

Forging Linkages & Finding Solutions A BC Treaty Commission Conference for First Nations

The Hon. Michael de Jong, Minister of Aboriginal Relations and Reconciliation Keynote Address – October 29, 2008

First let me say how honoured and appreciative I am for the opportunity to be here in the traditional territories of the Coast Salish peoples and to have an opportunity to take some of your time in this BC Treaty Commission 2008 Conference.

Acting Chief Commissioner Jody, I'm appreciative of the introduction and the opportunity to be here. I know there are other commissioners here as well, Dave Haggard, Jerry Lampert, Robert Phillips. I don't know if I've missed anyone from the Commission. And of course, grand chiefs, hereditary chiefs, elected chief councillors, councillors, members from First Nations communities right across British Columbia and elders, my thanks for your invitation to participate in this discussion here today.

I'd like to do a couple of things today, I'd like to share some thoughts with you about the work that the Treaty Commission is undertaking and has undertaken, some of the challenges that lie ahead, some of the obstacles that are yet to be overcome, and there are some and, at the end of the day what the road ahead to progress and continued and accelerated and expanded success might actually look like.

Its worth, I think, at these gatherings, to remind ourselves about the history of the body that brings us together, the BC Treaty Commission, the keeper of the process.

After the years that have passed, it is frequently tempting to think of process as a four letter word; it's not. At times, though, we are inclined to think of it in those terms. The Treaty Commission, though, was established with a very specific purpose in mind. We all know what that purpose was, to provide a mechanism by which we can move forward collectively in addressing some long, unfinished business and establish the means by which we work together and co-exist going forward.

It was built around the notion that First Nations enjoy some fundamental rights, particularly around the notion of self-determination. First Nations make the decision themselves to participate. They make the decisions along with the other two parties at the table about the nature of the discussions, about the nature of the negotiations and, ultimately, when those negotiations have occurred and taken place and reach a conclusion, it is the First Nation that exercises its right to self-determination, makes a decision about whether or not to endorse or ratify the agreement.

Now I'm sure in the course of the deliberations and the workshops that have taken place so far today, I hope, that people have had an opportunity to reflect globally on what has taken place over the last 12 to 18 months. I've learned something in the 15, actually 20 years if I consider local representation, that I have been an elected official.

We are sometimes challenged. We're always thinking about the problems, the obstacles, the hurdles, the frustrations and that's probably a natural thing because we are confronted by them on a daily basis and people come to us and say 'why haven't you solved all of these issues'... We, as leaders in this room, sometimes we have to take a moment, just a moment, and think about some of the successes that we have enjoyed, realized, and think about what the recipe for that success looks like.

I'm going to suggest to you, for a moment, that over the past 12 to 18 months there have been some significant successes. What are they, how did we achieve them, how do we extend that recipe so that it captures others and we can replicate, maybe not precisely and exactly the same way, but replicate that which we see as positive and successful.

Right now we've got 106 First Nations involved at 47 tables. We shouldn't kid ourselves, that doesn't mean all of the tables are proceeding as actively, as quickly, or that the prospects for final resolution are the same at all those tables. It does mean that there are a lot of people who continue to invest a measure of effort and care and energy in this exercise that we charge the Treaty Commission and the commissioners and staff with helping us organize and advance.

One First Nation, the first one, in about six months will celebrate something we haven't seen and that is the effective date for a final agreement. That is the Tsawwassen Nation.

Now amidst all of the celebrations – of course Chief Baird will talk to you about a new set of challenges, if she hasn't already – that goes with implementation and the work that involves. But folks, that's the first one, the first one after many, many years of trying and I do this at other events and I do it quite shamelessly.

I think that when a leader steps forward when in concert with her people, acting around the principles of self-determination, that community decides that they have reached a point where they are satisfied that an agreement serves their purpose and they are proud to endorse that agreement as the Tsawwassen First Nation has.

Ladies and gentlemen, I think that's worth celebrating and I think that's worth paying tribute to. And, Chief Baird, I do so here, now. Congratulations.

Other First Nations elsewhere in British Columbia, the Maa-nulth on Vancouver Island are close to seeing the passage of legislation, ratifications have taken place, passage through the provincial legislature now that we have resolution at the federal stage for the moment in terms of the new government being in place, we're hopeful that we can move ahead with ratification at the federal level.

