

# British Columbia Treaty Commission

**An Independent Effectiveness Review  
November 18, 2003**



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# 1. Executive Summary

## 1.1 Introduction

The British Columbia Treaty Commission (‘the Commission’) was formed in 1992 by agreement between the governments of Canada, British Columbia and the First Nations Summit (‘the Principals’) and commenced operations in April of 1993. The role of the Commission as defined by the British Columbia Treaty Commission Agreement and the BC Claims Task Force Report is to act as an independent and neutral body to facilitate the negotiation of treaties among the governments of Canada, British Columbia and First Nations in British Columbia. In addition to the facilitation of treaty negotiations, the Commission is also responsible for the allocation of negotiation support funding to First Nations and providing public information and education about the BC treaty process.

Since the Commission has been operating for 10 years, the Principals have agreed that it is timely to review the effectiveness of the Commission. Deloitte & Touche was engaged by the Principals to conduct this effectiveness review of the Commission and all of its activities in the last three years. The objectives of this review are as follows:

- To assess the extent to which the Commission has effectively fulfilled its role and performed its duties and functions as outlined in the British Columbia Treaty Commission Agreement and achieved desired outputs and outcomes; and
- To determine the extent to which there is a shared sense of purpose and direction, both within the Commission and between the Commission and the Principals.

## 1.2 Our Approach to the Review

In order to assess the overall effectiveness of the Commission over the past three years, it was important for us to understand the level of awareness around the Commission’s stated role, mandate and responsibilities. Stakeholders both within the treaty process and external to the treaty process were identified by each of the Principals for us to interview. Where applicable, we facilitated workshops with similar groups (i.e. First Nations involved in treaty negotiations, groups of Chief Negotiators, etc). In total we completed more than 35 interviews.

Additionally, 7 workshops were held at various locations around the province to meet the needs of the Principal groups, including Vancouver, Victoria, Nanaimo, Prince George and Terrace. Recognizing the broad geographic spread of potential stakeholders, we also established a dedicated fax number and email address ([BCTCReview@deloitte.ca](mailto:BCTCReview@deloitte.ca)) allowing participants to provide additional information, or to provide an opportunity for those who were unable to attend a workshop to present their opinions.

We also interviewed several staff members within the Commission, including the Chief Commissioner, the four Commissioners, department managers and support staff. In addition, we reviewed internal policy and procedural documentation to better understand the effectiveness of

the organizational structure, communication mechanisms and responsibilities within the Commission.

The specific duties and responsibilities of the Commission are formally defined in Section 7 of the BC Treaty Commission Agreement and the original BC Claims Task Force Report. This broad mandate is comprised of the following three primary activities:

- Facilitation of the treaty process;
- Allocation of Negotiation Support Funding to First Nations; and
- Communication to the Principals and the broader public.

We have used these broad categories to assess the level of consensus around the Commission’s past and future mandate. One of the most significant objectives driving the creation of the Commission was to bring a level of balance, neutrality and objectivity to the treaty tables and the related funding allocations. This consideration is also inherent in our assessment and observations.

### 1.3 Key Findings

Based on our interviews with various stakeholders, facilitated workshops and our review of documentation, we have assessed the effectiveness of the Commission in achieving the mandate defined above, using the following criteria (against a 3-point scale that ranges from ‘Not Effective’ to ‘Partially Effective’ to ‘Effective’). This is a summary of our conclusions from the review.

Effectiveness Criteria	Conclusion
<p><b>Level of Fulfillment of the Mandate</b> – To what extent can the Commission display evidence of their actions in meeting their defined responsibilities?</p> <ul style="list-style-type: none"> <li>▪ Facilitation Mandate</li> <li>▪ Negotiation Support Funding Mandate</li> <li>▪ Communication Mandate</li> </ul>	Partially Effective (for all mandates)
<p><b>External Perception of Effectiveness</b> – How do the perceptions of stakeholders external to the Commission and the Principals align with the mandated responsibilities of the Commission, and what is the level of awareness around their actions, role and contributions to the treaty process?</p>	Partially Effective
<p><b>Neutrality and Independence</b> – Does the Commission implement their mandate in a neutral and unbiased manner?</p>	Effective
<p><b>Internal Organizational Structure</b> – To what extent does the organizational structure support effective decision-making and execution of strategies?</p>	Effective
<p><b>Efficiency of Operations</b> – How do the various stakeholders who work with the Commission perceive the timeliness and responsiveness of the day-to-day operations and activities of the Commission?</p>	Partially Effective
<p><b>Deployment of Resources</b> – Has the strategy for deployment of people and</p>	Effective

resources improved the effectiveness of the Commission in executing their mandate?	
<b>Value to the treaty process</b> – Despite the specific mandate prescribed for the Commission, what is the overall impact of the Commission on the treaty process?	Effective

### 1.4 Summary of Recommendations

Throughout this review process, we solicited feedback and insight from over 75 individuals, representing the interests from five distinct stakeholder groups - the Commission, the Province of BC, the Government of Canada, First Nations and the wider BC public and private sectors. As a result, we received varying, often conflicting information around the performance and effectiveness of the Commission and their level of involvement and contribution to the treaty process. Our report seeks to strike a balance of perceptions and opinions conveyed to us, and to provide recommendations that will enhance the overall effectiveness of the Commission and the treaty process. As such, the following recommendations were identified during our review of the effectiveness of the Commission:

1. We recommend the Principals and the Commission jointly investigate the benefits and challenges that could result from the following enhancements to the responsibilities and powers of the Commission, specifically with regard to improving the timeliness and efficiency of the Commission in facilitating the treaty negotiation process:
  - To investigate and get involved in dispute resolution without requiring the agreement of all three parties;
  - To compel the parties to move to an independent dispute resolution forum or tribunal; and
  - To conduct or request ongoing readiness assessments at the request of another party or at the observation of the Commission.

**Expected Benefits:** Increased perception of value of the Commission by the tables. Allows tables to work through substantive issues and not become stalled. Ensures that all active tables are equipped with a mandate and are prepared to negotiate.

2. The Commission should establish criteria for suspending funding where, in their view, progress is clearly not going to be made toward common goals. This should only be considered as a final measure by the Commission and after a thorough, unbiased and objective review of the table. Care will need to be taken so that this power would not be punitive or used to enforce participation, but simply a fiscal control designed to prevent unnecessary expenditure for all parties involved.

**Expected Benefits:** Improves the likelihood of an effective and appropriate distribution of available funds. Reduces the likelihood that tables will not have the necessary amount of funds to support planned negotiation activity.

3. The Commission could improve the perception of their effectiveness by clearly communicating the value they bring to the table and the role they could play, to those tables that have not sought the services of the Commission. This could potentially be

achieved by demonstrating the methods in which the Commission is assisting other tables.

**Expected Benefits:** Clearly communicates the value, benefits and skills that the Commission brings to each table. Allows for the Commission to share best practices between tables. Increases the awareness of the roles the Commission has taken at other tables. Enhances the ability of the Commission and tables to openly discuss the appropriate role for the Commission at the table.

4. Stage 5 negotiations will be very intensive for the First Nations and the federal and provincial governments. Given current provincial government resource constraints, this will likely result in government resources (i.e. human and funding resources) being heavily focused on a few tables and a lack of resources for tables that have not reached this stage. The Commission has an opportunity to step in and take a lead role in assessing and assisting tables that have become stalled. Such actions may include helping the tables develop a tangible action plan, specific timelines and common desired outcomes, thereby providing the two governments with a business case to support the decision of directing the necessary resources towards those tables.

**Expected Benefits:** Keeps tables moving forward and creating realistic and beneficial action plans. Supports the effective allocation of resources and focuses tables on key, individual table issues. Allows the sharing of insights, resolutions and best practices from other negotiating tables.

5. The Agreements In Principle (‘AIPs’) that have recently been initialled contain a number of substantive issues that have not been addressed. These areas will require considerable effort of the parties to come to agreement during Stage 5 negotiations. The Commission has an opportunity to facilitate these discussions in a more proactive manner.

**Expected Benefits:** Ensures that tables move forward on these difficult issues and work towards satisfactory resolution.

6. The Commission should continue to investigate additional, innovative opportunities to bring negotiation opportunities to multiple tables (especially broader sectoral issues, such as education or healthcare), particularly where all parties realize the potential benefits of this approach.

**Expected Benefits:** Supports the sharing of best practices between tables. Expedites the negotiation process by allowing tables to focus effort and resources negotiating issues that are specific to their tables.

7. More communication is required with First Nations to ensure that there is clearer understanding of the established funding formula and funding allocation process. For example, this could be achieved through holding a series of workshops around the province.

**Expected Benefits:** Increases the perceived value, independence and fairness the Commission brings to the process. Provides an opportunity for all First Nations to better understand the process. Assists First Nations in the funding application process,

ensuring appropriate planning, staffing and resource allocation (re: negotiation action plans). Raises the visibility of the Commission in the process.

8. There is an opportunity to get more involved with education of the public and to increase awareness of the treaty negotiation process among British Columbians. This includes working with the Principals to ensure that they are adequately engaged in communication with their constituents, especially at the community level, and by working to gain greater exposure for key milestones and issues in the media.

**Expected Benefits:** Increased public awareness and acceptance as tables move towards final treaty agreements.

9. The Commission should begin to plan for an effective post-treaty communications program. There will be a need to continue to educate Canadians, particularly youth and new Canadians, on the history, objectives and rationale behind specific treaty processes and outcomes well into the future.

**Expected Benefits:** Creates a foundation for sustainable treaties in BC. Ensures there is the appropriate support for all parties as treaties are finalized.

10. Most parties to the treaty process see the Commission as a credible, objective and independent entity. As such, the Commission should at times take more public and aggressive stances to keep the treaty negotiation process moving forward fairly and equitably, for example when any of the Principals is not in adherence with the 19 recommendations of the 1991 Report of the BC Claims Task Force.

**Expected Benefits:** Keeps all parties accountable to the 19 recommendations. Encourages negotiations to continually move forward. Keeps the public aware of the challenges and successes in the treaty process. Increases the awareness that the Commission uses its ‘teeth’ in a fair and equitable manner when necessary.

