

**ACHIEVING CERTAINTY IN TREATY NEGOTIATIONS:  
A POLICY PAPER OF THE UNION OF BC MUNICIPALITIES  
OCTOBER 1995**

**PART 1 INTRODUCTION**

**1. Certainty is a primary UBCM Interest**

The 1994 Annual Convention of the Union of BC Municipalities adopted an initial definition of the municipal interest in treaty negotiations<sup>1</sup>. It set out the general and the specific interests of local government. First among the "general" interests was "certainty and finality". The UBCM policy says:

*CERTAINTY AND FINALITY – Local governments want treaty settlements to be certain and final, meaning that the final outcome of treaty negotiations will be a completion of the process of addressing outstanding First Nations claims and that, in relation to the question of aboriginal right and title, the treaties will bring finality and certainty to the greatest extent possible, recognizing that "self-government" for aboriginals may be a dynamic, evolving form of government as it is for local governments. This will enable all citizens of British Columbia to move toward economic, social and community sustainability.*

The central issue is how to provide legal language in a treaty that will ensure certainty and finality.

**2. UBCM Position Founded on Basic Principles and Criteria for Success**

In 1991 the UBCM adopted its basic approach to treaty negotiations which included as the first two recommendations a set of principles and criteria for success of these negotiations:

- *Recommendation #1*  
*The basic principles for land claims negotiation process are that it must be fair, open, principled and community-based.*
- *Recommendation #2*  
*The basic criteria for success in land claims negotiations are that it must be democratic, efficient and acceptable.*

The explanatory text accompanying these recommendations is set out in Appendix A.

It is timely to restate our comments on the first recommendation. What we said then remains true today.

To be credible and successful the process must conform to these basic principles:

- *it must be **fair**, that is it must be equitable, impartial, free from prejudice and all parties must have their rights respected;*

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<sup>1</sup> Local Government and Aboriginal Treaty Negotiations: Defining the Municipal Interest, A Policy Paper of the Union of BC Municipalities

- it must be **open**, that is all parties must be heard, have complete information about the potential impacts on their interests and have equal access to the decision-making process;
- it must be **principled**, that is it must focus on interests, not positions, and place a high value on the integrity of the relationship among the parties both during and after the negotiations;
- it must be **community-based**, that is it must be situated so that it becomes real and accessible for the people it directly affects, the native people and their neighbours at the community level.

We went on to state in the second recommendation three criteria for successful negotiations: democratic, efficient, and acceptable.

### **3. Federal Fact Finder to review current federal approach to certainty**

The federal government has considerable experience in dealing with the issues of certainty through its participation in domestic and international treaties. The government has however appointed a Fact Finder to identify the objectives and interests of participants and to review the current approach and alternatives in response to the concerns of aboriginal peoples about the present approach. The House of Commons Standing Committee on Aboriginal Affairs and North Development also expressed concern. A commitment not to require blanket extinguishment of Aboriginal rights is part of the *Liberal Plan for Canada*. The Fact Finder has invited the views of others and this submission is a BC local government perspective on the issue.

### **4. The Importance to British Columbia**

Treaty making with aboriginal peoples today is dominated by the BC situation. At present there are 42 Statements of Intent by First Nations organizations within BC expressing their interest to “treat” with the federal and provincial governments under the BC Treaty Commission process. In addition, there are a significant number of bands or tribal councils that have yet to indicate if and how they wish to resolve outstanding aboriginal rights questions.

Elsewhere in Canada the federal government has concluded "modern-day" treaties in many northern areas. Other areas of Canada were “treated” in the late 1880s.

It is well known that with the exception of the "Douglas Treaties" on Vancouver Island and Treaty 8 in northern BC, this province is the last major area in Canada to enter into the treaty making process.

Although the settlement of claims may be seen as an opportunity to resolve outstanding issues on aboriginal rights, the views of all British Columbians must be considered very carefully in any review of certainty. In particular, any departure from previous treaty making policy which may impede resource development and effective local government should not be considered unless policy is developed by those that are primarily affected and not just by those who live in treated areas. British Columbians

should not be obliged to live with agreements that impose less certainty than the treaties previously signed.

## 5. Provincial Relevance

We are aware that the Provincial Government is yet to formulate a formal position on the means to achieve certainty in treaties. This submission is as much a response to the Federal Fact Finder as a signal to the provincial government of the views of B.C. local government on this critical issue.

