

EXECUTIVE SUMMARY

Looking Back, Looking Forward: A Review of the BC Treaty Process

The “big bang” theory of treaty making must be laid to rest.

Comprehensive treaties are built over time.

The Treaty Commission, from its unique perspective as keeper of the process, has taken a hard look at the experience of the past eight years and presents its findings in *A Review of the BC Treaty Process* within its eighth annual report.

The review, conducted over the past several months, confirms there is a solid foundation for treaty making in British Columbia. However, urgent action is necessary if treaty making is to survive growing public skepticism, First Nation disapproval and a province-wide referendum on the British Columbia government’s guiding principles for treaty negotiations.

This review was an opportunity for the Treaty Commission to step back from the negotiations, look at treaty making and ask: What has been accomplished? What has gone wrong? And what needs fixing? The result is a plan that, if followed, will restore faith in the treaty process; bring a measure of certainty to land and resource use; and deliver immediate social and economic benefits to First Nations communities.

In its last annual report the Treaty Commission shone light on the two solitudes, highlighting the differences in vision that First Nations and the governments of Canada and British Columbia bring to the negotiating table. The gap, the Treaty Commission explained, was huge and the challenge ahead was to bridge that gap; much of that work remains to be done. There are major unresolved issues that must be addressed if there is to be significant progress.

But British Columbians should not lose sight of *how much* has been accomplished, the lessons we have learned and the experience we have gained — all valuable experience the parties can now bring to the negotiations.

Over the past year there was progress, primarily through interim agreements, despite a federal election, a provincial election and the installation of a new government in Victoria. With strong leadership and political will much can be accomplished in the coming year. But it will take new thinking and urgent action to save treaty making in British Columbia.

While comprehensive treaties are the goal, it will be important to establish building blocks and that is best accomplished through a series of incremental steps. The “big bang” theory of treaty making must be laid to rest. That is one of the important lessons of the last eight years.

The idea that comprehensive treaties will be concluded quickly is no longer a reasonable expectation for many of the negotiating tables. We have to shift our thinking to building treaties incrementally. In the end, we will have more durable treaties and better relationships if we take the time now to test these solutions on the ground.

Building treaties incrementally means: negotiate more interim protection measures; intensify high level talks on major issues common to all tables; negotiate “slim” agreements in principle; give priority to governance initiatives; and allow First Nations “time-outs” to develop their governance and vision.



The governments of Canada and BC need to be candid about what is on the table in these negotiations. And all of the parties need to be clear about their goals in treaty making and their vision of British Columbia after treaties.

This is true for First Nations as well as for the governments of Canada and BC.

The report spells out actions the Principals must take. The message to the governments of Canada and British Columbia and First Nations is this: act together on these recommendations to make the treaty process more effective.

The First Nations Summit must take steps to become more effective. There are recommendations within the report that address this issue.

Some First Nations currently negotiating in the treaty process are not ready for intense negotiations. These First Nations should have the opportunity to take time out from negotiations, without being penalized, to develop governance and vision. This approach would allow negotiators to focus on tables where the parties are ready for intense negotiations.

The BC government must respect the tripartite nature of the treaty process. Its review of the Treaty Commission is just one example of unilateral action.

The Treaty Commission agrees there should be a review, but through a tripartite process, not by BC acting alone.

The BC government must engage in negotiations on the full range of treaty issues while the referendum is underway. The planned referendum may help the BC government more clearly articulate its goals in treaty making although the Treaty Commission remains skeptical.

A more effective consultation effort is the better alternative. The Principals must ensure that consultation is effective — that people know what the rules are, how their input is being used or not used and why.

The Government of Canada must stick to its commitment to high level negotiations and to quarterly meetings of the ministers and Summit task group. The Treaty Commission suggests the federal minister have a political alternate here in BC to take a leadership role in his absence.

Urban issues are becoming more contentious as has been seen in Nanaimo. There has been a lot of talk about the problems, but not enough about solutions. A constructive forum was created in Nanaimo to address these issues, but local government has scuttled this opportunity to develop a better working relationship with the Snuneymuxw First Nation.

Action is needed on urban issues so that private land, acquired from willing sellers, can be incorporated into treaty settlement lands.

While taking a hard look at the last eight years of treaty negotiations, the Treaty Commission acknowledged its own shortcomings and put forth an immediate action plan to address these challenges. Specifically, the Treaty Commission needs to be more proactive in enforcing formal reporting requirements and in holding the parties accountable for results.

In the past, the cost of our collective failure to resolve the BC land question has been almost entirely born by aboriginal people.

This is no longer the case. We will all bear the cost if we fail this time.

RECOMMENDATIONS AT A GLANCE

Build treaties incrementally.

The Treaty Commission has identified several elements of the “building block” approach:

> *Negotiate more interim protection agreements* – a formal agreement among Canada, BC and a First Nation to protect First Nation interests in land that will ultimately be part of a treaty settlement.

> *Intensify high level talks* on major issues common to all tables, such as tax exemptions.

> *Negotiate “slim” agreements in principle* that allow First Nations to begin to benefit from treaty arrangements while high level talks on other treaty matters continue.

> *Give priority to governance initiatives.*

> *Allow “time-outs” for the development of human resources, governance and vision.*

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Be candid in negotiations.

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Respect the tripartite process.

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Address urban issues.

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Improve consultation, information.

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Negotiate during referendum.

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