11. In an effort to ensure there is an effective use of Commission effort and resources, it may be advantageous to establish a minimum threshold for conducting variance analysis audits to ensure that only significant variances or expense categories are investigated.

**Expected Benefits:** Allows an effective use of resources within the Commission and First Nations. Creates consistency in the audit review process.

12. Vacancies in the Commissioner positions should be filled before the retirement of the existing Commissioner. Where this is not possible, the Principals should relax the quorum rules to facilitate day-to-day decision-making by the remaining Commissioners until the vacancy is filled.

**Expected Benefits:** Ensures that the Commission can remain active and effective even when it is not possible to achieve a quorum as defined by the Agreement.

## 1.5 Overall Conclusions

### *Facilitation Mandate*

The primary mandate of the Commission, as per the British Columbia Treaty Commission Agreement, is to facilitate the negotiation of treaties. However, most stakeholders interviewed

were tempted to measure the success of the Commission against their perception of the success or failure of the treaty process overall, despite the fact that the Commission actually has little direct control over the outcomes at the treaty tables. Where a table is having success moving forward through the process, the Commission is more often viewed as effective by those tables, compared with tables that are still in earlier stages and are experiencing difficulties. As a result, the Commission is often held accountable for outcomes over which it has little control.

Many view the Commission as being too process-oriented, rather than results-oriented. To some degree this is deliberate, as the Commission sees itself as the ‘keeper of the process’ in the literal sense. The challenge to this point of view is that effective facilitation involves keeping a process moving, rather than maintaining a consistent status quo. One of the obvious hurdles to effectively measuring the Commission on a process or a results basis is that there are no good examples of a best practice negotiation process leading to a comprehensive treaty to date. This framework is being created now, so the onus is clearly on the Commission to establish and record these best practices and bring them to future negotiations, where they may likely be measured more aggressively on results.

From our observations and analysis, it is clear that the Commissioners have in the past deliberately chosen to fulfill their role as facilitators, or keepers of the process, in a quiet, persuasive way. As a result, a general perception exists that the Commission has avoided conflict and has not wanted to publicly deal with tough issues in order not to offend any of the parties. All three Principals have cited this example of perceived lack of visible action as an indication that the Commission is not sufficiently active, relevant or lacks ‘teeth’.

Related to this issue is the common belief of many stakeholders that the Commission tries too hard to be neutral. In fact, some indicated the Commission was “afraid not to look neutral”, so was perhaps biasing their decisions through lack of action. The Commission was always intended to be a neutral and independent body in the treaty process, bringing legitimacy, credibility and objectivity from the outset. By definition, they do not have an interest in any one party and are accountable to the public - not to any Principal (even those who appointed them) nor to the tables they sit at. They bring to the table an objective perspective as well as balance. However, the Principals believe the Commission has proven itself and its objectivity and can now afford to ‘take a stand’ on key issues. This may involve taking affirmative action against a party at the table, but one that is seen as an important aspect of keeping the process moving forward fairly and equitably.

Over the past year the Commission has seen the appointment of two new Commissioners. The current complement of Commissioners has very strong experience with the BC treaty process, an excellent grasp of aboriginal issues, and a high degree of prior political experience. Our discussions with the Commissioners indicate that they share a strong sense of commitment to a common vision, and that they also plan to take a much more proactive, forceful approach in the future. This new approach combined with the progress of the Commission in recent years has been having some effect, with many stakeholders interviewed commenting on the increased effectiveness of the Commission over the past year, and particularly in recent months given the progression of five tables moving towards (initialled) AIPs since February 2003.

We believe the Commission’s passive approach to their facilitation role in the past may have fuelled the concerns around their apparent lack of ‘teeth’, but due to the wide definition of

facilitation and the varying, often conflicting, stakeholder expectations of the Commission, our interviews did not identify any specific initiatives that would require a significant change to their overall facilitation mandate. Within their current mandate, the Commission has the ability to determine the degree to which they use their mandate to effect change – whether it be through passive or active facilitation. There was consensus among the many stakeholders interviewed that they would like to see the Commission take a more proactive role.

#### ***Negotiation Support Funding Mandate***

With regard to the negotiation funding aspect of the Commission’s mandate, the Commission is quick to recognize the many challenges associated with performing this funding allocation role. Overall, the general perception is that the Commission is doing a reasonable job of allocating negotiation support funding, and that it is an important element of the Commission’s mandate given the requirements for sensitivity and objectivity.

#### ***Communication Mandate***

There was a shared view that the Commission could play a much larger role in communication to the general public, however, it was also recognized that this responsibility could not be entirely offloaded to the Commission. Therefore the Principals and stakeholders including the business sector, municipalities and community organizations have an active responsibility to increase and improve communication and other forums for discussion around the treaty process and its potential impacts. We recognize that this comes at a cost to all parties, and also that the Commission has been particularly efficient in managing communications costs to date.

#### ***Internal Effectiveness***

The organizational structure of the Commission is conducive to the effective processing of information and decision-making, but this does not guarantee the efficiency of these operational activities. A number of concerns were raised regarding the perception of the level of bureaucracy for such a small organization.

Given that there have been no significant funding increases in the past few years, but the fixed and variable costs of operating the Commission have continued to escalate, we conclude that the Commission is managing their funding efficiently. Despite the effectiveness of the Commission in managing their financial affairs, there is a strong perceived linkage between the cost of “keeping” the process and the “results” of the process - in effect, a positive return on investment is expected. To date this has not been an insurmountable challenge for the Commission, but given the perceptions around lack of progress at the tables, the increasing cumulative investment in the Commission, and the fiscal challenges of the provincial government, there is an increasing challenge for the Commission to demonstrate tangible value for money. In summary, the Commission is managing efficiently with a limited budget, and seeks to optimize the deployment of appropriately skilled resources to tables, while ensuring the retention of key staff.

#### ***Overall Conclusion***

It is clear most stakeholders see the Commission as being valuable to the treaty process, both in theory (the need for an objective, independent body) and in reality (the benefits they bring to the overall process). Some stakeholders challenged that the lack of progress at the treaty tables demonstrated a lack of value, however, in balance it is unlikely that many of the delays in progress could be attributed to the Commission. The Commission could be more proactive and



assertive in their positions, but would need to manage the challenges of maintaining political balance and sensitivity. Given the desire of the Commission to move toward more active and vocal facilitation, we believe this would simply add to the value they are already providing.

The Commission has brought greater credibility and trust to the treaty negotiating process. The greatest challenges to date have been managing the varied expectations of the Principals and the broader community, while demonstrating the value of the overall investment. Being able to clearly demonstrate the ability of the Commission to continually add value to the process through active facilitation and communication will become more critical as treaty tables move into the final stages of the negotiation process, and beyond signed treaties. There is consensus amongst the Principals that the Commission has proven itself and its objectivity such that it can now afford to ‘take a stand’ on key issues.

## 2. Background

### 2.1 The BC Treaty Commission

In December 1990 the governments of Canada and British Columbia, and the First Nations of British Columbia formed the British Columbia Claims Task Force to:

- Review the treaty process in BC;
- Recommend how the First Nations of British Columbia, the Government of British Columbia and the Government of Canada could begin treaty negotiations; and to
- Identify what those negotiations should include.

As a result, the 1991 Report of the BC Claims Task Force provided 19 recommendations that were approved by Canada, British Columbia and the First Nations Summit. In addition to setting out the current six-stage treaty process, the report recommended that a British Columbia Treaty Commission be established to facilitate the negotiation of treaties in BC. The Commission was subsequently formed in 1992 and is governed by the *British Columbia Treaty Commission Agreement*, the 1995 federal *British Columbia Treaty Commission Act*, the 1996 provincial *Treaty Commission Act*, the 1993 First Nations Summit Resolution "*The British Columbia Treaty Commission Resolution*" and First Nations Summit Resolution "*Amending s.6 of the British Columbia Treaty Commission Resolution*". These documents set out the mandate and duties of the Commission. The Commission commenced operations in April of 1993.

The role of the Commission is to act as an independent and neutral body to facilitate the negotiation of treaties among the governments of Canada, British Columbia and First Nations in British Columbia. The Commission's primary role is to ensure that the parties to individual treaty negotiations are being effective and making progress toward negotiating treaties and to ensure that the process is fair and impartial. In addition to the facilitation of treaty negotiations, the Commission is also responsible for allocation of negotiation support funding to First Nations and providing public information and education about the BC treaty process.

### 2.2 Objectives of the Independent Review

While the Commission has been operating for 10 years, and the BC Treaty Commission Agreement requires that the Principals review the effectiveness of the Commission at least once every three years, this review is the first undertaken by the Principals under the terms of the Agreement. The Principals commenced this review process by forming a Project Authority, or steering committee, consisting of designated representatives of the Government of Canada, British Columbia Government and the First Nations Summit to determine the nature of the review and to select an independent consultant to complete the review.

The objectives of this review, as defined by the Project Authority, were as follows:

- To assess the extent to which the Commission has effectively fulfilled its role and performed its duties and functions as outlined in the British Columbia Treaty Commission Agreement and achieved desired outputs and outcomes; and



- To determine the extent to which there is a shared sense of purpose and direction, both within the Commission and between the Commission and the Principals.

Deloitte & Touche has been engaged by the Principals to conduct this effectiveness review of the Commission and all of its activities over, but not restricted to, the last three years. The remainder of this report describes our approach, findings and recommendations.

## 3. Our Approach

Deloitte & Touche conducted the review of the Commission over a five-month period, including a significant review of relevant documentation and meetings with many stakeholders including industry, government and negotiating tables involved at various stages of the Treaty Negotiation process. This report is the primary deliverable from our review.



### 3.1 Our Methodology

#### Phase 1. Information Gathering and Planning

At the commencement of the review, we met with the Project Authority to confirm our understanding of both the project scope and engagement objectives. This enabled us to ensure that our approach and understanding was aligned with those of the Project Authority and to ensure the deliverables would meet the expectations of all key stakeholders. We also met with the First Nations Summit Chiefs to present our approach, and to determine the objectives and expectations of the First Nations Summit from this review.

#### Phase 2. Documentation Review

In the second phase of our review, we held meetings with the Chief Commissioner and senior staff members of the Commission to outline our objective and approach, to ascertain their expectations, and to gather any relevant documentation. Some of the key documents of consideration included reports that had been produced by, or for, the Commission in the past three years; copies of the BC Claims Task Force Report; reports prepared for the Principals by the Commission; audited financial statements; copies of applicable legislation; and other reference material that the Commission has used to form the basis of decisions or actions in recent years.

