

Statement of Treaty Issues: Treaties As A Bridge To The Future



The Office of the Treaty Commissioner

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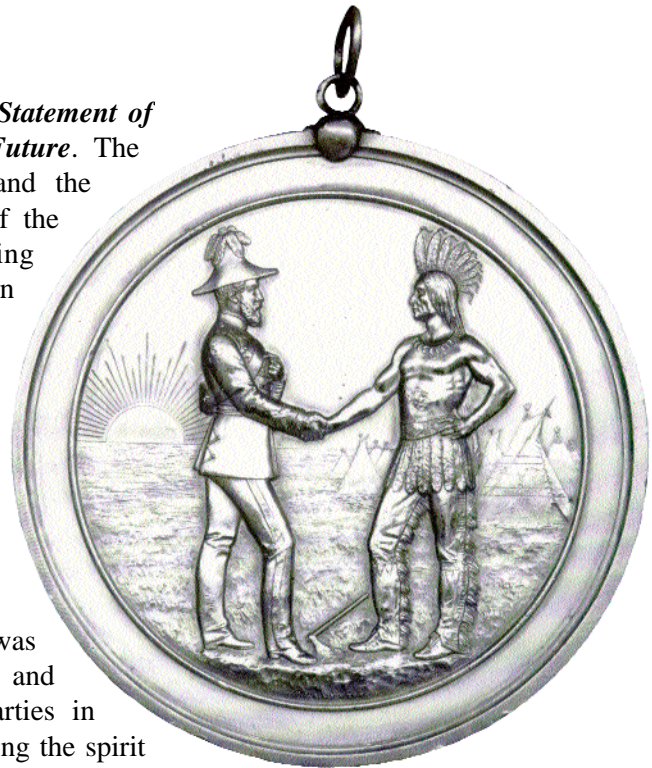
The following is an executive summary of our *Statement of Treaty Issues: Treaties as a Bridge to the Future*. The Federation of Saskatchewan Indian Nations and the Government of Canada, through the Office of the Treaty Commissioner committed to promoting efficient, effective and orderly discussions on treaty issues and to carry out those discussions in good faith, sincerity and mutual respect. Their commitment to those principles was demonstrated in the process. I commend the parties for observing those principles and look forward to seeing them display the same level of commitment and honourable conduct as the process continues.

The participation of Treaty First Nations' Elders was also of primary importance. Their wisdom and guidance was instrumental in assisting the parties in building common understandings and in promoting the spirit of flexibility and mutual recognition.

Treaties are clearly our bridge from the past to the future – we must now forge ahead and envision a new reality, one that will ensure a prosperous, stable, and healthy environment for all people in Saskatchewan. I encourage the parties to continue to strive for understanding, and to continue to seek guidance and wisdom in their quest to find mutually beneficial solutions.

A handwritten signature in black ink, appearing to read "David Arnot".

The Honourable Judge David M. Arnot
Treaty Commissioner for Saskatchewan



Executive Summary

The Office of the Treaty Commissioner has completed the first phase of exploratory treaty discussions between the Federation of Saskatchewan Indian Nations and the Government of Canada, with the Government of Saskatchewan observing the process. The Statement of Treaty Issues: Treaties as a Bridge to the Future chronicles the exploratory treaty discussions and presents a forward-looking approach to relations between Canada and Treaty First Nations in Saskatchewan. The Statement includes a brief history of Treaties 4, 5, 6, 8, and 10 in Saskatchewan; it presents an overview of the parties' discussions on seven specific treaty issues; and it presents the parties' common understandings about the treaty relationship. The parties also devoted considerable time to identifying steps that are needed to advance their discussions and to build on the treaty relationship.

Introduction

A paradigm shift is occurring in relations between the Government of Canada and Treaty First Nations in Saskatchewan, one which could turn the page on the Indian Act approach of the past and build upon the treaty relationship. In Saskatchewan, a Joint

Work Plan for Exploratory Treaty Table discussions was established between the federal government and the Federation of Saskatchewan Indian Nations (FSIN) on July 22, 1996, which included the following objectives:

- to build a forward-looking relationship that began with the signing of the treaties in Saskatchewan;
- to reach a better understanding of each other's views of the treaties and of the results to be expected from the exploratory treaty discussions; and
- to explore the requirements and implications of treaty implementation based on the views of the two parties.

On October 31, 1996, the Chief of the FSIN and the Minister of Indian Affairs and Northern Development, signed a Memorandum of Agreement reconstituting the Office of the Treaty Commissioner (OTC) for a five-year period commencing January 1, 1997. Judge David M. Arnot was appointed the Treaty Commissioner. The mandate of the OTC is to facilitate a common understanding between the FSIN and Canada on treaty rights and/or jurisdiction in the areas of: child welfare; education; shelter; health; justice; treaty annuities; hunting, fishing, trapping, and gathering; and any other issues which the parties may place before it.

