

BC Treaty  
Commission  
**Annual Report**  
2008 / [www.bctreaty.net](http://www.bctreaty.net)

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# letter from the **acting chief commissioner /**

Resolving the 'land question' in BC remains a serious challenge and a necessary task. The job of the Treaty Commission is to identify the challenges and help the parties overcome those challenges to achieve lasting and fair settlements.

Progress is being made but the pace is far too slow despite considerable investment. First Nations' expectations for the outcome of treaty negotiations appear much greater than currently supported by either the government of Canada or BC. This is worrying and should be of concern to all British Columbians. Failure to resolve the land question through negotiations will only lead to increased court action and the potential for confrontation. Treaty negotiations must be encouraged. We need successes.

To date we have celebrated the success of the Tsawwassen Treaty, the first final agreement to be ratified under the BC treaty process. The effective date of the treaty is set for April 3, 2009. We applaud Tsawwassen First Nation for their courage in taking this historic step on their path of nation building. As Tsawwassen moves forward the Treaty Commission will closely monitor the challenges and issues they face in implementation, both with respect to the process of implementation and interpreting the substance of the treaty. The Treaty Commission will be available to support the parties and we hope to learn from this important experience.

We look forward to seeing final approval of the Maa-nulth First Nations Final Agreement. Unfortunately, the second treaty that we had hoped would be implemented this year is stalled pending resolution of litigation. The final agreement has been signed by four of the five First Nations and passed in the BC legislature. However, Canada has not ratified the agreement. Our efforts to see ratification completed continue.

The Treaty Commission has identified the potential for agreements at other tables. There are four First Nations at Stage Five of our process that are working in earnest on final agreements and approximately eight tables in Stage Four that are close to an agreement in principle. We continue to support those efforts.

This, of course, leaves more than thirty tables either in a holding pattern, stalled, pursuing other activities or inactive. This means we are still not close to making the breakthrough in negotiations that will see treaties for the majority of those First Nations that are currently committed to negotiations. The reasons for this are complex and

serious efforts in the last year, supported by the Treaty Commission, were undertaken to move the process forward. Key to this effort was supporting the First Nation requested 'common table', which involved more than 60 First Nation communities and the governments of Canada and BC. Six key issues were addressed at the common table that are proving too difficult to resolve for many individual tables. The Treaty Commission provided a comprehensive report from the 'common table' which perhaps best summarizes the current impediments facing treaty negotiations that need to be resolved if significant progress is to be made.

As chair of the common table, and on behalf of my fellow commissioners, I can say we were impressed by the high level of preparation and engagement at the common table, but we want to see the parties take action on the opportunities that were identified. If progress is not made on the opportunities identified it is very likely that the tables involved will, at best, remain stalled and, at worst, see their communities will explore other avenues to resolve their land claims, including recourse to the courts.

The Treaty Commission has been supportive of what are being called 'incremental treaty agreements'. In these agreements, elements of the treaty package are implemented by BC and the First Nation in advance of the full agreement. An agreement was signed with Tla-o-qui-aht First Nation and one is expected to be signed with Haisla First Nation. The Treaty Commission sees such agreements as mechanisms to build trust and support First Nations now. We are considering how these agreements can benefit many more First Nations and how we can get Canada to participate.

Fish issues remain a challenge, not only for those First Nation communities participating in the common table, but also for tables that we have identified as close to concluding agreements. The Treaty Commission has requested and will insist that the federal government set a firm timetable for obtaining a fish mandate and for finding a solution that recognizes and protects the historic and continuing aboriginal right to fish.

Outside the treaty process, but of great interest to the Treaty Commission, are the efforts being made by the BC First Nations Leadership Council and the provincial government to develop a workable 'recognition and reconciliation act' to address aboriginal title and rights. This act, which would be the first in Canada, could go a long way to establishing a legislative framework for reconciliation. It could help resolve many of the conflicts we

are seeing on the ground in First Nations' territories and would complement the treaty making process.

While the courts continue to define the scope and extent of aboriginal title and rights and have been helpful in forcing the parties to deal with their differences on the land, the Treaty Commission, as do the courts, see negotiations as the better way to realize the goal of one day achieving a resolution to the land question.

I have had the privilege of being the acting chief commissioner for most of 2008 and want to thank my fellow commissioners for their support and encouragement during a very busy year. I also want to thank our staff for their hard work, commitment and support.

As acting chief commissioner, and on behalf of the BC Treaty Commission, I am pleased to submit to the First Nations Summit, the Government of Canada, and the Government of British Columbia our 15th annual report. Our financial information has been prepared to coincide with the release of Annual Report 2008 and is submitted as a separate document.

Respectfully,



Jody Wilson

# overview

# 2008 / Highlights

The Treaty Commission's primary focus is the BC treaty process. As such, we are providing an update on the progress and challenges at the individual treaty negotiation tables, but we also look at developments on the wider front.

These table reports reveal there is progress and success, including the first final agreement to be ratified under the BC treaty process, a second agreement close to being ratified, and the emergence of exciting, new 'incremental treaty agreements'. This new tool will provide early access to significant treaty benefits for First Nations. The table reports also reveal that significant challenges exist, including the lack of a fisheries mandate from the federal government.

*Forging Linkages and Finding Solutions* was the theme for a conference the Treaty Commission hosted recently in Vancouver, which provided a forum for dialogue among First Nations on their challenges and the fundamental issues essential to their future governance and development. This annual report contains a special report on what was discussed at the conference.

Forging linkages is, in many ways, the challenge facing all parties in the BC treaty process. A treaty is not the one, all encompassing answer to every problem and challenge facing First Nations; nor can negotiations occur in isolation from other important initiatives and events that impact aboriginal people.

There are other important events occurring simultaneously with treaty

negotiations, which may or will have an impact. These events form part of this overview, for example: important legal developments; efforts to develop a recognition and reconciliation act; the prime minister's apology to Canada's aboriginal peoples for the government's role in the Indian residential schools system; and the impact of First Nation territorial disputes. Harmonizing these initiatives should be and is becoming an integral part of treaty making. But when harmonization is not clear, treaties should also be capable of standing alongside other important initiatives and tools without conflicting with or detracting from them.

Out of frustration and in an effort to resolve some of the many outstanding treaty issues, more than 60 First Nation communities worked together at a common table earlier this year with the governments of Canada and BC. Their frustration arises, in part, from the lack of a connection between the positive developments happening outside the treaty process and what is achievable in treaty negotiations.

The commitment of the two governments and their willingness to reach agreements with First Nations will be judged, in part, on their responses to the opportunities that emerged from the discussions and the report on the common table prepared by the Treaty Commission.

More importantly, they will be judged on how they harness the opportunities identified by the parties at the common table.

As our special report reveals, treaty making is ultimately about nation building, and that in turn encompasses many things, like governance, economic development and capacity building. Getting there is proving complex, and treaty making is certainly a significant and important tool to resolving the land question. There are other pathways to get us there as well, and these may be part of treaty making, support it, or coexist alongside it.

When we look back on 2008 and the events of 2007, we can see that the parties have clarity on what it will take to achieve the reconciliation of Crown and aboriginal title. This is true, in part, because the parties have a clearer understanding of each other's perspective on the major issues that remain obstacles to many more treaties.

From our viewpoint, there is much more clarity on aboriginal issues than was the case a decade ago when substantive treaty negotiations were just getting underway. Where there is clarity we believe there is opportunity. What is required is action by all parties that will see many more agreements concluded.

# overview

# 2008 / Highlights

## First Treaty A Significant Achievement

The Tsawwassen First Nation treaty, the first approved in the BC treaty process, is a positive achievement for all British Columbians and an encouragement for other First Nations to seek their own unique treaties.

Seventy per cent of the registered Tsawwassen First Nation members voted in favour of the treaty on July 25, 2007. The treaty was subsequently ratified in the BC legislature and approved in Ottawa. It is now being made into law and will take effect on April 3, 2009.

The treaty provides the First Nation with approximately 724 hectares of treaty settlement land and a one-time capital transfer payment of \$13.9 million over 10 years, \$2 million for relinquishing mineral rights, \$13.5 million for startup and transition costs, \$7.3 million for a number of funds for the purposes of resource management and economic development and \$2.6 million annually for ongoing programs and services. There is provision for salmon, crabs and intertidal bivalves and funding to establish a Forest Resource Fund and Wildlife Fund.

## Maa-nulth Treaty Requires Royal Assent

The five Maa-nulth First Nations voted in favour of their final agreement in October 2007 and provincial legislation was approved in November 2007. The

treaty still requires royal assent from federal parliament.

The treaty provides a one-time capital transfer payment of \$73.1 million over 10 years, \$1.2 million annually in resource royalty payments for 25 years and \$9.5 million annually for program funding. There is one-time implementation funding of \$47.3 million for transition and implementation in such areas as fisheries, parks, public works, governance and land and resource management to be paid over eight years. A further \$11.1 million has been provided outside the treaty for capital projects.

The treaty also provides 22,375 hectares of land including subsurface resources, in addition to the existing reserves of 2,084.

Final approval is delayed because one of the five First Nations is part of a court action over the aboriginal right to sell fish. The treaty would have been delayed temporarily in any event because of the federal election which ended the parliamentary sitting. The federal government is not expected to proceed with approval until the court case is resolved or the First Nation drops the legal action. The two parties will have another opportunity to review their options when the new parliament begins sitting this fall.

Four of the five Maa-nulth First Nations — Ucluelet, Toquaht, Uchucklesaht and Kyoquot/Checklesah — have signed the final agreement. Huu-ay-aht First Nation has vowed not to sign until

their fisheries case is resolved in the BC Supreme Court. The court case, launched by the Nuu-chah-nulth Tribal Council, resumed in February 2008 after a 17-month recess but may not be decided for some time.

## More Agreements On The Way

Of the First Nations actively pursuing final agreements or agreements in principle, none is a certainty. However, several First Nations are preparing to have their members vote on treaties in 2009 or in 2010. Yale First Nation, In-SHUCK-ch Nation, Sliammon First Nation and Yekooche Nation all have their sights on final agreements within the next year if members approve.

Perhaps another eight First Nations may be in a position to consider agreements in principle as well. Those First Nations closest to agreements in principle include K'omoks First Nation, 'Namgis Nation, Nazko First Nation, Northern Shuswap Treaty Society, Oweekeno Nation, Te'Mexw First Nation, Tla-o-qui-aht First Nation and Tsimshian First Nations. There are now 60 First Nations in the BC treaty process of which two have concluded treaties, and six others are in stage 5 seeking a final agreement and 43 First Nations are in stage 4 seeking an agreement in principle.

Circumstances in each set of treaty negotiations will play a large part in determining Treaty Commission priorities and actions. Whatever the action, the underlying objective

will be to move forward the treaty process so that more agreements can be achieved. Facilitation by the Treaty Commission will continue in treaty table negotiations and also in discussions among First Nations on territorial issues.

## **First Nations Await Responses To ‘Common Table’ Report**

During the past year, BC First Nation communities called for the establishment of a common table. More than 60 BC First Nation communities, through their chief negotiators, came together to engage the governments of Canada and British Columbia on key issues in the treaty process, to identify obstacles, address barriers and promote the speedy conclusion of fair and viable agreements based on recognition and reconciliation of aboriginal title and rights.

With support from the Treaty Commission, the First Nations were able to bring the other two governments into far-ranging discussions on six major issues they see as obstacles to progress in treaty negotiations. All parties agreed the issues for consideration would be: recognition/certainty, including shared territory issues; constitutional status of lands; governance, co-management, including structures for shared decision-making; fiscal relations, including own source revenue and taxation; and fisheries.

