

British Columbia Treaty Commission Act

1995, c. 45

[Assented to December 15, 1995]

An Act respecting the establishment of the British Columbia Treaty Commission

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

SHORT TITLE

Short title 1. This Act may be cited as the *British Columbia Treaty Commission Act*.

INTERPRETATION

Definitions 2. In this Act,

"Agreement"
« *Accord* » "Agreement" means the British Columbia Treaty Commission Agreement executed among the Summit, Her Majesty in right of Canada and Her Majesty in right of British Columbia on September 21, 1992 and includes any amendments to it that may be made from time to time;

"Commission"
« *Commission* » "Commission" means the British Columbia Treaty Commission established as set out in section 4;

"first nation"
« *première nation* » "first nation" means an aboriginal governing body, however organized and established by aboriginal people within their traditional territory in British Columbia, that has been mandated by its constituents to enter into treaty negotiations on their behalf with Her Majesty in right of Canada and Her Majesty in right of British Columbia;

"Lieutenant Governor
in Council"
« *lieutenant-
gouverneur en
conseil* » "Lieutenant Governor in Council" means the Lieutenant Governor in Council of British Columbia;

"Minister"
« *ministre* » "Minister" means such member of the Queen's Privy Council for Canada as may be designated by the Governor in Council as the Minister for the purposes of this Act;

"principals"
« *signataires* » "principals" means Her Majesty in right of Canada, Her Majesty in right of British Columbia and the Summit;

"Summit"
« *Sommet* » "Summit" means the body that is established to represent the first nations in British Columbia that agree to participate in the process provided for in the Agreement to facilitate the negotiation of treaties among first nations, Her Majesty in right of Canada and Her Majesty in right of British Columbia.

PURPOSE OF ACT

Purpose of Act 3. The purpose of this Act is to establish the British Columbia Treaty Commission as undertaken in the Agreement.

ESTABLISHMENT OF COMMISSION

Commission jointly
established 4. (1) There is established, by the joint operation of this Act, an Act of the Legislature of British Columbia and a resolution of the Summit, the British Columbia Treaty Commission consisting of the Chief Commissioner and not more than four other commissioners.

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| Commission is provincial entity | (2) Subject to section 14, the Commission shall for all purposes be treated as having been established by or under an Act of the Legislature of British Columbia. |
| Not agent | (3) The Commission is not an agent of any of the principals. |

PURPOSE AND POWERS OF COMMISSION

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| Purpose of Commission | 5. (1) The purpose of the Commission is to facilitate, in British Columbia, the negotiation of treaties among one or more first nations, Her Majesty in right of Canada and Her Majesty in right of British Columbia. |
| Powers of the Commission | (2) The Commission has the capacity and powers of a natural person, including the power to sue and be sued, to enter into contracts and to acquire, hold and dispose of property for its purpose. |
| Duties | (3) In furthering its purpose, the Commission shall <ul style="list-style-type: none"> (a) assess the readiness, in accordance with the Agreement, of Her Majesty in right of Canada, Her Majesty in right of British Columbia and one or more first nations to begin negotiations; (b) allocate funds that have been provided to enable first nations to participate in negotiations, in accordance with criteria agreed to by the principals; (c) encourage timely negotiations; (d) where the parties to a negotiation all agree, assist them in obtaining dispute resolution services; (e) prepare and maintain a public record of the status of negotiations; and (f) perform any other duties that are consistent with the Agreement and this Act. |

COMMISSIONERS

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| Meaning of "prior commissioner" | 6. (1) In this section, "prior commissioner" means any person who, at any time before the coming into force of this Act, was a commissioner pursuant to an appointment made by resolution of the Summit, an order of the Governor in Council or an order of the Lieutenant Governor in Council or jointly by the Governor in Council, the Lieutenant Governor in Council and the Summit. |
| Prior commissioners continue | (2) The prior commissioners in office on the coming into force of this Act are confirmed and continue as commissioners on and after the date of the establishment of the Commission as though they had been appointed pursuant to subsection 7(1). |
| Rights and obligations | (3) The Commission has all the rights, property and interests in existence on the coming into force of this Act that were acquired by, and is, instead of any prior commissioner, responsible for all the debts, liabilities and obligations in existence on the coming into force of this Act that were incurred by, a prior commissioner in the performance of that person's duties as a commissioner. |
| Appointment of commissioners | 7. (1) One commissioner is to be appointed by order of the Governor in Council, one commissioner is to be appointed by order of the Lieutenant Governor in Council, two commissioners are to be appointed by resolution of the Summit and the Chief Commissioner is to be appointed jointly by the Governor in Council, the Lieutenant Governor in Council and the Summit. |
| Term of office | (2) The Chief Commissioner may be appointed for a term not exceeding three years and each of the other commissioners may be appointed for a term not exceeding two years. |
| Removal of Chief Commissioner | (3) The Chief Commissioner holds office during pleasure and may be removed by the Governor in Council, the Lieutenant Governor in Council and the Summit jointly. |
| Removal of other commissioners | (4) A commissioner other than the Chief Commissioner holds office during pleasure and may be removed by the person or body that appointed the commissioner. |
| Re-appointment | (5) A commissioner or former commissioner may be re-appointed. |
| Chief executive officer | 8. (1) The Chief Commissioner is the chief executive officer of the Commission and has supervision over and direction of the day to day operations of the Commission. |
| Absence or incapacity | (2) In the event of the absence or incapacity of the Chief Commissioner or if that office is vacant, the other commissioners may designate, by unanimous agreement, one of them to act as Chief Commissioner during the absence, incapacity or vacancy, and the commissioner so designated has and may exercise all of the powers and perform all of the duties and functions of the Chief Commissioner. |
| Terms and conditions of appointment | 9. After the principals have reached agreement, the remuneration and other terms and conditions of the appointment of the commissioners are to be fixed by order of the Governor in Council, order of the Lieutenant Governor in Council and resolution of the Summit. |

