

Referendum on Treaty Negotiations

Make your vote count for justice

On the basis of our fundamental belief in pluralism, Citizens for Public Justice opposes the Campbell government's treaty referendum process. It is unjust and unworkable.

We urge you to register a protest vote that is legally valid by:

- **Voting NO on Question 6.** It blatantly undermines the treaty process, and denies Aboriginal rights to self-government.
- **Refusing to answer the other questions on the ballot.** They are based on unfair assumptions, and cannot be answered with a simple yes or no.



An open letter to British Columbians

British Columbia's government has invited citizens to express an opinion on eight questions related to treaty negotiations, with mail-in ballots to be returned by May 15. Like many others, Citizens for Public Justice has major concerns with the referendum. Several strategies have been proposed to protest it.

Inspired by the biblical call to justice, CPJ has worked for healing and reconciliation between Aboriginal people and Canadian society for more than 25 years. Our belief in pluralism – that different groups of people should have the right, within reasonable limits, to live according to their values – has also motivated our work in support of Aboriginal people.

All of us, Aboriginal and non-Aboriginal, have both rights and responsibilities. But many Aboriginal people are still waiting to have their rights acknowledged, rights that have been upheld by the courts and the Constitution. The treaty negotiation process is an important way to affirm those rights. We all have a stake in this process. Negotiations leading to just treaties and a positive climate of reconciliation foster peace in our province. They also help foster a healthy economic climate, in which investors, companies and citizens know what the ground rules are.

Our public justice values lead us to oppose the referendum questions posed by the Campbell government. They do not leave room for the flexibility that ongoing negotiations require. In some cases, an affirmative vote would require renegotiation of existing agreements. In others, the questions implicitly challenge court decisions, the Constitution, or imply provincial jurisdiction where none exists.

We hope that you will find our recommendations helpful. We all have a role to play in working for more just relationships between Aboriginal and non-Aboriginal neighbours.

Donna Stewart, North Vancouver,
member of CPJ's National Board
Jennifer Barron, Nelson, writer

Terry Glavin, Mayne Island, author
Dr. Tim Schouls, Vancouver, professor

Darryl Klassen, Abbotsford, educator
Peter Rhebergen, Smithers, teacher

OUR RECOMMENDATIONS

Out of our commitment to “love of neighbour,” and its implications for principled pluralism, Citizens for Public Justice has promoted Aboriginal rights for over 25 years. Public justice means that all peoples have a right and responsibility to live according to their convictions. This has led us to support Aboriginal self-government and land rights.

Given our values, we recommend that British Columbians **make their vote count for justice.**

We believe that a strong message of disagreement about the referendum process, a call for renewal of the treaty negotiations, and a commitment to solidarity with Aboriginal neighbours can be achieved by:

- **Voting only on question #6 and voting “NO”.** This question most blatantly undermines the treaty process, and denies the court and constitutional guarantees of Aboriginal rights and self-government. (See inside.)
- **Refusing to answer any other question on the ballot.** They are based on unfair assumptions and cannot be answered with a simple “yes” or “no”.
- Follow the rest of the voting procedures as required:
 - Insert your ballot in the “secrecy envelope.”
 - **Sign your official declaration** and put it into the “certification envelope.”
 - Put both of these envelopes into the third envelope, and mail it by May 15.



OUR CONCERNS

Referendums undermine elected, representative governments. They over-simplify issues and fuel divisions. Principled political leadership and intelligent debate, not simple referendum numbers, are needed to resolve the issues we face.

Referendums are particularly troublesome when they ask a majority to rule on the rights of a minority. This contravenes the basic premises underlying non-discrimination guarantees in international treaties.

Referendums are meaningless and cynical when, as is the case here, the government states that it will be bound by a “yes” vote, no matter how low the vote turnout is, but will not be bound by a “no” vote.

Are these questions ...

QUESTION 1 Private property should not be expropriated for treaty settlements.

A “yes” majority would alleviate non-native fears, but leaves little room for negotiation where a native community is “hemmed in” but tradeoffs might be possible. What if a piece of property is all that’s needed to settle a claim, but there is no willing seller? Or if a sacred site is on privately owned land and a First Nation would like to own it? What happens if the owner does not want to sell?

