

Same Process, Different Results: Comparing Cases in the BC Treaty Process

by

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B.A., St. Francis Xavier University, 2008

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Supervisory Committee

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Abstract

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The purpose of this thesis is to determine the key explanatory factors that explain why some First Nations reach an agreement through the British Columbia Treaty Process, while others do not. To do this, analytical frameworks from Gabrielle Slowey and Christopher Alcantara are empirically applied to three First Nations who are (or were) negotiating agreements in the province. The findings conclude that negotiations in the Treaty Process produce different results for the same reasons that Alcantara and Slowey identify for Aboriginal groups throughout Canada. They depend on the particular circumstances of each First Nation within the current institutional structure. This structure defines the relationship between Aboriginal and state actors and provides a set of options from which the former may choose to navigate their futures. However, in addition to the determining factors that Alcantara and Slowey identify, this thesis finds that it is also imperative to take into account the desire of a First Nation to use the Treaty Process as a means to progress along its own path of self-determination.

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CHAPTER ONE

Introduction

The majority of British Columbia's land mass was never formally ceded to settler governments by indigenous peoples who lived in the territory since time immemorial. Formal recognition of the Aboriginal right to title by the Supreme Court of Canada has strengthened indigenous peoples' claim to the land to unprecedented levels. In 1991, a report from the British Columbia (BC) Claims Task Force on the scope, organization and process of negotiations recommended that the provincial and federal governments begin negotiating comprehensive land claim agreements with First Nations in BC as soon as possible. The following year saw the establishment of the British Columbia Treaty Process and the Treaty Commission.

By no means has this heralded an end to the devastation that colonization has brought to First Nations communities in the province. Nor has it served as an adequate response to the Aboriginal right to self-determination. Yet the purpose of this study is not to critique the effectiveness of the BC Treaty Process. Rather, my aim is to determine why negotiations in the process produce varying outcomes among different First Nations. If one assumes that an implemented Final Agreement signifies a "successful" end to negotiations, then why have current negotiation processes in BC led to so few successes? Why has it taken over a decade to see results, and why has Tsawwassen First Nation been the only one to see a completed and implemented treaty as of April 2010? More specifically, what key explanatory factors help to explain why some First Nations achieve an agreement in the Treaty Process, while others do not?

After a brief summary of relevant British Columbian history, this study reviews the literature that concerns these issues. From the existing scholarship, it draws upon two separate analytical frameworks that most closely respond to the questions posed above. These frameworks are empirically applied in Chapters Two and Three to a sample of First Nations participating in the BC Treaty Process. The results provide some insight as to why negotiation outcomes vary among First Nations as discussed in the concluding chapter.

Context

Full comprehension of the research developed in this project necessitates a strong understanding of the unique historical development of British Columbia and its Aboriginal population. Current relations between Aboriginal and non-Aboriginal peoples in Canada are rooted in the experiences of their early ancestors. Initial contact between Europeans and indigenous peoples in the New World developed the normative characteristics of cross-cultural interaction that define socio-economic relationships today.

European settlers and First Nations have struggled with questions of coexistence since the Colony of British Columbia was first formed. The province's history of colonization includes a pattern of harsh policies of assimilation followed by continued disregard. Once settlers were confident that their own survival and socio-economic success no longer depended on the expertise of the Indigenous peoples, efforts to maintain peace and friendship quickly subsided. Often, the politics of settler society encroached upon Indigenous affairs, particularly over the matter of land rights. The

widespread belief was that the growing number of colonists would eventually overwhelm the land's original occupants until they no longer posed a threat to state sovereignty. This assumption was proven wrong as First Nations in the province managed to tolerate enormous social and political opposition (Barman 2007).

The Royal Proclamation of 1763 was signed by the British Crown to formally recognize and protect the rights and territories of Aboriginal peoples in Canada. It was also meant to preserve the honour of the Crown in Aboriginal and non-Aboriginal relations. The terms of the proclamation compelled incoming Europeans to conclude formal "land surrender" treaties with the Aboriginal peoples before they could permanently settle. It stated that lands held by the indigenous peoples could be purchased only by the Crown, and only through negotiation. This meant that the sole way to transfer land from First Nations to the Crown was through a process of treaty-making (Lohead 2004).

Thus, eleven treaties (the "Numbered Treaties") were signed across Canada between the federal government and numerous Aboriginal groups shortly after Confederation in 1867. Many of these groups surrendered their rights to the land in return for money and various other items. British Columbia, however, remains something of an anomaly as the Royal Proclamation was inadequately applied to the country's west coast. With the exception of Treaty 8 that barely reaches into the north-eastern corner of British Columbia and the 14 Douglas Treaties that were signed on small areas of Vancouver Island, the province's land mass had not been settled by any early treaties. In other words, the majority of BC's landmass was never formally surrendered by Aboriginal peoples (Lohead 2004). It was not until 1951 that Parliament repealed the

land claims prohibition that had been in place for twenty-four years stimulating a surge of political activity throughout BC from Aboriginal peoples who could now openly pursue land claims (Tennant 1996).

Legislative developments were paralleled in the judiciary as the courts continually ruled in favour of Aboriginal rights. Several decisions by the Supreme Court resulted in a strong preference by governments to engage in negotiations rather than litigation when specifying the rights of Aboriginal peoples. First, in *Calder v. Attorney-General of British Columbia* (1973), the Supreme Court acknowledged the existence of Aboriginal title prior to European contact in the New World. Hence, the Aboriginal right to title was to be upheld unless it was appropriately extinguished by the Aboriginal peoples themselves or the Crown (through, for example, a treaty). Shortly after the incorporation of Aboriginal rights into the *Constitution Act, 1982*, the Court held that the Crown has a fiduciary obligation to conduct itself in good faith towards the Aboriginal population in Canada (*Guerin*, 1984). Next, in *Delgamuukw v. British Columbia* (1997), the Court confirmed the existence of Aboriginal title to traditional lands and accepted oral testimony as evidence to claims of exclusive occupation to certain territory prior to sovereignty. The initial reaction was one of great optimism among First Nations and others who believed that the case provided a “forceful incentive to government” to negotiate land claims (McKee 2000, p. 93). They felt that the Court’s decision provided a significantly strengthened foundation upon which Aboriginal peoples could advance their rights (Roth 2002).

As these cases were being carried out, the number of First Nations political structures continued to grow. Eventually, interest in Aboriginal issues increased among

the public and on the state's political agenda. By 1989, the Premier's Council on Native Affairs was created to meet with First Nations and prepare recommendations on how the government ought to move forward with Aboriginal issues. Here, it was advised that a specific process be established in which Aboriginal land claims may be negotiated (Ministry of Aboriginal Relations and Reconciliation 1991). Thus, the BC Treaty Commission was established ushering in a "New Relationship" between the Province and its Aboriginal population. Based on "respect, recognition and accommodation of Aboriginal title and rights," the New Relationship recognizes the achievement of self-determination as one of the leading goals of First Nations peoples. It is within the discourse of this New Relationship that the modern BC Treaty Process functions (BC Treaty Commission 2009b).

The BC Treaty Process

The BC Treaty Process differs from the comprehensive land claims negotiating process in the rest of the country because it is facilitated by a Treaty Commission that acts as an independent and neutral body. The primary role of the Commission is to fund and oversee negotiations as well as to inform the public on the progress of each negotiating table. The Treaty Commission is mandated to "ensure that the parties work effectively to reach agreements," and to "identify specific barriers to progress" (BC Treaty Commission 2009a). Another notable difference between the BC Treaty Process and the comprehensive land claims process used elsewhere in Canada is that First Nations in BC are not required to provide proof of rights and title before they may be accepted into the process (Sliammon Treaty Society 2010). Instead, the Treaty Process in

BC is initiated as soon as a First Nation submits a statement of intent to negotiate. It is concluded when a Final Agreement between the First Nation, the Government of BC, and the Government of Canada has been ratified and implemented.

The Treaty Process is comprised of six stages. First, a Statement of Intent to negotiate is initiated when a First Nation provides a mandate from its community to enter the process, and specifies the geographical area in which its distinct traditional territory lies (Stage One). The Aboriginal group must also identify any overlapping territory or claims with other First Nations. Next, the Commission calls a meeting between representatives of the First Nation, the provincial government and the federal government to make sure that each party has met the criteria for the readiness to negotiate (Stage Two). From here, the three parties formulate a Framework Agreement by identifying the subjects to be negotiated, the goals of the negotiation process, and a timetable for negotiations (Stage Three). Substantive negotiations begin in Stage Four where over two-thirds of all First Nations participating in the Treaty Process currently remain. This stage involves the negotiation of an Agreement-in-Principle. Here, a detailed examination of the Framework Agreement is carried out, and the major agreements that underlie the treaty are negotiated. Framework Agreements tend to be signed much more quickly than Agreements-in Principle. Once the latter has been ratified by all three parties, technical and legal issues are resolved when the treaty is finalized at Stage Five. Lastly, Stage Six includes the long-term implementation of the Final Agreement, which takes place only after it has been ratified by the First Nation through a referendum, and approved by both the provincial and federal legislatures.

Currently, negotiations between the province and 60 First Nations in the Treaty Process have resulted in the achievement of only two ratified Final Agreements—one with Tsawwassen First Nation that took effect in April 2009, and one with the Maa-Nulth First Nations with an effective date that is yet to be determined. When nearly two-thirds of all Aboriginal peoples in the province are engaged in the process, and an estimated \$432 million has been given in negotiation support funding since the process was created in 1993 (BC Treaty Commission 2009b), one may be disappointed by the scarcity of tangible results.¹

Given these daunting statistics, Alcantara (2008) describes three alternative policy instruments to the treaty process that First Nations might consider: self-government agreements, bilateral agreements, and the *First Nations Land Management Act*. Though commonly negotiated in unison with comprehensive land claims agreements (through treaties), self-government agreements deal with an entirely separate set of concerns. They give First Nations communities the ability to design their own governing institutions and exercise a number of important powers that address local needs (Alcantara 2008, p. 359). Bilateral agreements seek to address particular issues like the development or co-management of a resource between an Aboriginal group and the government or private companies. Rather than holding out for a comprehensive land claims agreement, an Aboriginal group might seek bilateral agreements to gain immediate control and input into the use of their lands (p. 360). Finally, the *First Nations Land Management Act* provides Aboriginal groups with a way of opting out of the land management provisions of the *Indian Act*. In doing so, Aboriginal groups may develop

¹ Table One displays a list of First Nations involved in the Treaty Process, and the stages at which they are currently negotiating.

their own land codes for managing reserves (p. 361). Alcantara discusses these options as alternatives to the treaty process because they require much less negotiating than comprehensive land claims and therefore produce more immediate results. However, this does not mean that these options and the treaty process are mutually exclusive. On the contrary, many First Nations in BC are negotiating comprehensive land claims while simultaneously pursuing the three options described here.

Because the Treaty Process and Commission are relatively new to the province, the body of scholarship that speaks directly to them has much room to develop (though, for a brief treatment, see Alcantara and Kent 2010). To date, most of the relevant literature focuses on the broader treaty process in which hundreds of First Nations across the country participate. Much of the work assesses the comprehensive land claims process that is used across Canada. Scholars both directly and indirectly offer a range of explanations as to why negotiations produce a variety of outcomes. Existing literature suggests that land claims negotiations between Aboriginal groups and non-Aboriginal governments are affected by opposing visions of the future, unequal levels of power, and varying motivations to negotiate.

Literature Review

Opposing Visions of the Future

Many scholars note that a significant failing of the modern treaty process results from the inconsistency of future visions between Aboriginal and non-Aboriginal negotiators. For example, Ladner (2001) criticizes current attempts to renew the relationship between Aboriginal and non-Aboriginal peoples because they fail to

acknowledge the historical place of Aboriginal peoples as “partners in Confederation” (p. 119). She argues that the recognition of nation-to-nation relationships is a necessary foundation on which to build a renewed relationship in the modern world.

Alcantara (2009) agrees that contrasting future visions affect comprehensive land claims negotiations. He cites the work of Tully (2001) and Abele and Prince (2003) who argue that Aboriginal groups and Canadian governments have contradictory understandings of the treaty process that result from their fundamentally different world views. Where the former interprets negotiations as a nation-to-nation discussion between equals, the latter enters negotiations as a representative of the Crown with the perspective that it is meeting with minority groups within Canada.

Similarly, in his critique of the BC Treaty Process, Woolford (2007) explains that the key differences of vision separating First Nations and non-Aboriginal governments are that the former have visions of justice that are rooted in the past and concentrated on redressing historical wrongs, whereas the latter focuses on using the process to guide the future (p. 134). For example, the rigid notion of certainty to which the government aims in settling land claims requires an exhaustive list of defined Aboriginal rights. Thus, the flexibility of rights that First Nations feel is necessary to adapt to a changing world is removed. As a result, they each have conflicting ideas about what reconciliation ought to entail. Rossiter and Wood (2005) might agree as they argue that the BC Liberals have yet to grasp the complexity that lies behind First Nations’ assertions of land title and rights to self-government. Describing the futility of a treaty process that ignores the past and focuses solely on the future, the two scholars say that “it will not be enough to welcome Native peoples into the economic fold with open arms and a few million dollars

devoted to training programs” (p. 365). Integrating First Nations into the province’s mainstream economy in this way is precisely how Dacks (2002) describes the governments’ attempt to compensate for the inflexibility in their bargaining positions in the BC Treaty Process.

Dacks (2002) contends, somewhat counter intuitively, that it was actually *Delgamuukw* that enabled the provincial and federal governments to maintain their existing negotiating mandates and to resist First Nations’ efforts to improve government offers at the negotiating table. In other words, though *Delgamuukw* initially appeared as a breakthrough in confirming the existence of Aboriginal title, it ultimately served to promote the state’s inflexibility towards the Treaty Process. Dacks explains that after the decision, the state had two options: It could change its position on land claims in relation to the “expansive characterization” that the Court gave to Aboriginal title, and seek the surrender or limitation of the right by First Nations through some form of compensation; or, it could maintain its negotiating position and risk future litigation. Because it was the less costly of the two, the government chose the latter (p. 240). Thus, Dacks says that Canadian governments can take considerable comfort in the Court’s decision in *Delgamuukw* because they are in a much better position to fight a war of legal attrition than are most First Nations (p. 250).

Dacks (2002) adds that this stance creates a sharp divergence of goals between governments and First Nations who desire and expect a “fundamental symbolic change” to the comprehensive claims policy of the state (p. 247). He explains that because *Delgamuukw* provides the grounds for a much stronger political position for Aboriginal peoples, it intensified the resolve of First Nations throughout the province. It also

reinforced a number of reasons why approximately one-third of the First Nations in BC chose not to enter into the BC Treaty Process. First, some First Nations are fundamentally opposed to any process that aims to circumscribe their rights. For them, extinguishment, modification, or diminishment of their inherent rights is unacceptable. Second, many communities fear the high costs that come with participating in negotiations as they are paid for by loans to Aboriginal groups from the federal government. If a Final Agreement is not reached because a band council chooses to exit the process, the federal government will call in the loan. Alfred (2001) says this creates an incentive to First Nations to continue participating in the process (p. 2). Indeed, the many communities who would be unable to repay the loans in such a situation would be under a great deal of pressure to settle a deal that is not necessarily to their liking. Finally, First Nations might want to wait for a better deal than what is achievable through negotiations in the current negotiating framework. Consequently, until the state significantly reconsiders its priorities with respect to the Treaty Process, its goals will continue to diverge from that of First Nations and negotiations will be impacted as a result.

Success of the process depends on the participants having a common vision of where they intend negotiations to lead (BC Treaty Commission 2002). Because scholars have recognized the incompatibility of future visions between Aboriginal and non-Aboriginal peoples, it is likely that negotiations will lead to an array of outcomes. Certainly, this provokes a useful dialogue on the Treaty Process and a foundation upon which it may be constructively criticized. However, such an approach fails to thoroughly address why some First Nations have in fact achieved modern treaties. Do these

agreements represent instances when governments recognized First Nations as equal “partners” in the negotiation process? In the context of the BC Treaty Process, are Tsawwassen First Nation and Maa-Nulth First Nations the only participants whose future visions correspond with that of the governments? Further research and empirical analysis on the subject is indeed necessary.

Power Disparity

Another major area of relevant research concentrates on the unequal levels of power between parties and how they affect the outcomes of negotiations. It is no secret that Canada’s colonial history has given federal and provincial governments a patent negotiating advantage over First Nations. Scholars agree that this clear disparity of power between Canadian governments and Aboriginal groups impacts land claims negotiations (see, for example, Alcantara 2008; Macklem 2001; Woolford 2007). For instance, Woolford (2007) refers specifically to the BC Treaty Process when he argues that the economic and political rationalities of those who possess various forms of social power often permeate reparative discussions. Because of this power imbalance, First Nations who demand moral reckoning or material redistribution for past injustices are severely limited in the extent to which this may be reached. As such, it is the government vision that tends to dominate negotiations forcing participating Aboriginal groups to respond accordingly.

