

**Dennis MacKay, M.L.A. (Bulkley Valley–Stikine)**  
*Tsawwassen First Nation Final Agreement Act*  
**Debate in British Columbia Legislature**  
**October 18, 2007**

**D. MacKay:** First of all, before I get into the treaty that's before us in this House today, I would like to spend a couple of minutes and talk about the issue of free votes in this House.

We are elected — 79 of us — to represent our constituents in the ridings that we represent throughout this province. We have our views. None of us think exactly the same. We all have different views on different issues, but most of us want to make life better for the people of British Columbia, and that's what we do in this chamber. It doesn't mean we all think exactly the same on every issue.

As elected officials, I believe we have an obligation to express our views, whether it agrees with the government of the day or not. I'm in the House today representing a large riding called Bulkley Valley–Stikine. The views that I'm going to express in this chamber today about the Tsawwassen treaty represent the people from Bulkley Valley–Stikine — not everybody, but a large majority of the people who live in the riding that I represent, as well as my own personal views.

So when I'm going to talk today, I'm going to talk about I and me, but I actually mean we. I've had phone calls from around the province expressing concerns about treaties in British Columbia and what they're going to do for the future of our people here.

Now, I think it's a shame that the opposition members have not been afforded the right to stand up and express their views, whether they agree or disagree with their leader.

Interjections.

**D. MacKay:** Madam Speaker, the NDP will be given an opportunity to speak. There is one member who sits next to me, from Maple Ridge–Pitt Meadows, who has actually been kicked out of his caucus because....

**Deputy Speaker:** Member.

Interjection.

**Deputy Speaker:** Member, no personal attacks, and keep your comments to the bill.

[1620]

**D. MacKay:** Very good. Thank you, Madam Speaker.

My comments today are going to be a representation of many of my constituents from within the riding of Bulkley Valley–Stikine and from others around the province who have contacted me. I have the opportunity as a government member to vote with or speak for or against the treaty that's here today, and I will be speaking against and voting against the treaty for the reasons that I will lay out as I go through the next 30 minutes.

Before I do that, I should qualify where I'm coming from. For the past 46 years I have worked with native people in British Columbia in a variety of roles: first of all, for 28 years with the RCMP; nine years as a coroner; and for the past six and a half years as the MLA for Bulkley Valley–Stikine.

I understand the poverty that is out there and the hopelessness. I understand that. I've seen the poverty and the hopelessness of some of our aboriginal communities as they struggle and fall further behind mainstream Canadians.

The problem, as I see it, is the isolation of living on a reserve. They live on a reserve though it separates them from the rest of us in society. Stop and think for a moment what we're going to do as we go through this treaty process over and over again. We are going to continue to isolate our aboriginal community from the rest of us. Call it a reserve; call it treaty lands. It is still going to isolate them from the rest of us.

I don't know if that's what they want. It's going to do that for perpetuity, and I don't think I want that. I don't think I want my children to experience some of the challenges that we face today. I don't think we want or need that. We do not need that, and I don't think many aboriginal communities want that either.

Madam Speaker, I've got to go back to 2002. One of the reasons that attracted me to the B.C. Liberal Party years ago was the fact that we have free votes. Private members have free votes, unlike our opposition members.

In 2002 a province-wide referendum went out to the people of this province. Question 3 talked about how hunting and fishing and recreational opportunities on Crown land should be ensured for all British Columbians. The response we got back was that 93.14 percent supported that question.

Question 4: parks and protected areas should be maintained for the use and benefit of all British Columbians. Again, 94 percent of the people who responded to the referendum said that yes, they should be protected for everybody.

On question 6, which is the aboriginal self-government, we asked the question: should it have the characteristics of local government, with powers delegated from Canada and British Columbia, as provided in our constitution? The response was yes — 87.25 percent.

[H. Bloy in the chair.]

Question 8 dealt with taxes: should existing tax exemptions for aboriginal people be phased out? And 90.1 percent of the people of the province said that yes,

they should. Now, there's an interesting sidebar to that, and I'm going to discuss that in a moment.

You know, in this chamber today and yesterday and the day before, I've heard a number of people talk about the treaty. I agree that we have to do something to resolve the problem that has been left with us in this day and age from our forefathers. I've heard about the problems, and I understand that we've got to do something to resolve those problems to make life better for people like Kim Baird, who is up there with her children.

She has done a remarkable job. She has done a remarkable job for her children and her people. I as an elected official want to do the same thing for my children and my grandchildren who live in this province.

We're not going to do that going down this road, with some of the provisions that are contained within this treaty. I do support the treaty in some ways, but it's what is in the treaty that I have a problem with.

I wonder just how many people have actually taken time to read that document that took 14 years or 17 years to get us here today. How many people in this room have actually read it and understand it?