Further to the establishment of the Exploratory Treaty Table, the Government of Canada and the FSIN recognized the need to discuss matters of mutual concern and priority with the Government of Saskatchewan. In 1996, the parties established a Common Table, which includes the federal Minister of Indian Affairs and Northern Development, the

provincial Minister of Intergovernmental and Aboriginal Affairs, and the Chief of FSIN. Under the umbrella of the Common Table, the three parties also established a Fiscal Relations Table and a Governance Table to discuss First Nations' governance and related fiscal issues. While the Exploratory Treaty Table is a bilateral table (at which Saskatchewan was an observer, in recognition of the special relationship between the Treaty First Nations and Canada), the other tables are trilateral and involve all three parties. These tables form the basis of the evolving treaty process in Saskatchewan. The OTC is not currently involved in the Common Table, Fiscal Relations Table, or the Governance Table discussions, but has received reports on their progress.

In commencing the work of the Exploratory Treaty Table, the parties adopted a number of guiding principles for the exploratory process. The parties agreed that the following principles would apply to their conduct and approach to the discussions:

- The parties acknowledge that the principles of mutual recognition, mutual respect, reciprocity, and mutual responsibility shall apply to the proceedings and the processes of the Exploratory Treaty Table.
- Discussions at the Exploratory Treaty Table will always respect the principles of ethical and honourable conduct.
- The parties approach the Exploratory Treaty Table as partners.
- The parties shall demonstrate in their discussions and deliberations mutual respect for each other and for the Office of the Treaty Commissioner.

- The parties shall be guided by candor and good faith in both oral and written submissions to the Office of the Treaty Commissioner.
- The parties agree to the sharing of information and expertise without undue restrictions.
- The parties acknowledge the importance of flexibility and the necessity to avoid legal disputes.
- The parties acknowledge that First Nations have distinct perspectives and understandings, deriving from the cultures and histories and embodied in First Nation languages.
- The parties acknowledge that Elders are keepers and transmitters of oral history, and therefore, must play an integral role at the Exploratory Treaty Table.
- The parties agree that knowledge that is transmitted orally in the culture of First Nations must be accepted as a valuable resource along with documentary evidence and other sources.

The parties' commitment to maintaining these principles have contributed greatly to the success of these discussions and enabled the parties to develop new understandings.

Between May, 1997, and March, 1998, Canada and the FSIN engaged in discussions to explore each others' understandings of the nature of the treaty relationship, and to examine the policy implications of building on the treaty relationship. They did this through Exploratory Treaty Table discussions, facilitated by the OTC, and through meetings with First Nations' elders in all five treaty areas in Saskatchewan.

While the parties came to the Exploratory Treaty Table as partners, they

approached the discussions from different perspectives. At the beginning of the discussions, Canada stated that, consistent with its commitment to working in partnership with Treaty First Nations in Saskatchewan, it would not create new policies or change its current policies with respect to treaties in advance of the Exploratory Treaty Table discussions. Instead, it would outline Canada's current understandings regarding treaties in Saskatchewan and seek the views of Treaty First Nations regarding how best to interpret the treaties including their original spirit and intent. Furthermore, Canada stated that it is committed to strong, effective First Nations' governments within Canada and believes that these can be achieved within the context of a treaty relationship through trilateral intergovernmental agreements.

The FSIN emphasized that it was important to contextualize the discussions in terms of how they have conceived of the treaty relationship, how they understand the history of the treaties, how they view the purposes of treaty-making, and how they interpret the objectives of the parties. During the Exploratory Treaty Table discussions, the FSIN relied upon elders' oral history for an overview of treaty-making in Saskatchewan, including the motivations, understandings, and commitments made by the parties negotiating the treaties. In the view of the FSIN, Treaty First Nations entered into treaties with the Crown for the purpose of securing a positive future for their children and their children's children. At the time of treaty-making, First Nations were aware that changes were coming. They entered into treaties to ensure that future generations would continue to:

- govern themselves according to the comprehensive body of laws given to

them by the Creator;

- make a living, providing for both the material and spiritual needs of themselves and their families; and
- live in brotherhood and peace with their neighbours.

These three objectives guided Treaty First Nations at the time of treaty-making. They believed that the arrangements which were agreed upon would lead to a better future for both parties.

