

Revenue & Benefit Sharing

BC First Nations - All Chiefs' Forum
Nov 25 - 26, 2008

REVENUE & BENEFIT SHARING

- Revenue and benefit sharing has been committed to in the New Relationship and *is a necessary component of a recognition-based relationship*
- The Supreme Court of Canada (SCC) has been very clear that in accordance with s.109 of the *Constitution Act, 1867*, the Province's interest in lands and resources subject to un-extinguished Aboriginal title
- In *Delgamuukw*, the SCC clarified that Aboriginal title, which has not been extinguished in B.C., is a right to land with an inescapable economic component

NEW RELATIONSHIP COMMITMENTS

We agree to establish processes and institutions for shared decision-making about the land and resources and for revenue and benefit sharing...

GOALS OF REVENUE & BENEFIT SHARING

1. Principle Based Approach

- Revenue and benefit sharing is an expression of recognition of co-existing Aboriginal and Crown titles and jurisdictions, with revenue and benefits flowing to both the Province and First Nation Governments on a government to government basis. Revenue and benefit sharing must also occur between proponents and First Nations
- Supports First Nations' interest in maintaining a link with lands and resources in their traditional territories and supports fiscal self-reliance

GOALS OF REVENUE & BENEFIT SHARING CONT...

2. **Contribute to capacity development of First Nations**
 - Sustained stream of revenue and benefits will assist First Nation in building human and infrastructure capacity to function as governments
3. **Contribute to certainty/stability on land base**
 - First Nation participation in economic development, through sharing in revenue and benefits derived from their territories, is essential to creating a economic certain and predictable investment climate in BC and, therefore, stability for land and resource development.

OPTIONS & ISSUES FOR REVENUE SHARING

PUBLIC Sector Revenues - ISSUES

- *Types of revenue and benefits to be shared include:* public portion of resource rents, plus revenue from income, sales and other forms of taxation revenue linked to resource extraction (e.g. forestry, mining, oil/gas), as well as non-resource based revenue (e.g. taxes from sales, income, gaming, other)
- *Determining of amount of revenues:* e.g. a percentage (%) of public revenues, pre-determined amounts of revenue to be notionally funded from specific sources, and/or a hybrid approach
- *Distribution principles:* e.g. linked to traditional territories, not linked to territories (e.g. province-wide; gaming), hybrid approaches

OPTIONS & ISSUES FOR REVENUE SHARING

CONT...

PRIVATE Sector Revenue and Benefits

1. *Joint-Venture Agreements*: allows First Nations to share in private sector revenue and for increased participation in the economy
- *Canada and BC can contribute to private sector joint ventures with First Nations - e.g.:*
 - Directing funding transfers to joint venture partners;
 - Financial support to enable First Nations to purchase equity shares and increase capacity to participate;
 - Legislative/regulatory change necessary for joint venture partnerships to succeed;
 - Transferring portions of public sector rent to private sector through tax preferences and other policies;
 - Placing terms and conditions on tenures, compelling proponents to work with and address First Nations interests and concerns

2. Impact Benefit Agreements

Accommodation

- The Crown has at a minimum a legal obligation to consult with, and accommodate, First Nations when the Crown has knowledge (real or constructive), of the potential existence of an Aboriginal title or right and contemplates conduct that might adversely affect it.
- Accommodation occurs where it is determined that a decision may impact Aboriginal title or rights. Revenue and benefit sharing generally does not address key issues related to specific projects - and is not a process whereby First Nations interests or concerns can be identified or addressed.
- Accommodation is distinct from general revenue and benefit sharing on the basis of existing titles and jurisdictions.

BC'S PROPOSED APPROACH

- BC has unilaterally developed a new framework for revenue sharing that:
 - Diverges significantly in terms of principles and content from the vision of First Nations (e.g. considers “strength of claim” and “population”)
 - Is not based on recognition of Aboriginal title, but is linked to “new, major projects” (i.e. accommodation)
 - Is called an “Economic Community Development Agreement”, which ties the use of the revenues to closing the gap on socio-economic needs