



Negotiating Aboriginal Land Claims in British Columbia

Presentation to Cabinet

October 3, 2001



First Nations in BC

- Aboriginal people represent 3-4% of BC population
- 202 Bands in BC (633 Bands in Canada)
- 117 Bands in BC treaty process as of Sept. 2001
- Aboriginal quality of life well below that of other British Columbians



Constitutional / Historical Framework

- 1867—Constitution Act (*BNA Act*)
- 1871—Terms of Union (BC/Canada)
- 1982—Constitution Act, Section 35



Key Supreme Court of Canada Decisions

- 1973—*Calder* represented first modern recognition of aboriginal title in Canadian common law**
- 1990—*Sparrow* interpreted Section 35 and established framework for addressing justifiable government infringement of aboriginal rights**
- 1997—*Delgamuukw* recognized aboriginal title, set out test for its proof and established framework for justifiable government infringement of aboriginal rights**



Why Negotiate?

- Aboriginal rights and title undefined—legal burden on Crown title (the “land” question)
- BC’s ability to authorize use and disposition of lands and resources constrained
- Uncertainty discourages investment
- Negotiations provide for public input and consultation, unlike litigation



BC Objectives

- Clarify rights and title of aboriginal people to establish greater legal certainty around land and resource base
- Create climate for greater economic opportunity for all British Columbians
- Address and move forward on improving the quality of life for aboriginal people
- Implement New Era commitments



History of Negotiations in BC

- 1991 British Columbia Claims Task Force recommendation to pursue negotiations instead of litigation
- 1992 British Columbia Treaty Commission (BCTC) Agreement
- BCTC Six-stage process
- First Nations participation funded by federal loans and federal/provincial contributions
- Land-and-cash settlements to be cost-shared between Canada and BC



BC Negotiation Principles

- 1993 BC Principles for Treaty Negotiations
- 1997 Select Standing Committee on Aboriginal Affairs—report on Nisga'a Agreement-in-Principle and BC Treaty process



Treaty Negotiations Office Activities

The Treaty Negotiations Office:

- **negotiates interim measures and treaties that represent the interests of all British Columbians**
- **develops policy for treaty making**
- **manages treaty implementation**
- **manages relations with First Nations outside treaty process**
- **manages Critical Incidents Response Strategy**
- **consults with stakeholders and the public**



Treaty Process Results

- 8 years, \$230 million+, no treaties
- Governments and First Nations have different treaty visions
- First Nations expectations high
- Treaty process overloaded—too many small First Nations



Future Directions

- From comprehensive treaties to comprehensible treaties
- From single-focus “full” certainty to building certainty in stages
- From current BCTC process to more effective models
- From a stalled process with shaky public support to post-referendum broad public input and support

The Referendum— Giving People a Say

- Select Standing Committee on Aboriginal Affairs established
- Telephone: 1-877-428-8337 (toll-free)
- Email: ClerkComm@leg.bc.ca
- Report due November 30, 2001
- Referendum —Spring 2002
- Renewal of treaty negotiations process