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Inter-American Com- mission on Human Rights

Petition filed by Hul'qumi'num Treaty Group

I am pleased to report on the progress that we have made on the Petition that was filed by the HTG in Washington, D.C. with the Inter-American Commission on Human Rights. The Petition is explained in the companion article by Sarah Morales.

Our Petition has been accepted by the Com-

mission and they have given Canada 60 days, until the middle of March, to file their reply. This is an important event since the Commission determines which files they will proceed with. The HTG represents one of a few files accepted by the Commission dealing with First Nations in Canada.

This Petition is meant to resolve the issue that government has taken the position that private lands are not on the treaty negotia-

tion table. They refuse to negotiate the unlawful confiscation of our traditional territory through the E&N land grant that occurred in the late 1800's. I have heard the leadership, elders and Hul'qumi'num membership who have said this is unacceptable.

Once we receive the reply we will report on the position Canada is taking relative to the Petition.

Huy'ch'qu

Robert Morales
Chief Negotiator

Inter-American Commission on Human Rights

Hul'qumi'num Treaty Group Petition to the Inter-American Commission on Human Rights

By Sarah Morales, LL.B., LL.M.
Phd. Law (Candidate)

Beginning in the nineteenth century, Canada began granting away the rights, title and interests in the traditional lands and resources of the Hul'qumi'num peoples to private third parties without ever consulting the Hul'qumi'num peoples or obtaining their consent. The largest of these grants was the "E & N Railway grant," which occurred in 1884. This grant included almost 70% of the Hul'qumi'num peoples traditional territory. These grants were made without prior consultation with the Hul'qumi'num peoples and without considering their property rights or interests in their traditional territory. No offer of restitution, for example return of lands or replacement of lands, or payment of compensation has ever been made by Canada to any of the Hul'qumi'num communities for the unlawful taking of their traditional lands, territories and resources. As a result of these and subsequent land grants, approximately 85% of the Hul'qumi'num peoples traditional territory is now controlled by non-Aboriginal private parties.

The unlawful granting of Hul'qumi'num traditional lands has had a devastating effect on the Hul'qumi'num communities

because these grants cover areas that the Hul'qumi'num people have depended on and continue to depend on for their livelihood and culture.

Throughout the traditional territory, "privatization" has damaged forests and essential water supplies, reducing plant and wildlife populations and threatening access to and use of Hul'qumi'num natural resources for hunting, fishing and gathering practices, as well as ceremonial practices, all of which are important to the cultural and physical survival of the Hul'qumi'num people. These grants to private landowners have also restricted the Hul'qumi'num peoples access to their sacred sites and have limited their ability to perform their cultural and religious ceremonies in their traditional territory. In severe cases, these grants to private landowners have resulted in the destruction of Hul'qumi'num sacred sites. Furthermore, the unlawful granting of Hul'qumi'num traditional territory has negatively affected the economic independence of the Hul'qumi'num peoples. Without any recognized property rights in their traditional land base to rely upon, and without the right to access the natural resources needed to sustain their way of life, the Hul'qumi'num peoples are among the poorest people in all of Canada. Over the years, despite repeated requests and appeals by the Hul'qumi'num

peoples, Canada has refused to discuss the recognition or protection of Hul'qumi'num property rights in these so-called "private lands" unlawfully granted to the E & N Railway Company and other third parties. More recently, after 13 years of negotiation, the Hul'qumi'num Treaty Group has been told that these "private" lands, unlawfully taken and granted to third parties, are NOT on the table in the B.C. Treaty Process. Not on the table for expropriation, not on the table for compensation and not on the table for co-management. Unable to accept this, the Hul'qumi'num Treaty Group has decided to use international law to try and get these lands "on the table" for negotiation.

Inter-American Commission on Human Rights

The Hul'qumi'num Treaty Group has filed a petition with the Inter-American Commission on Human Rights alleging that Canada has violated the human rights of the Hul'qumi'num peoples by refusing to negotiate "private" lands in the B.C. Treaty Process.

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The Inter-American Commission on Human Rights may hear and act on complaints, or “petitions,” concerning human rights violations involving any of the countries that are members of the Organization of American States — Canada is a member.

Right to Property

International law recognizes the human right to “own such private property as meets the essential needs of decent living and helps to maintain the dignity of the individual and of the home.” By virtually granting away 85% of the lands traditionally used and occupied by the Hul’qumi’num communities to a private railroad corporation and to other private third parties, Canada has violated the Hul’qumi’num peoples right to property.

