

Keeping the Promise:

The Path Ahead to Full Modern Treaty Implementation

February 26-March 1, 2013 - Hilton Lac Leamy, Gatineau Quebec



Leaders Plenary: Keeping the Promise

Summary Notes

Presenters:

- Terry Audla, National Inuit Leader and President of Inuit Tapiriit Kanatami
- Matthew Coon Come, Grand Chief, Grand Council of the Crees
- Shawn Atleo, National Chief, Assembly of First Nations

Terry Audla, President of Inuit Tapiriit Kanatami

I am proud to share the stage with those who helped create the Idle No More movement. I look forward to meeting the new AANDC head. Also, I would like to note that there is currently a delegation heading to a meeting in Bangkok to fight a proposal by the United States to further restrict the polar bear trade.

I have seen the transformative impact the Nunavut Land Claim Agreement (NLCA) has had on Inuit. ITK pushes the government of Canada at the national level, and at the international level through the Inuit Circumpolar Council. ITK supports the Inuit organizations of the Inuit regions; these organizations sit on the board of ITK.

The Land Claims Agreements Coalition helps us see that Inuit are not alone in their frustration due to

the lack of leadership on behalf of the Government of Canada. If there isn't any concrete improvement, then just watch us!

What is lacking to ensure that the land claims are fully implemented is political will. Successful relationships are ones that are respected and acted upon. The relationship with the Crown has not enjoyed this respect and attention from the Crown.

Two messages that have been delivered loud and clear to the Crown in the last few years:

- The relationship has been badly eroded
- There remain outstanding issues of providing adequate health, housing, education and food security to Aboriginal peoples.

The inflexibility and stubbornness of the federal government have inevitably led to court cases.

Litigation between Nunavut Tunngavik and Canada started in 2006 and is ongoing. This litigation was provoked by the repeated refusal of the government of Canada to settle various disputes by arbitration. The government of Canada also refused to accept the suggestions of Thomas Berger on the implementation of NLCA employment provisions.

The Land Claims Agreements Coalition has been a very important player in working towards the implementation of land claims agreements. The core message remains as relevant today as it was when it started: including the statement that "fully implemented modern treaties benefit all Canadians".

The Coalition has been adamant about the need for change in policies. The four key changes continue to be compelling and bear repeating:

1. Treaties are with the Crown as a whole
2. Implement modern treaties to meet their core objectives
3. Have central agency oversight
4. Fair and constructive use of alternative dispute resolution

There has been movement from Prime Minister Stephen Harper. There has been an apology for the residential school system. Canada has accepted the UN Declaration on The Rights of Indigenous Peoples. However, as treaties are a defining characteristic of Canada, a better treaty relationship is needed. We call on Prime Minister Harper to reduce socio-economic inequality and to realize mutual benefits in extracting natural resource wealth through land claims implementation.

Stephen Harper has shown his interest in the Arctic, in Inuit Nunangat. He is received in the North with honor and respect. It is confusing that he has so little regard for treaties.

I am looking forward to a 2013 federal budget that addresses health, housing and education. It is time for action. While this government talks about rights all the time, we rarely hear government talk about Aboriginal rights.

Thank you for your continued work to honour the spirit and intent of our treaties.

Grand Chief Matthew Coon Come, Grand Council of the Crees

This year is a year of many anniversaries with regard to treaty making in Canada:

1. 250th anniversary of the Royal Proclamation of 1763 (recognized the Aboriginal peoples in North America as nations with special relations and affirmed treaty-making)
2. 40th anniversary of SCC Calder decision
3. 40th anniversary of the court decision that provoked the James Bay treaty-making
4. 30th anniversary of the addition of section 35(3) to the Constitution Act 1982. At that time there were two comprehensive land claims and since then 23 have been signed
5. This year is also the 10th anniversary of the founding of the Land Claims Agreements Coalition. The Crees were among the eight founding members and since then the numbers have increased

Anniversaries provide an opportunity to reflect on what has happened and what should happen. There are a few agreements imposed by governments whose conceptions of Aboriginal peoples are not much different from colonial views of hundreds of years ago. There also remain issues of housing, unemployment and socio-economic well-being. There has been little or no improvement in this area in the last decade.

