You people in this room, the people that work in this office, when the people in the office are doing the papers, you always have to remember to keep in mind the promises that the Queen gave us. And always write them into those papers that you write. Because people are promised by the Queen that the treaty would be upheld for as long as the sun was able to travel from the east to the west and for as long as the rivers flow, that was the promise. And now you can copy this down and translate it into English so that everyone sitting in the room that doesn't understand Cree can read it on paper. I have finished speaking for now.

(Spoken by Elder Albert Davis on January 31, 1991)

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A REPORT PREPARED BY THE TREATY 8 TRIBAL ASSOCIATION FOR THE ROYAL COMMISSION ON ABORIGINAL PEOPLES

1.0 INTRODUCTION TO THE ROYAL COMMISSION REPORT

Across Canada, the Royal Commission on Aboriginal Peoples is examining issues of importance to First Nation Peoples. This Treaty Review was conceived as an integral component of the Treaty 8 Tribal Association (T8TA) Brief to the Commission because Treaty fulfilment issues go to the heart of most problems encountered by the T8TA member nations. In many cases, full implementation of the spirit and intent of Treaty No. 8 has been identified as a possible solution to these concerns. But in order to implement the spirit and intent of the Treaty, it is necessary to first define exactly what that spirit and intent is, beyond the narrow interpretation currently used by the Government of Canada. There exists, therefore, a requirement for a detailed Treaty review, and this document represents the results of a four-month preliminary effort in this direction. Hopefully it will form a sound basis from which to proceed on a more comprehensive effort.

In British Columbia, the B.C. Treaty Commission is negotiating modern-day treaties with Indian groups across the province. The Treaty 8 Tribal Association (T8TA) recently submitted a draft *Memorandum of Understanding (MOU) on the Protocol for Negotiations on Treaty Recognition and Implementation Under the auspices of the B.C. Treaty Commission*. This MOU outlines some major concerns of the T8TA including: a) that Canada has failed to implement the spirit and intent of Treaty 8, partly because of jurisdictional disputes between the federal and provincial governments, b) that some federal and provincial laws are in conflict with the spirit and intent of Treaty 8, and, c) that B.C. and Canada must fully recognize and implement the existing Treaty in British Columbia as a prerequisite to the credibility of any other negotiations with B.C. groups (Treaty 8 Tribal Association 1993a). The June draft of the MOU, drawing on decisions of the Supreme Court of Canada, defined the spirit and intent of Treaty 8 as:

> . . . the terms and content of Treaty No. 8 as the First Nation signatories would have naturally understood them at the time of the signing of the Treaty's negotiation, given the historical and cultural context and the circumstances of the negotiations; with those terms content being liberally construed; with ambiguities

> resolved in favour of the First Nations signatories; and the terms, content, and historical and cultural context being defined by the Treaty review described herein. (Treaty 8 Tribal Association 1993a:1)

The Treaty 8 Tribal Association, through its Treaty and Aboriginal Rights Research (TARR) program, intends an on-going study of the spirit and intent of Treaty 8 as defined above. The goal of TARR is to produce a verifiable understanding of Treaty 8 which can be corroborated by many different types of documentation, especially Elder testimony, and which may be used for a variety of purposes (such as background for proposals, specific claims, government negotiations).

The Royal Commission on Aboriginal Peoples' Treaty 8 Review Brief was designed as a first step in creating a data base on the history of the signing of Treaty 8 in B.C., the Indian understanding of the Treaty at the time of its signing, and other contemporary issues related to the Treaty. Submissions for the Royal Commission Brief were solicited from T8TA advisory staff on their respective areas of expertise and these were integrated into the Treaty Review text. In order to better meet the mandate of the Royal Commission, advisory staff submissions were standardized in a "problem-solution" format.

A major component of the Preliminary Treaty Review Project focussed on a literature and source review. Due to limited time and resources, rather than attempting to generate new data on the spirit and intent of Treaty 8 through, for example, an elder interview project, the Preliminary Treaty 8 Review Project was designed to "take stock" of what information was already available - to identify, flag, and collate materials into special "Spirit and Intent Files." The primary methodology used in the Treaty Review, then, involved a literature search through the entire holdings (archives, books, minutes of meetings, videos) of the Treaty and Aboriginal Rights Research Office of the Treaty 8 Tribal Association in Fort St. John. While some information was gathered through participation in meetings, and through participant observation, this was limited in scope. Three interviews (Madelaine Davis, Fred Courtoreille, and Joseph McCarthy) were conducted for this project. These are the oldest Elders in B.C. Treaty 8 territory, and their interviews served as test cases for a new questionnaire that was designed to elicit specific information on the Indian understanding of Treaty 8 on a promise-by-promise basis following the clauses in Treaty 8 (Appendix 1).

Wherever possible, information specifically on the B.C. case was used in the Review but, where evidence was absent, or corroboration was available, examples from Alberta or the N.W.T were considered and applied where appropriate. The Chiefs and Elders say that "Treaty 8 is

Treaty 8." By this they mean that the promises made and the terms and benefits afforded by the Treaty are applicable regardless of the particular Treaty 8 region being studied. A case- by-case examination is necessary, however, because each region has been subject to different provincial laws (game laws for example), different historical circumstances (relationship to Confederation for example), and different levels of treaty implementation (the N.W.T. does not have reserves, B.C. groups were not offered land in severalty).

A "Made in B.C." approach is vital for B.C.-specific negotiations, like those contemplated with the B.C. Treaty Commission between Canada, British Columbia, and the Treaty 8 Tribal Association member nations. This approach is also essential for gaining an understanding of the nature and origins of problems faced by the T8TA communities, and to facilitate resolutions to those problems.

The Preliminary Treaty Review component is the result of four months of research. The limited time frame allotted for preliminary work allowed for only a superficial glimpse of the issues raised in the Treaty Review. This report, then, is not a definitive work - and the information and analysis here should be viewed in that light.

1.1.2 Acknowledgements

Many people should be acknowledged for their assistance in the Preliminary Treaty Review Project. Gloria Hammermeister, Treaty Review researcher for the Grand Council of Treaty 8 First Nations, provided information and materials for this study and acted as a liaison with the Grand Council. Gilbert Capot-Blanc, T8TA-TARR Researcher and Genealogist, assisted in locating materials, gave helpful advice, helped compile the questionnaire and arranged and/or conducted the interviews. He also designed the cover for this report. Deborah Smithson, T8TA-TARR Senior Researcher, with her encyclopedic mind, answered questions on points of detail and led the researcher through archival materials. Deborah also assisted by providing information on disk and by editing drafts of this report. Rose Alfred and Rhoda Paquette are thanked for their time and patience. I would like to thank the Elders for contributing their words to this report.

1.1.3 THE PRELIMINARY TREATY REVIEW REPORT

The Treaty Review Report is a summary of findings in three parts: a Literature and Source Review discusses the materials used in the Treaty Review and their relative value for the

B.C. case; a Clause-by-Clause Analysis of the Treaty details the promises made in the *Report of Commissioners for Treaty No. 8*, the text of *Treaty No. 8,* and the spirit and intent of these promises, as well as other relevant perspectives found in the literature (by missionaries, translators, government officials); and, a critique of specific claims policy examines the problems related to settling grievances through the specific claims process. Included in the Clause-by-Clause Analysis are reports from T8TA advisory staff who point out issues of concern regarding Treaty 8 and contemporary problems. The common theme "the spirit and intent of Treaty 8" links these discrete sections together.

1.2 Literature and Source Review

The literature review corresponds to two file boxes compiled as part of this study, to be stored in the T8TA-TARR archives. The materials contained in these boxes are all directly related in one way or another to the spirit and intent of Treaty 8, either in a general way, or in a B.C.-specific way. Filed materials are organized according to their source-type and follow the headings in this report. The files will allow for a "quick-search" of materials on Treaty 8, and can be used for subsequent research projects without duplication of effort and expense. Some explanation is necessary, however, in order to understand the importance of the materials and, in some cases, why they have been included in the files. In addition to this explanation, the following Literature and Source Review also provides a summary of the materials used in the Treaty Review generally, and assesses their value for the B.C. case study.

1.2.1 Historical Works

Historical works on Treaty 8 are important because they often provide summaries from a variety of data sources - archival research, oral history, court testimony, ethnographies and other historical accounts. One example of an historical work that uses a variety of primary sources is the published work by Rene Fumoleau entitled *As Long as this Land Shall Last* (Fumoleau 1976). This work is significant because it traces the historical circumstances before, during, and after the signing of Treaty 8 (1897-1939). Although primarily concerned with the circumstances of Treaty 8 and 11 in the Northwest Territories it does contain references to Treaty 8 in British Columbia and is an excellent ethnohistorical account generally on the spirit and intent of Treaty 8.

Written mainly from the non-native point of view is the brief article *Inland Journey* (Chalmers 1972) which describes and summarizes, in a straight forward historical fashion, the 1899 journey of the Indian Treaty Commission.

Three historical works are especially important because they focus on Treaty 8 in British Columbia.

Madill's (1981) article, *B.C. Indian Treaties in Historical Perspective,* gives a treatment of the history surrounding Treaty 8 in British Columbia. Although brief, this article is particularly useful because it places Treaty 8 in the context of British Columbia's history.

Melville's (1981) study, *Report on Reserves and Indian Treaty Problems in Northeastern B.C.,* was developed in relation to B.C. Hydro's proposed hydro-electric projects for the Liard, Iskut, and Stikine Rivers in Northern B.C. Of great interest to Melville were the boundaries of Treaty 8, and the land surrender issue. Melville provides a detailed account of the tribes in B.C., but his work is based on secondary sources, those of anthropologists, and his history of Treaty 8 B.C. references Madill's work.

Although not yet publicly available, by far the most comprehensive history on Treaty 8 B.C. is found in *Volume 1 of* the *Consolidated Annuity Arrears Claim of the Halfway River, Prophet River, Fort Nelson, Saulteaux, Blueberry River, Doig River, & West Moberly First Nations* (TARR 1993b). This manuscript is a collection of historical documents and provides: a chronology of events relating to Treaty 8, a chapter on the history of Treaty 8 and its B.C. adhesions, and an outline of outstanding legal obligations. Its importance cannot be stressed enough because it includes relevant historical documentation which will save in duplicated research effort.

1.2.2 Articles on Treaty 8 - Topical

Articles on specific topics related to Treaty 8 are important because they look at the history of the signing of the Treaty, using archival and other information, and summarize it according to specific issues related to the Indian understanding of Treaty 8 and Treaty 8 rights. The titles provide a comprehensive summary of the articles.

New Perspectives on the Alberta Treaties (Price 1976) contains a series of articles based on IAA-TARR (Indian Association of Alberta) research. Important to Treaty 8 are*: The Spirit and Terms of Treaty 8* (Daniel 1976:a), *The Development of Farming in Treaty 8 (1899-1940*) (McCardle and Daniel 1976), and, *Hunting, Fishing and Trapping Rights: White Competition and the Concept of Exclusive Rights for Indians* (Daniel 1976b).

Other materials related to specific topics written for IAA-TARR which often deal with several treaty areas include: *Economic Development and the Spirit of the Treaties* (n.d., IAA-TARR), *Treaty Rights to Health in Canadian Law Today* (Bartlett 1990), *Indian Land Holdings in Severalty Under Treaty Eight and the Indian Acts, 1899-1930: a Preliminary Discussion* (McCardle 1975/77), and *Statement on the Indian Title to Lands Surveyed "in Severalty" under Treaty Number 8* (IAA-TARR 1980).

An ethnohistorical work, *Commentary on the Economic History of Treaty 8 Area* (Ray 1985), addresses commercial livelihood issues for Treaty 8 and describes the "usual vocation" of the Indians of Treaty 8 in or about 1899. A new article, *Treaty 8 and Traditional Livelihoods* (Smith and Price - Draft) examines the controversy surrounding the traditional livelihood promises found in Treaty 8 and the significance of the Alberta Natural Resources Transfer Act.

Although very important for the Treaty 8 case, these articles tend to examine Treaty 8 from a Lesser Slave Lake, Peace River and Athabasca District (Alberta) point of view.

1.2.3 Research Reports and Position Papers

Research reports have proved to be a valuable source of information on the spirit and intent of Treaty 8. Although often a confidential and unquotable source, reports and proposals provide contemporary interpretations of the Treaty, as well as concise summaries on a wide range of topics. Of value are the articles *Treaty Research Report: Treaty 8* (Madill 1986) and *Probable Factors and Alternatives for Treaty Rights Negotiations* (Price 1974).

Important for the B.C. Treaty 8 case specifically are *Notes on the Present State of Understanding and Research on Treaty 8* (Union of B.C. Indian Chiefs 1973) and *Treaty 8 in*

British Columbia - An Interim Report (Union of B.C. Indian Chiefs 1974).

The Chiefs and TARR, Treaty 8 Tribal Association Northeastern B.C., have also written research reports and position papers which detail the spirit and intent of Treaty 8. The recent *Memorandum of Understanding* (Treaty 8 Tribal Association 1993a) provides a clear definition of the "spirit and intent of Treaty 8," while the *1st Quarterly Report to the Intervenor Participation Program of the Royal Commission on Aboriginal Peoples* (Treaty 8 Tribal Association 1993c) provides insight into the relationship between Treaty 8 and the Province of British Columbia. B.C.-specific information was also presented in reports to the Royal Commission as follows: *An Historical Summary of Treaty #8* (Capot-Blanc 1992); *Resource-Use in Treaty 8: Is there a Future for Co-operative Decision-Making?* (Whiten 1992); and, *Royal Commission on Aboriginal Peoples - Briefing Notes Outline* (Havlik 1993).

1.2.4 Oral Statements

Lynn Hickey, responsible for analyzing the IAA-TARR interviews, discusses the importance of oral history to the Indian understanding of treaties:

> The basic idea behind [oral history] is that most of our information on the treaties has come from written sources which either are ultimately derived for the government, or from other parties who had some interest in getting the treaties signed. Thus such sources may be presenting a one-sided view of the treaties, especially since Indian people often seem to have very different opinions on what the treaties mean.
>
> Information about the Treaties from the Indian side is necessarily in oral rather than written form as it consists of stories which have been handed down by people who were actually present at the negotiations. (Hickey 1976:1)

Hickey explains that unlike other treaties, there are actually a few eyewitnesses to the Treaty 8 negotiations alive because it was not signed until 1899 (Hickey 1976:6). Of all treaty areas researched, she writes that: "Treaty 8 elders gave the most varied responses as to what the Treaty was about" because "Treaty 8 negotiations were carried out in many different places and people in the area tended to live in smaller groups that were more isolated from each other than in other treaty areas" (Hickey 1976:6).

A comprehensive oral history project on Treaties 6, 7, and 8, was conducted through the Indian Association of Alberta TARR Elders' Interview Program during the 1970s. Unfortunately, however, time did not permit more than three interviews on Treaty 8 from two areas - Sucker

Creek/Lesser Slave Lake Reserve (Jean Marie Mustus and William Okeymow) and from Fort Chipewyan (Felix Gibot).

Hickey (1976:10) summarizes her findings as follows:

> William Okeymow gives the best of the actual eyewitness accounts of Treaty 8 and he recalls the long discussions the Indians had prior to signing the Treaty because of their worry that their way of life would change thereafter. Jean Marie Mustus, whose grandfather was a chief who signed the treaty, also relates how difficult his grandfather's decision to sign was. The fear the Indians felt that their hunting, fishing and trapping would be restricted if the Treaty was signed is a constant theme in most Treaty 8 interviews and shows up again in the interview from Fort Chipewyan. In fact, many interviews make the point that without reassurance by the Commissioners on this matter, the treaty would not have been signed at all.
>
> The question of whether the treaty concerned surrender of land is unfortunately not as clearly answered in these three Treaty 8 interviews as in many others. William Okeymow, feels that the Indians surrendered only the surface of the land while Jean Marie Mustus states that his grandfather "sold the land". Felix Gibot, an eyewitness to the treaty, is not certain that the government bought the land, but feels the Commissioners thought they were doing so. In any case, it is clear that Treaty 8 elders feel the treaty did concern land, whether they were being asked to sell it or share it.
>
> Another prevalent idea in interviews for Fort Chipewyan is that the treaty commissioners had heard the Indians were starving and part of the reason for the treaty was to prevent this from happening again. Felix Gibot goes on to stress that the treaty negotiations themselves discussed that from then on there would be friendliness and helpfulness between Indians and Whites. (Hickey 1976:10)

A further series of interviews (not included but) mentioned in the Price manuscript were conducted by Dan McLean, Dave Capot and Lawrence Courtoreille (80 interviews) with Treaty Indians. These vary significantly in content. A few contain useful statements about the history of the signing of the treaty, broken treaty promises and Indian understanding of the Treaty, but many are brief and contain little on the spirit and intent of Treaty 8.

Twenty-seven elder interviews and three councillor interviews were conducted by Delia Opekokew and Zannie Williams in Treaty 8 in 1992. These were sworn as court-admissible affidavits (Grand Council Treaty 8 First Nations 1992). Opekokew summarized the relevant points of the interviews and noted the regional differences in the Indian understanding of Treaty 8 based on oral historical information. This work has significant ramifications because it seems

to suggest that adhesions to Treaty 8 should be separately researched.

Another source of oral testimony on Treaty 8 comes from the Paulette Case (*Re Paulette's Application to file a Caveat [1973] W.W.R.97)* brought by the Brotherhood of Northwest Territories. The Paulette case argued that the native title to the land still existed, and had not been extinguished by Treaties 8 and 11, because of the manner in which the treaties were negotiated. The Paulette case took evidence from many people who witnessed the signing of Treaties 8 and 11. Important testimony specifically related to Treaty 8 (N.W.T.) comes from Book 3 of the Transcripts (Chief Francois Paulette, Fort Smith pp. 154; Chief Joe Lockhart, Snowdrift, pp. 204; and Chief Edward Sayine, Fort Resolution, pp. 182).

For example, Chief Edward Sayine, Fort Resolution, (Book 3 pp. 182) gave evidence as follows:

> Q What is your understanding of what Number 8 means to the people of Fort Resolution?
>
> A Treaty 8, and they are Indians, and those people are - it isn't like today - since 30 years they can talk and write good, and my son was here, and in those days at Treaty time they just give it to them and go, and they don't understand that, and they don't speak English, and they don't write, and today I read a bit, and I just get advice from the older chief, and my older people…
>
> Q When you spoke to the old people about Treaty 8 did they say what kind of treaty Treaty 8 was?
>
> A They say they got five dollars, treaty 8, they got five dollars from the government but not for the land, and he said, that is the day he signed the agreement for peace with the white man. He told me last before I leave. He was the chief for 20 years, and his name is Peter Frieze, and he is 85, and I will bring him to you and he will talk.

Melville (1981:2.31), however, cautions about the use of the Paulette case for generalizing about B.C. land surrenders. In his opinion:

> Re: Paulette deals only with the Northwest Territories and does not give consideration to any evidence within B.C. for Treaty 8 or any of its adhesions. Presumably each negotiation session would have to be judged on its own merits… After all, the treaties are really two separate series of treaties each conducted with the Indians grouped according to the settlements at which they were met by the Commissioners. Thus Re: Paulette provides no direct evidence on the validity within B.C. If anything it merely raises suspicion that not everything was above board.

Melville (1981:2.27) writes:

> Left untouched, however, was the more important question of the validity of the treaties. Morrow's finding, albeit not a final determination, that there are serious grounds on which to dispute the apparent surrender of native title under the treaties is of great significance. . . .
>
> Re: Paulette should not be discounted for these reasons however. The ease with which evidence of bad faith in this case was forthcoming makes it all the more likely that such evidence of bad faith may be found elsewhere or which would go to the substance of the treaties as a whole.

Melville (1981:2.31) also adds that:

> Morrow's judgement is also difficult to rely on because he does not distinguish between the evidence of bad faith in Treaty 8 and that in Treaty 11. Neither does he attempt to identify which adhesions are doubtful because of the nature of the question before him.

Oral historical information specific to British Columbia comes from three sources:

1. The testimony presented at the Northern Pipeline Agency Hearings, which is especially important because it provides unsolicited testimony on the Indian understanding of Treaty 8 from Elders', Chiefs', and band members' points of view. Represented are all B.C. Treaty 8 groups. As well as relating evidence specifically to Treaty 8, information is provided on a number of issues including hunting, fishing, and trapping rights, priority use rights, and livelihood issues.

2. Information on the Indian understanding of Treaty 8 came from videos of the Treaty 8 Tribal Association. Those reviewed include: the Charles Butler interview (Halfway), the John Davis interview (Doig) (both conducted by Gilbert Capot-Blanc), as well as an interview with the Elders of Halfway (conducted by Vern Lalonde and Jerry Hunter). Three additional interviews were conducted for this project (Madelaine Davis, Fred Courtoreille, and Joseph McCarthy) and contain some important statements on the history and understanding of Treaty 8 B.C. Madelaine Davis, for example, states that education was not mentioned when their band adhered to the Treaty. She also says that the medical provisions of the Treaty were not mentioned, and that the people had "Indian medicine" which was good.

In conducting these interviews, procedures for court admissible evidence were reviewed and considered including: Justice Addy's opinions on the presentation of video-taped evidence (*Apsassin vs the Queen* - Judgement 1987:12), Delia Opekokew's legal opinion on court-admissibility of interviews, and the IAA-TARR Indian Management Assistance Program report titled *Legal Considerations of Oral History.*

3. Oral statements, vital for the understanding of the B.C. case, also came from the minutes of Treaty 8 Tribal Association meetings including Elders' gatherings like the ones at Blueberry River (June 21, 1991), Fort Nelson (June 25, 1991), and Halfway River (June 20, 1991), and Elders' Council meetings (May 29-30, 1991) and Elder/Youth meetings. The sort of data derived from these not only provides an understanding of Treaty rights but also gives background into issues indirectly related to Treaty understanding and history, for example, residential schools and their impacts, the irreplaceable spiritual value of life on the land, the importance of tradition in modern life, and so on.

For example, Albert Davis commented on the protection afforded by the Treaty:

> *That's my land there too . . . . If you had make an agreement in the first place, that's the Treaty, then he can't go through there because there's the paper right here. How come you put a fence here? We can't do nothing. Nothing to protect that for us that here a long time ago. (Albert Davis statement to the Elders' Council Meeting May 29-30, 1991, at Blueberry River)*

He also recounts the Indian understanding of Treaty 8:

> *I will talk about what I remember 50 years back and what I remember about how our people made a living. I will talk slow… Now, my first recollection of what I remember, when I first started recalling of what promises were made by the Queen and when we first entered into Treaty. And the reserves were made and also the promise that our treaty would be fulfilled as long as the sun shines, and the waters flow. With that she promised that is how long that the treaties would be upheld for the native people, and with the land being promised also with it.*
>
> *Treaty people made a very good living off the land a long time ago. We stuck to our land, our territory, we never bothered the white people. Even to go try to steal from the whiteman, we never thought of that as native people. Now it is difficult to go on our hunting trips, there is nowhere to hunt. It is becoming harder and harder for us to go out there. . . Now today, all those rights are*

> *being taken away slowly and we are starting to have nothing left. We need to start fighting back to protect our rights. The Indian Agent at the time never told us that there would be more white people moving into our territory, although he knew, and they would move them in and take away our land. He never told anybody about this. No one was educated back then in whiteman system. No one spoke english at the time because there were very few white people in the area when we entered into treaty. The Indian Agent did what he wanted because the Chief at the time couldn't communicate with him in the language. . . How are we going to make a living now? The white people are moving in and destroying our land, they are destroying our livelihood. They are a lot of clear cut logging.* (Albert Davis spoken on January 31,1991)

1.2.5 Expert Testimony

Expert testimony from anthropologists and other specialists is an important aid in helping to get at the Indian understanding of Treaty 8. Expert witness June Helm's testimony in Paulette (1973:9:539,569), for example, is important because it compares and analyzes Athapaskan cultural concepts to those of Western Europeans. It draws two different types of conclusions - those based on what the Indians actually said and those formulated as the result of Helm's anthropological understanding of Native peoples. Although Northwest Territories specific, Helm's evidence can be generalized to include the B.C. case. Helm testifies as follows:

> I have drawn two kinds of conclusions: There are those directly communicated to me by the Indians and those which in my understanding of their culture the Indians could or could not have understood. The complaint I heard prior to 1967 relating to the Treaty were that its provisions never had anything to do with the land. It was never mentioned by Indians that the land had anything to do with the Treaties. It was mentioned very frequently thereafter with expression that "we did not know, nobody told us we were giving away our land." "We would never have done it, had that been the case". Men said to me "I was at the Treaty, and I don't know anything about why the Chief was appointed". So that, and I am sure that this is with complete honesty, the people have expressed shock at something new and unknown to them. From what people have said to me, and I know some of these people pretty well, and I think it was not dissimulation, and this was indeed news to them. It was not understood before, and I understood in previous years, although I did not bring this up with them and I wish I had brought it up before now feeling a sense of responsibility, even in 1960, in reading the Treaty with others as well as myself, how could anybody put in Athapaskan language through a Metis interpreter to mon-lingual Athapaskan hearers the concept of relinquishing ownership of land, I don't know, of a people who have never conceived of a bounded property which can be transferred from one group to another, I don't know how they would be able to comprehend the import translated from English into a language which does not have these concepts, and

> certainly in any sense that Anglo-Saxon jurisprudence would understand. So this is an anthropological opinion and it has continued to puzzle me how any of them could possibly have understood this. I didn't think they could have. That is my judgement.

