in had they not had someone smack their car or break their window.

Can aboriginal people in this province be put back into the position they had been in, had Europeans not come? No. Can aboriginal people be put back into the position they would have been in had they had treaties 150 years ago? No.

Treaty making in this country is 150 years too late to do exactly what would have been done then. We've got more than four million non-aboriginal people living in this country, and more keep coming everyday. Canada has a declining birth rate, that means that they are relying on immigration to support its economics.

It was said in a newspaper I was reading just the other day, the Globe and Mail, reported a statement by a politician, which really struck a chord for me. It said that the greatest resource of Canada isn't its natural resources but the untapped resource in aboriginal people who have yet to achieve their full growth and development in terms of education.

Over half of our people are still not succeeding in high school. We're still dying too early in life and our suicide rates are way too high.

If treaties are going to get implemented in a way that I hope that we will want them to be, the health of our communities has to be the next order of business. We have to examine those issues in light of the achievement of treaties. We have to ask ourselves - what do we want for 20 years from now, for that seventh generation in 50 years? How do we reconcile the past so that we can take control of the present in light of the need that we have for the future generations? I think that's our challenge now.

True reconciliation can and must begin through treaties. But true reconciliation can only occur in my mind, after our communities have had an opportunity to heal from this colonial hangover that we've had for the last 100 years, after we've come to grips with our history, and after the government and the people have taken responsibility for everything that's happened in a way that reconciles our relationship.

There is a lot of talk about new relationships. Lord knows we've been wanting one for a long time. But if we're going to dance with the devil we better pick the tune; we better have good shoes on; and we better know our partner.

It is possible to make changes. It is possible to dream and to improve our communities. But the concerted effort of a few leaders cannot equal a concerted effort of the entire community to achieve an entire community that is no longer impoverished.

These last few weeks for me as Lieutenant Governor of British Columbia, has taught me one important lesson, that this office, although I'm viewed as the head of state, is non-political, non-partisan and independent of government. However, I can still speak to you from my heart.

But if there is something further that I can do, I welcome that opportunity. I welcome the opportunity to come and speak with you from time to time, but more than that if necessary, have a dialogue with you.

We are after all still a part of the greater picture, the larger country, the larger scheme of things. And I look forward to that dialogue. Thank you very much. Thank you for your time.

## Panel Discussion:

### *If we knew then what we know now...*

Panelists will focus on their treaty negotiation and implementation experiences in the Yukon, Nunavut, Northwest Territories and BC. Presenters will highlight for them what worked, what didn't, and what they might have done differently. This workshop will provide information, and raise specific issues and strategies that First Nations now negotiating treaties can be thinking about as they negotiate agreements in principle and final agreements. Audience participation is welcomed. Floor microphones will be provided or you may give your question to conference staff who will pass it to the facilitator.

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#### Presenters:

Edmond Wright, Nisga'a Lisims Government  
Richard Nerysoo, Nihtat Gwich'in Council  
Charlie Evalik, Nunavut Tunngavik Inc.  
Andy Carvill, Council Yukon First Nations

#### Presenter: Edmond Wright

Good morning to everyone, my name's Edmond Wright. My Nisga'a name is [Sim'oogit K'amuluugidis]. I am in the wolf clan and we're Gitwilnaak'il in the House of Duuk in the Nass Valley.

I chair the finance committee and our Capital Commission, I function within our government on the executive and, of course, I'm a member of our legislative house [Native language].

I was a former administrator for my village from 1970 to 1998, but I had to do a role as an administrator for 28 years, I was also functioning with our Nisga'a Tribal Council and for your information, most of my holidays in those years were used for my work at the land question

issue working with the Nisga'a Tribal Council. I still function today as the secretary/treasurer for Nisga'a Lisims Government on my second four-year term since the effective date of our treaty.

I'm glad to be here to sit on this panel where we have been asked to end the sentence: "If we knew then what we know now..."

It's very important to touch on our negotiation experiences and I want to start for the Nisga'a Nation from the earliest time of contact. That was in 1881 when we found that government surveyors were in our midst.

Well, by 1887 our people were pretty well disappointed with the whole process so the Tsimshian and the Nisga'a chiefs travelled to Victoria. This was really the first face to face negotiation or discussion with Premier Smythe about their particular position on the ownership of the lands and resources in the Tsimshian area and, of course, our chief spoke on the Nass Valley.

They didn't get a very good reception from Premier Smythe. Premier Smythe said that it was encouraging to see that there would be little parcels and reserves so they could have gardens and grow vegetables. Well, that certainly wasn't what our people were asking for. They were asking for a treaty and Premier Smythe actually asked them how they heard about treaties. By that time our people were travelling enough to know that east of the Rockies there were treaties and that was one of the reasons they were pursuing land, forestry, and other resources, the hunting and fishing and so on.

Entering treaty negotiations with Canada and British Columbia is your indication that you are willing to share lands, resources and jurisdiction within your particular traditional territory.

Throughout our negotiations, community consultations were held in our four villages and three urban locals and we made up our committees from the Nisga'a Tribal Council and the band council so that they could meet regularly to give direction and assist our negotiator.

Our annual assemblies and special assemblies continued to give guidance to resolve the Nisga'a land question. On March 22, 1996 shortly before our 39th annual assembly, Canada, British Columbia and the Nisga'a Tribal Council signed the Nisga'a Agreement in Principle, and on December 11, 1997 the Supreme Court of Canada handed down its decision on *Delgamuukw*. The decision caused some delays in the Nisga'a negotiations as all three parties reviewed the implications of the ruling. The Nisga'a Nation decided that they would honour the AIP and continue negotiations on that basis. After all, our AIP was clear that our aboriginal title and our aboriginal rights would not be extinguished or surrendered.

At the 41st annual assembly of the Nisga'a Nation in New Aiyansh on April 27, 28, 29 and 30 of 1998, we reviewed the draft chapters of the final agreement and continued the development of the Constitution of the Nisga'a Nation.

On July 15, 1998 in Terrace, British Columbia negotiators from Canada, British Columbia and the Nisga'a Nation concluded negotiations of the Nisga'a Final Agreement with handshakes, hugs and a whole lot of joy. It was quite the celebration. We had our people come in from the valley to join us singing and dancing as we concluded.

On August 4, 1998 in New Aiyansh the final agreement was initialled by Canada, BC and the Nisga'a Nation.

We actually started what I would call implementation before all three parties completed their ratification. We got a quick start on the preparation of our draft legislation for our new regime during the ratification process by the three parties.

May 11, 2000 was selected as the effective date for the Nisga'a Final Agreement. Our Nisga'a Tribal Council, general executive council, served as a transition government for the Nisga'a Nation. We were sworn in as members of [Native language] that's our legislative house on May 11, 2000. At the meeting, WSN rules of conduct were adopted. The speaker and the deputy speaker were elected and 18 new Nisga'a legislators and the constitution of our nation were enacted.

Our work as a new government had just begun. Boy, did it ever just start. Four or five days after the effective date we were down here in Vancouver defending our treaty along with Canada and British Columbia against Gordon Campbell, now premier, and his colleagues. And I think you're aware that we won that case, that they were arguing that our agreement was unconstitutional. Williamson ruled that there was room within 91 and 92 for us to have certain powers and we had willing partners at the table that were willing to share those particular jurisdictions.

So that case still is a law of the land that our treaty is a very legitimate treaty.

The Nisga'a Nation conducted its first general election on November 8, 2000. All our candidates were elected to serve a four year term and in our legislation we chose four years, although our constitution gives us up to five years. We thought that we would start with four and if we needed to extend it we'd have that time to allow it to happen.

Our transformation from the *Indian Act* — certainly the recognition of our legal status and capacity is within our treaty and our

governments. The Nisga'a Nation and the Nisga'a villages are separate and distinct legal entities. The nation acts through Lisims Government and the villages act through their village government. We had four grants of land that were made by the Nisga'a Nation to the four Nisga'a villages. Everyone in each village received a Nisga'a village entitlement to their lot. We also granted interests such as statutory rights of way, easements, licenses of occupation, permits, and so on to BC Hydro, Telus, ministry of forests, ministry of highways, DFO, CBC, RCMP and so on.

Our land regime was put in place; we have the Nisga'a land title office and the Lisims Land Registry.

Presently eligible recipients have progressive holdings that start with the village entitlement and then moves to a nation entitlement and then you can raise the title in the provincial land registry.

We are presently reviewing that and we now have marching orders through our executive to move to fee simple estates for individuals in each of our villages holding fee simple estates, moving away from certificates. Well, that was done very deliberately, partly to challenge the financial institutions on their requirement to forever request guarantees from the nation.

We had bi-elections in the spring of 02, the fall of 02 and the fall of 03. We also had bi-elections in the spring of 05 and bi-elections in the spring of 06 and the fall of 06.

One of our laws — the *Administrative Decisions Review Act* actually was put to use. There were appeals on one of our elections, the second general election, and the ruling of our board was that some of the results were invalid.

Therefore our executive had to call for new elections. We're actually seeing the areas where required to be scrutinized by an independent group actually works.

We have provisional budgets to start the year and we adopt a final budget on October 31st, something very new in implementation for us. We've set up our Nisga'a Settlement Trust.

Some of the questions, what other areas did we implement? We had our Nisga'a Fisheries that we developed. We have an elders' package — when a Nisga'a participant becomes 60 years old they receive a payment of \$15,000. We set up our *Economic Development Fund Act*. We have our Nisga'a Capital Finance Commission that oversees asset replacement and major maintenance. We have our Lisims Fisheries Conservation Trust that contributes to our fisheries program. We have our Nisga'a Fisheries Opportunity Fund that allows for the buying of licenses and assisting of our commercial fisheries.

Lessons learned. I think there are more areas within your treaty that need pre-implementation. It's very hard to try to do within the period from final agreement to ratification to effective date and I think there are areas, quite a bit more areas, that can be done.

In implementation, the plan should be binding on all three parties and funding should be properly budgeted. Funding for government should not be based on band council budget. And certainly our coalition is dealing with that through the land claims coalition.

OSR: lessons learned. I think there's a conflict between governance and business development. As soon as one of our corporations deals with our resources we have to play big brother by demanding their financial statements so we can do calculations on their earnings and I think that's wrong when we try separating government and business and we're still reaching in.

Wills and estates are going to be a major issue. We're under the provincial system, but we got used to the very relaxed *Indian Act* process. I think that needs to be done. I think the use of status Indians by Canada is still there; our treaty says that benefit should be for Nisga'a citizens.

The question that was asked at the beginning how to rephrase: Would you have entered into a treaty negotiation if you had known what you know today after seven years of implementing treaty? Remaining under the jurisdiction of the *Indian Act* was not an option for the Nisga'a Nation. This statement is made as a result of discussions of the Nisga'a Nation here in the 41 annual assemblies before ratifying the Nisga'a final agreement. Thank you very much.

**Presenter: Richard Nerysoo**

If we knew then what we know now, we'd think about the kind of words and the kinds of objectives and the kind of community that we would want to leave.

First, one has to look at the euphoria versus the hangover. Is this an exercise in creating more independence of our people or continued dependency, with that dependency moving from Canada to our own aboriginal governments? I think it's really important that people try to think about that issue: whether or not we were creating prosperity or abject poverty for our people and moving it from one government to the other.

And this idea of business versus government. It always seems that we talk a lot about the idea of removing business from government and we forget that and we actually tried to maintain control over those things. One of the greatest problems that we've had historically is the idea that our people should always have to rely on government, on the collective sense instead of promoting the idea that our people should become more independent so that they can

sustain their community governments. In other words, that there's a basis for taxation for our governments then somebody has to pay for it. The people have to think about it in that context.

The other thing is: are you creating a dream or a nightmare? In other words, do we create an exercise where people wake up one day and that they continue to dream about the bigger things as opposed to finding that they're in an exercise, a nightmare that they don't know how to get out of?

We came, as the Gwich'in. And for those that don't know, we have a numbered treaty — Treaty 11 — that applied to us. And we entered into the [treaty negotiations] with the idea of trying to change, not the terms, but the understandings that we had about Treaty 11, and to expand what we understood to be Treaty 11.

The Gwich'in Tribal Council came about as a result of the Dene/Metis negotiations process for the Dene/Metis in the Northwest Territories. That basically broke up in 1988 when the Gwich'in decided that they were going to leave the process simply because the Dene/Metis negotiators and the leaders decided that they would not allow the communities to vote on an agreement in principle. So they walked in 1988 from that process because it was very important for the Gwich'in to get the decision of the people to come to an agreement, yes or no. Not the leaders, but the people, to agree to the process, to agree with the results and to accept or deny what that agreement would mean.

So, in 1988 the Gwich'in removed themselves. In 1990 we signed an agreement in principle. In 1992 we signed a final agreement.

I will say this — it's all well and good that we signed the agreement but our greatest challenge has been implementation. It has been the most difficult exercise that we have gone through. It seems as though there are never ending negotiations between Canada and the Gwich'in about



the objectives and the obligations of the land claim agreement. We still have outstanding issues that remain under Treaty 11 that have not been resolved and that still need to be dealt with.

But it always seems that the [federal government has] to defend what it is that they understood their agreements to be. It's the same thing with us — we're always trying to get to the conclusions of what we understood the land claim agreement to be and what government understands it to be. And it's a great ongoing debate for us.

I'll say another issue is — for those who are at the table negotiating agreements — understand what it is that you're signing. Really understand it, because legal words mean different things to different people. And if a person who does not speak the language of English doesn't understand what it is you're signing, then obviously you're going to create a gap between those who understand and those who don't understand. So the negotiations have not been completed.

And then there is this idea of objectives. We intended the agreement to say this from the aboriginal point of view. Then you go back and the government says, well we intended it to mean this. And the next thing you know, you're back at the table trying to resolve what it is that you really meant to say at the beginning but it's too late to change it because you have an agreement that's already signed. So you have to understand what it is that you're signing.

The other thing is that objectives and obligations are two different things. You have an objective of making your community self-governing and yet when you get into the process of implementation, governments say, "Well, we didn't mean it to be that." In other words, we didn't want to give you all the authority that you should be getting. We wanted to go this extent but your municipality needs to get, has that authority. Or this other First Nation has that authority.

And so the debate is circular in the sense that what it is you thought you understood, who else had the power, why is it that you don't have it? And yet the agreements always look like they're exactly what it is that you intended it to be.

The other exercise that I've always understood is this. We continue to grow as a community. In 1992, when we signed the agreement we had, I believe, a population of 2,500. Today we have 35, almost 3,700 people. The agreements and the demographics in that growth has never been calculated into the compensation arrangements that were arranged and therefore what happens is that the demand for services and programs are now transferred to the First Nation or the Gwich'in Tribal Council to respond to that 1,000 people growth in our community. It's not governments any more. And it seems that those things of demographics are never a consideration in these, and yet there's a continuing growth in population. That doesn't always happen.

The other thing that I kind of need people to understand is we have four communities that are divided. In the case of services I am the leader of a community called Inuvik. The community, people have moved into Inuvik, gone from Sekachik, Fort McPherson and Klavik into Inuvik. We're the hub of the region. We're the large community and when I took over as chief four years ago, the Gwich'in population in Inuvik was 239. Today it's 578. There's been no transfer of money from the other communities because we have never had a change in the formula financing for each of the communities based on that transition. And I think that when people look at these issues, you have to look at it in a global context and try to consider all the changes that are going to happen in your communities and try to find ways that are going to accommodate that kind of transition, because my belief is that growth happens.



It happens in our communities, it will happen in every community. Everything that we have is a situation that the rights apply to everyone. They apply outside our lands because the right holders are the people and so what's happening for us is there's a great demand for services to those people that are living in Yellowknife, in Edmonton, right here in Vancouver, because they are, in fact, because of rights, because of the ones that hold rights have the right to services and programs as a result of the land claim and the treaty agreement.

And so you cannot deny them the right to access the programs. The problem, the challenge for us as a Gwich'in Tribal Council is being able to respond to those needs outside our jurisdiction. And 45 per cent of our total population of Gwich'in live outside the Gwich'in settlement area and when university and post-secondary programming starts in the fall, it's almost 60 per cent that are outside our area. So our challenge is trying to find ways to respond.

Another issue that is, I want to say, Grand Chief Carvel mentioned this, is a need for us to try to solve the trans-boundary issues between First Nations and aboriginal governments.

I know that as I listened earlier to the comments, but the reality is that if First Nations and aboriginal people cannot solve those problems, they will not be able to get other governments to step in on their behalf because other governments will avoid it and they will prefer that courts decide those issues for you. And I say this to you. As a former minister of justice and premier, having been in that position, I would encourage all First Nations to resolve internally and externally their trans-boundary issues.

I know how challenging it is for the fellow that came up and said, "Well, some of these things are not working," but First Nations have to find

a way to resolve their differences. We can't allow other people to come in. I'm not saying it won't happen, because it has happened, but it's the best way for us.

For instance, the differences between us and the Yukon was for us to sit down, try to find a way and a mechanism to get involved in the Council of Yukon First Nations because we do have land, we do have trans-boundary rights and trans-boundary interests and the best way for us was to join that organization so that we can explain our issues to them and they can come and help us deal with the issues. Now that's not always a solution for everyone, but I do know this, it will be extremely helpful.

The other thing that I'm party to is an exercise with the Dene Nation on developing a dispute resolution mechanism where First Nations and aboriginal people will sit on a dispute resolution board and finding a dispute resolution vehicle that will allow for us to resolve either specific community issues or trans-boundary issues. It's up to the First Nations then to determine who is going to be part of that conflict resolution and we're in that exercise right now and trying to find a mechanism. Because unless we do it, I know this, governments would prefer us to spend money in court and I think there are better ways to resolve that.

The other thing, the final thing I want to say is that the Gwich'in Tribal Council represents everyone. We represent the status Indian, the Metis, the non-status members and all have equal rights in the Gwich'in Tribal Council. They have equal rights to program services, equal rights to voting, equal rights whatever that might be. So we've tried to be inclusive in our exercise.

So thank you very much. I have a bit more to say but I think I can answer questions. Thank you, Mr. Chair.

**Presenter: Charlie Evalik**

Thank you very much. My name's Charlie Evalik and I'm currently with Nunavut Tunngavik Inc.

I want to give you a quick overview of Nunavut land claims agreement before getting to "If we knew then and what we know now..." and what might be done differently today.

Nunavut land claims agreement was signed in 1993, almost two decades after Nunavut filed their Statement of Claim with the Crown. Nunavut land claim agreement sets out Inuit rights, establishes institutions and establishes fee simple ownership of major tracts of land for the Inuit.

Inuit owned lands make up about 18 per cent of the service area, Nunavut, and about 1.8 per cent of the sub-surface. The sub-surface component may seem small but was selected and includes important mineral land resources.

The agreement established financial compensation for the claim and provides a governance framework which is essential to government in Nunavut.

The Nunavut land claims agreement led to the creation of the new territory of Nunavut and to a public Nunavut government. However, the Nunavut land claims agreement is not a self government agreement like the Nisga'a treaty. The Nunavut government is a public government like those in the Yukon and Northwest Territories.

The Nunavut land claims agreement includes 42 articles on this very comprehensive framework affecting everything from Inuit rights to land ownership, environmental protection, wildlife management, to social and cultural matters to Nunavut Social Government Council.

The environmental and resource management provisions of the claim depend on co-management institutions, boards and commissions which are explicitly part of our public government which are institutions above public governments — we call them IPGs.

Half the members are appointed or nominated by Nunavut Tunngavik Incorporated and half are appointed by the governments. These IPGs play a role in land-use planning, wildlife management, water management and environment impact assessment.

The Nunavut land claims agreement grants 356,000 square kilometres of surface land to the Inuit in fee simple. Lands include both surface and sub-surface, 38,000 square kilometres. Nunavut Tunngavik Incorporated administers the sub-surface lands and the regional Inuit associations administer the surface lands for their respective regions.

The Nunavut land claims agreement also sets up Nunavut trusts to invest amounts received from the Government of Canada as part of the settlement of the land claim. Today, the trust holds approximately \$1.3 billion. The last payment was received this year, 2007.

Income from the trust in turn provides funding for programs that the beneficiaries would like to set up to benefit the Inuit. Some examples of the benefits and where the income could go to are [Native language] which is a small financial institution to assist the Inuit businesses right across Nunavut, to support regional government corporations. We also have hunter support programs and elders' pension programs.

It is worth mentioning that [native language] has an agreement with the First Nations bank to expand banking services in Nunavut. The Nunavut land claims agreement also established an interpretation panel to oversee and monitor progress in settling the claim.

This includes five-year reviews to an implementation contract which monitor progress in settlement claim. This was accompanied by a first 10 years of the agreement.

The implementation plan addressed each article of the Nunavut land claims agreement and the assigned responsibility for its implementation to government and to Inuit organizations.

There are 26 communities scattered across Nunavut which is divided administratively into three regions, [Native language] as I indicated, with a regional centre in each region.

Under the Nunavut land claims agreement there was an elected Inuit organization, regional Inuit association in these regions to represent Inuit in all aspects of the implementation of Nunavut land claims agreement.

Now I will go into the 15 years of experience with Nunavut land claims implementation and I will go into what I think works in our case.

Firstly, Nunavut government serves all the residents of Nunavut and has been up and running since 1999. It has similar powers as the government of the Northwest Territories and works on a consensus basis with no political parties.

Secondly, the institution of public governments, or IPGs, were not set up until 1996, but they now have over 10 years operational experience and they have generally been sensitive to Inuit interests and concerns in the resource management and development process.

The Nunavut trust has invested well and has funded important programs for the Inuit. There was a collaboration between NTI and the regional Inuit associations.

The regional Inuit associations deal with their regional responsibilities and are accountable to their own constituents. Mineral development is occurring and benefits are occurring to the Inuit through the royalties as well as to our Inuit impact benefits agreements.

The implementation panel works if and when it has issues to deal with. This is readily available day-to-day land claims implementation questions. The implementation plan has generally been satisfactory but this plan needs to be updated. Discussion on the plans needs to take place between Nunavut Tunngavik Incorporated and the new associations as circumstances change.

Implementing the Nunavut land claims agreement is no short-term task. Inuit have been doubled in capacity to manage their own affairs over the last 15 years and will continue to do so.

And what does not work? Interpretation of the Nunavut land claims by the parties can be a problem. The negotiators are not the people who implement these agreements. Understanding exactly what agreement was reached at the negotiating table and carried over to implementation phase is a problem.

Disputes have arisen and are not easily settled. The arbitration and dispute resolution process has not been given an opportunity to work and cannot be relied upon to address interpretation issues. The implementation panel process is rarely used. A mechanism with the powers and responsibility to oversee all implementation issues would be welcome if it was able to resolve problems quickly. There are policy issues which need to be ironed out between signatories of the claim. An effective implementation plan is essential. This requires consideration of detail like timelines, costing and who is responsible for what.

Our implementation contract expired in 2003 and has not been renewed. The federal Government walked away from the table, from the negotiations. The plan must be updated periodically and understood by all the parties. Different government bureaucracies need to understand, both the letter of the Nunavut land claims agreement and its spirit and intent, in order to ensure effective implementation and its objectives.

Effective communication by all parties for the implementation of the Nunavut land claims agreement and who is responsible for each article need to be properly understood. The parties need to sit down to understand the Nunavut land claims agreement and to set up a proper implementation plan for all the articles of the claim.

And finally, what can be done differently? Implementation agencies, both levels of government, Government of Canada, Government of Nunavut, Nunavut Tunngavik Incorporated and the three regional Inuit associations need to be properly resourced to ensure that the government's framework and institution established by the Nunavut land claims agreement work as planned.

The Treasury Board approval process in relation to claims implementation is very painful. Inefficient funding mechanism needs to be addressed. Transparency is required. Relationships built on mutual trust need to be established.

We need a federal comprehensive land claims policy that would outline how claims are to be implemented and provide direction to our federal departments. We need an effective arbitration process that no party can veto. An independent watchdog to report directly to the parliament on claims implementation is needed. The auditor general does effectively but something more regular that would apply to our claims as needed.