This justifies why many First Nations denounce the modern treaty process as a “grossly colonial-minded policy” (Lohead 2004, p. 275). They are dissatisfied with the federal government’s attempt to restructure the relationship between Aboriginal and non-

Aboriginal peoples in Canada. Though hundreds of recommendations were provided in the 1996 Royal Commission on Aboriginal Peoples, the federal government has yet to seriously consider them. Even then, Ladner (2001) argues that the report from the Royal Commission ignores the historically unequal relationship between indigenous and non-indigenous peoples. She fears that the status quo will lead to the “institutionalizing” of neocolonialism (p. 130).

Such an imbalance of power has a significant impact on the quality of legitimate and fair negotiations. For instance, when questioning the validity of the Canadian state’s claim of sovereignty, Slowey (2000) asks why the extinguishment of Aboriginal title is formally mandated in the federal self-government policy. She argues that non-Aboriginal federal negotiators are entirely focused on how to extinguish title (10). Why then, Slowey asks, do Aboriginal peoples not challenge the Crown’s sovereignty? She suggests that Aboriginal peoples may be distracted by the rhetoric of the state because they are “so entrenched in struggles over land claims, fiscal devolution and self-government” (p. 10). Further, she identifies the more immediate concern of the “desperate situation” in which many communities find themselves. Consumed by the immense challenges that poor socio-economic environments create, regaining control over their futures becomes an urgent priority (p. 10). This is why Alfred says that the BC Treaty Process is “so great that it’s almost impossible to resist unless you have a strong ideological position rooted in sovereignty” (Langford and Alfred 1997). The strength of such convictions is rigorously tested in the face of poverty. As a result, the lack of legitimate grounds to extinguish Aboriginal rights is often ignored and the state continues to use negotiations to pursue its own agenda.

When analyzing the Treaty Process, it is important to understand the impact of the power difference between different parties at the negotiating table. Penikett (2006) cites how the Assembly of First Nations says existing policies fail to take into account the power imbalance between the parties. It is this fundamental problem that both slows process and affects outcomes. It is also one reason why Penikett (2006) says that the BC Treaty Process “needs renovating” (p. 259). The existing secondary literature on this topic correctly and often eloquently highlights the great imbalance of power between First Nations and the state, yet it does so in a rather general manner. Again, such an approach fails to take into account instances when negotiations have in fact produced treaties. Once more, the need for deeper research in the area including critical analyses and empirical investigation must be stressed.

State Motivations to Negotiate

With the balance of power favouring the federal and provincial governments, state motivations to negotiate with Aboriginal groups can have a significant impact on the outcomes of negotiated land claims. Determining why results vary necessitates a strong understanding of why the state makes certain decisions. Indeed, this has been recognized by scholars and taken up to such a degree that the topic now comprises a distinct area of the literature.

Russell (2005) views the motivations that drive state policies in negotiations as an impediment to the formation of a strong Aboriginal/non-Aboriginal relationship. He argues that the state is mainly concerned with avoiding Aboriginal resistance that might unsettle economic stability and attract international disrepute. Thus, Russell concludes that the Canadian government’s overarching approach has been to devolve power to

Aboriginal groups. This suggests that First Nations with the greatest capacity to disrupt the socio-economic status-quo might be most likely to achieve a Final Agreement.

Alcantara (2008) argues that the primary interest of the federal government throughout comprehensive land claims negotiations is to ensure certainty and finality in order to encourage economic development. The same might be said at the provincial level, as it is generally accepted that the aim of the BC Treaty Process is to create economic and political self-sufficiency and stability for the entire province (Brown 2002). Rossiter and Wood (2005) say that it is precisely the British Columbian government's continued interest in attracting investment that forces government to engage in discussions with First Nations within the logic of neo-liberalism (p. 364). Supporting such a view, Penikett (2006) points out that "from 2001 to 2005, the BC Liberals shifted from defending provincial sovereignty against Aboriginal claims to defending treaties as good for business" (p. 254). Perhaps, then, Aboriginal groups with the capacity to economically contribute to state development might be favoured in negotiations, and thus might achieve an agreement more quickly than otherwise.

Literature relevant to this topic exists throughout the social sciences. Mensah (1996) emphasizes the importance of geographic information and techniques in the analysis and completion of Aboriginal land claims in BC. He admits, though, that the successful negotiation of a treaty requires a pluralistic and multidisciplinary approach to properly address the complexity of the process. Further, he maintains that explicit recognition of the concerns of Aboriginal peoples is necessary for an agreement to be reached. This implies that despite the disproportionate amount of power held by the state

at the negotiating table, Aboriginal parties retain a significant degree of leverage that may impact the outcome of negotiations.

It is only through sufficient empirical analysis of current negotiation processes in the BC Treaty Process that many of the ideas proposed by the scholars discussed here may be properly assessed. This is why the analytical frameworks proposed by Slowey and Alcantara are used in this study to assess negotiation outcomes in the Treaty Process. While they each address the role that opposing visions, power disparity and state motivation have on negotiations, their analyses extend beyond the existing literature to provide a more thorough examination of what is happening concretely at negotiating tables around the country. In different ways, both scholars speak directly to the question of why comprehensive land claims negotiations lead to varying outcomes. Among other factors, their models examine the socio-economic capabilities of individual First Nations, the timing of and events during negotiations, the various actors involved, and the location and value of the land being discussed. Even though other approaches may also be useful in assessing why negotiations in the BC Treaty Process produce various outcomes, Slowey and Alcantara's models offer particularly clear ways to gather relevant data. This is because they provide readily available means through which the present research question may be addressed. The next section will describe these frameworks in detail before they are applied in subsequent chapters.

Analytical Frameworks

Recent work from Slowey and Alcantara develops a new branch within the literature that has only just begun to deliver results. Both scholars provide analytical

frameworks that may be used to explain the outcomes of negotiations within the Treaty Process. While Slowey (2008) admits there is no single model of First Nation self-determination, the frameworks she and Alcantara have created offer potentially useful foundations upon which future research may build. These scholars emphasize the socio-economic competencies and capacities of individual First Nations that seek self-determination. They also carefully analyze the history and governance of each First Nation to understand how they might affect negotiations.

My work will contribute to the field by applying Slowey and Alcantara's models to First Nations participants in the BC Treaty Process. This will simultaneously test the value of their frameworks outside of their original case studies and offer some insight as to why negotiations in the Treaty Process produce varying results.

The Mikisew Cree First Nation Model

Slowey (2008) takes into account all of the previously discussed themes that arise from the literature when she constructs the Mikisew Cree First Nation (MCFN) model for self-determination. She argues that land claims settlements offer a means by which the state may pursue stable economic growth. Consequently, there is "significant pressure" on the state to "resolve outstanding conflicts and ensure stable access to resources" (p. 16). This is so that resource development and exploration may proceed uncontested, and the demands of international markets may be met.

Slowey (2008) views the government's current policy towards Aboriginal peoples as fundamentally linked to its changing role within the neoliberal global era. First Nations seek self-determination, while the Canadian state tries to respond to the needs of

the new political economy. Indeed, she argues that the “unifying principle dictating current government policy, including First Nation’s policy, is that anything that increases corporate profit margins...ultimately serves the interest of Canada” (p. 14). Slowey proposes that neoliberalism is therefore linked to self-determination because the state uses the latter as a means to promote economic growth and private enterprise. As such, she acknowledges that self-determination is often measured in terms of financial success because economic imperatives drive government policy (pp. 11, 15).

Based on the MCFN experience, Slowey (2008) identifies three characteristics that are essential for the realization of self-determination – external development, internal assets, and development strategy. She then forms a model that highlights three critical issue areas for political and economic development including: money, geography and industry. Money includes capital and resources that are on the traditional territory of an Aboriginal group. Geography, or the location of the group, may help or hinder development depending on the availability of opportunities. Industry, through the relationships that Aboriginal groups have with local companies, can also significantly affect the development of an Aboriginal community. The Mikisew Cree had strong cards to play in all three of these areas (pp. 75-78).

The purpose of Slowey’s work is to trace the development of the MCFN’s self-determination to show how the relationship between the Aboriginal group and the federal government has developed alongside the market (Slowey 2008). She does this by analysing the community dynamics, financial capital, and geography of the Nation before tracing the events that ultimately led to the political and economic transformation of the MCFN. In order to apply Slowey’s framework to cases in BC, specific information must

be drawn to determine whether a First Nation is capable of self-governance by taking on administrative functions that were previously the responsibility of Canadian governments. Collaborative work between the provincial Ministry of Economic Development and the First Nations Leadership Council offers a useful methodology from which to gather this information.

The Ministry sponsored a temporary position of Project Manager to Cowichan entrepreneur Ted Williams, who was chosen by the First Nations Leadership Council to highlight how BC First Nations might develop strong community economies and participate more fully in regional and provincial economies. In 2007, Williams completed *Journey to Economic Independence*—the result of an information gathering initiative on various economic development approaches from participating First Nations (Williams and Bootsman 2008). The project aimed to reveal best practice strategies so that other First Nations throughout the province may choose to approach economic development accordingly. After visiting with senior representatives from eleven First Nations throughout the province, Williams identified the major areas where economic development was pursued and own-source revenue was generated. Broadly, his research concludes that economic development in First Nation communities is achieved through the joint participation and commitment of First Nations leaders, governments, and the private sector (Williams and Bootsman 2008).

This coincides with Slowey's research that says, essentially, in order for a First Nation to achieve self-determination it must have the political economic capacity to do so. As well, it must also be likely that self-determination will significantly benefit the broader Canadian economy. Applying the MCFN model, then, requires this significance

to be measurable in concrete terms. Certain indicators must be chosen to serve as evidence of political economic capability and self-determination capacity. Because the findings of Williams' report closely accord with Slowey's neoliberal analysis of treaty-making, the indicators used in *Journey to Economic Independence* are applicable to the present study as will be demonstrated in Chapter Two.

The Alcantarian Model

Alcantara's contribution to the field is also of particular benefit to the research being conducted here. Analyzing the negotiation processes between Canadian governments and the Inuit and Innu in Labrador, he creates a framework to explain why the Inuit were able to achieve a comprehensive land claims agreement, but the Innu were not (Alcantara 2007). Alcantara divides his analysis into external and internal factors that help to determine both whether an agreement will or will not be obtained and the speed to which it will be obtained. He identifies the congruency of goals between the governments and an Aboriginal group as a key internal factor in explaining whether or not an outcome is obtained from negotiations. The cohesiveness of an Aboriginal group and the tactics it employs throughout the negotiation process are other internal factors that determine the results of an outcome. An important external factor that Alcantara recognizes as having an affect on whether a treaty will be obtained is how the government perceives of the Aboriginal group. Factors that explain the speed to which an outcome is obtained include: the timing of tactics that Aboriginal groups employ, the levels of trust between negotiators, the role that individual negotiators take on, and the value of the land and location that is being negotiated (Alcantara 2007).

Rather than focusing on the role of economic forces in negotiations, as Slowey does, Alcantara's framework concentrates on the nature of the negotiations themselves and the ability of the Aboriginal group to respond to the demands of the state. Indeed, he argues that the internal and external factors that ought to be taken into account when assessing negotiating processes is of great significance to treaty completion. Thus, he boldly challenges the "conventional explanation" that economic development projects are a necessity in comprehensive land claims negotiations (Alcantara 2007, p. 186).

Alcantara (2009) employs both mid- and micro-level analyses to understand the impact that governments and individuals have on negotiations and their outcomes. He acknowledges the more dominant negotiating position of the governments, and explains that comprehensive land claims negotiations can either be lengthy and slow when the pace is set by the federal and provincial governments, or accelerated when a window of opportunity presents itself (see Kingdon 2003 for a fuller description of windows of opportunity). Alcantara (2007) provides three examples of such "opportunity windows" – large-scale economic development projects, changes in federal or provincial leadership, and influential court cases – each of which may propel negotiations forward if they are recognized by Aboriginal groups and used accordingly to their benefit. The author takes care to note, however, that such opportunity windows will not automatically lead to a completed treaty (p. 190). The method by which Alcantara's framework will be applied in this study will be discussed in Chapter Three.

Conclusion

Illustrating the historical context from which modern treaty negotiations are derived and reviewing the relevant literature, this chapter has provided a foundation upon which the following two chapters will build. In Chapters Two and Three, both Slowey and Alcantara's models will be applied to a sample of three First Nations at various stages in the Treaty Process. Progress will be categorized into a continuum of complete, nearing completion, and far from complete, with the models being applied to Tsawwassen First Nation, Sliammon First Nation, and Westbank First Nation, respectively. Each First Nation entered the BC Treaty Process in the early 1990s, has less than 1000 members, and claim land to traditional territories that are located in different regions of the province.

The differences between the three First Nations used in this study are as varied as they would be had any other Aboriginal groups been selected for the same purpose. Tsawwassen First Nation was chosen because it is the first and currently the only participant in the Treaty Process to have begun implementation of a Final Agreement. The other two First Nations were selected within each of the remaining categories, (nearing completion and far from complete). My choices were based on the relatively similar size of each First Nation's population compared to that of Tsawwassen, and on the region of the province where each First Nation is located. Roughly controlling for population size in this way allows one to more fully consider how land value and location may affect negotiation outcomes.

It is important to acknowledge how the choice of cases impacts the results of the study. Literature concerned directly with the Treaty Process is still quite new. Therefore,

a study that assesses the impact of population size on negotiation outcomes – by, for example, controlling for location by analyzing First Nations whose traditional territory is within the same region of the province – would be of great value to the field. Since land value and location is an indicator that both Slowey and Alcantara identify as having an effect on negotiation outcomes, however, it was considered more worthy of analysis than population size for present purposes.

Systematically applying the models to the entire population of BC Treaty Process First Nations – and doing so in such depth so as to provide a comprehensive analysis of each case – would prove to be a tremendously valuable addition to the literature in two ways. First, it would provide a model to which First Nations engaged in the Treaty Process could refer as they progress towards a treaty. Second, certain trends might be revealed that could predict future negotiation outcomes. However, such work is beyond the scope of this study as it would lessen the opportunity to more fully acquaint oneself with the character of each First Nation.

There is great value in this latter, more detailed approach because it allows for a more comprehensive understanding of certain distinguishing characteristics of each First Nation. These characteristics illustrate the broader personality of a First Nation, and may impact negotiation outcomes as a result. For example, the social capital of one First Nation might provide for a higher capacity of its members to effectively communicate their interests. Alternatively, another Aboriginal community might comprise many entrepreneurial-minded people whose individual talents would influence the policies and actions of the band council accordingly. Analyzing only three cases also enables the reader to grasp each First Nation's individual negotiating experience to a much more

detailed level than would otherwise be possible. Moreover, this approach is also superior to a single-case analysis because the results may be compared with one another and considered accordingly.

This study relies on primary documents such as band newsletters and public records, as well as secondary research drawn from a variety of scholars, journalists, politicians, activists, and others. Firsthand interviews have not been conducted to gather information. Some might view the absence of interviews as a limitation in this study. For instance, the impact of trust relationships between negotiators of governments, Aboriginal groups, and local companies will be based on inferences made from sources like published reports, newspaper articles, and printed interviews, rather than asking people directly about them. Despite this, the two models to be applied here offer promising lines of research that should be seen as complimentary and parallel to interview-based investigations.

Based on the findings from Chapters Two and Three, the concluding chapter will respond to why negotiations in the BC Treaty Process lead to varying outcomes among different First Nations. It will also assess the applicability of Slowey and Alcantara's models outside of their original contexts. In doing so, a better understanding will be developed regarding the choices that Aboriginal groups make as they attempt to navigate toward more prosperous and sustainable futures.

