**Legislative Summary** **LS-596E**

# BILL C-34: THE TSAWWASSEN FIRST NATION FINAL AGREEMENT ACT

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# LEGISLATIVE HISTORY OF BILL C-34

| HOUSE OF COMMONS | |
|---|---|
| **Bill Stage** | **Date** |
| First Reading: | 6 December 2007 |
| Second Reading: | 26 May 2008 |
| Committee Report: | 5 June 2008 |
| Report Stage: | 16 June 2008 |
| Third Reading: | 17 June 2008 |

| SENATE | |
|---|---|
| **Bill Stage** | **Date** |
| First Reading: | 17 June 2008 |
| Second Reading: | 18 June 2008 |
| Committee Report: | 26 June 2008 |
| Report Stage: | |
| Third Reading: | 26 June 2008 |

Royal Assent: 26 June 2008

Statutes of Canada 2008, c. 32

N.B. Any substantive changes in this Legislative Summary that have been made since the preceding issue are indicated in **bold print.**

Legislative history by Michel Bédard

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# BILL C-34: THE TSAWWASSEN FIRST NATION FINAL AGREEMENT ACT*

Bill C-34, An Act to give effect to the Tsawwassen First Nation Final Agreement and to make consequential amendments to other Acts, received first reading in the House of Commons on 6 December 2007. **Bill C-34 was adopted without amendments by the House of Commons and the Senate on 17 June and 26 June 2008 respectively. Its enactment** completes ratification of the tripartite comprehensive land claim and self-government agreement among the Tsawwassen First Nation, British Columbia and Canada, the first modern treaty to be concluded under the British Columbia Treaty Commission process, and the province's first urban treaty.

## BACKGROUND

### A. Summary Overview of the Land Question in British Columbia

#### 1. Pre-1970s

The historic treaty process resulting in land treaties involving the surrenders of vast Aboriginal territories in Ontario, the Prairie provinces and the present Northwest Territories, was largely not entered into with British Columbia First Nations. The 14 Vancouver Island Douglas Treaties of the 1850s involved purchases of tracts from Coast Salish groups(1)

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* Notice: For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both houses of Parliament, receive Royal Assent, and come into force.

(1) This is the cultural or ethnographic designation of a subgroup of First Nations or Native American cultures in British Columbia and Washington State, whose various communities use one of the Coast Salish languages that are spoken around most of the Georgia and Puget Sound Basins and that belong, in turn, to the Salishan language family.

totalling fewer than 400 square miles,[2] and did not serve as a precedent for further treaty-making on either the Island or the mainland.[3] The only other treaty activity involving land cessions in British Columbia occurred between 1900 and 1914, when four First Nations groups in the northeastern portion of the province adhered to Treaty 8.[4]

In concluding the Vancouver Island treaties, Governor James Douglas had recognized Aboriginal title, consistent with the principles of the *Royal Proclamation of 1763*.[5] However, denial of title subsequently became the enduring position taken by successive colonial and provincial policy makers.[6] After its 1871 entry into Confederation,[7] British Columbia did

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(2) While the word "treaty" was not used in the documents, Douglas's land purchases have consistently been upheld as treaties by the courts. In return for the surrender of their lands, the Songhees, Saanich and other groups concerned received blankets and small reserves, and retained hunting and fishing rights on unoccupied land. See Dennis Madill, *British Columbia Indian Treaties in Historical Perspective*, Ch. 1, "The Vancouver Island Treaties – Treaty Activity," research paper prepared for the Research Branch, Corporate Policy, Department of Indian and Northern Affairs, Ottawa, 1981. A version of this document is also available at http://www.ainc-inac.gc.ca/pr/trts/hti/C-B/treC-B_e.pdf.

(3) A variety of explanations have been offered as to why no further treaties were signed. Some suggest Douglas ran out of funds and was unable to obtain additional resources from the British government (Frank Cassidy, "Aboriginal Land Claims in British Columbia," in *Aboriginal Land Claims in Canada: A Regional Perspective*, ed. Ken Coates, Copp Clark Pitman, Toronto, 1992, p. 13), while another view is that Douglas later subscribed to a system that anticipated the assimilation of Indians and the abandonment of traditional communities for homesteads (Paul Tennant, *Aboriginal Peoples and Politics: The Indian Land Question in British Columbia, 1849–1989*, University of British Columbia Press, Vancouver, 1990, pp. 36–7).

(4) Madill (1981), Ch. 2, "The Treaty 8 Portion of British Columbia – Prelude to Treaty Negotiations." Treaty 8 is one of three Alberta treaties, and also covers smaller areas in northwest Saskatchewan and southeast Northwest Territories.

(5) As described in the 1991 report of the British Columbia Claims Task Force: "From the earliest days of its presence in North America the British Crown pursued a policy, set out in the Royal Proclamation of 1763, that recognized aboriginal title. Aboriginal land ownership and authority was recognized by the Crown as continuing under British sovereignty. An effect of the policy was that only the Crown could acquire lands from First Nations, and only by treaty. By the 1850s, the Crown had signed major treaties with the First Nations in eastern Canada. Ultimately, that process continued west to the Rockies, in advance of European settlement." British Columbia Claims Task Force, *The Report of the British Columbia Claims Task Force*, 28 June 1991 (Task Force Report), http://www.bctreaty.net/files/pdf_documents/bc_claims_task_force_report.pdf.

(6) Joseph Trutch, the province's dominant Aboriginal policy-maker in the pre- and post-Confederation periods, wrote in 1867 that "[t]he Indians have really no right to the lands they claim, nor are they of any actual value or utility to them; and I cannot see why they should either retain these lands to the prejudice of the general interests of the Colony." See Madill (1981), Ch. 1, "The Vancouver Island Treaties – The Significance of the Vancouver Island Treaties."

(7) Under the Terms of Union, the federal government assumed responsibility for "Indians and Lands reserved for the Indians," consistent with subsection 91(24) of the *Constitution Act, 1867*, and the provincial government retained authority over land and resources. Section 109 of the Constitution made provincial ownership of lands, mines and minerals subject "to any Interest other than that of the Province in the same."

not subscribe to the federal government's view that policies applied in the prairie provinces recognizing and extinguishing Aboriginal rights should extend to the province.(8) Although Aboriginal groups appealed to the federal government for larger reserves than had been allotted by the province,(9) and despite ongoing conflict between the federal and provincial governments on this issue, Ottawa did not press the province on the question of Aboriginal title or treaties.

Land-related developments over the ensuing period included the establishment, in 1912, of the McKenna-McBride Royal Commission in order to settle federal-provincial differences over Indian affairs and lands. The Commission's terms of reference and 1916 report focused narrowly on reserve size, rather than on fundamental issues of ownership and control of land. In 1920, the federal *British Columbia Indian Lands Settlement Act* implemented the McKenna-McBride recommendations. In 1927, an amendment to the *Indian Act* that remained in effect until 1951 made it illegal for any person to accept payment from an Aboriginal person for the pursuit of land claims.(10)

In the result, as the colony/province expanded, First Nations groups lost access to and use of most of their traditional territories, while issues related to Aboriginal title in British Columbia remained largely unaddressed.

## 2. *Calder* Decision and the General Comprehensive Land Claims Context(11)

In 1968, the Nisga'a Nation initiated a court challenge seeking a declaration that Aboriginal title to the Nass Valley in northwest British Columbia had never been extinguished.

