

Policies and Procedures
6 Stage Process

Stages 1-4
April 11, 1997

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Explanatory Note

The following document lays out the policies and procedures that guided negotiations within Stages 1-4 of the BC treaty negotiation process as of April 11, 1997.

The BC treaty negotiations process has evolved over time as new legislation and policies are introduced and adopted. This document does not accurately reflect all current policies and procedures followed by the BC Treaty Commission.

References to negotiation loan debt for instance are no longer applicable, following the shift to 100% non-repayable contribution funding in 2018, and the forgiveness of outstanding loans in 2020.

The names of federal and provincial government departments have changed since 1997. References to the Minister of Indian Affairs and Northern Development (Canada) and Minister of Aboriginal Affairs (BC) on page 12 would now refer to the Minister of Crown-Indigenous Relations Canada and the Ministry of Indigenous Relations and Reconciliation, respectively.

Other policies and legislation have been adopted and implemented by the BC Treaty Commission and the BC treaty process. These include the *Multilateral Engagement Process to Improve and Expedite Treaty Negotiations in British Columbia* report (2016), the *Principals' Accord on Transforming Treaty Negotiations in British Columbia* (2018), the *Recognition and Reconciliation of Right Policy for Treaty Negotiations in British Columbia* (2019), and *Canada's Collaborative Self-Government Fiscal Policy* (2019), among others.

For questions about the latest policies and procedures, please contact the BC Treaty Commission directly.

BC Treaty Commission, May 2023

Stage 1

Stage 1: Filing a Statement of Intent to Negotiate a Treaty

To be accepted into the treaty process, a First Nation's governing body must submit a Statement of Intent that meets the Commission's criteria for Stage 1.

The definition of First Nation is set out in s. 1.1 of the B.C. Treaty Commission Agreement. A First Nation is

an aboriginal governing body, however organized and established by aboriginal people within their traditional territory in British Columbia, which has been mandated by its constituents to enter into treaty negotiations on their behalf with Canada and British Columbia.

As recommended by the British Columbia Claims Task Force, treaty negotiations are conducted on a government to government basis. Implicit in the definition of First Nation is a requirement that its organization be appropriate to the task of negotiating and implementing a treaty of the kind contemplated by the Task Force Report. There should be elements of "nationhood" such as

- a shared sense of identity, language, laws and customs among the aboriginal people,
- historical exercise of control over a distinct traditional territory that is not wholly shared or disputed,
- a degree of historical existence as a governing body,
- reasonably sizeable body of aboriginal people able to sustain the effective negotiation and implementation of a treaty.

This is the definition of First Nation that the Commission will apply for the purposes of treaty negotiations, and the definition that is generally applied throughout this document.

A. Criteria for Stage 1

An aboriginal governing body filing a Statement of Intent must provide the following information:

1. **the name of the First Nation;**
2. **how the governing body is organized and established for the purposes of treaty negotiations by the aboriginal people it represents;**

The organization and establishment of a governing body for treaty negotiations is a decision to be made by the aboriginal people it represents, namely the constituents of the First Nation. "Constituents" are all the members of the First Nation, on and off reserve or wherever they reside. The governing body must describe its organizational structure and how it was established.

Types of organization - examples

- a) traditional government

This may include an organization according to an hereditary system.

b) band

A band is established under the Indian Act. Its authority is limited to the powers granted by that legislation. In order for a band to meet the definition of First Nation, it must, among other things, be a governing body "organized and established by aboriginal people." In order to meet this criterion, the constituents must specifically approve the band as the appropriate governing body to conduct treaty negotiations. (Further explanation is provided under criterion 3 below.)

c) tribal council

A tribal council may be a political alliance of bands or tribes. It may be organized in a number of ways, such as a governing council appointed or delegated by independent bands or tribes, or as a governing body of all the members of its component bands or tribes. However organized, the constituents must approve the tribal council as the appropriate governing body to conduct treaty negotiations. Where a tribal council's component members are independent bands, the constituents of each band must give the approvals.

d) combination of the above.

3. that the governing body is mandated by its constituents to submit a Statement of Intent to negotiate a treaty on their behalf with Canada and British Columbia under the treaty process;

The governing body must obtain the following mandate from its constituents:

- a) to enter into treaty negotiations with Canada and British Columbia through the treaty process, and
- b) specifically approving it as the appropriate organization to conduct the treaty negotiations.

The governing body must describe how its constituents have given it the mandates described above.

This necessarily involves those constituents with capacity to make decisions (i.e., adult members). In determining whether the constituents have given the required mandates, the Commission will expect compliance with the following guidelines:

- a) there must be clear notice given to all known constituents of the First Nation that informs them of the specific mandates being sought, and
- b) all known constituents should be given an opportunity to participate in the decisions.

As a minimum standard, a majority of constituents who have participated in the decisions must indicate their support for the mandates sought.

Examples of ways for constituents to participate in decision making include:

- attending meetings convened in the communities where a significant number of members reside;

- where members are unable to attend a meeting, they should have an opportunity to express their views in writing -- by mail-in ballot, by appointing a proxy to vote on their behalf or by sending written comments to be considered at the meeting;
- community petitions;
- consensus processes in combination with other examples described above.

