

Negotiating the future

As First Nations groups flex their muscles on claimed territory in the Lower Mainland, B.C. Treaty Commission head Sophie Pierre hopes the stalled treaty process can bring stability and economic opportunity to B.C.

BY MICHAEL MCCARTHY, SPECIAL TO VANCOUVER COURIER MAY 28, 2010

Sophie Pierre, chair of the B.C. Treaty Commission.

Photograph by: Dan Toulgoet, Vancouver Courier

Sophie Pierre looks pensively out the window of her Coal Harbour apartment toward the North Shore mountains. Such rare moments of peace and quiet are treasured in her hectic new life as chair of the B.C. Treaty Commission. It's Pierre's position that "certainty" through the signing of treaties is needed to stimulate economic development throughout the province. In Vancouver, the ongoing lack of certainty about aboriginal rights has some municipal officials worried another level of government is evolving to which they will have to answer.

"I was always taught that if you want to get something done right, don't ask somebody to do it for you," says Pierre in a calm voice, while sipping a cup of tea. "The federal Indian Act makes it virtually impossible to get positive changes accomplished for First Nations people, but I think there are other ways to get things done, like using the treaty process. We need to get inventive."

Pierre's business model emphasizes self-government for aboriginals based on sound economic planning, which is exactly what she accomplished with her own First Nation. The St. Mary's band of Ktunaxa (pronounced 'k-too-nah-ha') people have lived near Cranbrook for more than 10,000 years. The arrival of Europeans irrevocably altered their lives, with the horrific legacy of residential schools still being felt.

"I spent nine years at St. Eugene's Mission School," says Pierre calmly, "and I would never allow my children to go to such a horrible place. A lot of our people wanted the building burned down, but the idea was raised to transform the school into a resort. That has been very successful."

After Pierre was elected St. Mary's chief in 1978, that former source of humiliation has evolved into a \$40 million, 4.5-star resort employing 250 people in summer peak season and generating in excess of \$10 million annually in revenue for the Cranbrook region. It's the fifth largest private employer in the area and a great source of pride. "Our business model is not like the exploitation of raw resources," says Pierre. "The money doesn't leave town and go to some foreign head office. It all stays home and benefits everyone in the community."

Approaching retirement age, Pierre might just well have collected a pension but that's not her way. Upon her appointment as chair of the treaty commission in April 2009, she commissioned a report by PricewaterhouseCoopers that showed if all 60 First Nations involved in B.C.'s treaty process completed treaties by 2025, the province could receive \$6.4 billion in economic benefits, after deducting the costs of reaching those treaties. In 2010 dollars (the value in today's dollars of the stream of future income), that works out to \$4.3 billion. The money would come in the form of new employment income generated both by First Nations and other British Columbians, estimated to increase by \$14.4 billion over 40 years.

"More than \$1 billion has been wasted since 1993 in treaty negotiations with little to show for the money in many cases except for massive legal bills being paid for by the taxpayer," says Pierre. "There's no template for any treaty that will satisfy every First Nation. We have problems of overlapping territories throughout the province and many other serious issues to deal with, but we do have momentum building [with our new model]. What's the option? Maintaining the status quo is unacceptable. Nobody wants to live in poverty."

Jock Finlayson agrees. The executive vice-president of the Business Council of B.C. notes that B.C.'s resource-based economy, outside of the energy sector, has been in constant decline for a decade and economic certainty in the form of signed treaties will invigorate investment in the province.

"Sophie is very well regarded in the aboriginal community and there is obviously new energy being developed around the treaty process," he says. "The Business Council of B.C. is very supportive of the treaty process and Sophie's argument is increasingly being accepted among First Nations leaders, too. I think we'll see a couple of dozen treaties signed in the next five to 10 years, and maybe five or six in the next year or two. What a treaty means is that it will allow each First Nation control over its own affairs, and that will help provide the certainty that the entire province needs."

The B.C. treaty process currently has 60 First Nations, or 110 of the 198 B.C. Indian Act bands, working on 49 sets of negotiations. There are six stages in the process, ranging from "intent to negotiate" to final signed treaty. There are 44 First Nations in Stage 4 (agreement in principle) negotiations, and seven First Nations in Stage 5 negotiations (finalize a treaty) and one in Stage 6.

The Tsawwassen First Nation was the first to sign a treaty April 3, 2009. Prior to the current treaty process, the Nisga'a signed an agreement that is considered a blueprint for present negotiations. It went into legal effect in April 2000.

At the North Vancouver offices of the Tsleil-Waututh Nation (SLAY-wah-tooth, formerly known as the Burrard Band), there have been new developments since the Olympics ended that may pertain to furthering a treaty settlement.