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(8) According to Joseph Trutch, the treaty system would not work in British Columbia:

> [W]e have never [bought out] any Indian claims to lands nor do they expect we should – but we reserve for their aid and benefit from time to time tracts of sufficient extent to fulfil all their reasonable requirements for cultivation or grazing. If you now commence to buy out Indian title to the lands of British Columbia – you would go back [on] all that has been done here for 30 years past. … Our Indians are sufficiently satisfied … .

Madill (1981), Ch. 1, "The Vancouver Island Treaties – The Significance of the Vancouver Island Treaties."

(9) In 1874, for example, 50 BC chiefs unsuccessfully petitioned the federal Indian Commissioner for British Columbia for implementation of a federal proposal that reserves contain 80 acres per family. For background on reserve creation in the province, see Madill (1981), Ch. 1, "The Vancouver Island Treaties – Reserve Policy," and Union of British Columbia Indian Chiefs, "Background to the McKenna McBride Royal Commission," http://www.ubcic.bc.ca/Resources/ourhomesare/narratives/Background_1.htm.

(10) The same year, a joint Senate-House Committee appointed to investigate Aboriginal claims in British Columbia recommended that First Nations people receive an annual allotment of $100,000 in lieu of treaties. This recommendation, too, was implemented.

(11) See Mary Hurley, *Settling Comprehensive Land Claims*, TIPS-18E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 24 October 2007.

Although the province's superior courts dismissed the suit, suggesting that, even if title did exist, it had been extinguished implicitly by pre-1871 land legislation, the Supreme Court of Canada's 1973 decision in the *Calder* case represented a landmark for all Aboriginal groups with outstanding claims.(12) In finding that the Nisga'a had held title prior to the creation of British Columbia, the Court confirmed that Aboriginal peoples' historic occupation of the land gave rise to legal rights in the land that survived European settlement, thus recognizing the possibility of present-day Aboriginal rights to land and resources.

The *Calder* decision proved a significant factor in prompting the federal government to develop policies for addressing unsettled Aboriginal land claims. Initially released in 1973, the first "comprehensive land claims policy" was adopted in 1976,(13) and was reaffirmed in 1981 in *In All Fairness: A Native Claims Policy – Comprehensive Claims*.(14) In 1986, revisions to the policy allowed for a broader scope of subject matters to be negotiated within the land claim context(15) and, in 1993, the government reiterated the objective of the comprehensive claim process as being to negotiate treaties that determine rights to land and resources, "[exchanging] undefined Aboriginal rights for a clearly defined package of rights and benefits."(16) In 1995, a policy shift occurred with the then Liberal government's recognition of the inherent right of self-government as an existing Aboriginal right under section 35 of the *Constitution Act, 1982*. This paved the way for the negotiation of constitutionally protected self-government rights as well as land rights in new treaties. With one exception, treaties concluded since 1995 contain governance chapters.(17)

A long-standing issue associated with comprehensive claims has been the federal policy requirement that Aboriginal groups surrender their Aboriginal rights and title to lands and resources in exchange for defined treaty rights. The dominant underlying theme has concerned

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(12) *Calder et al.* v. *Attorney General of British Columbia*, [1973] S.C.R. 313.

(13) It provided, *inter alia*, that only six land claims could be negotiated in Canada at any one time, and only one per province.

(14) Department of Indian Affairs and Northern Development, Ottawa, 1981.

(15) Including, for example, offshore wildlife harvesting rights and resource revenue-sharing.

(16) Department of Indian Affairs and Northern Development, *Federal Policy for the Settlement of Native Claims*, Ottawa, 1993.

(17) The bilateral Nunavik Inuit Land Claims Agreement between Canada and the Inuit of the Nunavik region of northern Québec, who are party to the 1973 James Bay and Northern Quebec Agreement, is not concerned with governance, which is being dealt with in a separate, non-treaty process. The *Nunavik Inuit Land Claims Agreement Act* (Bill C-11) received Royal Assent on 14 February 2008, completing the treaty ratification process.

the need to achieve "certainty" with respect to land and resource rights and interests. Aboriginal groups have consistently opposed this policy, which has also been viewed critically in a number of reports.(18) And while the language of cession, release and surrender typical of earlier land claim agreements has not been reiterated in more recent treaties, the matter remains a key concern for Aboriginal groups and other observers of the land claim negotiation context.

A total of 21 comprehensive land claims have been concluded since 1973,(19) including the Nisga'a Final Agreement, the first modern treaty to be negotiated in British Columbia.(20)

### 3. British Columbia Treaty Commission Process

From 1976 through 1990, the Nisga'a and Canada negotiated on a bilateral basis, as the provincial government maintained its long-standing denial of Aboriginal title and refused to play a role in land claim negotiations. However, during the 1980s, the province became more responsive to First Nations concerns.(21) In 1989, the Premier's Council on Native Affairs recommended that the province establish a specific process for the negotiation of land claims and, in 1990, the province – although continuing to reject Aboriginal title – agreed to join First Nations and the federal government in tripartite negotiations.

In 1991, government and First Nations parties accepted the report of the British Columbia Claims Task Force appointed by their representatives,(22) which outlined the scope and process for land claim negotiations in the province. Significantly, the then New Democratic Party government recognized Aboriginal title and Aboriginal peoples' inherent right of self-government. Its endorsement of the Task Force Report enabled the establishment in 1992 of the

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(18) In 1995, reports of both the federal fact finder mandated to explore alternative models and the Royal Commission on Aboriginal Peoples suggested that certainty as to land-related rights might be achieved without this "extinguishment." United Nations bodies urged Canada to abandon the practice.

(19) Nineteen are with Aboriginal groups north of 60 and in the northern portions of Quebec and Newfoundland and Labrador.

(20) For a fuller description of policies, concluded agreements and current negotiations, see Department of Indian Affairs and Northern Development, *General Briefing Note on the Comprehensive Land Claims Policy of Canada and the Status of Claims*, March 2007, http://www.ainc-inac.gc.ca/ps/clm/gbn/gbn_e.pdf.

(21) The activities of local and provincial First Nation organizations, growing public support for Aboriginal issues and a series of court decisions in favour of Aboriginal people all contributed to altering the political context for Aboriginal–non-Aboriginal relations, including in British Columbia.

(22) Task Force Report (1991).

tripartite BC Treaty Commission (BCTC) and six-stage treaty process[23] that remain in effect today.

Although the establishment of the BCTC process undoubtedly marked a watershed development in the vexed history of BC First Nations' land claims, the process has faced a number of ongoing challenges. First Nations groups have expressed frustration with the perceived lack of progress at treaty tables, the protracted nature and expense of treaty talks, and the continued alienation of lands and resources while complex negotiations are taking place.[24] Other observers are also critical of the absence of concrete results[25] under and mounting costs associated with, the BCTC process.[26]

A significant percentage of BC First Nations groups are not participating at all in what they view as a flawed treaty process. Since 2006, dozens of communities that are engaged in the process have signed on to a Unity Protocol Agreement that calls for a renewed joint table mechanism to remove barriers to negotiations resulting from what the signatories view as government parties' rigid negotiating positions in a number of key areas.[27] The BCTC has

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(23) In accordance with the Task Force Report "blueprint," the BCTC is not a direct participant in the various negotiations that are active at any given time. Rather, its primary oversight role with respect to the negotiation process involves facilitation, funding and public information and education.