James Bay Cree Nation signed a land claims agreement in 1975, the first modern treaty. Cree came to the negotiating table reluctantly; they knew if there was no negotiation then a hydro-electric project would happen on their lands. The parameters of the negotiations were not of Cree choosing, but Cree did their best. In the decades after the treaty signing, there were many challenges. The project dramatically changed the landscape, polluted hunting grounds with mercury, and changed the seasonal rhythm. There was also very little in the way of public infrastructure, including access to clean water, roads, and sewage. In the early 1980s, there was the killing of 8 children during an epidemic of gastro-enteritis.

There is a fundamental disconnect between promises made and the ability to ensure implementation. The concept of self-government remains an empty sound if the institutions are underfunded.

After the dam was built, and the federal government had obtained what they wanted, Canada had no reason to care about implementing the land claims agreement. There was still a lot left to be done. Each year the resources taken from our territories bring billions of dollars of profit, and decisions are made without our participation. Continuous work needs to be done in order to obtain services that are routinely provided in non-Aboriginal communities.

The Cree spent the next several decades in litigation to force the government to abide by the spirit and letter of the land claims agreement obligations, and also for the right to participate in the extraction in our own back yard. Sovereignty cannot be maintained by forced surrender. There needs to be a nation to nation relationship based on mutual respect.

The response we have had over the years is that we have to proceed to the extinguishment of our rights. We were told that was the price to pay and that we have to accept that “legal truth”. We were told that our issues are not treaty issues but public policy issues.

The Cree were told by Canada that Canada was complying with all of the legally enforceable requirements of the land claims agreement. We have had negotiations with people who have no mandate to negotiate.

We have received offers with cynical further conditions to extinguish our rights in exchange for one time delivery of certain obligations, the right to income assistance, the building of fire stations, etc.

Since then there has been notable progress. We have signed further agreements. In 2002 there was the historical agreement with the Government of Quebec called the “Paix des Braves” which ensures funding for Cree’s economic and social development. It was a Nation to Nation agreement. Major projects wouldn’t be done without Crees’ consent. It reaffirms our right to the land and our right to benefit from development in and on our territory.

In 2008, the Cree and the federal government have signed a new agreement that adopted a new approach. Funding is now premised on the assessment of the true costs of establishing obligations. We are now five years after the beginning of our new relationship and there have been noticeable positive changes in our communities implemented by our own government. There is still a lot to do on a socio-economic level but there has been progress made by our own institutions and organizations on things that are taken for granted by Canadians.

What we were doing was new and it is no longer new. However the implementation challenges remain the norm with the modern treaties that cover half of Canada’s lands and waters. Modern treaties are an essential part of the foundation of this country. The legitimacy of Canada’s claim to these lands, and to the resources they hold is entirely dependent on these treaties. If the solemn promises

contained in modern treaties are not implemented according to their full spirit and intent, there remains a fundamental defect in Canada's very foundation.

I will reiterate the four points made by the by the Land Claim Agreements Coalition:

1. The recognition that it is the Crown and not INAC only that is a party to land claims agreements and specific claims agreements
2. There has to be federal commitment to achieve the content of the land claims and not just technical compliance to them, and that must include adequate funding
3. Implementation must be handled by the appropriate federal officials and representatives
4. There needs to be a review body separate from INAC, the Auditor General's office for example

Those remain the objectives of today.

In 2005, the LCAC drafted 10 fundamental principles for the proper implementation of modern treaties. They were drawn from statements of the Supreme Court of Canada.

In 2009, at the third LCAC conference, we recommended policies for the full implementation of modern treaties. Those have fallen on deaf ears. That was four years ago, and we are still waiting for a response.