4. who the aboriginal people are represented in the Statement of Intent;

The governing body should describe the aboriginal people, including tribal affiliation.

5. the number of aboriginal people represented in the Statement of Intent;

This number must reflect the total number of the First Nation's current members, wherever they live, broken down as follows:

- total number of members living on reserve,
- number of adult members living on reserve,
- total number of known members living off reserve, and
- number of known adult members living off reserve.

6. whether there is any other First Nation that claims to represent the aboriginal people described in 4 and 5 above;

This would include First Nations either in or outside the treaty process. The Commission is responsible for ensuring that only one Statement of Intent is accepted on behalf of the people described in 4 and 5.

7. a description of the First Nation's traditional territory in British Columbia;

The Treaty Commission does not make any determination of the boundaries of a First Nation's traditional territory. However, the Commission must be able to determine that the aboriginal people represented in the Statement of Intent have a distinct traditional territory that is generally recognized as being their own.

The governing body should attach a map showing the traditional territory. The suggested map size is 1:250,000. Refer also to 8 below.

8. whether there are any First Nations with whom the First Nation may have overlapping or shared territory; if so identify them;

In many instances, traditional territories of different First Nations overlap one another. The governing body filing the Statement of Intent must identify any First Nations in or outside the treaty process with whom the First Nation may have shared or overlapping territory.

Insofar as these overlaps may affect negotiations, First Nations are responsible for resolving them. As a general principle, these issues do not have to be resolved before

negotiations start, but a process for resolution must be established in Stage 2.

9. the name of the person assigned as a contact for formal communications.

The governing body must advise the Commission when the contact person is changed.

The Commission may require additional information where clarification is necessary.

B. Amending a Statement of Intent

The Commission will accept an amended Statement of Intent that meets all the criteria for Stage 1 and the requirements set out below.

A Statement of Intent may be amended in a number of circumstances, such as where:

1. the First Nation makes changes to the organization of its governing body,
2. the First Nation files an amended map of its traditional territory,
3. additional aboriginal communities join a First Nation which has already been accepted into the process, and or
4. one or more aboriginal communities that were members of a First Nation in the process separate from that First Nation.

1. Changes to the organization of the governing body

Changes to the organization of a First Nation's governing body may occur; for example, where there are significant changes to its Constitution. A First Nation must file with the Commission an amended Statement of Intent describing any changes to the organization of its governing body.

If the changes to the governing body are substantial, they must be mandated by the First Nation's constituents. A First Nation should file the amended Statement of Intent after it has obtained this mandate. It may file the amended Statement of Intent before it obtains this mandate. In this case, the First Nation must indicate in writing that it will obtain the mandate from its constituents as soon as practicable.

2. Amendments to a First Nation's map of its traditional territory.

A First Nation may need to make changes to its map after it has begun research and preparations for the negotiations. This has important implications for other First Nations, which use the maps of traditional territory to identify overlaps, and for Canada and British Columbia which use them for consulting with third parties. Consequently, changes to traditional territories may affect neighbouring First Nations as well as Canada and British Columbia. Thus the First Nation must provide a written explanation of the reasons for the boundary changes.

A revised map filed with the Commission has the effect of amending the First Nation's Statement of Intent. The Commission will date and attach the revised map and the explanatory note to the Statement of Intent, along with the original map.

The Commission must be notified of such changes and must receive a new traditional territory map, along with the written explanation of the reasons for boundary changes. The Commission will distribute copies of the revised map and explanatory note to Canada and British Columbia,

and the First Nation will be expected to distribute copies to all neighbouring First Nations affected by the changes and to address any ensuing overlap issues.

3. Aboriginal communities joining a First Nation which has already been accepted into the treaty process.

An aboriginal community may join a First Nation which is already in the treaty process. This may allow the joining group to move quickly into the later stages of the process.

This process requires the consent of all three parties currently in negotiations (the original First Nation, Canada and British Columbia) and the approval of the Commission.

a) Requirements for the joining group

The joining group must develop a plan on how it proposes to join the original First Nation and the negotiations. This plan must be reviewed by the parties and the Commission before it is submitted for acceptance by the parties and for approval by the Commission.

The joining group will be required to obtain the following mandates from its constituents depending on the stage reached by the original First Nation:

Stage 1

- to enter into treaty negotiations with Canada and British Columbia through the treaty process,
- approving the organization of the original First Nation, amended to include the joining group, as the appropriate governing body to conduct the treaty negotiations.

Stage 2 - where the original First Nation has completed Stage 2 of the process:

- a mandate approving the substance of the readiness documents already filed by the original First Nation, with the necessary amendments to include the new group,
- a specific mandate to negotiate a framework agreement in conjunction with the original First Nation, and
- an effective process to develop its mandate during Stages 3 and 4, in conjunction with the original First Nation.

