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Bill McKnight

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Treaty Implementation in Canada

Hon. Bill McKnight PC

Editor’s Note: The following are the speaking notes of Commissioner Hon. Bill McKnight PC. This address was delivered at the day-long workshop, “Historic Treaties with First Nations in Canada: Historical Context and Modern Meaning,” which was jointly hosted by the Strategic Research and Analysis and Treaty Relations Directorates of Indian and Northern Affairs Canada, March 2009.

I am very pleased to be here and to contribute in a small way to advancing the issues that are before us today. As I begin, I want to be clear about a few things: First, I will be speaking today from my context as the treaty commissioner from Saskatchewan—hopefully the lessons we have learned over the last twenty years will be of some assistance to others as we move forward on matters related to Aboriginal policy and research. Secondly, you should be aware that I was the minister of Indian and Northern Affairs Canada for two and a half years in the mid-1980s. Although my vantage point has changed, I have always believed, and I continue to believe, that how well governments, First Nations, and Aboriginal communities work together has a direct impact on how prosperous all Canadians will be in the future. Finally, I must be clear that working together—although a good beginning—is not the goal itself, but the means by which we might strive to achieve the ultimate goal of everyone sharing in the prosperity that is treaty implementation. I hope that my comments will challenge, but I also hope that they will provide hope for the future and that they will lead us closer to prosperity for all—as was the vision held by our forefathers.

What I hope to do in the next few minutes is to share with you some of my observations about what I think will lead us closer to treaty implementation in Canada. I hope to address two questions and through those questions speak to treaty implementation in Canada: What lessons have we learned from treaty implementation strategies of the past—I believe that this might contribute to discussions about Aboriginal policy and research—and based on these lessons, where might we go from here?

Before I turn to the substance of my remarks, let me tell you a little about the Office of the Treaty Commissioner in Saskatchewan, or the OTC. I will spend some time on this because in large part it sets an important backdrop to understanding my perspective on the lessons learned and where we should go from here. The Office of the Treaty Commissioner was established in 1987. The first commissioner was the former mayor of Saskatoon, Mr. Cliff Wright. The commissioner

from 1997 to 2007 was Judge David Arnot, and I have been the treaty commissioner since July 2007. The OTC is an independent body created by the Federation of Saskatchewan Indian Nations (FSIN) and the Government of Canada (the Crown), with the Government of Saskatchewan as an observer. Therefore, please note, the scope of the office is limited to the Province of Saskatchewan.

The Office of the Treaty Commissioner is about fostering dialogue, and promoting change and prosperity for First Nations people and all Canadians through treaty implementation. Typically, this has been accomplished through three main mandates or objectives for the OTC. The first mandate is to facilitate discussions aimed at the resolution of outstanding treaty matters between the Federation of Saskatchewan Indian Nations and Canada. These cover all matters related to treaty as long as the parties—the FSIN and Canada—agree the OTC should address the matter. The second mandate is to build greater social harmony in Saskatchewan by providing educational programs to schools and the general public about First Nations people, their culture, and the treaties. We believe that through better education will come greater understanding, which will lead to a better chance of resolving differences between the parties. The third mandate is to advance the First Nations treaty right to livelihood, prosperity, economic self-sufficiency, and independence by supporting training, employment, and economic development.

Some very significant outcomes have been achieved by my predecessors; or more correctly, by the parties, Canada and the FSIN, through the facilitation of the commissioners. Let me take a moment to mention two of the many accomplishments of the previous commissioners. Cliff Wright, the First Nations leaders, and those from Canada and Saskatchewan made a great contribution in 1992 by reaching the Treaty Land Entitlement (TLE) Framework Agreement. The TLE Framework Agreement recognized that over thirty First Nations in Saskatchewan did not receive the amount of land they were promised under treaty. It set up a process through which the federal and provincial governments are fulfilling the treaty commitments of land to First Nations by providing over five hundred million dollars to buy up nearly two million acres of land to add to reserves. This accomplishment has made a significant difference to the lives of First Nations people across the province. It made amends for wrongs of the past and provided economic opportunities for the future. The TLE Framework Agreement is recognized by First Nations, the Governments of Canada and Saskatchewan, municipal governments in Saskatchewan, and landowners in Saskatchewan as a significant success. I will discuss some of the factors for its success in a moment.

Another accomplishment of the OTC is its Treaty Education Program. Through the Treaty Education Program, we can celebrate that there is kindergarten to grade 12 treaty-teaching resource material in every school in Saskatchewan. And as a result of these efforts many more people in Saskatchewan are now aware that “We are All Treaty People.” Through this program, all people should know more about treaties and the treaty relationship, and more importantly the leaders of

the future, our children, will know more about the treaties. You may know that, partly because of the work of the Office of the Treaty Commissioner, the Ministry of Education in Saskatchewan has recently made treaty education mandatory in kindergarten through grade 12. Saskatchewan is the only province in Canada to have such a requirement. We are hopeful that more provinces will follow Saskatchewan's lead.