(24) These concerns appeared heightened following the 1997 *Delgamuukw* decision confirming the existence of Aboriginal title in the province, owing to First Nations' perception that governmental parties failed to take the ruling's requirements into account sufficiently. *Delgamuukw* also confirmed that Aboriginal title qualifies provincial ownership of land in a province, being an "Interest other than that of the Province in the same" within the meaning of section 109 of the Constitution: *Delgamuukw* v. *British Columbia*, [1997] 3 S.C.R. 1010, par. 175.

(25) Negotiations toward the *Nisga'a Final Agreement* predated and were conducted outside the BCTC process.

(26) In 2006, separate audits of the BCTC process by federal and provincial auditors general observed that "results achieved are well below the three parties' initial expectations," and that First Nations and government parties hold "differing views on the nature of the treaties being negotiated." In their view, the evolution of "other legal, economic, and political options" make it "challenging for the federal and B.C. provincial governments to offer benefits to First Nations that meet or exceed those available outside the treaty process." See Office of the Auditor General of Canada, *Report of the Auditor General of Canada to the House of Commons*, Ch. 7, "Federal participation in the British Columbia Treaty Process," November 2006, http://www.oag-bvg.gc.ca/internet/docs/20061107ce.pdf. The Department of Indian Affairs and Northern Development accepted the federal Auditor General's recommendations for improvements to the process, including ongoing federal policy review, development of a consultation policy and improved management of negotiations.

(27) These are: certainty; the constitutional status of treaty settlement lands; governance; co-management throughout traditional territories; fiscal relations; and fisheries.

endorsed the idea of a common issues table[28] and, in December 2007, the responsible federal and provincial ministers reportedly agreed to pursue the possibility.[29]

According to the BCTC's 2007 Annual Report, 58 BC First Nations groups are currently participating in the treaty process at 48 negotiating tables. Six groups, apart from the Tsawwassen and Maa-nulth First Nations,[30] are in negotiations to finalize treaties (Stage 5).[31] The BCTC has indicated that "while there is success at some treaty tables, there remain considerable gaps between the parties at others. In all, about 20 tables report making progress in negotiations; another 14 tables are struggling due to significant differences in positions and the remaining 24 are doing very little or nothing at the treaty table. For many First Nations these treaties do not represent their idea of true reconciliation."[32]

This backdrop serves to underscore the significance of the successfully completed Tsawwassen First Nation Final Agreement and Maa-nulth First Nations Final Agreement for all three parties, and for the treaty process.[33]

## B. The Tsawwassen First Nation

### 1. Introduction

The Tsawwassen First Nation (TFN) is among the communities that make up the Coast Salish people of the West Coast. TFN's historical use of the waters of the Southern Strait of Georgia and the lower Fraser River and their environs for travel, fishing and hunting is well documented. Over time the TFN, like other First Nations groups in the province,

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(28) BC Treaty Commission, *Treaty Commission Annual Report 2007* (BCTC Annual Report), http://www.bctreaty.net/files/pdf_documents/2007_annual_report.pdf.

(29) Stephen Hui, "Uniting First Nations' treaty talks may avoid 'dark cloud,'" 31 January 2008, available at Straight.com website, http://www.straight.com/article-130289/uniting-first-nations-treaty-talks-may-avoid-dark-cloud.

(30) The final agreement of five Vancouver Island communities, the Maa-nulth First Nations, has been ratified by the communities themselves, as well as the provincial legislature. See *Maa-nulth First Nations Final Agreement Act* (Bill 45), enacted 29 November 2007. Federal legislation is expected in the near future.

(31) BCTC Annual Report (2007).

(32) BC Treaty Commission, "Breakthroughs Underline Diverging Views," News release, 4 December 2007, http://www.bctreaty.net/files/pdf_documents/newsrelease_071204.pdf.

(33) The Lheidli T'enneh First Nation located near Prince George voted to reject a final treaty settlement in March 2007.

experienced the loss of all but a fraction of its claimed traditional territory, which covers over 250,000 hectares.(34)

Today about half of TFN's current membership of around 350 reside on a 290 hectare reserve, situated between the BC Ferries terminal and the Roberts Bank Superport in the Tsawwassen suburb of the Corporation of Delta, itself a suburban municipality in the southwest portion of the Greater Vancouver region of British Columbia's Lower Mainland.

Map 1


Source: Government of British Columbia, Ministry of Aboriginal Relations and Reconciliation, "Tsawwassen First Nation," http://www.treaties.gov.bc.ca/treaties_tsawwassen.html.

As is the case in numerous First Nations communities, over 50% of TFN members are in the under-25 age group, while unemployment numbers are significantly higher, and annual family incomes and high school graduation rates significantly lower, than in the neighbouring non–First Nations community.(35)

TFN material documents unsuccessful petitions by community leaders dating from the 1860s – including to the McKenna-McBride Commission – to obtain a larger land base.(36) It also enumerates the gradual development and industrialization of land surrounding its

(34) See Appendix A. The Tsawwassen describe this territory as unsurrendered, and "bordered on the northeast by the watersheds that feed into Pitt Lake, down Pitt River to Pitt Meadows where they empty into the Fraser River. It includes Burns Bog and part of New Westminster, following the outflow of the river just south of Sea Island. From Sea Island it cuts across the Strait to Galiano Island and includes all of Saltspring, Pender and Saturna islands. From there, the territory continues northeast to include the Point Roberts peninsula, and the watersheds of the Serpentine and Nicomekl Rivers." See "Who we are," *Land Facing the Sea: Tsawwassen First Nation, A Fact Book*, http://www.tsawwassenfirstnation.com/whoweare/factbook.pdf.

(35) Ibid.

(36) Ibid. "TFN Timeline 10,000 BC – 2007 AD."

reserve, and the ensuing environmental impact on TFN members and lands. These include the development of over 16,000 hectares of surrounding land by 1890; construction and subsequent expansion of the Ferry Terminal and causeway, beginning in 1958; and construction and round-the-clock operation of the Superport, as of 1968.(37)

Residential developments on land leased from TFN include the Stahaken Development, a large subdivision leased to the Town of Tsawwassen until 2089, and the condominium complex Tsatsu Shores. About 500 non-members reside on TFN land.

2. The Tsawwassen First Nation Final Agreement

a. Negotiation and Ratification

The TFN entered the tripartite BCTC process in 1993 by filing its Statement of Intent to negotiate a treaty. The parties reached an agreement-in-principle that formed the basis for the final phase of negotiations in 2004 and, in December 2006, initialled the Tsawwassen First Nation Final Agreement (TFA). The TFA was ratified by 70% of registered TFN voters in July 2007 and by the Legislative Assembly of British Columbia in November 2007, with the enactment of the *Tsawwassen First Nation Final Agreement Act* (Bill 40).(38) The parties signed the TFA on 6 December 2007. Under its terms (Chapter 24), the federal government is similarly obliged to adopt settlement legislation, introduced as Bill C-34, in order to complete the ratification process and give effect to the TFA.

b. Overlap Challenge

Disputes over the boundaries of traditional territories affect numerous ongoing comprehensive claims in British Columbia and elsewhere, including that of the TFN.(39) In late November 2007, a judge of the British Columbia Supreme Court dismissed the petitions of four First Nations groups with overlapping claims – including three Douglas Treaties groups –

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(37) Ibid. “Did you know?”