Stage 3 - where the original First Nation has completed Stage 3 of the process:

- all of the above mandates,
- a specific mandate to adopt the framework agreement, with the necessary amendments to include the joining group, and
- a specific mandate to negotiate an agreement in principle in conjunction with the original First Nation.

b) Requirements for the original First Nation

Where the original First Nation is substantially changed by the addition of the joining group, the original First Nation should obtain approvals from its constituents for that addition.

c) Requirements for the newly organized First Nation

The newly organized First Nation must file with the Commission:

- an amended Statement of Intent and map of the traditional territory, reflecting the joining group as part of the First Nation,
- amended readiness documents, if already filed,
- initialled or signed copies of any amended agreements already entered into.

The Commission will accept an amended Statement of Intent that meets all the criteria for Stage 1, and amended readiness documents that meet the criteria for Stage 2.

d) Requirements for British Columbia and Canada

The agreement of Canada and British Columbia is required to negotiate with the newly organized First Nation, and to amend any agreements they have already initialled or signed with the original First Nation to include the joining First Nation.

4. One or more aboriginal communities that were members of a First Nation in the process separating from that First Nation.

Reorganizations within a First Nation caused by separations of its component communities place undue strains on the treaty process. Where a separated group files its own Statement of Intent as a First Nation, the number of treaty tables is increased, along with a corresponding demand for resources. The negotiations may become more complicated, as new overlapping traditional territories emerge. Where the First Nation has received funding, it may be difficult to resolve issues of each party's proportionate share of debt liability.

A First Nation enters the treaty process when at least a majority of its constituents who have participated in the decision approve the governing body as the appropriate organization to conduct the treaty negotiations (see criteria 2 and 3 above). Disputes within a First Nation that could lead to separation should first be treated as internal matters to be resolved by the First Nation.

Where the issues cannot be resolved internally and a separation results, the original First Nation must file with the Commission an amended Statement of Intent to accurately describe its altered structure and membership.

Where the separated group wishes to re-enter the treaty process either by filing its own Statement of Intent or by joining another First Nation in the process, it must meet all the criteria listed below.

- a) The separated group must meet the definition of First Nation, by meeting criteria 1 - 9 described above.
- b) Subject to (e) below, the Commission will only consider a Statement of Intent from or including a separated First Nation where the original First Nation has not yet been declared ready to begin Stage 3 of the process.
This is because considerable commitments are made and resources spent by the First Nation before it can be declared ready to begin Stage 3 framework negotiations. Moreover, the other parties, and the Commission, are entitled to assume that the First Nation has the authority to negotiate and enter into binding agreements. Once tripartite negotiations have started, all three parties have an interest in issues that may affect progress towards the goal of reaching agreements. Thus it is important to the process that the established governing organizations that were mandated in Stages 1 and 2 to negotiate a treaty continue throughout Stages 3 and following.

- c) The separated First Nation must demonstrate that it has a specific mandate from its constituents to separate from the original First Nation and, according to criteria 2 and 3, enter the treaty process independently or with another First Nation, as the appropriate governing body.
- d) The separated First Nation will be expected to first identify all overlapping territories, whether shared or disputed, and resolve any overlapping territorial issues with the original First Nation ("internal overlaps"). In determining whether internal overlaps are resolved for the purposes of proceeding into the treaty process, the Commission will consider the nature of the dispute, and whether it is satisfied that best efforts have been made by all parties to achieve resolution through a process such as the First Nations Summit's Recognition Protocol.
- e) Where a separated First Nation files a Statement of Intent either independently or with another First Nation after the original First Nation has been declared ready to begin Stage 3 of the process or later, the Statement of Intent will only be considered by the Commission where:
 - i) the separated and original First Nations have explored all other available options to resolve their differences internally and the original First Nation agrees that negotiations must be conducted separately,
 - ii) the separated First Nation's governing body is organized appropriately for treaty negotiations, with the capacity to proceed,
 - iii) the separated and original First Nations have resolved all issues of responsibility for any debt liability taken on by the original First Nation, and
 - iv) the separated and original First Nations have resolved any overlapping territorial issues between them and have prepared revised traditional territory maps showing this. (In determining whether internal overlaps are resolved for the purposes of proceeding into the treaty process, refer to (d) above.

Where requested by the First Nations affected, the Commission will provide advice on dispute resolution services available to resolve overlap or other organizational issues.

C. Procedure for receiving Statements of Intent and Revised Traditional Territory Maps

The governing body's representatives are encouraged to call the Commission office for assistance.

Receiving Statements of Intent

1. The governing body files a Statement of Intent with the Commission. The Commission will notify Canada and B.C. when the Statement of Intent has been filed.
2. The Commission will review a new or amended Statement of Intent to ensure that it meets all the criteria set out above. It will advise the governing body whether the Statement of Intent satisfies the Commission's criteria and whether it has been accepted.
3. When a new Statement of Intent is accepted, the Commission will:
 - send copies of the document to the federal and provincial governments, and
 - schedule an initial meeting of the three parties to take place within 45 working days.

4. When an amended Statement of Intent is accepted, the Commission will:

- send copies of the document to the federal and provincial governments,
- schedule an initial meeting only where necessary.

