



MAR 4 2010

The Honourable Bill McKnight, PC
Treaty Commissioner for Saskatchewan
Office of the Treaty Commissioner
2553 Grasswood Road East
SASKATOON SK S7T 1C8

Dear Mr. McKnight:

I would like to take this opportunity to acknowledge and thank the Office of the Treaty Commissioner for the production of *Treaty Implementation: Fulfilling the Covenant* (the Report). This Report and the ongoing work of the Commission contribute valuable knowledge and insight into the enduring and evolving relationship between Treaty First Nations and the Crown, and enables us to continue to build on the relationship established when the Treaties were signed.

I do apologize for the significant amount of time the preparation of the attached response has taken. Given the complicated and significant nature of the subject matter, a great deal of internal consideration and discussion followed, hence the delay in our response.

Once again, I extend my sincere appreciation to the Office of the Treaty Commissioner for undertaking this important work. This Report, together with the ongoing education and advocacy work of your office, will continue to contribute to the objective of reconciliation between Treaty partners in Saskatchewan.

Sincerely,

Chuck Strahl

Encl.

THE GOVERNMENT OF CANADA'S RESPONSE TO TREATY IMPLEMENTATION: FULFILLING THE COVENANT

I would like to respond to *Treaty Implementation: Fulfilling the Covenant* (the Report) by offering some observations on one particularly important theme raised regarding treaties and the treaty relationship: reconciliation. As well, I would like to outline a way forward on treaty-related matters for the Treaty First Nations of Saskatchewan and Canada and other concerned stakeholders in Saskatchewan.

ORIGINS

The origins of the Report are rooted in the inability of the Government of Canada, the Federation of Saskatchewan Indian Nations (the Federation) and the Province of Saskatchewan to arrive at mutually-acceptable self-government arrangements within the context of the self-government negotiations undertaken from 2000 through the fall of 2003. This fact is noted in the Report where it is stated:

The Federation of Saskatchewan Indian Nations reported significant concern on the part of First Nation communities that the Agreement-in-Principle and Tripartite-Agreement-in-Principle did not sufficiently reflect the principles of the treaties or the goal of honouring, fulfilling or implementing the spirit and intent of the treaties, and that linkages to the treaties in the agreements were inadequate. (page 9)

The Report highlights the Federation of Saskatchewan Indian Nation's position that the treaties have not played a central role in guiding the relationship between First Nations and the Crown. The Federation's rejection of the self-government process is symptomatic of the significant challenges facing Canada and First Nations in fully comprehending and reconciling the treaty relationship. Saskatchewan First Nations have consistently made it clear that any solutions to First Nations issues of concern, including education reform and socio-economic development, need to be rooted within the construct of the treaty relationship. It is clear, from the Government of Canada's perspective, that the Crown and First Nations must work towards understanding and improving their relationship within the context of the treaties.

In an effort to resolve the impasse reached by the parties in self-government negotiations, the Commission was mandated to explore options for treaty implementation and to produce a report providing recommendations and options to the parties for future direction in the evolution of treaty policy. The executive summary of the Report identified reconciliation as a foundational concept that is part of "implementing treaties", and that the four pillars of reconciliation – political reconciliation, legal reconciliation, socio-economic reconciliation, and spiritual reconciliation – are areas where Canada and treaty First Nations can make demonstrable progress. Canada supports reconciliation as the basis for the ongoing implementation of the treaty relationship.

Political Reconciliation

Providing First Nations jurisdiction over their governing structures and matters internal to their communities allows for greater autonomy within the framework of Canadian federalism and works towards the goal of political reconciliation. From Canada's perspective, negotiated self-government arrangements are the key vehicles to achieve this autonomy within the context of a government-to-government relationship. These negotiated arrangements will be respectful of the principles of federalism, including First Nations' responsibility and decision-making over matters that are important to their communities.

Economic Reconciliation

There are a number of avenues before us to work towards economic reconciliation.