The implication of a “no” vote is that *all* private property is subject to expropriation. This is not the position of Aboriginal peoples. Flexibility is needed, not a hardline position.

CPJ urges you to leave this question unanswered.

Neither “yes” nor “no” is an adequate response.

QUESTION 2 The terms and conditions of provincial leases and licences should be respected; fair compensation for unavoidable disruption of commercial interests should be ensured.

Leases and licenses are privileges granted by a government that did not have the right to grant them, and that in most cases did not consult the First Nations. A “yes” vote might lead to limiting benefits to which the courts have said the original peoples are entitled, giving priority to commercial interests, even if those interests were acquired without consultation.

First Nations have no problem with people being compensated for disruption of their commercial interests. But they want equal treatment, that is, compensation for their rights and title. However, the B.C. government is acting as if third-party leases and licences (privileges) take precedence over native rights to use their land to support themselves. Why do these privileges take precedence over settling rights?

CPJ urges you to leave this question unanswered.

Neither “yes” nor “no” is an adequate response.

QUESTION 3 Hunting, fishing and recreational opportunities on Crown land should be ensured for all British Columbians.

A “yes” vote involves non-native citizens in recommending policies that our courts have already rejected. The courts have said that, when taking away Aboriginal rights such as hunting and fishing rights, the government must give priority to their Aboriginal users. They have also said that, before the government infringes upon the rights of Aboriginal people to hunting and fishing resources, it must first consult with the Aboriginal people affected, and compensate them where their rights are being taken away. Yet this question is phrased to set aside, once again, pre-existing Aboriginal rights that the courts have already affirmed.

The question also implies a double standard, with non-natives still deserving more consideration than First Nations. Non-native people who own lands do not have to allow public access on their property, but First Nations owners would have to allow everyone to hunt, fish and enjoy recreational activities on their lands. Why?

CPJ urges you to leave this question unanswered.

Neither “yes” nor “no” is an adequate response.

... fair — or loaded?

QUESTION 4 Parks and protected areas should be maintained for the use and benefit of all British Columbians.

Some parks have been created on native lands without any consultation. This question invites a blanket “yes” vote from citizens, regardless of a First Nations interest, the history of a particular park, or negotiations thus far. That “yes” vote could prevent, in some cases, there being enough land to settle claims with First Nations.

If a majority vote “no”, then parks and protected areas would not be maintained. Or the province could come up with another mandate, since no direction is given for a “no” vote. Either way, this question has been designed to result in a “yes” vote.

CPJ urges you to leave this question unanswered.

Neither “yes” nor “no” is an adequate response.

QUESTION 5 Province-wide standards of resource management and environmental protection should continue to apply.

The question appears to arise from a laudable concern for uniform standards. But it apparently assumes that in all cases provincial standards are higher than the standards of people who have relied on the resources for ten thousand years. Given our lamentable failure to protect fish, forests and wildlife, it’s a questionable assumption. In fact, the provisions in many treaty agreements have allowed First Nations to meet or exceed provincial standards. Recent provincial cutbacks in environmental protection make the assumption behind this question even more doubtful.

CPJ urges you to leave this question unanswered.

Neither “yes” nor “no” is an adequate response.

QUESTION 7 Treaties should include mechanisms for harmonizing land use planning between Aboriginal governments and neighbouring local governments.

Mechanisms for land use planning are at the heart of present treaty negotiations, but this question ignores the careful provisions made to hear all stakeholders. What if a local government is uncooperative and harmonization cannot be achieved? Furthermore, each voter will have a different concept of “harmonizing.” The courts have repeatedly said Canadian and British Columbian laws must harmonize with pre-existing Aboriginal rights and constitutional guarantees — not the other way around.

CPJ urges you to leave this question unanswered.

Neither “yes” nor “no” is an adequate response.

QUESTION 8 The existing tax exemptions for Aboriginal people should be phased out.