Right to Restitution

International law recognizes that indigenous peoples have a right to the restitution (return) of their unlawfully taken lands, or alternatively, to just compensation for the taking of those lands, no matter how far in the past the taking occurred. Canada has taken away the majority of Hul’qumi’num lands and failed to consider, let alone offer, any form of restitution. Therefore, Canada’s refusal to pay compensation, or at the very least to negotiate restitution for expropriated Hul’qumi’num traditional territories, is in direct violation of Canada’s international legal obligations.

Right to Cultural Integrity

Under international law, Canada has a responsibility to protect the culture of the Hul’qumi’num peoples. In fact, the right to culture is of supreme importance in international law. Arguably, Canada’s confiscation of Hul’qumi’num traditional lands, and its refusal to even discuss restitution or compensation for those lands, threatens to destroy the Hul’qumi’num peoples connections with their land, their livelihood, their language, and their cultural survival and development as indigenous peoples. By failing to protect the Hul’qumi’num peoples’ property rights and other interests in their traditional lands, Canada has denied the right of the Hul’qumi’num to enjoy their culture.

Right to Consultation

Embedded in the rights to property and cultural integrity, which protect Hul’qumi’num interests in lands and natural resources, is the right to be consulted in a meaningful way about any decisions that may affect those interests. Nothing even remotely approaching such required “good faith” consultations has been provided for the Hul’qumi’num peoples by Canada. In fact, Canada continues to allow the granting and re-granting of Hul’qumi’num traditional lands within the E & N Railway grant without providing meaningful consultations with the Hul’qumi’num communities affected.

Conclusion: Relief Sought

Although the recommendations of the Commission are not legally binding, Canada is sensitive to international criticism and often times such criticism results in positive action by government. Therefore, the Hul’qumi’num Treaty Group is requesting that the Commission prepare a report stating that Canada is internationally responsible for the violations of international law set out above.

The Hul’qumi’num Treaty Group is also requesting that the Commission recommend that Canada take efforts to prevent the further alienation of Hul’qumi’num traditional lands by suspending all property sales and subdivision permits until a treaty is negotiated between the Hul’qumi’num peoples and government.

The Hul’qumi’num Treaty Group is also requesting that the Commission recommend that Canada pay damages for the development activities on Hul’qumi’num traditional lands. Finally, the Hul’qumi’num Treaty Group is requesting that the Commission conduct an on-site visit to the Hul’qumi’num communities and to make recommendations to government as to the steps that can be taken to assure that negotiations are in good faith at the Hul’qumi’num treaty table. Although it is not guaranteed that the Commission will be able to positively influence Canada, international law is another “tool” being used by the Hul’qumi’num Treaty Group to ensure a just resolution of the land question in British Columbia.

Closing the Treaty Gap



Closing the Treaty Gap: Six Topics, Six Solutions Brian Thom, Senior Negotiation Support

The governments of Canada and British Columbia have recently agreed with the Unity Protocol First Nations to hold high-level talks about many of the key issues that have prevented the conclusion of treaty negotiations. The First Nations who have signed on to the Unity Protocol, the Hul'qumi'num Treaty Group being among them, have agreed that six topics 'top' the list of negotiating gaps: constitutional status of lands, concurrent law-making, shared decision-making, certainty, tax and own source revenue, and fisheries.

With the Common Table now a reality for seeking mandate change from Canada and BC on these key issues, we now have to engage the hard work of finding solutions to these issues. This article will give an outline of key issues being debated, and a sketch of some of the solutions being considered.

Unity Protocol Topic 1: Constitutional Status of Lands

The Final Agreements signed in British Columbia all set out that the lands that First Nations acquire in treaty and their Indian Reserves all become private, fee-simple lands after treaty. These fee-simple treaty lands would be owned collectively by the First Nation, and subject to their constitution and the land laws they pass, could be bought, sold or leased. Provincial tax assessment notices would be provided for any commercial or 'for-profit' improvements made to these lands, or for any of these lands which interests have been granted by the First Nation to non-members. For the rest of the traditional territory outside the Reserves and lands secured through treaty, the First Nation 'releases' their Aboriginal title, and all the rights and powers that go with it.

First Nations are looking for solutions to the constitutional status of lands question that achieves recognition of their underlying ownership to land, both within lands secured in treaty and throughout traditional territories. On treaty settlement lands, First Nations want property rights that are not characterized as 'interests' in land with underlying Crown

title (fee-simple), but to have property that 'is of no other lord', something lawyers have called 'allodial title'. The application of Federal and Provincial laws to these lands would be worked out in the treaty (as discussed in 'law-making' below). Throughout the rest of a First Nations territory, First Nations are looking to have their continuing Aboriginal title be a burden on Crown title. The treaty would spell out what property rights were associated with that title and how the jurisdictions and decision-making that flowed with it could be exercised – perhaps as shared decision-making (as discussed below).

