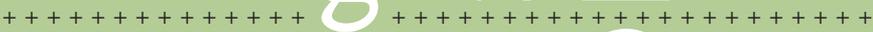


Rights + Responsibilities

Discussion Guide
about Treaty Negotiations
for First Nation Members



A Guide

This discussion guide provides information to First Nation members on ways they can be actively involved in developing their treaty.

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As a First Nation member, being involved in treaty making is vitally important to a successful treaty.

We hope to encourage First Nation members to:

- > Be aware of and understand their rights and responsibilities in treaty negotiations;
- > Be more actively involved in the treaty negotiations taking place; and
- > Be more involved with the treaty team in charting the path for a treaty.

Members

may get involved before Stage 1 of the six-stage treaty process:

- > Members have the right to be involved in the decision as to whether the First Nation enters the treaty process and to approve the First Nation’s governing body as the appropriate entity to lead the negotiations;
- > Members must be given notice and informed of the specific treaty mandate being sought by their First Nation;
- > All known constituents must be given an opportunity to participate in decisions; and
- > With this approval from members, a band chief and council, tribal council or the head chief of a traditional government can enter the treaty process.



Constituents are all the individual members of the First Nation, living on and off reserve, with the legal authority to make these decisions (i.e., adult members).



The three parties involved in negotiations are Canada, British Columbia and the First Nation.

Stage 1 > Mandate Requirements for filing a Statement of Intent

1. *The name of the First Nation and its territory*
2. *How the governing body is organized.*
3. *How the governing body received its instructions (mandate) from its constituents to submit a Statement of Intent to negotiate a treaty and to lead the negotiations.*

How members can be involved in Stage 1 activities:

- > Attend meetings to confirm your First Nation's territory;
- > Attend meetings to decide how your governing body will be organized.
- > Make sure your attendance and opinions are recorded for future reference.
- > You should have ideas about what you would like to see covered in a treaty and where you would like your First Nation to be in 5, 10, 20 or 100 years.

Stage 2 > Requirements for Readiness Submission

1. Each party appoints a chief negotiator.

The chief negotiator should know and understand the community and its members. The chief negotiator offers advice or suggestions but the membership decides what they want their treaty to achieve.

2. Each party must confirm in writing that it has the authority to negotiate a treaty.

3. Each party must have the people and the money to carry out and conclude Framework Agreement negotiations.

- > The BC Treaty Commission will distribute available funds to the First Nation for Stage 3 where such funds are requested — 80% is a loan and 20% is a contribution.

How members can be involved in Stage 2 activities:

- > The First Nations must decide and describe how the constituents will be able to express their views on:
 - a. The ongoing negotiations and drawing down the necessary funding to support negotiations
 - b. Framework Agreement
 - c. Agreement in Principle
 - d. Treaty.

Individual First Nations may have different approval and ratification procedures that reflect their distinct political organization. However, the First Nation treaty group must attempt to obtain approval from all known constituents.

- > First Nations must identify, and begin to address any overlapping/shared territorial issues with neighbouring First Nations.

Stage 3 > Framework Agreement Negotiations

Negotiations begin!

First Nations can now access money on an annual basis to continue negotiations.

The first thing the three parties do is negotiate what will be negotiated. This is often referred to as the table of contents of a treaty. Like a book, it tells you what will be in the treaty, but not the specific details.

Examples of the items you will find in a Framework Agreement are Lands, Natural Resources, Resource Management, Culture and Heritage, Taxation, Governance, Eligibility and Enrolment, Dispute Resolution, and Implementation.

Stage 4 > Agreement in Principle (AiP)

The parties examine in detail the elements outlined in their Framework Agreement. Detailed negotiations begin. The chief negotiators and their treaty team require qualified staff to do the work of negotiating a treaty. How the staff do their work is a result of the information and instructions they receive from the First Nation's constituents. It is important that the members are involved in a meaningful way.

Some groups have found the following methods helpful in getting members involved:

- > Host meetings to discuss the negotiations taking place at the treaty table;
- > Host regular meetings in urban areas where members live;
- > Host workshops to inform and educate members on the issues;
- > Determine areas of agreement and develop recommendations for improvements;
- > Host annual general meetings so that all constituents can attend to get updates and ask questions — this is one of the best ways to obtain yearly mandates;
- > Communication is key — not everyone is able to attend meetings in their home communities so newsletters, websites, and other communication tools are important to keep members informed and to let them know how they can participate;
- > Community treaty councils or committees are a part of many First Nation groups. Others have different forums. These groups make decisions about all or certain topics. Youth and Elders sometimes have groups of their own;
- > Make sure all views are heard and recorded and that all questions are, or will be, answered; and

- > Recognize and acknowledge different viewpoints and perspectives.