This question is particularly divisive, playing on existing hostilities and on voter ignorance of history. It also implies provincial powers that do not exist. Tax exemptions for Aboriginal people are provided under the federal Indian Act. This Act is not within provincial jurisdiction, so the province does not have any say on this matter.

CPJ urges you to leave this question unanswered.

Neither “yes” nor “no” is an adequate response.

— Based in part on a paper posted at <http://arcbc.tripod.com>
Other resources are listed on CPJ's website, www.cpj.ca

This question undermines the whole treaty process.

CPJ urges you to vote NO.

QUESTION 6 Aboriginal self-government should have the characteristics of local government, with powers delegated from Canada and British Columbia.

The question is based on the assumption that Aboriginal self-government can only occur at the pleasure of the federal or provincial legislatures. It attempts to establish a template for all treaties. It disregards the mandate of the Standing Committee on Aboriginal Rights, which was told that it could not define Aboriginal rights. It violates Premier Campbell's promise that the referendum questions would not define or interfere with constitutional rights, as specified in Section 35 of the Constitution Act. A "yes" vote would violate the Constitution by defining and limiting the right of self-government. In our federal system, the province has no right to define Aboriginal rights.

More important, the question disregards the basic claim of First Nations, which courts have affirmed repeatedly in different contexts: First Nations were self-governing peoples before settlers arrived. Since they did not give up their rights to govern their territories and were not conquered by force, they have the right to govern themselves.

A "yes" vote would relegate self-government to a delegated form of government with power from the province. Local governments are created by provincial statute and manage municipal business according to powers delegated by the province. First Nations governments are not created by statute. They are regional or territorial governments that pre-date the provincial government, and have constitutional recognition that municipalities do not have.

In the Campbell case in 2000, the B.C. Supreme Court considered the allegation made by Gordon Campbell (then a member of the Opposition) that the Nisga'a treaty was invalid because it created Aboriginal self-government, which was an unconstitutional "new" government. The court dismissed that argument and affirmed the Aboriginal right to self-government as a constitutionally protected right. Aboriginal self-government, the court said, is another level of government in addition to the federal and provincial governments, not a municipal-style government that only derives its powers from the provincial or federal governments.

A "yes" vote could kill the treaty process. Many treaties have already negotiated powers beyond what local governments have. Those chapters in treaties would have to be renegotiated.

This question most strongly symbolizes the referendum's lack of respect for Aboriginal rights. CPJ urges that you vote NO to Question 6, to ensure that it is soundly rejected. Leaving the other questions blank underscores the gravity of this question and serves to reject this referendum process.

Moving forward Today the Aboriginal people and other Canadians stand on opposite shores of a wide river of mistrust and misunderstanding. Each continues to search through the mist for a clear reflection in the waters along the opposite shore. If we are truly to resolve the issues that separate us, that tear at the heart of this great country ... then we must retrace our steps through our history to the source of our misperceptions and misconceptions of each other's truth. The challenge we face is to define, clearly, new visions and pragmatic mechanisms that will allow our cultural realities to survive and co-exist. We must seek out those narrow spots near the river's source where our hands may be joined as equal and honourable partners in a new beginning. – Rod Robinson, Nisga'a First Nation

Building bridges, not barriers

Whether we are Aboriginal or non-Aboriginal, all of us are neighbours and all are here to stay. We all need to work together to resolve differences among us. We do that with respect for one another, honest dialogue and negotiations.

Citizens for Public Justice believes that the Campbell government's referendum is a one-sided, divisive tactic that flies in the face of these values. We urge you to think carefully about what lies beneath the surface of its innocent-sounding questions.

We invite you to work for reconciliation in our polarized province. This referendum will accomplish very little. After the ballots are counted, the difficult issues before us will remain. We all have a role to play in resolving them.

Citizens for Public Justice

CPJ was founded 39 years ago by justice-oriented Christians who believe that public institutions have a responsibility for the common good. CPJ is a non-partisan, ecumenical advocacy organization focussing on an economy of care, poverty issues, refugee rights and Aboriginal justice. Its sister organization, the Public Justice Resource Centre, conducts public policy research and education. We invite you to join us.

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