I should be consistent, even though I was disappointed in the result of Lheidli T'enneh, that too, reflects the outcome of a people practising around the principles of self-determination.

One of the things that the Treaty Commission has done –and I applaud them for but quite frankly I have heard some criticism about – is in the aftermath of the result in Lheidli T'enneh, at the invitation of the chief and council there, came in and examined the process around some of the discussions that had taken place and the process that was followed through ratification. They have also done the same thing with respect to Tsawwassen. We shouldn't be afraid of learning. We shouldn't be afraid of asking questions about what worked, what didn't work. That's how we're going to learn. That's how we're going to find a way for as many people as want to be part of this to feel comfortable within a process that we have together. It can serve to achieve the kind of reconciliation that I think we're all striving for.

Other First Nations are very close: Yale, In-SHUCK-ch, Sliammon, Sechelt, Yekooche, they again will make decisions about the speed with which these things move forward, to a certain extent. They're partners at the negotiating table. We and the federal government will have a role to play in that, as well.

But I can tell you this, no one needs to be overly sympathetic for either the provincial or federal government, but we too at times now struggle with some capacity issues in terms of being able to properly staff the tables and some of you know about that and for some of you it's very frustrating. I realize that and I apologize

because we would like to move forward more quickly where there are willing partners that will allow that to happen. We might still be at a stage where we are finishing that foundation upon which we can build that accelerated progress.

What did Churchill say in 1941? “This is not the end of the beginning, this is perhaps the beginning of the end.” We’re moving forward and there’s a lot more work to be done and maybe we’re beginning to establish that foundation upon which we can do that work. I want to talk to you a little bit about that, but I also want to pay tribute to some of the other things that the Treaty Commission has been working on in terms of the looking at some models for resolving territorial disputes.

But these are things, folks that we ask - we together – ask the Treaty Commission as partners in this process to address and they do so willingly. But we have to help them and we have to tell them what we think works. We have to provide them with a measure of comfort that they are doing work that we find helpful, that we find useful. It’s always, and I speak as one of the parties to this process, fraught with a little bit of uncertainty, isn’t it? Because when you ask someone, a group like the Treaty Commission to get involved, you’re always a little bit worried about what – at least I am – what the outcome is going to be.

Sometimes you have to hold hands, all of the parties at the table and say, you know, if we’re going to find a way through some of these issues, we’ve got to have a little bit of trust in one another, a little bit of trust in the Treaty Commission that we’re guided by a sense of good will, fair play, good faith and see if that can form the basis for some new ways to do things.

I’ll tell you that already through the first number of agreements that have emerged, I have learned some things about steps that the provincial government needs to take to be more sensitive to some of the sensitivities that exist around territorial questions, overlaps I think is the word we like to use.

Hopefully we’re beginning to make some adjustments that find favour with you and the Treaty Commission as participants in this exercise. I don’t think we’ve got it perfect yet; I’m not sure we’ll ever get it perfect. But as we proceed, hopefully we’re getting a little smarter about identifying where some of these issues exist earlier in the process and trying to address them.

I want to say something as a way of emphasizing the importance, in my view, of ensuring that we continuously re-invigorate the Treaty Commission process, continue to re-invigorate the manner in which we have come together and engage with one another. I don’t know if any of you noticed, in the last two months the world has taken on a rather different complexion. Anyone notice that?

And, Grand Chief, there were people who said you and I had nothing in common. People are uncertain, circumstances have changed the discussion around a lot of people’s tables and actually, all kidding aside, I actually don’t think that people sit around the kitchen table worrying about what’s happened to CitiBank. I don’t think they sit around the table thinking about and worrying about what’s happened to someone’s stock portfolio, I don’t think they get too worked up when they see swings of 500 on the NASDAQ and the TSE.

But I do know this. They know there’s a whole host of people out there talking about a measure of economic uncertainty descending across, not just North America, but much of the world, and they worry about what the impact of that might be on them.

The premier made an address last week about some of this as a way of trying to be honest with people about some of the things that fall within our control as population wise, a relatively small jurisdiction and some of the things that are happening on a global scale that are outside of our control.

