

## **Forging Linkages & Finding Solutions**

### **A BC Treaty Commission Conference for First Nations**

#### **Grand Council Chief John Beaucage, Union of Ontario Indians**

#### **Keynote Address – October 29, 2008**

Good evening commissioners, chiefs, elders, ladies and gentlemen. It is a distinct pleasure to be here today and to bring greetings on behalf of the 42-member First Nations of the Anishinabek Nation in Ontario. I wish to thank the BC Treaty Commission for the invitation to address you tonight. I always feel welcome here in British Columbia and I love Vancouver. I am not afraid to be controversial. I wish to give thanks to the Coast Salish for allowing us and allowing me on their territory.

Forging linkages and finding solutions is a significant theme for First Nations across Ontario, especially the Anishinabek Nation. There are a number of themes that are being discussed at this conference that all First Nations can relate to. The themes of governance, economic development and capacity building are among the highest priorities for the Anishinabek Nation, especially within the context of treaties, treaty rights and treaty relationships.

There needs to be definite linkages between the treaties and economic development. Without treaties in Ontario and the rest of Canada the Crown would have no access to the territory and resources necessary for development. For us, however, the treaty making process is over. We must use the treaty relationship we already have with the Crown to give us the access and the involvement in the greater resource-based economy.

Unfortunately, the treaty relationship that exists leaves a lot to be desired. We must spend time to redefine the treaty relationship between First Nations and the Crown in Ontario. We must assert our goals and our priorities. We must also spend time to develop and foster a positive economic and investment environment within our nation throughout our territory. These are, indeed, our top priorities.

The Anishinabek Nation has been part of treaty making for centuries. We have a long and storied tradition of making treaties with the newcomers. Our sacred creation story tells us that the Anishinabek lived here on Turtle Island, known as North America, since time immemorial. Archaeologists would like to argue that we have only been here since the ice age, approximately 12,000 to 14,000 years ago – semantics. I don't give that theory any credence whatsoever. I will take our creation story long before we listen to archaeologists. And as far as 1,000 years are concerned, we were here first. Sometimes these archaeologists and other people use those stories to denigrate our story and our place in the history of North America.

Our own history tells us of a prophecy that foresaw the coming of the light skinned race. The great prophecy tells us that two things may happen – either the light skinned race will offer us their hand in friendship or from our two nations one great nation will emerge and flourish. However, it is also stated that the light skinned race will come wearing the face of destruction and will begin an era of disease, poverty and loss of our culture for our people. We would lose our land as well. It is said that the rivers would run with poison and the fish would be unfit to eat.

Our people long held the view that we could benefit from a friendship with the Europeans. We befriended them, offered them our foods, showed them our ways and cured them with our medicines. We shared the land with them. We offered them our most sacred gift – tobacco.

As a result of this friendship we began to sign treaties with the British Crown. Our most important treaty we signed as a nation was the Treaty of Niagara in 1764. This created what is known as the covenant chain between the British and the three fires Confederacy and a number of affiliated nations. As a result of this Treaty an important alliance was created between the British and the First Nations. This was instrumental during the war of 1812 and 1814 where the British, with the help of the First Nations in Ontario, pushed back the United States so that when they were trying to take over our country at that time that was the only war that the United States ever lost.

We pushed them back so far that we pushed the American army right to Washington and then we burned down the White House. I've heard they've since rebuilt it, and next week I guess somebody new is going to move in. So there is good news all the way around.

The most tangible result of these treaties is the realization that they contributed greatly to the wealth of Canada. As a result of the Royal Proclamation of 1763 the Crown required treaties to be negotiated with First Nations in order to speculate and develop land in the new British colony. Most of these treaties were signed between 1850 and 1923. Within our territory it began with the Robertson/Huron and Robertson/Superior Treaties of 1850 and ended with the Williams Treaties of 1923.

For the Crown this was very much a formality. Land was surrendered by the First Nations in order for the government to begin licensing development. This licensing continues on to this very day.

For First Nations, however, these treaties were not merely formalities. Treaties were considered sacred. They were not concluded with a simple signature or an X; they were concluded and witnessed by the Spirit through the smoking of the pipe. We invoked the Creator to bear witness to everything that was said during the treaty making process so the treaty wasn't just what was written on the paper. The treaty was everything that was said during the treaty making process because we began our ceremony with the lighting of a pipe and we invoked the Creator to bear witness to the truth of the words that were said during the treaty making process. That is why it's sacred.

For First Nations there was no concept of land ownership or land to surrender. The treaties meant that the land would be shared and, that in return, full use and benefit from the traditional use of the territory would continue in perpetuity. First Nations expected to share in the wealth of the development of forestry, fishing, mining and agriculture. In return, First Nations were provided with small sums of money and gifts.