(38) BC legislators also adopted the *Final Agreement Consequential Amendments Act*, 2007 (Bill 41) and the *Treaty First Nation Taxation Act* (Bill 42).

(39) Generally speaking, First Nations are expected to seek resolution of such disputes between or among themselves. The BCTC has noted limited success with this policy, and has consistently urged First Nations communities to deal with territorial disputes early on in their negotiations, observing that unresolved overlaps become more significant and problematic as negotiations advance to the later stages.

that sought to prevent the signing of the TFA based on insufficient prior consultation and accommodation of their interests by the provincial Crown. The judge agreed with government lawyers that it would be impossible to finalize any treaties if every overlapping claim had to be resolved beforehand, and concluded that the petitioners' claims would not be irretrievably harmed by the signing, "particularly having regard to the non-derogation clauses contained in the [TFA]."(40)

c. Substance: Selective Summary Overview

The TFA consists of 25 chapters that comprehensively define TFN rights, responsibilities and applicable processes in relation to Tsawwassen Lands, land and environmental management, forest resources, wildlife harvesting and fisheries allocations, taxation, dispute resolution and numerous other matters. In addition to the constitutionally protected treaty, the parties have concluded "side agreements" outside the treaty. They include an implementation plan and fisheries guidelines as well as agreements related to fiscal financing, real property tax coordination, tax treatment and own-source revenue.

Although it is beyond the scope of this paper to provide a detailed summary of the TFA's contents, the following sections outline some significant features related to its General Provisions, Lands, and Governance chapters.

(i) General Provisions (Chapter 2)

This pivotal chapter includes stipulations that:

- the TFN Agreement is a land claim agreement protected by section 35 of the *Constitution Act, 1982* (s. 1), but other agreements or plans provided for under its terms do not have that status (s. 58);
- with some prescribed transitional exceptions set out in the TFA, the *Indian Act* ceases to apply to TFN, Tsawwassen Members, Government and Institutions except for the purpose of determining "Indian" status (s. 39);

(40) *Cook* v. *The Minister of Aboriginal Relations and Reconciliation*, 2007 BCSC 1722, 29 November 2007, par. 185, 199. Evidence presented during court proceedings indicated accommodation agreements had been concluded between TFN and other First Nations communities with potentially overlapping claims without re-opening the TFA.

- Tsawwassen Lands as defined in Chapter 1 are neither "Lands reserved for the Indians" under subsection 91(24) of the *Constitution Act, 1867*, nor "reserves" under the *Indian Act* (s. 10);

- the *Canadian Charter of Rights and Freedoms* applies to the Tsawwassen Government established under Chapter 16 (s. 9);

- federal and provincial legislation applies to the TFN (s. 19);

- in the event of inconsistency between the TFA and any federal, provincial or TFN laws, the former prevails, while Bill C-34 and provincial Bill 40 prevail to the extent of any conflict with federal or provincial legislation respectively (s. 26-28);

- TFN Members who are Canadian citizens remain entitled to the rights and benefits of that status, and the TFN, its members and institutions may continue to participate in programs and services available to registered Indians (s. 35-36);

- the consultation obligations of Canada and BC in respect of TFN section 35 rights are exhaustively enumerated, and include those provided in the TFA or federal and provincial law (s. 45);[41]

- Canada must Consult the TFN before agreeing to be bound by a prospective international treaty that may contain new obligations that could adversely affect a TFN right under the Agreement (s. 30);

- should Canada consider that it is unable to perform an international legal obligation owing to a TFN law or other exercise of authority, Canada and the TFN must discuss remedial measures: the TFN must either remedy its law accordingly or, where there is disagreement, the matter is to be resolved via arbitration under Chapter 22 (s. 30-32);

- the Agreement does not recognize or affect any Aboriginal or treaty rights of any Aboriginal group other than the TFN, and, should a superior court determine that such rights are adversely affected by the TFA, the Parties will strive to remedy or replace the offending provision(s) (s. 47-48);

- if another treaty or land claim agreement adversely affects TFN section 35 rights set out in the Final Agreement, additional or replacement rights or another suitable remedy will be provided by British Columbia and/or Canada (s. 49).

The TFA's alternative to explicit extinguishment provisions of prior land claim settlements returns to the "modified rights" approach originally set out in the 1998 *Nisga'a Final Agreement*. Under this "certainty" option:

- the TFA represents the full and final settlement of all TFN Aboriginal rights, including title (s. 11);

(41) "Consult" is defined by the TFN as notice of and sufficient information concerning a matter, time to prepare and opportunity to present views, and full consideration of those views (Chapter 1).

- the Final Agreement exhaustively sets out the TFN's section 35 rights, which are:
  - the Aboriginal rights of the TFN, including title, in and to Tsawwassen Lands and other lands and resources;
  - the jurisdictions, authorities and rights of the Tsawwassen Government; and
  - the other section 35 rights of TFN (s. 12);

- TFN Aboriginal rights, including title, are modified and continue as modified by the TFA, and the Aboriginal title of TFN is modified as estates in fee simple to Tsawwassen Lands and Other Tsawwassen Lands, as defined (s. 13-14);

- the purpose of modification is to enable the TFN to exercise its section 35 rights under the TFA, to enable the other parties and all persons "to exercise their rights, authorities, jurisdictions and privileges" and to release the latter from any obligation to the TFN in relation to any right that differs from those set out in the TFA (s. 15);

- the TFN releases Canada, the province and others from any claims whatsoever relating to any act or omission before the TFA takes effect that may have affected TFN Aboriginal rights, including title (s. 16).

(ii) Lands in the TFA (Chapter 4)[42]

Under the TFA, treaty settlement lands comprising 724 hectares include

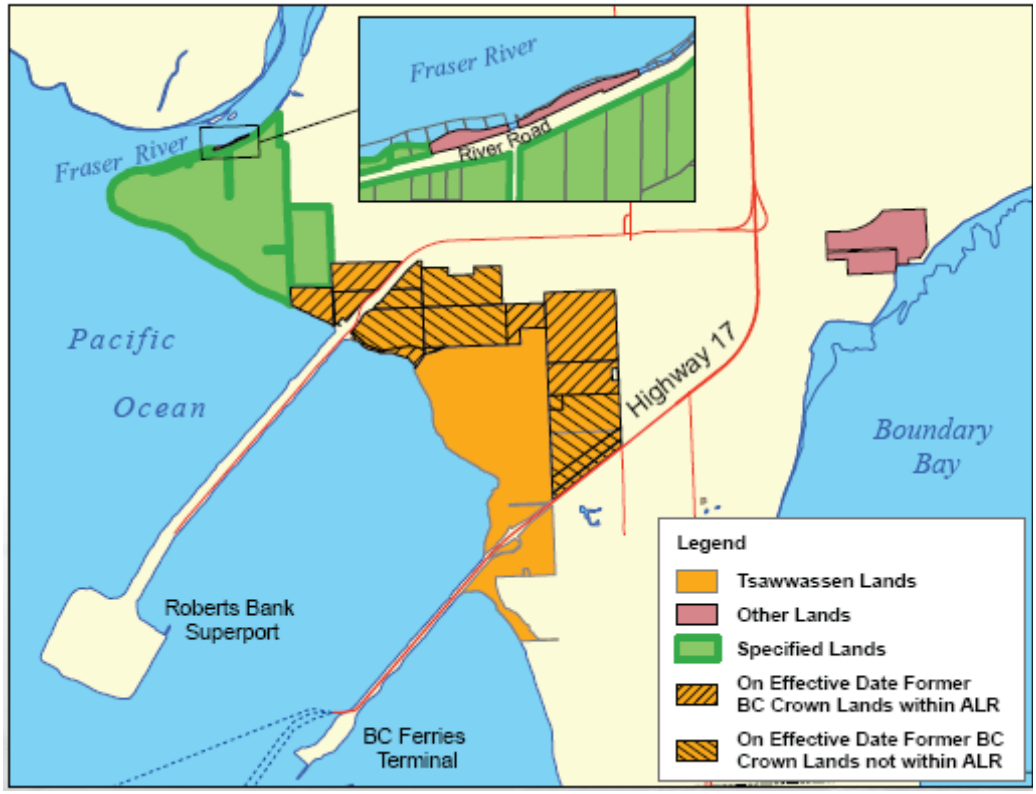
- "Tsawwassen Lands" consisting of 290 hectares of former reserve lands and 372 hectares of former provincial Crown land: the TFN will own Tsawwassen Lands in fee simple, including subsurface resources, not subject to any conditions under the provincial *Land Act* (s. 1-2); and

