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# Hagwilyaa

A quarterly publication of the Tsimshian First Nations Treaty Society



Sharlene Patterson Photography

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## Skeena Nations Draft Fish MOU

The fifth 'Skeena River Fish Forum' was held in Smithers May 6 & 7 2015. These forums aim to identify a potential Skeena River co-management initiative to support and inform the fish mandate for treaty negotiations and assist with overlap challenges potentially associated with Skeena fish.

The fourth meeting held in Hazelton in February established that the BC Treaty Commission continue to facilitate these meetings and discussion focused on creating a vision for the effective governance of the Skeena watershed moving forward.

This most recent meeting in Smithers has resulted in a draft Memorandum of Understanding (MOU) titled "Watersheds of the Skeena Nations Fish Forum Protocol". This MOU will be brought back to the respective communities for review and approval. If the MOU is approved each community would sign as per their own specific requirements (i.e. a hereditary chief, elected official or combination of both).

In summary the MOU establishes

that the First Nations of the Skeena Watershed agree to coordinate governance over the Skeena fishery and collectively work together to advance First Nations' Skeena watershed management. Using the principles of the now defunct Northwest Tribal Treaty the draft MOU proposes to work under the following premises: each First Nation continue to practice their own political systems and laws; each First Nation shall maintain sovereignty as Nations; all parties will assist each other to reaffirm continuing hereditary title; all parties will collectively join the other Skeena First Nations efforts to pursue the explicit recognition of aboriginal title in Canada's Constitution; all parties will continue to enter into bilateral or multilateral relationships to strengthen and assist in settling matters and common concerns regarding cultural identities, common boundaries and access to traditional territories and natural resources.

The principles of the MOU as noted above would be implemented with a political

## Skeena Nations Draft Fish MOU *continued from page 1*

commitment from each nation to establish an anticipated Skeena Nations Fish Secretariat that would establish a communications plan and a process for working together on the issues of conservation, sport fishery (and its impact on the rights of the Skeena Nations) and other issues as identified. The Secretariat would provide a means of reaching formal decision making on the principle of the greater good of the Skeena fish.

The Secretariat would consist of representation of the Tsimshian (Gitga'at, Gitxaala, Kitselas, Kitsumkalum, Lax Kw'alaams and Metlakatla), the Gitksan (represented by the Gitksan Hereditary Chiefs and Gitanyow Hereditary Chiefs), the Wet'suwet'en (represented by the Office of the Wet'suwet'en) and the Lake Babine Nation. The Secretariat would be

supported by an Advisory Committee composed of officers of the Skeena Fisheries Commission and the North Coast Skeena Stewardship Society and/or other similar entities of the Skeena Nations. The Advisory Committee will facilitate and plan meetings, provide summary reports, provide technical advice and assist in seeking funding resources and options.

This MOU is not a part of any treaty negotiations, rather the formation of the Secretariat will help to inform the fish mandate for the First Nations actively engaged in treaty negotiations. The focus is on cooperation to gain a favorable management position on Skeena fish matters.

The next Fish Forum is scheduled tentatively in June 2015 with Metlakatla hosting.

## Modern Treaty Self-Governance Conference

The BC Treaty Commission hosted its annual 'Modern Treaty Self Governance' conference March 10-12 in Vancouver which included a number of keynote speakers sharing their experiences in their respective communities. Some of the topics included constitution development, treaty implementation, and building government, industry and business relationships. The annual conference brings together First Nations at various stages of the treaty process to engage in intense dialogue and is an important learning opportunity given the complexity of modern treaty negotiations and the resulting self-governance that accompanies a negotiated settlement.

In her opening remarks to kick off the three day event former Chief Commissioner Sophie Pierre referred to the desire to be self-determining and the drive toward self-government as the common thread for all participants. Before the *Indian Act* assumed authority over First Nations and imposed regulations on their lives, First Nations had their own socioeconomic systems in place. Through modern treaty negotiations First Nations will create and implement a system of governance free of the constraints under the *Indian Act* and restore authority over their own affairs. There is no template for self-government which allows each First Nation to determine what their government will look like and how it will operate. A modern treaty also provides law-making authority over treaty land, a monumental shift from the limited jurisdiction afforded to Band governments.

As the political landscape is always changing and new governments come into power provincially and federally it is the will and the desire to improve the status of our people that continues to motivate modern treaty negotiations. Each successive conference grows and there is even more to learn from each other.



*Gerald Wesley, Chief Negotiator Tsimshian First Nations Treaty Society addresses the audience at the annual 'Modern Treaty Self-Governance' conference in Vancouver, B.C.*

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# BC puts into question the future of treaty talks



Photo: Lyle Stafford / Post Media News

The Provinces' rejection of George Abbott as new Chief Commissioner for the BC Treaty Commission at the last minute caused shock and concern amongst the First Nations currently engaged in treaty negotiations. Abbott was expected to assume the role of Chief Commissioner at the departure of since retired Sophie Pierre when the Province unilaterally rejected his appointment. The First Nations Summit and the BC Treaty Commission were quick to condemn this seemingly arbitrary move stating it has called into question the sincerity of the province to negotiate in good faith.

Abbott has served terms as Minister of Aboriginal Affairs and Reconciliation and Minister of Health and was poised to bring to the role of Chief Commissioner a demonstrated awareness of First Nations issues. Abbott was selected by the three principals of treaty negotiations - Canada, British Columbia and the First Nations Summit – after six months of discussion.