TABLE 1 ²

Current Negotiating Status of First Nations in the BC Treaty Process

FIRST NATION			CURRENT STAGE	TOTAL
Tsawwassen First Nation			6	1
In-SHUCK-ch Nation	Sliammon Indian Band	Sechelt Indian Band	5	7
Lheidli T'enneh Band	Yekooche Nation			
Maa-nulth First Nations (Ratified Final Agreement)	Yale First Nation			
Carcross/Tagish First Nation	Kaska Dena Council	Quatsino First Nation	4	43
Carrier Sekani Tribal Council	Katzie Indian Band	Snuneymuxw First Nation		
Champagne and Aishihik First Nations	Klahoose Indian Band	Sto:Lo Xwexwilmexw Treaty Association		
Da'naxda'xw Awaetlatla Nation	K'omoks First Nation	Taku River Tlingit First Nation		
Ditidaht First Nation	Ktunaxa/Kinbasket Treaty Council	Te'Mexw Treaty Association		
Esketemc First Nation	Kwakiutl Nation (in suspension)	Teslin Tlingit Council		
Gitanyow Hereditary Chiefs	Laich-Kwil-Tach Council of Chiefs	Tla-o-qui-aht First Nation		
Gitxsan Hereditary Chiefs	Lake Babine Nation	Tlatlasikwala Nation		
Gwa'Sala-'Nakwaxda'xw Nation	Musqueam Nation	Tlowitsis First		
Haisla Nation	'Namgis Nation	Tsay Keh Dene Band		
Heiltsuk Nation	Nazko Indian Band	Tsimshian First Nations		
Homalco Indian Band	Northern Shuswap Tribal Council Society	Tsleil-Waututh Nation		
Hul'qumi'num Treaty Group	Nuu-chah-nulth Tribal Council	Westbank First Nation		
Hupacasath First Nation	Pacheedaht Band	Wet'suwet'en Nation		
Cheslatta Carrier First Nation	Council of the Haida Nation	Squamish Nation	3	3
Acho Dene Koe First Nation	Hwilitsum First Nation	MacLeod Lake Indian	2	6
Allied Tribes of Lax Kw'alaams Band	Liard First Nation	Ross River Dena		

² Source adapted from bctreaty.net

CHAPTER TWO

Applying the MCFN Model

Slowey (2008) says that self-determination is a “multi-faceted phenomenon that involves the interaction of political and economic forces” (p. 11). She describes the “process” of self-determination as one that builds the autonomy, accountability, and decision-making power of First Nations communities. In order to achieve self-determination, therefore, a First Nation must have decisive control over its affairs to develop its social, economic, cultural, and political institutions.

In this chapter, Slowey’s approach will be used by adapting the work of Ted Williams who researched economic development strategies of various First Nations throughout the province. The MCFN model of self-determination will be applied to Tsawwassen, Sliammon and Westbank First Nations by using the following five categories from Williams’ *Journey to Economic Independence*: lands, resources and water opportunities; planning and development strategy; leadership, corporate governance and capacity; benefit and revenue sharing agreements and partnerships; and access to capital. Each of these categories was found to be crucial to the economic development and independence of participating First Nations. Given Slowey’s primary reliance on political economic factors to inform her findings, the same categories are also useful in applying the MCFN model to the BC Treaty Process cases.

For instance, Slowey (2008) says that land is fundamental to a First Nation that is seeking self-sufficiency because self-determination is most concretely expressed when a defined population is governed in a defined area of land. The eventual resolution of

outstanding land claims, therefore, is an essential part of achieving self-determination (12). First Nations gain control over their land through various structures of authority delegation. Williams looks at whether a First Nation has a multi-year lease on its land, designation under the federal *First Nations Land Management Act*, or some other form of delegate authority or self-government arrangement to assess the level of control an Aboriginal community has over its land.

Land may also be of considerable significance to a First Nation as it seeks self-determination because it provides a range of potential resource development opportunities. Slowey describes how First Nations that are situated in both rural and urban locations are provided opportunities that may lead to socioeconomic success. “Proximity to a city,” she says, “can make a First Nations community dependent on municipal provision of services;” on the other hand, it could also very well provide advantages to development (Slowey 2008, p. 77). Similarly, Williams compares the development opportunities of natural resources that are available on the traditional territories of each First Nation that participated in his study. He specifically examines the accessibility of water resources that can be used for revenue generation and quality of life—each of which are fundamental to the success of a First Nation (Williams and Bootsman 2008).

Because she links neoliberalism and self-determination, Slowey says that the involvement of the federal and provincial governments is essential to the achievement of the latter (Slowey 2008, p. 13). The Mikisew Cree claimed land in the Athabasca region, where Alberta’s tar sands have attracted considerable interest from the oil industry. The desire of the provincial and federal governments to develop the resource was likely an

enormous incentive to settle the MCFN Treaty Land Entitlement—which is a process by which a First Nation receives the full amount of land to which it is entitled (Isaac 1999). Slowey (2008) argues that the Treaty Land Entitlement substantially advanced MCFN self-determination. It created certainty in the area for investors to pursue resource development initiatives, and it allowed for the decentralization of programs and services from the governments to MCFN (p. 10). Government participation in First Nation self-determination is undoubtedly of great importance, yet private-sector involvement also leads to substantial development opportunities for Aboriginal communities.

Partnerships and agreements between First Nations and businesses often lead to the development of infrastructure on First Nations lands, which sequentially increases capital and results in a greater return on equity. Williams (2008) explains that partnerships – particularly ones with “large and credible partners” – can bring significant pools of capital to a project (p. 23). Indeed, MCFN was able to develop its economy by building a lucrative relationship with major producers in the industry, like Syncrude Canada, a large oil sand plant in the area (Slowey 2008).

Slowey (2008) says that neoliberal governments encourage partnerships that result in shared power between politicians, public servants, industries and other sectors of society like Aboriginal communities. This brings forth questions about what “good governance” involves, and the capacity of a First Nation to manage public society through successful administration and service delivery. For example, Slowey acknowledges the decision of MCFN to separate electoral politics from the management of business enterprise as “an important institutional development” (p. 76). She also stresses the importance of economic development plans and comprehensive community

plans – that concentrate on economic growth as much as on political jurisdiction – to demonstrate that a First Nation’s leadership will be capable of maintaining accountable and effective governance.

A set of questions, operationalized from the research of both Williams and Slowey, will be used to measure the economic development of each First Nation in this study. These questions, as well as the category to which they relate, are listed in Table 2. For the purposes of this study, achieving a treaty is tantamount to achieving full self-determination within the boundaries of the current institutional framework. If the model is to be accepted as a useful guide to explain negotiation results in the BC Treaty Process, it is expected that most or all of the questions will receive a positive answer when applied to First Nations that have already achieved or are close to achieving a Final Agreement. Similarly, First Nations that are far from reaching an agreement are expected to respond negatively to the majority of questions in Table 2. Regardless of whether or not the results reveal such expectations, the information provided in the remainder of this chapter will offer insight as to why negotiation outcomes differ between First Nations participating in the Treaty Process. As noted in the introduction, information was gathered for three BC First Nations: Tsawwassen, Sliammon, and Westbank.

TABLE 2

MCFN Operationalized

Crucial to Economic Development	Indicator of Success
Lands, Resources and Water Opportunities	<ul style="list-style-type: none"> ❖ Does the Nation have a multi-year lease on its land, designation under the <i>First Nations Land Management Act</i>, delegated authority under the <i>Indian Act</i>, or other self-governing arrangements? ❖ What natural resources are available on the traditional territories of each First Nation? Does the Nation have control over these resources? ❖ Does the First Nation have access to a developed water source? Is there opportunity for involvement in the BC aquaculture industry to some extent? ❖ Does the location of the reserve(s) impact opportunities for economic development?
Planning	<ul style="list-style-type: none"> ❖ Does the First Nation have a Comprehensive Community Plan and/or an Economic Development Plan?
Leadership, Corporate Governance and Capacity	<ul style="list-style-type: none"> ❖ Is there governance continuity in the Nation? ❖ Are administrative duties clearly defined? For example, are the duties of the Chief and Council separate from the Board of Directors for major companies in the community?
Benefit and Revenue Sharing Agreements/Partnerships	<ul style="list-style-type: none"> ❖ Has the First Nation signed a benefit agreement with an industry proponent or a revenue sharing agreement with the provincial and/or federal governments? ❖ Has the First Nation entered into some other kind of partnership or agreement with governments or industries? Do external development interests exist?
Access to Capital	<ul style="list-style-type: none"> ❖ Is the First Nation engaged in significant development projects? Approximately how much money are they worth? ❖ How financially successful is the First Nation? Does it possess internal assets?

Tsawwassen First Nation (TFN)

After more than 14 years of negotiations, Tsawwassen First Nation, who entered the Treaty Process in 1993, became the first in the province to sign a modern treaty negotiated through the BC Treaty Process on 3 April 2009.³ Approximately half of TFN's 400 members live on 724 hectares of Treaty Settlement Land on the Lower Mainland/Fraser Valley region of the province.

LANDS, RESOURCES AND WATER OPPORTUNITIES: Tsawwassen traditional territory includes nearly 150,000 hectares of land, stretching from Boundary Bay across the Fraser River to the Pitt Lake region, and across the Strait of Georgia to several Gulf Islands. Prior to ratification of the Treaty, the First Nation only had one reserve that was situated along Robert's Bank, between the two Delta communities of Ladner and Tsawwassen. Reserve land was on either side of the highway leading to the BC Ferry Terminal, including land between the highway and Deltaport Way.

Tsawwassen First Nation participated in the Regional Land Administration Program before it signed onto the Land Management Agreement. This program is a transfer of duties from Indian and Northern Affairs Canada to a First Nation to build the Aboriginal group's land management capacity (INAC 2009a). Once TFN became a signatory to the *First Nations Land Management Act*, *Indian Act* provisions on land management no longer applied to reserve land or resources. The former allowed TFN to assume a greater degree of decision-making authority and responsibility.

The land on which TFN is located provides for a number of water opportunities. For instance, the Treaty grants the First Nation the authority to regulate activities on

³ The Nisga'a Final Agreement was achieved in 2000 through tri-partite negotiations that were outside of the BC Treaty Process.

water lots – estimated to be worth approximately three million dollars – that are leased to TFN from BC (Simpson 2004). Moreover, a Harvest Agreement, issued by the Department of Fisheries and Oceans in 2006, provides for the issuance of commercial fishing licenses to the First Nation. The right of TFN to harvest fish within defined geographic areas is acknowledged under the treaty (Ministry of Aboriginal Relations and Reconciliation 2007).

The Final Agreement declared 662 hectares of Crown and reserve land as “Tsawwassen Lands.” This significantly extended the opportunities available to TFN. Subsurface resources now belong to the First Nation which has law-making authority over the land. TFN also gained fee simple ownership of 62 hectares of land along Boundary Bay and the Fraser River, although these land parcels remain under the jurisdiction of the Corporation of Delta. Furthermore, provoking great debate, prime provincial Crown lands that are in the Final Agreement were removed from the Agricultural Land Reserve and transferred to TFN (Ministry of Aboriginal Relations and Reconciliation 2007).

Grand Chief Ed John of the First Nations Summit said that the situation for TFN is unique because much of its traditional land has been developed into cities, towns and regional districts (Mickleburgh 2007). Similarly, Grand Chief Stewart Phillip, president of the Union of BC Indian Chiefs, suggested that the signing of the Treaty is primarily attributable to the fact that Tsawwassen is a “small, urban-based First Nations community hemmed in by surrounding non-Aboriginal municipalities” (Dolha 2007). Indeed, an article in the *Vancouver Sun* compares the cash per resident worth of a 25-year agreement signed between TFN and the Vancouver Port Authority to expand the port at Robert’s

Bank. It finds that the deal, in terms of its amount of money given per First Nations person, exceeds all previous agreements reached with Aboriginal groups throughout the country, (including those with the Nisga'a, James Bay Cree, and the Inuit in Nunavut). According to the *Vancouver Sun*, such a deal reflects the “vastly greater strategic value of an integral piece of waterfront along one of North America’s key transportation corridors” (Simpson 2004). Baird describes the location of TFN as “ideal” for economic development as it is surrounded by the ongoing traffic along the port causeway. She says that TFN is in a “very strategic position, politically and physically” to the province’s multi-billion-dollar Gateway port and transportation project (Simpson 2007).

PLANNING/DEVELOPMENT STRATEGY: In 2008, members of the Tsawwassen Council approved a Land Use Plan for the community that described future development goals. It states an overall vision to see a safe and accessible community where TFN-owned businesses thrive and the economy continually grows. It sets out eight land use designations and includes policies to guide their development. While the TFN Council is not committed or authorized to proceed with any project specified in the plan, all future decisions that it makes must conform to the Land Use Plan (TFN 2009a). Currently, the original Land Use Plan is being used as a guide for more extensively detailed plans to develop the industrial lands (Kiemele 2009).

LEADERSHIP, CORPORATE GOVERNANCE AND CAPACITY: Only a few months before the Final Agreement was to be ratified, a vote was held to elect TFN Chief and Council. Kim Baird ran against Bertha Williams, an outspoken opponent of the treaty. Had Baird been unable to secure another win at the election, the First Nation’s

negotiating experience might have been drastically altered. As it was, though, Baird won a fifth consecutive term as Chief by defeating Williams in a vote of 87 to 43 (Smith 2007). The results of the election thus maintained governance continuity for another term with the reinstatement of a Chief and Council committed to negotiations.

Recently, TFN established an Economic Development Council with duties that are separate from Chief and Council. The purpose of the Council is to achieve long-term wealth through the creation of organizations and rules for commercial investments. Its Board of Directors is composed of the Chief and the Chief Administrative Officer, (as well as two business-minded people who are not members of TFN, and two who are; one of these members must serve on the Executive Council, which is the body of government that creates laws, appoints officials and enacts regulations). Open communication between the Executive Council and the Economic Development Council must be upheld (TFN 2010b).

REVENUE AND BENEFIT SHARING/PARTNERSHIPS: In 2004, the Vancouver Port Authority signed a memorandum of agreement with TFN for the development of Roberts Bank, and the existing container handling facility (Deltaport) (TFN & VPA 2004). Estimated at 47-million dollars, the agreement established a 25-year business partnership, and created a number of job opportunities for local residents (Ministry of Transportation 2006). The large-scale nature of the project that will result from the agreement is of enormous significance to TFN development interests.

TFN also receives own-source revenue through a joint venture partnership between Tsleil-Waututh Nation and TFN that was begun in 2005 to create SPAL General Constructors. Fully owned by the two First Nations, the company organizes the

construction and development of large public projects. A number of successful multi-million dollar projects have resulted from the partnership including the 300-million dollar Raven Woods condominium development, the 17-million dollar Tsatsu Shores condominium development, and the 4.5-million dollar Tsawwassen Water Treatment Plant, to name a few (SPAL General Constructors 2010).

Great potential for future development on TFN lands was recognized prior to the signing of the Treaty. Not long after the ratification of the Final Agreement, the federal and provincial governments entered into a partnership with TFN committing each to a 3-million dollar investment in an infrastructure stimulus project. The money will be used to pay for the first phase of development for the Tsawwassen Industrial Lands Site Servicing Project (TFN 2009a). With road construction, water and sewer works on 40 acres of currently undeveloped Tsawwassen land, the project is expected to lead to future developments, bringing significant gain to the regional economy (Government of Canada 2010).

CAPITAL: When Tsawwassen First Nation was negotiating its Agreement-in-Principle, economic statistics did not represent a First Nation that was overly successful by any means in terms of its finances. The average annual family income on the reserve was reported to be 20,005 dollars (nearly 50,000 dollars less than that of non-Aboriginal residents in neighbouring Delta), forty percent of Tsawwassen people were on social assistance, and the unemployment rate was 38 percent. Despite these challenges, TFN completed three market housing initiatives based on a 99-year lease in which the First Nation retains taxation authority. Tsatsu Shores, Stahaken, and Tsawwassen Beach Lots currently house approximately 460 people (TFN 2003). Furthermore, prior to treaty

ratification, TFN developed a business relationship with over 200 lessees who operated on former reserve land.

The partnerships described above provide TFN with a few sources from which to draw revenue. This allows for more secure access to capital than would otherwise be the case if the bulk of TFN income relied on a single source of funds. It is the partnership with the Port Authority, though, that gives TFN the most lucrative access to capital and credit, as well as an opportunity to substantially develop the local economy. The memorandum of agreement between TFN and the Vancouver Port Authority provides for large-scale project funding, including: 10-million dollars for the creation of a joint venture investment fund, 7-million dollars for past and future environmental impacts, 4-million dollars for construction contract benefits and 7.5-million dollars for construction and full-time employment at the port facility. A further 10-million dollars is expected in land rentals and 2.5-million dollars in property taxes (Simpson 2004).

SUMMARY: In summary, Tsawwassen First Nation had administrative power over its land and resources through the *First Nations Land Management Act*. Before the Final Agreement had been reached, TFN partnered with the Vancouver Port Authority, providing immense opportunity for development. Expansion of Robert's Bank is a project of extremely large-scale, securing more than two decades of employment opportunities and development activity for the First Nation. The Tsawwassen band council approved a very general Land Use Plan the year before the Treaty was signed; the Economic Development Corporation, however, was not created until after its ratification. Negotiations likely sped the process of creating this corporate governing body to guide future development plans on Tsawwassen lands. Chief Baird, who has provided her

people with a high level of governance continuity for six consecutive terms, now sits on the Board of Directors of the Development Corporation. Thus, even though its duties are formally separate from Chief and Council, the corporate and non-corporate sectors of the Tsawwassen government remain closely connected. The significance of these findings will be discussed later in the chapter.