Unity Protocol Topic 2: Concurrent Law-Making

Concurrent law-making has been proposed as the model in which First Nations, provincial and federal laws all apply at the same time on First Nations land. First Nations are concerned that when this concurrent-law model comes into force, the scope and extent of their law-making powers will be significantly less than the full self-determination they had negotiated for. Through the legal measures both in the treaty (the 'priority of laws' provisions) and in the common-law (the 'frustration of purpose' test) First Nations see the potential for significant conflicts in cultural values which will inevitably end up being resolved always in favour of the Crown,

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bringing First Nations self-determination to the lowest common denominator.

To respond to this issue, several options are available. First Nations could negotiate a displacement model, where Federal and Provincial laws only apply when the treaty explicitly brings them in. Alternatively, treaties could spell out more extensive areas where First Nations law-making have priority. There could be provisions negotiated which provide a narrowing of the frustration of purpose test, perhaps through a mechanism of rendering for the federal or provincial decisions to be inoperative to the extent of the incompatibility in purpose in key areas of First Nation interest.

Another problem with the model is the over-bureaucratization of First Nations lives, when having to comply with multiple laws simultaneously. The treaties are silent on the practical management issues which arise when the First Nation exercises jurisdiction in an area concurrently managed under another authority. For heritage sites on Treaty Settlement Lands, for instance, both Provincial and First Nations' permits will be required, unless significant harmonization agreements are negotiated. This effectively puts First Nations at a disadvantage, as the cost and efficiency of doing business on lands that are double-regulated may be a significant deterrent to investment. Treaties must contain explicit mechanisms and commitments to efficiently and effectively implement harmonization or to displace Federal and Provincial management

systems in areas where First Nations are exercising jurisdictions.

If, through the mechanisms discussed under Status of Lands and Certainty, Aboriginal title and Aboriginal governance of First Nations traditional territories is achieved, mechanisms will need to be developed to handle the application of First Nations laws throughout their territories and the inter-relationship of First Nations laws if more than one First Nation exercises its jurisdiction to the same area. The parties may have to develop a basket of options other than law-making in order to give effect to territorial jurisdictions (such as those described through the Shared Decision-Making options, below).

Unity Protocol Topic 3: Shared Decision-Making

To give effect to the Aboriginal territorial jurisdictions discussed above, and to give certainty to the parties in respect of the interplay of those jurisdictions in key areas of resource management and planning, treaty language in the Final Agreement is needed to provide for the establishment of a management structure with representation from all Parties for the purposes of shared decision-making on resource management and planning. Shared decision-making requires agreement at three levels, including a province-wide Framework Agreement establishing provincial-scale and regional-scale shared decision-making structures and institutions; treaty language which locate the recogni-

tion of Aboriginal territorial governance within these structures and institutions, and treaty commitments to a Side Agreement to provide certainty around flexible, local processes to determine the structure, process and scope of the implementation of shared decision-making within the traditional territory.

Hul'qumi'num Treaty Group has recently released a book on this topic called *A Call to Action: Shared Decision-Making, A New Model of Reconciliation of First Nations Natural Resource Jurisdiction*. The book provides more details about how to put this policy vision into action, and can be obtained by contacting HTG or by downloading it from the HTG website (http://www.hulquminum.bc.ca/our_work/).

Unity Protocol Topic 4: Certainty

An alternative certainty model is needed to address the recognition of the territorial jurisdictions of First Nations. A new approach to certainty would contain a recognition of both Crown and Aboriginal jurisdiction across the traditional territory, affirming that Aboriginal jurisdictions outside of treaty settlement lands are neither modified out of existence nor extinguished. This version of certainty diverges from the prevailing model by asserting in the Final Agreement that the governance rights of all the Parties remain in effect throughout First Nations traditional territory. This will result in a certainty model that responds to the Crown's desire to create a predictable environment for continued development and growth in the province without requesting First Nations to compromise their

Closing the Treaty Gap (continued)

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fundamental territorial governance rights.

Such an approach is important because of the difficulty of exhaustively setting out all the potential cultural rights that may be held by First Nations within the text of a Final Agreement. Indeed, such rights may include contemporary practices inextricably linked to and derived from ancestral activities, customs and traditions. The form of these cultural practices may develop, change, and adapt over time, and may have economic, governance, social or political components.

For the purposes of achieving incremental certainty, the treaties should provide a process by which First Nations may explicitly identify a cultural practice as a right, which must be exercised in a manner consistent with the agreement, and broadly limited by concerns for conservation, safety and public health.