Helm continues later in her testimony:

> …they were told that they would be able to hunt off the land and fish forever, as long as the sun rises and the river doesn't stop running and "now they are interfering with our hunting". The other statement is "why did you sign this? What did they ask you to do?" and the answer was that "we want to make sure that everything is going to be peaceful", …there will never be any trouble, and the Indians were agreeable that the the [sic] Indian people and the whites should never have any trouble and that is, you might say, the only positive reason the people thought the whites wanted them to sign. They thought they would always be able to hunt and fish, and it turned out to be a misunderstanding. (Helm 570-572)

Important expert testimony was also given by Father Rene Fumoleau in Paulette (1973:1:44 and 1973:15:884). His testimony (based on archival work at the National Archives of Canada in Ottawa, Archives of the Catholic Church in Fort Smith, Archives of the Anglican Church in Toronto, the Archives of the Catholic Church in Winnipeg and the archives in Edmonton, and from oral history from the N.W.T.) provides background on the signing of the treaties in Canada, and summarizes the historical circumstances of Treaty 8 as well as background documents. For example, Fumoleau stated that the interpreter for Treaty 8 who saw a copy of the Treaty at Fort Chipewyan says that it was altered after the negotiations. He testifies:

> I believe copies of Treaty Eight were sent to the Indian Chiefs after the Treaty was signed, because we have a letter from Pierre Mercredi, who was an interpreter at Fort Chipewyan and says that when he received a copy of the Treaty it wasn't the same as had been explained to the people of Fort Chipewyan the previous year and he was the interpreter. (1973:15:893)

Important for the Alberta case, and for Treaty 8 generally, is the expert testimony given by Arthur J. Ray, ethnohistorian, in the Horseman case (cf. *R. v. Horseman* (S.C.C.][1990]). (The article accompanying the testimony is Exhibit 2 - *Commentary on Economic History of Treaty 8 Area*.) Ray's work is particulary noteworthy because he does not distinguish between hunting for domestic use and hunting for commercial purposes. Both were part of one livelihood. Justice Wilson discusses the significance of Ray's evidence:

> In his Commentary of Economic History of Treaty 8 Area…Professor Ray warns of the dangers involved in trying to understand the hunting practises of Indians in the Treaty 8 by drawing neat distinctions between hunting for domestic use and hunting for commercial purposes. (*R. v. Horseman* (S.C.C.[1990])

Ray also provided expert evidence on economic history and Treaty 8 in the Provincial Court of British Columbia in *Regina v. Walker* (1987).

Important for the B.C. case study is evidence given at the Northern Pipeline Agency Hearings by Professor Michael Jackson (who provides a history of the signing of Treaty 8) and by Hugh Brody (who outlines promises made in the Treaty).

Apsassin v. The Queen, heard before Justice George Addy of the Federal Court, was a case involving a breach of trust suit brought by the Doig River and Blueberry River Bands of British Columbia, where the plaintiffs argued that the Federal Government had failed to honour its fiduciary responsibility when it took the surrender of I.R. 172 - the Montney Reserve. Hugh Brody's testimony in *Apsassin* is important because using the techniques of social sciences it:

> explains the values, way of life and experiences, institutions and language of the Dunne-za-Cree - as a hunter-gatherer society of those aboriginals known as Athapaskans and how these would have related to a surrender of land. (Opening Statement of the Plaintiffs, *Apsassin* 13)

Brody's testimony is important for understanding the problem of discourse - the problems of understanding that result when two different cultures meet. In the Opening Statement for the Plaintiffs, the importance of this sort of analysis becomes apparent:

> Between any two cultures there is a gap. Cultures differ as to their values, way of life, and experiences, institutions and language. In order to have fully effective communication - or discourse - between people of different cultures, it is necessary for those involved to understand the similarities and differences between their cultures, so as to be able to interpret the ideas, experiences and values or words of the one culture into those of the other…In any particular attempt at such communication, unless at least one of the participants has the knowledge and ability to bridge the gap, so as to create effective interpretation between the cultures, no real communication is possible.
>
> This problem of discourse is a major concern in this case. It is trite to say that whether or not communication has been effected…is of critical legal significance when the result of the interaction and apparent communication is some form of legally binding agreement between participants. (Opening Statement of the Plaintiffs, *Apsassin* 11)

While the Apsassin case involved the question of discourse and the validity of the 1945

surrender of Montney, it has applicability to the B.C. treaty adhesions for, if there were problems understanding land surrenders in 1945, then there were probably problems related to the B.C. Treaty 8 adhesions which were negotiated up to 45 years before that.

> When the Elders speak to you about events of 1945, their evidence will reflect the confusion, misunderstandings and uncertainties which attended the event for many of them, many years ago. The evidence you will hear will show that the Elders' confusion and uncertainty about the surrender events of 1945 does not reflect faulty memory. Rather, those people cannot today tell you any more about those events than they could have told you then - the Elders cannot tell us today about things which they neither understood nor knew the significance of when those things first occurred. (Opening Statement of the Plaintiffs, *Apsassin* 12)

Brody's testimony also provides information on other important issues like the registered trapline system, and the history of the signing of Treaty 8. (*Apsassin* 2:253). The problem of discourse between native and non-natives as it is seen in the Apsassin case is also discussed and reviewed in Robin Ridington's book *Little Bit Know Something* (in the article "The Problem of Discourse," Ridington 1990:187) which provides a review of the Apsassin case.

1.2.6 Ethnographic Sources

Mirroring expert testimony, ethnographies or ethnohistorical accounts contain information relevant to understand Treaty 8. For B.C., Hugh Brody's book *Maps and Dreams* (Brody 1988) contains a chapter, entitled "Hunting and Treaties", which details the signing of Treaty 8 and hunting and trapping rights for the Dunne-za of B.C. The *Two Mountains that Sit Together: an Ethnohistorical Overview* (Treaty 8 Tribal Association 1992) discusses the importance of hunting and trapping for the Dunne-za and Saulteaux Bands and contains oral statements from elders. Although references to Treaty 8 are negligible in most older ethnographies, information is available on hunting, trapping, fishing, and other points of Dene and Cree culture. Particularly good summaries of ethnographic materials not summarized here may be found in June Helm's (1981) *Volume 6, Subarctic*. *Handbook of North American Indians*.

1.2.7 Archival Evidence

Bennett McCardle (1982) discusses the importance of archival research:

An archive, like a library, contains information on a wide variety of subjects. It is

> a special kind of repository in that it holds old and often unique records and papers. In an archive you may find letters, reports, legal documents, maps…You may find documents that date from last year, such as minutes of Band Council debates on economic development plans, or on new forms of government. Your source may be the reports of an Indian-white council held to discuss a military alliance 200 years earlier. You may even use eyewitness accounts of the first meetings and tradings between Indians and non-Indians in Canada, almost five centuries ago…
>
> Researchers also go to archives to explain and document Indian claims…For example, you may find reports in an archive that describe the negotiation of a Treaty and the promises made at the time, from several points of view. After you read and compare these reports, you will be able to explain more clearly what Indians and non-Indians agreed (or thought they agreed) to do when they put their hand to the pen. This kind of fact-finding allows the long-standing claims of Indian people to be better argued, and perhaps satisfied. (McCardle 1982:1-2)

Files containing archival material proved to be a rich source of information on the spirit and intent of Treaty 8. Examined were materials from the National Archives of Canada (NAC) record groups (RG 2, 10, 18), material from the Federal Records Centre (formerly Public Archives Record Centre - PARC), and the British Columbia Archives and Records Service (BCARS). Materials found on the spirit and intent of Treaty 8 were scattered throughout these files largely in the form of non-native reports on the Indian understandings of Treaty rights. Also found were letters written by local non-natives, and non-native organizations, either written on their own initiative, or at the request of specific native individuals. Archival files also contained letters from Band Councils, or individuals, to the various branches of government (reporting how the Indians themselves perceived Treaty rights on a wide variety of topics).

For example, one man from a B.C. Treaty 8 community wrote on January 20, 1950, to the Indian Affairs Department:

> I have written to Mr. Galibois [the Indian Agent] about my desire to be enfranchised. It had been quite awhile back and thought I had better write to you. I want to get out of treaty and want forms for our signature.
>
> We all want to get out Indian whole family. We want to get out of treaty because we are not satisfied. I've been in ill health for quite a while now. No one looks after it so if I get out of treaty I might find a better way to live. We want to have chicken, geese, turkey, cows and horses in my indian reserve home. We had to sell them out to eat. My trapline is too small for such a crowd of children and besides almost every indian traps there…If I get out I'll do my best to make my living anyplace I please and not look for help which we never get…If we quit treaty I want to get a trap line somehow, anyway I'll try hard… So please answer

> our letter and send us forms so we can sign. (NAC, RG 10, Volume 7305, File no. 8 143-5 Pt. 1)

This same person wrote again on February 3, 1950:

> We had been up to _____to see Mr. Harry Garbitt, and he explained a few things which are worthwhile about the treaty. We had not known this before. We understood that a treaty indian can live anyplace and can buy land that's what we wanted. So we made one great mistake on wanting to get out of treaty. Mr. H. Garbitt and also most of the indians does not wants [sic] us to go out of treaty So please forgive us for the letter we wrote and ask you for forms. We had talked things over for hours so we made up our minds after all to stay in treaty.
>
> If we had known before what we know now we would not ask to be enfranchised. ….So our last words are we have to stay in treaty. Please answer my questions. Can I live out of the reserve? Can I buy a place of my own? So please give us an answer and thank you. (NAC, RG 10, Volume 7305, File no. 8 143-5 Pt.1)

The scattered and unpredictable nature of the materials found in the archives made no file in the TARR office an unlikely source on the Indian understanding of Treaty 8. Some files yielded nothing, but this in itself is important. For example, files on local education and the establishment of schools for Doig, Blueberry, Halfway, Fort Nelson etc. were examined but yielded no references to education as a treaty right. Negative evidence of this sort is important in viewing DIA policy versus, the understanding of, and guarantees made in, the Treaty.

1.2.8 Government Reports and Commissions

Royal Commission and government reports also yielded information on the spirit and intent of Treaty 8. For example, in 1956 the Nelson Commission was formed to look into complaints regarding Treaties 8 and 11 in the Northwest Territories. The Nelson Commission was "to inquire generally into all matters arising out of the unfilled provisions of Treaties 8 and 11 as they apply to the Indians of Mackenzie District" (Report of the Commission 1959:ii). The Nelson Commission held meetings at all major centres (with an attendance of about 710 adult Indians and 43 non-Indian participants), and interviewed informally with the services of interpreters when needed. Opinions came from people in all walks of life: clergy, R.C.M.P. officers, Hudson's Bay Company employees, members of the Northwest Territories Council, government officials, and other residents of the N.W.T. (Report of the Commission 1959:3 also PARC 1/1 11-5). While the task of the Commission was to look into establishing reserves, it provides important information on the Indian understanding of hunting, fishing, and trapping

rights, as well as on how Indians perceived, in 1956, land ownership and mineral rights.

The Nelson Commission Report contributed these observations on the Indian understanding of Treaties 8 and 11:

> At a number of the meetings Indians who claimed to have been present at the time when the treaties were signed stated that they definitely did not recall hearing about the land entitlement in the Treaties. They explained that poor interpreters were used and those interpreters urged the Indians to sign saying, "It will be good for you". It was emphasized that their Chiefs and head men had signed even though they **did not know** what the Treaties contained because the treaty parties included high government and religious officials whom the Indians trusted to look after their interests. When the Chairman pointed out that the Chiefs of each band, among others, had received copies of the Treaties the Indians replied that they were published in complicated English and they **could not understand them**.
>
> It should be noted that although the Treaties were signed sixty and thirty-eight years ago respectively, very little change has been effected in the traditional mode of life of the Indians in the Mackenzie District, very few of the adults had received an elementary education and consequently were not able to appreciate the legal implications of the Treaties. **Indeed some bands expressed the view that since they had the right to hunt, fish and trap all of the land in the Northwest Territories, the land belonged to the Indians.** The Commission found it impossible to make the Indians understand that it is possible to **separate mineral rights or hunting rights from the actual ownership of the land.** It must be remembered that until recently the Indians of this area have remain semi-nomadic hunters and trappers, living in the vicinity of small trading-post settlements for a few months of the year but roaming over vast tracts of land in search for food and fur-bearing animals for the remainder of the year. Under the circumstances, to suggest to them that they were entitled to a certain area of land was more or less meaningless for, due to their way of living, they had virtually no interest in using the land [agriculture?] and could not conceive that taking the land would benefit them. (Report of the Commission 1959:3 also PARC 1/1 11-5 3-36. Emphasis added.)

Following the work of the Nelson Commission, in 1968, N.K. Ogden was given a mandate to visit the Northwest Territories to survey Treaty 8 and 11 bands and to report on land entitlement, areas where reserves could be established, and alternatives to establishing reserves. Also important was the issue of outstanding mineral rights. In his report Ogden says that he travelled through the communities:

> explaining and discussing Treaties 8 and 11 with each of the bands. [He] placed particular emphasis on the land entitlement provisions of the Treaty and on the fact that by signing the Treaty the Indians in the North gave up any interest they may have had…(Ogden 1968:3)

The general utility of Ogden's report to Churchill, Director of Indian Affairs, is that it mentions Indian concerns about hunting, fishing and trapping rights, as well as showing that the Indians, in 1968, did not recognize that they had ceded title to land. It also shows Native opposition to being placed on reserves, and that Native peoples insisted on being consulted on matters that affect them (including the Treaty). An example of information generated by Ogden is found in individual reports for N.W.T. regions as follows:

> Snowdrift Band - July 1, 1968
>
> In my opinion, we had a very good meeting attended by the majority of the men and women in the settlement. I can only conclude that there is little understanding of the terms and conditions of Treaty No. 8. In addition, the band has now a young and recently elected Chief who wisely wants to review the Treaty not only with his band, but with the resident Missionary and their elected member of the Northwest Territories Council before we get into any serious discussion. Informal talks with the band lead me to believe that they are not interested in the reserve system, but at the same time, they have not as yet formed any opinion as to what they might ask for in lieu of reserves. (Ogden 1968:3)

In 1985, the Honourable Frank Oberle, M.P., was appointed to examine problems, grievances, and the unfulfilled promises of Treaty 8 as well as to recommend ways in which the Treaty could be fulfilled. His solution was to look at the spirit and intent of Treaty 8 and how this could be used as the basis for a future agreement on Treaty rights. In a letter, dated 31 January 1986, to the Honourable David Crombie, Oberle writes:

> This report summarizes the findings of detailed investigations and analyses of a considerable volume of data relating to constitutional, legal, demographic, socio-economic and other conditions relevant to the Treaty 8 region. In its present form, it is intended to serve as a discussion paper which, following circulation to interested parties, will generate a productive consultation process geared to fine-tuning the treaty renovation concept further. (Letter from Frank Oberle to David Crombie, Minister of Indian and Northern Affairs January 31, 1986)

Oberle claimed that Treaty 8 renovation "would not be a renegotiation of the Treaty 8 rather a clarification of its terms." *Treaty 8 Renovation*, was the report sent out January 31, 1986, and contained sections entitled "The Spirit and Intent of Treaties," "Treaty 8 History and Issues," "The Current Situation of People of Treaty 8," and the "Implications of Treaty Renovation." Six appendices contain information on historical background to Treaty 8, a socio-economic overview

of Treaty 8 Bands and other quantitative sections (Task Force 1986).

The importance of the Task Force Report is that it summarizes the Indian understanding of Treaty 8, describes the way that negotiations were unfair, and acknowledges that the federal and provincial governments violated treaty rights. Although it has its own motives and political agenda, this report is particularly adept at pointing out the moral and ethical responsibility, and short-comings, at all levels of government, in failing to keep the terms of Treaty 8. As the Task Force Report states:

> It would be difficult, after examining the events surrounding the signing of Treaty 8, to come with any other conclusions than that the basis on which it was signed was patently unfair. One can base this assertion on a number of different factors.
>
> The two parties to the transaction were not on an equal footing. They could not really communicate with one another, they had quite different understandings about land, the use of land, title to the land, the possibility of conveying land to others, and probably, quite different notions about making contracts. To the Indians the spoken word was sacred. Those negotiating the contract quite obviously did not share this view. The Indians they were dealing with were uneducated and, in most cases, illiterate. They were unable to read the Treaty and had to depend on translators for explanations of its contents. As noted before, a great deal of what was expressed was not recorded in the final text of the treaty.(Task Force 1986:25-26)

And later in the report:

> This is hardly a description of a process that could be considered "fair".
>
> To this must be added the fact [that] at the time of signing the Treaty, the Indians in the area were under considerable duress. They had a number of years of famine and had suffered badly from the diseases brought in by whites. . . . They did receive the assurance from the Treaty Commissioners that the government would take care of them in times of distress.
>
> Another factor that indicates the degree to which the process was unfair was the fact that the Indians had no one there who was really acting on their behalf and trying to negotiate the best deal possible for them. . . . While it is true that the two missionaries accompanying the Commissioners' party did try to fulfil this role, even they were considerably misled by the promises made by the Commissioners.
>
> Another aspect of the treaty signing that was unfair was the fact that the treaty turned out to be a unilateral contract. There was very little real room for negotiation on the part of the Indians who were basically faced with a "take it or leave it" proposition. Generally the Commissioners took the line that the Indians could lose their land with the benefits of treaty or lose their land without the

benefits of a treaty. (Task Force 1986:27-28)

The Task Force Report is best seen as some kind of acknowledgement that treaty promises were not fulfilled by government. One example of this admission is as follows:

> As wanting as the record of the federal government is with respect to implementation of Treaty 8, it was not the only level of government to be guilty of violating treaty rights. The governments of Alberta and Saskatchewan seem to have totally ignored Indian treaty rights with respect to hunting, fishing and trapping while drafting their game laws. (Task Force 1986:30)

1.2.9 Legal Review

Case law was examined and collated for the Treaty Review. Materials examined include: *Delgamuukw v. The Queen* (March 8, 1191, Smithers Registry, No. 0843, B.C.S.C); *Nowegijick v. the Queen* [1983] 1 S.C.R.; *Jones v. Meehan* (1899); *Simon v. The Queen* [1985] 175 U.S.; *Regina v. Horseman*, [1990] 1 S.C.R. 901; *Regina v. Taylor*, [1981] 3 C.N.L.R; *Regina v. Batisse* (1977), 19 O.R. (2d) 145 (Dist Ct.)*; Regina v. Napoleon*, [1982] 3 C.N.L.R.; *Regina v. Sparrow*, [1990] 1 S.C.R. 1075; *Regina v. Taylor and Williams* [1981] 3 C.N.L.R. and others.

While case law was surveyed and included in the filing system, it was not analyzed. Included with the case law, however, are assorted legal opinions, including the 21 March 1993 letter to John Watson [DIAND RDG for B.C.] from the Chiefs (Treaty 8 Tribal Association 1993d), and the analysis found in the chapter "Outstanding Legal Obligations" in *Volume 1* of the *Consolidated Annuity Arrears Claim of the Halfway River, Prophet River, Fort Nelson, Saulteaux, Blueberry River, Doig River, & West Moberly First Nations.* Also included is Melville's (1981:2.42-2.52) discussion of case law relating to land surrender, as well as Lester's (n.d.) *Understanding the Present: The Historical and Legal Background to Aboriginal Claims in Canada.*

1.2.10 Summary, Conclusions and Directions for Future Work

To summarize, archival material was surveyed and reviewed, as were published and unpublished books and articles, historical works, and Elders' statements found in textual form and in video taped interviews. In short, all readily available evidence was examined, weighed, photocopied and filed. In reviewing files by region some conclusions may be drawn. By region, there is an inequity in evidence across Treaty 8. The Northwest Territories is well represented

(Fumoleau's book, Paulette case, Nelson Commission, Ogden Commission), as are Alberta Treaty 8 bands (IAA-TARR interviews, work by consultants like Price, McCardle, Daniel), but B.C. is less so (Annuity Arrears Claim, Madill's article, and recent technical articles prepared by T8TA TARR). Of all the regions surveyed (there was no available material from Treaty 8, Saskatchewan), it appears that B.C. has fewer documented oral historical accounts than can be found in other regions.

By topic, hunting, fishing, and trapping are well represented in the literature, probably because these are of utmost importance to Treaty 8 Bands today. Farming is well-documented, as is land in severalty, but examples tend to be drawn from the Alberta region (where conditions were different, for example, where land was conducive to farming and where the land in severalty option was allowed for some families). Research for the T8TA should continue to draw out the Treaty 8 B.C. perspective on these topics. Other issues like taxation, medical, and social assistance provisions are not well documented. It is here, perhaps, that future research should be directed.

Further archival work needs to be conducted in all areas. Still to be investigated are: files from the various ministries that historically contained the Department of Indian Affairs (for example, the Department of the Interior, Department of Mines and Resources); the Oblate files from British Columbia (which have yet to be located and reviewed); files from The Hudson's Bay Archives; the B.C. Archives (which has information on crown lands, energy, forestry); and information contained in British Columbia and Alberta newspapers (Deborah Smithson, personal communication, June 1993). These materials are vital, not only for documenting the Indian understanding of Treaty 8 B.C., but for the "hoe and head counts" necessary to process B.C. specific claims.

