



Bill C-34

Tsawwassen Treaty

Notes for Speech at Second Reading

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Delta-Richmond East

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1. **Where I Stand**

On July 25th 2007, less than 200 Tsawwassen Indian Band members participated in their referendum on the terms of their Treaty with Canada and British Columbia. A majority of the band approved of the Treaty in a vote that was tainted by promises of \$15,000 cash payments, free trips and other enticements not permitted by law in any other jurisdiction in Canada.

None of the million or so non-band residents in the area the Treaty refers to as Tsawwassen Territory, an area stretching from the Gulf Islands to Langley and Maple Ridge, will have an opportunity to vote on the Treaty.

Equally disturbing, the terms of this agreement were negotiated behind closed doors with next to no meaningful consultation with those most impacted by the Treaty and significantly no formal direction from either the provincial Legislature or the federal Parliament.

There was no careful consideration of the terms of this agreement before passage by the B.C. Legislature.

In fact there will be no real debate in this House.

We will be setting a precedent for a new relationship between our long-standing elected governments and a new order of government created by the Treaty—all without any serious public discussion or Parliamentary debate.

Amazingly this Treaty doesn't create real opportunities for aboriginal people. It will simply transfer dependency from the federal government to the new band government but without any safeguards to ensure an equitable distribution of benefits and opportunities.

This Treaty will create a company town where the band government controls or owns virtually all of the jobs and resources. This Treaty bears little resemblance to the traditional free democratic governing systems by which we govern ourselves and under which a free enterprise economy allows us all to flourish.

Nowhere in this Treaty are there provisions for individual rights and initiative.

We will find out too late if the structures created by this Treaty will withstand the pressures of corruption, be resilient enough to provide opportunity and ensure the protection of political and civil rights all the while co-existing in the larger world where individualism, individual rights and a free enterprise economy are at the heart of our democracy.

Once ratified the Treaty settlement will have constitutional status and as such, will be virtually impossible to change. We will only be able to watch as trial and error exposes the failings of a collectivist model for economic and political rights embodied in this Treaty. We all know that such experiments have proved disastrous for the freedoms of people in other countries that have put collectivism ahead of individual rights and initiative.

Moreover, the lack of serious scrutiny and open public debate about this first-of-its-kind urban treaty—the Tsawwassen settlement—will mean that non-aboriginal people will never be able to ask the serious questions about the value of the trade-offs made to reach the settlement and their long-term costs to our way of life and the kind of country we leave our children.

We will not have had the opportunity to consider the disenfranchising of the 500 or more non-Tsawwassen living on the former reserve lands now to be governed by the new Tsawwassen government, a government in which they cannot fully participate. These non-aboriginal residents on the reserve lands will no longer have the

opportunity to vote for those to whom they pay their municipal taxes.

We won't have had the opportunity to explore the impact on the rights of the million or so non-Tsawwassen band members living in the area designated by the Treaty as Tsawwassen Territory.

We won't have had the opportunity to consider the overlapping claims from other bands to the area that now forms the Tsawwassen Territory.

We won't have had the opportunity to consider the impact on the Fraser River fishery as this and future treaties largely exclude all persons without Treaty rights.

We will not have had the opportunity to consider whether the loss of farmland and wildlife feeding areas will be a tipping point leading to further destruction of farmland and wildlife.

We will not have had the opportunity to consider if the Treaty was more about providing an easy way to expand the Vancouver port with its road and rail corridor than providing a just and final settlement of aboriginal claims.

These are some of the fundamental questions that need answers now—questions which our children and grandchildren may answer with some regret generations from now and may question where we stood when the mistakes were made.

Some may be surprised to know that as the Member of Parliament representing the area most impacted by the Treaty that my input was not sought when the treaty was being negotiated nor has any effort been made to convince me of the worth of the final agreement.

To vote for this Treaty would be to do a disservice to my constituents both aboriginal and non-aboriginal, a disservice

to the people of my province and my country. I will not do that.

2. **Overview**

While the Treaty allocates 1,772 acres to the Tsawwassen Indian Band the Bands rights under the Treaty extend over the whole of their claimed territory, defined in the Treaty as the Tsawwassen Territory.

