

ANNUAL PREMIERS' CONFERENCE

BRIEFING NOTE

ISSUE: BRITISH COLUMBIA CLAIMS TASK FORCE REPORT

BACKGROUND:

- The Province of British Columbia, the federal government and provincial aboriginal leaders established the British Columbia Claims Task Force on December 3, 1990 to make recommendations on the scope and process for the negotiation of comprehensive aboriginal claims in the Province. The Task Force Report was released on July 2, 1991. The overarching theme of the Report is the need to proceed quickly with the negotiation of modern treaties. The report contains 19 specific recommendations which were unanimously endorsed by the Task Force members.
- The Province announced on July 10, 1991 that it supports, in principle, the establishment of the Treaty Commission for British Columbia. The Government also indicated that other recommendations of the Task Force would be reviewed by Cabinet over the next 60 - 90 days.

The Minister of Native Affairs has asked the Third-Party Advisory Committee on Land Claims to review and advise on the Task Force recommendations

Key Task Force Recommendations

- The negotiations should permit parties to introduce any issue viewed as significant. The Task Force noted ownership and jurisdiction of land, management regimes to ensure effective and sustainable development, self-government, cash, service delivery, certainty, amendment and implementation as key issues.
- British Columbia negotiations should include the establishment of a Treaty Commission to guide the process and assist the negotiators. The Treaty Commission would have four members (two Native, one Provincial, one Federal) plus a Chairperson jointly appointed by the members.

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- Any party should be able to initiate negotiations of interim protection measures at any time, including prior to and during negotiation of agreements. Options ranging from notification to moratorium, as well as sector wide interim measures agreements, are mentioned by the Task Force.
- Self-government should be included within the scope of negotiations. This could mean constitutional entrenchment of self-government without national (First Ministers) constitutional discussions.
- The extinguishment of aboriginal rights should not be a precondition for negotiations. To date, negotiations have extinguished undefined aboriginal rights and replaced them with rights that are clearly specified in agreements.
- Third parties should participate in negotiations through government consultation processes.
- Strong consideration should be given to joint public information and education initiatives.
- On July 10, 1991, Cabinet accepted the key recommendations in principle. Government officials are presently reviewing the Task Force Report and will provide cabinet with options for a full response within 90 days.

POSITION OF OTHER GOVERNMENTS:

- Some of the Task Force recommendations directly result from the members reviewing processes in other provinces. For example, Treaty Commissions exist, and have been useful to the processes, in the Ontario and Saskatchewan. In addition, Ontario has proposed self-government initiatives similar to the those endorsed by the Task Force.
- Recently the Honourable Tom Siddon indicated that he personally supports the establishment of the Treaty Commission, but he does not expect federal Cabinet to be in a position to approve the Task Force recommendations until the Fall.

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DESIRED OUTCOME:

- Sharing of information on Task Force process and issues with other jurisdictions indicate the process being followed by the provincial government is in review and responding to the Task Force recommendations.

Prepared by: Mr. Graham Gomme Date: August 1, 1991
Land Claims Implementation Group
Ministry of Native Affairs
356-0223