## PART 2 - TREATY CONTENT AND PURPOSE

To understand the significance of certainty in treaty-making, it is necessary to recognize what treaties are and why they are used.

### 1. What is a Treaty?

A treaty is more than a political accord to reduce conflict between states, although they are often useful for this purpose. International law, which is also the root and source of aboriginal rights, gives to treaties the status of a legally binding contract. Treaty-making in British Columbia should strive for nothing less than the certainty required of treaties at the international level, so that each party can be confident in its rights and obligations insofar as they are governed by the treaty.

The nature of a treaty is described by Alan Gotlieb in *Canadian Treaty-Making* (1968) as follows:

*"By binding countries to each other, treaties constitute to a large extent the formal structure of our international legal order and provide a continuing framework within which states deal with other states. By creating legal obligations, treaties allow the countries which are bound by them to rely on the fact that each will behave, in an international context, in the specific or general manner in which it has agreed to behave."*

Treaties are an exchange and recognition of rights and obligations. There must be a legal order that arises out of a treaty and the treaty must create legal obligations to ensure that each party will behave in the manner in which it has agreed to behave.

### 2. Why treaties in British Columbia?

If treaties are binding agreements between sovereign states, why are we negotiating treaties with First Nations? The answer lies in the fact that aboriginal rights arise from international law and, according to international law, these rights may only be dealt with in a conclusive way by conquest, express legislation or formal cession in a treaty.

A mutually acceptable treaty between aboriginal people and the Crown is preferable to conquest or unilateral legislated extinguishment of rights. However, if a treaty is the preferred option to determine rights conclusively, where this certainty is not desired or obtained there is also no need to enter into a formal treaty. It is important to remember that treaties receive constitutional protection under section 35 of the Constitution Act, 1982, while other agreements do not.

Aboriginal rights in British Columbia generate a level of uncertainty that has economic consequences for all. This uncertainty arises because the courts have given little guidance to clarify the scope and content of aboriginal rights. What the courts define as aboriginal rights are the activities and uses of land that aboriginal people regarded as integral to their distinctive culture and society at the time that British sovereignty was asserted in the province. These rights vary from place to place and group to group and can never be defined with full certainty without a judicial interpretation of each right in every possible circumstance.

We look to treaties to formally recognize powers and jurisdiction without the need to resort to expensive and lengthy litigation over each aboriginal right (and without the risk, on both sides, of an adverse judicial decision). This makes treaty negotiations similar to the settlement of a lawsuit - each party may disagree on the strength of the other's rights, but together they can find middle ground for a livable compromise. Neither party to the lawsuit achieves full satisfaction, but both will be spared the expense and uncertainty of a trial if the plaintiff abandons his or her claim and the defendant pays the plaintiff to do so.

The policy options to address the uncertainty of aboriginal rights are limited. Governments may litigate every aboriginal right, ignore the issue and incur the cost of uncertainty, or settle the matter in fair, final and binding treaties. Governments have selected the third option. If the treaty-making process is completed without achieving certainty of rights, Canada and B.C. will have failed to address the most important issue, and will not have fulfilled the very reason for settling treaties in the Province.

### **PART 3 - EVALUATING THE OPTIONS**

If governments agree that certainty is a critical outcome of treaty negotiations, the question becomes how much "certainty" is enough?

The answer lies in the fact that under treaties First Nations will receive recognized rights to land and resources and financial compensation, while Canada and B.C. will obtain the benefits of the level of certainty they can negotiate into the agreement. Governments must be prepared to compensate for the level of certainty they require. A settlement which provides little certainty should have an economic cost to the First Nation, just as lack of certainty creates an economic cost for the federal, provincial and local governments. Where a high degree of certainty is obtained, compensation at this level of certainty should reflect the higher economic value of that settlement for all

Canadians and B.C. In other words, less certainty should lead to smaller settlements or extended settlement periods, and vice versa.

The report of the British Columbia Claims Task Force makes particular reference to negotiating certainty concerning the ownership of and jurisdiction over land and resources and we support this concern. As part of a treaty settlement it should not be necessary for First Nations to surrender other aboriginal rights respecting matters such as their culture and unique society. However, we are concerned that post-treaty relationships should be sufficiently certain in the area of jurisdiction and, in particular, where they relate to powers within traditionally under local government jurisdiction. We understand that new relationships may be established on a national scale in other negotiations but, to the extent that jurisdictional powers are recognized in any treaties, there must be certainty of the scope of these powers within the current Canadian legal framework.