The Tsawwassen Territory covers some 1,079 square miles and is home to nearly 2 million people.

The Territory covers all or parts of 16 B.C. municipalities stretching from, as I said, the Gulf Islands to Langley and Maple Ridge including South Vancouver and Pitt Lake

In this vast territory the Band government will have considerable say on matters thought the exclusive purview of municipal, provincial or federal governments.

3. **Final Settlement or Never Ending Deadlock**

The proposed Treaty establishes a recipe for deadlock and confrontation throughout the 16 municipalities that form the Tsawwassen Territory.

Decisions cannot be taken or work initiated on a wide range of federal, provincial and municipal matters until the consultation mandated by the Treaty is completed. There are about 30 different places in the treaty where consultation is necessary.

In the treaty "consult" means more than merely asking somebody's opinion. Its meaning and use in the context of a constitutionally protected Tsawwassen treaty borders on "asking the band's permission" and can conceivably be used as a stick to make demands on other matters thought long-settled.

In the Memorandum of Understanding signed with Vancouver Port Authority the Band agreed not to raise issues that would derail the environmental assessment of the container port expansion at Roberts Bank.

In return the Band got a commitment from the Vancouver Port Authority to fund a container handling facility on ALR protected farmland and other concessions.

With the power to require consultation, the Band acquires the power to make demands and interfere in matters in which it has no real interest. It is not inconceivable that it might want to block the expansion of a National Park or a highway simply as a bargaining chip to get other governments to concede on some matter of importance to the Band.

As will be demonstrated this is a Band government that is controlled in part by members living elsewhere who have only a tenuous connection with Reserve residents: A Band government that will conceivably be able to block developments in Delta, Richmond, Maple Ridge or even the Gulf Islands.

4. **Beneficiaries**

Who are beneficiaries of the treaty?

Well Mr. Speaker, the beneficiaries are the Band members live in California, Washington state and Oregon in the U.S. and in Manitoba and Ontario and elsewhere in B.C.

For many their only connection to the Tsawwassen Band is that one of their grandparents may have been a Reserve resident.

No one has satisfactorily explained why Parliament should accord in perpetuity untold millions of dollars and special rights and privileges to persons who are not Canadian citizens, who have no appreciable connection with the Tsawwassen Reserve or its longtime residents and whose children and their children will in future generations have even less connection.

Payments to these new Band members will mortgage the future of longtime Reserve residents who Canadians assume are the primary beneficiaries of this Tsawwassen Treaty.

Many longtime Reserve residents will actually be in a worse position as a result of the treaty.

Bertha Williams' family has lived on the Tsawwassen Reserve for generations.

In a recent speech, Bertha stated:

"A lot of our elders ... are new to our community... They lost their status years ago. They went off got married, they didn't want to be labeled as native...

These elders ... don't know our history... don't know our culture.

I have never surrendered my birthright... I have never left my homeland...

[But] we are outnumbered... The majority of those who are voting members live off the Reserve.

These are people that live in Alabama, Los Angeles ... across the Prairies.... They are Band members but they have no intention of ever living on the reserve. Yet they are voting on our business.

A lot of them have never even visited the Reserve. It is just ludicrous how they have so much to say on our livelihood... I see it as the demise of my people."

Let me take a moment to explain why Bertha Williams is upset.

In 1982 the band undertook to develop part of the Reserve known as Stahaken on a 99 year lease basis. In 1982 the Band had 62 members, 43 living on Reserve and 19 off-Reserve.

In 1985 the Band distributed the proceeds from the development to existing Band members. They each received some \$23,000. There were 69 members, 50 living on Reserve and 19 off.

In June of 1985 Parliament passed Bill c-31.

By 1998 membership had swelled, leaving the original band members in a minority.

In 2003 it was decided that 116 new band members were entitled to the same \$23,000 payment the original band members had received for the Stahaken project plus \$15,000 in interest.

The cost was \$3.5 million.

The new members, now a majority, had no hesitation in voting themselves \$3.5 million even though it indebted and mortgaged the future of longtime members like Bertha Williams.

From that commitment to pay \$3.5 million to the so-called Stahaken Claimants came pressure to develop Reserve land for commercial purposes including port-related developments.