- "Other Tsawwassen Lands" totalling 62 hectares that are non-contiguous with Tsawwassen Lands and that are to remain under the jurisdiction of the Corporation of Delta: these lands[43] will be owned in fee simple, not including subsurface resources, subject to the conditions in the *Land Act* (s. 18-19).

(42) See British Columbia, Ministry of Aboriginal Relations and Reconciliation, "Tsawwassen Lands," http://www.gov.bc.ca/arr/firstnation/tsawwassen/down/factsheet/lands.pdf.

(43) Referred to as the Boundary Bay and Fraser River parcels.

Map 2




Source: Government of British Columbia, Ministry of Aboriginal Relations and Reconciliation, "Fact Sheet: Tsawwassen Lands," http://www.ainc-inac.gc.ca/bc/treapro/ston/fnagr/twsn/lnd_e.pdf.

All the provincial Crown lands to be transferred to the TFN under the TFA are currently within the Agricultural Land Reserve (ALR) governed by the BC *Agricultural Land Commission Act*. When the TFA takes effect, 207 hectares of Tsawwassen Lands will lose the ALR designation,(44) while the remaining Tsawwassen Lands and Other Tsawwassen Lands are to retain that designation. The 290 hectares of former reserve lands, being federal land, are currently and will remain excluded from the ALR (s. 31-34).

The Lands chapter also:

- authorizes TFN to dispose of the whole of its estate in fee simple in any parcel of Tsawwassen Lands, or of any lesser estate, to anyone (s. 3);
- makes provision for the treatment of existing interests on Tsawwassen Lands (s. 10-17);

(44) See section 9 of the BC *Tsawwassen First Nation Final Agreement Act*, which excludes the lands described at s. 32 of the Lands chapter from the ALR, notwithstanding the land commission statute.

- prescribes the scope of subsurface resource management by Tsawwassen Government (s. 22-25);

- sets out mechanisms for subsequent additions to or removal from Tsawwassen Lands including, in particular, the "Specified Lands"(45) indicated in Map 2 (s. 36-51); and

- prescribes the conditions for federal or provincial expropriation of Tsawwassen Lands (s. 58-95).

(iii) Governance (Chapter 16)

The TFN's governance provisions:

- provide that TFN has the right of self-government and law-making authority (s. 1), and acts through the Tsawwassen Government (TG) in exercising its rights and authorities (s. 5);

- provide that TFN has the legal status and capacity of a natural person (s. 7);

- require the TFN to have a Constitution and specify its mandatory contents (s. 8);

- require Tsawwassen Institutions to consult with non-member residents on Tsawwassen Lands about decisions that "directly and significantly affect them" (s. 17);

- provide for non-member participation in the decision-making processes of a Tsawwassen Public Institution whose activities affect them, including the right, where members of that Institution are elected, to vote in and stand for election (s. 18-19);

- provide for Non-Members to avail themselves of appeal or review procedures in respect of administrative decisions (s. 22);

- require the TG to give Canada and the province six months' notice of proposed TFN laws in a number of areas, including health, social and child care services (s. 23);

- require the province to give TFN prior notice of legislation and regulations relating to subject matters over which the TFA gives TFN law-making authority (s. 29);

- enable delegation of TG's law-making authority to a Tsawwassen Public Institution, Canada, British Columbia, another First Nations Government, or others (s. 39);

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(45) See s. 35 and 41-45 of the TFA and Appendices H and I. The largest area of "Specified Lands" involves 283 hectares known as Brunswick Point lands. They were among the more than 1,600 hectares expropriated by the government in 1968 and have not been released for repurchase by the former landowners who continue to farm it under lease, pending the outcome of treaty negotiations. Under the TFA, TFN has the right of first refusal, should the original owners of the land either not purchase the land or decide to sell it following re-purchase, a condition the landowners contest in a court challenge launched in late 2006 that is scheduled for hearing by the BC Supreme Court in late February 2008.

- provide that if TG exercises its discretionary authority to make laws in specified areas, TG laws will prevail over conflicting federal or provincial laws in certain areas,[46] while federal or provincial laws will prevail over conflicting TG laws in others;[47]

- provide that TG may adopt federal or provincial laws in relation to matters under its jurisdiction (s. 136); and

- make TFN responsible for enforcing Tsawwassen Laws (s. 137).

(iv) Other

Additional TG law-making authority is set out in various chapters of the TFA, each of which prescribes the scope of that authority, and, with one exception, specifies which of TG or federal/provincial laws is to prevail in case of conflict.[48] The exception is the Taxation chapter authorizing laws for the direct taxation of TFN members on Tsawwassen Lands, which provides that any such laws do not limit federal and provincial taxation powers (Chapter 20, s. 2).[49]

The TFA also contains provisions relating to the transition from the *Indian Act*'s application to TFN in certain areas (Chapter 3); to relationships between TFN and regional government (Chapter 17); and to a dispute-resolution mechanism to apply to conflicts among the Parties over the TFA's interpretation, application or implementation, or a breach of the TFA (Chapter 22).

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(46) These include the administration and management of TG (s. 43), TFN membership (s. 40), TFN assets (s. 51), K–12 education provided by Tsawwassen Institutions on Tsawwassen Lands (s. 77), the organization and structure for the delivery of health services on Tsawwassen Lands (s. 88, 92), adoption of Tsawwassen children (s. 55) and child protection services (s. 68). TG law-making authority in the last two areas must provide for standards comparable to provincial standards: see s. 56(b) (adoption) and s. 69(b) (child protection).

(47) They include post-secondary education provided by a Tsawwassen Institution on Tsawwassen Lands (s. 82), health services on Tsawwassen Lands (s. 88), social services (s. 93) and family development (s. 98), liquor control (s. 100), solemnization of marriage (s. 106), child care (s. 111), emergency preparedness (s. 113), regulation of business (s. 118), public works (s. 126), traffic and transportation (s. 128), public order, peace and safety (s. 130), and penalties for violation of Tsawwassen Laws (s. 132).

(48) They include chapters relating to land management (Chapter 6) and access to Tsawwassen Lands (Chapter 7), management of forest resources (Chapter 8), fisheries (Chapter 9), wildlife (Chapter 10), migratory birds (Chapter 11), the harvesting of renewable resources in national parks (Chapter 12) and the gathering of plants in provincial parks (Chapter 13), culture and heritage (Chapter 14), and environmental management (Chapter 15).