Sliammon First Nation (SFN)

Sliammon First Nation was chosen from the seven First Nations currently in Stage 5 who are negotiating to finalize a treaty. For the purposes of this study, SFN typifies Aboriginal groups that fall in the “nearing completion” section of the continuum in which progress is categorized. It is important to acknowledge that applying the models to any of the First Nations at Stage 5 would establish the grounds for an equally interesting discussion about why negotiations lead to varying outcomes. For example, community members from the Lheidli T’enneh Band, the first Aboriginal group to complete a Final Agreement in the BC Treaty Process in 2006, surprised many when they voted against the treaty settlement. The Treaty Commission cites deep family divisions, low levels of trust and a problematic treaty among many other reasons for the outcome. Moreover, after an examination of the vote by then Chief Commissioner Steven Point, the voting process was found to be flawed. Community members had not yet grappled with all of the information in the proposed treaty. Also, the vote was held shortly after a band council election, which divided the community even further (BC Treaty Commission 2007a).

Located on nearly two-thousand hectares of reserve land on six different locations just north of Powell River, Sliammon First Nation offered an equally enticing choice to use for this study (Sliammon Treaty Society 2010). The Vancouver Island-based Sliammon people entered the BC Treaty Process in 1994 and are currently negotiating a Final Agreement. However, the Treaty Commission (2009a) reports delayed progress for Sliammon's almost one-thousand members, due to the lack of a federal fish mandate. With the onus now on federal negotiators to move the discussion forward, an analysis of Sliammon First Nation's negotiating experience provides the foundation for fruitful discussion.

LANDS, RESOURCES AND WATER OPPORTUNITIES: Sliammon First Nation currently operates under the *First Nations Land Management Act*. Together with the Sliammon Land Code, this framework agreement defines the roles and responsibilities of the Lands Department in the Sliammon Government (BC Guide to Watershed Law and Planning 2003). If a treaty is ratified by the Sliammon people, future land owned by the First Nation will increase considerably to 6,360 hectares of land on nine locations. Sliammon will receive forest, woodlot and aquaculture tenures, and licenses for freshwater fishing (Sliammon Treaty Society 2010).

In 2006, SFN signed a 2.7-million dollar, five-year, interim measures agreement with the provincial government that gave the First Nation access to 190,000 cubic metres of timber and a community forest license (Ministry of Forests and Range 2006). The year after, Tla'Amin Timber Products Ltd., a branch of the SFN government that oversees forestry business operations, was granted the right to an annual harvest of 28,000 cubic metres of timber on public forest lands through a five-year probationary

community forest agreement. Much of the land in the treaty settlement package, including lakes, rivers, and prime waterfront, provides for a great deal of development potential (Sliammon Treaty Society 2010). Currently, SFN has priority to 27 hectares of shellfish growing areas through a Memorandum of Understanding signed with the Province. The beaches are expected to produce approximately 150,000 pounds of clams annually that are processed in the SFN-owned plant, Mermaid Oyster Producers (Malaspina Okeover 2004). The locations of SFN reserve lands provide economic opportunities through shellfish farming, commercial recreation and fisheries, as well as tourism and forestry initiatives (Malaspina Okeover 2004).

PLANNING/DEVELOPMENT STRATEGY: Sliammon First Nations' Comprehensive Community Plan, first drafted in March 2007, is a detailed document defining what ought to be done to create an effective mode of governance for the Sliammon people. It lays out strategic plans for six thematically organized areas of governance administration. Each plan outlines who is responsible and accountable for specifically defined goals, and how their progress will be monitored and communicated throughout the community. Each action area is broken down according to its level of urgency – moderate, high, or urgent – to inform a timeframe for implementation.

The community plan is part of a four phase pilot project initiated by the Treaty Commission to help First Nations and their non-Aboriginal neighbours prepare for future intergovernmental community cooperation. The project includes SFN, the Corporation of the District of Powell River, and the Powell River Regional District. It involves the development of the Comprehensive Community Plan as well as the comparison and amendment of plans among neighbouring localities (BC Treaty Commission 2009a).

LEADERSHIP, CORPORATE GOVERNANCE AND CAPACITY: Sliammon First Nation uses a two-year election system. Former Chief Walter Paul explains that such a system could cause a “complete turnover” putting business partnerships in jeopardy (INAC 2008b). However, the strong relationship between the City of Powell River and SFN began when Chief Maynard Harry led the Sliammon people, and has since been maintained. Clint Williams currently serves as Chief for the Sliammon people. Elected in September 2008, he will have to maintain his position by winning another election this year.

SFN is negotiating both a Final Agreement, and a separate Governance Agreement to define the rights of the acting Sliammon government. The self-government will have various law-making authorities with respect to land, resources, culture and language, as well as some aspects of education, child and family services (Sliammon, Canada & BC 2009).

Formed in 1996, the Sliammon Development Corporation is a separate branch of SFN government that is committed to the development of a strong economic foundation within the community. The Board of Directors is comprised of Council and board appointments as well as community elected seats. It manages all business affairs of SFN—including land management, fisheries, aquaculture, tourism, and civil construction (SFN 2007). Sliammon entrepreneur David Formosa describes the Development Corporation as a “separate corporation, an entity itself” (INAC 2008). He adds that people prefer to deal with a business arm rather than a council when they engage in business-related issues (INAC 2008).

REVENUE AND BENEFIT SHARING/PARTNERSHIPS: The First Nation has made a number of agreements with local companies and governments. In April 2006, SFN reached an Interim Measures Agreement with the provincial government to provide for revenue sharing and access to the forests. This gives the First Nation an opportunity to share in the economic benefits that are created by the BC forestry industry (Ministry of Forests and Range 2006). In the same year, the City of Powell River, Sliammon Development Corporation and Catalyst joined together to form PRSC Land Management Ltd. The limited partnership aims to move Powell River from a single industry town to a more economically diversified one through the redevelopment of 805 hectares of lands formally owned by Catalyst. Some of these lands are within the province's Agricultural Land Reserve, which means development will not be unhindered. However, even early stages of cooperation demonstrated in the PRSC Land Management venture provide a useful support system for SFN as it negotiates a treaty (BC Treaty Commission 2007b).

Another source of revenue for SFN comes from an Impact Benefit Agreement that the First Nation signed with Plutonic Power Corporation in 2007. The Agreement allows for the development of a hydroelectric project on Sliammon lands. For the duration of the project, SFN receives annual payments from Plutonic, employment and training opportunities, as well as opportunities for work in the construction of the first two run-of-the-river hydro generation sites (Kennedy 2007).

SFN has also developed a strong relationship with the neighbouring local government. In 2002, SFN and the City of Powell River began the cooperative construction of a neighbourhood sea walk project. A Community Accord was signed the following year to articulate the new working relationship that formed as a result. This

commitment heralded a new era of economic opportunity and community improvement for future inter-governmental initiatives (National Centre for First Nations Governance [NCFNG] 2010). By 2004, a Protocol Agreement on Culture, Heritage and Economic Development was reached committing both parties to immediate action on inter-governmental cooperation (rather than waiting for a treaty to be signed) (BC Treaty Commission 2007). The strengthening relationship between SFN and the local government inspired Catalyst Paper Corporation, a private pulp and paper company, to follow suit. Soon after, Catalyst signed a Cooperation Protocol with the First Nation to develop a relationship of mutual benefit and business opportunity (BC Treaty Commission 2007b).

CAPTIAL: The East Toba River/Montrose Creek run-of-river hydroelectric project partnered by Plutonic Power and SFN, (and several others), is a tremendously significant development project estimated to be worth 660-million dollars (Moreno 2007). In 2000, SFN purchased the historic Lund Hotel and Marina, as well as all of the adjacent businesses, in a joint venture with Dave Formosa (SFN 2006). Furthermore, it is likely that the relationship initiated from the 2.3-million dollar sea walk project will lead to an increase in future capital through more joint ventures.

SFN currently receives 6.4-million dollars from the Department of Indian and Northern Affairs each year for programs and services. Should the Final Agreement be ratified, SFN will continue to receive this annual funding. In addition, 19.3-million dollars will be given as a capital transfer over ten years and a one time payment of 3.7-million dollars will be given to support economic development activities within the community. SFN will also gain the authority to generate tax revenues on all treaty

settlement lands. Another major financial component of the proposed treaty includes 31.5-million dollars in resource revenue sharing to be transferred from the government to the First Nation in annual installments over 50 years (Williams 2008).

SUMMARY: Like the Tsawwassen people prior to Treaty ratification, Sliammon First Nation maintains a certain degree of control over its lands and resources beyond the *Indian Act* through the *First Nations Land Management Act*. SFN has an extremely detailed Comprehensive Community Plan and a separate Economic Development Corporation with a Board of Directors on which the Chief sits. Elections for Chief and Council are held every two years. SFN is engaged in a number of revenue and benefit sharing agreements most significant of which is the large-scale project led by the Plutonic Power Corporation. What these findings mean in terms of Sliammon's treaty negotiations will be discussed in the final section of this chapter.

Westbank First Nation (WFN)

Like Sliammon, Westbank First Nation entered the Treaty Process in 1994 with the signing of a Statement of Intent to negotiate. However, twelve years at Stage 4 finally slowed negotiations to a halt, resulting in the recent withdrawal of the First Nation from the process in November 2009 (Squire 2009). WFN was selected for this study to represent Aboriginal groups in the Treaty Process who are far from completing a treaty. It was originally chosen for three straightforward reasons. First, its population is reasonably close to that of the other two First Nations examined in this study; second, it is located in the interior of the province in a region where neither the Tsawwassen nor Sliammon peoples are located; finally, it entered the Treaty Process within just a year of

TFN and SFN, allowing the analysis of all three First Nations to span over the same time frame. Westbank First Nation has a total of 686 members who live on the west shore of Okanagan Lake across from the city of Kelowna. The First Nation is located on five reserves that amount to 2,161 hectares of land (Ministry of Aboriginal Relations and Reconciliation 2007c). Of the 52 First Nations that are currently in Stages 2 to 4 of the process, Westbank is a particularly interesting case because of its recent decision to leave the BC Treaty Process.

LANDS, RESOURCES AND WATER OPPORTUNITIES: Westbank First Nation fares quite well in terms of its lands, resources and water opportunities. Indeed, Westbank Chief Robert Louie says that the financial achievement of the First Nation is due, in part, to its “ideal location in the booming Okanagan” (BC Treaty Commission 2008a, p. 11). In 2002, WFN signed an Interim Measures Agreement with the province that led to a five year Community Forest Pilot Agreement. Later, the Province issued a license to WFN providing for an annual allowable cut of 55,000 cubic meters (WFN 2007a). As a participant First Nation in his research project, Williams observes that WFN has developed renewable resources in a Community Forest License and is actively investigating non-renewable resource opportunities (Williams and Bootsman 2008, p. 26).

As well, there are many areas to access water on WFN lands. Indeed, water on the First Nation’s reserve land is provided by a 66,000 imperial gallon reservoir that has been in place since 1981. In 2004, WFN was also given a waterworks license on Okanagan Lake (Ministry of Aboriginal Relations and Reconciliation 2007c). Today, WFN owns and operates a private water utility, and uses the water from the Okanagan

Lake for commercial and residential developments (Williams and Bootsman 2008). Such an abundance of the resource provides for a great deal of development potential in the area.

Westbank First Nation demonstrates a strong capacity to self-govern. It was among the original signatories to the First Nation Land Management Framework Agreement in 1996 and now operates as a fully self-governing First Nation under the *WFN Self-Government Act* (WFN 2007a). This arrangement has enabled WFN to pass laws governing wills and estates, taxation, management of reserve lands, resource management, agriculture, environmental protection, culture and language, education, health services, law enforcement, traffic enforcement, public order, and public works, among other things (Alcantara 2008). WFN reserve lands are home to over 9000 non-Aboriginal people who are represented through mechanisms provided in Westbank law (BC Treaty Commission 2008a). Because of this, Aboriginal and non-Aboriginals who reside on WFN lands share many common economic and community development interests.

PLANNING/DEVELOPMENT STRATEGY: After extensive community consultation and a vote by the WFN membership, the First Nation enacted a Land Use Plan in 2007 stating the objectives and policies to guide planning decisions on Westbank lands. The Plan is based on a long-term perspective of at least fifty years to ensure sustainability of future investment decisions. The desire to create land use certainty is first among a list of goals within the Land Use Plan. Other goals include a plan to promote business investment and economic development, to prudently manage

infrastructure investments, and to address the social and cultural needs of the community (WFN 2007c).

Shortly before the Land Use Plan was enacted, the WFN Economic Development Commission released its strategic plan for the community. The plan lists business attraction as a top priority. While they are listed as secondary concerns, business facilitation and enhancement are also of great importance to the First Nation's economic development prospects. The strategic plan includes a number of objectives, strategies and tactics to achieve each of these main interest areas. It also lists several ways to evaluate their progress (WFN EDC 2005). The comprehensive community process in which WFN is engaged allows members of the First Nation, rather than hired consultants, to provide input on future development decisions (WFN 2007a).

LEADERSHIP, CORPORATE GOVERNANCE AND CAPACITY: Westbank Council consists of four Councillors and one Chief who are elected to serve for three-year terms (WFN 2007b). Robert Louie served as Chief from 1986 to 1996 when WFN first entered the BC Treaty Process. He again took office in 2004 and continues to lead WFN today (WFN 2007a).

Separate from the Chief and Council, the Economic Development Commission has its own distinct responsibilities, but it also has an important policy-forming role in the WFN Government. In accordance with the principles that guide the WFN Constitution, the Development Commission reports to and advises the Chief and Council on the economic goals and plans of the community. Broadly, its purpose is to assist and facilitate the creation of a "healthy, environmentally sustainable and dynamic economy" that is based on the value of economic self-reliance. It aims to increase awareness of

economic development and investment opportunities, and to provide support to existing businesses on WFN lands. The Economic Development Commission is comprised of three WFN members selected for their business and community involvement, two outside advisors selected for their knowledge of WFN lands, one member of Council appointed by the Chief and Council, and a few other administrators (WFN 2007a).

Chief Louie attributes a great deal of WFN success to the 2005 Self-Government Agreement and the Constitution that was signed two years prior. Both define how the WFN Government must function to foster economic stability and community prosperity. The Chief also affirms that the “tremendous economic success” of WFN is partly attributable to its keen ability to manage growth and change (BC Treaty Commission 2008a, p. 11).

REVENUE AND BENEFIT SHARING/PARTNERSHIPS: In the national *Communities in Bloom* competition, the District of West Kelowna and WFN received special recognition for Community Resiliency and Cooperation. The competition’s judges said that the three-way partnership between the District, the First Nation, and the Chamber of Commerce “demonstrates excellent collaboration, cooperative effort and organization” (WFN 2009, p.3). The fast pace of growth on WFN lands suggests that the First Nation is deserving of such recognition and has demonstrated an ability to work with a variety of partners. Indeed, the WFN website currently lists partnerships with the following: Kelowna Economic Development Commission, Westbank and District Chamber of Commerce, Community Futures Development Corporation of the Central Okanagan, Okanagan Nation Alliance, Regional District of Central Okanagan, District of Westside, Westbank Tourism, and Kelowna Tourism (WFN 2007a).

WFN and the BC Government share a strong working relationship that has led to further revenue sharing and development agreements. A Community Forest License agreement with the Province provides WFN with 275,000 cubic metres of timber. This was later extended to an additional 90,000 cubic metres and 1.5-million dollars in revenue sharing over five years. The Province also granted a waterworks license to WFN on Okanagan Lake that allows for the development of over 8000 new homes and many construction job opportunities. Another agreement between WFN and the provincial government led to the completion of a new bridge between Kelowna and Westbank in 2008. The Campbell Road Interchange, a large-scale highway development project, also saw completion in 2008. The following year, WFN and the Province signed another agreement to construct a new interchange in West Kelowna (Ministry of Aboriginal Relations and Reconciliation 2007c). This deal means WFN and the provincial government are committed to working together in the near future. It may perhaps provide for more joint development opportunities later as well.

CAPITAL: According to the BC Treaty Commission (2008a), Westbank has an annual budget of approximately 30- to 40-million dollars. About 80 percent of this is generated by WFN while the federal government contributes the rest. All developers on WFN lands are required to pay a benefit charge to fund capital improvements throughout the community. The assessed value of WFN properties increased 130 percent from 2005 to 2008. During the same years, the number of building permits grew 42 percent from 169 to 240. In 2008, the number of licensed businesses on WFN land totaled 341 (WFN 2008, pp. 41-44).

