

**Cross Cultural Neighbours:
Exploring Settler Responses to the Tsawwassen Urban Treaty**

by

Catherine Deborah Rhodes
B.A., University of Victoria, 2001

A Thesis Submitted in Partial Fulfillment of the
Requirements for the Degree of

MASTER OF DISPUTE RESOLUTION

In the School of Public Administration

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Supervisory Committee

Dr. Karena Shaw, Co-Supervisor
(School of Environmental Studies)

Professor Maureen Maloney, Co-Supervisor
(Law/Institute of Dispute Resolution)

Dr. Leslie Brown, Departmental Member
(School of Social Work)

Supervisory Committee

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ABSTRACT

This thesis examines conflict between Tsawwassen First Nation, the Host community and Delta Council representing the Settler community. The methodology is textual research and analysis of the historic and current relationship and the impact on the conflict of Delta filing a lawsuit to prevent the first Urban Treaty in British Columbia. It is a structural analysis of probable root causes of the conflict including political, economic and social linguistic barriers to understanding. The work begins with a political and policy analysis of First Nations challenges including the competing interests, fears and the public record of the Settler community. Differing worldviews, assumptions, language, core beliefs and values contribute to the walls which prevent Settlers from seeing the Host community clearly. Reconciliation or transformation of the relationship is the goal; achievable through recognizing and honouring difference. Cross Cultural Competence between the two communities is preferred to the limitations of Interest Based Negotiations.

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CROSS CULTURAL NEIGHBOURS: EXPLORING SETTLER RESPONSES to the TSAWWASSEN URBAN TREATY

CHAPTER 1 Introduction to Thesis and Methodology

The one who throws the stone always forgets
The one who is hit remembers forever
---Angolan proverb

INTRODUCTION

In response to the announcement that the Tsawwassen First Nation had reached an historic first urban treaty Agreement in Principle (AIP) in its Treaty negotiations with the Federal government and the Province of British Columbia, the dominant neighbouring community, the Corporation of Delta, filed a lawsuit seeking to prevent the Tsawwassen First Nation from concluding their treaty. This response to the Tsawwassen First Nation landmark agreement was an escalation of the already poor relationship between the two neighbouring culturally distinct communities and appeared to be counterproductive to any attempts at reconciling relations between them.

This thesis will examine the history and context of the relationship between the two communities in order to develop and suggest a more constructive approach to its neighbours by the municipality of Delta. At the heart of most conflicts are at least two parties who may appear to be far apart on the issues. This is often illustrated by the polarized positions each party takes to the other. The heart of Interest Based Conflict Resolution¹ is the idea that if people or groups move away from their positions and closely examine their interests within the context of the conflict, each will discover that

¹ Roger Fisher and William Ury, *Getting to Yes: Negotiating Agreement without Giving In*, 2nd ed. (New York: Penguin Books, 1981).

there are overlapping interests which can provide a unique opportunity to work through their differences to a positive outcome for each party to the conflict. This is sometimes characterized as a “win-win” situation.

This thesis will analyze the ongoing conflict between Tsawwassen First Nation and Delta in the context of an interest based negotiation and then will explain why the Cross cultural aspects of the current conflict require a deeper analysis and a broader solution. The thesis will explore the context of the problem and suggest how Delta could benefit if they were to place increased focus on improving the relationship. Differences between two such disparate communities may never disappear, however my conclusion will demonstrate that improving Cross cultural understanding between the two communities could substantially reduce the confrontational aspects of these differences for the future and enhance the possibilities for cooperation moving forward.

This thesis can be understood as a letter or submission to the local council in Delta to suggest the need for some form of dispute resolution between the two culturally distinct communities with an ultimate goal of Reconciliation of the existing relationship between them. My efforts to re-contextualize the problem will be directed towards Delta for two reasons. First, as I will argue below, a shift in their approach, and the possible cultural assumptions informing that approach, is a vital precondition to the relationship being improved. By reframing its response to Tsawwassen First Nation, Delta would open the possibility of developing a constructive relationship with them. Second, as a middle aged Settler myself, I am motivated by observing the conflict from the perspective of a resident who lives in the local Settler community of South Delta. I feel I am both well positioned and have a responsibility to engage my own community. I do not pretend that I am an expert in Aboriginal worldviews. I have no intention to speak for nor interest in appropriating a First Nation’s standpoint. I have the perspective of a concerned citizen, observer and student. My personal interest is to establish Reconciliation with the First

Nation in my particular community. My area of academic interest and the goal of this thesis is cross cultural dispute resolution.

I had the good fortune to go back to university as a mature student, and after completing my undergraduate degree in Political Science, I was thrilled to be accepted into the Masters of Dispute Resolution program at the University of Victoria. From my perspective the most critical political issue of our time in British Columbia is Aboriginal politics. The history of this province and the way we in the dominant society have dealt with Aboriginal issues over the years are not things of which mainstream British Columbians can be proud. British Columbia has historically denied the Aboriginal rights of First Nations people in this province since the days of Trutch;² came into Confederation with false assurances of the relationship with First Nations in this province,³ and has continued to deny the existence of Aboriginal rights or even their existence as peoples until very recently as a direct result of several Supreme Court rulings.⁴

I find myself in the uncomfortable position of living in a community referred to as Tsawwassen when the actual Host community⁵ the Tsawwassen First Nation is right on my doorstep. I often wonder how the residents of the Host community, Tsawwassen First Nation feel when Settler people say they live in Tsawwassen. I can only imagine the sense of loss and resentment I would feel if I were in their position.

² Olive Dickason, *Canada's First Nations : A History of Founding Peoples from Earliest Times* (Norman: University of Oklahoma Press, 1992).

³ Paul Tennant, *Aboriginal Peoples and Politics: The Indian Land Question in British Columbia, 1849-1989* (Vancouver, BC: University of British Columbia Press, 1990).

⁴ *Delgamuukw V. British Columbia*, 30 B.C.A.C 1 (1997), *Haida-Taku*, (2004), *Regina V. Sparrow*, 3 CNLR (1990). *R. V. Marshall*, (1999), *R.V Sparrow*.

⁵ Throughout this thesis I will refer to the Tsawwassen First Nation as the Host community in respect of their position as the original inhabitants of the area. The Delta community will be referred to interchangeably as the Settler community in the historical context and as the dominant community in today's setting.

Given the context described above, I would like to see some recognition and compassion demonstrated by the municipality in which I live toward their Host community and neighbours. Currently, the demonstrated approach is one of extreme caution, possibly paranoia and certainly confrontation. By contrast, I believe that Delta council, and by extension the local Settler community, owes itself and its neighbours some introspection and self-examination. The question must be asked: In what way are we a party to any ongoing conflict? What is it in our own worldview, that is, in our core belief system or values that exacerbates or enables this conflict to continue? Each of us should ask ourselves, is there anything I personally can do to help resolve or mitigate these long-standing differences? Resolution of our differences will have to take into consideration a cross cultural perspective because it is only by engaging our different worldviews that we will understand how our core values, held so deeply, are getting in the way of a successful outcome to the current conflict.

METHODOLOGY

The methodology for my inquiry will be primarily textual, and will involve research and analysis into three different contexts for understanding the conflict:

1. The public record of the historic and current relationship between the two communities, including statements recorded by both sides at public meetings, and analysis of published statements in local, national or community news sources over a four-year period.
2. Structural analyses of potential causes of conflict (political, economic and socio-linguistic contexts for existing tensions) and conflict resolution methodology.
3. Broader academic political and policy analyses of the challenges faced by First Nations in Canada.

I have chosen a textual review in the interests of examining the public record, including the rationale provided to the local community for actions taken by council. The current positions of council reveal a reluctance to engage with their neighbours. Prior to any potential consideration of movement from the status quo, council has to find their own motivation and a rationale for change. This thesis could be considered the research preparation for a mediation or intervention between the two groups. My fervent wish would be to convince Delta council that there is good reason to move from their current position to one of Reconciliation with their neighbours.

An examination of the logic and the context of decisions already taken by council and recorded publicly may reveal other possible approaches, which could begin to bridge the cultural divide between the two communities. An examination of alternatives to the status quo may illustrate more effective solutions to outstanding issues. It is not my intention to place blame, but rather to examine the political and historical influences that have pre-determined some of the public discourse and current action or inaction, which each contribute to maintenance of the status quo.

Tsawwassen First Nation is quite capable of speaking for itself. I wish to undertake an analysis of the dominant side of the debate, of which I am a concerned participant. It is the Delta council, which is in the driver's seat for positive change. As the dominant community, in a relationship based on a history of oppression, any indication of movement from the current council could be the necessary catalyst for positive change.

Most studies of contemporary Aboriginal issues such as treaties, poverty, homelessness, justice and education, tend to examine tensions at the federal government level involving its fiduciary responsibility to First Nations and the longstanding conflict over jurisdiction between the federal government and the

provinces.⁶ I prefer to examine issues closer to home. The Tsawwassen/Delta area is an interesting example of two diverse cultural communities living in close proximity to a much larger urban neighbour. If the goal of the Tsawwassen First Nation is to establish autonomy through the treaty process, how does that impact Delta and what is the goal of the Delta community in their relationship with Tsawwassen First Nation? How do these goals overlap? Is there commonality? What influence do the actions of each group have on the behaviour/actions of the other group?

It is important to examine the broader context of conflict to put the current situation in perspective.⁷

Deutsch⁸ says conflict exists whenever incompatible activities⁹ occur. It is often unexamined background or historical issues, political posturing or unquestioned positions taken by the parties to a conflict, which can contribute to conflict. When each

⁶ Alan C. Cairns, *Citizens Plus: Aboriginal Peoples and the Canadian State* (Vancouver & Toronto: UBC Press, 2000), Canada, "The Report of the Royal Commission on Aboriginal Peoples," (Ottawa: Minister of Supply and Services, 1996), Audrey Doerr, "Federalism and Aboriginal Relations," in *The Machinery of Government in Canada* (Toronto: Methuen, 1981), Paul Havemann, ed., *Indigenous Peoples' Rights in Australia, Canada & New Zealand* (Oxford, UK: Oxford University Press, 1999), J.R. Miller, *Skyscrapers Hide the Heavens: A History of Indian-White Relations in Canada*, 3 ed. (Toronto: University of Toronto Press, 2000), Robert Page, "The Berger Commission: The Public Inquiry Process and Northern Policy," in *Northern Development: The Canadian Dilemma*, ed. Robert Page (McClelland & Stewart, 1986), Tennant, *Aboriginal Peoples and Politics: The Indian Land Question in British Columbia, 1849-1989*.

⁷ Justice Bertha Wilson's contribution and importance of legal contextualism to the Supreme Court of Canada is discussed in Natalie Oman, "Paths to Intercultural Understanding: Feasting, Shared Horizons and Unforced Consensus," in *Intercultural Dispute Resolution in Aboriginal Contexts*, ed. Catherine Bell & David Kahane (Vancouver, BC: UBC Press, 2004).; Morton Deutsch and Peter T. Coleman, eds., *The Handbook of Conflict Resolution: Theory and Practice* (San Francisco: Jossey-Bass, 2000), Seymour Martin, *Consensus and Conflict: Essays in Political Sociology* (London: Transaction Publishers, 1990), B. Mayer, *The Dynamics of Conflict Resolution: Practitioner's Guide* (San Francisco: Jossey-Bass Publishers, 2000), Barbara F Okun, Jane Fried, and Marcia L Okun, *Understanding Diversity: A Learning-as-Practice Primer* (Boston, London, Toronto.: Brooks/Cole Publishing Company, 1999), Andrew J Pirie, *Alternative Dispute Resolution: Skills, Science, and the Law* (Toronto: Irwin Law, 2000), Stella Ting-Twoomey and John G Oetzel, *Managing Intercultural Conflict Effectively* (London: Sage Publications, 2001).

⁸ Morton Deutsch, *The Resolution of Conflict: Constructive and Destructive Processes* (New Haven, CT: Yale University Press, 1973).

⁹ I take activities to include verbal, written or opposing expressions or ideas of any kind as defined by whichever group takes issue or offense.

party believes they have *the* moral position and believes the “other party” is the one at fault, positions can become entrenched and conflict, particularly with cross cultural issues can become intractable over time. This does not sound like a positive community atmosphere where diverse peoples can share a peaceful co-existence in an atmosphere of mutual respect.

Deutsch also explains that conflict is not necessarily negative: It prevents stagnation, it stimulates interest and curiosity, it is the medium through which problems can be aired and solutions arrived at, it is the root of personal and social change.¹⁰

Communication begins at the local level, between human beings. Human beings live in the real world, in relationships and communities. It is important to resolve our differences at the local level and use our positive experience to influence the political level from the ground up. No Canadian community is uni-dimensional and neither are most First Nation communities in Canada today. If there is no social consensus within either community it is unrealistic to expect that a social consensus will exist between two such culturally diverse communities. The two communities view the treaty very differently, each with competing interests and competition for scarce resources, many of those interests exacerbated by cultural assumptions and a lack of common language to ease into the new treaty reality. As Tully explains, both levels of government and by extension many citizens from the dominant society believe that Aboriginal peoples are “minorities already in a relationship of subordination” entering into treaty negotiations with representatives of the Crown. First Nations see themselves as ‘First Nations’

¹⁰ Morton Deutsch, *The Resolution of Conflict: Constructive and Destructive Processes* (New Haven, CT: Yale University Press, 1973).

entering into treaty relations with the Crown in British Columbia and Canada on an equal footing – on a ‘nation-to-nation’ basis.¹¹

If our goal is to move beyond the colonial status quo, our communities need to learn to live side by side as good neighbours.¹² Once we examine the broader context, it might cause us to ask different questions of each other and ourselves. It is always important to try to understand the perspective of the other party to resolve any conflict, however it is even more critical in Cross cultural settings.

It is not sufficient to examine the conflict as though in both communities everyone understands the rules, the language and the dispute resolution process, as may often be the case in a management-union relationship within a company setting. In our setting, each community has their own rules, their own culture and language and their own method of dispute resolution and the mainstream community may have little understanding of the depth of those differences. Tsawwassen First Nation has lived those differences since contact with Europeans gradually imposed a Western point of view and radical lifestyle changes. Any effort at Reconciliation will of necessity have to

¹¹ James Tully, "Reconsidering the BC Treaty Process" (paper presented at the Speaking Truth to Power: A Treaty Forum, Victoria, 2000).

¹² Catherine Bell and David Kahane, eds., *Intercultural Dispute Resolution in Aboriginal Contexts* (Vancouver, BC: UBC Press, 2004), David Bohm, "The Power of Impossible Thinking," in *On Dialogue*, ed. Lee Nichol (London; New York: Routledge, 1996), Pat Caplan, ed., *Understanding Disputes: The Politics of Argument* (Providence, RI: Berg Publishers, 1995), Daniel Chirot, *How Societies Change* (London: Pine Forge Press, 1994), G. Chornenki, "Exchanging 'Power over' for 'Power with'," in *Rethinking Disputes: The Mediation Alternative*, ed. Julie MacFarlane (Toronto: Emond Montgomery, 1997), Malcolm Gladwell, *The Tipping Point: How Little Things Can Make a Big Difference* (Boston: Little, Brown, 2000), Geert Hofstede, *Culture's Consequences: Comparing Values, Behaviors, Institutions and Organizations across Nations* (Newbury Park, California: Sage, 2001), Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights*, ed. David Miller and Alan Ryan, *Oxford Political Theory* (Oxford: Clarendon Press, Oxford, 1995), Robert Paterson, *In the Canoe Together - the Power of a Systems Perspective* (2004 [cited]); available from http://smartpei.typepad.com/robert_patersons_weblog/2004/09/in_the_canoe_to.html, Stella Ting-Twoomey, *Communicating across Cultures* (New York: Guilford, 1999), G. Weaver, ed., *Culture, Communication and Conflict: Readings in Intercultural Relations* (Boston: Pearson, 2000), Whitaker, "Sovereignties Old and New: Canada, Quebec and Aboriginal Peoples," *Studies in Political Economy* 58, no. Spring (1999), Iris Marion Young, *Justice and the Politics of Difference* (Princeton, New Jersey: Princeton University Press, 1990).

acknowledge difference, recognize the oppression of the past and demonstrate a willingness to participate in relationship building through cultural comings together, which has meaning and substance for the Tsawwassen First Nation.

Reconciliation is a “transformation of the relationship”, acceptance is strengthened and a relationship based on justice and reciprocity can be achieved.¹³ Reconciliation is a joint process of releasing the past with its pain, restructuring the present with new reciprocal respect and acceptance, and reopening the future to new risks and spontaneity.¹⁴ Barriers to Reconciliation include resistance to change and an unwillingness or inability to recognize that assimilation is a failed policy. The courts dictate accommodation, not assimilation, and Reconciliation is the viable alternative to the failed policies of our oppressive past. If Delta chooses Reconciliation they will have to recognize and acknowledge the cultural gap before attempting to bridge it. Michelle LeBaron¹⁵ indicates that leadership, creativity, authenticity, empathy and sensitivity to culture are important resources when trying to move beyond fences that maintain the status quo in Cross cultural conflict.

STRUCTURE OF THE THESIS

The thesis is structured overall as a communication to Delta council entreating them to recognize the effect of local history from the Tsawwassen First Nation standpoint and to closely examine some of their current positions in light of the historical perspective and to consider the underlying cultural basis of some assumptions which may have influenced those negative positions and decisions made previously on the

¹³ David W. Augsburger, *Conflict Mediation across Cultures: Pathways and Patterns* (Louisville, Kentucky: Westminster/John Knox, 1992).

¹⁴ Ibid.

¹⁵ Michelle LeBaron, *Bridging Cultural Conflicts: A New Approach for a Changing World* (San Francisco, CA: Jossey-Bass, 2003).

path to the status quo. If Delta can acknowledge that the status quo is not a desirable option, I will attempt to offer some alternative possibilities for Reconciliation with our neighbouring Host community.

Chapter 1: Introduction to Thesis and methodology

The current chapter situates the problem, explains why I chose to examine the local conflict between Delta and Tsawwassen First Nation, outlines the thesis methodology and provides a detailed description of each chapter.

Chapter 2: Land Facing the Sea: The Tsawwassen Perspective

Chapter two outlines the conflict between the two communities and how historical tensions between First Nation communities and each level of government have developed over time in Canada. I will examine the local background within a context of historical aspects of the government to First Nations relationship between the federal government, the province of British Columbia and in particular the Tsawwassen First Nation. This chapter lays out some of the root causes of the conflict and attempts to describe the problem from the First Nations perspective.

For Tsawwassen First Nation their history has always been one of pride and of pre-contact independence, which gave way after contact to oppression and domination by the Settlers who first visited the area, then moved in and eventually through their representatives in the Federal Government, imposed their own set of values, rules and laws through the regressive Indian Act. Not mere bystanders to their own lives, the Tsawwassen First Nation determined to take back what control was available to them in today's political environment. Treaty negotiations were not without criticism from within their own community, from other First Nation communities and leaders in addition to ongoing criticism from many mainstream neighbours. It was their decision to negotiate a final treaty in an effort to re-establish control over their own destiny and at least a degree of their original independence, reinterpreted in a contemporary setting.

Chapter 3: Delta Perspective

Chapter three examines the position of Delta with respect to the Tsawwassen First Nation treaty negotiations. This chapter outlines what the problem is from the perspective of the Delta council, describing their interests, their fears and the public record of what could be perceived as their sometimes-confrontational positions, which appeared to escalate the conflict. This chapter will also examine the sometimes-antagonistic relationship Delta has with the province on many other issues. Is their opposition to Tsawwassen First Nation one symptom of a bigger issue of frustration and lack of power within the provincial purview? Are there similarities between the relationship that Tsawwassen First Nation has had historically with the Federal Government due to the imposition of the Indian Act and Delta's relationship with the Provincial Government? Perhaps the two communities share some frustration of always being dominated by a political entity with the power to call the shots.

Chapter 4: Cross cultural Conflict Resolution, Language and Assumptions

Chapter four examines potential causes of the Cross cultural conflict through a conflict resolution lens. Structural causes of conflict include factors like lack of political participation, lack of equal economic and social opportunities, issues of political, economic and social control over people and resources. This chapter explores various approaches to dispute resolution, considering what each can potentially offer to this project.

The benchmark book written on *Interest-Based Negotiation* is Roger Fisher & William Ury, Getting to Yes.¹⁶ Interests are considered to be the underlying motivations of the actors, that is their goals, concerns, hopes, needs and fears. The theory says that

¹⁶ Fisher and Ury, *Getting to Yes: Negotiating Agreement without Giving In*.

if the “neutral¹⁷” party teases out the interests of each of the parties, common interests will be discovered to overlap and creative new solutions can be found so that each party gets at least a portion of what they need out of the exchange and the new solution is not zero-sum but “win-win”.¹⁸

This chapter will examine what interest based negotiations can offer and how bringing a cross cultural perspective to the table can further enhance the resolution of the conflict in a deeper, more long lasting resolution to include relationship-building for the long term benefit of both communities.

This chapter will also take a look at the problem from a different perspective so that we can examine the conflict from a new standpoint and consider new solutions. I will recommend that we explore beyond interest based negotiations for a more satisfying resolution that takes into account differing cultural influences which, if left unexamined, may hinder Reconciliation between the two communities. Leadership, sensitivity and determination can assist us in recognizing, respecting and transcending many of these differences. Differing worldviews and how language divides us will be examined using Rupert Ross, Returning to the Teachings¹⁹ as a core guide into how we become constrained in our own thinking by virtue of our mother tongue. Additional insights are provided by Ting-Twoomey, in Communicating Across Cultures.²⁰ The Cross cultural aspects of our relationships and our own assumptions about disputes add another dimension to any attempts at Dispute Resolution not addressed by the core texts.

¹⁷ The quotation marks are mine. While the text does not question the neutrality of the mediator, in our cross cultural context, neutrality could be assumed to be questionable based on the cultural background of the mediator who may very well not be perceived to be any kind of neutral by the opposing cultural group.

¹⁸ Fisher and Ury, *Getting to Yes: Negotiating Agreement without Giving In*.

¹⁹ Rupert Ross, *Returning to the Teachings: Exploring Aboriginal Justice* (Toronto: Penguin Books, 1996).

²⁰ Ting-Twoomey, *Communicating across Cultures*.

Catherine Bell & David Kahane examine the cross cultural aspects of dispute resolution in Intercultural Dispute Resolution in Aboriginal Contexts.²¹

This chapter also examines how our Christian Euro-Canadian culture is shaped by ways of thinking which are deeply constrained by our English language, by our pre-conceived concepts of western democratic individualism which so informs our thinking today and the idea that the rule of the majority allows us to impose those ideas on unfortunate “others” who have not benefited from our mature level of being in the world. Our Host neighbours believe they are re-claiming their collective, inherent right to self government which is constitutionally protected because of their prior occupation while the Settler community believes in the supremacy of the individual and that equality and equal treatment under the law trumps all other political rights. Each community has a distinct standpoint, which is at odds with the other and is informed by their own worldview.

Chapter 5: Reconciliation: Re-Balancing Language and Assumptions

My conclusion will examine remaining issues and provide suggestions for further study. Human beings often take certain aspects of culture, knowledge and power for granted. How we experience the world around us is filtered through various cultural lenses. Mayer²² defines culture as the enduring norms, values, customs and behavioural patterns common to a particular group of people.

Any attempt to re-imagine the relationship between Delta and the Tsawwassen people will require a close examination of values and beliefs of the other community. Differences will continue between the two communities. It is the relationship itself, which needs attention. If Reconciliation is to be the goal there must be a re-building of trust. The trust relationship, if it ever existed, is broken. Healthy relationships are built on

²¹ Bell and Kahane, eds., *Intercultural Dispute Resolution in Aboriginal Contexts*.

²² Mayer, *The Dynamics of Conflict Resolution: Practitioner's Guide*.

mutual respect. To rebuild such a neighbourly relationship will take an investment of time and intention. With commitment and work, cultural competence can be a key component of a healthier new relationship.

This thesis will contribute by encouraging the Delta community to look at the problem from a new perspective and to re-examine some of its core assumptions about itself and others. With some combined effort, it is possible to develop a new cross cultural standpoint that celebrates our differences and acknowledges that we are stronger when we work together.

CHAPTER 2 Land Facing The Sea: Tsawwassen Perspective

When Europeans arrived, Aboriginal peoples were already here, living in communities on the land, participating in unique cultures, as they had done for centuries.²³

INTRODUCTION

This chapter of the thesis provides context important to understanding what is at stake for Tsawwassen First Nation in their relationship to Delta. There are aspects of Canadian history, which are often ignored or forgotten by the mainstream community when making assumptions of what is right or wrong between the two culturally disparate communities. This chapter will begin by examining the history of the First Nations/Settler relationship in Canada and in British Columbia, a history of the British Columbia treaty process and will conclude with a particular emphasis on the local relationship between Tsawwassen First Nation and Delta. This chapter will focus on the impacts of that relationship on Tsawwassen First Nation particularly now that the Final Treaty has been negotiated.

THE CENTRAL QUESTION

Historical debates have raged over the “nature” of North American Indians since the early days of discovery. The original conclusions of this debate continue to inform our conscious and subconscious belief systems today.

The debate around whether First Nations have rights, including the right to speak for themselves and determine their own destinies, is an old one. In *Aristotle and the American Indian*, Lewis Hanke describes the original debate between Las Casas and

²³ *Delgamuukw V. British Columbia*, 23799 (1997).

