

**Preparing for the Day After Treaty:
November 14 - 16, 2007**

Matthew Coon Come, Grand Council of Crees

It is an honour and a pleasure for me to be addressing this session of the Preparing for the Day After Treaty conference. I wish to emphasize at the outset that while I am attending this conference as the Grand Council of the Cree's official, the views I am about to express are mine as a First Nations citizen. They do not necessarily represent the official position of the Grand Council. In other words, I can say anything I want.

As you may know, the eastern James Bay Cree people of which I am a proud member entered into Canada's first modern land claims agreement in 1975, approximately 32 years ago this month. That makes me about 20, give or take more. So we James Bay Crees have a bit of experience in the so-called treaty business.

Since making treaty, we have been trying to implement treaty. We have been complaining about not implementing treaty; we have been going to the United Nations and to the Vatican to whine about not implementing treaty; we have been suing about treaty; we have been meeting with the Minister about treaty, and the next Minister and the Minister after that. We have been making other treaty about not suing about treaty, yet we have even been refusing to make another treaty that would undermine and extinguish our present treaty. We have also now been making treaty to implement our original

treaty. God, it's confusing.

Actually, when I think about it, we James Bay Crees have been preparing for the day after treaty every day for more than 30 years. Oh, excuse me, just a minute okay? Thanks. As you can see I'm having fun I'm not running for an office.

It's lunch and the food was good so a little ancient history is in order.

In 1701, at the end of 60 years of war with the French and English, the five Iroquois Nations made treaties of peace and accommodation with two European Crowns at Albany, New York and Montreal in return for very solemn promises of exclusive territory, peace, ally status and non molestation, the French and the English Crowns admit their presence in North America.

The Iroquois people kept their side of the deal, including the War of Independence and the American invasion of 1812. In return for their solemn promises, especially regarding the lands and resources six miles on either side of the Grand River from Lake Erie to its source were made.

Few, if any, of these promises were honoured and it appears that the land or its trust benefit was taken from them.

Three hundred years later at Caledonia in Ontario, there was an Iroquois occupation and we are witnessing the unfortunate but inevitable consequences of a gross failure to implement historic treaties.

In the 1820s, the Chippewa in what is now Southwestern Ontario entered into a treaty with the English Crown whereby in return for permitting English settlement in over two million acres of their traditional lands they were promised that they would have three Reserves guaranteed to them forever. The Chippewa kept their side of the treaty, but in 1941 the entire Reserve at Stoney Point was taken from them by the Crown. More than 50 years later, in 1995, Dudley George and a few other courageous protestors gave up waiting for their Reserve lands to be returned as promised at the end of World War II. They reoccupied the last small part of their Reserve land. As we all well remember, Dudley was shot and killed by the Ontario Police. Again, we were seeing the consequences of gross failure to implement these historic treaties.

These are two typical stories of the so-called historic treaties between Aboriginal peoples in Canada and the Crown. As reported by the Royal Commission on Aboriginal peoples a decade ago, and it is still true today, the historic treaties have overall been neglected and ignored. As a result, many of our people are now nations without resources and dispossessed. Some people might conclude that inadequate preparations were made in these historic contexts for the day after treaty.

I think it would be more accurate to say that the Crown made very deliberate preparations for the day after treaty. The Crown made very deliberate preparations to forget, violate, ignore, suspend and even extinguish the treaty rights

in favour of other peoples that the historic treaties contain. The Crown prepared to take what it got from treaty but to not deliver to the Indians what they got from treaty.

These days the treaties between Aboriginal peoples and the Crown are referred to as the modern land claims agreements. I was in my late teens when I learned that my community in Northern Quebec was going to be flooded for a hydro mega-project. I was attending school down south and one day in the early '70s we picked up a newspaper and we saw the proposed hydro electric development called James Bay I Project. Bourassa called it a project of the century. I saw on that map the Mistasni Lake and my community would be flooded under water.

I have always wondered what was modern about the circumstances in the 1970s in which we negotiate our treaty, the James Bay Northern Quebec agreement. At that time the Federal Crown and the Government of Quebec were holding the gun of massive hydro electric flooding to our peoples' head. In the negotiations our leaders were threatened, funding was withheld, terrible deadlines were imposed and our political leaders had little experience with these things. There was nothing that was modern about these take-it or leave-it circumstances of duress.

Our treaty, the James Bay Northern Quebec agreement, contains many important benefits of which our leaders and people are still proud. Promises of economic development, housing, education and training, community

infrastructure and housing, environmental and social protection and health care, to name a few.

These were and still are very modern and essential benefits. Since the signing of our agreement in 1975, our people have made incredible progress in terms of employment and training and housing. We own our own airlines, Air Quebec, we own our own construction companies that administer millions and millions of dollars; we don't even have a Cree word for million let alone a Cree word for billion.

We also pushed for individual entrepreneurs and we improve the well being of our communities and there's still much more to do. However, there was nothing modern about the fact that in 1975 unlike all other Canadians, we were forced to surrender and undergo extinguishment of our Aboriginal title to our lands and resources before the Crown would give us benefits that all non Aboriginal Canadians simply take for granted.