The Treaty Commission provided \$400,000 in Negotiation Support

Funding to assist the representatives of the First Nation communities in working together to prepare for and undertake the discussions at the common table. The three parties adopted an aggressive timetable and met for a total of 13 days over a three-month period.

In the Treaty Commission's view, the common table proved to be an intensive and worthwhile undertaking due, in large part, to the commitment and hard work of all parties at the table.

There is no question the work of the common table represents a promising basis for reaching agreements with a significant number of the First Nations involved in treaty negotiations.

It is the expectation of the First Nations and the understanding of the Treaty Commission that representatives for both Canada and BC will take the opportunities agreed to at the common table, along with appropriate background and documentation, to their principals for decision-making on options.

Aboriginal and Reconciliation Minister Michael de Jong, speaking at the recent Treaty Commission conference said, “I think that next step involves re-engaging with the federal government now and seeing if we can actually turn the ideas that revealed themselves in the report... into something tangible that we can talk about at individual tables.

“I’d like us to challenge ourselves to take that discussion and turn it

into something tangible that we can bring to the table and help move the process forward.”

The Treaty Commission will hold the parties to their commitment to respond to the common table report and will work with the parties on specific follow up steps to ensure that the work of the common table is acted on and translated into concrete results.

## **Revitalization Not Yet Addressed**

The treaty revitalization table, also discussed by the Principals, has not yet been struck. The Principals-level table is to be the venue for discussion of such matters as First Nations funding and debt issues, compensation, capacity with respect to treaty negotiations, treaty implementation issues and overlaps as well as the role and, perhaps, enhanced authority of the Treaty Commission. When and how this work will begin is an issue the Principals must address soon.

## **Progress Possible Through Interim Measures**

One area where the Treaty Commission continues to see the potential for progress at individual treaty tables is with interim measures. There continues to be a need for more interim measures agreements earlier in the treaty process and these agreements need to be more strategically linked to treaty negotiations.

# overview

## 2008 / Highlights

The “incremental treaty agreement” option being proposed by the BC government for at least two tables shows promise in providing a new pathway to treaties. It also provides economic opportunities for First Nations. The Province is expected to announce incremental treaty agreements with Tla-o-qui-aht First Nation and Haisla Nation. (See Progress Report pages 13–30)

The Treaty Commission is monitoring this approach closely and will explore ways in which incremental treaty agreements might be applied more generally to benefit more First Nations. The Treaty Commission sees this as an area where the federal government should be involved, but at a minimum it must be an observer.

### First Nations Address Territorial Issues

With so many more First Nations in the advanced stages of negotiations, territorial issues and disputes, more than ever, are front and centre in the negotiations over land and resources. As such, the Treaty Commission is much more involved in resolving territorial disputes among First Nations.

Territorial disputes have hindered progress in some treaty negotiations and caused tensions between First Nations as treaty agreements are concluded. To assist and encourage First Nations to address territorial issues in a more timely fashion, the Treaty Commission initiated a pilot project currently underway in the Kwakwaka'wakw territories of north-

ern Vancouver Island and the adjacent mainland. Supporting the shared territory pilot project is consistent with the Treaty Commission's mandate to facilitate the treaty process while also enabling First Nations to resolve territorial issues among themselves.

The Treaty Commission is also supporting talks on territorial issues between Tsawwassen First Nation and Cowichan First Nation being facilitated by former BC Court of Appeal Justice Lambert.

The courts have given their views on territorial disputes involving First Nations that are finalizing treaties and those that are feeling the impact of those agreements. Those decisions have favoured the First Nation that is completing a treaty, indicating there are sufficient protections in place for those First Nations that are impacted by the treaty.

Recent court decisions suggest assertions of aboriginal rights and title are strengthened where First Nations have territorial protocols in place and are weakened where competing claims remain unresolved. Agreements can also benefit the First Nations in their interactions with other governments, businesses and those interested in partnering on economic development projects and other initiatives.

### Tsilhqot'in Title Case Significant

The BC Supreme Court, in the Tsilhqot'in Nation case, brings us

the closest yet to an outright finding of aboriginal title.

BC Supreme Court Justice Vickers concluded the Xeni Gwet'in proved aboriginal title to about 200,000 hectares or about 50 per cent of their traditional territory in the Nemiah Valley. However, Justice Vickers denied the request for a declaration of aboriginal title, given the all-or-nothing nature of the pleadings and he urged the parties to negotiate.

The BC government set an October 30 deadline for bringing an offer to the Tsilhqot'in but no significant offer was forthcoming by the deadline. Minister of Aboriginal Relations and Reconciliation Michael de Jong said in media reports “that bringing the federal government into negotiations is vital, but the province hasn't been able to do that.”

### Gitanyow Case Reveals Crown Recognition Lacking

The BC government has spent considerable time defending itself in court as First Nations seek the court's assistance in resolving disputes primarily over land and resources. Its hard-line stance in court has made its position on aboriginal issues somewhat confusing. But these recent court decisions brought by First Nations against BC have been helpful in further defining aboriginal rights to the benefit of both parties and, in some cases, providing interim solutions.

For example, the BC government failed to recognize Gitanyow house groups and boundaries in decision-making relating to the issuing of six forest licence replacements, the BC Supreme Court found in *Wii'litswx v. British Columbia*.

The province also failed in its obligations to fully involve the Gitanyow in forest activities on its traditional territory where there has been "a long and troubled history of over-logging and unfulfilled silviculture obligations."

The court action revolved around how the province renewed or replaced the six forest licences, the impact from licensees' activities on all facets of Gitanyow life and the future impact from their forestry activities.

Madame Justice Neilson found that the province generally met, in the short term, accommodation and consultation obligations to provide monies to the Gitanyow for resource use, and in terms of domestic use of harvested wood.

Regarding the province's failure to recognize the Gitanyow's hereditary system, the court said, "Dismissing such recognition as impractical, without discussion or explanation, fell well below the Crown's obligation to recognize and acknowledge the distinctive features of Gitanyow's aboriginal society and reconcile those with Crown sovereignty."

## No Fish On The Table

There is no clarity regarding fish mandates. That lack of a federal

mandate on fish is hindering final-agreement negotiations and fish may not be part of agreements in principle signed in the short term. The delay in any new fish allocations in either final agreements or agreements in principle is the result of a major review of the west coast salmon fishery by Fisheries and Oceans Canada.

First Nations have been told the Government of Canada is not prepared to complete final agreements without a fish mandate and no timetable has been given on when a mandate might be achieved. The Treaty Commission has requested and will insist that the federal government set a timetable for obtaining a mandate and find a solution that recognizes and protects the historic and continuing aboriginal right to fish.

These stalled fish negotiations come at a time when fish returns are low, there are serious concerns about the decline in wild fish stocks and the need for fish security among First Nations has never been greater.

## Special Fishing Rights Meet Charter Test

The Supreme Court of Canada, in June of this year, ruled that granting special fishing licences to aboriginal groups is consistent with the Charter of Rights and Freedoms and does not discriminate against non-aboriginal fishers.

The licences, being challenged by non-aboriginal fishers in *R. v. Kapp*, allowed fishers designated by First

Nations to fish for sockeye salmon 24 hours in advance of non-aboriginal fishers and to use the fish caught for food, social and ceremonial purposes and for sale.

Charter section 15(2) gives governments the right to implement a program that "has as its objective the amelioration of conditions of disadvantaged individuals or groups." In the *Kapp* case, the court ruled that granting communal fishing licences to the Musqueam, Tsleil-Waututh and Tsawwassen First Nations met the test for "disadvantaged".

The court noted the licences address aboriginal rights claims, provide economic opportunities and promote First Nation self-sufficiency, thereby improving conditions.

## First Nations Endorse Economic Plan

First Nation Summit chiefs voted in September in favour of the BC First Nations Economic Development Action Plan that was developed by the BC Assembly of First Nations, First Nations Summit and Union of BC Indian Chiefs following a series of regional sessions in 2007 and a province-wide forum in February 2008. A copy of the plan is available on the First Nations Summit website at [www.fns.bc.ca](http://www.fns.bc.ca)

Actions set out in the plan will assist First Nations in the treaty process in finding new economic opportunities while treaty negotiations continue and in a post-treaty world.

# overview

## 2008 / Highlights

### Talks Continue On Proposed 'Recognition Legislation'

A joint working group involving the First Nations Leadership Council and the BC government is considering rights, title, governance, consultation and accommodation in a proposed 'recognition and reconciliation act'.

Aboriginal Relations and Reconciliation Minister Michael de Jong, speaking at the Treaty Commission conference *Forging Linkages and Finding Solutions* in October, characterized the proposed recognition and reconciliation act as overarching legislation to supersede the myriad outdated statutes that do not reflect current understandings of aboriginal rights and title.

"If we can work together and can establish a model we are comfortable with and build that legal model, British Columbia would be the first and only province to establish legislation that would enshrine aboriginal title, rights, governance and consultation and accommodation requirements in a provincial statute."

The minister acknowledged there are frustrations relating to consultation and the management of lands and resources within traditional territories.

"That is what lies at the heart of the discussions that are taking place around the recognition and reconciliation legislation. That work is taking place at the very highest level,"

he said. "We are hoping to complete that work in a way that will allow us to move forward legislatively prior to the expiration of the term of this government.

### New Relationship Addresses Major Issues

The main objective of the New Relationship introduced in 2005 and agreed to by the Leadership Council and the BC government, is to close the gap between aboriginal and non-aboriginal British Columbians in five key areas: education, health, housing, economic development and intergovernmental relationships. This vision and these objectives are backed by the \$100 million New Relationship Trust Fund.

Additional information on New Relationship initiatives can be found at <http://www.gov.bc.ca/arr/index.html> or <http://www.fns.bc.ca>

### Prime Minister Apologizes To Residential School Survivors

In June, the prime minister acknowledged a sad chapter in Canadian history in an apology to Canada's aboriginal peoples for the government's role in the Indian residential schools system. Many Canadians now have a better understanding of the severity of the impact of the Indian residential schools. The Truth and Reconciliation Commission established in June

2008 has an opportunity to educate many more Canadians about the lingering harmful consequences of the Indian residential schools.

For over a century Indian residential schools separated more than 150,000 children from their families and communities. Two primary objectives of the schools were to remove and isolate children from the influence of their homes, families, traditions and cultures, and to assimilate them into the dominant culture.

There were 132 schools financed by the federal government in both territories and in most provinces, except for Newfoundland, New Brunswick and Prince Edward Island.

In the apology he said, "Today, we recognize that this policy of assimilation was wrong, has caused great harm, and has no place in our country..."

"The government now recognizes that the consequences of the Indian residential school policy were profoundly negative and that this policy has had a lasting and damaging impact on aboriginal culture, heritage and language."

Assembly of First Nations National Chief Phil Fontaine said the apology "signifies a new dawn in the relationship between us and the rest of Canada."

# special report / On Nation Building

First Nations from throughout BC gathered in Vancouver in November 2008 at the invitation of the Treaty Commission to discuss governance, economic development and capacity building.

*The conference, Forging Linkages and Finding Solutions, provided a forum for dialogue among First Nations, both inside and outside the treaty process, on fundamental issues essential to their future governance and development. In essence it was about nation building or nation re-building. Conference attendees heard from a number of guest speakers and panelists and participated in facilitated workshops on these three topic areas. The following article provides an overview of some of the conference highlights as well as some insights into the challenges First Nations aired at the conference as they seek to reconcile their title and rights with that of the Crown.*

## Treaty Making Is About Nation Building



Stephen Cornell, a co-founder of the Harvard Project on American Indian Economic Development who has studied First Nations governance for over 20 years, observed that First Nations in the BC treaty process are engaged, most fundamentally, in nation building.