Almost 20 years ago, in 1974, the Land Claims Research Centre of the Union of B.C. Indian Chiefs wrote:

> If future research on Treaty 8 [B.C.] is conducted, it should focus on the Bands involved. It is recommended that this include extensive fieldwork and the gathering of data from elders. This type of research will fill the holes in our knowledge of Treaty 8, holes due to the incompleteness of the documentation. (Union of B.C. Indian Chiefs 1974:3)

In B.C., while adhesions were formally signed by the Beaver Indians of Fort St. John and the Fort Nelson Slaves, it seems that other groups were merely admitted to Treaty 8. Information related to the Hudson's Hope Band and the Saulteaux Band is deficient, and

documentation of the formal adhesions is scanty. For example, Dr. H.A.W. Brown, the Indian Agent for Fort St. John, wrote in a letter dated March 6, 1936, to the Secretary of the Department of Indian Affairs, Ottawa:

> In my copy of Treaty # 8 I cannot find any mention of the inclusion of the Hudson's Hope Beavers or the Moberly Lake Saulteau or the names of the Indian signatories. I am given to understand that Mr. Laird negotiated this section of the Treaty at Hudson's Hope but have no record of the date not[ing] those signing. I would be very glad to have this information if it would be available. (Parc 1/1 11-5 1933-65)

In the reply of 23 April 1936, from A.F. MacKenzie, Secretary Department of Indian Affairs, to Dr. Brown:

> Your letter of the 6th ultimo requesting the names of the signatories to the adhesions to Treaty 8 by the Hudson's Hope Beavers of Moberly Lake West and Saulteaux of Moberly Lake has been received.
>
> In reply I have to inform you that this information cannot be located in the files of the Department and it is possible that the documents may be in the Lesser Slave Lake Agency. In letters dated 21st March and 30th March 1914, Indian Agent H. Laird was instructed to admit these bands into treaty when making the annuity payments that year and the first pay list shows Old Man, No.1, as the Chief, and Migsedlean, No.2, and Dogie, No.3, as Headmen of the Hudson's Hope Band and William Desjarlais, No. 1, as Headman of the Moberly Lake (Saulteaux) band.
>
> It is presumed that these Indians signed the treaty for their respective bands, the number admitted in the Hudson's Hope Band being 116 and in the Saulteaux Band 34. (Parc 1/1 11-5 1933-65)

Although he has since passed away, Elder Thomas Hunter, who testified to the Alaska Highway Gas Pipeline Hearings at Halfway, describes some of the events which lead to the signing of Treaty 8. This Elder also had an excellent recollection of the 1914 adhesion:

> *He was talking about he's come in in 1912, he was thirteen years old and he live on trapping and he was going to - talking about Treaty this time.*
>
> *The First Treaty come out at Hudson Hope at that time in 1914. At that time his dad was gone so that time, the First World War is coming too. Like the Moberly Lake Band and Halfway River Band, they got the Treaty in the same time in Hudson Hope. They got the Treaty before in, someplace in down Alberta I guess, that is where they start Treaty, Fort St. John Band, they got Treaty before us*

> *anyways, that's what he said and after that, Moberly Lake and Halfway, they got Treaty same time I think.* (Hunter 1979:471, as translated by Billy Fox)

Moses Wokely remembered:

> *Chiefs from Halfway and Moberly (Antoine Hunter, Dokie) came to Hudson's Hope. Dokie came down from Moberly Lake. Dr. Brown tried to give the money right away, but the Indians were scared. Brown told the Indians they would have to get licences if no treaty. So long as moon keeps going, river keeps running, government will help you. Don't worry. First Hudson's Hope. Chiefs talked seven days.*
>
> *Indian agent tried to pay money, $5.00 a piece. He scared old people. They said no, no, seven days. Sixth day he talk, he talk, never get it. Told Indians you get a licence too. You get treaty money.*
>
> *Everybody, $5.00 each, children included. 50 pounds flour, big piece of bacon, some rice (not much) Indian agent he told them "Don't you scared." The $5.00 would continue to be given as long as a person lives. Something happens to you, you get into trouble, I don't think you get into trouble too. Indian agent he told them that. That's why you get $5.00 a piece.*
>
> *Next summer it was $12.00 a piece. Seven days they talk, try to make business. Dokie too, he talk. Used to be many people in Hudson's Hope come from Moberly Lake. Everybody get $5.00…Antoine [Hunter] that time didn't understand it good, besides old people not much know, not understand. Antoine talked and told them that*. (Moses Wokely in Treaty 8 Tribal Association Offices, December 1992:63-64)

The lack of documented data on the 1914 adhesions, combined with the fact that there are still elders alive who remember this adhesion (like Madelaine Davis), indicate that this would be the place to launch an oral history project. The need for this work to be conducted IMMEDIATELY cannot be stressed enough. The information is vital not only to help document the spirit and intent of Treaty 8, but for much needed data related to all specific claims areas and court cases.

2.0 ANALYSIS OF THE TREATY PROVISIONS

2.1 INTRODUCTION: CLAUSE-BY-CLAUSE ANALYSIS OF TREATY 8

The following section is an issue-by-issue discussion of the verbal promises made by the Commissioners of Treaty 8 and the guarantees stated in the text of Treaty 8. (The entire document is found in Appendix 1, if an uninterrupted read-through is desired.)

The Clause-by-Clause Analysis reviews the spirit and intent of Treaty 8 by topic. As well as a comprehensive review, the Clause-by-Clause analysis will serve as a "quick-reference" source when materials are needed on the history, Indian understanding, or other relevant points of view on a particular treaty promise. It also serves as a new source of information on Treaty 8 in British Columbia.

2.2 LAND CESSION/SURRENDER

2.2.1 What the Commissioners' Report States

Nowhere in the *Report of Commissioners* is there a discussion on land cession, either how it was explained, or how it was received.

2.2.2 What the Text of Treaty 8 States

> *AND WHEREAS, the said Commissioners have proceeded to negotiate a treaty with the Cree, Beaver, Chipewyan and other Indians, inhabiting the district hereinafter defined and described, and the same has been agreed upon and concluded by the respective bands at the dates mentioned hereunder, the said Indians* ***DO HEREBY CEDE, RELEASE, SURRENDER AND YIELD UP to the Government of the Dominion of Canada, for Her Majesty the Queen and Her successors for ever, all their rights, titles and privileges whatsoever, the lands included within the following limits, that is to say:-***
>
> *Commencing at the source of the main branch of the Red Deer River in Alberta, thence due west to the central range of the Rocky Mountains, thence northwesterly along the said range to the point where it intersects the 60th parallel of north latitude, thence east along said parallel to the point where it intersects Hay River, thence northeasterly down said river to the south shore of Great Slave Lake, thence along the said shore northwesterly (and including such rights to the islands in said lakes as the Indians mentioned in the treaty may possess), and thence easterly and northeasterly along the south shores of Christie's Bay and McLeod's Bay to old Fort Reliance near the mouth of Lockhart's River, thence southeasterly in a straight line to and including Black Lake, thence southwesterly up the stream from Cree Lake, thence including said lake southwesterly along the height of land between the Athabasca and Churchill Rivers to where it intersects the northern boundary of Treaty Six, and along the said boundary easterly, northerly and southwesterly, to the place of commencement.*
>
> *AND, ALSO the said* ***Indian rights, titles and privileges whatsoever*** *to all other lands wherever situated in the Northwest Territories,* ***British Columbia****, or in any*

other portion of the Dominion of Canada.

TO HAVE AND TO HOLD the same to Her Majesty the Queen and Her successors for ever.

2.2.3 Discussion

Hickey's and Opekokew's recent works show that individuals had different understandings of the land surrender clause. Some people say they sold the land (surface), some say that the Commissioners thought they were getting land, and others that they understood they were only to share the land. Recent interpretations have shown that there were different understandings by region, perhaps reflecting dissimilarity in the negotiations.

The land cession issue is well documented for the N.W.T. Treaty 8 region through the Paulette case. Here the evidence showed that: a) The Native signatories to Treaty 8 and 11 did not understand the document to be a land surrender document; b) They could not have understood the concept of land surrender given their culture; and, c) They were not told that the Treaty was a land surrender document. What they thought they signed was a peace and friendship treaty. The case raised doubts about whether Indian title was properly and fully extinguished in the Treaty 8 region given the methods employed in the treating process and the incomplete coverage of the area.

2.2.4 B.C. Case Study

Oral interviews conducted, and written accounts from B.C., confirm that the Beaver, Slavey and Cree people did not know that they signed a land surrender document.

At a workshop held by TARR in 1992 designed to explain the terms and conditions of the Treaty, the land surrender clause came as a complete surprise to many who, in contemporary times, thought that the land provision segments of the document referred to sharing the land with non-natives. At an interview conducted with Madelaine Davis (June 13, 1993) the interpreter, Amy Gauthier, could not explain in Cree the words "cede, release, surrender, and yield up rights to the land."

Misunderstandings of the surrender clause for the B.C. region are confirmed in this account:

> The moccasin telegraph had brought further word of still more white settlers pouring into the Pouce Coupe and Grande Prairie country…Even the Moberly Lake Saulteaux were reported to be resistive and it didn't seem to occur to any of them that in accepting King

> George's annual treaty bounty from Harold Laird, the Indian Agent, in the form of crisp new greenbacks and gold-braided suits for their chiefs they had bartered all rights to the land. (Godsell 1942:80)

Indians did not recognize and still do not recognize that they gave away the larger territory when they signed Treaty 8. As Godsell (1943:19) wrote, "The Beavers still look on this country as their own, and upon all whites as usurpers." Another example, Joseph McCarthy, a Slavey Elder residing at Kahntah (more than 100 miles upriver from Fort Nelson), is concerned that someone is going to take Ekwan Lake away from the people. This lake is far from any reserve boundaries yet McCarthy considers it "our lake". Although Joseph McCarthy (Yahzah) is at least 94 years old, he will not leave Kahntah until he dies, because he is afraid that even the reserve land will be taken away by whites.

> *Fantas used to stay here before [Kahntah], and he gave me this place. And Clark, he is the one that gave me the Trapline around here . . . Matsule [son of Fantas] use to live in this place before, and that is his land, that is why I am living here now. . . .*
>
> *I was just a kid, that time they had that Treaty. I put some money in the Hudson's Bay Company long time ago, and never got it back. . . . Billie Badine's grandfather was the Chief. I don't know what those people were talking about. Long time ago Fantas said not to leave here [Kahntah]. . .*
>
> *They [whitemen] put gas wells all over our traplines and all over there is logging and everything. At least they should give us money for that so that we could save for the kids ahead . . . . Too many people are taking over our lands. I heard that someone was going to take our lake [Ekwan lake]. (Joseph McCarthy, as translated by Cathie Schassie, August 14, 1993)*

Fear of losing the land was expressed in almost all of the testimony presented at the Alaska Pipeline Hearings in 1979, where the standard objection was that the pipeline was going to go through Indian land important to hunting, fishing, and trapping. This testimony supports the view that elders, in the past, and today, do not differentiate between the right to use land and its ownership.

At the pipeline hearings Michael Jackson (1979:7:1936) stated that:

> They [Indians of B.C.] understood it [the treaty] as a treaty of peace and friendship. The condition precedent to their friendship was the affirmation or recognition of their rights to the land.

2.3 HUNTING, FISHING, AND TRAPPING

2.3.1 What the Commissioners' Report States

There was expressed at every point the fear that the making of the treaty would be followed by the ***curtailment of the hunting and fishing privileges****, and many were impressed with the notion that the treaty would lead to taxation and enforced military service.*

We pointed out that the Government could not undertake to maintain Indians in idleness; that the ***same means of earning a livelihood*** *would continue after the treaty as existed before it, and that the Indians would be expected to make use of them.*

Our chief difficulty was the apprehension that the ***hunting and fishing privileges were to be curtailed****. The provision in the treaty under which ammunition and twine is to be furnished went far in the direction of quieting the fears of the Indians, for they admitted that it would be unreasonable to furnish the means of hunting and fishing* ***if laws were to be enacted which would make hunting and fishing so restricted as to render it impossible to make a livelihood*** *by such pursuits. But over and above the provision,* ***we had to solemnly assure them that only such laws as to hunting and fishing as were in the interest of the Indians*** *and were found necessary* ***in order to protect the fish and fur-bearing animals*** *would be made, and that they would* ***be as free to hunt and fish after the treaty as they would be if they never entered into it.***

We assured them that the treaty would not lead to any ***forced interference with their mode of life****, that it did not open the way to the imposition of* ***any tax,*** *and that there was no fear of enforced military service.*

In the main the demand will be for ammunition and twine, as the great majority of the Indians ***will continue to hunt and fish for a livelihood****. It does not appear likely that the conditions of the country on either side of the Athabasca and Slave Rivers or about Athabasca Lake will be so changed as to affect hunting or trapping, and it is safe to say that so long as the fur-bearing animals remain, the great bulk of the Indians will continue to hunt and to trap.*

2.3.2 What the Text of Treaty 8 States

And Her Majesty the Queen HEREBY AGREES with the said Indians that they shall have ***right to pursue their usual vocation of hunting, trapping and fishing through the tract surrounded*** *as heretofore described, subject to such regulations as may from time to time be made by the Government of the country, acting under the authority of Her Majesty, and* ***saving and excepting such tracts as may be required or taken*** *up from time to time for settlement, mining, lumbering, trading or other purposes…and for such Bands as prefer to continue hunting and fishing,*

as much ammunition and twine for making nets annually as will amount in value to one dollar per head of the families so engaged in hunting and fishing.

2.3.3 Discussion

The Indians were promised by the Commissioners and in Treaty 8:

1. The same means of earning a livelihood would continue **after the treaty.**
2. That only such laws as to hunting and fishing as were in the interest of the Indians **would be enacted (these were to protect the animals).**
3. Indians would be as free to hunt, trap, and fish after the treaty as they would be if they had never entered into it.
4. The treaty would not lead to any forced interference with their mode of life.
5. They would be given ammunition and twine to support their way of life.

The testimony of Indian elders and the Commissioners' report acknowledge that livelihood concerns were the single most important issue to the Indians at the signing of the Treaty in 1899. Indians had had miners, prospectors, and non-native trappers interfere with their livelihood activities to such an extent that they were concerned about their self-sufficiency. The Indians wanted livelihood assurances in times of distress, especially guarantees that their economic base would not be restricted. Not only did the Commissioners assure them that they would be able to maintain their livelihood but he said that he expected them to. Daniel points out that while the prairie treaties recognized that settlement would create the need for an alternative to traditional economic modes in Treaty 8 it was recognized that in many areas there were few realistic alternatives. The Indian people were assured, and it was understood, that Treaty 8 would protect rather than threaten their way of life (Daniel 1976:40).

2.3.4 B.C. Case Study

Indians in B.C. understood that they would retain ownership of fish, wildlife, and fur-trapping areas. Madelaine Davis told the Royal Commission, on 18 November 1992, that the Indians were to keep their way of life and the animals, and that the people that were coming would farm and bring their own animals. Her major recollection of the Saulteaux adhesion was that the Treaty was there to protect the Indians from white people and to help them in times of distress (Madelaine Davis, as translated by Amy Gauthier, 13 June 1993).

After 30 years of working as an anthropologist with the Beaver Indians, Robin Ridington communicated that Treaty 8 was originally presented to the Indians as a peace and friendship treaty. It was there to maintain peace between the Indians and Klondike gold rushers who were disturbing the Indians and disrupting their livelihoods (personal communication, June 1993).

Brody (1988:68) writes that there is a world of difference between the terms of Treaty 8 and the understanding the Indian signatories had of it. He attributes these differences to an inherent structural problem in the Treaty. Non-natives wanted the treaty to gain land for settlement, mining, and lumbering; Indians wanted it as protection for their way of life. The Treaty tries to accommodate both - it allows land to be opened for settlement while at the same time guaranteeing natives that they would always be "as free to hunt, fish and trap as if they had never entered the treaty."

Michael Jackson said at the Alaska Highway Pipeline Hearings that:

> Now, if the Treaty Commissioners had thought upon the guarantees of hunting and trapping as mere temporary privileges to be suspended at such time as settlement required or other development required, they conspicuously failed to make it clear at the negotiations. Such a conspicuous failure also characterizes the negotiations concerning the surrender of lands.
>
> Even though, from the government's point of view, surrender of aboriginal rights, surrender of the Indian interest in the hunting territory was the purpose of the Treaty, the contemporary evidence indicates that hardly any mention was ever made of that. It's interesting to speculate why that should be, why the government would not make it clear as to what was their central position. (Jackson 1979:1938-3)

According to Brody (1988:30) Treaty 8 in B.C. gives First Nations the right to hunt, fish, and trap on "unoccupied Crown land," and that they can do so without regard to season or other restrictions designed to limit sport and trophy hunting. One treaty benefit is the fact that Indian trappers within the Treaty 8 area are not obliged to file fur returns (Brody 1988:200). Despite treaty rights provincial legislation resulted in the trapline registration system. Brody comments that the registered trapline system was brought in on the pretext of protecting fur- bearing animals and Indian user-rights.

> This improvement, however, seemed to be argued in disregard for the terms of Treaty 8 - at least as the Indians understood them - which some of the bands had signed,…only a decade before trapline registration began. The Treaty had granted them the right to hunt, to trap, and to fish throughout Crown Lands, according to their traditional system. (Brody 1988: 93-94)

Brody (1988:94) also notes that in order to protect game and white trappers it was suggested that it would be necessary to "bring in" people who were found hunting or trapping on any areas other than their own traplines. Brody relates this to trapping rights under Treaty 8:

> The attack on Indian people was firmly under way. Whatever self-righteous and well-meaning protestations have been made to the contrary, the attempt to extend the registration of traplines to Indian people constituted a violation of Indian rights; its explanation to Indians amounted to an outright lie. To try to confine Indians to their own registered traplines and, by the same token, to consider their use of other traplines as a trespass is to disregard the one unlimited right that the treaty does guarantee.
>
> [Indians were urged], even by those they trusted most, and for their own well-being to participate in trapline registration. Otherwise, they were told, all the good land would fall into the hands of Whites. In addition to this persuasive and seemingly beneficent urging, Indians were encouraged to believe that the guarantees promised in Treaty 8 would be secured by a registered trapline system. (Brody 1988:94-95)

Brody claims that no matter what happened, whether it was individual ranchers or multinational corporations entering lands, the acceptance of outsiders has been facilitated by the belief that Treaty 8 Indians would always have their traplines. Brody writes on the importance of traplines:

> Although they continue to insist upon and to exercise their right to hunt on Crown land wherever they can, it is registered traplines that they hold to be especially and irreversibly theirs. (Brody 1988:99)

Daniel (1976b:1) writes of livelihood rights:

> Among all of the issues surrounding the implementation of Treaty 8, few have involved as much bitterness and conflict as the problem of controlling the activities of white hunters, trappers and fishermen and conserving fish and wildlife for the benefit for Indian people. Even prior to the treaty of 1899, the presence of non-Indians in the area and their effects on Indian hunting, fishing and trapping was causing concern among the Indian people and in the federal government.

Daniel (1976b:5) points out that while the treaty was expected to resolve conflicts between native and non-native user groups the decades after the treaty saw an increase in hostilities. When, for example, the Indians were reported to be reluctant to engage in treaty negotiations for fear of livelihood restrictions:

> They were assured by the Superintendent-General of Indian Affairs, Clifford Sifton"… there is not likely to be any marked change on account of the making of the treaty." David Laird, Lieutenant Governor of the Territories and Treaty 8 Commissioner indicated that while some laws for the conservation of fish and wildlife were necessary, they were"…rather for the benefit of the Indians than of whitemen, as they live more on farm products than game." (Daniel 1976b:5)

Daniel (1976b:9) points out that the written text of Treaty 8 did not address the extent to which hunting, fishing, and trapping would be available to non-Indians and non-treaty Indians; that while it gave Indians certain assurances against legal restrictions it did not overtly protect the Indian from white competition. Nor, he claims, did the **text of the treaty** insure that wildlife would be conserved primarily for the benefit of the Indian. He writes:

> It is difficult to judge the extent to which the rights and practices of non-Indian trappers might have been the subject of verbal negotiations at the time of the treaty. Certainly the use of poison traps and the conflicts between Indian and non-Indian were of great concern to both sides and one might have expected that the rights of non-Indians would have been the subject of some discussion.
>
> The strongest evidence that the Indians were given explicit promises that they would be protected against white competition in hunting and trapping is contained in twenty-one affidavits obtained by Bishop Breynat in 1937 [which]…asserted that the treaty promised that the Indians would be protected in their way of living as hunters and trappers from White competition.
>
> Despite these reservations, the affidavits must be taken seriously, for even if protection from white competition was not explicitly promised in the negotiations, it could be argued that **the spirit of the treaty required government action to protect the Indians' livelihood from threats such as that posed by white competition.** At least one might assume that these witnesses to the treaty would not have signed the affidavits had they seen protection from competition a**s being in conflict with the spirit of the treaty**. The Indians were given repeated assurances that if any new fish and wild life laws were passed they would be for the purposes of conservation and for the benefit of the Indians, and that the government was interested in seeing them continue to make their livelihood as before. (Daniel 1976b:9-12. Emphasis added.)

Brody writes that Treaty 8 gives the Indian population a **priority use right** that "from historical, cultural, legal and moral points of view, **transcends any other**" (Brody 1988:30).

The text of Treaty 8, according to Daniel (19767-8), recognizes that the Indian interest in fish and wildlife is, and continues to be, a vocational one. Further, because trapping was primarily a commercial enterprise (rather than purely a subsistence enterprise) before the treaty,

the terms of the treaty would appear to make no distinction between commercial and non-commercial uses of fish and wildlife. He writes:

> More important than the **written terms of the treaty were the verbal negotiations that took place prior to the signing**. We have seen no record of these negotiations which would indicate that any distinction was made between commercial and non-commercial activities. On the contrary, there is every indication that commercial activities comprise such a large segment of the native economy that they would **have refused to sign the Treaty** had they been given any indication that they would be restricted to hunting, fishing and trapping for food. Furthermore, the Treaty Commission not only recognized this but actually warned the Indians that they would be expected to make their living in the same manner as they had in the past and could not expect to live on government provisions. (Daniel 1976b:8. Emphasis added.)

B.C. Treaty 8 Elders have had much to say about their interpretation of Treaty 8 hunting, fishing, and trapping rights, livelihood rights and priority use-rights. One Elder, from Halfway, commented on his understanding of livelihood rights with respect to settlement:

> *His name is Thomas Hunter… And he is talking about the time when the Indians lived in the country when they had only stones were axes, bows and arrows to live in this country and a dead fall or which way he could make survival of living. He was saying in our country, there was no such things as money before the white man came; our only [way] is to make a living is to hunt and there is no such thing as money to get from one another and big bulldozers that come over, go across our country.*
>
> *He is saying as long as **there is the sun that goes over that** he shall never stop hunting in this country and **whenever** he likes to do, **as long as the sun is still there.***
>
> *He is saying in the 1912s he has nearly starved up in the Findlay, that was one of the roughest winters he said he had passed in their way of life.*
>
> *He is saying that the white man **pushed his way into our country**, that he stake up all the land and a long time ago there was no people and then now there is so many.*
>
> *He is saying that his daddy made a living from the woods and from trapping and he is saying that his daddy wasn't all that Indian and he washed gold too at one time and he says he hasn't forgot him yet in the country he was born.* (Hunter 1979:430 as translated by Jerry Hunter. Emphasis added.)

One Elder, Madelaine Davis from Saulteaux, commented on hunting and trapping rights,

and inferred priority use for Indians over sportsmen:

> *She introduced herself in the traditional way by saying I am little or no value at all, sitting in front of you, but I do like to speak some of my mind.* ***We are original people. We were given this land to live our traditional way.*** *Seeing that we are traditional people we like to - white men has no value - I mean white man has no business in our land. No matter where you look there is explorations, where you cannot even go in the bush to get what you wanted. She also said she was very fortunate to live in a time when, before the explorations came that they lived the original happy way. Now you cannot do that because everywhere you go there is white people threatening our way of life. And she said there was a time when the white man promised us Indian people,* ***long as there the rivers run, and as long sun rises*** *that we have been taken care of in a fashion that we should, towards a white man fashion, but this was never so.*
>
> *We have been cheated on that, and we cannot even trap or hunt any place without experiencing some activity such as logging, all the bush knocked down. So that has deprived us people. She said oh yes, I am an old person. It should not concern me too much, but I am speaking for my grandchildren and my great grandchildren, because there will be more to come. She also said our way of life is the original way, the traditional way. An Indian life is eating meat and living off the land: and to give you an example even the summer that we, there is hardly any moose being killed because of the fact that the white people have come up and shot most of the game away. And even when they do shoot them, shoot moose, they leave them there to rot without taking the meat at all. It is just more or less she is referring to them being sportsman. On sportsman on behalf of the white people.*
>
> *And she said we cannot, previous to that I omitted some that it caught on to me now. She said even our reserve is too small to be supporting any kind of hunting at all, and what we have is that, what little we have the white people are even running our way of life on the reserve, She is basically concerned about grandchildren because those are things that, she would like to see the traditional way, you know, to be stabilized*. (Davis 1979:591-593, as translated by Buddy Napolean. Emphasis added.)

Saulteaux Band Councillor Stan Napoleon's presentation to the Pipeline Hearings discusses the promises made under Treaty 8 which includes the following rights: a) a guarantee of hunting, fishing and trapping freedoms, b) the right to be treated with respect by government and agencies, and, c) consultation over matters that effect Native lives and lands:

> *My name is Stan Napoleon, I am a member of the Saulteaux Band here. I am strictly against this pipeline on the basis of the fact that it is going to, not only kill our culture, but it is going to open up a lot of avenues for other corporations to move in on us. We all have experiences in the past, it is a past where white men*

have manipulated Indian people to point where they almost become extinct in their own culture. And it is a saddened thing to see that culture die, because we are proud people, we are the original people, we are the owners of this land and I do not think it is right for any kind of company at all to come in and destroy what little we have.