This is what members should expect from their treaty group:

- > Regular updates — members have the right to be fully informed of everything that is happening in negotiations;
- > Regular opportunities to provide input to the negotiating team.
- > First Nation members have a responsibility to inform themselves and be a part of the decision-making process that will result in a treaty.

The goal is to reach agreement on each of the topics that will form the basis of the treaty. For example, the chapter on Forests will set out the structures and authorities through which the three parties will manage the forests. A range of rights and obligations for Canada, British Columbia and the First Nation will be defined.

Once the agreement in principle is completed, it must be approved in accordance with the First Nation's approval process. So, it is important that members understand the agreement.

The BC Treaty Commission does not make the rules for First Nation voting. First Nation members must decide for themselves on their method of voting, for example the number of votes needed for approval. These ratification procedures are also negotiated with Canada and BC so that there is an agreed basis for continuing with or discontinuing negotiations.

Stage 5 > Final Agreement

If the First Nation constituents approve the agreement in principle the treaty table then moves into Stage 5. This is where the negotiators work out the detailed technical and legal issues.

At the conclusion of Stage 5 the constituents must vote on whether to accept the Final Agreement. Again, First Nations must determine their method of voting and the other parties to the negotiations have to agree. The difference between the vote at the end of Stage 4 and vote at the end of Stage 5 is that if the Final Agreement is approved by all three parties it becomes a legally binding treaty.

Stage 6 > Implementation

The plans to implement the treaty are put into effect.

The *Indian Act* is phased out as agreed to in the treaty. In other words, over time the *Indian Act* will cease to exist for the First Nation that has signed a treaty. In its place will be the self-governing arrangements as set out in the treaty.

Review

Q. Why should I be involved? We have a chief negotiator and staff to negotiate the treaty.

A. The chief negotiator and staff cannot negotiate a successful treaty without membership involvement. Members are the ones who are experts on their territories. Members can bring their valuable experience and traditional knowledge to the table. Members know about special resource areas, spiritual places and everything else that the negotiating team needs to know. Also, it is the members who can set the priorities in health and housing, education, family services, economic development, language, culture, resources, preservation or development, protection of sacred and special places, land identification. A combination of knowledge coming from the membership will make the treaty a success.

Q. At what point is each individual of a First Nation expected to make decisions about the treaty?

A. Members of a First Nation have the right and responsibility to express their views at every stage of the treaty process.

Q. Once a treaty is ratified, can we renegotiate a better treaty if this one does not work for us?

A. No. Once the parties approve the treaty it is legally binding and cannot be renegotiated at a future date unless all three parties agree or a court determines that aspects of a treaty seriously impact another First Nation's aboriginal rights. However, in addition to the treaty, there are a number of side agreements. These generally cover such things as fiscal financing and fisheries management. Provision is made to renegotiate these matters periodically.

Q. Can a First Nation request money before entering the treaty process?

A. No, the First Nation can request loan/contribution funding only when it has been determined that the First Nation group has a mandate from their constituents to enter negotiations.

Q. What happens to the money borrowed if no treaty is reached?

A. The loan may be due and payable.

Q. Can the treaty team borrow money without informing members?

A. No. If the majority of constituents approve joining the treaty process individual citizens of that First Nation have the right to know what money is being borrowed on their behalf. The treaty team, if requested by the Treaty Commission, must be able to certify that it has an annual mandate from members to draw down funds.

Q. Does BCTC have an outline of the mandate process for each Nation involved in negotiating?

A. No. There is no one correct way to confirm the annual mandate. The Treaty Commission does not tell the First Nation what steps to take but does expect community members to be aware of the current range of the total debt and roughly how much money will be required to carry out the work plan for the next year.

Q. What financial statements are required by the Treaty Commission?

A. Annual audits are required.

Q. Can I phone the Treaty Commission to get a copy of an audit or request other information?

A. No. Citizens should ask their governing bodies or treaty teams for this information.

Q. Can I get general information about treaty groups and the BC Treaty Commission?

A. Yes, you can go to our website **www.bctreaty.net** for general information on all groups in the treaty process.

Q. Will aboriginal rights and title change once treaties are settled?

A. Yes, these rights will be fully defined. Without a treaty these rights are not defined.

