

BC Conference Position

In 1996 BC Conference of the United Church of Canada presented a brief, “Moving Toward Stronger Communities,” to the Provincial Select Standing Committee on Aboriginal Affairs. In its Conference presented 8 Ethical Benchmarks and 8 Recommendations for seeking a new relationship between native and non-native people in British Columbia.

Benchmark #8 was “The treaty process should involve as broad a base of public participation as possible,” but the corresponding Recommendation was “that the mechanism used to gauge public endorsement ... should not be a referendum.” While there is not much debate in a democratic society about the benchmark itself, controversy arises around the meaning of “public participation” and the mechanisms by which this is ensured.

In a representative democracy, it is recognized that the public cannot become adequately informed on every issue, and that individuals may be blinded by personal or regional interests. Representatives are elected to inform themselves about the background and implications of the decisions they will make on behalf of the common good, with particular responsibility for protecting minority interests.

A referendum is a direct or popular vote, often used when a government does not want to accept responsibility for making a controversial decision. Voting is usually at monitored polling sites, and the public expects the government to act on the majority vote.

The Premier’s Office has been unclear about the status of this referendum, having said that “its results will be binding on government policy,” and that “by giving all British Columbians a direct say on the principles that treaties should reflect, that will guide my government at the negotiating table.” “Binding” and “guiding” are quite different actions. Many of the questions are not about principles but about specific negotiation results.

Yes No

7. Treaties should provide mechanisms for harmonizing land-use planning between Aboriginal governments and neighbouring local governments.

Accord between aboriginal and local/provincial/federal governments on land-use planning and zoning is important in both rural and urban areas. This question does not indicate what the mechanisms for harmonizing land-use would be, so presumably they are open for negotiation.

Our concern is the implication that First Nations do not want to work with local people or governments and need to be coerced into such an agreement.

Yes No

8. The existing tax exemptions for Aboriginal people should be phased out.

In the present agreement each party is at liberty to introduce any issue at the negotiation table. The province may introduce the issue of income tax, but this is a matter within federal jurisdiction. Except for the small minority of First Nations people who earn income on a reserve, all aboriginal people are currently subject to income tax.

Our concern is that this reinforces the impression that the current tax exemptions for income earned on reserve is somehow an unfair benefit, rather than an arrangement imposed upon First Nations decades ago through the Indian Act.

Our concern is the implication that First Nations want to take parks away from the rest of British Columbians. They do not.

5. Province-wide standards of resource management and environmental protection should continue to apply.

Yes No

This would mandate the minimal provincial standards on treaty land, but would not prevent First Nations' from exceeding them. The matter of how managerial jurisdiction will apply should be a matter for negotiation. First Nations have generally indicated agreement with this.

Our concern is the implication that First Nations want different standards or are not capable of using resources responsibly unless regulated by government. This is not true.

6. Aboriginal self-government should have the characteristics of local government, with powers delegated from Canada and British Columbia.

Yes No

This question is one of the most troublesome. It indicates that the Provincial Government is seeking to impose a municipal style of self-government, similar to the Sechelt agreement, upon all First Nations. Each treaty situation requires a customized solution. Restricting negotiations to a municipal model would be counter-productive, as First Nations have already indicated that this is not acceptable or advisable for all of them. Many question the legal ability of the Province to effect this under the Constitution. First Nations are not obligated to include the province in discussions of self-government, as that is a federal issue.

Our concern is that a "Yes" vote could close down negotiations or might lead First Nations to negotiate bilaterally with the Federal Government.

This particular referendum on treaties is problematic for several reasons:

- Mail-in balloting is notoriously inaccurate; verification of the vote is impossible.
- The issue is complex and cannot be reduced to simple Yes/No answers.
- The underlying implications of the proposed questions are not clear, which will produce invalid results.
- Many aboriginal people have said they will boycott the referendum. This means the non-native majority will have an even more disproportionate voice on matters crucial to First Nations.
- The government will be able to interpret and apply the results any way it wants.

This referendum does not further the government's professed desire for revitalized negotiations and reconciliation, but exacerbates divisions and contention. The questions give a false impression of how First Nations and negotiations now function. Some questions foster stereotypes of aboriginal people. Land questions and treaty negotiations are about as complicated as issues get in British Columbia.