Finally, if I might, I would like to highlight another accomplishment of the OTC. Over the last few years, the OTC has also partnered with CTV Saskatchewan to develop and air television advertisements celebrating First Nations history and culture. A new series of advertisements will soon celebrate the contributions of First Nations and non-First Nations businesses as they partner to provide economic benefits for all people in Saskatchewan, including First Nations people. We continue to stick to our theme—"We are All Treaty People"—and are making significant progress. Recently, the premier of Saskatchewan, the Honourable Brad Wall, began a speech to the Council of Ministers of Education in Canada (CMEC) by declaring that he was happy to be speaking on the topic of Aboriginal education because he understands that he, too, is a treaty person.

I believe that if we reflect on these accomplishments we will find some unique ways of addressing treaty implementation that will tell us what we, at the OTC, must continue to do. First, we must fulfill the promises made in the treaties, including support to First Nations communities as they endeavour to become self-sufficient economic engines. Through economic activity, First Nations people from all walks of life can participate in the prosperity of the province. This was one of the original intents of the treaties—sharing the land, mutual benefit, and enabling First Nations people to share in the new economic reality that First Nations leaders saw coming. Secondly, we must continue to build greater social harmony in this province through education—education about the treaties, about the importance of treaties, about the fact that treaties are part of the legal framework of our society, about First Nations people, about First Nations customs, spirituality, language, and culture. Through better education comes increased pride among First Nations people, through better education will come better understanding, through understanding will come greater respect, and through respect will come greater harmony in our province. Thirdly, we must step out of our comfort zones; we must set aside our stereotypes, our excuses, our bitterness, and our envy, and engage in meaningful dialogue to resolve our issues based on sharing and mutual benefit. I am not speaking to just non-First Nations—I am speaking to both First Nations and non-First Nations groups and individuals. Until we engage in meaningful dialogue aimed at finding prosperity for all, we will not find unique ways to address treaty issues

I will now turn to the first substantial question I propose to address today: What lessons have we learned from treaty implementation strategies of the past? Although I believe that in the last 30 years things have begun to change and improve, over much of the last 130 years, treaties and treaty implementation in

Canada has had a history about which we have little to be proud. But I do not wish to dwell upon the problems of the past, other than to find lessons for the future. In fact, recently in Canada we have had some evidence of a new era. Since 1982 when treaty rights were entrenched in the Constitution to, more recently, last June's apology by Prime Minister Harper for the treatment of First Nations in residential schools—these I take as signs of change and as signs of hope.

So, what lessons can we take from the past? What has been common among the successful programs, such as the Treaty Land Entitlement Agreement in Saskatchewan, the Sichert agreement in British Columbia, the establishment of Nunavut, the modern treaties in British Columbia and Quebec, and the First Nations Taxation Commission introduced twenty years ago? What has been common among what I consider to be the less successful endeavours, such as the attempts to revise the *Indian Act*, the problems of Bill C-31, and the problems with Indian control of Indian education? In most cases these were well-meaning attempts to improve the lives of First Nations people, but they have encountered a common set of problems. In my opinion the strengths of one are also the causes of the limited success of the others.

I submit to you that successful treaty implementation strategies included the following characteristics. Let me borrow from popular management literature, for I will call these my “Seven Strategies for Successful Treaty Implementation.” The first strategy is that treaty implementation must be treaty based. It should not be based on policy or legislative authority. It is my view that the *Indian Act* is a fundamental impediment to treaty implementation. Until the *Indian Act*, with its paternalistic foundation, is replaced, true treaty implementation will not occur. The implication of being treaty based is that we acknowledge the legitimate role of both parties in the treaty implementation process. If this does not occur in a culturally sensitive and meaningful way it violates the treaty relationship.

The second strategy is that treaty implementation must be elders-based. It should not be just politically based. Our experience in Saskatchewan is that building innovations and problem-solving with elders leads to culturally based solutions that are politically acceptable. The implication of elders-based treaty implementation is that differences are resolved over time based on mutual benefit.

The third of the Seven Strategies for Successful Treaty Implementation is that treaty implementation must be community based. It must be built from the bottom up not the top down. Nor should treaty implementation strategies be based on a template from Ottawa that treats all First Nations and provinces the same. For too long we have relied on the Parliament of Canada to affirm the legitimacy of treaty implementation policies, programs, and legislation. Although this is appropriate and necessary, it is insufficient. Successful implementation strategies depended on another affirmation process, one based on community engagement and community affirmation. For First Nations people the Parliament of Canada is just one method of affirming the appropriateness of treaty implementation strategies. An implication of the community-based process is that differences are resolved in a manner

that is fundamental, culturally appropriate, and respects the treaty relationship entered into over one hundred years ago. This process recognizes that two people came together to sign treaty and both cultures must affirm that relationship as it evolves over time. That is a respectful relationship, based on mutual benefit. This values the important treaty principle of shared responsibility for resolving differences in a modern context. To be successful both parties must change behaviour.