The main proponents of the Treaty and related port developments have been the Stahaken claimants.

And what about Bertha Williams?

Bertha has recently been advised that the property that her family has occupied for generations is likely to be used for port development, apparently to pay off those Stahaken Claimants and those Band members living in California and elsewhere whose first concerns are not

about how this Treaty will maintain Tsawwassen traditions but how much money it will put in their pockets now and in future years.

5. **Vancouver Port Deal & Industrialization of Reserve**

Prior to the initialing of the treaty in December 2006, the Vancouver Port Authority inked a deal with the Band leadership that could only be seen as an enticement to OK the treaty for the new non-reserve resident members of the band.

In exchange for the long term use of the reserve lands for a rail marshalling yard, container storage and warehousing, the band would receive \$47 million.

The affront to long term residents like Bertha Williams is that at the best their homes would now be immediately adjacent to up to 500 acres of a busy 24/7 international port, a rail marshalling yard and all the disturbance that would entail.

If you were Bertha, you would see the property you live on and that your family has owned, since the reserve was created more than a century ago expropriated for port development.

So who really gains from the Port deal?

- Not the farmers who lost the best farmland in the Fraser delta,
- Not the hundreds of thousands of migratory birds who depend on the land for forage.

The only real winners are the new band members who live in Los Angeles or elsewhere, whose only connection the Tsawwassen reserve is that they may have had a grandparent who was a band member.

For them the cheques roll in and nothing else matters.

We are now being asked to bless this environmental and human tragedy.

6. Taxes: Who pays & who gets to keep the money?

Canadians have repeatedly been told that after the Tsawwassen treaty is signed, Tsawwassen band members will pay taxes to our federal and provincial governments just like they do.

According to the *Department of Finance* and the *BC Treaty Commission*, the answer is no. Tsawwassen band members will not start paying taxes to the federal government like the rest of us. Nor was it ever intended they would do so.

When Tsawwassen band members eventually pay income taxes the money will be paid to the Tsawwassen band government, not to the federal government.

The B.C. Treaty Commission states:

"The income tax of any person (First Nation or non-First Nation) who resides on 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% of the GST generated and 50% of the PST generated on Treaty Settlement Lands. And all First Nation government-run businesses will be exempt from income tax on profits earned on treaty lands."

When the 500 or more "non-citizens" who reside on the Reserve pay their income taxes, the money will go to the Tsawwassen band government, not to the federal government.

The Department of Finance, in a closed-door briefing to band members, advised them that:

"Canada is not seeking to gain tax revenues as a result of the treaty."

Furthermore, according to the Department of Finance most of the Band's tax revenue will come not from band members but from "non-citizens" living on the Reserve or members of the public who might shop at stores that locate on the reserve. Finance estimates that the Band

will collect "3 to 4 times" more from the non-citizens than its own Band members.

Canadians have been misled.

The Tsawwassen treaty is not about ensuring band members start paying taxes like other Canadians.

The taxation provisions of the treaty are about the band government getting its hands on income tax and GST & PST revenue, most of it paid by non-band members.

7. **Majority cannot vote or participate in Government**

The *Tsawwassen Final Agreement* removes the right to vote for the vast majority of residents on the Tsawwassen Indian Reserve.

There are approximately 160 registered band members living on the Reserve and about 500 persons who are not band members.

For local government purposes, the non-band members have been considered residents of Delta and voted and paid their taxes there.

These non-Tsawwassen Band members or non-citizens as they are called by the Department of Finance and the federal treaty negotiator will now pay taxes to the Tsawwassen Band even though they have lost their right to vote and effectively participate in their local government.

The Department of Indian Affairs in a briefing document prepared for Members of Parliament states that

“The power to tax is a basic feature of governments. ... [I]t also serves as a means of the government’s accountability.”

Unless that is, you are a non-citizen living on Tsawwassen Lands.

There is no democratic accountability here for the majority of Tsawwassen reserve residents.

How is it that this democratically elected House would even consider ratifying a treaty that would strip the overwhelming majority of the residents of their full rights of citizenship?