He said treaty making is about rebuilding nations that once exercised governance over lands and peoples and did so superbly well.

Traditionally, many First Nations organized their societies through houses or clans, which preserved their authority through complex variations of matrilineal or patrilineal systems. These traditional governments exercised control over vast territories. They also formed the basis for larger political units, often referred to as tribes or nations.

After British Columbia entered Confederation in 1871, Canada began to impose the band council system. The traditional governments and their ability to exercise authority over territories were discouraged and, at times, outlawed. Today, these traditional governments survive side-by-side with the band council system.

“This treaty process, I would think from a First Nations point of view, is about bringing that kind of world back to life again. It seems to me you are engaged in a profound and colossal effort to rescue your nations from the legacies of colonialism; to reclaim your place on this land; and to reinsert your voice in the major decisions that affect your lives.”

Cornell said the treaty process represents an opportunity not only to make a treaty, but to put in place the

kinds of tools that First Nations need to exercise their rights effectively.

At the end of the struggle for rights there is a prize for the winners which Cornell refers to as the governance challenge.

“The rights challenge has an end point. It is the point where you’ve either got them in your hand or you don’t. You have a treaty in hand that specifies your rights; or you have a court decision that specifies your rights; or you have an agreement that specifies your rights.”

Cornell said that is not true for governance because governance doesn’t come to an end.

“In the governance challenge the focus of the work isn’t on some opposition out there, or some ‘them’ — the federal government, the province, somebody who has been leaning on you for decades, generations. Now the focus is on you; it is on what you do.”

Governance is a critical piece of defending aboriginal rights, according to Cornell, because if the First Nation cannot govern well then eventually somebody is going to step in and take those rights away.

“What good is it to have a right to the land if you can’t make and implement good decisions about what happens on the land? What good is it to have

# special report / On Nation Building

the right to decide what happens in your community if your community is in such disarray that it can't decide what to do?"

Cornell said it is not the assets that determine the success of a First Nation, it is whether or not the First Nation can take whatever assets it has — generous assets or minimal assets — and put them to work in effective ways.

He said First Nations need governance tools that are robust, that are capable of realizing their dreams.

"To me, governance refers to a set of principles and mechanisms that enable you to translate your vision, the will of the people, into action. The principles are the fundamental understandings of the community that come out of your own experience and culture, of what the community is about, what its purposes are, the basis of authority in the community and the appropriate use of that authority."

Cornell said good governance means having a constitution, separations of powers and limits on the abilities of politicians to disrupt enterprises and programs; provisions for continuity instead of upheaval when there are elections; and sound management practices and the like.

"But, if these are going to be successful nations, they have to respect their own ideas of governance and find ways to make them work in the contemporary world."

## Planning And Preparation Key To Treaty Implementation



Tsawwassen First Nation Chief Kim Baird understands well the challenges Cornell describes. The challenges are daunting for this small First Nation that must be prepared for self government by April 3, 2009, the effective date of their treaty.

The First Nation has no special funding to prepare for the effective date. When the treaty was approved Treaty Commission loan funding stopped and no treaty payments are made before the effective date.

So far, Tsawwassen has identified 18 laws that will be required on the effective date and 39 separate projects that must be completed by then. All the projects can be categorized under governance, economic development and capacity building.

"We felt strongly we needed to go beyond the bare minimum for it to be a true expression of self government while staying within our limited capacity as a small First Nation," said Baird.

She said that to go from an *Indian Act* band with INAC-based policies and bylaws approved by ministers, which are very limited, to a self-governing First Nation is difficult.

"We never really had policy capacity in Tsawwassen let alone lawmaking capacity. Suddenly, we will have ultimate responsibility."

Chief Baird said Tsawwassen will need people who can understand program policy, develop and present positions for the decision-makers and who understand the impacts of external changes.

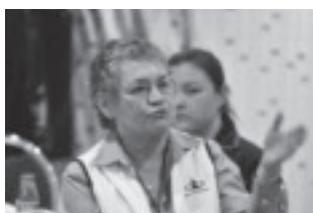
"We must be able to stand behind the decisions we make and ensure that those decisions are respected by everyone, member and non-member. Without good enforcement that treats everyone on the same basis, we will not be able to make decisions because we won't have the trust of the people we act for."

Chief Baird said finding the right balance between the needs of CP holders (First Nation land owners with Certificates of Possession) and the needs of the community in land use planning is challenging — balancing the livability of the community with economic activities.

Tsawwassen held more than two dozen consultations including community and family meetings to get feedback on their land use plan which was approved in July.

"I believe this is as critical as the treaty vote," she said.

## Rebuilding Economies Essential To Sustain Communities



St. Mary's Indian Band chief and Ktunaxa Nation Council Tribal Chair Sophie Pierre has come to understand that good government, and good governance, is essential to economic success.

The vision statement for the Ktunaxa Nation ends with the words "as a self-sufficient, self-governing First Nation."

The Ktunaxa made a commitment to creating wealth, and to do that, they had to re-embrace the idea of rebuilding their economy.

"Every one of our nations had thriving economies that over the years have been broken down just like everything else," said Pierre. "My mother used to call this little reserve where we lived 'living inside the corral'."

It is almost impossible to sustain First Nation economies "within the tiny little corrals in which we live.

"Well, now we have an opportunity through the BC treaty process where we are going to get beyond those corrals. Now we can recreate the economies in our communities but

we need real strong governance to do that. It is very hard to attract good business to our communities if we don't have good governance in place."

The Ktunaxa also have to take care of social development; protect lands and resource; protect language and culture; and develop ecosystem-based land use planning, and not just resource development.

"If a young person wants to set up a business... we are not prepared to deal with that. If that same young person went into the City of Cranbrook they can obtain licences, they can hook into water, power and sewer. There is an infrastructure that we don't have."

Pierre said all First Nations have opportunities. Some have opportunities for large-scale commercial and residential developments like Westbank First Nation and Squamish First Nation; others have potential for independent power projects; while others have opportunities in mining, oil and gas.

To rebuild economies Pierre said First Nations need access to capital and credit. To attract capital, First Nations need to have infrastructure. But to borrow money to build infrastructure a First Nation needs equity.

For some First Nations annual tax revenues will be a source of equity. Revenue sharing in the resource sector is a source of equity and Pierre is hoping gaming revenue will become a new source of income. Gaming revenue is not currently shared with First

Nations in BC although it is shared in other jurisdictions in Canada. It is an issue that BC First Nations, through their gaming revenue-sharing initiative, are lobbying the BC government for.

## Economic Success Is Achievable With Good Governance



Westbank First Nation is enjoying tremendous economic success, said Chief Robert Louie. Their financial achievement is due, in part, to their ideal location in the booming Okanagan. But it's also about good management, managing growth and change.

Westbank's success, according to Louie, can also be attributed to the Self Government Agreement negotiated by Westbank with the federal government, which came into effect on April 1, 2005, and the accompanying constitution that describes how the government operates and how it relates to its citizens.

"In Westbank we have governance over our lands and peoples within our lands," said Louie. "So, we have that recognition and understanding by our membership... residents on reserve... the federal, provincial and local governments, third parties, First

# special report / On Nation Building

Nations who are part of our whole structure (Okanagan Nation Alliance) and the general public.”

More than 9,000 people who are not members of Westbank First Nation reside on the reserve and are represented by a five-member advisory council. Under the self government act, the leaders are accountable, first and foremost, to the members and that fosters good governance practices which in turn results in economic stability and community prosperity.

Westbank generates about 80 per cent of its \$30 to \$40 million annual budget while the federal government contributes approximately 20 per cent.

Louie said the economic development is not without responsibility and from a governance perspective Westbank must address the social issues.

“It is one thing to be economically viable and prosper but it is also important to build a healthy and vibrant community with social responsibility.”

A community protection act is one of the most controversial pieces of legislation under consideration by Westbank. If approved, the act targeting sexual predators, drug dealers and other criminals, would enable Westbank to banish people from the community.

A community benefit charge, levied on all developers, helps fund capital improvements that benefit the entire community such as sidewalks and street lights for safety, elder, youth, sports and recreational programs, and culture and health initiatives.

“The perception today with our children and the youth is different. It was not so many years ago that Westbank didn’t have its flag on our building. So we fly our flag with pride. That generates more community pride.”

## Governance Challenges Can Be Overcome

Conference participants agreed that capacity — the ability to implement a treaty and provide good governance — is a challenge for many First Nation communities.

Workshop participants produced a list of things that First Nations will need to build capacity including: a shared vision; strong focused leadership; a constitution and a community plan in keeping with traditional and cultural knowledge; training and distance education; and advice from other First Nations and professionals.

## Treaty Implementation Challenging

In the Yukon, where First Nations have treaties that were ratified in 1995, many of the challenges have been with implementation, not with the agreements themselves.

The Yukon First Nations and the other First Nations in Canada with modern-day treaties formed the Land Claims Agreements Coalition to lobby the federal government to properly fund treaty implementation activities and to work with First Nations on

implementation as was envisioned when the treaties were signed.

In response to the coalition’s concerns the Senate Standing Committee on Aboriginal Peoples examined matters affecting the implementation of land claim agreements. Committee members came to the conclusion that the federal government is failing to properly implement the provisions of modern treaties.

“We endorse the view that failure to properly implement the provisions of modern treaties puts Canada at risk for generating new legions of broken promises.”

Council of Yukon First Nations Grand Chief Andy Carvill said, “Generally speaking, I believe we have good agreements, remembering that they are agreements derived from the process of compromise. Nonetheless, they are very strong on governance and the sharing of public health and safety responsibilities.”

Chief Carvill believes criticism of the body of the agreements is unwarranted.

“The agreements aren’t the answer to all our problems. But they definitely give us the tools that we didn’t have before under the *Indian Act*. They give us the tools that can assist us to make our own laws and implement our laws. They give us the tools to really make a difference in our communities and people’s lives. They make a difference in the economy and the relationships that we build.”

# progress reports / 60 First Nations

There are 60 First Nations participating in the BC treaty process. Because some First Nations negotiate together, there are 49 sets of negotiations. There are 8 First Nations in Stage 5 and 43 First Nations in Stage 4.