Sepulveda. This debate turned on a simple, central issue: did or did not the Indian occupants of Spain's new territories have a way of life that deserved to be respected? In another later idiom, this becomes a question of whether or not the Indians have a proper social and economic system that European colonists must legally and morally respect. Las Casas, who had lived most of his life in South America, argued that they did have a system and that it should be respected. Sepulveda, who had never been to the New World, argued that they did not have any such system or rights and therefore could only benefit from Christian control--even if it amounted to enslavement. This debate took place in 1550 and its themes have been at the heart of European intellectual life ever since.²⁴

HISTORICAL RELATIONSHIP BETWEEN FIRST NATIONS AND SETTLERS

By 1812, immigrants outnumbered Indigenous people in Upper Canada by a factor of ten to one. The new economy...needed land...from Aboriginal people, who began to be seen as 'impediments to progress' instead of valued partners.²⁵

The First Nations to Settler relationship can be seen as an evolution of three historical phases in Canada. The first phase started at contact and continued to about 1812. In this phase, there was a kind of loose partnership between First Nations and newcomers because the newcomers needed Aboriginal peoples, at first just for basic survival and subsequently for economic success in the fur trade. During this period the British Crown signed the Royal Proclamation of 1763 to protect Crown interest in the land and to ensure the separation of Settlers from First Nations. The Royal Proclamation

²⁴ Hugh Brody, *Maps and Dreams: Indians and the British Columbia Frontier* (Vancouver/Toronto: Douglas & McIntyre, 1981).

²⁵ Dickason, *Canada's First Nations : A History of Founding Peoples from Earliest Times*.

dictated that Aboriginal land could be ceded only to the Crown. It also stated that Aboriginal peoples would be in control in their own lands. Aboriginal lands were to be protected from encroachment by Settlers and peace was to be ensured because land for Settlers and land for First Nations were separate and each group was in control on their own land.

The second phase began when the British defeated the French. History tells us that after the war of 1812, alliances with Indians were no longer critical for survival, economic or otherwise, so allegiances previously formed to fight the French were no longer essential to the new English government in Canada. Sometime after 1812, the priority of the colonial government for resolution to the “Indian problem” was to isolate Indians on a portion of their own lands, or reserves, where it was anticipated by those in power at the time that the “Indians” would fare poorly. They would be surrounded and vastly outnumbered by civilized Settlers, and it was thought, eventually they would die a natural death and any future “Indian problem” would resolve itself. The government signed treaties of cession to maximize the available land base for the expected large influx of European Settlers. Although there is more than a single version of this joint history, it is the written, European version, which prevails even today.

The benchmark for the third phase was passage in 1857 of the Act to Encourage the Gradual Civilization of Indian Tribes, which ensured an explicit policy to assimilate Indians into the dominant society. During this period, Indians were denied the vote, so they had no political power.

At the time of Confederation, First Nations were accorded neither the right to be different nor the right to participate in the new union as equals. Having been excluded from the founding of the country, they were made wards of the federal state under the terms of the Indian Act. This act excused them from certain obligations of citizenship, such as paying taxes, while denying them the right to

*represent themselves, to organize as free people, and to control the lands and resources they depended on for their livelihood.*²⁶

Once the omnibus Indian Act was passed in 1876, the federal government sought to control every aspect of native life in Canada. Cultural practices were outlawed; commerce was forbidden without express permission from the Indian agent; Indians needed a pass to travel from one community to another and it became illegal for outsiders to assist Indians in litigation to try to regain their historical rights.

This pattern of increased control continued. In 1878, Canada began to restrict traditional fishing rights, creating a new distinction between food and commercial fishing. In 1884 the Indian Act was amended to outlaw cultural and religious ceremonies, such as the potlatch – the major social, economic and political institution of the coastal peoples. In 1889, the federal system of permits was introduced to govern commercial fishing. Indians were effectively excluded from commercial fishing until 1923.²⁷ In this period, First Nations were isolated and tightly controlled. It was expected that they and their way of life would die out and the “Indian problem” would resolve itself without contaminating the Settlers who now vastly outnumbered the First Nations in Canada.

The assimilation phase of the colonial relationship was heightened in 1879 by the dawning recognition that First Nations had not died off, as previously predicted, and included the tragic decision to force young Indian children into residential schools. In these schools, from the late 1800’s until the late 1900’s every effort was made to erase children’s traditional culture and values and transform them into good little Christian souls. Religious instruction and forced labour often prevailed over any pretence at schooling. The “problem” did not go away, but conditions in the childless communities

²⁶ Michael Ignatieff, *The Rights Revolution, CBC Massey Lecture Series* (Toronto: House of Anansi Press Ltd, 2000).

²⁷ TFN, *Land Facing the Sea: A Fact Book* (2004).

were terrible and many children were bereft of their identity and culture by the time they left the schools, often unable to return to their communities and ill equipped to live in mainstream communities.

In 1947 a report was filed with the Senate-House of Commons Joint Committee on Indian Affairs called the “Plan for Liquidating Canada’s Indian Problem in 25 Years”, which recommended the termination of special status of Indians under the Indian Act.²⁸ While this report never left the committee stage, it is clear that Aboriginal rights in Canada have been under attack as long as there has been a Settler component of society in Canada.

The Trudeau liberal government in 1969 introduced the famous “White Paper”. A means intended to improve First Nations conditions to a level comparable with the living conditions of mainstream Canadians was proposed. It became a political turning point in Canada, which galvanized First Nations in Canada to organize and fight back. Trudeau, ignoring past history, political problems and policy mistakes of past governments, spoke of “Justice In Our Time”. The Trudeau government decreed that the Indian Act would be repealed, First Nations would be compensated for their lands and all would lose any special “status” that they had and become full citizens with the equal rights enjoyed by all Canadians. For many Canadians today this may still seem like a good solution. First Nations reaction to this proposed legislation was swift and the “White paper” became a rallying cry for the creation of First Nations political organizations.

Although unpopular, the Indian Act was considered by many First Nations to be a minimal recognition that First Nations had rights distinct from other Canadians whether protected by treaty or not. While First Nations may dislike the Indian Act, most do not trust the federal government to act in their best interests without it. They want to

²⁸ Havemann, ed., *Indigenous Peoples' Rights in Australia, Canada & New Zealand*.

negotiate any changes on a nation- to-nation basis. First Nations have been clear across the years since contact that they have never relinquished their sovereignty or the title to their lands.

While many First Nations in Canada live under terms set out in historical treaties, signed long ago, there are many instances where the First Nations signatories take issue with how their particular treaty has been interpreted by the dominant partner, the federal government, or even violated over the years since signing. In 1927, Ottawa through provisions of the Indian Act, prohibited Indians from organizing to discuss land claims, raising money or hiring a lawyer and made it illegal for non-natives to help in any way until this provision of the Indian Act was repealed in 1951.

There has been a progression of Supreme Court decisions, beginning with *Calder*²⁹ in 1969, which have shifted some of our thinking about the “Indian problem” over time and forced governments to re-think the way they deal with First Nations in Canada.

Existing Aboriginal rights are now recognized and affirmed by the repatriated Constitution of 1982, however those rights have not been defined. Gradually, piecemeal definitions are emerging through a succession of Supreme Court decisions. Rights are being defined and summarized in decisions, however, the Court has made it clear in more than one instance that it would be preferable for the parties to negotiate rather than to litigate political rights.

According to Phil Fontaine in a speech at the time of the Kelowna Accord, the national chief of the Assembly of First Nations (AFN), First Nations are looking for *transformative* change in their relationship with the federal government. They do not want to administer their own poverty through devolution of existing government

²⁹ *Calder V. A.G. B.C.*, (1973).

programs, they want control over decision-making and their own governments. The Prime Minister's Roundtable with Aboriginal peoples in 2004 committed to renewal of the relationship between Aboriginal peoples in Canada and both levels of government.

According to political scientist Paul Tennant, every self-respecting people has its own founding myths³⁰; British Columbia Settler communities, were, and are, no exception. Majority views were fully formed by the 1880's and remained little changed until the 1950's. These views devalued the worth and the claims of "Indians" while legitimizing the land ownership and political jurisdiction of the colonial authorities and their successors. Only occasionally, and especially during the last quarter century, when the provincial government has had to defend its views in court, were attempts made to construct coherent legal or philosophic arguments in support of majority land rights in the province. The province's arguments in the Delgamuukw case provide the most comprehensive example of such an attempt.³¹

For too long, the dominant solution to the "Indian problem" was to isolate the "problem" in reserve communities far from the mainstream Settler communities or later, in the face of failure with the initial policy to resolve the problem, to assimilate native communities into the mainstream. Even today, we hear the argument that all Canadian citizens are "equal" and should be treated the same, with the same rules applying equally to all; there should be no special treatment for "minorities". However, each group does not start from an "equal" footing and to treat "unequal" people on an equal basis with the majority elite does not guarantee an "equal" or "just" outcome.

³⁰ Tennant, Paul. *Aboriginal Peoples and Politics: The Indian Land Question in British Columbia, 1849-1989*. Vancouver, BC: University of British Columbia Press, 1990

³¹ Dara Culhane, *The Pleasure of the Crown: Anthropology, Law and First Nations* (Burnaby, BC: Talon Books Ltd, 1998).

Chapter four will closely examine some of the political assumptions behind our liberal democratic positioning within the dominant community and how those positions have had a negative historical impact on the Host First Nations community.

It is simplistic to ignore the historical injustices and oppression that has created deep dysfunction within many Host First Nations communities. The situation must be understood in all of its complexity for Reconciliation to be meaningful between the two communities. The context within which First Nations live in today's world and how we all got to this position will illustrate the disparity between the two differing worldviews. I argue that it is folly to assume that we are all coming from an equitable starting point. First Nations are not just another minority community who have immigrated to Canada and chosen to live within the political reality that is Canada.

Contemporary political reality in Canada has been imposed on First Nations communities. The "equality" argument also ignores the political and legal reality that First Nations Host communities have inherent, historical rights, which are constitutionally protected.³² I will attempt to convince my fellow community members that a shift in perspective can help us to view the problem from a new standpoint and perhaps consider new solutions to the problem. The current treaty process in British Columbia lags that in the rest of Canada where historical treaties defined the relationship between First Nations and mainstream Canadians. The historical treaty process was instituted to establish a "fair and lasting relationship"³³ which has never existed in British Columbia. In contrast, an unfair and dishonourable relationship was established, unilaterally,

³² John Borrows, "Recovering Canada: The Resurgence of Indigenous Law," (2002), Cairns, *Citizens Plus: Aboriginal Peoples and the Canadian State*, Canada, "The Report of the Royal Commission on Aboriginal Peoples.", Curtis Cook and Juan D. Lindau, eds., *Aboriginal Rights and Self-Government: The Canadian and Mexican Experience in North American Perspective* (Montreal and Kingston: McGill-Queen's University Press, 2000), Ignatieff, *The Rights Revolution*, Tennant, *Aboriginal Peoples and Politics: The Indian Land Question in British Columbia, 1849-1989*, Whitaker, "Sovereignties Old and New: Canada, Quebec and Aboriginal Peoples."

³³ Tully, "Reconsidering the BC Treaty Process".

through the imposition of the reserve system and the Indian Act, without the consent of Aboriginal people and in disregard of their (historical) rights.

TREATY NEGOTIATIONS IN BRITISH COLUMBIA

In 1992, the government of British Columbia, the government of Canada and the First Nations Summit established the treaty process and set up the British Columbia Treaty Commission to oversee treaty negotiations in British Columbia. The need to resolve existing land claims in the province became pressing, whereas these had been previously “settled” in the rest of Canada through the early treaties. The necessity for treaties in the province was underscored by the uncertainty for the logging, mining and fishing industries in the province and the cost of lengthy court challenges against the wholesale infringement of resources on First Nations territories, without any meaningful consultation, and usually with few benefits flowing to the Host communities. Environmental destruction continued over the years while the province refused to negotiate. The tri-partite Treaty Commission is considered “the keeper of the process”. The process has turned out to be a lengthy, resource-intensive one.

There are six stages in the British Columbia Treaty process:

Stage 1: The First Nation files a statement of intent to negotiate a treaty.

Stage 2: The three parties, the federal government, the province and the First Nation prepare separately by establishing negotiating teams, preparing background information, identifying preliminary topics for negotiation and establishing consulting mechanisms for each of their teams.

Stage 3: The three parties negotiate a framework agreement, an agenda that sets out topics, process and timing for negotiations.

Stage 4: The parties negotiate an agreement-in-principle (AIP) as a basis for agreement.

Stage 5: The AIP is revised into a Final Treaty, which must be ratified by each party by a date set out in the final agreement.

Stage 6: The three parties implement the Final Treaty according to the plan set out in the treaty.

Unfortunately for the parties to treaty negotiations in British Columbia even though the treaty process was initiated in 1992, to date there have only been two treaties³⁴ to reach final settlement under this process. Millions of dollars have been borrowed by First Nations to enable them to negotiate on an equal footing with their government negotiating partners; much research has been done and progress has been achieved, but it has been incremental and agonizingly slow. Even if settlements can be achieved by all six of the First Nations who have actually achieved stage five in the process, it is frightening to contemplate the dollar amount owing that will presumably have to be repaid from any treaty settlement funds. It was estimated that Tsawwassen First Nation would owe between four to five million dollars for legal and consultation fees and costs of negotiations, when the Final Treaty was signed this year.³⁵ While many First Nations are eager to have self sufficiency restored it is not at any cost. The chokehold of monies owing has to be weighed against any potential gains that may be mitigated by the intransigence of the other parties at the negotiating table.

In 2005 the Province announced a dramatic new initiative in British Columbia politics, a "New Relationship" with the three main First Nations organizations in British Columbia: the First Nations Summit, Union of British Columbia Indian Chiefs and the

³⁴ As of November, 2007, the Tsawwassen First Nation and Maa Nulth First Nation on Vancouver Island both voted in favour of a final treaty.

³⁵ Miro Cernetig, "First Urban Treaty 'a Leap of Faith'," *Vancouver Sun*, June 3 2006.

Assembly of First Nations. The “new relationship” purports to establish a more collaborative relationship for policy development and implementation in the province. It is yet to be seen if the “new relationship” will change the tone at existing treaty tables, however all three major provincial First Nations organizations have signed on and not since the late 1960’s have all three of these organizations agreed to even meet together. It certainly signals a change in approach but has not proceeded without hiccups. The “new relationship” is certainly about more than just treaties. A changed relationship could have major impact on resource development, revenue sharing, First Nations land claims litigation and many other aspects of the relationship between the Province and First Nations in British Columbia. However, it is also possible that a sustainable improved relationship at the provincial leadership level could produce political results at currently stalled treaty tables. Only time will tell if the “new relationship” is just rhetoric or substantive change from the deeply entrenched attitudes of the past.

TSAWWASSEN FIRST NATION LOCAL HISTORICAL BACKGROUND

The Tsawwassen First Nation is one of 54 Coast Salish Nations and has lived on the coastal area just south of what is now Vancouver, British Columbia for millennia. Traditional Tsawwassen territory is bordered on the northeast by the watersheds that feed into Pitt Lake, down Pitt River to Pitt Meadows where they empty into the Fraser River. It includes Burns Bog and part of New Westminster, following the outflow of the river just south of Sea Island. From Sea Island it cuts across the Strait to Galiano Island and includes all of Saltspring, Pender and Saturna Islands. From there, the territory continues northeast to include the Point Roberts peninsula, and the watersheds of the

Serpentine and Nicomekl Rivers, where the territory meets the Semiahmoo territory just north of White Rock. This territory has never been surrendered.³⁶

Carbon dating at existing village sites shows proof of occupation as far back as 2260 BC³⁷ “when the Pharaohs ruled Egypt”. Sites at Whalen Farm and Beach Grove provide documented proof of Tsawwassen people’s occupation as early as 400-200 BC³⁸. In 1791, first contact was with Spanish and English explorers who arrived in the Tsawwassen people’s vicinity. By 1808, the Simon Fraser expedition had arrived at the mouth of the Fraser River.³⁹ By 1858, the international border dividing Point Roberts and parts of Washington State from Canada and the colony of British Columbia was officially established. Loss of traditions and culture began in 1860 with the establishment of the St Charles Mission in New Westminster. This was Tsawwassen First Nation’s first contact with the Catholic Church.⁴⁰

The colonial reserve was established in 1871. In 1872 a large crowd of Coast Salish people assembled outside the New Westminster Land Registry office to protest the illegal seizure of their lands. Throughout the 1870’s various groups sent petitions and delegations to state their grievances to government. Four issues preoccupied them:

- Recognition of Aboriginal title
- Insufficient and arbitrary land allocations
- Encroachment on lands and resources by Settlers
- Lack of support from governments for developing agriculture and animal husbandry

³⁶ TFN, *Land Facing the Sea: A Fact Book*. P.4.

³⁷ For those who prefer to use dates from the Present, plus 2,000 years becomes 4,260 BP.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ibid. p.24.

The first census of Tsawwassen First Nation Indians was conducted and the first official survey of Tsawwassen lands was completed in 1881.⁴¹

By 1890, Tsawwassen lands were pre-empted by the government, and Settler families were given huge tracts of land. About 40,000 acres of land surrounding Tsawwassen First Nation's reserve were developed and farmed by the Host community's non-Aboriginal neighbours.⁴² In 1906, a representation of Coast Salish Chiefs went to England to fight unsuccessfully for land claims.

In 1914, then Chief Harry Joe submitted a petition to the McKenna McBride Commission, which reviewed the province's reserve lands and made recommendations for adjustments. The Tsawwassen Chief argued that his people did not want to be forced into exile on a tiny reserve. His eloquent words went unheeded.⁴³ The federal ban in 1927 against First Nations organizing to discuss land claims, raising money for land claims or hiring a lawyer to represent them in the mainstream legal system meant land claims were negated until this provision of the Indian Act was finally repealed in 1951. By then, much of the damage was permanent. Settler communities had now been established for lengthy periods of time and what had occurred in the distant past had little resonance in mainstream society.

Contemporary Tsawwassen people number approximately 331(2004). Of that number, 168 community members live on reserve. That means almost half live off reserve. About 60 per cent of Tsawwassen First Nation people are under 25 years old, compared with neighboring Delta, where 36 per cent are under 25 years old. The average family income is \$20,065, compared to Delta, at \$67,844. About 40 per cent of people are on welfare or some other form of social assistance. The unemployment rate

⁴¹ Ibid.

⁴² Ibid. p.17.

⁴³ Ibid. p.24.

is 38 per cent, compared with neighboring Delta at 7.4 per cent. High school graduation rate is 47 per cent; Delta's is 77 per cent.⁴⁴

Their traditional territory as established in the Tsawwassen oral history, was some 148,888 hectares, although they live on a fraction of this now: right on the coastal waters south of the major Canadian city of Vancouver, sandwiched between a major provincial British Columbia Ferries terminal with a 3 kilometre causeway and the industrial provincial Coalport terminus, Deltaport with a 5 kilometre causeway. The Tsawwassen longhouse, spiritual centre of the community, was demolished when the land was expropriated for the causeway to the ferry terminal. Now that there is a major Coalport at the northern end of the tiny reserve, the waters edging the Tsawwassen territory have become a stagnant mud flat that is a shadowy reminder of the former glory of the traditional fishing community.

The Tsawwassen First Nation were once proud fishermen, hunters and gatherers of a rich variety of foods. Over time Aboriginal fishing and other rights were legislated away. Their ancestors cultivated food such as camas bulbs, cranberries and medicinal plants for themselves and for others.

The Tsawwassen First Nation face many challenges unique to only a handful of First Nations in British Columbia. Their proximity to a huge population centre is both an advantage and a disadvantage. There are many opportunities available for those who wish to pursue an advanced education or participate in the economic advantages available, but threats to cultural continuity are relentless, including the lure of the economic mainstream, the downtown eastside drug community, all pose an enormous threat of assimilation into the larger, dominant society.

⁴⁴ *Tsawwassen First Nation: Land Facing the Sea* (2006 [cited]; available from <http://www.tsawwassenfirstnation.com/index.asp>).

The Tsawwassen First Nation is a small, tightly knit community clinging to a sliver of their former territory, hemmed in by the third largest population centre in the country. Community children attend mainstream schools where they hear little of their own culture, where it is common knowledge that First Nations children are often taunted and bullied because they are different. The social reality in Canada is that although First Nations are only 2.5 per cent of the population, 20 per cent of First Nations children do not complete high school. The high school graduation rate for the Tsawwassen First Nation is less than 50 per cent.

The province signed the Aboriginal Education Enhancement Agreement eleven years ago to build partnerships between school districts and local Aboriginal communities to focus attention on academic achievement, Aboriginal culture and languages. Tsawwassen First Nation signed on to the agreement in May of 2005 with the hope that students in Delta would see themselves reflected in the curriculum in Delta. At the time there were 450 students of Aboriginal descent in Delta and about 50 of them were from Tsawwassen First Nation.⁴⁵ Provincially however, signs of improvement are negligible.

In 2008 the latest report showed only 49 percent of Aboriginal students completed high school in British Columbia compared to 83 percent of non-aboriginals, up only slightly from 47 percent five years ago.⁴⁶ Also in 2005, Tsawwassen First Nation received a grant from the provincial government to develop a childcare centre on their land. The centre will be able to accommodate 60 children, ranging from infants to out of school care from the larger community.⁴⁷ Provincially a more recent development is an agreement signed in 2006 in which First Nations can opt out of Indian Act education

⁴⁵ Janet Steffenhagen, "Aboriginal Educators Find Hope Amid Dismal Student Results," *Vancouver Sun*, June 13, 2008.

⁴⁶ *Ibid.*

⁴⁷ "TFN Gets over \$200,000 for Child Care Centre," *Delta Optimist*, August 20 2005.

provisions and provide Aboriginal control over Aboriginal education by joining the British Columbia First Nations Education Authority. The hope is that students may eventually receive an education that celebrates their own history and pride in being First Nations. Many people believe the Federal government Residential Schools apology may be an important first step toward healing Aboriginal education outcomes in Canada.⁴⁸

TSAWWASSEN FIRST NATION TREATY NEGOTIATIONS

The majority of B.C. lives in our traditional territory and every interest group you can imagine have the opportunity to be consulted on our treaty negotiations⁴⁹

The Tsawwassen First Nation entered the formal treaty-making process in 1993 as a way to remedy some of the historical injustices since European contact and to get out from under the imposed constraints of the Indian Act. They determined that Treaty negotiations were the path to restoring their former independence and dignity. There were internal goals, which include a return of control over their own destiny, spiritual and psychological health of the community. Secondary goals included the restoration of healthy external relationships on a basis of mutual respect and dignity without dependence.

Stage 2 was completed in 1995; stage 3 was completed in 1999 and included the major accomplishment of the negotiation of the 'Roberts Bank Back-up Lands Agreement', which successfully preserved Crown land as part of the treaty negotiations. This was a critical if controversial element of the treaty because most of the land surrounding the existing reserve is privately owned. This is the only parcel of contiguous

⁴⁸ June 11, 2008.

⁴⁹ Chief Kim Baird, "Session #4: The Treaty Process - Specific Cases," in *Land Claims and Governance Speakers Series*, ed. Linc Kessler (Vancouver: UBC, 2005).

land, which could possibly provide growth in size to the existing reserve without involving privately owned land.

The first Agreement in Principle (AIP) for an urban treaty in British Columbia was formally signed in 2004 by Chief Kim Baird, the Indian Affairs Minister Andy Mitchell and British Columbia Attorney General Geoff Plant. The agreement was the first major step toward a modern, final and legally binding treaty, restoring self-government to the Tsawwassen people.⁵⁰

The Agreement In Principle for the Tsawwassen treaty dealt with land, cash, resources, culture and “related” governance provisions. The Agreement In Principle set out certain law-making authorities related to Tsawwassen First Nation’s management of their lands, resources and culture. Other law-making authorities were to be considered in the final agreement. Indeed, many of the tough negotiations were left to the final stage negotiations. The Agreement In Principle specifically stated that the Canadian Constitution will not be altered and the Canadian Charter of Rights and Freedoms will continue to apply.

Tsawwassen First Nation now have their own law-making authorities concurrent with federal and provincial laws. Federal and provincial laws will continue to apply and the Final Agreement provides that once the transition is complete, the Indian Act will no longer apply to Tsawwassen First Nation, Tsawwassen government or Tsawwassen members, except for the purpose of determining whether an individual is an “Indian” within the meaning of the Act.

The land component of the Tsawwassen Final Treaty contains 724 hectares of land, which includes a fee simple parcel of 62 hectares that remains in the Corporation of Delta’s jurisdiction. This total parcel is less than 1% of their traditional territory. Treaty

⁵⁰ TFN, *Land Facing the Sea: A Fact Book*. P.25.

negotiations were complicated by the fact that all of the Crown lands under negotiation were protected under the provincial Agricultural Land Reserve (ALR).

The Agreement In Principle stated that the objective of Tsawwassen First Nation is to use its lands to support the growth and development of Tsawwassen First Nation as a viable community. There are several categories of lands anticipated by the Agreement In Principle. Tsawwassen Lands will include the original Reserve Lands and 365 hectares of provincial Crown land. In addition there are lands outside Tsawwassen First Nation jurisdiction, which will be known as "Other Tsawwassen Lands", comprising 62 hectares of provincial Crown lands. Also to be negotiated before Final Agreement were the conditions under which lands purchased by Tsawwassen First Nation post-treaty could become Tsawwassen Lands. Tsawwassen First Nation will have law-making authority concerning the administration, management and development of Tsawwassen Lands. The Final Agreement also contains provisions by which Tsawwassen First Nation will have rights of refusal to purchase the Category B lands identified in the 1998 Roberts Bank Protocol Agreement.

