

By Robert Laboucane.

Title:

Between Rocks and Other Hard Places.

Over the past 500 years, there have been 500 treaties and military alliances signed between the British Crown, Canadian Crown and numerous First Nations. These treaties are in fact contracts, and are considered sacred by the First Nations that entered into these agreements.

Unfortunately, our federal government doesn't feel the same. All of these contracts have been dishonoured. Treaty 11 signed in 1921 covering the Northwest Territories, was never implemented. Our government decided which terms of the treaty were to be fulfilled after they were signed and which parts of these treaties they would simply ignore. Many discrepancies exist due to a mis-interpretation of what the First Nations said they said and what actually got written into the documents. Today, there are many lawsuits by First Nations being pursued through the courts in an effort to have the government honour their obligations as agreed to at the time of the signing. Suing for "breach of contract" today is part of the natural order of things.

In Canada today, private sector industries go to extraordinary lengths to ensure separation from government, with special emphasis on promises made, promises kept. Understanding and respect for the Aboriginal perspective of their rights is an essential ingredient if we are to work together for mutual benefit.

With recent conflicts between First Nations, some mining companies and provincial courts, it seems the "rule of law" must prevail in order to ensure some semblance of order and minimize chaos. This rule of law should apply to the provincial governments as well.

Many First Nations leaders do not believe the provinces are adhering to the rules as spelled out by the Supreme Court of Canada about the 'duty to consult'. It's clear that provincial government action or inaction have a profoundly negative impact on industry's needs to encourage cooler heads to prevail.

When we have First Nations leaders from all across Canada, including senior church leaders, calling on the premier of Ontario and the minister of northern development and mines to revoke exploration and drilling permits just as the Manitoba government has done this past month we can all agree that there are serious issues on the land and the private sector finds themselves caught right in the middle.

Companies must take the initiative and begin learning as much as possible about the Aboriginal rights holders on or near the land where their assets are located so their own consultations can begin. For many, this courtship must start as soon as possible. Development of a company's 'Aboriginal Relations Program' is the starting point because this is where the business case is identified and clarified. Certainty, confidence and comfort are what investors are seeking as well. How many investors are asking mining companies for a copy of the company's agreements with the Aboriginal partners? How many companies are prepared to offer the information and clarity being asked for?

Today about 80 per cent of Canada's land mass is covered by treaties, historically numbered treaties and comprehensive land claims settlements, sometimes referred to as modern treaties. Other claims still unsettled cover most of British Columbia, parts of Quebec, 3 unsettled land claims in the Yukon and, of course, the Deh Cho of the Northwest Territories. The Deh Cho has not reached a settlement with the federal government after 35 years of negotiations. The Supreme Court has ruled that original Aboriginal title exists on the land where no treaties have yet been made. This is an encumbrance on Crown title. These new treaty negotiations have been on-going for many decades with very little progress at a cost of hundreds of millions of dollars

annually. This continues to bring great uncertainty about the legitimacy of Crown title and levels of Aboriginal jurisdictions. The only way to get rid of this original Aboriginal title is to make treaty.

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 crown, the government decided to give you the same benefits as those that did make treaty, except of course for the annual treaty annuity of \$5 which only treaty Indians are eligible to receive. In some treaty areas the annuity can be \$2 or \$3 per year. These amounts have not changed since treaties were signed in the mid to late 1800s.

Why do non-treaty Indians receive treaty benefits? Well, the government decided at some point, to put all the treaty benefits under the Indian Act and now these treaty benefits are referred to as Indian Act benefits. Therefore, all registered Indians are eligible to receive these treaty benefits whether they are treaty or not, except for the \$5, of course. This helps expedite administration and costs about \$3 billion annually. The vast majority of First Nations in B.C. do not have treaty rights but they do have Aboriginal rights and original Aboriginal title on much of the land.

I hear so many Canadians from all parts of the country ask "what is this First Nation compulsion to keep talking about these agreements that are hundreds of years old". "Why can't they just forget all this treaty crap and stop insisting on being treated special, with special rights and benefits, and special specific laws just for them"? "Why don't they just adjust, assimilate and go to work and be just like everybody else"?