For the 1850 Robertson/Huron treaty bands, literally this was in the form of hundreds of dollars in exchange for vast tracts of surrendered lands. Each 1850 treaty citizen was provided with an annuity of four dollars every year. This was certainly not expected to be compensation for the entire treaty. My ancestors did not sign the treaty expecting to consign their descendants to poverty. We signed it expecting to share in the benefit of all of the territory that we were sharing.

Each and every year, under the watchful eye of the Indian and Northern affairs person and the RCMP guard in full dress we lined up for a four dollar treaty entitlement. And for obvious reasons an annuity claim against the Crown is in the works.

Other treaty areas were provided with commitments for a schoolhouse or a medicine chest and today this means the right to ensure education and health care. Yet First Nation's right to education is limited to basic education. It ignores special education and has a vast underfunding of post secondary education. Healthcare is limited to cost containment measures that don't take into account the health indicators of First Nations people.

The Crown's historical role in treaty making was one-sided and dishonourable. Further, their role in resolving land claims, historical grievances, and facilitating First Nations treaty rights has kept us poor and has kept us for generation after generation.

This fundamental unfairness and ignorance of the treaty must come to an end in order for First Nations to overcome poverty, to establish self-sufficient economies and thrive under self government nationhood. First Nations are entitled to their historical, modern, and future share of the wealth generated from the treaties through the sharing of our traditional territories.

The treaties secured a number of treaty rights, not only for First Nations but for all Canadians. Yes, all Canadians have treaty rights, too.

The most significant right obtained by the treaties was the right to economic wealth, through the development of our territory. This treaty right has amounted to billions upon billions of dollars which has accumulated for the past hundred years. For all intents and purposes the treaty right of economic wealth has exclusively benefited the crown and non-native Canadians. As we know, First Nations poverty continues to be one of the highest social issues for all Canadians.

The second most significant right obtained by the treaties was the right to the land. The treaty right to land has almost exclusively benefited the Crown and non-native communities. Less than 2 per cent of the territory is under control of First Nations while Canada enjoys 98 per cent control to all of the lands in Canada.

At one time First Nations had full jurisdiction over their reserve land. However, this was also immediately removed with the imposition of the *Indian Act* in 1876 which regulated all aspects of Indian life, including lands management on reserve. At that point the Chief Superintendent of Indian Affairs had the power to dispose of lands reserved for Indians.

First Nations continue to have certain treaty rights, including the right to hunt and fish on our traditional territories; the right to education, healthcare, and housing; and the right to be exempt from foreign taxation. However, many of these rights have been subject to regulation by the Crown.

For example, the treaty right to housing provides a limited sum of dollars to First Nation bands for their housing programs. Although the bands have control over their housing programs, INAC subsidies are insufficient to build quality homes. As a result homes on reserves are smaller, not built to code, and are often times incomplete and unable to withstand the cold climate. The average community has subsidies to build less than seven of these homes per year.

The right to income tax exemption is limited to those few people who are fortunate enough to live and work on reserve. These opportunities are few and far between. Over 60 per cent of our people are forced to live and work off reserve. The treaty right to healthcare is limited by Health Canada policy, with the majority of the responsibilities covered under the *Canada Health Act* and provincial healthcare programs. All Canadians enjoy the right to universal health care.

The treaty right to post secondary education is limited by government policy and budget. The majority of First Nation people make use of student loans like everyone else. More and more, Supreme Court, lower courts and public opinion are moving towards equality in the legal rights of First Nation people under the treaty. Canadians are demanding reparations, fairness and improvements in the social issues that face all aboriginal people.

The Ipperwash Inquiry brought forward a number of recommendations that highlight the need to improve relationships based on the treaties, including calling for an establishment of a treaty commission in Ontario. The Anishinabek Nation is currently working on an initiative to restore the balance in the treaties. The Anishinabek Nation is calling for an establishment of a new, modern treaty implementation process for Ontario.

Our five-point proposal includes a treaty-enabling framework negotiated between Canada, Ontario and First Nations on a treaty-by-treaty basis to look at all aspects of the treaties, to negotiate its modern interpretation and implementation, establish treaty-enabling legislation that will ensure adherence to the treaties, including treaty-enabling language in all development agreements, entrenched legislative requirements for consultation and accommodation and engagement of First Nations in all developments on land and transactions.

One thing that really bothers me is the non-derogation, non-abrogation clauses which are currently in just about all of our agreements. Basically those are negative clauses. They say we've been taken away from you for hundreds of years and we promise we are not going to take away any more.

What we are proposing and what we are saying right now with our enabling language is that we want the governments to put in there "we affirm your treaty rights under this agreement," – positive language not negative language. And every community, every contract across the country should have treaty-enabling language, not the language which means the negative; we're not going to take away anymore. We don't want that. We want to add to the cup not take away from the cup.