While this documentation assisted our team in developing a framework from which to conduct our assessment, it also enabled us to define a set of useful questions for the subsequent interviews and workshops in order to better assess the external perception of the Commission's effectiveness.

#### Phase 3. Interviews with Key Stakeholders

While the first two phases provided us with a landscape of the stakeholders, history, successes and challenges to date with regard to the Commission, the third phase formed the core of this review. In this phase our objective was to meet with various stakeholders including, government representatives, First Nations and key business and public community interest groups, to understand how they have interacted with the Commission in the past; where the Commission

has added value; and perhaps where improvements could be made. We also met with Commission staff and Commissioners to understand their perspective on their key capabilities, areas of opportunity and future focus.

#### **Phase 4. Assessment and Documentation**

As we progressed through the interviews and workshops, common themes, strengths, risks and performance gaps began to emerge. We began to categorize our findings and look to support them with statistical data that were collected through the use of data-gathering technology used in the workshops. We then met with the Commissioners in order to gain their perspectives on specific issues or findings, as well as to provide some context to our analysis. In most cases, we found that the Commission agreed with our assertions and observations.

#### **Phase 5. Conclusions and Recommendations**

In the final phase of this review we provided the Commission and the Project Authority with this report, outlining our key findings, issues and recommendations.

### **3.2 Criteria for Measuring Effectiveness**

In order to measure the effectiveness of the Commission, we must first define the criteria against which to assess this effectiveness. The Project Authority have defined the core objectives of the review as follows:

- To assess the extent to which the Commission has effectively fulfilled its role and performed its duties and functions as outlined in the British Columbia Treaty Commission Agreement and achieved desired outputs and outcomes; and
- To determine the extent to which there is a shared sense of purpose and direction, both within the Commission and between the Commission and the Principals.

Before we can assess the effectiveness of the Commission in achieving their mandate, we must first determine what that mandate is, and determine the level of consensus between all the stakeholders with regard to this perceived mandate. Although there were no established criteria against which to assess the Commission directly, we initially focused on this level of **Internal and External Consensus on the Commission's Mandate**. This allowed us to evaluate the degree to which there has been a shared understanding of the roles and purpose of the Commission. We also interviewed the Commission and key stakeholders to determine their consensus and shared perspective on the future direction of the Commission, effectively allowing us to address and answer the second overall objective outlined above.

Once we assessed the mandate of the Commission, as defined in legislation and as perceived by the primary stakeholders, we moved on to assess the effectiveness of the Commission against that mandate using specific measurement criteria. Focusing on the first objective above, the following criteria were created as the primary benchmarks against which to assess the effectiveness of the Commission in fulfilling their roles and responsibilities as outlined in the BC Treaty Commission Agreement:

1. **Level of Fulfillment of the Mandate** – To what extent can the Commission display evidence of their actions in meeting their defined responsibilities?

2. **External Perception of Effectiveness** – How do the perceptions of stakeholders in the community external to the Commission and the Principals align with the mandated responsibilities of the Commission, and what is the level of awareness around their actions, role and contributions to the treaty process?
3. **Neutrality and Independence** – Does the Commission implement their mandate in a neutral and unbiased manner?
4. **Internal Organizational Structure** – To what extent does the organizational structure support effective decision-making and execution of strategies?
5. **Efficiency of Operations** – How do the various stakeholders who work with the Commission perceive the timeliness and responsiveness of the day-to-day operations and activities of the Commission?
6. **Deployment of Resources** – Has the strategy for deployment of people and resources improved the effectiveness of the Commission in executing their mandate?
7. **Value to the treaty process** – Despite the specific mandate prescribed for the Commission, what is the overall impact of the Commission on the treaty process?

We have assessed the effectiveness of the Commission using the criteria above against a 3-point scale that ranges from ‘Not Effective’ to ‘Partially Effective’ to ‘Effective’.

### 3.3 The Interview Process

In order to assess the overall effectiveness of the Commission over the past three years, it was important for us to understand the level of awareness around the Commission’s stated role, mandate and responsibilities. Stakeholders both within the treaty process and external to the treaty process were identified by each of the Principals for us to interview. Where applicable, we facilitated workshops with homogeneous groups (i.e. First Nations involved in treaty negotiations, groups of Chief Negotiators, etc).

#### Interviews

Interviews were conducted in person or, depending on the timing and location of participants, by telephone. We forwarded questions in advance of the interview to provide context for the discussion as well as provide opportunity for interviewees to provide specific, relevant examples.

Our key objectives in each of the interviews were to understand the interviewee’s perspectives and to:

- Understand their view of the Commission’s stated objectives;
- Understand their opinion on the Commission’s effectiveness to date against the perceived mandate;
- Confirm the key measures of effectiveness;
- Identify the key strengths of, and opportunities facing, the Commission;
- Identify past ‘stumbling blocks’ or challenges for the Commission;
- Assess the clarity of roles and responsibilities; and to
- Identify key risks for the Commission in the future.

## Workshops

Seven three-hour workshops were held at various locations around the province to meet the needs of the Principal groups including Vancouver, Victoria, Nanaimo, Prince George and Terrace. Recognizing the broad geographic spread of potential stakeholders, we also established a dedicated fax number and email address ([BCTCReview@deloitte.ca](mailto:BCTCReview@deloitte.ca)) allowing participants to provide additional information, or to provide an opportunity for those who were unable to attend a workshop to present their opinions.

In an effort to create an open and objective atmosphere in the workshops, we utilized anonymous data-gathering technology. This allowed the participants to “vote anonymously and to speak honestly”. The technology was used in two different segments of the workshops:

1. Participants were provided with five statements regarding the Commission, and were asked to respond as to whether they believed those statements to be true or false. These statements were derived from the British Columbia Treaty Agreement and legislation. The statements were primarily designed to enable us to gain a better understanding as to how well the participants understood the mandate of the Commission. These statements were as follows:

1. *The Commissions mandate is to facilitate negotiation of Treaties in BC.*
2. *The term facilitate is clearly defined in the BC Treaty Commission Agreement.*
3. *The roles and responsibilities of the BCTC are clearly outlined in the BC Treaty Commission Agreement and the BC Claims Task Force Report.*
4. *Commissioners are accountable to the party that appointed them.*
5. *BCTC assigns a Commissioner and Treaty Process Advisor to each negotiating table.*

2. Participants were asked to provide their opinion on 15 statements designed to understand how the Commission was perceived, what roles they played and how effective they were at various tables. Participants were asked to rate each statement on a sliding scale from 1 (being “I Strongly Agree”) to 5 (“I Strongly Disagree”). These statements were as follows:

1. *The Commission has effectively carried out its mandate.*
2. *The role of the Commission is valuable in the negotiation process.*
3. *The Commission is neutral and independent, acting in the best interests of all parties.*
4. *The Commission has the necessary skills to effectively carry out its mandate.*
5. *The Commission is suitably active to add value to the Treaty Process.*
6. *The Commission has been effective in creating public awareness around the Treaty Negotiation process.*

7. *The Commission has been effective in facilitating the Treaty Negotiation process.*
8. *The Commission has been effective in managing the overall support funding budget.*
9. *Treaty Negotiators for each of the parties participate in the development of tripartite timetable to submit to the BCTC.*
10. *The Commission has a good working relationship with your negotiating team.*
11. *The Commission should be actively involved in all stages of the 6-step negotiation process.*
12. *The Commission is adequately involved in monitoring negotiations.*
13. *The Commission has been successful in keeping the negotiating process moving forward.*
14. *The Commission has been effective in providing dispute resolution .*
15. *The Commission has been effective in assessing the readiness of the parties prior to negotiating.*

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Each statement was voted on separately, and upon completion of the voting, the results of the group were displayed on the screen, providing the group with immediate feedback as to whether or not there was consensus. The responses stimulated deeper discussion, providing us with rationale, specific examples and context for the participants' responses.

### **Documentation Review**

We also reviewed a number of documents in order to gain a better perspective of the effectiveness of the workings of the Commission. These included various legislative and regulatory materials, documentation around roles and responsibilities, audit reports, financial and funding working papers, internal communications, meeting minutes, formal reports, policies, procedures and other documents. This was used to generate interview and workshop questions, as well as to clarify comments and observations raised in those sessions.

## 4. The Mandate of the Commission

### 4.1 The Formal Mandate

Stakeholders are inclined to measure the success of the Commission against their perception of the success or failure of the treaty process overall. The challenge to this rationale is that the Commission actually has little or no control over the outcomes of the treaty process, or the outcomes at individual treaty tables. As a result, the Commission is often held accountable for outcomes over which it has little control. Our review has focused on factors that the Commission does have control, that is, the Commission's mandate, roles and responsibilities as set out in the BC Treaty Commission Agreement. We have also, however, commented on the degree to which the Commission's activities improve or impede the treaty process.

In both the interviews and the workshops, we asked participants to convey their understanding of the role of the Commission. Almost all responded that the role of Commission was to be "the keeper of the process".

From the Commission's perspective, this was understood to mean that they ensured the parties involved at the treaty tables adhered to the 19 recommendations set forth in the 1991 BC Claims Task Force Report<sup>1</sup> and ensured that all parties were engaged in discussion at the tables. When we asked the interviewees to define the actions of the Commission that clearly demonstrated they were effectively "keeping the process", we identified varying interpretations of this role, including:

- Ensuring that the parties adhere to the 19 recommendations and impose penalties on those not doing so;
- Being proactive in facilitating negotiations;
- Being reactive; and responding to the requests of a negotiating table or individual party;
- Levelling the playing field;
- Assisting tables through impasses; and
- Being actively involved in dispute resolution and making recommendations for resolution of key issues and impasse areas.

The specific duties and responsibilities of the Commission are formally defined in Section 7 of the BC Treaty Commission Agreement and the original BC Claims Task Force Report. This broad mandate is comprised of the following three primary activities:

- Facilitation of the treaty process;
- Allocation of Negotiation Support Funding to First Nations; and
- Communication to the Principals and the broader public.