Well, I tried to go through it because it was of interest to me. It is a confusing, complicated document to go through. Just to give you some example of just how complex and complicated this rather lengthy document is, let me read one section of this. It comes from page 185, and the section number is 21.

I would ask you to listen carefully. I'm going to read it slowly. See if you can understand what this says, because I don't understand it and I've been reading it for weeks.

"If Tsawwassen First Nation imposes a tax within Tsawwassen lands and concludes a tax agreement for that purpose with Canada or British Columbia as contemplated in clause 4, clause section 17 does not apply to the extent that the Tsawwassen First Nation, Canada or British Columbia, as the case may be, imposes a tax that the particular taxation agreement specifies is applicable to Tsawwassen members and other Indians within Tsawwassen lands."

Do you want me to read that again? I don't think I can read it because I don't understand it, and I'm sure most....

**G. Coons:** Read it three more times.

**D. MacKay:** Three more times? I read it a hundred times, and I don't understand what they're saying there.

So I would have to ask and question just how many people understand why we're in this chamber today. That is to move a treaty through this House, and most of us don't understand what's in there. So that is really, really confusion.

I talked about the referendum and the tax exemptions that were there. On page 184 of the treaty it allows for another eight years with respect to transaction taxes. It also allows for another 12 years for personal property, which includes income earned.

So again, I tried to go through that rather lengthy document, and I had a bit of a problem. I went to the Treaty Commission update to help me understand what's in there as it relates to taxes.

It's rather interesting, and I would ask you to listen to this. This is one of the areas that I have a problem with. This is a quote from an update from the B.C. Treaty Commission, and it relates to the Tsawwassen treaty: "For example, the income tax of any person, first nation or non-first nation, who resides on treaty lands or treaty settlement lands will flow to the first nation government no matter where they earn their income. The first nation government will also receive 100 percent of the GST generated and 50 percent of the PST generated on treaty settlement lands."

So that means all the income tax for people who reside in those apartment complexes as you get off the ferry in Tsawwassen will be paying their income tax not to the federal government and not to the province. That money will be generated and left with the Tsawwassen First Nation.

Taxes are what pays for the social programs that we all enjoy in this country, including our aboriginal communities. So how does that work? That doesn't make things equal. I'm sure there's a lot of communities throughout the province of British Columbia that would love to get the income tax that all of us pay in the communities in which you live.

I think the community of Smithers, where I live.... They're lucky if they get \$3 million a year income from property tax to run the community — \$3 million. That's not very much money. But all this revenue is going to be going back to the Tsawwassen band with the exception of 7 percent.

I found out the 7 percent because I read another document that I got my hands on. It was a survival guide to the Tsawwassen First Nation final agreement. It was a document that was prepared, I'm assuming, by the band as they tried to explain to the Tsawwassen people about the complexity of this treaty that is before the House today.

There's a number of interesting things in there about the Indian status. It says, under Indian status: "First and foremost, you will still have your status card if you have one now." On social assistance, it says: "You will not notice any negative change on how your social assistance is administered." Under medical and dental, it says: "Under the new treaty, Tsawwassen members will still have medical and dental benefits as provided by Canada." So they're going to have the best of both worlds.

If the treaty is ratified, the elders over 60 will receive \$15,000 cash. Everybody else will get a thousand dollars cash. As you progress and get older, according to this document, once you hit the age of 60, you will be entitled to another cash settlement of \$15,000.

I would like to have had someone give me \$15,000 when I reached the age of 60, but that didn't happen.

Interjection.

**D. MacKay:** Yeah, I guess you turned yours down, didn't you?

There are a number of other things in this survival document. It talks about subsurface resources. It says the Tsawwassen First Nation will own subsurface resources such as gravel, sand, minerals and petroleum under Tsawwassen lands. Nobody else does that. None of us owns the resources underneath the homes that we bought and paid for and continue to pay taxes on. We don't own the subsurface rights. The ranchers that live in the area where I come from don't own the subsurface rights there. But we want to give these to the Tsawwassen First Nation.

On page 152 we talk about self-government provisions. On 152 they talk about the sale and the manufacture or consumption of liquor, and on page 153 of the treaty it gives the exclusive right to sell liquor and buy from the Liquor Distribution Branch. This creates a rather interesting question. Natives are exempt from taxes, and the sections on page 184 extend the non-payment of taxes for another eight years, as I said earlier.

So I have to ask the question: will our aboriginals living on Tsawwassen lands challenge the taxation on liquor, which we know makes up the majority of the cost of the liquor that we buy today? What do you think? They are exempt from taxes. I don't know the answer.

As I said, most new taxes paid by members, once they do start paying taxes, will be returned to the Tsawwassen community. There was an interesting comment within that survival guide from whoever wrote it that talks about none of us liking to pay taxes. I think I can say that I agree with that. None of us likes to pay taxes.

