

Plenary : The Purpose and Vision of Land Claim and Self Government Agreements

Chair: **Kevin McKay**, Chairperson, Nisga'a Nation

Speakers: **Matthew Coon Come**, Grand Chief, Grand Council of the Crees (Eeyou Istchee)
Honourable Tagak Curley, Founding President of Inuit Tapirisat of Canada (now ITK) and negotiator of the Nunavut Land Claims Agreement
Ethel Blondin-Andrew, Chair, Sahtu Secretariat Inc.

Matthew Coon Come

[Introduction in Cree]

I am honoured to be here today, at this gathering of modern treaty signatories and modern treaty researchers. Our guiding theme is an important and weighty one: making treaties work for future generations.

My people, Eeyouch, the James Bay Cree Nation of Eeyou Istchee, have the longest experience of modern treaty implementation of any people in Canada. We, along with the Inuit of northern Quebec, signed the first so-called "modern treaty", the James Bay and Northern Quebec Agreement, in 1975.

The Cree Nation thus has had forty years' of experience with modern treaties. We have forty years' of experience of fighting for the recognition of our rights within and outside this system. It has not been an easy fight, but we are proud of our hard-earned successes. And we will keep fighting to ensure that our purpose and our vision of our modern treaty is realized. Since 1975, 26 modern treaties have been negotiated and signed in Canada. And, since 2003, the Land Claims Agreement Coalition has brought together representatives from all of the signatory nations of these treaties, to work together on common issues. The main issue that brings us together is the shared problem of treaty non-implementation.

Our agreements have different details and contexts, and vary in their purposes and visions. However, there is a common thread that runs through all of our experiences. They are marked by the Crown's failure to implement modern treaties in a way that recognizes and respects the spirit and intent of each of our treaties.

Our experiences as modern treaty signatories has given us first-hand insight into the gaps that still exist between the purposes and visions of our agreements, and the realities on the ground. Indeed, regrettably, these gaps are often more aptly described as chasms.

The Crown has persistently refused to see modern treaties for what they are meant to be: treaties are not about extinguishing Aboriginal rights. Instead, they are about committing to live together, with these rights, in a mutually respectful way. They are about partnership, rather than paternalism. This is the purpose and vision of modern treaties.

So, what do we need to realize our purpose and vision for modern treaties? First of all, we need the Crown to partner with us for implementation, on an ongoing, nation-to-nation and government-to-government basis. The Crown must understand our vision of modern treaties, and must respect their spirit and intent.

This has not historically been the case.

Since the Europeans first arrived in this land and reached agreements with its first inhabitants, there has been a long history of misinterpretation and non-implementation of treaties with Aboriginal peoples. The Crown consistently failed to respect the spirit and intent of historic treaties, and the rights of Aboriginal peoples were frequently denied and forgotten.

The Crown's failure to respect the spirit of its agreements with Aboriginal peoples has also plagued the implementation of modern treaties. My people, the James Bay Cree Nation, have experienced this firsthand with our treaty, the JBNQA.

In the years that followed the signing of the JBNQA, we had high hopes for our communities and for the new institutions that had been promised under the treaty. We expected that we would be able to deliver services that responded to our needs, in our own language, on our own lands. We expected that the new institutions would help to safeguard our culture and way of life, while also facilitating our participation in the new activities that were occurring in our territory. We intended, in signing the Agreement, to ensure that we could survive, and even thrive, as a people.

In the decades after the JBNQA was signed, we faced overwhelming challenges. We quickly realized that the institutions of so-called self-government that had been created by the Agreement would not enable us to achieve the clean water, roads, housing, health services, education, jobs or community centres that we had been promised in 1975. There was a fundamental disconnect between the promises that had been made to us, and the actual tools at our disposal as a people to bring those promises to life.