And finally, we need to work to get a better understanding by the beneficiaries themselves of the agreement. Too often they do not realize some of the benefits that have come from that agreement that was negotiated a number of years ago and what they are doing in terms of the benefits today. Thanks very much.

**Presenter: Grand Chief Andy Carvill**

Thank you. I want to start by thanking BCTC and the Nisga'a Nation for the invitation to be part of this conference. It is indeed a pleasure to be here.

I also want to recognize politicians and staff from the First Nation governments and Government of Canada and other governments who are also attending this conference. First Nations people here in BC are interested in learning from the experience of other First Nations and Inuit in negotiating and implementing modern treaties.

The conference organizers asked us to speak about "If we knew then what we know now...". It is quite a task. As they say and was mentioned earlier, hindsight is 20/20. I am, however, optimistic about negotiating and implementing modern treaties. There are many problems as you've heard, of course there are, but we should not let these problems obscure some of the successes that we can have. If you watch TV news, read newspapers, the stories seem almost always to be about failures, disasters and scandals. That, however, is not always the story of modern treaties. We're going to talk about challenges and difficulties in implementing modern treaties, fair enough. But let's also remember that generally modern treaties can be a success story regionally and nationally if properly implemented by the other governments.

We should also remember that aboriginal peoples in other countries are hugely interested in our land claims and self-government

experiences. We receive a lot of inquiries from other aboriginal peoples in Canada and world-wide about implementation of the agreements.

I want to start with a few words about the importance of First Nation peoples supporting each other. Negotiating modern treaties takes a very long time. In some cases far too long. It is grinding to all involved. Lawyers pour over every word, every comma. The implementation process is also often expensive, difficult, convoluted, time consuming and can be frustrating.

Governments on the opposite side of the negotiating table, they have the time, the money and they seem to have an endless supply of staff and people to work on issues. But usually First Nation peoples bring only a few individuals to the table, as we know it is not fun being outnumbered, this is why it's important that First Nation peoples support each other and be seen to do so.

I think you will hear a lot at this conference about the Land Claims Agreements Coalition which remarkably brings together most First Nations people with ratified modern treaties, CYFN (Council of the Yukon First Nations) is a member of the coalition. The coalition has, for four years, pressed the Government of Canada to adopt a policy to fully implement modern treaties. [The CYFN], as a member of the coalition, recently met with Minister Strahl in the Yukon and pressed upon him the importance of this policy and gave him a copy of the policy for him to review.

A sense of solidarity and mutual support and trust has developed, I feel, between coalition members. This is tremendously important, perhaps just as important as the implementation policy.

The coalition strengthens my ability as Grand Chief of the CYFN and our individual First Nations to deal with the Government of Canada

and to use our land claims and self-government agreements to better the lives of the people that we represent.

All comprehensive land claims agreements are long, complex and detailed. The 1993 Yukon Umbrella Final Agreement, nearly 300 pages of single spaced text, is no different. We need to be able to explain the intent and the scope of these agreements to our people. It was mentioned earlier that our people need to understand these agreements. So my advice is to rethink the level of detail and complexity that we put into these agreements.

At present, we are putting together and providing constitutional protection to basic rights dealing with issues such as hunting, land ownership, royalty shares with details about administrative procedures, and the number of people that are sitting on boards and committees.

We'd like to look at separating out the big things from the smaller things. It is likely to be easier to implement agreements in certain areas that may be short. Our agreements are only as good as they are implemented.

Negotiators of the UFA (Umbrella Final Agreement) focussed on their job at hand, not so much on implementation which then was years in the future and in hindsight, there could have been a different approach. We should have been thinking of implementation as we were negotiating. This would have added a practical note into the negotiations.

The UFA and individual First Nation agreements put in place a partnership between the Government of Canada, the Government of Yukon and the Government of the Yukon First Nations. Nurturing and maintaining the partnership takes time, takes real effort and money. It has taken us a bit of time to understand the cost of implementing the agreements, the costs of doing business is

high, whether promised benefits are delivered or not. Agreements don't implement themselves, they require committed political leaders supported by dedicated and knowledgeable staff to negotiate, lobby and persuade our partners to do what is required.

Building the capacity of our institutions and the people they employ to implement these agreements and to deal with our challenges and partners is a huge and ongoing challenge.

To come back to the question posed by the conference organizers, we know this now, but we did not fully appreciate it 15 to 20 years ago during our negotiations.

Many implementation issues come back to money or, in our case, the lack of it. We have just completed a review of implementation in the Yukon and underfunding is a theme that came out time and time again. The financial cost of doing business, particularly if it is coming out of the capital transfer defined in agreements, should be a driving concern during and not after negotiations.

Some commentators including academics characterize comprehensive land claim and self-government arrangements as somehow divorcing or sidelining aboriginal peoples from Canadian society. This is not correct. Even as we govern ourselves, these agreements provide means for us to engage federal, provincial and territorial government as the case may be.

Effective implementation requires us to understand a lot about how these larger governments work and how broad public policy is made and implemented. Why is this important? One key to effectively implementing our own land claims and self-government agreements is to use them to achieve national, provincial or territorial public policy objectives.

Agreements in the Yukon can be used to promote the territorial economy, protect the environment and improve the well being of the territory's residents. Our agreements deeply affect all residents of the Yukon so it is important that departments and agencies of federal and territorial governments use our agreements to achieve their objectives as well as helping us to achieve ours. It won't be a surprise to you if I say that many federal departments that operate in the Yukon have only a rudimentary knowledge of our agreements. This is something we know now that we could not have predicted then.

Let me give you an example. The north featured prominently in a recent speech from the Throne. The Government of Canada wants to promote resource development in the north. A special advisor has been appointed to help streamline the regulatory system and an integrated northern strategy has been promised. I don't see how the Government of Canada can move forward on these initiatives without our direct involvement using the UFA and individual First Nation agreements as means to achieve its public policy objectives.

When the UFA was being negotiated I don't think many people on either side of the table thought of the connection between northern aboriginal peoples and their rights and interests and Canada's foreign policy, but just take a look at the recent speech from the throne. Arctic sovereignty and northern dimension to Canada's foreign policy are central themes. Climate change is rapidly altering the northern environment and is undercutting the value of the harvesting rights that we so painfully negotiated.

Coming to grips with the climate change can only be done through foreign policy so First Nations have a real interest and concern about the position Canada takes internationally on climate change.



The UFA has an important clause that guarantees our interests will be represented when Canada undertakes international negotiations on fish and wildlife management.

But in hindsight, it would be very helpful now if negotiators had further stressed our involvement in foreign policy and circumpolar relations, but as I said in the beginning and others have said, hindsight is 20/20.

Who would have thought only six months ago that the north would be the lead theme in the speech from the throne. As I mentioned earlier, I met Minister Strahl about a week ago and he is well aware of the implementation problems with comprehensive land claims and self-government agreements. The Government of Yukon and Yukon First Nations spoke with similar intent. The minister responded quickly and in public to the recent report by the Auditor-General of Canada to implementation difficulties with the 1984 Inuvialuit Final Agreement. I think our implementation issues are, at last, starting to climb on the federal government's agenda.

I started my remarks by saying that I am optimistic about implementation of the UFA and our individual First Nation agreements. I'm going to close on a quote from Premier Fentie of the Yukon at the news conference following the meeting that he and I had with Minister Strahl, but before I do, I want to discuss quickly two of the implementation review group findings that have the greatest implications for the future success of implementation, which speaks about and it seems to be a common theme, funding is inadequate. The gap between what we are getting from Ottawa to run our governments and what we actually need is significant, in our case, possibly as high as 70 percent in some cases. Determination of adequacy of funding is incomplete, but the review is proceeding through the GEB project that we have ongoing in the Yukon.

Secondly, certain federal policies and practises are inconsistent with and could be impeding implementation of our agreements. After more than a decade in our case, and 23 years in the case of the Inuvialuit, Northwest Territories, the federal government has still not made the necessary changes in policies or legislation needed to fully implement our agreements. Ottawa is still failing to meet its legal and financial obligations as once again stated in the Auditor-General's report and this is having significant impact on self-governing First Nations in the Yukon. This has slowed our ability to develop legislation, impacted the ability to carry out the obligation that we have to our citizens. We still have to focus too much of our attention on fundraising which diverts us from implementing our agreements and developing our governments.

In our meeting we just had in the Yukon, like I said, the quote from Premier Fentie is that... this quote is not a case of I knew then what we know now. Actually, it may be the reverse. What is happening now is not what we predicted then. But the point that I am encouraged by what he said was:

"Folks, there's something going on in this Territory that is of great benefit to this federation and that is how we are developing our relationship with First Nations in this Territory, working together in governance, involving them in strengthening our social fabric, involving them in economic development, building Yukon's future together collectively, that's progress. That wasn't happening in the Yukon ten years ago, it sure is happening today."

But with that, there's always great difficulty around implementation, about working with other governments while the premier says this on one hand, on the other hand he is also, there's a court challenge that's being undertaken in the Yukon. Little Simon Carmacks versus the

Government of Yukon and it could greatly impact all First Nations across Canada that have a treaty in place. Therefore, the Government of Canada has recently applied for Intervener status and they were granted that Intervener status so it's Government of Canada, the Government of Yukon Territory going to court against Little Simon Carmacks government in the Yukon Territory.

And with that, I want to again thank you so much for the invitation to be here. Thank you.

## Panel Discussion: *Are treaties the answer?*

Perhaps that depends on the question... our panel presenters will outline why they believe treaties are the way to a more prosperous future for their First Nation or why they aren't. Identifying what is wrong with the current treaty process and what First Nations need to conclude treaties that work will be up for discussion. Exploration of possible alternatives to the treaty process is encouraged and the audience is invited to be a part of the action! Come prepared with your questions for panel presenters. This debate is meant to stimulate discussion on some of the most pressing issues facing the BC treaty process and First Nations today in a serious but good-natured and inclusive forum.

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### Presenters:

Robert Morales, Hul'qumi'num Treaty Group  
(presentation unavailable)

Robert Louie, Westbank First Nation

Robert Dennis, Huu-ay-aht First Nation

Jim Aldridge, Nisga'a Lisims Government

### Presenter: Chief Robert Louie

Chiefs, elders, commissioners, councillors, negotiators, government officials, distinguished guests, ladies and gentlemen. It does give me great pleasure to be here, to talk to you about the treaty process. The topic we have is "What We Need to Conclude Treaties that Work." What's wrong with the treaty negotiation process? What do we do?

Right now there's over 60 First Nations in this province that are part of the unity protocol and that represents over 35,000 people. It's backed up by the Union of BC Indian Chiefs with approximately 140 First Nations in this province who agree with positions that we're taking.

I'm here to tell you about the treaty process. Don't be fooled that it's working. It's not. And that's a big, big problem.

I'm here to also talk about the future of treaty negotiations. I believe that there is a strong, imminent potential of court action. It is being seriously contemplated against the two governments and it may well proceed in the imminent future unless mandates and things change.

I want to talk to you a bit about the self-governance by First Nations and the fact that some of the First Nations, including my own, are being held hostage by the treaty negotiation process. I'm going to touch upon the problem areas with the treaty process. There are six main mandated areas that are real problems. I'd like to compare the treaty process with other processes — some of which are working — things that are happening in Sechelt, Squamish, McLeod Lake and my own community at Westbank.

I'll talk a bit about the treaty land entitlement in the prairie provinces. Much of that is working and they're not giving up their lands or paying taxes and giving up the jurisdictional basis to do so. And talk briefly about land management and land codes and what's happening there as an alternative.

To say the least, I believe that the vast majority of First Nations in this province are vastly disappointed with the treaty process.

There was so much promise made 17 years ago, a made-in-BC approach. We all expected collectively that we'd be much further ahead today. The fact is: we're not. The future of the treaty process is really dependent on the goodwill and common sense of British Columbia and

Canada. The question that has to be asked, therefore: will the honour of the Crown be maintained? Will there be goodwill and common sense?

I recognize that there's been progress made at some of the tables. I see what's happening there and I congratulate Tsawwassen. I congratulate those other communities that have signed, Maa-nulth and some of the other tables that have reached AIPs. Nothing against those communities, and I applaud those communities for making their decisions.

Sadly, for the vast majority of First Nations in this province it's not working, nor will it ever work under the current mandates. Settlement is a long ways off and, again, court may be the only direction, sadly.

Simply put, Canada and BC are asking First Nations to give up far too much including the successes we have made on our existing reserves and that's ironic, to say the least. At the end of the day, it's the Crown that really needs treaties. It's not the First Nations. Our aboriginal title will not go away with certainty over who really owns BC and what will happen in this province is only going to deepen.

For Westbank, signing a treaty under the current federal and provincial approaches would actually set us back and reverse much of the amazing progress we've made and that would hurt our economy. I came directly from the Westbank lands management seminar, at my community and my gymnasium. We had over 200 people there. First Nations people, lawyers, realtors, people that are looking at business, developers and so forth. We had a gymnasium full of professional people and they're looking at our model of land management, our self-government. We've looked at and have introduced the federal lands registry regulations that came into effect on November 5th [2007]. Our land-use planning laws and plans,

development processes that we're doing, there is real economy happening in my community, there's a very thriving real estate and that's not because of treaty, I can assure you. It's because of our location, but more importantly, it's about good governance and what the alternatives are.

We have land management jurisdiction, we have self-government and it's working. Governments have told us at the negotiating table, you're going to be far better off by signing under our mandated positions of treaty. That's baloney. It's not there.

Our proof is in the pudding. We asked our negotiators, come, come to Westbank. Come look and see what's happening. See the amount of development that's happening. It's booming. It is truly booming, over 5,000 residential units right now on the books that are planned. We've got over 9,000 people, most of who are non-natives. We've got 30-storey residential apartment complexes and resort developments that we're contemplating right now. This is real. 29 major projects, \$1 billion worth of business. Two years now and we've got over a hundred million dollars of development in permits. That's the type of activity that's happening there. It's not, again, because of treaty.

Does government really think we're going to give that up? I don't think that's going to happen. In treaty negotiations incredibly federal and provincial mandates mean Westbank would have to disrupt our own government. We'd have to re-write most of our laws that we've been working on now for 17 years. And that's after our lawyers have tried to figure out the extent of our jurisdiction and they have complicated restrictions and harmonization rules under the treaties. Because of powers available under the current treaty mandates are not as extensive as ours right now under Westbank self-government. That's a fact. There'd be far more provincial

interference with exercise of the limited jurisdiction we would have. Our land status would change, it would disrupt our economy that we've built and worked hard to deliver.

Our primary relationship, believe it or not, is not with Victoria, the provincial government; our primary relationship is with other First Nations and with Canada. This is fundamental and treaty mandates seeks to change this? That's wrong. I assert to you. It's unfair and it would create long term uncertainty for us.

We're not alone in the expressions with regard to self-government. Sechelt, for example, has been successful, they've been self-governing First Nation. They withdrew from the treaty process in part because both governments, Canada and BC, would not recognize their 91.24 self-government model under the treaty. That's a problem for them; it's a problem for us. There's been much progress made outside of this province in other areas, and within this province — Squamish, for example. They're not involved in the treaty process, they're doing very, very well and I commend the people of Squamish for what they've achieved. They've achieved it, not with treaty and the mandated positions, but they've done it because of the position that they're in and the negotiating strength that they have with the province. That's why they're being successful, not to mention the good people that they have there.

Land codes, under the framework agreement, that's an alternative. It's happening across this province. It's major. There are over a hundred First Nations in line waiting to develop their land codes, all with 91.24 jurisdiction; they're not giving up the 91.24 jurisdiction and accepting the 92 model. It's not happening. I assert even, and I apologize if it upsets anyone, but I believe Chief Leah, your community as well, is doing fantastically well and that's a success story and it's outside the treaty process.

McLeod Lake, Treaty 8, the adhesion agreement; they didn't give up their 91.24 lands and they're doing very, very well. The list goes on.

Treaty land entitlements throughout the provinces: there's Alberta, Saskatchewan, Manitoba. They're not being forced to give up their positions so government has done certain things in mandates that they don't do with other communities outside this province. There's something wrong with that picture.

If we, any one of us, goes to Alberta, Saskatchewan, I've been there. Manitoba, I've seen, I've seen Ontario, I've seen the Maritimes. I work in my capacity as chairman of the lands board and I hear the communities. They tell me when I raise the issue about 91.24, what's happening in BC? What are you people doing? Are you giving up all your tax benefits? You're giving up your reserve status? What's wrong with you? That's the actual fact and that's what I hear time and time again across this country.

I think some people seem to have forgotten what we are supposed to be doing in the treaty process. Let's remind ourselves, we are settling the outstanding land question because we, as aboriginal peoples, have an unextinguished aboriginal title to our territories.

You've heard it from Grand Chief Matthew Coon Come and I think that's an actual reality. In treaty we should not attempt to try and settle every issue between us for all time. Treaties should not be used as a back door assimilation of our peoples by making our governments and our peoples and those that do business or live on our lands subservient to provincial standards of law making.

There's a whole bunch of other points. But I'm going to cut to the chase a bit more and just list in summary some of the key problems I see in the mandates of government. Quite frankly, I see at least five.

Firstly, I think self-government is limited by British Columbia through concurrence of law making authority and positions on delegation. That's a problem, the concurrence law model. They want jurisdiction on reserve lands. That's why they're at the table.

Secondly, compensation amounts are limited. They're limited, an aggregate of land and cash not exceeding \$70,000 per capita. That's the position that they have, so the compensation amounts are limited.

Thirdly, provincial governments want all settlement lands including reserves to then be 92 lands under the provincial domain. Fee simple, basically, having the title registered in the provincial lands system.

Fourthly, both governments want concurrent taxation jurisdiction and assess the tax revenues of First Nation citizens. We've done our own studies at Westbank, we know the impact that that would be and I'll tell you, we would be dumb and crazy and belligerent to even think that we would sell it to our community. Very clearly, they told us loud and clear, no way. It's not going to happen. I wouldn't expect to be chief much longer if that was the position I took to our people and said here, this is what we're going to do. Not going to happen.

Fifthly, land quantum are not factored in, rather only land value. That's a problem. It's a problem right now in today's market. We have a market right now of lands that are rapidly increasing in property prices, yet land quantum are not factored into this equation, only the land value. That means that our lands are going to be worth less and less in treaty settlement. That is a big, big problem.

So, ladies and gentlemen, I submit that treaty as a mandated position of governments are simply not working.

You know, they're not.

We've got six major areas of contention that I know that unity protocol group supported by the Union of BC Indian Chiefs have agreed and they're problem areas and they've got to be solved, whether we go to a common table, if we can't do a common table approach and settle this, then, again court is the unfortunate answer.

Those key issues include one, certainty. That's the extinguishment policy.

Secondly the constitutional status of treaty lands — do we have to give up our existing reserve lands simply to get a treaty?

Thirdly, governance, do we want the concurrent model of jurisdiction to allow the governments to have a say in our lands.

Fourthly, co-management throughout our traditional territories - that hasn't been offered quite fairly at the tables.

Fifthly, fiscal relations and taxation — are we forced, as aboriginal peoples, to give up our rights that we have lived with all this time? We've given up enough right now, to give up a benefit that exists since the late 1800s. So, it's a problem.

And fisheries; there isn't enough being put on the table. That's loud and clear and we hear that time and time again by the coastal fisheries group.

So, ladies and gentlemen, yes big problems in treaty process. It's not working and don't let anybody be fooled in this room or outside this room to say that, hey, things are rosy and they're working well because they are absolutely not.



We've got a handful of First Nations, maybe that might end up finally settling a treaty under the mandated positions but the vast majority are saying absolutely no way. Governments, wake up, listen. Wei lum lum.

**Presenter: Chief Robert Dennis**

You probably noticed that I'm the only one here without a pen in my hand and I don't have any papers.

That's for a reason, because I want to talk to you today from my heart, not from my mind because when I let my mind talk it's emotion, it becomes anger, it becomes frustration.

So, from my heart I say, where I come from I firmly, utterly believe the hawiih of the Huu'ay'aht First Nation. That is I firmly believe in the hereditary chiefs of our nation, that is who I recognize first before I do anything on behalf of my nation.

If the hereditary chief says, "I'm willing to accept this," who am I to question the ultimate traditional authority of our nation? And for that matter, who is it for anybody else to question the authority of my head chief. My head chief does not question the authority of any other First Nation. My head chief does not question what other First Nations are doing in their non-treaty environment or their treaty environment. He says I respect whichever path you've chosen.

So today, he has chosen along with the people, the who's of our nation have said we want to be in the treaty process. We want to negotiate a modern day treaty. Kah'li'chen gets his chiefs together and they decide we are going to negotiate a modern day treaty.

Let us gather our people together and see what they want in the treaty. I think that fancy negotiating word is called mandate. I'm not a full

fledged negotiator and I'm not a lawyer, I'm just ordinary Robert Dennis. I don't have any education except I went to Grade 12. But what I do know is when your people speak and give you a mandate of what they want to see in the treaty you go out and do it.

In 1994 the Huu'ay'aht community appointed Chief Arthur Peters a permanent member on the Huu'ay'aht treaty committee because he was hereditary chief of the nation. That was the first man they wanted; the hereditary chief had to be on that committee or else it could not exist.

Secondly, we're going to appoint the speaker of that chief to be on that committee and that speaker happened to be myself.

Thirdly, we're going to appoint another chief amongst the Huu'ay'aht and we're going to appoint him to the committee. His name is [Native language] Tom Happynook who is now the president of the NTC. So he was appointed to the committee.

And the people said we want somebody on that team that has a technical and an educational background and can write documents on behalf of the people. And that was Angela Wesley. When we formed that committee, our first responsibility was to visit every one of our people to say: what do you want in the treaty? We spent about three, four months just going around to each of the homes, community meetings, meeting with people. What do you want to see in the treaty?

We didn't ask them what's the mandate you're going to give us. We talked in terms that our people understood. No discredit to the educated people that are sitting up here. I have a hard time because I'm not as educated as them. In some senses I have an advantage as well. I'm talking to people that are at my educational level, people that can understand what I'm saying.

So we heard what they were saying. The Huu'ay'aht treaty committee, one day we would like to regain that place in the fishing industry that we once had. Our people went from 71 licensed fishermen down to, I believe, we have four or five now. 71 to four or five licensed fishermen. We want to get back up there somehow. So we knew that was a task.

They said we want to see that Sereta River and other rivers in our territory restored. Go out and get some money so that we can restore the resources of the rivers, the salmon, the steelhead and the wildlife, the mink that live in around the rivers, the bears, the eagles. And then they told us when we did a land survey what they would like in the treaty. It wasn't me, Robert Dennis, telling the Huu'ay'aht people what kind of land holdings we should have. We asked the people: what kind of land holdings do you want to see in the treaty? I remember that survey took quite a while.

And some more of the what? I remember this one, 1996, because I work in forestry. We had done a forestry survey and we asked the people: what would you like to see in forestry? Well, I remember the very first thing I almost got knocked out of my chair and one of our members said we want to see 100,000 cubic metres of wood that is allocated to the Huu'ay'aht First Nation. We want to see that in the treaty. I said holy smokes, you know, we only got two guys employed in the forest industry I don't know how we're going to do that. But that became a task. That became a mandate and in that forestry survey they identified cultural and heritage resource in the forest must be preserved, must be protected.

And in that survey they also said sustainable forest management must be one of the guiding principles. So what did we do? We entered into interim

negotiations with the province of British Columbia, right up front on that document "Guiding Principles of Sustainability for the Huu'ay'aht First Nation."