We have voiced our concerns that with such a limited land base we will need flexibility in how we manage our lands and governments maintain that the designation needs to remain in place. Our AIP proposes an approach where the three parties would, through a negotiation process, pre-select an area that will be targeted to be added to Tsawwassen lands if we are able to acquire them with our own money. This process makes the land package proposal in our AIP a little more meaningful. If we successfully complete negotiations that would identify the pre-selected area then we will make a proposal to any affected First Nations and any affected municipalities to seek their consent. Our AIP states that consent cannot be unreasonably withheld though.⁵¹

The land package was a complex one, due to the limited choices available to the parties. It is clear that some creative negotiations were required to achieve even the piecemeal agreement contained in the Agreement In Principle. Some flexibility was

⁵¹ Baird, "Session #4: The Treaty Process - Specific Cases."

achieved even under the constraints at the time; the biggest single issue in this section of the treaty was the drawback that the new treaty lands were protected within the ALR. Any suggestion of removal of land from the ALR creates enormous controversy in the province and is a continuing issue of great debate in the daily newspapers even outside the context of treaty negotiations. For Tsawwassen First Nation, the addition of treaty lands would have had no meaning if at least a portion were not removed from the ALR. Tsawwassen First Nation took the initial step of approaching the ALR prior to final treaty to test the waters and see what the reception to their application for removal of the lands from the ALR might be. Even this pro-active process was risky because Tsawwassen First Nation could have received one response based on the representatives on the ALR board at the time, in the meantime the provincial government could have changed, ALR policy could have changed and the representatives on the board themselves could have changed or all of the above could potentially have changed prior to completion of stage 6 of the treaty. In the end, and not without controversy, the province made the decision to handle the issue itself and despite vocal opposition, removed 518 acres from the ALR itself prior to completion of the final treaty, removing the onus of Tsawwassen First Nation going begging to the ALR for removal of the lands under the normal process.

Another significant area of tough negotiations within the AIP was the dogged determination of the province to keep certain provisions of the agreement as separate provisions, outside of the protection of the Final Agreement. It was the adamant insistence of the province that the all important governance section of the treaty be treated as a separate agreement resting outside of the final treaty. Fiscal agreements, rights to harvest wood, salvage logs and fish commercially would also be treated as separate agreements outside the treaty itself, thus ensuring that these separate agreements would not have constitutional protection. The implication for the Tsawwassen people is that these outside agreements would not be constitutionally

protected and would be susceptible to change, possibly even arbitrarily by the province or Tsawwassen First Nation could potentially be forced to re-negotiate in the future, thus giving the Tsawwassen First Nation a delegated authority with municipal like status, under the control of the province in key areas. In the end, the province compromised and the Final Treaty enshrines the governance provisions within the Tsawwassen treaty itself.

The province doggedly held the position that certain issues are off the table at treaty negotiations and were supported in that position by the Federal government. The intention to isolate certain important political issues from the treaty continues to be a direct outcome of provisions from the province's misguided treaty referendum of 2002 and subsequent assurances to the public that any treaties negotiated in British Columbia would be on the order of municipal jurisdiction, which would not create a new order of government in Canada. Government negotiators arrive at the Treaty table with specific mandates restricting the parameters of what can be negotiated. This could have prevented the final agreement from ever being signed because for the Tsawwassen First Nation there would always have been a lack of certainty, if these key clauses have no permanent protection. The objective of more than fourteen years of treaty negotiations was to provide each side with certainty, not just government and industry.

After two hundred years or more of repeated failed promises by government, there is little reason for First Nations to trust that there is protection for their rights, in agreements outside any treaty. There are hundreds of unresolved claims against the Federal Government for failure to live up to commitments in existing treaties. The Specific Claims process to resolve existing claims has been debated since the right for First Nations to take their claims to court was restored in 1951. Many policy debates have continued since the time of the Diefenbaker government regarding how to resolve the many outstanding claims and the Federal Government carries over a budget item for

unpaid liabilities in this regard from budget to budget as the debate continues. For many First Nations in Canada, the abysmal failure of the federal Specific Claims process to date is a testament to the Federal Government's continuous failure to live up to provisions of historical treaties. With such a history, how can First Nations be optimistic for future agreements, which might not have at least the minimum constitutional protection of a signed treaty?

BACKGROUND TO THE DELTA-TSAWWASSEN RELATIONSHIP

We need a rebellion, not an armed struggle, as in violence, but a rebellion against the lies. This is the same as taking up arms, but our weapon is truth. We must rebel against the lie and confront it in its most present state. We must stop participating in our own colonization.⁵²

The Tsawwassen First Nation has benefited greatly for the past ten years from the vision of young, new leadership in the person of Chief Kim Baird. Chief Baird is doing significant work in her community to restore independence, self-respect and control over their own destiny. She is leading her community in a move from the dependency of the past, into areas of renewed economic independence and hope.

While there have always been differences between Delta and Tsawwassen First Nation, overt tension did not become visible within the larger community until Tsawwassen people attempted to assert their right to take economic initiative(s) on their own behalf. In the past, protests such as that by Chief Harry Joe to the McKenna McBride Commission in 1914 happened outside of the local community, and the appeal was unsuccessful, so there was little or no impact on the dominant community. Equally, the negative impacts of the Indian Act and Federal government oppression on the Tsawwassen people have kept the morale low, and the community somewhat isolated

⁵² Quote from Taiaiake Alfred in Brendan Stone, *Exploring Native Rights and Concerns in Canada* (Volume 73, issue 14) (Protecting Knowledge, 2002 [cited November 28 2002]).

and inwardly focused. It was not until the Tsawwassen people began to develop projects on their own land that the local Delta government started to worry that actions by the Tsawwassen people could impact the wider community. Delta must have felt it should have some say if there was to be future development on a large scale that could negatively impact traffic patterns, freedom of movement of its own citizens or the local government infrastructure. Further, once Tsawwassen First Nation began treaty negotiations it became apparent that the Delta community tax base could be negatively affected. The land to be designated as Tsawwassen treaty land is currently included in the Delta tax base, and once designated and approved as treaty lands, it would be taxable to the Tsawwassen First Nation instead of Delta.

Development has proceeded apace in the mainstream community surrounding the tiny reserve to the benefit of that community and industry since the middle of the twentieth century. Major industrial developments locally had enormous long-term negative impacts on the small community. Each development was initiated by the Province of British Columbia in an era when there was no concept of any necessity for consultation, not even a phone call to the band office to advise that construction was starting tomorrow.⁵³

The British Columbia Ferry Terminal and the Roberts Bank Coalport have virtually destroyed the Tsawwassen beaches, creating a stagnant bay choked with invasive, non-Indigenous plants and seaweed. Once a productive habitat teeming with crabs, clams and many other shellfish, the bay is today a dead body of water with nearly no tidal wash. In this stagnant water, harmful algae, known as Red Tide, often blooms. These two massive industrial operations bookend the Tsawwassen reserve and both

⁵³ Gerry Bellett, "A Natural Leader," *Vancouver Sun*, December 30 2004.

have massive industrial lighting systems and 24-hour noise, which constantly illuminate the entire reserve.

British Columbia Ferry Terminal construction started in 1958 effectively cutting the Tsawwassen reserve in half. During causeway construction the British Columbia government approved the tearing down of the Tsawwassen Longhouse, spiritual heart of the community. The terminal and causeway were expanded in 1973, in 1976 and again in 1991. The Tsawwassen people found out about the original construction of the causeway when the construction crew knocked on the door.⁵⁴ The Longhouse was not replaced until 1995.⁵⁵

Construction on the Roberts Bank Coalport began in 1968. By 1983 it had become a 113-hectare island, with a British Columbia Rail line running along the causeway. Operating around the clock, the facility handles 24 trains each day. Light and sound pollution, as well as excessive noise and vibration, are a constant nuisance to the Tsawwassen people.⁵⁶ The Tsawwassen made the decision to sue the British Columbia Ferries, B.C. Rail, the Vancouver Port Authority, the provincial and federal government because the government refused to discuss the devastating impacts caused by these massive industrial operations on their territory including the sensitive ecosystems which supply food and resources to the community.⁵⁷ A partial resolution of the lawsuit was achieved in 2004 with the negotiation of a multi-year, multi-million dollar accommodation agreement with the Vancouver Port Authority.

Chief Baird described the condition of the Tsawwassen community:

Like other First Nations (Tsawwassen) has dreadful socio-economic conditions ranging from unemployment, poor health and education statistics, to sub-standard housing and I think my biggest job as Chief is to protect Tsawwassen

⁵⁴ Ibid.

⁵⁵ Scott Simpson, "A Vision in the Land Facing the Sea," *The Vancouver Sun*, February 28 2004.

⁵⁶ TFN, *Land Facing the Sea: A Fact Book*. P.17.

⁵⁷ Ibid. p.18.

people's rights and improve the quality of life for the members. Ultimately I view treaty as a toolbox that will help my community to rebuild itself to its traditional level of wealth and as a Coast Salish Nation living at the mouth of the Fraser River, traditionally we were a very wealthy people. Our objectives are to have the tools to become self-sustaining and we want our treaty to provide us with enough land, cash and resources to rebuild our wealth. More importantly and in my opinion I believe we have a need for autonomy so we can end the cycle of dependency that the Indian Act has perpetuated. Our approach to treaty negotiations has been on trying to meet our future needs. We've done serious research to set out an order of magnitude including economic modeling to establish what sort of capital transfer we might need with population growth projections to establish what land base might be required over the next hundred years.⁵⁸

Chief Baird works tirelessly on behalf of her community. She has been politically active in her community since her early teens. In addition to her leadership role early in treaty negotiations, she is mother to two young daughters, Amie and Sophia. She also finds personal time as a geography student at UBC. In 2003, Chief Baird convinced her community to approve a land code, which means that Tsawwassen First Nation successfully took over a 25% portion of land management, which was previously 100% under the Indian Act. This was a first step in pulling away from the Indian Act, establishing some independence and insurance against any failure of the treaty process.

In 2004, the Tsawwassen Chief negotiated an accommodation agreement with the Vancouver Port Authority which provides financial compensation in the form of mitigation money for damages done to the Tsawwassen foreshore since construction of the Roberts Bank Coalport. The agreement contains construction contracts and employment and economic development opportunities, which are potentially worth \$47 million. Chief Baird cautioned that while this is a significant achievement for her community, it still does not provide an increase to the land base or autonomy. "Even if

⁵⁸ Baird, "Session #4: The Treaty Process - Specific Cases."

we could get a number of accommodation agreements, our long term need would not be met.”⁵⁹

Chief Baird has negotiated on several fronts, on an economic scale that has made the outside community wake up and take notice. These contemporary developments are on a scale not previously anticipated by the dominant community from a First Nation. First Nations have usually been perceived to accept their role as passive communities, resigned to their oppression. There was little direct conflict for Tsawwassen First Nation as long as the members of the reserve confined their activities to spending money in the local grocery stores and restaurants, contributing in some small way to the economic prosperity of the larger community.

The Tsawwassen people can no longer be considered passive bystanders to their own destiny. However, recent assertions of independence and economic initiatives including the long-term implications of the Final Treaty had local fishermen who include the current Conservative party Member of Parliament (MP), local farmers and the municipal council all concerned about the scale of Chief Baird’s ambitions for her community, their treaty and economic impacts on the dominant community. Opposition has also been apparent in the larger community as well, from environmental groups, Indigenous academics and particularly from other First Nations communities and organizations including the AFN and the BCUIC. Some First Nations have overlap territory issues with Tsawwassen First Nation traditional territory that have not yet been resolved and many other First Nations in the province are opposed to negotiating treaties under the current arrangement because the province had previously been insistent that treaties signed in British Columbia must explicitly extinguish Aboriginal title

⁵⁹ Ibid.

in the province. While negotiated treaty rights trump and replace previous undefined rights, the explicit language of extinguishment is no longer a negotiating issue.

The following is an examination of four specific areas of tension and conflict between the two communities including the ongoing issue of a servicing agreement for the reserve with Delta, the idea of removing land from the agricultural land reserve, the fisheries agreement and governance. Each of these issues was considered a deal breaker for the Tsawwassen First Nation to conclude their treaty.

Servicing Agreement

If they plan to develop the land, we're going to have to look at that. What services of ours are they going to be using? Will we incur any capital costs?⁶⁰

Previous attempts by the Tsawwassen people to economically develop their community included the development of Tsatsu Shores, a beachfront condominium project developed between 1994 and 1996. Before, during and since construction Delta municipality had refused to provide water and sewer for the development. Lack of a water service agreement left the Delta municipality in control; any potential profits from sales of the condominiums went to building a self-contained water system. The Department of Fisheries and Oceans attempted to prosecute the band for unilaterally commencing operation of a tertiary sewage treatment plant to process waste coming from the Tsatsu development. Meanwhile the Delta municipality has for decades maintained what it calls a "sewer" that carries street run-off and fecal-contaminated agricultural run-off in a three meter-wide open stream straight through the Tsawwassen

⁶⁰ Mayor Lois Jackson quoted in Simpson, "A Vision in the Land Facing the Sea."

reserve and into the Straight.⁶¹ Are the Tsawwassen First Nation being held to a higher standard than the neighbouring community of Delta?

Everyone has pretty much ignored our observations on that point. When you look at what we did (with the treatment plant), in comparison to the environment we're surrounded by, including the port and the ferries, it's laughable.⁶²

Agricultural Land Reserve

Newspaper letters to the editor, web pages and blogs, have all been received decrying the loss of 207 hectares of land from the ALR...they have become a soapbox of misinformation and partisanship for those who oppose the treaty process, the port expansion and its related transportation links or the Campbell government in its entirety. And they use the proclaimed sanctity of the ALR to do so.⁶³

There are many concerns specific to Tsawwassen as an urban reserve with such a limited land base. Increased land values in the Lower Mainland since the inception of negotiations meant a decrease to the land base for the Tsawwassen community in their negotiations. Additional complications included the complexity of the lands' inclusion in the ALR. Changing case law can also impact negotiations. The groups opposing the negotiations cross cultural boundaries. Chief Baird faced criticism from the public, from interest groups, from local governments and from other First Nations.⁶⁴

The mayor of Delta was quoted⁶⁵ as being concerned that the treaty deal includes 365 hectares of land that is currently included in the province's agricultural land reserve, but may be removed to allow the Tsawwassen people to develop it as a source of revenue. That would have put Delta in the position of providing access to its water and

⁶¹ Chief Kim Baird quoted in Ibid.

⁶² Ibid.

⁶³ Don Anderson, *There Is No Conspiracy Here, No Double Dealing, No Hidden Agenda* (2007 [cited April 19 2009]).

⁶⁴ Baird, "Session #4: The Treaty Process - Specific Cases."

⁶⁵ Sandor Gyarmati, "Jackson Backs Request for Agricultural Land Reserve Data," *The Delta Optimist*, July 30, 2005.

sewer utilities, in support of Tsawwassen projects that may violate Delta's own planning principles.

The most common things that people or groups have raised are generally planning issues or concerns. Some people want or even expect to control development on our lands for a variety of reasons whether it's for protection of farmland or the environment, whether it's to control growth, whether it's related to traffic concerns or whether people are afraid of the big box developments. These issues bump up against regional government's issues. How will Tsawwassen First Nation fit in with the G.V.R.D. and its planning initiatives? How will the livable region strategy be impacted? Will we be provided with such services as water and sewer as other municipal governments are? The media, politicians and interest groups are very concerned about our future plans. Some want to see municipal style official community plan before they will support a Tsawwassen treaty. Some people are reluctant to accept that we will have autonomy over land use planning. Some people don't want us developing our lands. Some people don't want us to have the same opportunities that other communities have enjoyed for the past century and more and I guess in their view we are supposed to be responsible for the remaining environmental, agricultural and growth issues in the Lower Mainland. Even though we were never consulted on regional plans for the past century of development, some won't accept that Tsawwassen members are concerned about quality of life issues and others don't want to face the fact that development will likely have to occur if we want to overcome poverty.⁶⁶

The Tsawwassen First Nation was concerned that Delta wants to interfere with their choices for the future and included in the Agreement in Principle a description for provision of water, sewer and other services as a priority and a commitment by the provincial government to ensure they are provided.

One of the arguments Delta council used against the treaty is the impact of unknown future development by Tsawwassen First Nation on the adjacent municipality. Delta worried about the impact of potential large-scale development by the Tsawwassen First Nation, particularly increased traffic through Delta. Chief Baird appreciates the irony. "It is frustrating to hear them say they have concerns about the traffic we might add by developing our land. To be sitting here, between two major public transportation

⁶⁶ Baird, "Session #4: The Treaty Process - Specific Cases." Note: the GVRD (Greater Vancouver Regional District) is now called "Metro Vancouver".

infrastructures where millions of cars are going by, and be told we could add to tunnel traffic is kind of offensive. We are at a critical time in history when the Lower Mainland is developing rapidly and must worry about growth and sustainability—except Tsawwassen doesn't have an economy that would support that sustainability.”⁶⁷

What is not commonly acknowledged is that there was already a memorandum of agreement negotiated in 1999 as the out-of-court settlement with Deltaport that permits use of the lands within their traditional territory for port expansion. The memorandum is explicit that the provincial government would remove the land from the ALR regardless of the ratification of the treaty.⁶⁸

Fishery

*“Native only” means the local native band that has always owned and fished in the band’s territory, for thousands of years*⁶⁹

Salmon have a symbolic and economic primacy in British Columbia. First Nations wealth in the past was measured by access to the salmon fishery. The Coast Salish people along with other coastal First Nations were historically and are today fishers. They consider fishing to be in their blood, it is an integral part of their identity as First Nations peoples. Widely accepted rights to fish for food, social and ceremonial purposes are no longer a political issue in the province. What is at issue is what commercial fishermen frequently call a “race-based” fishery. Some outspoken commercial fishers consider any move to protect the Aboriginal fishery, “race-based” and use the argument that all fishermen should be treated as “equal” citizens and no one is entitled to special rights particularly when it comes to fish. One of the more prominent spokespeople for

⁶⁷ Simpson, "A Vision in the Land Facing the Sea."

⁶⁸ Anderson, *There Is No Conspiracy Here, No Double Dealing, No Hidden Agenda* [cited].

⁶⁹ Larry McFadden, "'Race-Based' Description Is Incorrect," *Times Colonist*, July 31, 2008.

this particular position is the federal MP for Delta-Richmond East, Jim Cummins, a member of the ruling Conservative government. He no longer enjoys the confidence of his party in the role of fisheries spokesperson but he continues to maintain his strong opposition to First Nations commercial salmon fishing rights. His vocal and passionate opposition to the treaty continues even since the signing of the final agreement despite the fact that he is the MP for the Tsawwassen First Nation as well as local fishers. The irony of his appeal to Euro-Canadian values is that his argument against the 'race-based' fishery is more race-based than the court decisions he opposes.

In Canada, we like to pride ourselves on our multiculturalism, however, many of us would argue that everyone must be treated equally, with no special rights for anyone and that this fundamental belief sets us up as an ideal society, an example really for the world. But there is a flaw in this line of universal application to people who have been marginalized, or oppressed for several hundred years. They do not begin from an equal starting place as those who argue against "special" rights.

The native fishery is based on nationhood, not race.⁷⁰ Croft continues to mention that court decisions in favour of the native fishery relied heavily on Section 25 of the Canadian Charter of Rights and Freedoms and Section 35 of the Canadian Constitution. The right to fish is an existing right that is protected by the constitution and cannot be extinguished just because the current fishery has been depleted by previous commercial over fishing and fishers feel that they now have a grievance.

The bitter battle over depleted fishing stocks has been ongoing for 15 years and has included demonstrations, violence and legal disputes. The Vancouver Sun reported on June 3, 2006 that an agreement between the Commercial Salmon Advisory Board, which represents British Columbia non-native fishing interests and a group of Fraser

⁷⁰ Roland Croft, "Stern Words Inflammate Debate over Fisheries," *Times Colonist*, July 29, 2008.

River Aboriginal groups had been presented to federal fisheries officials, marked the first time West Coast commercial fishing interests have accepted the federal policy allowing separate native commercial fishery. Critics accuse the government of blackmailing industry to get a deal. Supporters of the deal posit instead that it is not blackmail, it is “coming to terms with a new reality”,⁷¹ that transgresses party lines. Access to sockeye stocks was severely limited in 2005 due to concerns about the Cultus Lake sockeye viability and ending the ongoing feud is in everyone’s best interest. This particular agreement has the potential to resolve an ugly dispute over fish in the lower mainland area and other areas if it works. If successful, the agreement could be a model for future agreements further up the Fraser River.

Our fisheries chapter provides for a domestic allocation that would provide for an average of 12,000 sockeye and in abundance based on economic allocation that equals 0.78 percent of the Canadian total allowable catch for an average of 30,000 sockeye annually and I have to stress those are averages that would change from year to year based on the actual run sizes. We still need to sort out the method of harvest for economic fisheries. It remains to be determined whether the Tsawwassen will harvest their fish through a harvest agreement like the Nisga’a or by some other method, of course most of us are aware that the commercial industry would like to see the industrial solution where we would hold regular commercial licenses and our preference would be a treaty protected priority economic fishery.⁷²

Governance

Governance was the key issue of the Final Treaty. It will define the political and legal rights of the First Nations community once the negotiators go home. It is those political rights, which will define how much control the First Nations will have over their own destiny. It is unfortunate that the province insisted for so long that the governance package rest outside the constitutional protection of the treaty itself.

⁷¹ Peter O’Neil, “Cultus Sockeye Harvest Settled,” *Vancouver Sun*, June 3 2006, Peter O’Neil, “Native Fishery Deal Could End 14-Year Battle,” *Vancouver Sun*, May 30, 2006.

⁷² Baird, “Session #4: The Treaty Process - Specific Cases.”

The core principal of negotiation based on government to government is key. A mutual goal of Reconciliation must be the foundation of a Tsawwassen treaty. If these elements are met then a final agreement is achievable. If the parties maintain a political will to reach a final agreement and overcome obstacles and controversies collaboratively, then we can do it and we do have some very controversial issues to work through and much is at stake. The final agreement will have to have many compromises by all three parties. Governments want certainty in relation to lands and resources and we want certainty in our ability to govern ourselves.⁷³

Many Aboriginal groups and individuals oppose negotiating treaties at all.⁷⁴ They opposed the Nisga'a treaty and the Tsawwassen First Nation Final Treaty would have had less constitutional protection than even Nisga'a if it had been completed according to provincial demands. The Tsawwassen final agreement would have had primarily municipal-type jurisdiction and many key elements would have been contained in outside agreements, potentially subject to future change because they would not have the constitutional protection of the treaty itself.

The latest model is the modification model that's outlined in the Nisga'a agreement where our Aboriginal rights would be modified into treaty rights, which would have Constitutional protection. I guess the nervousness about that is what happens if we don't get things right and case law develops that would provide for new rights. Overall, I think our community views that as a workable model. The complication that is added though is that the provincial government wants to have some of our self-governance powers in a governance agreement. So, Tsawwassen doesn't want to modify some of its land and resource rights to provide government certainty over those things if we don't have certainty over all our jurisdictional sort of powers. So, currently there is a different sort of model being contemplated where potentially there is a governance agreement some of those law making authorities could be transported or moved into a final agreement at a future time for whatever reason that would support that transfer occurring. This is a very new proposal that's being presented to us. Ultimately, if we could have everything in the final agreement I think our community would accept the modification model that is provided for in the Nisga'a agreement.⁷⁵

⁷³ Ibid.

⁷⁴ Taiaiake Alfred, *Peace, Power, Righteousness: An Indigenous Manifesto* (Don Mills, Ontario: Oxford University Press, 1999).

⁷⁵ Baird, "Session #4: The Treaty Process - Specific Cases."

In the end, the province agreed to include governance⁷⁶ provisions within the main agreement; consequently the Tsawwassen treaty has constitutional protection for its governance provisions. This was probably the key to the successful ratification vote by the Tsawwassen First Nation which was 70 per cent in favour of the treaty, a substantial success for Chief Baird. However, the 30 per cent who voted against the treaty were obviously not convinced. There is some concern that deep divisions remain within the community on the issue of the treaty and perhaps some feel that there were too many compromises to make the treaty acceptable. Chief Baird herself regrets some of the compromises, “Even though we completed our treaty, there are still parts of it that I find offensive, but in answer to whether it was worth it? Yes, a resounding yes”⁷⁷. The Chief hopes to demonstrate over time that the treaty will benefit all Tsawwassen members.

WHAT TREATY MEANS TO TSAWWASSEN FIRST NATION

*Canada and British Columbia acknowledge the aspiration of Tsawwassen First Nation and Tsawwassen people to participate more fully in the economic, political, cultural and social life of British Columbia in a way that preserves and enhances the collective identity of Tsawwassen people as Tsawwassen First Nation, and to evolve and flourish in the future as a self-sufficient and sustainable community*⁷⁸

Finalization of the treaty means the Tsawwassen First Nation have become signatories to the first urban treaty in contemporary British Columbia. What does that mean to the Tsawwassen First Nation? It means that they now have the constitutional protection of a defined relationship with the rest of Canada. Their place in the world and their right to inhabit their land on their own terms will be guaranteed. The future suddenly looks brighter for their children and their children’s children. Pride and a sense of destiny

⁷⁶ Self government as negotiated by Tsawwassen First Nation.

⁷⁷ “Address from the Bar of the House” October 15, 2007.

⁷⁸ Tsawwassen Final Agreement, preamble, point K.

can be restored and they must surely feel that their neighbours will have to accept the place of Tsawwassen people in the world is now defined in contemporary terms and decisions affecting the community cannot be imposed from outside without proper consultation and consent of the Tsawwassen community. Tsawwassen people's self-government and their right to their own place in the world will be guaranteed and protected from encroachment by others. After 200 years of living in the shadow of the Settler population, this must be an exhilarating new reality.

The Tsawwassen First Nation want economic certainty for their community and their children's future. The only real resource left to them is fishing and that has been under threat from a history of government mismanagement and years of commercial over-fishing when First Nations were not allowed to participate. Now that the resource is depleted, commercial fishers fought redistribution of the remaining resource to include First Nations, terming it a "race-based" fishery and arguing that existing mainstream laws protect everyone equally. Ironically they argued that they, commercial fishers, were being discriminated against by redistribution of the resource.

Mainstream laws are intended to protect "the public good", that of the majority community and only incidentally ignore the existing rights of the Host community. Existing laws and processes protect dominant cultural values. The treaty includes the right to make Tsawwassen laws over their share of the fishery and provides a new opportunity for the Tsawwassen First Nation to develop their land, if needed for the economic benefit and long-term health of the community, based on their values. Certainty exists now, and future Tsawwassen laws still to be created will necessarily be for the benefit of all community members and future generations.