GENERAL PROVISIONS

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| Office | 10. The office of the Commission shall be in British Columbia. |
| Quorum | 11. (1) The Chief Commissioner, one commissioner appointed by the Governor in Council, one commissioner appointed by the Lieutenant Governor in Council and one commissioner appointed by the Summit constitute a quorum of the Commission. |
| Where acting Chief Commissioner | (2) For the purpose of determining a quorum, an acting Chief Commissioner shall be counted both as Chief Commissioner and as a commissioner appointed by the person or body that appointed the commissioner. |
| Chief Commissioner to preside at meetings | 12. (1) The Chief Commissioner shall preside at meetings of the Commission. |
| Decisions of the Commission | (2) Decisions of the Commission shall be made by agreement of at least one commissioner appointed by each of the Governor in Council, the Lieutenant Governor in Council and the Summit. |
| Decisions of the Summit | 13. Her Majesty in right of Canada is entitled to rely on resolutions of the Summit that are certified in the manner specified by the Summit as proof of the decisions of the Summit that are set out in the resolutions as certified. |
| Access to information | 14. The Commission is deemed to be a government institution as that term is defined in section 3 of the <i>Access to Information Act</i> and section 3 of the <i>Privacy Act</i> for the purposes of those Acts. |
| Protection of Commission and employees | 15. Her Majesty in right of Canada shall not make any civil claim against the Commission, any commissioner or any employee of or person retained by the Commission for anything done, omitted, reported or said in the course of the exercise or performance or purported exercise or performance of any power, duty or function under this Act, unless the claim arises from the wilful misconduct or gross negligence of the commissioner, employee or person retained. |
| Commissioners to be indemnified | 16. Her Majesty in right of Canada shall indemnify, in proportion to Her funding obligations as set out in the Agreement, the commissioners against all claims, damages and penalties that are made against or incurred by the commissioners in the exercise of their powers or performance of their duties and functions under this Act, except where the claims, damages or penalties arise from the commissioners' wilful misconduct or gross negligence. |

PERSONNEL

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| Personnel of Commission | 17. (1) The Commission may employ or retain persons who are necessary to perform the duties and functions of the Commission. |
| Presumption | (2) No person employed or retained pursuant to subsection (1) shall, by virtue of being so employed or retained, be considered to be employed in the federal public administration. 1995, c. 45, s. 17; 2003, c. 22, s. 224(E). |

BY-LAWS

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| By-laws | 18. The Commission may make by-laws consistent with this Act and the Agreement respecting the carrying out of the work of the Commission, the management of its internal affairs and the duties of its officers and employees and of the persons retained by it. |
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FINANCIAL PROVISIONS

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| Annual budget | 19. The Commission shall submit its budget for each financial year to the principals for review and approval before the deadline set by the principals. |
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AUDIT

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| Audit | 20. The accounts and financial transactions of the Commission shall be audited annually by a qualified independent auditor designated by the Commission, and a report of the audit shall be made to the Commission. |
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ANNUAL REPORT

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| Annual report | 21. (1) The Commission shall, as soon as possible but in any case within six months after the end of each financial year, submit to the principals a report of all activities under this Act for that financial year, including the financial statements and the auditor's report. |
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| Contents | (2) The report submitted pursuant to subsection (1) must contain information with respect to the progress of negotiations facilitated by the Commission, the other operations of the Commission and any other matter that the Commission deems appropriate. |
| Tabling in Parliament | (3) The Minister shall cause a copy of the report to be laid before each House of Parliament within the first thirty days that that House is sitting after the report is made. |

AGREEMENT

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| Principals may amend Agreement | 22. (1) Nothing in this Act shall be interpreted as preventing the principals from amending the Agreement from time to time. |
| Copies of Agreement | (2) The Commission shall keep a copy of the Agreement at its office and make it available for inspection by any person at any time during usual business hours. |

CONSEQUENTIAL AMENDMENTS

23. and 24. [Amendments]

COMING INTO FORCE

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| Coming into force | *25. This Act comes into force on a day to be fixed by order of the Governor in Council. |
| | [*] [Note: Act in force March 1, 1996, see SI/96-23.] |