## 8 First Nations in Stage 5

In-SHUCK-ch Nation  
Lheidli T'enneh Band  
Maa-nulth First Nations\*  
Sechelt Indian Band  
Sliammon Indian Band  
Tsawwassen First Nation\*  
Yekooche Nation  
Yale First Nation

## 43 First Nations in Stage 4

Carcross/Tagish First Nation  
Carrier Sekani Tribal Council  
Champagne and Aishihik  
First Nations  
Da'naxda'xw Awaetlatla Nation  
Ditidaht First Nation  
Esketemc First Nation  
Gitanyow Hereditary Chiefs  
Gitxsan Hereditary Chiefs  
Gwa'Sala-'Nakwaxda'xw Nation  
Haisla Nation  
Heiltsuk Nation  
Homalco Indian Band  
Hul'qumi'num Treaty Group  
Hupacasath First Nation  
Kaska Dena Council  
Katzie Indian Band  
Klahoose Indian Band  
K'omoks First Nation  
Ktunaxa/Kinbasket  
Treaty Council  
Kwakiutl Nation  
Laich-Kwil-Tach Council of Chiefs  
Lake Babine Nation  
Musqueam Nation  
'Namgis Nation  
Nazko Indian Band

Northern Shuswap Treaty Society  
Nuu-chah-nulth Tribal Council  
Oweekeno Nation  
Pacheedaht Band  
Quatsino First Nation  
Snuneymuxw First Nation  
Stó:lō Nation  
Taku River Tlingit First Nation  
Te'Mexw Treaty Association  
Teslin Tlingit Council  
Tla-o-qui-aht First Nation  
Tlatlasikwala Nation  
Tlowitsis Nation  
Tsay Keh Dene Band  
Tsimshian First Nations  
Tseil-Waututh Nation  
Westbank First Nation  
Wet'suwet'en Nation

## 3 First Nations in Stage 3

Cheslatta Carrier Nation  
Council of the Haida Nation  
Squamish Nation

## 6 First Nations in Stage 2

Acho Dene Koe First Nation  
Allied Tribes of Lax kw'alaams  
Hwiltsum First Nation†  
Liard First Nation  
McLeod Lake Indian Band  
Ross River Dena Council

*\*Ratified Final Agreements*

*†See Table Report page 30*

# progress reports / 60 First Nations

## First Nations In Stage 5



### In-SHUCK-ch Nation

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The parties are in the intensive closing phase of treaty negotiations, working toward a final agreement, which the parties' chief negotiators expect to initial sometime in the first half of 2009.

In-SHUCK-ch Nation traditionally occupied and used the land generally located between the middle point of Harrison Lake, northward to the middle point of Lillooet Lake and has 936 members.



### Lheidli T'enneh Band

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Lheidli T'enneh is considering a second ratification vote and has initiated a community consultation process to determine what members

would like to see in the governance process. As part of the consultation process, they are reviewing the final agreement, in particular, the four pillars of governance, land, resources and the fiscal transfer, to ensure members fully understand the agreement. A final report, on whether or not to proceed to a ratification vote, is expected to be delivered to chief and council in December 2008.

The Lheidli T'enneh traditionally used and occupied the land and water around Prince George, including the Nechako and Fraser River area to the Alberta border. Today, the First Nation has approximately 320 members and 685 hectares of reserve land just outside of Prince George.



### Maa-nulth First Nations

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The five Maa-nulth First Nations voted in favour of accepting the Final Agreement in October 2007. Provincial legislation to ratify the agreement was introduced in the legislature on November 21, 2007; it was ratified on November 29, 2007. The treaty will require royal assent from federal parliament before taking effect.

Approval of the Maa-nulth First Nations Final Agreement has been delayed

because one of the five First Nations is part of a court action over the aboriginal right to sell fish. Four of the five — Ucluelet, Toquaht, Uchucklesaht and Kyoquot/Checklesah — signed the final agreement during the summer of 2008; however Huu-ay-aht First Nation has vowed not to sign until their fisheries case is resolved in the BC Supreme Court. The court case, launched by the Nuuchahnulth Tribal Council, resumed in February 2008 after a 17-month recess, but may not be decided for some time. The federal government is not expected to proceed with ratification until the court case is resolved or the First Nation drops their legal action.

The Maa-nulth First Nations comprise the Ucluelet, Huu-ay-aht, Toquaht, Kyoquot/Checklesah and Uchucklesaht First Nations, with a total population of almost 2,100. Until 2003 they were part of the Nuuchahnulth Tribal Council treaty table. The traditional territories of the Maa-nulth are concentrated in the Barkley Sound area and towards the northwest end of Vancouver Island.



### Sechelt Indian Band

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No tripartite activity occurred at the Sechelt table in 2008. The last

meeting between the parties was held in April 2007, at which time Sechelt addressed the issues they had identified to move discussion forward and requested a written response from the governments of Canada and BC. To date, no response has been received and there have been no further meetings.

Sechelt has been self-governing since 1986 when it signed the first self-government agreement in Canada, the Sechelt Indian Band Self-Government Agreement. Sechelt, a First Nation with approximately 1,225 members, traditionally occupied and used the land and water around the Sechelt Peninsula.



## Sliammon First Nation

Tripartite activity continued at the Sliammon table during 2008 and the First Nation has been at the forefront of developments across a wide range of treaty areas. Sliammon is now nearing completion of a final agreement with Canada and BC, with legal drafting well under way.

While the parties are close to a final agreement, anticipated for spring 2009, the major obstacle to completion is fish, an area of vital interest to Sliammon.

The lack of a federal mandate on fish is hindering negotiations.

In early 2008, Sliammon and K'omoks First Nation signed a shared territory agreement between their two nations.

Sliammon First Nation has a population of approximately 960 and traditionally occupied and used lands and waters in the vicinity of Powell River and Powell Lake and parts of the Gulf Island, the Courtenay area and Desolation Sound.



## Tsawwassen First Nation

The Tsawwassen First Nation Final Agreement received senate approval and royal assent in parliament on June 26, 2008. The effective date of the treaty is April 3, 2009. In anticipation of the effective date, Tsawwassen is continuing work on implementation, including community planning and dealing with territorial disputes. The community plan was approved by Tsawwassen First Nation members in July, paving the way for future development on treaty settlement land. It provides Tsawwassen with a vision for the future development of its land, allows them to finalize infrastructure planning

and provides the certainty to proceed with economic development. Tsawwassen's traditional territory spans the Pitt Lake area and the Fraser River Delta to Point Roberts and Saltspring Island. Their population numbers approximately 330.



## Yale First Nation

The parties at the Yale First Nation treaty table are working to conclude a final agreement and are hopeful that progress on outstanding issues can be made through early 2009. Most of the treaty chapters are substantially complete and undergoing legal review, although a few key elements in fisheries and land remain. Consultations by Canada and BC with First Nations and stakeholders in the area are ongoing.

Yale has taken advantage of treaty related measures (TRM) over the past year and made good progress in important areas. Yale recently completed the first part of an intergovernmental TRM which supported their work with the Fraser Valley Regional District (FVRD) on the development of the local government chapter of their treaty. The second component of that TRM is now underway and will enable Yale and the FVRD to develop a master service agreement.

# progress reports / 60 First Nations

Before fish negotiations stalled across the province this spring, Yale was able to conclude a fishery TRM, enabling them to work with Fisheries and Oceans Canada on a draft harvest agreement and the development of a joint fisheries committee.

Yale traditionally used and occupied the land around Yale, north of Hope. Their population numbers approximately 150 members.



## Yekooche Nation

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Yekooche is working to finalize a treaty with Canada and BC. This includes a high level of activity at the main table and in technical working groups, ongoing community consultations and capacity building.

In anticipation of a final agreement, Yekooche is also devoting considerable attention to overlaps with other First Nations. In the preceding year, Yekooche held numerous meetings with its neighbours and has made progress with some in addressing these overlaps.

Yekooche First Nation has a population of approximately 220 and traditionally occupied and used lands and waters northwest of Fort St. James.

## First Nations In Stage 4



## Carrier Sekani Tribal Council

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The Carrier Sekani Tribal Council (CSTC) table was inactive in 2008 and there are no indications that negotiations will resume in 2009.

CSTC represents eight First Nations in the treaty process, including: Burns Lake Indian Band (Ts'il Kaz Koh First Nation), Nadleh Whut'en Band, Nak'azdli Indian Band, Saik'uz First Nation (formerly Stony Creek), Stelat'en First Nation, Takla Lake First Nation, Tl'azt'en Nation and Wet'suwet'en First Nation. The combined population of CSTC is approximately 5,945 and the traditional territories of its members span an area of more than 90,000 square kilometres in north central BC.



## Dididaht First Nation / Pacheedaht Band

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Tripartite negotiations ceased in early 2008 as a result of court action by Dididaht against Canada and others for an alleged infringement of Dididaht aboriginal rights and title arising from the Maa-nulth First Nations Final Agreement. Canada effectively suspended negotiations pending an internal review of the implications of the lawsuit for the treaty table and Canada's ability to conduct negotiations. This internal review by Canada has been ongoing for more than nine months.

In the meantime, the parties at the Dididaht table have requested a comprehensive review of the status of the table by the Treaty Commission to identify obstacles to progress in negotiating an agreement in principle, as well as to suggest potential solutions.

Both Dididaht and Pacheedaht were participants at the common table involving 60 First Nation communities and the governments of Canada and BC.

Dididaht and Pacheedaht have been negotiating at a common table since 1997. Dididaht, located near Nitinaht Lake, has approximately

700 members, while Pacheedaht, with approximately 260 members, is based at Port Renfrew. The First Nations' traditional territories span the southwest corner of Vancouver Island.



## **Esketemc First Nation**

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Progress in negotiations at the Esketemc table has been slow. Last year it was reported that, in addition to the process chapters, the parties had eight chapters currently under negotiation including parks, forestry, land, subsurface resources, water, migratory birds, wildlife, and local government relations. Work has continued on those chapters; a few are closer to substantial completion, but no new chapters have been introduced. The parties maintained a regular negotiation schedule over the past year.

The traditional territory of the Esketemc is centred around their community at Alkali Lake, 50 kilometres to the southwest of the Williams Lake, and has approximately 765 members.



## **Gitanyow Hereditary Chiefs**

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Tripartite activity at the Gitanyow table has stalled despite recent efforts by the Treaty Commission to revive negotiations. Basic differences in approaches to treaty making, including Gitanyow's rejection of the treaty land selection model advocated by Canada and BC, remain major obstacles to successful negotiations.

In September 2007, Gitanyow initiated court action arguing the Province has not abided by the terms of the 2004 Gitanyow Forest Agreement, given their decision to renew forest licences within Gitanyow traditional territory. In August of this year, the Gitanyow secured a legal victory with a court decision finding the provincial government renewed a forest licence in northern BC without meaningful consultation or adequate accommodation of aboriginal interests. The Gitanyow Hereditary Chiefs headed back to the BC Supreme Court in October seeking direction on orders from the court; the status of which is not currently known.

Gitanyow was an observer at the common table involving 60 First Nation communities and the governments of Canada and BC.

The Gitanyow population is approximately 740 and its traditional territory spans the middle reaches of the Nass River.



## **Gitxsan Hereditary Chiefs**

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The Gitxsan table has completed facilitated discussions on the impasse around governance. However, the Gitxsan chiefs proposed an alternative governance model and undertook public education through newspaper and television ads in the summer of 2008 to demonstrate their interest in reconciling with Canada and BC on specific issues identified for exploration and negotiation. The parties have addressed the common areas where further exploration can move negotiations forward in an effort to achieve identified goals.

In November, the Gitwangak Band — part of the Gitxsan — was one of four First Nations that agreed to a land and cash settlement with the BC and Canadian governments to return lands cut off from reserves nearly a century ago under what was known as the McKenna-McBride commission of 1912–1916. These are the last of 22 historic claims that took more than 40 years to resolve.

# progress reports / 60 First Nations

Gitksan also assumed a prominent role at the common table involving 60 First Nation communities and the governments of Canada and BC.

Gitksan traditionally occupied and used the land and water around the upper reaches of the Skeena and Nass Rivers. The First Nation includes all or part of the populations of Gitanmaax Band, Gitwangak Band, Kispiox Band, Gitsegukla Indian Band and Glen Vowell Indian Band and comprises approximately 5,600 members.



## Haisla Nation

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The Treaty Commission conducted a comprehensive review of the Haisla table in 2008 and delivered a written report to the parties. This report contained recommendations to improve dynamics and relationships at the Haisla table and address obstacles to progress. Since the report was released, most of the recommendations have been adopted, including a proposal for the conduct of negotiations on an incremental treaty agreement (ITA). Indications are that an announcement on the outcome of the negotiations on an ITA will be made before the end of 2008.