We have used these broad categories to assess the level of past and future consensus around the Commission's mandate. One of the most significant objectives driving the creation of the Commission was to bring a level of credibility and objective authority to the treaty tables and the

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<sup>1</sup> Refer to Appendix A for a detailed listing of these 19 recommendations.

related funding allocations. This consideration is also inherent in our assessment and observations.

## 4.2 Consensus on the Commission’s Past Mandate

### 4.2.1 The Facilitation Mandate

The role of the Commission, as outlined in the BC Treaty Commission Agreement, states that “*the role of the Commission is to facilitate the negotiation of treaties and, where the Parties agree, other related agreements in British Columbia*”. This mandate could be considered ‘permissive’, as opposed to ‘prescriptive’, in that it provides guidance for the Commission, but it does not seek to define a formal role for the Commission within the treaty process. This allows the Commission flexibility as to how broadly or narrowly it interprets its mandate and ultimately the role it plays in facilitating treaty negotiations. In most workshops and interviews, the word ‘facilitate’ generated significant discussion. While the mandate of the Commission is to ‘facilitate the negotiation of treaties’, it was not possible to obtain consensus on the definition of this term or the actions that should support it. The dictionary definition of *facilitate* is “to make easier” or “to help bring about”<sup>2</sup>. All stakeholders agreed on this fact, but not on the activities necessary to achieve it.

Facilitation can take various forms, ranging from passive (or reactive) facilitation, through active (or proactive) facilitation, to arbitration. Much of the lack of consensus arises from the individual perceptions as to where the Commission should lie on this ‘facilitation scale’.



#### *The Commission’s Perception*

In its 2002 Annual Report, the Commission indicated that it performs its role of facilitation by:

- Offering advice; chairing meetings, where requested, and assisting the parties in developing solutions in resolving disputes;
- Developing policies and procedures for the six-stage treaty process;
- Monitoring and reporting on the progress of negotiations and encouraging timely negotiations by helping the parties to establish meeting schedules and by monitoring deadlines; and
- Accepting First Nations into the treaty process and assessing when the parties are ready to negotiate.

During our discussions with the Commissioners and the staff of the Commission, we identified a strong internal consensus around this definition of their facilitation role. This could be characterized as being towards the passive end of the above spectrum.

<sup>2</sup> Merriam-Webster’s Collegiate Dictionary, Eleventh Edition, 2003

### ***Other Stakeholders' Perception***

When workshop participants were asked whether the role of the Commission was to facilitate the negotiation of treaties, there was almost unanimous agreement with this statement. The qualities and activities most associated with facilitation by the variety of workshop and interview participants included the following observations:

- Chairing critical meetings;
- Providing leadership to clarify positions on important issues and working to encourage a solution;
- Responding to the requests of the Principals;
- Striving to create conditions for successful negotiations;
- Participating actively when called upon;
- Building trust amongst the parties;
- Assisting parties to avoid misunderstandings;
- Being there (at the tables), listening, ensuring that the parties create rules, respect those rules and each other;
- Ensuring that process issues are addressed;
- Keeping focus in the group;
- Keeping the parties apart if they are not ready; and
- Assisting in encouraging ongoing assessment of readiness.

In our discussions with representatives of the Principals and third-parties external to the process, it became apparent that all stakeholders external to the Commission were actually providing the same definitions as we received from the Commissioners themselves. However, although there was consensus that the role of the Commission was to facilitate the process, there was certainly some disagreement as to whether the level of activity to achieve this had been adequate. Any differences in opinion seemed to arise from the perception of effectiveness of the Commission in achieving this mandate, rather than in the definition itself (as discussed in *Section 5*).

#### **4.2.2 The Negotiation Support Funding Mandate**

The BC Treaty Commission Agreement states that the duties of the Commission, relating directly to negotiation support funding for First Nations, include:

- To receive and consider any requirement for negotiation funding submitted by a First Nation; and
- To allocate funds that have been provided to enable First Nations to participate in negotiations, in accordance with criteria agreed to by the Principals.

This mandate is seen as being clearly defined and was not challenged by any of the stakeholders interviewed. No one believed the funding process would have received the current level of credibility if it had not been administered by a neutral third-party, such as the Commission.

Some observations were made regarding the lack of clarity in the funding allocation process. Individuals within the First Nations workshops were aware that a funding formula existed, and that discretion was allowed to the Commission in final funding allocations.

### 4.2.3 The Communication Mandate

The Commission Agreement states that the duties of the Commission include the following items that relate directly to Communication:

- Maintain a public record of the status of negotiations;
- Develop an information base to assist the Parties;
- At least annually, submit a report to the Principals on:
  - The progress of negotiations;
  - The operations of the Commission; and
  - Any other matter the Commission deems appropriate.

Again, the duties are more ‘permissive’ than ‘prescriptive’, providing the Commission flexibility in interpreting and fulfilling its mandate. Differences of opinion seemed to arise with regard to the degree to which the Commission should be actively involved in communications. However, most stakeholders believe the role of the Commission should extend to include such activities as:

- Leveraging the position and status of the Commission and the Commissioners to conduct more speaking engagements, increase publicity and communicate information regarding the overall process and the status of particular tables.
- Using the ‘public voice’ of the Commission as a last resort to realign those parties who are not working within the 19 recommendations of the BC Claims Task Force or the overall spirit of the process; and most importantly,
- Working more closely with the three Principals, local governments and other community stakeholders in a joint effort to communicate the need for, and value of, treaty making to the BC public, as well as the impacts of any agreements under discussion.

### 4.3 Consensus on the Commission’s Future Mandate

The second objective of our review was “*to determine the extent to which there is a shared sense of purpose and direction, both within the Commission and between the Commission and the Principals*”. It was clear through our workshops and interviews that there is a shared sense of purpose amongst the Principals around the treaty negotiation process; that is, all three Principals desire to have signed treaties that are sustainable, comprehensive and complete. While the Principals share this same ‘vision,’ we found that there is less agreement regarding the timing, content, and the dedication of resources required to arrive at the desired goal. Equally, there are a number of points of consensus around the Commission’s future mandate as well as a number of differences. We have tried to focus on the key points of variance.

### *Facilitation Mandate*

There seems to be little enthusiasm amongst the federal and provincial governments to alter the mandate of the Commission, but there is a common desire to see the Commission become more visibly active in the facilitation process and to take more of a stand. The First Nations Summit, however, believes the Commission's mandate is too narrow and that it should be expanded to give the Commission more "teeth". To better understand this issue, we asked interviewees what they meant by "teeth" when this comment was raised. The common response was that the Commission should have the power to:

- Compel the parties to come to the table and engage in meaningful discussions about issues even where one or more party indicates they are not prepared to discuss them;
- Compel the parties to enter an independent dispute resolution process when an impasse is reached (without necessarily requiring the consensus of all three parties);
- Compel the parties to deal with substantive issues such as land, governance, taxation and compensation; and also to
- Attach consequences or penalties for refusal to deal with the above issues.

This clearly extends past the visions of the federal and provincial governments when they describe a Commission that is more active and visible in the process.

From our observations and analysis, it is clear that the Commissioners have deliberately chosen to fulfill their role as facilitators, or keepers of the process, in the past in a quiet, persuasive way. As a result, we observed a general perception that the Commission has avoided conflict and has not wanted to publicly deal with tough issues in order not to offend any of the parties. Individuals involved in the process in all three Principal groups have cited this example of lack of visible action as an indication that the Commission is not sufficiently active, or does not have teeth.

Over the past year the Commission has seen the appointment of two new Commissioners. The current complement of Commissioners has very strong experience with the BC treaty process, an excellent grasp of aboriginal issues, and a high degree of prior political experience. Our discussions with the Commissioners indicate that they share a strong sense of commitment to a common vision, but that they also plan to take a much more proactive, forceful approach in the future. This new approach has been having some effect, with many parties interviewed commenting on the increased effectiveness of the Commission over the last year, and particularly in recent months.

The Commission challenges their need to have more 'teeth' as they feel this would impact their ability to maintain neutrality. However, they do concur with some aspects of the requests for enhanced responsibilities, including the following capabilities:

- To investigate and get involved in dispute resolution without requiring the agreement of all three parties;
- To compel the parties to move to an independent dispute resolution forum or tribunal; and
- To conduct or request ongoing readiness assessments at the request of another party or at the observation of the Commission.

Based on our discussions with the various stakeholders, these appear to be reasonable extensions of responsibility, and could fall within their current mandate, assuming a broader definition of facilitation is adopted. They would likely provide the foundation to address some of the concerns expressed by the workshop participants during our review.

**Recommendation 1: We recommend the Principals and the Commission jointly investigate the benefits and challenges that could result from the following enhancements to the responsibilities and powers of the Commission, specifically with regard to improving the timeliness and efficiency of the Commission in facilitating the treaty negotiation process:**

- **To investigate and get involved in dispute resolution without requiring the agreement of all three parties;**
- **To compel the parties to move to an independent dispute resolution forum or tribunal; and**
- **To conduct or request ongoing readiness assessments at the request of another party or at the observation of the Commission.**

We believe the Commission's passive approach to their facilitation role in the past may have fuelled the concerns around their apparent lack of power, but we could not identify any specific concerns that would require a significant change to their overall facilitation mandate. The Commission ultimately has the ability today to determine the degree to which they use their mandate to effect change – whether it be through passive facilitation or active facilitation.

#### ***Negotiation Support Funding Mandate***

The Commission recognizes there are many challenges associated with performing a negotiation support funding allocation role, but all Principals recognize the value and credibility associated with assigning this role to a party neutral to the table negotiations. All stakeholders believe in maintaining the status quo with regard to this role, except for one area of potential concern from the federal and provincial governments. This relates to the maintenance of funding support for tables not seen as making progress in their negotiation process.

The mandate of the Commission with regard to receiving and assessing requirements for funding is clearly defined, however, there is no guidance provided with regard to potentially suspending funding for tables not conducting active negotiations. This appears to be an area where consensus could be difficult to reach given the fiscal objectives of all parties, but an area where the Commission could take more of an active role if their mandate were clarified in this area. It should be noted that this should not be used as a punitive measure to enforce participation, but as more of a fiscal control to prevent unnecessary expenditure of funds that could be utilized for productive tables.