Here's something that is entirely within our control, however. That is ensuring that people's attention does not divert our attention. If you're in this room you know how important this work is that takes place within the context of the BC Treaty Commission. But we can't let people's attention outside of this room divert away from the importance of this work.

And, folks, you and I both know that in times of economic uncertainty that is a risk. That is a risk. Now more than ever, in my view, is when we have to lock arms and remind people that this work needs to be done, that it is important, that it is just and in many ways the economic future of our country and the communities within our country depend on us moving forward. Now is not the time to diminish the level of effort we are making as partners within a process.

I want to emphasize this. People in this room, some of whom have dedicated a lifetime to the work that's taking place, we can't let that be in vain and we can't let the modest amount of momentum that has begun to develop disappear. That's why we want to make sure our third partner, the federal government, as soon as they – I heard the Cabinet's going to be announced tomorrow – that we engage with them right away around some of the work that we've done. I'm going to talk about the common table in a moment.

So if that's important and if people agree that ensuring that our enthusiasm for this exercise and our re-energization of this is constant and ongoing, how do we do that? I'm going to suggest to you that a couple of things have happened, and these are by no means the ultimate solution, this doesn't mean I'm saying to you great, we've done this that's all we need to do and everyone should be happy. But I'm going to suggest to you this: that some of these new measures, some of these new tools are significant and the question now is how we put them to use to demonstrate yet again that we can have success. That we can move forward.

How many of you have heard the term incremental treaty? There's a few on that side of the room. The people on this side, incremental treaty, anyone heard about that?

The Lieutenant Governor, his Honour Grand Chief Steven Point, in the Throne Speech earlier this year, he said we move forward by moving beyond positions that hold us back. In short, sometimes we have to change our approaches. Sometimes we have to be prepared to admit that we come to a point where people are concerned enough about a particular model that we need to change and consider some other model.

That, in part, is what incremental treaties are about. It's a big step for a community and there are people in this room who can talk about that step. And maybe, just maybe, one of the ways we take that step is through a series of smaller steps and that's why for communities like Tla-o-qui-aht and Haisla, we're moving ahead with incremental treaties.

I'll take Haisla as an example. The chief came to me about a year ago and he talked about a circumstance in which they had a reserve, reserve land here, reserve land here and a parcel in the middle and they actually had some plans, some economic development plans, that could be built around that parcel.

Well, formerly the approach has been fine, let's talk about a treaty and when we get to a final agreement I guess we'll see what happens. That didn't make a lot of sense to me, to us. We're not going to do anything with that land, it's smack dab in the middle of a traditional territory, it's going to be part of a final agreement if and when we get there.

So if our primary concern is: how do we develop some economic potential, some jobs, some hope for the people that live in that community, why don't we look at an incremental agreement that would see that property transferred to the Haisla so that they could put it to work. And that's what we're doing.

And yes, as a province we ask the Haisla to acknowledge that this is a transfer measure that we'd like taken into account at the time we get to a final agreement, if we can get there and we ask the same of the federal government. But, ladies and gentlemen, that is, I hope, evidence of the measure of importance we attach to working with First Nations and communities to see things happen on the ground so that when you as leaders address your people or are addressed by your people and they say how is this working for me, you're able to say here's how it's happening for me. Here's how it's working for you.

I'm going to tell you one other thing, very candidly. I can't pretend for a moment that that is a model or approach that we can unilaterally and simultaneously apply in 203 communities across British Columbia. I'd be kidding you if I did. But it is something I think can be the recipe for success in certain circumstances and help establish one of the key elements that I think, and I believe most of you think, needs to be present if you are going to move to a more comprehensive agreement. That's trust. And how do we build that between one another? Maybe that's a way, I hope that's a way. And in the case of the Tla-o-qui-aht and the Haisla, they believe that it is a way.

I talked a moment ago about the common table. I think it's still premature to be characterizing the common table exercise as a success, but I can tell you this. What we were confronted by – I mean all of us – a year ago was a situation in which a sizeable number of First Nations were saying we think you other governments – the province and the federal governments - are coming to the table with mandates in some key areas that for us are non-starters, and there's that principle of self-determination.

