

Forging Linkages & Finding Solutions

Conference Presentations

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Conference for First Nations*

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BC TREATY COMMISSION

The independent voice of treaty making in British Columbia

Keynote Speaker:

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Thank you all very much. It is always a pleasure to be in Canada and I appreciate the chance to come up here again. I want to thank Brian Mitchell and the BC Treaty Commission for inviting me and I thank the Coast Salish people for the privilege of being in your territory and homeland.

I wasn't able to sit in on many of the workshops today, but I have a feeling I may be preaching to the choir here. You have been talking about governance and economic development — a set of issues which are very close to my own activity. I hope that I can give you a few thoughts to add to what you are discussing over these few days. I understand this conference is part of the treaty process in the sense that it's one of a series of dialogues organized by the Treaty Commission. But there are also other issues that are coming up in the treaty process here in British Columbia.

In some sense it is about treaties, but I think it's about much more than that. You're all involved in much more than that in things that are more important than treaties. Treaties after all are really just tools. Treaties are tools that nations can use to do the things they want to do.

It seems to me that what you and your nations are engaged in most fundamentally is not treaty making, it is nation building. Or, if I listened to Chief Oren Lyons, chief of the Onondaga people, it is nation rebuilding. It is rebuilding nations that once exercised governance over lands and peoples in this entire region and did so superbly well.

This treaty process, I would think from a First Nations' point of view, is about bringing that kind of a world back to life again. You are engaged in a profound and colossal effort to rescue your nations

from the legacies of colonialism, to reclaim your place on this land and to reassert your voice in the major decisions that affect your lives. That's what this conference is about, and to me, that's what rebuilding native nations is about.

Treaty making is just one part of that. It's laying out a system of rights and obligations and understandings between yourselves on the one hand and the Crown and the Province of British Columbia on the other. But it also represents a very special kind of opportunity. The treaty process represents an opportunity not only to make a treaty, but to put in place the kinds of tools that you need to exercise your rights effectively.

Some of you know this better than I do because you are actually doing it right now. You are seizing the opportunity of treaty making to build capable governing systems, and in doing so, you are getting even deeper into the process of nation building.

About two-and-a-half years ago I had the privilege, partly with the help of Neil Sterritt, to host a group of aboriginal Australians — the indigenous people of Australia — on a visit to the United States and Canada. They spent some time in Arizona and New Mexico and then visited some First Nations here in British Columbia to talk about governance issues. One of the places we visited was Nisga'a to talk about their treaty, which of course took place outside of the BC treaty process, and about the Nisga'a Lisims Government.

Our group was received by Edmund Wright, whom I'm sure many of you know, and he told us an interesting story. He talked about the 20-plus years it took Nisga'a to secure that treaty. He said it

completely absorbed them. It was an enormous effort requiring incredible amounts of time and energy and they pulled it off. They got a treaty that recognizes their claims to land and their rights to govern themselves.

He said the day the treaty was signed they all looked at each other and said, “Ay-yi-yi, now we have to govern. We pulled it off; we have these rights in our hands and now we have to deliver.”

“You know,” he said, “We really hadn’t thought about that. Nobody had had the time to think about what happens the day after you sign the treaty. What do you do then? We hadn’t prepared ourselves for what would happen next and suddenly we had to act like a government.”

I don’t think that’s an unusual situation. I have a colleague, Jim Anaya, a professor of law at the University of Arizona. Jim is probably the leading litigator for international indigenous rights in the world today. Not long ago Jim won a big case in the World Court. It had to do with the rights of the indigenous people of Belize, a small country in Central America, to control what happens on their lands and to govern themselves.

The indigenous people there are Mayan Indians. When the court decision came down the Mayans looked at each other and said, “This is fabulous, we won. No one expected us to win. The World Court just told us you have these rights, now what do we do? What do we do with those rights? How do we use them to pursue our goals?” They hadn’t really thought about what happens the day after the treaty.

