

Treaty News

Federal Treaty Negotiation Office



*Providing general news and
Canada's views on BC treaty negotiations.*

September 1998

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One Big Step Closer to the First Modern Treaty in B.C.



They had been sitting at the negotiating table for 24 days straight. Finally, on July 15, the Chief Negotiators for the Nisga'a Nation, Canada and British Columbia stood up and declared that they had a deal. Some two and a half weeks later, on August 4, the Nisga'a Final Agreement was initialled.

The initialling ceremony in New Aiyansh, B.C. celebrated the completion of eight years of negotiations between the Nisga'a and the Canadian and B.C. governments. It also recognized the much longer history of attempts by the Nisga'a to resolve their claim to land and resources in the Nass Valley.

The Nisga'a took their first steps in search of a treaty in 1887, when Nisga'a chiefs travelled to Victoria to demand recognition of title, and the negotiation of treaties and self-government. Subsequent efforts over the next eight and a half decades yielded little.

Then, in 1973, the Supreme Court of Canada delivered its decision in the Calder case, a land claims suit brought to trial by Nisga'a chief Frank Calder. The court unanimously recognized the possible existence of Aboriginal rights to land and resources. Three years later, negotiations began between the Nisga'a Tribal Council and Canada.

For 14 years, the negotiations continued on a bilateral basis. Then, in 1990, the Government of British Columbia realized that its involvement was necessary to conclude a treaty. B.C. therefore joined Canada and the Nisga'a at the negotiating table.

The Final Agreement achieved last month is the full and final settlement of the Nisga'a claim. Once the agreement is ratified, it will become B.C.'s first treaty since 1899.

At the initialling of the agreement, Nisga'a Tribal Council President Joseph Gosnell, Sr. remarked that the agreement "proves that negotiations -- not lawsuits, not roadblocks - provide the most effective and honourable way to resolve Aboriginal issues in this country."

Minister of Indian Affairs and Northern Development Jane Stewart concurred. "This agreement signifies our willingness as a society to reconcile major historical and cultural differences through negotiation and compromise," she said.

B.C. Premier Glen Clark echoed his colleagues. "This historic agreement is the most significant progress we have ever made in reconciling our communities and achieving the certainty and opportunity all British Columbian's desire," he said.

The Final Agreement sets aside approximately 2000 sq. km of the Nass River Valley as Nisga'a Lands and establishes a Nisga'a central government with jurisdiction similar to that of other local governments.

Under the terms of the Final Agreement, the Nisga'a will own surface and subsurface resources on Nisga'a Lands, and have a share of Nass River salmon stocks and Nass area wildlife harvests.

The Final Agreement also provides the Nisga'a a financial transfer of \$190 million, payable over 15 years. Further contributions of \$21.5 million will enhance fisheries management and allow for greater Nisga'a participation in the commercial fishery. Forty million four hundred thousand dollars will also be provided to the Nisga'a over five years to implement the treaty.

In addition, the Final Agreement specifies that personal tax exemptions for Nisga'a citizens will be phased out. All loans that Canada has made to the Nisga'a Tribal Council to finance the negotiations will be repaid in full over 15 years. The *Criminal Code*, the *Canadian Charter of Rights and Freedoms* and other federal and provincial laws of general application will continue to apply.

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In brief

Facts and figures on the Nisga'a Final Agreement



Approximate Nisga'a population:	5800
Area claimed by the Nisga'a as traditional territory:	24,862 sq. km
Approximate amount of land that will be included in the Nisga'a Lands:	2000 sq. km
Number of land parcels expropriated from private land owners to complete the Nisga'a Final Agreement:	0
Value of the financial transfers included in the Nisga'a Final Agreement:	\$190 million
Value of contributions for fisheries management and Nisga'a participation in the commercial fishery:	\$21.5 million
Value of contributions to the Nisga'a for treaty implementation:	\$40.4 million
Number of years (beginning from the effective date of the treaty) until Nisga'a citizens will pay all sales taxes:	8
Number of years until they will pay full personal income taxes:	12
Approximate number of people other than Nisga'a who live in the Nass River Valley:	100

Frequency with which individuals who are not Nisga'a will be consulted by Nisga'a Government on matters that directly and significantly affect them:

Always.

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Terrace: Next Door Neighbour to the Nass Valley

To travel between Terrace and the Nass Valley, you must drive some 130 km along the Nass Highway. It's a bumpy trip, but one made often by visitors, shoppers and loggers.

The 22,000 member community of Terrace is the largest neighbour to the Nisga'a Lands.

As the nearest service centre for three of the four Nisga'a villages, Terrace is an important destination for people who live in the Nass Valley. Goods and services unavailable in the Nass are generally found in the city of almost 22,000, as are job and entrepreneurial opportunities.

The forestry-related employment that drives Terrace's economy is also dependent on the logs that roll out of the Nass Valley almost continuously. Terrace sawmills and pulp and paper manufacturers receive a significant amount of their raw product from the Nass.

With its strong links to the Nass, Terrace's residents are keenly interested in how a treaty with the Nisga'a Nation will affect their community. For one view on the subject, Treaty News talked with the Mayor of Terrace, Jack Talstra.