As a cultural practice becomes explicitly recognized as a right under this section, the treaty should provide that the Parties will engage a process for the enumeration of that right as a treaty right. In a non-extinguishment world, a cultural practice does not have to be explicitly identified or enumerated in order to be a valid treaty right, but may need to be so if the exercise of the right becomes a concern of any of the parties.

Unity Protocol Topic 5: Tax & Own Source Revenue

Governments continue to insist on a tax exemption phase-out and a phase-in of revenue transfer claw-backs.

These positions are in response to populist dislike of the section 87 exemption, concerns that both property and other tax exemptions will create an unfair marketplace for neighbouring non-First Nations lands, and to institutionally encourage First Nations to become 'less dependent' on government transfer dollars.

First Nations grass-roots members and leaders have rejected this position, arguing that there need to be other options to take into account the very real, and likely long-term social and economic inequalities that First Nations continue to be in.

There is little consensus about what options, other than simply maintaining the section 87 tax exemption in treaties, would be acceptable to First Nations. The leadership of the Unity Protocol First Nations will be considering options such as:

Option A: First Nations form a treaty-enabled taxing authority which displaces Federal and Provincial taxes, giving First Nations decision themselves over taxation matters.

Option B: Treaties contain a long-term grandfather clause providing anyone who is alive

on the Effective Date a section 87 tax exemption for life.

Option C: Treaties would establish benchmarks of social and economic indicators, phasing out tax exemptions only if there is a level playing field between Aboriginal and non-Aboriginal people in a region.

Option D: Treaties could split off property tax issues from income, good & services, and other tax issues. Displace all federal-provincial property tax authorities with respect to property tax, with the laws of the First Nation (including having a 'no taxation of property' in the First Nations laws or constitution), and accepting *option C* described above.

There are any number of other solutions to the issue of tax in treaty, which may also meet First Nations needs and interests.

A new model is needed for financing post-treaty First Nations governments.

We envision fiscal arrangements that ensure that there are clear floors for First Nations so that transfer agreements are never reduced to zero.

Currently other levels of government enjoy this fiscal security.

Treaties should ensure that any own-source revenue 'claw-back' formulas that are agreed to, are indexed to social and economic indicators, not just phased in on time- or revenue-based schemes.

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Common Table

By Robert Morales, Chief Negotiator

I am pleased to announce that government has agreed to participate in the Common Table, after an 18 month campaign to get them to this point. I have personally pushed hard for this through the media, ferry blockade, rally at the legislature when the Tsawwassen Final Agreement was introduced, lobbied in Ottawa with the Parliamentary Standing Committee and the Senate Aboriginal Peoples Committee, as well as many letters to the Prime Minister and Premier.

We held our first meeting in Vancouver on February 14, 2008 to develop the Terms of Reference and discuss the process.

The Hul'qumi'num Treaty Group has been a leader among the BC First Nations that have called for the establishment of a Common Table. This has included the 50 plus Nations that have signed onto the Unity Protocol, the First Nations Summit by Resolutions 0906.09 and 0907.04, and the Union of BC Indian Chiefs support by Resolution 2007.16. The Hul'qumi'num Board of Directors have passed two resolutions in support of the Common Table.

The intent of the First Nations is to jointly engage Canada and British Columbia at a Common Table in the negotiation of principles or options that all parties

can rely upon when negotiating individual treaties within the BC treaty process. This is consistent with the tripartite Framework Agreements, The Task Force Report, Auditors General report, The British Columbia Treaty Commission Annual Report 2007, and the February 2008 BC Throne Speech. .

Negotiations have been ongoing under the BC treaty process since 1992 and the majority of First Nations have not been able to reach workable agreements, resulting in spiraling costs and loan debt to First Nations and an increasing level of frustration among both First Nation people and the public.

The First Nations Summit Chief Negotiator's have been meeting and discussing common challenges that we face in our respective negotiations. The primary difficulty is the common mandates that government brings to the tables on primary issues that are fundamentally at odds with the mandates of First Nations. We know that Canada and British Columbia intend to take the same approach, table the same language, and have the same mandate at all the tables, including the final agreement tables, on these critical items.

The Chief Negotiators have identified critical areas of common concern for all tables in the treaty process which are:

1. Recognition/Certainty
2. Constitutional Status of Lands
3. Fiscal Relations – Tax and Own source revenue
4. Governance
5. Fish
6. Co-management

Canada and BC approach the negotiations as separate parties but they share information amongst themselves about the activities at the negotiations table and have unlimited control over their resources in terms of experts, staff, and lawyers.

There is a need for the First Nations to get creative in order to be able to compete. In order for the First Nations to be able to affectively engage the governments on these six substantive issues, the treaty tables must develop a strategy to move government off their entrenched positional bargaining tactics.

