

**British Columbia Treaty Commission  
Chief Commissioner Celeste Haldane  
Speaking Notes**

**Prepared for the Indigenous and Northern Affairs Standing Committee  
Study – Restitution of Lands to First Nations, Inuit and Metis Communities  
Hearing date June 7, 2023**

Hay čx<sup>w</sup> qə, Thank you, Merci Beaucoup, Parliamentarians for the invitation to present and provide an update with regards to the treaty negotiations process in British Columbia, which is an integral mechanism and framework for restitution.

Introduction:

The Treaty Commission is an independent mechanism that oversees the treaty negotiations process in BC. We facilitate the negotiations between First Nations, Canada, and British Columbia (the “Parties”).

We are the only tripartite legal body to oversee reconciliation and are mandated to facilitate the modern treaty negotiations process between the Parties, provide funding to First Nations in negotiations, and provide public education. Our mandate has been enhanced whereby through the facilitation of modern treaty negotiations we assist the parties implement the United Nations Declaration on the Rights of Indigenous Peoples (the “UN Declaration”), the Truth and Reconciliation Commission 94 Calls to Action, and First Nations title and rights. (Page 54 of 2022 Annual Report) As well, integral within the negotiations framework and inherent in the implementation of modern treaties is restitution.

Modern Treaties in Canada and British Columbia:

29 Modern Treaties across Canada

8 in British Columbia and 7 were negotiated through the made-in-BC treaty negotiations process

Maa-Nulth First Nations (2011 – will celebrate 12<sup>th</sup> anniversary on April 1<sup>st</sup>)

- » Huu-ay-aht First Nations
- » Ka:’yu:’k’t’h’/Che:k’tles7et’h’ First Nations
- » Toquaht Nation
- » Uchucklesaht Tribe
- » Yuułu ı̨’ ath First Nation

Tla’amin Nation (2016- will celebrate the 7<sup>th</sup> anniversary on April 5<sup>th</sup>)

Tsawwassen First Nation (2009 – will celebrate 14<sup>th</sup> anniversary on April 3<sup>rd</sup>)

Nisga'a Lisims Government (2000 – will celebrate 23<sup>rd</sup> anniversary on May 11<sup>th</sup>)  
(Map on Page 31)

(Status of negotiations starts on page 30 of 2022 Annual Report)

**Treaties are a true sharing of constitutional sovereignty.** (Hogg & Millen legal opinion) Modern treaties contain provisions for restitution over a variety of areas such as fair access to lands and resources, self-governance, law making authority, and jurisdiction. Modern treaties also operationalize the UN Declaration on the Rights of Indigenous Peoples.

#### Innovations for Reconciliation:

We recognize and applaud the Federal Government for the tremendous work undertaken to strengthen the relationship and shift the negotiations with First Nations in the BC treaty negotiations process. We are moving beyond historic legacies of Crown denial, unilateralism, to a new nation-to-nation relationship based on the recognition of rights, reconciliation, respect, cooperation, and partnership.

Notable Policy Shifts that have transformed the negotiations process in BC:

- **Recognition and Reconciliation of Rights Policy for Treaty Negotiations in British Columbia (RRR Policy), 2019** codeveloped with First Nation in the treaty negotiations process, British Columbia and Canada replaces both the **Comprehensive Claims Policy** and the **Inherent Rights Policy**.
- *United Nations Declaration on the Rights of Indigenous Peoples Act, 2021*
- *Declaration on the Rights of Indigenous Peoples Act, 2019*
- Canada's Collaborative Self-Government Fiscal Policy, 2019
- Principles Respecting the Government of Canada's Relationship with Indigenous Peoples, 2019
- Forgiving and Reimbursing Loans for Comprehensive Claim Negotiations - Budget 2019 "Investing in the Middle Class". Total of 1.4 billion-dollar investment into First Nations communities.
- Contribution-only Funding – Budget 2018 "Equality Growth – A Strong Middle Class". Moving from 80 percent loans and 20 percent contribution funding to 100 percent contribution funding.