The numerous partnerships described above provides for a diverse range of sources through which the First Nation acquires wealth. Agreements with the Province also increase the First Nation's income. The Campbell Road Interchange, for example, was estimated to be worth 12.9 million dollars, and the building of the interchange in West Kelowna is soon to start (Ministry of Transportation 2007). Williams describes a "good working" relationship between WFN and mainstream banks, Indian and Northern Affairs Canada and commercial lenders (Williams and Bootsman 2008, p. 27). This enhances the ability of the First Nation to pursue investment initiatives and develop infrastructure to produce additional capital.

SUMMARY: Westbank has full self-governing power over its lands and resources as it is defined in its Self-Government Act. It has a Land Use Plan and an Economic Development Plan, both of which are designed to foster business activity on the First Nation's lands. With elections for Chief and Council held every three years, the First Nation has had relative governance continuity because Chief Robert Louie has served for almost two (non-consecutive) decades. Ted Williams defines "large-scale" projects as those that exceed 20-million dollars (Williams and Bootsman 2008, p. 23). While there are no large-scale projects currently underway, the many businesses that operate on Westbank lands provide for the bulk of the First Nation's income.

Summary and Comparison of Results

This section will summarize the results of the information above so that a clear comparison of each First Nation may be made. Analyzing the findings of each individual

section in the same order that was set out in Table 2, the similarities and differences between the findings for each First Nation will be discussed.

LANDS, RESOURCES AND WATER OPPORTUNITIES: TFN has unique opportunities as the only urban First Nation of the three studied. However, WFN is similarly advantaged as it is situated near the expanding city of Kelowna in the Okanagan Valley. Natural resources and water sources on each of the three First Nations territories provide roughly equivalent opportunities for each. The most important comparison to note between the First Nations for this study is the variance in levels of self-governing authority. Each of the First Nations examined in this study has self-governing designation to some extent. As mentioned, WFN signed the Self-Government Act in 2003. Therefore, out of the three cases, WFN is the only one to exceed the self-governing capacity that a signatory to the *First Nations Land Management Act* may obtain.

This is an important difference because it suggests that perhaps the higher degree of authority that a First Nation has (as a result of being further removed from the constraints of the *Indian Act*), the more likely it is to agree to a Final Agreement through the Treaty Process. The experience of the Sechelt First Nation seems to support this hypothesis. Sechelt was the first Aboriginal community in the country granted authority to manage its own lands under the *Indian Act* (Etkin 1988). Not long after, the Sechelt people achieved self-government in 1986. Although it was the first to negotiate a Final Agreement with the province under the BC Treaty Process, Sechelt First Nation announced its formal withdrawal from the Treaty Process after walking away from the negotiation table nearly a decade before. As First Nations increasingly lose patience and

money waiting for discussions to meaningfully proceed, the likelihood that others will abandon the process grows. Only time and further research will determine whether there is in fact a relationship between the level of authority an Aboriginal community has and the probability it will leave the Treaty Process.

PLANNING/DEVELOPMENT STRATEGY: Sliammon First Nation completed its extremely thorough Comprehensive Community Plan, yet now faces the challenge of implementation as plans must be carried out in coordination with neighbouring jurisdictions and business partners. A strong relationship between the First Nation and the City of Powell River has been firmly established, yet similar relations with the Regional District have yet to materialize. Progress in the area depends on the cooperation of the three local governments and their joint commitment to develop a meaningful regional plan (NCFNG 2010).

Westbank First Nation has completed two comprehensive plans – one for land use and one for economic development. Each plan takes anticipated rates of growth into consideration and details various strategies and tactics that will be used to pursue specified goals (WFN Advisory Council 2009). However, the Land Use Plan only serves as a statement of how WFN lands will eventually be used, and it does not provide detailed instructions on how to achieve each goal. The Plan, though, is protected legislatively through the Westbank Land Use Law and future amendments will be considered only if the First Nation decides that they will significantly benefit the community. Future development prospects remain strong on WFN lands. In 2007, WFN Council approved the development of 450,000 square feet of commercial space as well as permits for a new hotel and about 500 residential units (WFN 2007a). As several more

applications are either currently being reviewed or are expected soon, WFN is well situated to accomplish many of its development goals. One could argue, then, that First Nations that are actively engaged in pursuing pre-planned development goals are less willing to commit to the Treaty Process. One reason for this may be because, if development is generating enough capital, the Aboriginal communities are in a stable enough position to wait to make deals with governments that do not require the extinguishment of rights.

Unlike the other two case First Nations, Tsawwassen did not develop its Land Use Plan until shortly before the Final Agreement was reached. As well, the Economic Development Act was not enacted until the day the Treaty came into effect. This means that for the majority of negotiations, there was no tangible legislation affirming the goals, strategies, or details of how the First Nation will proceed with the future development of its lands. However, as discussed, development potential on TFN land was certainly recognized long before the plans were finalized. The desire of governments to develop Tsawwassen lands marks a significant difference between the scenarios of each First Nation. For example, it is likely that because Sliammon lands do not surround an expanding port and busy ferry terminal, there is less imperative on the part of the state to provide its negotiators with the mandates they need to proceed with discussions.

LEADERSHIP, CORPORATE GOVERNANCE AND CAPACITY: Sliammon First Nation is currently negotiating a Governance Agreement to specifically define governmental jurisdiction and responsibility. While the structure of the government is relatively new, there is much potential for effective administration if implementation is adequately followed through. The Tsawwassen Economic Development Corporation was

created when the Treaty brought the Economic Development Act into effect. Out of the three First Nations, WFN has had a Development Corporation providing business-oriented leadership for the community for the longest period of time (since 2004). Chiefs from both SFN and TFN currently sit on their respective Board of Directors, while the WFN Chief does not.

Yet perhaps the most important difference to note between First Nations in terms of how leadership, corporate governance and capacity affect the outcome of land claims negotiations is the degree of governance continuity in each community and the stability that is created as a result. Although the Sliammon Council is technically the least stable with elections being held every two years, it has managed to avoid major disruptions to the flow of its leadership. On the other hand, Tsawwassen First Nation has had the most stable leadership because of Baird's several consecutive electoral successes. Baird was able to earn the respect of government negotiators both as the head of the band council and as the chief treaty negotiator representing her people in the process. Uninterrupted continuity in the Tsawwassen leadership certainly eased the flow of negotiations for the First Nation than would have otherwise been the case if Bertha Williams had defeated Baird in the most recent band election.

REVENUE AND BENEFIT SHARING/PARTNERSHIPS AND CAPITAL: In February 2009, over one hundred jobs were cut at the Catalyst Paper Company's Powell River location due to a steep decline in market demand. While operations were not shut down indefinitely as they were in Crofton and Coquitlam, the business' response to the declining price of paper exemplifies the great risk involved in depending exclusively on a corporate entity that is highly subject to market demands (CBC News 2009). Therefore,

when assessing the strength of a First Nation's capital base, it is important to note both the variety and reliability of revenue sources from which it draws.

Fortunately for SFN, the Sliammon economy does not depend alone on its partnership with Catalyst. The First Nation reached revenue sharing agreements with the Province and with Plutonic Power Corporation. The strong intergovernmental relationship with the City of Powell River is also of great benefit to the First Nation as it pursues its economic and developmental goals. Similarly, the cooperative relationship established between WFN and local and provincial governments provide several opportunities for revenue and benefit sharing agreements. The same is true of the many businesses that operate on Westbank lands. Indeed, WFN capital comes from a wide range of sources, some of which have opportunities for large-scale commercial and residential developments (BC Treaty Commission 2008a).

Prior to ratification of the Treaty, TFN was engaged in several partnerships with small-scale businesses. To an extent, this provided funds to stimulate the TFN economy. However, it was the Vancouver Port Authority's interest in developing Roberts Bank that was of considerable significance to negotiations with TFN. As a committed investor with a long-term interest in the area, the agreement provided a substantial amount of capital upon which the First Nation's economy now may build.

Westbank First Nation far surpasses TFN and SFN in terms of capital. The numerous businesses operating on Westbank lands generates enough cash flow to provide for a relatively stable economy—one that continues to strengthen as ongoing development creates new opportunities for growth. There may indeed be a correlation

between levels of wealth and First Nations who decide to leave the Treaty Process. Wealthier First Nations are more able to afford waiting for governments to offer a better deal than what is currently offered in the BC Treaty Process. They can also more easily engage in costly litigation to pursue their goals. Poorer First Nations, on the other hand, face greater restrictions in terms of the options they may choose; they are thus more likely to view a treaty as a possible escape out of their current circumstances.

The fact that it was able to achieve economic success without a Final Agreement convinced the Westbank community that the Treaty Process was not the only means through which long-term goals may be achieved. For TFN, though, the Final Agreement offered a promising foundation upon which the Tsawwassen people could considerably build its economy. It will be interesting now to observe how the Sliammon band council chooses to move forward. Will the First Nation abandon the Treaty Process and rely on existing partnerships and agreements to reach its goals? Or, will it continue to wait for government negotiators to return to the table with mandates that satisfy Sliammon demands?

Conclusion

This chapter has assessed the capacity of three BC Treaty Process First Nations to achieve self-determination as it is defined by Slowey in her analysis of the MCFN negotiating experience. It has done so by measuring several political economic indicators that are crucial to the self-determination of an Aboriginal group. The findings reveal important differences between the political economies of each First Nation. The most significant of these differences are in the varying levels of self-governing authority, the

location (and development potential) of the lands that each First Nation claims, and the capital that each First Nation has accumulated (particularly through lucrative, long-term partnerships and large-scale development projects). Chapter Four will discuss the applicability of Slowey's MCFN model to First Nations in the Treaty Process. First, though, Alcantara's model will be applied to Tsawwassen, Sliammon and Westbank First Nations, respectively, in the next chapter.

CHAPTER THREE

Applying the Alcantarian Model

This chapter will apply Alcantara's analytical framework to First Nations involved in the BC Treaty Process. It will examine the goals, tactics, cohesion, and government perceptions of each First Nation so that a comparison of all three may be made. It is assumed that if available evidence suggests that the following four questions may be answered in the affirmative, then negotiations are likely to result in a treaty:

1. Are the goals of the First Nation congruent with that of the governments?
2. Does the First Nation use tactics that are conducive to reaching a treaty?
3. Is the First Nation internally cohesive?
4. Is the First Nation favourably perceived by governments?

On the surface, these questions appear to be rather simplified. Of course First Nations communities that meet these qualifications, (for example, that have congruent goals with the state in terms of a Final Agreement, that employ treaty-conducive tactics to pursue these goals, that are internally cohesive, and that are favourably perceived by governments), will have an easier time negotiating a treaty than ones that do not. However, the seemingly tautological nature of the questions posed does not reduce the value of Alcantara's model. The scholar's analysis is based on the Innu and Inuit whose negotiating experiences sharply contrast. Indeed, the differences between the two Aboriginal groups in terms of each indicator are much more palpable than they are with the sample of First Nations examined here. Because of this, empirically testing Alcantara's analytical framework to experiences beyond its original application is of particular worth.

In order to answer the above questions as they pertain to the three First Nations in this study, certain terms must be defined in a manner that is consistent with Alcantara's work. For instance, before the Alcantarian model may be applied, one must understand exactly what the phrase "internal cohesion" means for an Aboriginal group that is engaged in negotiations. To what degree must a First Nations community be unified in order to reach a Final Agreement with the state? The same is true when assessing government perceptions of a First Nation. What serves as evidence that the government has a positive or negative perception of a First Nation? Similarly, how does Alcantara perceive of "congruency" between the goals of a First Nation and that of the governments? Each of these concerns will be addressed in the subsequent discussion through close examination of Alcantara's analysis and comparison of the comprehensive land claims negotiating experiences of two Aboriginal groups in Newfoundland and Labrador.

Analysis

Alcantara (2007) focuses his analysis on the Inuit and the Innu—two Aboriginal groups in the same province who are negotiating within the same time frame. In this way, he is able to examine how similar events and opportunity windows impacted each negotiating table in divergent ways. In 1977, both the Inuit and the Innu initiated treaty negotiations with the federal and provincial governments. Alcantara says that the Inuit reached the Labrador Inuit Land Claims Agreement in 2005, but he describes the Innu as "nowhere near to completing their agreement" (Abstract). Comparing the negotiating experiences of each Aboriginal group reveals a sharp contrast.

First, the goals of each Aboriginal group varied in terms of their compatibility with the governments. Alcantara (2007) explains that when he speaks of “congruent goals” he means the “matching of government and First Nation goals with respect to the purposes of a Final Agreement” (pp. 194-195). Certainty has long been the foremost goal of the federal government in its pursuit of modern treaties with First Nations. Initially, the government sought to achieve certainty by exchanging specifically defined rights and treaty benefits for all other constitutionally-protected yet unspecified Aboriginal rights through a policy of “cede, release and surrender” (pp. 194-195).

This “extinguishment model” was the approach used when the Inuit negotiated certainty in its Final Agreement. Despite some differences between the Inuit and the governments on the issue, Alcantara explains that the two were able to come to an agreement based on a shared goal to avoid future conflict and a willingness to create certainty in areas of land claimed by the Aboriginal group. Contrastingly, the Innu community’s firm determination to achieve recognition of Innu sovereignty over all its traditional lands serves as a major obstacle to the completion of an Agreement in Principle (Alcantara 2007, pp. 195-196).

The Government of Canada and the Government of British Columbia share the same incentives to negotiate. Both governments feel morally obligated to close the wide socio-economic gap that has developed between Aboriginal and non-Aboriginal communities. They both acknowledge the Supreme Court’s affirmation of Aboriginal and treaty rights – including the right to title – as protected under the Canadian Constitution. Finally, lamenting the loss of an enormous amount of potential investment,

they both recognize the strain that ongoing questions about Aboriginal rights and title have on economic growth (INAC 2009b).

The provincial government's Ministry of Aboriginal Relations and Reconciliation (2007b) lists economics as one of the leading reasons to negotiate treaties in the province. Concern is raised over lost development opportunities and discouraged investment that has resulted from uncertainty over land ownership. The province views negotiations as a means to develop socio-economic standards of both Aboriginal and non-Aboriginal communities alike. Governments seek to maximize job creation and encourage development. Certainty, therefore, is of primary importance to negotiators who represent the federal and provincial governments.

Rejected by First Nations participating in the BC Treaty Process, the blanket extinguishment policy has since been reformed. The model that Canadian governments now use when negotiating certainty in treaties is the modified rights model - where Aboriginal rights are modified into specific rights defined in the treaty - and the non-assertion model - where a First Nation agrees to exercise only the rights that have been defined in the treaty (Lewis 2008). The BC Treaty Commission (2003) acknowledges that progress has been made on the issue, yet it admits that much work is required to reconcile the disparity between Aboriginal and non-Aboriginal visions of certainty. While the governments of Canada and BC no longer require the extremely rigid conditions they once did, a mutually agreed upon vision for achieving certainty has yet to be accomplished. Thus, First Nations in the province and in the rest of the country have mixed responses towards the state's vision of certainty.

Applying Alcantara's notion of congruency between goals of the governments and that of the three cases studied here will require an examination of the latter's objectives with specific regard to a Final Agreement. The reasoning behind a First Nation's involvement in the Treaty Process will provide a useful indicator of each Aboriginal group's goals. The degree to which a First Nation is willing to achieve a treaty will be measured by analysing statements of individual members that have been expressed through media sources like interviews and newspapers, government documents, and legal statements.

The same variance that exists between goals of the Innu and Inuit is evident in the tactics that each group used during its negotiation process. Alcantara explains that governments are more likely to work with First Nations that are committed to negotiations, as opposed to ones that are confrontational. The Inuit kept to a strategy of compromise and negotiation whereas the Innu tended to favour protesting, media campaigns, litigation, and efforts to gain international attention. Alcantara (2007) notes that confrontational tactics dominated the Innu's negotiating strategies for most of the Aboriginal group's involvement in the comprehensive land claims process (p. 196).

This study will research the frequency of confrontational actions like litigation and protests that each of the three First Nations employed (or employ) throughout negotiations. Importantly, it will also describe the result of such actions, as certain tactics may produce positive or negative outcomes depending on when they are carried out. For instance, if an Aboriginal group chooses to litigate shortly after a major court decision has been won in its favour, the government might be more willing to respond aptly rather than ignore the action. The consequences of certain tactics may be advantageous or

detrimental to the completion of a treaty, depending on the timing and response of the groups involved.