We believe that if we pool our resources, research and skills we can create a very formidable team to engage with Canada and British Columbia in a Common Chief Negotiators Table forum that has the authority to explore options, look at new approaches and make decisions based on collaboration. The Chief Negotiators Forum believes that we can make progress.

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The BC treaty process is about achieving reconciliation and defining our relationship with Canada and British Columbia.

This cannot be accomplished through positional bargaining, where the government's mandate is the bottom line. We need a process that provides the tables with the opportunity to engage government officials with sufficient authority to address these high level policies/mandates by exploring viable options that meet all of our interests.

A Common Table will provide the credibility necessary to influence the government to commit to alternative options.

We as First Nations will need to be able to commit to the outcomes of this Common Chief Negotiators Table and see the benefits of collaborating. Government may be able to reject our ideas one table at a time, but it would be far more difficult to reject a collective vision.

It is in this spirit that the Chief Negotiators' recommend that there be support for the concept of coming together, to utilize their best talents and resources to affect and change the mandates of the government of Canada and BC on these critical

issues for the benefit of all First Nations in the BC treaty process.

The purpose of the Common Table is to remove barriers and speed up completion of negotiations.

The intent of this Common Table is for the parties to engage in a unified way on fundamental issues to remove barriers and allow for the speedy conclusion of fair and viable treaties based on recognition and reconciliation.

Again, the key issues for negotiation are recognition/certainty; constitutional status of lands; governance; co-management throughout traditional territories; fiscal relations specifically own source revenue & taxation; and fisheries.

The First Nations have stated that they anticipate that each party will bring negotiators who are mandated to complete negotiations and that their Common Table mandate/instructions will not be constrained by existing BC treaty process policy/mandates with respect to the key issues.

We also expect that the negotiations will be based on recognition and reconciliation of aboriginal rights and title. Also that the negotiations will be based on the 19 recommendations from the BC

Task Force Report, the rule of law, and the interests that each party brings to the table.

All meetings take place in Vancouver and each treaty table / First Nation will select one individual to represent them at the common table.

All First Nations Chiefs may attend negotiation sessions but one spokesperson will be selected per topic.

I will be meeting with our leadership, elders, and membership to discuss what options the Hul'qumi'num Mustimuhw would want myself and the Chiefs to bring forward on your collective behalf.

Huy' ch' qu

Robert Morales
Chief Negotiator

**NMCA Newsletter
Coming Soon**

The Referrals Impact Assessment Office will be issuing a special edition Newsletter by the end of March on the National Marine Conservation Area. Please look for that special edition coming soon.



Tsilhqot'in Nation v. British Columbia

Key Decision Reached
***Tsilhqot'in Nation v. British Columbia*, 2007 BCSC 1700**
 By Renee Racette, Legal Counsel

The Tsilhqot'in Nation recently heard back from the BC Supreme Court on their lengthy court action. They sought a Declaration of aboriginal title and rights in the Cariboo –Chilcotin region referred to as the Brittany Triangle and Trapline Territory in response to forestry activities. The Tsilhqot'ins have been in court since the fall of 2003 bringing an incredible amount of evidence of their use and connection to the territory with the objective of proving their aboriginal title and rights to preserve the area, their lifestyle, wildlife, rivers and horses.

Justice Vickers did not make a Declaration of aboriginal title. He held that although the First Nations had established title to almost 50 percent of the area he could not make a court Declaration as requested because of a technical issue. Justice Vickers did, however, make a Declaration of Tsilhqot'in aboriginal rights including trapping and hunting throughout the claim area for work, food, transportation, ceremonial, and culture which includes a right to capture and use the wild horses for trans-

portation and work. Furthermore, the Tsilhqot'in established an aboriginal right to trade as a means of securing a moderate livelihood.

The Tsilhqot'in case is viewed as a major victory for First Nations. The Court offered many substantive findings about aboriginal title and rights which have the potential for major change for Aboriginal people. The Tsilhqot'in case added content to what "aboriginal title" means; it further clarified what title lands look like. According to Vickers, provincial laws are not necessarily applicable to aboriginal title lands as they are not Crown lands defined under provincial law. The province has no jurisdiction to extinguish aboriginal title and such title has not been extinguished by a conveyance in fee simple title.

The court held that the small area, or postage stamp approach, argued by the province was an impoverished understanding of aboriginal title. Furthermore, this approach should not be utilized when negotiating settlements with First Nations. Para, 1377, "A tract of land is intended to describe land over which indigenous people roamed on a regular basis; lands that ultimately define and sustain them as a people, the recognition of long standing presence of Tsilhqot'in People in the claim area is a simple straight forward acknowledgement of a historical fact."