While this is what happens in these kinds of situations, in some ways I think about it as at the end of the struggle for rights for self determination. There is a prize for the winners; it’s called the governance challenge. It’s what you face next and it’s a very different challenge. Can you deliver for your people? You have to translate rights into a good life and finding the solutions to problems, into wise decisions, into selfless leadership, into a better future.

The rights challenge and the governance challenge are very different things. The rights challenge has an endpoint. It’s this point where you’ve either got them in your hand or you don’t. You have a treaty in hand that specifies your rights or you have a court decision that specifies your rights or you have an agreement that specifies your rights.

Granted that’s not the whole story. Even when you have those things in hand you may still have to defend them; it doesn’t mean you can relax. But once achieved, those rights are no longer the focus of political and community life, the focus changes.

But that’s not true for governance. Governance doesn’t come to an end. You don’t meet the governance challenge once and for all. It happens every day. There is no endpoint. It’s this daily task where you have to deliver for your people what the rights made an opportunity out of. The rights open the door; then it all depends on what you do with it.

So you have to deliver not once, not twice, but every day from now on. And, it’s not just you; it’s those who come after you. They have to deliver as well, over and over. The question is: Do they have the tools in hand to do it?

Furthermore, in the governance challenge, the focus of your work isn’t on some opposition out there, on the feds, the province, or somebody who has been leaning on you for decades, generations. Now the focus is you, it’s on what you do. It’s not on what they agree to; it’s on what you are capable of delivering.

I’m reminded of a tribal leader in the United States who once said to me, “The trouble with this self determination and sovereignty stuff is that once you’ve got it you can’t go around blaming the feds for everything anymore. Now it’s up to you.” He said it gets pretty uncomfortable.

Furthermore, governance turns out to be a critical piece of defending your rights. If you can’t govern well, then eventually somebody is going to step in and take those rights away again, particularly in the countries that you and I live in where there

is skepticism to begin with about whether First Nations can govern effectively.

I remember another tribal leader who told me and some colleagues that the best defence of sovereignty is to exercise it effectively. It's not to litigate or to march in the streets, it's to govern well, that's how you do it. Governing well is the best revenge. That's where you win not only rights, but you win respect and support.

I think governance is the name of the nation-building game. Yes, rights matter. Toothless governance, that's governments that have no real power, they're useless. If you don't have real power, why be in the governance game? But rights without capable government are useless, too. They don't get you anywhere. They state you have a right but they don't do anything else for you.

What good is it to have a right to the land if you can't make and implement good decisions about what happens on that land? What good is it to have the right to decide what happens in your community if your community is in such disarray that it can't decide what to do? You can have rights, but if you can't deliver on what the rights promise, you're dead.

I think this is true in the economic arena as well. Consider two indigenous nations. Let's call them nation A and nation B. I'm calling them that out of respect for them. They're real nations from the U.S. but I'll keep them anonymous here.

Nation A is asset rich, it has a large land base with diverse and pretty substantial natural resources. It has a large supply of educated people. It's in a promising location for economic development. It has a vibrant cultural heritage that is still apparent in language, ceremony, social relationships. It has the right, in the view of the United States, to govern itself, but its history over the last few decades is of failed initiatives, failed enterprises, persistent social problems; very little works at nation A.

Despite the assets it remains heavily dependent on federal dollars and every federal dollar is a leash

around its neck. It's dependent on federal dollars not only to support its people, but even to run its own government. Where is the self determination in running a dependent government? Its people, for the most part, are unemployed, mired in poverty, angry, discouraged.

Then there is nation B, another real story. Nation B has far fewer assets. It actually has a very small land base that's broken up into pieces, some of them a 20-minute drive from each other; depleted natural resources, almost nothing marketable that is in the ground; a location far from major markets and transportation links; and lower rates of educational achievement than nation A, although it, too, displays a vibrant cultural heritage.