8. Fishery – Will there be any fish left?

Under the Tsawwassen Treaty the Tsawwassen Band is the recipient of two allocations of sockeye salmon –

- A Trade and Barter allocation of roughly 13,000 salmon per year which is more than double the food allocation in 2006 and
- A commercial allocation of 0.78 % of the Total Allowable Catch which averages out to approximately 30,000 fish per year.

The combined allocation of 43,000 sockeye per year divided amongst the 273 Band members provides approximately 157 sockeye per person per year.

In 1993 the Department of Fisheries and Indian Affairs undertook a study for treaty negotiators that assessed the “coast-wide implications” of a Nisga’a Treaty allocation of 26 sockeye salmon per person.

The study concluded that an allocation of 26 salmon per person would utilize about 30% of the available sockeye in BC.

But the allocation in the Tsawwassen Treaty is about 157 sockeye per person or about 6 times greater than in the Nisga’a allocation.

The math is really pretty simple.

It follows that an allocation of 157 sockeye per person would take about 180% of the available sockeye.

Thus based upon the government’s own study the Tsawwassen Treaty if replicated coast wide would mean the entire Fraser salmon fishery is insufficient to satisfy the Indian claims.

And remember the Supreme Court of Canada’s decisions in *Sparrow* and *Van der Peet* that clearly rejected the Trade and Barter of food fish and any claim of any aboriginal right to sell salmon.

9. Powers Prevail Over Federal and Provincial Powers

The Treaty gives the Tsawwassen Government Power to make laws that prevail over federal or provincial law (in at least 28 areas including):

- The transfer of property.
- Licensing of Band Members and Vessels to fish in the Trade and Barter fishery,
- Licensing of members to hunt and trade and barter wildlife and migratory birds.
- Licensing of hunting and fishing in National Parks and National Marine Conservation Areas.
- Child Protection Services both for Band and non-band children living on the reserve.
- Kindergarten to grade 12 education, including home schooling for all children.

10. CHARTER PROTECTION LACKING

Does the Charter of Rights and Freedoms Protect Tsawwassen residents with regard to the actions of the Tsawwassen Government?

No. The Reserve is largely a Charter free-zone.

The *Final Agreement* states that:

“This Agreement is a treaty and a land claims agreement within the meaning of sections 25 and 35 of the Constitution Act, 1982”

The Tsawwassen government argued before the Supreme Court of Canada in Kapp in December 2007 that section 25 should be given a wide reading.

By bringing the Treaty within ambit of the *notwithstanding provisions* of section 25 of the Charter, four classes of persons are potentially impacted with regard to actions of the Tsawwassen Band’s government:

- (i) band members,
- (ii) non band members living on the reserve,
- (iii) visitors to the reserve, and
- (iv) anyone in the Tsawwassen Territory impacted by the actions of the Tsawwassen Band government.

11. **Competing claims to the Tsawwassen Territory?**

According to the Minister of Indian Affairs, the B.C. Treaty Commission has accepted **8** claims to the Tsawwassen Territory.

In addition there are **2** non-treaty claimants.

Clause 49 of Chapter 2 provides that **if the government enters into another treaty that adversely affects the treaty rights of the Tsawwassen Band the government is required to provide additional or replacement rights or other appropriate remedies.**

12. CONSPIRACY OF SILENCE

Mr. Speaker, the Final Agreement is a 2 volume document of over 460 pages.

As well there are seven side agreements.

This House should be carefully examining the implications of this Final Agreement now before it is enshrined in constitutional cement to ensure that it does not undermine our ability to govern ourselves, undermine the cohesion necessary for healthy communities or undermines our ability to live together in peace.

13. **Conclusion**

Let the record show Mr. Speaker, the Real Beneficiaries of the Treaty are the new band members, many of whom live outside of Canada, and the Vancouver Port Authority who was able to get port expansion without environmental objections from the Band.

Mr. Speaker, this treaty negatively impacts lifelong band members and reserve residents like Bertha Williams.

It will mean the destruction of valuable farmland, and the loss of habitat for migratory birds.

Its legacy will be a more segregated and divided nation.

To vote for this Treaty would be to do a disservice to my constituents both aboriginal and non-aboriginal and a disservice to the people of my province and my country. I will not do that.