Vickers was clear that the province must take many proactive steps to environmental management prior to attempting to justify any infringement. The province has infringed the aboriginal rights and title of the Tsilhqot'in people and has no justification for doing so. Additionally, land-use planning and forestry activities have unjustifiably infringed Tsilhqot'in aboriginal title and Tsilhqot'in aboriginal rights.

Vickers held that the rights holders were not merely the Xeni Gwet'in, an Indian Band, but rather the Tsilhqot'in Nation. Thus, the entire Tsilhqot'in Nation has acknowledged aboriginal rights (and perhaps title). His analysis of the Nation as the right holder is finally aligned with a rational connection to the historic people rather than the administration of Indian Affairs.

Finally, Canada is reminded of its central role in resolving matters relating to Aboriginal Canadians. The "denial or avoidance" of this constitutional responsibility is unacceptable if reconciliation is to one day be effected. Canada has unacceptably denied and avoided its constitutional responsibility to aboriginal title and rights. Therefore, Canada cannot continue to take a passive role in responding to the plight of Aboriginal people. Indeed a major finding with the potential for change.

Chief Negotiator Executive Assistant Report

Community Update

‘Uy Skweyul Siem nu Siiye y’u, Siem Sulxween, (Good day respected friends/relatives, respected Elders). My name is Rosanne Daniels. For those of you who do not know who I am, my parents are Danny Daniels and Late Aggie Daniels (Nee Seymour).

I would like to begin by wishing each and every one of our six communities’ members a very safe and happy New Year for 2008.

I am pleased to offer an update on activities, from my point of view. I will explain a brief history of myself. I began working for the Hul’qumi’num Treaty Group in 2001 as receptionist. Since then I have taken on numerous roles and responsibilities.

My current capacity is Executive Assistant to the chief negotiator, and I have the most enormous task of all, that is, I must keep the chief negotiators’ calendar and all scheduled meeting requests up-to-date and organized.

I also take notes for all meetings that take place with the chief negotiator. In order for those meetings to have an accurate record, I take meeting notes, and I

especially make note of commitments made during meetings & ensure follow-up steps.

There are so many meeting requests for the chief negotiator time, and if records weren’t made it would be difficult to keep track of commitments and issues for follow up. Having a record is most important, especially in discussions with government, or those commitments would be lost forever.

When I moved into this position I began by recording and taking notes for all HTG negotiations for many of the treaty chapter discussions. There are approximately 27 chapters, and the approach of the negotiations has been to be as comprehensive as possible, in order for greater clarity for interpretation of the language.

These discussions in key chapters began to break down when the Federal and Provincial governments would not negotiate to change their mandates/policy positions.

Our Hul’qumi’num Chief Negotiators & team have on a number of occasions tabled very creative, alternative approaches in the negotiations, only to be stonewalled by the negotiators who were handcuffed by their marching orders from their leaders and bureaucrats.

This has resulted in a number of chapters completed and many others stalemated.

Other treaty tables have taken a more slim agreement in principle approach which resulted in their communities accepting deals that worked for their communities.

There are also a number of communities who are in the same position as the HTG, in that, they are not prepared to accept the one approach government is bringing to the treaty table.

This process should allow for flexibility in options that are agreeable based on a communities’ unique situation but that is not happening.

There are 47 treaty tables in this province and government comes with only one approach on these key issues.

We have experienced that the federal government has come with a number of human resources on their team, but BC has come to the table with very limited either one or two people, at all times and this results in the inability to make decisions on many topics.

Hul’qumi’num also has had some issues that we too had to consult with our communities for their input.

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One key problem has been that both governments come with the inflexibility to negotiate these key issues that our First Nations want resolved.

Government mandates/policies are so out-dated that our office, along with many other first nations are looking at ways in which the negotiations mandates can line up with the existing aboriginal case law, which governments are not adhering to at this time. In other words the crown is in effect ignoring the rule of law at their convenience.

There needs to be more public awareness on how government policies are affecting our communities every day.

We have heard from our community members that they want issues such as health, education, and housing dealt with in treaty; and as we are all aware these are key concerns. Issues like dental, medical, lack of education and housing funding and many more social issues; but the governments refuse to listen.

They do not want to talk about these issues at all. The only discussion the governments are willing to have is on law making in regards to these issues and that

funding arrangements will be dealt with later on in the fiscal relations & capital transfer chapters, and all they are proposing is that the existing funding gets rolled into treaty, with no enhancements. Governments say that issues like housing need to be dealt with pre-treaty and by the individual bands, but they are not offering any solutions.

For some time now I have been keeping track of a multitude of meetings, at a number of levels.