It, too, according to the United States has the right to govern itself, but in contrast to nation A, nation B has done very well. It has created businesses and jobs in such profusion that it has to look outside the nation for new employees. It's importing labour because there aren't enough tribal citizens to fill all the jobs they have created. Its businesses yield significant revenues that the nation now uses to fund its own court system, police force, schools and health clinic, and to meet its peoples' social needs. It's investing in cultural and language activities, and it has dramatically reduced its dependence on federal funds, thereby it dramatically increased its own freedom of action.

Now what's the difference? Both of these nations face pretty much the same legal and political environments. Both face notable amounts of racism in nearby non-native communities. Both have talented, visionary leaders. Both have fought hard to protect their rights. But those factors cannot explain why one goes this way and one the other.

It turns out that the key difference between these two nations has been in how they organized themselves to pursue their own objectives. Nation A, the one in such difficulty, has a written constitution that specifies how it governs itself. It's a constitution that came largely from the U.S. government. It provides no stability in the nation's

governance, no accountability in the nation's governance. It includes dysfunctional decision-making tools.

Tribal government has few roots in indigenous conceptions of authority, how you should exercise power. The tribal council is a battlefield where various families and factions fight with each other over who gets to control the jobs, the houses, the services. Some years one extended family wins and they throw anyone who opposes them out of office, hire their friends and relatives and monopolize the resources. A couple of years later another family wins and they throw out the last bunch, bring in their friends and relatives, and monopolize the goodies. Business ventures are politicized. Some disputes within the nation have ended up in violence. Each new administration brings new priorities, systematic firings and massive turnover in personnel.

One result is that a lot of talented employees, many of them citizens of the nation, get tired of banging their heads against the wall and simply move away. They head for Chicago or Minneapolis or someplace where they think they might get a better shake.

As result, all the assets that nation A has — natural resources, an educated workforce and a location close to markets — all of that goes to waste.

Nation B, on the other hand, has a radically different situation. They, too, have a written constitution, but they wrote it; it's their own system of governance. It provides a stable foundation for them. It makes the rules clear so everyone knows who has what rights and powers and how things should be done, and the rules are enforced. No one is above the law.

Politics are kept in their place. People are hired on their merits. Changes in tribal administration don't lead to upheavals; they lead to continuity. Operating in this more secure and encouraging environment, the nation's employees stick around, they invest in their own professional development. The result is, despite limited assets, the nation is thriving.

I think perhaps the most important indicator is that people who moved away years ago when things were much worse are coming home. The former chief of that nation said, "That is my measure of success. My people used to leave; today they come home."

These are governance stories. That is the difference in these two nations. It's not the assets. It's whether or not you can take whatever assets you have — generous assets, minimal assets — and put them to work in effective ways. Governance turns out to be fundamental to everything.

I often talk to foundations or federal agencies that want to address particular issues of First Nation communities. They are interested in health or they want to do something about education or they want to start an economic development project, something like that. I often ask them, "Have you considered the governance issues?" And they ask, "What do you mean?"

Let's think about it. You want talented people to run these programs you're going to start, right? How long will talented people stick around on the reserve if they discover that every time there's an election and a new administration comes in half the people working for the government get fired? In fact, if you didn't vote for the right person you might lose your job, too. Would you stick around under those conditions? Probably not.

How about strategic direction? If you're running a program for the nation, wouldn't you like to know what the nation's priorities are so that you can be sure your program is on the right page? What if the nation hasn't identified those priorities? What if the priorities change every time there's an election? What if they're priorities that nobody actually pays any attention to? They were written up in a document at that strategic session we did last year and they've been gathering dust on the shelf; nobody's looked at them since.

What if you discover that the nation has six different social services programs — this is coming from a nation in my own state of Arizona — but

the managers of those programs never talk to each other, there's no team building and everybody is just covering his or her behind. What do you think the chances are that your new social program is going to have a major impact under those conditions?

Or let's say you set up a health care program and discover you can't get rid of incompetent people because they have friends in powerful places who force you to reinstate them.

The stories can go on. How long will these programs and development initiatives last under these conditions? While all of those are governance issues, if you don't address the governance problem, then you probably won't be able to address the education problem or the health problem or the economic development problem because governance is the foundation upon which all of those other things sit. It's the thing that has to work if the other things are going to last.