We heard what our people wanted to see in the treaty. To me, that's what it's all about so that when you finally do go for ratification, it's not what people outside of your nation say that the treaty is the right answer or not, it's whether you go back and they gave you the mandate. In our case, in the Huu'ay'aht First Nation case, in the case of the Uchucklesaht tribe, in the case of the Ucluelet First Nation, in the case of the Ka:'yu:'k't'h/Che:k:tlas7et'h First Nation and in the case of the Tla-o-qui-aht First Nation. Each of our communities overwhelmingly supported that treaty. Why? Because we went out and asked them what they wanted to see in the treaty. We weren't negotiators up here telling them what we're going to put into the treaty and that's probably why we ended up with these incredible results.

I can't tell you the numbers for the other First Nations, but I sure memorized ours: 90 per cent of our people approved the treaty. That's an incredible result and I believe that result came about because we went out and asked the people: what do you want to see in the treaty.

So, is the treaty the answer for us? Absolutely. Yes. Because the people have decided it is the right thing for us.

**Presenter: Jim Aldridge**

Well, I'll start where Robert Morales did. Which is to look at the theme of this debate: 'Are Treaties the Answer?' That immediately raises the response what's the question?

I remember more than 25 years ago when I had the good fortune to start working for the Nisga'a that the late James Gosnell, president of the

Nisga'a Tribal Council, would often say to assemblies, to executive meetings and in private conversations that while some people would focus on how much money they would have [after settling the land question] the truth is, the day that the land question is settled will be the day that the hard work begins.

That was repeated by his successors, the late Albert Mackay as well as by Dr. Joseph Gosnell, and by other officers such as Edmond Wright, Nelson Leeson, Kevin Mackay, other executive members, elders and hereditary chiefs. So when that came true, no one was really surprised.

So, if the question is: how can we, any First Nation or aboriginal group, achieve immediate wealth and prosperity for our people? If that's the question, then no, treaties aren't the answer.

If the question is how can our people, our nations, be fully and totally compensated for the last 200 years of reprehensible federal and provincial laws, policies and actions? Well then no, treaties aren't the answer to that one either.

If the question is: how can our nation establish itself as a sovereign country with international recognition? Then no, treaties as they are being negotiated in Canada are not the answer.

But if the question is instead: how can we achieve a place within Canada for our nation with an acknowledgement of our identities and a clear set of rules to govern our ongoing relationship with the Canadian Crown? Then, yes I suggest treaties can be the answer. It depends.

It depends, of course, in no small part to what is on the table and certainly if the federal and provincial governments come to treaty tables with empty mandates or mandates that don't take into account progress that has already been made and asks people to take a step back, no, of course, there won't be a deal. But that's about the mandate, that's not about the treaty.

It really depends, I suggest, on what each aboriginal group, whether it be an aboriginal nation, a First Nation or a band, a tribal group or people self-defining determines that it wants as its collective sovereignty. It's up to the collective decision making and assessment process at each nation. And as these decisions are made, surely it's incumbent upon all to respect the choices and the exercise of self-determination made by each group.

Several years ago I was chatting with a friend of mine, the chief of a prominent nation in British Columbia whose people at that time were contemplating entering the treaty process. It was shortly after the effective date of the Nisga'a treaty, and I asked him what his people wanted. What do you mean?, he said. Well, I said, I'll make it easy for you. I was teasing a bit. I proposed two options. Option A: it could be that what you want is a treaty that will enable your people to continue as a self-governing nation within Canada on your own territory to protect your language and your culture and to have a reasonable prospect of achieving prosperity based upon your own lands, resources, efforts and skill, working together for the benefit of each person and the overall good of the people.

Or, it might be Option B. We want a treaty that will provide sufficient wealth that everyone in our nation will be immediately able to purchase a new house, an SUV, spend the afternoon watching Judge Judy or maybe CPAC (Cable Public Affairs Channel) depending on taste and tolerance. I was making a joke.

My friend paused and he thought about it for a moment and then he said, well you know I think if I asked my people they'd say A, but they'd mean B.

Of course it's a joke, but it was revealing in a way. Treaties are not a panacea. They are not a one-time-fix-all. They do not and they cannot solve all of the problems and challenges that

aboriginal peoples face. What they can do is provide opportunity. What happens to that opportunity, in my respectful view, is far more dependant on the efforts and the decisions of the aboriginal people than could ever be the case if they remained under the *Indian Act*.

Ultimately though, it's up to each group, each people, to decide what they want and whether a treaty and the terms they're able to achieve will be a means to obtain their goals. You will never hear me defending the mandates of the federal and provincial governments because they seem to be formulated in a grudging, close-minded way. But that doesn't mean you have to agree. But it also doesn't mean that the objective of a treaty is not one that is worth having.

Not all is perfect and you've heard speakers this morning and last night, leaders of peoples with treaties. I've been helping the Nisga'a and their membership with the Land Claims Agreements Coalition. Every single modern treaty since the 1975 James Bay and Northern Quebec Agreement is represented by the coalition. They're looking for improvements, but I have not heard any of them say, gee we've made a mistake by entering into that treaty. I haven't heard any of them say, gee wish we hadn't done that.

The coalition was formed for one purpose. It was to work together to urge the Government of Canada to adopt a new policy in respect to how it goes about implementing modern treaties. And again, while such a policy is urgently needed, nobody's saying that in the absence they would rather be back under the *Indian Act*.

To my mind, the fundamental problem with the post-treaty world lies in the systemic attitude that the Government of Canada, and especially its officials in the department of Indian Affairs and the department of justice, take towards implementation and that they take towards the relationships that are established between aboriginal peoples and the Crown.

To over simplify, aboriginal peoples (my analogy) think of agreements as being akin to entering into a marriage. They consider implementation to be the means by which the relationship can be made to work. How do we live together, work together, get along with each other and derive the maximum mutual advantage from our relationship? Who gets to hold onto the remote control?

The federal government, on the other hand, seemed to think of the agreements as more akin to a divorce or a separation agreement in which rules are set out as to who gets the house, how much money has to be paid and how frequently do we really have to get together.

Put it like this, [the federal government] seems to be asking the question: what do we have to do, in order to avoid being successfully sued? And that's what they're willing to do and no more. And if they do more, it's done grudgingly. That is why the auditor-general in her last two reports has identified a main concern of the coalition which is these agreements were about more than a checklist of narrowly defined legal obligations that federal officials grudgingly do to avoid being sued. They were entered into for objectives and the objectives were, should have been, mutual objectives. And whether they're expressly stated, as they are in some agreements, or implicitly stated as they are in all agreements, the objectives are known and familiar and they ought to be looked at, assessed and measured to see whether or not they're being achieved. That's a fundamental aspect of the coalition's goals in bringing about a new federal policy.

There are a number of points that were raised [by the other speakers].

Let me just say this. Just because a federal or provincial negotiator tells you that you should accept something because it's in the Nisga'a treaty doesn't mean that that's a good reason to accept it. You have to assess that yourself. But don't believe that they're giving you the straight

goods on what's in the Nisga'a treaty either because there's an awful lot of misapprehension and misunderstandings about things that are in the Nisga'a treaty that the Nisga'a decided for themselves and for nobody else were acceptable.

[And just because a federal or provincial negotiator goes] and mandates themselves and comes back and tells you this is how it has to be, you can reject the mandate without rejecting the idea of a treaty, a treaty that your people will or will not ultimately decide will work for you.

Those of you who are still at it I wish you seriously, the best of luck. Those of you who have them already like the Nisga'a do, I wish us the best of luck and I look forward to the rest of the debate.

# Workshop Session: *Economic self-sufficiency — creating and capitalizing on treaty opportunities*

This workshop will focus on how to identify and capitalize on economic development opportunities. Panel presenters will share some of their experiences in developing business models and managing their business ventures. It will look at the inter-relatedness of political, constitutional, economic, and social issues affecting First Nation communities and how treaty provisions might address these issues. The effects of big ticket negotiation issues such as land status, taxation, and resource revenue sharing on self-government and economic development will be explored.

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## Presenters:

Chief Bill Cranmer and Michael Rodger,  
‘Namgis First Nation  
Edmond Wright, Nisga’a Lisims Government  
Valerie Cross Blackett,  
Tsawwassen First Nation.

## Presenters: Chief Bill Cranmer and Michael Rodger

CHIEF BILL CRANMER: Hi, I would just like to start by telling everybody about the first written records of when the first sailing ships came up to our territory, 1792. Captain Vancouver met our chief at Robson Bay in 1792 and travelled up to the village at the mouth of the river and he saw a very industrious, healthy community there. And same thing that was written in the journals was the Spanish ships that came around the northern end of Vancouver Island. Again saw very industrious people, healthy people. And what we’re doing here is recognizing that in order to be a healthy community you have to have healthy

economic projects to allow you that. We’re here to share what we’re doing and my colleague has created this presentation on behalf of the ‘Namgis, so, Mike Rodger.

MIKE RODGER: Thanks, Bill. I think the first thing to understand, we we’re asked to do a presentation on economic self-sufficiency: creating treaty opportunities and capitalizing on treaty opportunities. And what we have here is the ‘Namgis approach.

Clearly each of you will have your own approach and we’re not saying this is the best approach, this is the way we do it.

I would like to start off with a quote from a very famous president John Kennedy, “Let us never negotiate out of fear, but let us never fear to negotiate”. And that I think is really the way ‘Namgis, the ‘Namgis leadership, their chiefs, their councils always approach business.

Briefly, where is ‘Namgis in the treaty process? We’ve been in treaty negotiations for more than 11 years; we’re in an advanced stage of agreement-in-principle negotiations. We anticipate, you know, so called dirt and dollars on the table in the next several weeks and months. We’re not taking the slim AIP approach; we’ve taken a comprehensive approach so that we have every aspect of the agreement set out so that we know before we get into an agreement-in-principle, before we conclude an agreement-in-principle what the treaty is likely to look like.

‘Namgis always works to get ahead of the curve. It sets its priorities based on a vision for cultural, environmental and economic self-sufficiency and sustainability. Always at the forefront of the discussion with our council is, you know, how



does this affect our environment, our fisheries interest in particular, how is this consistent with culture and is it going to be a long term sustainable kind of activity. All initiatives must conform to those principles and those values. We never wait to be offered from a government, we never wait to be offered from a company, we never negotiate from a kept position of cap in hand. 'Namgis knows its priorities, it sets its own priorities and when there's a developer in its territory 'Namgis is usually the one that's right out front saying hey, you're in our territory, we need to talk.

We do this through planning, as well we have very, very strong planning initiatives that go on, we understand what's going on in the territory, where the potential is, where the opportunity is. This is just a photograph of somebody working in the territory to actually set out an arborglyph. This is one of our local artists.

'Namgis sees itself as a regional player. It doesn't see itself as just a First Nation or just a small community on Cormorant Island or having just a territory. 'Namgis sees itself from an economic and a cultural and environmental point of view as a regional player. We understand the economic potential of the territory, and this map actually shows a number of projects that we've mapped and many of which we've acted upon to develop.

We plan for development. We have a complete planning department that looks at what's going on and understands what's going on. We meet developers based on the merits of individual proposals and we screen these guys, if they're coming to us and they've got great ideas and great plans well, you know, we want to know who they are, what they are, how they work. And we choose partners based on corporate capacity. We want to know what the balance sheet looks like. We want to know how much money they got in the bank. We want to know how many assets they hold, how deep are they. We want to know about the strength of their management as well. Are they just fly-by-nighters

or are they just breaking out or do they have a great idea and they've got good management or are they really — do they really have a solid history of strong management.

We also are very interested in their environmental capacity and their community capacity. What is their response to communities? In fact, in recent negotiations with corporations, we've had major international corporations coming to us and saying after they've done deals with 'Namgis, this is the kind of deal that we want to make with everybody that we do business with.

'Namgis has identified a number of economic priorities in their territories and we've acted upon many of them, in fact we've acted upon all of them. We have interests that we're developing in mining, hydroelectric development, tourism, forestry, fisheries and government services.

The question though was always for us, is it a collision of values between ourselves and corporations, or can we find some coinciding goals. And much of our discussion, at least entering into a project with the developer, is finding where we share common values. And we're not afraid to understand that corporations are in it for making money, we're in it for that, but we're in it for a lot more than that as well. And can common ground be found sometimes between these opposing values. Sometimes it may seem that the corporate agenda is different than the community agenda, and we have to look at that and see if we can, we can somehow marry that or does it make sense.

This is one of our projects and in fact, this is the first ship load of sand and gravel that was sent to California from the Orca Sand & Gravel operation that 'Namgis is a partner in. Bill actually went down on the boat with the mayor. We were trying to build some relationships with

the mayor of Port McNeill, who doesn't necessarily share our point of view, so we locked them on a gravel boat and sent them down the coast for three days. There wasn't much gambling on that boat.

So what does 'Namgis bring to the table? Leadership — most of all the leadership of 'Namgis know what they want and are very prepared to make the kinds of decisions that are required to get them there. And when we talk about leadership, we're talking about not only the elected leadership in 'Namgis, but also the hereditary leadership. The hereditary leadership plays a very, very important role in leading the community.

Vision — 'Namgis have a very clear vision, and that vision is backed up by solid planning. We also say that 'Namgis are the undisputed champions in terms of understanding all aspects of their territory. We take individual watersheds, we plan watersheds. We know what's going on there in terms of the resources. We know where it fits from a cultural point of view. We know what the economic opportunities in that are. We are the undisputed champions of that.

In the past year we've mapped probably two or three hundred different aspects of the territory. We spend a lot of time and a fair bit of money doing that. At any given day you can go out in the territory and find 'Namgis working in the territory. They are either swimming down the river counting fish or they are out in the forest seeing what's going on and they are checking out different archaeological or cultural sites. People are always in the territory doing work.

The other thing that 'Namgis has is fiscal capacity. They've taken a very clear and important approach to understanding what their relationship with their community is from a fiscal point of view, making sure that they are always in the black in terms of money. And they also have very good relationships because of this with banks and other kinds of investors.

The other thing they have is strong management capacity. We have a number of highly qualified individuals who work at 'Namgis, either on a contract basis or as full time employees and when we pull our management team together, we have a management team that we think is second to none. And a track record of success. And that track record is building as we speak.

Most importantly, one of our very strong assets is our young and vibrant work force. 'Namgis has, as many First Nations communities have, a young population eager to find good quality jobs in good quality companies and 'Namgis likes to actually be partners in those good quality companies.

And then finally what we bring is clout. We know that when a partner joins up with 'Namgis, that with respect to the regulatory processes, with respect to how they operate with banks, with respect to how they operate in the community and in the region, 'Namgis has clout.

An objective that we have is full employment and here's just an example of some of our folks who are working at the Orca Sand & Gravel project. In terms of capacity it's all about the team for 'Namgis. And one thing that 'Namgis does not do, is it doesn't create power silos. We don't have a treaty office over here doing one thing and an administration over there doing another thing and a financial management group over there doing another thing and the politicians doing something else.

When we look at 'Namgis and 'Namgis looks at itself, we look at it from how we are all working together and we work very closely as a team. The team includes the community, who have the ultimate say in what's going to happen in their territory, the hereditary leadership, the

elected chief and council, the actual administrative or management capacity. And I think one of the biggest things that they have in terms, that 'Namgis has in terms of its capacity is its ability to make a deal.

If there's a deal to be had, and one that makes sense, and one that's going to be profitable and meet 'Namgis objectives, the people who make the decisions about those deals can make that deal. And that's very important.

So what do we look for in a proposed development? Environmental and cultural sustainability are at the top of the list. If they are going to destroy habitat that is important to fish, for instance, and there's a direct tie back to 'Namgis culture, that's not going to meet the sniff test. And we'll push that business right out of the territory.

We also look for a strong business case, and the case is not based on some idea that, you know, that we have this social agenda, it's a strong corporate case that we look to. We also look to long term viability, we're not looking at projects that are flash in the pan, we're not about to build something, sell it and take a quick bit of cash and that's the end of it. We look at projects that have life spans of thirty-five, fifty, eighty and — eighty years and longer. And many of our investments over the past several years have been just those kinds of investments.

We look to economic and employment benefits for 'Namgis. My times up. We look for an equity stake. So, some of our active investments are Western North America's largest new sand and gravel operation, sixty megawatts of hydro power that are currently under development. We're currently accessing up to 50 more sites, not all those sites will make the test, but we're looking at them. We have a hundred megawatts of wind power on the table that we're accessing. We have four hundred thousand cubic metres of forestry under development. We have

about 11 commercial fishing licences and we have a proposal on the table for considerably more. We manage every park, we're into tourism development, commercial services, municipal and other community-based services and building capacity.

**Presenter: Edmond Wright**

Thank you, good morning again. I have a few notes here. I usually develop papers and get real organized, but for some reason nobody told me to do that, so I didn't do it. They have to tell me before I do it. I make a lot of presentations.

The topic is quite interesting, Economic Self-Sufficiency: Creating and Capitalizing on Treaty Opportunities. In our case, as you are aware, we've been implementing our treaty since 2000. What we have been doing is the development of Nisga'a government since the effective date, and we believe that development is an investment in our nation's future. We had a lot of opportunities to throw our money around, I guess you could call it, but what we decided to do was move slowly forward.

Nisga'a Nation carried out its strategic priority planning, envisioning through workshops held by Nisga'a village governments and by Nisga'a Lisims Government. These workshops included elected members and their respective administrators. We have also held [native language] Nisga'a, which is our legislative house round tables on sustainable prosperity and self-reliance that continues to move us in the direction that includes economic and business development, along with a strategic priority planning envisioning workshop. We have completed a risk budgeting analysis on the investment of our treaty funds. And we have adopted the Nisga'a settlement trust investment strategy that will ensure that future generations of Nisga'a will benefit from the treaty funds for their continued development.

I'll touch back on this particular issue later. Before you create and capitalize on treaty opportunities, you must develop a plan, you must also start to undo the years of dependency under the *Indian Act*. That in itself is a major task, that dependency. Also, the first several years of implementation of a treaty is very busy and, as I stated, in the development stage, developmental stage.

The recent strategic plan that we adopted includes legislative amendments. We undid the ties on village government to be able to go to financial institutions to borrow and lever money and we made amendments to our *Financial Administration Act*. We also made amendments to our *Land Act*, we are making amendments to our *Land Act*, land acts, so that the individual holdings will be fee simple estates.

Today we have village entitlements and nation entitlements. We are now going to a fee simple estate that will be by individuals. This is deliberate so that we can challenge the financial institutions to move away from forever asking guarantees from the nation, from mortgages on residential housing and so on, businesses within the various villages.

We have to make some changes in our Economic Development Fund Act to be able to allow our administrators to higher approval levels. And also on the groups that we will work with, we will be having contributions and loans on that particular fund act.

Our plan also includes funding. And I talked about the risk budget analysis on our treaty funds, our investment in the Nisga'a settlement trust. We have been clipping along at about an expenditure level of about four percent of the earnings of the trust.

Only recently we've had some bumps. It got started with China's market's messing up some of our earnings. But I think it's important to

note that even with a huge amount of money that we're repaying for our loan, and our loan to conclude our treaty was \$50 million, after we pay that out in 14 years, that's \$84 million. Our capital transfer was \$190 million. That converts to \$284 million dollars at the end of 14 years. So already today we have \$84 million in our settlement trust.

We have decided for a five-year period to provide funding from the trust at an eight percent level, for a five-year period. And then move back to a four percent expenditure. This is very important to us, to have that little jump in funding. We want to do some investments, and we've unravelled some of our legislation that will allow that. And our risk budget analysis indicates to us that at the end of 25 years, even with the increased expenditure for a five-year period that we will still have at the end of 25 years, \$319 million in that particular settlement trust, that our future generations will have. And if they stay within the great planning that we've been doing, that will help.

So, this year in our provisional budget we provided business support funding. We provided employment initiative funding, and in the final budget on the end of October, we provided more funding to go into our *Economic Development Loan Fund Act*. So all together we're putting about \$3.7 million there to help development.

Our business model, you heard our president say yesterday, those that were there, that we have made a policy that we would be arms length from business and economic development. We are involved as political groups, both at Lisims government, village government levels in the initial stages to initiate a project and then we turn over the business operation to the various corporations. And today under Lisims government there is a Nisga'a commercial group, and that

commercial group consists of Nisga'a Fisheries Ltd., Lisims Forest Resources, enTel Communications Incorporated, we have our commercial recreation and wilderness eco-tourism and we have a new hydroelectric proposal — project that they will take over.

The Nisga'a lands are two thousand square kilometres. The Nass area, for our fishing is 26,000 square kilometres. The Nass wildlife area is 16,000 square kilometres. These are the areas, not only where the developments under our commercial group can happen but also individuals that want to create opportunities. Our future challenges of course, another sawmill is shut down in the Terrace area and we hear that all over the province. The regional economy continues in a downturn in forestry and in fisheries.

Our future benefits will include our five-year expenditure from the settlement trust and increase. We have now joined, asked to be joined on the sharing of transaction taxes so that the revenues will come to us, the PST, 50 percent like others that are entering into the treaties today, will come to the nation. That will be decided on how that distribution will happen within our nation.

The future developments that are happening in our area that we have interest in, the northwest transmission line construction proposal will go through about 245 kilometres of not only Nisga'a lands but Nisga'a wildlife area and Nass area. Now we are getting ourselves involved in discussions on it. One of our villages has been moving along on a mining aggregate operation and continue to do sampling and I've — each of the villages have developed many opportunities on their own through their own village government, and that, we try to assist. I believe I've used up all my time, I see our facilitator keeps looking at his watch. I'm looking at mine over here.

Definitely, the land issue is very important and we're going into fee simple ownership. All our people, corporations and so on, have opportunities within the 2,000 square kilometres to make proposals for licences of occupation and so on, leases you name it. There are restrictions in our constitution on the total volumes of land on who approves, it can be approved in the legislative house, the executive and if it gets a little bit too large it has to go to referendum of the whole nation.

Thank you.

**Presenter: Valerie Cross Blackett**

Hello and welcome to all the guests, elders, conference participants, hosts, speakers, everyone, welcome. I'm excited to be here. I'm particularly excited to be participating in this group, after listening to the wonderful and exciting and encouraging stories from these other speakers here. I would like to thank the BC Treaty Commission for inviting the Tsawwassen First Nation to speak at this conference and on this panel and also their partner the Nisga'a Lisims Government.

I'm just going to add that I've only done this public presentation stuff a couple of times, so I'm a little nervous. So please bear with me and be as supportive as you can be and don't boo until later.

I would also like to thank the Musqueam, Squamish and Tsleil-Waututh First Nations for allowing us to have this conference in their traditional territory. I'm honoured to be here to speak on behalf of my own First Nation, my chief and my council. There is much information to share and I've always been a proponent of sharing our lessons learned, our experiences. There's much blood, sweat, and tears to share. There's much experience to share, our lessons, our successes.



Success, the Tsawwassen treaty, I'd like to think that it's a success, and I'm really excited about our treaty. And I'd like to share all the different things that we've experienced with all the other First Nations that are considering the BC Treaty process, or are involved in the BC Treaty process or who are not. And we can still share those experiences.

What's the value, our purpose of the journey that we experience if not to learn from the lessons ourselves or to share those lessons with others. As I mentioned earlier, I too am a Tsawwassen band member. I've been working for my First Nation for five years. Actually about 20 years ago, when I was very young, I worked for the First Nation then and I came back. It's one of those things that you just can't get away from your people.

My grandfather, he was a chief, my uncles, they were chiefs. So it's in my blood to come back and help my people. I lived on the reserve until I was about 10 and then I moved away and came back about 20 years later and continued to serve my people.

My grandfather, Isaac Williams, he was raised in the long house. He became chief when there was only one dirt road in our small reserve that was oiled maybe once or twice a year to keep the dust down. He and his family used to follow the berry harvest from Delta to Seattle to earn money so that they could put food on the table.

I wonder — where was the economic opportunity for our people then. Grandpa also farmed fields, the non-native farmers across the ditch, they had all this great big fancy equipment. Do you think my grandfather could get that equipment, no, he wasn't allowed to get a loan to get that equipment. So the best he could do was maybe hire those non-native farmers with their fancy equipment to farm his fields. I wonder — where was the economic opportunity for my people then.