**Recommendation 2: The Commission should establish criteria for suspending funding where in their view, progress is clearly not going to be made toward common goals. This should only be considered as a final measure by the Commission and after a thorough, unbiased and objective review of the table. Care will need to be taken so that this power would not be punitive or used to enforce participation, but simply a fiscal control designed to prevent unnecessary expenditure for all parties involved.**

### *Communication Mandate*

The mandate of the Commission around the communication role in the future generated significant discussion amongst the Principals. There seemed to be consensus amongst the various stakeholders that the Principals and other stakeholders need to show a much higher commitment to communicate with and educate their respective constituents.

There was a shared view that the Commission could play a much larger role in communication to the general public (whether First Nation or not); however, it was also recognized that the stakeholders could not offload all of the responsibility to the Commission and that the Principals and stakeholders including the business sector, municipalities and community organizations, had a responsibility to increase and improve communication and other forums for discussion around the process and its potential impacts.

The Commission should function as a resource base to assist the Principals and relevant stakeholder groups in planning for, and engaging in, public information at the community level. The consensus view is that the Commission is not funded to deliver this level of communication, but should be actively working with the Principals promoting the need for it within their constituencies.

The Commission concurred with this approach, and does recognize the need to expand their communications capability. Each table looking to initial an Agreement in Principle should have completed the appropriate level of consultation and public information. This is the shared responsibility of all parties but from the perspective of the various stakeholders, one that could be better supported by the Commission.

## 5. Assessing the Effectiveness of the Commission

*To assess the extent to which the Commission has effectively fulfilled its role and performed its duties and functions as outlined in the British Columbia Treaty Commission Agreement and achieved desired outputs and outcomes.*

Focusing on this first objective, the following criteria were created as the primary benchmarks against which to assess the effectiveness of the Commission in fulfilling its roles and responsibilities as outlined in the BC Treaty Commission Agreement:

1. **Level of Fulfillment of the Mandate** – To what extent can the Commission display evidence of their actions in meeting their defined responsibilities?
2. **External Perception of Effectiveness** – How do the perceptions of stakeholders in the community external to the Commission and the Principals align with the mandated responsibilities of the Commission, and what is the level of awareness around their actions, role and contributions to the treaty process?
3. **Neutrality and Independence** – Does the Commission implement its mandate in a neutral and unbiased manner?
4. **Internal Organizational Structure** – To what extent does the organizational structure support effective decision-making and execution of strategies?
5. **Efficiency of Operations** – How do the various stakeholders who work with the Commission perceive the timeliness and responsiveness of the day-to-day operations and activities of the Commission?
6. **Deployment of Resources** – Has the strategy for deployment of people and resources been effective of the Commission in executing its mandate?
7. **Value to the treaty process** – Despite the specific mandate prescribed for the Commission, what is the overall impact of the Commission on the treaty process?

We have assessed the effectiveness of the Commission using the criteria above against a 3-point scale that ranges from ‘Not Effective’ to ‘Partially Effective’ to ‘Effective’. These have been symbolized within this report as follows:

<b>Not Effective</b>	○
<b>Partially Effective</b>	◐
<b>Effective</b>	●

It should be noted at this stage that criteria assessed as less than effective may not necessarily be the result of internal factors within the Commission, but could be due to differences in past opinion or direction between the Principals and Commissioners.



**Partially Effective**

## 5.1 Level of Fulfillment of the Mandate

### 5.1.1 Effectiveness of Facilitation Role

The Task Force Report contemplated that in order to facilitate the negotiation of treaties, the Commission would initially be involved in co-coordinating the start of negotiations and then once negotiations commenced, it would move into a more passive monitoring role. However, the Task Force Report also contemplated that treaties would be negotiated over a period of three to five years. Due to a number of factors, the treaty process has not moved as quickly as contemplated and difficulties have arisen in a number of substantive areas. The Commission has played a key role in making recommendations for changes to the treaty process and the level of involvement by the Commission has extended beyond monitoring in a large number of cases.

#### *Keeping the Process or Achieving Results*

The Commission is not involved in active negotiations and has no control over the outcomes of specific table negotiations, however, many individuals appear to link the effectiveness of the Commission with the progress of the treaty process. Those not involved in direct negotiations feel that since there are still no signed treaties, the Commission has not been effective. Given the passive manner in which the Commission chooses to execute their facilitation mandate, there is also an external perspective that the Commission is irrelevant to the process or certainly not as effective as it could be. The most reliable conclusions and observations naturally came from those closest to the table negotiations.

When we asked those individuals or tables active in the negotiation process how effective they believed the Commission had been, their responses varied depending on their prior experience with the process. *Differences in opinion appeared to correlate directly with the level of progress a particular table was achieving in the overall negotiation process.* While the physical presence of a Commissioner at a table did have some bearing on perceived effectiveness, it was mostly observed that if a table was having success moving forward through the process, the Commission was more often viewed as effective compared to those tables that were still in earlier stages and were experiencing difficulties.

For example, workshop participants were asked to respond to the statement “*The Commission has been effective in facilitating the Treaty Negotiation Process*”.

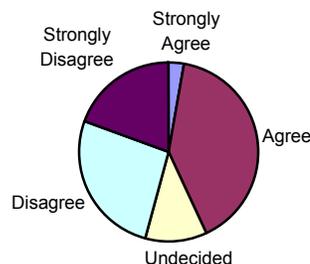


Figure 1: “The Commission has been effective in facilitating the treaty negotiation process”.

Responses were mixed with 43% agreeing, 45% disagreeing and 11% undecided with the statement. During subsequent discussions, it became clear that those tables that were experiencing difficulty and were not moving forward felt that the Commission was **not** effective, regardless of how active the Commission was at those tables. However, tables that were working well and moving forward believed that the Commission **was** effective, again despite the level of activity by the Commission at their table. Clearly, however, it was a challenge for participants to separate their personal feelings around the treaty process from their observations about the effectiveness of the Commission.

We asked all workshop participants to respond to the statement “*The Commission is suitably active to add value to the treaty process*”. Again, the responses varied dramatically within each workshop indicating that expectations of the Commission and perception of value differ widely from table to table.

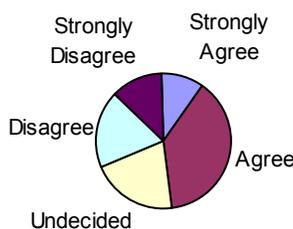


Figure 2: “*The Commission is suitably active to add value to the treaty process*”.

Discussions with individuals involved with actual negotiations indicate that the Commission’s involvement at each table varies considerably. This is consistent with the nature of the differing dynamics at each table, as each table has unique needs and those needs change over time. As a result, the Commission has needed to be flexible enough to address the various requirements of individual tables and to modify its involvement as required.

Some tables, for a variety of reasons, have solicited active involvement from the Commission. If requested, the Commission has attended or chaired important meetings, and either a Commissioner or Commission Advisor has attended or monitored most other meetings. In contrast, however, some tables indicated that they rarely saw the Commission at their negotiation meetings. On further probing it was discovered that these tables could be segregated into two further categories:

1. Tables where negotiations were progressing and there was little perceived need for Commission involvement. Through our discussions, it was determined that these tables were comfortable with the current low level of activity and presence of the Commission; and
2. Tables where things may not be progressing well. Through our discussions, it was determined that the Commission’s lack of involvement in these tables was perceived as negative. However, although it was apparent that these tables felt that the Commission should be more visible, *they had not asked them to play a more active role.*

A further observation is that many participants view the Commission as being too process-oriented, rather than results-oriented. To some degree this is deliberate, as the Commission sees themselves as the keepers of the process in the literal sense. Others challenge this view,

commenting that the facilitation mandate involves keeping the process moving, rather than maintaining a consistent status quo. One of the obvious challenges to measuring the Commission on both a process and a results basis is that there are no good examples of a best practice negotiation process leading to a comprehensive treaty in BC. This is being created now, so the onus is on the Commission to establish and record these best practices and bring them to future negotiations, where they may likely be measured more aggressively on results.

**Recommendation 3: The Commission could improve the perception of their effectiveness by clearly communicating the value they bring to the table and the role they could play, to those tables that have not sought the services of the Commission. This could potentially be achieved by demonstrating the methods in which the Commission is assisting other tables.**

### *Dispute Resolution*

One of the key mechanisms available to the Commission to actively ensure the negotiation process is moving forward is dispute resolution. While there is no direct correlation between level of Commission activity at a table and the perceived level of effectiveness, it was clear from our discussions that in the opinion of the workshop participants the Commission can improve their effectiveness around mediating disputes and keeping the process moving forward.

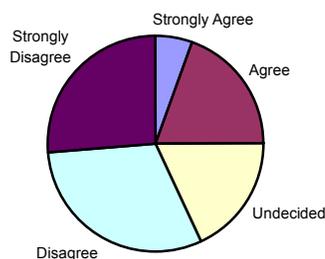


Figure 3: "The Commission has been successful in keeping the negotiating process moving forward".

The BC Treaty Agreement requires agreement by each of the three parties before involving the Commission in dispute resolution. From this perspective, there is some concern that the Commission can never be effective in their facilitation role if they have to be invited by all three parties at a table. It has been suggested that there are likely situations where it would be appropriate for the Commission to investigate disputes, despite the fact that all three parties have not invited them.

Our recommendation<sup>3</sup> is to investigate the provision of the Commission with the ability to become actively involved in dispute resolution without the unanimous consent of all three parties.

<sup>3</sup> See Recommendation 1 on page 20 of this report.

### *Looking To the Near Future*

As the various tables move through the defined negotiation phases, there is the perception that ‘a lot of the difficult work still has been done’. This further builds on the perception that the passive facilitation role played by the Commission has not been effective. However, given the current status of the negotiations, and the fragility of some of the advanced tables, there is a collective desire to keep these tables moving forward, while not ignoring other tables behind them in the process. In addition, there is a consensus within the Commission and across the various stakeholders that the Agreements in Principle that have been initialled are not as substantive as originally desired by some of the parties to negotiations and, therefore, many of the significant issues and details have been moved into Stage 5. There is an opportunity for the Commission to play a more visible leadership role at this critical stage of the negotiation process.