Leah George-Wilson, former chief and now the Tsleil-Waututh's treaty negotiator, explains that her people want a settlement. Trouble is, they've been stuck in stage three (negotiating a framework agreement, agreeing on the subjects to be negotiated and an estimated time frame for stage four agreement-in-principle negotiations) for more than a decade. The Tsleil-Waututh are prepared to become just as inventive as the new treaty commissioner to achieve their own economic development. Only they may go outside of the treaty process to accomplish their plans, which may have far-reaching repercussions.

"We have been in negotiations with the provincial government since 1995," says George-Wilson, "and all we've heard is endless talk from bureaucrats who really have no power to do anything. We've repeatedly asked for written proposals, with exact dollar figures and land settlements, and we've never received one. It's time to move on."

The Tsleil-Waututh Nation's newest initiative has raised concerns among Lower Mainland municipal officials. The band has circulated a "Stewardship Policy" to all local governments on whom it intends to levy various fees on certain projects within its newly defined territorial area, a 413,000-hectare area spanning much of Metro Vancouver.

The Tsleil-Waututh had previously defined their traditional territory for the purposes of treaty negotiations as being the North Shore, Vancouver, Burnaby, New Westminster and most of the Tri Cities--an area of 179,000 hectares. But its new stewardship policy sets out an area on lands wherever the TWN hunted, fished or had seasonal camps, an area more than twice as large. The 447-member band says municipal governments must pay these new fees as part of "their duty to consult and accommodate native bands" or else run the risk of illegally infringing First Nation interests.

"The Olympics were a great moment for aboriginal people," says George-Wilson. "It showed the world that these are our traditional lands and that we have aboriginal title, and that we need to be consulted about what happens on these lands. The Supreme Court has ordered that governments and First Nations must consult and work together as equals. For instance, if the federal government decided to sell or re-develop any of their downtown Vancouver property, we'd expect to be consulted on that, in advance, in writing. The Musqueam and Squamish people also claim traditional territory in downtown Vancouver, so there are overlapping claims and that's also something that needs to be clarified through the treaty process."

The TWN stewardship fees (which are subject to increase) include a \$250 set-up fee; application fees ranging from \$200 to \$400 for Cultural Heritage Investigation Permits; and rates of \$50 to \$100 per hour to reimburse TWN staff members for time spent on any projects that require active involvement. Not paying the fees may mean facing court action, and some local politicians, such as Metro Vancouver's treaty representative Ralph Drew, know the TWN aren't kidding.

Drew, who is also the mayor of the village of Belcarra, is keenly aware of the impact these new actions by TWN will have on municipal governments. Drew says that everyone he's talked to in local municipal government is worried about the Stewardship Policy.

Now the TWN is taking the position that municipal governments are an extension of the Crown and the same laws must apply to them as well. This could have serious ramifications for Lower Mainland property owners. Drew says regional leaders were left stunned after hearing band representatives lay out their policy last November.

The policies could result in massive delays for construction projects, add a new layer of bureaucratic costs, and leave TWN with a veto power that trumps local and regional plans.

Drew fears that once other First Nations in the Lower Mainland hear about the policy, they may also start the same process. It's unknown what would happen if different First Nations who claim the same traditional territory took opposing positions on the merits of any particular project because only a formally negotiated treaty could answer these complicated questions.

Drew has first hand experience with what can occur if the TWN's requests for project involvement are ignored. A \$6-million project to build a new drinking water line under Burrard Inlet to serve Belcarra was held up for a year and that may be just the first of many projects that could be frozen by aboriginal interests if the First Nation relationship with municipalities is not clarified. "We spoke to the Federal government about the new stewardship policy and eventually they told us to deal with the Tsleil-Waututh directly," says Drew, who also chairs the Lower Mainland Treaty Advisory Committee (LMTAC).

Belcarra initially agreed to pay the \$250 application fee but the village was subsequently presented an estimate of \$34,000 for the total costs. TWN noted the fee was "not final and might be subject to further increases." In the end, the band charged only the original \$250. George-Wilson explains that amount was "for assisting the village with writing the proposal," but the warning shot was heard loud and clear in many city halls.

Are these actions simply a calculated tactic by the Tsleil-Waututh to get the ear of provincial and federal officials and speed up the slow-moving treaty process? TWN's George-Wilson says that's false.

She claims that Supreme Court of Canada's rulings require that First Nations, as well as various levels of government, have a legal responsibility to "consult and participate" with each other, but the TWN's main problem is that while certain levels of governments have budgets and staff to deal with processing infrastructure and development projects, First Nations like hers have no money at all.

"All the money we have spent over the past decade on lawyers for treaty negotiations is borrowed money," she says. "We need funding to pay our people for processing these development applications, not just on reserve but off reserve on our territory as well."