Cohesion is another variable that Alcantara considers when assessing whether an Aboriginal group will obtain an outcome in its land claims negotiations with the state. In the Alcantarian model, cohesion is comparable to cooperation. The degree to which an Aboriginal group is able to work together and share responsibility of the community is therefore an important factor to examine in the present study. Alcantara (2007) describes the Innu as a “people beset with divisive leadership, internal division and strife” (p. 197). This is a result of severe social and economic problems that the Innu have faced for decades, which have created domestic problems and spoiled a sustained community effort to negotiate an agreement.

This study will therefore measure the extent to which First Nations are internally cohesive by examining the day-to-day operations of the community. These include things like the frequency of elections and the leadership they provide, the capacity to ratify laws that require collective agreement and mutual awareness (such as a constitution), the accountability and effectiveness of band governance, and the general potency of socio-economic problems. Such indicators will provide a reasonable depiction of the relative degree to which each First Nations community is cohesive.

The final factor that Alcantara notes as having an effect on whether an outcome is obtained is government perceptions of the Aboriginal group. He lists three types of perceptions that matter most, including: financial accountability, capacity for negotiations and self-government, and acculturation (Alcantara 2007). The degree to which each First Nation has the capacity for financial accountability is demonstrated in

the previous chapter through the application of the MCFN model. While it will not be reproduced in this chapter, factors like benefit and revenue sharing agreements and access to capital has significant relevance in the application of Alcantara's model.

A First Nation's capacity for negotiations and self-government is made evident through its designation under the *First Nations Land Management Act* or other self-governing arrangements. This is also addressed in the previous chapter, yet maintains its relevance here because the willingness of the provincial and federal governments to devolve land management and self-government responsibilities to an Aboriginal group depends on how governments perceive of the particular community (Alcantara 2007).

Acculturation, a possible factor Alcantara identifies in the willingness of government to negotiate a settlement, is defined as the degree to which a group is familiar with Western institutions, processes, ideas and languages (Alcantara 2007, p. 199). For example, one gains a sense of acculturation when each First Nation's capacity and willingness to enter into co-management agreements is examined. As Nadasdy (2003) explains, co-management requires a fluency in the social and linguistic conventions of official discourses. In other words, an Aboriginal group must acquire a strong capacity to communicate with members of the majority society in order to effectively co-manage various responsibilities. A First Nation's willingness to acculturate Canadian society is reflected in the organizational structure of band councils and the existence of laws that are comparable to that of western institutions. Government perceptions of a First Nation may further be revealed through statements released in interviews with parliamentarians or in media reports.

Each of the explanatory factors described above are identified by Alcantara as important indicators affecting whether negotiations will result in an agreement. When applied to the BC Treaty Process, therefore, it is expected that a First Nation whose negotiation experience has similar variables to that of the Inuit is more likely to obtain a treaty than one that does not. In addition, Alcantara examines factors that affect the speed at which an outcome is obtained. These include timing of tactics used throughout negotiations, trust relationships between negotiators, and the commitment of government and external negotiators to the process. Internal and external factors affecting the speed of negotiations will be applied concurrently when there is available and meaningful information to do so. As before, a First Nation that uses these factors to their negotiating advantage is expected to achieve a treaty sooner than one that does not.⁴

The chapter will now proceed to present information relevant to each of the explanatory factors described above. It will analyze the internal and external factors affecting negotiating outcomes of Tsawwassen First Nation, Sliammon First Nation, and Westbank First Nation, respectively.

Tsawwassen First Nation

Internal Factors Affecting Outcomes

GOALS: Prior to signing its Final Agreement, the main concern of TFN was to become a self-governing nation. Speaking on behalf of her people, Tsawwassen Chief Kim Baird expressed an understanding of a treaty as a legal framework that allows a First Nation to enter into the political and economic mainstream of the wider Canadian public.

⁴ While it pertains to both Slowey and Alcantara's analytical frameworks, information on land value and location will be provided only when Slowey's model is applied to the case studies.

Along with sustainability and higher education, Baird emphasized the need for greater investment in Tsawwassen lands and resources so the quality of life for Tsawwassen members could reach a level that is comparable to other British Columbians (TFN 2003).

The Chief said that the desire to have a new start was an objective of TFN from early on—even if this failed to adequately respond to issues of principle that concern many First Nations involved in negotiations throughout the province. Baird saw the “pragmatic reality” of the Treaty Process as the only way to secure tools for the future (BC Treaty Commission 2007a, p. 11). Thus, the primary aim of TFN was to achieve full self-governance through a treaty in order to improve the lives of Tsawwassen individuals.

TACTICS: In 2003, TFN filed a single lawsuit against the Vancouver Port Authority, the BC Ferry Corporation, the provincial and federal governments, BC Transportation and Financing Authority, and BC Rail for failing to properly consult the First Nation on previous development projects in the area (including the BC Ferry Terminal and the Roberts Bank Superport) (*Tsawwassen First Nation et al.* 2003). Chief Baird explained that the action was necessary because the “federal and provincial governments refused to discuss this critical matter within the context of the treaty process” (TFN 2003). However, when TFN and the Port Authority reached a Memorandum of Agreement the following year, the court case was dropped and negotiations were able to proceed towards a Final Agreement (TFN & VPA 2004).

Chief Baird admits that there were many obstacles to overcome through the course of negotiations (Simpson 2007). However, the BC Treaty Commission describes the First Nation’s “insistence on interest-based negotiations, a willingness to pick their

battles, and a ruthless consideration of Tsawwassen priorities” as tactics that helped to keep negotiations on track (BC Treaty Commission 2007a, p. 11).

COHESION: Prior to signing the Treaty, social problems had not divided the small TFN community to the extent that they had for the Innu. On the contrary, TFN was cohesive both within the on-reserve community and between on-and off-reserve members. This was made clear when Band members held family meetings and travelled to the locations where off-reserve Tsawwassen people lived. The efforts formed part of an enormous information campaign to promote the Treaty and ensure that thorough consultation with all members was sufficiently undertaken (Sibbeston 2008).

A band council election held a few months before the TFN community would vote on the ratification of a treaty, however, revealed that not all members were unified on the decision to sign a Final Agreement (Gulyas 2007). In her campaign to become Chief in March 2007, Bertha Williams openly opposed the Final Agreement. She warned that a treaty would lead to a loss of Indian status, a loss of tax exemptions, and a loss of prime agricultural land to an expanded port facility. Despite Baird’s election to Chief for a fifth consecutive year at the time, she acknowledged the scepticism of many in her community and the fact that the ratification vote would be “no slam-dunk” (Lewis 2007).

Community cohesion, however, became clearer as the Nation came closer to ratifying the Treaty. A number of laws were passed spanning a range of jurisdictional areas, and Tsawwassen members approved a Constitution at the same time as its Final Agreement in 2007. Strong community support for the Treaty was demonstrated when the agreement was ratified by nearly seventy percent of the Nation’s voting population (TFN 2010b).

External Factors Affecting Outcomes

GOVERNMENT PERCEPTIONS: As a signatory to the *First Nations Land Management Act*, members of TFN had already taken on various roles that demonstrated their capacity to be self-governing. Additionally, the goals and tactics of the First Nation were conducive to the governments' willingness to negotiate. Federal and provincial negotiators were well-aware of the goals of TFN. For instance, negotiating for the federal government, Margo Novak commented favourably on Chief Baird's commitment to be self-sufficient and self-governing. In response to a question about how consultation worked and what impact and influence off-reserve Tsawwassen individuals had on the process, Novak said that the First Nation did a "fantastic job" informing its community and members—some of whom live in the US and others in various parts of BC. Novak explained that the goals of the Tsawwassen people were to become part of the wider community as an economically self-sufficient participant in the life of Delta or Vancouver (Sibbeston 2008).

Indeed, Chief Baird made no secret of her plans to develop the land that was taken from the Agricultural Land Reserve and handed over to the First Nation through the Treaty. In an interview in 2006, she said: "We'll probably be asking for about half of [the land] to be taken out of the agricultural land reserve. If we can't have that, I don't think we can have a treaty. That would be a deal-breaker" (Tieleman 2007). The plan to build a container storage facility in line with port expansion plans – and with the plans of the provincial and federal governments – was made public directly on the TFN website. This resulted in a great deal of controversy that Canadian governments (who had long planned to develop the area anyway) could now face in unison with the First Nation.

Internal and External Factors Affecting Speed

TFN negotiated the final stages of its Treaty at a time when both the provincial and federal governments were eager to expand the Robert's Bank Superport to gain space for a greater number of storage containers and a higher volume of traffic to move through the area. Chief Baird took on a pivotal role in the successful achievement of the TFN Final Agreement. As discussed, she made no effort to hide the fact that a large portion of treaty settlement lands would be rezoned for development. A great deal of criticism was directed to TFN for its development plans particularly from Delta Mayor Lois Jackson and various environmentalist groups (*The Vancouver Sun* 2006a). Joe Foy of the Western Canada Wilderness Committee said that the federal and provincial governments have used the Treaty Process to get around the Agricultural Land Commission and "have the largest chunk of farmland removed in recent history in one swoop" (*The Vancouver Sun* 2006b). Had Baird been adamant about protecting the land from industrial development, the governments likely would have been much less willing to include the area in the Final Agreement, creating a serious challenge to the progress of negotiations.

There is no doubt that governments were pleased with the ratification of the TFN Treaty, especially as Vancouver prepared to host the 2010 Winter Olympics. Such a public event likely served as an opportunity window that strongly encouraged the provincial and federal governments to finalize negotiations with the urban First Nation.

SUMMARY: To recapitulate, the primary goal of the Tsawwassen people was to become politically and economically self-governing. During negotiations, the First Nation initiated litigation once, but did not follow the case through to its completion because it reached an agreement outside of the courts instead. While government

perceptions of TFN were presumably weak at the local level, Kim Baird's leadership capacity impressed the provincial and federal governments. As well, the Tsawwassen community was cohesive enough to focus on politics surrounding negotiations rather than having to concentrate all of its efforts on addressing social concerns.

Sliammon First Nation

Internal Factors Affecting Outcomes

GOALS: The stated mission of the Sliammon Treaty Society is to honour and respect SFN ancestors by negotiating a fair and equitable treaty settlement that will ensure good governance and a sustainable future for the First Nation. SFN negotiates in the BC Treaty Process to resolve the outstanding land question that has persisted for centuries (Sliammon Treaty Society 2010).

The Sliammon economy is sustained by a number of First Nation community-owned business enterprises on the First Nation's lands (Williams and Bootsman 2008). Chief Walter Paul says that "ownership is a key goal of the Nation in capacity building for our future generations" (Kennedy 2007). The mission statement of the Sliammon Development Corporation is to establish an economic base by effectively managing assets through the maintenance of a strong business sector (SFN 2006). Both the Sliammon band council and the Development Corporation are driven by the desire to achieve long-term sustainable community growth and environmental stewardship (Kennedy 2007).

TACTICS: Within close proximity of its treaty ratification date, the First Nation is committed to settling its specific claims concerning instances where the federal government has either failed to fulfill legal obligations or breached its fiduciary duties. In this regard, SFN makes it clear that it will not refrain from litigation if necessary. For instance, the Sliammon Treaty Society's website distinguishes between comprehensive and specific claims in which SFN currently engages. While the former is being addressed through negotiations in the Treaty Process, resolution of the latter has yet to be defined. The largest of the First Nation's specific claims is for Tees-Kwat, an area of land that SFN argues ought to have been reserve land. Because this claim was recently rejected by the federal government, SFN acknowledges three remaining options from which it will proceed: negotiate a deal for Tees-Kwat within the Final Agreement; appeal the decision to a Specific Claims Tribunal; or, go to court. After the claim to the land was rejected by the Department of Indian and Northern Affairs, SFN filed a legal writ for a title claim to the area to keep the option to litigate open "as a last resort" (Sliammon Treaty Society 2010). SFN prefers to negotiate a deal over Tees-Kwat in a treaty, but is clearly willing to go to court if its efforts are unsuccessful. Indeed, SFN previously filed another lawsuit in July 2008 when a landslide from forestry roads in 1995 caused major damage on an important Sliammon village site and fishing area (NCFNG 2010).

Despite these actions, SFN demonstrates a strong preference and capacity to negotiate as well as an ability to achieve resolutions through cooperative discussion. This is shown through the sea walk project that led to a Community Accord and an ongoing successful relationship between SFN and the City of Powell River ever since. The project originally began as a dispute in 2002 when the City failed to consult the First

Nation on its plans to construct a sea walk. The earliest construction phases of the project had severely negative impacts on SFN cultural sites. Rather than burgeoning into a drastic conflict, however, government-to-government discussion ensued and the two communities agreed to develop the waterfront park together (BC Treaty Commission 2008c).

COHESION: Initially, the Agreement-in-Principle failed ratification when it was put before the Sliammon membership in 2001. The BC Treaty Commission says that SFN spent a considerable amount of time the following year trying to address the issues that were a concern to its members (BC Treaty Commission 2008c). During this time, a study conducted found that a more inclusive system of governance was required—one that would allow for traditional forms of governance to adapt to a contemporary setting. From this developed *Sijitus*, which is a concept aimed to increase family involvement in government and create new measures of accountability (NCFNG 2010).

The *Sijitus* is a gathering of family representatives whose objective is to improve service delivery within the Sliammon community. Conflicts that exist among community members have been partially attributed to the replacement of traditional governance by *Indian Act* governance—or, in other words, from a system that accepted leadership as a family responsibility to one where an elected leadership assumes responsibility for the entire community. Sliammon members hope that the *Sijitus* will resolve the division and mistrust that this replacement created. The Sliammon community already reports a number of tangible successes as the initiative continues to be met with enthusiastic participation (NCFNG 2010).

SFN is currently focusing its efforts on explaining the contents of the proposed Final Agreement to its membership in preparation for a community vote. The First Nation acknowledges that the Agreement provides for some very significant gains, yet it also falls short in providing certain guarantees for which SFN has asked (Sliammon Treaty Society 2010).

External Factors Affecting Outcomes

GOVERNMENT PERCEPTIONS: The National Centre of First Nations Governance (2010) uses SFN as a best practices case study in First Nations governance for its excellent intergovernmental relations. SFN identifies a number of principles that provide guidance on how to achieve such a relationship. The list begins with the recommendation to build a relationship of mutual trust and respect by maintaining regular communication, establishing joint committees, and celebrating shared successes. One result of Sliammon's strong capacity for negotiations is the Community Accord negotiated with the City of Powell River when successful inter-governmental cooperation led to the completion of the sea walk project.

Despite these successes, however, the Treaty Commission (2008a) describes the lack of a federal mandate on fisheries as a "major obstacle" to treaty completion for SFN (p. 15). Therefore, regardless of the how well the government may perceive of the First Nation, negotiations are hindered because the Department of Fisheries and Oceans has

yet to produce a mandate for its negotiators to proceed (BC Treaty Commission 2008a). This is true not only for SFN, but several other First Nations in the process as well.⁵

Internal and External Factors Affecting Speed

Once described as “parallel solitudes,” the relationship between SFN and the City of Powell River matured into a firm commitment to future cooperation when the two agreed to jointly take on the sea walk project (BC Treaty Commission 2007b, p. 8). While a healthy relationship exists between the First Nation and the neighbouring local government, SFN is by no means reticent in its willingness to go to court. When the dispute arose during the sea walk’s early construction phase, former Chief Maynard Harry and Elder Norm Gallagher immediately threatened to take legal action. In a number of situations, the tactical use of threats to litigate have worked to the advantage of SFN and likely propelled treaty negotiations forward.

Negotiations slowed while SFN was at Stage 4 of the Treaty Process because the provincial chief negotiator had twice been replaced. Eventually, the momentum of negotiations picked up and SFN anticipates a vote on the Final Agreement in 2010. Chief Walter Paul has expressed a commitment to build a community where young Sliammon members can benefit from the many business opportunities that a treaty provides (INAC 2008b). He recognizes the successful shift from negative to positive communication between negotiators and the parties they represent, and he is optimistic about the benefits that intergovernmental collaboration will bring (NCFNG 2010).

⁵ Along with SFN, the 2009 Annual Report from the BC Treaty Commission cites K’omoks, Te’Mexw, Tsimshian, Tla-o-qui-aht, and Winalagalis as First Nations whose progress at the negotiating table has been stopped because there is no federal fish mandate.