ANNUAL PREMIERS' CONFERENCE

SPEAKING NOTES

ISSUE: BRITISH COLUMBIA CLAIMS TASK FORCE REPORT

- PLEASED TO INFORM YOU THAT THE BRITISH COLUMBIA CLAIMS TASK FORCE RELEASED ITS FINAL REPORT ON JULY 2, 1991. THE TASK FORCE WAS FORMED TO MAKE RECOMMENDATIONS ON THE SCOPE AND PROCESS FOR THE NEGOTIATION OF COMPREHENSIVE LAND CLAIMS IN BRITISH COLUMBIA.
- THE PROVINCE OF BRITISH COLUMBIA ANNOUNCED ON JULY 10, 1991 THAT IT SUPPORTS IN PRINCIPLE THE ESTABLISHMENT OF A TREATY COMMISSION.
- NOW THAT THE PROVINCIAL GOVERNMENT HAS RECEIVED THE REPORT, CABINET HAS ASKED THE MINISTER OF NATIVE AFFAIRS TO UNDERTAKE AND REVIEW ITS RECOMMENDATIONS WITH THE PROVINCE'S THIRD-PARTY ADVISORY COMMITTEE ON LAND CLAIMS AND WITH THE MINISTRIES THAT WILL BE IMPACTED BY THE IMPLEMENTATION OF THIS REPORT.
- THE OVERARCHING THEME OF THE REPORT IS THE NEED TO PROCEED QUICKLY WITH THE NEGOTIATION OF MODERN TREATIES IN OUR PROVINCE. THE REPORT CONTAINS 19 SPECIFIC RECOMMENDATIONS WHICH WERE UNANIMOUSLY ENDORSED BY THE TASK FORCE MEMBERS.
- I EXPECT THAT THE PROVINCIAL GOVERNMENT WILL BE IN A POSITION TO FULLY RESPOND TO THIS REPORT BY THE EARLY FALL.

Prepared by: Mr. Graham Gomme Date: August 1, 1991
Land Claims Implementation Group
Ministry of Native Affairs
356-0223



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PRESS RELEASE

For immediate release.

PROVINCE, CHIEFS UNION AGREE ON FRAMEWORK TREATY TALKS

VANCOUVER -- December 10, 1991 -- B.C. Aboriginal Affairs Minister Andrew Petter has agreed to pursue discussions with the Union of B.C. Indian Chiefs on a Comprehensive Framework Treaty to recognize aboriginal title and rights in British Columbia. At a meeting of the UBCIC Chiefs Council yesterday, Mr. Petter expressed support for "many of the fundamental principles in the Framework Treaty document" and confirmed his willingness to pursue discussions with the Union on its proposal for political negotiations on recognition of aboriginal title and the inherent right of self-government. In his remarks to the 12 Tribal Nations represented at the Council meeting, Mr. Petter stated that the goal of the provincial government is to end costly litigation by moving aboriginal title and rights issues to political negotiations.

Chief Saul Terry, President of the Union, welcomed Mr. Petter's commitment. "It seems that the message has gotten through that the provincial government can't just disregard the many First Nations that haven't bought into the B.C. Claims Task Force. I expect we will commence serious discussions in January. I would like to see some tangible results by April, before the arguments are heard in the Delgamuukw appeal. It would be too much for the Chiefs to bear if the new provincial government were to argue in court that aboriginal title has been extinguished and does not exist."

In response to the provincial government's announcement today that it has accepted the 19 recommendations of the B.C. Claims Task Force, Chief Terry said, "I think that what we initiated yesterday in Chiefs Council on aboriginal title will be far more significant in the long run than today's flashy media event on the Task Force recommendations." Chief Terry cautioned, however, that "the federal government's extinguishment policy for aboriginal title remains a very big stumbling block to negotiations of any kind. Requiring us to extinguish our inherent rights in treaties is the federal government's precondition for negotiations. It is a total non-starter for First Nations."

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Contact: Chief Saul Terry, 684-0231

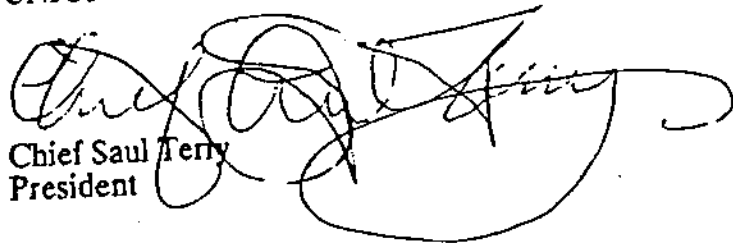
Framework Treaty proposal that the Union of B.C. Indian Chiefs put forward last year.

In light of the above, and considering the serious impediment to progress on the Land Question posed by the "extinguishment issue," I respectfully recommend the *Framework Treaty* proposal to your government's consideration in the days ahead.

Mr. Petter and I have agreed to meet again before mid-December. I anticipate that the substance of this letter will be discussed then. It would be useful, I think, for representatives from the Office of the Premier, the Minister of Constitutional Affairs and the Attorney General to be present at that meeting.