(49) The TFA also provides for possible taxation power agreements between or among TFN, Canada and/or British Columbia relating to the extent of TG's direct taxation authority over persons on Tsawwassen Lands other than Tsawwassen members, and for the co-ordination of any such taxation powers with federal and provincial systems (s. 4).

Financial components of the TFA are set out, in part, in the Capital Transfer chapter (Chapter 18)[50] and the Fiscal Relations chapter (Chapter 19). The latter provides for the negotiation and contents of five-year Fiscal Financing Agreements providing, *inter alia*, for funding of agreed-upon programs and services for TFN, including TFN contributions from its "own source revenue" [s. 2].[51] The most frequently reported estimate places overall costs associated with the TFA at around $120 million.

## DESCRIPTION AND ANALYSIS

Bill C-34 consists of a preamble and 33 clauses, 12 of which are transitional, consequential amending or conditional provisions. It is generally typical of comprehensive claim settlement legislation. The following review gives a general overview of selected significant features of the bill and does not discuss every clause in the legislation. References in square parentheses are to provisions of the TFA.

### A. Preamble

Bill C-34's substantive clauses are preceded by a six-paragraph preamble that will enter the annual statute book as an integral part of the legislation. A preamble is an interpretive measure employed to establish a context and rationale for legislation and may also underscore parliamentary intent in enacting it. In this case the preamble refers, *inter alia*, to the importance of reconciliation through negotiation and to negotiation of the TFA as a means of achieving a new relationship among the parties, and notes that its ratification is dependent on the enactment of federal legislation.

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(50) See discussion of clause 6 of Bill C-34.

(51) See Tsawwassen First Nation Fiscal Financing Agreement, http://www.tsawwassenfirstnation.com/treaty/Tsawwassen_Fiscal_Financing_Agreement_Initialled_Dec8.pdf. According to Department of Indian Affairs and Northern Development documentation, one-time funding of $15.8 million is to support start-up and transitional costs, while annual funding of $2.8 million under the initial FFA is to finance programs and services, as well as implementation activities. TFN will also receive $2 million related to its release of mine and mineral rights under previously surrendered reserve lands. See "Backgrounder: Tsawwassen First Nation Final Agreement," http://www.ainc-inac.gc.ca/nr/prs/s-d2006/02826bk_e.html.

B. Interpretation and Ratification (clauses 3-4)

The bill confirms the TFA's status as a treaty within the meaning of sections 25[52] and 35 of the *Constitution Act, 1982* (clause 3). It also approves the TFA, gives it effect, declares it to be valid and acknowledges it to have the force of law (clause 4). The provision mirrors its equivalent in the November 2007 BC settlement statute on whose adoption the Agreement's validity also depends [Chapter 24, s. 11].[53]

Bill C-34 further stipulates, for greater certainty:

- That the powers, rights and benefits conferred on any person or body by the TFA, and the duties and liabilities set out in it, have legal effect. That is, persons and bodies enjoy the former, and must perform or assume the latter (clause 4(2)). This applies not only to Tsawwassen Members, the TFA's principal beneficiaries and duty-holders, but also, for example, to other residents of Tsawwassen Lands with a right of access under Chapter 7 of the TFA or voting rights under Chapter 16, as well as to government bodies with obligations prescribed throughout the TFA. The measure reiterates similar or identical provisions in previous ratification legislation.

- That the Agreement is binding on all persons and bodies, that is, it is enforceable by and against all, and can be relied upon by all (clause 3(3)).[54]

C. Conflict of Laws (clause 5)

As has been the case in all previous legislation for the ratification of land claim settlements, Bill C-34 contains provisions for dealing with both potential inconsistency between

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(52) Section 25 of the *Canadian Charter of Rights and Freedoms* provides that:

> The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada. …

The section has often been referred to as a "shield" for the safeguard of collective Aboriginal and treaty rights.

(53) It is identical to its counterpart in the 2000 *Nisga'a Final Agreement Act*, the 2005 *Labrador Inuit Land Claims Agreement Act* and *Tlicho Land Claims and Self-Government Act*, and substantially consistent with those in the predecessor Gwich'in and Sahtu Dene and Métis ratification statutes as well as the legislation ratifying the land claim agreements of Yukon First Nations and the Inuvialuit.

(54) This provision is identical to its equivalent in settlement legislation for the Tlicho Agreement, and a variation on the analogous measure contained in the Nisga'a statute, which made no reference to "bodies." Settlement laws for Gwich'in and Sahtu Dene and Métis agreements contain no such provision; they do specify that each "Act is binding on Her Majesty in right of Canada or a province." Ratification legislation for the Yukon and Labrador Inuit treaties contain both provisions, stipulating that the relevant agreements are binding on both the federal and provincial Crown and on all persons and bodies that are not parties to them.

itself (when enacted) or other federal laws and the TFA, and conflict between itself and other legislation. In accordance with the TFA's terms [Chapter 2, s. 26-28], the bill makes it clear that (1) the constitutionally protected TFA will prevail over any inconsistent federal laws, including the settlement legislation (clause 5(1)), and (2) the latter is to prevail over conflicting federal laws (clause 5(2)).

D. Appropriation (clause 6)

Bill C-34 provides for payment of Canada's financial obligations under the TFA out of the Consolidated Revenue Fund. The specific obligations referred to in clause 6 are those set out in: Chapter 4 (Lands), which requires Canada to provide TFN $440,000 to establish a Reconciliation Fund for legacy projects [s. 30], and slightly over $1 million to enable it to establish an Economic Development Capital Fund [s. 107]; and Chapter 18 (Capital Transfer and Negotiation Loan Repayment) providing for scheduled capital transfer payments to TFN totalling about $14 million, over $12 million of which consist of ten annual transfers commencing when the TFA takes effect [Schedule 1, clause 1].(55)

E. Lands (clause 7)

The legislation reiterates provisions of Chapter 4 of the TFA providing that as of the effective date, TFN owns the estate in fee simple of Tsawwassen Lands and Other Tsawwassen Lands.

F. Tax Treatment Agreement (clauses 8-9)

Chapter 20 of the TFA calls for the parties to enter into a Tax Treatment Agreement (TTA) for the treatment of various tax matters, and federal and provincial legislation to give effect to it [s. 22-23]. The TTA has been concluded,(56) and Bill C-34 satisfies the requirement that it be given effect legislatively. The bill also gives the TTA force of law for the

(55) The balance is made up of funds provided for in other chapters of the TFA. In addition to those set out in Chapter 4, they include the Forest Resources Fund (Chapter 8, s. 6), the Commercial Fish and Crab Funds (Chapter 9, s. 105.a and .b) and the Wildlife Fund (Chapter 10, s. 9).