**Recommendation 4: Stage 5 negotiations will be very intensive for the First Nations and the federal and provincial governments. Given current provincial government resource constraints, this will likely result in government resources (i.e. human and funding resources) being heavily focused on a few tables and a lack of resources for tables that have not reached this stage. The Commission has an opportunity to step in and take a lead role in assessing and assisting tables that have become stalled. Such actions may include helping the tables develop a tangible action plan, specific timelines and common desired outcomes, thereby providing the two governments with a business case to support the decision of directing the necessary resources towards those tables.**

**Recommendation 5: The Agreements In Principle that have recently been initialled contain a number of substantive issues that have not been addressed. These areas will require considerable effort of the parties to come to agreement during Stage 5 negotiations. The Commission has an opportunity to facilitate these discussions in a more proactive manner.**

Also from a future perspective, it is becoming clearer that opportunities are arising to take more of a provincial or sectoral approach to the negotiations. These opportunities often relate to broad issues such as education, healthcare or other common infrastructure concerns that could be addressed for many tables at once. These opportunities will likely be most visible to the Commission, who sit at every table and have a broad perspective as well as an in-depth view of the table negotiations. There is a high degree of sensitivity associated with introducing provincial or sectoral negotiation opportunities to a broad number of tables, however, given the objectivity and neutrality of the Commission, they may be the obvious party to identify and facilitate the incorporation of these opportunities where they create a win for all parties.

**Recommendation 6: The Commission should continue to investigate additional, innovative opportunities to bring negotiation opportunities to multiple tables (especially broader sectoral issues, such as education or healthcare), particularly where all parties realize the potential benefits of this approach.**

**Overall Facilitation Effectiveness**

The very nature of the role of the Commission demands that the Commissioners build a strong trust and rapport with the Principals and Chief Negotiators at each table. Many examples were cited throughout our review where the Commission has been effective in helping to move the treaty process along through private discussions and so-called “side-door meetings”, designed to raise the understanding of the issues that must be addressed to remove impasses at the table level. This example of proactive facilitation support and contribution of value to the process seems to be balanced by a general lack of visibility and perceived irrelevance to the treaty process, largely due to actual or perceived lack of progress at the tables.

**5.1.2 Effectiveness of Funding Support Role**

**Partially Effective** 

Our review of the funding process indicates that the federal and provincial governments are directly involved in approving the form and content of the First Nation Negotiation Support Agreements, the Funding Guidelines and the Allocation Criteria. There have been three revisions to these documents since 1994 and a fourth revision is currently underway. The First Nations Summit is required to sign the Allocation Criteria document and, as one of the Principals, their approval is sought each time the full package of funding documents is renewed. Their involvement has certainly led to revisions in the approach and guidelines in the past. The Commission, as the party administering the funding, has been instrumental in initiating these reviews and revisions.

We asked workshop participants to respond to the statement “*The Commission has been effective in managing the overall support funding budget*”. Responses were mixed with 41% agreeing, 33% disagreeing and 26% undecided.

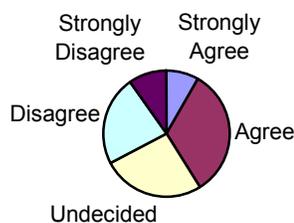


Figure 4: “The Commission has been effective in managing the overall support funding budget”.

In subsequent discussions it became apparent that many participants from First Nations are aware that there is a formula and that there is discretion allowed to the Commission in final funding allocations.

Some concerns were raised relating to the audit and follow-up process. In the past year there seemed to be more effort allocated to following up variances between the budget and actual amounts spent, with little indication of a materiality threshold. This has resulted in a number of queries for relatively small amounts.

The cost to conduct the Negotiation Support Funding audits can also be significant. Instructions to auditors need to be clearer regarding levels of materiality and sent on a timely basis so that the auditors can ensure that they cover all areas required. This would reduce the questions by the Commission resulting from the audited accounts.

In terms of operational effectiveness around the funding process, some concerns were raised regarding the timing and timeliness of the funding process, particularly around the duration of the allocation process. However, examples were also shared with us where the Commission has been able to exercise discretion and provide additional funding for specific goals.

Overall, the general perception is that the Commission is doing a reasonable job of allocating negotiation support funding, and that it is an important element of the Commission’s mandate given the requirements for sensitivity and objectivity.

**Recommendation 7: More communication is required with First Nations to ensure that there is clearer understanding of the established funding formula and funding allocation process. For example, this could be achieved through holding a series of workshops around the province.**

### 5.1.3 Effectiveness of Communication Role

**Partially Effective** 

Many of those we met with commended the Commission’s more recent efforts in providing information around treaty making in BC and the treaty process. While it was acknowledged, even by the Commission, that there is a significant opportunity to improve the level and frequency of communication, the Commission’s role as a public educator to date has been beneficial to the treaty process. The Commission’s public communication takes a variety of forms including annual reports, special purpose reports, its website ([www.bctreaty.org](http://www.bctreaty.org)), as well as periodic public speaking engagements.

However, despite any improvement in public perception, there still remain a number of opportunities to improve the effectiveness of the Commission with regard to communications, including the following:

- Ensuring equity in the portrayal of issues and concerns through communication mediums;
- Leveraging the position and status of the Commission and the Commissioners to conduct more speaking engagements, increase publicity and communicate information regarding the overall process and the status of particular tables. This includes increasing the public visibility of the Commission by facilitating and attending more public and community meetings, both in First Nation and non-First Nation communities;
- Using the ‘public voice’ of the Commission. This is a key underutilized asset. The Commission needs to increase its willingness and/or ability to become more vocal regarding the efforts of those parties who are not working within the 19 recommendations of the BC Claims Task Force Report or the spirit of the process;
- Working more closely with the three Principals in a joint effort to communicate the need for treaty making to the BC public, as well as the impacts of any agreements under discussion. This should include a greater effort at working closely with local governments and other community stakeholders;
- As tables move through the final stages of negotiation, pressure for the Commission to respond to public criticism, comments and suggestions will increase significantly. The Commission will have to be prepared to quickly react to these public discussions. There will also be an increasing demand for the Commission to attend public meetings, information sessions, and media events, and to publish editorial comment as these tables reach AIP.

- Commission-sponsored events, such as the planned ‘*A Business Case for Treaties*’ conference and the *Talking Circles* video project, will certainly provide strong positive public and stakeholder communication, provided they are appropriately marketed.

One of the core aspects of the Commission’s communication mandate is their role to gather, store and distribute the best practices and collective knowledge being constantly created throughout the treaty process, perhaps by way of a virtual and physical resource centre for information developed through the current negotiation and AIP processes. The Commission is also critical to the effective dissemination of knowledge around the status of treaty negotiations in BC. Stakeholders, either within the process or outside, acknowledge the importance of clear, consistent and frequent communication around the status, progress and challenges within the treaty process and at treaty tables.

While most parties indicated that the communication currently provided by the Commission (such as the annual reports, web site, and published articles) are very polished, there is a strong sense that the Commission needs to be much more visible delivering the communication personally through speaking to community organizations and other forums across the province.

**Recommendation 8: There is an opportunity to get more involved with education of the public and to increase awareness of the treaty negotiation process among British Columbians. This includes working with the Principals to ensure that they are adequately engaged in communication with their constituents, especially at the community level, and by working to gain greater exposure for key milestones and issues in the media.**

We recognize, however, that this comes at a cost to all parties and also recognize that the Commission has been particularly cost-efficient in managing and implementing their communications strategy to date – despite the challenges faced in providing adequate coverage to the public and business communities.

When workshop participants were asked to respond to the statement “*The Commission has been effective in creating public awareness around the treaty process*”, 55% of the respondents disagreed with the observation and 18% were undecided.

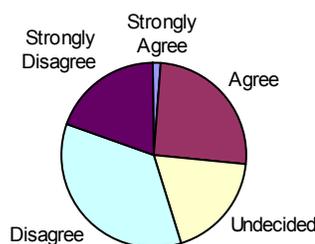


Figure 5: “*The Commission has been effective in creating public awareness around the treaty process*”.

Most participants believed that the communication provided in the form of annual reports and other supplementary reports is very good, however, those same respondents feel that there should be a much higher level of communication to the general public, as well as increased focus on providing more educational tools for use in the school system.

Many of the workshop participant observations concurred with the viewpoint that the Principals and the Commission collectively need to show a much higher commitment to communicate and educate their constituents. There was also consensus around the fact that the Commission can play a much larger role in communication to the general public (First Nation and non-First Nation), but that the Principals cannot offload all of that responsibility. In our workshops with First Nations, there was interest in the Commission functioning as a resource base to assist tables in planning for and engaging in public consultation at the community level. Overall, however, most observed that the Commission has executed their mandate relatively effectively with limited resources.

The Commissioners believe that the Commission needs to expand its communications capability significantly. With five tables completing AIPs and the expected stress on government resources to negotiate final agreements and at the same time, continue negotiations at the other tables, communication will be critical in improving the understanding and awareness by the people of BC.

Finally, there is also a need for the Commission to consider post-treaty communications. There will be a need to continue to educate new Canadians and youth on the history, objectives and rationale behind specific treaty processes and outcomes. A positive example of this model would be the Saskatchewan Treaty Commission, which has been recognized by the BC provincial Government as a leader in this area.

**Recommendation 9: The Commission should begin to plan for an effective post-treaty communications program. There will be a need to continue to educate Canadians, particularly youth and new Canadians, on the history, objectives and rationale behind specific treaty processes and outcomes well into the future.**

**Partially  
Effective** 

## 5.2 External Perception of Effectiveness

For third-party stakeholders, i.e. those stakeholder groups outside of the Commission and the Principals, assessing the Commission's effectiveness is extremely challenging given the lack of tangible measurement criteria. These stakeholders are tempted to measure the effectiveness of the Commission against the perceived progress of the treaty process. The obvious challenge to this benchmark is that the Commission does not control the outcomes of the overall treaty process or the outcomes at individual treaty tables. As a result, the public often holds the Commission accountable for outcomes it has little or no control over. Many external stakeholders, therefore, perceive the Commission as either failing in their role, or irrelevant to the process. Examples of this 'lack of effectiveness' included:

- Failure of the treaty process to result in signed treaties;
- Length of time that negotiations have taken to date;
- Inability to deal with substantive issues at the AIP stage; and
- Lack of visible involvement at the community level.