In order for us to survive as Indian people, to keep our pride up, we must stand united against all corporations that are going to be destroying, like I said, what little we have. We also have experience, ***the promises that were made to us by the Government. None of the commitments that were made to us, they were never exercised.*** *When the Terms and Conditions were made by Westcoast Transmission, or the Northern Pipeline Agency, whoever, Indian people were never* ***consulted****. They had no involvement at all and I think if anything that is going to affect the way of Indian people, I think they definitely have to have participation in those Terms and Conditions.*

Even when that Act was passed by the parliament in 1978 [allowing for Pipeline] as you say, Indian people had little or nothing to say about the proposed route, or when they did set up the Terms and Conditions. There was no ***respect****, there was no mention of anything on those Terms and Conditions that I have read where we had* ***Treaty Number 8, there was nothing mentioned of that, that would guard our way of life, be guaranteed forever.***

I think, what good is that ***Treaty Number 8****, if those things what we have been given, promised, they were never met. And I really feel that we have not been given any kind of opportunity as far as participation goes, as to what goes on to destroy our way of life. I have said this before and I will say it again, this is our land. It is a known fact that this is our land. I think it should be respected as such …There was no mention about compensation for loss of game, the disruption it is going to cause. In your Terms and Conditions there is no specific references made to Indian people under mitigated measures, and I think we are an important part of this whole thing…*

He continues later in his presentation to discuss Treaty 8 priority rights over sports hunters:

Our social life style, that is going to be drastically changed, and what little hunting and trapping area we have, we already have far too much access to them, because there are roads all over. That leaves an open street for a lot of white hunters, United States hunters to come in and kill game we have lived on for ages….

If you are an Indian you just cannot go any place, you cannot hunt any place, because of the access that is already there for other resident hunters. There is far too much access to our hunting and trapping areas, as was promised, should have been that ***as long as the rivers run and the sun sets*** *or whatever, like Mrs. Davis said, those things were guaranteed to us for life. But that is not so now. You have*

> *given us some things with your right hand, but on the other hand you take back with your left. So we are virtually left with nothing at all, except the fact that we are the people that are suffering as a result of these explorations.* (Napoleon 1979:602-607. Emphasis added.)

Chief Sandy Yahey also spoke at the pipeline inquiry:

> *The first time they sign Treaty 8, I guess the Government tell the Indians no white man will go to your trapline and no one is going to touch it for years, for another hundred years [not literally] and now they turn around and they go and put that pipeline right through the Indians' trapline and most of it will go through the Indians' trapline, because* ***they promised not to let the white man go hunt on their trapline or they said it's all yours****. That's why they have signed the Treaty 8 and that's only 80 years ago they signed there, and they turn around again and they just pick on Indian's land and it doesn't matter what they say. There's no way we can stop them. You see, because these are all Indian stands in here, all them, these pipelines. They go right through the Indians' land right here*. (Yahey 1979:235. Emphasis added.)

The following statement about Treaty 8 was presented by John Yahey from Blueberry River (as translated by his son Sandy). It shows that Indians at the time of the signing of the treaty were being pushed around by whites and that Yahey expected the Treaty to bring law and order (as communicated by Ridington earlier):

> *That was in 1889 the first treaty, I guess, because the Government, came down and they asked for, get treaty but they gotten days' meeting with the head chief around Blueberry area. I guess the Government came back four years later and they keep telling them again. Finally they got a treaty because the Government* ***promised them not to push the Indians around****.* ***No white man is going to push us around, try to push us away from our traplines****. Even Fort St. John right now, just because we're Indians we got pushed around by white people cause the first time the Government tell the Chief that no one was going to come down to Beatton River or to Blueberry River, that is going to be yours, all it is going to be yours for a hundred years. It is all yours he said. That was only eighty years ago. They turn around and they have to push Indians around again, that is what they said*. (Yahey 1979:256. Emphasis added.)

2.3.5 Technical Report - Chronology of Confirmation or Violation of Livelihood Treaty Rights

The following is a chronology of some written documents which deal with violations of livelihood promises of B.C. Treaty 8.

1905 The B.C. government creates the Office of the Provincial Game and Forest Warden to administer the Game Act. The director of the department advocates a policy of issuing resident licenses as a source of revenue for his department.

> Attempts are made to control the shooting of wildfowl, and non-resident game licence for a fee of $50.00 are introduced. Provisions are made for Indians and settlers in the unorganized territories to kill deer for immediate personal use but not for sale or traffic with prospectors. Placer miners and surveyors are not limited to deer, but could generally kill "game" **for food**. [BCARS, *Statutes of the Province of British Columbia,* 1905, (Victoria: Printer to the King's Most Excellent Majesty), p. 150]

1905 The amendment to the Game Act imposed a six-year moratorium on beaver trapping, **prohibiting anyone from killing or trapping beavers, or even from possessing untanned pelts for a six-year period beginning 1 August 1905.** The Hudson's Bay Company objected to this curtailment, and its lawyers successfully argued that native trappers had their own systems of conservation. [BCARS, Game Warden Correspondence, Drake, Jackson, and Helmcken to the Provincial Secretary, 8 February 1905]

1907 Primarily as a result of some of the Hudson's Bay Company arguments, the Province exempted Indians and traders north of the 54th parallel from the Beaver trapping moratorium until 1907, when a **province-wide ban went into effect.**

1912 Indian Agent for the Stuart Lake Agency: "I might say that **the Game Laws of B.C. have, to my way of thinking, seriously interfered with the Indian hunting and trapping rights**, and while these laws are ostensibly formed for the purpose of protecting the animals, in some cases an exactly opposite result is produced. In the past the Indians have systematically farmed the fur areas which they and their forefathers have used from time immemorial - every Indian had his territory whose boundaries were religiously observed, and only what would be the reasonable product of that area was trapped in one year. All that is now changed: the B.C. Game Laws, Section 16, provides that traplines may be run one-half mile distant from each other, and if trappers took full advantage of this, in two seasons there would be very few fur-bearing animals left as the white trapper, with his aggressive methods, catches all he can every season. Referring particularly to the beaver, I might say that **this animal has a special value to the Indians as they eat its flesh as well as trade the fur**, and an Indian is rich or poor according to the number of beaver on his hunting ground, and I would say that if this animal is to be preserved as a fur-bearing animal of commercial value in B.C., the trapping of it by whites should be entirely prohibited." [BCARS, Government Record 1995, Reel B1458; Examination of W.J. McAllen, pp 141-343, pp 338/(198) Prepared statement by W.J. McAllen (Indian Agent), 22 June 1912]

1913 An amendment to the Game Act required non-native trappers to pay $10.00 for a license to hunt and trap.

1915 The Indian Agent for Stuart Lake Agency discusses the problem of trapping and game reserves in the region: "On the subject of furs I would like to say this: that the establishment of game reserves and prohibited areas in British Columbia **has been done without considering the Indian rights at all** - they are simply declared a game reserve and the Indians are arbitrarily excluded from their hunting grounds, and in some cases their hunting grounds were taken away

from them altogether without any consideration at all, and if they happened to go on any of these game reserves for the purpose of hunting they would be arrested and put in gaol. I am simply bringing this matter up with the idea as to whether or not the Indians should be compensated for losing the game which they formerly had and used for food." [Testimony, p. 341/(201) Indian Agent McAllen (? circa 1914/15) when McKenna-McBride Commission visited the Stuart Lake Agency]

1923 Indian Agent advises the Treaty 8 (B.C.) Indians that "**they are at liberty to hunt and trap wherever and whenever they liked and that the B.C. Game Wardens and Police have no right to interfere**." [BCARS, GR 1085, Box 2, File 7, Report by Constable Barber, 12 September 1925]

1925 The trap-line regulations are passed under Order-in-Council No. 909 approved on August 18 1925, and the regulations in respect to Guides and Traplines appeared in the B.C. Gazette under the date of August 27th, 1925. [BCARS, GR 1085, Volume 8, File 1, J.H. McMullin, Provincial Game Warden, to Officer Commanding, "D" Division, B.C.P. Police, Prince Rupert, Letter, 2 November 1927]

1925 A debate ensues over whether Indians on Reserve must adhere to the Game Act. It is agreed that "**the British Columbia Game Act has no application to Indians while pursuing their vocations as hunters and trappers on their reserves"**, but the local Indian Agent Harold Laird also **defends the right of the Indians to hunt and trap everywhere pointing out that the Treaty allowed "The Indians [to] hunt and kill game as long as the grass grows and the water flows"**. Indian Agent refuses to register Indian traplines in the Treaty 8 area because he argues that it is a direct violation of the Treaty. [BCARS, GR 1085, Box 2, File 7, Indian Commissioner W.E. Ditchburn to the Department of Indian Affairs, 6 October 1925]

1925 17 March, _____ (Fort St. John Indian) is convicted for killing moose off-reserve. Agent _____ publicly calls down Constable _____ on Treaty day (July 23 1924) for the arrest of _____ for exercising his treaty rights. [BCARS, GR 1085, Box 2, File 7, Constable _____, Fort St. John Detachment, report, 11 November 1925]

1926 Indian Agent fails to meet with the Chief Game Commissioner for B.C. regarding the Peace River Indians and trapping, but the Game Commissioner meets with Laird's secretary and reaches an understanding of the Hudson's Hope Indian demands. The Indians ask-- 1. No more white trappers to be allotted trap lines in the district, and that if any of the present trap lines become vacant they should revert to the Indians; 2. That the Indian will respect and keep off white men's trap lines, and that they should be allowed to trap all the country South of Parallel 58 that is not covered by whitemen's trap lines.

"I propose that wherever possible the Indians shall register a trap line but I realize that the Hudson's Hope and Moberley Lake Bands hunt more or less in families, and that possibly an area is more suitable to their requirements than a trap line. Their movements are governed by "jaw bone" and their food supply more than those of the white man…I want the Indian to realize the fact that we are only trying to ensure to them and their offspring a constant and increasing supply of game and fur in their district." [BCARS, GR 1085, Box 2, File 7, Chief Game Commissioner, B.C. to Agent, 9 June 1926]

1927 Agent is informed that he must notify all Indians that they have to register their trap-lines. [BCARS, GR 1085, Box 2, File 7, B.C. Provincial Police Pouce Coupe District Headquarters, to Officer Commanding B.C. Police Game Branch, Prince Rupert, 15 July 1927]

1928 Chief and his band are taken to Court for trespassing on a registered trapline. They are given a suspended sentence upon promising that they will register their trapping areas without delay.

1931 **Instructions for registration of traplines are issued to Game Wardens**. Information to be included: full names and addresses; sketches of traplines and trapping area, including longitude and latitude, names of lakes, rivers, etc.; numbers of reference maps used. [BCARS, GR 1085, Box 18, File 8, T. Van Dyk, District Game Warden, Prince George, to All Game Wardens, 21 November 193]

1932 Inspector of Indian Agencies Alberta visited the Moberly Lake area, and noted that the Moberly Lake **Indians complained about the traplines and several of them made the statement that if they could get some of the traplines now held by white people they would not call upon the department for relief**. "The Indians informed me that the total income from furs last winter would not average over $25.00 per family, and that if it were not for the fish in the lake and rabbits &c. they would have starved, as they pointed out that they required fur with which to buy clothing. I quite agree with the Indians viewpoint in this connection, as they are hemmed in on all sides by white people and the amount of land that has been left for the Indians to trap on is about sufficient for two families." [VFRC, File 975/30-5-168A, Inspector of Indian Agencies Alberta to Dr. McGill, 24 July 1933]

1933 Halfway River: "**They complain bitterly about all their traplines having been registered by White people which left them but very little open ground where they could trap. This is making it very hard for the Indians up there and they are finding it almost impossible to eke out a living."** [VFRC, File 975/30-5-168, Inspector of Indian Agencies Alberta to Dr. McGill, 24 July 1933]

1933 Inspector of Indian Agencies wrote to the Secretary of the DIA in September 1933: "I might say that I investigated the matter fully and the Indians at Moberly Lake, Halfway Reserve and Fort St. John complained that they **were unable to make a living off the hunting grounds that had been allotted to them**, and this will be borne out by anyone who is familiar with conditions in the Peace River Block. The Provincial Policeman at Hudson Hope is fully aware that the Indians at Moberly Lake and Halfway Reserve have not sufficient trapping grounds, as I discussed this matter with him. The Policeman at Fort St. John is also aware that the Indians there are short of trapping grounds." [BCARS, GR 1085, Box 2, File 7, Inspector to Secretary DIA, 18 September 1933]

1933 In his November report, Game Warden _____ states: "A number of them [Indians] are not registered and they either do not know how to go about it or they are unwilling to register. Through not registering the Indians have lost a lot of trapping area and this was not so noticeable, while there was open territory for the Indian to fall back on, but now the country is covered by registration, **the Indian will have to stay on his line and try to do like the White trapper**. The great difficulty with the Indian is, that he does not trap alone or with a partner, but

is accompanied by his band and every one of them is a trapper even the squaws. The Indian is a killer of Game and not a conserver; he will kill his beaver in the summer time for the meat, not concerned about the value of the pelt next winter. In the Fort St. John district, the White-men hold big areas for traplines and between these areas the Indians are registered. The Indians are the roving kind and have no permanent place of abode; they have been allotted their Reservations, but do not live on them except during a short time in the summer to receive their Treaty money, . . . this is the only support they receive from the Indian Department and as they are a Poor tribe are left to shift for themselves. Their whole existence is the killing of Game and as the country is overrun by them, there is very little Game in the country, till the heavy snows drive the Moose down from the Mountains.

> The following case will explain why the Indians have lost so much of their trapline areas: "In October 1932, _____ [non-native] applied for registration of a trapline along Osborne Creek and when he went out there to trap, he found that a Band of Indians under Chief Sakona were trapping all over that area. To compensate _____, the Milligan Creek area was registered in his name as this country was open for registration. _____ went out to his new line this fall and found Indians all over the area. They had been trapping there all their live and were not going to vacate. As the line is registered in - _____'s name, he is entitled to it, but to enforce the Law, it would mean the bringing in of all these Indians and their bands." [BCARS, GR 1085, Box 2, File 7, Game Warden _____ Report, 6 November 1933]

1933 The Game Warden made another report the following month, noting: "It is very hard to deal with an Indian, as he does not understand our language and as there is no one in this district, who know anything about their traplines and is appointed to act for them. The Indians in the Moberley areas also hold separate lines, but _____, the Indian Agent for that district has made application to have these lines registered under the different chiefs." [BCARS, GR 1085, Box 2, File 7, 17 December 1933]

1934 A new Indian Agent writes to Inspector stating that "It would appear to be necessary for us to purchase back quite a considerable amount of territory from white trappers to enable the Indian population to maintain itself." [BCARS, GR 1085, Box 2, File 7, Agent to Inspector, 30 November 1934]

1936 Indians using traditional methods of fur conservation by leaving some of their trapping areas "fallow" in certain years are **in jeopardy of losing their traditional territories**: "Where proof has been established that any trap-line or portion thereof **is not being trapped according to the Game Act or the Regulations made thereunder, same may be applied for by any qualified person."** [BCARS, GR 1085, Box 36, File 3A, Inspector to Game Warden, BCP Radiogram, 3 March 1936] People trapping on "private" land, however, were not required to register their traplines.

1940 The Monthly Report (July) from [Indian Agent] reports: "The spirit of the meetings was cordial and there were no complaints except from the Hudson's Hope Band **who bitterly resented unwarranted search of toboggans and camps for meat to which they are entitled by treaty**, by the local Game warden." [NAC, RG 10, Volume 6923, File 975/28-3 Pt.1]

1944 Indian Agent wrote to the Indian Affairs Branch (which at this time was under the Department of Mines and Resources) regarding reserve land for the Fort St. John Dunne-za/Cree. He states: "As I understand it, Reserves are only granted for agricultural purposes; and these Indians will never farm any land as long as they can trap. **They are acutely aware that they were promised ample trapping rights over a vast area under Treaty No. 8, rights which have been severely encroached upon by the registration of White trappers in territory which by no stretch of the imagination will be used for settlement or industry for many years to come.** Indians of the St. John Band, since the acquisition of a few traplines during the past ten years, have now **barely sufficient territory to keep them from starving**, even while living in very primitive fashion in the woods. It is common knowledge here that the B.C. Game Commission is not sympathetic towards the claims of the Indian. My own experience during the past ten years has convinced me of the truth of this. We purchased a number of good traplines several years ago from white trappers; but the Game Department put a stop to it. Their Game Wardens **informed white trappers that if they sold their traplines to us they would be excluded from ever again trapping elsewhere in the Province of British Columbia**. That effectively put a stop to our acquisitions of traplines. **On appeal to Inspector _____ for consideration of Indian rights under Treaty No. 8 he replied that there was a "catch" in the Treaty, which meant that the tract of country involved was to be subject to the Provincial laws which now includes Registration of traplines; and Indian registration can be restricted by means such as I mentioned above…**I know Mr. _____ is interested deeply in bringing back the beaver and other fur-bearers to trapped out areas and thus supplying a livelihood to Indians who can live in no other way. This Peace River country used to be considered by the Hudson's Bay Company as their prize beaver country. Now they are practically gone." [VFRC, RG 10, Volume 7779, File 27143-4 Pt. 1, Agent to Indian Affairs]

1949 At this time, Indians were being charged **$10 per year for trapline licenses** the Department of Indian Affairs "bought-back" for them, and the fur-catch in these territories was so poor that Galibois wrote to the Game Commission that they were unable to pay even the $10 fee. "Prior to the last game year of 1949-50 these dues have been paid by the Department." [VFRC, RG 10, Volume 11497, File 20-10, Pt. 1, Galibois to Game Commission J.D. Williams, 4 January 1951]

1951 _____ is charged. "**Unlawfully did act as a guide without first taking out a licence in that behalf**." Sentenced to one year suspended sentence and no costs. "Due to the fact that the accused had a large family to support and very little money and it is felt that this offense was committed through ignorance and probably the influence of less reliable whites, it is felt that the penalty is sufficient." [VFRC, RG 10, Volume 11497, File 20-10, Volume 4]

1952 In 1952, the regional fur-supervisor, wrote to Indian Agent: "Some time ago an agreement was reached between Indian Affairs and the Provincial Game Department to the effect that, whenever an Indian takes over a trapline which was formerly registered in the name of a non-Indian, **he must continue to pay the yearly trapline fee**. In other words, the Province does not wish to lose any revenue which they now obtain from traplines." [VFRC, RG 10, Volume 11497, File 20-10-1, Pt. 1, 16 May 1952]

1957 Letter to Game Warden from Welfare teacher, Doig River School, Rose Prairie, 25 April 1957:

> One of these Indians, _____ of _____, Fort St. John has been asking me for advice about a search you made on his cabin while he was working at a lumber camp on the Alaska Highway. He was guilty, it appears, of **shooting meat in the closed season** and I advised him to see you as soon as possible. However, having no money and a family to support he has to go beaver trapping and it will be sometime before he can get to town . . . .
>
> Meanwhile, I think that I should take some of the blame. **I have always advised these Indians that they have the right to kill moose for their own eating at any time.** Otherwise, they would starve.
>
> **But your attitude…is that they do not have this right when in regular employment. The point is what do you consider regular employment**. Is there a legal definition? At most, ____'s job could not have lasted more than two months and there was long breaks in that when the camp was idle. If this is regular employment, then several Indians, nearly all, have been breaking the law in the last two years. Because part of my job is to encourage them to take what work they can and I am always finding jobs. I should add that this is going to be very difficult in the future if they know that they lose their hunting rights by working.
>
> **I have met this problem before and always understood that the hunting rights were guaranteed by Treaty subject to modification by circumstances**. I believe a case similar to ____'s was taken to High Court in Alberta on appeal and the Court laid down that the hunting rights could only be suspended if the Indian lived permanently off the reserve, in other works did not abide by the Treaty agreement.
>
> However, I cannot be sure of my facts without the books. The matter is really one for my Superintendent and I hope you will contact him before taking any action. I would however urge that you help those who live in contact with the Indian by giving a clear ruling which the Indians will understand and which has court sanction. Then I will know what to do. [VFRC, RG 10, Volume 11496, File 18-11, Volume 1]

1957 Letter from Game Warden to Welfare teacher, Doig River School, Rose Prairie, April 30th, 1957:

> "I have your letter of April 25th. regarding the shooting of a moose during the closed season by the above named while he was employed by Mr. _____near _____, B.C.
>
> I have discussed the matter with [Indian Agent] and we agreed that we would have ____ into the Indian Office when he comes to town, and make the situation clear to him . . . .
>
> Under Section 8 of the Game Act, **an Indian who is a resident may at any time kill**

Male animals of the Deer family when in actual need of same for himself and family. It follows then that an Indian who is employed at daily wages or salary would have a hard time convincing a Magistrate that he killed an animal under circumstances underlined above. It had been my experience over the last 15 years that Indians getting money either from trapping or working at wages spend the large part of it on liquor, and food is a very secondary consideration. **I do not think it wise to let them think that they can get meat any time legally when they are employed**. If they knew it was illegal then, they probably would save some money to buy meat." [VFRC, RG 10, Volume 11496, File 18-11, Volume 1]

1957 Letter from a Chief to Dept. of Indian Affairs, Ottawa, dated October 28, 1957:

"Can the Game Warden lawfully, come to Moberly Lake to look into our places, without permission? He came, and did so, on Oct. 16th. Here are two families who got into trouble…**We were told that we could kill any animal if the children were hungry**. Why did the Game Warden have to do this to our people…P.S. _____ had to pay a $100.00 fine." [VFRC, RG 10, Volume 11496, File 18-11, Volume 1]

1957 A letter from ___ Mile 70 Little Prairie, B.C. to J.D. Addison, November 28, 1957:

"We are writing you, to call to your attention an incident that happened here and which we feel to be strictly unjust.

_____, a treaty Indian living on the reserve, shot and killed a cow moose, in the reserve proper, strictly for **their own consumption and because they badly needed the meat**. The moose season was on at the time.

_____ has an A.1. reputation here everywhere, has never been on relief, or in trouble. Has always been able to make a living for himself and his family even though he was in the hospital here at Dawson Creek just prior to the incident above. Even so he was assessed a fine of $100.00 which leaves him in mighty poor shape for the winter.

Another thing is that he **has to pay a trappers licence** and none of the other Indians do why. He is a full blooded Indian and living on the reserve, is a non-drinker and an excellent worker and just happened to be in need of meat, why should they pick him out when they know his circumstances?

He had just got through assisting the mounted police in an extended manhunt, and in fact it was he who found the body after the hunt had been given up. And is very highly thought of by them." [VFRC, RG 10, Volume 11496, File 18-11, Volume 1]

1957 A letter (December 27, 1957) to Mr. W.S. Arneil, Indian Commissioner for B.C., from E.J. Galibois, Superintendent, Fort St. John Agency:

"I beg to report on the complaint made by _____ of the _____ Band…. regarding the activities of Game Warden _____ who charged the above named of killing a cow moose on October 16th in consequences of which he was assessed a fine of $100.00…

The game warden visited _____ [area] on October 16th on the information that the residents, white and Indians alike, had been killing game wholesale. He found this complaint unfounded but profited of this occasion to visit all the homes to collect information relevant with his duties. When he came to the home of _____ he met Mrs. ____ and her children in the yard and found them engaged in quartering the carcass of a moose. As all the information they would give were seemingly untruths and falsities he sensed that something was wrong and upon the hide lying on the ground found it to be that of a female moose, whereupon he decided to lay a charge against Mr. _____ …

The information furnished by _____ and _____ [residents of the reserve] was that _____ shot the moose in question on the Reserve and from his doorstep. Had he been out on a hunting expedition for game would have indicated a need for food but circumstances of the killing do not bear that out. They agreed that if that need existed, the accused could have engaged in logging operations on the Band's contract with the Fort St. John Lumber Company for which he…own the most complete equipment for that kind of work and earn sufficient from that source to replenish **his larder from store purchases**. **They also state that he raises sufficient cattle each year so as not to be in need of claiming dispensation from the game laws at that particular time of year.**

For a number of years now, the Indians of _____ district have been under certain restrictions with regard to the indiscriminate slaughter of game for food. In 1953 the Game authorities came upon numerous cases of **Indians trading game with white settlers for articles** of doubtful value,…At the Band meeting in July of that year the Indians were informed that henceforth no game could be brought to their reserve or to the settlement unless they had first obtained a permit for so doing from our ration issuer. The game warden had suggested that sort of control and I agreed with him. This regulation served its purpose but after a while it came to be ignored by the Indians.

Mr. _____ [the accused]…has never given us his co-operation or his help and like so many other members of the Band makes his own **Indian Act** and other regulations to suit himself. He is surly in disposition, stubborn, and his remarks in or out of councils have always been uttered in a manner to cause offense and to destroy every authority I and the rest of the Council may possess.

However, I must say that he is undoubtedly the best worker on his reserve and the most active. He has a good home clean and fairly well furnished; he owns cattle, power equipment for logging, all obtained without Departmental assistance and it is not to my recollections that he ever asked me for relief.