5. If the Statement of Intent is incomplete, Commission staff will contact the governing body contact person to obtain the required information. If the Statement of Intent is not accepted by the Commission, it will be returned to the governing body with an explanation.

Receiving Revised Traditional Territory Maps

Where a revised map and written explanation of the reasons for the boundary change are received, the Commission will:

- a) date stamp the revised map and the explanatory note and attach them to the Statement of Intent, along with the original traditional territory map;
- b) forward copies of the revised map and the explanatory note to Canada and British Columbia;
- c) request copies of letters from the First Nation which demonstrate that the revised map and the explanatory note have been distributed to neighbouring First Nations affected by the revised boundaries for the purpose of identifying overlaps;
- d) request information and documentation from the First Nation indicating that a process has been established to resolve any ensuing overlap issues; and
- e) make the revised map and the explanatory note available to the public on request.

D. Returning a Statement of Intent

A Statement of Intent must be a current document. Circumstances may arise where the governing body no longer meets the definition of a "First Nation"; for example, where it no longer has a mandate from its constituents or needs substantial restructuring.

In such a situation, the Commission will review the Statement of Intent, advise the governing body representatives of its concerns and seek their comments. The Commission will then determine whether to return the Statement of Intent to the governing body.

If that occurs, the First Nation is free to file a new Statement of Intent when it is able to meet the definition of "First Nation".

Where a Statement of Intent is returned, the Commission will return the original documents to the governing body and notify Canada and British Columbia.

Stage 2

Stage 2: Preparing for Negotiations and Assessing Readiness

The purpose of Stage 2 is:

- a) to bring the parties together for an initial meeting
- b) for the parties to do the necessary preparation and for each party to file readiness submissions;
- c) for the Commission to assess each party's readiness submissions and to declare each party and the table ready to proceed to Stage 3.

A. Initial meeting of the Three Parties

Stage 2 begins with the initial meeting of the three parties.

1. The Commission will prepare the agenda and a Commissioner will chair the meeting.
2. The purpose of the initial meeting is:
 - a) to bring the parties together for the first time;
 - b) to review the Statement of Intent and supporting documents and discuss whether there is any information that should remain confidential because disclosure could reasonably be expected to harm the negotiations;
 - c) for the Commission to inform the parties of the criteria to be used to determine each party's readiness and to describe the readiness process;
 - d) to discuss each party's current state of readiness, how each can achieve readiness and how long each party estimates it will take;
 - e) to obtain a formal oral commitment from each party to negotiate a treaty;
 - f) to begin a discussion about the issues that each party would like to negotiate; and
 - g) for the parties to discuss their expectations regarding interim measures.
3. After the initial meeting, the Statement of Intent and its supporting documents will be made available to the public on request, with the exception of any information which the parties and the Commission determine should remain confidential.

B. Readiness Submission: Process and Assessment Criteria

Once each party has determined that it has completed its Stage 2 preparations, it should file written readiness submissions with the Commission. The Commission must assess these documents to determine the readiness of each party to commence negotiating a Framework Agreement. The Commission will notify the other parties when it receives a readiness submission.

Section 7.1(f) of the B.C. Treaty Commission Agreement sets out the readiness criteria that the parties must satisfy before they can begin these negotiations. The following are the Commission's policies for meeting those criteria.

THE INFORMATION REQUIRED IN CRITERIA 1 - 5 BELOW SHOULD BE PROVIDED RESPECTIVELY BY REPRESENTATIVES OF THE FIRST NATION'S GOVERNING BODY ON BEHALF OF THE FIRST NATION; THE MINISTER OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT ON BEHALF OF CANADA; AND THE MINISTER OF ABORIGINAL AFFAIRS ON BEHALF OF BRITISH COLUMBIA.

- 1. The First Nation has made a formal commitment in writing to Canada and British Columbia to negotiate a treaty under the six-stage treaty process, and Canada and British Columbia have each made the same written commitment to the First Nation.**

These formal written commitments should be exchanged as soon as possible after the initial meeting. Copies of the letters must be sent to the Commission.

- 2. Each party has appointed a negotiator.**

Each party must appoint a Chief Negotiator who has continuing responsibilities for conducting the negotiations. Each party should identify its Chief Negotiator and the members of its negotiating team. The Chief Negotiator will be the liaison person with the Commission. He or she must have the authority to negotiate effectively.

- 3. Each party must confirm in writing that it has a mandate to negotiate a treaty, a comprehensive and clear mandate to negotiate a framework agreement, and a timely, effective process to develop and modify its mandate throughout Stages 3, 4 and 5.**

Each party must confirm that it has a comprehensive and clear mandate to negotiate a framework, describe how it received its mandate and describe its process for developing and revising this mandate during all stages of the negotiations.

Canada and British Columbia must be able to show that their negotiators have the ability to access government departments so that they are able to address cross-departmental issues and jurisdictions in a timely and effective way.

They must also demonstrate that they have a timely, effective process in place to obtain a specific mandate necessary for progress to be made in treaty negotiations.

In accordance with the B.C. Treaty Commission Agreement, the First Nation's mandate must be received from its constituents. "Constituents" are all the members of the First Nation, on and off reserve or wherever they reside.