My uncles, uncle Russell and uncle Benny, worked many jobs and eventually turned to fishing. Fishing with expensive licences were also a challenge to obtain. What happened to our aboriginal right to fish and to barter? The non-natives again were able to get — purchase these large gill netters and expensive licences when our people were not allowed to get loans to do the same. I wonder where — was the economic opportunity for our people then.

In the early 90's, as I mentioned, I moved back to the reserve and I saw growth in the surrounding Tsawwassen and Ladner areas. The coal port expansion, BC Ferries, George Massey Tunnel, town houses in Ladner and Tsawwassen, row houses in Ladner, Trenant Square Mall with more and more businesses, Safeway, Save-On, London Drugs, Tsawwassen Mall, Thrifty's, Starbucks, Shoppers Drug Mart and we got Tim Horton's. Expanded city hall, improved recreation centres, golf courses the list goes on. Yet we were denied water for our development, Tsatsu Shores. Delta it seemed wanted to maintain and control their growth. They wanted to control Tsawwassen; they wanted to manage our affairs. We had no power, no authority over our own affairs and no opportunity. It was simple; no water, no development. There was no economic opportunity for our people.

Our reserve is approximately 290 hectares with very little communal land, very little land for development, for growth, for housing, for all of our needs, very limited. So our dilemma is no water, no land, no resources, and no authority over our own affairs, no economic opportunity.

So what did Tsawwassen do to turn the tides of opportunity for our people, what could we do. Everywhere we turned we were denied, everything we tried, we were rejected. So how can Tsawwassen First Nation capitalize on economic opportunities?



For years we were unable to develop our lands because we were refused municipal services, water and sewer from Delta. This is not new news for anybody. Our relationship with Delta has always been stressed over the years.

For years and generations we had little or no control over our land and resources. For years and generations our people suffered the effects of colonialism. Our ability to create wealth on reserve under the impressive *Indian Act* is greatly hampered. There are few economically successful First Nations who operate under the *Indian Act*, to my knowledge. And the nations that are successful have overcome great odds and have leaders that have dedicated their lives to making those successes.

Great economically successful First Nations such as Osoyoos Nation under Clarence Louie's leadership are the exception on reserves, not the rule. Tsawwassen First Nation decided to use the treaty process to make change.

Our collective objective, as a First Nation is to have the tools to become self-sustaining. We wanted our treaty to provide us with enough land, cash, and resources to rebuild our wealth, and it will. More importantly, we have a need for autonomy, so we can end the cycle of dependency that the *Indian Act* has perpetuated. That autonomy will come only from self-governance. The treaty provides us with these tools.

There's also a need to develop better relationships with the governments of BC and Canada and I see the treaty as a mechanism for a government-to-government relationship that has been lacking since European contact. It's also an important objective of ours to reconcile our rights and titles with the Crown. The treaty box, to me it's a book of opportunities. It's a tool box that will help my community rebuild itself to its traditional wealth.

As a Coast Salish nation living at the mouth of the river, traditionally we were very, very wealthy people. The decision, the vision, this journey, this community decision, community mandates with lots of community participation and direction, it was a decision that cost lots of money, as my esteemed colleague here has alluded for his treaty as well.

To maximize our treaty opportunities, to maximize our resources, to maximize our funding we access different types of treaty-related measure funding that we used to create analysis of economic opportunities for the future, population growths, program and services development. In the room over there this morning they mentioned about planning now, planning during your negotiations for implementation. Our leadership and our treaty and our people had that vision and we used those funds to try and maximize our treaty to capitalize on it as best we could. This type of funding helps us to manage the high cost of the treaty loans that we were engaging in.

Our community has participated and has been engaged in all aspects of our treaty process from stage one to stage five, where we are today. Almost three years ago our members met twice a month for two years to develop a constitution, again when you want to prepare for implementation the best time is to start preparing now. And having our people participate in the development of the constitution has saved us two years of work that we would be doing now until effective date. We now have a constitution. And the thing that I find most exciting about that is that my people sat down and they developed their own constitution. How many people can say that they have an opportunity to develop a constitution? I just think it's remarkable, and I'm really excited about that. What a fantastic opportunity.

We had a very high and consistent participation rate in all of our consultation efforts, in fact during the ratification process our members were highly involved and contributed a great

deal to our treaty process. Now we have more consultation work to do. We are now working from ratification to implementation. We need to plan for implementation; we've got over 21 strategy and planning projects slotted on our plate, a lot of work. And as, it's been said before, we have a small capacity of people that are working on this plan. With all the success so far we really want to keep up the momentum and the excitement that our community has participated in. We count on them for their feedback, their guidance, their cultural experience and their support. Talk about maximizing your treaty investment and capitalizing on your treaty is using your people and getting the direction from them.

On July 7, 2007 the Tsawwassen First Nation ratified their treaty, our economic future changed. We finally have economic opportunity. We have an opportunity to rebuild. Tsawwassen First Nation used the treaty to create and capitalize economic opportunity, how you may ask. Well let's look at the barriers that we faced in the years passed that prevented us from moving forward with economic development, we had no water, no large land base, no resources and no authority over our own affairs.

Let's explore why the Tsawwassen First Nation — let's explore why the treaty provides Tsawwassen First Nation on those items, and these are just general highlights of our treaty in general terms.

Water, our treaty provides us with a position on the GVRD, also known now as Metro Vancouver, with the legal, the legal ability to access water, so no longer will water be a barrier for us to pursue economic development opportunities. We will be a member on the board, a First Nation member. That in itself is a remarkable asset for us.

Land, our treaty provides us with an increased land base. Without land there's no opportunity for development. From 273 hectares to 724 hectares plus the land we'll own — the Tsawwassen will own all lands in fee simple. We will continue to have our land management powers as we do now, but the lands will be now — will be registered in the Provincial Land Title Office. In fact the *Land Title Act* has been amended to recognize the distinct nature of TFN lands as aboriginal lands. Do you know what this means for investors? I mean the security that they now are finding a sense of comfort, perhaps with investing with Tsawwassen, do you know what this means for people in our community that want to get mortgages? We no longer have to wait years for ministerial guarantees, and the hassle and the things like that, it's remarkable.

Resources, currently undefined aboriginal rights, which are not protected, can potentially be limited in future court cases. Now, under our treaty they will be defined rights within our traditional territory. We have improved economical access to our sockeye fishery as a result of the treaty. Authority over our own affairs, this really is the coup de grace for me.

We will be a self-governing nation, with law making powers, the right to deliver services to our people in a manner that we know suits their needs, not how according to INAC whether they be status or non-status, to all our members, all the powers of a government, a self-government. No interference from anyone anymore.

Sounds pretty good doesn't it. Steven Cornell, who's has been involved with the Harvard Project on American Indian Economic Development at Harvard and conducted considerable research to determine necessary conditions for successful economic development among indigenous nations in the US. Cornell describes how First Nations have not been allowed to govern themselves and set institutions that could exercise power effectively. Although, there have

been some forms of governments and they do a few things that governments are supposed to, he states that under these conditions self-government is a little more than self-administration.

The major decisions are made somewhere else, let's see, INAC and well, the First Nation or American Indian nations simply just gets to implement them, sounds familiar doesn't it. In fact, he found that the key to economic success was self-governance. Even the Secretary General of United Nations, Kofi Annan's comments that good governance is perhaps the single most important factor in eradicating poverty and promoting development. I agree.

I think it's important to add that all of our rights under the Tsawwassen treaty are constitutionally protected and TFN will be a government, a First Nation government with a variety of powers, some municipal in nature, some provincial, and some federal. Without treaty — our current outlook without treaty is not bright. There would be some port related opportunities, but they would pale in comparison to the economic power the treaty provides us. Without treaty we maintain status quo, we'd be looking at about \$2 million a year to sustain our nation with no economic opportunity.

With the treaty we will no longer be fighting for opportunity but will be choosing what the opportunity is for us. We have a lot of planning and strategy work ahead of us. Our future band meetings will no longer be about where will we get the money to fund that youth program or expand the elders program or how will we manage to find money to finance next year's operations. But instead our discussions will be about how do we want to invest our money,

whether China is a good market or not, how to manage our wealth. Those are excellent discussions that I think our people will be looking forward to have. With this treaty the Tsawwassen treaty's future is bright.

Ten years from now, 10 years from effective date, conservative estimates — conservative estimates have TFN making about \$10 million in profits annually. Indian Affairs transfers would be far less important. We'll be able to fund our own capital projects, programs and services that will make a difference to our members. Now that is self sufficiency, that is self-government.

We don't want to waste another generation on negotiations; we want to get to the task of the next generation rebuilding our community. The work to come is overwhelming and it will take time to overcome our problems, and we're not naive about the work that's to come, but we were anxious to get on to making a difference, instead of talking about making a difference.

Ever wonder how your life will be the day after treaty, well I do and I'll be living it.

Thank you.

## Workshop Session: *Capacity building — preparing for self government*

To be successful a First Nation needs to have the right people and tools in place. In this workshop you will hear from our panel presenters some of the things they did to identify people and build capacity for self government. Some discussion of programs and organizations which assisted in this task, as well as identification of options, opportunities and future initiatives which could be of benefit, will be explored. Interim agreements, New Relationship opportunities, collaborative management regimes, comprehensive community planning, land and marine use planning initiatives — are these designed to assist First Nations to build capacity and “test run” management opportunities or buy short-term certainty and distract First Nations from treaty settlement?

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### Panel:

Bertha Rabesca Zoe, Tlicho Nation

Kathryn Teneese, Ktunaxa Nation

Jamie Restoule, Union of Ontario Indians

### Presenter: Bertha Rabesca Zoe

My name is Bertha Rabesca Zoe. I’m a Tlicho, a member of the Tlicho Nation from the Northwest Territories. Tlicho region is located just north of Yellowknife around the northern part of the Great Slave Lake. I’m also a lawyer and an associate with Pape Salter Teillet, it’s a law firm here in Vancouver and Toronto. And we have an office in Behchoko which is the largest community in my region (Tlicho).

I speak my language fluently. I’m a member of the Law Society of Upper Canada and a member of the Law Society of the Northwest Territories. Prior to going to law school — I went to law school in my early thirties — I worked in the

community and doing community development work in the culture, social and recreational area. But since completing law school and during law school I’ve been helping whenever I can as a summer student working with the Tlicho Implementation Team on the negotiations of the Land Claims and Self-Government Agreement that the Tlicho have signed or became effective two years ago.

Currently I’m also the laws guardian for the Tlicho government. I draft laws and work with their assembly and give legal advice on the laws and the agreement and the Tlicho constitution. I sit as a representative on the implementation Committee. I’m also the interim negotiator for the Tlicho on the resource revenue sharing and devolution discussions that are going on in the north.

I also helped in setting up the Tlicho government prior to the effective date.

And I’ve helped set up their Tlicho Investment Corporation, their corporate arm, because what happened on the effective date is they took over all the companies of the four bands and the Treaty 11 at that time, the regional tribal council, basically. Everything is transferred to Tlicho government now so we had to reorganize that.

I also help a lot with their caribou issues; that’s a huge issue in the north. I’m quite involved in their environmental processes, their regulatory processes. I was also part of the negotiating team for the implementation plan for the Tlicho agreement.

I'm basically their technical and legal counsel and my work is mainly with the Tlicho government because they're in the early stages of the implementation of their agreement. So, that's a little background on what I do right now.

When we talk about capacity building because the Tlicho agreements, I can only speak to the experience of the Tlicho because that's who I work for. I am a Tlicho so on a personal level I have a lot of interest to make sure that what has been negotiated is implemented properly for today and the future generation as our elders and our leaders have said.

The Tlicho agreement is a land claim and self government agreement. It's one of a kind in the Northwest Territories. There are about three other land claims in the Northwest Territories but they don't have the self-government component. The Tlicho own outright surface and subsurface 39,000 square kilometres of land. It's been equated to the size of Switzerland, so it's a large, large tract of land. And, when we say subsurface we mean everything underneath.

The Tlicho have a constitution that they approved prior to the effective date and it's the highest law in the Tlicho nation. And we've just gone through a political bump along the way, but the Tlicho constitution is what guided us through that bump just recently, so I cannot say enough about that document that the elders worked so hard for us for the Tlicho.

Again unlike other claims in the north, this is a three party agreement — it means that Canada, the Tlicho and the Government of the Northwest Territories are party to that agreement. Before, the Government of Northwest Territories — we call them GNWT — used to be part of the federal team in the other negotiations. But this is the first one where they're a full party so they

have a lot of obligations that they have to live up to. Capacity building in my opinion — it's been two years since the effective date — has become a huge, huge issue.

One of the other things is to set priorities and what those priorities are because the way the Tlicho government is set up as a four-year term, so there's an election every four years. As with any government. One of the elders who was very important to us passed away right after the effective date. He always said, "What are your priorities? What as a government are you going to do for the next four years?" And every year, if you set your priorities, if you don't achieve them, then how you are going to deal with them? He always said that priorities were very important — it's something to measure your successes with and to revisit if something happens that maybe at that time it's not the way to go.

So capacity comes with priorities and, for us anyways, it helps with identifying what our requirements are and what areas to focus on and how to budget accordingly. I look at land claims and self-government in two ways. One is core capacity and one is implementation because one thing we haven't done, and this is my advice to anybody that cares to listen, but to those that are in negotiations or towards completing an agreement is — implementation is so huge, planning for implementation and planning for capacity implementation. Because before the effective date there are a lot of pre-effective date activities that need to be carried out so that on the effective date you're able to achieve what the agreement said you would. If you're self-governing you have to set up your institution, your laws and all the people have to be in place. It's like from one day, we're a different system and the following day you're a totally complete different system. So implementation capacity is a huge thing.

With Tlicho, we always say the Tlicho agreement is about language, culture and way of life. So everything the Tlicho do is always with those three important elements. Again, because Tlicho government is a self government, there's a lot of capacity building that needs to be done. The way the Tlicho agreement works is that there are four communities within the Tlicho region and prior to the effective date there were bands in the communities. But in the agreement, bands were done away with because our leaders and our elders see bands as an *Indian Act* system, it's not a traditional governing system of the Tlicho. The Tlicho are one united people. So they've gone back to the way it used to be prior to the signing of the treaties and the *Indian Act* becoming applicable in our area, even though we're not reserves but certain sections of the *Indian Act* still apply. So we don't have bands anymore but we have one Tlicho government for the four communities and the Tlicho citizens.

So, it means getting rid of that type of institution and setting up a Tlicho governing system. So in developing institutions like the usual finance, administration and human resources departments and those types of areas, you need to develop laws if you have governing powers. Especially for such a huge tract of land, you need to have a system in place. So instead of opening up the land for development, and because the land was frozen after the effective date, the law makers, the assembly at that time, passed a law putting that land in a moratorium. The Tlicho land is all in a moratorium; there's no disposition of land whatsoever until such time as they develop a land-use plan.

So how do you use that land and what kind of capacity do you need? This has given the Tlicho time to build that capacity. We live in a diamond mine area. We have four diamond mines in our traditional territory, which is outside of Tlicho lands but is still within our traditional territory. The pressure of development, as most of First Nations are experiencing, is tremendous

and the social impact that comes with that is also unavoidable. To date governments haven't addressed those kind of social impacts, but you still need to develop capacity in that area. How do you deal with developing pressures and all the regulatory regimes and environmental concerns and assessments that go along with that? How do you build capacity so that that 39,000 square kilometre of land is monitored and protected properly?

This is where the Tlicho government is developing a system for that right now, because the land is in a moratorium. We've made it known to governments and industry that they're not allowed on Tlicho lands unless they come and talk to us. And there are no developments, so don't even bother applying for a permit or a lease or a land use permit or water licence or anything like that.

So in the meantime, what does that mean for capacity building? What kind of capacity do you need using traditional knowledge? We still have traditional land users, traditional economy is still very strong. So it's building capacity in that area as well because not everybody wants to work in the job market and because we have mine companies we have a lot of people working at the mines. So the pressures that come with development also make you focus on the type of capacity you need in that area.

One of the things, in terms of capacity, is dealing with other governments. In our case we haven't really dealt much with the department of Indian Affairs through Canada yet. But as a member of the Land Claims Agreements Coalition — where all the land claim groups in Canada have come and formed a coalition to work on common issues and try to get the federal government to agree to an implementation policy — we haven't really dealt much with Canada. But GNWT has



been our number one concern because sometimes they fail to consult you when they should and other times they want to consult when it's not really a priority.

I always say that this is a Tlicho agreement. It's for the Tlicho people and so the Tlicho people should be able to set the priorities and then government should follow those priorities. But they always need to work with other aboriginal groups and other aboriginal groups would have other priorities that are different from yours so there's a balancing act there. But the agreement is pretty straight forward as well sometimes.

For example, in the Tlicho agreement, it talks about developing core principles and objectives for social programs like social assistance, housing, child care and early child care development, but in our agreement there's no deadline to develop those things. But in another First Nation that's negotiating self-government. It's in their AIP that says they have to have a CPO, or core principles in place, prior to their final agreement. So the Government of Northwest Territories is trying to pressure us into negotiating with them on this territorial wide core principles and objectives. And the reason why we're saying it's not a priority for us and we're not going to waste capacity in that area, is that we have a sub-agreement with a territory government where they take on health, education and social services for 10 years until we build our own governance capacity and deal with the lands, which is a priority for the Tlicho.

So programs and services are still being delivered by this agency that was created through this 10-year agreement and so it's not a priority. But because another First Nation has made it in their agreement, they're pressuring the Tlicho to get on board on this consultation. But again, it's not a priority for the Tlicho and they've decided not to waste what limited resources we have on capacity.

Again, land is land, and I need to go back to the land because land claims is about land and resources, as was said earlier by Justice Berger. You have core management regimes in the land claim areas. In the Tlicho way it's no different from other land claim groups. We have Wek'ézhíí Renewable Resources Board, Wek'ézhíí Land and Water Board, then the overall Mackenzie Valley-wide board, so you have to work with them because you do have the appointments. So that is also part of capacity building. Your own people are being trained in those areas to be on quasi-judicial bodies and learn about environmental assessments and preliminary screening and how the process for water licensing works, what kind of requirements mining companies require when they file documents and what kind of capacity do you need to understand those things. You need environmental assessors and you need environmental engineers and you need water experts and wildlife biologists. So these are the areas that a lot of our people aren't trained in but these are the areas, as you take over the land and build a management regime, these are the kind of people you're going to need that have that knowledge. So you need to train your people in those areas.

Forest management is not very huge in our territory, because, we don't have very large trees, but a lot of people still burn wood and so there's commercial interest in it and personal use as well. Again, going back to developers, there's been a lot of consultation and so how you want to be consulted is another area. Because, they want to come to your community to do engagement initiatives or to do an update on a project or, and they use these words and because when you tell them you don't want to be consulted — but you want to be consulted in a certain way — and so there's got to be some protocol as to what that is. And there have been a lot of leading cases, especially out of BC on consultation from mining companies and multi-corporations. So it's really interesting to look at all the latest development of the law in that area from BC and as a lawyer I

take great interest in that kind of stuff especially like the recent case in the BC on the *Little Salmon/Carmacks* case, where they litigated the agreement and that's going to the court of appeal.

But one of my colleagues is a lead counsel on that so we're pretty excited about that case. I'm sure it's going to have huge impact on how agreements are interpreted and applied.

Economic development is also a huge, huge area in which capacity is so required, not just financing capacity, but also human resources and knowledge about business. One of the things that the Tlicho have done is separate business from politics, but not so separated, so far apart that they don't have control over their businesses anymore. Because one of our bands had done that, where they've separated them so far that they didn't really have any control over how their business was operating or any policy direction or shareholder direction.

So the Tlicho government has, through the work that we did prior to the effective date — because one of the things about agreements is that little simple clauses can have huge, huge impacts. In our agreement there's a section, Section 14, that says on the effective date the assets and liabilities of the bands become the assets and liabilities of the Tlicho government. That's all it says. On the effective date those assets and liabilities become assets and liabilities of Tlicho government.

What does that mean?

So, two years prior to the effective date, when I finished law school and became an articling student, that was what I was tasked with, implement that before the effective date. So what we had to do was look at the bands and their corporate interests, their companies, the Dogrib treaty and tribal council and all its corporate entities. Because you have four bands with different companies and you had this regional tribal council with its own companies. They were competing for contracts with other

aboriginal partners for the same contracts. And so, one band was doing really well, the other one was always bailing its companies out, so there was a mixture of all of that. But they were all going to be a part of Tlicho government after the effective date. So, it meant looking into all the companies, their audit statements, understanding what they are, and how they were set up. Some were federally incorporated, territorial corporation, some were not-for-profit but they were making profit. Some were just shell companies holding another shell company and it was a mixture and it was pretty interesting work.

But those little clauses can mean so much implementation activity and so through that process we got to learn a lot about the companies and the kind of capacity we need. You need good board members who know about companies, who know about how to be board members yet understand and respect the Tlicho language, culture and way of life. And understand that even though the bottom line is something to look at there are still some essential services that are required in the communities. And so you have some really good companies that are nothing but you want to make profit and really good profit. But there are maybe three or four companies that provide essential services in a community that you don't really need for them to make profit, but they need to provide those services.

For example, in three of our communities you have to fly in. There's no road, and the airport is located 10 kilometres away, and not everybody has vehicles so you provide taxi services. You don't expect to make money from providing that taxi service but it's an essential service that you need to provide. So you have to put a little bit of money into it. But it's not going to break your bank because you have this other huge, huge company that has these multi-million dollar contracts with the mining companies and that's making you a lot of profit.

So those are the kind of balancings you need your people to understand. That if you hire non-aboriginal managers and they only think about profit because they have to — they want to make that five percent pre-tax bonus that's usually in their contract.

So you need to have board members who understand those things. And so economic development is — and it's in most land claims agreements — there are economic measures when if there are government contracts in your region then the federal policies in existence apply so that they give you a preferential contracting arrangement. So those are really key to understand and it helps in building capacity because you're talking about getting access to contracts in your region and training, not just for jobs and employment for those mining companies that require it, but it also helps in assisting for traditional economy and land users as well because, the objectives in those chapters are usually to achieve economic self-sufficiency and to promote traditional economies.

So, traditional economies for us are hunters and trappers and people that use the land because they are the real key holders or the knowledge holders of the land. And the Tlicho are working extensively in developing that area in traditional place names and where all the caribou migrations are and where all the heritage sites are and protection of those. Those are where the land users are, the knowledge holders for those areas, and so they become very instrumental in land-use planning. And again, that is all part of capacity building based on the knowledge that you have as a people already.

Again, capacity building is also about building capacity. Meaning that what the Tlicho have done is, they're in a process of developing a school of Tlicho governance. The goal and objective is to teach every Tlicho citizen — and there are about 3,600 Tlicho citizens — about the agreement, about the constitution, about how the Tlicho

government is set up, what all its sub-agreements are — we have IBA's with mining companies, we have environmental agreements and we have other agreements as well. So we want Tlicho citizens to know all those things so that as a Tlicho citizen it's in their best interest to make sure they understand what the Tlicho agreement and the Tlicho government are all about and what they're doing. So that you have a knowledge base and you're building capacity, because then they would have a good idea of how they want to contribute, and in doing so, you help them achieve that by setting up these types of schools.

The Tlicho have been contributing annually to scholarships, to high school and university and college students in the neighbourhood of about \$500,000 out of its own budget. They have a strong support of the education system, the mission statement has always been to be strong like two people, to still retain your language, culture and way of life, but also be able to exist in the modern way as well. And so, they learn the language at an early age and continue on and they still learn the usual math, writing — what we call the non-Tlicho education. Because of these initiatives a lot of Tlicho have gone to university and colleges and so we're building that capacity. But we also worry about brain drain of our communities, because now that a lot of our people are educated, how do you bring them back is the next challenge. Because people have jobs and lots of money and it's very common to see households with two or three vehicles. People are mobile and they go and they live where they want to because they can now. And so how do you bring your people back to your communities so that they would want to work for your people is the next big challenge for the Tlicho right now.

