

COPY

OPENNESS
PROTOCOL

**OPENNESS PROTOCOL
AMONG THE HUL'QUMI'NUM TREATY GROUP,
CANADA AND BRITISH COLUMBIA FOR THE
AGREEMENT-IN-PRINCIPLE STAGE OF THE
TREATY NEGOTIATIONS**

In recognition of the need to encourage public understanding and awareness of the treaty negotiation process, an Openness Protocol was also signed in the Readiness stage (Stage 2). The Protocol is intended to provide public access to information throughout the treaty negotiation process subject to the need to conduct effective and efficient negotiations. In other words this protocol establishes procedures for public attendance at meetings and public access guidelines to information and documents

The amendments to the Openness Protocol were minor and procedural in nature.

OPY**OPENNESS PROTOCOL FOR STAGE AGREEMENT-IN-PRINCIPLE STAGE**

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AMONG THE HUL'QUMI'NUM TREATY GROUP,
CANADA AND BRITISH COLUMBIA FOR THE AGREEMENT-IN-PRINCIPLE STAGE
OF THE TREATY NEGOTIATIONS**

WHEREAS the Parties recognize the need to encourage public understanding and awareness of the treaty negotiation process;

WHEREAS the Parties recognize that the sharing of information about the treaty negotiations will promote support for and implementation of agreements and treaties among the Aboriginal and non-Aboriginal people;

THE HUL'QUMI'NUM TREATY GROUP, CANADA AND BRITISH COLUMBIA HAVE AGREED ON THE FOLLOWING:

1. PARTIES

1.1 The Parties to this Protocol are the Hul'qumi'num Treaty Group, Canada and British Columbia.

2. PURPOSE

2.1 This Protocol is intended to provide public access to information throughout the treaty negotiations process subject to the need to conduct effective and efficient negotiations. The Parties agree to provide for such public access through:

- 2.1.1 attendance at main table sessions;
- 2.1.2 access to information and documents
- 2.1.3 consultation; and
- 2.1.4 public information.

as specifically provided for in this Protocol.

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3. ATTENDANCE AT MAIN TABLE SESSIONS

- 3.1 Public access to treaty proceedings will generally occur at main table negotiations devoted to a general exchange of information or clarification of interests and policies, or the discussion of matters of a procedural nature.
- 3.2 In deciding whether the public will have access to a negotiation session, the Chief Negotiators will consider whether attendance at the session by individuals other than the negotiating team members would:
- 3.2.1 increase the effectiveness of the session;
 - 3.2.2 interfere with the effectiveness of the process;
 - 3.2.3 reasonably be expected to prejudice the positions or strategies of the Parties; or
 - 3.2.4 harm the conduct of negotiations.
- 3.3 The Chief Negotiators will, by agreement, provide access to treaty proceedings as described in subsections 3.1 and 3.2. Where such access has been agreed to, these meetings or sessions will be open to the general public, or to representatives from advisory committees, or to broadcast by local television or radio, or to representation from the print media, or any combination of the above.
- 3.4 Pursuant to subsections 3.1, 3.2 and 3.3 of this Protocol, the Chief Negotiators will determine prior to a main table negotiation whether that session will be open, either in whole or in part. Where the Chief Negotiators agree that a main table negotiation will be open, the Parties will make best efforts to provide at least two weeks notice.
- 3.5 The Chief Negotiators of the Parties will be responsible for the overall conduct of the negotiations, and members of the public in attendance at main table sessions will participate as observers only.
- 3.6 The Chief Negotiators are entitled by agreement to adjourn open main table sessions for safety and security reasons.

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4. ACCESS TO INFORMATION AND DOCUMENTS

- 4.1 The Parties agree that the following documents will be made available to the public in their final form on a timely basis:
- 4.1.1 main table meeting agendas;
 - 4.1.2 records of decision and commitments given by each Party at the main table meetings;
 - 4.1.3 documents tabled by a Party at a main table meeting which have not been identified as confidential; and
 - 4.1.4 all tripartite reports tabled with the British Columbia Treaty Commission.
- 4.2 The following documents, once they have been initialled by the Chief Negotiators, will be made available to the public:
- 4.2.1 Agreement-in-Principle Sub-Agreements;
 - 4.2.2 the entire Agreement-in-Principle; and
 - 4.2.3 the Final Agreement.
- 4.3 The members of the negotiating teams for all Parties will be subject to all rules of confidentiality, including the provisions of this Protocol, and such rules as may be agreed to by Canada, British Columbia and the Hul'qumi'num Treaty Group, for the full duration of the negotiations.
- 4.4 Subject to subsections 4.1 and 4.2, where one Party produces a document and provides it to another Party, the Chief Negotiator for the Party producing the document will decide whether the document may be made public and advise the Parties accordingly.
- 4.5 For greater certainty, when one Party produces a document or imparts information that it has decided should not be available to the public no other Party may either directly or indirectly reveal the contents of the document or information in any other document intended for public distribution.
- 4.6 Subject to subsections 4.1. and 4.2 where two or more Parties produce a document, the Chief Negotiators for those parties will determine by mutual agreement whether it may be made public. In making this determination,