After due consideration of the matter, I feel that [the] Game Warden ____ has acted in a manner that is not causing duress to the complainant and that a remission of the fine at this stage will only serve to promote further breach of the Game Act and nullify any authority I may still possess over the Indian members of the _____ Band." [VFRC, RG 10, Volume 11496, File 18-11, Volume 1]

1958 A letter from W.S. Arneil, Indian Commissioner for B.C., to the Superintendent of the Fort St. John Agency:

"Your reports of December 27, 1957 dealing with the conviction of the above-named Indian under the B.C. Game Act has been under review by the Department who appreciate the efforts you have made to imbue the Indians with the need of conservation of the game resources of the Province, in which they are franchised citizens as well as being Indians.

It is pointed out, however, that _____ [area] lies within the area covered by Treaty 8 which, regardless of the fact that it is within the Province of British Columbia, contained assurances that Indians would be permitted to pursue their usual avocations of hunting, fishing and trapping.

Even if this were not a Treaty area, the fact that the moose in question was shot on an Indian Reserve places the matter in an entirely different light. An appeal on that point was taken to the Superior Court of British Columbia in 1915 with the following result as reported in the British Columbia Law Reports, Volume 20, page 106 (*Rex vs Edward Jim*).

In my opinion, this conviction must be quashed. The facts are not in dispute; the central fact being that the Defendant charged with an infraction of the Game Act was an Indian who killed a two-year-old buck upon a reserve which he was entitled to live, and was using the meat for his household use. The question at once arises as to whether the Indian is within the scope of the prohibitions of the Provincial Game Act. In my opinion he is not . . . ."

In the view of the foregoing which would establish the right of Mr. ___ to kill the moose at that time and place: and having in mind that in this case the appeal period of thirty days has expired; it would appear necessary that you advise the Game Warden concerned that the applicability of the B.C. Game Act, and his authority thereunder to Indians on Reserves should be legally determined by him before any further incidents take place. **A duty devolves upon our Department and its officers to protect the rights of the Indians** . . . ." [VFRC, RG 10, Volume 11496, File 18-11, Volume 1]

1951 Letter from E.J. Galibois, Superintendent of the Fort St. John Agency, to _____, December 10, 1951, that shows violation of traditional livelihood re: meat sharing:

"The Game Warden has mentioned that you sent meat to a white woman at Fort Nelson, and while he will not prosecute you for this infringement of the Game Act, he has asked me to inform you that the Indians have it as a **privilege** to kill game for food at all times of the year but that it is forbidden to give meat to other than Indians.

Mrs._____ **has now become a white woman**, since she is married to a white man - that is, her legal status is "white."

I trust you will understand that this information is given to you in your own interest and that the **privilege you have of killing game at all seasons of the year can be withdrawn if there are abuses**." [VFRC, RG 10, Volume 11497, File 20-10, Volume 4]

1958 A letter (February 3, 1958) to the Game Warden at Pouce Coupe from Galibois the Superintendent of the Fort St. John Agency:

> "I have received advice that my report dealing with the above named resident of _____ has been under review by the officials of this Department who have requested that the following observations be passed on to you:
>
> **It is pointed out the _____ [area] lies within the area covered by Treaty 8 which, regardless of the fact that it is within the Province of British Columbia, contained assurances that Indians would be permitted to pursue their usual avocations of hunting, fishing and trapping.**
>
> Even if this were not a Treaty area, the fact that the moose in question was shot on an Indian Reserve places the matter in an entirely different light. An appeal on that point was taken to the Superior Court of British Columbia in 1915 resulting in the quashing of the conviction …
>
> The appeal period having expired, the Department does not indicate that it plans further action in the matter except to ask that applicability of the B.C. Game Act and your authority thereunder to Indians on their Reserves be legally determined by you before any further incidents take place." [VFRC, RG 10, Volume 11496, File 18-11, Volume 1]

1966 **New regulation to traplines is proposed**. Traplines will be registered annually and a fee will be charged for this service. The Indian Commissioner for B.C. writes:

> "We appreciate that the $1.00 registration fee may appear to be very minimal. However, it has been our experience that when our **Indians are asked to pay for something they have been receiving gratis for years there is no doubt in their minds as to whether or not this is just one more instance where the white man is attempting to trespass their treaty rights**." [VFRC, RG 10, Volume 11497, File 20-10, Volume 4]

2.4 FARMING AND ECONOMIC DEVELOPMENT

2.4.1 What the Commissioners' Report States

> *The treaty was therefore so drawn as to provide three ways in which assistance is to be given to the Indians, in order to accord with the conditions of the country and to meet the requirements of the Indians in the different parts of the territory.*
>
> *In addition to the annuity, which we found it necessary to fix at the figures of Treaty Six, which covers adjacent territory, the treaty stipulates that* ***assistance in the form of seed and implements and cattle will be given to those of the Indians who may take to farming, in the way of cattle and mowers to those who may devote themselves to cattle-raising,*** *and that ammunition and twine will be given to those who continue to fish and hunt. The assistance in farming and ranching is*

only to be given when the Indians actually take to these pursuits, and it is not likely that ***for many years*** *there will be a call for any considerable expenditure under these heads. The only Indians of the territory ceded who are likely to take to cattle-raising are those about Lesser Slave Lake and along the Peace River, where there is quite an extent of ranching country; and although there are stretches of cultivable land in those parts of the country,* ***it is not probable that the Indians will, while present conditions obtain, engage in farming*** *further than the raising of roots in a small way, as is now done to some extent. In the main the demand will be for ammunition and twine, as the great majority of the Indians will continue to hunt and fish for a livelihood. It does not appear likely that the conditions of the country on either side of the Athabasca and Slave Rivers or about Athabasca Lake will be so changed as to affect hunting or trapping, and it is safe to say that so long as the fur-bearing animals remain, the great bulk of the Indians will continue to hunt and to trap.*

2.4.2 What the Text of Treaty 8 States

FURTHER, Her Majesty agrees to supply each Chief of a Band that selects a reserve, for the use of that Band, ten axes, five hand-saws, five augers, one grindstone, and the necessary files and whetstones.

FURTHER, Her Majesty agrees that each Band that elects to take a reserve and cultivate the soil, shall, ***as soon as convenient*** *after such reserve is set aside and settled upon, and the Band has signified its choice and is prepared to break up the soil, receive two hoes, one spade, one scythe and two hay forks for every family so settled, and for every three families one plough and one harrow, and to the Chief for the use of his Band, two horse or a yoke of oxen, and for each Band potatoes, barley, oats and wheat (if such seed be suited to the locality of the reserve), to plant the land actually broken up, and provisions for one month in the spring for several years while planting such seeds; and to every family, one cow, and every Chief one bull, and one mowing-machine and one reaper for the use of his Band when it is ready for them; for such families as prefer to raise stock instead of cultivating the soil, every family of five person, two cows, and every Chief two bulls and two mowing-machines when ready for their use, and a like proportion for smaller or larger families. The aforesaid articles, machines and cattle to be given one for all for the encouragement of agriculture and stock raising…*

2.4.3 Discussion

The Indians were promised by the Commissioners and in Treaty 8:

1. Assistance in the form of seeds, implements and cattle.

2. Chiefs (receive for the benefit of the band for farming) - 2 horses or a yoke of oxen, 1 bull, 10 axes, 5 handsaws, 5 augers, 1 grindstone, and necessary files and whetstones;

barley, oat and wheat seed. 1 mowing machine, 1 reaper. Chiefs (receive for the benefit of the band for stock raising) - 1 bull, 1 mowing machine, and 1 reaper. A like proportion for smaller and larger families.

3. For each family (who farm) - 2 hoes, 1 spade, 1 scythe and 2 hay forks. 1 cow.

4. For every family of five persons (those families that would prefer to raise stock instead of farming) - 2 cows.

5. For every three families - 1 plough and 1 harrow.

6. Provisions for one month in the spring for several years.

7. Articles to be given when Indians take to farming and ranching.

Treaty 8 was designed for the Lesser Slave Lake and Peace River districts of Alberta. While most of the Indians living there were nomadic hunters and trapper, they lived in an area conducive to agriculture (McCardle and Daniel 1976:1). The Commissioners did not believe that the Indians would want farm assistance or reserves in the near future. They envisioned that settlement would encroach gradually on Indian territories and then "by natural transition the Indians would turn to agriculture and wage labour." The government would then step in and provide reserve lands, as well as provide aid during the crucial transition, but not before it was necessary (McCardle and Daniel 1976:2).

In addition, the Indians were promised verbally that they would be provided with a farm instructor when they were ready to attempt agriculture. McCardle and Daniel (1976:3) write:

> Although we have not found such a promise in the sketchy archival accounts of the treaty negotiations, there is a record of the fact that a few months after the treaty the Chief and Councillors of Lesser Slave Lake wrote to Indian Affairs with a reminder of the promise that they would get a reserve, implements, cattle, seed and " . . . that someone would be sent to look after us and advise us, and that we would have someone sent also to teach us to plough and use a mower and build our houses."

McCardle and Daniel (1976:3-4) mention the written version of the treaty stipulates that **tools, implements and cattle would be provided only once**. The provisions while planting would be provided for several years. However, when Commissioner Laird was presenting the terms verbally he did not make restrictions on the number of times assistance would be provided. He stated that "the Government will give you ploughs or harrows, hoes, etc., to enable you to [plant crops] and every spring will furnish you with the provisions to enable you to work and put

in your crops."

McCardle and Daniel (1976:4) present the results of elder interviews:

> Many of the elders remember that promises were made concerning cattle, implements, and provisions during planting. There is **no indication in the interviews that the Indian people understood these promises to be on a "once-for-all" basis, but our interviews did not focus specifically on this issue**. It seems that the various details of agricultural assistance were seen by the Indians as amounting to **a general commitment to provide whatever assistance was necessary to help them get started in farming, if they so desired.**
>
> Furthermore, the Indians clearly understood that it **was not within the government's discretion to determine whether any or all of the promises of agricultural assistance would actually be implemented**. Such promises were seen not as merely a matter of government policy, to be overruled by other policies, but a matter of treaty rights, as binding as the Indians' agreement to white settlement. (McCardle and Daniel 1976:4. Emphasis added.)

McCardle and Daniel cite complaints of non-compliance with farming assistance from the Indians of Lesser Slave Lake and the Government's reaction in 1932:

> The file in connection with the expenditures under the Treaty is not very voluminous, and at the present time it is not possible to examine it to ascertain if every detail has been followed. It may be said however that **these expenditures have entailed more than the Department has been called upon to make**, and in the circumstances it cannot be considered that the Indians can reasonably complain.

The Agency Inspector, M. Christianson, did not think that the Indians (who showed him a copy of the treaty) would be satisfied with this response:

> The Indians may have received certain considerations there that [were] not mentioned in the Treaty, but I believe the actual terms of the surrender were not carried out: viz, - **the supplying of cattle, implements and food for a month in the Spring when they commenced working on the land.** Therefore, the Indians will insists on the terms of the Treaty being carried out to the letter. The whole Band from the reserves around Lesser Slave, interviewed me last summer, and no doubt will do so again on my next visit there. In any event, unless an agreement had been made direct with the Indians that they were to get certain other considerations in lieu of cattle, implements and food supplies in the spring **they will demand** that part of the Treaty be carried out. (McCardle and Daniel 1976:5-6 and PARC 1/1 11-5. Emphasis added.)

McCardle and Daniel (1976:36) summarize farming treaty promises for the first 15 years after the Treaty:

> In conclusion, it may be said that the material aid promised by Treaty given to the Driftpile and Sucker Creek reserves in the first fifteen years after the Treaty was initially effective in establishing and developing gardening, stock-raising and even some grain farming on the reserve. However, Government during that period **refused to provide qualified supervision to maintain the development achieved with Treaty aid**, as requested by the Departmental local officials. Despite some advances made as a side-effect of such national schemes as the Greater Production Campaign, a decline set in after the First World War. New grants of implements, and hiring of an instructor were not made until an important faction at Driftpile **requested aid under Treaty to protect their possession of land against white interests** and to achieve self-sufficiency on their own terms.
>
> According to the **Indians' understanding** of the Government's obligation to assist them in development, farming aid was a right, not a gift, bestowed by fulfilment of the literal terms of the Treaty. In reply, Government agreed to give them supervision and to develop industry by using the Band's own resources; but it rejected any but the most general financial responsibility for the Indians' past economic development.
>
> The government also failed to provide a farm instructor in all cases where one was both needed and requested. In some cases a farming instructor was provided in name only, and spent very little time or effort in promoting farming among the Indians. Although the written terms of the treaty make no reference to farm instructors, **the negotiation of the treaty apparently included verbal promises** that instructors would be provided. Certainly it was part of **the spirit of the treaty** that bands which found it necessary or desirable to engage in agriculture would receive the benefit of the `white man's knowledge' of agriculture, and by the time of the treaty it was a well established policy of the Department of Indian Affairs to provide instructors to bands making a significant effort at farming. (McCardle and Daniel 1976:94. Emphasis added.)
>
> In order to fairly assess the government's efforts at developing reserve economies through agriculture, one must place these efforts in the context of the decline of hunting, fishing and trapping industries. Naturally requests for farming assistance tended to come forward at times of decline of these traditional pursuits. The **spirit of the treaty** required that at such times **farming assistance would help Indians to make the transition to an alternative livelihood**. However, it was seldom that such assistance was prompt and adequate, with the result that bands had to persist over many years in their requests for farming assistance. Meanwhile, the `relief' requirements for the Treaty 8 area climbed to astonishing levels. (McCardle and Daniel 1976:95. Emphasis added.)

> In attempting to determine whether the farming provisions of the Treaty 8 were adequately implemented, it must be emphasized that throughout the period studied [1899-1940] the Department of Indian Affairs **placed very little significance on the treaty.** Decisions as to whether particular band should receive stock or implements may have been based on budgetary considerations, recommendations from the field, prevailing Indian Affairs policy and a number of other factors. However, the Department did not **measure its efforts against the terms and the spirit of the treaty.** This attitude not only deprived Indian farmers of promised assistance, but placed the whole question of Indian agriculture outside the realm of an agreement between two parties and into the realm of the decision making powers of a distinct government. (McCardle and Daniel 1976:95. Emphasis added.)

The following references provide information on agricultural provisions and Treaty 8 B.C.

2.4.4 B.C. Case Study

In a monthly report for August 1941, H.W. Brown, Indian Agent, reports:

> For the Fort St. John Band and the Hudson's Hope Band, both on the north side of the Peace River, the livestock owned consists only of sufficient saddle stock for their own use. These horses are of a fairly good grade of hardy cayuse. In general they are wintered out in meadows and hillsides adjacent to their trapping grounds, and are subject to heavy losses during the winter. Sufficient feed could, of course, be grown on both Reserves, but this would entail fenced areas and machinery. Neither of these **Reserves is fenced and any machinery such as mowers and rakes originally given to these Bands when Treaty #8 was made have long since disappeared.**
>
> Moberly Lake on Reserve No. 169, however, and also that portion of the Hudson's Hope Band living at the West End of Moberly Lake on Reserve No 168A have a few domestic cattle in addition to their horses; and these Bands have put up enough hay to ensure adequate feed supply. They have recently evinced a growing interest in the resources of their Reserves and are making more use of the machinery in their possession, and in the fencing of their land for common use. Requisitions for barbed wire and more machinery are being prepared and will be included in the Estimates for next year. (RG 10, Volume 10330 File 975/15-8. Emphasis added.)

In B.C., Jack L. Grew reported that in 1941 Fort St. John Reserve had "no cattle, but a very good class of horses," East Moberly also had "very good horses" and Fred Napolean had 20 head of cattle "sleek and fat" but small in size. Halfway 168 "no cattle, but very good horses.

West Moberly - no cattle but good horses."

Grew's Report for 1945 Annuity payments for Halfway reported:

> In 1945 the Chief of Halfway asked the department for wire so that he could fence a section in order to put hay away for the winter. It is clear from the letter that outsiders were "stock ranging" the reserve. If the Department would not give him the money **he said he would use his own**. This letter also reported that Green said Halfway **had received a plough, a mower and rake about 15 years ago [1930] but that they were worn out**. (RG 10, Volume 10330, File 975/15-4. Emphasis added.)

Grew's Report for 1945 Annuity payments for Moberly states that:

> More fencing was needed to protect against outsider cattle the fencing they had (pole fencing) was easily broken through. **Some repairs to the mower and rake were needed** and so Garbitt was given the authority to order them from Dawson Creek. (RG 10, Volume 10330 File 975/15-4. Emphasis added.)

Grew's Report for 1945 Annuity payments for Moberly noted that forty or fifty acres on Reserves 169 - 168a at Moberly were:

> broken and ready for seeding. I told Garbitt to write to Mr. Schmidt . . . so that the seed could be ordered for next year. Twenty-five or thirty rolls of barbed wire were also needed. (RG 10, Volume 10330, File 975/15-4)

A letter from the Economic Development Division from L.D. Sheppard, dated 27 April 1964 showed that Indians were using their horses to support trapping and guiding activities:

> Two years ago farming was introduced to the Halfway River Indian Reserve which, I might add, has proved quite successful. It is **our** intention to gradually increase the acreage under cultivation and introduce beef cattle, as this reserve could carry up to 1000 head of cattle. However, when this program was introduced, I realized that the number of horses on this reserve posed a problem.
>
> When **we instituted this program**, there were approximately 200 horses on the reserve which **the Indians use primarily for guiding purposes and, whenever possible, to take them to the traplines**. It was pointed out to the Indians that they were carrying far too many horses and it was suggested that they consider reducing the herd…Now that they have gotten down to approximately two stallions, they insist that a new stud be introduced before disposing of the remaining two stallions.
>
> As previously mentioned, it is **our** intention to introduce cattle to this reserve, possibly this coming fall, and if **our** plans for the reserve reach fruition, then

> horses will be required for managing the herd. I feel that the expenditure of $400.00 for the stud in this instance is justified and I would strictly recommend that resolution for your approval. (RG 10, Volume 10330, File 975/158. Emphasis added.)

In his reply the Department wanted to know: 1. the number of horses in the herd, 2. What use was made of them, were they being raised for resale, 3. what **income** the band received from the horse source, 4. whether the **raising of horses was more lucrative than the raising of cattle** (RG 10, Volume 10330, File No 975/158).

We also know from a letter written by L.D. Sheppard, Superintendent, Fort St. John, to the Indian Commissioner for B.C. dated 8 June 1965, that the Council of the Hudson's Hope Band agreed to release the sum of $3,000.00 for the purpose of purchasing a Band herd on the condition that the Department would contribute a like amount. In this letter Sheppard added:

> **The Indians of this Agency came under Treaty No. 8 which was made June 21st, 1899 and your attention is respectfully directed to that portion which agrees that any band or individual wishing to take up the raising of stock would be granted cattle accordingly**. (RG 10, Volume 10330, File No 975/15-8. Emphasis added.)

Unfortunately we do not know the outcome of this request.

It is clear from the data on the B.C. case that: 1. individuals were farming even at their own personal expense, 2. that bands had received some machinery but this was in a state of disrepair, 3. people were keeping horses which probably were used to maintain the hunting, fishing and trapping economy, 4. the keeping of horses was probably discouraged, 5. the department and its economic development officers implemented DIA policy and individual versions of it, rather than granting agricultural rights under Treaty 8.

2.4.5 Technical Report - Treaty 8 and Agriculture - Problems and Solutions

In his 1900 report Commissioner J.A. Macrae stated:

> It appears that this disinclination to adopt agriculture as a means of livelihood is not wisely entertained, for the more congenial occupation of hunting and fishing are still open and agriculture is not only arduous to those untrained to it, but in many districts it as yet remains untried. A consequence of this preference of old pursuits is that the government will **not be called upon for years** to make those expenditures which are entailed by the treaty **when** the Indians take to the soil for subsistence.

While the written original treaty stipulates tools, implements and cattle would only be provided "once for all" this information was not verbally communicated to the Indians. Subsequent copies of the Treaty (Treaty No. 8 Made June 21, 1899 and Adhesions, reports, Etc., Land Publication No. QS-0576-000 EE-A-16 as quoted above) state a "one for all" provision throughout the text. Thus it has been the general interpretation of Indians, for several reasons, that the Treaty contained a "one for all provision." Further, the Commissioners' report suggests that agricultural provisions could be taken up when hunting, fishing and trapping were no longer viable. Thus, the agricultural provisions were not a one-time deal but an on-going commitment to be implemented when the Indian themselves were ready. No doubt the Indians at the signing of Treaty 8 understood the agricultural provisions in the same manner as did Macrae (who is quoted above).

According to Native peoples' understanding the agricultural provisions under Treaty 8 were a right due them because of the fulfilment of their part of the Treaty - the sharing of land. Agricultural aid is not a gift, it is not a privilege, IT IS A RIGHT.

Even if the "once for all" nature of the Treaty provisions were to be considered, (rather than the spirit and intent of Treaty 8), agricultural treaty rights were not met because the Department failed to maintain initial development by providing the expert supervision (as recommended by its resident officers, and the bands themselves, at critical points in the farming history). Further, the Department of Indian Affairs instituted farming programs when it wanted, rather than when the Indians requested it.

In the 1970s, the Department of Indian Affairs provided the reserves with equipment and stock to initiate cattle ranching but this was a development plan of the Department's - it did not arise because of the desire of the Indians or bands themselves to take to ranching. The plan was initially effective in establishing and developing gardens, in stock-raising, and in some grain farming. A negative consequence, however, was a lack of vested interest in the success of these projects. A lack of business knowledge and ranching experience resulted in poor management and maintenance. Since none of the bands had a vested interest in farming at that time, no one had the initiative to follow through. Farming provisions should have been implemented when the individuals or bands expressed interest in having treaty rights fulfilled (as outlined in the Treaty), <u>not</u> when the Department of Indian Affairs' initiated policy according to its own agenda.

At the writing of this report, bands and individuals possessing the necessary skills are expressing a keen interest in accessing funding to establish viable agricultural ventures. The

resurgence of interest in agricultural ventures may be due, in part, to the encroachment of oil/gas explorations, large scale agriculture projects and housing development which has had an impact on traditional hunting and trapping areas.

The following are examples of parties interested in agriculture:

- Doig River Reserve: 2 individuals wish to access funding to establish cattle operations on reserve, and for the maintenance and expansion of facilities and equipment.

- Halfway River Reserve: 1 individual wishes to purchase private land to establish an independent agricultural operation.

- Halfway River Reserve: Band interest in expanding land base through purchase of adjoining private lands. This is as a result of surrounding lands being purchased by conglomerates.

- Halfway River Reserve: Agriculture and grazing leases are being tied up by individuals thus restricting operations.

- Halfway River Reserve: 2 individuals wish to access funding to re-establish cattle operation and for the maintenance and expansion of facilities and equipment.

- West Moberly Reserve: 1 individual wishes to purchase tractor and attachments/implements to start market garden and winter snow removal.

- Saulteaux Reserve: 1 individual wishes to access funding to expand personal cattle operation and to purchase an off-reserve farm for himself and family.

- Saulteaux Reserve: 1 individual encountering problems with the Ministry of Forests regarding a lease (where he operates a trapline). He cannot afford to put cattle on the lease.

- Fort Nelson Indian Reserve: Individuals currently raising bison north of the 57 degree latitude are hampered by restrictions that do not permit farming of wood bison, nor do they permit game farming of wood bison north of the 57th. This individual is in a "catch 22" position as a result. Suggestions have been made for an exchange of breeds and an exclusion on the licensing but with no results.

Many Native individuals have a vision of economic stability for themselves and their families through agriculture. This vision is currently impeded by the restrictions they face from commercial lending institutions requiring collateral securities (reserve leases granted to band members are not viewed in any way as secured collateral). Many of these institutions further compound the problem by demanding that the applicant reside for a year off-reserve, incurring normal living expenses. This is not a realistic demand, as several reserves have housing that requires the occupant to pay a substantial mortgage payment to CMHC. The development of viable agricultural operations today requires access to funding and loan guarantees.