Again on capacity building, that's an area that I work closely with the Tlicho government on. The Tlicho government is two years into the effective date. They still need to set their priorities. As I've said, on the implementation committee there's a new thing that Government

of Canada is pushing on groups and the implementation committee especially, results-based reporting. And you're going to hear some of that as some of you progress on your negotiations and they want to achieve results. Because of the auditor general's reports about how Canada's not living up to some of the obligations in the claims, there's got to be this results-based reporting.

But again it goes back to Tlicho, because it's a Tlicho agreement I always argue the Tlicho need to set its priorities then we could measure results that way or modify it in such a way that, in the end we want to see the same thing, that we achieve some of these objectives that were set out. And so, capacity is always an issue when you're going to set priorities.

But on the other hand, you need priorities to set what your requirements for capacity are and your financial resources and how you're going to achieve those things and what time lines. The Tlicho are facing that challenge right now, but because the land is in a moratorium it's given them time, they've just extended that moratorium for another two years because the land-use plan they just started is not going to be completed until then. Just for your information, the land-use plan that the Tlicho are developing for the Tlicho lands, which is huge, is totally different from how it was done in the Northwest Territories with the other land claim groups. Because, they have to develop a plan with the governments, and I think the federal minister has a final say on approving the land-use plan. But in the case for the Tlicho, nobody tells the Tlicho whether their land-use plan will be approved or not because it's up to the Tlicho to develop their own land-use plan and so that's what they're doing.

And so that has helped in easing or giving us time to really set up a department that will address all needs for how to manage Tlicho lands and the wildlife and the trees and the plants and the waters. So, again that's an area of capacity

building that's going on right now. And by working with key elders and the land users, because they're ultimately the ones who are going to guide how that land will be used. And they're the ones who are teaching land-use planners and environmental engineers and people that know about GIS and biologists because, they know about the land and they've used it day in and day out. So, that's my presentation on the Tlicho experience on capacity building and on implementation and governance.

#### **Presenter: Kathryn Teneese**

My name is Kathryn Teneese and I'm the chief negotiator for the Ktunaxa Nation and I'm here today to talk a bit about the activities that we've been involved with in building capacity of our nation as we prepare for implementation of Ktunaxa governance.

And one of the things that I say to our citizens — and although we are here under the invitation of the BC Treaty Commission and the Nisga'a Nation, both of whom are deeply committed to the whole notion of concluding treaties and concluding arrangements between our governments and the Governments of Canada and British Columbia — I have said to our citizens that the work that we are doing in preparing ourselves for this we have to do regardless of whether we conclude a treaty or not.

So, what I'll talk about today is some of the activities that we've been involved with and the fact that capacity building and preparing for self-government is not just about people. Obviously people are a very important component of this exercise and we certainly need to do that, but as Bertha (Rabesca Zoe) has mentioned in her comments, the importance of building the institutions to ensure that we're able to move forward is also a critical part of the activity that we need to engage in.

The other thing I wanted to say is that, as we move forward in this, there's no quick fix, there's no easy answer and it's an activity that you need to move in a slow and purposeful way. In Bertha's comments, she spoke of priorities and yesterday when I made this same presentation I referred to the comments that had been made earlier in the day with respect to the importance of setting objectives. We're just using different words but the idea is the same. In order to get where you're going you need to have a plan and you need to have a target. Otherwise you're just going, you could find yourself going in circles.

We're working on some steps and we're building towards the day that Ktunaxa government is going to be the body that makes the decisions for how we're going to live. And I emphasize that because that's all that I can speak about, much the same as Bertha says she can only speak about Tlicho, I can only speak about Ktunaxa. But I'm happy to share our experiences of what we're doing and hopefully I can provide you with some information that you may find useful to move forward with what it is that your nation is doing.

So, first things first and I'm using the presentation, first of all, I said this yesterday and I want to say it again, I want to acknowledge the Coast Salish people whose land we're on and thank the organizers for the invitation and the opportunity to make a presentation. But also to acknowledge the work of my colleague from our nation, Gwen Phillips, who helped me put together the presentation. Some of you may have heard Gwen in other forums so if some of the material looks familiar for those of you who have heard Gwen, you'll know I wanted to be very up front to say that I worked very closely with a colleague.

The analogy that I'm going to use here in terms of what it is that you need to do in planning for capacity building is, when you build a house and the things that you start off with. You start a rough idea of what you want, what your needs are, the number of bedrooms, the number of

bathrooms, you want one or two stories. As all of us, and I listen to Mr. Berger and Dr. Gosnell this morning talking about their ages, I'm not going to go there. But just in terms of planning and when you think about planning a house that perhaps when you're younger that the notion of one or two stories is, you don't think about it that much. But as you get older you're thinking well, you know what, I don't really want to have to go down stairs to do the laundry or I don't want to have to do this or that. But that's the reason that we need to think about all of the things as we make our plan.

So then after you've got a rough idea of what it is that you want, then you talk to people to help you pull your ideas together. And in this instance we're talking about architects and engineers and eventually your plan goes to the builder. But the thing is you're embarking on a very complicated process, but at least you've got a picture of what you want. So, that's the same, and I say that's what we need to do in terms of capacity building — you need to have a rough idea of where it is that you want to go. And in our case, the way that we did that was we spent quite some time on various activities, gatherings and bringing ourselves together in various forms, and bringing us back to who we are as Ktunaxa people and where we've come from. And reminding ourselves that, indeed we're governing, and we continue to govern ourselves subject to the interferences in our lives by others.

And so the rough plan or the goal, the thing that helped us establish where it is that we wanted to go, was the development of our Ktunaxa nation vision. We have a vision statement that says that what we are seeking to achieve is strong, healthy citizens and communities, speaking our languages and celebrating who we are and our history in our ancestral homelands. Working together towards managing our lands and resources as a self-sufficient, self-governing nation.



Now that's a lot of good words but the fact is, that we worked on getting to that place of what our plan was going to be over many years, it took us a long time to get to that place. It sounds like it should be pretty straightforward but the fact is that in order for it to really be the nation's vision it had to belong to everybody.

So we started off by bringing together our leadership who created the framework for this and then engaged in a long community consultation process, not specifically on the vision, but on all of the things that are connected to the vision. The things of reminding ourselves what are our values, who are we as people, where have we come from, what is it that we're trying to achieve and how are we going to say that. So, this is what we came up with. And this is the target that we've set for ourselves and it's our way of continuing to check back and measure whether or not we, indeed, are even getting to the place that we said that we want to.

We have this everywhere in our communities. In fact, in one of our community schools the children have been able to say it to us in the Ktunaxa language. They can speak our language saying this vision. Unfortunately, not a lot of people are able to do that and that's one of our activities that we're working towards, to ensure that in maintaining and building the capacity that the emphasis on our language and culture is critical.

So as we were working together and talking about the Ktunaxa nation, we realized that we needed to ensure that we had something, a picture, so that people could understand what it is that we were working towards and the fact that being part of a nation is a feeling, it's something that we need to work towards. But the fact is, it's not a thing that you can really, really touch, because it's all based on our values and principles, but we also have to remember what makes up a nation and in our case it's our communities

within the nation. Then also what is it that makes up those communities, it's family and at the very centre is the individual, the citizen.

So we've made sure that everyone has a clear understanding of this structure, that in order for the nation to exist all of these other bodies, and they're all the same, all need to be taken into consideration and have a sense of belonging based on who we are as a people, that helps us move forward in the vision, in trying to achieve the vision that we've identified for ourselves. And that vision has to be shared.

As I spoke about earlier, the process that we went through, and I'll refer to it as the community development process, of creating that shared vision and getting us to the place that we were trying to get to. And in creating the vision, and in creating all of the things of who we are, that we also needed to make sure there was an understanding that in moving towards being in control of our lives that meant we have responsibilities. And each of us has to ensure that, again, there's that understanding, that we are going to be responsible for ourselves. You know the buck stops with us now and that we're not going to have someone else to shift the blame to or to point our fingers at. And to move from a place of dependence to the independent people that we've always been. But unfortunately through the infringements and interferences in our lives over time, that has changed, but we're working towards getting us to also recognize that as we carry out our responsibilities that come with it some privileges of being part of the Ktunaxa nation.

So in our vision statement, flowing from that, we have created our governing structure to deal with the services and to deal with how it is that we're going to address the issues that face us as Ktunaxa people. What we've done is created what we call sectors. We have sectors of our government that take our vision statement and we've sort of divided it up into areas so that we have



our sectors and we have the first one being social investment. And that's all of the people things, all of the services and the social safety net that we know that we need to have as a government. And under that we deal with child and family services, we deal with health, education, justice so all of those things come under our umbrella of social investment.

Another important area, and I indicated this earlier, is the whole area of traditional knowledge and language. If we don't build what it is that we're trying to do based on who we are as Ktunaxa people, we're no different from any other government. So the emphasis on traditional knowledge and languages is a very critical one. And we've done various activities and we engaged in things like the multi-million dollar broadband project so that we can ensure that we can use technology to preserve and enhance our language activity. We have a goal; we are presently identified by the First Nations Technology Council as what they call a FIT community and what that stands for is fully integrated technology. So we're working on all kinds of activities in that area. And it was our director, our overall administrator for traditional laws and language who was the champion for that particular work. And people used to say, "Why is the TKL person being responsible for getting broadband?" And we said, "Because it's going to be our tool to help us to save our language."

An obvious area, I mean in the treaty negotiation process, we're talking about land and governance and so the whole area of lands and resources is another corner or pillar of our government structure. Not only are we talking about lands and resources from a development perspective, but we're also talking about it from a stewardship perspective. Because we all know that the values we bring to the table are quite different from the folks that have had that responsibility since they've come into our respective territories.

And finally, in order to ensure that our government is able to function and that we can pay for things, we have what we call economic investment. And that's a sector of our government that will be responsible for ensuring that we are creating a vibrant economy for the Ktunaxa government and also to ensure that we have the resources to provide for our government.

Yesterday in one of the panel discussions there was a comment about the need to ensure that you know what it's going to cost. And I think that's one of the tasks that we're undertaking as we're going along, of trying to figure out, okay, as we move towards implementation of Ktunaxa government, how are we going to do it, what's it going to cost? And that's ongoing work that we're involved with.

All of these things, as I described them as part of our government, all of them are engaged in their own areas of capacity development around the specialties that they're involved with.

Then what we have is sort of overall of these, what we're calling corporate services, kind of the administrative arm of our government that is going to be responsible for the common services that each of those sectors are going to require in order to do their business. The things like our treasury board, and just generally the things that we're used to what are now either our tribal or our band administrative units.

All of these things are, as we're moving forward and we know that we need to do these things, based on, first of all, competency. We have to make sure that we're building the level of competency that is required, the capacity and the tools and the instruments to get us to the place that we're trying to go. All of this is a package that we're trying to move forward at the same time in dealing with all of these things.

But remembering that all of them are based on who we are as a people, our traditional values and our principles, that's what guides us as we move forward.

So competency and capacity, we need to make sure that we've got sufficient knowledgeable, skilled, qualified, ethical individuals in the right place at the right time to do all of the jobs that need doing in order to achieve the vision. And it includes our citizens, our leaders, our directors, our managers, our staff and our partners. There are a lot of things that need to be happening at the same time.

And, as I sit here and describe it, I don't want to leave you with the notion that any of this is easy. It's a tough slog and sometimes you feel like you're going two steps forward and three backwards. But the fact is, we need to make sure that as we're moving towards achieving our vision that we are all moving together as close to the same time as we possibly can. We don't want the gap between our citizens and leaders to get too big. Although, leaders just by their very name, obviously have a responsibility of being forward thinking and taking on the job of ensuring that we're getting where we're going, we want to make sure that the gap between the leadership and the citizens doesn't ever get too big and unmanageable.

I mentioned earlier the need for the tools and instruments and all of the things we need to do in order to achieve the goal of increasing our capacity. Things like the right location, the building, equipment, systems and supplies, all of the things that we need to do the job that needs doing. And then also the regulations and relationships necessary to protect and enhance these assets and achieve the vision. Things like offices and all of the things that are on the slide.

There have been several definitions of capacity building and basically all of them all speak to

the same thing. They all talk about the combination of people and institutions and practices that permit countries to reach their development goals, and capacity building is an investment in human capital. Institutions and practices, now that's a definition from the world bank and then there are a couple of other definitions but when we look at them they're all similar, they're all the same outcomes they're all seeking to achieve the same thing.

And I guess I couldn't leave without talking about some of the barriers and challenges that we're faced with. Some of them that we find today are things that here in the province of British Columbia, and I can only speak about that, is the fact that the people that we deal with, i.e., the governments, always want to find the easy way out. And, very often they want to deal with bodies rather than dealing with each of us as nations, so that's a real problem. And, I know that I look around the room and I see familiar faces who have, say for example, been at the First Nations Summit table and the concerns that we have of trying to deal with issues and then being told, well we're dealing with the (First Nations) Leadership Council on that. And, I'm certainly not saying this in any way to denigrate the leadership council, but it's an example of a huge barrier when you're trying to do something for your own nation. When in trying to seek the easy way out and the one-size fits all of let's just deal with one group and come up with the answers. That's an example of the kinds of barriers and challenges that we're faced with.

So, in terms of governance capacity — what is it that we've got to do? We've got to establish strategic alliances and institutions with those presently holding the authorities of government. We have to engage our citizens in nation rebuilding and community development. We have to assess our current governance capacity and adopt a preferred model. And again, that was part of the long process that we engaged in — trying to

find a model of governance that's going to work for us building on where we come from, but also recognizing that we are in the 21st century.

And a very important part of that step is the whole notion of developing transition strategies and development plans and partnership agreements across the sectors. Because in order to get where you're going — it's not like a light switch on and off — you need to have a plan to go from A to B and a transition plan to get you to where you're going.

And then lastly, obviously, you need to build a competency and the capacity, acquire the necessary tools and develop the instruments to get you to where you want to be.

So finally, we just included this slide because it was a capacity building framework that was put forward by a group called BC Healthy Communities. I'll just read it to you because I think it kind of, encapsulates where it is and it sounds very much like our own vision statement that I've referred to earlier, that our purpose is to create communities that provide us with the physical, social, economic, environmental, cultural, physiological, and spiritual assets that promote health, well being and the capacity to develop to our full potential. Since human potential is unlimited, capacity building is an ongoing aspect of community life.

I found that very interesting because it was a group that was launched in the fall of 2005 with funding from the BC Ministry of Health. We're not sure where it is now, but just in terms of the vision and the framework that they described for themselves, it's not unlike what I spoke about as the Ktunaxa nation's work.

I'd like to thank you for your attention and hope that I've been able to provide you with a least a quick snapshot of where it is that we are in terms of our capacity building initiatives. And hope that and certainly offer up to say that we are available

to help if we can and that more information can be found on our website which is [ktunaxa.org](http://ktunaxa.org). So thank you very much.

**Presenter: Jamie Restoule**

All right, good morning everybody. Thank you for inviting me on behalf of our Grand Council Chief John Beaucage of the Anishinabek Nation in Ontario. I thank you very much for having me here today to share our experiences in capacity development that we've been taking on over the last four or five years.

I just want to provide a bit of background as to how we got to where we're at right now with our capacity development initiatives. There are two main agreements that we're negotiating in terms of self-government. There is certainly a difference between Ontario and BC in terms of First Nations self-government or treaty developments. Within the Anishinabek Nation I'd say the majority, almost all of our First Nations, have treaties that they are signatories to. So that's certainly a key difference between our initiatives and the initiatives you guys are undertaking here.

We are involved in self-government negotiations in two core areas, which are education and governance. We aren't in a comprehensive process as of yet, although, it is something that we are looking into for the future.

So that's a little bit of background on the difference between our initiatives. But, I just wanted to give also a bit of background as to the Anishinabek Nation itself before we get into capacity development initiatives because there are some unique issues that we deal with as a collective group as opposed to individual communities.

The Anishinabek Nation is also known as the Union of Ontario Indians, which is our corporate name that we work under. And, we're

the political advocate and secretariat for 42 First Nations in Ontario. And our geographic area goes from Ottawa, north to Thunder Bay and south to past Toronto near London, Ontario. So we have a fairly large geographical area with a number of communities that we represent and negotiate on behalf of.

In '95 we received our mandate from our political leadership to get involved in the self-government negotiations under the inherent right policy, and in '98 we started those sectoral negotiations.

Under the inherent right policy, there's certainly a lot of discussion that has taken place as to the pros and cons of the policy itself. With our organization we are aware of those negative aspects, of the limitations that are included within it, but we certainly look at the positives that we can take from it as well. The two main things of the negotiations of the two agreements, and supplementary to that, we also look at the benefit of the internal consultations that we can undertake for our nations that we work with.

It's a nation-building initiative, it gives us a number of forums that we can come together and discuss strategy and future planning at. So that's certainly one of the big opportunities that we see from that.

The restoration of jurisdiction is the self-government initiative itself, that's the title for it that we work under. And what we're looking at doing is getting specific improvements in the areas of education and governance in our Ojibwa language. We are moving forward in these important areas.

And as I mentioned, there's no limitations on future opportunities. We are looking at a comprehensive process which we hope will include lands and resources, health, social and a lot of those areas.

As I mentioned, the challenges that we have with those large scale negotiations is the geographic area. I think one of the bigger things beyond geographic, looking at a map and seeing the areas, is the distance between our communities — that challenge we have to overcome when it comes to consultations, information sharing, communications. In some cases, I know from my community Dokis First Nation to Fort William and Thunder Bay, it's probably about a 14-hour drive. So there's certainly a lot of distance between the communities, that's a challenge we have to overcome.

Another challenge to overcome is the off-reserve membership issue, with the major centres like Toronto, Ottawa, Thunder Bay, Sudbury. There's a large number of our community members who live there for various reasons whether it's work or school or what not. So to keep them involved in the process as well is certainly a challenge. And the consensus building for everybody in all of those areas is a challenge, as well.

A couple of ways that we address these challenges is through different levels of decision making. The first, and certainly the most important one, is at the Anishinabek Nation community level, having those information sessions within the communities themselves to give our grassroots people the opportunity to come out, hear what's going on and provide their input. And as you'll see in a couple of minutes, be involved in that cycle of how their information is actually inserted into the agreements that we're negotiating.

The second level is the chiefs' committee on governance, which is a specific group that meets to provide some specific issues and direction. They meet on a quarterly basis and really are the political decision makers for the self-government process. And the third is our Anishinabek Nation

Grand Council; they meet twice a year. That's our annual meetings with all of our political leadership, so they come together to give final direction to the critical issues that are brought forward.

This is the information cycle model that I was speaking about a couple of minutes ago, something we really use as a backbone to all of our capacity development initiatives we're information sharing and what not. As you can see at the top we have the community member and it goes full circle back to them as well through our community facilitators. And just to avoid a question later, we had a question yesterday about how we overcome the challenges of information sharing and what not, and we employ four community facilitators who are located throughout our areas. And what they do is conduct, if it's regional sessions or community-based sessions, to bring the information to the community members and take the information and feedback from the community members as well. That is then put into a report which comes to my office and I collate all of those reports to bring forward to the negotiators for the respective agreements. It's then considered for clauses or sections within the agreement itself, the new draft agreements brought back to me which then go back to the community facilitators and to the community members again and that cycle continues. So, there's really a lot of opportunity and it's really been successful in showing the community members that their input is valued and there is a value to it and it does get consideration at the negotiation table. That's certainly a way of building support for the agreements as well, when we get to the issues like ratification, implementation.

As I mentioned, I'd say virtually all of our sessions are held within the communities themselves or within the larger centres where we have a large population. And we certainly have a lot of

notices that go out. And it's really about that — developing those agreements and initiatives for the community members by the community members.

Some of the opportunities that I wanted to mention, and this really gets into the capacity development issue itself, is like I mentioned, we have the two main thrusts, which are the governance and education negotiations themselves and the final agreements stemming from those. But there's a lot of opportunity for the community members and the communities themselves to develop tools of capacity alongside those agreements.

Certainly, the goal is to have negotiated, ratified and implemented agreements in education and governance, but realistically, there is opportunity in that they may not be ratified. What we want to do is ensure that we are moving forward agenda items that the community members identify as well. Items such as constitution development at the First nation and the collective Anishinabek nation level, development of the Anishinabek education system, a series of community consultations and other activities such as development of appeals and redress mechanisms, First Nation law enforcement and adjudication, and the other issue I'm going to get into a little bit more specifically, the capacity development workshops.

Each of those items that I just went over, are tools the communities can use. The constitutions are certainly one of the more high profile activities that we're undertaking right now in conjunction with the First Nations themselves. This past fiscal year we were able to help 16 of our First Nations develop their own constitutions, which was certainly a good success. And this fiscal year we're looking at doing the same thing. So as I mentioned, regardless of what comes of the self-government agreements themselves, these are concrete tools that are products of what we're doing within the communities.



The goal of the capacity development workshop project is to develop capacity within our First Nation communities within the Anishinabek nation as a whole in advance of the implementation of the education and final agreements. So it's setting our communities up with enhanced skills in the areas that they'll need once they take on those increased responsibilities that are brought forward through the agreements.

A little bit on the process of how we conduct the capacity development project. We do have a six-person advisory committee. They've been put in place through the chiefs' committee on governance and their nominations that they brought forward. They meet on a regular basis to steer the capacity development initiative and the workshop process.

We did undertake a needs assessment study in 1999 where we did thorough work with each of our First Nations to identify areas of capacity development that they see as key. And we developed a list of 19 key areas from that study and that's really been the main focus for the capacity development workshop process.

Once we get into the workshops themselves we have a circulated call for proposals, which is reviewed by the Capacity Development Advisory Committee. And one of the key principles is that we have aboriginal workshop facilitators for all of our workshops that we conduct. We really believe that there have been a number of successes throughout both our communities and beyond. And it's important to build capacity from within through our own people because we do have that capacity as it exists right now.

As with our negotiations, our workshops for the capacity development are held within Anishinabek First Nations or urban centres with high First Nation population. And, we really feel it's important there to give the opportunity to staff — we understand there are limitations as well in terms of budget considerations, travel

away from family and what not. So, the more we can bring these workshops right into the communities where we can get a high turnout and it's a benefit for us as the organizers and for the communities as well to bring those skill enhancement workshops to the people.

Another important item we have is that through each of the workshops, we have developed an ongoing resource library. It houses workshop materials, the workshop structure and the plan for them. So that if any community wants to implement or run their own workshop we have a package. They can contact us and we'll send it to them.

That's really a big key, not to just have the workshop end on Thursday at noon and never talk about it again, but to have it live on beyond then and keep on benefiting from those workshops that we conduct.

The workshop participant levels, have been very successful in our view. We've had over 600 participants in the first four years of our workshop, so for cost effectiveness it's been very successful. There's been a very wide range of participants for the workshops. We've had First Nations leadership through chiefs and council, band administrators, financial officers, education directors and other First Nation directors and administrative staff, so certainly appealing to a lot of different groups.

In terms of our next steps, we have the continued development of our education and governance final agreements and, as I mentioned, a possible expansion into comprehensive negotiations, and of course, the continued capacity development in all of the areas that I have touched on earlier to support the development of our First Nations.

For my formal presentation that's about it. But the last comment I'd like to make is that we really do have the capacity within each of our communities. I know within our catchments



of First Nations there are some communities who are strong in financial development, some are strong in education, and some are strong in health or social. And I think if we look inwards towards ourselves in our own communities and help each other that capacity development is there; it's just a matter of networking it and building everything within our individual communities.

So that's what I'll leave you with. I did have a list of workshops but due to the time constraints I'll pass on those.

And the last thing, I do have a number of reports from our last year of capacity development workshops, they are available at the front here. They are fairly limited because of Air Canada's weight restrictions on baggage, so first come first serve.

Thank you very much for your time.