But when you read this document that was provided to help the aboriginal community understand the complexity of this rather extensive document, it says here that.... I'm just trying to find it. It talks about the fact that none of us likes to pay taxes. But it's nice to know that the money will be spent on medical and education for the people who live on the reserve or on the treaty lands.

Well, that is an interesting concept, because I don't know if people understand just exactly how much money we spend on health care in our province. We spend about \$13 billion a year. We spend all the revenue from the Forests Ministry, all the revenue from the natural gas royalties, all other taxation sources, social services tax, corporate income tax, personal income tax, other revenues, including MSP premiums and B.C. Lottery revenue. That's just to pay for health care in British Columbia.

The Tsawwassen band are going to be contributing 7 percent of their tax to the province and to the federal government. I don't think that will quite cover the cost of health care and dental, because they're going to continue to receive that from the federal government. They're going to continue to receive all the benefits that they have today, with some other add-ons to it.

Let me talk about what's happening in the workforce today in the area where I live. It just shows that we can't go down this road, because we're not going to be equal at the end of the day.

Two people working side by side on a reserve doing exactly the same job, one native, one non-native. The native Indian, because he's tax-exempt while he earns income on a reserve, takes home \$19,000 a year more than the person who is working beside him and is non-aboriginal. Is that fair? I guess if the money is earned on the lands that were set aside for the benefit of our native population.... I guess if he wants to work there and pay taxes, so be it. But that's the difference it makes — \$19,000.

I hear about these in my office, and I don't have the answer. But if we don't come to some means of being able to share in taxation and in the cost of delivering services to all of us, we're going to have some problems down the road.

Now, I also understand that the taxation exemptions that are provided for the Tsawwassen band are going to be extended to the Nisga'a peoples. With the large increase in our native population.... I don't think anybody will argue with the fact that we are seeing our aboriginal community grow at a phenomenal rate, and our population is actually declining.

If we continue to allow them to pull back on the taxation and spend it within their own treaty lands, who's going to be paying for the services down the road? I can't get my head around that to understand how that is going to bring us together when we still have this reserve system — call it treaty lands or reserve system — in place with special exemptions for aboriginal people who live there.

I guess this is probably why I'm speaking against this. This is me speaking now, not the people in the riding. As elected officials, we are expected to be accountable for public funds, and I want to just run through a couple of examples of areas where I think we are totally lacking in accountability when we deal with public funds.

B.C. Rail trust fund was a \$15 million fund that we provided to the aboriginal communities who lived along the B.C. Rail line. Well, the \$15 million is gone. I actually tried to follow up on one file. I found out where a cheque for \$180,000, I believe, had gone into a treaty office. That cheque was immediately distributed into three names.

One of the three people — I was able to track it down — put the cheque in his bank account. It didn't benefit the native people that that money was intended to benefit. Three people benefited from that — at least in the one case, because he put the cheque in his account. That was lack of accountability on somebody's part, but I haven't been able to get much response to it.

The \$100 million trust fund is another one. We don't know where that money is going to be spent, with the taxpayer's money. It's not FOIable. I hope it's well spent. I hope it does what it was intended to do, but I'm not going to be able to find out. The taxpayers won't know either.

We've tried a number of different projects to create some employment opportunities for the aboriginal community. A hemp farm in the Hazelton area was designated to create employment. It failed. A longhouse on Highway 16, near the intersection of Highway 37, has been under construction for a number of years. The sign that was put up to show what this thing was going to look like when was finished has actually fallen down now, because it's been under construction for so long that the paper is starting to blow in the wind. Another failed experiment.

The C GED sawmill at Kitwanga. They owe the province back taxes for stumpage. It's not operating today. There was no oversight. Another failed example.

A ski cabin. Crown land in the community of Smithers was provided to a native band to build a log cabin on it so that they could create some employment opportunities and sell the cabin. It never got finished. The Crown finally sold the property.

Accountability with public funds for education. Now, I've been to the Kispiox reserve, and I've seen the poverty there, the poor state of some of these homes and the poverty within the homes. I went there once and found out that the children of that school were going on a field trip, and I was excited for them. I thought: Great. They're going to come down to Vancouver, or they're going to go to Victoria. They didn't go to either of those places. A bunch of them went to Thailand on a school trip. This was a field trip with public funds. It could have been better spent building up some of the homes that these people were living in.

There's a guide territory in the northwest part of our province. It was identified by a man interested in opening up a guide territory. It was denied because it may be the site of a future land claim.

Placer claims in the small community of Atlin. A gentleman up there kept a placer claim in good standing for years, working the claim. He went up there one day, and there was a cabin built on it several years ago by the Taku River Tlingit. I was up there this past summer, and the insulation is blowing out of it now. It's full of beer cans. It was never finished. I don't blame the aboriginal community for this; I blame people within government, and I blame ourselves for that.