That doesn't mean that was the case for everyone. In fact, we're working with, as I just alerted you to, some communities who have indicated their comfort level is higher. But a number of communities, leaders, said we need to see some options because if you are going to remain steadfast on some of these key areas – recognition, certainty, governance, status of lands, then we don't think our prospects for success are that great, and we have to begin to question the amount of energy we are devoting to the treaty exercise, final agreement exercise.

And at a meeting that took place in December as I recall that the Treaty Commission kindly offered to chair, we had a pretty candid discussion about that. I recall at that meeting saying to people as I had an opportunity to look at what some of those issues were, the first confession I'll make is, you tend to get entrenched. You tend to get entrenched around a certain set of beliefs - we have to do it this way because one, two, three, four.

Well maybe we have to take a step back and find out if there are some alternatives. And I don't think you do this by taking one set of approaches and replacing it with a second. Maybe you do this by establishing a set of options that people can look at and say well, "I don't think that works for me, but maybe this one has some promise, maybe this is something that my community would authorize me to move on."

I think we're part way there. And I want to say thank you to the upwards of 64 First Nations that participate at the Treaty Commission and of course that played a role in those discussions, but I think we're only part way there.

I think we've got to take the next step, ladies and gentlemen, and I think that next step involves re-engaging with the federal government now and seeing if we can actually turn the ideas that revealed themselves in the report that Jody provided me with not so long ago, and turn those ideas into something tangible that we can talk about at individual tables.

And it's big stuff, but I think it's worth doing and I think it's been worth the time we spent. But I'd like us, again, as one party to this exercise, I'd like us to get to that next level. I'd like us to challenge ourselves to take that discussion and turn it into something tangible that we can bring to the table and help move the process forward.

We are trying to build a New Relationship. Not we, the provincial government, we all of us. I've got to tell you in the time that I've had the honour of holding this position the strength of the desire on the part of First Nations, their leaders and communities to actually realize on the hope and promise of developing the same opportunities, economic opportunities for their people as others enjoy is very real and has affected me very deeply.

The New Relationship, of which treaties are but one way we do that. Treaties are one tool, an important one, an extremely important mechanism by which we affect that genuine sense of reconciliation. But there are other ways.

I think about the reconciliation agreements that we struck with the Kwadacha around the Williston Reservoir. They just ratified last week, the capital payment of millions of dollars and ongoing payments to deal with the dislocation that community felt; the Songhees and Esquimalt, a dispute, a claim involving the very lands upon which the legislature sits that has gone unresolved for over a century and a half and is now resolved to the satisfaction of those communities and the leaders that represent them.

Land use agreements, aboriginal healthcare agreements and an aboriginal housing plan, educational jurisdictional agreements, these are the tools that we build together to help give effect to that goal we are seeking to achieve of genuine reconciliation. None of them are perfect. None of them accomplish that goal themselves. But they help, hopefully, to build that trust, to build that spirit of reconciliation in a very real way.

At the end of the day, it's not this stuff; it's not the paper that actually is the measure of success. It's what happens on the ground, it's that single mom in your communities who says to you look, I get it, it's actually starting to have an impact for me or that young man who's graduating from high school, or young woman, who says you know what? I actually see some prospects for staying home and getting a job and raising a family. That, at the end of the day as leaders is what we strive to achieve.

What I'd like to do is show you something, it's about 10 minutes and then I've got a couple of concluding remarks and then I'd like to engage in a conversation with you about some of the issues that are on your plate.

(POWERPOINT PRESENTATION)

Sometimes, ladies and gentlemen, when we're confronted by the issues that we have to deal with on a day-to-day basis, as they relate to us and our communities, it's easy to lose sight of the myriad of things that have taken place and are happening.

This New Relationship, this child, is still an infant and it needs our care, it needs our attention on a constant basis. We have to continue to work at it. But you know what else we need to do? We actually, like any child, when those things happen that we're proud of when they walk, when they talk for the first time, let's not be shy about celebrating that and saying how do we do more of it? How do we take the agreements that we saw referred to here and apply them in a way that works? How do we take the lessons that we've learned in a series of negotiations and apply them so that more communities and their leaders will feel comfortable getting to the destination, to the place that others before them have gotten to? That's the challenge.