# Workshop Session: *Effective negotiating — developing relationships*

Building and developing relationships with those you are negotiating with is often key to reaching understandings and making progress. This workshop will look at the role of relationship building; things that can help develop trust and commitment between the parties. The importance of relationships in making progress on key issues, accessing funding, completing negotiations and implementing agreements will be explored. The role of using political pressure — using a common table approach, regional strategies, taking issues to the public, and other dispute resolution options will be discussed. Setting realistic timelines and expectations for negotiations will also be addressed.

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## Presenters:

Gary Yabsley, Maa-nulth First Nations  
Daryn Leas, Council Yukon First Nations  
John Bainbridge, Nunavut Tunngavik Inc.

## Presenter: Gary Yabsley

Good morning. There are several things I guess I can say. I was the lead negotiator for the Maa-nulth, the five Maa-nulth communities. I ratified the Maa-nulth treaty about two or three weeks ago. They had been originally a part of the Nuuchah-nulth Tribal Council, there were 13 originally. This is the end product of about 13 years of negotiations. I only became the lead negotiator two years ago, when the late George Watts passed away and there was just an immense vacuum in your world at that time so I got thrust into this world. I had been legal counsel up until that point.

I think what I'd like to do is just take the time I've got and try to articulate as best I can what I've actually learned in the last few years, and

trying to relate it to the topic of this panel which is relationship development. I would say to begin with, it is my assumption that this discussion and people participating in the treaty process, are doing so with one objective which is to get to treaty. If that is not the objective I would strongly recommend that you don't do treaties and you certainly don't borrow money and consume people's time if you're not trying to get there, then don't do it. You owe it to yourselves and you owe it to communities not to do it.

Having said that, one observation I could make, is that actually getting there depends to a great extent on the actual ability to develop relationships in the process. We can talk about the substance of treaties, we can talk about legal theory, we can talk about history, but you're not going to get there if you don't develop fundamentally sound relationships with the people that you are dealing with.

I would also suggest that those relationships have to be relatively healthy. If you are in the process where the relationships with the parties on the other side are just acrimonious or they become personalized in a negative way, it won't be healthy and I don't think you'll get there.

I'd ask you to consider another thing, and this is unique in part to my own situation with Maa-nulth, when we talk about relationships, I think there's probably two sets of relationships that you need to comprehend and you need to understand you've got to develop. One is those relationships you've got with governments, the negotiators on the other side, and the other sort of relationships are the internal relationships with the people you're dealing with.

In the Maa-nulth situation it was even more complicated because in fact I had five communities. The Maa-nulth Treaty is really five treaties rolled into one. And the politics and the management of the administrative reality of advancing a treaty is extremely complex and if you don't have fundamentally sound relationships with the people you're working with on the inside, you've got a tremendous problem.

So maybe I'll take those two propositions as separate. In relation to developing healthy relationships with government, I think what I'll do is I'll give you, in a nutshell, the things I've learned. They may not be applicable to you in your situations or you may simply suggest that I'm out of my head, wouldn't be the first time that somebody's suggested that, but here goes.

First of all, it is my belief that it is critical for First Nations participating in this process to understand what the process is all about. You do yourself a disservice and you do your communities a disservice if you develop expectations of what this process can do, when in fact it cannot do that structurally. If you think that the people at the table for the other side are able to deliver things that are simply beyond their ability or the ability of their governments to deliver, you are deluding yourself, and you will simply get frustrated.

So, understand the reality of the process you are in. For instance, understand that this process is part and parcel of the committee and constitutional context. Governments aren't going to come to this table with propositions that are outside the bounds of the legal reality of those governments, they can't do it. So if you don't understand that and expect them to do something that they can't do, you will be frustrated.

Secondly, it is my view that treaty negotiations should be distinguished for what they are, and the nature of the process. I believe treaty negotiations are negotiations about a social contract. I do not believe these are like labour

negotiations. In so far as the negotiations of a social contract they should be less adversarial than negotiations you would have in a labour agreement for a number of reasons that I can get into later.

Thirdly, I think it's critical, when I say understand the process, it's critical to understand who the players are. And in that regard you will sit there and you will look at chief negotiators for the federal and provincial government, you will negotiate with them, but in fact you are not negotiating with them exclusively, you are negotiating with the federal department of finance, you are negotiating with the department of fisheries and oceans, you are negotiating with provincial ministry of the attorney general there are other players who are not at that table that you do not see and who have in many cases the ability to trump what the negotiator for the government is saying. Understand that because you will be looking at that negotiator and he will not be able to deliver on many things, he will have to go back and get instructions from the respective departments. If you think otherwise you will be frustrated.

Understand that government systems have built-in time lines and they don't fit First Nation time lines. That is particularly the case with the federal government. And one particular issue when you require multiple letters of approval in Ottawa, and it may take significant amounts of time to get those approvals. That is just the system you're dealing with.

So, again if you think that you will get a quicker turnaround than you are getting, in part your expectations will not fit their reality.

Another point, understand your own objectives and work to become increasingly precise about what you mean by those objectives. And again, I'll give you an example. One fundamental objective is self-government. Self-government is a vague, broad, swooping proposition that lacks

clarity and definition, and I often hear the term sovereignty thrown out there in the same way. If you are not able to define and be precise as to what you mean and make that definition fit the reality of the Canadian constitutional context that I talked about earlier, you will be frustrated. You have got to increasingly refine your level of precision when you're taking positions at the table, because the other side is going to push you to do exactly that. And unless you want to just sit there with your mouth open, you're going to have to be able to respond to those.

And let me get back to another observation here which I said earlier: I think that this is a negotiation about a social contract. I believe that at the end of the day all of the parties in this negotiation have very similar objectives. They may not be quantitatively the same and they may not have the same understanding how they get there, but at the end of the day you have to assume the governments are there to get to a treaty. And, I think, that given the Maa-nulth context, we constantly have to re-iterate that proposition for everybody. That at the end of the day we are all trying to get there. That is an additional implication for First Nations, and that's because probably in the negotiation process for First Nations to say they got to get there, ultimately we've got to get ratification at the community level.

So governments say well, when are we going to get there, our response in many, many cases is we're going to get there that way and we're telling you that if you go that way you will not get ratification at the community level so we've wasted 13 years of our time. And it forced governments to rethink the process by which they get there because otherwise we won't get it ratified.

The next thing I want to suggest is, it's my experience in this and I'm pretty adamant about this, we have to work to develop and maintain personal trust with one another at the table, if you do not trust the people on the other side you will not get there. It's that simple. You have to have a level of confidence and surety that when they tell you something there not lying, and when they tell you they will deliver something, they've got the capacity to deliver. You have to be cognizant and consciously work at maintaining trust.

From the Maa-nulth perspective and from my perspective that meant several things; if you give your personal commitment at the table, first of all, be clear as to what it is your committing to, put it on the record, state it in clear terms and make sure that the other side understands what it is you've committed to. Once you've made the commitment deliver on it, that's your word. You then have the right to expect that from the other side and if in either direction it does not work, your negotiations won't work, the trust breaks down.

Now there's the other point I think, in my own personal approach and everybody has different views on this. I strongly believe in treating those people that represent governments with respect. I do not believe you can go into these negotiations and personalize it or personally or verbally assault other people or attach to them personal motives and initiatives that are not warranted. This should not and cannot become a question of personalities.

I told you about one other proposition which is that, I don't believe it's in anybody's best interest to become preachy. This in fact is not a moral play. This is a negotiation about constructing future relationships and the moment either side brings in morality then the other side has the right to say well, we're morally superior, and you get into a debate that cannot be won.

Another point, if you take a position on any issue, fish, land, governments whatever it is, be prepared to explain the reasons for the position. Don't take a position for the sake of having a position. Be prepared to explain to the other side why you've got that position and why it's relevant to both ratification and to the long term advantages of the community.

I'll give you an example on that: in the treaty process the provincial government, five or six years ago, came to the table and said, governance isn't going to be in the treaty, we're going to do governance by way of a self-government agreement and we said no, no way, we don't believe in that. The ultimate propositions came down to if you take governance out of the treaty and governance is not a Section 35 right, we're not giving you legal certainty, we're not giving you one of those things that you say you need to make the treaty work. It took two and a half years to persuade the provincial government to take the self-government agreement off the table and put governance back into the treaty. I believe they did so at the end of the day because logic dictated that the only place you could put self-government was in the treaty.

I would encourage everybody at the table, and on all tables to recognize the skills of an impartial and an independent chairperson. Have somebody there that keeps the table from deviating into name calling or some of the more negative aspects and in this case we used Peter Colenbrander. He did an amazing job of saying, this is a civilized process and we're going to keep it that way.

When governments have positions on an issue, request those positions in writing, in advance and be prepared to do the same when they ask you what your positions are. When you've got them in writing it's easier to talk to them when you've got them at the table.

**Presenter: Daryn Leas**

Thank you. I'd like to talk a little bit this morning about experience in Yukon of negotiations, as well as implementation.

Just by a little bit of background, the Yukon First Nations are 14, 11 of them are self-governing. Our negotiations commenced formally in 1973. Of course Calder happened in 1973, but we also met with the prime minister and the minister of Indian Affairs in 1973 and requested that land claim negotiations commence in the Yukon, and they did.

Those negotiations, you know, lurched ahead and then stalled out, and then lurched ahead and eventually we reached an agreement principle in 1984. That was rejected. We went back to the table a couple of years later and finalized the Umbrella Final Agreement. In 1993 it was signed off.

The Umbrella Final Agreement is a territory-wide document that applies to First Nations. It sets out the parameters for the negotiation of land claim and self-government agreements. UFA was negotiated through a single entity, Council of Yukon Indians, on behalf of all Yukon First Nations people, along with the territorial government and the Government of Canada. It's interesting to look back to negotiations in the 1970's and 1980's and see a very diverse group come together under the Council of Yukon Indians and negotiate this agreement. We're talking about, as I said, 14 different communities, a handful of different cultural and language groups that comprise Tagish, Tlingit, Southern Tutchone, Northern Tutchone, Han and Gwitch'in people, Kaska, Upper Tanana, so it's a very diverse group. We're all Athabaskan people aside from the Tlingit people, but very distinctive communities. Nonetheless, people

were able to work together for this objective of realizing the treaty, to ensure that we had political and economic autonomy, that social conditions were rectified.

In 1993 when the UFA was signed off we had four of our 14 First Nations also signed off their agreements. Subsequent to that, seven other First Nations have finalized their agreements, and I was involved in the negotiation of three of those First Nation final and self-government agreements. The first was the Tr'ondek Hwech'in, my own First Nation in 1998, then the Ta'an Kwach'an Council final and self-government agreements in 2002, and the chief for Ta'an has joined us and I acknowledge her and subsequent to that, Carcross/Tagish, more recently in 2005.

One thing that we've learned is that once the negotiations are concluded for the treaty the negotiation process continues because that's really what implementation is all about in many, many ways. Under our agreements we have a series of other arrangements that we have to negotiate, new relationships we have to establish, administration of justice provisions, program and service transfer agreements so we're delivering, administering and managing specific programs, no longer DIAND. Obviously we have to negotiate fiscal arrangements through our financial transfer agreements. We have to negotiate tax arrangements and of course, from some of the people like, Richard Nerysoo and some of our technicians have been involved in implementation reviews nine or five or 10 years after the agreements have been finalized. Those unto themselves become negotiation processes and in addition to that there's the ongoing implementation of the agreement, land dispositions, approval of different permits, testing out and implementing the new provisions of the agreement to ensure that we have substantial input. So, it just seems to continue on.

And it really emphasizes to us, and I'll get back to this point later, the need to establish, following up what Gary was saying, an honourable, respectful negotiation table. They're difficult issues, they're complex, they're multi-party, it's a long time, people get tired of dealing with it. But the relationship that you establish with others, particularly with government, during those negotiations is going to carry over to your implementation. And it's very important that those relationships are strong, constructive, respectful, can withstand the stress of contentious discussion.

And probably that, from my experience, is one of the most difficult aspects of implementation. Because if you go through years, if not decades in some cases, of adversarial negotiations and then the next day you are working with the same people, you know, to implement it, and you're relying on them to continue to push their systems to ensure your deal is implemented, it can be challenging.

I want to talk a little bit about two types of relationships, and Gary touched on both, the internal relationships within First Nations during negotiations, as well as the external relationships with First Nations, governments and other entities. As I said and we all know this, the issues that are dealt with at the treaty table are complex, they're diverse. We do everything from self-government to tax, to land issues, to resource development. They're difficult and contentious, if they weren't we would have dealt with them a hundred years ago, they're tough issues. They're emotional issues for a lot of us because they touch the core of who we are, they affect our identity, and it's not easy to — I understand we have to rationalize to other governments but sometimes it's difficult to do that. And often other governments are not trying to be disrespectful, they're trying to understand and those discussions, as I said, can be difficult. They're multi-party negotiations, which also makes it difficult and they're protracted. It takes a long



time, people get frustrated because the longer it is, the more expensive it becomes for our First Nations, because we're of course borrowing money and paying interest and all those sorts of things.

During the course of the negotiations, obviously relationships are going to be strained, they're going to be tested, they're going to be broken, they're going to be renewed, and in some cases, new relationships are going to be established, because that essentially is what a treaty is all about. As Gary said, it's establishing new relationships with other governments, with the residents of Canada.

One of the things I have seen in Yukon is a certain amount of frustration within our own First Nations, following the ratification of the agreements. Some First Nations citizens have high, high expectations which they should have, and they expect that the results and the benefits of those treaties should be immediate and forthcoming, and it takes some time. There has been, in my view, substantial improvement in self-government communities in the Yukon in the 12 years or 10 years that those agreements have been implemented, but it's slow in coming. It takes time to change, you know, there's a paradigm shift that's happening and it takes time for that to take place.

How do you establish good relationships? We know that, it's obviously hard work. It's all about perseverance, patience, understanding and respect and having a real commitment to have a constructive working relationship. And we have to remember it's a two-way street, for us as well as for government.

I just want to talk a little bit about internal relationships because I found those probably more challenging during the negotiations than I found a relationship with government. I kind of knew where government was going to come from, I knew what their approach would be.

I found it challenging internally, and it shouldn't be a surprise in hindsight, but it was work that we, you know, we dealt with as we came along.

Of course, if you want a treaty that's going to have any sense of ownership of your community or within your community, if you want to have any sort of treaty that has a chance for ratification, it has to involve citizens. Grassroots people have to be involved. It can't be negotiated by elites in your community in isolation, it can't be negotiated by lawyers or consultants that aren't part of your community, you know, it has to be grassroots people involved. And not just sitting at the back of the room, but part of your caucus, engaged directly in the negotiations.

So what we've done in the communities I've been involved in, we've went out and invited people, not just put a sign up and said, hey, if you're interested in treaty negotiation issues come in and be involved. We've actually, in some cases went out and actively recruited people and said, we need your input, we need your perspective. In some cases those people didn't support the treaty process but their point of view was valid anyways.

So, we tried to have a caucus which was inclusive, on the understanding that nobody had a veto, you know, we wanted to hear everybody's point of view. But we had this objective that Gary spoke to, that there was an agreement that we were going to try to get the best deal we could under the mandates that were there and push the mandates, if we could and at the end of the day take that best deal that we could do and give it back to our citizens for them to review and make a decision about ratification.

So we weren't interested in having caucus discussion as to whether or not we're going to treaty or not, but how do we have the best or how do we get the best treaty possible that can

meet the best interests of this community. And that took a lot of time, and some of the communities I was involved in, strong personalities with extremely strong points of view. And it takes time; you have to invest in it, time wise.

And the last community that I was involved with, Carcross/Tagish we worked with our caucus probably, you know, in a concentrated fashion for 18 months before we really got engaged with government, and that was good, we needed to do that. It took a lot of time and in the end it benefited the process and it benefited the agreement that we negotiated.

I found in our discussions in caucus were probably — well they were, they were tougher than the discussions we had with government because, if you're going to put a position out there, as Gary said, you have to provide some rationalization for it. But when you're in a caucus, if somebody puts a position forward, you have to challenge it, you have to push people to really think it through and identify what the underlying interests were.

And I remember one of our caucus sessions, people will get frustrated and they would say, "God, Daryn, your worse than YTG," the territorial government. But you have to do that, you have to really push, not challenge people, but to really push things so that when we're at the table we can really articulate it and identify what the issues are.

Our negotiations teams, I found were very focused, we were prepared to make a decision, which is difficult in a lot of cases, and you can't underestimate that, but in the end that led to, as I said, a better deal and it led to a ratification process which was successful.

One of the last agreements I was involved in went through two ratification processes because their thresholds were extremely high. They needed 60 per cent of all their citizens over the age of 18 to vote 'yes.' Not 50 per cent, but 60 per

cent of everybody on the list, not just people that cast ballots. So you know we needed to get out there and ensure people understood the agreement. And it helped a lot in the second ratification vote that people who were involved in our caucus started speaking authoritatively to the community at meetings about their agreement. And because the first time around was a reliance on lawyers themselves to explain it and it didn't go so well because it wasn't my deal, it wasn't my deal. So the second time around I went to Europe for six weeks and said, see you later, don't bother me, it's your deal, you guys got to stand up in your community and tell people about it. And it passed, it made the difference because if that capacity wasn't there in the caucus and in the community the deal wouldn't have, wouldn't have been ratified in my view.

Also on the implementation side we're seeing an aggregation of efforts. There's a real need for First Nation groups to come together, formally or informally to start dealing with implementation issues. We've had some discussions throughout this conference about the national Land Claims Agreements Coalition, we've talked — I know my clients have talked — with the Nisga'a about working together on certain issues. It's an absolute. We need to work together on the implementation side. Because that's how we worked to get the agreement in the first place is by coming together, dealing with mandate issues that were national or territorial.

In the 1970's and 1980's we worked in the Yukon with groups across Canada and without doing that, we wouldn't have got the deal we were able to achieve. So on the implementation side we're starting to see that again, even though we have individual agreements, people are coming back together.

Now that's challenging for people because people say, "Hey, look we negotiated for 20 years for self-government, we're not going to delegate it or water that down by working with others."

But the reality is, you have to do it. Because the issues that we're dealing with in the Yukon are the same as the Gwich'in and the Nisga'a on financial issues, on review matters and we have to come together.

On the external relationships, Gary spoke a lot of this, about your relationships with government, and I concur with that. One thing I will point out — what we found is that external relationships also include establishing good relationships with municipalities and the general public. That will help the implementation as well as the negotiation process. We used industry and public groups to help deal with mandate issues by putting pressure on government. And that takes a lot of time, sometimes that's frustrating, it's hard work, but the more support you get for treaties and the more support you have in the broader public for treaty implementation, the greater benefit we're going to have.

In the Yukon initially there was heavy, heavy resistance to treaty negotiations in the 1970's. Today people see the value, I think, most people do. And that just comes through the hard work of education, education will enlighten most, but not all. But, you know, 80 per cent of the population is better than 20 per cent, making the effort makes a real difference.

Now I'll just close off by talking about some other stuff, but maybe some questions will arise on that. But just to re-emphasize that how you conduct yourself and carry out the negotiations is a real reflection in your community. And, if you can carry it out with honour and respect, even though they're tough issues, governments are going to support and I think work that much harder for you internally. You're going to develop those relationships, and that's going to benefit you in the long run on implementation.

I've seen it time and time again, from my experience in the Yukon. And again it's not easy work, its difficult work, particularly after an

adversarial process, to set that aside and say, let's now really work together as a team, which we probably were doing during the negotiations anyway. But it's worth it and it's going to help you.

Thank you very much. I look forward to your questions, because I know there's a lot of, a lot of experience in the room, so I look forward to discussion

**Presenter: John Bainbridge**

What I would like to do is just give you the benefit of hindsight that we have gained from six years of ongoing negotiations to update Nunavut's implementation plan.

When it started in 2001 — Nunavut has a number of advantages or apparent advantages that are not clearly available to any other groups. In the first place, there's one treaty and it covers one people within the bands of a single jurisdiction. So there's a certain simplicity to it. It has a fairly high national profile, most of the country's aware of Nunavut and more or less how it came about. It also has some international recognition.

Those two things together give Nunavut access to some fairly high levels of government, so, that throughout the negotiation we had meetings with the minister of DIAND, we had regular meetings with the deputy minister and we also gained access to the prime minister's office and the privy council office.

The other advantage that we had was that NTI is very well resourced and could enter this negotiation and stay in it for the long haul. So although it started in 2001 it has not yet finished, it's now in litigation. Despite all of these advantages that Nunavut had, we started off the negotiation with some very low level officials and it was clear from the start that movement was going to be extremely difficult.

When we approached the negotiation we looked at the existing implementation contract and went through all of the assumptions that had been made back in 1993, when the treaty was first signed. Those costing assumptions that were made back then were no more than that, they were assumptions they were best guesses of what implementing the claim would cost. When we went through it with the benefit of 10 years of experience, we came up with some radically different figures. Nevertheless, the federal government came into the negotiation determined only to increase the funding by three to four percent to cover what they figured were inflationary increases. We came to the table with a tenfold increase as our basic demand and significant other demands.

So right off the bat we were miles apart. The federal government was extremely cagey about when it was going to get its mandate. It did not want to discuss with us the content of its mandate and when it finally got its mandate it simply was no basis for a successful negotiation.

So right off the bat we were confronted with a federal government that was very powerful, held apparently all the cards; and our first significant challenge was to come up with a strategy for readdressing the balance. And the principal thing that we did, the most important thing was to broaden the base or the scope of the negotiation, we realized we would make very little movement at the table that we had to go outside of the table and bring pressure down on the table from various outside powers.

So, in doing that the first thing that we felt was essential to do was to re-examine our negotiating proposals and fully understand them and reword them in a way that would simplify them and make them saleable to other organizations, to other departments, to the public, to other NGO's,

to anybody that we felt could form an opinion that might be influential on the federal government. So it was essential to make sure it was simple, but we also realized we had to present the proposal in a way that the government would be the winner in a successful negotiation. This was – could not be coming to the table with a list of grievances, it had to be, if we can succeed here the Canadian government will benefit in a number of ways.

And the second thing, in order to do this, we brought in outside help. Price Waterhouse Coopers was the main one; we got them to do various economic impact studies for us. That was an extremely useful thing. These people were extremely expert in the area of costing things out, and understanding what implementation might cost. And they came up with reports for us that gave us insights into implementation that we had completely missed. And they were extremely valuable when it came to our communication strategy with the media. We were able to point to solid organizations like Price Waterhouse Coopers and say, this is what they say, and their opinions carried weight.

The second important thing that we did was to attempt to work outside of the negotiation table with the department of Indian Affairs to get them to revise their mandate or reconsider the mandate. That was a long, ongoing process that lasted more than three years. The third point we felt was important was to train the negotiating team in how to negotiate. There is nothing inherent in someone being a lawyer or a politician that gives them some peculiar talents to negotiate, it's a learned skill. And what NTI did was send several members of the team to the Kennedy School of Administration at Harvard University to take the course on strategic public sector negotiations. And I cannot emphasize how useful that was.

Another thing we did was when we realized, when we had our first few meetings with the federal negotiator and realized how difficult this was going to be, we made an assumption that probably, it's going to end in an impasse. And in that case we — when the negotiations broke down, we wanted to be in possession of the moral high ground.

In other words if anyone's going to walk from the table, it was not going to be us, it was going to be the federal government, so that we would always be able to place them in the wrong. This is in fact what happened. We then engaged in a serious media strategy, we got the Auditor General of Canada involved, we gave an access to information request demanding information through that process from the federal government. That didn't get us anything — answers, straight answers to our questions but it did enormously irritate the federal bureaucracy and it gave us some insight into a whole lot of other issues that we didn't even ask questions about.

Finally, through relationships we'd cultivated in the federal government, and we found an awful lot of sympathy within the federal government, especially in other federal departments, we were able to get access to the prime minister's office and meet with some of the prime minister's aides and more importantly, we got into the privy council office at the time when Martin was prime minister and he set up a special aboriginal affairs committee in the PMO. This was extremely useful, too.