SUMMARY: The Sliammon people are primarily interested in development growth through increased ownership over its lands, resources and wealth. They emphasize a desire to obtain a treaty, but only on terms that they deem to be fair. Thus far, SFN has maintained open communication and remained committed to relationship building with its neighbours. Efforts taken to ensure good governance and accountability within the community have earned favourable perceptions of the First Nation from the provincial and federal governments, and especially from the City of Powell River. Although there has yet to be court cases seen through to their end, the Sliammon Council expresses an obvious willingness to litigate. Whether or not SFN will opt for litigation rather than negotiations to pursue its land claims depends on how long its patience will hold while federal negotiators await a mandate from the Department of Fisheries and Oceans to proceed with discussions on fisheries.

Westbank First Nation

Internal Factors Affecting Outcomes

GOALS: The Westbank Government states its straightforward goal to provide effective and efficient governmental services for the betterment of the community. The Westbank Economic Development Corporation vision is to see a “business oriented community that is economically self-sufficient” (WFN 2007a). The objectives of both the Chief and Council and the Economic Development Corporation have resulted in a WFN economy that is based on support for local entrepreneurs and their individual businesses (Williams and Bootsman 2008, p. 11).

TACTICS: WFN is bold in its claim to traditional Westbank territory. For example, an emergency meeting was held in 1999 to quell conflict that arose when Aboriginal loggers harvested timber in an area without a provincial timber license, but on land that was claimed to be Okanagan traditional territory. Mediating the meeting was then Assembly of First Nations national leader, Phil Fontaine. He cited provincial media reports that said WFN was engaged in “criminal activities as an attempt to create fear in the minds of British Columbians” (Bonneau-Jack 1999). Such tactics impact the governments’ perceptions of the First Nation and may also affect treaty negotiations consequently. Other tactics are cited by the WFN website that says that the Interim Measures Agreement on forestry reached in 2002 was the result of “subsequent confrontations, legal battles, and negotiations” with the BC Government (WFN 2007a).

COHESION: The National Centre of First Nations Governance (2010) refers to conflicts that broke out in the mid-1980s within the Westbank Council and the “significant animosity among community members” that followed. Consequently, the Hall Inquiry was carried out leading to improved governance accountability and jurisdictional clarity.

Thousands of non-Aboriginals currently reside or conduct business on Westbank reserve lands. Ray Manzer, of the Kelowna and District Manufactured Homeowners Association, describes a “we-they situation” between members of WFN and non-members who share their land (WFN 2003). Before it was passed, the Self-Government Agreement twice failed to achieve the absolute majority required for ratification. By May of 2003, however, the Self-Government Agreement, the WFN Constitution, and the WFN Land Code were achieved (WFN 2007a). Manzer contends that a direct result of

these accomplishments was the lifting of an antagonistic barrier between the two communities as common interests and goals were recognized. The changes have produced a system of “significant transparency and fairness” within which the WFN government now operates (NCFNG 2010).

GOVERNMENT PERCEPTIONS: Chief Louie describes the growth of WFN from the “poorest of the poor” to an industrious Nation adept at business (McMurray 2006). The federal government acknowledges this as the Department of Indian and Northern Affairs has called WFN “one of the most economically successful Aboriginal communities in Canada” (O’Neal 2008). Initiatives taken by WFN to achieve self-governing status attract positive perceptions from the state. For example, WFN voluntarily applied the Judicial Review Procedures Act of BC to its own lands, ensuring accountability for its members (O’Neal 2008). For WFN, however, government perceptions – whether positive or negative – do little to satisfy the Aboriginal perception of the Crown as acting in bad faith for reasons that are discussed in the following subsection (Hul’qumi’num 2009).

Internal and External Factors Affecting Speed

In March 2008, 63 First Nations participants (at 23 treaty tables) in the BC Treaty Process formed a ‘Common Table’ to discuss issues of concern that are shared at negotiating tables throughout the province, including: certainty, lands, governance, fiscal arrangements, taxation, and fisheries. A year after it was concluded, the process received an oral response from government ministers that failed to satisfy First Nations participants (Morales 2009). Frustration among Westbank members is primarily directed

to the federal Department of Fisheries and Oceans for its failure to produce a mandate for federal negotiators to proceed with talks at the treaty table (Hul'qumi'num 2009).

SUMMARY: WFN aims to build a strong community that is economically self-sufficient and has ownership over its traditional territory. The tactics employed during negotiations are bold as the First Nation has chosen to litigate a number of times. Despite the fact that many lawsuits were filed against the state, government perceptions of the First Nation are high in terms of its economic successes and self-governing capacities.

Summary and Comparison of Results

As done in the previous chapter, this section will summarize the results of the information above. The three First Nations will be compared on the basis of the internal and external factors that Alcantara argues will have an effect on negotiation outcomes.

GOALS: In his analysis of the Inuit and Innu in Labrador, Alcantara determines that a treaty may be obtained when, in conjunction with other factors, the goals of a First Nation are compatible to those of the state. For a treaty to be obtained, it must first and foremost satisfy the aspirations of those to whom it relates.

As expressed by Chief Kim Baird, the Tsawwassen community views a treaty as the necessary legal framework by which TFN members may achieve an improved quality of life. It allows the First Nation to become a self-governing component of the political and economic mainstream of the Canadian majority. Baird said that a treaty would reinstate the self-reliance of her community because it would provide the Tsawwassen people with the ability to make their own decisions. She also shared her belief that a

treaty would promote reconciliation between Tsawwassen and non-Aboriginal peoples (TFN 2003). In this capacity, the central goals of TFN were compatible to that of the governments.

Similarly, the Sliammon Treaty Society (2010) believes that a fair treaty will aid the First Nation in pursuing its goals. Objectives of the SFN community are strongly oriented towards business development and expansion through ownership. Thus, certainty through land claim settlements is a high priority for SFN members. While the ambitions of the First Nation may be fulfilled in compatibility with the goals of the federal and provincial governments, SFN has stressed the importance of community in negotiating a treaty settlement. The strong-willed Sliammon community is committed to attaining a *fair and equitable* treaty settlement. A Final Agreement must be ratified by the entire community before a treaty becomes effective. If the terms of the Final Agreement are not accepted by a 70 percent majority of SFN membership, ratification will fail.

The achievement of a treaty certainly requires compatible goals between First Nations and governments. However, just as important is a mutual acceptance of all negotiating parties to commit to a process that demands compromise and concession of certain rights. For the time being, such a process proves unacceptable for WFN. Unlike the other First Nations examined in this study, WFN never mentioned a treaty as a means to pursue its goals. In fact, the First Nation's website makes no mention of current intergovernmental affairs at all. The considerable effort that WFN put into the formation of the Common Table suggests that the Nation's priorities lie with issues of principle rather than economic gain (BC Treaty Commission 2008b). After his Nation left the

Treaty Process, Chief Louie expressed the desire of the Westbank people to have an “unconditional, absolute and unfettered declaration of Aboriginal title” over their lands (Squire 2009). Giving in to such demands, however, would of course undermine the ability of Canadian governments to achieve the kind of certainty they desire.

The discrepancy between the goals of TFN and WFN are necessary to consider in terms of why negotiations produced different outcomes in the present analysis. It is likely that a treaty, obtained through the BC Process, meant different things to the Tsawwassen people than it did to those of Westbank. Because each First Nation had unequal degrees of wealth, the incentive structures facing them were different. A treaty was the most pragmatic option for TFN to pursue the socio-economic goals with which it was most concerned. For WFN, on the other hand, a treaty became less desirable as governments failed to adequately respond to its concerns.

TACTICS: Throughout negotiations, moderate use of litigation was enough to develop a partnership of mutual benefit between TFN and the Vancouver Port Authority. TFN held firm to its priorities, and remained quite committed to negotiations and open dialogue with government negotiators. Having recently entered her sixth consecutive term, Chief Baird has devoted a great deal of effort to pursuing a treaty for her people.

SFN acknowledges that dealing with its claim to Tees-Kwat in its treaty settlement package is not working because the federal government has not given its negotiator a mandate to discuss fisheries issues in the Final Agreement. The First Nation is firmly committed to either complete its specific claims before a treaty is signed or leave all claims open for negotiation after the completion of a treaty (Sliammon Treaty Society 2010). Such determination reveals an obvious and undaunted willingness to

litigate if necessary. However, SFN has also established extremely good relationships with local governments. The First Nation's excellent negotiation skills and preference for productive discussion is summarized when former Chief Walter Paul said, "We will continue to work together based on the fact that there is no substitute for common sense" (NCFNG 2010).

In contrast, WFN is noticeably more confrontational in its tactics than SFN and TFN as is reflected in the First Nation's strong claim to its traditional territory. Indeed, shortly after WFN dropped out of the Treaty Process, Chief Louie said that unless the provincial and federal governments return to negotiations with a new mandate, his band will take legal action early in 2010 (NCFNG 2010).

The difference in tactics reflects the same disparity that exists between the goals of the three First Nations. Throughout negotiations, the objectives of WFN were to continue building an economically self-sufficient community and regain control of the Westbank traditional territory. Thus, when WFN felt that negotiations were not catering to these goals, it resorted to alternative tactics instead. In this study, bold tactics by an Aboriginal group did not cause the government to refrain from reaching an agreement as it did with the Innu in Newfoundland and Labrador. On the contrary, it was the First Nation that chose to leave the BC Treaty Process because it was unsatisfied with the government's approach.

COHESION: Community cohesion could have a substantial impact on comprehensive land claims negotiations as Alcantara demonstrated when he analyzed the negotiating experience of the Innu. If a First Nation is overcome with social problems, it might be more willing to accept a proposal from governments (in the form of a treaty) if

it offered a way out of the circumstances. On the other hand, the impoverishment in which a First Nation finds itself might be so intense that treaty negotiations are of little concern to community members. In this study, though, none of the First Nations lack community cohesiveness to the same degree as the Innu when it was engaged in land claims negotiations. Indeed, each of the Tsawwassen, Sliammon and Westbank First Nations are making efforts to govern effectively with fairness and accountability—and these efforts have proved fruitful thus far for all three. With one urban First Nation and another sharing its lands with thousands of non-Aboriginal peoples, it is unsurprising that the cohesiveness of each First Nation community is maintained in distinct ways.

GOVERNMENT PERCEPTIONS: Several local politicians openly opposed the TFN Treaty. Former Delta Mayor Beth Johnson even said in 1999 that if changes were not made to the political relationship between her locality and the First Nation, “any large-scale development of band property could create an intolerable situation” (Bellettn 1999, para. 16). However, the provincial government expressed its full support of the Treaty, ultimately superseding such an antagonistic relationship at the local level.

The self-governing capacity of both TFN and SFN was demonstrated when they became signatories to the *First Nations Land Management Act*. As a model for best-practices in First Nations governance, SFN has been acknowledged for its high capacity to maintain productive inter-governmental relations. However, these successes have yet to result in a committed effort to negotiate by the federal government as SFN awaits a decision from the Department of Fisheries and Oceans.

Self-governing for five years and a model for best-practices in transparency and fairness, WFN is an obvious candidate for an extremely favourable perception from both

the provincial and federal governments. The Aboriginal group demonstrates a strong capacity for financial accountability, self-government, and acculturation—all of which Alcantara says are essential to foster good government perceptions of a First Nation.

Of course Alcantara is correct to argue that government perceptions of an Aboriginal group must be of high enough favour to result in a treaty. Negotiations will be more difficult if the Aboriginal groups participating in them are perceived to be incapable of self-governance, financial accountability or even acculturation. Government perceptions of the First Nations examined in this study do not contrast as sharply as they did when the Innu and Inuit were compared. In fact, based on the findings, it is fair to say that the provincial and federal governments' perceptions of all three First Nations were high enough so as not to hinder negotiations. Deeper analysis, though, may suggest otherwise. For example, why is it that the federal government has not given its negotiators a mandate to discuss fisheries when it so obviously frustrates the First Nations that are willing and ready to move ahead in their negotiations? SFN has proven its capacity to negotiate and take on self-governing responsibilities. It has also demonstrated a commitment to maintain positive relationships with other governments. If government perceptions of SFN are actually high enough to lead to a Final Agreement, then the state had best return to the table soon with a mandate to proceed before SFN loses interest in the Treaty Process and resorts to litigation instead.

Internal and External Factors Affecting Speed

As mentioned, the internal and external factors that Alcantara identifies as having an affect on the speed that an outcome is negotiated include: tactical timing, trust

relationships, government and external negotiators, and land value and location. Paired with the events and development opportunities that arose during negotiations, the urban location of TFN resulted in an opportune time for TFN to complete its Treaty. This is particularly so because of the construction boom throughout the province prior to the upcoming 2010 Vancouver Olympics. The provincial and federal governments were ready to upgrade the Roberts Bank Superport and reaching an agreement with TFN meant that such developments could be undertaken with much less interference than would otherwise be the case.

It may be argued that Tsawwassen lands are currently of greater value to Canadian governments than that of SFN. The Sliammon people have developed high levels of trust through open and committed communication with the City of Powell River. They have also made the occasional use of tactically timed litigation strategies to pursue its goals. However, the location of Tsawwassen lands next to the busy ferry terminal and the expanding Deltaport offer much greater incentive to governments to focus on securing a deal—and securing the certainty that a deal provides.

The BC Treaty Commission cites the lack of a federal fish mandate as the reason why progress has been delayed at the SFN negotiating table. In fact, the inability of the federal Department of Fisheries and Oceans to provide their negotiators with a mandate has affected negotiations at several tables in the process, some of which have otherwise reported “substantial progress” (BC Treaty Commission 2009a, p. 21). Unlike these First Nations who currently wait for federal officials to make decisions on fisheries issues, the TFN Harvest Agreement had already been signed in November of 2006, not long after Harper’s Conservatives had ended a 13-year long stretch of Liberal Party governance.

Because TFN had previously entered into negotiations over fisheries with the federal government, it was able to reach an agreement on the issue sooner than other First Nations who had not yet done the same.

Like TFN, Westbank First Nation is located in an area that is bustling with development. However, the fact that so many non-Aboriginal individuals already reside and conduct business on Westbank reserve lands perhaps reduces the urgency of governments to negotiate a treaty with the First Nation. Indeed, over one hundred non-Aboriginal businesses operate on Westbank reserve lands where thousands of non-Aboriginal people live (INAC 2004). While it would provide the certainty governments desire, it is likely that business activity on WFN lands will not be significantly slowed by the absence of a treaty.

Conclusion

As done previously with the application of the MCFN to the three case First Nations, this chapter has applied Alcantara's analytical framework to the negotiating experiences of Tsawwassen, Sliammon and Westbank First Nations. Each Aboriginal group examined in this study was assessed according to the same factors that Alcantara highlights to explain why negotiating outcomes differ among Aboriginal groups. Borrowing his methodological organization ensured that Alcantara's model was consistently applied to the present research. Again, the findings in this chapter reveal important comparisons between the three First Nations as well as particular internal and external factors that characterise each of their negotiation processes. The most important differences between the First Nations analyzed here in terms of how negotiation

outcomes were affected are: the goals that each has with respect to the purposes of a Final Agreement; the resulting tactics that these goals inspired; the land value of claimed territory; and the windows of opportunity that were opened in certain locations. Now, Chapter Four will discuss the applicability of both Slowey and Alcantara's models to the three cases before concluding the general findings of this study.

CHAPTER FOUR

Conclusion

A report published by PricewaterhouseCoopers estimates that billions of dollars in benefits for the province would result if all First Nations participating in the BC Treaty Process ratified a final agreement within the next two decades. It also suggests that completing treaties would result in economic gains for the BC Government rather than costs (BIV 2009). If one accepts Slowey's argument that the state's current policy towards Aboriginal peoples is fundamentally linked to its changing role in the new political economy, then based on the findings from Pricewaterhouse, all treaties resulting from the process should serve as practical state responses in the neoliberal era. Hence, the state ought to be committed to resolving as many outstanding land claims as possible through the Treaty Process or through some other means. Yet this is not happening; negotiations at many tables have been interrupted for a number of reasons, and some have even stopped completely. This chapter will discuss why the application of both Slowey and Alcantara's models is useful in the context of the BC Treaty Process. It will also discuss important considerations that must be taken into account when determining why negotiations in the province lead to varying outcomes among First Nations.

Applicability of Models

Results from Chapter Three confirm the assumptions made before Alcantara's model was applied to the three First Nations. Thus, Alcantara's analytical framework for determining why comprehensive land claims negotiations lead to varying outcomes is

applicable to First Nations participating in the BC Treaty Process. Committed to seeing its Aboriginal right to title confirmed, WFN was the only First Nation whose specified goals made no mention of a treaty. This stance influenced the tactics used by the First Nation throughout negotiations and impacted the outcome of its negotiations accordingly.