What is governance? I am going to give you a broad definition. To me, governance is how a nation translates the will of its people into sustained, organized, effective action. What do your people want on this land 50 years from now for their grandchildren? Governance is about how you translate that vision into sustained, effective, organized action today. It is how the decisions in front of the council this afternoon get decided on the basis of what gets us closer to that vision and what keeps us further away from it.

Governance to me refers to a set of principles and mechanisms that enable you to translate that vision, the will of the people, into action. And by principles, I mean fundamental understandings of the community that come out of your own experience and culture of what the community is about, what its purposes are, the basis of authority in the community and the appropriate organizational use of that authority.

We have done some work with some of the Pueblo nations in the southwestern United States. In the more traditional of those Pueblo nations a key

principle of governance has to do with the primacy of the sacred, and a division between sacred and secular aspects of governments.

What does that look like? It means that ultimate authorities within these Pueblo communities, the more traditional ones, rest in the hands of spiritual officers — not elected leaders — spiritual officers who come up through an apprentice system in the traditional, spiritual societies in those communities. They are the ultimate authority. But they never deal with the U.S. government, the state of New Mexico or the school systems. That is all in the hands of secular officials. They pick the people who are skilled at doing that and they say to those secular officials, "Your primary responsibility is to protect the spiritual core of Pueblo life from the impositions of that white man world out there. You have to be good at dealing with that world because that world threatens what is most important to our people. It threatens the place where ultimate authority in Pueblo life lies." That is a governance principle.

They have organized a system of governance to try and realize that fundamental value, but they've done it realistically saying, "Okay, we are going to organize governance around protecting that sacred core and we are going to use hot shot negotiators, skilled people who know that outside world and can help us keep it at bay. " They combine the two.

Other principles may be critically important. One nation may view it as dangerous to place great power in the hands of single individuals. Some of the nations I have worked with in Canada and the United States in their cultures don't think it's a good idea to give one person a whole lot of power. If you go back and look at the ways they governed themselves under traditions of freedom they dispersed power to various bands and people. You can run this operation, but that doesn't put you above the rest of us. When that operation is over the power comes back to the centre.

Yet another nation may believe that constituent villages, districts or kinship-based units within the nation should have a lot of authority in their own

affairs. Don't concentrate it at the centre the way the U.S. government or the Canadian government wants you to do. No, they want a centralized government with one man or woman who is in charge, so they know who to talk to and the decisions get made and all of that.

That's one idea of governance. But if these are going to be successful nations, they have to respect their own ideas of governance and find ways to make them work in the contemporary world.

Ideally, each nation's principles are reflected in the practical mechanisms of government that each nation adopts; things like written constitutions, designated sets of offices, legal codes, the laws that your nations pass and the mechanisms for enforcing those laws, your agreements with other governments, a host of other practical tools that form the nuts and bolts of governments, and how you get stuff done on a daily basis. Those mechanisms, which are the way you operate every day, are informed by those underlying principles that say in our governance operation here's what we're trying to protect, here's what we're trying to change, and here's what we're trying to achieve.

I think the task of identifying what those core principles are and then finding mechanisms that are capable of addressing the real world you live in today is an extremely difficult world to survive in. The task of combining those principles with the effective mechanisms is the hard work of nation building. That's where a lot of the work of moving from rights to successful nations gets done; building governance systems that respect your core values but are capable of dealing with the real world you face.

Let me close with a few questions you might want to ask yourself as you confront what I call the governance challenge, because at the end of a process like the British Columbia treaty process it seems to me that is where everyone is headed.

The first question is: are you using the treaty process to address governance issues? My guess

is most of you are one way or another. Some of you are doing it in these workshops yesterday and today and the treaty process asks you to address those issues. But it's not just a question of talking about it. So I have rephrased the question a little differently.