Finally because Nunavut had some international recognition we went overseas to various international meetings, like Commonwealth Institute Policy meeting in London. We went to Ghana. We tried to build some relationships with other aboriginal groups in other countries where Canadian companies were engaged in forestry and generally causing harm to aboriginal people overseas.

Every time we did that somebody from DFIA or external affairs would be at the meeting taking notes, and it was clear to us that this was another route to get a message back to the federal government. And very quickly we also got involved in mediation with Thomas Berger as the mediator. This was immensely useful. There is no substitute for a sound objective third party coming in and giving their opinion, especially if it carries a lot of weight, such as his did.

Finally, there was litigation, we are in litigation right now; we used litigation and the threat of it for several years, constantly ratcheting up the tension on that. It caused a good deal of worry within various departments. It was a useful tool, but the one thing I think that may not be useful is if it actually ends — gets into court. As a strategy for putting pressure on, it has some merit, but to actually go into court and leave it up to a judge to make a decision may not be terribly useful.

# Workshop Session: *Ratification — best practices*

The three First Nations presenting in this workshop have diverse experiences with ratification. The five Maa-nulth First Nations successfully ratified their final agreements just last month and will share their story and some of the materials and strategies they used to communicate with community members that helped their vote be a success. The Lheidli T'enneh voted down their final agreement in March and in cooperation with the Treaty Commission undertook a post-vote analysis with their leaders and community members; findings from that research will be presented here. For the Westbank First Nation, a third vote was required to ratify their self government agreement. A change in the voting requirements of Canada and learning from their experience with previous ratification attempts eventually culminated in a successful vote in May 2003.

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## Presenters:

Mischa Menzer, Westbank First Nation  
Marvin George, Lheidli T'enneh  
Vi Mundy & Trudy Warner,  
Maa-nulth First Nations  
Eva Clayton, Nisga'a Nation

## Presenter: Mischa Menzer

Tim [Raybould] couldn't be here. Tim is the chief negotiator for Westbank First Nation on the self-government negotiations and the treaty negotiations. And I've been legal counsel to Westbank on both self-government and treaty. So I agreed to fill in for him this morning to come and talk a little bit about the ratification process Westbank went through.

I don't know if there's anything symbolic that I'm the first [presenter]; if we're moving from self-government to treaty as we go through these discussions, but perhaps it's a fitting place to start.

For those of you who may not know Westbank First Nation is a First Nation in the Okanagan Valley, and they're the only First Nation in Canada with what I like to call a free standing self-government agreement. It's not tied to a land claim and it's not tied to any local government model.

This agreement was negotiated bilaterally with Canada over a period of about 13 years beginning in 1989. And the final agreement was initialled by the negotiators in 2000. It was ratified by the membership of Westbank in May 2003. It was ratified by Canada through an act of parliament in 2004, and came into force on April 1, 2005.

So, since April 1, 2005, Westbank First Nation has been self-governing. [The agreement] covers only the reserve lands. It's not a treaty. And there are three basic components: there's the self-government agreement which is a comprehensive self-government agreement; there's Westbank's constitution, which sets out the governance structure and the core elements such as the citizenship or membership rules and land rules; and finally, the legislation itself, which is short legislation to bringing the agreement into force.

There are two areas I want to talk about. First, the lessons that were learned by Westbank through the ratification of its self-government agreement. And secondly, some of the models of ratification that are currently there.



I've given you a bit of background; Westbank began the self-government initiatives in the early 70's by trying to assume more control over its land management and passage of bylaws even within the limited powers under the *Indian Act*. They began collecting property taxes in 1991, and Westbank's first major move involved a ratification process in 2003, when it enacted a land code under the *First Nations Land Management Act*. That's a piece of federal legislation that facilitates a First Nations exercise of jurisdiction and gains recognition for that over its lands. And that was ratified by the membership in 2003.

The next step, as I indicated, was the ratification of the self-government agreement in 2003. The self-government agreement implements self-government based on the recognition of the inherent right of self-government. And it's unique in that it's really the first time that there's been such a clear recognition by Canada in an agreement, and I think that's very beneficial.

As indicated, it is a bilateral agreement. British Columbia was not a party, although there was consultation — the C word — with British Columbia. It's interesting to have consultation going the other way, with British Columbia when the agreement was finalized and before it went to ratification.

The agreement is not a treaty, it's without prejudice to treaty or the positions that any party may take in a treaty. So that's really the background [and] hopefully it gives a bit of context for discussion on ratification, which is really the topic for today's workshop.

So the first comment or question I want to look at, is how high should the bar be set? And I think this is a really important issue because, if the bar is set too high you may never achieve ratification. Not because it's not a good agreement, not because the majority of the membership don't support it, simply because it may be too difficult to reach that bar.

In Westbank we learned the hard way. It took three votes to conclude the self-government agreement. The ratification process — and all this is available (the Westbank Self-Government Agreement) on the website at [wfn.ca](http://wfn.ca) under intergovernmental affairs. Follow the links.

The ratification process didn't change from the AIP to final agreement. It was ratified by members, all members voted, there was not a residency requirement. There was a ratification committee, and a lot of this will sound familiar to those working in the treaty field on the issue of ratification. The committee was a joint committee (one representative from Westbank, one from Canada and one jointly selected) and it prepared a voters list.

All those on the voters list were 18 years of age or older as of the date of the vote. And where there was no current address available and we were not able to locate someone, they were not included on the voters list. And this has some significance: the voters list is obviously very important because that's the measure against which you will look at whether ratification has been achieved.

The process called the usual kind of procedures of having voters lists posted and people can be added or removed based on new information received. There were a series of information meetings required to be held in the community about the ratification process and notification of the vote.

The voting process itself provided for an advanced vote. It also allowed for mail-in ballots. So it seemed to be as comprehensive as possible, and to really not exclude anyone who did want to vote. It was a secret ballot.

The approval level, and this is one of the issues that came up, was 50% plus one of all eligible voters. [That's] what's called an absolute majority.

So if the membership is 500, you would need 251 yes votes for the agreement to be ratified. So that's the essence of how the process worked.

The first vote was held in 2001 and there were 412 voters and 320 of those voted, and of those who voted, 191 said yes, and 129 said no. 78% of the members actually voted, so there was a strong turnout. What that translates to is that 60% of the members who voted supported the self-government agreement and constitution.

However, when you looked at whether the absolute majority was attained, they fell short by 19 votes. So 46% of the total electorate supported it, and 60% of those who voted supported it, but they fell short of the absolute majority.

There was a poll done of the membership afterwards to see if they wanted to have a second vote and several community meetings. The self-government agreement was not changed, but there was support for a second vote.

After a series of further meetings — and those of you who've been through processes know that it's a slow process and community education is challenging — it was felt that more information needed to be available to the members. So a second vote was held under the same ratification rules a year later in 2002. And in that vote, again a strong turnout. Of 418 eligible voters, 335 turned out, 208 supported the agreement, 127 said no. The absolute majority level was 210.

Two votes. For most of you who are involved in these negotiations, you can imagine the feeling in the community [after] 13 years having probably the biggest decision to make and [it being] a matter of two votes. 49.8% supported self-government of the total electorate, of those who voted 62% said yes. So again, still a strong turnout of 80%. 62% supporting it, but [the vote] fell 0.2% short of the required level.

The end of the story is that [the agreement] went back to the table with Canada. We looked at what was going on in the community. The self-government agreement was not changed. Canada had in the interim a policy change, and I'll talk about that, to where the ratification level, from their perspective was no longer required to be an absolute majority. And they looked at what was called a double majority, which I'll explain.

A double majority is when you have a vote, you have to have 50% of your electorate participate in the vote. So if you have 500 eligible voters, you need to have 251 ballots cast. Then of those who vote a simply majority would carry the vote. And the self-government agreement was amended, the ratification procedure to provide for that and the third vote was held. And in the third vote that was held, similar, similar numbers, which I don't have here but I think they were similar. It was about 65% supported it. The numbers were virtually the same if not a little higher and achieved the ratification and the self-government agreement was implemented.

So, Westbank's experience has shown that setting it as an absolute majority may have been too high, for a variety of reasons. As I've indicated in all three votes, over 60% of those who voted supported self-government and over 45% of the total electorate supported self-government.

So why was it so difficult, and why do we feel the bar may have been too high. First is the voters list is — it isn't perfect. The voters list is done at a point in time. Everybody does their best, but we faced examples where people who had died were still on the voters list. There were two or three mentally incompetent individuals. And effectively what happens is, if these people are on the list, with an absolute majority, they are deemed to have voted no. It's not as if they don't vote, and they're not counted. [If they don't vote], they constitute a no vote.

And in the second ratification it was a matter of two votes. And that was one of the reasons Canada agreed to recognize a third ratification vote. Westbank actually retained someone to go find people, because if you couldn't reach people they effectively voted no, and that's not really a fair process.

The second element is it's not easy to get the vote out. A lot of you know what it's like getting people to come to meetings. To get the vote out is very difficult and when you're dealing again with an absolute majority, those who don't come through apathy are effectively saying no. And Westbank had people who lived in the United States, who lived in Argentina, who lived in England and mail-in ballots worked.

But mail-in ballots are a little more complex and not everybody is prepared to work through it. Even with repeated phone calls and pursuing them, it was very difficult to get the vote out.

The third thing I want to say about an absolute majority is that really in most advanced democracies this isn't a level that's used. It's unrealistic to expect turnouts of a high enough nature to get that. If we look, and I don't have the statistics for Canada, but generally in Canadian elections the turnout is nowhere near the type of turnout that we had in the ratification vote. We still fell short.

In most liberal democracies, change is carried out by a majority of those who participate in the process. When Westbank conducted a survey, the members were supportive of this approach, with the idea of a threshold.

In other words, a minimum of 25% plus one of the total electorate had to say yes. And that was the balance that was achieved.

And this double majority is a mechanism that's used, for example, in the *First Nations Land Management Act* where First Nations can establish a written land code to get out of the

*Indian Act*, and that has to be ratified by its members. And in that example a double majority with a minimum of 25% voting yes, is what's used essentially.

So, each community will decide its own ratification process, but these are some of the concerns [based on] the experience that we had with an absolute majority, and it's something to look at.

So at the end of the day, there were three votes and each time well over a majority of those who participated supported the self-government agreement. The other comment that I want to make is not so much about the Westbank's [ratification] process, but Westbank's treaty negotiations. We're looking at ratification [for treaty] as well. And the issues in treaty of course are different than when you're dealing with self-government or reserve issues. But there was something that struck me that I did want to raise and for people to think about in terms of the ratification process and the approach in the modern treaties.

And the issue I'm thinking about goes like this: under the *Indian Act*, reserve lands are held for the use and benefit of the First Nations of the band for who they're set aside. And if that is going to change whether through surrender or a designation process, there has to be a vote of the members of the band, we'll use old terminology, *Indian Act* terminology for the moment.

When I look at the treaty ratification procedures essentially it calls for a simple majority of eligible voters. So it does call for an absolute majority. But there's an enrolment procedure. In other words you have to enrol and then those who are enrolled are entitled to vote.

The group that is entitled to vote however, is potentially much larger than the existing band membership of the First Nation or the collective group of First Nations voting on a treaty. And in the Nisga'a case or in Tsawwassen and I think

Maa-nulth, it includes all the existing members of the band. [And this is] a larger category of those with ancestry and those who may be adopted or descendants of that larger group.

Under the *Indian Act* to make a fundamental change with respect to the status reserve lands you need a majority vote of members. Under the treaty to make this fundamental change you do need a majority vote, but the group voting is much larger than members. So conceivably you could have, if someone did an analysis or a potential analysis of a vote, the group voting to change the fundamental status of reserve lands is a different group and a larger group and perhaps not the group that could do so, if they want to change it under the *Indian Act*.

I've raised this question at our treaty table [because] it is an issue that concerns me and I'm curious about. I'm simply raising it today because [at] many tables one of the main issues involves the change of the status of the existing reserve lands from 91(24) to a different category of lands.

I think ratification is really a critical question. You assume it's easy until you start doing it. And, it really is important because, really, the will of the people has to be heard and if you have a ratification process that doesn't allow for that to happen or creates barriers to that happening, then you're not really filling your role as negotiators, as leaders and you're not truly respecting your process of negotiation. So, thank you again.

**Presenter: Marvin George**

I will talk about the Lheidli experience. Many of you are aware that our ratification vote was not successful. We don't see it as a failure, we just see it as an incomplete project. I want to bring you through some important timelines to the ratification vote and what's come out of it since then and where we're at right now. As I mentioned I started working with the Lheidli

T'enneh back in 1999, they were already at stage 4. And we met with the Community Treaty Council which was made up of family representatives from the nation. We met with them every Tuesday to seek direction and advice on table issues, to advise them of any changes that were made to any paragraphs within any chapters.

On July 26, 2003 the agreement in principle was signed and we were at stage 5. October 29, 2006 the chief negotiators advised that they had reached the end of their mandate, that the final agreement should go to the table and it was initialled in Prince George at the Prince George Civic Centre. There was a big banquet there; there was lots of pride and joy amongst all the people that we had finally reached a stage.

We started our first round of community consultations. In November we met in Prince Rupert and in Mission, December in Quesnel, January in Prince George and February again in Vancouver, Prince Rupert and then Kelowna.

The information package that we delivered at the time was the introduction, important timelines in our treaty process. The vision and strategic goals that were developed by the Lheidli T'enneh in that to demonstrate that we had met all the goals that were established.

We touched on the treaty, the important building blocks of the treaty, self-government, lands, resource, and fiscal relations and the Lheidli T'enneh constitution, the eligibility enrolment process and the ratification process.

During our round of community consultations there were other issues that arose. One is the band election. Lheidli was in a position for new elections and nominations for chief and council happened in January, and in March when we were looking at ratification dates, band elections were held.

And as I complete my presentation you will see how these issues affected the outcome of the process. The ratification vote dates were determined by the community and with the assistance of the office and we wanted to ensure that we could meet the legislative objectives of the province and the federal government. When the province was in legislature we had hoped that our agreement would have been ratified and it would be in there. So that's the dates — that was the reason for us choosing the dates that we did.

The dates were determined, and the advance polls were held in Prince George on March 17, 2007 and polls were in Prince Rupert on March 27, and Vancouver March 28, and in Prince George on the 29th and the 30th. The results of the votes, you know that we already failed. We had 273 eligible voters, of the 273, 234 voted, 111 voted yes and 123 voted no. So we didn't meet the 50% threshold that was identified in the final agreement. And the community had identified a larger threshold that they wanted us to meet; 70%, we didn't meet that either.

So now it was decision time for the community. There were two options, stay in the treaty process or withdraw from the treaty process. At about this time the BC Treaty Commission came forward and offered to do an analysis of the ratification vote, why it failed. On April 29 there was a community meeting and the idea of this community meeting was to deal with two issues, one to get a mandate to continue on the process or to abandon it and a decision to allow the analysis. They had agreed that the BC Treaty Commission should do the analysis of why the ratification vote failed, but there is no decision on a mandate to stay or withdraw from the process.

So we had to have another meeting. May 27 we got the community together again and we looked at all of the issues that were identified in the media about why it failed. It would have passed if the membership received some compensation, some money. There was no

road map to ensure financial accountability, not enough land, no traditional governance in the final agreement.

So we spoke to all that in this meeting. We came up with a plan to not just give money, but compensate for loss of Section 87 which is the income tax. So we had agreed that we would provide every member with \$3,000 and all of the elders over the age of 55, \$5,000 for compensating for losing Section 87.

We ran through the final agreement and the constitution and identified all the clauses that ensured there was financial accountability. We looked at the land and provided a value of the land within the City of Prince George, a potential value to develop those lands and the value. Even though the value of the assets at the time were something like \$80 million, the value to developing those parcels far exceeded that. So even though the numbers were low, we owned 30 hectares, but we still used the rest of the territory.

No traditional governance, we pointed out that the final agreement didn't have to change; only the one clause in the constitution had to change to reflect that. At this meeting, because we had agreed to compensate for loss of Section 87 and we spoke to the issues that were identified in the media, we had 100% support to continue on in the treaty process. And a lot of the people that were there that were naysayers, that voted no, agreed, yes we should stay in the process.

At this time BC and Canada indicated that the assets were intact until March 31, 2008. So we were working towards that date. We got to get this thing ratified. We worked with — as I mentioned the BC Treaty Commission came forward and said they wanted to do an analysis of why the ratification vote failed, so we worked with them to develop the questions that would



ensure that we got the answers that we needed. And we identified people that the BC Treaty Commission could speak to, one on one, that knew the process that we went through.

So, on July 20 the BC Treaty Commission and the Mustel Research Group presented their findings to the chief and council at the treaty office. Out of this analysis that they did they also came up with some best practices scenarios. We had agreed that this particular outcome of the analysis could be made available to other First Nations and it was made available to the Maa-nulth, Tsawwassen but the findings of the analysis itself could not be made public until we had met with our members.

So on September 23 there was a general community meeting, and the Mustel Research Group presented their findings, the analysis of the ratification vote. BC and Canada were there as observers. And we made every attempt to get everybody that was on the official voters list there to Prince George to hear what the outcome of the analysis was. And the message at the time was the community is divided, and it remains divided. Issues now are readiness and capacity.

After that meeting on the next Tuesday after that, there was a tripartite conference between Lheidli, BC, and Canada and because it's the observers there, there's an understanding now that it's not, not enough land, not enough this, not enough that but it's more an issue of readiness and capacity. BC and Canada have now extended their date and are working with Lheidli T'enneh to develop a capacity plan that will ensure that Lheidli has — Lheidli is ready on the effective date.

As I mentioned out of this analysis comes some best practices and I will touch on these. Conduct a membership vote on the agreement in principle; this is the outcome, I'm not saying I totally agree with the outcomes because there's double edged swords here.

Start early to provide treaty information to engaged members. And we did that every Tuesday we met with the community. And these credible champions from within — from and within the community to lead the process, and we thought we had that.

Enlist elders and youth from the community as spokesperson on issues. We had a Youth Treaty Council that we also met with every Thursday to advise them on the progress that we we're making on the treaty. Use a variety of communication tools. Good feedback from members is essential, focus on what is important to the members and leave no questions unanswered, treat off-reserve members as a distinct audience, make enrolment and voting easy to members and, where necessary, address trust issues arising from the *Indian Act* election process.

As I mentioned there was some issues that came forward when we were doing our community consultation, the elections for chief and council. Because some didn't want to come right out and say that they were in support of the treaty process as their platform, we didn't have the political will behind us because of the *Indian Act* elections that were happening at the time.

So there are practices also to avoid during ratification. Do not hold band elections, or major initiatives other than — other referendums during right up to the vote because they impact on what's happening. Do not hold a vote when it could conflict with other events or activities. Do not hold a ratification vote before members are ready. Do not ignore voices, whether members or not who oppose a treaty. And do not alienate members who oppose a treaty but work harder to include them in the conversations about the treaty. Do not interpret silence as consent. Do not send members the entire treaty and its appendices unless there is a member there to



explain it and they specifically request a copy. Address member's issues and concerns first. And do not rely solely on the negotiators to explain or defend the treaty.

During February when we were doing our community consultation we had sent out packages, information packages, to all of the members that were on the official voters list. The information packages included shiny pamphlets developed by BC, Lheidli, and Canada that clearly articulated what was in all of the chapters. There was the final agreement, plain English version of the final agreement plus questions and answers at the end of each chapter. And we canvassed the community members on questions that they had regarding the chapters and we'd write answers to those, all of the side agreements and the appendices to the treaty.

So those people who became eligible to enrol and became members or eligible to vote all of a sudden got these big packages of information — legalese. And, it was a lot of information to absorb at one time.

The problem, eligibility and enrolment happen after the final agreement, and a lot of these people were not aware that they were eligible. If we knew that they were eligible to vote in the final agreement, this information would have gone to them earlier, in those bite size chunks that the recommendations say that we should give the information out in.

So I just wanted to provide our experience to you. It is not a failed process as I mentioned. Lheidli, BC, and Canada are working hard on the vote and implementation plan, capacity plan to ensure Lheidli is ready. And when we have the support of the chief and council, full support we will go back to the community and seek another ratification date. And with the full support of the chief and council behind us we feel that we can get ratification.

**Presenters: Vi Mundy and Trudy Warner**

Just to give you a little bit of a background of how we got started, the Maa-nulth Treaty Society was formed in 2002 and is comprised of the five First Nations within the Nuu-chah-nulth territories on Vancouver Island. After years of negotiating with the Province of BC and the Government of Canada the Maa-nulth Final Agreement was initialled on December 11, 2006. This signified the end of treaty negotiations and introduced a spectacle of treaty communications under which we lived for the past 11 months.

Now that a majority of our membership has voted in favour of the treaty, I am honoured to be here with you today to share the Maa-nulth perspective and our best practices. I think it is the goal of everyone here to better understand how we as First Nations can move forward and make the best of a system that has never worked before in our favour.

I think it is the goal of everyone here to — collectively we are regaining our strength as leaders and now are in a position to heal the wounds of the past and to weave our people back into the fabric of society. Our youth are getting smarter. Everywhere I go within the First Nations community I see healthy and vibrant young people getting involved with all of the important issues, issues that'll have a positive impact on our people for generations to come.

The singularity of the experience has already inspired a lot of our people to re-examine their identity as Ucluelet, and look to the possibility of real change and progress for our people. The ratification process created a wave of interest, opposition, controversy amongst our people. But it also electrified the voters and propelled our ratification teams into a state of permanent overdrive, with frequent seven-day work weeks and substantial travel, in order to be inclusive of our large populations living away from home.

Today we'd like to highlight some of our most successful initiatives for you, with the hope that you might benefit from our experience.

I'll turn it over to Trudy.

TRUDY WARNER: Good morning ladies and gentlemen. It's my pleasure to be here to share a little bit of about our experience. My name is Trudy Warner, I'm a member of the Huu-ay-aht First Nation, which is one of the five First Nations as Vi explained, that negotiated the Maa-nulth treaty. I worked for my First Nation for over 11 years and started out as the treaty office secretary and worked on various projects. I was an assistant to our constitution committee, so I went out and visited all our community members and received input from them on how they envisioned our constitution to be written.

My job right now is the communications coordinator for all five [First Nations]. So some of the things that the five tribes do together, we do collectively. And because there's no central government for Maa-nulth, there's five separate governments, five different tribes, five constitutions. What I basically do is I facilitate cooperation and how we can work together on common things.

So, I'm just here to share some of the highlights of our ratification experience, in point form. And hopefully I won't take too long because I think it's more appropriate for you to ask questions and then we can make sure that we answer what you're looking for.

What I'm going to provide to you today is take what your gut tells you would work for your nation. And of course, it's up to your people to decide how best it is for you to communicate to them. Like Vi said it's such a complex document, it's really, really intimidating. We live and breathe this stuff, but our members don't, and we always have to keep that in mind. Your membership's

going to be your best gauge, they'll tell you if and when they're ready to vote. And it's always good to have a goal, it's always good to have a plan, you have to take so many things into consideration when you set voting dates, or target dates for your ratification process. But until your membership is ready, it's not going to fly.

People just want to be heard. I assisted my nation's constitution committee and visited our members house by house, and what I found very early on is that people just want to be heard. I went there with a questionnaire and I was trying to seek their direction on how we're going to structure this highest law in our nation called our constitution, and 90% of my visit was just listening to our members vent and it's not what I was there for. But I needed to just listen to them and bring that back to our leadership. And that was the start of the healing process in our nation because until people feel like they're heard, you're not going to get this information — it's not going to penetrate them. So, I thought that was a really, really important thing to recognize very early on.

