

Treaty News

Federal Treaty Negotiation Office



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New Chief Negotiator Joins FTNO

Wendy Porteous is a senior federal public servant who served as Assistant Deputy Minister of Lands and Trusts Services in the Federal Department of Indian and Northern Affairs before joining the Federal Treaty Negotiation Office.

Ms. Porteous' appointment was made by Indian Affairs and Northern Development Minister Ron Irwin in August, 1995.

In her new capacity, Ms. Porteous is responsible for treaty negotiations with the Cariboo Tribal Council, the Esket Nation (Alkali Lake Indian Band), the Nazko Indian Band and the Ktunaxa/Kinbasket Tribal Council. She is also leading negotiations with the Carrier Sekani Tribal Council, Cheslatta Carrier First Nation, the Yekoochet'en First Nation, the Lheit-Lit'en First Nation and the Nuu-chah-nulth Tribal Council.

Ms. Porteous' past experience also includes Assistant Deputy Minister positions with Labour Canada, Consumer and Corporate Affairs Canada and the Solicitor General.



Wendy Porteous,
Chief Federal Negotiator

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Achieving Certainty About Rights

Stakeholders in the use and enjoyment of lands and resources are anxious for treaty negotiations to conclude as quickly and efficiently as possible in order to achieve certainty.

The objective of achieving certainty through treaty negotiations reflects both the need to end disputes and claims over rights to land and to ensure Aboriginal and non-Aboriginal people have a clear and common understanding of the extent and meaning of their rights and responsibilities.

The federal government's approach to certainty has been to exchange constitutionally-protected but undefined common law Aboriginal rights for constitutionally-protected, clearly defined treaty rights and benefits.

Prior to 1986, certainty was achieved by "blanket extinguishment" or the passage of federal legislation to extinguish all of the Aboriginal party's rights over a certain territory following a surrender of rights by the Aboriginal party.

The federal government revised this policy in 1986. "Blanket extinguishment" of Aboriginal rights was no longer required. First Nations could negotiate to retain any existing, undefined Aboriginal rights on settlement lands as long as they were not inconsistent with the provisions of the settlement. Nevertheless, First Nations were still required to cede, release and surrender their Aboriginal rights in non-reserved areas in order to conclude a treaty. The federal government saw this provision as the only means to achieve certainty over lands and resources.

First Nations have expressed concerns about this requirement and suggested that certainty be achieved without a "cede, release and surrender" clause in their treaties.

In response to First Nations' concerns, the Liberal government, elected in November 1993, decided to take a close look at alternatives to achieving certainty without requiring the surrender of Aboriginal rights.

In December, 1994, the Minister of Indian Affairs and Northern Development, the Honourable Ron Irwin, appointed Justice A. Hamilton as an independent fact-finder to explore and report on the existing policy and other potential models for achieving certainty of rights to land and resources through treaties. The "Hamilton Report" along with other views and proposals will be considered and explored further by the Minister in determining how certainty can best be achieved.

Hamilton's Report

Justice Hamilton was mandated to hold extensive information and consultation sessions on certainty with people

throughout the country. From January to May 1995, over 65 Fact-Finder sessions were held of which 14 took place in B.C. He also received 77 written submissions -- 32 from Aboriginal people and 45 from non-Aboriginal organizations. Of the written submissions, almost 20 were from B.C. - from First Nation groups, third party organizations and the provincial government. Justice Hamilton incorporated the information he gathered across the country into a report entitled *Canada and Aboriginal Peoples: A New Partnership*, released on September 14, 1995.

In this report, Hamilton outlines his view that it is possible to do away with the surrender requirement and still achieve the certainty that everyone desires if Aboriginal rights as well as rights of all parties and affected interests are clearly stated in the treaty.

B.C. Perspectives About Certainty

Below are views on certainty expressed by British Columbians.

- "I think we have to ensure that the rights, roles and responsibilities of the federal government, the provincial government and the First Nations who are parties to that treaty are clearly laid out in the treaty. If everybody understands their position in relation to the treaty as to those provisions then we don't see the need to force anybody to extinguish any rights that may arise in the future." (an Aboriginal participant at a meeting in Vancouver)

- "The relationship between the rights of Aboriginal and non-Aboriginal peoples must be defined "with sufficient certainty that it provides a reliable base for planning and carrying out activity." (from a joint written submission by members of the Treaty Negotiation Advisory Committee)

- "I don't think it matters how it is done but it is important to us to get it done." (from a joint written submission by Treaty Negotiation Advisory Committee members)

- "Extinguishment is like a "very, very blunt instrument, equivalent to using a flame thrower to kill mosquitoes in a tent - it works but it causes all kinds of other damage." (a member of the public at a public meeting in Victoria)

- "Extinguishment severs a First Nation's links with our past...Canadians must understand that our enjoyment and use of our lands and resources in the years to come is based not upon a grant from the Crown, but is a vital part of our ancestral inheritance" (from a written submission by the Nisga'a Tribal Council)

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Six New Regional Advisory Committees for B.C.