Our institutions of self-government were grossly and persistently underfunded. Once the dams had been built, and the governments had obtained the surrenders and extinguishments that they wanted, they had no reason to concern themselves with the Agreement they had made with us. Each year, the value and quantity of resources extracted from our territory increased into the billions of dollars. Each year, decisions about this development continued to be made without our participation and without regard for our needs.

We spent the next several decades in litigation and negotiations. We worked to force the federal and provincial governments to abide by the spirit and intent of their treaty obligations. We worked to force

them to respect what we knew to be our fundamental right to benefit from, and participate in, the extraction of wealth from the resources in our own backyard.

We made it known, in every international and domestic forum we could, that our fundamental human rights as a people could never legitimately be extinguished. We warned that the legal certainty and legitimacy that the Crown was looking for could not be obtained or maintained through forced surrender. This certainty and legitimacy could only be obtained through honourable dealing, and through meaningful treaty implementation.

And we stated, over and over again, our belief that an equitable, sustainable approach to development in our territory was possible and achievable. An approach that is compatible with our way of life and our identity as a people. An approach that is based upon an enduring nation-to nation relationship of coexistence and mutual respect.

The response we received from governments was the same throughout these years. We were told that the extinguishment of our rights was the price we had paid for the benefits we gained under the JBNQA. We were warned that our rights were limited to those explicitly set out in the Agreement, and that our refusal to accept this so-called “legal truth” put even those limited rights at risk. We were told that the government was complying with all of its legally enforceable obligations. We were told the glaring deficiencies we identified were not treaty issues, but merely issues of public policy and politics.

We attended many meetings with government representatives who had no mandate to negotiate the real issues. We were presented with dozens of take-it-or-leave-it offers. Often, when we received offers to implement portions of the Agreement, these offers came with a further condition – that we agreed to extinguish the minimal obligation that had been written down, in exchange for a one-time delivery of certain services. So, for example, we were offered the money to implement the treaty promise of a fire station, or a community centre, or an income assistance program so that our hunters could stay on our land – but on the condition that we agreed to forgo any future obligation on the part of the Crown.

We refused to accept this limited vision of the treaty relationship. We insisted on implementation of treaty promises, rather than further extinguishments. And in recent years, after nearly three decades of implementation failure and continual disputes with the Crown, we have experienced some important successes. In 2002, we signed the Paix des Braves. Under this agreement, the government of Quebec provides funding for the Crees to assume Quebec’s obligations under the JBNQA regarding economic and social development, for a period of 50 years. The amount of funds transferred is indexed to the value of mining, forestry and hydroelectric development, over the full extent of our territory.

The Paix des Braves is premised on a nation-to-nation recognition that Cree consent is required for resource development in Eeyou Istchee. The Paix des Braves reaffirms our fundamental connection to all of the lands and waters of Eeyou Istchee. It implements our right to be involved in development on our territory, and to benefit meaningfully from that development.

In 2008, we concluded the “New Relationship Agreement” with the federal government. Under this agreement, the Cree Nation assumed certain federal obligations under the JBNQA for a period of 20

years. The New Relationship Agreement guarantees to the Crees the resources required to implement Canada's outstanding obligations under the JBNQA.

In negotiating the New Relationship Agreement, we adopted a new approach: funding was to be premised upon an assessment of the true long-term costs of accomplishing the treaty obligation in question. As many here today would attest, this is, unfortunately, a radical proposition when it comes to modern treaty implementation.

Finally, in 2012, we concluded the Agreement on Governance in the Eeyou Itschee James Bay Territory with the government of Quebec. This historic, nation-to-nation agreement creates a formal partnership in governance between the Cree Nation and the non-aboriginal communities in our region. This agreement will, we hope, promote the autonomy and development of the Cree Nation, modernize the public governance regimes in the Territory, and permit us to work together to develop our territory in a way that is mutually beneficial. It is a step away from a governance model that excluded Crees, and a step towards a model of inclusion and respectful engagement.

Today, over 40 years after the JBNQA was signed, and 15 years after the Paix des Braves was concluded, I can report that progress is being made, and it is being made by our own institutions, and by our own people, on our own lands and in our own language.