The background paper prepared by the federal government concerning achievement of certainty in comprehensive land claim settlements identifies current federal policy and a number of models to achieve certainty in treaty settlements. None of these models are perfect for all parties and the Fact Finder has made it clear that these are Federal Government models and not the only approach to certainty.

Nevertheless these models are a useful point of departure for a discussion of certainty and provide a framework for us to advise the Fact Finder of our views concerning this issue.

### **Model #1 - Surrender**

The first model follows the pre-1986 approach to land claim settlements and requires a cession, release and surrender of aboriginal rights to lands and resources and recognition of specified treaty rights. We support the continued inclusion of this model in the range of options. It meets the international law test to deal with aboriginal rights in a certain, conclusive and final way and is consistent with past settlements in Canada and elsewhere in the common law world.

As a starting point for negotiations, all parties should recognize that any less certainty should lead to a less satisfactory outcome from Canada's perspective and a correspondingly smaller settlement. We note that the cession in Model #1 applies only to land and resource rights. Land and resource rights are important, but we see that self-governing powers will be a critical area of emerging aboriginal rights, with the potential to significantly impact on a municipality's ability to govern all residents for the benefit of our communities. To the extent any treaty expressly recognizes or affirms self-governing jurisdiction we submit that careful consideration be given to language that will provide certainty to all governments who are charged with the responsibility of governing the affected community.

We are not concerned so much here with the substance of the relationship between First Nations and local government as we are concerned that the relationship be clearly addressed and not left for post-treaty speculation. Clarity of terms and jurisdiction will be critical to ensuring smooth relations. If certainty is not achieved, self-governance jurisdiction should be addressed in a parallel accord that does not have the status of a constitutionally entrenched treaty.

### **Model #2 - Surrender of Only Certain Rights**

The model that has been offered in post-1986 settlements provides less certainty by recognizing that aboriginal rights consistent with the agreement will continue. In most respects this would be a satisfactory settlement, particularly for cultural and similar rights. However, aboriginal rights of self-government are emerging rights which would also be preserved and could have a significant impact on local governments without being inconsistent with the applicable treaty. Our comments concerning self-governing rights noted above also apply to Model #2.

### **Model #3 - Alternative Wording**

Under this model the words "cede", "release" and "surrender" would be replaced with alternative language more acceptable to First Nations. The real question is whether language is the only problem or do First Nations object to any surrender of their rights as a matter of principle? If so, they are bringing little certainty to the negotiating table and there would not seem to be good reason to enter into constitutionally protected treaties.

If it is simply a matter of finding alternative language, there remains the legal risk that by choosing other language a court could decide something less than a full cession of rights was intended by the parties. If imprecise language is substituted for the usual terms, there is also the risk that a court may not be able to determine the intent of the parties from the words in the document or, worse, decide whether there was a "meeting of the minds" on the issue of post-treaty rights. Notwithstanding these risks, we think that alternative language could be used so long as the parties do not intend an alternative and uncertain result, in which case the monetary and other compensation should reflect the degree of certainty obtained in the treaty.

### **Model #4 - Limitation of Surrender**

Under this model the treaty would limit the surrender or release of rights to only those rights which are not listed in the agreement. We think this model would be unduly slow and expensive as it requires the negotiators to agree upon a complete a list of aboriginal rights that would continue under the treaty. There could be prolonged "hair splitting" over the choice of words to describe each individual right, with Canada and B.C. seeking specific and narrow language while the First Nation would likely seek broad general principles.

Two further problems arise with model #4. First, it is not known whether the surrender of all other non-listed rights would be sufficiently express to meet the legal test for a surrender of aboriginal rights, particularly with respect to new rights that were not known or recognized at the time the list is drafted for the treaty. Second, it would likely still be necessary to litigate the interpretation of each right asserted by a First Nation to determine whether it is on or off the treaty list, which is not that different from the current uncertain legal context.

### **Model #5 - Agreement to Not Exercise Rights**

The fifth model eliminates the surrender of rights from the treaty and substitutes a covenant by the First Nation to not exercise aboriginal rights except the rights which are set forth in the treaty.

At first glance this model seems to provide the same certainty as a surrender but without the need for a formal release of rights. However, the fundamental legal difference is that all aboriginal rights, defined or undefined, will continue to exist. The First Nation has simply agreed not to exercise those rights for the term of the agreement. There is no exchange of rights as is ordinarily found in a treaty.