1. **Problem: Funding is restricted for those desiring to initiate or enhance farming or ranching.**

a. **Solution: The Federal Government must live up to the spirit and intent of agricultural provisions of Treaty 8, making the benefits relevant in a late 20th century context.**

b. **Solution: The Federal Government must provide access to funding/loans to those individuals/bands starting agricultural ventures.**

c. **Solution: The Federal Government must provide loan guarantees for those accessing funds from mainstream lending institutions and/or develop alternative funding mechanism.**

The inability to access funding for the purchase of stock, equipment or the maintenance thereof, lends to a very strong deterioration in the ambition and motivation of individuals and bands. Many individuals in Treaty 8 communities realize that the government cannot not provide a bottomless pit of funds. Further, these individuals realize they must be accountable in their business operations. They are willing to take loans from any financial institution that will grant them, and to be accountable and responsible for these loans. The greatest need at this moment is cash equity requirements and collateral security from reserve lands to initiate applications.

d. **Solution: Treaty 8 promised Indians assistance in developing agricultural economies. A modern interpretation of Treaty provisions, and the implementation of**

> **these, could go a long way in helping bands and individuals possessing skills and interest to develop a viable agricultural economies.**

Indians understand that the agricultural rights under Treaty 8 are not frozen in time. The Federal Government's commitment to developing economies was an on-going one, not only to provide "shovels and hoes", but to make an investment in the future. A modern up-dated interpretation of the Treaty would view the tool and implement provisions, for example, in the context of modern technology and knowledge.

2. Economic Development

Kinoosayo, one of the principal spokesmen for the Indians at Treaty 8, emphasized his desire to live independently:

> Up to the present I have earned my own living and worked in my own way for the Queen. It is good. The Indians loves his way of living and his free life …Up to the present I have never seen the time when I could not work for the Queen, and also make my own living.

The same opinion was expressed in B.C. Treaty 8 territory when Conroy took the adhesion:

> I arrived at Fort Nelson on Saturday August 13th, two days ahead of time. The greatest part of the next two days was spent talking with the Indians, and explaining the articles of Treaty. Their chief objection was that the country was too big to sell for a few dollars and that they could make a living in the bush without the aid of government. (Conroy to the Superintendent General of Ottawa, October 29th 1910 RG 10, Volume 8595 C.R.S. File 1/1 5-1)

A IAA-TARR Research Report on Economic Development and the Spirit of the Treaties states:

> In assenting to these three treaties the Indian people realized that although the government was committed to helping them adopt new ways of making a living, real economic development would require a great effort on their part. Archival evidence from the period immediately following each of the three treaties indicates that [while] many bands [were willing to try agriculture and other occupations]. . . the bands were aware that they could not succeed at **completely changing their economic base** without the type of assistance in the forms of equipment, stock and instruction that was promised in the treaties. (IAA-TARR Research Report n.d. 5-6. Emphasis added.)

> The fact that economic development assistance was promised in the treaties is often regarded as little significance to the government because the government has given assistance to Indians whether they are treaty or not. Yet to the Indian

> people, the fact that these promises were made in the treaties gives them special significance. (IAA-TARR Research Report n.d. 8)

The IAA-TARR Research Report claims that the Department of Indian Affairs interpreted the text of the treaty narrowly or often did not refer to the treaties at all. Nor did they consult with Indian people when creating economic development policies and programs. TARR called on the government of Alberta to develop policies within the context of the spirit and intent of the treaties which they explain as follows:

> Although in the decades following the treaties the Indian people insisted that economic development should be based on the treaties, they seldom referred to the exact written terms of the treaties but rather to the general spirit of treaty promises that **the government would provide a level of assistance which would allow them to progress…**they placed their confidence in these more general assurances of the commissioners. The treaty commissioners promised that the level of assistance would indeed be sufficient to provide an alternative way of making a living for those bands who by choice or by necessity sought alternatives to hunting, fishing and trapping. (IAA-TARR Research Report n.d. 9-10. Emphasis added.)

IAA-TARR gives these conclusions regarding economic development and the spirit and intent of treaties:

1. The text of the treaties are <u>inadequate</u> to provide sound economic development even if they had been implemented to the letter in all cases.

2. It was unrealistic to assume that by providing cattle and implements "once for all" and a small amount of instruction, the governments could enable the Indian people to adapt to totally new economic circumstances.

3. The spirit and intent of the treaties was an ongoing commitment to economic development. (IAA-TARR Research Report n.d. 13)

The Oberle Task Force explained its version of how Treaty 8 relates to economic development:

> The issue of Federal support for economic development as a Treaty right arises in connection with the negotiations that took place around alternative livelihoods to hunting, fishing and trapping. In the course of treaty-making, the Commissioners anticipated that some areas of the region could be suitable for future agriculture and stock-raising and incorporated such a possibility into the Treaty. Accordingly, the Treaty specifies provisions for tools, implements seed, cattle and supplies for one month each year over a period of several years while crops are being planted. Cattle and implements were designated in the written version of the Treaty as a "once-for-all" allotment. Oral history suggests that the Indians did not know about the "once-for-all" qualification. **Their understanding** today is that what was actually negotiated during Treaty making **was an economy based on an**

> **exchange of ceded lands for a sacred federal trust that guaranteed to Indians access to alternative economic opportunities**. (Task Force 1986:33-34. Emphasis added.)

Indians claim, however, that they did not surrender the lands. IAA-TARR writes a different interpretation of the treaties:

> Treaties 6, 7, and 8 made in Alberta, all contained explicit promises of **economic development assistance in partial compensation for the Indian agreement to open their territory to settlement**.

IAA-TARR reports on the contemporary understanding of elders:

> The elders assert that treaties did not remove all responsibility from the Indian. They wanted the necessary assistance to help them learn and eventually become an independent…Economic Development Assistance is a Treaty right, not merely a matter of government policy…This form of assistance was insisted upon by the Indians during treaty negotiations. (IAA-TARR Research Report n.d. A1:1)

2.5 RESERVE LANDS AND LAND IN SEVERALTY

2.5.1 What the Commissioners' Report States

> *The Indians are given the **option of taking reserves or land in severalty**. As the extent of the country treated for made it impossible to define reserves or holdings, and as the **Indians were not prepared to make selections**, we confined ourselves to an undertaking **to have reserves and holdings set apart in the future**, and the Indians were satisfied with the promise that **this would be done when required**. There is no immediate necessity for the general laying out of reserves or the allotting of land. It **will be quite time enough** to do this as advancing settlement makes necessary the surveying of the land. Indeed, the **Indians were generally averse to being placed on reserves. It would have been impossible to have made a treaty if we had not assured them that there was no intention of confining them to reserves**. We had to very clearly explain to them that the provision for reserves and allotments of land were **made for their protection**, and to secure to them in perpetuity **a fair portion of the land ceded**, in the event of settlement advancing.*

2.5.2 What the Text of Treaty 8 States

> *And Her Majesty the Queen hereby agrees and undertakes to lay aside reserves for such bands **as desire reserves**, the same **not to exceed in all one square mile for each family of five** for such number of families as may elect to reside on reserves, or in that proportion for larger or smaller families; **and for such families or individual Indians as may prefer to live apart from band reserves, Her Majesty undertakes to provide land in severalty to the extent of 160 acres to***

> ***each Indian**, the land to be conveyed with a proviso as to non-alienation without the consent of the Governor General in Council of Canada, the selection of such reserves, and lands in severalty, to be made in the manner following, namely, the Superintendent General of Indian Affairs shall depute and send a suitable person to determine and set apart such reserves and lands, **after consulting with the Indians concerned as to the locality which may be found suitable and open for selection**.*
>
> *Provided, however, that Her Majesty reserves the right to deal with any settlers within the bounds of any lands reserved for any band as She may see fit; and also that the aforesaid reserves of land, or any interest therein, may be sold or otherwise disposed of Her Majesty's Government for the use and benefit of the said Indians entitled thereto, with their consent first had and obtained.*
>
> *It is further agreed between Her Majesty and Her said Indian subjects that such portions of the reserves and lands above indicated as may at any time be required for public works, buildings, railways, or roads of whatsoever nature may be **appropriated** for that purpose by Her Majesty's Government of the Dominion of Canada, due compensation being made to the Indians for the value of any improvements thereon, and an equivalent in land, money or other consideration for the area of the reserve so appropriated.*

2.5.3 Discussion

The Indians were promised by the Commissioners and in Treaty 8:

1. The option of taking reserves or land in severalty with amount of land specified in the Treaty text.
2. Reserves or land holdings in the future if so desired.
3. That they would not be placed on reserves.
4. That reserves were for their protection.
5. A fair portion of the land ceded as settlement encroached.
6. Consultation on the choice of suitable locations for reserves and land holdings.
7. Compensation for lands of any type appropriated by government.

The Task Force Report provides an adequate summary of the historical context of the reserve land in severalty issue:

> Many of the Indians during Treaty negotiations resisted being confined to reserves, since it was necessary to range throughout the region in pursuit of their livelihood. The Commissioners acknowledged that the treaty provisions, which

> had been applied to Indians in more southerly climes, had little relevance in the Treaty 8 region. Their response was to offer two options [reserve land and land in severalty]. (Task Force 1986:31)

Treaty 8 simply copies the system of setting aside land for reserves that was developed for the prairies. It has been argued this was a system highly inappropriate for northern conditions because the land was intended for farming as a new economic base to supplement hunting, fishing and trapping throughout the outlying region. While the prairies had lost their economic base and had farm land, the soil in the north was not conducive to many kinds of farming and the Indians still were pursuing hunting, fishing and trapping livelihoods.

A letter, dated 27 November 1900, from Macrae to the Indian Commissioners Office in Winnipeg, raises some important questions on Treaty guarantees for recipients of land in severalty:

> I have the honour to inform you that there are two points in Treaty No. 8 about which question has already arisen, and which, I think should be determined.
>
> 1st. as to the extent of land which an Indian family may receive in severalty. The words of the Treaty read "for such families or individual Indians as may prefer to live apart for reserves, Her Majesty undertakes to provide land in severalty to the extent of 160 acres to each Indian." Is an Indian whose **family numbers 10 souls entitled to 1600 acres or 160 acres**?
>
> 2nd. as to the rights of those taking land in severalty to receive implements stock, etc. It is generally understood that Indians taking land in severalty are to **receive exactly the same benefits as those who take land in a reserve**, and that the moment at which they become entitled to those benefits which are intended for the promotion of agriculture, is the one at which they commence to cultivate their land taken in severalty.
>
> It appears to me to be in the highest degree desirable, in order that the present action may be determined and future complications avoided, to conclude at once what construction is to be put on these points of the treaty.
>
> I may add that I have carefully obtained from betraying any opinion in respect to the quantity of land to be given in severalty, except by offering families 160 acres, but have expressed the view that the Government did not intend to allow Indians taking their land apart from reserves to suffer in any way by so doing. (RG 10, Volume, 3564, File 82 Pt. 21. Emphasis added.)

In the reply, written 5 December 1900, the Indian Commissioner clears up several questions on land in severalty. This letter also serves as an example of Department of Indian

Affairs' thinking in 1900:

> With respect to the 1st. as to the extent of land which an Indian family may receive in severalty. I do not think that there is any ambiguity, the words "**to the extent of 160 acres of each Indian**" determined the matter. Those Indians who elect to go on large reserves get land to the extent of one square mile to each family of five, or in the proportion which is at the rate of **128 acres to each Indian**. The quantity of land for those who take land in severalty was made greater or -160 acres- for two reasons, first, because it was thought desirable to encourage settlement in this matter as congregating large bands of Indians on reserves has not, upon the whole, worked well; secondly, because those who settle in severalty will, in all probability, be more healthy and progressive than those on large reserves, and consequently multiply more rapidly. If a family increases in two or three generations to double or treble the number, they will only have the original allotment to occupy; whereas in large reserves if some families die off, such families as remain, whether they multiply or not, own the whole reserve.
>
> 2nd tThe paragraph in the treaty as to the **right of those taking land in severalty** to receive implements, stock, etc., and in particular, if they receive them, when the distribution is to be made, **are not quite as clear** as they might have been yet the word "for every family so settled", show that in the distribution to be made all **are to be treated alike**. When an Indian who selects and settles upon land in severalty (which is his reserve) is prepared to cultivate the soil or keep stock, he is entitled to receive the articles promised. There may be some difficulty about bulls, as these are furnished to the Chiefs alone; but the **Treaty should not be interpreted too strictly in that regard** - two or three families settled near together in severalty might be allowed to have one.
>
> In short, Mr. Macrae has correctly summarized the intention of the Treaty on the 2nd point which he has raised when he says, "It is generally understood that Indians taking land **in severalty are to receive exactly the same benefits as those" who take land in a reserve**, and that the moment at which they become entitled to those benefits which are intended for the promotion of agriculture, is one at which they commence to cultivate their land taken in severalty. (RG 10, Volume 3564, File 82, Pt. 21. Emphasis added.)

It is apparent, then, that people taking land in severalty were allowed the same assistance in economic development as those who selected reserves.

McCardle describes the difference between Native and non-native interpretations of the Treaty:

> The **Indian interpretation** of the Treaty obligation tended to be substantive [based on the actual use of the land and the need to maintain separate holdings for the purpose of pursuing livelihoods]…[while] the administration's interpretations

> were formal [based on literally calculated acreage, documentary conveyance and limited fields of inheritance]. (McCardle 1977: 47-48. Emphasis added.)

McCardle (1977:19-20) writes of the types of areas protected in severalty cases and relates it to land improvements:

> It is not clear how many people expressed interest in land in severalty ownership at the time of the Treaty…It is difficult to determine whether the **Indian understanding of severalty holdings** included the fact that Government was not ready to allow mixed holdings for one individual of common and several lands…Brief consideration of the setting up of small reserves and severalty holding…leads to the tentative conclusion that the purpose of "taking land apart" was to protect improved land. This included farmland, stopping places, broken ground, houses, stables, hayland and fishing stations. The definition of the holdings as severalties, representing self-sufficient livelihoods (farms, stopping places, hunter-trapper's residences) as distinct from non-severalty special purpose reserves (haylands, fishing stations, etc.) **would seem to follow the spirit of the Treaty**. (Emphasis added.)

McCardle also points to methods of interpretation by government which "devised expedient solutions based on literal interpretations of the Treaty and Indian Act" (McCardle 1977:46-47).

A report from IAA-TARR analyzes requests for land in severalty in Alberta:

> The facts involved in each of these requests for land, as well as in those put in over the following few years, suggest that the **Indian applicants did understand the severalty provisions as a useful device to protect their occupancy of "family" (non-communal) holdings,** including houses, hay grounds, garden, and private enterprises such as stopping places. (TARR 1980:3. Emphasis added.)

2.5.4 B.C. Case study

After the 1900 negotiations, Treaty Commissioner Macrae reported that Treaty Indians did not want or need reserves, but that there were fifteen or sixteen applications for land in severalty by individuals who had, to some extent, taken to agriculture. IAA-TARR noted that had these people been non-Indian they would have qualified for confirmation of their prior holdings either as Metis or as settlers entitled to free grants of lots occupied before the Treaty (IAA-TARR 1980:3). IAA-TARR provides an historical summary of DIA policy regarding land in severalty:

> It is not clear exactly how the severalty provision was explained to the Indians adherents to Treaty 8, either at the initial negotiation sessions or at any adhesions thereafter. The circumstances of later surveys suggests that the idea was discussed in a reasonably clear way in 1899 and 1900, but was not widely promoted thereafter, and was definitely avoided (or even suppressed) by DIAND officials in most consultations over Treaty land allocation after 1910. (IAA-TARR 1980:2)

In 1910 when the Fort Nelson adhesion to Treaty Eight was negotiated, the Provincial Government was adverse to give up land for reserves, and the Federal Government (faced with the political problem of allocating reserves out of rich lands it controlled in the "Peace River Block" within the Province) was anxious to limit the Indians' claims as much as possible. Following much discussion it was advised that the land in severalty option not be carried out in B.C. (Laird to Deputy Minister of Interior, 11 January 1910, RG 10, 8595, File 1/1-11-5-1).

As IAA-TARR (1980:3) reports:

> By 1910, DIA was anticipating resistance from the Province of British Columbia to the setting aside of reserves under Treaty Eight within its territory. The Department thus privately decided that it would be easier to get B.C's assent to surveys by discounting the severalty option and "pushing" the standard 128-acre per person formula as the maximum size of the claim for each band.

When at last reserves in B.C. were selected Inspector Conroy again urges that the

> problem of severalty be obviated by refusing to confirm the small reserve holdings allocated by the Royal Commission on Indian Reserves for B.C. for Indians of Treaty Eight. These Indians he said, should be "given sufficient notice to enable them to select proper reserves" instead of following "the very plan which has failed in the Southern part of Treaty 8 and which an attempt is now being made to rectify". (McCardle 1977:20)

When, by 1939, the Beavers and Slave Bands of Upper Hay River were selecting reserve lands the severalty option was not considered in the negotiations. The Inspector in charge of laying out the reserves, did not offer the choice when the Bands said they wanted to preserve their five small camp grounds. The Inspector said "that he would not recommend the setting aside of small reserves here and there" (McCardle 1977:44).

The following technical report documents the failure of the Crown to uphold the land in severalty provision of Treaty 8 in B.C.

2.5.5 Technical Report -Violation and/or Confirmation of Land in Severalty Rights

As early as 1898 there was ample evidence to suggest that the reserve system did not work. Also noted previously, the land in severalty clause was included in the Treaty because of the distinctive lifestyle of the Northern Bands as differentiated from that of the Plains Bands treated with in the preceding numbered treaties. The Superintendent General of Indian Affairs had explicitly stated that only in the case **where the Indians *preferred* Reserves** over land in severalty were they to be set aside. Although this was the expressed intention of the Department when the Treaty was negotiated, this intention was thwarted prior to the surveying of any lands within the B.C. Treaty 8 area in 1914, and has been denied in all subsequent surveys as well.

In December 1908, Commissioner David Laird wrote to the Secretary of the Department of Indian Affairs concerning problems with Department of Interior surveyors operating in the Treaty 8 area who **"disputed the right of the Indians to hold land in severalty."** He felt compelled to remind the Secretary of the terms of the Treaty, stating:

> I need not remind you that Treaty 8 accorded that privilege to the Indians, and that the privilege was given in accordance with the instructions issued to the Commissioners by the then Superintendent General. I have no information as to what reserves have been laid out in common for Indians of Treaty 8 or what lands have been set apart in severalty; nor have I any report as to what occurred when surveyors of the Indian Department were in that country for the purpose of setting aside land for the Indians.
>
> It seems to me, however, that there **should be no interference with the exercise of the right to hold land in severalty** which the Treaty accords to the Indians, and that if Surveyors of the Department of the Interior are not aware of the provisions of the Treaty it would be well that they should be advised thereof. (NAC, RG 10, Volume 7777, File 27131-5, Indian Commissioner for the Northwest Provinces and Territories, David Laird, to the Secretary, Department of Indian Affairs, 21 December 1908)

By the end of 1909, however, it became apparent that the land entitlement provisions specified in the Treaty for the Treaty 8 Bands in British Columbia **were not going to be pursued according to the terms of the Treaty**. Indian Affairs was considering a different policy with regard to providing land in severalty in British Columbia as opposed to the rest of Treaty 8. Commissioner Laird had reversed the position he had held on the issue just one year previously. On 11 January 1910, he advised his Deputy Minister as follows:

> The last clause about land in severalty is the greatest difficulty; but in inserting it in the Treaty the Commissioners were following their instructions. If practicable,

> **it would be advisable not to carry this clause out in British Columbia**. With respect to reserves the phrase "not to exceed in all one square mile" may lessen the difficulty in dealing with the Indians of that Province within the limits of Treaty (NAC, RG 10, Volume 8595, File 1/1-11-5-1, Volume 1, Commissioner Laird to Deputy Minister, 11 January 1910. Emphasis added.)

Indeed, Inspector Conroy was already carrying this "policy" out in British Columbia. In his 1909 annual report for Treaty No. 8, Inspector Conroy indicated to Frank Pedley, Deputy Superintendent General of Indian Affairs, that he had overtly discouraged the Treaty 8 Indians in B.C. from considering land in severalty:

> The next band dealt with was the Beavers. They want reserves set apart for them somewhere along the north side of the Peace River. I informed them that there was no immediate hurry, as it would be some years before any white settlers would be coming in, and advised them to take every care in selecting their lands in one reserve, **as I considered it better than taking it in severalty**. The chiefs quite agreed with me. (Canada. Sessional Paper No. 27, Report of Indian Agents, Inspector H. Conroy, Report on Treaty No. 8, 30 December 1909, p.186. Emphasis added.)

Mr. Conroy failed to advise the Indians correctly: whether one is Indian or whether one is of European extraction, 160 acres of land is `better' than 128 acres of land. Only when considering the cost of establishing and administering reserves can it be said that less land in one block is better than a larger quantity of land of a standard quality, a monetary consideration which contravenes both the fiduciary and lawful obligations of the Crown to the native signatories, and the spirit and intent of the provisions of Treaty 8. In addition, despite a request by the Fort St. John Chiefs to have land surveyed for them, Conroy told them to wait because there would not be settlers for years. Over the next few years, however, settlers and surveyors swept across the Peace River Block.

In his January 1910 letter, Mr. Laird attempted to deal with this `difficulty' in **British Columbia by advocating abrogating the terms of the Treaty which he had, himself, negotiated** - allegedly in good faith - on the honour of the Crown:

> Under the circumstances, therefore, as an appeal now to the British Columbia Government to grant from its lands such reserves to the Indians of that Province as are mentioned in the Treaty would doubtless be in vain, two courses are open to the Dominion Government:
>
> 1. The Indians of Fort St. John being the only Indians in British Columbia who have give their adhesion to the Treaty, they might be granted reserves of the full size mentioned in the Treaty out of the Peace River block of

> 3,500,000 acres belonging to the Dominion Government in the vicinity of St. John; and to the other Indians within the limits of the Treaty in British Columbia might be allowed the utmost quantity of land that the British Columbia will concede to them near their habitat, and the balance to make up the quantity mentioned in the Treaty might be granted them out of the same Peace River block.
>
> 2. When the Indians who have not yet given their adhesion to the **Treaty are asked to do so they might be told the provision relating to reserves would have to be modified, as they could only be allowed such reserves as the British Columbia Government is willing to grant.** The modification, except with respect to lands in severalty, would require to be very slight, as the words "not to exceed one square mile for each family of five" almost cover the case. (NAC, RG 10, Volume 8595, File 1/1-11-5-1, Volume 1, Commissioner Laird to Deputy Minister, 11 January 1910. Emphasis added.)

In the Treaty document, however, the phrase "not to exceed in all one square mile" explicitly refers only to the reserve option:

> *And Her Majesty the Queen hereby agrees and undertakes to lay aside **reserves for such bands as desire reserves**, the same not to exceed in all one square mile for each family of five for such number of families as may elect to reside on reserves, or in that proportion for larger of smaller families; and for such families or individual Indians as may prefer to live apart from band reserves, Her Majesty undertakes to provide land in severalty to the extent of 160 acres to each Indian*. (Emphasis added.)

In a memorandum to the Deputy Superintendent General dated 19 January 1910, Chief Accountant Duncan Campbell Scott noted his agreement concerning David Laird's analysis of Treaty land entitlement problems in B.C. Mr. Scott stated:

> The really important points are brought up in the Hon. David Laird's memorandum of the 11th January. His remarks as regards the area of land and land in severalty to be granted under the Treaty in the Province of British Columbia are well considered. **If the Province of British Columbia had not received communication of the intention of the Government to negotiate a Treaty, it might be surmised that the peculiar position of British Columbia as regards Indian lands had been overlooked.** The Province is not bound by any land provisions in a Treaty negotiated by the Dominion Government without their concurrence and we must sooner or later face the difficulties which our own action has created. Upon the whole I do not anticipate any trouble over this matter. The only adhesion to the Treaty so far given by British Columbia Indians is that at Fort St. John taken by Mr. MacRae when he was Commissioner on 30th of May 1900. There are only 99 Indians at Fort St. John and their Reserve

> allotment under the Treaty, supposing that none of them took land in severalty, would be a little less than 20 square miles. I do not think the difficulty is lessened by the phraseology of the land stipulations which read "not to exceed in all one square mile for each family of five." This is the form of words used in several of the Treaties, and the Government has interpreted it liberally to mean in effect one square mile for each family of five. There is no doubt that the relatively small quantity of land can be provided for the St. John Indians by the Dominion Government but if it were impossible to provide so much, an agreement might be made with them in which they could by allowed something in compensation for the loss of the land. The other two chief points at which the British Columbia Indians living within the boundaries of Treaty No. 8 trade are Fort Graham and Fort Nelson. Mr. Inspr. Conroy has been appointed a Commissioner by Order-In-Council to obtain an adhesion of the Indians at Fort Nelson during the coming summer and I would propose in ample time to take up the question of the terms which shall be offered these Indians. **The land provisions might be somewhat varied, and the Indians compensated in some way for restricted reserve areas.** (NAC, RG 10, Volume 8595, File 1/1-11-5-1, Volume 1, Scott to Deputy Superintendent General, 19 January 1910. Emphasis added.)