Treaty News: Mayor Talstra, how do you think a treaty with the Nisga'a will affect your community?

Jack Talstra: In Terrace, we are cautiously optimistic about the agreement and are pleased to see it initialled. Personally, I think that it is a good thing overall, although it is hard to predict precisely what it will mean for Terrace.

Undoubtedly, the economics of our region will change and there will be a five year adjustment period in all sectors. There will likely be job losses in the forestry sector, for example, but these will be offset by other opportunities. I can see joint venture opportunities in wood, tourism and retail. Our merchants will benefit, I think, and in tourism there will be room for growth. But it will take time.

TN: With regard to the economic opportunities that you see coming from the treaty, do you think they will mainly be spin-offs, or more joint ventures?



JT: There will definitely be spin-offs, but I also think there is room for joint ventures. There are a number of tourist sites in our area and in the Nass that have significant potential. Take the Lava Bed Park, for instance. It has the potential to be a world class tourist destination.

I could see people travelling to the Nass Valley through Terrace -- coming into the city by plane or car on their way to the Nass Valley, staying a day and then going on. On the way back, they could spend another day in Terrace and get to know what our city has to offer.

So, I think Terrace could benefit quite a lot from joint ventures. It will just take time. Entrepreneurs will need to find each other.

" ... our community members look forward to ending the uncertainty and moving forward."

TN: What's the word from the streets in Terrace? What are community members saying about the final agreement?

JT: There is a range of opinion about the treaty, just as there is in other communities, I imagine. But on the whole, our community members look forward to ending the uncertainty and moving forward.

TN: If you could look 20 years down the road at Terrace's future, after the treaty has been finalized, what would you envision?

JT: I think that 20 years down the road we will be booming. We've been in a boom mode since 1990. We've had some drop-off in the last couple of years, as a result of slowdowns in the forestry industry, but that is consistent with the performance of the industry in the province as a whole. For the most part, Terrace continues to grow.

We have a lot in common with the communities in the Nass Valley. We live in the same region and share many of the same concerns. And we're all going to be here -- no one is leaving. So it is in the interest of everyone to cooperate and pursue our common interests.

I think that Terrace will expand its role as a service centre for the region and become a meeting place for the various cultures. I think our future looks bright.

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Negotiator's News: Tom Molloy, O.C., Q.C.

The Nisga'a Final Agreement has received a lot of attention from both supporters and detractors. The debate is entirely appropriate considering the importance of this document.

Tom Molloy was Canada's Chief Negotiator on the Nisga'a Final Agreement. He also represents the federal government in other Canadian land claims negotiations.



For my part, I would like to provide some context on three issues.

First, there is the value of the agreement. The Nisga'a will directly receive \$190 million, plus about \$40 million for implementation. Other government contributions will go towards third party compensation and for enhancements and upgrades that will benefit the Nisga'a and other local residents.

Although the cost of this treaty is substantial, it will yield many benefits for the local economy and the Nisga'a will also take on significant financial responsibilities over time, offsetting the governments' contributions.

Second, there is the question of what the treaty will do for other British Columbians. Perhaps the most important benefit will be certainty over who owns, and who can use, the lands and resources in the Nass Valley. Certainty will mean that logging companies will know where they can log with confidence.

Last, there is the concern that the Final Agreement will introduce a race-based government and race-based rights. This is inaccurate.

The Nisga'a will be able to make laws that are integral to their culture, internal to their community, and essential for their government. Even with these, the *Charter of Rights and Freedoms* and the *Criminal Code* will be paramount, and other residents of Nisga'a Lands will keep the same rights they have always had.

We need to bring a close to the Nisga'a treaty. Through negotiation and compromise the Parties have reached an agreement that allows us to put the past behind. Now it is time to move forward.

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Ratification: How it happens

The Nisga'a Final Agreement must be ratified by each of the Parties to negotiations in order to become a binding treaty. Here's how the ratification process works.

Nisga'a Nation

The Nisga'a Nation ratifies the agreement before British Columbia and Canada.

The Nisga'a Enrolment Committee creates a list of all Nisga'a eligible to vote on the Final Agreement.

At an assembly, the Nisga'a Nation adopts a motion to hold a referendum on the Final Agreement.

Eligible Nisga'a both within, and outside of, the Nass Valley vote in the referendum by secret ballot. A Ratification Committee with representatives from the Nisga'a Nation, Canada and B.C. oversees the process.

The Final Agreement is ratified by simple majority of all those who are eligible to vote.

British Columbia

The Government of British Columbia is the next to ratify the agreement.

The Minister of Aboriginal Affairs signs the Final Agreement.

Legislation giving effect to the Final Agreement is brought before the provincial Legislature.

The legislation is passed by a majority in the Legislature.

Canada

The Government of Canada ratifies the agreement last.

The Minister of Indian Affairs and Northern Development signs the Final Agreement.

Legislation giving effect to the Final Agreement is brought before Parliament.

The legislation is passed by a majority in Parliament.