First, will you come out of the treaty process with genuine, substantive power over what happens on your lands, over the form of your own governments, over the form and process of economic development on your lands, and over the organization of your communities? Will you actually be in the driver's seat of your own affairs, and if not, what is the point?

Number two: are you creating the governance tools that you need? Not the *Indian Act* — that was never conceived as an instrumental power of substantial governance as far as I can tell. As John Beaucage told us last night it was a control mechanism; today it is a burden on First Nations. You need governance tools that are robust, that are capable of realizing your dreams. That means constitutions, separations of powers, and limits on the abilities of politicians to disrupt enterprises and programs, provisions for continuity instead of upheaval when there are elections, sound management practices and the like.

I compare nation building to house building. If you are going to build a house you better have some pretty good tools. They have to be precise, they have to hold up under hard work and they have to be capable of the job at hand. The same is true of building nations — you better have some good tools in hand. That is the governance challenge.

Third, and it may be a little late in the game of this treaty process to raise this issue, but have you considered the boundaries of governance? What do I mean by that? I'll give you a couple of examples, one from BC and one from elsewhere.

Chief Sophie Pierre is here with others from the Ktunaxa nation, which decided to organize its own governance system, not at the First Nations level but at what we might think of as the tribal level.

Five First Nations joined together in the Ktunaxa Nation. Those five First Nations retain powers of their own, but they are building governing institutions at a broader boundary, linking arms together, and they are going to be far stronger as a result.

They are not the only ones. This summer I was up in the Northwest Territories visiting the Tlicho people, formally the Dogrib people. They were four separate First Nations that have joined together to create the Tlicho Government. Again, some powers remain in the hands of the member First Nation communities, but they are building something much stronger, much more potent and much more capable by joining hands together to form an overarching system of governance and acting as a single people.

There are others who are doing it, too. I think this is a remarkable kind of nation rebuilding. I am very interested to see how those things play out because I think it's an effort by First Nations to reconstitute the nations that were here before Canada, the nations that Canadian policies shredded into tiny postage stamp reserves and villages which they then designated as the appropriate units for everything. It's an attempt to recreate the nations that Canada pulled to pieces. I think it's an inspiring effort.

By the boundaries of governance, I simply mean to raise the question: are there other nations with whom you share culture, language, perhaps history, even a watershed, with whom you should be linking arms, knowing that in the long run such relationships are a source of power?

Fourth, and I will leave you with this one: do you have the leadership you need? In our experience, good leaders have vision, we all know that. They can communicate, they're willing to work brutal hours, you all know this much better than I do — I just observe it, you live it. We could go through an entire list. But I want to leave you with a slightly different thought: do you have the kind of leadership that lives what it talks about?

If your leadership talk about serving the nation, is that what it does instead of just serving a portion of the nation, a faction or a family? Does your leadership obey the rules? These aren't indigenous questions; these are governance questions any community anywhere in the world faces. Does your leadership do what it expects everyone else to do?

I'm going to finish with a leadership story, partly because it illustrates what I'm talking about and partly because it's a good story. I come from a country where we ought to be thinking more about the kinds of questions I'm raising — not indigenous nations — the United States. We specialize in going around the world and telling people how to govern themselves, typically with our system. "Hey, you've got a problem? We're Americans, we've got the solution." I hope I'm not fitting into that profile here.

I think these issues I'm raising — I really want to underline this — these aren't indigenous issues; these are human issues. Human societies have spent generations trying to figure out how to govern well. Your nation solved that. You wouldn't be here if sometime in the distant past you hadn't solved those problems. There is a lot that nations around the world could learn from what you have done in the past and maybe will be able to learn from what you do today.

Here's the leadership story. It comes from someone many of you know, Mike Mitchell, former Grand Chief of the Akwesasne, the Mohawk Council of Akwesasne.

Akwesasne has been engaged in the nation building effort for some time. One of the things they've done that I think it is pretty interesting is they tried to find openings in Canadian and provincial law where they could assert their own governing power, where there were issues they were concerned about where they could fill a void. One of the areas they discovered was the regulation of the waterfront on their land, along the St. Lawrence and what happens in those waters and what happens to the animals and the wildlife on their land.