Confirming a mandate necessarily involves those constituents with capacity to make decisions (i.e. adult members). In determining whether the constituents of the First Nation have given the required mandate, the Commission will expect compliance with the same guidelines that apply in Stage 1:

- a) there must be clear notice given to all known constituents of the First Nation that informs them of the specific mandate being sought, and
- b) all known constituents should be given an opportunity to participate in the decision.

As a minimum standard, a majority of constituents who have participated in the decision must indicate their support for the mandate sought.

Examples of ways for constituents to participate in decision making include:

- attending meetings convened in the communities where a significant number of members reside;
- where members are unable to attend a meeting, they should have an opportunity to express their views in writing -- by mail-in ballot, by appointing a proxy to vote on their behalf or by sending written comments to be considered at the meeting;
- community petitions;
- consensus processes in combination with other examples described above.

The First Nation should describe how it received its mandate, and how it allowed all known constituents the opportunity to participate. It should provide the Commission with copies of resolutions passed, decisions taken or minutes of all duly convened meetings, how it took into account any written comments received from members not in attendance, copies of signed petitions, or any other documentation available.

4. Each party must have both the human and financial resources to carry out and conclude Framework Agreement negotiations

Each party must have both the human and financial resources to carry out and conclude Framework Agreement negotiations in a timely manner.

Canada and British Columbia must confirm that each has dedicated resources for the ongoing support of an effective negotiating team with cross-departmental support to carry out and conclude framework negotiations and proceed into agreement in principle negotiations.

The Commission will allocate available funds to the First Nation for Stage 3 where such funds are requested.

5. Each party has adopted a ratification procedure.

Each party must describe the ratification procedure it expects to follow to conclude a final treaty.

Each party should also describe the process by which the Framework Agreement and Agreement in Principle will be approved. As the B.C. Claims Task Force stated:

Parties must understand each other's ratification procedure and be confident that agreements reached at each stage in the process have been fully considered and approved, and that the treaty will be binding once it is ratified. It would be unfortunate to reach the treaty stage only to find that the ratification of some earlier stage was incomplete, thus undermining support for the treaty.

Individual First Nations may have different approval and ratification procedures reflecting their distinct political organization. In deciding on a process for approving a Framework Agreement or Agreement in Principle, the First Nation should be attempting to obtain approval from all known constituents.

THE INFORMATION REQUIRED IN CRITERIA 6 - 8 BELOW SHOULD BE PROVIDED BY THE CHIEF NEGOTIATOR OR DESIGNATE.

6. Each party has identified the substantive and procedural issues that it wishes to negotiate.

Substantive Issues

Each party must identify the major substantive matters to be discussed in the Framework Agreement stage. The Framework Agreement will contain the substantive issues that the parties agree to negotiate in the ensuing stages.

Procedural Issues

Before they enter Stage 3, the parties must write to the Commission confirming that they have agreed on the following procedural issues:

- frequency of meetings, locations and estimated time to complete Stage 3, and
- how they will share information during negotiations.

The Commission will facilitate discussion of these issues if required.

Parties may agree on other procedural issues during Stage 2, such as openness protocols. While these are not requirements for readiness, the parties are encouraged to resolve these issues early in the process.

7. With respect to overlap issues, the First Nation must:

- **identify, and**
- **begin to address any overlapping territorial issues with neighbouring First Nations.**

Overlaps may involve First Nations both in and outside the treaty process. The Commission respects the principle that First Nations have the primary responsibility to resolve overlaps among themselves. The existence of an overlap is not an impediment to entering negotiations. However, the First Nation must clearly identify all known overlaps and begin to address these issues, in accordance with the following requirements:

(a) Identifying overlaps

The First Nation must, in consultation with its neighbours wherever possible:

- i) identify all affected First Nations and notify them;
- ii) prepare a map which shows
 - the boundaries of its traditional territory,
 - the areas that are considered to be shared territories, identifying the neighbour(s) affected,
 - the areas that are disputed, identifying the neighbour(s) affected;

iii) send a copy of the map to the affected First Nations.

(b) Begin to address overlaps

The First Nation must:

- make best efforts to establish an agreed process for resolving the overlaps with each of the affected neighbours, and
- describe the way in which the First Nation will report to the Commission on the progress of overlap discussions.

Where a First Nation does not have an established process, the Commission encourages it to consider adopting the First Nations Summit's Recognition Protocol. In accordance with its facilitation responsibilities, the Commission is available to provide advice and assist the parties to obtain dispute resolution services where requested.

The First Nation must provide the Commission with copies of its maps and correspondence with its affected neighbours.

8. Canada and British Columbia must:

- a) obtain background information on the communities, people and interests likely to be affected by negotiations, and**
- b) establish mechanisms for consultation with non-aboriginal interests.**

Canada and British Columbia represent non-aboriginal interests and the general public in the negotiation process. The Commission recognizes this as a major responsibility of these two parties. These governments must confirm in writing to the Commission that they have compiled profiles identifying local and community interests. It is expected that community profiles will be updated as negotiations and consultations proceed.