The particular goals of a First Nation may perhaps be the most important indicator of whether or not a treaty will be reached precisely because it responds to the fact that First Nations located in BC have a negotiating advantage that is distinct from many other Aboriginal communities in other provinces. Because very few early treaties were signed throughout the province, the modern equivalent must now be pursued. Today, Aboriginal jurisprudence has progressed significantly from where it was in the 19th-century. First Nations increasingly recognize the options that legal advancements have opened, and they are responding accordingly.

One response by Aboriginal groups is to pursue litigation. Yet judicial outcomes are unpredictable and therefore come at great risk. As discussed in the introductory chapter, Alcantara (2008) describes other options that serve as practical and concrete alternatives to comprehensive land claims negotiations, namely: self-government agreements, bilateral agreements or agreements under the *First Nations Land Management Act*. These options fundamentally change the incentive structure facing Aboriginal peoples because they can now pursue their goals without necessarily obtaining a treaty (pp. 355-357).

Alcantara's work is based on the political-institutionalist structure-agency framework that helps to explain why one Aboriginal group obtains a treaty while another one does not. The difference, argues Alcantara, is based on the strategic interactions

between government and societal actors who are subject to overarching institutional structures that regulate their behaviour (Alcantara 2008, p. 348). Not ignoring the body of scholarship that describes an enormous power imbalance privileging the federal and provincial governments over participating First Nations, Alcantara's model demonstrates the meaningful role that Aboriginal agency may have in affecting the outcome of comprehensive land claims negotiations (Alcantara 2007). This agrees with the MCFN model that is based upon analysis of an Aboriginal group's underlying political economy expressed through a neoliberal agenda. Both Alcantara and Slowey's models show that there are a number of options available to First Nations to pursue self-determination in the modern world.

Slowey (2008) argues that a neoliberalized form of self-determination can work to a community's advantage if the advantage is measurable in material terms. For example, neoliberalized self-determination can benefit a First Nation by providing increased political authority and an overall improved economic status (p. xv). While she takes care to note that the experience of the Mikisew Cree First Nation illustrates just one possible path toward self-determination, Slowey identifies external development, internal assets, and development strategy as essential for a First Nation to realize its potential for self-determination (p. 75). MCFN was able to successfully manage money, geography, and industry to provide a model for self-determination. Slowey aims to provide guidance through her work to other communities throughout the country that find themselves in similar circumstances.

Findings presented in Chapter Two reveal that all of the case study First Nations are pursuing or have pursued self-determination in various capacities through

negotiations in the Treaty Process. In terms of its journey towards full self-determination, one Aboriginal group may fare better than another in certain respects. However, advantages may be easily reversed in favour of another First Nation in other ways. For example, before the ratification of its Final Agreement, TFN had no Economic Development Corporation, had relatively few partnerships with small-scale companies, and was relatively much slower to produce a land use plan than the other two First Nations examined in this study. However, the location of Tsawwassen lands attracted a substantial investment opportunity from the Vancouver Port Authority, and treaty negotiations were influenced considerably as a result. On the other hand, WFN has had an Economic Development Corporation for the longest period of time of the three cases; it has the largest number of partnerships with non-Aboriginal businesses, and the most varied array of sources from which capital is attained. Until recently, it was also the only First Nation to have achieved self-governing status, officially removing Westbank lands from governance under the *Indian Act*. Yet despite these achievements, it was the only First Nation in this analysis to withdraw from the BC Treaty Process.

WFN chose to exit the process even though, according to the indicators operationalized from Slowey's framework, the First Nation was well-equipped to obtain a treaty. On the surface, these findings seem to depart somewhat from Slowey's analysis because they suggest that First Nations with greater resources may have more latitude in their negotiations with the state. As was the case with WFN, this may in turn decrease an Aboriginal group's desire to obtain a treaty. However, this does not discredit the utility of the MCFN model. Rather, it raises important concerns that must be taken into consideration when assessing these results.

First, Slowey's analytical framework focuses on self-determination, whereas the main concern of the present research is whether or not a First Nation achieves a treaty. One must then decide whether self-determination is in fact tantamount to a treaty as this study has assumed. Thus, Slowey's definition of self-determination must be carefully examined. Borrowing from previous research from Cassidy and Bish (1989), Slowey (2008) says:

Self-determination means governance as the broadest possible system, one that includes state government but still permits First Nations people to make decisions. It is an inherent right that precludes a relationship with Canadian citizens and government, based on freedom, equality, and consent. It is a shared citizenship, one that does not require the sacrifice of those qualities that make First Nations people unique, nor does it deny them access to the benefits of modern society. Additionally, it acknowledges the desires and efforts of First Nations people to use their governments to achieve the goals they set for themselves, because self-determination provides them the opportunity to develop their own societies on their own land and for their own accord (p. 13).

This is the ideal form of First Nation self-determination that may or may not be neoliberal in orientation. It is distinguishable from self-determination in the neoliberal context that refers specifically to First Nations' political and economic development in the global economy. Yet Slowey (2008) also argues that as many First Nations pressure government for greater control over their own affairs, Aboriginal peoples' demands are becoming increasingly compatible with neoliberalism. That is why her analysis focuses on both the political and the economic dimensions of self-determination. The former includes devolving governing authority to First Nations. This allows communities to assume various degrees of control over social services and programs and over resources on traditional lands. The latter includes access to capital, development of comprehensive business plans, and the establishment of partnerships with the private sector. In this way,

therefore, Slowey's understanding of neo-liberal self-determination is applicable to First Nations in this study because it provides for the same political and economic opportunities that can be achieved through a modern treaty from the BC Process.

This conception of self-determination leads Slowey (2008) to conclude that the pragmatic goal of self-determination, within the current institutional framework, is to achieve change. This, she adds, is most often accomplished through negotiation of economic and political rights (pp. 11-12). An interesting comparison may be drawn from the different avenues that TFN and WFN have taken towards self-determination.

Negotiations between TFN and the state resulted in a treaty, whereas negotiations between WFN and the state resulted in self-government outside of a treaty. TFN now has ownership of certain parcels of land that were negotiated in the Final Agreement. Protected under the *Constitution Act, 1982*, the Treaty allows for full self-governing status free from the constraints imposed by the *Indian Act*. In comparison, subject to certain provisions, the *Indian Act* ceased to apply to WFN upon ratification of the WFN Self-Government Agreement in 2003. Federal legislation prevails over Westbank Law in certain areas and several matters have yet to be negotiated, (such as health, labour relations, social services, and the establishment of a WFN Court, for example). As WFN collects taxes much like a municipality, it is able to independently generate the majority of its annual budget with the remainder coming from the federal government through a Financial Transfer Agreement (WFN Self-Government Agreement 2003). However, the bilateral agreement does not include a land claim component, and Westbank lands remain "reserves" (INAC 2008a, para. 16). Thus, the degree to which TFN and WFN have

achieved self-determination varies according to the different paths that each has chosen to pursue.

According to Slowey's definition, the kind of governance that WFN exercises could be described as a neoliberal form of limited self-determination. The limitation exists because Slowey (2008) says that land is a precondition for self-determination (pp. 12-13). WFN, though free from the *Indian Act* in many respects, still does not own the land on which it governs. Therefore, WFN has yet to achieve full self-determination in the same way that the Tsawwassen people have through their Treaty.

However, the degree to which TFN has acquired self-determination has come at great expense. For the provincial and federal governments to achieve the certainty they desire, First Nations in the BC Treaty Process are required to specify their Aboriginal rights through the modified rights and non-assertion models described in Chapter Three in order to reach a Final Agreement with the state. Specifically, in return for compensation in the form of a cash settlement and fee simple ownership of land, First Nations must relinquish their right to title so that future land claims cannot be pursued. Essentially, this requires no less of a sacrifice on the part of First Nations than what was stipulated by the "cede, release and surrender" approach that defined previous government policy.

This is an issue that dissuades many First Nations from negotiating in the Treaty Process. Chief Robert Louie argues that the demand from government to see First Nations land become fee simple infringes on the rights of Aboriginal peoples to govern themselves and their lands. Having spent nearly two million dollars on negotiations, WFN has yet to see the concrete results it expected. As a result, Chief Louie says that

litigation is inevitable (Nieoczym 2009). WFN is certainly not the only Aboriginal group to express concern over issues of principle. Shortly after the Westbank community made its decision to leave the process, Sechelt Indian Band did so as well; other First Nations, like the Carrier Sekani Tribal Council and Ts'kw'aylaxw, have made similar decisions (Luggi & Alec 2007). The primary dissatisfaction of the latter two First Nations is with the millions of dollars in debt that accumulates through loans from the government to pay for negotiations. These debts continue to increase even when results fail to be produced. Not surprisingly, the frustration that First Nations have towards the process overcomes their willingness to continue with negotiations.

The findings in the preceding two chapters confirm Slowey's hypothesis that the business agenda, as it exists in a capitalist society, impacts Aboriginal policy and self-determination in a very important way (Slowey 2008). WFN has already developed a reasonably prosperous community that is founded upon strong working relationships with many non-Aboriginal people and businesses. Clearly, there is less incentive to hastily obtain a treaty if doing so comes at such a high cost. For TFN, a treaty offered the most pragmatic means to pursue its goal of building an economically strengthened community. It now provides a foundation for a more sustainable future. Indeed, TFN member Valerie Cross Blackett shared her view on the value of the Treaty when she expressed her Nation's collective objective to acquire the tools to become self-sustaining. She believes that the Treaty provides the necessary tools in the form of land, cash and resources that will rebuild the wealth of TFN. It also provides for self-governing autonomy to end the cycle of dependency perpetuated by the *Indian Act* (BC Treaty Commission 2008b, p 4).

Blackett's optimism supports the notion that a treaty was the best option available to Tsawwassen members to achieve their economic and political goals.

Treaties obtained through the BC Treaty Process serve First Nations in different ways; their utility is thus subject to a range of interpretations. For example, at the In-SHUCK-ch Annual General Assembly, former Chief Commissioner Steven Point claimed that "Not only is the treaty the best way to go, it's the only way to go" (Coast, 2007, p. 12). He explained that the best way to protect First Nations governments and shelter traditional territory is through a treaty. Yet, Kerry Coast, a contributor to the *BC Treaty Negotiating Times*, offers a sharply contrasting view. He argues (2007) that a treaty includes a land claims agreement, a transfer of program funding, and a devolution of obligations that ultimately limits governance to taxation, marriage certificates, and laws. Because self-determination and governance are protected under international human rights law, Coast remains skeptical at best about the value that treaties granted through the BC Process bring to First Nations communities (p. 12).

This debate is important to consider when applying the MCFN framework to First Nations participating in the BC Treaty Process. Ultimately, a community's willingness to commit to the process depends on the degree to which a treaty will advance its self-determination. Through self-government, WFN pursues the political dimension of self-determination. Through numerous partnerships with private sector businesses, it pursues the economic dimension of self-determination. Now, it has chosen to wait for a better option than what the BC Treaty Process offers to pursue the land ownership component of self-determination. SFN does not yet have full self-government, and its sources of capital are much more limited relative to WFN. In that respect, a treaty presents a more

enticing option for the Sliammon people to pursue self-determination than it does for WFN – even if it means giving up certain Aboriginal rights indefinitely. Therefore, in assessing why negotiations in the Treaty Process result in different outcomes, one must also assess the degree to which a treaty will serve as the most pragmatic means for the Aboriginal group to pursue self-determination. Only once this has been taken into consideration will a reasonable prediction regarding the outcome of negotiations be possible.

Conclusion

Broadly, the purpose of this study is to determine why negotiations in the BC Treaty Process lead to varying outcomes among different First Nations. This was done using the analytical frameworks proposed by Gabrielle Slowey and Christopher Alcantara—two scholars who share similar purposes to the one here, but whose analyses focus on Aboriginal groups elsewhere in Canada. Negotiations in the BC Treaty Process arrive at varying outcomes for the same reasons that Alcantara and Slowey identify for Aboriginal groups in other parts of the country. They depend on the particular circumstances of each First Nation within current institutional structures. These structures define the relationship between Aboriginal and state actors. They also provide a set of options from which the former may choose to navigate their futures. The indicators identified by both Slowey and Alcantara’s models help to determine whether or not the state will sign a treaty with a First Nation. Although drawn from only a small sample of First Nations, the findings in this study establish a useful basis from which further research may be conducted. Additional empirical analysis using the negotiating

experiences of other First Nations throughout the province will be of great benefit to the literature and to the strength of Slowey and Alcantara's models.

Grand Chief Stewart Philip, president of the Union of BC Indian Chiefs, says that the ratification of the Tsawwassen Final Agreement is clearly not a victory for the Treaty Process because the process remains fundamentally flawed (Dolha 2007). He is confident that despite choices made by TFN to follow through with negotiations, other First Nations in the province will be in no rush to obtain a treaty. The frustration among First Nations in the province has grown considerably as demonstrated by the negotiating impasse involving more than two dozen currently inactive tables. Certainly, the decision by First Nations to form a Common Table to address shared concerns reveals a general dissatisfaction among Aboriginal groups involved in the Treaty Process. This may cause some First Nations to leave the process in hopes of pursuing self-determination on more equitable terms. As findings from the present study suggests, such a decision will be made by First Nations who not only have the will, but also the socio-economic capacity to take such action.

Alternatively, First Nations that have not yet achieved a considerable degree of self-determination may enter the process in hopes of using a treaty to do so. The Tsawwassen community voted for a treaty to better the lives of their people both today and for future generations. Some First Nations will do the same even if they must do so through what has become a politicized and flawed process. Indeed, Yale, Yekooche and In-SHUCK-ch First Nations are all currently negotiating Final Agreements. The Lheidli T'enneh Band is considering a second vote to ratify its Final Agreement, and the Maa-Nulth First Nations are awaiting an implementation date for theirs.

When using the models as a means to explain future negotiation processes in BC, it is important to note how willing different Aboriginal groups are to accept compromise. For example, the models put forward by Slowey and Alcantara propose that a First Nation that is capable of self-governance and financial accountability will be better suited to respond to the state's neoliberal agenda. In that sense, the state will be more willing to negotiate a Final Agreement. However, as was the case with WFN, one might expect a First Nation that has a higher degree of control over its own affairs, a moderately strong economy, and relatively unconstrained development potential to be more likely to leave the BC Treaty Process than one that does not. Thus, only future analysis focusing on the internal decisions of individual First Nations communities will help determine exactly where the tipping point lies between the desire to obtain a treaty and the decision to forego the process altogether.

The First Nations in BC comprise a mosaic of diverse communities each with its own unique set of circumstances and ambitions. It is therefore quite unlikely that a universal trend will define the future direction of First Nations relations with the state in the Treaty Process (Dacks 2002). Application of Slowey and Alcantara's models in this study confirm this to be true. It also provides a useful means to explain whether a First Nations community in BC will be capable of obtaining a treaty from the state. Ultimately, though, this capability will only be realized if an individual First Nation so chooses.

Glossary

Aboriginal rights: Interests that may be asserted by Aboriginal peoples in respect to certain lands or activities. Aboriginal rights have been recognized and affirmed by s. 35 of the Constitution Act, 1982. The Supreme Court of Canada has held that this provision protects a range of rights, yet only some have been specified in case law.

Aboriginal self-government: Form of government that is the exclusive right of Aboriginal peoples in Canada to express. Because it has never been directly addressed by the Supreme Court, self-government arrangements have been defined through negotiations between Aboriginal groups and the state. Thus, no two self-governing arrangements between an Aboriginal group and the state will necessarily be the same.

Aboriginal title: A collective right by an Aboriginal group to the exclusive use and occupation of land for a variety of purposes. Aboriginal title is protected under s. 35 of the Canadian Constitution, but has yet to be proven by a First Nation in case law. Most modern claims regarding Aboriginal title are resolved through negotiation processes.

comprehensive land claims: Concern parts of the country that have not yet been addressed by earlier agreements. Comprehensive claims usually involve self-government, land, fishing and hunting rights, and a cash settlement. The BC Treaty Process was established to facilitate the negotiation of comprehensive land claims in BC.

First Nations Land Management Act: Federal law enacted in 1999 that allows signatory First Nations the authority to make laws in relation to reserve lands and resources, thus removing *Indian Act* provisions that would otherwise apply. It grants First Nations communities the authority to create their own system for making reserve land allotments to individual members and to deal with matrimonial interests or rights.

Indian Act: Principle federal statute legislated in 1876 concerning Indian status, local government and the management of reserve land and communal monies.

Royal Proclamation of 1763: Signed by the British Crown to establish a basic framework for relations with Aboriginal peoples in North America. It implemented a process by which Aboriginal lands could be purchased for British settlement and development on a nation-to-nation basis between Aboriginal peoples and the British Crown.

specific claims: Concern instances where the federal government has either failed to fulfill legal obligations or breached its fiduciary duty to properly consult with and act in the interest of Aboriginal peoples.

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