This covenant generates significant uncertainty at several levels. First, we will not know what the total "basket" of rights will look like after the treaty. Second, we will not be certain who will be bound by the covenant. Aboriginal rights are constitutionally protected collective rights that are exercised by individuals within the group. Individuals or family clans may argue that they are not bound by the covenant and if they are successful they will enjoy all aboriginal rights as if the treaty were never signed. The problem becomes more acute in respect of future generations who may argue they were never bound by their predecessors to comply with the covenant. In contrast, an express cession or surrender properly given by the group will bind the group, including future generations. A further problem is that the covenant will be made only with governments, which means that third parties, including local governments, must rely upon the Crown's willingness to enforce the covenant. We submit model #5 is unsuitable in the treaty-making context and produces the least certainty for all parties to the negotiations.

### **Model #6 - Definition of all Rights**

The sixth model seeks to exhaustively define rights in the agreement, whether they be the rights of the First Nation or the rights of all governments. Again, we submit this would lead to lengthy and costly negotiations.

There is a significant benefit to all parties by specifically defining First Nation rights (e.g. greater certainty in the commercial field for financing, licensing etc.). However, we do not believe it would be a good use of negotiation resources to develop such a list individually for each First Nation. Again, without a recognition that rights have been

ceded or surrendered, there will be no certainty that other rights, new or otherwise, may be exercised by the First Nation membership.

### **Model #7 - Rolling Surrender**

The seventh model limits the cession or surrender to lands held by third parties or occupied Crown lands. All other Crown lands would remain unaffected. This model is not an independent option but is intended to provide additional certainty when used in conjunction with models 4 or 5.

We do not think model 7 is acceptable for the same reasons we believe models 4 and 5 do not provide sufficient certainty for all British Columbians. If generalized aboriginal rights are retained over unoccupied Crown land, the Province would be unable to deal with this land without addressing these rights each time it entered into a lease, license, right of way, etc. The Province would be required, in effect, to "buy back" Crown land one piece at a time.

### **Conclusion**

We submit that models #1 and #2 are the most acceptable options for treaty settlements in British Columbia. Model #3 is acceptable if there is no objection on the basic principle of bringing rights to the "table" in exchange for a treaty settlement. Model #4 is less attractive due to high negotiating costs and the risk that it merely substitutes uncertain words for uncertain rights. We do not suggest that any of the other models be seriously pursued, unless the First Nation is prepared to accept a more modest settlement in recognition of the inherent uncertainty generated by these options.

Although we do not have other models to propose, and urge that options #1 or #2 be retained, we suggest that the choice of model for treaty certainty be guided by the following principles:

### **Principles to Guide Certainty Decisions**

1. Treaties are intended to produce certainty, and should not be made where uncertainty remains. Where a First Nation is not prepared to bring certainty to the table, negotiators should consider other forms of agreement that are not constitutionally protected. Governments should not approach the negotiating table until there is a common understanding concerning the level of certainty that will be achieved when negotiations are concluded. Where certainty affects the legislative authority of local governments, local governments should participate in the process of establishing the level of certainty required. This process should occur prior to or during negotiations on a framework agreement.
2. For topics where certainty is not achievable or dynamic rights are evolving, governments should consider using accords that are not constitutionally protected.

3. Governments should be prepared to compensate First Nations for greater certainty and to offer less compensation where certainty is not obtained. This requires that the **certainty provisions be negotiated prior to** settlement of other issues, so that the total settlement reflects the degree of certainty provided by the treaty.
4. Treaty settlements should contemplate compensation for rights over an extended period of time, so that the parties can evaluate treaty implementation and how post-treaty relationships will develop before compensation is rendered and settlement lands are granted.
5. Clarity of language throughout the treaty is an excellent (and relatively inexpensive) means of obtaining certainty and should be pursued at every opportunity for the benefit of all parties.
6. Treaties must allow for dispute resolution provisions to address certainty issues that may arise after settlement legislation is enacted.

## APPENDIX A

**"Local Government and Native Land Claims"****6. BASIC PRINCIPLES AND CRITERIA FOR SUCCESS****a. Introduction**

The Union of British Columbia Municipalities believes that land claims settlements will not be successful unless all of the interests involved can participate in the process leading to settlement. Local government must have a clear and direct role in the negotiation process.