There's nothing modern about the ongoing Crown policy and practise of extracting surrenders and extinguishments in the course of these agreements.

These days government officials say that extinguishment is no longer required but it is plain to see if you read the text of all modern agreements, they still require extinguishment under other name - code words like certainty, conversion, non assertion and fall back release. It is important to note that most recent United Nations Human Rights reports and concluding observations stated that the practise of extinguishing inherent Aboriginal rights is incompatible with

Article 1 of the International Covenant on Civil and Political Rights.

This international covenant is universal and applies to humans everywhere, even Aboriginal peoples in Canada. There is also nothing modern about the idea of land claims. This phrase proclaims that our indigenous title is inferior to the Crown's; that we must come forward and make claims to what every Aboriginal Elder knows has always been ours. This terminology perpetuates the notion that requiring indigenous peoples to give up our title to most of our traditional lands and resources in the context of claiming our birthright is legitimate and modern.

However, no matter what we get promised in return, this is not modern. I stated in 2005 by the United Nations Special Rapporteur on the Human Rights of Indigenous Peoples, and I quote:

"In addition to adequate lands and resources, Aboriginal peoples also require certainty and predictability concerning the non-extinguishment of their inherent rights."

Importantly, UN Special Rapporteur Dr. Stefan Hagen then declared that from a Human Rights perspective it should be clearly established in the text and spirit of any agreement between an Aboriginal people and the Government of Canada and supported by relevant legislation that no matter what is negotiated, the inherent and constitutional rights of

Aboriginal peoples are inalienable and cannot be relinquished, ceded or released, that Aboriginal peoples should not be requested to agree to such measures in whatever form or wording.

The word inalienable means cannot be given away no matter what. If our treaties and agreements are really modern, why are the Federal and Provincial Governments still insisting in the East and the West and the North that Aboriginal peoples must relinquish, cede, surrender or not assert our inherent and fundamental constitutional rights in order to enter into and implement so-called modern agreements with the Crown.

If our agreements are modern, why does it take 30 or more years for them to begin to be properly or meaningfully implemented? Incredibly, in September the Government of Canada voted against the adoption of the Declaration on the Rights of Indigenous Peoples by the UN General Assembly. The delegations of indigenous peoples from every corner of the earth had put decades into developing the Declaration; each clause is a proper response to real issues including genocide, landlessness, oppression, marginalization, discrimination and terrible socio-economic disparities affecting indigenous peoples everywhere. Yet, the Federal Government decided to join the few hold-out states at the UN and opposed this very important human rights instrument.

The Declaration is particularly important to our treaties and their proper implementation. It makes clear, for

example, that our treaties and agreements are matters of international concern, interest, responsibility and character. The Declaration also affirms that indigenous peoples everywhere have the right of self-determination and have the right to maintain and straighten our relationship with our traditional lands and resources. The Declaration also makes clear of our rights to education, health services and socio-economic development, to name a few - our fundamental human rights of all indigenous peoples.

The Governments of Canada and other countries may wish to ignore the Declaration, but as long as the right it contains remains strong in our heads and our hearts, these governments will not succeed.

I am still not ashamed of the indigenous rights agenda. In the end, the only thing indigenous peoples can need are our fundamental rights. Any other approaches rest on charity.

As the Kelowna Accord approach now shows, programs and benefits are not rights, can get minimized and extinguished. Programs and benefits are mostly only given to us when governments or non Native Canadians take pity on us. Under these circumstances, the programs are inadequate and the benefits are stingy. On the other hand, rights lead to entitlements. Aboriginal peoples are fully entitled to a full and proper share of the great wealth of this land, our land.

All is not lost if our so-called modern agreements contain extinguishments that are imposed upon us

against our will in whatever form or by whatever new name. I know that these extinguishments are violations of fundamental human rights. I believe the extinguishments are not consistent with the honour of the Crown. These extinguishments will not stand the test of time as long as we continue to assert that we never gave up and we'll never give up our fundamental human rights.

The 1975 James Bay Northern Quebec agreement, of which I and my people are beneficiaries, contain many oppressive, purported extinguishments including some whose meaning only became clear when the Crown asserted them against us. The Crown purported to extinguish our title to our traditional lands and also to all future resource revenues, all in the name of the so-called certainty. Twenty-six years later, in 2001, the Government of Quebec found that instead of getting certainty that it had endless social conflict with the Crees and the ongoing uncertainty. So it finally asked the Crees to re-visit the earlier purported extinguishments of resource revenues and our economic relationship with all of our traditional lands. So the Cree and Quebec entered into the La Paix des Braves under which the Crees have regained a significant share of all resource revenues from all of our traditional lands.

The 2001 La Paix des Braves agreement set an acceptably high standard for treaty relations concerning the 50 per cent of our treaty that is between Quebec and the James Bay Crees.

