

Problems plaguing treaty talks not of first nations' making

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[Online link](#)

Re: Harcourt fingers the flaw in treaty process: 'People need to get real', Vaughn Palmer, April 5 ([online link](#))

When Mike Harcourt was premier in the 1990s, he was part of the New Democratic Party government that arbitrarily set a policy ceiling on the land quantum for treaty negotiations -- specifically, the five-per-cent land-selection model.

Years later, when questioned on how his government arrived at this number, he admitted to first nations leaders that this was a mistake on his part and that the figure was largely an arbitrary one chosen as he was entering a meeting with municipal leaders.

Despite this admission, the B.C. treaty negotiations process continues to bend and falter under the weight of that grossly unfair expectation, where first nations are expected to accept unsatisfactory agreements based on the five-per-cent template, which is a key component of the unimaginative and restrictive mandates of government negotiators.

The unfair nature of government mandates was highlighted in May 2007 by the UN Committee on the Elimination of Racial Discrimination, which found in Canada that aboriginal claims to "land rights are being settled primarily through litigation, at a disproportionate cost for the aboriginal communities concerned due to the strongly adversarial positions taken by the federal and provincial governments," (emphasis added.) Furthermore, the committee recommended Canada "ensure that the new approaches taken to settle aboriginal land claims do not unduly restrict the progressive development of aboriginal rights. Wherever possible, the committee urges the state party to engage, in good faith, in negotiations based on recognition and reconciliation."

Since Harcourt's mea culpa was offered, he's been reluctant to own up to his role in creating the problems that continue to plague treaty negotiations. Instead, he deflects blame onto first nations who, by the way, have been forced to take out treaty loans in excess of \$315 million only to face intransigent government negotiators who come to the table without the mandates necessary to break impasses over land and other key issues.

Rather than bringing flexibility to the process to address unique circumstances consistent with emerging case law and international human rights standards, federal and provincial negotiators continue to come to the table with their cookie-cutter and homogenous approach to negotiations. All of which contributes to the long delays we have seen in the ability to achieve fair and just settlements in BC.

As a means to address this impasse at many negotiations tables, a number of first nations have come together to discuss a common approach on some key issues; these first nations are bringing a creative approach to contentious issues in a genuine attempt to break the impasse.

Despite the direction provided by international bodies and the courts, there are still people in B.C. and Canada who would rather not walk down a path towards reconciliation if the terms proposed would make them even the slightest bit uncomfortable.

Far too often the type of discourse reflected in Vaughn Palmer's column of April 5 creeps into the picture. Whether through media or business reports, the message is consistently one of maintaining the Crown's free hand over land and resources with little regard for the recognition of the title and rights of first nations. Such regressive attitudes are a dreadful throwback to the worst aspects of this province's colonial past.

To rightfully address the challenges facing the treaty negotiation process, reconciliation measures are in order. True negotiations can occur only when both sides of the table come without preconceived and predetermined outcomes. First nations remain at the negotiation table waiting patiently for government to deliver on this point.

The other unfortunate, costly and time-consuming option to resolve this impasse will be for first nations to continue looking to the courts and international bodies as an alternative to negotiations and a means of seeking relief from fundamentally anachronistic, colonialist and offensive Crown policies.

If we can't obtain fair, just, honourable and timely agreements with the Crown where else can we turn?

That is why we reject Harcourt's message to British Columbians, that the land question in B.C. can only be answered if first nations get "real" and drop "the myths and BS."

In reality, the land question in B.C. will only be settled when governments take Harcourt's advice.

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