

Questions and Answers on the Multilateral Engagement Process

What was the multilateral engagement process?

The multilateral engagement process was established in May 2015 by the Principals to the made-in-British Columbia treaty negotiations process (Minister of Indigenous and Northern Affairs, Canada; Minister of Aboriginal Relations and Reconciliation, British Columbia; and the First Nations Summit Task Group).

This engagement process, which took place from June 2015 to March 2016, involved a tripartite working group of representatives from Canada, British Columbia, and the First Nations Summit who together developed proposals for improving and expediting treaty negotiations in British Columbia. Representatives from the British Columbia Treaty Commission also participated in an advisory capacity.

The working group concluded its report (“Multilateral Engagement Process to Improve and Expedite Treaty Negotiations in British Columbia”) in March 2016, which included proposals and action items. On May 24, 2016, the Principals endorsed the report.

What was the goal of the engagement process?

The goal of the engagement process was to jointly develop proposals and action items that would help improve and expedite treaty negotiations by increasing flexibility and by providing new tools and approaches to address process-related impediments in negotiations.

What subject areas were looked at?

There were five priority areas that were examined:

- process efficiencies;
- negotiation support funding;
- shared territory and overlap issues;
- certainty; and
- the role of the British Columbia Treaty Commission.

What was the degree of First Nation involvement?

As part of the process, focus group sessions were held with some First Nation Chief Negotiators. Their input helped inform the development of proposals and action items. The First Nations Summit also provided ongoing updates to the First Nations Summit Chiefs in Assembly.

How is this engagement process different from the other attempts to improve and expedite the British Columbia treaty process?

We recognize that the status quo is not acceptable and that issues and challenges that are impediments to concluding treaties need to be addressed. The Principals started this collaborative process because we know we can't carry on with the current pace of negotiations. We need to find a path forward that provides for long-term reconciliation between the Crown and First Nations in treaty negotiations in an accelerated timeframe.

The current review, and subsequent proposals developed for consideration, took into account and built on previous reports such as the April 2015 Douglas Eyford Report (A New Direction: Advancing Aboriginal and Treaty Rights), the 2011 Lornie Report, the 2008 Common Table Report and annual reports of the British Columbia Treaty Commission.

What impact will these proposals have on negotiating tables?

The proposals respond to calls to improve and expedite treaty negotiations in British Columbia. Many of the proposals are meant to increase flexibility and expand the tools available to negotiating tables to reach agreements.

How does this report address First Nation negotiation debt and loans?

All of the parties are concerned about the magnitude of First Nations' treaty negotiations loans (totalling more than \$500 million). To address this concern, the Principals will explore alternative funding models.

Further, they will also develop guidelines to assist First Nations' assessment and management of negotiating costs.

What is being done to expedite negotiations?

The Principals have endorsed a number of proposals to explore more efficient ways of negotiating treaties, allowing for a more flexible range of negotiated agreements and a “stepping stone” approach to treaty-making. The Principals have also endorsed proposals to enhance tools that could better address complex shared territory and overlapping territory issues.

More specifically, proposals involve the exploration of the following concepts:

- A “core” treaty approach, which would include negotiating a constitutionally protected treaty focused on areas of importance while leaving administrative details regarding the exercise of the treaty rights and implementation of jurisdiction to time-limited, renewable or evergreen non-constitutionally-protected side agreements.
- A “stepping stone” approach to treaty making, which would provide a flexible range of options to negotiating tables. The “stepping stone” approach could include arriving at a comprehensive treaty by using a combination of incremental agreements, sector-specific agreements, and the core treaty model. Alternatively, tables may decide they do not want a comprehensive treaty, and may choose to implement these new options on a stand-alone basis.
- A “condensed” agreement-in-principle, which focuses more on core elements of a treaty, and less on detailed process language for each Final Agreement chapter. Condensed agreements-in-principle would support the parties moving to Final Agreement negotiations faster.
- Agreeing on a tripartite multi-year strategy to conclude Final Agreement negotiations.
- Discussions with negotiating tables to determine whether there is enough common ground on main components of a treaty, such as land and capital transfer, to continue comprehensive treaty negotiations, or whether another type of agreement would better suit the parties.

It should be noted that other issues, such as internal mandate issues, can cause delays in negotiations, but these issues were not part of the Terms of Reference for the multilateral engagement process.

What are the next steps?

The Principals will need time to explore the proposals and to engage with negotiating tables on the proposed options and innovations. They will report out on a timely basis on progress in advancing the endorsed proposals.

Are First Nations at negotiation tables interested in these options?

A focus group of some First Nation Chief Negotiators have provided feedback on the proposals to officials working on the multilateral engagement process. Some of those Chief Negotiators have indicated they may be interested in continuing to explore options to provide flexibility at their negotiation tables.

First Nation Chief Negotiators have been asked to express which, if any, of the proposals they are interested in, and as process efficiency concepts are developed, engagement will continue with self-identified interested negotiation tables.

How fast could treaties be negotiated if all these proposals or action items are put into practice?

Because the proposals enable a wider range of agreements to be negotiated by British Columbia, Canada, and First Nations, the length of time that it will take to reach agreement will depend on the type of agreement the parties choose to negotiate. The overall goal of the multilateral engagement process has not been to ensure agreements are negotiated in a set period of time, but that agreements are negotiated in an efficient way that addresses the parties' interests and concerns, while avoiding unnecessary delays.

What is being done to address shared territory or overlapping territory issues?

The Principals are exploring approaches to ensure the recognition and protection of Aboriginal rights of First Nations that may have shared or overlapping territories with First Nations negotiating a treaty.

Approaches may include shared decision-making agreements between British Columbia, Canada, the negotiating First Nations, and the First Nation or Nations potentially affected by the treaty.

The Principals are also exploring options for a dedicated source of funds to support First Nations' efforts to resolve shared territory and overlap issues.

The Principals have also asked the British Columbia Treaty Commission to assess the efforts of First Nations to address issues among themselves, as well as assessing Canada and British Columbia's support of those First Nations' efforts.

A number of these proposals or action items involve the British Columbia Treaty Commission. How were they part of the multilateral engagement process?

The British Columbia Treaty Commission (BCTC), an independent body responsible for facilitating treaty negotiations, participated in the multilateral engagement process in an advisory capacity.