- Principals' Accord on Transforming Treaty Negotiations in British Columbia, 2018
- Truth and Reconciliation Commission of Canada – 94 Calls to Action, 2015

(Indigenous Rights Recognition Handbook)

Conditions are right for Success:

The above policy shifts have transformed the negotiations process and expedited negotiations. We now have a tremendous opportunity to conclude treaties in BC. There are four tables representing 8 Indian Act Bands that can reach a negotiators' handshake under 12 months. **They are: Kitselas; Kitsumkalum; K'ómoks; and Te'mexw Treaty Association (5 First Nations negotiating together).**

Back to the study being conducted by INAN, there are concrete examples of restitution within the BC treaty negotiations framework. For instance, the four tables who are closing have negotiated available provincial crown land to be included in their treaties. As well, there are federal crown lands to be included in their treaties (DND and reserve lands).

Implementing self-governance is also a form of restitution thereby supporting the modern treaty nation to restore their law-making role over their lands and resources, and being able to strengthen their culture and communities by being able to prioritize their community needs. Just to be clear, a lot of nation re-building happens during the negotiations process, modern treaty nations do not wait until effective date, they are building capacity as they negotiate. This is true of all the negotiations happening within our framework.

As you are probably aware, First Nations peoples have been self-governing since time immemorial. It was not until contact and colonization (and all the colonial policies aimed to rid First Nations from Canada and make way for settlement, and the forceful assimilation through defunct policies such as the banning ceremony, removing children from our communities, and enacting the Indian Act.) It is through those legislative and policies that made First Nations communities into wards of the state and dependent on the Canadian state. But there is an opportunity to change that, and move towards supporting restitution and reconciliation by completing modern treaties.

And on another positive note, First Nations in BC have been strengthening their governance and capacity for over 30 years in the negotiations process, and are some of the most capable First Nations ready to implement self-governance.

From our vantage point, the lack of a whole of government approach has been a barrier to success. However, there are signals that the investment and political and senior public servants attention required to conclude negotiations is a priority for the federal government. We also share the same insights and messaging with the provincial government. Restitution is a whole of government responsibility.

The Recognition and Reconciliation of Rights Policy for Treaty Negotiations in British Columbia (RRR Policy), supports self-determination and self-government, and ensures modern treaties are adaptable, living agreements, and capable of renewal when necessary. The RRR Policy explicitly states that negotiations are grounded in the recognition of Indigenous rights and title, and is a framework to implement the UN Declaration.

These treaties will be the most innovative agreements to date, will reflect the new RRR Policy and will demonstrate the success of all the policy innovations.

Concluding the mentioned negotiations will provide for a concrete realization of investment in negotiations and a new path forward for a stronger future for all Canadians.

Concluding these four treaties will undoubtedly establish nation-to-nation grounded in recognition and reconciliation, and will enable faster and effective closing for the next set of advanced negotiation tables. This is important as the last agreement to come to Ottawa was Tla'amin Nation, concluded in 2012 but not ratified by Parliament until 2016.

We cannot see a long delay like this again. This creates challenges within and the treaty negotiations process and especially in the First Nation community. For example, First Nation key leaders and negotiators are retiring or nearing retirement, which could lead to loss of community support and potential opposition, shifting strategies, or stalled negotiations. Loss of momentum at this time could be permanent given significant generational change.

As well, a delay like what transpired with Tla'amin with any of the four closing tables will have lasting ripple effects and impact the next set of First Nation negotiation tables. Our message is the momentum needs to continue especially when treaties and agreements reach Ottawa.

We will continue to urge the entire federal family to understand their role in reconciliation and their role in concluding modern treaties in BC and to implement the RRR policy. Given the fact the RRR policy applies to all government department and agencies we encourage departments to review their authorities. And where they see the opportunity to innovate and update their authorities to reflect a new nation to nation relationship, we encourage the federal government to do so.

Where agreement cannot be reached, carve-out solutions can be an interim step to conclude treaties where some departments and agencies have mandate challenges, while protecting the *Section 35* right. This is only when the First Nation agrees and must not be a forced option. However, a cautious warning must be given, when departments and agencies follow this model they risk falling behind in reconciliation, relationship-building, and represents a missed opportunity for innovation. No progress means status quo - uncertainty for Canada and British Columbia, as well as for First Nations. This also goes against the very definition of restitution.

That concludes the Treaty Commission's opening remarks.