Yours truly,

UNION OF B.C. INDIAN CHIEFS


Chief Saul Terry
President

c.c.: Hon. Andrew Petter, Minister of Aboriginal Affairs
Hon. Moe Sihota, Minister of Constitutional Affairs
Hon. Colin Gableman, Attorney General
Office of the Gitksan and Wet'suwet'en Hereditary Chiefs
UBCIC Chiefs Council Nation Representatives

Enclosure.

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*This Treaty is recommended by and presented to
the First Nations in British Columbia
by Chief Saul Terry, President,
Union of British Columbia Indian Chiefs.*

COMPREHENSIVE FRAMEWORK TREATY

**BETWEEN:
FIRST NATIONS IN BRITISH COLUMBIA
AND
HER MAJESTY THE QUEEN IN RIGHT OF CANADA**

Abridged -- Revised Draft: May 15, 1991

Previous drafts:

July 30, 1990

August 30, 1990

March 15, 1991

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P R E A M B L E

WHEREAS the First Nations are the original people of this land; and

WHEREAS the First Nations assert that they have exercised ownership and jurisdiction over their lands through their institutions and laws which evolved over time to enable their survival as distinct Peoples within their territories; and

WHEREAS the Crown has colonized Canada, including territory within the boundaries of the First Nations' territories; and

WHEREAS the First Nations assert that the Crown has been bound by a fundamental law which requires it to recognize the ownership and jurisdiction of the First Nations in their territories. This law affirms that the First Nations will not be disturbed in the possession of their territories except by their informed consent through the treaty-making process. This law was recognized and confirmed by the Royal Proclamation of 1763 and is a law binding upon the Crown to the present; and

WHEREAS by the distribution of legislative authority between Canada and the Province of British Columbia through the Constitution Act 1867 and 1982, Canada has the authority of the Crown to enter into treaties with the First Nations and has fiduciary obligations to protect the lands and rights of the First Nations; and

WHEREAS the First Nations assert that since 1858 the Colony and later the Province of British Columbia has possessed lands of the First Nations contrary to law and continues to unlawfully possess those lands today; and

WHEREAS, except for Treaty 8 in the northeastern part of British Columbia and the Douglas treaties made with certain First Nations on Vancouver Island, there has never been a treaty between the First Nations in British Columbia and the Crown, either represented by Her Majesty the Queen in Right of the British Crown, or Her Majesty the Queen in Right of Canada; and

WHEREAS the Crown has breached the spirit and intent behind Treaty 8 and the Douglas treaties, and in material respects has failed to live up to its obligations so that these treaties require that re-negotiations be concluded upon the terms and conditions herein; and

WHEREAS the people of the Shuswap, Okanagan and Thompson Nations presented a Memorial to Sir Wilfred Laurier in 1911, which Memorial has been reaffirmed by the members of the three Nations on August 15, 1990. This Memorial represents principles, policies, claims and demands of the three Nations pertaining to a fair and just resolution of the aboriginal rights and title question in British Columbia;

THEREFORE THE PARTIES AGREE AS FOLLOWS:

ARTICLE 1: INTENT & PURPOSE

- (1) This framework treaty sets out the principles and process for treaty-making between Canada and the signatory tribal First Nations in British Columbia.
- (2) Pursuant to the terms of this framework treaty, separate treaties shall be negotiated by Canada with each signatory tribal First Nation.

ARTICLE 2: PARTIES TO TREATIES

The First Nations with whom Canada is obligated to treat are those indigenous peoples who are the descendants of the original inhabitants of their traditional territories, as defined by each respective First Nation. Canada shall not challenge such definition.

ARTICLE 3: MAINTENANCE OF STATUS QUO

In order to promote the timely conclusion of treaties between each First Nation and Canada, the *status quo* in lands and resources in British Columbia shall be maintained until each First Nation has concluded its treaty with Canada. No new fee simple titles and no new alienations of resources shall be created by the Crown during treaty negotiations.

ARTICLE 4: FUNDAMENTAL PRINCIPLES OF TREATY-MAKING

(1) NO EXTINGUISHMENT OF ABORIGINAL TITLE AND RIGHTS:

Aboriginal title and rights are inalienable and shall not be extinguished through treaty.