Albert Einstein's definition of insanity is to keep on doing the same things over and over while expecting a different result. I am an optimist. Our People have come this far and it is not for us to give up. For Aboriginal Peoples to be treated in a fair, just and sensible way is in the interest of all people of Canada and the honor of the Crown is at stake.

The Coalition has made a policy answer to outdated and colonialist policies. We are determined to be Idle No More and it is time for the Government of Canada to hear our message.

Shawn Atleo, National Chief, Assembly of First Nations

I feel honored and privileged to be here. I am thankful and appreciative of Matthew Coon Come's leadership as well as that of Terry Audla and the ITK leader before him, Mary Simon.

We are all standing and drumming side by side; the First Nations, Inuit and Metis. We have sent out a message to say that we are Idle No More and divided no more. The young people are also saying that they are finding ways to work together. That is also the mission of the Coalition. It is moments like this when we combine our voices to acknowledge our leaders, Elders and chiefs.

It is the 250th year since the Royal Proclamation. We are thankful for the progress that has been made

as we spell out clearly the challenges we still face.

I would like to recognize and honour the leadership of the Nisga'a and the passing of Frank Calder. I wish to honour the history of our ancestors. Their presence is here. They whisper in our ears when we are faced with challenges.

I recall seeing a hereditary chief when the Indian Act no longer applied in his life. With tears in his eyes he said: "I'm free" as he was grasping in his hands the future for his people.

My father when he was here was always reflecting on the work of Indigenous Peoples all around the world. Now we have the United Nations Declaration on the Rights of Indigenous Peoples. We have arrived to this after swimming up current. Regarding self government, my father said we were not self-governing, we were just governing.

There is a young person from Yukon working in our office in Ottawa. The young people are watching closely and carefully. They are taking to social media. At the funeral of the late Frank Calder I observed the deep resilience of our people; our quiet strength. At the conclusion of the funeral I was invited to go to a protest, and that sight was for me a reminder of the realities we face. A development corporation is digging up our sacred site, and people are blockading Bear Mountain development. There are seemingly endless challenges.

Treaties should not be about extinguishment or denial but the recognition of our rights. In 2013, we have had 48 court cases to our favour, we have the United Nations Declaration on the Rights of Indigenous People (UNDRIP), the federal government has given a formal apology for the residential schools. After these recent events, my grandmother said: "They're just beginning to see us."

I stand in full support of the Coalition's policy work. The time for talk is over. The time for implementation is now.

Canada has introduced a new Fiscal Harmonization Act that is damaging to the Aboriginal-Crown relationship. I join leadership to call on the federal government to act. The solutions are in your regions and territories.

There are bills out there intended for certainty for businesses. The development of natural resources across the country has implications for First Nations in this land. There is \$640 billion in natural resource projects. They can only proceed with our agreement and if free, prior and informed consent is honoured.

In the end it's about a relationship based on mutual respect and recognition, and that is not the kind of environment we are in. That needs to change.

During my meetings over the year I have sensed that there is a malaise because the energy was brought out of the room. It is the young people and women in our communities that will be able to renew that energy, pick up that responsibility as they have one foot in the universities and one foot anchored firmly in their language and culture.

The Canadian Human Rights Tribunal is currently hearing the case of the First Nations Child & Family Caring Society of Canada.

If you bring up the levels of graduation you will reduce the rates of incarceration.

If the promises that were made to us are not kept – just watch out!

The main message is to deal with implementation, stop the pattern of unilateral legislation on development and to stop overstepping on our agreements and our rights. There is a need for independent oversight of the implementation of treaties. If not, the government is both judge and jury. We have heard across the board stories of federal negotiators with no mandates. The honour of the Crown is at stake.

Our experience is that of sharp dealings by the Government of Canada.

We need to continue to press this government with a shared message. We have a tremendous opportunity. First Nations are ready to take up the challenge. We must and will push forward. We will rid ourselves of colonial structure and work together towards common objectives. That requires political will.

Again I wish to honour the leadership of those who came before us and state that I am committed to work with the Coalition in forging a new relationship with Canada.