We want resource benefit sharing which would include the negotiation of an Ontario-wide revenue sharing agreement similar to the Ontario First Nations gaming agreement. This would include negotiation of a treaty-based revenue sharing framework.

We want to establish the Treaty Commission of Ontario as recommended by Justice Linden in the Ipperwash final report. This would consist of treaty commissioners and an office of the treaty commission appointed from every treaty region in Ontario. Roles from the treaty commission would include treaty administration, natural resource management, licensing, and coordination of consulting, regulation with the regulatory authority and enforcement of treaties.

Finally, we are calling for a significant treaty education mandate. This would include public education for all people in Ontario on treaties, as well as a formal curriculum in the Ontario school system.

Although we are calling for a new relationship with the Government of Canada and the Province of Ontario based on the treaties, we are not content to be wards of the Crown and to continue a long cycle of the dependence on government. Many years ago when I first became involved in First Nations politics, I kept hearing the term fiduciary duty when talking about our relationship with the Crown. Essentially, the definition of fiduciary is a person to whom property or power is entrusted for the benefit of another. Children or the elderly typically need a fiduciary. A fiduciary looks after the assets of another and is expected to act in the best interest of the person whose assets they are protecting. This is known as fiduciary duty.

How this concept has been translated for First Nations – by imposing the *Indian Act* upon us and virtually controlling our lives for more than a hundred years – the Government of Canada was a de facto fiduciary. Sadly, even though First Nations considered treaties a sacred document the main reason treaties were instituted was in fact to find a legal way to exploit our lands and resources. The reason for the *Indian Act* was to control, subjugate and colonize Indians. Our best interests were not seen as a high priority at all.

To our credit, since the 1960s, First Nations citizens have become more politically astute. Our past leaders fought well to preserve our rights. Through the work of the Union of Ontario Indians, the National Indian Brotherhood and others, we fought for and achieved constitutional recognition. We also have legal precedents that confirm our rights. Today there are several meaningful self-government agreements in place and over 80 more are being negotiated throughout Canada.

Our own Anishinabek Nation restoration of jurisdiction process represents the largest self-government table in Canada. In 2007 the minister of Indian and Northern Affairs and I signed an agreement in principle on core governance principles after a decade of negotiations on behalf of our 42-member communities across Ontario.

We talk about our nation-to-nation, government-to-government relationship with the federal and provincial governments. Yet despite all of this momentum and political awareness, we still cling to the sacred fiduciary relationship – a failed concept that has done us a great disservice. By its very nature the fiduciary duty must end at some point. A parent/child relationship changes and at some point it reverses itself in terms of duty of care. Let us be the first ones to talk about ending the fiduciary relationship on our terms. Let us talk about the contractual relationship that was brought about by treaties.

When I say contractual relationship, I am not talking about demeaning the aspect of treaties. The treaty is the highest form of contract. It is a treaty between nations. It is a contract between nations. It provides for honour between the two nations in dealing with each other. Let us negotiate fiscal equalization transfers that are due to us because of the resources taken off our territories.

The province has discussed equalization payments over time with the federal government. Only we should be responsible for our futures and ourselves. To cling to the concept of maintaining a fiduciary relationship is like saying we need a safety net. And that is not being self-sufficient or self-reliant.

In order for self-government to be a reality, the concept of fiduciary duty must perish in order to give life to our aspirations for our children's futures and strong First Nation governments. We must begin to take steps to get beyond the fiduciary duty. We must begin to ask ourselves: do we really need to be dependent on the Government of Canada? Are they really working in the best interest of our people?

We must look forward toward sovereignty, success and self sustainability. These are the keys to true self-government and true self-determination.

In 2006 I published the Political Manifesto, a document that would guide my leadership. Article 15 of that manifesto boldly states that we shall collectively work towards the elimination of Anishinabek poverty in 20 years. In order to achieve that we need to take broad, definitive steps to develop an Anishinabek Nation economy. The key to a prosperous, stable and healthy Anishinabek Nation is the establishment of a self-sustaining Anishinabek Nation economy.

In article 16 of the Political Manifesto I stated we must continue to assert that the Crown has a fiduciary duty to finance our governments, a concept that is based on our treaty rights. However, we can no longer solely rely on Indian monies and government revenues to finance our communities and Anishinabek Nation governments and social needs. Therefore, it is a primary goal of the Anishinabek Nation to support the coordinated approach to development of an Anishinabek Nation economy. A long-term Anishinabek Nation economic strategy will be developed and will act as the foundation for a new economic outlook for our nations.

Our economic strategy will be based on obtaining and sharing benefits with the whole of the Anishinabek Nation, including sharing and equalization of resources and benefits with each of our four Anishinabek Nation regions. Resource revenue sharing agreements must be negotiated and implemented with the Crown as part of the Anishinabek Nation economy. Impact benefit agreements must be negotiated and implemented with business and industry within Anishinabek Nation territory as part of the Anishinabek Nation economy.

