

ABORIGINAL AWARENESS

Trying Hard To Be Equal

Editor's Note: The following is the second in our series of Aboriginal awareness columns, which are part of an APEGGA Business Plan goal increase Aboriginal representation in the engineering, geological and geophysical professions.

BY ROBERT LABOUCANE

President, RippleFx

What is this First Nations compulsion to keep talking about agreements that are hundreds of years old? Why can't they just forget all this treaty garbage and why do they continue to insist on being treated special, with special rights and benefits, and specific laws just for them?

Why don't they just adjust, adapt, fit in, go to work and be like everybody else?

These are questions I hear Canadians from across the country ask.

Well, I can tell you that most First Nations in this country are more than ready to forget the treaties, including all the unfulfilled promises. All Canadians have to do is give them their land back. They are ready when Canada is ready.

Sounds harsh, doesn't it? We'll get back to that later. First, let's look at some history to put it all into context.

Sacred Contracts to Some But not to Others

Over the past five centuries, 500 treaties and military pacts have been signed between the British and Canadian Crowns, as well as many First Nations in Canada.

The treaties – contracts, really – are considered sacred by the First Nations that entered into them. Unfortunately, our federal government doesn't feel the same way. All of these contracts have been dishonoured in a variety of forms.

Treaty 11, signed in 1921 to cover the Northwest Territories, was never implemented. Our government decided which terms of the treaty were to be fulfilled and which parts would simply be ignored. Many discrepancies exist due

to a misinterpretation of what the First Nations initially said and what actually found its way into the documents.

Many First Nations lawsuits are before the courts in their efforts to have the government honour promises made when the treaties were signed.

Today, about 80 per cent of Canada's land mass is covered by treaties, historically numbered treaties and the comprehensive land claims settlements sometimes referred to as modern treaties.

Other claims cover most of British Columbia, parts of Quebec, three unsettled tracts of land in the Yukon and, of course, the Deh Cho lands of the Northwest Territories. The B.C. Treaty Commission began its work 17 years ago, has cost many 10's of millions with very little measurable outcomes and most agree this system is a complete failure in making treaty with the 50 or so groups in negotiations. I suggest the hundreds of lawyers involved have no incentive to reach conclusion and closure.

Specific Land Claims are well over 900 today and when we calculate the total costs of resolving all the claims our governments are looking at a \$15 Billion liability.

Supreme Court Position

The Supreme Court of Canada has ruled that original Aboriginal title exists on land where no treaties have yet been made. These negotiations have been going on for many decades.

Progress has been painstakingly slow and has cost taxpayers – you and me – hundreds of millions of dollars. This continues to bring great uncertainty about encumbrances on the Crown's title and levels of Aboriginal jurisdictions. The only way to get rid of this original Aboriginal title is to make treaty, but there continues to be much disagreement about this point as well.

Of the 650,000 registered status Indians who are also registered "band" members, only 50 per cent are considered treaty Indians because of the geographic location of their home reserves. If your home reserve is located in an area of land that is part of a treaty, then you are considered treaty and are eligible to receive treaty benefits and have the treaty rights agreed to in the original treaty.

If, on the other hand, you are a registered member of a reserve that is *not* located on land covered by a treaty (the other 50 per cent), then you are a non-treaty registered Indian. You can still be a status Indian because you are on the Indian registry maintained by the Department of Indian Affairs.

How are we doing so far? I know – the terminology can get confusing, so please do refer to the glossary of terms in last month's *PEGG* if you need to.

Now, if you happen to be a treaty Indian, you receive whatever treaty benefits the government chooses to give you. If you happen to be a non-treaty Indian, meaning your community did not make treaty with the federal Crown, the government has decided to give you the same benefits as those that did make treaties, but not the annual cheque.

What huge amount of cash does that entitle you to as a treaty Indian? Twenty grand a year? Two thousand bucks? Not even close.

Treaty cheques come in at the paltry lump sum of \$5 a year – sometimes just \$2 or \$3 – and this figure has not changed in a century or more since the treaties were signed. (By the way, the government won't send it in the mail, either – you have to go back to your home reserve and pick it up.)

Some people might wonder why non-treaty Indians receive treaty benefits (but not that \$5 cheque). Well, apparently the government decided at some point to put selected treaty benefits under the *Indian Act*, which governs the lives of most First Nations people. Therefore, all registered Indians are eligible to receive these treaty benefits whether they are treaty or not.