To revitalize negotiations, the parties recently conducted an in-depth review of the chapter language tabled by the parties. This review has enabled the parties to identify major areas of disagreement and establish priorities in addressing them.

Haisla Nation has a population of approximately 1,620 and its traditional territory occupies an area on the central west coast of BC from Kitammat Arm, Devastation Channel, Kildadas Arm, the upper reaches of Douglas Channel, Gardner Channel, Verney Passage and the upper reaches of Princess Royal Channel.



## Hamatla Treaty Society (Laich-Kwil-Tach Council of Chiefs)

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The Hamatla Treaty Society has faced tremendous challenges in treaty negotiations in recent years; the most significant is reconciling their vision of a treaty with that of Canada and BC. To overcome this issue Hamatla worked with other First Nations and pursued discussions with both levels of government at the common table that was convened earlier this year.

Hamatla spent 2008 focused primarily on the process chapters of an agreement in principle and progress has been made on eligibility and enrolment, dispute resolution, approval of the agreement in principle, and ratification. The parties continue to meet on a regular basis.

The Hamatla Treaty Society is comprised of three First Nations including Kwiakah, Wei Wai Kai and Wei Wai Kum. Traditionally these First Nations occupied and used the lands and water around Campbell River, Courtenay and Comox, including parts of Knight, Call, Loughborough, Bear and Toba inlets. Today their collective population is approximately 1,575 members.



## Heiltsuk Nation

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This treaty table remained inactive in 2008; there have been no treaty negotiations since 2001.

Heiltsuk's traditional territory spans the central coast. The First Nation, based on Campbell Island, has approximately 2,210 members.



## Homalco First Nation (Xwemalhkwu)

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Homalco plans to conduct an internal review of the status of the treaty table before resuming tripartite negotiations. Homalco was a participant at the common table involving 60 First Nation communities and the governments of Canada and BC.

Homalco has a population of approximately 460. The lands and waters traditionally occupied and used by the Homalco people extend from Phillips Arm, west of the mouth of Bute Inlet, to Raza Passage and Quantum River, and to Stuart Island and Bute Inlet and its watershed.



## Hul'qumi'num Treaty Group

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In early 2008, tripartite activity at the table ceased as frustration over lack of progress increased. Hul'qumi'num

filed a petition against Canada with the Inter-American Commission on Human Rights citing breaches by Canada of its obligations under the American Declaration on the Rights of and Duties of Man. Tripartite activity at the Hul'qumi'num table resumed in fall 2008; however, concern has been expressed by the HTG over an apparent lack of commitment to negotiations by BC.

There were, however, two important developments affecting the table. One was the decision of Cowichan Tribes and BC to conduct bilateral negotiations on a Cowichan Reconciliation Agreement. The HTG also assumed a prominent role at the common table, involving 60 First Nation communities and the governments of Canada and BC, in an effort to help overcome some of the major issues at the table.

The Hul'qumi'num Treaty Group represents six communities: Chemainus, Cowichan Tribes, Halalt, Lake Cowichan, Lyackson and Penelakut. It has a combined population of approximately 6,615 and traditionally occupied and used lands and waters encompassing part of southern Vancouver Island, the waters of the Strait of Juan de Fuca and the Strait of Georgia, and on the mainland along a narrow corridor extending from the coast to Yale in the east.



## Hupacasath First Nation

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Hupacasath has been working towards an agreement in principle during 2008. To accelerate negotiations, the parties agreed to increase the number of meeting days each month. Although major challenges remain, including the constitutional status of treaty settlement land, governance, and the role of the Hupacasath off treaty settlement land, progress has been made on elements of the agreement in principle.

Hupacasath is pursuing several initiatives outside the treaty process to build community capacity and economic development opportunities. Hupacasath was also a participant at the common table involving 60 First Nation communities and the governments of Canada and BC.

The First Nation won a legal victory in its dispute with the provincial government over the transfer of a forest licence within their traditional territory. The BC Supreme Court has ordered that a mediator be appointed to resolve the dispute between the First Nation, the Province and the forest company.

# progress reports / 60 First Nations

Madam Justice Smith ruled the mediator is necessary because the provincial government has failed to engage in meaningful consultation despite a 2005 court order requiring the forests ministry to do so and the government had failed to make a reasonable effort at accommodation.

Located in the Port Alberni area, the First Nation has approximately 265 members.



## Kaska Nation

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In May 2008, after several years of stalled negotiations resulting from ongoing litigation by some Kaska communities, the parties have agreed to resume treaty negotiations with the BC Kaska communities represented by the Kaska Dena Council. In October a new KDC leadership was elected representing Kaska communities in British Columbia, and a resolution was passed to re-engage in treaty negotiations.

Despite minimal progress over the last few years in negotiating an agreement in principle, many of the chapters are in an advanced stage of development. The work done outside of treaty negotiations by the Kaska Dena Council in relationship building with neighbouring First Nations, industry, environmental non-government organizations and with the Yukon and BC governments will be beneficial in concluding treaty arrangements once the parties resume negotiations.

Kaska Nation includes Kaska Dena Council, Liard First Nation and Ross River Dena Council — with a combined membership of approximately 3,000. The First Nation's traditional territory ranges from north central BC to the Yukon and Northwest Territories.



## Katzie Indian Band

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Negotiations toward an agreement in principle at the Katzie table continue, with the parties meeting regularly. However, further progress on the substantial completion of chapters is proving difficult without the meaningful engagement by the parties on lands. While preliminary discussions are underway following the tabling of Katzie land priorities in

late 2007, no timelines for a land and cash offer, or the conclusion of an agreement in principle have yet been agreed to by the parties.

Negotiating fish is also a challenge at the Katzie table due to the lack of a federal mandate on fish. Like many other BC First Nations, Katzie is unable to negotiate the key issues in the fisheries chapter while Canada awaits the results of an internal review by Fisheries and Oceans Canada.

Katzie members number approximately 490 and traditionally used and occupied the land and water around Pitt Lake, Pitt River, Surrey, Langley, New Westminster and Vancouver.



## Klahoose First Nation

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No tripartite negotiations have occurred in the past year; however, some bilateral discussions with BC ministries and industry related to resources and economic opportunities are occurring. Regular meetings with four neighbouring First Nations regarding land use planning as well as overlap discussions with the Sliammon and Homalco First Nations are being held.

Community consultation meetings with on- and off-reserve members to discuss territorial overlaps, governance, land use processes and community planning have also been occurring. Klahoose has approximately 315 members and a traditional territory on the mainland opposite Campbell River.



## **K'omoks First Nation**

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The K'omoks table continued to make good progress in negotiations throughout the year. The table has substantially completed most of the chapter work for their agreement in principle (AIP). The parties have completed important work on K'omoks First Nation's land interests. The governments are consulting with local and regional governments in the area and third party interests.

Progress for the parties has not been without challenges though; negotiation on the fish chapter is on hold due to the lack of a federal mandate on fish. The delay likely means the parties will not be able to meaningfully address fisheries prior to their conclusion of the agreement in principle in early 2009. K'omoks was looking forward to a land and cash offer by Canada and BC late this fall. However, in light of

outstanding fisheries issues and the governments' ongoing stakeholder consultations the parties have decided to delay the tabling of the offer until the first quarter of 2009. This will give the governments more time to continue their consultations with local and regional governments in the area and third party interests. K'omoks will also use this time to continue its consultation with members living in the community and away from home.

K'omoks has been actively pursuing agreements with their First Nation neighbours on overlapping territories. In early 2008, K'omoks and Sliammon First Nation signed a shared territory agreement that has been of interest to other First Nations looking to make progress in resolving long-outstanding issues of overlapping traditional territories.

K'omoks has approximately 300 members. Their traditional territory covers the central east part of Vancouver Island and extends to Johnstone Strait.



## **Ktunaxa Kinbasket Treaty Council**

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Significant progress has been made at the Ktunaxa Kinbasket Treaty Council (KKTC) table in developing an agreement in principle. However, major differences exist in several areas including the role of KKTC off treaty settlement land. In 2008, following extensive work, KKTC identified lands of interest to its members for treaty settlement. This was followed by a response to these land interests by Canada and BC. In 2009, discussions at the KKTC table on land selection and other issues will continue.

The Ktunaxa Nation was a participant at the common table involving 60 First Nation communities and the governments of Canada and BC.

Ktunaxa/Kinbasket Treaty Council includes Lower Kootenay Indian Band, Columbia Lake First Nation, Shuswap Indian Band, St. Mary's Indian Band and Tobacco Plains Band. They have a combined population of approximately 1,225 and their traditional territories are located between the Rocky Mountain Trench and Kootenay Lake together with adjacent watersheds.

# progress reports / 60 First Nations



## Lake Babine Nation

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The Lake Babine table has been meeting regularly in 2008 to review agreement- in-principle chapter language. Attention is focused on governance and settling the eastern portion of Lake Babine's traditional territory. Lake Babine and BC are currently exploring all options related to land opportunities.

A priority for Lake Babine is achieving a treaty to obtain recognition of their unique fishing rights under the "Barricade Treaty" concluded in 1906–07, under which they and a number of other First Nations agreed to stop using weirs to catch salmon in the Stuart Lake system.

Lake Babine was also a participant at the common table involving 60 First Nation communities and the governments of Canada and BC.

Lake Babine Nation comprises five communities — Woyenne, Old Fort, Tachet, Donald's Landing and Fort Babine — and the combined population is approximately 2,235. Its traditional territory spans an area from Burns Lake in the south to the Babine and Nilkitkaw rivers to the north including most of Lake Babine.



## Musqueam Nation

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There have been no agreement-in-principle negotiations in 2008. Musqueam has been involved in litigation, and subsequent negotiations, over the disposal and development of four parcels of Crown land in the First Nation's traditional territory. Although an injunction obtained by Musqueam over the disposal of two buildings in downtown Vancouver was struck down by the Federal Court of Appeal, the Musqueam were successful in reaching other agreements.

In March, the Musqueam Nation signed a reconciliation, settlement and benefits agreement with the Province, outside the treaty process. The agreement gives the Musqueam \$20.3 million in cash, title to the seven hectares of land on which the River Rock Casino in Richmond was built, the 59-hectare University Golf Club lands and more than 20 hectares of land in Pacific Spirit Park, bordering the University of British Columbia.

The First Nation has approximately 1,210 members, with a traditional territory spanning the Greater Vancouver area.



## 'N̓am̓gis Nation

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The 'N̓am̓gis Nation table has made progress over the past year in negotiations on key elements of their comprehensive agreement in principle (AIP). It was expected the AIP would be concluded in early 2008, but a land and cash offer from the governments of Canada and BC has not been forthcoming. Negotiations on fish are stalled due to a lack of mandate by the federal government. 'N̓am̓gis Nation interests in a collaborative management approach have received limited response from the other two governments in the negotiations. Despite the issues, the parties remain hopeful an AIP will be concluded in the coming months.

The 'N̓am̓gis Nation has also been active in discussions with their First Nation neighbours on shared and overlapping territory issues. They are currently participating in a BC Treaty Commission initiative to address overlaps with six other Kwakwaka'wakw Nations.

The 'Namgis Nation comprises approximately 1,600 members with a traditional territory at the north end of Vancouver Island and extending from the Nimpkish watershed to the east and west. The majority of their members live in Alert Bay on Cormorant Island.