The federal and provincial governments must also confirm in writing that they have established mechanisms for consultation with non-aboriginal parties with a direct interest in the subject matter of the negotiations. The consultation mechanisms should ensure that those interests are heard and considered.

The Commission generally anticipates that Canada and British Columbia will, under normal circumstances, fulfil these requirements and file their readiness submissions with the Commission within 60 days after the Commission accepts the First Nation's readiness submission and declares the First Nation "ready". This policy requirement is based on the recommendation of the B.C. Claims Task Force that the federal and provincial governments start negotiations as soon as First Nations are ready.

C. Procedure for Assessment of Party Readiness and Table Readiness

1. The Commission will assess each party's Stage 2 readiness submission.
2. If the readiness submission meets the criteria noted above, the Commission will accept the submission as complete and will declare that party "ready".
3. After each party has been declared ready, its readiness submissions will be distributed to the other parties.

4. Commission staff will canvas each party for its views on the readiness of the table to proceed into Stage 3. The Commission may, at its discretion convene a further meeting or teleconference to ensure that all outstanding readiness issues have been dealt with.
5. The Commission will declare the table ready to enter Stage 3 Framework Agreement negotiations.

Stage 3

Stage 3: Framework Agreement Negotiations

A. Framework Agreement

The purpose of Stage 3 is for the parties to negotiate a Framework Agreement. A Framework Agreement is a negotiated agenda for Stage 4 Agreement in Principle negotiations. It should identify the subjects for and objectives of the negotiations, and establish a timetable and the procedural arrangements for the negotiations.

During Stage 3, it is expected that the parties will discuss all of the issues each identified in Stage 2. The Framework Agreement should identify what will be on the treaty negotiation table by setting out all of the subjects that the parties agree they will negotiate during Stage 4.

Examples of procedural arrangements which should be addressed in a Framework Agreement include:

- structure of tables, such as main table, side table, working group, etc.
- frequency, location and notice of meetings
- estimated time to complete Stage 4
- who is responsible for agendas and record keeping
- who is to chair the meetings
- access to and confidentiality of records produced by the parties
- who is entitled to attend meetings
- coordination of communications and public information program
- process for dispute resolution, particularly in the context of a party suspending negotiations.

Further, during framework negotiations, each party should describe to the others its proposed ratification procedure to conclude a final treaty. It is expected that ratification procedures will be a subject in the Framework Agreement for clarification or negotiation during Stage 4.

When the table agrees on the Framework Agreement, the Chief Negotiators can recommend that the agreement be approved by their respective Principals. Their recommendation is normally indicated by the Chief Negotiators' initialling the agreement. Framework Agreements must be approved in accordance with the approval processes of the respective parties. The agreement is then signed.

The parties should notify the Commission when they plan to sign the Framework Agreement and must provide the Commission with a copy of the signed agreement. Once the Framework Agreement is approved and signed by each party, the Commission will acknowledge this by declaring that the table has moved into Stage 4 of the process.

B. Monitoring by the Commission

The Commission has a responsibility, once the parties reach Stage 3, to monitor the progress of negotiations. Monitoring enables the Commission to encourage timely negotiations, maintain a public record of the status of negotiations, and report to the Principals on the progress of negotiations.

1. Documents to be provided to the Commission

Any records provided to the Commission that are confidential to a party or to the table will be received by the Commission in confidence. Such documents must be appropriately marked as "Confidential".

The parties are expected to provide the Commission with the following documents on a routine basis:

On a routine basis:

- a) copies of main table meeting agendas and tripartite records of decision;
- b) copies of documents which the parties have agreed will be available to the public;
- c) tripartite workplan for Stage 4 (see 7 below);
- d) copies of initialled and signed Framework Agreements.

As requested by the Commission, where additional information is considered necessary for effective monitoring:

- e) a tripartite progress report;
- f) copies of side table and working group documents such as meeting agendas, reports and recommendations to main tables and tripartite records of decision where these are produced;
- g) copies of draft sub-agreements and agreements under discussion;
- h) individual reports from the parties as needed.

2. Attendance at negotiation meetings and chairing by the Commission

In addition to reviewing documents and reports, a Commissioner or staff member may attend a negotiation meeting as an observer, after giving notice to all parties.

Generally, Commissioners or staff will attend meetings for the following reasons:

- o routine, periodic monitoring,
- o where the Commission determines a particular meeting to be critical, or
- o as chair, where requested by the parties.

a) Routine monitoring

The Commission has a responsibility to monitor the progress of each negotiating table. Commissioners and staff must observe and report regularly to the Commission on the status of each table, and advise on any problems that are or may be an impediment to progress.

b) Critical meetings

Commissioners or staff may also attend any meeting that they have determined may be critical in the negotiations. One or more of the parties may alert the Commission to critical issues, or the Commission may determine this through routine monitoring. In either case, the Commission will consult with all the parties before it decides that attendance in addition to routine monitoring is warranted.

c) Chairing meetings

Commissioners or staff are available on a limited basis and may agree to chair negotiation sessions according to the following guidelines:

- one or more of the parties requests in advance of the meeting that the Commission act as chair,
- all three parties agree,
- there is a demonstrated need in the Commission's view for it to chair the session, and
- the parties provide the Commission with copies of the meeting agenda and any relevant documents within a reasonable time in advance of the meeting.