Back to the Land

Now, let's get back to how we started this – the part about giving the land back.

Wait a minute, you say. Canada can't return the land to First Nations. It's not practical and makes no sense. On one hand Canadians are saying forget the treaties, then they say we want all the land and resources and forget our contract obligations. Does that mean Canadians want their cake and eat it too?

But this has nothing to do with reason, logic or fairness.

It wouldn't be so difficult to comprehend if the government actually honoured the contracts and fulfilled its treaty obligations. For many decades now, the Supreme Court of Canada has been insisting that our federal government live up to its promises and that it is liable for choices and actions, past and present. There has been much effort to restore the honour of the crown. Apparently this hasn't worked, as there seems to be great resistance to the concept.

Today in Canada, the ability to hunt, fish and gather are considered rights for Aboriginal people. We also know that 80 per cent of our country's land allows for treaty rights, while the other 20 per cent is covered by original Aboriginal title.

But understanding what these rights are, whom they belong to and where these rights can be applied is a daunting and at times onerous task. Most provincial governments and corporate leaders in Canada are making an honest effort to learn about these rights, because they know infringement, without the full informed consent of these Aboriginal stakeholders, has been proven very costly indeed.

Some Aboriginal groups have Aboriginal rights, but don't have treaty rights – such as the nation's Métis citizens, who share a mixed-blood heritage with early European settlers, voyageurs and fur-traders. Their Aboriginal rights are on par with First Nation Aboriginal rights – and one does not want to ignore any potential Aboriginal stakeholder

First Nations people also have treaty rights on top of their Aboriginal rights, and many have original Aboriginal title as well.

It's a complicated scenario rooted in centuries of misunderstanding – misunderstanding that Canadians are only now beginning to grasp.

My Rights and Yours

I would like to clarify that I am an Aboriginal person, but not a First Nation person. Nor am I an Inuit person. All Canadian Aboriginal people are Canadian citizens, although know of some who don't want to be.

First Nations people actually became Canadian citizens in 1960, but Métis have always been considered Canadian citizens.

Most Canadians tell me they believe we are all equal under the rule of law in Canada. Our federal Constitution, our Charter of Rights and Freedoms, and our laws protect my rights as a Canadian citizen.

However, since I am an Aboriginal, I do hold Aboriginal rights, while 95 per cent of other Canadians don't.

Could this mean that I am a citizen-plus? Am I now more equal than other non-Aboriginal Canadians? A First Nations person with treaty rights would be even more equal than I am, and might therefore be considered a citizen-plus-plus.

It is important to me that non-Aboriginal Canadians see me as their equal under the law, not their "more equal." I choose not to exercise any of my Aboriginal rights, so I can be as equal a Canadian as the rest of you.

Whenever many Aboriginal people say they want to be equal to all Canadians, they are not saying they are willing to forfeit any of their rights or benefits. But they do want to enjoy the same standards of living as the average Canadian.

Under “special” current laws, legislation and policy, this is all but impossible. Aboriginal people in Canada are subject to all the same laws as every other Canadian, however there are all these other laws that apply to them that do not apply to non-Aboriginal Canadians.

How does one go about getting equal?

When the Aboriginal demographics show that the Aboriginal peoples standard of living is the same as the average Canadian, then I predict most Aboriginal people will kiss their special laws – such as the widely loathed federal *Indian Act* – goodbye. It is interesting to note that as the numbers of registered status Indians leaving the reserves increases yearly, they are already forfeiting access and use of many of their rights.

Canadians have an international reputation as honest fair-minded people and expect our governments to treat Aboriginal people with kindness, compassion and fair play.

Unfortunately that is simply not happening.

They can't wait any longer for the demographics to change or catch up to them. They are seeking equality right now in most urban centres; however, equality is an elusive dream for most.

My circumstances allow me to choose not to take advantage of my Aboriginal rights because I don't need them. I choose not participate in race-based laws because I have this choice. I want to be equal with my fellow citizens – not more equal – and it is vitally important to me that my fellow citizens know that.

But it's just as important that we all understand the reasons why many Aboriginals have not done the same. I hope this column and the ones that follow are helping shed some light on this complex set of circumstances.