## **Nazko First Nation**

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The Nazko First Nation table made progress towards an agreement in principle in 2008. The majority of AIP chapters are substantially complete and following extensive consultations with community members, Nazko tabled a detailed document which identifies lands that are areas of interest. A land and cash offer by Canada and BC is expected in 2009.

Nazko First Nation has a population of approximately 340 and its traditional territory extends from southwest of Quesnel to Prince George in the north.



## **Northern Regional Negotiations**

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The Treaty Commission has been in discussions with Taku River Tlingit (TRT) over the past year about engaging in tripartite negotiations separate from the other First Nations of the Northern Regional Table. None of these First Nations have been active in negotiations since spring 2003 when the BC government left the table to reassess its mandate for transboundary negotiations. TRT has advised they intend to meet with their membership to confirm a mandate on how or even if they might move forward in negotiations. The Treaty Commission is hopeful a decision will be forthcoming by the end of 2008.

Champagne and Aishihik First Nations, Carcross/ Tagish First Nation, Taku River Tlingit First Nation and Teslin Tlingit First Nation represent approximately 2,320 members who traditionally used and occupied the lands in southwest Yukon and northwest British Columbia. With the exception of Taku River Tlingit, who assert traditional territory predominantly in British Columbia, these First Nations have negotiated land claims agreements with the Government of Yukon. All the members of the

Northern Regional Negotiation table have transboundary claims — claims to land and resources that span the British Columbia and Yukon border.



## **Northern Shuswap Tribal Council Society**

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The Northern Shuswap Tribal Council Society (NSTCS) continued to make progress in negotiations in 2008. All chapters of the agreement in principle have been substantially completed and many of the key outstanding issues that need to be addressed before an agreement can be concluded have been identified.

The parties had expected to conclude an agreement in principle in early 2008. However, their efforts have been hampered by a lack of negotiations on the land and cash component of the treaty. While Canada and BC are working toward tabling an offer, the extended delay is frustrating for the NSTCS leadership and community members who want to see tangible results from their lengthy treaty negotiations. The lack of a federal mandate on fish is another significant challenge for the NSTCS.

# progress reports / 60 First Nations

Progress was made in other areas during the year. Among the highlights were land tours NSTCS conducted in their traditional territory for provincial and federal government representatives and their community members, and their participation in the Museum Heritage Park Tour. Another important achievement was the NSTCS identification of lands in which they have an interest in holding as treaty settlement lands.

NSTS represents more than 2,165 people of Northern Secwepemc to Qelmuw (NStQ) ancestry from four member communities in and around the Williams Lake area: Williams Lake Band (T'exelc), Soda Creek Band (Xat'sull/ 'Cmetem), Canoe/ Dog Creek Band (Stswecem'c/ Xgat'tem) and Canim Lake Band (Tsq'escen').



## **Nuu-chah-nulth Tribal Council**

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No significant tripartite activity has occurred at the Nuu-chah-nulth treaty table since mid-2005. The Nuu-chah-nulth Tribal Council (NTC) continues to work internally on treaty-related matters. In 2008, Tla-o-qui-aht First Nation announced its decision to negotiate a treaty with Canada and BC on its own. In the absence of new developments, tripartite activity at the

NTC table is unlikely to resume for the foreseeable future.

Nuu-chah-nulth was a participant at the common table involving 60 First Nation communities and the governments of Canada and BC.

The Nuu-chah-nulth treaty table comprises Ahousaht, Ehattesaht, Hesquiaht, Mowachaht/Muchalaht, Nuchatlaht and Tseshah First Nations, with a combined population of approximately 4,525. The traditional territories of these First Nations span the west coast of Vancouver Island from Barkley Sound to Kyuquot Sound.



## **Oweekeno (Wuikinuxv) Nation**

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Wuikinuxv has substantially completed an agreement in principle, although outstanding issues remain in a number of chapters. The parties anticipate the tabling of a land and cash offer by Canada and BC late this fall; ideally this will help focus negotiations and enable the parties to quickly come to agreement on key issues.

One of Wuikinuxv's key interests is the negotiation of a collaborative management agreement on land and resource use in their traditional territory and they have tabled an approach for discussion with Canada and BC. Wuikinuxv is also working on two treaty-related measures; one on governance is currently underway and a final report on the Penrose Island Marine Park treaty-related measure is expected by the end of 2008.

Wuikinuxv has approximately 280 members with a community at River's Inlet.



## **Snuneymuxw First Nation**

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There have been no tripartite treaty negotiations in the past year. However, there have been developments outside the treaty process. Snuneymuxw is in negotiations for parcels of land the First Nation claims as their traditional territory promised to them in the Douglas Treaty signed in 1854. The Snuneymuxw have been in discussions, under the *Specific Claims Tribunal Act*, for a 79-acre parcel in Nanaimo for five years and hope to settle soon. Talks for five other specific sites will also

begin. Snuneymuxw was also a participant at the common table involving 60 First Nation communities and the governments of Canada and BC.

Snuneymuxw's traditional territory ranges from central Vancouver Island, including Gabriola Island, Mudge Island and other adjacent islands, to the Nanaimo River watershed. The First Nation has approximately 1,540 members.



### **Stó:lō Nation / Stó:lō Xwexwilmexw Treaty Association (SXTA)**

Currently seven communities within the Stó:lō Nation, working with the SXTA, are actively engaged in Stage 4 negotiations. They are also participants at the Common Table, with SXTA negotiators playing a lead role in discussing Fiscal Relations. Treaty work plans and negotiations in 2007–08 focused on a number of substantive issues including lands, shared decision making, land use planning and governance. The SXTA community outreach program continues to share treaty-related information and gain community feedback on treaty-related issues. The SXTA engaged in consultations over the Tsawwassen

Final Agreement, In-shuck-ch Final Agreement, and the Yale treaty negotiations.

The seven Stó:lō First Nations currently in treaty negotiations are: Aitchelitz, Leq'a:mel, Popkum, Skawahlook, Skowkale, Tzeachten and Yakweakwoose with approximately 1,700 members. The Stó:lō Nation's Statement of Intent includes the lower mainland of south western BC with a core interest area associated with the central and upper Fraser Valley, Chilliwack River Valley, lower Harrison Lake, and lower Fraser Canyon.



### **Te'Mexw Treaty Association**

There has been a high level of tripartite activity at the Te'Mexw table throughout 2008. Approximately 90 per cent of the chapter work is complete. However, challenging issues remain regarding Douglas Treaty rights that Te'Mexw wants protected. Te'Mexw is holding regular community meetings to keep the membership updated on the status of negotiations. Canada and BC hope to table a land and cash offer in early December 2008. Te'Mexw was a participant at the common table involving 60 First Nation communities

and the governments of Canada and BC.

The Te'Mexw Treaty Association comprises five communities — Beecher Bay, Malahat, Nanoose, Songhees and Sooke — with a combined membership of approximately 1,430. These First Nations traditionally occupied and used the land and water around the southern top of Vancouver Island.



### **Tla-o-qui-aht First Nation**

Tla-o-qui-aht First Nation submitted a statement of intent to the Treaty Commission in July 2008. Wanting to move forward on land and other treaty issues, Tla-o-qui-aht acquired a mandate from their community to engage in negotiations separate from the larger Nuu-chah-nulth Tribal Council, which it has been part of since 1994. Tla-o-qui-aht continues to be a member of the Nuu-chah-nulth Tribal Council and accesses programs and services as before.

Tla-o-qui-aht came into the treaty process with a plan to achieve an incremental treaty agreement (ITA) and a full agreement in principle by the end of 2008. Negotiations between the parties have been

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focussed and progress has been made in a number of key areas. In mid-November, BC and Tla-o-qui-aht signed a unique ITA that demonstrates substantial progress between the two parties in the treaty process.

The ITA makes progress in achieving certainty with respect to lands in and around Tofino, which are under significant development pressure. Specifically, the ITA transfers five parcels of land at staged intervals leading up to the signing of a final agreement, land that will be included in the eventual treaty package. The ITA also identifies specific treaty negotiation initiatives and milestones culminating in a final agreement and provides Tla-o-qui-aht with interim economic benefits, including funding for capacity building and communications.

The traditional territory of the Tla-o-qui-aht First Nation extends west from the Tofino area to Kennedy Lake in the south, Adder Mountain in the east and the area around Rhine Peak in the north. The Tla-o-qui-aht First Nation represents more than 900 members.



## **Tlowitsis First Nation**

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Tlowitsis Nation officially entered Stage 4 of the treaty process in 2008, with federal approval of the framework agreement. Tlowitsis had made considerable progress in developing an agreement in principle with Canada and BC while waiting for federal approval of the framework agreement. Tlowitsis attributes this rapid progress to its ability to work collaboratively with BC to solve problems that affect their mutual interests.

As Tlowitsis advances towards an agreement in principle, anticipated in 2010, its citizens' treaty advisory group, composed of a broad cross-section of Tlowitsis Nation members, is assuming a greater role in defining priorities for Tlowitsis Nation and overseeing the work of the chief negotiator and his team.

They are currently participating in a BC Treaty Commission initiative to address overlap and shared territory issues with six other Kwakwaka'wakw Nations.

Tlowitsis First Nation has a population of approximately 380 and its traditional territory spans part of northeast Vancouver Island and an area on the mainland northwest of Campbell River.



## **Tsay Keh Dene Band**

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Tripartite activity resumed at the Tsay Keh Dene table in 2008 following a long hiatus in negotiations. The successful resolution of Tsay Keh Dene's claim against BC Hydro over flooding of significant parts of its traditional territory has enabled Tsay Keh Dene to refocus its attention and resources on treaty negotiations. Negotiations on the agreement in principle will continue in 2009.

Tsay Keh Dene has a population of approximately 400 and its traditional territory encompasses an area bounded by Mount Trace in the north, by South Pass Peak in the west, by the Nation River in the south and by Mount Laurier in the east.



## Tsimshian First Nations

While the Tsimshian First Nations communities continue to work on a collective basis, negotiations have reached a point where individual community requirements must be addressed through separate approaches. Two of the communities, Kitselas and Kitsumkalum, are making substantial progress towards an agreement-in-principle by the first half of 2009. The biggest hurdle to progress for these, and all the Tsimshian First Nations, is the lack of a federal fisheries mandate. Recent developments associated with the Prince Rupert Port expansion and other major projects in the Northwest have brought the Tsimshian together for discussions and attention to economic development and internal boundary relationships.

In November, the Metlakatla Band — one of the five Tsimshian communities — was one of four First Nations that agreed to a land and cash settlement with the BC and Canadian governments to return lands cut off from reserves nearly a century ago under what was known as the McKenna-McBride commission of 1912–1916. These are the last of 22 historic claims that took more than 40 years to resolve.

Kitselas and Kitsoo/Xaixais were participants at the Common Table involving 60 First Nation communities and the governments of Canada and BC.

The First Nation's territory spans the northwest coast, including Prince Rupert and Terrace. The First Nations comprises five communities: Gitga'at, Kitsoo/Xaixais, Kitselas, Kitsumkalum and Metlakatla First Nations, with a combined population of approximately 3,120.



## Tseil Waututh Nation

Tseil Waututh continued in active agreement-in-principle negotiations with Canada and BC in 2008. In February, Tseil Waututh received a verbal settlement proposal outlining the other two government's ideas for rural land and cash, revenue sharing and economic development. Urban land remains an important element that has not yet been addressed by the parties and continues to be a major focus at the table.