The Commission will review the progress of negotiations based on its review of these documents, reports and observations. If problems arise which may impact on progress, the Commission may investigate and make a report to the parties, or to the Principals where the issues have wider applicability, identifying what those issues are and recommending ways to resolve the problem. Where requested by the parties, the Commission will provide facilitation services and will assist the parties to obtain further dispute resolution services.

3. Mandates

During Stage 2, each party is required to confirm to the Commission how it received its mandate and its process for developing and revising it during all stages of the negotiations. The process of approving a Framework Agreement should enable the parties to confirm, modify or expand their negotiators' mandates.

The Commission expects that each party will have the necessary mandates to commence Stage 4 negotiations once the Framework Agreement is approved by all the parties, and the authority to develop and refine those mandates as those negotiations progress.

4. Resolving First Nation overlaps

The First Nation is expected to implement its agreed process for resolving overlaps. If it is anticipated that overlaps will impact heavily on Agreement in Principle negotiations, the First Nation will be expected to focus on these issues early in the process. The general policy on Dispute Resolution applies to overlap disputes.

Where an overlap dispute has been resolved, the First Nation must provide the Commission with a copy of its agreement once it has been approved and signed. The Commission will inform Canada and British Columbia when this occurs.

Where overlaps are unresolved at the end of Stage 3, the First Nation must provide the Commission with a written report on the overlap. This report should generally describe the type of territory and traditional uses, identify the extent of the overlap in relation to the traditional territory, assess the potential impact on the negotiations, and explain how its dispute resolution process is working and the potential for settlement.

Transitional: Those First Nations currently in Stage 3 that completed Stage 2 in accordance with the Commission's previous Policies and Procedures (March 28, 1996), must comply as

soon as practicable with Stage 2 criterion 7 set out in this document. Commission staff will be monitoring these requirements throughout Stage 3.

5. Canada's and B.C.'s Consultation mechanisms

The consultation mechanisms initiated during Stage 2 should become fully operational in Stage 3. Where regional and local advisory committees have been established, all members should be appointed and their work coordinated in a timely way with the treaty negotiations and mandate development processes of Canada and British Columbia.

Canada and B.C. must advise the Commission of the full membership and structure of their advisory committees, and any changes to the consultation mechanisms. They must also provide the Commission with the agendas for meetings of the Treaty Negotiation Advisory Committee and each regional and local advisory committee.

6. Local and regional Public Information Program

The B.C. Claims Task Force recommended that the parties in each negotiation jointly undertake a public information program. It is expected that these local or regional programs be fully operational during Stage 3.

The parties may decide among themselves on the best manner to carry out this task. Public information activities should be undertaken in communities within the First Nation's traditional territory, and elsewhere as the parties may agree.

The parties must periodically advise the Commission by letter of the activities of their joint public information program.

7. Tripartite workplan

The parties must develop a tripartite workplan for Stage 4 activities. This is the parties' plan which lists the tasks to be undertaken during Agreement in Principle negotiations, how those tasks will be carried out and the time required for each. It should be a realistic plan with sufficient detail to be a useful tool for the parties and for the Commission. The workplan must include a meeting schedule and a target time frame for completing Stage 4. The Commission will assist the parties to develop a workplan where required. It is recognized that the workplan is a working document that will need to be regularly revised as negotiations proceed.

The parties must file with the Commission copies of their tripartite workplan for Stage 4, as amended from time to time. The workplan will give the Commission an outline against which to monitor the progress of the negotiations.

C. Reporting by the Commission

The Commission will provide the Principals and the public with periodic reports on the status of negotiations. The Commission will make available to the public, on request, copies of signed Framework Agreements.

Stage 4

Stage 4: Agreement in Principle Negotiations

A. Agreement in Principle

The purpose of Stage 4 is for the parties to negotiate an Agreement in Principle. This is the agreement that will form the basis of the treaty. It should be the product of a thorough examination of the subjects set out in the Framework Agreement.

The Agreement in Principle should contain the essential points of agreement among the parties. The parties should confirm their processes for ratification of the final treaty and establish a mechanism to develop an implementation plan.

It is anticipated that substantial agreements on specified subject matters, or chapters, may be reached by a table over the course of the negotiations. When the table agrees on the Agreement in Principle as a complete document, the Chief Negotiators can recommend that the agreement be approved by their respective Principals. Their recommendation is normally indicated by the Chief Negotiators' initialling the agreement. As with Framework Agreements, Agreements in Principle must be approved in accordance with the approval processes of the respective parties. The agreement is then signed. By the approval process, the parties should be able to provide their negotiators with a mandate to conclude a treaty.

The parties should notify the Commission when they plan to sign the Agreement in Principle and must provide the Commission with a copy of the signed agreement. Once the Agreement in Principle is approved and signed by each party, the Commission will acknowledge this by declaring that the table has moved into Stage 5 of the process.