CONCLUSION

The sad fact is that the basis of any rights Aboriginal people have gained has been based on confrontation in the history of this province. Tsawwassen is now trying to negotiate in what we sincerely hope to be a successful route but now only time will tell.⁷⁹

This chapter has sought to provide context for understanding how Tsawwassen First Nation is approaching the Delta community. It is an attempt to establish the historical role of the First Nations community with the explanation of historical background information that is widely available but seldom considered in relations between the two communities. I have examined past conflicts in order to provide context for understanding the current relationship with Delta and how the treaty is shaped by the historical record and experiences from the past.

The sad history of denial of Aboriginal rights in British Columbia is not an isolated political issue. The culture of entitlement fostered by the colony and then the province, the denial of an Aboriginal voice in the province, the ongoing provincial position against Aboriginal title in court cases and the misguided referendum on treaty negotiations in the province, may have fostered the idea for some that the will of the majority could supercede any inherent or constitutional rights of the Host communities in the province as a direct result of their being outnumbered in the democratic sense of one person, one vote. For a time there was a sense that Aboriginal rights could just be voted out of existence because they are not convenient or even that they are a potential deterrent to economic progress for the majority. In our capitalist based consumer society, economic progress has a powerful tendency to dominate rights talk and trump cultural values. Individuals can be expected to follow the tone set by political leaders and governments.

⁷⁹ Baird, "Session #4: The Treaty Process - Specific Cases."

However, the general public cannot vote away the constitutional rights of anyone in Canada, including First Nations.

First Nations have been remarkably patient with us Settlers. Aside from a few court challenges and the odd protest, there has been little confrontation or violence⁸⁰ in response to the imposition of colonial values and oppressive and alien forms of government based entirely on foreign-based value systems. Of course our ancestors thought they were doing First Nations a favour. However, First Nations know better. Past attempts to civilize the “savage” have had devastating impacts on First Nations communities and individuals, disrupting their culture, knowledge and spiritual value systems. From a First Nations perspective, they have been marginalized in their own land. Their situation is not hopeless of course, but is one of constant struggle just for recognition and respect from their fellow human beings in the mainstream community. With the Final Treaty, Tsawwassen status in the community is firmly re-established and it will be up to us in Delta to respond respectfully and appropriately.

Aboriginal organizations representing First Nations, Metis, Inuit and non-status Indians across Canada have vast political differences and experiences with federal and provincial governments and widely varying interests and priorities. Although many historical differences existed, political difference was exacerbated by the Indian Act which defines who gets “status” with whatever benefits attach to that and who doesn’t. Consequently there are generations of “have” and “have not” Aboriginal groups, somewhat similar to “have” and “have not” provinces. Those with “status” have clearly defined membership and benefits specific to the Indian Act while it is only since the 1982

⁸⁰ For exceptions, read Maggie Siggins, *Riel: A Life of Revolution* (Toronto: HarperCollins Publishers Ltd, 1994).; Peter Edwards, *One Dead Indian: The Premier, the Police and the Ipperwash Crisis* (Toronto: Stoddart, 2001).; J.R. Miller, *Lethal Legacy: Current Native Controversies in Canada* (Toronto: McLelland & Stewart Ltd., 2004).; Linda Pertusati, *In Defense of Mowhawk Land* (Albany: State University of New York Press, 1997).

Constitution that Metis and Inuit have even been recognized officially as Indigenous peoples.

Their differences are often difficult to bridge. Representatives of the five national Aboriginal organizations in Canada signed political accords meant to improve the vast education, health and housing gaps between Aboriginal peoples in Canada and the dominant society. Accords were signed with the Federal Government and all provinces and territories in November of 2005, but shortly after the signing the federal government changed and the accords have to date not been implemented.

Most First Nations in Canada still live under the restrictions of the Indian Act and Aboriginal people who live in cities are often subjected to the thorny issue of jurisdictional disputes between the federal government and the provinces. Many contemporary discussions in the media and members of some political parties still support the idea of assimilation with the mainstream as the panacea to the “Indian Problem”, although most are too politically correct to refer to it any longer in those terms. In Delta this is an argument, which often finds fertile ground.

In any conflict, there are at least two varying perspectives and I have tried to give an overview of the First Nations perspective from the publicly available record. These are the issues and background, which I consider essential to any close examination of the relationship between the two communities. First Nations communities have been held back from paddling their own canoe in Canada by the imposition of a colonial political order and laws without their consent, by the very people who were welcomed warmly as visitors and allies post-contact and who became the “visitors from hell” when the Settler communities imposed their own imported values, legal structures and cultural restrictions on the Host communities.

Aboriginal peoples in Canada have a need to restore consensus in their own communities and be wary of negotiators from the majority community who often

negotiate based on the position that negotiation is a zero sum game. There is often the sense that if First Nations gain an advantage, then the mainstream community is disadvantaged.

A lot of emphasis in the dominant community is based on what they believe Aboriginal peoples have to do differently and that often reflects the assumption that if “Indians” were just more like us, everything would be fine. This is the theory of assimilation. Many of us do not seem to understand that not everyone sees the world from our dominant, Western European perspective. There is often a lack of recognition or even understanding within the dominant community that First Nations have a different understanding of the world. There is too often an assumption that ours is the only perspective that counts. Therefore, if someone else sees the world differently, they must be misguided or ill informed. Perhaps we need to turn that assumption around and offer a little self-reflection about our own possible misconceptions.

It is always a mistake to believe that everyone else thinks the way we do. It is critical to understand how our neighbours differ from us. What does it mean to be Coast Salish and live in the vicinity of a huge urban, non-indigenous neighbour? Is it anything like being Canadian in the shadow of the U.S. or a municipality under the thumb of the province? Certainly frustrations are inherent in both. What have been the impacts of colonialism on the Host community? What are their goals, aspirations and how does their history differ from ours in perspective? It is important to acknowledge and respect those differences and recognize them in our interactions. As a community we could celebrate many of those differences and teach our own children tolerance, respect and new ways of seeing the world, which could benefit them for whatever the future brings here in Delta or elsewhere in the ever-expanding global community.

When we interact respectfully and deliberately with others, we learn a tolerance and respect, which can be extrapolated to other similar situations with new friends or

especially with strangers. It is all of a piece in our perception of how we picture our combined future living together in the larger world.

Many First Nations communities have a lot of internal rebuilding and healing to do, and no one believes they can return to their original hunter-gatherer state. However, they have the right under our constitution to maintain their traditions, to build on their own collective worldview and to control their own destiny. They have the right to choose from the best of their traditions and the best of what the Settlers have to offer and combine the influences of both to complement their choice of how to live today and in the future.

The path of that journey is strewn with rocks and potholes created by the Settler communities who have restructured the world around First Nations since their arrival and imposed laws and infrastructure of their own. First Nations communities have a pressing need to repair the resulting dysfunction and poverty from the legacy of colonial social policy, which included the mammoth control of the Indian Act and structural attempts at overt assimilation through the imposition of Residential Schools beginning in the late 1800s until the late 1990s. The Tsawwassen First Nation have been tenacious since the beginning and have taken important steps to restoring their ability to decide for themselves, so critical before they can hope to begin to restore balance and health to their community.

If wealth can be measured in the richness of tradition, in the joy of sharing a proud moment and the strength of instilling the community's most powerful attributes of pride and respect for elders and guests to the next generation, the signing of the AIP was a powerful moment for the Tsawwassen people and I was honoured to be a witness to each of the signing, the joy and the pride.

We can choose to be good neighbours or we can continue to be an obstruction to their hopes for the future. Either way, it is a choice we each make that has enormous consequences for the future of both communities.

CHAPTER 3 Delta Perspective

We are all here to stay. We agree to a new government-to-government relationship based on respect, recognition and accommodation of Aboriginal title and rights. Our shared vision includes respect for our respective laws and responsibilities. Through this relationship, we commit to Reconciliation of Aboriginal and Crown titles and jurisdiction.⁸¹ The “New Relationship” in British Columbia

INTRODUCTION

The local community of Delta, British Columbia is officially called the Corporation of Delta, a not so warm and fuzzy name for an amalgamation of several rather distinct areas: a quaint, older fishing community called Ladner, a suburb of sixties frame houses and strip malls called Tsawwassen, a large area of ecologically threatened ‘wetlands’ and the largely farming community of North Delta. The latter is essentially the north and western extension of Surrey, a much larger, primarily immigrant community containing large, sprawling farms and industry along the Fraser River and multiple strip malls the closer you get to Surrey.

The name “Corporation of Delta” certainly embraces the Western Capitalist ideal and by virtue of its name alone, implies an entity that is unyielding and steadfast. Not many municipalities boast publicly that they are incorporated. 90,000 people live in this predominantly Euro-Canadian corporation. While many residents are farmers and fishers, there is a large commuter population in response to the close proximity of the city of Vancouver. This chapter will examine the issues behind Delta’s relationship with its Host community and analyze what is at stake from the perspective of the Corporation

⁸¹ In Spring of 2005, an agreed-to Memorandum of Understanding was signed called *The New Relationship* developed by the Premier’s Office and the First Nations Leadership Council (Union of British Columbia Indian Chiefs, First Nations Summit, Assembly of First Nations – British Columbia Region). A copy can be found at <http://www.lmtac.com> or <http://fngovernance.org/bc/index.htm>.

of Delta now that the Tsawwassen First Nation have been successful in signing not only the first urban treaty but the first final treaty under the British Columbia Treaty Process.

DELTA BACKGROUND

The Delta population is represented by an elected mayor and six councilors. The formidable mayor is Lois Jackson, elected as the municipality's first female councilor in 1972 and mayor in 1999. Delta is currently represented at the federal level by Member of Parliament (MP) Jim Cummins, a former member of the Reform Party and currently a member of the ruling minority Conservative government, and at the provincial level, was represented during Treaty Negotiations, by Member of the Legislative Assembly (MLA) Val Roddick.

In Canada, constitutional authority is divided between the two levels of government, federal and provincial. The province of British Columbia joined Confederation in 1871 as the sixth province. Section 92 of the constitution vests overriding legislative authority over municipal institutions in the provincial government. Local governments are created under the delegated authority of the *Municipal Act* since 1872. This act outlines the electoral process for local governments, the ways in which they may create bylaws, contract debts, levy taxes, issue licenses, promulgate regulations, acquire and dispose of property, control the use of highways, construct and operate public works, and establish utilities. Other provincial acts impact the authority of municipalities in areas such as cemeteries, condominiums, health, heritage, libraries, parks, pollution, schools, police, water and others.⁸²

⁸² J Terence Morley et al., *The Reins of Power: Governing British Columbia* (Vancouver/Toronto: Douglas & McIntyre, 1983).

Local government is financed primarily through property taxes, business licenses, fines and penalties. For the rest of its budget, local governments rely on fiscal redistribution from the province to fund the multiple services necessary. The use of tax sharing, revenue and expenditure sharing are used to assist local governments in providing many services devolved from the province. Local bylaws require provincial approval to be enacted. In 1967 the Municipal Act was amended to impose a *regional district* over the municipalities in the Vancouver lower mainland.⁸³ The district created was originally called the Greater Vancouver Regional District but has recently been changed to Metro Vancouver. Mayor Jackson has recently received increased prominence since early 2006 when she took on the additional elected role of Chairperson of the Greater Vancouver Regional District⁸⁴.

Development in Metro Vancouver is a bit like a jig-saw puzzle. Metro Vancouver has what is called the 'livable region strategy' and municipalities develop what is called a 'civic official community plan' that covers long-term planning and development and each community plan is designed to fit with the livable region strategy.⁸⁵

DELTA'S RELATIONSHIP WITH THE PROVINCE

The relationship between the Delta council and the province has been a rocky one. When the Liberals were elected to government in 2001, they enacted some radical restructuring and amalgamation of services, which included closing many local hospitals and courthouses across the province. Delta fought hard to retain both their courthouse and hospital with highly vocal and active support from many local citizens. The hospital

⁸³ Ibid.

⁸⁴ A group of mayors from 23 municipalities and 3 electoral districts in Metro Vancouver.

⁸⁵ Maureen Gulyas, "Treaty Negotiators Are Given Crash Course in Municipal Governance," *The Delta Optimist*, 15 May, 2004.

is still open and has undergone recent renovations to restore its emergency services, which had been severely curtailed under the provincial restructuring.

Current issues of major contention between Delta and the province include opposition to the *Deltaport* expansion, opposition to the massive new *Gateway* transportation project, including the South Fraser Perimeter Road, and opposition to the *Tsawwassen First Nation Treaty*, each of which are major political initiatives by the province. Tsawwassen and representatives from the local community also are involved in very vocal opposition to the upgrading of power *transmission lines* through residential neighbourhoods. Previous battles over the hospital and courthouse have proven to be just a warm-up to the main events. Each of these events can be linked to potentially negative impact on the municipal tax base, local residents, as well as marine life, wildlife and the health of Burns Bog. Local groups rally in opposition to each issue, creating in some cases group identities of their own, such as *Against Port Expansion (APE)*.

The provincial interest dominates provincial –municipal relations because it controls both the legislative and fiscal power. In September of 2006 there was an article in the local paper about how concerned local council was over a proposal for a re-examination of how port land was valued in the province.⁸⁶ In April of 2005, the Property Assessment Appeal Board ruled the “comparative value methodology” used by the British Columbia Assessment Authority was not appropriate and the effect was a reduction of about 50% of one company’s⁸⁷ assessment, later upheld by the British Columbia Supreme Court.⁸⁸

It's not clear how changing the methodology of how properties are assessed will impact Delta, but those changes combined with proposals by the British

⁸⁶ Sandor Gyarmati, "Property Tax Revenue Dip Feared: Mayor 'Very Very Concerned' About Provincial Review Now Underway," *The Delta Optimist*, 16 September 2006.

⁸⁷ Western Stevedoring.

⁸⁸ Gyarmati, "Property Tax Revenue Dip Feared: Mayor 'Very Very Concerned' About Provincial Review Now Underway."

Columbia Competition Council, a group made up of heavy industry owners appointed by Premier Gordon Campbell, could have a massive impact on the tax roll.⁸⁹ Mayor Jackson

In 2006, the then minister of housing got into conflict with local governments over housing and taxation. He accused local governments of hypocrisy on social housing by creating obstacles like zoning restrictions, unnecessary requirements and dragged out, multi-stage approvals. He had previously taken on municipalities for overtaxing resource industries.⁹⁰ The provincial competition council also cited local government for taking too big a bite out of industry on property taxation.⁹¹ Municipalities worry that the province will unilaterally cap local levies on ports, mills and other industrial property. There is also conflict between the municipalities and the energy minister over independent power projects. The minister took away what many regarded as a “local government veto” over such projects stating that local government should not block development of the provincial energy supply.⁹²

The ‘not in my backyard’ (NIMBY) element is alive and well at the local level, in this case, particularly in Delta and issues of housing, zoning, development, transport, energy policy, agricultural land, policing, hospitals and treaty settlements are some of the long list of ongoing tensions between Delta and the province. Perhaps some of Delta’s opposition to the treaty was in part, a manifestation of the ongoing battle with the province.

⁸⁹ Ibid.

⁹⁰ Vaughn Palmer, "More Conflicts Loom between BC Liberals and Local Governments," *Vancouver Sun*, 7 October, 2006.

⁹¹ Ibid.

⁹² Ibid.

LOWER MAINLAND TREATY ADVISORY COMMITTEE

The mandate of the Lower Mainland Treaty Advisory Committee (LMTAC) is to coordinate and represent the interests of local government jurisdictions and their constituents in Lower Mainland Treaty Negotiations. The LMTAC is comprised of elected officials and senior staff representing 23 municipalities and three regional districts. LMTAC coordinates and represents Lower Mainland local governments at Lower Mainland treaty negotiations. As the representative of a particular local government, they liaise with other parties involved with treaty negotiations.⁹³

This is the forum provided for local government to address their issues with like-minded officials from neighbouring municipalities and to brainstorm ideas and approaches to resolve pressing issues, which could have a negative impact on council at the conclusion of a treaty. It is a forum to get input on other approaches and to discuss how similar situations may have impacted comparable governments.

In 2003, the Delta council removed themselves from participation on the LMTAC on the basis that whatever was discussed was confidential and could not be shared with fellow counselors and staff.⁹⁴ The committee, made up of civic mayors and councilors was created to put forward municipal concerns at the treaty table. However, the committee is actually a party to the provincial negotiating team and has no independent say in the negotiations.

Official parties to treaty negotiations are restricted to the First Nation, the Federal Government and the Province (municipal government has no constitutional standing but is an element of provincial government).

⁹³ Administrative report from Vancouver City Council on May 30, 1999 regarding Lower Mainland Treaty Advisory Committee negotiations. RTS no. 00591, CC File no. 3139.

⁹⁴ Maureen Gulyas, "Attempt to Return Local Voice to Treaty Committee Can't Get Council Support," *The Delta Optimist*, April 24, 2004.

“We had no real role or responsibility in the treaty process because committee members were under a provincial gag order not to divulge details on treaty negotiations”.⁹⁵ Since leaving the LMTAC provincial legislation has been amended to remove the confidentiality clause that Delta council felt prevented them from freely sharing treaty information with other council members and staff. Delta subsequently returned to LMTAC in 2005 after a two-year absence.⁹⁶

A councilor who had previously represented Delta at the LMTAC disagreed with the majority position that they were prevented from sharing information and that council should remove themselves from representation on the committee. Vicki Huntington stated: “we had always shared information”.⁹⁷

By pulling out of the LMTAC Delta sent a message that their differences with Tsawwassen First Nation are irreconcilable. Pulling out implied that until council's conditions were met no further discussion would be worthwhile. This appears to have been a deliberate political strategy to influence negotiations and while it was not successful, at the very least it demonstrated a tough stance to Delta constituents, many of whom were strongly opposed to the treaty process.

The consequence of their decision to pull out of the LMTAC was that Delta was left with no forum to air potential grievances other than the press and through elected representatives to each level of government, neither of whom are involved in the treaty process; neither is either representative a member of cabinet in their respective governments. With no forum to engage the key issues at the table, Delta effectively put in place a self-fulfilling prophecy. They argued that they had no voice in negotiations, and they effectively excluded themselves from any discussion of the ongoing

⁹⁵ Ibid.

⁹⁶ Maureen Gulyas, "Jackson Returns to Treaty Table," *Delta Optimist* 2005.

⁹⁷ Ibid.

negotiations. This also precluded any change of heart or softening of positions as negotiations proceeded. There is little room for compromise if you are not part of the process even at the discussion level.

Delta's decision effectively exacerbated the existing conflict with Tsawwassen First Nation because it removed one of the only opportunities to discuss fully its concerns regarding the treaty and precluded the opportunity of achieving some compromise position in the future. In 2006 following the appointment of a new Aboriginal affairs minister and a change to the legislation preventing information sharing, Delta decided to return to LMTAC. The turning point may have been the issuance of a written invitation to return to the table from the chair of the LMTAC.⁹⁸ Reconsideration in 2005 of their role in the LMTAC may have been the first indication that Delta council might have been ready to take a new look at their role vis a vis Tsawwassen First Nation prior to the signing of a final treaty.⁹⁹

TREATY ISSUES FOR DELTA

In response to Tsawwassen First Nation attempts to restore some measure of control into their own hands, the municipality of Delta took the Tsawwassen First Nation to court to in an attempt to stop them from signing the first urban treaty between a British Columbia First Nation, the Federal Government and the Province of British Columbia. In December of 2005, Delta council filed an injunction to prevent the Tsawwassen treaty from becoming finalized. The concerns of the municipality were that "under a finalized treaty the Tsawwassen band would be able to purchase property outside the reserve's

⁹⁸ Gulyas, "Jackson Returns to Treaty Table."

⁹⁹ Sandor Gyarmati, "Natives Must Pay Share of Regional Services: LMTAC," *The Delta Optimist*, August 10 2005.

border and convert it to 'treaty land'."¹⁰⁰ The argument was that municipal regulations would no longer apply to the purchased land and "that land would be exempt from local taxation."¹⁰¹ The court ruled that since no changes had yet taken place to the land, no ruling could be made, so the case was dismissed.

Economic: Loss of Tax Base

One of the concerns of Delta is over the jurisdiction of land purchased post treaty and the lack of veto power over those additional lands.¹⁰² Delta will lose both taxing authority and legal jurisdiction. Tsawwassen First Nation will have its own land code regulating laws and land use on treaty lands and tax authority on additional lands purchased post-treaty.

Delta council has spoken out about the fact that many non-Aboriginal people live on the reserve, and for now at least, on the lands to be designated as treaty lands. The stated concern is that these non-Aboriginal people will have little or no say in policy development and decision making on Tsawwassen lands.

Logically, a more compelling and immediate concern for the corporation is that at least some of those people currently pay taxes in Delta and in future those taxes would go to Tsawwassen First Nation. Also some roads will become designated as Tsawwassen roads and Tsawwassen will have the ability to purchase additional lands, which could also have a potentially negative impact on the current tax base of the municipality. However, the new treaty lands come from the agricultural land reserve and are consequently of a lower value than land already available for development and are

¹⁰⁰ Philip Raphael, "Delta's Suit Stalled: Action Aimed at Blocking Treaty Talks Thrown out of Court," *South Delta Leader*, 4 March 2005.

¹⁰¹ Ibid.

¹⁰² Gulyas, "Treaty Negotiators Are Given Crash Course in Municipal Governance."

thinly populated so the dollar value of any tax loss is minimal. Even when a portion of those lands are freed up for development by their removal from the ALR, this future tax base is not one upon which Delta had prior access and should not be considered their financial loss.

Servicing Agreement

Some of you may be familiar with the conflict we've had with our municipality, Delta, as it pertains to servicing issues and our AIP has addressed this and that B.C. commenced to ensure that servicing arrangements in particular the provision of water will be addressed by final agreement.¹⁰³

One of the longest running areas of dispute between the two communities is the lack of a servicing agreement between the two communities, as discussed above in relation to the Tsatsu Shores condominium project, and the apparent unwillingness by Delta to work on one. This was primarily a problem for the Tsawwassen First Nation but it would have become a problem for Delta because it was considered to be a deal breaker for Tsawwassen First Nation to sign the treaty. In that case Delta could have had an agreement forced upon them by the province as part of the final treaty. Alternatively, servicing could have been negotiated through the Greater Vancouver Regional District however the mayor was been quoted in a local paper as saying "Whatever happens, it must be a made-in-Delta agreement".¹⁰⁴

The threat of this issue loomed large over the relationship throughout the treaty negotiations and may have contributed to Delta's resistance to the treaty, increasing the confrontational aspects of the relationship, putting additional pressure on treaty negotiations, potentially leading to blocked negotiations. This would seem to have

¹⁰³ Baird, "Session #4: The Treaty Process - Specific Cases."

¹⁰⁴ Gyarmati, "Natives Must Pay Share of Regional Services: LMTAC."

supported the goals of Delta, however it did not contribute to healthy neighbourly relations. There are alternative ways of viewing the problem.

Delta, as the much larger community has the services that the Tsawwassen First Nation needs for any type of development on their land. Delta appears to have been concerned about the types of development that Tsawwassen could turn to now that the final treaty is signed and withheld agreement based on the unknown future plans of the smaller Host community.

Most small communities negotiate with their larger neighbours to provide servicing which they are unequipped to provide for themselves, because of their size. Every community requires police, fire and ambulance service as well as sewers, electricity and potable water provision. For Tsawwassen First Nation they were unable to negotiate provision of services on a long term basis with the local Delta community. To date, emergency services are provided on an as-needed basis. The lack of service provision was a stumbling block in previous development attempts on the reserve and an ongoing issue for treaty negotiations. Tsawwassen did not want to negotiate in a vacuum, achieve some independence and yet be prevented from making independent decisions on future development because the local municipality was unwilling to negotiate. The municipality of Delta was in the power position in this situation because it holds all the cards and was able to refuse to negotiate as long as it was to their advantage.

At the beginning of 2003, the local Business Association attempted to get the Delta council to discuss servicing with Tsawwassen. Mayor Jackson denied the

relationship was poor and indicated a willingness to discuss the servicing issue. "I don't like this kind of thing being spread around."¹⁰⁵

Does her comment imply a tension between the idea that the relationship is poor and that a servicing agreement is difficult to resolve? Jackson indicated there was a partial agreement for servicing (for emergency services) but otherwise council was waiting for treaty issues to be completed. The refusal to negotiate until the treaty was completed amounted to an ongoing attempt to block the treaty, because Tsawwassen had always indicated that without a servicing agreement it was unlikely there would be a treaty signed by the Tsawwassen First Nation.

The province appointed a mediator in fall of 2005 to try to get the two parties to negotiate a servicing agreement.¹⁰⁶ Delta may have been even more recalcitrant to reconcile the relationship with Tsawwassen First Nation if a post-treaty service agreement had been forced on them by the province. Several councilors tried to pass motions forcing Delta back to discussions over servicing but without success. There was also discussion that Tsawwassen First Nation might alternatively negotiate with the Greater Vancouver Regional District. At the time of the Agreement In Principle it was an uncomfortable stalemate and the source of much of the conflict between the two groups.

When questioned Chief Baird responded, "This council hasn't been prepared to have those discussions." Two years later there had been no progress on access to servicing for Tsawwassen. "Our fundamental concern is that we want to be able to access public utilities like any other local government has been able to...the mayor is always prepared to meet with me but they're not prepared to negotiate servicing issues. Ever since I've been chief, which has been almost six years, we have asked an endless amount of times to start negotiating this issue and the Corporation of Delta has not cooperated in even trying to negotiate. It's unacceptable and in our view we're being discriminated against and we'll pursue

¹⁰⁵ Jan Westell, "Lack of Servicing Talks Bothers TSA Members: Delta's Relationship with Tsawwassen First Nation Is Subject of Discussion at Business Association Meeting," *The Delta Optimist*, February 15, 2003.

¹⁰⁶ Dan Ferguson, "Mediator Hired," *South Delta Leader*, October 7, 2005.