As my people's experience over the last 40 years demonstrates, modern treaties have great potential. They present an opportunity to overcome some particularly shameful aspects of Canadian history, to step beyond the policies and practices of colonialism. They affirm nation-to-nation and government-to-government relationships between Aboriginal peoples and the Crown. They provide a foundation for the mutually-beneficial and sustainable development and use of Aboriginal peoples' traditional lands and resources.

Modern treaties are not about surrendering our rights. They are about working together to give practical effect to our rights, on an on-going basis. They can be important vehicles for meeting Canada's human rights obligations. They can contribute to the survival and well-being of Aboriginal peoples, as peoples.

Unfortunately, if they are not properly implemented, they also have the potential to perpetuate great harm. They can become a tool of dispossession. They can be used to disenfranchise and marginalize us.

Modern treaties do not implement themselves, and they do not get implemented overnight. Successful implementation requires hard work, over long periods, and it requires sustained commitment from all parties. It requires a willingness to re-evaluate existing policies and practices, and to step away from one-size-fits-all approaches. And it requires resources.

The members of the Land Claims Agreements Coalition have organized this conference as part of our Coalition's on-going efforts to encourage academic research into the experience of modern treaty implementation in Canada. We need the assistance of researchers and academics, to work with us to produce more and better information and evidence, about what's working for treaty implementation,

what isn't, and what's missing. We have organized this conference because we are convinced that research of this kind is an essential tool to spur the full and meaningful implementation of our treaties.

We are convinced that this research will assist us in providing tangible evidence of what we modern treaty signatories know. The costs of non-implementation are significant, they are unacceptable, and they are growing. On the other hand, investment in the full implementation of our agreements will pay many dividends, in terms of social wellbeing in our communities, in terms of economic development in our communities and regions, and in terms of opportunities for future generations.

Thank you – meegwetch!

Honourable Tagak Curley

I'm honoured to be here, to have our elders here, your participation and prayers are important to us. Thank you to make this event a pleasant event for a couple of days. When you reach my age you will be younger. Ethel was our MP for the NWT for many years. When I was a young man, I moved here in 1972. We had formed a national body but I was living in Edmonton, that was my base.

I was criss-crossing the north for years.

Before I deal with some of my comments with respect to our Inuit land claims, I would like to acknowledge James Eetoolook, my colleague for many years.

When I moved here in 1972, to open the offices for ITC, it was a lonely place. Wally Firth was our MP, my friend and colleague. We would strategize about how to deal with the government. Some Nunavut communities saw flights once a month.

George Manuel was my mentor and friend. I invited him to one of our annual meetings in Baker Lake. He spoke through the radio to everyone who was listening. I was honoured to host him.

I want to say to all of you that it took many years before I accepted that I am a host, in Nunavut, to all Canadians. Our First Nations members here are the hosts of this whole nation. We are the hosts to Canadians. We are not second class, we are the First Nations.

I want to speak about the Nunavut land claim. It was about 22 years ago that we first had our modern treaty established in Canada. In Nunavut it's been an awesome experience. The land base we have is huge. What we have with the NLCA is some key articles. Many of you understand that the Inuit side of the Canadian history has been lagging behind. It took many years for the Canadian government to recognize our entitlements. We had to build leadership capacity. It took time to settle the Nunavut Land Claims Agreement (NLCA); over 20 years.

I was honoured to hear mention of Terry Fenge, a friend of Nunavummiut. And also Former ITC secretary treasurer Meeka Kilabuk recently passed away; a passionate person.

Regarding modern treaties; you must make them living treaties. That means the children in schools must be involved, so they can manage them effectively. Our agreement involves many provisions. Economic provisions are important as well.

We had to negotiate a deal, and the NLCA achieved certain provisions that ensure development must meet certain criteria. Inuit Impact Benefit Agreements.

We would negotiate a deal with the mining company before the feds issue a permit.