They had some issues with Quebec and Ontario and the Canadian government about that and they decided the best way to address these issues was for them to assert their own governing power over these things. If they were going to do it, they said, “We better do it well because we don’t want to invite the kind of court action or other actions that might pull the rug out from under us. So let’s be smart.”

They decided the first thing they would do is write a conservation code that specified what the law was along the waterfront in dealing with animals, the land and wildlife. They looked at other conservation codes and they did a careful job of putting a conservation code together. Then, they said they were going to have to have some people to enforce these laws. It’s one thing to have a law but if you can’t enforce it, it’s pretty meaningless.

So they decided they would establish some conservation rangers. They got some tribal citizens and they asked Ontario if they would let them put the rangers through Ontario’s police academy. Ontario said, “Are you kidding? No.” So being creative, they looked to the State of New York — the other side of the river — and asked the state of New York, “Can we send our guys to your state police academy?” New York said, “If you’re willing to pay the fees, sure send them along.”

These rangers were sent through the full training course at the New York State Police Academy and certified as law enforcement officers in the state of New York. They were brought back to Mohawk, sent out and then the nation realized that if these guys actually apprehend violators, they would need a court to deal with those cases. So they set up a conservation court and trained judges. They wanted people who walked in the door to know it’s a court, it’s serious and it does things right. They set up a room with Mohawk flags, big desks, and made it look like a real court.

A few years ago, Mike Mitchell, as Grand Chief, was talking to a group of elders in the community about this. He was telling them why the nation was doing this, what nation building was all about sharing his pride in what the nation was

accomplishing. Suddenly the door at the back of the room opened and a couple of the conservation rangers walked in. Mike was thrilled. He said, “By chance here are a couple of our rangers. These are two of the guys we sent off to Albany to get trained and here they are. They’re doing a great job.”

One of the rangers said, “Chief, when you’re done with the meeting can we have a word with you?” Mike finished the meeting, went up to the two rangers and one said, “Chief, we’ve got a problem. You know that neighbour of yours up on the hill that raises pigs? Something has been killing some of his piglets. He called us up there to investigate and we found a blood trail, chief, and that blood trail led from his pig sty to your door. It looks like that Siberian husky of yours has been having pork for dinner lately. We’re going to have to cite you, Chief Mitchell, for failure to control your animal, which is a violation of this section of the Mohawk conservation code.

So the rangers wrote Mike up and he had to go to Mohawk court. The judge said, “Chief Mitchell, you violated this section of the code, which specifies compensation to the owner of the piglets. I’m going to hit you with \$80 a piglet and on top of that there’s a fine.” Mike wrote a cheque, paid it and the case was closed.

Not long after, he was walking down the street and ran into one of the elders who’d been in that community meeting. The elder said, “We were watching you, Chief Mitchell. We weren’t sure those guys would actually cite you — you’re the chief. But they did. We wondered if you would show up in court and if you would pay that fine. You showed up and you paid. We’ve decided that you’re okay, Chief Mitchell.”

Mike’s response was, “Of course I paid. That’s Mohawk law.”

That story is a nation building story. That’s what it was about. Not just the conservation code, though that was one piece of it. Not just the court and the rangers, those were pieces of it, too. It’s the leadership that put the nation first. That one

incident suddenly demonstrated to every Mohawk that when the Mohawk nation adopts a law it is serious and nobody in the nation is above it.

I think that's what makes it a nation building story. I think you are nation builders here today. You have a lot tougher job than I do. I get to go look at nation building stories, but you have to try and live them. I salute you for that and thank you for your time, letting me share some thoughts with you. Thank you very much.

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For details on the six-stage treaty process and recommended resources, see our website.



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Merging the past and present, the Treaty Commission symbol represents the three Principals in modern-day treaty making—the governments of Canada and British Columbia and First Nations. Pointing in an upward and forward direction, the symbol implies a “coming together” pivotal to successful negotiations and treaty making.