*every means we have available to us to ensure that's resolved, with or without treaty.*¹⁰⁷

Several financial initiatives, which might otherwise have benefited the community, have been thwarted by the Delta municipal refusal to supply services to the First Nation, ostensibly due to uncertainty prior to the resolution of treaty issues. A British Columbia Court of Appeal ruling in 1997 declared that Delta has a duty to provide water, sewer and fire service to Tsawwassen First Nation for a "reasonable" fee.¹⁰⁸ Delta continued to refuse to discuss servicing.

Delta has made several public statements protesting that the municipality has no standing at the treaty table. The Tsawwassen Chief, quoted in chapter 2, believes that the issue is one of control for the larger dominant community and regional government. The majority of council appear to be in agreement over servicing and the refusal to accept pressure to resolve the issue either from local business organizations, the province, the Lower Mainland Treaty Advisory Council or even fellow council members.

*There's a lot of things that need to be worked out and "they" need to put some thought into it and tell us what they want. We can't just go in there and say we'll offer them whatever they want.*¹⁰⁹

Council stated that until Tsawwassen First Nation prepares a detailed economic development plan it can present to the municipality, Delta can't get into servicing discussions. "We don't know what they need when you talk about water, fire, police or roads".¹¹⁰ This seems to imply that Delta expected to hold a veto on Tsawwassen development.

Take sewers for example. Our engineers say we have about 15 per cent left before we reach capacity in South Delta and then new sewer lines would have to be built. We are not in a position where we can sign off that capacity to

¹⁰⁷ Baird, "Session #4: The Treaty Process - Specific Cases."

¹⁰⁸ Ferguson, "Mediator Hired."

¹⁰⁹ Delta councilor Robert Campbell is the municipality liaison with Tsawwassen First Nation and was quoted in the Delta Optimist on Feb.2, 2005.

¹¹⁰ Ibid.

Tsawwassen First Nation and not have any excess for our own community. If they need more, who constructs the line? Delta is not going to be responsible for constructing big, new sewer lines just to service Tsawwassen First Nation.¹¹¹

A report to Delta council last year stated that significant development on the reserve lands following a treaty could result in increased costs between \$20 million and \$25 million for water and sewer services. Delta Councilor Robert Campbell also questioned whether Tsawwassen First Nation would pay for Delta services through taxes—which could be difficult since the band would be out of Delta’s jurisdiction—or some other way.¹¹²

We’d love to have a servicing agreement which is clear and that everyone can understand, but our position is that they’re not ready to go there and don’t have a grasp of the situation yet.¹¹³

It could be considered extremely paternalistic language to imply that the Tsawwassen are unable to grasp the situation, when council has been unwilling to negotiate. Does the use of language, they “don’t have a grasp of the situation yet” imply an assumption that the Tsawwassen are too simple to understand or not sophisticated enough to deal with Delta council?

Delta may reasonably feel that they have the most experience in how to provide services and the risk assessment may have pointed to holding the status quo until plans of the Tsawwassen Nation were complete and public. Certainly there could have been legitimate concerns with future capacity and the costs of expansion. However, Delta’s unwillingness to sit down together and negotiate could have easily been interpreted by the First Nation as political interference in the Treaty negotiations.

¹¹¹ Mayor Lois Jackson quoted in Gulyas, "Attempt to Return Local Voice to Treaty Committee Can't Get Council Support."

¹¹² Delta councilor Robert Campbell is the municipality liaison with Tsawwassen First Nation and was quoted in the Delta Optimist on Feb.2, 2005.

¹¹³ Ibid.

In the end, after a seven-year impasse, a mediator was asked to facilitate service agreement discussions between Tsawwassen First Nation and Delta and an agreement was reached in July of 2006. Tsawwassen First Nation members and residents at Tsatsu Shores will pay for water services; a fire service agreement was formalized at the same time. A police agreement was expected to follow. A sewer agreement was expected to be negotiated with the GVRD the same as any other government¹¹⁴. The achievement of this agreement was a significant step forward for the relationship between the two communities. For the Tsawwassen First Nation it means the water portion of the reverse osmosis plant built to service the Tsatsu Shores condominium development can be shut down for a saving of \$150,000 a year.

Agricultural Land Reserve

In 1973 the then New Democrat provincial government instituted a designation of farmland that would be held inside something called the Agricultural Land Reserve (ALR) to protect farmland from encroachment by developers particularly near large urban centers such as Vancouver. There is an oversight body, the Agricultural Land Commission, which accepts applications from those owners of farmland who wish to remove their land from the ALR and use it for something other than farming. The South Coast panel is a three-person panel with the power to make the decision regarding removal of land from the ALR. At the time of writing, the three-person panel had two vacancies. Filling of those vacancies could have become controversial just prior to receiving submissions from Tsawwassen First Nation.

¹¹⁴ Maureen Gulyas, "Municipality Signs Water, Fire Services Deal with Tsawwassen First Nation," *Vancouver Sun*, 26 July 2006.

According to a recent ALR bulletin, less than 5% of British Columbia's land base is suitable for agriculture. Prior to the creation of the ALR, approximately 6,000 hectares of prime farmland were being lost every year to urbanization and other development. The ALR helped to reverse that trend, and for 30 years has ensured that farmland is available for a growing and dynamic agriculture industry.¹¹⁵

Mayor Lois Jackson is quoted in the Vancouver Sun of June 2, 2006 as wanting to fight back against Tsawwassen First Nation removal of land from the ALR. "I don't see that I have any other choice," adding she isn't necessarily against the natives being given some land¹¹⁶. "But if they want this land, they should farm it, just like everyone else. I have to stand up and ask what is going to happen to the rest of the Delta lands, the best and richest land we have? Are we going to be Los Angeles, put Wal-Marts and everything else on it? Because that is where we are going with this."

Constituents of Delta who farm are naturally worried about how these developments could compromise local agriculture and are concerned that as a result of treaty, land has been removed from the agricultural land reserve. There does appear to be as much opposition to local large-scale greenhouse operations, however these activities do not require removal of land from the ALR. People who buy farmland in the area and subsequently build large country estates and do not farm are not welcomed with open arms in Delta.

This concern that landowners are moving to Delta and building luxury homes and not farming the land is unrelated to treaty negotiations. The corporation of Delta is concerned that these particular usages subvert the protections of the ALR for farmland. Delta council has passed bylaws attempting to control the maximum square footage of

¹¹⁵ The ALR as an Engine of Growth in *ALC Reserve Opinion*, An Information Bulletin from British Columbia's Agricultural Land Commission. Vol.1, No.8. Winter 2003.

¹¹⁶ Miro Cernetig, "Band Wants to Build on Farmland: Development a Condition of Tsawwassen Treaty," *Vancouver Sun*, June 2, 2006.

housing in the municipality to prevent such country estates. This indicates that there is a genuine concern for the loss of farmland on all fronts and this concern is not directed only at the Tsawwassen First Nation.

When local farmland was expropriated from farmers for the building of the Roberts Bank Coalport in 1968-69, most of the land was never used and was leased back to farmers. These now tenant farmers believe the province has no right to provide the expropriated property to the Tsawwassen as treaty land. The farmers believe the provincial government is reneging on a prior covenant to return the land if it is not required for Roberts Bank.

The Delta Farmers' Institute wanted the Tsawwassen First Nation to provide a detailed business plan, to illustrate their plans for the future use of the land. "We're not really against them taking out some land around the port, but if you are not careful you'll take out this land and wake up one day with parking lots here and subdivisions of a thousand houses there. Once you pave it with blacktop, it's lost for good".¹¹⁷ The farmers' passion for farming and preserving farmland is understandable. There has recently been an increase in awareness of the general public that growing and consuming locally grown food is healthier for both individuals and the environment and this awareness is likely to increase in the coming years.

There is an article in the Delta Optimist dated July 30, 2005 that is titled, *Jackson backs request for Agricultural Land Reserve data*. The article states that Delta is supporting a call by the City of Burnaby to have the provincial body in charge of protecting B.C.'s farmlands give information on just how much total land is being lost (to farming). Mayor Lois Jackson is quoted as saying, "I hear people think it's wonderful we

¹¹⁷ Ibid.

can take agricultural land out of production and replace it somewhere else, but it's apples-to-oranges because the reality is you're not replacing it with good farmland."

Heaven knows what will happen 20 years from now if we don't have the land and we might not have the products coming in from the United States. I guess I'm old school. I think we should feed ourselves but maybe that's Utopian.¹¹⁸

The article goes on to state that the future of farmland in Delta is supposed to be even more secure once the new Official Community Plan (OCP) is approved by council this year. One of the OCP's key components is to preserve as much of the 10,085 hectares (24,929 acres) of land in the Agricultural Land Reserve as possible.¹¹⁹ What the article does not explicitly state is that removal from the ALR was a key condition of the Tsawwassen for final treaty that Delta council vehemently opposed.

The fact that the new treaty lands were included in the ALR was a potential stumbling block to final treaty. Land that cannot be freely used to Tsawwassen First Nation's best purpose would have been like buying a car with a lien on it. The point of negotiating a treaty was to restore Tsawwassen First Nation control over their land and determine their own future. Negotiators for both the Federal and Provincial governments from the beginning assured locals that the Tsawwassen First Nation would have to apply to have the lands released from the ALR just the same as any other landowner in the province.

In the end, the province determined that the issue was too complex to be decided by an appointed commission and the decision was made by the provincial government to rezone the land itself.

¹¹⁸ Gyarmati, "Jackson Backs Request for Agricultural Land Reserve Data."

¹¹⁹ Ibid.

Fishery

*Historical entitlement is the basis of the agreement, not "race" because simply being "Indian" is not enough. Surely there is something very unfair about taking property away from people because of their race and then arguing it is racist to give it back.*¹²⁰ Hamar Foster

The Federal Department of Fisheries and Oceans (DFO) controls the fishery in Canada. They maintain the resource, control the allowable catch, determine which stocks are at risk and police fishers for compliance.

Salmon is the lifeblood of the fishing industry in British Columbia. Salmon has a cultural and economic importance in this province. A history of over-fishing and government mismanagement has depleted once powerful stocks of fish and there is much in fighting among fishermen regarding who has a right to fish, who should fish, when to fish and how to protect the stocks for the future.¹²¹ The bitterness spills over into protests at the dock and in the media. Many commercial fishermen consider any move to protect the Aboriginal fishery, "race-based" and use the argument that all fishermen should be treated as "equal" citizens and no one is entitled to special rights particularly when it comes to fish.¹²²

In British Columbia, Aboriginal people make up less than 5% of the population¹²³ and government is planning to allocate less than 1% of the fish stock annually to the Tsawwassen First Nation. This is the Tsawwassen sole source of resource industry on a coast that used to supply the First Nation with everything they needed for survival. Today, the fishery is all that they have left of their resource-based economy. There is no

¹²⁰ Hamar Foster, "The 'Race-Based' Myth: First Nations Are Being Allocated Fishing Rights Because Their Fisheries Were Wrongfully Appropriated," *Vancouver Sun* 2007.

¹²¹ Stephen Hume, "Cultus Lake Sockeye Provide a Brutal Lesson in Conservation," *Vancouver Sun*, 13 October 2006.

¹²² Foster, "The 'Race-Based' Myth: First Nations Are Being Allocated Fishing Rights Because Their Fisheries Were Wrongfully Appropriated."

¹²³ Canadian 2001 census establishes the Aboriginal population in British Columbia at 4.4% of the total population.

forest, no mining from which to make a living and be self-sufficient. It is commercial over-fishing whether domestic or international, which has depleted the stocks, as a consequence of mismanagement by governments in which First Nations have had no say. By comparison, as a result of U.S. litigation some 30 years ago, fishing tribes of Washington State and Oregon were confirmed to be entitled to up to 50 per cent of the salmon fishery.¹²⁴

Some local fishermen are particularly vocal about what they consider to be a “race-based” fishery. One of the most vocal of these is the local MP, John Cummins, who is a former Reform Party member and commercial fisherman. He is a vocal proponent of Individual, “equal” rights and is now the sitting federal government Member of Parliament for the Delta-Richmond district. He is far to the right of most of his fellow conservatives politically. Although he was fisheries critic when the conservatives were in opposition, he has since been side-lined by his own party and relegated to the backbench where he does not sit quietly.

One minor political challenge in a democratic system is that voters do not have to be well-educated regarding political issues or knowledgeable about local or even national history. This can advantage candidates who appear to defend single issue constituents. Once elected, the local MP is supposed to represent all of their constituents. While the mayor and council represent only those electors resident in Delta, the local MP represents the Tsawwassen First Nation who are his constituents. Mr. Cummins is a sitting member of the Federal government, which has constitutional obligations to all First Nations including the Tsawwassen First Nation. The Federal government has legal and historical obligations, which include a fiduciary responsibility

¹²⁴ Foster, "The 'Race-Based' Myth: First Nations Are Being Allocated Fishing Rights Because Their Fisheries Were Wrongfully Appropriated."

to First Nations and a moral obligation to contain and minimize potential threats to the local First Nation community in his jurisdiction.

It is understandable that fishers are worried about the future of their industry. Fishing stocks are threatened on both coasts and the industry is in steep decline for many species of fish. However, there is little acknowledgment that policies of the past in regards to native fisheries were not equal and that it is a combination of commercial over fishing in the past and government mismanagement, which have endangered the stocks. Commercial fishers want government to restrict the minimal native fishery and ensure that natives have no right to make a living wage from their traditional resource. Perhaps this is the idea of sharing the pain, however it is not the native fishers who have contributed to the current state of affairs in the fishery. It is easy to empathize with the anxiety and fears of the local fishers. However, is it fair to single out and restrict native fishers who have historic rights to their portion of whatever is left of a fishery that has been decimated over the course of two hundred or more years of commercial over-fishing?

The issue of the Salmon Fishery appears to have been one of the more controversial treaty issues for non-indigenous residents of Delta. Commercial fishermen have been very vocal about their opposition to what they term a “race-based” fishery. In the Agreement In Principle it was determined that Tsawwassen First Nation will receive .78 per cent of the total annual available sockeye catch on the Fraser River. At issue in the negotiations was the mechanism to decide how that catch is delivered. Commercial fishermen and the provincial government preferred the method referred to as the “industrial solution” which means commercial licenses for all. The commercial fishermen see this method as the preferred solution because they see it as a level playing field and non-discriminatory. The Tsawwassen say this method limits access to as few as 20

“lucky” Tsawwassen fishermen who would be licensed to fish and this method would exclude the rest of the community.

Tsawwassen preferred what is called “a harvest agreement”. Each year the Department of Fisheries and Oceans determines the available catch and the Tsawwassen would proceed to harvest its .78 per cent of the total catch. The Tsawwassen would manage the allocation and determine collectively how it would be distributed among their people. The federal government supported this approach for Tsawwassen which is what ultimately resulted in the Fisheries side agreement of the Final Treaty.

Tsawwassen view the salmon fishery as the only significant resource they have left. They want it managed communally, with the participation of as many people as possible. The inclusion of secure access to a commercial fishery was central to Tsawwassen achieving a final treaty agreement.

First Nations are being allocated fishing rights not because of their race but because their fisheries were wrongfully appropriated. A century and a half ago Governor Douglas signed treaties on Vancouver Island that explicitly state that in return for accepting settlement, they were guaranteed “their fisheries as formerly”. This promise was made throughout British Columbia in the 1860s and ‘70s. The argument was also used that because their fisheries were guaranteed, they did not need much land.¹²⁵

Arguments of equality seem to prevail when the majority community senses a threat from a minority. This argument equates the idea of treating people ‘equally’ with treating them ‘the same’. However, treating people equally does not always mean treating them exactly the same. As First Nation professor John Borrows explained so

¹²⁵ Ibid.

well, “you don’t make a rich man and a poor man equal by giving them each a hundred dollars.”¹²⁶

Minority rights are challenging to the mainstream when they feel under threat. There is often a perception that if one smaller group gets a benefit, the large group is disadvantaged. There is no acknowledgement that the proposed benefit is the correction of an historical wrong. If things had been done differently, First Nations would have shared this “benefit” that the majority community has had since the beginning of settlement in Canada and it would not be such a “hot-button” issue today.

Just because First Nations have been disadvantaged in the fishery in the past does not mean that they should continue to be disadvantaged. They are only 3% of the population in Canada. Only the Tsawwassen will have the right to fish under this Treaty; their total population is 331, half of whom live elsewhere and many are children. How much of a threat can they be to the British Columbia fishery?

The arguments, already resolved in the courts, parliament, the legislature and the Treaty, continue. MP Jim Cummins continues to argue vocally against the treaty, in a 44-page report against tax provisions, saying the treaty “amounts to a ‘windfall’ for the band should it lease land to Deltaport for container storage and build market housing”¹²⁷. The treaty was tabled in the House of Commons, December 6, 2007 by the Indian and Northern Development Minister Chuck Strahl. The minister said “the treaty would give band members the quality of life that the vast majority of Canadians take for granted.”¹²⁸

Deltaport Expansion

The Port of Vancouver’s Deltaport expansion was approved on November 3, 2006. The expansion will nearly double the berth length of the current operation and will

¹²⁶ John Borrows, "Taking What's Not Yours," *Windsor Yearbook of Access to Justice* 253 (2004).

¹²⁷ John Bermingham, "MP Wants 'Windfall' Treaty Debate," *The Province*, 19 December 2007.

¹²⁸ Ibid.

expand the footprint of the port by 20 hectares, increasing container handling by 250,000 units to 750,000 units per year.¹²⁹ The project despite vocal local opposition had received approval from the British Columbia environmental assessment office. This project is considered a key element of the ambitious Pacific Gateway project currently in development to ensure Metro Vancouver's role as Canada's biggest and busiest port.¹³⁰

There has been vigorous opposition to port expansion by both locals and environmentalists. Opponents complain of flawed reports and air pollution that will exceed the regional district levels for particulate matter.¹³¹ The port has an existing agreement with Tsawwassen First Nation, which was estimated to be worth a potential \$50 million at the time it was negotiated in 2004 as settlement for decades of adverse environmental impact from the existing port development next to reserve lands.

It is expected that at least half of the land removed from the ALR as Tsawwassen Treaty Lands will be used for Tsawwassen First Nation to benefit from the new port expansion. It seems disingenuous to criticize Tsawwassen First Nation for benefiting from the port expansion, now that it is approved, when they were the ones most negatively impacted by the original port development. There are few economic opportunities for Tsawwassen in the lower mainland, a hub of economic and development opportunity for mainstream investors.

The issues discussed above comprised the main areas of concern for Delta in their opposition to the Tsawwassen First Nation final treaty. I have discussed the issues as they have been expressed publicly and now I wish to turn to how these concerns were addressed by the treaty process itself.

¹²⁹ Scott Simpson, "Deltaport Expansion Plan Approved," *Vancouver Sun*, 4 November, 2006.

¹³⁰ Ibid.

¹³¹ Ibid.

WHAT TREATY WILL MEAN TO DELTA

There are many legitimate reasons why Delta council opposed the Tsawwassen treaty. The treaty will remove a portion of Delta's agricultural land base; the tax base may be moderately reduced, and constituents who currently live in Delta may find themselves living on Tsawwassen treaty lands with no vote on what happens to those lands and only a single voice on other issues of direct concern which may arise in the future within Tsawwassen First Nation jurisdiction but no vote in the First Nation government. It will be up to the Treaty government to remain concerned for the welfare of their primary tax base.

Fishermen fear that access to the remnants of already threatened fish stocks will be reduced due to the percentage allocated to Tsawwassen First Nation, and farmers fear that rich farmland reserved solely for agriculture by a previous provincial government 30 years ago will be lost to farming forever. These fears are not irrational. They may seem fair and reasonable based on the perspective of Delta. However well meaning, local people defending their own way of life are commonly willing to have governments compensate with vast amounts of cash, in lieu of the access to traditional land and resources, which were the highly prized priorities of the Tsawwassen people.

Local Delta constituents may well be unaware of the meaning of court decisions, the constitutional status of First Nations' rights and even indifferent to the position of the Province on treaty negotiations. While busy adult taxpayers are often only interested in their own single issues, it is the education system which can be considered a major player at fault in the treaty discourse due to the missing Aboriginal voice in its teachings of history in Canada.

Each group probably believes that they are righteously defending important personal and political issues, whether that is farming or fishing, transportation, power or

port expansion. However, what are the consequences of fighting so vocally for particular issues? How have those battles played out in public?

What message was sent to the next generation? Do the children sharing classrooms from both communities understand the nuances of each argument or do they see the issues watered down to their simplest dimension? Is it possible they see the core issue as one of race? Do school age children who see bullying everyday in school, potentially interpret vocal community difference between the ethnically different groups as Settler adults trying to impose their position on their neighbours yet again as bullying? Do the mainstream children then feel emboldened to bully the First Nation children? Each group has a responsibility to raise the next generation free of biases of the former.

CONCLUSION

Since the repatriation of the constitution in 1982, the courts have found that federal and provincial governments are under a moral and Constitutional obligation to work out a just relationship, including restoring the honour of the Crown.¹³² There are historical, economic, social and legal reasons compelling us to mend the recently re-negotiated relationship with our First Nations neighbour. Finally, the Supreme Court has found that the re-negotiation process as a whole will constitute the “Reconciliation” of the pre-existence of Aboriginal societies with the sovereignty of the Crown”.¹³³ This should be interpreted as an obligation for us all to care about the future of the relationship.

The point of the current Treaty is a partial restoration of enough of the original land base to help secure a stable, sustainable economic future for current and future

¹³² 3 S.C.R. 1010.

¹³³ 30 B.C.A.C. 1, 49 W.A.C.1, 104 D.L.R. (4th) 470, [1993] 5 W.W.R. 97 [1993] 5 C.N.L.R. 1, [1993] B.C.J. No. 1395 (QI). (BC Court of Appeal.), 3 S.C.R. 1010.

members of our Host nation. The actual Treaty lands are less than 1% of the Tsawwassen traditional territory.

Under the Indian Act, like most reserves, Tsawwassen First Nation has suffered the loss of its self-sufficiency; much of its self-respect and its cultural core was continually at risk under the status quo. The Tsawwassen First Nation clings to a slivered remnant of its former land base. The Treaty is intended to ensure the collective economic, political, cultural and spiritual survival of the community well into the future. These are the same healthy goals that each of us would recognize and demand for ourselves, if ever our well-being was under threat from outsiders. These are the same goals for which Canadian politicians argue internationally on behalf of peoples under threat in other countries around the world.

When the Delta mayor and council filed a lawsuit against the Tsawwassen First Nation to try to prevent the achievement of a final treaty next to their corporation in December of 2004, their concern must have appeared to be ironic to Tsawwassen First Nation.

The British Columbia Supreme Court ruled against Delta on the basis that the court cannot rule on something that has not yet happened.¹³⁴ In fact, at the time of the ruling there was no final treaty. However, this type of decision is not helpful in resolving the conflict between the two communities as it left open the possibility that the treaty could have been blocked at a later date, instead of rejecting out of hand the idea that the municipality should be able to block a legally negotiated agreement.

There is no shared pride in the history of the two communities. Many in the dominant community have been determined to thwart any moves of the Host community to re-establish their own self-sufficiency. Surely it is a colonial-type expectation that we

¹³⁴ Raphael, "Delta's Suit Stalled: Action Aimed at Blocking Treaty Talks Thrown out of Court."

should have the power to dictate the future of our neighbours. They have political rights that predate our arrival on this rich land and we have not returned the favour of the sharing of the riches that our ancestors were the beneficiaries of, quite the opposite.

The two communities share some political similarities in relation to a lack of power. Tsawwassen First Nation has had no decision making authority of its own since the Indian Act was passed in 1876, and Delta council represents a local municipality which is a larger community than Tsawwassen First Nation, but because it is not a recognized government under the Canadian constitution, it is subject to the political whims of whichever provincial government is currently in power.

Perhaps a recognition of these similarities could provide a starting point from which the two communities could share their frustrations and at least to begin to communicate with each other. By adding the cultural component to Interest Based Negotiations, lasting Reconciliation could become a possibility. Relationship-building begins with communication and in a cross cultural setting requires the acknowledgment of that as a foundation for the future. Currently, the two communities are not communicating well and neither are we speaking the same language when we begin from a history of conflict and divergent worldviews. Chapter four will discuss this language framework further.

CHAPTER 4 Cross Cultural Conflict Resolution, Language and Assumptions

*The world we have created today as a result of our thinking thus far, has problems that cannot be solved by thinking the way that we thought when we created them*¹³⁵

INTRODUCTION

Often in mainstream literature it is obvious that some authors still believe that resolution of the “Indian problem” requires changes within First Nations, to change enough to solve “their” problem by assimilating to the Euro-Canadian, liberal, democratic paradigm.¹³⁶ Integral to my thesis is the argument that there are at least two parties to the “problem,” and that a resolution requires closer examination of how “we” as mainstream Canada contribute to the problem in the first place. It is necessary to examine how our own assumptions of universality and non-indigenous worldview colour our perceptions of how difficulties between the two communities should be resolved.

It is human nature to assume the other party to any conflict is the one who has to change for relations to improve. Indeed, Hofstede¹³⁷ tells us that when we personally have a problem, we assume it is created by outside factors, but when others have a problem we assume it is something internal that they could control, a conscious decision that they made, laziness or lack of intelligence perhaps. This is an everyday occurrence within our own cultural group; imagine how this becomes magnified when dealing with

¹³⁵ Paterson, *In the Canoe Together - the Power of a Systems Perspective* [cited].

¹³⁶ Cairns, *Citizens Plus: Aboriginal Peoples and the Canadian State.*; Tom Flanagan, *First Nations? Second Thoughts* (Montreal: McGill-Queen's University Press, 2000).; Melvin H Smith, *Our Home or Native Land?: What Government's Aboriginal Policy Is Doing to Canada* (Victoria, BC: Crown Western, 1995).