There are contentious issues around other matters, like federal contracts. We have Article 24; many modern treaties gave the opportunity to negotiate contracts to one group. In Nunavut, that wasn't going to work. In some parts of Nunavut, we have to identify not one organization to be informed of government contracts, but Inuit firms must be involved. Small businesses are taking part, but we need to do more.

Being involved in modern treaties means more than public sector and mining contracts. We must actually start controlling some of that development. That's how the Middle East took control, by nationalizing resources. We can't do that, but we can exert control in other ways.

It's going to take the next generation to implement that.

Political: when we negotiated the NLCA, it wasn't enough to secure the future for generations to come. My vision was to split the NWT. The lawyers were right, it was not an inherent right or Aboriginal right. I said, it doesn't prevent us from having a movement to split the NWT. Eventually division did happen, and I'm proud to see the process evolving over the years.

Ethel Blondin-Andrew

I served in Parliament from 1988 to 2006, and have been working with my people ever since. I was raised traditionally, and speak my Dene language fluently. I also married a Dene drummer, a traditional man. I work for my people, and it is rewarding.

My people are mountain Dene, who travelled with dog packs and walked into the mountains in the fall, then harvested moose, made boats, travelled on the Mackenzie.

Today we're talking about the Land claims agreement. I grew up in a small community run by chiefs and elders. We ran our own affairs, no one told them what to do. We had self-government long ago. Now we are formalizing that reality.

The region I come from is Sahtu. We consist of Dene and Metis, based in five communities; a total of 3,500 beneficiaries. Our land claim agreement was signed in 1993. Why did our land claim happen? The government wanted oil from Norman Wells.

Now there is a community that has been there for close to 90 years. After all that time there are no libraries, no legacy projects; nothing that says "We were here, and we took your resources."

We have an eye on getting a 1/3 interest in that proven area.

The chiefs signed treaty 11 in 1921, and we ratified our land claim in 1993, approved in August 1993. I was here during that time.

There haven't been as many recently, but there were a lot of land claims signed. This agreement is protected by Section 35 of the Constitution Act, 1982, and covers 41,00 square km of land. It was intended to be implemented in a decentralized manner, a community based land claim agreement.

Land management and decisions are made by the corporations, and the Chair takes their decisions and executes them. Carrying out the work of our people is the job of Land claims organization.

We have huge issues on surveying, tagging and capping of numbers of caribou taken vs. government policies and priorities. We received \$130 million, and began repayment of negotiation fees in 1995.

Canada must pay a percentage of royalties; payments are made to the Sahtu on a quarterly basis. The implementation committee (IC) oversees and monitors, and conducts an annual review.

Government comes with all kinds of things we have to fight or work with. Tlicho is the only one that has self-government embedded in it, the rest are community based. We entered into a land claim to act for future generations, to build healthy communities, to take responsibility for our future.

We also wanted to become economically autonomous; didn't want a European based system, rather one that reflected our culture, language, traditional knowledge.

Dwindling caribou numbers and a drop in the water levels, are huge issues. A highway is now needed, because of low water levels.

Implementation must be a priority, we cannot negotiate and sign an agreement, then maintain the status quo. Practices and policies must evolve and accommodate the land claims.

We must develop capacity so we have sufficient funding and can hire experienced personnel. Must promote capacity development in our communities, and develop the next generation of leaders. Residential schools and the Indian Act did not foster new leaders.

We must be able to work within our communities, generate consensus, and appoint our own people. And we must be resourced adequately in order to properly implement our agreement. Self-government, devolution, etc. Nothing happens without money.

Financially it's been very rough, but we rebounded from the 2008 crisis. This year we have healthy dividends for our beneficiaries. We're taking \$4 million of that before Christmas to allow our elders to do what they will in their communities.

My advice to new land claims signatories? Build a cushion, in case you run into rough times.

Lastly, about my good friend Terry Fenge: he has gone on his journey. The goodness of his work will last. Goodbye Terry, we will always remember you.