In areas where treaty negotiations are underway, federal and provincial negotiators consult with third party interests that will be directly affected by negotiations through regional advisory committees or RACs.

RACs meet regularly with negotiators to provide input and advice regarding negotiations in their area.

Community members play a lead role in determining who will make up a RAC.

The purpose of regional consultation is to give local industries, government and other third party interests information on specific treaty negotiations and for negotiators to receive advice on aspects of treaty negotiations which directly affect those interests.

Last April *Treaty News* profiled the Sunshine Coast and Bulkley-Skeena RACs. Since then, six more RACs have been formed in B.C.

RAC	Contact		Negotiations
	Federal	Provincial	
Lower Mainland	Jonathan Rayner (604)775-8144 Margo Novak (604)775-8137	Debbie Seto (604)356-5258	Tsleil Waututh Nation Musqueam Nation Squamish Nation Tsawwassen First Nation Katzie Indian Band
West Island	John McIsaac (604)363-6915	Terry Clark (604)356-5264	Nuu-chah-nulth Tribal Council Ditidaht First Nation
South Island	John McIsaac (604)363-6915	Terry Clark (604)356-5264	Te'mexw Treaty Association Hul'qumi'num Speaking Peoples Nanaimo Band
Kitimat-Skeena	Joan McEwen (604)775-8145	John Pyper (604)387-5369	Haisla First Nation Tsimshian First Nation
Atlin	Joseph Whiteside (604)775-8143	Lynda Cronin (604)383-9542	Taku River Tlingit Nation
Pemberton	Sena Paradis (604)775-8135	Mark Atherton (604)356-5001	In-SHUCK-ch/N'Quatqua

Seven RACs are still in the organizational stage and will soon be active:

RAC	Contact		Negotiations
	Federal	Provincial	
Northern Interior	Liz Murray (604)775-8142	Bruce McCallum (604)387-2216	Carrier Sekani Tribal Council Lheit-Lit'en Nation Yekoochet'en
Lillooet	Elizabeth Snow (604)775-6067	Mark Atherton (604)775-5001	Xaxli'p First Nation Pavilion First Nation
Okanagan	Margo Novak (604)775-8137	Mark Atherton (604)775-5001	Westbank First Nation
Fraser Valley	Elizabeth Snow (604)775-6067	Debbie Seto (604)356-5258	Yale First Nation Sto:lo First Nation
Desolation Sound	John McIsaac (604)363-6915	Ellen Frisch (604)387-1119	Homalco Band Sliammon Indian Band Klahoose Nation
Cariboo	Jonathan Rayner (604)775-8144	Mark Atherton (604)356-5001	Cariboo Tribal Council, Nazko Indian Band, Esket Nation (Alkali Lake Indian Band)
Mid-Coast	Jonathan Rayner (604)775-8144	John Pyper (604)387-5369	Heiltsuk Nation, Oweekeno Nation

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Progress in Negotiations

The following provides an update on the status of negotiations as at November 1995. Also included is a list of the federal negotiating teams and a map of the regions in which they negotiate.

(Legend)

6 Stage Treaty Negotiation Process

Stage 1 - Statement of Intent

Stage 2 - Preparation for Negotiations

Stage 3 - Negotiation of a Framework Agreement

Stage 4 - Negotiation of an Agreement in Principle

Stage 5 - Negotiation to Finalize a Treaty

Stage 6 - Treaty Implementation

Team North-Central

Chief Federal Negotiators:

Tom Molloy

Senior Negotiator:

Bill Zaharoff

Public Information and Consultation Advisor:

Joan McEwen



Negotiating with:

Gitanyow -- Stage 3 (Initialled)

Gitxsan -- Stage 4

Haisla -- Stage 2

Nat'oot'en -- Stage 1

Tsimshian -- Stage 2

Wet'suwet'en -- Stage 4

Team North-Coast

Chief Federal Negotiators:

Pauline LaMothe

Tim Koepke

Senior Negotiator:

Bill Megill



Public Information and Consultation Advisor:
Joseph Whiteside

Negotiating with:

Champagne and Aishihik -- Stage 4
Haida -- Stage 1
Kaska Dena -- Stage 3
Tahltan -- Stage 1
Taku River Tlingit -- Stage 2
Teslin Tlingit -- Stage 3 (Initialled)
Tsay-Keh Dene -- Stage 2

Team North-East

Chief Federal Negotiator:

Wendy Porteous

Senior Negotiator:

Edmond Constantineau

Public Information and Consultation Advisor:

Mark Podlasly

Negotiating with:

Carrier Sekani Tribal Council -- Stage 2
Cheslatta Carrier -- Stage 2
Lheit'Lit'en -- Stage 3
Yekoochet'en -- Stage 3

Team South #1

Chief Federal Negotiators:

Robin Dodson

Wendy Porteous

Senior Negotiator:

Bill Clevette

Public Information and Consultation Advisor:

Jonathan Rayner

Negotiating with:

Cariboo Tribal Council -- Stage 2
Esket Nation (Alkali Lake Indian Band) -- Stage 2
Heiltsuk -- Stage 2
Katzie -- Stage 1
Nazko -- Stage 1
Oweekeno -- Stage 2
Sechelt -- Stage 4
Squamish -- Stage 3
Tsleil Waututh -- Stage 2

Team South #2



Chief Federal Negotiators:

Robin Dodson

Wendy Porteous

Senior Negotiator:

Mike Sakamoto

Public Information and Consultation Advisor:

Margo Novak



Negotiating with:

In-SHUCK-Ch/N'Quatqua -- Stage 2

Ktunaxa/Kinbasket -- Stage 1

Musqueam -- Stage 2

Pavilion -- Stage 2

Spallumcheen -- Stage 1

Sto:lo Nation -- Stage 1

Tsawwassen -- Stage 2

Westbank -- Stage 2

Xaxli'p -- Stage 2

Yale -- Stage 2

Team Vancouver Island

Chief Federal Negotiators:

John Langford

Wendy Porteous

Senior Negotiators:

Lynne Gregor

Ross McKinnon

Public Information and Consultation Advisor:

John McIsaac



Negotiating with:

Comox -- Stage 1

Ditidaht -- Stage 3

Homalco -- Stage 2

Hul'qumi'num -- Stage 1

Klahoose -- Stage 1

Kwakiutl -- Stage 1

Nanaimo -- Stage 2

Nuu-chah-nulth -- Stage 3

Qualicum -- Stage 1

Sliammon -- Stage 1

Te'Mexw -- Stage 2

Team Nisga'a

Chief Federal Negotiator:

David Osborn

Senior Negotiator:

Mike Furey

Public Information and Consultation Advisor:

Joseph Whiteside

Negotiating with:

Nisga'a Tribal Council -- Outside the B.C. Treaty Commission process.

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Mathias and Robertson On-the-Air

On October 12, First Nations Summit Task Force member Chief Joe Mathias and Chief Commissioner of the B.C. Treaty Commission Alec Robertson discussed treaty negotiations in B.C. with CBC "Almanac" host Cecilia Walters. Below are portions of the responses given by Mathias and Robertson to questions from the public.

Q: Is the treaty negotiation process working well?

A: (Mathias) Absolutely, the process is in place, the table for negotiation is in place, the environment is created. Both governments are at the table and have set up their teams. Funding arrangements are in place. People are getting into a state of readiness.

We must allow the process to work so we don't spin our wheels. We're not saying it's easy, we have a lot of bumps on the road, but we're not disillusioned. We're out to seek solutions to a long outstanding problem.



Q: Are First Nations really claiming 110 percent of the province?

A: (Robertson) That figure arose because each First Nation who comes into the treaty process is required by the B.C. Treaty Commission to demonstrate that they have or had a traditional territory. Now, that is not framed as how much territory they are claiming, it is framed as what is their traditional territory.



First Nations are also required to disclose whether there are any overlaps with other First Nations. If you add up all the territories and their overlaps, that's how that figure came to be. It was a distortion of information and ever since, it has been waved around as evidence of exorbitant demands by First Nations.

Q: Why is it taking so long to settle treaties?

A: (Robertson) In a simplistic sense, there are two stages to get ready, then you get into actual negotiations. But getting ready for negotiations is a major step for a lot of the First Nations, particularly those that are representing an entire tribal group of a number of different communities. They must go out and develop a mandate amongst their membership, agree on what it is they're going to negotiate and involve all their people. That



process takes time.

The most important aspect of these negotiations is that when the B.C. Treaty Commission announces that the parties are ready to commence their negotiations, that means that each of the three parties, Canada, B.C.,

and the First Nations have negotiators appointed who have a clear mandate as to what they're going to negotiate and have the resources to see their way through the process.

Q: Will everyone be under one law after treaties are settled?

A: (Robertson) Our system is a federal system that recognizes that there are many different sources of law. The federal government and the provincial legislatures each produce different laws. Within provinces, we have municipalities which also produce laws.

When we talk about settling issues of governments within treaties, we're not talking about creating sovereign independent states because frankly, I don't think that's going to get negotiated under any treaty. Neither Canada nor the province are going to agree to it and First Nations are not asking for it in these treaty negotiations. They are asking for measures of self-government that will be suitable to the economic and other basis which they will have and that's something that isn't unusual for our country.