The Five Treaties in Saskatchewan

In western Canada, First Nations' relations with Europeans were forged with the expansion of the fur trade, conducted on the European side mainly through large companies holding trading charters, such as the Hudson's Bay Company (HBC), established in 1670. As the fur trade economy evolved, HBC agents gradually built a network of alliances with First Nations borrowing and adapting First Nations protocols. After Confederation in 1867, the Dominion Government in Canada focused on settling the Prairies. In 1869-70, the Dominion acquired Rupert's Land from the HBC without the knowledge of the First Nations. First Nations were angered by reports that the HBC had "sold" what they considered to be their lands to the Dominion, and conflict followed. Surveyors were stopped and settlers turned back. This action frustrated settlement and jeopardized peace and security in the west. At this time, Canada was also facing external pressures. The government was conscious of the expansionist pressures in the United States to extend the American border northward to Canada. Both the Canadian government and First Nations were aware of the Indian Wars

in the United States and the heavy human and financial costs they exacted.

First Nations were beginning to suffer severe hardship from the impact of settlement and commercial harvesting of buffalo and other wildlife, and were also growing anxious over the security of their way of life and their means of livelihood. First Nations' objectives were related to their land, and their livelihood, and to dealing with deteriorating economic and health conditions in their communities brought about by declining wildlife populations and fur prices, diseases, and contact with growing numbers of settlers. They also wanted peace and recognized the importance of securing additional means of livelihood while protecting their way of life. They were hopeful that their objectives would be addressed through a treaty relationship.

Prairie Treaties 4, 5, and 6 were negotiated in 1874, 1875 and 1876 respectively. Disappearing buffalo herds, declining fur prices, and new diseases deepened the hardship of prairie First Nations. During treaty-making, First Nations leaders stressed the necessity of education and agriculture to establish new means of ensuring an adequate livelihood for future generations, and undertook to share their land, according to the oral tradition, in return for the Queen's benevolence and protection. Canada sought unencumbered control of the land to ensure Canadian sovereignty in the area and to facilitate settlement.

The northern treaties, 8 and 10, were negotiated in 1899 and 1906. Treaty 8 was negotiated after the discovery of gold in the north led to an influx of miners. Hostile relations developed between the First Nations and the miners. The North West Mounted Police, the trading companies, and the churches all suggested treaties should be negotiated to address the problems. The

Crown entered into negotiations on Treaty 10 in part because the boundaries of the Province of Saskatchewan extended far beyond existing treaty limits. The First Nations in the north had considerable apprehension that their way of life would be threatened and that their livelihood would be curtailed. They were assured that they would be as free to hunt and fish after the treaty as they would be if they never entered into treaty and that no interference with their mode of life would occur as a result of treaty.

Policy Implications

The Exploratory Treaty Table discussions were designed to bring forward the understandings of Treaty First Nations on each of the seven specific issues (education, child welfare, justice, shelter, health, treaty annuities, and hunting, fishing, trapping and gathering) and the policy implications of building upon the treaty relationship. Instead of focussing primarily on the rights, existing programs, and policies in the seven areas, the parties adopted a holistic approach and focussed their discussions on exploring the nature of the treaty relationship. It appeared to the parties that the seven areas would be most productively addressed by taking into account their relationship to the three objectives of treaty making identified by First Nations – livelihood, governance, and brother-to-brother relations.

Three areas were identified by First Nations as being in urgent need of change – child welfare, education, and justice. Canada was told that the lack of Treaty First Nations' authority and control in these areas hampers their ability to exercise responsibility for the well being of their people. Treaty First Nations wish to have responsible government and to exercise

jurisdiction rather than to administer policies and programs not of their own making. Given the nature of federal and provincial jurisdictions in these areas, the parties acknowledged the need for working with the government of Saskatchewan in order to achieve their objectives. Out of their discussions, the parties agreed that the policy implications of building on the treaty relationship in these areas had been sufficiently outlined to a point where fiscal and governance aspects could be pursued with the full participation of the government of Saskatchewan.

While further discussions are needed at the Exploratory Treaty Table in the areas of health, shelter, treaty annuities, and hunting, fishing, trapping, and gathering, continued discussions of all seven treaty issues will allow the parties to fully identify their common understandings and the policy implications of building on the treaty relationship in a contemporary context.

Common Understandings about the Treaty Relationship

Although the written texts of the treaties have been taken by the Government of Canada to represent definitively the agreements of the parties, the FSIN and Treaty elders have long maintained that the written texts are only one source of information about treaty-making, the treaties, and the treaty relationship. For First Nations, the oral history of the spirit and intent of the treaties is a significant method of understanding the treaty-making process and the nature of the treaty relationship. Canada and FSIN approached the exploratory discussions with a commitment to consider all sources of information about the treaties and reached a number of common understandings about the treaty relationship:

- Treaty-making incorporated the customs of the respective parties and created a fundamental political relationship between Treaty First Nations and the Crown. Treaties gave shape to this relationship, creating obligations and expectations on both sides.
- The treaty-making process between the parties involved the exchange of solemn promises, based on respect for the spiritual and traditional values of the other. The Crown and Treaty First Nations entered into the agreements freely and of their own accord as the best possible means of advancing their respective interests.
- In entering into these agreements, both the representatives of the Crown and those of Treaty First Nations recognized each others' authority and their capacity to enter into treaties on behalf of their respective people.
- One of those fundamental treaty principles is the acknowledgment by the treaty parties of the solemnity of the treaties.
- The treaty-making process contains within it the treaty principle of maintaining the honour of the Crown and the honour of Treaty First Nations in maintaining the treaty relationship. Equally important was the conduct and behavior of the parties to honour and respect the commitments made in the treaties.