We are working together in ways that only a few short years ago, people never would have imagined. We have an internship program where young people out of your communities, and by the way this is an invitation, tell us, tell me who are those young people that you've identified as future leaders who might benefit from an internship within the provincial government that can come and teach us and perhaps, learn something in exchange. There's a lot of mutual teaching and learning that has to go on, ladies and gentlemen.

We talk about economic development and I look around this room and I think of all the incredible things that are happening in communities, right around the province, for example, when I think of the fact that for the first time we are moving ahead with revenue sharing.

Now forestry isn't exactly at the top of my list of economic success stories these days. But would it surprise you to know that \$224 million in forest revenue sharing takes place in the province now, in British Columbia? It's still a tough industry to make a buck in, but contrast that with when I became forests minister in 2001.

First Nations, except in a few instances, had been all but excluded from the forest sector in a meaningful way. Now tenures in the amount of almost 35 million cubic metres – there's still some challenges about how to cut and make a buck doing it – but revenue sharing dollars of \$224 million, a couple of weeks ago a firm commitment, to move ahead with revenue sharing in the mineral sector became a reality now.

In the energy sector you saw reference to the Blueberry River First Nation, the Treaty 8 Bands revenue sharing of millions of dollars literally in economic development around the energy sector. These are tools, ladies and gentlemen that we have to put to work with one another and make successful.

There's something else that I'd like you to help me with as I look around the room and think of the communities that you represent and the success stories that already exist in some of them. We'd like to honour that success next year with the British Columbia Aboriginal Business Awards. Let's not be shy about taking the people within our communities, your communities, who have worked hard, developed economic opportunity, put people to work and been successful. Let's not be shy about putting them on a pedestal and saying well done, congratulations. Teach us, show us.

We do that nationally. I've been to it for a couple of years now, the National Aboriginal Business Awards, and every time I go, I sit there and part of me is thinking we've got to do this in BC because we have success stories in British Columbia. We have tremendous success stories in British Columbia. But, folks, if we don't talk about it no one else will. So we have to talk about it, we have to celebrate it.

I'll leave you with one last thought. Talking about the New Relationship, reconciliation, and the fact that there are many paths towards reconciliation, our preoccupation, in a good way, today and through the Treaty Commission, there are final agreements in treaties. But I know as well that as those discussions are ongoing and they won't be settled this year or next or probably the year after that. That in the process there are frustrations relating to consultations and management of resources, lands within traditional territories and that is what lies at the heart of the discussions that are taking place around the recognition and reconciliation legislation. We are indebted – I am indebted – to a great number of people, some of whom are in this room who have contributed to that discussion.

That work is taking place at the very highest levels. The joint working group that involves the Leadership Council and the Province, it relates to rights, to title, to governance, to consultation and accommodation and how can we address that in a way that has never been addressed anywhere else in Canada. We're hoping to complete that work in a way that will allow us to move forward legislatively prior to the expiration of the term of this government. The term of this government ends, the election's in May next year, for all practical purposes, of course, by the time the writ drops in April any legislative work ceases.

This would be precedent setting. It would be the first of its kind anywhere in Canada. If we can work together and establish a model that we are comfortable with and build that legal model, it would be – British Columbia would be the first and only province to establish legislation that would enshrine aboriginal title, rights, governance, and consultation and accommodation requirements in a provincial statute. We're committed to that exercise and it is precedent setting and it hasn't been done or tried anywhere else in the country, but we will only do it together. We will only be able to accomplish it together.

It is going to engage all of the communities and all of the leaders and require that measure of involvement for us to take that step together. I hope we can do it. I hope we can get it done. I am cautiously optimistic that we can. But if ever there was a project that depended upon us working together, this is it.

So, madam acting chief commissioner, I have gone on too long. Let me say thank you for sharing those thoughts. I was thrilled at the opportunity to come and meet with you, to speak with you and give you some of my impressions on what we've accomplished together, where some of the hurdles are and what some of the tools might be to help us overcome those hurdles. Now I think my task is to listen to you and answer, if I can, any questions that you may have I the time we have available.

So, thank you very much for the invitation to be here, ladies and gentlemen.