The fourth strategy is that treaty implementation must be inclusive of provincial and municipal authorities. It should not be based on the same approach in Saskatchewan as British Columbia or Nova Scotia. Just as we must build treaty implementation strategies based on First Nations community affirmation, we must recognize the modern context of Canada. First Nations people across Canada are very different, and the provincial and treaty areas are very different. Successful strategies have recognized this reality and involved provincial and municipal authorities in building a solution.

The fifth strategy is that treaty implementation must be funded according to the realities of the current context. It should not be funded according to a formula that may be capped. As we have seen by the statistical analysis provided today, First Nations populations in Canada are growing faster than the rest of the population, while their participation in the economic success of our society is far below the rest of Canada. And this is especially true in Saskatchewan. Therefore, funding must be provided that is proportionate to need. In other words, funding strategies should not be uniform, but must match and be appropriate to the requisite need.

The sixth strategy is that treaty implementation must be innovative, creative, and built on new legislative frameworks. It should not be based on the legislation or policies in existence today. As I have said, it is my opinion that the *Indian Act* is an impediment to treaty implementation. It is also my opinion that a policy and program approach to treaty implementation strategies is also an impediment. Success is found where people have pushed the envelope and new legislation and agreements are developed.

The seventh strategy for successful treaty implementation is that it be based on hope and strength. It should not be based on a deficit model. The legislation, policies, and strategies of the past have been built on a paternalistic approach. There is much evidence to support this assertion. Successful strategies of the future will be based on positive assumptions of First Nations people and their culture. This will have significant implications for both parties; both parties have a responsibility to act, and both parties must develop a deep-seated trust and respect for each other—one based on the strengths of the other.

I could discuss each of these seven strategies or characteristics at some length, but time does not permit me to do that today; however, I would like to address a couple of the obvious challenges or questions that might arise in your mind with respect to two of these characteristics of success. First, the treaty-based approach—one might observe that not all land in Canada is covered by treaty. However, the principles of treaty do not require treaties to exist in order to adhere

to those principles. Nor are all treaties in Canada the same, but where treaties do exist, in my view, there is a requirement to act. Where treaties do not exist there is the need to act. In the year 2000, the Office of the Treaty Commissioner, in conjunction with the FSIN and Canada, published a document called *Treaty Elders of Saskatchewan*. This document has become a foundation for much of the treaty implementation work in Saskatchewan. It outlines the treaty elders of Saskatchewan's understandings of treaty. Although their understanding is complex and sophisticated, it is also simple and easy to understand.

Through the research conducted under the auspices of the Office of the Treaty Commissioner, we now understand that the treaties are fundamentally about three things, as told to us by the elders: 1) getting along with others, 2) living together on the land, and 3) making a living. These are all pretty basic and reasonable objectives. I believe we must return to these simple but profound statements and set them as our objectives. With these as our objectives, and holding mutual benefit and respect as first principles, we can focus on building a better treaty relationship—a better dialogue to resolve our differences. This will lead to effective and meaningful treaty implementation.

I will also expand a bit on the challenge of provincial involvement. For example, in the Treaty Land Entitlement Agreement, the province and the municipalities were a fundamental part of the solution. In fact, provincial legislation was required to enact the agreement. Some might worry that this is a barrier to the First Nations call to deal with the Crown only. I do not believe that to be true. I believe it is possible for First Nations to negotiate with the Crown, while at the same time addressing the realities of the modern context. When this is done new opportunities arise.

My objective today was to challenge you with some thoughts based on the successes and failures of treaty implementation strategies from across Canada. I hope my words have given you some food for thought. If I might, I would like to close with three comments or assertions about where we might go from here. First, I am very hopeful of positive change for the future. First Nations leaders and the Government of Canada have set a very important precedent by coming together with the prime minister's apology, on behalf of all Canadians, last June. The apology appeared sincere and was supported by both sides of the House of Commons. First Nations leadership accepted that apology graciously and in the spirit of a better future together. This is an example of a treaty approach to working together. Now the challenge is to seize the moment and follow-up in a new spirit and a new direction.

Secondly, in order to seize the moment we must build a future that is aimed at changing the fundamental ingredients of Canada's approach to working with First Nations. First Nations and the Government of Canada must turn their attention to building a new relationship, a treaty relationship. Together they must build a plan with the goal of replacing the *Indian Act*, and building a new treaty based on new

legislation. Although this will not happen overnight, we must begin the process now.

Finally, the effort to build a new treaty relationship will come about through a new process of affirmation—a community-based, geographically unique approach that recognizes the unique needs of the different treaties in Canada and of the different regions in Canada. It will recognize that not all First Nations are the same, not all treaties are the same, and that a successful strategy for one is not necessarily appropriate for another. This is a lesson we learned years ago. The sooner we apply unique strategies to unique situations, the sooner we will achieve treaty implementation characterized by getting along with others, making a living, and living together on the land.