Algonquin treaty negotiations see progress

BY MARG. BRUINEMAN
For Law Times

An agreement in principle achieved between the federal and Ontario governments and the Algonquin and Innu is considered by many as a major milestone marking Ontario's first modern-day treaty.

But not everyone is delighted by the agreement, which may yet take years to finalize.

"It's about reconciliation. Essentially, what we're trying to do is reconcile 250 years of history," explains Bob Potts, a litigator and partner at Blaney McMurtry LLP, who has included aboriginal law in his work for the past 30 years.

Potts became involved in the Algonquin treaty negotiations in 2003, and negotiations with the federal government began in 2005. That resulted in a draft agreement in 2013, which was put out to the public for comment. A revised agreement in principle was drafted and finally signed on Parliament Hill this past October.

But the Algonquins have been attempting to petition to have a treaty since 1772, Potts says. Petitions have been made over more than the two centuries since, with no results.

Potts describes the current process as an attempt to reaffirm and ultimately reestablish the Algonquin presence in the Ottawa Valley.

"The significance of it is in the reconciliation of the power structure that ought to have been there will be appropriately realigned and the Algonquins will have a place, a much more effective and important place in the ongoing affairs of that part of our nation," he says.

"This is a wonderful expression of some of the very unique law that has been handed down from the Supreme Court of Canada."

What is unique about this agreement is that it is one of the few that focuses on a largely

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populated area. It also has status and non-status components. The deal involves nine million acres with 86 municipalities from the nation's capital to North Bay, including Algonquin Park.

Potts says it also includes economic development and the re-establishment of archeological and culturally important sites.

A light rail station in Ottawa is being dedicated entirely to aboriginal/Algonquin ways and a development in downtown Ottawa, along with others, will note the presence of the Algonquin and celebrate their history.

The next step is to engage with both the federal and Ontario governments to nail down the treaty, using the agreement in principle as a framework.

That process, mapped out in a five-year work plan, is expected to delve into more specific details such as trapping, hunt camps, municipal zoning and meeting with neighbours. At that point, if it's successful, the Algonquin beneficiaries will take it to a vote and, if they're in favour, it will be taken to the government to be passed as a treaty.

Jason Madden, a Métis and partner at Pape Salter Teillet LLP who practises aboriginal law with a focus on Métis-related issues, represents the Manitoba Métis Federation, which in November signed a framework agreement with the federal government setting out a formal negotiations process to talk about rights, land and self-government.

Madden has been watching the Algonquin negotiations closely because the Métis are dealing with the same subject matter, he says.

"It's slowly got to this point where the recognition of Métis rights and the need to deal with the Métis as a unique and distinct group has finally, I think, got to the tipping point and I'm cautiously optimistic.

It's always easier to sign framework agreements and processes committing to exploratory discussions. The proof is in the pudding. Do we ultimately get to real reconciliation through just and lasting settlement? But compared to being in neutral since 1982 almost, a lot has been happening," he says.

"The Algonquin claim is interesting because it is grappling with some of the issues the Métis face," he says. "They're two very different indigenous people who have seen their territories gobbled up by settlement."

The land claims process, he adds, are not ideal, they take too long and they are too expensive, but they're all that are currently available to advance and resolve the claims, he adds.

The Manitoba Métis Federation initially filed its claim in 1981. Litigation began after it was rejected by the federal government, taking 32 years to make its way to the Supreme Court of Canada.

The Algonquin claim is the only one in Ontario currently being negotiated, largely because there are historic treaties in Ontario.

There have been 26 modern-day treaties signed since the James Bay Cree Agreement in 1975. Prior to that, the last one was Treaty 11 in 1921.

"These modern-day treaties are really Canada's attempt to restart the treaty process but also resolve some of these broken promises," says Madden, who sees current discussions as an attempt to rebalance the situation after years of "erasing that indigenous space.

"How I see these goals [is that they] are carving out a safe, constitutionally protected space so my clients, the Manitoba Métis and others, never become just a footnote in history."

How the Algonquin agreement differs from others is that it also involves the provincial government, observes Signa Daum Shanks, assistant professor at Osgoode Hall Law School and director of indigenous outreach.

Historically, she says, treaties result from consultation between the federal government and a First Nation.

A provincial government, by its exclusion, may later claim no responsibilities — she points to the ongoing issue of the lack of potable water on reserves as an example.

That inclusion extends to municipalities, too, she says, because they fall under the purview of the provincial government.

"The more modern agreements there are that involve provinces, then the more overlapping these relationships become. So this is one that I think really acts as a template for Ontario about that idea of the province participating. So that's pretty precedent-setting here," says Shanks, a Métis.

"That idea of having Ontario at the table is really, really monumental."

Another unique aspect is the inclusion of heritage and culture in the Algonquin agreement, which includes a protocol pertaining to archeology and artifacts and raises the concept of defining culture, which Shanks says aren't typically parts of these arrangements.

A concern also is leaving room for future generations in these "final agreements" for self-governance.

And Shanks likes that the Algonquin have left some room for flexibility, taking heed from some problems in history when making agreements.

The problem that Bruce McIvor of Vancouver-based First Peoples Law sees is that this type of agreement serves as an extension of colonization and limits the inherent rights of indigenous people.

"The main issue now, at least from my perspective, is these types of proposed settlements aren't really about reconciliation. I think they're colonization masquerading as reconciliation," says McIvor.

"They begin from the same perspective that has been at the centre of Canada's policy with indigenous peoples for hundreds of years and that's that the purpose is to remove them from their land."

A preferred approach, he adds, is to recognize indigenous peoples' interest in their territories and their right to participate in the decision-making about how the land is developed or not developed.

He says the Supreme Court of Canada has signaled that there is space and scopes for those types of negotiations, based on recognition of aboriginal title and their interest in the land. **LT**