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the Chief Negotiators will consider whether granting access to the document could reasonably be expected to:

- 4.6.1 encourage public support for, or enhance progress in, the negotiations;
 - 4.6.2 lead to an accurate understanding of the intentions of any Party;
 - 4.6.3 prejudice positions, interests or negotiation strategies of any Party or the successful and timely conclusion of the current or future stages of negotiations of fair and lasting agreements;
 - 4.6.4 result in disclosure of information that was produced or provided in confidence; or
 - 4.6.5 result in disclosure of information that could reasonably be expected to be harmful to or interfere with the conduct of the negotiations.
- 4.7 Inclusion of the words "In Confidence", "Confidential" or similar words with respect to a document will constitute advice to any Party receiving the document that it is to be kept confidential.
- 4.8 The release of documents is acknowledged to be subject to the *Freedom of Information and Protection of Privacy Act* and *Heritage Conservation Act* of the Province of British Columbia, and the *Access to Information Act and Privacy Act* of the Government of Canada. If a Chief Negotiator is aware of a written request for information relating to the negotiations, notice of the request will be given to the other Parties.
- 4.9 The Parties acknowledge that British Columbia will include as a member of its negotiating team a representative of local government from the Treaty Advisory Committee (TAC). British Columbia will require that the TAC Representative follow the direction and instruction of its Chief Negotiator.
- 4.10 The Chief Negotiator for British Columbia may permit the TAC Representative to disclose to the TAC information, documents, or portions of documents that have not been determined to be available for public distribution by the Chief Negotiators pursuant to section 4 only where:
- 4.10.1 the information, document or portions of the document directly affects the local governments represented by the TAC;

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- 4.10.2 each member of the TAC and the councils of the local governments represented by the TAC agree in advance that they will confine discussion of the information, document, or portions of the document, to "in camera" sessions of their local governments and they will not otherwise disclose the same; and
- 4.10.3 the Party producing the information or document consents to the disclosure of the information, document, or portions of the document, to the TAC.
- 4.11 The Chief Negotiator for British Columbia will ensure that the TAC and its members will be subject to all rules of confidentiality as set out in this Protocol.
- 4.12 The provincial Chief Negotiator and the TAC will establish Terms of Reference for the TAC consistent with this Protocol. Copies of the signed TAC Terms of Reference, including the cover letter, will be provided to the other Parties.
- 5. PUBLIC RECORD OF MAIN TABLE SESSIONS**
- 5.1 A record of decisions will be kept of the proceedings of Main Table sessions.
- 5.2 The record of decisions will include the time and location of the Main Table session, the agenda for the session, a description of the decisions made by the Main Table, and a description of actions taken or to be taken on matters discussed.
- 6. CONSULTATION**
- 6.1 When a Party consults with its advisory committee it may, in the course of such consultation, disclose the following:
- 6.1.1 documents that the Party has produced;
- 6.1.2 information to its advisory committees on the substantive issues being negotiated;
- 6.1.3 documents made available to the public under section 4; and
- 6.1.4 any document produced by all Parties after substantial

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agreement is reached by the Parties on its provisions and form, and, where the document is to be initialled, prior to initialling.

- 6.2 Each of the Parties may, by invitation, provide periodic briefings to advisory committees established by the other Parties.
- 6.3 The Parties will undertake joint community consultation where it is mutually deemed advisable.
- 6.4 Nothing in this Protocol is intended to prevent the Parties from discussing their respective positions with their respective consultative bodies.

7. PUBLIC INFORMATION

- 7.1 Through the creation of a tripartite public information/education committee representatives of the Parties will ensure that an effective and regular public information/ education process is established.
- 7.2 A tripartite public information/education work plan for all stages of the negotiation process will be developed and will include details of public information activities.
- 7.3 Notices of meetings and public information activities will be issued to the local media at least two weeks prior to meetings or public information activities whenever practical.
- 7.4 Nothing in this section shall be construed to prevent the Parties from pursuing bilateral or independent public information/education activities.

8. REVIEW AND AMENDMENT

- 8.1 This Protocol will be reviewed and may be amended by consensus of the Parties, as represented by the Chief Negotiators, prior to the end of the Agreement-in-Principle negotiations.

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On behalf of the Hul'qumi'num Treaty Group:

Ernest W. Elliott
Chief Negotiator

On behalf of the Government of Canada:

John Langford
Chief Federal Negotiator

On behalf of the Province of British Columbia

Cristina Scattolin
Treaty Negotiator

Date: May 22, 1997

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