Well, I can tell you that the 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 all their land back. First Nations are ready when Canada is ready. I think what I hear Canadians saying is "we want our cake and eat it too". Now, since the First Nations have never been "conquered", does it seem fair and reasonable that we should have all these wonderful benefits of being Canadian and not feel some sense of duty and appreciation towards our fellow Aboriginal Canadians.

It wouldn't be so bad if the government actually honoured the contracts and fulfilled their treaty obligations. Industry does not want to be in that boat. For some reason our government insists on behaving in a dishonourable fashion and now has the Supreme Court of Canada ordering our government to act honourably and they are in fact now liable for their choices and actions. It is difficult to understand the very strenuous resistance from the federal government toward being "honourable". Industry does not want to be in that boat either.

We know that upon the land there exist Aboriginal rights such as hunting, fishing and gathering. We also know that on 80 per cent of our country there are treaty rights and the other 20 per cent is covered by original Aboriginal title. What are the levels of Aboriginal jurisdictional authority where your assets are located? Do you know whether or not these Aboriginal community stakeholders are self-governing or not? And if they are, what difference does this make when we consult and negotiate our partnership agreements?

Knowing what these rights are, who has them, where these specific rights are applied is a daunting task. Our provincial governments and corporate entities in Canada are really making an effort to learn about these rights because they know infringement, without the full informed consent of these Aboriginal rights holders, has proven to be very costly indeed. In more recent cases in Ontario the courts have decided that the need to infringe is justified and that those that disagree will simply be put in jail for contempt of court. These First Nations leaders were released from jail after serving 100 days.

Some Aboriginal groups have Aboriginal rights but don't have treaty rights such as the Métis. The Métis people's Aboriginal rights are on par with the First Nation's Aboriginal rights; therefore one does not want to ignore any potential Aboriginal rights holder. First Nations people also have

treaty rights on top of their Aboriginal rights and many have original Aboriginal title as well, particularly in B.C., Labrador and Quebec.

I would like to point out that I am an Aboriginal person but not a First Nation person or an “Indian” as some would say. Nor am I an Inuit person. All Canadian Aboriginal people are considered to be Canadian citizens. The First Nations people actually became Canadian citizens in 1960, while the Métis have always been considered Canadian citizens. Most Canadians I talk to tell me we are equal under the rule of law in Canada. Our Constitution, Charter of Rights and Freedoms and the Rule of Law protect my rights as a Canadian citizen. However, since I am an Aboriginal, I have Aboriginal rights while 96 per cent of other Canadians don't have these rights. 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 more equal than myself because I just have Aboriginal rights and so they would then be a citizen plus plus. So how does the rule of law apply equally to all of us when in fact we are not equal? It is important to me that non-Aboriginal Canadians see me as their equal under the law, not more equal. I choose not to exercise any of my Aboriginal rights so I can be equal- not more equal. My circumstances allow me to choose not to take advantage of my Aboriginal rights. I choose not to participate in race-based laws because I can. I just want to be equal with my fellow citizens – not more equal and it is critical that my fellow citizens know that.

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

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. When the Aboriginal peoples social demographics are the same as the average Canadian citizen then, I suggest, these same Aboriginal people will demand that race-based special laws like the Indian Act be abolished.

It is understood that explorers are invaders and from the Aboriginal perspective, always have been. Can modern day explorers change that perception? Skillful and sincere consultation will ensure attitudes remain positive and lead both parties down the path towards mutual benefit. Managing expectations (hope) is critical and getting to know what these expectations (hopes) are occurs during the initial “getting to know you” phase before consultation officially starts.

In conclusion I would like to remind readers that there are numerous provincial and federal permits required as part of the process to secure your rights to lands and resources. Companies should have a clear understanding of the necessities of having their social license in place as well.

Remember, trying to negotiate any kind of agreement BEFORE both parties develop mutual respect, which leads to trust, will ensure early difficulties, some negative outcomes and even some very serious and unnecessary challenges as they work towards an acceptable agreement.

Historically, honest effort in building relationships works between industry and their new Aboriginal partners and today there are many hundreds of these agreements in place.

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