

MUSQUEAM FIRST NATION OPENNESS PROTOCOL

May 23rd, 1997.

Purpose

1.1 The purpose of this protocol is to record the commitment of Canada, British Columbia and the Musqueam First Nation to an effective and open treaty process, and to set out a protocol for achieving that objective.

Principles

2.1 The purpose of the treaty process is to conclude ratified treaties, and therefore, the integrity, effectiveness and productivity of treaty negotiations shall be paramount.

2.2 In order to be effective, the Parties recognize that Canada and British Columbia will need to consult with and provide information to third parties on matters which are or which may become the subject of treaty negotiations and which affect those third parties. Likewise, the Parties recognize that Musqueam may from time to time consult with third parties as well.

2.3 The Parties recognize that treaty negotiations must be conducted in an environment where a wide variety of options can be considered and where the Parties can focus on finding solutions to the issues on the table at the table. Accordingly, the Parties recognize that the untimely disclosure of treaty information and documents could, in some instances, impede and interfere with the successful and timely conclusion of fair, honourable and lasting agreements.

2.4 In acknowledging the need to have an open and effective treaty process and the desire to provide accurate information to the public, the Parties will provide access to documents, public information and access to main table meetings as provided in this Protocol.

2.5 The Parties subscribe to the British Columbia Claims Task Force recommendation that non-aboriginal interests be represented at the negotiating table by the federal and provincial governments.

Openness Mechanisms

3.1 Openness will be achieved by public information, consultation with advisory committees, access to documents and access to main table or side table meetings, all as may be permitted by the Parties.

Public Information

4.1 The Parties will establish a Public Information Working Group to jointly develop a program of public information activities relating to the Musqueam treaty process which may include:

- (a) public information forums;
- (b) open workshops;
- (c) radio, television and newspaper interviews and briefings;
- (d) meetings with third parties and other community groups;
- (e) open houses; and
- (f) other public information activities.

4.2 Nothing in this section is intended to prevent the Parties from participating in bilateral or independent public information activities.

Consultation

5.1 Each Party retains the right to consult with its respective advisory committees.

5.2 The Parties recognize that in order to enable the advisory committees to provide advice on items under negotiation:

- (a) each of the Parties will need to provide information to its advisory committees on the substance of issues being negotiated;
- (b) each of the Parties may provide to its advisory committees documents available to the public, as well as agreements and sub-agreements which have been agreed to in principle but have not yet been initialled; and
- (c) each of the Parties may provide periodic briefings to advisory committees established by the other Parties.

5.3 Where the Chief Negotiators wish to share with their advisory committees information which has not been determined to be public in accordance with this Protocol, the Chief Negotiators may agree on conditions under which such information will be made available.

Access to Records

6.1 In this Protocol, the term "Record" means any thing on which documentary material or information is recorded or stored including by graphics, electronics, mechanical or other means (but does not include a computer program or any other mechanism that produces records), and that is provided by one or more Parties to the other Parties as part of this treaty negotiation process.

6.2 Where one Party produces a Record and provides it to another Party, the Chief Negotiator for the Party producing the Record will decide whether the Record may be made public and advise the other Parties accordingly.

6.3 Where two or more Parties produce a Record, the Chief Negotiators for those Parties will determine by mutual agreement whether it may be made public. In making this determination, the Chief Negotiators will consider whether granting access to the Record could reasonably be expected to:

(a) result in disclosure of Records or information that was produced or provided in confidence;

(b) prejudice positions, interests or negotiation strategies of any Party or the successful and timely conclusion of the current or future stages of negotiation of fair and lasting agreements;

(c) encourage public support for, or enhance progress in, the negotiations; or

(d) result in disclosure of Records or information that could reasonably be expected to be harmful to or interfere with the conduct of the negotiations.

6.4 Inclusion of the words "In Confidence", "Confidential" or similar words on or in respect of a Record will constitute advice to any Party receiving the Record that it is to be kept confidential.

6.5 If a Chief Negotiator is aware of a written request under federal or provincial freedom of information and privacy laws for information relating to the negotiations, notice of the request will be given to the other Parties.

6.6 Nothing in this section is intended to prevent a Party from sharing Records within its own caucus.

Access to Negotiations

7.1 The Parties agree that the public generally will be permitted access to observe Main Table negotiations devoted to a general exchange of information on issues, interests and policies, but only if all Parties approve of such access.

7.2 The Parties will determine whether sessions will be open to the public by considering whether their

attendance will decrease the effectiveness of the session, interfere with the effectiveness of the process, or reasonably be expected to prejudice the position or strategy of a Party.

7.3 Access by the public to negotiations, where agreed to by the Parties, may take the form of attendance as observers at a negotiating session, broadcast by television or radio, and may include attendance of the media.

7.4 Canada and Musqueam acknowledge that British Columbia will include as a member of the provincial negotiating team a representative of the Lower Mainland Treaty Advisory Committee (the "TAC" Representative) who shall have the same status at negotiating sessions as all members of the provincial negotiating team.

7.5 All members of the three negotiation teams will be subject to all rules of conduct and confidentiality established by the Parties.

7.6 The Parties agree to adhere to the rules of confidentiality and information sharing attached as Appendix 1 to this Protocol. Should a member of the Negotiation Team of any Party breach these rules, that person shall be denied further access to negotiations.

Duration of Protocol

8.1 This Protocol shall continue until the conclusion of the Stage 3 frameworking stage of the negotiations, at which time the Parties will review its operation and effect with a view to determining what replacement arrangements may be desirable for subsequent stages of the negotiation.

Dated the 23rd day of May, 1997.

Signed on behalf of the Musqueam First Nation

Chief Gail Y. Sparrow

Signed on behalf of Canada

Robin Dodson, Chief Negotiator

Signed on behalf of British Columbia

Linda Jolson, Treaty Negotiator

APPENDIX 1
RULES OF CONFIDENTIALITY
AND
INFORMATION SHARING

It is important that all Parties to the Musqueam Treaty negotiations be able to trust and rely on each other not to divulge information or documents which are confidential.

Section 7.6 of the Musqueam Openness Protocol provides that the Parties will develop rules of confidentiality and information sharing for the purpose of section 7.5 of the Openness Protocol. Accordingly, the Parties have developed and endorse the following rules:

1. The confidentiality of all documents and subject matter deliberated upon by the Main Table, its Side Tables or Working Groups shall be determined in accordance with the provisions of the Musqueam Openness Protocol.
2. Where agreement has been reached by the Parties for public disclosure, meetings open to the public or other methods for public disclosure shall be arranged.
3. Confidential information or documents will be made available through the Treaty Advisory Committee (TAC) Representative to the Lower Mainland TAC if:
 - (a) it is agreed that the information or document may affect local government interests;
 - (b) the TAC members, including the TAC Representative, agree to confine discussion of the information and documents to "in camera" sessions of their local governments; and
 - (c) the TAC members, including the TAC Representative, agree not to disclose this information to the public.