In a press release from the office of John Rustad, Minister of Aboriginal Affairs and Reconciliation, the province defends its decision by stating, “[we] heard from many First Nations that the treaty process, mandates and negotiations take far too long and they are looking for a better way.” Following the announcement Premier Christie Clark indicated the provincial government is planning to make changes to the BC treaty process and isn't sure whether the BC Treaty Commission will continue to exist. The Province has since given no indication they have a specific plan, but Clark has commented that a cabinet committee has in fact been discussing the issue since last summer. Some speculate Clark's intentions may

## The True Investment in Treaty Negotiations

BC Treaty Commission

8 April 2015

The province has inaccurately stated that there are 50 First Nations out of 200 currently in the Treaty negotiations process. Media Coverage reported that \$600 million has been spent by tax payers to conclude only four treaties. Here are the facts:

### NEGOTIATIONS

- There are 65 First Nations, representing 105 Indian Act Bands out of a total of 199 Indian Act Bands in BC, participating in or have completed treaties through the BC treaty negotiations process.
- Active or completed negotiations involve 47 First Nations, representing 83 Indian Act Bands, totalling 41% of all Indian Act Bands in BC.
- There are 8 treaties completed, not 4 as has often been stated.

### FUNDING

For every \$100 of negotiation support funding allocated, \$80 is a loan from Canada, taken by First Nations, \$12 is a contribution from Canada, and \$8 is a contribution from BC.

Since May 1993, \$627 million in negotiations support funding has been allocated to 65 First Nations. This represents approximately \$493 million in loans and \$134 million in non-repayable contributions.

***This means that the federal government has contributed approximately \$80.4 million to treaty negotiations and the provincial government has contributed \$53.6 million.***

### INVESTMENT

With over half of all First Nations in BC in the treaty negotiations process, taking a total of \$493 million in loans, and 41% in active negotiations, the investment by all parties is significant and on-going. We must not throw away the investment already made or trivialize the importance of treaty negotiations process to our province.

be toward a strictly economic model with resource sharing agreements but this is not reconciliation. The promise of self-government and true legal jurisdiction over land has always been at the heart of Treaty negotiations.

The Tsimshian First Nations Treaty Society will be watching with interest as the Principals process convenes to determine next steps.

## ***Does this recent move by the Provincial government mean Treaty negotiations have stopped?***

No, negotiations are still on-going. The principals of the treaty process - First Nations Summit, Canada and British Columbia - need to resolve the issue together. The Tsimshian First Nations Treaty Society maintains that modern negotiations is the most comprehensive and preferable method to reconcile Aboriginal Title.

# Eyford Report Released

Douglas Eyford, Ministerial Special Representative hired to engage Aboriginal groups to renew and reform the *Comprehensive Land Claims Policy*, submitted his final report at the end of February and it was released for review in early April 2015.

On the heels of the precedent setting Tsilhqot'in decision in June of 2014, Canada released an Interim Policy to be used as a starting point for Eyford's engagement. While some First Nation organizations were critical of this effort noting the Interim Policy was drafted unilaterally by the federal government and undermines the existing efforts of First Nation organizations, the final report, titled "A New Direction: Advancing Aboriginal and Treaty Rights" has been met with some positive reception. Eyford presents a relatively unbiased review of the existing treaty negotiations and makes 43 recommendations to improve the *Comprehensive Land Claims Policy*. Of these recommendations is an expanded mandate for the BC Treaty Commission to more effectively facilitate progress and where conclusion of treaties is unlikely, assist the parties in exploring alternative arrangements. This recommendation was timely in April given Premier Christy Clark had just rejected the appointment of a new Chief Commissioner suggesting the treaty process needs to be re-vamped.

In his report, Eyford acknowledges the federal and provincial governments role in slowing treaty negotiations noting "election cycles, changes in government, shifting political priorities...contribute to the sluggish pace of negotiations." Eyford also notes that Canada's claims procedures are cumbersome, and that "many Aboriginal groups feel treaty negotiations...have become another government program mired in bureaucratic intransigence and inertia." Eyford further suggests Canada develop a

***"AANDC alone is party in 452 proceedings involving section 35 (1) rights. Aboriginal Title is raised in 157 active claims involving Canada...the cost of Aboriginal Rights litigation is significant. AANDC spent in excess of \$100 million for litigation legal services over the past five years...Aboriginal rights claims highlight the tremendous inefficiencies of litigation as a dispute resolution tool."***

*~ Douglas R. Eyford*

standardized umbrella agreement that would indicate what is or is not open for negotiation allowing Aboriginal groups to decide whether a modern treaty is in their interest or whether incremental treaty agreements or non-treaty arrangements are best.

While the report does discuss the exploration of alternative forms of reconciliation outside the treaty process the Interim Comprehensive Land Claims Policy (which is still in place) emphasizes modern treaties remain Canada's most comprehensive means of achieving reconciliation with First Nations. As noted in this report, while the Tsilhqot'in Nation was awarded Aboriginal Title, implementing the decision will still require negotiations with the Crown. Further, Canada has proven to be slow, or reluctant, to carry out policy changes that result from judicial decisions.

At this point these recommendations are still under review and there has been no indication from government what will happen next. With a federal election on the horizon this fall it is possible we will not hear any more on this report until 2016.

***To view the entire report please visit our website: [tjntreaty.ca](http://tjntreaty.ca) and click on the 'Treaty News' tab.***



Participants from the Kitselas, Kitsumkalum and Metlakata Treaty offices gathered in Prince Rupert May 4 & 5 for a Communications Working Group hosted by the TFN Treaty Society. It was a productive two days of learning and sharing on the important task of keeping membership informed and engaged.



The Kitsumkalum Treaty office has been hosting a number of community meetings regarding the Kitsumkalum Constitution - an important aspect of self-government post-treaty. A working committee of community members has been organized to work on the constitution with input and feedback gathered at each community meeting. Kitsumkalum members will ratify the completed Constitution which will take an estimated two years. More information on this topic is available at [kitsumkalumtreaty.com](http://kitsumkalumtreaty.com)