It may be different from a municipality, but they too will be subject to certain laws of general application, that has been made clear in all of the policy statements that have come out from the governments. Part of the negotiations will concern what powers First Nations have to make laws with respect to their own people within their own jurisdiction and surely that's something we can live with within our federation. It's not unusual. It's no different from what we have now.

Q: Weren't Aboriginal rights extinguished by conquest and discovery?

A: (Robertson) The B.C. Court of Appeal overturned the finding (in the Delgamuukw case) that Aboriginal rights have been extinguished. The Court of Appeal agreed that the Aboriginal rights that existed at the time of a declaration of sovereignty by the British continued to survive and have not been extinguished.

Q: Do flare-ups like roadblocks put more pressure on you to get things going and make sure these negotiations work?

A: (Mathias) What it creates is what we're trying to tell white society and government politicians and bureaucrats that until we solve this through treaty negotiations, there will be a cloud of uncertainty in B.C. for all time. You've got to solve it now and the quicker the better because the economic, political and legal uncertainty is going to remain. We're saying let's get rid of this uncertainty that allows the frustrations to flare up and let's achieve a measure of certainty between our society and non-Indian society through the negotiation process.

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TNAC Profile: Ruth Madsen, B.C. Environmental Network

Environmentalists are involved in treaty talks because they see similarities between their own views and those of Aboriginal people, says Ruth Madsen, a member of the B.C. Environmental Network (BCEN).

The BCEN is a member of the Treaty Negotiation Advisory Committee (TNAC), which represents third-party interests in treaty negotiations. While Madsen is one of the network's TNAC representatives, she says no one person speaks for the organization, since it is a collection of more than 500 environmental groups, all of them with their own positions on the issues.

"The network's membership is probably as varied as the First Nations," Madsen says.

For Madsen, an interest and involvement in Aboriginal issues comes as a matter of course.

"The First Nations who we work with have the same ideas as we have when it comes to environmental issues and that is that conservation comes first."

Many environmentalists feel that, like Aboriginal groups, they have been excluded from decisions about key issues such as land use, she says.

"So we really understand where Aboriginal groups are coming from."

For example, Madsen says she believes that if Aboriginal groups had been participants in land use decisions, the framework for treaties would have been established for each region.

Another reason for the BCEN's involvement in treaty talks is that environmental issues are coming to the forefront in these discussions. In Madsen's view, environmentalists need to be there, actively participating and showing government that First Nations aren't the only people with these beliefs.

Not all environmentalists feel they should be involved in treaty talks. Some believe there are so few environmentalists in B.C., they can't afford to spend time on Aboriginal issues. Madsen says this isn't her view.

"It's long overdue that we settle land claims in British Columbia," Madsen says.

If people in the general public spent time with the background documents, they too would see why it's

necessary to sign treaties and let Aboriginal people get on with their lives, she says.

The BCEN has served B.C.'s environmental community for 13 years by putting organizations in touch with each other and appropriate government and industry agencies.

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TNAC Interest Papers: Lands and Forests

The Treaty Negotiation Advisory Committee (TNAC) represents many B.C. non-Aboriginal interests. The TNAC representatives with interests in lands and forests have highlighted priority issues regarding treaty negotiations in the Interest Paper. This is the fifth TNAC Interest Paper profiled in *Treaty News*.



Ruth Madsen,
B.C. Environmental Network

Members of the Lands and Forests Sectoral Group are the B.C. Cattlemen's Association; B.C. Environmental Network; B.C. Federation of Agriculture; B.C. Fishing Resorts and Outfitters Association; Communications, Energy and Paperworkers Union; Council of Forest Industries; Interior forest industry associations (includes CLMA, ILMA, NFPA); International Wood and Allied Workers - Canada (IWA - Canada) and the Truck Loggers' Association.

Lands and Forests Interest Paper:

- States that the outcome of treaty negotiations should be sustainable forests and sustainable communities.
- States that private land is not available for negotiation.
- Recommends that there should be a single authority on land use/environmental assessment regimes with common base standards which also provide room for flexibility.
- Recommends that Crown control of resources should be maintained.
- Recommends that there should be balance and consistency in the treatment of all forms of land, whether tenures or parks.
- States that treaty settlements should define now and for all time the content and extent of Aboriginal rights to land and resources and to self-determination.
- States that there should be no job losses related to treaty settlements from the existing workforce, with a clear understanding that treaty settlement will create economic opportunities and more jobs for Aboriginal people.
- Recommends that compensation should consider both immediate and long-term impacts on workers and existing businesses.
- Recommends access to lands and resources province-wide, access on the basis of fair competition, access for public use and access to permit new opportunities.

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