In April, alongside Minister Tony Clement, the federal minister responsible for the federal economic development initiative for Northern Ontario, FEDNOR and Minister Michael Bryant the minister of Aboriginal Affairs for Ontario, I had the pleasure of introducing the Anishinabek Nation economic blueprint, our 10-year plan to establish local and regional economies. This 10-year economic strategy will develop a practical and measurable master plan or blueprint for Anishinabek Nation economic development.

The blueprint involves roles and objectives for all of our member communities, tribal councils, economic development offices, economic development corporations, business development corporations, the human resource sector, key sector, private, and public partners and government. It looks at the economy from the perspective of our entire Anishinabek Nation territory, a bird's eye view of the full potential of our First Nation economy.

Our economic strategy was led by true leaders and economic professionals through an innovative think tank component. This included our chairpersons, Dawn Madobe and Ray Martin, Chief Clarence Louie was part of it, Bert Christmas, David Tuccaro and Dr. Jack Burroughs among others.

The final strategy outlines 21 key recommendations utilizing a First Nations progression model under three teams. Step one, building local capacity in financial and quality management; step two, preparing for economic development; and step three, pursuing economic development.

I am going to include a few recommendations that we have. Recommendation 2, all members of the Anishinabek Nation need to make economic development a priority. It has to be a part of our culture that we want to make economic development a priority with all of our citizens. Recommendation 12, develop and implement Anishinabek human resource strategy. Recommendation 14, utilize the entire traditional territorial land for economic purposes not just reserve land. Recommendation 15, develop and implement Anishinabek tax policies.

Yes, I said tax. We will tax others who are coming on to our territory. We won't tax our people, but we will tax them for coming on to our territory. Ontario Hydro, Bell Canada, the mining companies, we will tax them and we will put the tax into our coffers.

Recommendation 19, plan to participate in the regional Anishinabek Nation and global economy. In essence, we will all be on the same page, working on the same plan and be working toward the same goal building a sustainable, self-sufficient First Nation economy. This economic strategy will not simply be a report or a stand-alone initiative that will fester on a dusty shelf over time. This is a practical, living, breathing entity. A strategy consisting of principles, best practices, networking opportunities, key objectives, deliverables, tasks, and momentum, but most important of all is people.

Our Anishinabek Nation economic blueprint and our five-point plan to establish a new modern treaty implementation process are instrumental to our overall goal to eliminate Anishinabek Nation poverty in 20 years. However, we just don't want to stop at eliminating poverty. We should all have the right to earn and generate wealth. Yet, in the Supreme Court case of *R. v. Marshall*, the decision affirmed Donald Marshall's right to commercially sell fish and from it earn a moderate living.

Would Canada's top court ever intercede in a Bay Street decision and require the plaintiff or defendant the right to only make a moderate livelihood. Would a court ever make a decision in favour of the Canada Revenue Agency, but limit the taxable takings to something moderate? I think not. But why do they expect that First Nations should have only the right to earn a moderate living? That is a systemic barrier that goes right up to the Supreme Court.

Why are we always meant to stay poor? We should not be ashamed of individual wealth and our right to generate wealth on behalf of our nations. First Nations are not going to close up shop and go away.

We are making changes to our economies and our government to ensure that we counter the assimilation policies that we have faced for many years. We are choosing to move out from under the *Indian Act*, set our own priorities, and govern ourselves according to our goals and aspirations. Our overall goal is to re-establish a nation of revitalized, sustainable First Nation communities where each community will become a contributing part of the fabric of Canada. We seek to end the cycle of dependency that has kept us living in poverty.

You may have come here and expected a leader to call for implementation of the treaties and more government funding, to bang my fist on the table in defiance to paint a picture of squalor and despair, to talk about third world conditions in our own backyard. However, poverty doesn't mean we are victims. A single mother who works two part-time jobs just to get by, she is not a victim. The family of five with parents who work two jobs to support a child with special needs, they are not victims. The extended family of 10 crowded in a dilapidated two-room house, living only on social assistance, they are not victims either. Their strength and their defiance are in their will for survival and their goal to overcome adversity and make life better for themselves and their children to the seventh generation.

We must continue to come together and support each other to ensure that the poor are not forgotten. We can and will meet the goal of eliminating poverty within 20 years. This can be done by building our own economies and creating wealth for our nations and our citizens.

First Nations need more access and more opportunities to develop our own economies based on our own resources within her territories. And this can only be achieved through implementation of the treaties and in the case of British Columbia, through the negotiation and ratification of new treaties. In that, I wish you well over the next two to three days that you were going to be here and I know that you will be successful.

Thank you very much.