There have been meetings with both levels of governments, their negotiators, various members of parliament, the senate and aboriginal peoples committees, Ministers, BC First Nations Summit Chiefs, BC First Nations Summit Chief Negotiators, BC Treaty Commission, communities, Chiefs & Councils, HTG board meetings, Elders, general public and university forum meetings.

All this work has been to bring upon awareness on the state of our negotiations and governments inflexibility of mandates/policies, as well as to work on strategies along side many other First Nations who are experiencing the same issues at their negotiations tables.

In closing, I hope this has been helpful in giving you a better understanding of why our treaty is taking so long to negotiate. I want you to know that your concerns do not go unheard by our office staff, but government refuses to act on them. Our office needs your support and we need to hear from you on many of these issues that we will be discussing with government in the next little while. There are a series of meetings that will be taking place in regards to looking for your critical feedback on areas such as land / fiscal relations / tax exemption / own source revenue, aboriginal rights and title recognition, which government calls certainty, governance, fish. Our office continues to work hard on trying to find ways in which we can negotiate a fair, just settlement to the outstanding land question of our traditional territory, and ultimately bring our people out of poverty to restore us back to our rightful place in society, as a proud Hul'qumi'num Mustimuxw (People).

Huy tseep qu!

Article Submitted by
Rosanne Daniels
Executive Assistant
Chief Negotiator



Eligibility Criteria

Negotiations Project Coordinator, Lea Joe.

I'd like to provide a brief, yet important, update on the Eligibility Criteria project. This is a long-term study being done by Hul'qumi'num Treaty Group (HTG) to get community views on who should be eligible to enroll and benefit from treaty.

This is an important decision for the treaty because it will, in many ways, provide a new means for dealing with membership issues which do not depend on Indian Status. The chiefs have requested a high level of community input before a decision is made on the criteria.

To date, we have done several workshops, focus group session, information tables, and

have mailed over 4,800 surveys to our community members.

Thank you for those that made the time to share your thoughts, concerns, and ideas.

A summary of the results of this consultation is being drafted for our negotiators and chiefs. The report will serve as a tool for our negotiators when drafting the chapter, having the insight and input from our community members guides what the Eligibility Criteria in treaty will be.

The survey responses include overwhelming support for 'ancestry' as a key criterion for eligibility for benefit from the treaty. People's ancestral connection to the communities of Hul'qumi'num Treaty Group leaves little room for controversy or confusion.

Another overwhelming response from the survey was opposition to dual-membership. People agree that we respect and acknowledge family ties to other communities/ treaty members. However, if an individual were to have strong roots that individual may be con-

have membership to more than one band/treaty/community. This is consistent with governments' views that dual membership might pose a situation where people could 'double-dip' in benefits and services.

Other options for criteria to for who will benefit from the treaty include:

Adoption: feedback was nearly evenly split on whether adopted non-Hul'qumi'num people should be eligible to enroll, but a bare majority supported this criterion;

Marriage: again, community members were split, but with a clear majority speaking in favour of non-Hul'qumi'num people who marry-in being able to enroll. However, majority also stated that should a divorce occur, the non-Hul'qumi'num person should give up their residency to Hul'qumi'num members;

CP land Certificate of Possession: A majority of people felt that whether or not a person held CP land should not be used as a criteria .

Thank you for taking the time to fill out a survey and for reading this article.

Coast Salish leaders gather at Tulalip
Shared Territory Coordinator Ray Harris

Tulalip Tribes in Washington will be hosting leaders from both sides of the border at the Coast Salish Gathering at the end of February.

With a theme of 'Our Way', representatives from Environment Canada, the US Environmental Protection Agency and state, provincial and federal agency representatives will also be attending. Related technical staff from the Nations and Tribes and environmental organizations have also been invited. Watch for our report in the next issue of Treaty Talk.



Treaty Related Terms

Aboriginal Rights: refer to practices, traditions or customs (activities) which are integral to the distinctive culture of an aboriginal society and were practiced prior to European contact, meaning they were rooted in the pre-contact society.

Agreement in Principle: (AIP) document produced in the fourth phase of the six stage treaty process. The AIP outlines the major points of agreement between the parties regarding provisions which will form the basis of the treaty. An AIP is not binding on the parties, and changes may occur in negotiating the final agreement.

Certainty Provisions: treaty provisions designed to clearly define the authorities and responsibilities for all parties to the treaty.

Crown Land: land or an interest in land, owned by Canada or the Province. Almost all Crown land in British Columbia is owned by the Province.

Esquimalt & Nanaimo Railway: in late 1800's the federal government handed over 268,000 hectares (84%) of our territory as payment for the building of the E&N Railroad. The railroad privatized

the majority of Crown lands in the territory.