With respect to the purposes of treaty-making, the parties came to the following common understandings:

- The treaties were to provide for peace and good order between the parties, and

among the First Nations.

- The treaty-making process was a means to build lasting and meaningful alliances between the parties that would foster the future well-being of the people they represented.
- The treaties were foundational agreements that were entered into for the purpose of providing the parties with the means of achieving survival and stability, anchored on the principle of mutual benefit.
- The relationship between the Treaty First Nations and the Crown is one in which the parties have both benefits and responsibilities with respect to one another. The treaties created mutual obligations that were to be respected by the parties.

In looking to the future, the parties felt that the following principles could guide their conduct:

- The treaty relationship is one in which the parties expect to resolve differences through mutual discussion and decision.
- The parties share a common commitment to reinvigorate the treaty relationship, and to build on a partnership that can address the well-being of the parties in a respectful and supportive way.
- Canada and Treaty First Nations can enter into arrangements whereby Treaty First Nations exercise jurisdiction and governance over their lands and people, building upon the foundation of their treaty relationship with Canada. These agreements should not alter the treaties; rather, they should implement the treaty

partnership in a contemporary way while recognizing the principles of treaty-making.

- The parties recognize that the participation of the Government of Saskatchewan is required for there to be significant progress on the implementation of Treaty First Nations' jurisdiction and governance within Saskatchewan, and they believe that the principles of the treaty relationship are beneficial for all people in Saskatchewan.

Treaties as a Bridge to the Future

In building a bridge to future relations between Treaty First Nations and other Canadians, knowledge is a necessary precursor to mutual respect. An accurate and comprehensive historical record should be developed and made accessible, and public and official actions symbolizing mutual respect and renewal should be undertaken. To clearly strengthen relations between Treaty First Nations and all Saskatchewan people, the message must be clear – that the treaty relationship will not go unacknowledged in the future. Symbolic acts of celebration, reconciliation and recognition will be needed, such as establishing monuments at treaty-making sites, recognizing First Nations' place names, proclaiming a Treaty Awareness Day, jointly celebrating the anniversaries of all treaties in Saskatchewan, participating in annual treaty gatherings to discuss treaty issues, and supporting research and school programs devoted to the treaty relationship.

The treaties in Saskatchewan can be viewed as a bridge to future relations between Treaty First Nations and the federal and provincial governments. The treaty relationship is seen as a bridge to Treaty

First Nations' governance in Saskatchewan. The implementation of a new paradigm – one based on the treaty partnership rather than on the Indian Act – would require a new approach on the part of the parties. The jurisdiction of Treaty First Nations' governments should be based on inherent rights of governance building on the treaty relationship, rather than on the Indian Act. Treaty First Nations may need to consider whether their existing government structures are in keeping with the treaty relationship in terms of addressing the objectives of livelihood, governance and brother-to-brother relations.

The four "tables" already established – the Exploratory Treaty Table, the Common Table, the Fiscal Relations Table, and the Governance Table – are all vital elements of an effective integrated process which is consistent with a new paradigm for building on the treaty relationship. The discussions taking place at the Exploratory Treaty Table provide a foundation for discussions at the other Tables. The outcome of the discussions occurring at the various Tables will have a significant impact on future relations between Treaty First Nations, the Governments of Canada and Saskatchewan, and the people of Saskatchewan.

Conclusion

The first year of discussions at the Exploratory Treaty Table in Saskatchewan resulted in the discovery of substantial common ground on understanding the treaty relationship, on the policy implications of building upon the treaty relationship, and on the mutual benefits of doing so for Canada, Saskatchewan and Treaty First Nations. Everyone in Saskatchewan (and, indeed, in Canada as a whole) is a beneficiary of the prairie treaties. First Nations are growing as a demographic and economic reality, and

their prosperity will have a significant impact on their neighbours. Revitalizing the treaty relationship has the potential for becoming the unifying force that redefines and enriches what it means to be Canadian, and what is distinctive about living in Saskatchewan today and as we approach the 21st century.



FSIN Chief Perry Bellegarde, Treaty Commissioner David Arnot, and Jane Stewart, Minister of Indian Affairs, at the presentation of the *Statement of Treaty Issues: Treaties as a Bridge to the Future* on October 23, 1998
