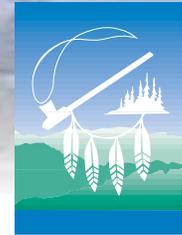


The Facts on Claims

Indian Claims
Commission

*Fairness in
claims negotiation*



THE FACTS: WHAT IS A TREATY LAND ENTITLEMENT CLAIM?

Treaty land entitlement (TLE) claims arise when a First Nation asserts that the Government of Canada did not provide the reserve land promised under treaty. Some First Nations have not received any of the reserve land they were promised; others have not received the correct amount of land. A TLE claim is a type of specific claim.

TREATY OBLIGATIONS = LEGAL OBLIGATIONS

In the 1760s, First Nations throughout what is now southern Ontario began to exchange land ownership for money in early treaties. After Confederation, Canada and First Nations across the Prairies, parts of Ontario, the Northwest Territories and northeast British Columbia signed 11 treaties. They were intended, in part, to deal with the waves of settlers moving onto the Prairies and the collapse of the aboriginal buffalo hunting economy. Canada promised that it would reserve land for First Nations. In return, treaty First Nations surrendered hundreds of thousands of acres of land to Canada.

The creation of Indian reserves was central to this treaty-making. For First Nations, the promise of land reserved for Indians was crucial to protecting their way of life. For Canada, the surrendered land made development possible. The federal government confirmed its responsibility for "Indians and lands reserved for Indians" at Confederation, and treaty and aboriginal rights are recognized and affirmed in the Constitution of Canada.

TREATY PROMISES

Treaties 1, 2, 5

160 acres for each family of 5 or 32 acres per person

Treaties 3, 4, 6, 7, 8, 9, 10, 11

1 square mile for each family of 5 or 128 acres per person

WHO TO COUNT, AND WHEN?

The numbered treaties say how much land per family was to be set aside for reserves, but they do not say when it was to be set aside. When the treaties were signed, however, it was understood that First Nations and Canada were to agree on what land to set aside for First Nations, and government agents were to return within a year or two to count the band population and survey the land for reserves.

Band populations, however, were in flux in the late 1800s. Disease and the collapse of the buffalo hunt meant more people were on the move as they sought food further north. New bands or individuals joined treaties after the first signing. In addition, some government agents worked carelessly. Government surveyors sometimes missed entire bands. In other cases, surveyors did not include all band members in initial reserve calculations.

TWO TYPES OF TLE CLAIMS: INITIAL AND SHORTFALL

Since 1973, the federal government has accepted two types of TLE claims for settlement negotiations under the Specific Claims Policy.

Initial (or Late Entitlement) TLE claims arise when a First Nation asserts that it has never received the reserve land promised under treaty. Under the Policy, the First Nation must prove to Canada that it has treaty land rights and has never received reserve land under treaty.

Shortfall TLE claims arise when a First Nation asserts that the full amount of reserve land promised under treaty was not set aside. If a First Nation is found to be owed land, Canada accepts the claim for negotiation. A First Nation and Canada must determine who should be counted and at what date so that the correct amount of land to which the First Nation is entitled under treaty may be calculated.

The **Indian Claims Commission** inquires only into TLE claims that have been rejected by Canada.

SETTLEMENTS

Once the federal government is satisfied that a First Nation has a valid TLE claim, the claim is accepted for negotiation of a settlement.

Settlements vary, reflecting the specific historical, genealogical, and legal basis for each claim. They include cash and may include other benefits or surplus crown land to be set aside as a reserve, provided certain conditions are met. Many First Nations use cash settlements to purchase land on the open market. Often the provincial government is involved in negotiations; the governments of Manitoba, Saskatchewan, and Alberta are responsible under the Natural Resources Transfer Agreement to make land available for treaty settlements.

Since 1973, over 70 TLE claims have been settled and 7 have been closed or rejected. In 1992 in Saskatchewan and in 1997 in Manitoba, First Nations joined with federal and provincial governments to negotiate framework agreements to establish core principles for the calculation and negotiation of treaty land entitlements.

The Mikisew Cree First Nation: An Initial TLE settlement

Canada had never set aside a reserve as promised in 1899 under Treaty 8 for the Mikisew Cree. In 1985, the First Nation, Canada, and Alberta reached a final settlement. The First Nation received \$28 million in compensation, which has been used for economic development.

The Peter Ballantyne First Nation: A Shortfall TLE settlement

A reserve was first set aside, under Treaty 6, for the Peter Ballantyne First Nation in 1876. In 1999, the First Nation settled with Canada and Saskatchewan for a total package worth approximately \$62.4 million. This allowed the First Nation to purchase 9573 hectares, which were then set aside as reserve land.

DEFINITIONS: THE ABCs OF TLEs

Absentee: A band member who was not present when the first survey of the land was conducted and a population count done. Proof that such individuals were absent is usually found by their inclusion on other treaty annuity paylists. These individuals may be included in the calculation of a band's TLE, depending on when they became members and how long they have been members.

Date of First Survey (DOFS): The date at which the physical boundaries of the reserve were identified by government and accepted by the First Nation.

Land in Severalty: Land set aside for individuals instead of land set aside for the community. Treaties 8 and 10 offered individuals the option of taking 160 acres each.

Landless Transferees: Indians who took treaty as members of one band and then transferred to another without being included in the land entitlement calculation of either band. The band is entitled to additional reserve land for every landless transferee.

Late Adherents: Indians who joined a band after the first survey, never having taken treaty or been counted in a land entitlement calculation. Bands are entitled to additional reserve land for every late adherent.

NRTA: Natural Resources Transfer Agreements of 1930 transferred the administration of natural resources and control of Crown lands from Canada to the Manitoba, Saskatchewan, and Alberta governments. The agreements specified that the provinces would provide enough vacant Crown land to enable Canada to fulfil its treaty obligations.

MORE INFORMATION

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