BC Conference of the United Church reaffirms its position against governments' holding referenda on complex issues, especially when minority rights are involved.

An Analysis of the Referendum Questions

The select Standing Committee on Aboriginal Affairs proposed 16 questions in four categories for a referendum on treaty negotiations. On March 15, 2002 the legislature approved eight questions.

Since the issues involved in treaty negotiations are often complex, there is much disagreement about the implications of voting “Yes” or “No” on various questions, but there is wide agreement that they are framed to produce “Yes” answers. A “No” response provides no clear mandate.

We gratefully acknowledge the work done by the Aboriginal Neighbours group of the Anglican Diocese of BC and their allowing us to adapt their material.

1. Private property should not be expropriated for treaty settlements.

Yes No

This is already a basic principle. i.e. the Provincial Government has said repeatedly that it will not expropriate private land to settle negotiations. First Nations have emphasized it is not their intent to threaten private property. The possibility exists for government(s) to buy private land to include in a treaty.

Our concern is the implication that First Nations are asking for private property as part of settlements. They are not.

2. The terms and conditions of leases and licences should be respected; fair compensation for unavoidable disruption of commercial interests should be ensured.

Yes No

The government cannot unilaterally break private contracts such as a lease/licence. In the past, if an encumbrance on land under negotiation was not compatible with intended use by a First Nation, the Provincial Government compensated the

lease/licence holder. Another option would be transferring the lease/licence to an alternative Crown area.

Our concern is that a “Yes” response would give precedence to lease/licence holders over new aboriginal land holders and limit their potential for resource-use, which is key to self-sufficiency. Self-supporting First Nations benefit the whole province.

First Nations have asked repeatedly for compensation for disruption and infringement of their rights and title, e.g. for third parties taking resources from disputed land. It is not their intent to deny protection to third party users of negotiated lands, but they do seek fair compensation. Compensation is basic commercial practice.

Our concern is that a “Yes” response seems to give priority to third party commercial users.

Yes No

3. Hunting, fishing and recreational opportunities on Crown land should be ensured for all British Columbians.

The meaning and consequences of this question are not clear. Certain lobbies do not want First Nations to set conditions (e.g. fees, priorities) or limits to their accustomed access.

Our concern is that a “Yes” response would not acknowledge the basic right of all property owners to make decisions about access to their land.

Yes No

4. Parks and protected areas should be maintained for the use and benefit of all British Columbians.

In parts of BC, e.g. southern Vancouver Island, there is little unencumbered Crown Land to negotiate, so some parks and protected lands are under consideration. If current park land is included in a treaty package, then the question of First Nations’ property rights arises. Joint-management might be a solution in some cases.

What Can You Do?

1. Become informed.
2. Test issues by your Christian beliefs and your understanding of a just, compassionate society.
3. Let your elected representatives know what you think: write, phone, fax, e-mail:

Premier: Hon. Gordon Campbell: gordon.campbell.mla@leg.bc.ca
PO Box 9041, STN PROV GOVT, Victoria, V8W 9E1; 250-387-1715;

Attorney General: Hon. Geoff Plant (responsible for treaty negotiations) PO Box 9044, STN PROV GOVT, Victoria, V8W 9E2; geoff.plant.mla@leg.bc.ca

MLAs: check the addresses at www.legis.gov.bc/mla

Mail to Parl. Bldg., Victoria V8V 1X4 will reach most of them

Further Resources

- a. "Moving Toward Stronger Communities," B. C. Conference of the United Church of Canada. December 4, 1996. Contact Conference Office at 604-431-0434 or www.uccanbc.org
- b. "Revitalizing the Provincial Approach to Treaty Negotiations: Recommendations for a Referendum on Negotiating Principles." Report of the Select Standing Committee on Aboriginal Affairs, November 30, 2001.
- c. The 19 guiding principles of the BC Claims Task Force for Tripartite Treaty Negotiations.

The Provincial and Federal Governments and the First Nations Summit agreed on these in 1991.

First Nations Summit represents the majority, but not all First Nations in BC. Go to Appendix 6 of the 1991 Task Force Report

Some Concerns About the Referendum

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United Church of Canada

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