The informal policy of reserve-preference was also extended to Alberta, as indicated by a letter to a new Departmental surveyor. On 11 June 1913, the Deputy Minister of the Interior forwarded instructions to I.J. Steele (Dominion Land Surveyor), concerning the survey of reserves at Lake Wabiscaw and Grand Prairie. Mr. Steele's instructions included in part the following:

> You will then be good enough to proceed with your party to Lake Wabiscaw… to lay out at that locality the Indian Reserves to which the Indians who make that point their home or headquarters are entitled to under the terms of Treaty No. 8, a copy of which is herewith enclosed.
>
> **You will note that there is a provision in the Treaty for granting lands in severalty to Indians; I may say that if this is insisted upon by one or more of the Indians you will require to survey the different plots of land selected but the Department very much prefers that the lands should be taken *en bloc*. There is, however, no objection to taking the lands in two or more blocks**. **In no case is an Indian to be allowed to take part of his land in severalty and part in common with the band, that is to say, if he chooses to take his land in severalty he must have his lot of land in one portion and not exceeding the area provided for in the treaty.** In the selection of lands for Indians in this case and in every other case in which you may be engaged. It is especially desired that no squatter's or other claims of any kind be included within the limits of the reserve. If this is unavoidable the lot or lots pertaining to these claims should be surveyed including reasonable areas and shown on the plan that they are not included as portions of the reserve. All acknowledged or travelled trails or necessary road allowances should be on your plans. (NAC, RG 10, Volume 4019,

> File 279,393-9, Assistant Deputy and Secretary to I.J. Steele, 11 June 1913. Emphasis added.)

In November 1913, however, prior to the surveying of any of the lands for the B.C. Bands of Treaty 8, W.W. Cory, Deputy Minister of the Interior advised Deputy Superintendent General Indian Affairs Duncan Scott that the Department of the Interior had made the decision that Indians in Alberta and Saskatchewan would be granted lands in severalty if they so desired:

> I beg to advise you that **it has now been decided to have all claims to land in the Northern district of Alberta and Saskatchewan preferred by individual Indians, through occupation prior to survey, duly noted** in the records of the Department in the same way as the claims of white squatters. Instructions to this effect have recently been issued and surveyors engaged in the subdivision of land in the districts mentioned will be asked to make a careful note in their survey returns of all such claims which may be brought to their attention. **It is understood, of course, that the Indians concerned will not have the privilege of making entries for their holdings, but as they are permitted, in accordance with your advice to that effect, to hold land in severalty**, there is no doubt that the proper recording of their claims in our registers will sufficiently protect them in their occupation (NAC, RG 10, Volume 7777, File 27131-1, Deputy Minister of the Interior W.W. Cory to Deputy Superintendent General of Indian Affairs Scott, 26 November 1913. Emphasis added.)

Duncan Campbell Scott chose to interpret the Deputy Minister's decision as pertaining only to occupied lands where Indians had made "improvements", **ignoring entirely the occupation of lands for the purposes of a hunting or trapping livelihood, as was the acknowledged norm in the Treaty 8 area:**

> The course you have taken with regard to land on which any Indian improvements may exist in the Northern districts of Alberta and Saskatchewan is very satisfactory. I shall be obliged if advice is sent from time to time to this Department, accompanied by the Township plans showing the lands that have been noted as having Indian improvements thereon. (NAC, RG 10, Volume 7777, File 27131-1, Deputy Superintendent General of Indian Affairs Scott to Deputy Minister of the Interior W.W. Cory, 10 December 1913)

At about this time, the Royal Commission on Indian Affairs for the Province of British Columbia (known as the McKenna-McBride Commission) had been established, and its first *Confidential Report*, under Order-in-Council dated 10 June 1913, explicitly dealt with a number of issues related to the Indian land question in B.C. With regard to land in severalty the Commission noted that:

> The time has arrived when action should be taken to give the individual Indian security of tenure. That would give an incentive to individual effort, and to the making of permanent homes, and would create a spirit of self reliance, that can never be expected from a system of common Band ownership where the Chief is the practical dictator as to what land a man may use or cultivate. **From a system of holding land in severalty within the Band could be operated a plan which would gradually lead fit Indians to full citizenship, which would be the goal of an enlightened Indian policy** (BCARS, Government Record 672, Box 5, File 4, *Confidential Report of the Royal Commission on Indian Affairs for the Province of British Columbia*, under Order-in-Council dated 10 June 1913, Victoria: Acme Press Limited, 1916, pp. 5-6)

Thus, prior to the surveying of any Indian lands in Treaty 8 B.C., the joint provincial-federal Commission had recommended that a system of land in severalty be instituted throughout British Columbia.

The DIA Chief Accountant also felt compelled to comment on the reserve land versus land in severalty policy, stating that he "would also recommend that if possible, Reserves be surveyed for these and the Fort St. John's band, namely, a large Reserve about 12 miles north of Fort St. Johns, a smaller Reserve at the Halfway River and another at Moberley Lake" (NAC, RG 10, Volume 7777, File 27131-1, Chief Surveyor S. Bray to Deputy Superintendent General).

Chief Surveyor for Indian Affairs, Mr. S. Bray, had seen the preceding documents by the Deputy Minister and D.C. Scott (as is evidenced by his initials), and he subsequently wrote a letter to Deputy Superintendent General of Indian Affairs Scott also advocating disregarding the land in severalty option for the Treaty 8 Indians of B.C. in favour of setting out reserves:

> **Under the treaty these Indians are entitled to choose their reserves in severalty if they so desire**; the Agent [Laird], however, recommends that three reserves be laid out and Inspector Conroy recommends strongly that lands in severalty be not laid out if it can possibly be avoided. It is, therefore, proposed to lay out a small reserve at Lake Moberly South of the Peace River; this will contain about seven sections; a larger reserve at Halfway River North of Peace River and West of Fort St. John and a still larger reserve on the Pine River or at Charlie Lake East of Fort St. John. The surveyor who may be appointed will require to ascertain the numbers of Indians for whom land is to be laid out at each place. (NAC, RG 10, Volume 7777, File 27131-1, Accountant to Scott, 21 February 1914.Emphasis added.)

It should be noted that these recommendations for reserve placement and size were made prior to the adhesion of any of the peoples residing at Halfway River, Cache Creek, Hudson's Hope or Moberly Lake, and without any accurate census.

Duncan Campbell Scott apparently chose to support **this policy *in lieu* of carrying out the terms of the treaty as supported by the Department of the Interior,** and made his position on the intention to avoid honouring the land in severalty option explicit by writing "Mr. D.F. Robertson Please Note" on the Chief Surveyor's memorandum. Dominion Land Surveyor Donald F. Robertson had been appointed to carry out the surveys in British Columbia in the ensuing months.

These policy directions to Robertson to disregard the land in severalty option were not restricted to British Columbia. The Department sought to evade its lawful treaty obligations to provide land in severalty, which it had willingly imposed upon itself, throughout the Treaty 8 territory.

On 27 April 1915, in the season following his surveys at Fort St. John, Mr. Robertson was instructed to survey reserves in Alberta and Saskatchewan. According to his instructions:

> Under the conditions of Treaty No. 8, these Indians are entitled to an area in the proportion of 640 acres to a family of five. **They are also entitled to take their lands in severalty, but this is undesirable except in cases where there should be unusual advantage to the Indian in so doing.** (NAC RG 10, Volume 4065, File 412,786-4, J.D. McLean Assistant Deputy and Secretary to D.F. Robertson, 27 April 1915. Emphasis added.)

In a *General Report of Surveys by Donald F. Robertson, Season 1915*, Mr. Robertson reported on his surveys in Alberta and Saskatchewan, and he indicated that, in all instances, reserves were surveyed *en bloc*, consistent with his instructions (NAC, RG 10, File 4065, File 412,786-4, *General Report of Surveys by Donald F. Robertson, Season 1915*, Donald F. Robertson, 5 January 1916). Further, in a separate report Mr. Robertson noted that he:

> informed Chief Bighead that if he could get his non-treaty friends living in that vicinity and the vicinity of Waterhen Lake to join his band and take treaty before this land was taken up, the Department would add to the present reserve the number of acres to which the new members would be entitled and if the band then wished it could be chosen adjoining the present reserve on the south. (NAC, RG 10, Volume 4065, File 412,786-4, D.F. Robertson to J.D. McLean, 5 January 1916; D.F. Robertson to J.D. McLean, 9 February 1916)

This appeal to a Chief to increase the size of his Band's reserve was an overt and blatant attempt to circumvent/subvert potential requests for land in severalty.

Subsequent to Mr. Robertson's surveys in Alberta, Saskatchewan, and **British Columbia,** no Indian bands for which he conducted surveys received land in severalty even though, previous

to his arrival, at least **two statutory declarations for land had been made by Indians from the Moberly Lake area which were subsequently denied.** The fate of undocumented requests for land in severalty is evident.

The land in severalty controversy continued on other fronts. In 1920, for example, when considering the new treaty in the MacKenzie River District, Deputy Superintendent General of Indian Affairs Scott acknowledged **that land in severalty was an undesirable option provided for in Treaty No. 8**, and should not be "offered" in Treaty 11.

The Indian Affairs policy favouring reserve lands as opposed to lands in severalty is expanded upon by Richard C. Daniel in *Indian Rights and Hinterland Resources.* According Daniel:

> The Indian Affairs agents and administrators generally attempted to uphold the rights of the Indians against those of the settlers who were represented by the powerful Department of the Interior. Their action on the selection of reserve lands was generally guided by a paternalistic concern that the Indians received land of good quality. However, in some cases the primary concern was to minimize the expenses of surveying the reserve and administering the band's affairs. **The attempts to minimize surveying expenses led to a policy of deliberately discouraging Indians from selecting land in numerous small parcels despite the fact that the treaty had specifically provided this option to suit the supposedly different settlement patterns of the forest Indians as compared with the Indians of the southern prairies.** In other cases requests for land for bands in remote areas have been denied or ignored because the chosen land would have been difficult to administer. The Lubicon Lake Band first selected a reserve site in 1946, and the land was temporarily reserved for that purpose. However, the temporary reservation was lifted when the Superintendent of Indian Agencies concluded that the site was too isolated for easy access by road. (Daniel 1977:137-138. Emphasis added.)

The foregoing demonstrates that the agents of the Crown recognized that land in severalty had to be provided to meet the different needs and lifestyles of the Northern Bands, promised land in severalty during Treaty negotiations because they admitted that it would have been impossible to have concluded the Treaty had they not, and subsequently systematically sought rationalizations for evading the obligations they had incurred.

2.6 EDUCATION AND TREATY 8

2.6.1 What the Commissioners' Report States

They seemed desirous of securing educational advantages for their children, but

stipulated that in the matter of schools there should be ***no interference with their religious beliefs.***

As to education, the Indians were assured that there was ***no need of any special stipulation****, as it was the policy of the Government to provide in every part of the country,* ***as far as circumstances*** *would permit, for the education of Indian children, and that the law, which was as strong as a treaty, provided for non-interference with the religion of the Indians in schools maintained or assisted by the Government.*

All the Indians we met were with rare exceptions professing Christians, and ***showed evidences of the work which missionaries have carried on among them for many years****. A few of them have had their children avail themselves of the advantages afforded by boarding schools established at different missions.*

We would add that the Very Reverend Lacombe, who was attached to the Commission, zealously assisted us in treating with the Crees.

2.6.2 What the Text of Treaty 8 States

FURTHER, Her Majesty agrees ***to pay the salaries of such teachers to instruct the children*** *of said Indians as to Her Majesty's Government of Canada may seem advisable.*

2.6.3 Discussion

The plain language of the Treaty 8 document shows that the promises made towards Indian education were minimal. The Commissioners' Report, however, shows that at least some Indians who were Christians wanted and asked for educational advantages. The people who were present at Treaty signing were assured of three things:

1. Government would pay the salaries of teachers for the education of Indian children.

2. Indians would receive education as far as circumstances would permit for Indian children.

3. They would have freedom of religion in education.

A letter, from Grouard to the Minister of the Interior, dated 29 August 1899, stated the church's position on the Treaty education promises. It also provides some historic context to Treaty 8 education rights:

> The treaty with the Indians of Athabaska district has been happily concluded. Schools have been promised to the Indians with the **solemn affirmation that they would be given teachers of the same religious denomination to which they belong themselves**. I wish now to present you some remarks of this subject. The Indians of this country cannot be put on reserves, as has been done on the prairies, they will continue for a long time yet to ramble over the forests in every direction, separated from each other, hunting and trapping to make a living the best way they can as they did before. In such circumstances there is but one practical way of giving them schools and this is by **establishing Boarding Schools in places where children may be brought from hundred miles around**. Now the whole aboriginal population or at least 90 per cent belong to the Roman Catholic Church…
>
> However, there is nothing surprising in that, because the Catholic Church came into the country and converted the people to their church long before any clergy of the Anglican Church put in his appearance. Well, I ask only that some attention to the principle of **proportion to population be made in grants to schools which the government is bound to deliver as part of the treaty**. I submit here a list of Boarding Schools which I beg you to grant for the children of Catholic Indians in the district of Athabaska. (NAC, RG 10, Volume 3952 File 134, 858. Emphasis added.)

Grouard viewed educational guarantees under Treaty 8 as the establishment of residential schools paid for by the government and choice in religious education.

The Department of Indian Affairs, at this time, was attempting to establish policy regarding treaty rights. A letter to the Secretary of the Department of Indian Affairs, Ottawa, dated 29 November 1900, had this to say about education and the Treaty:

> In Treaty 8, the only provision which relates to schools is as follows: "Further Her Majesty agrees to pay the salaries of such teachers to instruct the children of the said Indians as to Her Majesty's Government of Canada may seem advisable."
>
> Upon referring to the report of the Commissioner appointed to negotiate this Treaty I find it stated that the Indians were assured that there was **no need of any special stipulation as to education** as it was the policy of the Government to provide in every part of the country as far as circumstances would permit for the education of Indian children.
>
> The Commissioner in referring to the general characteristic of these Indians say that it is not probable that they will, while present conditions obtain, engage in farming and that the great majority of them will continue to hunt and fish for a livelihood…
>
> From the above you will see that these Indians are of nomadic habits and in my

> opinion are **not yet in a position to make use of the educational advantages offered by boarding schools**. These schools are of greatest assistance to the Missions in the work of making converts and it is therefore natural that they should be desirous of having as many schools of this class as they can obtain assistance for. **I do not think that the Government is called upon to furnish provisions to feed, clothe and educate nearly every Indian child in the Treaty**, especially as their residence of from eight to ten years in the school will . . . unfit them to earn their living in the surroundings in which they would be placed on leaving school.
>
> The returns for the schools now in operation show that the children are taken in at a very early age, and it is only such children that parents are likely to part with, as the older ones are useful to them.
> I think that the Department might **safely move slowly in the direction** indicated by the Bishop but as the Indian Commissioner and Mr. Inspector Macrae have discussed this subject with the Bishop, I think that their opinion in the matter should be had. (NAC, RG 10, Volume 3952, File 134,858. Emphasis added.)

A letter from Macrae to the Honourable Superintendent of General of Indian Affairs, Ottawa, dated 7 December 1900, discusses the education provisions in Treaty 8 as follows:

> Whilst in Treaty 8 during this past summer a point was made in obedience to your orders of inquisition closely into educational requirements of the Indians …
>
> The obligation of the Government in respect to education under Treaty 8 is contained in these words: "Her Majesty agrees to pay the salaries of such teachers to instruct the children of said Indians as Her Majesty's Government of Canada may seem advisable." **This appears to be the promise that day schools will be established**, but the general construction put upon the clause is, **that Indian children will be educated at Government expense in such manner as the Government deems best**. That this construction is fair may be seen from the remarks of the treaty Commissioner contained in their report to you, namely, "As to education the Indians were assured that there was no need of any special stipulation, as it was the policy of the Government to provide in every part of the country, as far as circumstances would permit, for the education of Indian children."
>
> The Establishment and maintenance of **day schools is at present out of the question** because the Indians are not evincing, and are not in the near future likely to evince, and [be inclined] towards collective settlement. **Boarding schools, therefore, must be used if education is to be attempted, and it has only to be decided to what extent these shall be encouraged.**
>
> All persons in the north with whom the matter of Indian education has been discussed agree as to its importance, not only as an economical measure to be demanded for the welfare of the country and the Indians themselves, but in order

> that crime may not spring up and peaceful conditions be disturbed, as that element which is the forerunner and companion of civilization penetrates the country and comes into closer contact with the natives. That **benefit** will accrue to both the **industrial occupants** of the country covered by the Treaty and to the Indians by weaning a number from the chase and inclining them to industrial pursuits is patent to those who see that [the] growing need of intelligent labour must occur as development takes place, and that the diminution in fur and fish demands a decreased pursuit of both, if those who are to continue such pursuits are not to encounter an increase of hardship in a mode of life which already entails a great deal. (RG 10, Volume 3952, File 134,858. Emphasis added.)

From Macrae's interpretation we see that he considers that the education rights under Treaty 8 are "as the Government deems best." While admitting that day schools were desirable, for practical reasons, he encouraged residential schools. His account implicitly suggests that as circumstances permit, educational rights under the treaty change. His letter indicates that the Department in Ottawa did not see treaty rights as frozen and inflexible, but as evolving. This unfortunately is not the case in all interpretations.

> The interpretation of the intent of these provisions is that they were minimal at best. Little more was promised than the education that would be provided for Indian and other Canadian children. As education eventually came to be compulsory up to the age of 16, it would certainly not be difficult to interpret the spirit of this treaty as being one that would see that level of education provided as a matter of right. It is difficult to read any more than that into the education provisions however. Unlike other treaty areas, there is no provision for a schoolhouse on each reserve. (Task Force 1986 A:15-17)

2.6.4 B.C. Case Study on Education

The school records examined for Treaty 8 Tribal Association member bands yielded no mention of education as a treaty right. It appears from preliminary work, that Department of Indian Affairs policy, rather than guarantees made under the Treaty were the order of the day. We can infer what people wanted in education from oral accounts and from letters and correspondence. Madelaine Davis (in an interview 13 June 1993) was present at the informal adhesion in 1914. She stated that educational rights were not mentioned that day. Several Indians from Saulteaux were at residential school by then, and if the education clause (equal in her mind to residential schools) was mentioned they wouldn't have taken treaty. Many parents did not want to send their children away and the literature is full of incidents of people from Treaty 8 being sent away to residential school against the wishes of their parents. Today, some people interpret

this action to be a violation of the treaty rights (guarantee of religious freedom).

Galibois, Indian Agent, writes (31 December 1945) about schooling for Treaty 8 Bands:

> There are no Indian schools in this agency. At Moberly Lake, Indian children of the Saulteau and Hudson Hope Bands have been accepted as pupils at the school operated by the Provincial Department of Education, at no expense to this Department. Seventeen children are enrolled at present and making good progress. The parents are interested; cases of absenteeism are nil and of tardiness, few …At Milepost 233 Alaska Highway, (Prophet River) the Indians are pressing for the establishment of a school <u>at that point.</u> There are eleven Indian families in that Camp…At Milepost 147 Alaska Highway (Beatton River) there are also several Indian Families [sic] who would like to have a school but they are not pressing for it with the same keenness at Milepost 233 (RG 10, Volume 8764, File 985/25-1-002 Pt.1).

It is clear from these accounts that Indians wanted day schools for their children - close to home - and that children kept close to home did well in school. Further, one enlightened individual envisioned changing the school year to accommodate a hunting, fishing, trapping way of life. In an Inspection Report dated November 19, 1951, L.G.P. Waller wrote of the Prophet River Day School:

> The school year could be extended to the period October to July to give the children the months of August and September for berry-picking and hunting. It is only during these two months that the majority of the children are absent from the settlement. (RG 10, Volume 8764 File No. 985/25-1-002)

In a letter to the Superintendent of Indian Affairs, dated 24 January 1954, the people known as the Hudson's Hope or Halfway River Band laid out general concerns about non-fulfilment of Treaty promises:

> Re-reserve no 168 on the Half-way River. We the undersigned, have tried from time to time for passed four or five years, to have reserve here at Stony river (Upper Half-way) instead of as at present some 35 miles down river.
>
> <u>Reasons</u>
> (1) All trap lines, hunting and fishing grounds are here - White settlement is also closing in on present reserve.
> (2) It is a dangerous & hard job taking children down to school in the spring across five creeks beside the river, which are high swift also have floating ice. Some near drowning last spring even thought we waited for week on the trail before trying to cross.
> (3) We would like to have gardens and also grow a little oats for our horses in winter. At present it is a little late in spring to get land ready & plant & we leave to early in the fall to harvest.

> We believe you will agree we need the reserve & school here. We also want it to be a public school. Each treaty time we asked to have these things told to you; are wondering now if our needs have been made known to you. We hope you will give these things your attention right away. It will be a big help to us, as we could also go ahead and do more, went we know how we are fixed. (VFRC, File 975/30-5-168, letter to Superintendent of Indian Affairs, 24 January 1954)

The Fort Nelson bands clearly did not want residential school education for their children. For example, the Superintendent of Education at the Indians Affairs Branch, Ottawa, received a letter, dated 25 January 1956, from R.F. Battle Regional Supervisor of Indian Agencies:

> The Indians at Fontas, Kahntah, Nelson Forks and Francois are extremely isolated and are normally seen by the Superintendent only at Treaty time, unless they happen by chance to be at Fort Nelson. Mr. Galibois **made an effort to persuade these people to send their children to residential school but generally they do not favour the idea**. He will try again this summer to persuade them to attend. I would suggest that they go to the Assumption school because as you know, we are contemplating making arrangements for some of the Slave children at Hay Lakes to attend on a day basis, which should make room for all of the children from the B.C. points mentioned. I should say, however, that we are finding it increasingly difficult to persuade some parents to place their children in residence in north-western Alberta and north-eastern British Columbia… Nevertheless I quite agree with Bishop Coudert that the fifteen children mentioned should be in residential school and we shall try to bring this about. (RG 10, Volume 8764 File No. 985/25-1-002. Emphasis added.)

On 2 July 1957, Moberly Lake residents wrote to the Department of Indian Affairs, Ottawa, of their desire for schooling which accorded with their understanding of their rights:

> Inasmuch as we, the undersigned of Treaty Indians of Moberly Lake, West End and East End Reserve, have had no school bus to take our children to school since Nov. 30th, 1956, and, inasmuch as we have a **real good public school** to which we desire our children to attend regularly, and, since many of us live too far from school four our children to walk; and, inasmuch as we understand that someone sent in a list of supposedly our signatures which were written down against our desire, declaring that we would like a mission school built on the East End Reserve. Inasmuch as we do not want our children to attend a mission school _____ petition you to please provide a bus by the opening of our school next September to take our children to our **own public school**. (RG 10, Volume 8763, File 985/25.1, Pt.1. Emphasis added.)

Although the Treaty specifies the obligation of Her Majesty"to pay the salaries of…

teachers to instruct the children of said Indians…" it is not totally clear what the understanding of this right was. Some people were sending their children to residential school and were Christians. They may have seen this as a fulfilment of their Treaty 8 rights. Others were sent to residential schools against their will and accounts suggest, at least in the 1950s, the withdrawal of family allowance in order to get parents to send their children back to schools. Children, in the Treaty 8 B.C. region, were also removed from T.B. hospitals and put in residential schools for their "own good." Some people today, cite examples like these as violations of the Treaty. In contemporary terms Indians interpret "instruction" to include a wide range of education and vocational types (university, up-grading, vocational training). It would not be difficult to interpret the spirit and intent of Treaty education rights to include vocational training because as McCardle and Daniel's (1976) article points out pupils at residential schools were engaged in daily chores like farming, and that "it appears that the philosophy, if not the curriculum of Indian schools after treaty required some form of 'industrial teaching'" (McCardle and Daniel 1976:88).

Indians do not view educational treaty rights as frozen. Like Macrae's letter from Ottawa implies these rights evolve and change over time.

2.6.5 Technical Report - Treaty 8 and Education - Problems and Solutions

Education and access to education have been, and remain, areas of importance and concern to Treaty 8 Tribal Association member nations. It is a matter of record that the Crown, both within Treaty 8 proper, and through verbal undertakings by its agents, guaranteed to provide for the education of the members of Treaty adherents. It is the position of Treaty 8 Tribal Association member Nations that neither the letter nor the spirit of these guarantees have been honoured. Generally, the levels of fiscal, material, and human resources available to the nations comprising the Treaty 8 Tribal Association are not now, and never have been, sufficient to provide an adequate level of educational service. This is at no time clearer than when the educational services accessible to children and adults in the communities comprising the Association are contrasted with those provided to the general population both provincially and nationally. Specifically, a number of problems associated with the failure to implement Treaty provisions can be identified.

