

Preparing for the Day After Treaty
Panel Discussion:
Are Treaties the Answer?
November 14 - 16, 2007

Presenters: Robert Morales, Hul'qumi'num Treaty Group
Robert Louie, Westbank First Nation
Robert Dennis; Huu-ay-aht First Nation
Jim Aldridge, Nisga'a Lisims Government

Presentation 1 - Robert Morales

Presentation unavailable.

Presentation 2 - 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 at Work". What's wrong with 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's 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 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.

Presentation 3 - Chief Robert Dennis

You probably noticed that I'm not 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 done 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:tles7et'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.

Presentation 4 - 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.