Since March, the parties have returned to more detailed work on the agreement-in-principle chapters and specific issues contained in each as it might apply to the proposed

land package. Topics and workshops have been scheduled through to the end of the fiscal year — March 31, 2009. The parties expect to have a comprehensive list of issues outstanding in each of the remaining chapters by that date.

Tseil Waututh has approximately 445 members and their people have traditionally lived on the land and waters around North Vancouver and the Lower Mainland, since time immemorial.



## Westbank First Nation

The parties continued to meet during the year, working towards an agreement in principle, focusing on the lands and governance chapters. While the table made good progress in its lands discussions, the constitutional status of lands remains a significant challenge.

The Westbank negotiators and leadership also concentrated a tremendous effort in the formation of the common table, and led the discussions around fiscal matters and constitutional status of lands.

Located in the Kelowna area, Westbank has approximately 670 members.

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## Wet'suwet'en Nation

Wet'suwet'en hired a new chief negotiator and resumed negotiations in the fall of 2008, following a one-year hiatus. The Wet'suwet'en chiefs had stepped back from negotiations to determine whether they should continue in the treaty process, prompted by frustration over several issues, including the Crown's mandates, increasing debt and lack of recognition of their traditional governance structure. The parties are now reviewing the work that has been done to date and determining what direction to take going forward.

Wet'suwet'en was a participant at the common table involving 60 First Nation communities and the governments of Canada and BC.

Wet'suwet'en traditionally occupied and used the Bulkley River drainage area in northwest BC. The First Nation includes members of Hagwilget village and Moricetown and has a total population of approximately 2,700.



## Winalagalis Treaty Group

The Winalagalis Treaty Group (WTG) struggled to make progress earlier this year, especially in fisheries and lands discussions. Fisheries negotiations have been a priority for the WTG First Nations but engagement with Fisheries and Oceans Canada has been limited. The situation further deteriorated when the Government of Canada halted fisheries negotiations in BC pending an internal review. The lack of provincial government resources to engage in land discussions has also been a challenge, but currently the Da'naxda'xw-Awaetlatla and the Gwa'sala-Nakwaxda'xw are making good progress in identifying lands for treaty settlement at negotiation tables of their own. Quatsino and Tlatlasikwala are expected to follow suit in early 2009.

There has been some progress at the WTG table, as the parties concluded negotiations on their fiscal chapters for agreement in principle and have a number of other chapters substantially complete. WTG has also had success hosting community-to-community forums and are currently working on developing regional protocols with the assistance of

some funding from the Union of BC Municipalities that will help enhance interactions between local government and First Nations and facilitate more cohesive land use planning in the region.

The WTG First Nations are also four of the seven First Nations currently participating in the BC Treaty Commission initiative to address overlaps with three other Kwakwaka'wakw Nations.

Quatsino, one member of the WTG, was a participant at the common table involving 60 First Nation communities and the governments of Canada and BC.

The Winalagalis Treaty Group includes the Da'naxda'xw Awaetlatla Nation, the Gwa'sala-Nakwaxda'xw Nation, the Quatsino First Nation and the Tlatlaskiwala Nation. They have been negotiating four separate treaties at a common table since 1997. The First Nations traditionally occupied the land and water around the north end of Vancouver Island and have approximately 2,200 members.

## First Nations In Stage 3



### Cheslatta Carrier Nation

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The Cheslatta Carrier treaty table remains inactive. The parties have not engaged in tripartite negotiations since 1997.

A First Nation of approximately 320 members, Cheslatta traditionally occupied and used the areas surrounding Ootsa and Eutsuk lakes in central British Columbia.



### Council of the Haida Nation

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Over the course of the last three years, and in response to the Supreme Court ruling in *Haida Nation v. BC and Weyerhaeuser*, the Council of the Haida Nation and British Columbia have been negotiating

land protection, forestry and revenue sharing, and the Haida role in land use planning and decision making.

Canada is currently observing these discussions and the parties are exploring whether or not there is basis for engaging in substantive tripartite treaty negotiations.

The Council of the Haida Nation continues to pursue its aboriginal title case over the whole of Haida Gwaii (Queen Charlotte Islands).

Located on Haida Gwaii, the council has 4,105 members.



### Squamish Nation

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There have been no negotiations in the past year. Squamish continues to pursue opportunities outside the treaty process, including economic development, particularly related to the 2010 Olympics.

Squamish's traditional territory ranges from the Lower Mainland to Howe Sound and the Squamish valley watershed. The First Nation has approximately 3,620 members.

## First Nations In Stage 2



### Acho Dene Koe First Nation

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Acho Dene Koe entered the treaty process in 2000; however, there has not been any progress in advancing negotiations due to reluctance by BC to negotiate. The absence of an established Acho Dene Koe community within BC and the trans-boundary nature of the Acho Dene claim appear the main reasons for BC's position.

However, in 2008 Acho Dene Koe signed a framework agreement with Canada and the NWT government to negotiate a comprehensive land claims agreement. The Treaty Commission is reviewing the status of the table to determine how to proceed.

The First Nation has approximately 620 members and is located in Fort Liard, Northwest Territories, which is 25 kilometres north of the BC-Northwest Territories border. Acho Den Koe has traditional territory on both sides of the border.

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## Allied Tribes of Lax Kw'Alaams

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There has been no tripartite activity at this table since mid-2005 when the Treaty Commission accepted the Statement of Intent of the Allied Tribes of Lax Kw'Alaams. Although the First Nation and British Columbia have completed their Stage 2 readiness requirements, Canada is still reviewing the impact of fisheries litigation brought by Lax Kw'Alaams on potential treaty negotiations.

The Allied Tribes and other Tsimshian communities have been meeting to discuss how they can cooperate and support each other in the region.

In November, the Lax Kw'Alaams Indian Band was one of four First Nations that agreed to a land and cash settlement with the BC and Canadian governments to return lands cut off from reserves nearly a century ago under what was known as the McKenna-McBride commission of 1912–1916. These are the last of 22 historic claims that took more than 40 years to resolve.

The Allied Tribes of Lax Kw'Alaams were formally part of the Tsimshian Tribal Council; and separated in the spring of 2004. Located northwest of Prince Rupert, the Allied Tribes have a population of approximately 3,160.



## Hwilitsum First Nation

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The Statement of Intent to negotiate a treaty, submitted by Hwilitsum First Nation, was accepted by the Treaty Commission in May 2008. The governments of Canada and BC have yet to make a commitment to negotiate with Hwilitsum. The Treaty Commission is continuing discussions with the parties to move negotiations forward.

Comprising more than 300 members, the traditional territory of the Hwilitsum First Nation encompasses a large portion of the Lower Mainland of British Columbia, the Gulf Islands and a portion of Vancouver Island.



## McLeod Lake Indian Band

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There was no activity at the McLeod Lake treaty table in 2008. The First Nation entered the BC treaty process in February 2004 with a view to building self government on the McLeod Lake Treaty 8 Adhesion and Settlement Agreement that was finalized in 2000.

The McLeod Lake Indian Band has approximately 480 members and its main community lies 150 km north of Prince George.

\*Maps are representational only and not to scale. For detailed maps, go to [www.bctreaty.net](http://www.bctreaty.net)

# about us /

The Treaty Commission is the independent body responsible for facilitating treaty negotiations among the governments of Canada and BC and First Nations in BC. The Treaty Commission does not negotiate treaties — that is done by the three parties at each negotiation table.

The Treaty Commission and the treaty process were established in 1992 by agreement of Canada, BC and the First Nations Summit. They are guided by the agreement and the 1991 Report of the British Columbia Claims Task Force, which is the blueprint for the made-in-BC treaty process. The Treaty Commission was mandated to facilitate negotiations towards fair and durable treaties under the six-stage treaty process. The process is voluntary and open to all First Nations in BC.

As the independent keeper of the BC treaty process, the Treaty Commission has three complementary roles: facilitation, funding, and public information and education.

The Treaty Commission's operating budget for 2007–08 was \$2.52 million and its total funding for operations from 1993 to March 31, 2008 is approximately \$31.5 million. Under normal circumstances the Treaty Commission comprises four part-time commissioners and a full-time chief commissioner, and employs 13 staff. However, the Treaty Commission has been without a chief commissioner since October 1, 2007. Funding for administering the treaty process and for settlement costs is borne jointly by the federal and provincial governments.

The government of Canada contributes 60 per cent of the Treaty Commission's budget and the BC government contributes 40 per cent.

Effective April 1, 2006 the federal and provincial governments entered into a three-year agreement ending March 31, 2009 to fund the operating costs of the Treaty Commission at \$2.52 million per year.

## Report on Facilitation

The Treaty Commission's primary role is to oversee the negotiation process and to ensure the parties are being effective and making progress in the negotiations.

In carrying out this role, the Treaty Commission:

- Accepts First Nations into the treaty process and assesses when the parties are ready to start negotiations;
- Monitors compliance with the fundamental principles of treaty making as set out in the Treaty Commission's Mission Statement
- Monitors and reports on the progress of negotiations and encourages timely negotiations by helping the parties to set meeting schedules and monitor deadlines;
- Chairs key meetings at tables and offers advice to the parties, where requested;

- Assists the parties in developing solutions and in resolving disputes;
- Identifies, engages with the Principals on, and reports publicly on opportunities and key overarching obstacles to progress (e.g., mandates, resources, capacity, etc.);
- Supports pilot projects with the potential to promote progress in negotiations (e.g., community planning, overlap resolution); and
- Develops and applies policies and procedures for the six-stage treaty process.

The Treaty Commission continues to devote the greater part of its time and resources to facilitation. Over the past year, the commissioners and staff have been involved in a variety of facilitation initiatives, often on a sustained basis, which has arisen from a number of circumstances:

- Common Table negotiations chaired by the Treaty Commission resulting in a report to the Principals which is awaiting a response;
- Intensified treaty negotiations at Stage 5 and some Stage 4 tables;
- Stalled treaty negotiations;
- Intensified inter-First Nation dialogue on overlapping and shared territories, particularly where treaty negotiations are approaching final agreement;
- Consultations between the Crown and First Nations affected by overlaps; and

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- Relationship building among the parties to the treaty negotiations and other key stakeholders.

We anticipate that these circumstances will persist into the coming year. It is also expected that the Treaty Commission's attention and energies will be increasingly focused on:

- Common Table-related activities and initiatives;
- Negotiations on issues best resolved on a sector or regional basis;
- High-level talks among the Principals;
- Treaty implementation issues; and
- Dispute resolution initiatives.

## Report on Funding

The Treaty Commission allocates negotiation support funding so that First Nations can prepare for and carry out treaty negotiations on a more even footing with the governments of Canada and BC. For every \$100 of negotiation support funding allocated, \$80 is a loan from Canada, \$12 is a contribution from Canada and \$8 is a contribution from BC.

Since April 2004, First Nations have been able to accept just the non-repayable contribution or take any portion of their loan allocation. In 2008, several First Nations chose to accept fewer loan dollars than would have been required before this change.

Contribution funding will continue to be available to a First Nation until the effective date of their treaty. However, loan advances must stop not less than thirty days prior to all three parties signing the final agreement. Because a schedule to the final agreement must set out the total amount of negotiation support loans accepted by the First Nation, formal signing of the final agreement usually takes place just before Canada introduces the legislation into the House of Commons. The funding guidelines have been revised to clarify that Stage 6 begins on the date a treaty comes into effect and that no negotiation support funding will be available in Stage 6.

Unless treaties come into effect, or the loans are in default, loans made to First Nations to allow them to participate in treaty negotiations come due 12 years from the date of the first loan advance. The first treaty loans would have become due in August 2006. When the 12-year deadline was set there was an expectation treaties would be completed within that time frame. That has not been the case.