The Report notes that:

The treaties included promises that the Treaty First Nations were, through education and other assistance from the Crown, to learn the ways of agriculture and to participate in other economic opportunities created by the treaties. The treaties were to provide skills and tools required for the First Nations to fully participate in the new economy, with opportunities equal to those of the new society. In the northern part of the province, there was an expectation on the part of the Crown and the First Nations that a traditional form of economy would continue for a longer period. Regardless of these variations, it is fair to conclude that a reconciliation of the economic interests was not only contemplated in the making of the treaties but a central pillar to them. (page129)

Economic reconciliation can only occur when First Nations people are able to realize their potential as full participants in the broader Saskatchewan and Canadian economy. This in turn requires that communities have safe drinking water, quality health care services, and safe homes. It also requires an investment in education and skills training which will contribute to First Nations people gaining and holding meaningful employment in the broader economy. These are all areas where Canada understands that it has a role to play in undertaking active and practical measures, and where it is making concerted efforts to make fundamental improvements.

However, viable, comprehensive solutions to address economic disparities experienced by First Nations people will only be effective if they are jointly developed by the various economic stakeholders in Saskatchewan, including the Treaty First Nations, Canada, the Province, and private sector enterprise.

The Government of Canada understands that it has a role to play in facilitating relationships with the other economic stakeholders in the economy.

In June 2009, the Government of Canada released the New Federal Framework for Aboriginal Economic Development. Representing a fundamental change to our Canada's approach to Aboriginal economic development, this Framework will foster partnerships between the Government of Canada, Aboriginal Canadians and willing partners to ensure that Aboriginal Canadians enjoy the same opportunities for employment, income and wealth creation as other Canadians. Focusing on strengthening Aboriginal entrepreneurship, developing Aboriginal human capital and enhancing the value of Aboriginal assets, the Framework will support an approach that is responsive to economic conditions, targeted at emerging opportunities and leverages partnerships to achieve sustainable, long-term economic development for Aboriginal Canadians.

In pursuing active and practical measures, Canada is taking steps to increase the ability of First Nations enterprises to access the private sector capital required to run successful ventures. Canada is also working to improve and streamline the on-reserve regulatory environment to aid in the development of First Nations-owned commercial and industrial businesses.

In addition to these steps, Canada is continuing to pursue the settlement of treaty land entitlement and specific claims to enable First Nations access to more land and resources, which will enhance opportunities for First Nations peoples to participate more fully in the economy. Canada will continue to play an appropriate and constructive role in the discussion of land related matters, and will continue to work with First Nations and other stakeholders in the Saskatchewan economy towards enhancing First Nation participation in crucial areas of the economy.

Spiritual Reconciliation

The recognition of the culture, language and spirituality of First Nations people provides a lens through which First Nations people can see themselves, and in turn, to be seen by other Canadians, as full members of the Canadian community. This affirmation also serves as a foundation upon which to build spiritual and social well-being both in First Nations individuals and in their communities.

The affirmation of the treaties via spiritual and cultural education contributes to an evolving, positive and fruitful relationship among cultures. In pursuing spiritual reconciliation, Canada has taken significant steps to address the transgressions of the past, such as Canada's work with First Nations towards implementing the Indian Residential Settlement Agreement and its apology with respect to residential schools and the victims of abuse. Through the work of the Truth and Reconciliation Commission, Canada will continue to support the healing process around this painful period in Canadian history.

Legal Reconciliation

The Report asserts that the goal of legal reconciliation is for Canada and First Nations "to give meaning and content to Section 35 of the *Constitution Act, 1982* with a view to bringing certainty and clarity to the promises of the past." The Report goes on to state:

Treaty and other jurisprudence are an important source, but not the only source, of interpretive and other principles applicable to the treaty relationship. The courts in recent years have increasingly urged the Crown and First Nations to address their differences through dialogue. Increasingly, the decisions of the Supreme Court of Canada encourage good faith negotiations to address questions of First Nations and treaty rights. Canadian law can be seen as a "floor" on which additional understandings can be built, but not an end in itself. (page 124)

Canada agrees that dialogue between the treaty partners is the preferred means of resolving contentious issues and is consistent with the treaty relationship. In my address to the Treaty Implementation Conference in Saskatoon in March 2008, I noted that the key to success is to keep the lines of communication open as we strive to address these outstanding and sometimes contentious issues. I believe that historic treaties and their promises must be part of the dialogue. The onus is on all of us to approach these discussions in good faith and with reconciliation as our primary objective.