The Government of Quebec understood that the standards of the 1970s were unacceptably low, that the only way to retain its self respect as a modern Provincial government was through fairness, generosity and equity. It took another six years for the Government of Canada to understand that the same standards must apply to half of our treaty that concern the Federal Crown.

You may have heard that the James Bay Crees just entered into and ratified a new relationship agreement with the Federal Government. This agreement settles past Court cases, and at long last, substantially implements part of our 1975 treaty by transferring responsibility and resources to the James Bay Crees for a period of 20 years and there was no extinguishment.

So the James Bay Crees, my people, went through - and I personally went through - seven negotiators over 32 years and now, at last, we have a Cree Federal New Relationship agreement one that finally begins to implement our treaty.

But I ask myself: why did it take an epidemic, mass poverty and unemployment and endless negotiations and so many years to begin to implement the first modern land claims agreement in Canada? And in order to do so, why do we, an Aboriginal people, have to sign another agreement to implement our treaty? Our people have been very, very patient.

In the meantime, 20 per cent of our youth are encountering problems of alcohol and drugs and family relationships. They should have been able to become productive

members with choices and contribute towards nation building of our Nation. We Crees now have the highest rates of family separations. Grandparents are raising their children's children. There's high teenage pregnancy, we have had a range of illness, diabetes and other serious problems. Could we have avoided all this if we had had the resources as originally provided for under the James Bay Northern Quebec agreement? The training dollars, the facilities, the transfer of knowledge, the access to contracts, the housing, the government funding and the building capacity to name a few. I believe so.

The only path to certainty, social peace and indigenous people developing in Canada is fairness, generosity and equity. If our treaties do not deliver fairly an equitable relief for our people, it does not matter what is written in there. There cannot be certainty or social peace. The writing's on the wall and the days are numbered for policies and practises of any kind that force us to surrender or to alienate or to not assert or to give up or to indemnify the Crown regarding our inalienable and inherent rights.

As is stated in the land claims agreement coalition, historic 410 Declaration, our treaty rights are human rights. They must be honoured, upheld and fully implemented.

The Federal and Provincial Governments are obligated to uphold the honour of the Crown in regard to all past and present and future dealings with our peoples. It is not honourable and it is no longer consistent with our human

rights to impose extinguishments. This includes the kind of extinguishment that occurs when benefits are promised but the promises are forgotten before the ink is dry and the day after treaty stretches into decades of disappointment and dashed hopes.

No province and no other group in this country is asked to give up its fundamental rights in return for getting full benefit from the wealth of the land. It is not honourable and it is inconsistent with our human rights to insist that as a result of historic treaties, the Indians got nothing and the Crown got it all. Our peoples did not agree in the 17th, 18th, 19th or 20th centuries or this century to be dispossessed or to be conquered or to be vanquished. To say we got nothing is dishonourable and absurd.

Our peoples agreed to share and in return perpetual, evolving assurances were made of peace and of friendship and of economic futures for our people. Our treaties will be as economically meaningful as we insist that they are. The alternative is perpetual social conflict and uncertainty.

I remain optimistic about our treaty relationships with Canada. I believe that with focus, vision, determination, unity, clarity and strength of purpose, adherence to the 410 Declaration of the land claims agreement coalition, and on occasion principled refusal to accept the very low standards that are still being proposed to us by the Crown, that all of our treaties can and will be meaningfully

negotiated, advanced and implemented.

If and when that occurs, our peoples' lives will improve, our Nations will once again begin to thrive, the honour of the Crown will be restored and the sun will rise on a bright day for our peoples the day after treaty.

In closing, I leave you with some thoughts. You can call these Matthew's ten treaty thoughts. Yesterday, the Co-Chair of the land claims agreement coalition, Paul, referred to the 410 principles and talked about maybe changing that to a 12 gauge with a slug, well I figure I'll use a 10 gauge this time, it's a little bit more powerful, if you know about guns, than a 12 gauge.

So here's my Matthew's Ten Treaty Thoughts:

1. Negotiate hard. If at all possible, walk away from any fundamentally unfair and inequitable deals that are being proposed to you. There will be another Minister, another negotiator, another policy, another government and another day.
2. Aboriginal treaty rights are human rights and our human rights cannot be legitimately extinguished.
3. If your treaty contains extinguishment of any kind, you can legitimately oppose and ignore them. Nobody has to accept violation of their human rights even if your signature is on them.
4. The Crown is generally not honourable because it will try to take what it wants and give little or nothing in return.

5. The Crown will try to forget, deny and extinguish the promises it made. That's true.
6. The Crown will have to be forced to do what it promised.
7. The Crown does not naturally behave in a generous, fair and equitable way.
8. Our treaties are only a foundation for our rights and entitlements in confederation.
9. The Crown will tell you that your treaty is the limit of your rights and entitlements, that's the limit to what your people can get. Not true. Move the goalposts. Demand more. Raise the standards. Behave just like the provinces do.
10. The day after treaty is every day of your life and your children's and grandchildren's lives for generations to come.