The Treaty Commission has now completed all First Nation-requested, five-year extensions to the 12-year due date. The Treaty Commission had recommended the maximum five-year extension for every First Nation in the treaty process that has requested an extension.

Since opening its doors in May 1993, the Treaty Commission has allocated

\$432 million in negotiation support funding to more than 50 First Nations, \$345.6 million in loans and \$86.4 million in non-repayable contributions.

## Report on Public Information and Education

As the independent voice of treaty making in British Columbia, the Treaty Commission is uniquely positioned to provide public information. The governments of Canada and BC also share responsibility for public information. As well, the three parties in each set of negotiations — Canada, BC and First Nations — provide specific information on their treaty negotiations.

## Ongoing Communications Commitments

The governments of Canada and BC have funded the Treaty Commission to provide public information and education on treaty making in BC since 1997. To reach audiences throughout BC, the Treaty Commission uses a variety of communications tools, including a website, annual report, newsletters, special publications, DVDs and teaching materials for elementary and secondary schools.

Commissioners and treaty advisors regularly deliver presentations at special events and community forums and to business organizations, schools and post-secondary institutions. In addition to providing up-to-date information on the current

state of the treaty process, the Treaty Commission has an important role to play in supporting publication information efforts by individual treaty tables. To assist with these regular efforts, commissioners and treaty advisors regularly attend information forums with First Nation constituents and with the broader non-aboriginal community.

### Special Projects

#### **Conference for First Nations**

Following on the heels of a successful conference in 2007, the Forging Linkages and Finding Solutions conference brought together First Nations from throughout the province to consider governance, economic development and capacity. There were a series of workshops, guest panelists and guest speakers from BC and from other parts of Canada and the United States.

***Nisga'a Dancing in Both Worlds***  
*Nisga'a Dancing in Both Worlds*, a film documenting the historic journey of the Nisga'a people to achieve a modern-day treaty that secures their place in their traditional territory and protects their centuries-old culture, traditions and way of life has been recommended for use in BC secondary schools by the BC ministry of education.

The ministry has approved the DVD as a provincially recommended resource for supplemental learning for Social Studies 8–11, BC First Nations Studies 12, Civic Studies 12 and Law 12. Each secondary school received

two copies of the DVD paid for by the Treaty Commission through a purchase agreement with the filmmakers, while the ministry covered the distribution costs.

Lessons plans are now being developed by educators to promote classroom use of the DVD *Nisga'a Dancing in Both Worlds* with funding provided by the Treaty Commission.

The DVD was produced in partnership by filmmakers John Bassett and Rosalind Farber, with funding from the Treaty Commission, Ministry of Aboriginal Relations and Reconciliation and Indian and Northern Affairs Canada.

#### ***Tsawwassen First Nation Ratification Vote Analysis***

The Treaty Commission undertook research to learn from the successful Tsawwassen First Nation treaty ratification vote. The Treaty Commission funded a member survey undertaken by Vancouver research firm Mustel Group and conducted its own interviews with Tsawwassen community leaders. Both the Mustel Group survey results and Treaty Commission report were published in October 2008, and are now posted to the Treaty Commission web site.

#### ***Community Information Sessions***

The Treaty Commission provided community information sessions, designed to meet the specific needs of people in First Nations communities. These sessions dealt with First Nations history, governance and

treaty making in BC. It will be First Nations members that ratify agreements signed through the BC treaty process and it is essential they have good information.

The session covered the contributions of aboriginal people with highlights from 15,000 years of inventions and innovations; examined attempts at displacement and assimilation; the way out through treaty negotiations; and the process for involving First Nations and their members. Over the past year, the session was delivered to 13 First Nation communities.

#### ***What's in these treaties?***

*What's in these treaties?* is a plain language guide to the Tsawwassen First Nation treaty and the Maa-nulth First Nations treaty. The guide includes information specific to each of the treaties and information on those elements that are common to both treaties as well as a historical timeline and glossary of terms. The booklet was produced in cooperation with the Tsawwassen First Nation and Maa-nulth First Nations.

#### ***Why Treaties? A legal perspective***

This popular booklet on the legal reasons for treaty making in British Columbia is updated to include recent important court cases. Among the new cases, all heard in the BC Supreme Court, is *Tsilhqo'tin Nation v. British Columbia*; *Lax Kw'alaams Indian Band v. Canada and BC*; *Hupacasath First Nation v. BC Minister of Forests*; and *Cook v. the Minister of Aboriginal Relations and Reconciliation*.

# about us / Treaty Commissioners



**Jody Wilson**, Acting/Chief Commissioner since February 6, 2008, was re-elected commissioner in March 2007 to a third, two-year term by the First Nations Summit. Raised in the Comox Valley, Wilson is a member of the We Wai Kai First Nation. Wilson had been a treaty process advisor at the BC Treaty Commission prior to her election. Previously, she served as a provincial Crown prosecutor for two years. She holds a Bachelor of Laws from the University of British Columbia (1999) and a Bachelor of Arts in Political Science and History from the University of Victoria (1996). Wilson has been an active member of the BC Bar since 2000.



**Robert Phillips** is serving his first term as commissioner following his election by the First Nations Summit in March 2007. He is a member of the Northern Secwepemc te Qelmu kw (Shuswap) of the Canim Lake First Nation. Phillips holds a Bachelor of Arts degree from the University

College of the Fraser Valley. He served as chief negotiator and, prior to that, as self-government director at the Northern Shuswap Tribal Council since 1998. Phillips has a background in aboriginal justice and economic development.



**Jerry Lampert** was appointed in December 2007 to a two-year term by the Government of Canada. Prior to this appointment Lampert served for 15 years as president and chief executive officer of the Business Council of British Columbia where he was a vocal advocate for developing better business relationships with First Nations in British Columbia. Prior to joining the business council, Lampert was a principal in a government relations/public affairs consulting firm offering strategic and tactical advice to private sector corporations in their dealings with government. He served as chief of staff to two BC premiers and managed two successful provincial election campaigns in BC.



**Dave Haggard** was appointed to a two-year term in February 2008 by the Government of British Columbia. A long-time labour leader and forestry advocate, Haggard has extensive experience facilitating negotiations with industry, labour, and governments including First Nation governments. Haggard has worked with a number of First Nations, including the Maa-nulth First Nations. He was first elected in 1996 as national president of the Industrial, Wood and Allied Workers of Canada and has served as vice-president of the Canadian Labour Congress and the BC Federation of Labour. Born in Kamloops and raised in Barriere, Haggard's grandmother was a member of the Simpcw First Nation located by the North Thompson River. He is married to Eileen, a member of the Nuu-chah-nulth First Nation.

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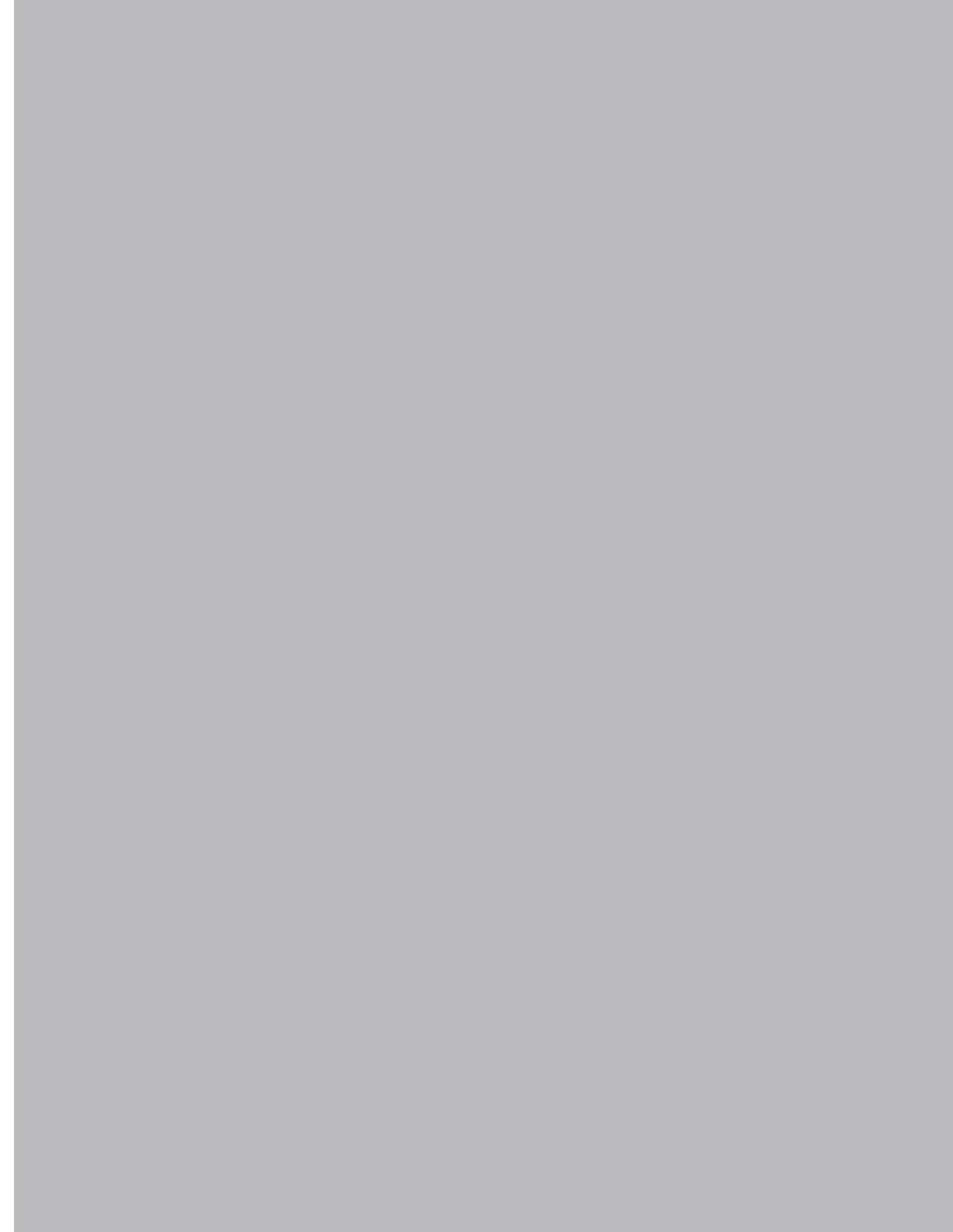
## Departures



**Jack Weisgerber**, was appointed to the Treaty Commission by the BC Government in February 2002 and served three consecutive, two-year terms. Prior to his departure, he was the Acting Chief Commissioner for four months.

Weisgerber earned a reputation as a knowledgeable and insightful adviser who was dedicated to resolving issues and moving treaty negotiations forward. Weisgerber brought to the table a unique perspective on issues important to governments, including First Nation governments. He was for 15 years a member of the BC legislature

during which time he became the first minister of aboriginal affairs. His leadership was instrumental in the formation of the BC Claims Task Force, and he was recognized by many as one of the architects of the BC treaty process.





**BC TREATY COMMISSION**

The independent voice of treaty making in British Columbia

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For details on the six-stage treaty  
process and recommended  
resources see [www.bctreaty.net](http://www.bctreaty.net)

Merging the past and present, the Treaty Commission symbol represents the three Principals in modern-day treaty making — the governments of Canada and British Columbia and First Nations. Pointing in an upward and forward direction, the symbol implies a “coming together” pivotal to successful negotiations and treaty making.