¹³⁷ Hofstede, *Culture's Consequences: Comparing Values, Behaviors, Institutions and Organizations across Nations.*

another culture. This is referred to as the fundamental attribution error.¹³⁸ It is particularly important to be aware of these assumptions in a cross cultural setting where distinct worldviews often increase the empathy gap.

There is a deep, long-standing rift between the two local communities. Chapter two looked at the conflict from a First Nations perspective and chapter three examined the perspective of the Delta municipality. Positions have been entrenched but neither community is going away. We are neighbours and solutions must be found. The Host community was here first. Then the European Settlers arrived and a foreign way of life was imposed on the Host community without their consent. Now some members of the Delta community continue to oppose the restoration of Tsawwassen First Nations rights, not just cultural rights but political rights to make their own decisions and determine their own destiny even though a final treaty has been achieved. It must be difficult for those farmers who fought so passionately against the treaty to let go of their frustration at the loss of high quality farmland from the ALR. However, just because there are more of us, does not give us the moral right to dictate to the Host community the choices they can or cannot make with their own land. It is important to remember that the portion of land being negotiated was significantly greater than what was gained in the treaty. After the non-native community built a ferry terminal, a freeway, hydroelectric transmission lines, a Coalport, a railway and a substantial residential community on Tsawwassen First Nations traditional territory does the Settler community have any right to tell them what they can or cannot do with their land or how to provide economic certainty for future generations?

The Royal Commission on Aboriginal Peoples (RCAP) studied the roots and the consequences of historical treatment of Aboriginal peoples and produced five volumes of

¹³⁸ Ibid.

advice and conclusions in 1996, which have been virtually ignored in mainstream Canada. The rhetoric from the report is often heard in international circles when we boast about our accomplishments at home but change has been slow and incremental outside the courtroom, where many contemporary Supreme Court decisions have encouraged negotiation not litigation.

Support for the First Nations legal position on self-determination has been recognized not only by RCAP, academia and Supreme Court decisions but Harvard University has also examined the factors of economic success in US tribes.¹³⁹ While there are historical differences between First Nations and the US tribes¹⁴⁰, it is no stretch to recognize that the economic implications could be transferable to the Canadian context. The study concluded that there are 3 key elements, which must be in place for First Nations governance to be successful:

1. Jurisdictional control by the first nation government over a range of areas including natural resources;
2. Capable institutions of governance that make intelligent decisions, and
3. Governance structures that match the culture of the people to ensure their legitimacy.

In other words, First Nations' long-term economic health depends first on the health of their political institutions. The political institutions, therefore, must be allowed to govern over a range of areas. To ensure this happens would require negotiation, respect and accommodation by Canada, the province and neighbouring municipalities. While the right to self-government is an inherent right protected by the constitution and not a delegated right, it is one negotiated and defined as part of any treaty. Canada and the Province agreed to negotiate but there is no forum for local municipalities to agree or disagree, because they are solely represented by their provincial entity at the negotiating

¹³⁹ Stephen Cornell and Joseph P. Kalt, "What Can Tribes Do? Strategies and Institutions in American Indian Economic Development," (Los Angeles: American Indian Studies Center, 1992).

¹⁴⁰ Deloria and Lytle, *The Nations Within: The Past and Present of American Indian Sovereignty* (New York: Pantheon, 1984).

table. The need for co-operation and collaboration between the First Nations and the local community follows post-treaty after the other parties to the negotiations return to their respective government jobs.

The method of achieving strong political institutions is through negotiation. But it is important to recognize the First Nations perspective that negotiations are between peoples – that is, between nations, each represented by their own governments. Many people in the mainstream believe that First Nations people are individual citizens, with equal, democratic rights like everyone else, subject to the same laws with no special status. This ignores the political rights recognized in the repatriated Constitution of 1982, decisions of the Supreme Court of Canada (SCC), which has recognized otherwise and inter-cultural negotiations go badly when governments and mainstream communities do not recognize those same rights.

*We are law abiding people overall like any society but we have historic relations that have developed a unique set of legal obligations on Canada.*¹⁴¹

This quote relates back to the initial quote at the beginning of chapter two, that First Nations were already here when the Europeans arrived. The initial quote, from former Chief Justice Lamer in the *Delgamuukw*¹⁴² decision supports the First Nations position that negotiations are to be conducted on a nation to nation basis between the First Nations and the federal government because First Nations were established nations prior to contact and only the federal government has the status to conduct those negotiations particularly for treaty rights and land. The final treaty will resolve most issues between Tsawwassen First Nations and the federal and provincial governments.

¹⁴¹ Allocution from Mr. Ghislain Picard, Regional Chief of the Assembly of First Nations of Quebec and Labrador – undated.

¹⁴² 30 B.C.A.C. 1, 49 W.A.C.1, 104 D.L.R. (4th) 470, [1993] 5 W.W.R. 97 [1993] 5 C.N.L.R. 1, [1993] B.C.J. No. 1395 (QI). (BC Court of Appeal.).

However the ongoing dispute between the two local communities could poison the relationship for years if it continues unresolved.

Resolution of the ongoing impasse between the two neighbouring communities is obviously the preferred solution that may require further intervention. However, that is not as straightforward as it would be if the two parties were from the same dominant culture, as would be the case in the positional bargaining of a labour dispute or of business entities arguing over a patent or business plan. RCAP and SCC decisions all encourage parties to negotiate, but there has to be a basis for negotiations and a willingness to constructively resolve any dispute. Interest based negotiations will not by themselves, without a culturally nuanced approach, positively resolve deep-rooted disputes between parties who see the world from very different cultural perspectives.¹⁴³ This chapter will argue that there are deeper aspects of cross cultural difference that must be understood and engaged to enable local relations to succeed for the long term. In fact the biggest obstacle to a successful Reconciliation is the lack of understanding of how our own worldview is getting in the way of resolving the current impasse. Our worldview can often prevent us from seeing the other person's perspective and blind us to options for Reconciliation.¹⁴⁴

This chapter will examine what interest based negotiations can offer and how bringing a cross cultural perspective to the table can further enhance the resolution of the conflict in a deeper, more long lasting resolution to include relationship-building for the long term benefit of both communities.

¹⁴³ John Paul Lederach, *Preparing for Peace: Conflict Transformation across Cultures*, ed. Harriet Hyman Alonso, Charles Chatfield, and Louis Kriesberg (Syracuse, New York: Syracuse University Press, 1995).

¹⁴⁴ Ibid.

INTEREST BASED NEGOTIATIONS

There are real issues at stake between the two groups. These issues affect people on both sides of the conflict in a deep and personal way. Livelihoods are at stake and the future of families. In the case of fisheries and the ALR removal, decisions will have an impact for generations. However, the real challenge is not the short-term fix, negotiated and forgotten about. Resolution of treaty issues have been negotiated between parties at the treaty table, but the real challenge is resolving the long-term conflict between the two communities by developing a constructive relationship that benefits both communities for now and the future. We are neighbours, we should try to be good neighbours. To accomplish Reconciliation between the two communities requires self-reflection and actions such as those described below to achieve the cross cultural competence required for a long-term, healthy, ongoing relationship.

Within the process of interest-based negotiations, something of a template has been developed for mainstream North American society to analyze the underlying interests of each party to a conflict.¹⁴⁵ In our current local conflict the parties include the federal government, the provincial government, the corporation of Delta and Tsawwassen First Nation. If we examine the interests of each party to the conflict it would look something like what follows.

The Federal Government's stated interests are always for the common good of all Canadian citizens or what is often referred to as the "public good". In our democratic society, mainstream Canadians often make the assumption that automatically means majority rule, i.e. the majority can dictate to the minority. Even if the courts determine

¹⁴⁵ Lederach calls this the prescriptive model to be used when the parties have a shared mainstream culture and language. Examples of the template can be found in Fisher and Ury, *Getting to Yes: Negotiating Agreement without Giving In*, Stephen Owen and Alex Grzybowski, *Good Governance and Conflict Management: A Framework for Conflict Analysis and Resolution* (Victoria, BC: Institute for Dispute Resolution, University of Victoria, 2001).

otherwise, or the constitution indicates otherwise, this information is seldom broadly understood in the general public. It is clear by their positioning that both levels of government frequently find themselves tested by the shifting priorities of historical and constitutional rulings and policy.

There has been a large investment of time and money in the treaty process since 1992 with few tangible results to date. The position of the Federal government was and is to achieve concrete results, and to prove that their faith in the process has not been misplaced. There were only 6 First Nations in stage 5 of the process at the time the federal government changed in 2006 to a Conservative government. The federal civil service may have felt some considerable pressure to move ahead and achieve an actual treaty and justify the millions of dollars and almost fifteen years invested in negotiations. Underlying interests of the Federal Government, used for interest-based negotiations might include:

1. To create legal certainty over land and resources in the province of British Columbia.
2. To enhance relations with the province by providing certainty for Industry.
3. To heal the failed relationship with First Nations people in the province of British Columbia.
4. To avoid losing in the courts and having decisions imposed on them
5. To avoid costs associated with protracted court cases.
6. To ward off international criticism, especially by the United Nations, of Canada's treatment of Indigenous People.
7. To demonstrate to the courts acknowledgment of not only the fiduciary duty which Canada holds towards First Nations people but the moral obligation in particular because of the historic wrongs that have been committed against Indigenous People in Canada.
8. To improve voter perception of the track record in treaty negotiations in light of the money already invested and the lack of visible results.
9. To resolve the question of fisheries allocation.
10. To avoid economic costs of failure, which would be prohibitive.
11. To repair some of the more egregious failed policies of INAC without dismantling the department

The federal government is always in the primary position of power at the table due to the constitutional distribution of power in Section 91, over First Nations, governance, defense, federal land and resources. If they want a successful resolution to

treaty negotiations, they have the ability to use that power in a positive way to influence the province to move on issues of importance to each of the parties and to create a win-win atmosphere for all.

The power of the Province of British Columbia included holder of title to all public lands and resources and a potent prior commitment to its citizens to hold First Nations to a municipal style of government; its intransigence at the negotiating table has been a large barrier to settlement of final treaties in the province. The province now has their laudable “New Relationship” but in order to prove that it is not just empty rhetoric, they too had a deep need to sign an actual treaty. Underlying interests of the provincial government include:

1. To settle one of the most high profile treaties because of the urban effect on the lower mainland population.
2. To settle the treaty to enable the economic expansion of Deltaport, a critical component for the high profile lower Mainland “Gateway Project” key to secure Asia Pacific Trade.
3. To define land rights as a benchmark for future treaties
4. To create legal certainty over land and resources in the province of British Columbia.
5. To avoid the high cost of not settling, estimated to equal \$1 B lost investment & 1500 jobs per year.¹⁴⁶
6. To respond to pressure from industry to create certainty for resource development in British Columbia.
7. To avoid the costs associated with protracted court cases.
8. To demonstrate good faith in the ‘New Relationship’ with First Nations people in British Columbia, due to the unfortunate public referendum on treaties when the current liberal government came to power.
9. To challenge the NDP by removing agricultural land from the Agricultural Land Reserve. The NDP created the ALR when they were in power.
10. To enhance the power of the province with the Delta Mayor, who was a vocal opponent of the treaty.

The parties have been able to conclude a treaty recommended for ratification at each of the three levels of government. The conflict with Delta however continues to

¹⁴⁶ National Post October 30, 2007

simmer below the surface with little opportunity for dialogue. There is a need for Delta to re-engage with its neighbours at the local level.

The position of Delta was to be a clear player in the process and influence the outcome for the benefit of Delta municipality and constituents. They wanted to protect the tax base and the Community Plan that they have put in place. However, the municipality of Delta had no actual place at the treaty table, no voice in the negotiations, and a rocky relationship with the province, which represented the municipality at the treaty table. Underlying interests for a frustrated Delta community might have included the following:

1. To maintain control over development of lands previously part of Delta's land base through opposition to lack of long-term coordinated land-use planning.
2. To convince treaty negotiators to accept the same land use standards as the Delta municipal land use plan.
3. To oppose the loss of tax revenue from re-allocated municipal tax base.
4. To prevent future land re-allocation if Tsawwassen First Nations chooses to purchase additional land.
5. To maintain the status quo, despite what is often considered one of the poorest relationships with its First Nations neighbours of any municipal government in the province¹⁴⁷.
6. To support local fishers through opposition to designating a percentage of the fishery to a First Nations.
7. To protect valuable farmland.
8. To maintain opposition to provincial government initiatives.
9. To protect the appearance of principled opposition in support of electoral base.

Each of the parties above had their publicly declared positions and then their underlying interests which are not always devoid of getting even or enhancing their own power in the future with one or more of the parties to the negotiations. However, over the prolonged length of treaty negotiations, often the players change and issues evolve. The interests of both the Province and the Federal government evolved and matured over the prolonged course of negotiations, possibly as a result of additional court decisions

¹⁴⁷ Vaughn Palmer, "Province Has a Lot Riding on Success of Proposed Tsawwassen Agreement," *Vancouver Sun*, October 31 2006.

and the evolution of relations between the Province and First Nations in British Columbia in particular. The relations between Delta and the Province and Delta and Tsawwassen First Nation however, did not mature.

There continue to be multiple areas of conflict between the Province and Delta and it could have been in the Province's best interest to work closer with Delta to represent their position in a more fulsome way at side table discussions; perhaps some form of ongoing discussions regarding servicing at least could have been facilitated by the Province between Tsawwassen First Nation and Delta. Even if Delta's positions were not communicated positively, improved communication between the groups might have increased understanding of their differences. However, Delta had a shared responsibility by their collective decision to sideline themselves in not participating even at the limited level provided by the revised process.

As discussed above, Delta is opposed to more provincial initiatives than just the treaty process from which they formally excluded themselves. Vocal opposition to provincial initiatives exist in multiple areas including upgrades to existing power transmission lines to Vancouver Island which transit the local community through residential neighbourhoods; expansion of the Coalport; opposition to the Gateway Project, a provincial plan to upgrade the transportation infrastructure of the lower mainland in which Delta must accommodate the vast numbers of trucks which transit through the municipality en route to the Coalport; they have also taken a firm stance previously against potential closure of the local hospital and courthouse and generally have been confrontational on many fronts with the Province. It has to be in Delta's interest to resolve at least some of these issues with the province. Any improvement in the relationship could lead to increased chances of successful resolution in other areas of ongoing conflict with the province.

If a willingness to improve the relationship with Tsawwassen First Nation develops post-treaty, that will have to include engaging with Tsawwassen First Nation in the knowledge that Tsawwassen First Nation views the world through a different lens than the mainstream community. Engagement with that difference is the only path to improving the relationship because currently the different worldviews have been a barrier to successful communication. Lack of understanding between the two communities on each other's position and view of the world increases the gulf and precludes a successful resolution of outstanding issues. Interest based negotiations anticipates that resolution of differences can be achieved and be a full and final resolution. Inter-cultural conflicts require relationship-based Reconciliation and that is a resolution that is never final. Reconciliation between two or more groups, is built up over time through the creation of healthy, ongoing relationships.

Tsawwassen First Nation interests are very focused on the successful implementation of the treaty but not at any cost. They have achieved their main goal of removing the new treaty lands from the ALR, governance has been protected within the treaty itself and they have a servicing agreement with Delta for now. It is necessary to find a constructive way to engage with Delta to achieve their ongoing goals for the future. Underlying interests for Tsawwassen First Nation include at least some of the following:

1. To re-establish traditional rights and title to their traditional lands.
2. To restore at least a portion of the previous land base providing each Tsawwassen member land of their own.
3. To preserve the Tsawwassen identity for future generations.
4. To re-balance the traditional medicine wheel, the four aspects that are needed collectively for health, in this case economic, political, spiritual and cultural
5. To create economic opportunities through increased land base.
6. To provide independence and economic certainty for current and future generations.
7. To control their destiny now and in the future.
8. To establish a working relationship of equals based on mutual respect and shared interests with each level of government.
9. To provide healing to an historically battered and dysfunctional community.

10. To provide educational standards for future generations based on cultural and historical realities of First Nations.
11. To restore self-respect and dignity to community members for the benefit of all and for future generations.
12. To protect existing rights to what is left of resources in their territory.
13. To free themselves from the paternalism and racism of the Indian Act forever.
14. To protect their cultural and political rights under the constitution.

In a dispute like the one with Delta, it is not just a negotiation of interests that is at stake. Worldviews will need to be engaged because the inherent differences in the two worldviews are part of the problem. The lack of understanding of the vast difference of meaning between the two worldviews is still a barrier to a successful Reconciliation. For Tsawwassen First Nation their collective future was dependant on the successful resolution of these issues and the political certainty provided with the Final Treaty. That future is one that is closely impacted by the reciprocal relationship with Delta and future Tsawwassen First Nation decisions will resonate in the neighbouring community of Delta.

Interest based dispute resolution does not necessarily concern itself with cultural difference. There is an implicit assumption that the parties to any dispute resolution process understand the rules and are coming from common understandings of the dispute and a common desire to resolve the dispute and enhance each side's positions of power. In the current relationship stakes have changed. There has been a shift in the power balance toward Tsawwassen First Nation. It may take time to get used to its new official role in Metro Vancouver and much time will be spent focusing on building community capacity, implementing Tsawwassen laws, development planning and community healing. However, that does not mean that the ongoing relationship with Delta does not need to be nurtured. The dominant community has been in the power position for more than two hundred years and still controls the services which

Tsawwassen First Nation has resolved for current use and but will still need to negotiate for future development.

Central to the issue of power imbalance is the issue of disparate worldviews, with deep differences in core values and motivation to move past treaty issues. When one party to the conflict has disproportionately benefited from the power imbalance for more than two hundred years, the parties have been in no way equal when they meet to negotiate, even when Delta has been willing to come to the table to resolve the conflict.

In the current dispute, Delta must put away any residual resentment that Delta had no official voice at the treaty negotiations. The optimum solution would be for Delta to realize that it has been hurting its own future relationship with Tsawwassen First Nation now that the final treaty has been ratified and once implementation has been completed, the federal and provincial negotiators will go home. It is Tsawwassen First Nation and Delta who will be left to heal the broken relationship. Delta finally came to the conclusion that negotiating is preferable to being forced into an imposed resolution so the initial steps have been made to resolve core issues and the door opened at least a crack to rebuilding a healthy relationship from the ground up. It is possible that the Tsawwassen First Nation could be a powerful ally in future disputes between Delta and the Province, should Tsawwassen First Nation and Delta share an interest that differs from that of the Province. It is conceivable that while Delta can only oppose the Province with little leverage, the Tsawwassen government may be in a more powerful position to actually block some Provincial initiatives in the future to the mutual benefit of both communities.

CROSS CULTURAL ISSUES

*The group rights claimed by Aboriginal peoples...are political, rather than cultural, and they are collective, rather than individual.*¹⁴⁸

While both cultural and political rights are important to First Nations, there is a general assumption that cultural rights are those generally allocated to minorities to protect language and religion from disappearing in our multicultural society. However, it is the all-important political rights in Canada which are subject to debate regarding the distribution of overlapping sovereignty between three constitutional entities in Canada, the First Nations, who were already here at Contact, and the federal and provincial governments, each of whom could be considered “partners” in Confederation. Canadian history, so far, has been written by the dominant society with scant acknowledgment that First Nations were here first.

How else can we look at the problem? As the majority community, our ideas, thoughts and interests are constrained by the idea that each individual thinks, feels and wants the same basic ideals and values from life. Some of us are religious, some independent, some have large families but most of us are self-contained individuals struggling to prove that we are self-sufficient and living up to the ideal that each of us has equal value to every other human being. This worldview is not wrong, it is a particular way of viewing the world that constrains our perception of “others” who may see the world very differently.

Our liberal democracy provides us with a measuring stick that says each human being has value, has equal rights and protection under the law in Canada and each has the ability to make their way in society and achieve wealth and independence through their own agency. This is a particular view of the world that we have inherited from

¹⁴⁸ Ignatieff, *The Rights Revolution*.

European male linear thinkers, who lived several hundred years ago in England and still influence political thought¹⁴⁹ and action today. It is this kind of thinking that is valued in western European states, the US and other former colonial states such as Australia, New Zealand and Canada.

It is said that First Nations never forget and the English never remember. We have a shared history in this country but it is not often reflected in the written record. It is the written record, which is valued by the dominant society. Europeans and later Euro-Canadians kept a written record of contact with First Nations in Canada and the ensuing years were documented from the Euro-Canadian perspective but First Nations had a very different way of valuing time and experience, which was recorded orally. First Nations traditional understanding tells us that it is impossible to fully know or control things, because of the complexities of interrelationships.¹⁵⁰

Because oral history is not valued in the Settler society, this approach is often denigrated. It cannot be exact or precise because it is not written down. In fact, in First Nations communities, many witnesses are called to confirm the oral history so that it is a collective memory and not individual interest that ensures valid recall.¹⁵¹ In the documents of early traders and explorers, their education level, their socio-economic level and cultural biases of the day are not part of the context of the narrative and not often taken into account in any analysis of the validity of the written work. There is a tendency to take them as a literal interpretation because the author was there at the time and a witness to (our version) of what happened at the time.¹⁵²

¹⁴⁹ Particularly Thomas Hobbes and John Locke.

¹⁵⁰ Ross, *Returning to the Teachings: Exploring Aboriginal Justice*.

¹⁵¹ Walter J. Ong, *Orality and Literacy: The Technologizing of the World* (New York: Routledge, 1993).

¹⁵² Elizabeth Vibert, *Trader's Tales: Narratives of Cultural Encounters in the Columbia Plateau, 1807-1846* (London: University of Oklahoma, 1997).

There has been much overlap and cross-pollination between the two worldviews over the years in Canada, but basically the core beliefs of each group have remained constant. The basis for our perception of how the world around us operates and our place in it, have changed little because these core beliefs are internalized from childhood. This local conflict does not represent a simple clash of worldviews because our individual worldview has dominated the First Nations collective worldview for more than two hundred years. We have become the schoolyard bully in the neighbourhood because our worldview leads us to believe that our way of thinking is the “right” way and anyone who does not agree is “misguided” and could do with our help to bring them around to the truth of the matter.

Some reflection on how our worldview shapes the way we think, the assumptions we make and the way we speak in our interactions with others may be helpful in moving towards an improved relationship between ourselves and our neighbours.

LANGUAGE and ASSUMPTIONS

Language is a good repository of this basic philosophy and worldview. The English language is all about nouns, things and objects, following up on the notion of objective language. It is not about process. Native languages are process oriented. I don't like to say verb-oriented because even the word verb is a noun.¹⁵³

Rupert Ross analyzes the differing views of justice between the mainstream in Canada and First Nations. He discusses how judgmental the English language is and analyzes some of the deeply embedded assumptions in our language, with particular emphasis on the justice system in Canada. The mainstream view of justice is an adversarial one of confrontation. It embraces the idea of punishment, while First Nations

¹⁵³ Little Bear, 1998: 17 quoted in Leanne Simpson, "Aboriginal Peoples and Knowledge: Decolonizing Our Processes," *The Canadian Journal of Native Studies* XXI, no. 1 (2001).

view Reconciliation between the victim, the offender and the community as the preferred solution. The First Nations' view is that an offence by a community member is also a failure of the community and therefore it is the responsibility of the community to restore the relationship and help the offender heal whatever is the underlying cause of any deviant behavior or offence, while the dominant system believes it is the state that has been offended against and thus it is the state which determines the punishment, regardless of the cost to the victim, the larger community or society.

This difference in how we see just one aspect of life helps to illustrate how we approach the current conflict regardless of the language we speak. In our dominant worldview we see the world as a pie that can be divided in only so many pieces and each attempt by others to attain a fairer share is seen by us as somehow reducing our own share. We respond in our typical adversarial way and challenge any attempts to change the status quo. This is the way we have learned from childhood to defend our interests and protect our individual selves. There are only winners and losers in our version of most conflict and we are determined not to be losers in any competition for resources. However, there is another way to view the problem. The pie is to be shared, it has already been taken away from its rightful owners and we already have the bigger share of the pie and maybe the pie was sitting on someone else's window ledge when we acquired it in the first place. We are restoring a small piece of the original pie to its original owners and maybe that should be accompanied by a big apology for the original misunderstanding. The possibility and meaning of Reconciliation will be examined later in the chapter but first I turn to a discussion of how our cultural beliefs influence our attitudes and assumptions.

David Bohm's Dialogue proposal contains some deep thinking about ways to become aware of the mental models themselves. Here is the key passage:

To further clarify this approach, we propose that, with the aid of a little close attention, even that which we call rational thinking can be seen to consist largely of responses conditioned and biased by previous thought. If we look carefully at what we generally take to be reality we begin to see that it includes a collection of concepts, memories and reflexes coloured by our personal needs, fears and desires, all of which are limited and distorted by the boundaries of language and the habits of our history, sex and culture. It is extremely difficult to disassemble this mixture or to ever be certain whether what we are perceiving – or what we may think about those perceptions – is at all accurate.¹⁵⁴

There are a multitude of basic assumptions which many mainstream Canadians accept as universal truths if and when they consider “the Indian Problem”. Mainstream Canadians and First Nations have a differing perception of time. Many in the dominant society believe that historical wrongs are in the past. The actions of the past, if they were racist or “bad decisions” are over and cannot be rectified. It wasn’t “us” that did “it”. Part of our emphasis on individual rights and capitalism dictates a belief that everyone in Canada has equal opportunity to be successful, productive members of Canadian society. Our definition of productive members of society includes but is not limited to: working (not on welfare); independent, happy, heterosexual, parents. We have a picture of ourselves as Canadians who are fair and unbiased, multicultural, just and equal. We perceive our role in the world as moral and able to see faults in others, which could be corrected if the rest of the world could only learn from our example. As a result of our deep determination that everyone is “equal” in Canada, many Canadians have a deep distrust for differentiated rights. There is a fear that group rights might diminish individual rights that are at the core of Canadian society’s values.

