

## Pimicikamak Okimawin

### Grant Funding and the Problem of Consideration

Historically, the government of Manitoba and Manitoba Hydro have used a *transactional* approach in most of their dealings with Indigenous communities in Northern Manitoba. That is, they look to make agreements.

Another way they look at this is that when they provide something they look to get something of value in return. The legal term for the something in return is *consideration*.

The Pimicikamak public has become allergic to the concept of consideration. Past Crown-party practices have led to any trace of it being widely perceived as corrupt.

As a key element of its survival strategy, Pimicikamak is pursuing a new relationship with Manitoba Hydro. It seeks a *relational* approach. For the past two years Pimicikamak's representatives have repeatedly emphasized they have no authority to negotiate agreements and they have no intention of seeking such authority. In other words, there will be no agreements.

In effect this change moves the relationship out of the past legalistic context and aims to move it into a context of mutual benefit and respect.

Not surprisingly there are some, particularly those who are less directly involved, who see millions of dollars in grant funding and ask, as if it ought to be there: Where is the consideration?

The Northern Flood Agreement provides a natural foundation for such tendencies. With a transactional view, Manitoba and Manitoba Hydro tend to see it in terms of a list of obligations (or liabilities). So they expect payments to be charged against obligations and reduce outstanding liabilities; in other words they look for the consideration.

This might have been a viable approach forty years ago, though it was never the Pimicikamak view. However, it ceased to be viable in 1985 when the government of Manitoba adopted a policy of refusing to implement NFA obligations because they were proving to be too expensive. It determined to buy out the bands one by one at much lower cost. Manitoba Hydro cooperated and so did Canada (with the Deputy Prime Minister calling it "the Manitoba scheme").

Today it has become meaningless to speak of implementing the NFA. Even if the policy were reversed it would be impossible. Half of the individual beneficiaries have died. The remedy for non-implementation is damages. If the damages for living (or, in many cases, dying) in conditions made hellish and hopeless were to be just tens of dollars per day per person the damages would be billions. Payment of such a sum would be a disaster for all concerned; so would a failure of the legal system to yield even such a paltry sum per day per person.

Manitoba and Manitoba Hydro need to come to grips with the fact that the legal obligation concept has, in consequence of their own actions, failed. It was an expensive failure and Pimicikamak is bearing most of the expense.

What now? Pimicikamak's answer is a new and non-transactional relationship that seeks mutual survival. For almost a year Manitoba Hydro has been actively exploring this with Pimicikamak.

An imagined example may help to illustrate the consequences for the concept of consideration: spending \$1 million on a program that improves Manitoba Hydro's standing as a good neighbor. Let us suppose there are two choices for such a program:

- one that meets an NFA obligation and gets a one-star rating for improved neighbor relations.
- one that is non-NFA and gets a five-star rating for improving neighbor relations.

In the old system, Manitoba Hydro would choose the first. It would claim a “NFA credit” as consideration. But the second choice is obviously better for Manitoba Hydro. Less obviously, it will also be the better choice for Pimicikamak. Simply put (and of course it is often not that simple) the mutual self-interest of the two parties is to find the least expensive and most effective ways to turn things around and make them acceptable, without regard to their NFA status.

So, to the extent a legalistic concept of consideration continues to move minds of decision makers, it is a problem for both parties because it leads to bad decisions.

Moving beyond the NFA framework will save Manitoba Hydro money. It will lead to good results instead of bad results for both parties. It offers each a pathway to survive.

For Manitoba Hydro there is a simple alternative to the world of obligation and consideration. In stark contrast with the disastrous course it pursued in the past, it can seek ways to look after the interests of its shareholder as cost-effectively as possible by working with Pimicikamak.

This seems to be the existing duty of its directors and officers. There is a maybe-six-month window of opportunity to do this well.

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