(56) Matters dealt with include the TFN's income tax status, GST refunds, property transfer, real property and resource taxes and the Tsawwassen Settlement Trust. See Tsawwassen Tax Treatment Agreement, http://www.tsawwassenfirstnation.com/treaty/Tsawwassen_Tax_Treatment_Agreement_Initialled_Dec8.pdf.

period that it is in effect, a minimum of 17 years [TTA, s. 13], and stipulates that the TTA is not part of the TFA and is not protected by sections 25 and 35 [Chapter 2, s. 58].(57)

G. Fisheries (clauses 10-11)

Under section 7 of the *Fisheries Act*, the discretionary authority of the minister of Fisheries and Oceans to issue fishing leases or licences is restricted to those not exceeding nine years; leases/licences for any longer period must be authorized by the Governor in Council. Bill C-34 provides for ministerial authority, notwithstanding section 7, to conclude and implement the TFN Harvest Agreement that is called for in Chapter 9 of the TFA [s. 102], and whose term is 25 years, with the possibility of further extensions at the option of the TFN [Harvest Agreement, s. 3-4]. The TFA does not expressly require that settlement legislation give effect to this non-treaty side agreement.

H. Application of Other Acts (clauses 12-15)

As indicated above, the TFA provides for transitional exceptions to the general rule that, except for the purpose of determining "Indian" status, the *Indian Act* will have no application to TFN, Tsawwassen Members, Government and Institutions [Chapter 2, s. 39].(58) Bill C-34 reiterates these exceptions, clarifying that the cessation of application of that Act coincides with the coming into effect of the TFA (clause 12). The bill further provides – again in accordance with the TFA [Chapter 2, s. 40] – that as of that date the *First Nations Framework Agreement on Land Management* to which the TFN became signatory in 2003, the *First Nations Land Management Act* (FNLMA) and the TFN Land Code mandated by that Act will cease to

(57) The provisions mirror those in settlement legislation for the Tlicho and Labrador Inuit agreements; the Nisga'a statute also gave effect to the taxation agreement concluded by the parties, while explicitly declaring only specified elements to have the force of law.

(58) The transitional exceptions are set out (1) in Chapter 3 of the TFA (Transition) relating, *inter alia*, to *Indian Act* provisions dealing with wills and estates, "mentally incompetent Indians," guardianship and the Money of Infant Children and (2) Chapter 20 (Taxation) relating to section 87 of the *Indian Act*, under which the "personal property of an Indian or a band situated on a reserve" is exempt from taxation. Chapter 3 also provides that, as of the coming into force of the TFA, all the rights, titles, interests, assets, obligations and liabilities of the Tsawwassen First Nation band under the *Indian Act* vest in Tsawwassen First Nation, and the *Indian Act* band ceases to exist.

apply to TFN, its members, Lands, Government and Institutions (clause 13(1)).[59] Notwithstanding the foregoing, any existing TFN by-laws, including implicitly those under the *Indian Act* or the FNLMA, such as the TFN Land Code, remain in effect on the former TFN reserve for 30 days following the TFA's effective date (clause 13(2)).[60]

Under subsection 91(24) of the *Constitution Act, 1867*, Parliament has exclusive jurisdiction over "Indians and Lands reserved for the Indians." Clause 15 satisfies a TFA requirement [Chapter 2, s. 20] that federal settlement legislation include a section providing for the application of British Columbia laws that would not apply of their own force owing to subsection 91(24) to TFN, its members, Government and Institutions, subject to Bill C-34 and any other federal laws (clause 15). The Nisga'a ratification legislation contains an equivalent measure.

I. General (clauses 16-20)

Bill C-34 provides for judicial notice of the TFA, the TTA and TFN laws (clauses 16-17), signifying that evidence of their existence and contents need not be presented in court in the event of litigation. The bill further requires that the Attorneys General of Canada and British Columbia and the TFN be notified in advance of any legal proceeding in which the interpretation or validity of the TFA, or the validity or applicability of federal or provincial ratification legislation or any Tsawwassen Law, is at issue (clause 20).

The Governor in Council is authorized to make "any orders and regulations that are necessary" in order to implement the TFA or the TTA (clause 18). A similar general power has been conferred by legislation ratifying prior land claim accords. The bill does not specify what person or body would determine when or what regulations are necessary.

(59) The 1999 *First Nations Land Management Act* (FNLMA) gave effect to the 1996 *Framework Agreement on First Nations Land Management* that gives participating communities control over reserve lands and resources, and ends ministerial discretion under the *Indian Act* over land management decisions on reserves. Land-related provisions of the *Indian Act* cease to apply to signatory communities that enact a land code consistent with the terms of the FNLMA. TFN is one of 47 First Nations communities scheduled as a participant under the FNLMA scheme. See S.C. 1999, c. 24.

(60) Section 5 of Chapter 3 relating to transition from the *Indian Act* explicitly provides only for the temporarily continued effect of *Indian Act* by-laws.

J. Transitional Provisions (clauses 21-25)

Bill C-34 stipulates that, barring the issuance of a replacement interest under the TFA Lands chapter, an existing interest in former TFN reserve land that was granted under either the *Indian Act* or the FNLMA continues in effect under its terms. Canada's rights and duties as grantor of that interest are transferred to TFN as of the coming into effect of the TFA (clauses 21-22), following which Canada is not liable for any TFN action or omission in the exercise of (1) TFN rights and obligations relating to existing interests in land or (2) powers or functions relating to such interests under Tsawwassen Laws (clause 23).

The legislation also reiterates a TFA provision related to federal obligations under the FNLMA [Chapter 2, s. 41], stipulating that, as long as that Act remains in effect, Canada will indemnify TFN in respect of its former reserve lands as it would if the Act remained applicable to those lands (clause 24). This ongoing undertaking relates to section 34 of the FNLMA, which obliges the federal Crown to indemnify a First Nation covered by that Act for any loss incurred as a result of a Crown act or omission in relation to the First Nation's land prior to the coming into force of its land code.

K. Consequential Amendments (clauses 26-30)

These Bill C-34 amendments to five federal statutes:

- remove the TFN from the list of First Nations communities scheduled in the FNLMA (clause 27);
- add the Tsawwassen Government to the enumeration of "aboriginal governments" in federal access to information and privacy legislation (clauses 26 and 30);
- add enforcement of Tsawwassen Laws enacted under the TFA's Fisheries chapter to the powers of fishery officers/guardians under the *Fisheries Act* (clause 28);
- add the Tsawwassen Government to the definition of "taxation authority" in the *Payments in Lieu of Taxes Act*, "if it levies and collects a real property tax or a frontage and area tax" (clause 29).

L. Coming Into Force (clause 33)

Bill C-34 will come into force on a date fixed by order of the Governor in Council, with the exception of two coordinating provisions at clauses 31 and 32,[61] and clause 19, under which the TFA's eligibility and ratification chapters are deemed to have taken effect upon the signing of the TFA in December 2006.

## COMMENTARY

Little response to Bill C-34 was noted. The TFA itself and the treaty process more generally were the subjects of mixed commentary since the closing stages of negotiation, largely by First Nations and non-First Nations observers within the province.

Non–First Nations observers raised the potential scope of the Tsawwassen Government's direct taxation authority over non-TFN members as a significant source of concern. They viewed such authority as taxation without representation in light of the limited ability of "disenfranchised" non-members, the majority of residents on TFN lands, to participate in decision-making processes under the TFA. A second point related to taxation concerned the fact that the TFN will retain percentages of various tax revenues collected on TFN lands, a situation described as a more generous financing arrangement than is available to municipalities.

Critics also objected to the withdrawal of treaty settlement lands from the province's agricultural land reserve. Concern about the loss of protected status for valuable farm land, a key issue in the region, was linked to uncertainty about its future use by TFN, in particular the extent of industrial development TFN's eventual land use plan will entail, and the subsequent impacts of development.