(2) SOVEREIGN JURISDICTION: The First Nations and Canada shall commence negotiations on the basis that First Nations' aboriginal title includes the right of sovereign jurisdiction, which is fundamental to the continuation of First Nations as distinct peoples within their homelands. This jurisdiction includes the right to develop and maintain governing institutions and laws relating to environmental protection, resource management and conservation, peacekeeping, citizenship, education, and spiritual, cultural, economic, and social development.

(3) LIMITATIONS ON JURISDICTION: Each First Nation may, by its free and informed consent through treaty, agree to limitations on the exercise of its sovereign jurisdiction.

(4) TERRITORIES: The First Nations and Canada shall commence negotiations on the basis that First Nations' aboriginal title includes the right to permanent control and enjoyment of their traditional territories, including lands (surface and sub-surface), inland and coastal waters, air space and the resources contained therein. Rights to share and use traditional territories and resources shall, by the free and informed consent of the First Nations, be arranged through treaty.

(5) ECONOMY: In addition to territorial rights, each First Nation has the right to build and maintain its economy and provide public services to its citizens by means of direct transfer payments from Canada.

(6) COMPENSATION: The First Nations and Canada shall commence negotiations on the basis that where lands and resources have been taken without the consent of the respective First Nations, the First Nations are entitled to full compensation for loss of use or benefit, with no extinguishment of aboriginal title.

(7) SACRED SITES: Without limiting rights to compensation, each First Nation has the right to regain possession and control of sacred sites.

(8) CONSENT TO TREATIES: Ratification of the terms of any treaty shall require the free and informed consent of the citizens of the respective First Nations. The citizenship of each First Nation shall be defined by that First Nation. Canada shall not challenge such definition.

(9) LIVING TREATIES: All treaties concluded between the First Nations and Canada shall include a protocol directing a review of the treaties and their implementation every 15 years. Treaties shall be modernized if, through the passage of time, their terms become redundant, the condition of a First Nation changes substantially, or if unforeseen events require alterations. Any changes to a treaty shall require the consent of the citizens of the First Nation affected.

(10) TREATY INTERPRETATION: All treaties between the First Nations and Canada shall be interpreted liberally and doubtful expressions resolved in favour of the First Nations, as per the Supreme Court's ruling in Nowegijick v. The Queen.

ARTICLE 5: TREATY-MAKING NEGOTIATION PROCESS

(1) PUBLIC TREATY COUNCILS: Treaty negotiations between the First Nations and Canada shall be conducted in open, public treaty councils, as prescribed by the Royal Proclamation of 1763.

(2) BRITISH COLUMBIA'S PARTICIPATION: The First Nations and Canada shall seek British Columbia's agreement to the terms of this framework treaty and its agreement to participate actively in subsequent treaty negotiations between each First Nation and Canada. British Columbia, the First Nations and Canada may enter into a parallel agreement confirming the terms of British Columbia's participation in treaty negotiations.

(3) INDEPENDENT ARBITRATION: If treaty negotiations between the First Nations and Canada reach an impasse, then the issues in dispute shall be resolved by reference to an independent arbitration process, whose the terms shall be mutually agreed upon.

(4) NEGOTIATION FUNDING: Canada shall fund the costs of all treaty negotiations directly to each First Nation. Canada shall not construe negotiation funding as a loan against compensation awarded to First Nations by treaty.

ARTICLE 6: CANADA'S FIDUCIARY OBLIGATIONS

Canada shall honor its fiduciary obligations to the First Nations during treaty negotiations and under the terms of the treaties that are concluded. Canada shall not be discharged of its fiduciary obligations except by the voluntary consent of the First Nations.

ARTICLE 7: LEGAL NATURE OF THE TREATIES

(1) This framework treaty and the treaties concluded between each First Nation and Canada shall constitute treaty rights within the meaning of Sections 25 and 35 of the *Constitution Act, 1982*.

(2) No subsequent government of Canada or of the province of British Columbia shall deny, in a court of law or otherwise, the force and effect of this framework treaty and all subsequent treaties with the First Nations.

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