In an effort to build on the principles of discussion and dialogue which are central to the treaty relationship, Canada has participated in discussions at the Treaty Table in Saskatchewan for over a decade. The Treaty Table is mandated to explore issues related to the treaty relationship. In its continued commitment to reconciliation, Canada worked with the Federation of Saskatchewan Indian Nations last year to renew the mandate for the Office of the Treaty Commissioner. The Office of the Treaty Commissioner will continue to play a critical role in assisting the parties in the ongoing evolution of their treaty relationship.

Enduring and meaningful reconciliation is best built on a foundation of mutual agreement and respect between the parties. Despite our best efforts, there will, however, be issues where discussions will reveal fundamental differences of opinion between the treaty partners that may not be resolved through dialogue alone. On matters where fundamental disagreements exist between the treaty partners and which can not be fully resolved through dialogue, the Courts will continue to be a valuable source of information and guidance on the overall direction of the treaty relationship.

The Report clearly outlines reconciliation as a theme central to the concept of implementing the treaty relationship. As I have discussed, political reconciliation, economic reconciliation, spiritual reconciliation and legal reconciliation are all areas where Canada will continue to work with Treaty First Nations and the Province of Saskatchewan towards fostering stronger relationships in the future.

MOVING FORWARD

In November 2007, Canada and the Assembly of First Nations signed a political agreement aimed at addressing areas of concern not addressed by the legislation adopting a new specific claims process. In this agreement, the parties committed to working together on a joint approach to address other treaty issues not addressed in the draft Specific Claims Tribunal legislation or the Specific Claims Policy. This joint engagement was to begin with a conference on historic treaties in early 2008.

In partnership between the Assembly of First Nations and Indian and Northern Affairs Canada, and hosted by the Federation of Saskatchewan Indian Nations, a conference took place on March 26 and 27, 2008. "As Long as the Sun Shines" was a national event that brought together Elders, Chiefs and First Nation political leaders from across the country to meet and exchange information, ideas and proposals with both federal and provincial government representatives. All had the opportunity to take advantage of the advice provided by elders and other speakers with expertise regarding treaties and treaty implementation issues.

The conference provided a national forum to share perspectives on options for advancing treaty implementation in all parts of the country. It started a process for developing a joint First Nations-Crown action plan to address treaty implementation issues with a focus on what we can do, and how we can do it together. To this end, the conference delegates discussed First Nations-Crown treaty implementation issues in all regions of Canada, from the pre-Confederation treaties of peace and friendship to the diverse treaties entered into between the Crown and First Nations from 1867 to the present day.

In my address to the conference, I noted that treaties reinforce the vital role First Nations play in the Canadian confederation, and represent the ongoing political and economic relationship between the Crown and First Nations. As such, they anchor this longstanding relationship and are an ongoing building block within the Canadian federation.

I also acknowledged that the courts have interpreted the role of treaties as instruments of reconciliation between First Nations and the Crown. I appreciate that implementation of the treaty relationship must be based on the original understandings of the treaty signatories, including the First Nations' understanding of the spirit and intent.

During your remarks to the March 26 and 27, 2008 conference, you noted that:

On one hand we have the treaties. These are the sacred understandings undertaken with the three Parties – The Creator, The First Nations and the Crown. Even with the most basic understanding of the treaties, one should realize that they are fundamentally about three things, as told to us by Treaty Elders in Saskatchewan: getting along with others; living together on the land; and making a living.

I agree that a relationship between the Crown and First Nations, consistent with that which was established when the Treaties were signed, will have direct impact on the *Indian Act*. I believe that the key to advancing towards such a treaty relationship is through working on the four pillars of reconciliation previously discussed: political reconciliation, economic reconciliation, spiritual reconciliation and legal reconciliation. Canada was committed to beginning this work when it signed the Political Agreement with the Assembly of First Nations in November 2007.

Canada and the Assembly of First Nations agreed to establish a joint working group to develop an action plan to focus on giving expression to the treaty relationship through practical measures. Phase One of the action plan has been successfully completed, and Phase Two will be initiated in the coming months.

The action plan will enable national, regional and local level engagement on key treaty relationship issues particular to specific regions. The latter will likely be addressed through regional roundtables that will target practical measures related to economic development and quality of life. It is within the context of the regional roundtables where I see further work providing for greater progress towards reconciliation.

By setting aside differences and adopting an interest and results-based process, Canada believes that in both Saskatchewan and across the country, all parties can work together as treaty partners in undertaking practical and active measures to enhance governance, economic independence and well-being for Treaty First Nations.