Other criticisms suggested that costs associated with the TFA – and, by extrapolation, with province-wide treaties – have been underestimated, and that the TFA's fisheries chapter and side agreement on fisheries promote a race-based fishery, providing TFN with special access to the commercial fishery. According to one view, overall the TFA and the

(61) These simply take account of the need to coordinate certain of the bill's provisions with the proposed specific claims and fisheries legislation, Bills C-30 and C-32 respectively.

modern treaty process and policy are divisive and promote segregation, and Bill C-34 ought to have been subjected to a free vote in Parliament.

On the other hand, some editorial comment, noting public acceptance of the need for treaties and the moral obligation to provide First Nations with economic opportunities, saw reason for optimism that the TFA and the Maa-nulth Final Agreements signal an important step forward, establishing that treaties are possible, and may offer a useful framework for other agreements. For other non-First Nations observers, since a primary objective of modern treaties is enhancement of economic development prospects for First Nations signatories, it would be unjust to restrict TFN's land use planning, particularly in light of the scale of existing industrial development by non-First Nations interests on TFN traditional territory. They pointed out that treaty settlements inevitably involve trade-offs and costs such as the loss of ALR lands, which are balanced by TFN concessions in other areas.

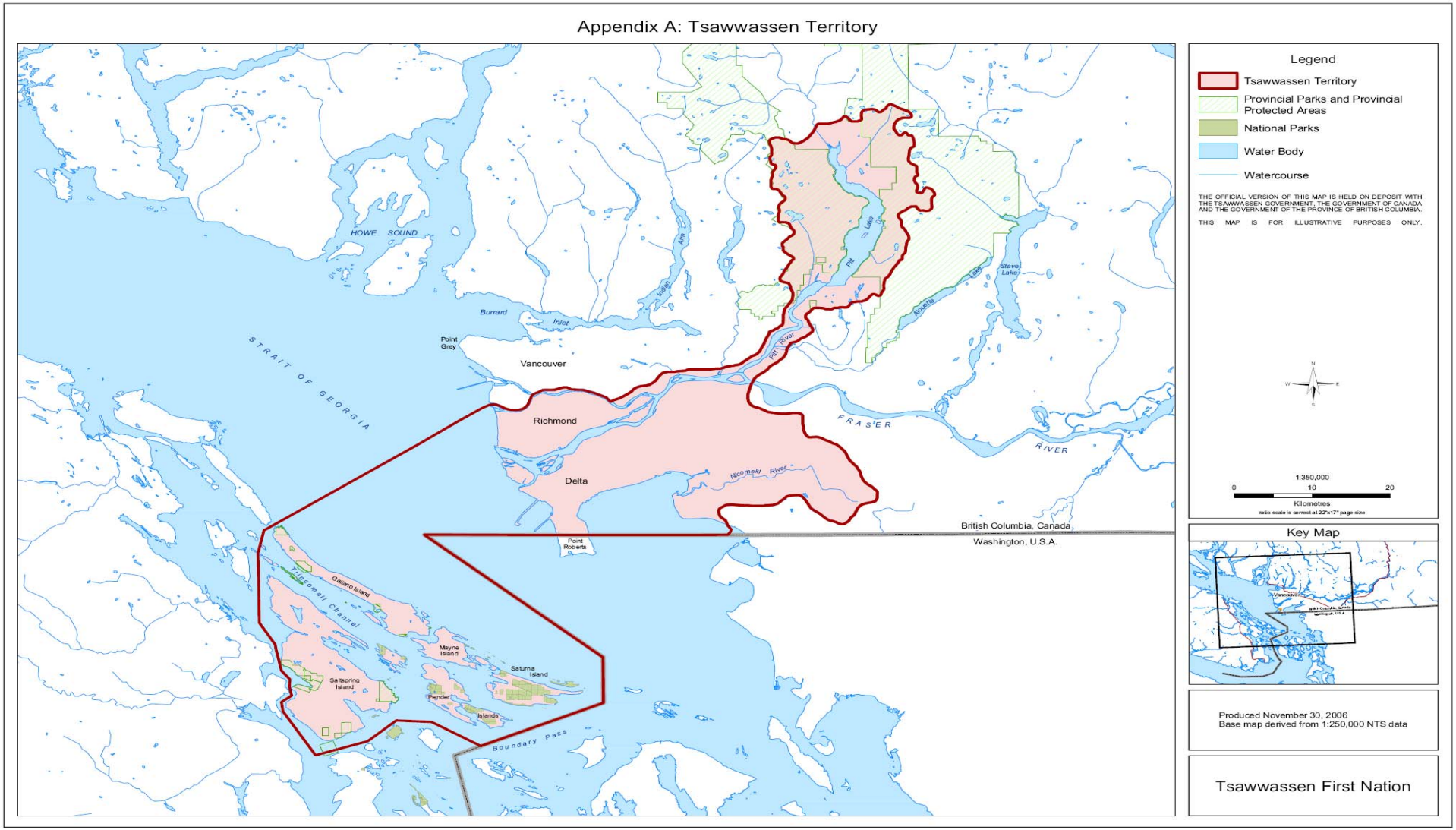
Others, agreeing with the need for compromise by all, noted that even with the land and financial components of the TFA, TFN members face challenges in "catching up" that they are prepared to take on. Other commentary observed further that TFN should be trusted to develop its community plan, since TFN members are unlikely to endorse a plan to turn their relatively modest parcel of land into an industrial park.

The responses of BC First Nations spokespersons to the conclusion of the TFA and its ratification were also mixed. Members of the First Nations Summit, representing communities in the treaty process, characterized ratification of the TFA by TFN as a huge development and a step forward for the treaty process, despite ongoing challenges for communities throughout the province. Both Summit and AFN–BC leaders, while celebrating BC ratification legislation, cautioned government that continued progress cannot be assumed and that much remains to be done. A First Nations Summit News Release congratulating the TFN on completion of the TFA warned that "reaching further settlement agreements is in serious jeopardy unless the federal and provincial governments change their negotiating mandates and commit to act with integrity and in good faith in further negotiations, to ensure the recognition of aboriginal title and rights."(62)

(62) First Nations Summit, "Tsawwassen Treaty a significant step but government must revise negotiation mandates to reach further agreements," News release, 15 October 2007, http://www.fns.bc.ca/pdf/FNS_StatementreTreaty101507.pdf.

Individual community representatives noted that conclusion of the TFA and Vancouver Island Maa-nulth treaties addressed the concerns of many by establishing that there is an end-point to the negotiation process that a majority can accept. Furthermore, the fact that the treaties reflect the different circumstances and histories of the groups involved demonstrated government's willingness to adapt the terms of treaties to individual communities, a fact reassuring to First Nations people.

The head of the Union of British Columbia Indian Chiefs, representing groups opposed to the treaty process, suggested the TFA would not kick-start that flawed system. In his view, First Nations communities opposing the process now outnumber those that support it. And, although respecting the TFN's decision to proceed with its treaty, he called on the federal and provincial governments not to sign the TFA pending consultation with Douglas Treaties groups claiming overlapping rights. Concern about resolving overlaps prior to reaching final agreements was shared by the First Nations Summit.




Source: Government of British Columbia, Ministry of Aboriginal Relations and Reconciliation, "Appendices to Tsawwassen First Nation Final Agreement, Appendix A," http://www.tsawwassenfirstnation.com/treaty/Tsawwassen_Final_Agreement_Appendices_Initialled_Dec8.pdf.