Success, meaning a credible agreement to which all stakeholders can subscribe, will be dependent on the nature of the process leading to settlement.

The settlement of land claims may be seen as an exercise in institutional design. As Irving Fox has said, the task of institutional design is to secure a distribution of resources among groups and a set of rules governing their behavior which will produce decisions which actually reflect the desires of society.

To be successful then, land claim settlements must result in the creation of institutions which reflect the interests of all stakeholders and the securing of a system for the distribution of power and resources which satisfies those who live in the settlement area.

The UBCM believes that there are four basic principles and three criteria for the successful resolution of land claims.

**b. Basic principles****RECOMMENDATION #1:**

**THE BASIC PRINCIPLES FOR LAND CLAIMS NEGOTIATION PROCESS ARE THAT IT MUST BE FAIR, OPEN, PRINCIPLED AND COMMUNITY BASED.**

To be credible and successful the process must conform to these basic principles:

- it must be **fair**, that is it must be equitable, impartial, free from prejudice and all parties must have their rights respected;
- it must be **open**, that is all parties must be heard, have complete information about potential impacts on their interests and have equal access to the decision-making process;
- it must be **principled**, that is it must focus on interests, not positions, and place a high value on the integrity of the relationship among the parties both during and after the negotiations;
- it must be **community-based**, that is it must be situated so that it becomes real and accessible for the people it directly affects, the native people and their neighbors at the community level.

**c. Criteria for Success**

**RECOMMENDATION #2:****THE BASIC CRITERIA FOR SUCCESS IN LAND CLAIMS NEGOTIATIONS ARE THAT IT MUST BE DEMOCRATIC, EFFICIENT AND ACCEPTABLE.**

The UBCM believes there are three basic criteria for the successful settlement and implementation of native land claims: it must be democratic, efficient and acceptable.

**i) Democratic**

Democracy is perhaps the primary and most essential attribute of an effective and meaningful process such as land claims negotiations, for if the process is not democratic and seen to be so it will not attract the support necessary for its successful implementation.

A democratic land claims negotiations process will be both representative and accountable.

A representative process ensures that all parties affected by a particular decision have adequate opportunities to express their concerns and participate in the decision making process. The process must promote some form of representation by all interested parties and ensure that individuals and groups are able to clearly state their interests, goals and objectives.

There are several elements necessary to ensure representativeness. Adequate notice must be provided to all parties of the schedule, structure and venue of the process. All relevant information must be readily and easily accessible to the affected parties. All parties must have complete information so they are put in a position where they are able to effectively respond to the positions of others.

The goals and objectives of the various parties regarding the issues at hand must be made explicit, and provision must be made for interests not formally represented at the negotiating table to be considered.

Accountability means that the decision-makers, in this case the provincial and federal governments and the native interests, are responsible and answerable to the constituency they purport to represent.

An accountable negotiating process will ensure that the decision-making process has been fully explained to the public and that the latter understand the process.

The process must ensure that when a term of the settlement will impact on a third party, all reasonable positions, options and alternatives will be considered.

**ii) Efficient**

An efficient process for negotiations is one where optimal decisions are reached in the least wasteful manner in regard to time and resources. Efficiency is also a ratio of cost to benefit; the concept of efficiency must include citizens' values, which calls for full citizen participation to determine those values.

An efficient process is also effective and adaptable. Effective means that the process meets the original goals and objectives of the process. Adaptive means the process can adjust to new conditions and respond quickly and effectively to unexpected developments. This means that reasonable alternatives can be explored throughout the process.

### iii) Acceptable

A process which meets the criteria of democracy and efficiency will tend to produce results that are acceptable to all interested parties. This means that all interested parties must be able to affirm and endorse both the process and the end result. Settlement will not be acceptable, nor will it work properly, unless all stakeholders can claim some ownership of the process and the result.

### d. Summary

In summary, the UBCM believes that local governments have a critical role to play in the successful negotiation of land claims. **The process must conform to certain basic values or principles: it must be fair, open, principled and community-based.**

As well, there are three basic criteria against which the process may be measured. **The process must be democratic, efficient and acceptable.**

## 7. MECHANISMS FOR SUCCESS

The UBCM believes that there are four basic instruments or mechanisms that will ensure the settlement process reflects the above principles and criteria: public information and education; public consultation; dispute resolution procedures; pro-activity.