There is an ongoing national debate over what has been referred to as the “Two Solitudes”, Quebec and the Rest of Canada as the founding partners in confederation. It is only recently that there has been any discussion of three solitudes, which would impart to First Nations their rightful role as the third party in the foundational history of

¹⁵⁴ Bohm, "The Power of Impossible Thinking."

the country. Because they were not at the table in Charlottetown, First Nations continue to be invisible partners in the origin stories of Canada.

Culture evolves and changes over time, however it is strongly informed by our often unchallenged historical viewpoint. Our cultural self-assurance creates a type of blindness to other points of view and constrains us from asking the right questions let alone coming up with positive solutions. We tend to build possible solutions up from where we are now. Planning starts here. But when here is the problem, this is not a smart approach. It is better to start from the destination and work backwards. This way we are not so distorted by our current culture.¹⁵⁵

The assumptions we learned as children constrain our ability to analyze the situation of the current conflict as adults. It is difficult for us to see the problem from another's worldview because we are caught in the trap of our own perception of the world according to the truths we learned as children. We are so convinced of the truth of our own position that it constrains us from considering how that truth might be perceived by someone else who may have a completely different understanding of the world around us. This applies in each of our encounters with others whether they appear to have a different worldview or not but it is of particular concern in the current conflict between Delta and Tsawwassen First Nation where deep differences in how we experience the world around us exist.

Different cultures have different norms about conflict behaviour. In North American middle class communities the conflict style tends to be direct, rational and linear.¹⁵⁶ For First Nations communities who value ongoing relationships, healing and restoration of the relationship may be more important than a final resolution to any perceived conflict. Their conflict style is more likely to be indirect, emotional and intuitive.

All cultures provide mechanisms for people to experience autonomy, intimacy, community and meaning. When those identity-based needs are significantly threatened,

¹⁵⁵ Paterson, *In the Canoe Together - the Power of a Systems Perspective* [cited].

¹⁵⁶ Mayer, *The Dynamics of Conflict Resolution: Practitioner's Guide*.

conflict is almost sure to ensue.¹⁵⁷ Michelle LeBaron would ask whose values do our processes mirror and whose do they exclude?

Reconciliation between the two communities does not mean we will not continue to have differences but if we can learn to celebrate those differences and respect each other's right to our own worldview, we can come together in the future and work together with respect and dignity in areas that could benefit both communities.

CULTURAL ASSUMPTIONS AND CONSTRAINTS OF LANGUAGE

*Our Elders tell us that the earth is sick, and when the earth is sick, the people are also sick. If we do not work together on our complimentary paths, Aboriginal peoples will not survive, neither will mother earth, or Euro-Canadian people.*¹⁵⁸

Our culture is so pervasive. The moment we arrive in school, we are told that everything is separable and that problems should be seen in terms of cause and effect. Our entire approach to planning discounts the idea of systems and assumes predictable cause and effect relationships. We focus on the details and not on the context. We think that if we can control the details, we will control the big things. The small is beautiful approach applies to complex behaviour as well.¹⁵⁹

We are never culturally neutral. We are informed by our own standpoint, our own culture informs all that we do, what we value and how we determine right and wrong; we can never see another's world from their culture's perspective or worldview.

The majority community values the future. The future holds out the possibility that any mistakes of the present will be rectified, but there is a strong feeling that the past is finished, that we cannot fix the mistakes of the past. We do not feel responsible for the

¹⁵⁷ LeBaron, *Bridging Cultural Conflicts: A New Approach for a Changing World*.

¹⁵⁸ Simpson, "Aboriginal Peoples and Knowledge: Decolonizing Our Processes."

¹⁵⁹ Paterson, *In the Canoe Together - the Power of a Systems Perspective* [cited].

mistakes made by our ancestors. We are well meaning today and we believe that should be enough.

To restore the rights of First Nations to self-determination is to reject the argument that First Nations must live by the same rules as all Canadians in order for us all to be “equal”. First Nations have not been equal since the arrival of European Settlers and the imposition of the Indian Act. It is remarkable that First Nations have maintained their determination and spirit of survival as strongly as they have against the imperial onslaught of government attempts at isolation and assimilation. Repeated attempts to isolate or assimilate First Nations in Canada have been an enormous failure. While many still consider assimilation the preferred option for Aboriginal peoples, there are now rights enshrined in the Constitution, which prevent us from unilaterally dictating how First Nations or other Aboriginal peoples should live their lives. Constitutional status protects Aboriginal peoples’ rights claims to the inherent right to determine their own futures.

Tsawwassen First Nation is not a group of indigent people asking for a handout or a freebie from their more prosperous neighbours. This is an independent, proud nation asking for a small portion of what is rightfully theirs. The legitimacy of their claims is supported by court rulings, the Constitution, the Royal Commission, the international community, the federal government, the province, academics and thoughtful people everywhere. If we do not recognize these rights and that we have lost the moral right to dictate how Tsawwassen First Nation lives its life, how they use their land or how they plan for their future, then it is our shame, not theirs.

Assumptions of cultural superiority can lead to a belief of “I am right, so you must be wrong”. Linear thinking and game theory tells us that in conflict there is a winner and a loser. Life is a zero sum game, if you win, I lose. So I have to battle to keep what is mine and ensure no one else gets my share. This is a core assumption of mainstream

liberal democratic thinking that seldom gets questioned and which is a cornerstone of our mainstream worldview. It is a part of our culture, which we accept as universal. We live in a litigious, adversarial society, which reinforces the “us against them” paradigm.

In our culture, we pride ourselves on being “equal”. If we treat everyone “equally”, no one has a right to complain, right? Wrong. Our culture has a penchant to live in the present and focus on our moral high ground. We live in a world where we pride ourselves on being morally superior. We occupy the high ground, right? We inherently know that our values, and sense of social justice provides us the ability to lecture others on human rights, so we must know what we are talking about? The Federal Government does the same thing Internationally with a particular emphasis on human rights, although it rejects similar criticism from International groups such as the United Nations and Amnesty International regarding Canadian treatment of Indigenous peoples in Canada. Seldom do many of us, as citizens, question where this moral standpoint comes from.

Rupert Ross explains how different languages can lead us to different understandings about what life is and how it should be lived. In his book, Returning to the Teachings, he points out that English and other European languages focus on *one* aspect of reality while Aboriginal languages commonly try to capture and express a very different aspect. He argues that the English language is judgmental and argumentative. The clear analogy is that we personify the way we speak. Most of us do not realize that there are alternative ways of speaking or viewing the world.

Ross’ revelation is that English has an extraordinary number of adjectives that do not so much describe things but are conclusions *about* things. For example, horrible, uplifting, disgusting, inspiring, delightful and tedious are all words that do not tell us much about the things they describe as they do about the judgments the speaker has made about things. There are also an endless supply in English of negative nouns which English speakers use regularly to describe each other. Nouns like thief, coward,

offender, weirdo, deviant, phoney, malingerer, pervert, fat-head and the ever-famous, moron. There are also positive nouns as well, such as saint, hero, saviour, mentor, friend. Ross tells us we have created a noun for all judgments. They all really provide us with the speaker's personal conclusion rather than a description of reality. This illustrates the way we view the world around us and how we respond to various situations in our lives. The western worldview assumes a dominance of human beings over the natural world around us and a First Nations worldview assumes the domination of the natural world over human beings.

Ross has worked in various Aboriginal communities and has become a keen observer of some of the major differences between the two cultures' language. He hears a different way of thinking when listening to Aboriginal people. His observation is that great care seems to be taken not to label things, people or events and this occurs of course even when they are speaking English. It is a way of viewing the world around them and their place within it. The emphasis in Aboriginal communities is on each individual's personal reaction, one which may or may not be shared by others. The expectation is that their individual reactions are likely to be very different from someone else's and how unique we all are. The distinct impression is that there is no intent to impose one person's viewpoint onto someone else within the Aboriginal community. This is where discussion becomes so important in collective decision-making. It takes a long time for each individual to explain their own point of view and for everyone to collectively decide what is the right thing to do.

Within the dominant culture, time is often considered to be money and we often take short-cuts to decision-making. If something seems obvious or straight forward to us, then we make assumptions and expect that right thinking people will agree with us. We often refer to this as "human nature". Ross talks about the limiting aspects of our world when we label someone in English as part of our assumption or discussion. An example

he uses is to label someone who may be a thief in one context and a philanthropist in another.

When we apply such labels they are usually only accurate if applied to a few narrow events taken from a few select moments in an individual's total life. When we apply such labels to real people, they tend to stick and when they stick, they cause us to start denying the complexity and wholeness of the human beings we are speaking of.¹⁶⁰

At the same time, they cause us to minimize the possibility of change.¹⁶¹ The example he uses is if one person labels someone as a bad person, then how can they expect that bad person to behave well? Most of us are busy people in our daily lives and our assumptions and beliefs help us get through the day. However, these shortcuts can become the only way we ever see an individual in the future and it can limit our interactions because we tend not to ever go back and reconsider those first assumptions. This may prevent us from ever developing a healthy relationship with someone we have written off as a result of a negative first encounter or faulty assumptions and that unexplored relationship might have benefited both of us in ways that we never took the time to consider. This is also true for groups of people as in the current situation in Delta. Do our judgmental words create hurdles we have to *overcome* before we can begin to deal effectively with complex realities?¹⁶²

These are questions we need to examine closely when we attempt to analyze the local conflict and our approach to it. What assumptions are behind positions taken by members of Delta council or council as a whole? Have motives and assumptions been taken into account or does council consider our moral position unassailable? It seems apparent that there is plenty of criticism of Delta's position both from within and from outside of council chambers. There are many individuals trying to convince council to re-

¹⁶⁰ Ross, *Returning to the Teachings: Exploring Aboriginal Justice*.

¹⁶¹ Ibid.

¹⁶² Ibid.

examine their position, including individual councilors. Perhaps council should consider the possibility that a close re-examination of positions is appropriate prior to being forced into an untenable situation where a final agreement will be imposed and council will have lost any moral high-ground it currently believes it is resting on.

Most Aboriginal worldviews take into consideration a broad spectrum of responsibility to the community at large. It is not personal gain at stake for the First Nations but an emphasis on healthy relationships. Perhaps we could all benefit from increasing our awareness of living a life based on sharing and caring spread large. Many of us do not realize there are other lenses through which the world can be viewed.

As a Mi'kmaq, I was born into a network of relationships and responsibilities. I am taught that these are to be the utmost priorities in my life. These include my family, my friends, my community and my nation. The largest of my responsibilities rests in my language. It is through my language that my worldview is transmitted and brought to the attention of whomever I communicate with. If it was not for the survival of the Mi'kmaq language, all of our rich cultures and traditions would have been lost.¹⁶³

Aboriginal languages focus on verbs. The title of the movie, *Dances with Wolves*, was the native name given to Kevin Costner by his new native friends. It seems that the languages of Aboriginal cultures are less on the *characteristics of things* than on the *relationship between things*. Aboriginal languages emphasize Creation's complex interconnectivity and constant change.¹⁶⁴ The emphasis is always on relationships, between individuals and between an individual and other animate and inanimate objects of creation which all have a place and a role in a healthy balanced life.

Relationships are primary in Aboriginal communities and are built on values, such as respect, caring, sharing, kindness, honesty, strength and humility. These are of course, values that each of us is familiar with but the difference between the worldviews

¹⁶³ Sasheen Gould of the Eskasoni First Nation on Cape Breton Island, quoted in Ross, *Returning to the Teachings* p. 129.

¹⁶⁴ Ross, *Returning to the Teachings: Exploring Aboriginal Justice*.

is the central importance of these values in their application to the broader community for our First Nations neighbours. There are of course many overlapping aspects of commonality between the neighbouring groups. The value differences tend to be in the emphasis within the dominant community on the nuclear family unit, on the importance of monetary success and a decreasing sense of responsibility to the broader community.

A good example of the differences in language and how that illustrates a particular worldview is the differing definition of wrongdoing and how to best treat it. Ross explains that in the non-Indigenous community, committing a crime seems to mean that the individual is a *bad person* and therefore must be punished. Indian communities view a wrongdoing as a misbehaviour which requires teaching or an illness which requires healing. Once again we can see an emphasis on the belief that people are not forever one thing or another, but that they can and do change. Life is change. The mainstream view tends to freeze people in one state or the other, good or bad. Ross quotes a British clergyman from the 1800's as an illustration: "He that is good will infallibly become better and he that is bad will certainly become worse; for vice, virtue and time are the three things that never stand still."¹⁶⁵ As Ross points out, it was this mentality that many of the clergyman's contemporaries brought to Canada and into their relationships with Aboriginal people. Today, there is still a tendency to label individuals and groups according to traits that we ascribe to them and seldom do we reconsider those labels once assigned. Our use of the English language leads us to a tendency to be judgmental even though it is often unintentional on our part.

For First Nations, group or collective values have historically had pre-eminence. Their worldview is different but that does not make it of less value. They see the world from a different but equally strong, equally embedded collective perspective. Strength

¹⁶⁵ Ibid.

and success are collectively measured. While individual strengths are valued and celebrated, individual success is for the mutual benefit of the group and relationships are highly valued. Those relationships include ancient ones with nature, the land, the ancestors and future generations. Each First Nations has its own origin story, history and unique experience, however there are some values that are shared. Commonly there is a different value and emphasis on time and spirituality than in our more Euro-Centric world. The laws that provide peace and harmony in the non-human world are seen as the only laws capable of providing peace and harmony elsewhere.¹⁶⁶

From an Aboriginal perspective it is a lack of balance that creates opportunity for conflict.

People who offend against another...are to be viewed and related to as people who are out of balance—with themselves, their family, their community and their Creator. A return to balance can best be accomplished through a process of accountability that includes support from the community through teaching and healing. The use of judgment and punishment actually works against the healing process. An already unbalanced person is moved further out of balance.¹⁶⁷

In the current conflict it is the two neighbouring communities which are out of balance with each other. Perhaps some of the imbalance is a result of assumptions we have made about the rights of Tsawwassen First Nation to the land or our wish to impose our will or our beliefs about the best use of that land for instance, once it is restored to the Host community. We have a belief that we know best, but is that automatically true for others? Perhaps we have a right to believe that fertile land is best farmed, but do we have a moral right to impose that belief on land once it is restored to its rightful owners. We may have differing views on who the rightful owners are, but once the treaty is final that view will be eclipsed by the laws and constitution of the country. Both the federal government and the province will have agreed the Tsawwassen First

¹⁶⁶ Ibid.

¹⁶⁷ Hollow Water “position paper” quoted in Ross, *Returning to the Teachings* p. 171.

Nation to be the rightful owners. We may disagree about the history of that parcel of land but the future will be clear. How do we restore a balance of respect for the ownership of the land to a relationship that has been so damaged by an adversarial relationship? How can we reconcile our differing points of view?

In a cross cultural setting the simplistic, one-dimensional method of interest based conflict resolution can be problematic because the process is designed by and for the dominant culture. Interest based negotiations could possibly assist to achieve buy-in from the mainstream community who opposed political gains for Tsawwassen First Nation. The language of interest-based negotiations responds to the question: what is in it for us? However, this type of potentially short-term solution is not sufficient for relationship building between culturally disparate communities and long-term Reconciliation. Negotiating a long term solution to this type of cross cultural conflict requires engaging with our own unexamined worldview and seeing how it often gets in the way of successful communication and the role it has in reproducing conflict even unintentionally.

Let us examine our differences further. First we will look at the behaviour of assumptions and then put that in a cultural context so that we can apply these theories to the current conflict.

DISTINCT WORLDVIEWS

“No, we don’t have any gender. It’s a relationship...The woman who cares for your heart—that’s your wife. Your daughters are the ones who enrich your heart. Your sons are the ones that test your heart.”¹⁶⁸

Historically, Canadian governments and civil society have devalued any worldview other than their own. It is assumed that western values are pre-eminent.

¹⁶⁸ Sakej Henderson quoted in Ross, *Returning to the Teachings: Exploring Aboriginal Justice*.

Indeed, attempts to assimilate First Nations to western values and culture have had dire consequences in First Nations communities. The outlawing of cultural and spiritual rituals, and of course the abysmal failure of residential schools to protect and educate Aboriginal children are only two of the biggest examples of social and policy failures. Entire communities had all of the children removed and sent to distant residential schools from which many children could not afford to travel home even at holidays. The psychological devastation, not just to the children but also to those who were left behind in empty communities cannot be measured. There is an inter-generational effect that has devastated generations of Aboriginal peoples and communities to this day. Dysfunction within the communities is a legacy that may never be rectified if left in the hands of government bureaucrats for healing and Reconciliation. While the visible effects of that dysfunction may be attributed by many to be the fault of the individual or attributed to cultural stereotypes, there is much blame to be shared. However, in a society with emphasis on the future, it is unlikely that awareness of culpability in past mistakes will get a close examination any time soon within the general population. It is easy for us to say the past is gone and over. It is not our mainstream communities paying the price for past assimilationist policy devastation in Aboriginal families and communities.

In Canada, we often like to pride ourselves on how multiculturalism defines us. In fact, we often posture from the moral high ground internationally, lecturing other nations about their human rights abuses and how they should be better by accepting our moral precepts of multiculturalism.

We may talk a good game, but we are on morally shifting ground at home. Since about 1812 when Aboriginal peoples were no longer useful to us as allies in war we have tried to solve the “Indian Problem” variously by removing them to relatively small geographical areas out of sight, where they could, it was thought, die off in peace and out of the way of Settlers or, subsequently when that did not happen quickly enough as

previously expected, since the mid 1880's we have had a failed policy of assimilation. We have done everything possible to legislate and bully First Nations in Canada into bleaching their skin and disappearing into the mainstream. It is very inconvenient that tenaciously, they have refused to disappear, to listen to our proselytizing and become one of us. Indeed, we are still arguing over the money spent annually and why on earth do we allow First Nations to remain on remote reserves where they have no hope of joining in the modern prosperity of the mainstream, capitalist economy where they would no longer be a drain on the federal purse.

As the moral victors, we do not often like to examine the motives behind the kind of help we offer to our Host communities. If we look too closely, we might notice that since the early days, we have promised one thing and then when the possibly good intentioned people who made the promises went home, the bureaucrats added up the cost, determined it is too high and then together with newly elected politicians, any prior promises are re-evaluated, downsized, justified and subjected to cost-reductions. When First Nations were promised farm implements on the prairies because of the loss of the buffalo, what was promised, which was intended to help First Nations join the mainstream economy became out of date, often unusable manual tools, sometimes not in usable condition and there was no one to explain the use of the tools. Then when local farmers complained because they were afraid the First Nations farmers could become competition for markets, the Indian Act changed the law, so that First Nations farmers had to get permission from the Indian Agent to sell their crops. When more Settlers arrived and saw that reserve land was being wasted on the "Indians", First Nations reserves were often relocated to higher, less fertile ground to make way for the Settlers. This could be justified because there was no immediate evidence that First Nations really wanted to be farmers, right? "They" were lazy, primitive people who really could not look after themselves, right? We could always help them, but did we? Perhaps

we think we did or perhaps we do not like to look too closely at the past actions of governments and Settlers because there is little to be proud of in the actions of either.

Political decisions made based on the greater societal good are controlled by the dominant community and it is difficult for us to make decisions in the best interests of First Nations, when our collective best interest benefits from their marginalization. What's in it for us? If their land is expropriated for a causeway, or utilized to dump nuclear waste, clear-cut, mined out does not that benefit the majority? Public policy with universally negative impacts on First Nations almost always benefits the majority community. Is it a "Just Society" when we use our superior numbers to decimate once proud, sovereign nations to the status of "wards of the state", where we control every aspect of their lives, while attempting to assimilate them into the majority community without their consent?

We continue to position ourselves based on the moral superiority of Christian, Europeans who came to this country and realized that the Host communities did not inhabit the land according to our principles and were therefore, too primitive to know what was best for them and in the beginning there was an alliance of sorts, because "we" needed "them" to survive. Since then, we wonder why "they" haven't benefited faster really from all of our coaching and help. The "Indian problem" should have been resolved by now. It must be their fault, really. "They" just haven't been paying attention when we have tried to help them, become more like "us". Do we not continue in the same vein when we attempt to dictate that Tsawwassen First Nation must farm the land if they acquire it in the final treaty? How is this helpful or respectful of their rights? Does the Delta approach not mimic that of the schoolyard bully? This view ignores that Tsawwassen First Nation cares deeply about its traditional territory and preserving their land for future generations, one of the prime motivators for negotiating their treaty.

The worldviews of our two cultures may overlap but our existing perceptions of ourselves and “others”, reinforce and emphasize our differences. In our own Euro, liberal democratic view, the individual is paramount. Each individual has the equal ability to achieve success. Success is not defined, it is the ultimate goal, but in our highly competitive, consumer driven society success is often measured financially. Personal values and relationships are often de-valued in our society.

The colonial relationship between the Settler community and First Nations has been based on coercion¹⁶⁹ and resistance to change. Our dominant perceptions of First Nations are often based on stereotypes and assumptions of cultural superiority. If we dictate the rules to Tsawwassen First Nation, if we demand that they farm “their” land post-treaty, how have we progressed from the errors of the past?

In what ways can we disrupt the colonial thinking that informs our own mainstream thinking? As long as the Indian Act is the basis of Federal policy on “Indians” then we can hardly be expected to have shrugged off our colonial attitudes. Perhaps that change has to start at the grassroots level. Maybe we owe that cultural shift to our children and our neighbours. If we want to move forward in a new way of thinking about each other, maybe we have to begin where we live. Without a fair share of the resources First Nation communities cannot create even the most basic of economies and therefore cannot create jobs, opportunities, hope and a sense of belonging among its youth.¹⁷⁰

¹⁶⁹ I am defining coercion as the use of political power to gain the advantage over others.

¹⁷⁰ Anne Chabot, "Letter to the Editor - Julius Strauss, November 12, 2005," *Globe and Mail*, November 14, 2005.

COMMONALITIES

Both the Delta and Tsawwassen First Nation communities are led by strong women who work tirelessly for the benefit of their respective community. Both communities suffer from frustration at the lack of control over issues that affect each community directly.

It is likely that both communities will continue to suffer from the vagaries of Provincial priorities and policy differences. Both communities will participate with equal status on the local GVRD. Delta has an ongoing role and Tsawwassen will be the newcomer not just as an equal player but as the first First Nations partner in a newly defined role on the existing committee. How will that role evolve and will it be in a positive framework or with shared distrust? There is probably at the very least a shared interest in a diverse, healthy and vibrant region going forward. There could also be the potential to be powerful allies in future challenges to provincial initiatives that both communities could be opposed to.

There could be potential synergies for both communities going forward in the GVRD or there could be residual distrust that could continue to prevent the sharing of interests and priorities. If residual negative feelings interfere in shared solutions to common interests, the hangover from the conflict during treaty negotiations will continue to exert a negative influence on any potential Reconciliation.

There is the negativity of the shared past relationship and the chance for change going forward. What each community makes of that opportunity will speak volumes about the ability to adapt and reconcile disparate cultural issues.

Interest based negotiations could attempt to resolve the past disputes and put together a framework agreement for moving forward but it would be based on defined targets and outcomes and would not necessarily consider the intangible relationship

needs and cultural aspects to be resolved through relationship building which cannot be defined or delineated in any contract-type defined decision making.

Interest based negotiations do not easily contemplate the complexities of cross cultural difference. It is assumed that all of the players will understand the rules and have the same language of negotiation. It is also contemplated that there will be a mediator who will in this less than judicial process, replace the role of the judge in a judicial setting. Even though this is not a judicial process, it is based on our cultural understanding of the necessity for a neutral party to mediate between the combatants. The success of the outcome is dependent on the skill level and cultural sensitivity of the mediator in these types of conflict resolution. Of course, if the process takes the time to drill down and work with cultural sensitivity, the outcome can be successful but this is not specifically built into the template of the process. This type of interest based conflict resolution is often a short-term solution, however and may not address deeper issues such as cultural difference, identity and inherent rights. Many seminal authors who have studied these subjects at far greater length than I could ever hope to, have tried to redress these shortcomings by writing at length about intercultural conflict,¹⁷¹ Reconciliation,¹⁷² and transformative mediation.¹⁷³

CONCLUSION

*It is character, not skin colour, and conduct, not identity, that matters when we size people up.*¹⁷⁴

¹⁷¹ Bell and Kahane, eds., *Intercultural Dispute Resolution in Aboriginal Contexts*, LeBaron, *Bridging Cultural Conflicts: A New Approach for a Changing World*, Michelle LeBaron, "Learning New Dances: Finding Effective Ways to Address Intercultural Disputes," in *Intercultural Dispute Resolution in Aboriginal Contexts*, ed. Catherine Bell and David Kahane (Vancouver, Toronto: UBC Press, 2004).

¹⁷² Lederach, *Preparing for Peace: Conflict Transformation across Cultures*.

¹⁷³ Robert A Baruch Bush and Joseph P Folger, "Underlying Values: Why Transformation Matters," in *The Promise of Mediation* (San Francisco: Jossey-Bass, 1994).

¹⁷⁴ Ignatieff, *The Rights Revolution*.

The analogy of paddling a canoe is a powerful one. True partnership means that we are in the canoe together. A canoe is only safe when it is in balance with its surroundings. “Paddling together” means getting involved with the broader issue of developing a viable local community. Citizens who live in the region have to have meaningful work, which provides enough income to meet their need to support their families. Creating a sustainable community includes designing a sustainable local economy. How can we work together¹⁷⁵ for a shared future?

If each of the two communities want to come together and reduce the potential for conflict, both parties will have to respect each other’s cultural differences and learn in some depth about the other party to the dispute. This can be considered a two-way street. However, to continue the analogy, the First Nations have traveled a long journey and are very familiar with the cultural pitfalls of colonialism and assimilation. It is the mainstream community, which has dominated First Nations for so long that we have the furthest distance to travel and the most amends to be made if the relationship is to become balanced and healthy. It is necessary to critically examine our own worldview to discover how and why it tends to dominate and contribute to the problem. There is a need to develop a cross cultural competence if we want to build a respectful, healthy relationship with our neighbours. There are many ways to recognize the value and history of our Host community if we work together to pay tribute to our combined history and move away from confrontation to a relationship built on co-operation and respect for difference. There are synergies apparent in working together to promote the awareness of the new treaty and there is potential for promoting the original culture of our shared community. There is exciting potential for joint projects to benefit public education, tourism and cultural celebrations to be enjoyed by all neighbours.