Although our review process provided a measure of immediate education around the role and mandate of the Commission, these observations (however inaccurate) further support our conclusions around the need for improved visibility, communications and a greater focus by the Commission on the results of the process itself.

Other more pertinent observations or recommendations by external stakeholders included the following recurring themes:

- When the Commission communicates they do it well, however they need to do more;
- The Commission has not always been proactive in soliciting third party interests, such as those of private business;
- The Commission is perceived as not being proactive enough;
- There needs to be an increased visibility of the Commission in the community through attending and speaking at meetings (such as town hall meetings, regional visioning sessions, etc.); and other opportunities; and
- The Commission avoids, rather than addresses, the tougher issues.

In summary, most third party stakeholders, businesses and public entities interviewed perceived the effectiveness of the Commission to be linked inextricably to the outcomes of the treaty process. However, where the individual was aware of the formal mandate of the Commission, or was made aware, they continued to identify some concern around the effectiveness of communications and proactive facilitation, but agreed on the overall value of the Commission.

Effective ●

### 5.3 Neutrality and Independence

The Commission was intended to be a neutral and independent body in the treaty process, bringing legitimacy, credibility and objectivity from the outset. By definition, they do not have an interest in any one party and are accountable to the public - not to any Principal (even those who appointed them) or to the tables they sit at. They bring to the table an objective perspective as well as balance – in effect working to create a ‘more level playing field’ between the First Nations and the federal and provincial governments.

Neutrality is demonstrated by the Commission in a variety of ways; including being available to any one of the parties outside of scheduled meetings; holding each party accountable to the 19 recommendations of the BC Claims Task Force Report; chairing meetings; and preparing public reports (such as the recent *Looking Back, Looking Forward: A Review of the treaty process*). When asked to identify the greatest value the Commission brought to the treaty process, both the Commissioners and interviewees alike identified the independent role they play.

A key point to note is that the Commission operates as “one voice”. While the Chief Commissioner is responsible for operational and strategic decisions, these decisions are not made without unanimous support of the other Commissioners. This further ensures the neutrality and independence of any decisions made.

Ironically, all three Principals consider the Commission to be somewhat biased towards the needs of one or both of the other Principals – which is perhaps the strongest indicator that they are operating in a neutral capacity! Almost all negotiators and negotiating tables we spoke with were quick to cite several examples where the Commission either unfairly criticized them, did not reprimand another party where reprimand was warranted, or was perceived as favouring the interests of one or more of the Principals.

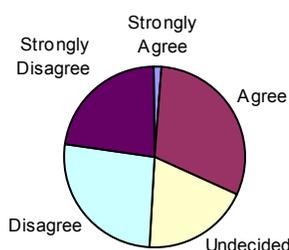


Figure 6: “The Commission is neutral, acting in the best interests of all parties”.

Other perception issues relating to neutrality were also identified during our review. It was clear that the Commission is working hard to manage these potentially negative perceptions by seeking a balanced representation where possible. For example, many First Nations workshop participants expressed concern that the federal and provincial governments directly fund the Commission, therefore placing the Commission in a potentially difficult conflict position. However, we found that the Commission has directed much of their external communications and web presence toward the First Nations community, and often their annual or periodic reports will chastise the federal and provincial governments on recent behaviours – while reprimands to the First Nations may be delivered in private.

Of more concern, there was a common belief across many interviews that the Commission tries too hard to be neutral. In fact, some indicated the Commission was “afraid not to look neutral”, so was perhaps biasing their decisions through lack of action. The Principals believe the Commission has proven themselves and their objectivity and can now afford to ‘take a stand’ on key issues. This may involve taking affirmative action against a party at the table, but one that is seen as an important aspect of keeping the process moving forward fairly and equitably. One example of this form of affirmative action was the Commission’s recent public denouncing of the provincial government treaty referendum.

**Recommendation 10: Most parties to the treaty process see the Commission as a credible, objective and independent entity. As such, the Commission should at times take more public and aggressive stances to keep the treaty negotiation process moving forward fairly and equitably, for example when any of the Principals is not in adherence with the 19 recommendations of the 1991 Report of the BC Claims Task Force.**

In general, however, the Commissioners are truly independent appointees who pride themselves on their unbiased approach to their job, rather than representing any particular Principal.

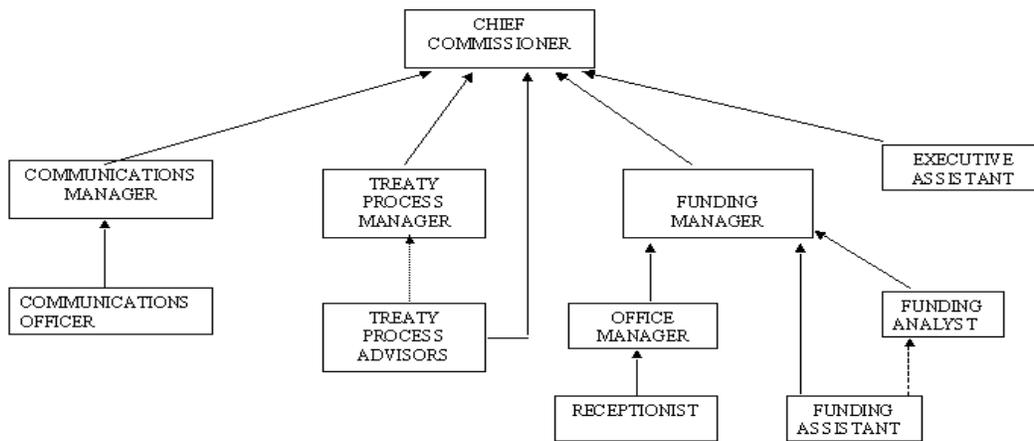
Effective

### 5.4 Internal Operations Structure

In addition to the Chief Commissioner and four appointed Commissioners, the Commission is comprised of 13 part-time and full-time staff. These staff members provide direct support to the Commissioners as they perform their day-to-day activities. The operations structure is divided into four main functions, each of which is led by a manager who reports directly to the Chief Commissioner. These primary functions reflect the execution of each of the formal mandates of the Commission, as well as its administration and management. They are as follows:

- Treaty Negotiation Process;
- Negotiation Support Funding;
- Communications; and
- Office Management.

The diagram below represents the current operations structure. Based on our review, this appears to be an optimal operations structure, facilitating effective decision-making and resource deployment:



Each negotiation table is assigned a Commissioner and a Process Advisor, whose responsibilities are to monitor negotiations and provide facilitation assistance as required. The Chief Commissioner assigns tables to Commissioners and consideration is given to equity in workload, travel and a match of skills to the potential issues at the tables.

Four committees have been structured to provide recommendations to the Commissioners on the three primary mandate areas (Treaty Process, Negotiation Support Funding; and Communications), as well as a Finance & Budget Committee. At least two Commissioners preside on each committee. Meetings are held quarterly for the Finance & Budget Committee and twice a month for the other committees. Financial audits are conducted annually.

Based on our review of the Commission’s operations (internal documents and meeting minutes, interviews with staff, etc.), we understand that there are formalized policies and procedures in place to address day-to-day operations and business processes. Signing authorizations, roles, responsibilities, reporting structures and operations committees have been established and



appear to be operating as intended. We reviewed the annual audited financial statements and the auditors' recommendations on internal controls. All recommendations appear to have been adopted, where possible.

Overall, the operations structure of the Commission is conducive to the effective operations and execution of the mandate.

**Partially  
Effective**

## 5.5 Efficiency of Operations

The organizational structure of the Commission may support the effective processing of information and decision-making, but this does not guarantee the efficiency of these operational activities.

Our review included an assessment of the perceived efficiency of decision-making and other operational processes within the Commission, both internally and from the perspective of other stakeholders who work with the Commission. In most situations the Commission appears to discharge their mandate in an efficient manner, however, some minor concerns were raised during our interviews with regard to the perception of bureaucracy within such a small entity. Perhaps this is the result of the multiple reporting lines or the complexity and sensitivity of the subject matter handled on a day-to-day basis? We sought to identify the cause of these comments and identified the following issues:

- The BC Treaty Commission Agreement states that the Chief Commissioner and one Commissioner, nominated by each Principal, will comprise a quorum and that decisions of the Commission be made by agreement of at least one Commissioner nominated by each Principal. At times when there is a vacant Commissioner position the Commission is unable to make decisions. The inability to make important decisions has at times hindered the ability of the Commission to be effective. Since the Commissioners are independent, are not accountable to the party that appointed them, and given the limited mandate of the Commission, there appears to be little purpose in requiring that appointees from all three Principals are required to form a quorum for decision-making purposes.
- Our review of Negotiation Support Funding audits identified that they often focus on very small variances, requiring an exchange of paperwork and explanations;
- The Commissioners spend approximately 3 days out of their 12 days available each month in internal meetings. This could be perceived as taking away from their ability to participate in treaty negotiations, meetings, public forums or other value-added activities.

Some issues were raised around the timeliness of budget preparation and communication.

**Recommendation 11: In an effort to ensure there is an effective use of Commission effort and resources, it may be advantageous to establish a minimum threshold for conducting variance analysis audits to ensure that only significant variances or expense categories are investigated.**

**Recommendation 12: Vacancies in the Commissioner positions should be filled before the retirement of the existing Commissioner. Where this is not possible, the Principals should relax the quorum rules to facilitate day-to-day decision-making by the remaining Commissioners until the vacancy is filled.**

## 5.6 Deployment of Resources

### 5.6.1 Funding Requirements

Effective



There was some concern that an organization that does not have stable, consistent funding into the future may not be able to operate effectively or may not discharge their mandate appropriately. To this end, the suggestion was that there should be strong commitment from both governments for funding beyond the current one-year interval.

Core funding commitments from the federal and provincial governments for the Commission operations remained at a relatively constant level from 1994 (\$1.84M) to 2002 (\$1.9M). This was increased to \$2.2M for the 2003 fiscal year. Despite this inflationary level of increase over the life of the Commission, there has been tremendous upward pressure on operational costs and expenses. For example, some expenses such as rent (300%) and travel (200%) have increased dramatically. However, the Commissioners' honorariums have declined in absolute value by 15% to help offset these cost increases.