Extinguishment: term used to describe the cessation or surrender of aboriginal rights to lands and resources in exchange for rights granted in a treaty.

Indemnity: the governments want First Nations to provide indemnity (forgiveness) to the federal and provincial governments for any past infringements on our rights and title and not bring any future claims for these past infringements.

Interim Measures: any activity undertaken by the Province in the interim before treaties are concluded, that is related to the management or use of land or resources, and aimed at meeting British Columbia's legal obligations while balancing the rights and interests of Aboriginal and non-Aboriginal British Columbians.

Resource Revenue Sharing: sharing of rents or royalties between the federal and /or provincial government and First Nations

S.35: section of the Constitution Act, 1982 that states that aboriginal rights and treaty rights are recognized and affirmed and makes it clear that treaty rights include rights that now

exist by way of land claim agreements or that may be so acquired.

S.87 Tax Exemption: tax exemption arising from s.87 of the *Indian Act* that applies to status Indian's income and property (including personal property) situated on Indian reserve land.

Six Stage Process: process established for all treaty negotiations in the province. The six stages are:

1. A First Nation sends a statement of intent to the British Columbia Treaty Commission.
2. The readiness of all parties is established.
3. The parties negotiate a framework agreement.
4. The parties negotiate an agreement-in-principle.
5. The parties negotiate a final agreement.
6. The provisions of the treaty are implemented.

Unity Protocol: an agreement that was signed by 46 First Nations wherein they agreed to develop a common approach and negotiate and develop options in a collective manner through the BC Treaty Process with Canada and BC regarding matters of common interest that are creating barriers to our respective treaty negotiation tables.

***Xe'xe'* Places: co-managing ancestral sites in parks**

Brian Thom, Senior Negotiation Support

There are over 60 recorded ancestral sites within the boundaries of the Gulf Islands National Park Reserve (GINPR). Many of these sites are burial places, camping places, village places, and other records of the past and ongoing use of the Gulf Islands by Coast Salish people.

The HTG-Parks Canada Committee – the group appointed by the HTG member First Nations chiefs and councils to work through management, planning and consultation issues in the GINPR – has been clearly directed by the Elders to take great care and caution around these places.

This care and caution is rooted in the *snuw'ey'ulh* held by people who have these teachings in their families. These teachings set high expectations. Expectations of discipline and respect. They show how these areas are *xe'xe'*.

Xe'xe' is a good explanation of these places. It suggests 'don't go there', 'don't walk there', 'don't even look in that direction'. Be careful.

The elders working with the Parks Committee have admonished that we should not let people come to these places and pick things up, because these are graveyards. These places need to be left alone.

Burial grounds are special places. Coast Salish Elders ask that we always keep in our minds the people buried there. This is a small part of why food and other things are burned each year. They are part of the respect that people have for these ancestors.

This caution and respect has been difficult to communicate to Parks Canada, and to the general public. Teachings of caution and respect are held by the general public – even the *Cemeteries Act* prevents people from playing on or making loud noises in graveyards. For Coast Salish people, the essence of a *xe'xe'* place is to really avoid it, unless you are prepared and have had teachings about how to handle yourself.

We are working with Parks Canada to bring these teachings into the management decisions made about the GINPR. Though it is taking time, we are seeing successes. We are considering issues of keeping trails, picnic tables and other facilities off these ancestral sites. We are working on innovative engineering to help prevent erosion. We are making recommendations to curb looting, pothunting and other desecrations of these ancestral places. We are communicating with our neighbours from First Nations in the Saanich area who share our concern about these places.

With the teachings of the Elders in our minds and hearts, we are committed to making sure that the Coast Salish ancestral sites continue to be *xe'xe'* places long into future.



Cabbage Island is one of many ancestral sites in the Gulf Islands National Parks Reserve

Return undeliverable mail to:

Hul'qumi'num Treaty Group
RR#1 12611B Trans Canada Highway
Ladysmith, B.C. V9G 1M5

WANTED

Information leading to the whereabouts of all Hul'qumi'num Treaty Group members.

Member nations include: Chemainus, Cowichan, Halalt, Lake Cowichan, Lyackson & Penelakut

If you are a member of one of these nations we're looking for you. We need your contact information

So we can include your input and keep you informed of treaty negotiations.

Please forward your; Name, Address, Telephone Number, Email Address & Band Affiliation to

April Miller at the Hul'qumi'num Treaty Group

12611B Trans Canada Highway

Ladysmith, BC, V9G 1M5

Telephone: (250) 245-4660

Toll Free Telephone: 1-888-987-3289

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Or fill out the form on our website:www.hulquminum.bc.ca

Email: aprilm@hulquminum.bc.ca