Ratification by all three Parties gives the agreement force and effect, and makes it B.C.'s first modern day treaty.

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Portrait of a Celebration



Nisga'a Tribal Council member Harry Nyce, the Rt. Hon. Jane Stewart and Chief Federal Negotiator Tom Molloy on the way to the initialing ceremony



A Nisga'a Elder pauses in prayer



Elders and guests await the arrival of negotiators



The Rt. Hon. Jane Stewart, Nisga'a Tribal Council President Joseph Gosnell, Sr. and B.C. Premier Glen Clark.

Nisga'a children watch the ceremony



Nisga'a Elder Frank Calder



Nisga'a Tribal Council President
Joseph Gosnell, Sr.

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Four things you should know about Implementation

After the Nisga'a Final Agreement is ratified, it will be implemented. Here are the facts on how implementation will take place.

What does implementation entail?

During the implementation phase, the treaty is brought to life following a plan that all three parties have agreed to. This plan is separate from the Final Agreement. It sets out the steps to be taken to ensure that the treaty works on the ground.

Many things will happen during the implementation phase. For example, the territory identified in the Final Agreement as Nisga'a Lands will be transferred to the Nisga'a Nation. Elections will be held to establish the first Nisga'a Government, which will begin to govern Nisga'a communities. The Government of Canada will take the steps necessary to phase out the application of the *Indian Act* to Nisga'a citizens. Financial transfers to the Nisga'a Government will begin, and the Nisga'a will start to pay back loans granted to finance negotiations. Through an Own Source Revenue Agreement, the Nisga'a government will bear an increasing share of its own costs over a 12-year transition period and beyond. Nisga'a citizens will also begin to pay all taxes that other Canadians pay.

One by one, all of the provisions in the treaty will take effect.

How long will it take to implement the treaty?

The treaty will not be implemented all at once. In fact, the Implementation Plan will be in effect for a term of 10 years starting from the effective date of the treaty.

Most major elements of the treaty will be implemented within a few years of ratification. However, some arrangements, like the taxation and own source revenue agreements will take more than a decade to implement.

Who will ensure that the treaty is being implemented correctly?

Most of the implementation costs will be borne by Canada. The Nisga'a will receive a total of \$40.0 million over five years. An Implementation Committee with representatives from all Parties will meet periodically during implementation to ensure that the process stays on track and runs smoothly.

Before the end of the 10-year Implementation Plan, the committee will review what has happened to date and make any recommendations for future activities.

Who pays for implementation?

The costs of implementation are shared among the Parties. The Government of Canada, will pay for most

of the funding, which will be \$40.4 million over five years. This money is separate from Canada's other financial contributions to the treaty, and will be used solely to pay for costs associated with the implementation activities, such as fisheries studies, ratification and enrollment activities, physical infrastructure upgrades and capacity-building.

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On the Web

Government of Canada: includes a summary of the Final Agreement, fact sheets, background documents on the history of Nisga'a negotiations, speeches and other materials.

Government of British Columbia: gives you online access to the text of the Final Agreement, information sheets and other materials.

Nisga'a Tribal Council: includes news releases, a range of material about the Nisga'a Nation and information on eligibility and enrolment in the treaty.

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Q & A: What does the Nisga'a Final Agreement mean for other treaty negotiations?

Upon ratification, the Final Agreement will be the first treaty settlement between the federal government, a province and a First Nation since the 1974 James Bay Treaty. As a result, it is a unique document that provides insights for other treaty negotiations.

The agreement will not be a template for all future treaties. In every negotiation, there are singular issues that demand singular solutions. For example, urban treaties will differ significantly from the Nisga'a agreement because of the shortage of Crown land in urban areas.

However, negotiators will look to the Nisga'a Final Agreement as a touchstone for solutions to some province-wide issues, such as achieving certainty and workable governance arrangements.

Unlike past treaties, the Nisga'a Final Agreement provides certainty over the ownership and use of lands and resources without extinguishing Aboriginal rights. The agreement provides that all Nisga'a rights recognized under s.35 of the *Constitution Act, 1982* are contained in, and defined by, the treaty. This solution works for both the Nisga'a and resource users. It is worth consideration in other negotiations.

The same applies to the governance arrangements. The Final Agreement harmonizes federal, provincial and Nisga'a laws, ensuring both the integrity of Nisga'a culture and the importance of federal laws such as the *Canadian Charter of Rights and Freedoms* and the *Criminal Code*.

The Nisga'a agreement represents years of analysis and negotiations. It shows that it is possible to arrive at common positions on different issues within the Canadian constitutional framework. As such, it will likely receive considerable attention at other negotiations in B.C.

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Treaty News is published by the Federal Treaty Negotiation Office. It is distributed to organizations and individuals interested in the progress of treaty negotiations in British Columbia. Readers are invited to reprint articles from Treaty News in other publications.

The Federal Treaty Negotiation Office of the Department of Indian Affairs and Northern Development represents all federal departments, agencies and the people of Canada in treaty negotiations with First Nations in British Columbia.

Treaty News

A quarterly publications of the Federal Treaty Negotiation Office

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