The Commissioners do make a valid case for an increase in the annual budget for a number of reasons (keeping quality staff, increasing communication to the levels required, hiring professional facilitators when needed, etc). Several workshop participants and interviewees also indicated that they felt the Commission required additional resources in order to be more effective and visible given that many tables are quickly progressing towards signing Agreements in Principle.

Given that there have been no significant funding increases in the past few years, but the fixed and variable costs of operating the Commission have continued to escalate, we conclude that the Commission is managing their funding efficiently. Despite the effectiveness of the Commission in managing their financial affairs, however, there is a strong perceived linkage between the cost of keeping the process and the results of the process - in effect, expecting a positive return on investment. To date this has not been an insurmountable challenge for the Commission, but given the perceptions around lack of progress at the tables; the increasing cumulative investment in the Commission; and the fiscal challenges faced by the provincial government; there will be an increasing challenge for the Commission to demonstrate tangible value for money.

### 5.6.2 Managing People

The Commission has experienced some turnover among Commissioners and Commission staff over the past 10 years. While the appointment (and re-appointment) of Commissioners is largely out of the Commission's control, there are actions they can take to retain key individuals. While this is critical in any organization today, many interviewees indicated that they felt that it was very important to try to maintain as much continuity as possible at the tables over time. The Commission ensures that there is a representation from a Commissioner and a Process Advisor at every table – clearly a challenge given the large number of tables and the current level of activity, and especially considering the small size of the Commission.

We asked workshop participants what they considered to be desirable attributes for a 'good' commissioner/advisor. Their responses included having:

- An understanding of treaty negotiations;
- An understanding of First Nation issues in BC;
- A high level of trust with the table parties;
- Direct access to the Principals; and
- An understanding of specific regional issues.

Commissioners and staff may have some of these attributes when they first join the Commission, however it takes a significant amount of time to develop trusted relationships and understanding of specific regional issues. There is a large body of knowledge regarding the treaty process that has been accumulated by the Commission over time - both around the process (funding, communication, awareness of programs and projects), as well as information specific to each negotiating table (history, key issues, personalities, past challenges). A key measure of success will be to ensure the retention and continuity of Commissioners and Commission staff at treaty tables.

In summary, the Commission is managing efficiently with a limited budget, and seeks to optimize the deployment of appropriately skilled resources to tables, while ensuring the retention of key staff.

## Effective ●

## 5.7 Value to the Treaty Process

With few exceptions, it is clear that most stakeholders see the Commission as being valuable to the treaty process, both in theory (the need for an objective, independent body) and in reality (the benefits they bring to the overall process). Some detractors indicate that the lack of progress at the treaty tables indicates a lack of value, however, in balance it is unlikely that many of the delays in progress could be attributed to the Commission. However, the Commission could be more proactive and assertive in their positions, despite the challenges of maintaining political balance and sensitivity. Given the desire of the Commission to move toward more active and vocal facilitation, we believe this will add to the value they are providing.

When asked how the Commission demonstrated they added value to the treaty process, participants responded with the following examples:

- They are seen by all to be ‘the keeper of the process’;
- Credibility of the Commissioners;
- Chairing meetings;
- Consultation with table negotiators/principals outside of set meetings;
- Bringing balance to the tables;
- Accountability for the three Principals;
- Ability to create ‘moral suasion’; and
- Identifying obstacles and making recommendations for next steps.

Most participants were quick to provide positive examples, despite any concerns or critiques they had made of the Commission and the Commissioners during the interview or workshop. No individuals advocated the dissolution or disbanding of the Commission, stressing the potential negative political consequences of such an action.

From an added-value perspective, the Commission has been effective in providing recommendations for changes in the treaty process. As a result of these recommendations the Principals have undertaken an extensive review of the process, culminating in the *Improving the Treaty Process* report and the formation of several working groups to examine key issues and recommendations. However, while the Commission has been effective in identifying areas of improvement and putting forward recommendations to the Principals, not all recommendations put forth have been adopted, and they are unable to dictate that the Principals implement those recommendations. An example of this is the recent proposed changes to the treaty process funding agreements.

Participants have indicated that as tables move into stage five of the negotiation process, the role and demands of the Commission regarding encouraging effective communication and public awareness will likely increase. Facilitation requirements and communication to First Nation and non-First Nation communities will be critical in this stage.

From an overall perspective, the Commission has brought greater credibility and trust to the treaty negotiating process, while certainly doing nothing to impede it. Being able to clearly demonstrate the ability of the Commission to continually add value to the process through active



facilitation and communication will become more critical as the process becomes an increasingly public one.

## 6. Conclusions

### 6.1 The Impact of Our Review

In retrospect, we believe this review has been a positive process for all those involved from the Principals, treaty tables, external stakeholders and the BC Treaty Commission. In preparing this report, we have conducted over 35 interviews and facilitated 7 workshops with stakeholders inside and outside of the treaty process across British Columbia. This review has further increased the awareness of the Commission, as well as allowing us to obtain honest input on their role, mandate, successes, strengths and areas of opportunity moving forward. This proved to be an excellent opportunity for all stakeholders to put forth their opinions and points of view around what is working well and what needs improvement around the treaty process and the Commission.

### 6.2 Summary of Key Findings

We have assessed the effectiveness of the Commission using the criteria below against a 3-point scale that ranges from ‘Not Effective’ to ‘Partially Effective’ to ‘Effective’. This is a summary of our conclusions from the review.

Effectiveness Criteria	Conclusion
<p><b>Level of Fulfillment of the Mandate</b> – To what extent can the Commission display evidence of their actions in meeting their defined responsibilities?</p> <ul style="list-style-type: none"> <li>▪ Facilitation Mandate</li> <li>▪ Negotiation Support Funding Mandate</li> <li>▪ Communication Mandate</li> </ul>	Partially Effective (for all mandates)
<p><b>External Stakeholder Perception of Effectiveness</b> – How do the perceptions of stakeholders external to the Commission and the Principals align with the mandated responsibilities of the Commission, and what is the level of awareness around their actions, role and contributions to the treaty process?</p>	Partially Effective
<p><b>Neutrality and Independence</b> – Does the Commission implement their mandate in a neutral and unbiased manner?</p>	Effective
<p><b>Internal Organizational Structure</b> – To what extent does the organizational structure support effective decision-making and execution of strategies?</p>	Effective
<p><b>Efficiency of Operations</b> – How do the various stakeholders who work with the Commission perceive the timeliness and responsiveness of the day-to-day operations and activities of the Commission?</p>	Partially Effective
<p><b>Deployment of Resources</b> – Has the strategy for deployment of people and resources improved the effectiveness of the Commission in executing their mandate?</p>	Effective



<b>Value to the treaty process</b> – Despite the specific mandate prescribed for the Commission, what is the overall impact of the Commission on the treaty process?	Effective
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### 6.3 Overall Conclusion

With few exceptions, it is clear most stakeholders see the Commission as being valuable to the treaty process, both in theory (the need for an objective, independent body) and in reality (the benefits they bring to the overall process). Some stakeholders challenged that the lack of progress at the treaty tables demonstrated a lack of value, however, in balance it is unlikely that many of the delays in progress could be attributed to the Commission. The Commission could be more proactive and assertive in their positions, but would need to manage the challenges of maintaining political balance and sensitivity. Given the desire of the Commission to move more toward more active and vocal facilitation, we believe this would simply add to the value they are already providing.

The Commission has brought greater credibility and trust to the treaty negotiating process. The greatest challenges to date have been managing the varied expectations of the Principals and the broader community, while demonstrating the value of the overall investment. Being able to clearly demonstrate the ability of the Commission to continually add value to the entire process through active facilitation and communication will become more critical as treaty tables move into the final stages of the negotiation process, and beyond signed treaties. There is consensus amongst the Principals that the Commission has proven itself and its objectivity such that it can now afford to ‘take a stand’ on key issues.

## 7. Acknowledgements

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 BC First Nations Chief Negotiators  
 Representation from the Prince George Region (Prince George workshop)  
 Representation from the North Coast Region (Terrace workshop)  
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**Deloitte & Touche Project Team:**

Shayne Gregg, Partner  
Lisa Ethans, Partner  
Marsha Stanley, Senior Manager  
Ian Thomas, Manager  
Melendy Lua, Senior Consultant



## **8. Appendix**

### **Appendix A: BC Claims Task Force Report Recommendations**

## Appendix A: BC Claims Task Force Report Recommendations

The following are a list of recommendations proposed by the 1991 BC Claims Task Force.

The Task Force recommends that:

1. The First Nations, Canada, and British Columbia establish a new relationship based on mutual trust, respect, and understanding—through political negotiations.
2. Each of the parties be at liberty to introduce any issue at the negotiation table which it views as significant to the new relationship.
3. A British Columbia Treaty Commission be established by agreement among the First Nations, Canada, and British Columbia to facilitate the process of negotiations.
4. The Commission consist of a full-time chairperson and four commissioners -- of whom two are appointed by the First Nations, and one each by the federal and provincial governments.
5. A six-stage process be followed in negotiating treaties.
6. The treaty negotiation process be open to all First Nations in British Columbia
7. The organization of First Nations for the negotiations is a decision to be made by each First Nation.
8. First Nations resolve issues related to overlapping traditional territories among themselves.
9. Federal and provincial governments start negotiations as soon as First Nations are ready.
10. Non-aboriginal interests be represented at the negotiating table by the federal and provincial governments.
11. The First Nation, Canadian, and British Columbian negotiating teams be sufficiently funded to meet the requirements of the negotiations.
12. The commission be responsible for allocating funds to the First Nations.
13. The parties develop ratification procedures which are confirmed in the Framework Agreement and in the Agreement in Principle.
14. The commission provide advice and assistance in dispute resolution as agreed by the parties.
15. The parties select skilled negotiators and provide them with a clear mandate, and training as required.
16. The parties negotiate interim measures agreements before or during the treaty negotiations when an interest is being affected which could undermine the process.
17. Canada, British Columbia, and the First Nations jointly undertake public education and information programs.
18. The parties in each negotiation jointly undertake a public information program.
19. British Columbia, Canada, and the First Nations request the First Nations Education Secretariat, and various educational organizations in British Columbia, to prepare resource materials for use in the schools and by the public.