Whoever is handing out this money to create these employment opportunities.... That cabin was supposed to have been built for the elders for some site, but it was never finished. There are so many stories of waste of money where we have tried to make life better for the aboriginal community, and we've failed.

The federal budget for the Department of Indian Affairs is around \$7 billion. This may come as a surprise to our government members. I did some research, and I found out that our government has provided over \$700 million since 2001 to our aboriginal communities to try to make life better. Has it improved their lives in any way? I'll let you be the judge on that one.

The bill that we're going to be debating in this House is called Bill 40. It's ten pages long — ten pages — yet the document that it relates to took 14 years to get us

here. It's got 21 sections in it. I have to say, when I go through it, I have a bit of a problem tying this document back to the treaty itself, so I'm going to be interested as we get into the committee stage on this particular bill.

This treaty offers benefits to the Tsawwassen people that are not afforded other Canadians. We can't keep doing this, and this is one of the reasons why I'll be voting against the treaty.

Self-government and, in some cases, laws that would exceed federal-provincial authorities. Once it's constitutionalized within the treaty, we'll never be able to change it.

Hunting and fishing examples. We have a provincial law that gives all of us the right to hunt and fish in the province. What happens when we start providing allocation, when we start giving a percentage of the fish or wildlife, when we start including these within treaties?

Let me tell you what happened up in my part of the province, thanks to the Nisga'a treaty. The open season had to be cancelled this year because the moose are in such a dramatic decline. They're going to allow for a limited-entry hunt, and they're only going to allow for 70 animals to be taken.

Out of those 70 animals, Nisga'a will get 46. They're guaranteed a percentage of the numbers within their treaty, so they're going to be allowed to take 46 out of 70 animals. Well, the aboriginal people are not the only people who hunt to put food on the table for their families. I have a large number of people who are non-native, who live in my part of the province and who hunt to feed their families through the winters as well.

We have overlap issues up there with the Gitanmaax and the Gitanyow. You can be sure they're going to get their animals, as well, so it doesn't leave very much for everybody else.

Fishing is another one that's rather complicated. The allocation table in there for the Tsawwassen band is quite complex. After all, sockeye salmon are the most sought-after because of the value attached to that species.

Think about this for a moment — or longer, if you like. If every native band situated on the Fraser River and the bands on Vancouver Island and along the coast were allocated the same number as the Tsawwassen band, there would not be a public recreational or commercial fishery — period. End of fishing for everybody except natives. That's for the Fraser River sockeye run.

This treaty will give them a commercial priority over the rights of other Canadian citizens. This is a race-based fishery, and I cannot and will not support it.

This treaty also allows the trade and barter of fish, despite the Supreme Court of Canada's rejection of the trade and barter of salmon in two cases: *Regina v. Van der Peet* and *Regina v. Smokehouse*. The Supreme Court of Canada did protect food fishing rights, because these rights were an integral part of aboriginal societies, but

this treaty grants constitutional protection to a commercial activity that Canada's highest court held was unconnected with aboriginal societies prior to European contact.

There are overlap issues. We said as a government that we would not entertain treaties that had overlap issues. There are eight other bands that claim the same territory that the Tsawwassen band has within this treaty, and you can be sure there are going to be problems as we go down this road.

Section 49 states:

"If Canada or British Columbia enters into a treaty or a land claims agreement within the meaning of sections 25 and 35 of the Constitution Act, 1982 with any other aboriginal people and that treaty or land claims agreement adversely affects the Section 35 Rights of the Tsawwassen First Nation as set out in this agreement" — this is what has to happen — "Canada or British Columbia, as the case may be, will provide the Tsawwassen First Nation with additional or replacement rights or other appropriate remedies."

Eight other treaties will be coming into this chamber from those eight bands that also claim territorial rights to that property.

What have we learned from the past? We know that the reserve system has failed the people it was designed for. So what are we doing in treaties? Treaties are necessary to resolve this ongoing problem.

Will those in need benefit from this new treaty? Women and children on reserves are the most at risk, and I don't think they're going to benefit from this. I hope they do. I really hope they do, and I hope the treaties will carry on. But we've got to get rid of some of those provisions that I've just talked about. The treaties are going to be the final answer.

Let me close with this. We are all Canadians, all of us, and we should all live under the same laws, pay the same taxes and be governed the same way. We should have the same obligations and benefits and all contribute taxes to look after those less fortunate. We cannot and must not continue down this road that is race-based, in my view, and affords one group of people benefits and privileges that are there because of their race. It's wrong.

I will not support any legislation that attempts to keep this invisible wall between all of the people of this great province and country. I do not support this legislation for the reasons that I have explained and will be voting against it.