### a. Public Information and Education

#### RECOMMENDATION #3:

**THE UBCM SHOULD WORK WITH THE THREE PRINCIPAL PARTIES TO THE NEGOTIATIONS TO IMPLEMENT AN EDUCATION AND INFORMATION PROGRAM AT THE LOCAL LEVEL IN ALL AFFECTED COMMUNITIES PRIOR TO THE COMMENCEMENT OF ANY LAND CLAIM NEGOTIATIONS.**

Public information and education is absolutely key to the process, and is a vital component of the democratic process. Unless all stakeholders and interest groups are fully informed about all aspects of the claim and the negotiations, serious problems will arise, as they have in other jurisdictions.

The Report of the B.C. Claims Task Force states:

*"It is essential to the success of this initiative that the negotiations be conducted in an atmosphere which will contribute to the development of a new relationship between the aboriginal and non-aboriginal people of British Columbia. In large measure the atmosphere will depend on the public awareness and the understanding of the history of British Columbia, and the dissemination of accurate information about the negotiations."*

The Task Force went on to recommend:

*"17. Canada, British Columbia and the First nations jointly undertake public education and information programs".*

The Task Force also recognized the crucial role that public information will play in the process of reaching settlements:

*"Negotiators for each treaty should explore creative ways to allow for aboriginal and non-aboriginal people to meet to discuss their perceptions, concerns and hopes for the future. Such meetings could do much to create understanding and to minimize fear about change or the unknown.*

The Task Force recommended:

*"18. The parties in each negotiation jointly undertake a public information program."*

The UBCM shares the view of the Task Force and believes that local governments and the communities they represent should be intimately involved in this process of education and information sharing.

## **b. Public Consultation**

### **RECOMMENDATION #4:**

**THE UBCM SHOULD WORK WITH THE THREE PRINCIPAL PARTIES TO ENSURE THAT A COMPREHENSIVE PROGRAM AND PROCESS FOR PUBLIC CONSULTATION AND PARTICIPATION AT THE LOCAL LEVEL IS IN PLACE PRIOR TO THE COMMENCEMENT OF ANY LAND CLAIM NEGOTIATIONS.**

The informed participation of the public, that is those parties with a stake or an interest in the settlement, is essential to both successful negotiations and a workable agreement.

The public must have complete information as regards the land claim, its meaning and scope, its spatial boundaries and the positions of all the parties at the negotiating table.

A formalized mechanism for public consultation should be implemented so that all groups know how they can make their inputs, and are assured a measure of fairness in relation to other groups. The consultation process must be highly visible and localized in the communities.

The idea of public participation relates to the theory of direct democracy. Democracy is one of the key criteria for success in the negotiating process. Direct democracy means that those people most affected by a decisions should be allowed to participate in the decision-making process.

For public participation to be meaningful, parties with significant or meaningful interests should be recognized in the planning, implementation and conflict resolution stages of the negotiating process. Public participation should occur early in the process.

Public participation should be comprehensive, which means systematic and continuous. It should be informative and cooperative, in that the process is inter-active in nature.

## **c. Dispute Resolution**

### **RECOMMENDATION #5:**

**A COMPREHENSIVE PROCESS FOR THE CONSENSUAL RESOLUTION OF DISPUTES SHOULD BE DESIGNED AND IN PLACE PRIOR TO THE COMMENCEMENT OF ANY LAND CLAIM NEGOTIATIONS.**

Conflict resolution is a means of resolving disputes among competing or conflicting interests. A

process that includes a well informed public involved in a comprehensive program of consultation and participation will demand an effective dispute resolution mechanism. This will require a mechanism outside the negotiating table for the resolution of issues that arise during negotiations.

The UBCM believes that the theory and practice of consensual dispute resolution best meets the requirements of this process. Consensual dispute resolution identifies common interests among the various parties and achieves a result to which all can subscribe. Social harmony and political consensus are the objectives.

A consensual dispute resolution process:

- is one in which self-interest, not self-sacrifice is the sustaining force;
- is a negotiated process, not an adversarial one;
- is one which ensures free communication, full disclosure and balanced participation;
- promotes the interdependence of interests;
- depends on the voluntary involvement of interests;
- calls on each party to define its objective in positive terms;

Solutions that are voluntarily entered into will be self-regulating and enduring. Consensual dispute resolution is a reasoning process rather than a coercive one.

The UBCM believes that such a dispute resolution process combined with comprehensive public consultation will lead to the best result in settlement negotiations.