B. Monitoring by the Commission

The Commission has a continuing responsibility to monitor negotiations during Stage 4. As with Stage 3, monitoring enables the Commission to encourage timely negotiations, maintain a public record of the status of negotiations, and report to the Principals on the progress of negotiations. In particular, the Commission needs the information that will enable it to assess the pace and progress of Stage 4 negotiations.

1. Documents to be provided to the Commission

Any records provided to the Commission that are confidential to a party or to the table will be received by the Commission in confidence. Such documents must be appropriately marked as "Confidential".

The onus is on the parties to report to the commission on any special problems that may affect negotiations. In addition, the parties are expected to provide the Commission with the following documents:

On a routine basis:

- a) tripartite workplan for Stage 4 activities as amended from time to time (see 3 below);
- b) copies of main table meeting agendas and tripartite records of decision;

- c) copies of documents which the parties have agreed will be available to the public;
- d) copies of sub-agreements that are substantially complete;
- e) copy of the signed Agreement in Principle.

Semi-annually:

- f) a tripartite progress report.

As requested by the Commission, where additional information is considered necessary for effective monitoring:

- g) copies of side table and working group documents such as meeting agendas, reports and recommendations to main tables and tripartite records of decision where these are produced;
- h) copies of draft discussion papers, sub-agreements and agreements under discussion;
- i) individual reports from the parties as needed.

2. Attendance at negotiation meetings and chairing by the Commission

In addition to reviewing documents and reports, a Commissioner or staff member may attend a negotiation meeting as an observer, after giving notice to all parties.

As in Stage 3, Commissioners or staff will attend meetings for (1) routine, periodic monitoring, (2) where the Commission determines a particular meeting to be critical, or (3) as chair, where requested by the parties.

During Stage 4, Commissioners or staff are available on a more limited basis than in Stage 3, and may agree to chair negotiation sessions according to the same guidelines outlined in Stage 3:

- a) one or more of the parties requests in advance of the meeting that the Commission act as chair,
- b) all three parties agree,
- c) there is a demonstrated need in the Commission's view for it to chair the session, and
- d) the parties provide the Commission with copies of the meeting Agenda and any relevant documents within a reasonable time in advance of the meeting.

Where the parties have a continuing requirement for a neutral chair, they should obtain the services of an outside person to act as chair.

The Commission will review the progress of negotiations based on its review of these documents, reports and observations. If problems arise which may impact on progress, the Commission may investigate and make a report to the parties, or to the Principals where appropriate, identifying the issues and recommending ways to resolve the problem. Where requested by the parties, the Commission will provide facilitation services and will assist the parties to obtain further dispute resolution services.

3. Tripartite workplan

The tripartite workplan is a critical document for the parties and for the Commission. It provides the Commission with an outline against which to monitor the progress of the negotiations. Workplans must be reviewed by the parties periodically and amended *as necessary*. This review must include meeting schedules and target time frames for completing Stage 4. The Commission will assist the parties to develop, review and amend workplans as required. It is recognized that the workplan is a working document that will need to be regularly revised as negotiations proceed.

The parties must file with the Commission copies of their tripartite workplans, as amended from time to time.

4. Resolving overlaps

Overlap disputes should be resolved before the conclusion of Stage 4.

Transitional: Those First Nations currently in Stage 4 that completed Stages 2 and 3 in accordance with the Commission's previous Policies and Procedures (March 28, 1996), must comply as soon as possible with Stage 2 criterion 7 set out in this document. Commission staff will be monitoring these requirements throughout Stage 4.

When an overlap dispute is resolved, the First Nation must provide the Commission with a copy of its agreement once it has been approved and signed. The Commission will inform Canada and British Columbia when this occurs.

During Stage 4, the First Nation must report at least quarterly to the Commission about the progress of its negotiations with the other party(ies) to the dispute and provide an update on the written report it made in Stage 3.

Where all parties to the overlap agree, the Commission may facilitate or assist the parties to obtain dispute resolution services as required.

Where an overlap dispute is not resolved near the end of Stage 4 negotiations, the Commission will assess the nature of the dispute, and whether best efforts have been made by all parties to resolve it through a process, such as the First Nations Summit's Recognition Protocol, agreed to in earlier stages. The Commission will provide a report on its assessment to the First Nation parties, as well as to Canada and British Columbia.

5. Consultation mechanisms

All advisory processes and mechanisms must be fully operational. It is expected that a significant amount of time will be devoted to consultation.

On a regular basis, Canada and B.C. must provide the Commission with the agendas for meetings of the Treaty Negotiation Advisory Committee and of each regional and treaty advisory committee. At least semi-annually, Canada and B.C. must report to the Commission, by letter, further advising of current and planned activities of the Treaty Negotiation Advisory Committee and each regional and treaty advisory committee, and any changes to the consultation mechanisms.

6. Local and regional Public Information Program

On a semi-annual basis, the parties must report to the Commission, by letter, on the activities of their public information program.

C. Reporting by the Commission

The Commission will provide the Principals and the public with periodic reports on the status of negotiations.