

The First Nations of the Maa-nulth Treaty Society



Submission

House of Commons

Standing Committee on Indigenous and Northern Affairs

Specific Claims and Comprehensive Land Claims Agreements

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Introduction

The Maa-nulth First Nations Treaty Society represents the five First Nation signatories to the Maa-nulth Treaty, Specifically, we are the Huu-ay-aht First Nations, the Ka:’yu:’k’t’h’/Che:k’tles7et’h’ First Nations, the Toquaht Nation, the Uchucklesaht Tribe and Yuułu?ił?ath First Nation. The Maa-nulth Treaty came into effect in April of 2011 and is currently the only modern treaty concluded with multiple First Nations.

The fact that it took our five communities a decade and a half to negotiate and ratify this instrument speaks to the complexity and the difficulty of treaty-making and the process for reconciliation within Canada. Treaty-making is complex, expensive and politically difficult.

As a result, any submission and short presentation intended to provide an analysis of Canada’s policy on modern day treaty-making can only scratch the surface. Because of time and resource constraints, we will limit this submission to a few observations and recommendations.

However, speaking as parties who have completed a modern treaty, we have paid the price for making a treaty and have learned a great many lessons. We have a deep understanding of what is required to negotiate a treaty, how a First Nation transitions out of the Indian Act into treaty structures and self-government, and how to function as governments and economic entities in a post-treaty world.

Each of the Maa-nulth First Nations can now point to governments founded on community-approved constitutions, comprehensive self-made legislation and a respect for the rule of law. Each of our communities can now point to significant economic success stories. Each of our communities can now identify instances of cultural rejuvenation and reconciliation with our neighbours.

These general successes cannot, and should not, be seen as a completed undertaking. They are merely the first step in a long and complicated journey to reconciliation. What we will suggest in this submission are simply a few observations and recommendations on how to make that journey easier for everyone.

Modern Treaties and Reconciliation

From our experience, modern treaties should be seen, not as an end in themselves, but as a constructive tool in successfully terminating the historic colonial relationship that has characterized our experience with non-aboriginal governments and societies. A modern treaty is a tool that enables us to define our own institutions of government and to empower those governments to better meet the needs of our citizens.

While these are tools that make immediate changes in the structure of our relationship, the actual success in the use of this tool can only be measured over time. True reconciliation can only happen over time. Neither reconciliation nor treaties should be viewed as a single event at a

fixed point in time. Reconciliation should be viewed as an on-going process and treaties as a living expression of a relationship.

Moreover, the ability to confidentially conclude that success has occurred and that reconciliation is taking place requires an ability to be informed by facts and data. In turn, future steps to enhance reconciliation must be shaped by the factual and statistical data accumulated over time in the post-treaty experiences of First Nations. Laws and policies in the future will be better served by a sound statistical base.

Modern Treaties and Statistical Data

Based on our experience in negotiations over many years, it is our view that the treaty process as currently administered is seriously deficient in its ability to contemplate a post-treaty relationship between our governments. During our negotiations, the Maa-nulth chiefs introduced the proposition that treaties were living documents and, as such, had to be revisited on a regular basis in order to determine the health of the relationship.

While we were successful in persuading Canada and British Columbia to incorporate the concept of a periodic review of the Treaty every fifteen years, we were not able to find wording to give precise guidance to how this review would take place. It is our understanding that the governments at that time were afraid that we were simply looking for an opportunity to renegotiate the Treaty at a later date.

In fact, this was very much not the case. While we had no desire to renegotiate our Treaty, we felt that it was imperative that we build in a degree of flexibility that allowed future generations to make economic, legal and policy decisions that ensured that the objectives of the Treaty were met. We felt, and still feel, that it is critical to know which aspects of our Treaty are working and which are not.

While the provisions in our Treaty are not specific in this regard, it is our view that the periodic review process should be informed to the greatest degree possible by a statistical baseline of information.

We therefore strongly urge Canada and British Columbia to:

- adopt policies to foster data collection in post-treaty First Nations,
- use various generally accepted criteria of social, economic and policy indicators in this process,
- work directly with First Nations in this data collection, and
- invest the necessary resources in this data collection.

It is our view that this information will allow for better governance and will benefit both the Maa-nulth governments and the federal and provincial governments. More importantly, we believe that this information can be of immense assistance in bringing about true reconciliation.

Modern Treaties and Loan Funding

In addition to acknowledging that modern treaties are living instruments by which reconciliation is achieved over time, the Maa-nulth First Nations strongly believe that the process itself must be fair and equitable. To the extent that the current federal policy requires First Nations to borrow money in order to participate in treaty negotiations, we believe that the process is inherently inequitable. First Nations should not be required to pay to solve a problem they did not create, a problem that has had profound adverse effects upon our communities for generations.

The Maa-nulth communities agreed to this policy approach and to borrow a great deal of money because we felt that we had no alternative if we were to bring about an end to the historic colonial relationship.

However, the existence of these loans has proved to be both a political and an economic hardship. If Canada truly wants reconciliation with First Nations, we urge it to:

- eliminate the required borrowing provisions in the comprehensive claims policy,
- forgive the loans that are currently outstanding for communities that have been engaged in treaty negotiations, and
- to the extent that any community has repaid any portion of their loans, those communities should be reimbursed for those funds.

We thank you for the opportunity to express our views on these matters. It should be noted, however, that there are a great many more aspects to the claims policy about which we have views and recommendations. Given the magnitude of the task that you have taken on, and the limited time that we had to prepare and present our perspective, we would like to recommend that the Standing Committee allow the Maa-nulth communities further time to prepare a more comprehensive analysis of your policy. If this were to be the case, we would be most willing to appear before you a second time and to speak to our recommendations.

Once again, thank you for this opportunity.