¹⁷⁵ Paterson, *In the Canoe Together - the Power of a Systems Perspective* [cited].

If there is good will within council and the community, there is little dollar cost to maintaining a good relationship but there will be a major requirement to nourish and maintain a new, healthier relationship. As in any good relationship gestures of friendship may need to be based on what is important to our friends within the Host community. The symbolic hand held out in friendship is the symbolic recognition of cultural rights. There is no great dollar cost but much to be gained in improving the cross cultural aspects of the relationship between the two communities. Any gesture of friendship must resonate within the Host community to be received in a spirit of trust, it is important to ask the question of our neighbours, what would have meaning or significance to them? What would they like to see in any symbolic gesture of Reconciliation if one is to be offered?

Then, after consultation, it is up to us to ensure that any gesture offered is one of substance and meaning to our neighbours. Recognition of past injustice might be corrected symbolically by renaming of places or locales of significant importance to Tsawwassen First Nation or by re-naming of schools and/or roadways with traditional names in negotiation with Tsawwassen First Nation. This type of acknowledgment and visible respect for our neighbouring community could be integral to Reconciliation.

Once a new relationship begins, there will be the opportunity to discover many shared interests which can include some of the more obvious such as a strong regional economic base, increased opportunities for tourism, improved communications, strategic regional consultation on shared community interests, finding common ground on shared values, such as education, daycare, and the environment just for starters. Improved relationships between the two communities can open the door to unlimited future potential for economic, political, cultural and spiritual benefits for both communities. No mediation can resolve the many differences but people of good will can improve

intercultural understanding and build a healthy relationship for the benefit of both communities.

Reconciliation is important because both communities are here to stay.

It is an important acknowledgement that the Tsawwassen people were here first. Recognition by the dominant community that the loss of their traditional territory has had a negative, long-term impact on their lives and the outcomes for their children is important. The Tsawwassen people cannot change the way we think of the relationship. Only we can do that.

In the west, the European, democratic culture is dominant. We assume that we have all the answers and our worldview dominates through education, the media and the political and economic power of the U.S. and Europe in world politics. Capitalism is accepted as the great leveler and measuring stick of success. However, there are other perspectives in the world and if the west wants to continue to have influence in the future there has to be a re-consideration to the assumption that there is only one right answer to any question. The belief that there is only one truth and that is ours needs to be challenged and shifted to value difference when examining issues and solutions.

Gandhi knew that the use of violence would only inflame the situation and create a violent response. He saw that what was needed was moral power. He used moral power to shift the great imperial power of the day. When we use moral power, people listen. Moral power is derived from compassion and awareness of the other as a human being. Moral power comes from speaking your truth. When we use words without the truth behind them, we manipulate. Much of our language involves the concept of partnership. True partnership is based on the value of our separate gifts working together in a common cause. It is about doing your own part well. It is about your true self rather than being in a role. Partnership is about respecting the fact that each person is a unique human being who has his or her own fears and hopes. It is about witnessing and

supporting the other in their life journey. Partnership is also about sharing the same loss or gain. True partnership means that you and I are in the same canoe together.¹⁷⁶

If we ignore the past, without making amends or recognizing that grievous harm was done, then we continue to perpetuate the wrongs of that past and continue to oppress our neighbour. As long as Canada has the Indian Act and First Nations are forced to live their lives as wards of the state, under the imposed rules of the majority community, colonialism lives on and “we” have become a party to that oppression.

In our neighbouring communities, we have a unique opportunity to surpass the restraints of interest-based negotiations and build a shared relationship between communities who can appreciate their difference and achieve true Reconciliation. By recognizing that we come from diverse cultural starting points, embracing our difference, and engaging our worldviews, we can choose to begin a new journey together on the path to a genuine Reconciliation.

¹⁷⁶ Bohm, "The Power of Impossible Thinking."

CHAPTER 5 Reconciliation: Re-Balancing Language and Assumptions

*I think compassion is the first step to reconciliation....projecting our fears onto others is so easy. When we project our fears onto others we don't have to look at ourselves.*¹⁷⁷

INTRODUCTION

I started my personal journey that led to the writing of this thesis in 1969 when I read *Custer Died for Your Sins*.¹⁷⁸ This led to my first realization that there were other worldviews out there in the wider world. I was very impressionable in the sixties; it was an exciting time to be an already impressionable teen. Human rights were the issues of nightly news broadcasts; there were anti-war protests in the States; draft dodgers were coming to Canada, and everyone it seemed was challenging the status quo. What I could not figure out was why were Canadians not incensed over our own human rights atrocity: Aboriginal Canadians. It would be many years before I would begin to find answers to my questions, but over that length of time, there were many more books by Indigenous authors and academics to increase the number of questions.

We need to discover and to understand the roots of our problems before we can effectively transcend them. The complexity and diversity of the liberal tradition must be respected and acknowledged. For the sake of self-understanding it is necessary to try to sift out of this complexity some of the persistent and significant ideas that continue to shape many of our own perceptions and beliefs. This thesis has attempted to do that.

¹⁷⁷ Paterson, *In the Canoe Together - the Power of a Systems Perspective* [cited].

¹⁷⁸ Vine Deloria Jr., *Custer Died for Your Sins: An Indian Manifesto* (New York: Avon Books, 1969).

Chapter two examined the conflict from an historical and First Nations perspective. Canada, as a nation, consists of three founding nations, English, French and Aboriginal.

As a nation, we have short historical memories. Our focus tends to be on the present and the future, when we can project that far. We value the present and what is happening today; it is often said that the past is over and gone. We tend not to value the lessons of the past as much as current individual experience. We tend to be a culture of immediate gratification and materialism; how much is the dollar worth today, where is the stock market, what has changed since yesterday that might impact today?

It is difficult for us to imagine a treaty from 1793 having any impact on our lives today. In fact, many people, if they consider them at all, consider treaties to be nothing more than a business contract that can be broken with little consequence or at the very least re-negotiated to reflect today's reality.

By contrast, the past has enormous value to First Nations who have a different sense of time and space than those of us from Settler backgrounds. The Indian Act, from 1876 still controls every aspect of First Nations life today. As individuals we are not always familiar with our history. We don't really recognize that obligations were created at the time of settlement in this country. How can those ancient commitments affect us today? We are modern Canadians with a liberal democratic view that everyone is equal. If First Nations are to be treated differently, how does that impact on our sense of equality? It often offends our sense of equality but only if we are in denial about the century and a half of oppression imposed on First Nations by the Indian Act.

The Delta community strained to impose its' political will on a community that has been pushed to the edge of the sea, ignored and dominated for two centuries. That is called oppression when done by the Federal or Provincial governments. To continue that oppression and pretend that we are all "equal", is not the same as having a difference of

opinion with a neighbouring municipality, which exists on an equal political footing as your own.

This thesis has made a case that an interest based approach to negotiations cannot by itself resolve the deep differences involved in a conflict that spans communities with vastly differing worldviews. Our assumptions, our rhetoric, our language and our core beliefs all contribute to walls which prevent us from being able to see ourselves through the lens of our Host community. There are real issues on the ground in the conflict between Delta and Tsawwassen First Nation. There is no single, simple resolution. Interest based negotiations have the potential to inspire pragmatic, short-term solutions but while treaty implementation could be a natural catalyst for change, it does not ensure the development of a constructive relationship between the two communities. Bringing a cross cultural perspective to the table can further enhance the resolution of the conflict in a deeper, more long lasting resolution to include relationship-building for the long term benefit of both communities.

A better way to ensure the development of a productive and healthy relationship is one that requires reflection and the investment of time and effort to bridge cultural differences and establish a trusting and enduring working relationship between the two communities, as described below.

It is no longer acceptable for mainstream Canadians to dictate solutions to First Nations. First Nations can decide on their own what their priorities should be or how to resolve their internal issues. The colonial history in Canada is responsible for much of the current dysfunction within First Nations in Canada (RCAP) and between Host First Nation communities and the newcomers. It is time that the non-indigenous community educate itself about the destructive history of the relationship, does some soul searching regarding its own role in the shameful past relationship and in some concrete and respectful way make thoughtful overtures to try to right the relationship and restore some

balance and harmony between the neighboring communities. If Reconciliation is the goal, as I believe it should be, the bridge must be built based on a foundation of mutual respect. This goal will not be achieved overnight, but will require sincere overtures and strong evidence of widespread, heartfelt goodwill.

Conflict, a normal part of being human, is often assumed to be negative. One way to perceive conflict in a positive light is to view conflict as an opportunity to re-evaluate the relationship and challenge our two communities to manage our differences for mutual benefit. Conflict resolution has become an industry that offers a quick alternative to the adversarial court process. Interest based negotiations are the core product of the conflict resolution industry and are considered a useful tool that is adaptable to many types of conflict. This analysis has attempted to illustrate that while interest based negotiations may offer the grand gesture or the “win-win” type of solution that many parties to a conflict may hope for, it cannot by itself bridge the cultural gap between disparate neighbours or create transformative change after a prolonged and bitter dispute without the investment of time and effort into understanding difference and how worldviews contribute to the lens through which we view ourselves and the world around us.

Chapter four examined the interests of both sides to the current conflict and cultural factors that may have contributed to our inability to easily assess our part in that conflict. Much behaviour within a conflict is based on how we perceive the world and our perceptions about how the world operates. Our reactions to conflict are often automatic and leave us no time to analyze the effectiveness of our reactions or the core assumptions underlying them. Our core values, beliefs and attitudes are based on early childhood experiences and learning.

It is our European knowledge base which has been imposed politically, economically and socially onto First Nations in Canada. Our laws and social structures

are based on a particular way of thinking, which we unquestionably assume to be the correct way to view the world.

Differing worldviews can heavily influence cultural assumptions on both sides, particularly if there is little structural opportunity for effective communication. Our western European worldview is based on a liberal democratic paradigm that is dominated by a global view of a capitalist, industrial society in which the rights of the individual define our social reality and it is this worldview which dominates our relationship with “others”. Indigenous peoples’ traditional worldview is based on a profound respect for the spiritual relationship between people and the land, including plants and animals, which is held as a collective trust. “Although we understand the need for economic development, our relationship to the land must continue to be collective stewardship so that all four aspects of ourselves, including our spiritual relationship with the land can survive”.¹⁷⁹

If we want to change how we react in a conflict situation we have to change at least some of the beliefs that trigger the negative cycle of conflict between the two communities. If our initial beliefs and reactions created a negative cycle then without changing some of our core assumptions, we will just recreate the same negative cycle or response in the future. Nate Booth¹⁸⁰ tells us that our beliefs set in process a certain cycle. We often choose our response before reviewing the consequences because our worldview reinforces the outcome that we expect and when the expected outcome is negative our beliefs are vindicated.

It is no small thing for people to volunteer themselves for public office. There is far less glory and more hard work than many might expect in public service. The

¹⁷⁹ Elmer Ghostkeeper, "Weche Teachings," in *Intercultural Dispute Resolution in Aboriginal Contexts*, ed. Catherine Bell and David Kahane (Vancouver: UBC Press, 2004).

¹⁸⁰ Nate Booth, *Strategies for Fast-Changing Times: The Art of Using Change to Your Advantage* (Rocklin, California: Prima Publishing, 1997).

councilors in Delta represent the smallest municipal council in the region for the number of constituents they represent. They have to participate on more committees and devote more time than they would if there were more of them. They sacrifice family time, personal time and come under frequent criticism from both their constituents and each other. No one pretends it is an easy job. However, leadership is necessary and by definition it may require thinking outside of the easy solution or the politically expedient one. There is plenty of consultation on many issues in Delta and the citizens of Delta are no shrinking violets, however, they each have their own agenda and the councilors must consider the big picture long-term implications and values for each resolution they come to. Circumstances also shift over time. What once might have been a well-considered position can change with circumstances and a new solution becomes a better choice. How much time and consideration can be devoted to each in-depth solution could be a major concern for a council that is overworked and stretched to the limit.

The advice that is offered by employees and outside experts has to be considered for its own agenda. There is much to weigh in managing such important issues as council do daily. No one is suggesting that such weighty decisions were not well thought out but there are long-term consequences to both communities. By the end of the treaty negotiations it was only Delta who did not achieve any of their underlying interests. The doggedness of their position on each of the issues may have prevented them from working together with their neighbours in whatever capacity was provided. If I had a say in the process, I would recommend the local community be involved in a more fulsome way in discussions so that even if they disagreed they would have a better understanding of what was at stake for each of the parties. Having said that, it was their choice to withdraw from the position provided to them in the process.

A NEW BEGINNING

Tsawwassen people have negotiated a new post-colonial contract which may not meet the perceived needs of those outside the First Nation community, but it signals a decisive break with the cycle of dependency dictated by the Indian Act and a return to self determination and autonomy within their own context. A strong economic foundation should provide economic certainty and independence for future generations, cultural and spiritual renewal, a spiritual link to their increased land base, a return to the primacy of collective rights, renewal and healing.

The Tsawwassen community plan, once completed, will automatically be integrated into the regional growth strategy of Metro Vancouver, which will have no say on how that land is zoned at the outset but the Tsawwassen First Nation will become a full member of the GVRD (now called Metro Vancouver in the lower mainland but interestingly, not by the Province). In the future it will be required to show how its land development fits into the broader regional plans for all of Metro Vancouver, a first for any First Nation. The Chief is about to become the equivalent of a local mayor with all the local fence building, politicking and municipal horse-trading that job requires¹⁸¹. Chief Baird and Lois Jackson will suddenly be working together or at least sitting on the same board, in the same room. It is possible that the future includes becoming allies on some issues. Likely, not on all issues. Luckily the Chief already has the thick skin required for her new role in the public domain.

¹⁸¹ Miro Cernetig, "Trust Tsawwassen Nation to Develop Its Own Backyard," *Vancouver Sun*, October 22, 2007.

RECONCILIATION

In Tsawwassen we share a beautiful space in our particular neighbourhood. How can we become good neighbours and get along well as equals? First, we must reach out to our neighbours in a show of good faith and attempt to restore a trusting relationship. Acknowledging that this cannot happen overnight is important. In Aboriginal communities, building relationships is key and this could be a lengthy process. Delta will have to ask what is important or most meaningful to the Host community. Priorities for taking the time to cement a meaningful relationship include the symbolic, tradition, ritual and respect for difference. This would not be easy because it might take Tsawwassen First Nation some time to appreciate whether any overtures from the municipality were genuine. Trust, once lost is not easily restored.

Recognition of and compassion or understanding for the wrongs of the past may be the first step to Reconciliation. Honouring the different perspectives of our neighbours could include ritual, respect and symbolic gestures of true Reconciliation all of which have important value for our neighbours.

There is major value in taking a risk and reaching out in a symbolic way to the Host community to demonstrate good will and acknowledge our part in the conflict. It demonstrates good faith and is a significant gesture of friendship. Symbolism is important when trying to make overtures and restore a relationship. A demonstration of acceptance and responsibility for at least a fair share of the failed relationship is needed.

Perhaps as a community we can put our differences behind us and offer a formal, public celebration of the Tsawwassen treaty now that it is a reality. Let us celebrate together that the future will be better for our Host community. The mainstream community could take the opportunity to make some meaningful public gesture. Perhaps we could have a funeral for colonialism in our neighbourhood and invite the world to

celebrate its burial. We might take the gigantic step of asking what would be meaningful to them. This would send a welcoming message to our neighbours. We have a small window of opportunity to support the Tsawwassen in concluding their landmark treaty and change the way we approach each other in a new spirit of co-operation. Even if we miss that window, it will never be too late to remake ourselves into good neighbours.

Cultural sensitivity is built over time and there are many potential pitfalls along the way. The biggest investment is time and sincerity. If Delta were to decide it genuinely wants to improve the relationship, with a goal of Reconciliation between the two communities, several things would have to happen. The first and most important would probably be a public Reconciliation, a symbolic gesture of coming together would probably need to include an apology for the opposition to the treaty. There is no dollar cost to an apology and that could be key to Reconciliation after such a long and bitter dispute.

However, the about face of any public support for the treaty would be a huge gesture by itself, so it is possible that support for the treaty would be a sufficient gesture. The key to success though is that it is the Tsawwassen who will decide what is a sufficient symbol of Reconciliation because it is the community who will decide whether to accept any gesture of Reconciliation. The fact that Lois Jackson was in the provincial legislature for provincial government ratification of the final treaty was a good step in that direction.

A single gesture alone will not be enough to sustain a neighbourly relationship. Relationships and trust are built up over time and time will have to be invested in the new reconciled relationship if it is to be sustained. There are cultural groups and trained individuals who specialize in Aboriginal healing who might be able to offer cross cultural training and awareness to those in positions of trust with Delta who would be receptive to improving their individual cultural awareness. In particular there is one group who

specialize in bridging the gap between the church and residential school survivors whose program might be adaptable for the type of conflict resolution between our two communities.¹⁸² However, there are also many other groups and individuals who specialize in cultural awareness if Delta should be interested in such a move.

First Nation communities value the symbolic, the traditional and the spiritual. Relationship building is the most important part of Reconciliation. We must get to know our neighbours in order to sustain a good relationship. Celebrating the process of relationship-building, will include recognizing the past, showing respect for our neighbours publicly, inviting them to be participants in community events and publicly showing respect for their traditions and acknowledging their past contributions to the community and recognizing our combined history as we so often recognize and celebrate our own history publicly.

European Settlers imported place names instead of preserving the Indigenous names that often poetically describe the function of the place. Historians and artists such as Lauren Harris, have noted that many Canadians lack a deep connection with their landscape because place names came from distant foreign cultures, often named for Europeans who had never set foot in the place being named for them. A lot of the names came after the people who paid to develop an area. The Canadian Pacific Railroad named many places in Western Canada after developers who subsidized the expansion of the railway and development along the lines.

In 2004, the provincial government introduced a campaign called “Honouring our Past” which is intended to encourage First Nations to reintroduce Aboriginal place names to the local landscape in British Columbia. The goal is to change the way

¹⁸² Megewan: Returning to Spirit is a transformative, future-focussed process for moving beyond conflict; accepting the past and restoring relationships that could possibly be adaptable for moving beyond the current conflict if Delta indicates a sincere and concerted will to change.

mainstream Canadians view Aboriginal culture in the province and restore a sense of local history with recognition of the place that Aboriginal culture shares in our past.

Naming is important to both communities to keep the link to our heritage and remind us of our past. We can do better at honouring our shared past. Place names are an obvious area of neglect in our community. Many streets and schools are not necessarily named for prominent community members but are numbers or non-descript names such as South Delta Senior Secondary. Many could be renamed with more traditional names from the local First Nation community, which would symbolize an awareness and a new respect for the history of the area. Renaming ceremonies would create an opportunity for intra-community participation and positive cross cultural encounters between the two communities.

RECOMMENDATIONS:

Individuals: Public attitudes can change but that usually happens over time and leadership is required to provide signifiers of real change. Change has to be well explained and supported by government leaders, academics and the press. A public focus on the issues that unite us is needed not just with rhetoric on political rights and historical injustice, but with informed public discussion leading to awareness and dialogue at all levels. Intransigence against Reconciliation must be denounced at every level by a well-informed media before the public will shift its views. Overtime, changes to the education curriculum to include First Nation history, increased understanding of cultural and political rights will improve the knowledge base of individuals living in the community for the long-term benefit of future generations living in Delta.

I have a personal vision that individuals of like minds who want to make a difference for the benefit of Tsawwassen First Nation in perpetuity could consider

bequests of land from their estate which could over time, increase the return of traditional territory to Tsawwassen First Nation at no cost to the First Nation.

Communities: This is what my thesis wants to address. Well-informed individuals can create change. Individuals must take on entrenched attitudes when they encounter them at council or in the press, at public meetings and during election campaigns. In the schools, parents should be encouraged to support teachers and school boards that use, develop and improve upon current cross cultural initiatives and continue to support cross cultural awareness and create opportunities for First Nation input into local curriculum, school activities and awareness campaigns.

There are probably many community activities, which would benefit from shared planning and inclusion of Aboriginal worldviews, which could improve local intercultural relationships. Adding cultural components to existing activities might be a bit of a band-aid solution, but consulting with Tsawwassen people before initiating new community activities could benefit enhanced community participation levels, increased educational components and increasingly creative solutions to community needs and development.

Celebrating the treaty itself and important dates from both communities could be fun and enhance benefits for both communities. Working together over time will create its own synergies as relationships grow and trust strengthens. Community initiatives do not have to wait for political will. Schools, parks, businesses, and recreation centres could each initiate their own group activities in concert with neighbours from the Tsawwassen First Nation. Initiating invitations will usually result in improved relations and residual invitations. That is how relationships build and grow between individuals and communities. Community cooperation just needs to start with a few right thinking individuals working together with good intention to strengthen both communities.

Once a degree of trust is restored and relationship building truly begins there is the potential to create many opportunities for improving intercultural relations not just

between Delta council and the Tsawwassen Chief and her board members but between the citizens of both communities. Perhaps a working group from both communities could meet to find a multitude of shared opportunities for increasing intercultural awareness. Just as a start, through joint design of shared participation in public events, shared tourism opportunities, potential sharing of programs for school projects, which could investigate successful programs from other communities, and how about the exciting possibility of writing a “shared” history of the area? Creative individuals with good intentions and open hearts could imagine far more exciting numbers of worthwhile projects than I can suggest here. The potential is great and the opportunity to do exciting community work together unlimited. These types of shared projects can become the basis for community transformation and true Reconciliation.

Local Council: Many opportunities exist for increased dialogue between cultural groups. Cultural awareness is not the only goal for mutual respect and ongoing dialogue but it is a place to start. Council should meet with its First Nation counterpart for social encounters and negotiations on how to improve local intergovernmental dealings. Council could easily show good faith through discussions of initiatives regarding local historical sites and integration of local traditions into the public life of the mainstream community.

1. The building of a healthy relationship will require patience and self-reflection on shared values and difference over time. While council may accept the new post-treaty reality and shrug off much of the treaty process rhetoric as in the past, it is important to remember that words hurt. Damage was done to the already poor relationship and individuals who opposed the treaty were supported in their negative positions and possibly inflamed by negative reinforcement from very public positioning of council. How will the damage be repaired? Not by ignoring it.

2. There is a need to start small and build on incremental successes.

Recognition of cultural difference will include the value of symbolic gestures, the importance of ritual and intra community relationship building. Symbolic gestures can include use of traditional names for schools and roadways and re-naming of places or locales of significance to Tsawwassen First Nation.

3. An improved relationship between the two communities will enable enhancements to the existing Aboriginal Education Enhancement Agreement signed by Delta in May of 2005 to enhance First Nation education in Delta and raise greater awareness with other students and school staff about the importance of First Nation cultures. The goal of making others more aware of difference will reduce bias and improve the inclusivity of First Nation students and to assist them to do better in school. Improving understanding at a young age can help to reduce incidents of conflict in the future.
4. Working together on the GVRD will provide an opportunity to not only carpool, but also to learn to work collaboratively on common issues and respectfully on issues of difference.

I imagine the two communities working together eventually on something like renaming some of the local streets or schools with traditional Tsawwassen names which might be important to and would recognize that we each live within their traditional territory. There is a very low dollar cost to this suggestion, but a very high payoff in respect and acknowledging the past. Delta is replete with numbered streets and the school closest to me is called South Delta Senior Secondary School. Would anyone regret the renaming of the school, perhaps a few former graduates, but there is no insult to someone from our own past, no removal of a worthy name for replacement by a traditional name and that would be the same if we renamed 56th Avenue or any of a

number of other numerical street names for which no current sentimental attachment exists.

The findings of this thesis do not eliminate the value of interest-based negotiations they only try to demonstrate that interest-based solutions are not sufficient for long-term relationship building that will be important in a post-treaty world. Both communities will be members of the GVRD and there may be issues where Tsawwassen First Nation can be an important ally on issues both with the GVRD and the province. They are already good neighbours. Now it is up to us.

CONCLUSION

*It is human difference which defines us*¹⁸³

A hand outstretched in the friendship of true neighbours could be truly demonstrated by inviting our Host community celebrate the monumental achievement of realizing their dream, of finally achieving their collective political rights, i.e. finalizing their treaty. The Treaty is the first step to restoring a truly equitable, respectful relationship with Tsawwassen colonial neighbours. For Delta to initiate such a dramatic about face would be a remarkable turn around. It would take substantive leadership and a total rethinking of the status quo. This would transcend the symbolic and establish a new standard for cross cultural relations and could even be a model for other cross cultural communities in Canada and elsewhere. Is it possible, of course it is. Is it likely, only time will tell.

We do not have to relive the past to acknowledge that things happened previously that we cannot in any way be proud of. It will be difficult for our Host community to believe we have changed in any substantive way if we do not

¹⁸³ Ignatieff, *The Rights Revolution*.

acknowledge that mistakes were made in the past. And perhaps we will not always agree on ways to move forward together. We will always have differences and may disagree on the way forward in the future. But for us to become good neighbours in the future may require recognition that the inequalities of the past may have clouded some of our thinking about the present.

Self-sufficiency, the holy grail of western democratic society can be over-rated in our mainstream communities because many individuals lead lives of quiet desperation in isolation and loneliness. This would not be what any of us would choose for our local community or for our neighbours. The collective self-determination that a final treaty will bring to Tsawwassen First Nation will enable our neighbours to interact with us on a more level footing. Separately we can only prolong dissent. Together we can build a relationship of trust, respect and dignity. It all begins by talking to each other. People of good will it is said will find solutions.

As good neighbours we can share the sense of a new beginning, of community interdependence, a respect for similarities and the recognition of difference. I admire the collective values of my recently treasured neighbours. Their values have sustained them through oppression, assimilation and intrusive neighbours. Maybe we could all learn something.

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