Exactly what type of property development would involve TWN's stewardship policy is unclear.

Tsleil-Waututh policy adviser Chris Knight told the Surrey Leader last November the policy is currently a "work in progress." The band is not interested in delaying building permits or the extension of somebody's deck but would want to study anything that disturbs the soil in areas of high cultural or archaeological importance. Knight said the band already receives 800 referrals a year from various project proponents but can't afford to properly analyze them with its existing funding. He said the new fees are to simply recover costs, not become a profit centre.

Some "agencies" have already begun to pay the stewardship fees, but Knight refused to identify these agencies or the types of projects involved. He claimed the fees are "something that is understood if not welcomed" by the private sector, which knows there are necessary costs associated with project approvals.

Peter Simpson, CEO of the Greater Vancouver Home Builders Association, says the private sector views the TWN's new stewardship policy with great concern. Simpson says any attempt to charge aboriginal permits and fees on home construction or renovations is "wrongheaded" and could result in serious impacts on private property. He considers the Belcarra situation a "test case" for the TWN to see what reaction will occur. "These fees are another layer of bureaucracy that nobody needs," he says. "I have a lot of empathy for the Tsleil-Waututh but this is the wrong way to go about getting attention. I am sure that homeowners all over the Lower Mainland are sure to be very concerned."

In an Oct. 15 letter to Victoria, LMTAC said the Tsleil-Waututh request "misrepresents" the province's policy of consulting First Nations. MLA George Abbott, aboriginal relations and reconciliation minister, replied in a written statement that while the Crown has an obligation to consult First Nations on decisions impacting aboriginal rights, "there is no legal authority" for a First Nation to charge a fee to an individual who is applying to government for a permit covering an activity on either Crown land or privately held land.

Pierre doesn't see it that way.

"I'm not a lawyer," says Treaty Commissioner Pierre, "but, generally speaking, I think the Supreme Court ruling gives the Tsleil-Waututh a leg to stand on."

Metro Vancouver officials also fear civic-owned lands, including regional parks, will ultimately be handed over to native bands to secure treaties or reconciliation agreements. The province last year

expropriated a 22-hectare portion of Metro-owned Pacific Spirit Regional Park and transferred it to the Musqueam band to settle a land dispute. Metro Vancouver is still challenging that transfer in court.

Coun. Ellen Woodsworth, Vancouver's LMTAC representative, says the matter of fees has been discussed at length both at the committee and at city council. Copies of the TWN stewardship policy have been distributed to all councillors for study. She says that according to the city's legal counsel, the city has no legal need to consult with the Tsleil-Waututh or any other First Nation.

"Municipalities are not at the treaty negotiation table, and we have no budgets or authority to deal with any of this," says Woodsworth. "Municipalities are now getting caught up between First Nations and the province and the federal government, but treaty negotiations are not our responsibility. There is a great deal of unfounded fear, whether by homeowners or at the municipal level, that First Nations issues such as this are going to affect them directly. People need to calm down and assess this rationally, but there is no doubt that we all have a responsibility to honour aboriginal land claims. It's obvious that if the provincial government doesn't sit down and solve these treaties, this kind of situation is exactly what will happen."

Not all B.C. bands are part of the treaty process. The Squamish First Nation has stopped negotiating, though it hasn't officially pulled out of the process. "It's not in our best interest to stay involved," chief Gibby Jacob says. "In the end, because of the cost of lawyers, the process becomes something of a net loss. We have our own plans for economic development."

One of those plans is a massive development underneath the south end of the Burrard Bridge, which the Courier reported on last week. Then there are the "side deals" outside of the formal treaty process that have added to uncertainty about how key Lower Mainland lands will be developed in the future. For instance, Richmond city council recently agreed to buy the Garden City lands for \$59 million from the Musqueam, who have also laid claim to vast tracts of the Lower Mainland. With such huge amounts of cash being offered by governments, why would the Musqueam, or any other First Nation offered such deals, ever sign a formal treaty?

"These side deals have nothing to do with the treaty process," says Pierre. "The Musqueam deal had to do with litigation, not negotiation. My position is that we still need certainty through treaties to guarantee economic development."

Pierre insists its time to get past political ploys and tactics, get inventive, move forward, and settle treaties for the economic benefit of everyone.

"The problem is that there are too many bureaucrats at the negotiating table who just want to keep discussions going forever," says Pierre. "If we can't abolish the federal Indian Act then we can simply

get things done through the provincial treaty process, so First Nations people can finally get control over their own affairs and start to develop their own economy. It's something that works for everybody. Whatever we have been doing to date is obviously not working, and personally I refuse to take no for an answer."

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