Before I get into some of the suggestions, I also want to point out that my nation's chief and council didn't agree to initial the final agreement until they had the full support of our Hawih. So when our negotiators came to a time where they thought we're at the end, we have a good agreement, they brought that to our hereditary chiefs. And it took some time for the hereditary chiefs to all agree that, and understand what was happening, and until they gave their full support our nation didn't initial the final agreement. And so our leadership thought that was a good way to show the community that our hereditary system supports this change in marrying our hereditary with this modern agreement, and that was really important.

So, one of the things the five tribes did right off the bat, when we concluded our negotiations we submitted a proposal for funding to tackle the

communication section. Our communication phase, I guess. I want to point out, please don't underestimate the amount of funding that will be required to undertake this project, it's so huge, don't underestimate how many human resources you're going to need.

Each nation started off with one communication worker and I think the Huu-ay-aht First Nation ended up with 15 at the end. So that was our first step, we made a proposal for funding. The next step that we took was, we established a relationship with a communication expert — his name is Tewanee Joseph — and we gathered people for a communications strategy. And so this strategy included leadership, both hereditary leadership and elected leadership. It involved all staff, all of the negotiators, all the technical people, key community people and anyone else that was interested.

Participating in a communication strategy allowed team members to contribute ideas. It built ownership and emphasized that everyone on the project was a communicator, whether they answer the phone or speak at a community meeting. So everybody needed to be on the same page right from the get go. Our negotiators weren't negotiators anymore, they were now communicators. And so everything that had taken place for the past 14 years, we needed to update our staff. Our staff are our front line people, they answer the phone, so if they don't know what's going on it doesn't look good for the organization or for what our common goal is.

So, one of the things, I have a couple of things here to share with you, a couple of materials. I have a PowerPoint presentation that I printed off on how to create a strategy and then I also have our strategy to share with you, and I'll just pass that around.

We ensured that we kept the flexibility in this strategy to amend it if we got a couple of months into it and our membership said, hey

you guys, you know, what about this? So we came back and we regrouped and we identified a few things that we missed, so we just kept that open. So some of the things that we identified in this strategy - and this was our bible. We made this, we went through several drafts and finally we became comfortable to call it a final. And this document contains how we're going to communicate this really complex document to our membership. We had community meetings, information sessions, we identified home visits, youth groups, elder groups, staff meetings, telephone campaigns, how we were going to keep our website updated and members updated through that, and how we were going to prepare our written materials.

Our written materials right off the bat, our communication expert advised us to brand things. So that's what we did, we made every bulletin look the same and that was establishing trust with our membership. So what I'm going to pass out here, everything is branded. This is what we shared as a collective, in addition to this, each of the five nations produced more materials that were just relevant to their nation.

In addition to that, the provincial government was generous enough to provide the funding for each of the five First Nations to have a video made of their nation. So, I think that was really, really helpful, it was useful in community gatherings, copies could be made for heads of households and that kind of thing.

Another really, really important step on our ratification journey was the trip that the provincial government sponsored for us to visit the Nisga'a government. That was a really, really wonderful experience for our people. We're very strategic in how we selected who was going to go on that trip. And we had such tremendous feedback from all of our membership, from all of our leadership. There wasn't anyone on our trip, whether it was the chief councillor or a member that didn't learn something from that.

Because that's what we were there for to learn from their experience. They are a little bit ahead and so, even our leadership found it very, very useful and just a really eye opening experience.

I remember being on the bus and they described that the road that we were travelling on used to be a gravel road until they decided they could change it. And it reminded me of where I'm from, which you have to get to by a gravel road, it takes an hour and a half. And it was just a simple statement from one of their tour guides that they had the ability to do that because they are a government now.

So the whole trip was wonderful. The nation pride that they show just in their dancers, like the dancing and the cultural entertainment was probably the biggest hit, and such a humbling healing experience. So visiting their nation has provided huge rewards for everybody in all of our communities.

I also want to point out the five nations chose to have two separate votes. We voted on our constitutions first, and because of that we were able to take what we learned from that vote and what we did well, and what we could have improved on and put that towards our treaty vote. So, that was something really smart I feel that we did.

You heard one of the earlier speakers talk about the importance of eligibility and enrolment and how much time that takes, because your enrolment numbers are your gauge. If you have 200 people enrolled but you can only find 100 of them, this is not a good thing. So the amount of time the ratification committee and the eligibility enrolment committees spent on preparing for the vote is astronomical. I couldn't believe how much effort we had to put into that. And we're in the same boat as many of you, no one taught us how to do this, you're thrown in, you either sink or swim. And, like I said, you take what we have to suggest to you and if your gut

tells you, hey that's sounds like a good idea, let's try that. The rest kick to the curb and then follow your instincts and what your gut says and follow what your memberships say. Because they're our bosses, you know. No matter what the negotiators say, no matter what the provincial, federal government say, of how good of a deal this is to them, if the membership doesn't support it, there's no point in anything that people have done for the past hundred plus years. People have been doing this for a long time. It's only called treaty today.

So, that's something that our leadership reminded our membership of. And the opening remarks of many of our membership information sessions are the negotiators that are sitting here presenting didn't just decide we are going to go negotiate. My tribe's membership actually gave instructions and formed our negotiating team and so they were mandated and our leadership, or sorry, our membership voted on the AIP and so that was instruction to go ahead and keep negotiating. Our Hawiuh, you know, approved the final agreement which allowed the chief and council to actually initial.

All of the direction all of the way has been from the membership. And this is not just one or five people thinking that they have an understanding of these intricate details and legal concepts and big words that happen in a negotiating room. It's the membership who has to support it, and ours did so. I was grateful that our leadership recognized that a long time ago, and it made our communication job much easier.

That's all I have to share. I don't now if there is anything I want to add.

VI MUNDY: Just in the way of communication strategy. For our tribe, what we had was family meetings. At the largest family meeting we had there were 65 people. And there were anywhere from 65 members of that family to, I think the

lowest was 40 members. So we found that that was very successful in providing a forum for the families to ask questions.

Each family had a different question for us, so we provided the resources from the Maa-nulth society, whether it was taxation or fisheries, they always told us what they wanted to hear or discuss in that family meeting. So I believe that was one of our strongest communication strategies for our tribe was to have those family meetings.

So and after the family meeting was over with what we would do is we would put it in a written form and put it in a bulletin form so that everybody saw what was discussed and heard. And it brought more understanding, too, because we broken it down, you know, by topic. Every family member had a different topic, so we weren't always dealing with fisheries or taxation.

So once they got the information out that way, which was our strategy to get it out to the people is so that they weren't asking the same questions over and over. So that was the strategy that worked for our tribe.

And we're 60% off reserve, so it was a lot of work for us to do that, to go out and meet them. And we actually went out to meet them. And wherever they lived the next highest population for Ucluelet is Port Alberni and then Nanaimo, Victoria and Vancouver, so we made arrangements to have meetings actually, in those little towns as well. So it was a lot of work, but we were glad we did it and we made contact with a lot of members that have never, ever been home. We've got second, third, fourth generations that have never lived in Ucluelet much less know where it is. So it was really good to make that connection with them. We've got really strong ties now with our people that are living away from home.

**Presenter: Eva Clayton**

Thank you to the panel members, now if I may, I'd like to share the Nisga'a experience with the ratification process of the Nisga'a Treaty.

First of all for the information of the delegates and attendees, I served as the chairperson of the Nisga'a Ratification Committee. I want to qualify my statements with the fact and to recognize that every First Nation is unique in its own way. We all have the same principles in terms of getting our treaties ratified, but how we do that, we are so unique. But it's always good to share with one another our experiences because we'll always be learning from one another.

The Nisga'a Tribal Council in 1998, July 1998 appointed what we call the Nisga'a Ratification Committee. The ratification committee had a timeline from July 1998 to November 1998 to take a look at getting the final agreement ratified. And it was within the interests and within the political arena of the Nisga'a tribal council back then. They took a look at the political climate in terms of the ratification process.

The Nisga'a ratification process is identified in Chapter 22 of the Nisga'a Final Agreement. It is agreed upon by the three parties, each of the three parties, Canada, BC, and the Nisga'a each had steps to carry out in order to get the treaty ratified. The Nisga'a Ratification Committee was appointed by the tribal council to govern the administration of the referendum required to ratify the Nisga'a Final Agreement, which I'll from here on refer to as the treaty.

Membership of the committee was comprised of seven plus two. The four communities within the Nass Valley and the three urban areas were represented on the committee plus two, Canada and BC they each had a seat on the Nisga'a Ratification Committee.



It's important to note that the committee functioned independently of the Nisga'a Tribal Council. It had to function independently of the Nisga'a Tribal Council because the tribal council negotiated the final agreement. Furthermore, the tribal council developed and adopted the rules that the ratification committee had to carry out.

The responsibilities of the Nisga'a Ratification Committee included compiling a list of eligible voters, enforcing the rules, providing copies of the rules to any person upon request. We promoted public awareness of the referendum by setting up information sessions for the members of the public. We also informed voters about the referendum process as well, provided information on the substance and the meaning of the final agreement.

It didn't necessarily mean that the ratification committee sat down and explained the whole treaty to them. We provided a means for them. We set up forums where the negotiators were invited in to make actual presentations on what they had actually negotiated in the final agreement.

The committee was responsible for reporting to the tribal council providing status reports. There was always that connection to the tribal council on where we were with the ratification of the treaty.

Eligibility, when you talk about it, you take a look at the best practices. How we do that as a First Nations to go in prepared, do we do it at the AIP level, do we do it now. Each of the First Nations really do need to sit down and take a look at the eligibility and enrolment prior to getting into ratification. Very important to see some of our panel members, it was very difficult for the Nisga'a Nation, because it's never been done before, to really quickly determine who was eligible to be enrolled in order to vote in the general ratification. That was done and to this day Nisga'a Lisims Government continues to

have an eligibility and enrolment department, because we do have members that are out there that need to be enrolled.

Right now we're looking at — I'm getting into another whole new session when it comes to government, but I think we're going to need to continue this.

Part of what was set out in the ratification chapter of the Nisga'a Treaty was the eligibility criteria that was agreed upon by the three parties. And for the Nisga'a the three pieces of criteria included that persons to vote on the referendum must have been at least 18 years of age on the last scheduled day of voting in the referendum, meaning a person who — on November 7 turned 18 was eligible to vote on the day of the referendum vote. So that needed to be taken into consideration because you're going to have members who are of age to vote, they are eligible to vote in the referendum if the date happened to be turning 18 on that day of your vote. And members who are ordinarily resident in Canada and not enrolled in another land claims agreement. For the Nisga'a ratification process those were the eligibility and enrolment requirements.

Some of the questions that might be arising, and I want to encourage the members in attendance today to feel free to ask questions of any of the panel members that you see here today. One example I want to give you, why did the Nisga'a vote on the final agreement in a referendum?

Very simply, and I don't mean to say that it's a simple answer, because the only way that Nisga'a could vote on ratifying the Nisga'a Treaty. You have to remember Canada and BC, they had the authority, they had the jurisdiction to vote on behalf of the constituents. First Nations, we don't have that kind of authority to vote on something of that nature to — it's a huge change for our people, so it was the only way for the Nisga'a that



we could provide that forum for our people to vote. And plus it was the Nisga'a right to be able to say yeah or nay to the Nisga'a Treaty.

And how did Canada and BC know that only the Nisga'a voted in the referendum? That's another question that could be asked. And the answer for that particular one is that the Nisga'a treaty contains, and I alluded to that earlier, contains a list of eligibility criteria that the persons had to meet to vote on a treaty. And that was agreed upon by the three parties. But also Canada and BC had a seat on the Nisga'a Ratification Committee so they were well aware of who was on the voters list for the Nisga'a ratification process. And of course the big question is what happened after the Nisga'a treaty got ratified is — we'll continue to implement it to this day, and were still in the infancy stages.

# Preparing for the Day After Treaty:

## *Summary of survey results*

Overall, how would you rate the conference  
Preparing for the day After Treaty?

70% of participants rated the conference good or  
excellent; 30% rated it average

Overall, how would you rate the workshops  
you attended?

**1. Economic Self Sufficiency: Creating and  
Capitalizing on Treaty Opportunities**

73% of participants rated this workshop good or  
excellent; 26% rated it average

**2. Capacity Building: Preparing for Self  
Government**

65% of participants rated this workshop good or  
excellent; 29% rated it average

**3. Effective Negotiation: Developing  
Relationships**

81% of participants rated this workshop good or  
excellent; 19% rated it average

**4. Ratification: Best Practices**

73% of participants rated this workshop good or  
excellent; 24% rated it average

Overall, how would you rate the conference  
panels?

**1. If we knew then what we know now...**

79% of participants rated this panel good or  
excellent; 20% rated it average.

**2. Are treaties the answer?**

84% of participants rated the panel good or  
excellent; 17% rated it average

## Biographies: *Treaty commission hosts*



### Jack Weisgerber

Jack Weisgerber was appointed to a third two-year term in February 2006 by the Government of BC. Weisgerber represented Peace River South in the BC Legislature for 15 years from 1986 to 2001. He became BC's first Minister of Aboriginal Affairs in 1988, and in 1991 he was appointed Minister of Energy, Mines and Petroleum Resources. His leadership was also key to the formation of the BC Claims Task Force.



### Jody Wilson

Jody Wilson was re-elected commissioner in March 2007 to a third term by the First Nations Summit. Raised in the Comox Valley, Wilson is a member of the We Wai Kai First Nation of the Laich-Kwil-Tach K'omoks Council of Chiefs. Prior to this post, Wilson worked for nine months as an advisor at the BC Treaty Commission and two years as a provincial crown prosecutor. She holds a Bachelor of Laws from the University of British Columbia (1999) and a Bachelor of Arts in Political Science and History from the University of Victoria (1996). Wilson has been an active member of the BC Bar since 2000.



### Robert Phillips

Robert Phillips was elected by the First Nations Summit to his first term as commissioner in March 2007. Robert is a member of the Northern Secwepemc te Qelmukw (Shuswap) of the Canim Lake First Nation. He holds a BA from University College of the Fraser Valley. Phillips served as chief negotiator and prior to that as self-government director at the Northern Shuswap Tribal Council since 1998. Phillips also has an extensive background in aboriginal justice and economic development.

## Biographies: *Keynote speakers*



### **Nelson Leeson**

Nelson Leeson is the elected president of the Nisga'a Nation. He has spent over 20 years in various Nisga'a public offices working for the common good of his people. He served terms as councillor and chief councillor for Laxgalts'ap Village Council, was the executive chairperson of the Nisga'a Tribal Council and one of the primary land claims negotiators during the final stages of negotiations with the province of BC and Canada.



### **Paul Kaludjak**

Paul Kaludjak has a long and distinguished history of public service. He has served as vice-president of finance for Nunavut Tunngavik Inc., president of the Kivalliq Inuit Association and mayor of Rankin Inlet. Kaludjak has also been involved in land claim negotiations and implementation for more than 12 years. Kaludjak is currently the president of Nunavut Tunngavik Incorporated.



### **Joseph Arvay**

Joseph Arvay is a civil litigation lawyer, with emphasis on constitutional and administrative law matters. He has been involved in many constitutional cases of importance throughout the country, including aboriginal right cases and has been counsel on a number of cases involving overlapping claims and the treaty process.



### **Matthew Coon Come**

Matthew Coon Come is a national and international indigenous leader and advocate for aboriginal, treaty and the human rights of indigenous peoples in Canada and internationally. He is former national chief of the Assembly of First Nations, and currently serves as an advisor to the Grand Council of Crees (Eeyou Istchee).



### **Thomas Berger**

Thomas Berger is a practicing lawyer in Vancouver and prominent defender of minority and aboriginal rights in Canada. He served as BC Supreme Court Justice (1971–83), chairman of the Royal Commission on Family and Children's Law (1973–74), commissioner of the Mackenzie Valley Pipeline Inquiry (1974–77), and chairman of the Alaska Native Review Commission (1983–85).



### **Honourable Steven L. Point**

The Honourable Steven Point was sworn-in as BC's 28th Lieutenant-Governor on October 1, 2007. In 2005 he was appointed Chief Commissioner of the BC Treaty Commission. He served as a provincial court judge, tribal chair of the Stó:lō Nation Government, and as elected chief of the Skowkale First Nation for 15 years.

## Biographies: *Panel discussion*



### Edmond Wright

Edmond Wright — Sim'oogit K'amuluugidis, member of the Laxgibuu (Wolf) tribe and Gitwilnaak'il from the House of Duuk — is chairperson of the Nisga'a Finance Committee and Nisga'a Capital Finance Commission. He has been involved in Nisga'a governance since 1970, and was a member of the Nisga'a Nation negotiating team that achieved the first modern-day treaty in BC.



### Richard Nerysoo

Richard Nerysoo is a veteran political leader of the Indian Brotherhood, Dene Nation and the Government of the Northwest Territories. Nerysoo was the first aboriginal person to become premier of the NWT, and the first aboriginal to be elected speaker in the NWT legislative assembly. He currently chairs the Gwich'in Council International, a non-profit collective striving towards securing environmental protection.



### Charlie Evalik

Charlie Evalik is chief negotiator on Devolution of Lands and Resources for Nunavut Tunngavik Inc. (NTI). NTI is responsible for the management of all Inuit-owned lands in Nunavut and acts as the advocate of Inuit interests in Nunavut.



### Andy Carvill

Andy Carvill is grand chief of the Council of Yukon First Nations. From 1996 to 2003, he was Kha Shade Heni of the Carcross/Tagish First Nation, and was chief when the First Nation signed its land claims and self-government agreements with the federal and territorial governments.

## Biographies: *Panel debate*



**Robert Morales**

Robert Morales is chief negotiator for the Hul'qumi'num Treaty Group representing six First Nations.



**Robert Louie**

Robert Louie is the chief of the Westbank First Nation and a former lawyer practicing in the area of native law. He is a long time advocate for aboriginal rights and title in the province of BC, and a driver of aboriginal economic development in the Westbank/Kelowna region.



**Robert Dennis**

Robert Dennis is the chief councillor of the Huu-ay-aht First Nation, and chief negotiator for Huu-ay-aht tribal matters related to forestry, fisheries, parks and treaty. He is a strong advocate of Huu-ay-aht culture, and is dedicated to bringing his vision of a better life for Huu-ay-aht to reality.



**Jim Aldridge Q.C.**

Jim Aldridge is a member of the Vancouver law firm Rosenbloom & Aldridge. Aldridge represented the Nisga'a Nation in treaty negotiations since 1980, and was lead counsel during most of that time. He is also a member of the legal team representing the Manitoba Metis Federation in its current legal action in respect of Metis land rights under the *Manitoba Act*.



## Biographies: *Economic self-sufficiency*



### **Bill Cranmer**

Bill Cranmer is the hereditary and elected chief of the 'N̓amgis First Nation. Chief Cranmer has led his community in the development of multi-million dollar business agreements and partnerships with industries such as mining, forestry and hydro-electric generation. Through these agreements, the 'N̓amgis have negotiated an equity position in major development projects within 'N̓amgis territory.



### **Michael Rodger**

Michael Rodger is the president of West Bay Strategic Resources in Victoria, BC, and specializes in negotiating and facilitating relationships between First Nations, governments and corporations. Rodger has led treaty negotiations for several BC First Nations and is the lead negotiator for the 'N̓amgis First Nation.



### **Edmond Wright**

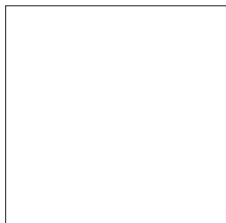
Edmond Wright — Sim'ooḡit K'amuluugidis, member of the Laxgibuu (Wolf) tribe and Gitwilnaak'il from the House of Duuk — is chairperson of the Nisga'a Finance Committee and Nisga'a Capital Finance Commission. He has been involved in Nisga'a governance since 1970, and was a member of the Nisga'a Nation negotiating team that achieved the first modern-day treaty in BC.



### **Valerie Cross Blackett**

Valerie Cross Blackett is the assistant negotiator/office manager for the Tsawwassen treaty department. Prior to her current role, Valerie was the director of operations for the Tsawwassen First Nation from 2003 to 2006 where she was involved in all aspects of band operations. Valerie made the transition from director of operations to assistant negotiator/office manager. Working with the Implementation Working Group, Valerie and her team were successful in completing an implementation plan that was approved by the chief negotiators.

## Biographies: *Capacity building*



### **Bertha Rabesca Zoe**

A lawyer with the firm Pape, Salter, Teillet, Bertha Rabesca Zoe is a member of the Tlicho Nation in the Northwest Territories. She is the laws guardian and advisor to the Tlicho government on their land claims agreement and constitution and its implementation. She also advises the Tlicho Investment Corporation.



### **Kathryn Teneese**

Kathryn Teneese has worked in administration for the Columbia Lake Band (now known as Akisqnuq), served two terms as elected councillor at Columbia Lake, and was an elected member of the Chiefs Council of the Union of BC Indian Chiefs representing the Kootenay-Okanagan district in the early 1970s. She has served as chief negotiator in treaty negotiations for the Ktunaxa Nation since 1996.



### **Jamie Restoule**

A member of Dokis First Nation, Jamie Restoule is currently completing his BA in Public Administration and Governance at Ryerson University. Over the past nine years, Restoule has worked in various positions within the Restoration of Jurisdiction (self-government) departments of the Union of Ontario Indians.

## Biographies: *Effective negotiating*



**Gary Yabsley**

Gary Yabsley is a senior partner in the law firm of Ratcliff & Company LLP and has practiced aboriginal law for the past 30 years. He has been a legal advisor and negotiator on a broad variety of issues including land claims and treaty settlements. He is currently lead negotiator and legal counsel for the Maa-nulth Treaty Society, whose member communities recently ratified the Maa-nulth Final Agreement.



**Daryn Leas**

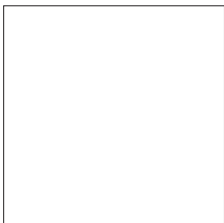
Daryn Leas is a constitutional lawyer with the Boughton Law Corporation. His practice focuses on constitutional, environmental, employment and administrative law as they apply to issues affecting First Nations. He has been legal counsel to several Yukon First Nations in respect to land claims and self-government agreements, has represented BC First Nations in the treaty process, and is co-chair of the Boughton Aboriginal Practice Group.



**John Bainbridge**

John Bainbridge has lived in and worked for aboriginal communities and organizations throughout the Canadian arctic and sub-arctic regions for 21 years as a teacher and lawyer. Since 1998, he has worked in the areas of land claims implementation and the devolution of provincial-like responsibilities.

## Biographies: *Ratification*



### Mischa Menzer

Mischa is legal counsel to Westbank First Nation on self-government negotiations and treaty negotiations.



### Marvin George

Marvin is Wet'suwet'en. In 1983 he took a position with the Gitksan-Carrier Tribal Council researching and mapping the territories of the Kuldo, Kisgagass, Kispiox, Gitanmax, Kitseguecla, Gitwangak and Wet'suwet'en peoples. His work was influential in the *Delgamuukw* case. He is currently employed as a negotiator with the Lheidli T'enneh treaty office.



### Violet Mundy

Violet Mundy is the elected chief councillor of the Ucluelet First Nation. For 13 years she has also worked as the Ucluelet First Nation Treaty Manager and is a dedicated proponent of the treaty process. She has been involved in the political and administrative operations of Ucluelet First Nation for 30 years.



### Trudy Warner

Trudy Warner is a member of the Huu-ay-aht First Nation, currently employed as the communications coordinator for the five Maa-nulth First Nations. Previously, an employee of the Huu-ay-aht First Nation, she worked closely with the Huu-ay-aht constitution committee treaty negotiation team.



### Eva Clayton

Eva Clayton is chief councillor in New Aiyansh and was chairperson of the Nisga'a Ratification Committee.

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For details on the six-stage treaty process and recommended resources, see our website.



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Merging the past and present, the Treaty Commission symbol represents the three Principals in modern-day treaty making—the governments of Canada and British Columbia and First Nations. Pointing in an upward and forward direction, the symbol implies a "coming together" pivotal to successful negotiations and treaty making.