1. **Problem: Inability to provide adequate instructional opportunities to elementary/secondary students in their own communities.**

a. Inadequate funding to attract and to retain high quality teaching staff (a specific provision of Treaty 8), to develop and deliver programs, and to diagnose and assist students with special needs

b. Program offerings/attraction and retention of staff and general quality of education suffer as a result

a. Solution: Investigate and establish mechanism/arrangements by which equity can be achieved (e.g. a formula based on provincial funding levels for schools in similar circumstances).

b. Solution: Make organizational/structural arrangements for the efficient provision of special and support services.

2. Problem: Inadequate educational facilities and shortage of capital funding for construction of proper facilities.

a. First Nations students are asked to attend school in facilities far below standard (which would not be permitted in the non-Native community).

b. Native students attending Federal and Band schools in Treaty 8 communities lose significant instructional time due to school closures related to physical plant problems.

c. Such facilities contribute to a negative attitude toward education, and lost instructional time.

d. Prevents fulfilment of program delivery.

e. Despite governmental acknowledgment that facilities are inadequate, waiting lists for capital money extend into the next century.

a. Solution: Establish minimum standards for school facilities in First Nations communities.

b. Solution: Institute a realistic schedule for educational facility construction supported by adequate funding.

c. Solution: Commitment from government to improve conditions.

3. Problem: Inadequate access to special and support services for schools in First Nations' communities.

a. No access to special education diagnosis/treatment, curriculum development and implementation services.

b. Need for higher level of teacher and program supervision by professional educators (to permit the maintenance of standards).

c. No mechanism for providing services to high-cost special education students (e.g., physically disadvantaged).

a. Solution: Investigate means by which such support services could be made available efficiently.

4. Problem: Retarded Community Development related to lack of educational opportunities and local expertise.

a. Restrictions on access to post-secondary education.

b. Inadequate opportunities for adult upgrading and vocational training.

a. Solution: Eliminate arbitrary limitations on post-secondary assistance.

b. Solution: Institute arrangements to allow adequate access to non-academic training and upgrading related to individual and community needs.

5. Problem: The loss of language and culture in the school system.

a. Schools in First Nations communities are not able to adequately develop and support language and cultural programs.

b. Provincial schools provide minimal support in this area and only do so on a haphazard and voluntary basis.

a. Solution: Consider the best means of providing predictable and proper access to Native students to cultural learning (e.g., the formal establishment and accreditation of Native language and heritage programs on a level similar to that of french in the public school system/ negotiation of a formula for the financial support of such programs).

6. Problem: Inadequate access/inferior quality of adult education and vocational programs for First Nations Peoples.

a. Native educational institutes are not properly supported and are not recognized by many governmental training/retraining programs.

a. Solution: Create a realistic method for the accreditation of adult programs for First Nations People developed with a sensitivity to their needs and aspirations along with a commitment from funding agencies that students enrolling in such programs would be eligible for support.

2.7 MEDICAL CARE

A letter to Thomas White, Superintendent of Indian Affairs, from the Deputy Superintendent of Indian Affairs, dated 21 January 1888, shows the Hudson's Bay Company's reluctance to continue providing medicine to Indians:

> The undersigned begs to state that there would appear to be nothing in Mr. Clark's letter . . . excepting that fact contained in the statement that the Hudson's Bay Company have now to meet with active competition in those parts from other traders. Of that competition he maintains the public now reap the benefits and that therefore, the Hudson's Bay Company should be relieved of the expense of providing for sick and destitute Indians in the Peace River District, as they have no longer the exclusive benefit of the Indian and feel that they can scarcely be called upon to pay the whole of such expense…The undersigned begs to state in regard to the above, that payment of these Accounts would create a precedent for paying similar bills, and in fact, for the Department furnishing relief, when required, to the Indians in the unceded part of the Territories, and, as the same involves a question of Government policy, the undersigned feels that it is only for him to state that no provisions be made by Parliament of money to meet any expenditure outside of Treaty limits. (RG 10, File 19, 502 Pt.1)

This has been recorded as one of the reasons that Indians wanted treaty:

> At a period in history when they were being decimated by diseases brought to their territory by white men, it is natural that the Indians in Treaty 8 area would be concerned about being provided with medicines and medical care. Both had been available through the Hudson's Bay Company and came to be a part of the package of the benefits that were similarly expected by government. (Task Force 1986:14-15)

This is well documented in the Commissioners' Report.

2.7.1 What the Commissioners' Report States

> *They requested **that medicines** be furnished. At Vermilion, Chipewyan and Smith's Landing, **an earnest appeal was made for the services of a medical man**.*

***We promised that supplies of medicines would be put in the charge of persons selected by the Government at different points**, and would be **distributed free** to those of the Indians who might require them. We explained that it would be practically **impossible** for the Government to arrange for **regular medical attendance** upon Indians so widely scattered over such an extensive territory. We assured them, however, t**hat the Government would always be ready to avail itself of any opportunity of affording medical service** just as it provided that the physician attached to the Commission should give **free attendance** to all Indians whom he might find in need of treatment as he passed through the country.*

> *The presence of a medical man was much appreciated by the Indians, and Dr. West, the physician to the Commission, was most assiduous in attending to the great number of Indians who sought his services.*

2.7.2 What the Text of Treaty 8 States

Unlike provisions in the prairie treaties there were no references made to medicines, medical care or a "medicine chest" in the text of the treaty itself (Task Force 1986 A:14-15). Although there were discussions on the issue of health care with the Commissioners, the **written version** of Treaty 8 makes no provision for health care. We know that, at the request of the Indians, The Commissioner committed the government to providing free medicines and medical attendance to the greatest extent possible. "Indians took these **oral commitments as a guarantee that adequate health care and social services would follow the signing of the treaty**" (Task Force 1986:35-36).

2.7.3 Discussion

Jim Cornwall (Peace River Jim), who was a witness to the signing of Treaty 8, wrote in a 1925 letter to the Department of Indian Affairs that:

> The physical condition of the Northern Indians is of such a nature that unless the Federal authorities take notice of same a most serious situation will arise, and it will reflect on the Government, and will tend to show the violation of one of the important principles as laid down in the Treaty.
>
> At the time of the treaty a solemn compact was entered into whereby the Government undertook to take care of Indians, both physically and materially, so long as the grass grew and the waters ran. This may not have been specifically

> stated in the Articles of Treaty, but was incorporated in the remarks of the promises made. Twenty-five years have elapsed since first Treaty No. 8 was made.

Jean-Marie Mustus (grandson of Chief Moostoos who signed the Treaty 8) recalled what he was told regarding treaty health care rights:

> We do not have to pay for medicines in the hospital. My grandfather told me that hospitalization was not to be paid by Indians, nor were taxes, including land taxes. The children still do not pay for education and hospitalization. (Mustus in Price 1979:148)

2.7.4 B.C. Case Study

Medical health rights are not well documented in the files on Treaty 8 B.C. We do know, however, that people were often not receiving adequate medical attention as this letter, dated 2 October 2 1916, from W.J. Reid of the Department of the Interior Dominion and Crown Timber Office at Fort St. John, to the Department of Indian Affairs shows:

> Regarding the handling of the Indians in this district I am taking the liberty of writing to learn whether or not there is not some provision made to supply them with medicine in the case of sickness. I thought as they were government wards this part _____the past 20 days there has been an Indian woman in a teepee about 2 miles out from the post, who is need of care _____without medicine of food. (VFRC 975/30-2-169 Saulteau Reserve)

Although not expressly stated as a right under Treaty 8 we know that Indians were asserting rights to medical care as is shown in the Agent's Report (written by Dr. Brown for the months of July, August, and September, 1939):

> ANNUITIES were paid July and August at Fort St. John, Halfway and Moberly Lake. The meetings were satisfactory in every respect and there were no complaints except from **Moberly Lake where the Indians demanded the right to order an airplane whenever they desired to send anyone to the hospital at Fort St. John without getting the Agent's authority of that of the resident dispenser Mr. Harry Garbitt**. (RG 10, Volume 6923, File 975/28-3 Pt.1)

The problem of transportation and medical promises show up again in this letter, 21 February 1962, from the British Columbia Women's Institute to the Department of Indian Affairs:

> Our organization would like information from your department on the exact function and responsibility of the Indian Agent
>
> We are rather concerned with the poor conditions of Indians in this area, and feel that there has been little constructive effort on the part of the Department to improve conditions. There seems to be a strong tendency for authorities to shift responsibility elsewhere, with the result that no one does anything.
>
> Living and health conditions of the Indians are very poor…Lack of any means of transportation is a real hardship to these Indians at times. There is no means of transporting seriously ill people to the hospital or for those recently discharges to get home. Taxi fare for thirty miles is prohibitive and hitching a ride in below zero weather is not recommended. Recently an Indian woman froze to death while camped out on her way home. (VFRC, File 975/1-2)

Often then, the treaty rights offered under Treaty 8 have been ignored by Department of Indian Affairs and problems have been shifted between the two levels of government. This is also reported to be a contemporary issue that arises, when for example, Treaty 8 Indians want to go to Alberta to specially designed treatment centres.

Misunderstandings about treaty health care rights are reported for other areas. For example, in a letter to the Indian Affairs Branch, Ottawa, from J.G. McGilp, the Acting Superintendent of the Fort Smith Agency, dated 12 September 1960:

> At a meeting of the Fits/Smith Council held in Fort Smith September 7th, Councillor Gibot requested that I write to you concerning free medical aid for Indians. I have assured the people here on several occasions that **medical aid is only provided free if an Indian is unable to meet the costs**. Councillor Gibot quoted the [sections of Treaty 8, page 3 paragraph 4 lines 13, 14, and 15, which deal with medical care].
>
> I advised Councillor Gibot that this was only the preamble to the Treaty, and it was the Treaty itself with which we should be concerned. I have the feeling that Councillor Gibot did not think of these questions himself, and I should be grateful if you would inform us on this matter. (PARC 1/1 11-5 1933-65. Emphasis added.)

A letter to Dr. P.K. Moore (Director of Indian and Northern Health Care Services, Ottawa) from H.M. Jones (Director Indian Affairs Branch, Ottawa?), dated 21 September 1960, neither confirms nor denies treaty rights and the applicability of the Commissioners' Report in this case:

> The Acting Superintendent, Fort Smith Agency has written the attached letter

> concerning free medical aid to Indians . . . .
>
> It is, of course, difficult for our field officers to give an adequate explanation to the Indians on this kind of question and I think you could provide a statement in light of the Commissioner's report which the superintendent could read to the Band Council. (PARC 1/1 11-5 1933-1965)

Unfortunately H.M. Jones does not provide more detail in his response.

> Richard Price writes on the Indian understanding of health care under Treaty 8:
>
> The Indian people apparently understood this as a general commitment to provide health care. Today the elders say that Indians should have doctors, medicine, hospital care, and medical aid free of charge as a treaty right. What is important in the treaty is not the specific promises that were made, but the fact that the government agreed to provide health care and social services to the **extent feasible**. It was not the understanding of the Indian people that they would be restricted forever to what was available in 1899. Some of the elders specifically remember the promises of care for the aged. (Price 1979:98)

Because Treaty 8 Indians do not understand their rights to be frozen at 1899 standards, they claim, as a treaty right, free access to doctors and medicines (promised in the Commissioners' report), as well as access to hospitals, dentists, rehabilitation facilities and other special care institutions. However, relating legal precedent to health care under treaties generally Bartlett (1990:14) writes:

> It has not yet been established that the Canadian courts would today recognize a treaty right to health care beyond that of an obligation to supply drugs and medical supplies.
>
> The cases which have held against the Indians to date have been decided upon a "plain meaning" approach to the interpretation of treaties which is no longer considered by the Supreme Court. The only case in favour of the Indians was Dreaver, a case which relied heavily on the evidence of Chief Dreaver, a witness to Treaty # 6.
>
> Moreover it must be recognized that the Courts will consider each treaty separately - in order to claim a treaty right the claimant must establish that he or she is a beneficiary under a particular treaty.

Any obligation beyond the foregoing is most uncertain. A "fair, large, and liberal" interpretation may suggest a broader obligation, but it is not certain (Bartlett 1990:8). Bartlett concludes by writing that the testimony of elders as to the assurances made at the time of the Treaty was absent from the court cases. In order to receive recognition of a treaty right to health care it is essential

that the evidence of elders be gathered. Using a broad and liberal interpretation we would focus on the words:

> *We assured them however that the Government would always be ready to avail itself of any opportunity of affording medical services just as it provided that the physician attached to the Commission should give free medical attendance to all Indians whom he might find in need of treatment.*

2.8 SOCIAL AND ECONOMIC WELFARE

A letter to P. Dewdney, Superintendent of Indian Affairs, dated 27 February 1890, states:

> Referring to your letter of the 25th instant, and to the letter from Chief Samuel of the Chipewyans, near Isle La Crosse, representing that they be assisted by the Government, I beg to inform you that upon referring to the Chief's letter, I find that it does not state that they are now in want of provisions, but that…"if someone does not come to our assistance in the future, sooner or later, we are certain . . . to die of hunger". Further on, in the letter, the chief states as follows, "we also desire that you would come to our assistance". I take it therefore from the tenor of the Chief's letter, that he is merely apprehensive in regard to the future. As you are aware, the Hudson's Bay Company have funds in their hands belonging to the Government for the prevention of starvation among Indians outside of Treaty limits in the N.W.T. The company has also a post at Ile a La Crosse.
>
> I think that probably the best plan would be to write Mr. Rigley, informing him of the purport of the Chief's letter, and authorizing him if there should be any danger of starvation, to relieve to a moderate extent, any of the Indians in the locality who would otherwise perish for want of supplies. It might be well also to ask Mr. Rigley, whether he has heard that starvation now threatens the Indians at that point. (RG 10, Volume 3708, File 19,502 Pt.1)

Next to the guarantee of livelihood issues, the major concern of the Indians in the Treaty 8 area was the provision of some form of assistance in times of distress. The Hudson's Bay Company, in return for furs, aided trappers at times when game was scarce. As with the medical provisions the Indians had hoped to develop a like relationship with the government at time of the treaty. It appears, from the quotation above, that the government was already aiding Indians in distress in 1890. It was definitely a concern at the Treaty 8 negotiations.

2.8.1 What the Commissioners' Report States

> *Some expected to be fed by the Government after the making of treaty, and* ***all asked for assistance in seasons of distress*** *and urged that the* ***old and indigent***

> *who were no longer able to hunt and trap and were consequently often in distress* ***should be cared for by the Government****.*
>
> *We pointed out that the Government could not undertake to maintain Indians in idleness; that the same means of earning a livelihood would continue after the treaty as existed before it, and that the Indians would be expected to make use of them. We told them that the Government was* ***always ready to give relief in cases of actual destitution****, and that in seasons of distress they would without any special stipulation in the treaty* ***receive such assistance as it was usual to give in order to prevent starvation among Indians in any part of Canada****; and we stated that the attention of the Government would be called to the need of some special provision being made for assisting* ***the old and indigent*** *who were unable to work and dependent on charity for the means of sustaining life.*

2.8.2 What the Text of Treaty 8 States

The Indians' concern over aid in times of distress and care for the old and indigent, as a Treaty right, apparently was not written into the text of Treaty 8. The Government, then, disregarded the requests made to the Commissioners.

2.8.3 Discussion

The Indians were promised by the Commissioner that:

1. The government was always willing to give relief in cases of destitution.

2. When in distress they would receive such assistance as it is usual to give Indians in Canada.

3. That the government would be notified about the request for the old and indigent.

As Price points out (previously cited):

> What is important in the treaty is not the specific promises that were made, but the fact that the government agreed to provide health care and social services to the **extent feasible.** It was not the understanding of the Indian people that they would be restricted forever to what was available in 1899. Some of the elders specifically remember the promises of care for the aged. (Price 1979:98)

2.8.4 B.C. Case Study

Indian Agent Dr. Brown, in a letter to the Secretary of the Indian Affairs Branch, Ottawa, (written 15 January 1939), ties the need for rations in the area to the reduction of territory:

> Permission is requested to extend the itinerary of the Treaty trip this year. After paying at Hudson's Hope and Moberly Lake, instead of returning the same way I would like to swing West through a part of the Dokkie trapping country, crossing the Peace higher up and swinging North up the Ottertail Creek through the Wallace trapping country and so back into our own country… It would take four weeks extra.
>
> I do not know yet whether I am going to be able to spare the time from my medical practise here in order to get around this circuit; but I think it desirable to do so if possible. **Although the fur catch in the North, from recent reports, is better reports from Moberly Lake are bad. Garbitt fears everybody will have to go on rations until we can get more country**. I know more trapping country is imperative in the West and I am taking the matter up with Commissioner Mackay…(RG 10, Volume 6923, File 975/28-3 Pt. 1. Emphasis added.)

Although the need for rations and assistance can probably be tied to non-fulfilment of livelihood guarantees, more research is needed in this area. A particularly poignant letter from the Moberly area to the Department of Indians Affairs, Ottawa, stated this view on social assistance in 1956:

> We all think that when an Indian needs help, he should receive it. If a treaty Indian wants to work on reserve can he get any help he needs? Why cannot a sick Treaty Indian get the same help as a non treaty? Have we Treaty Indians no rights at all? (NAC, RG 10, Volume 6856, File 975-29-2 Pt.2)

This same individual had written to Galibois in 1950 that he had been in ill health, that his trapline was too small to support his family, and that his trapline was crowded with other trappers. He was also considering enfranchisement because he thought the Treaty afforded few rights, and was, in fact, restricting his ability to make a living (NAC, RG 10, Volume 7305, File 8-143-5).

2.8.5 Technical Report - Infrastructure, Development and Housing - Problems and Solutions

What is stated in the Treaty 8 Commissioners' Report is that Indian peoples of Treaty 8 would be able to continue their way of life after signing the Treaty, that there would be no change in their **mode of life**, and that they would not be placed on, or restricted to, reserves.

The Federal Government has not lived up to the promises guaranteed in Treaty 8. Indian people have been subjected to both government policy and provincial game laws which have directly or indirectly changed their livelihood practises. Hunting, fishing and trapping rights have been curtailed and this has interfered with their general mode of life.

Treaty 8 implies, but does not expressly state, that Indians would be able to continue their **life style** without interference from government. One's life style goes beyond economic considerations. It includes the way of life, family structure, religion and customs, and the mental, physical social, moral and spiritual health of the society as a whole and its members.

Indian peoples can no longer make a living by fishing, hunting and trapping as they did at the time of Treaty. This is not their choice. By allowing the environment to be exploited in Treaty 8 so that Treaty 8 peoples can no longer live by their traditional means, the Government has violated the Treaty. In sending children to residential school, the Government has been instrumental in destroying societal values, native languages, child-rearing practises, and religious belief systems; the Government has violated the protection of Indian life-styles directly and indirectly guaranteed in Treaty 8.

The Government is responsible to not only restore the physical environment that they allowed to be destroyed in violation of the Treaty, but also the non-physical environment - the spirit of society - which it played a major part in demoralizing. The government, by taking the land, by placing Indians on reserve (and not offering land in severalty), has an obligation to help develop new economies, rejuvenate hunting, fishing and trapping, and provide adequate housing, infrastructure, and other capital projects on-reserve.

1. Problem: Major backlog of funding.

Within the scope of infrastructure, capital, and housing, there is a major backlog of funding needed. Treaty 8 groups cannot meet immediate needs let alone catch-up with needed capital improvements and housing.

a. Solution: In order for the Federal Government to meet its obligation, the existing Green Plan funding will need to be significantly increased/extended.

It is acknowledged that the Treaty 8 area of B.C. has received some substantial help from the current program, but native peoples have a long way to go to catch-up to the level of service provided for the "average Canadian". Current needs are:

a. Provision of adequate safe/potable water for consumption, bathing, basic sanitation, and fire protection,

b. Collection and treatment of all domestic waste waters in an acceptable manner, and,

c. Provision of adequate housing to meet the needs of extended family units in one household (under one roof). This may necessitate special housing needs for families (those containing the elderly, young single adults and the handicapped).

2. Problem: Monies received for housing and infrastructure are often wasted on temporary measures.

a. Solution: For basic housing and infrastructure needs, the immediate solution is capital and housing dollars. At the escalating cost of construction, we cannot afford to continue with band-aid-solution levels of funding. In northeastern B.C. we have alot of catching up to do.

3. Problem: **There is no industry on reserve and there is a high level of unemployment.**

a. Solution: Once infrastructure is under way and/or at the same time, economic development of cottage industries on reserve and off reserve are required.

4. Problem: **The Government seems more willing to give welfare than to be committed to developing economies.**

a. Solution: The hand-out programs of the past and present regimes encourages welfare and indirectly discourages development. Consultants can give helpful advise and direction, however solutions must come from the people themselves, with direction from their leadership. Joint stewardship and co-management regimes of fish and wildlife and natural resources will reduce dependence and restore pride.

b. The Government must keep its commitment under Treaty to develop economies to s

supplement and/or replace the traditional one.

2.9 ANNUITIES AND GRATUITIES

2.9.1 What the Commissioners' Report States

*In addition to the annuity, **which we found it necessary to fix at the figures of Treaty Six***

2.9.2 What the Text of Treaty 8 States

*And with a view to show the satisfaction of Her Majesty with the behaviours and good conduct of Her Indians, and in extinguishment of all their past claims, She hereby, through Her Commissioners, agrees to make **each Chief a present of thirty-two dollars** in cash, to each **Headman twenty-one dollars**, and to every other Indian of whatever age, of the families represented at the time and place of payment, **twelve dollars.***

*Her Majesty also agrees that next year, and annually afterwards for ever, She will cause to be paid to the said Indians in cash, at suitable places and dates, of which the said Indians shall be duly notified, to **each Chief twenty-five dollars**, each Headman, not exceed four to a large Band and two to a small Band, **fifteen dollars**, and to every other Indian, of whatever age, **five dollars**, the same, unless there be some exceptional reason, to be paid only to heads of families for those belonging thereto.*

2.9.3 Discussion

The Treaty promises:

1. A one-time only **present** to extinguish past claims.

2. Each year (forever) cash payments will be made.

The Commissioners' Report does not detail Indian requests, regarding the amount of the yearly annuity. We know that dollar figures corresponded to the figures of Treaty Six.

Frank Oberle writes in the Task Force Report that:

> This is a very straight forward benefit and one about which there has been limited misunderstanding or complaint, with the possible exception of those who insist that they would not have sold their land for such a small amount. (Task Force 1986 A:21)

In looking at the exact terms of the Treaty, however, the clause is not "straight-forward" because it brings in the entire land cession issue. Did Indian people know that the cash was for extinguishment of claims? If so, why were they given a "present" rather than a payment?

Elders in B.C. say that the Treaty was to help and protect them. Money was taken for "sharing the land with non-natives." Although Elders today claim the amount is small, they hold tenaciously onto the agreement because "it is sacred."

> Minimal as the amount is as noted earlier, it has an important symbolic value to treaty Indians and is taken by many as a symbol of the fact that their treaty with the government is still in effect. (Task Force 1986 A:21)

Gratuities/Assistance

Possibly following the Hudson's Bay Company's policy of gift giving, it was the custom for the Treaty party, and subsequent annuity payment representatives, to supply Treaty 8 groups with staple provisions (flour, salty bacon, tea, sugar) and gifts (tobacco, bankets). Known as "rations", these provisions are not mentioned in the text of the Treaty 8. Alfred Courtoreille clearly remembers what items were given, because he was hired by the Indian Agent to transport the goods. He provides a good account of rations in his interview (June 13, 1993).

It is difficult to discern from the literature when "rations" were given as gifts and when they were given for help in times of distress. Madelaine Davis thinks that, taking these rations undermined Indian self-reliance.

Over the years, there has been an erosion of the gratuities given at annuity payment time and further study is needed to know specifically when certain items were discontinued. For example in a Memorandum, dated 19 June 1954, to the Superintendent General, Deputy Superintendent H.W. McGill discusses the tobacco ration:

> With reference to your directions regarding the discontinuance of the tobacco issue for the Indians under Treaties 8 and 11, I may say that the Departmental officials are taking steps to give effect to this order.
>
> In this connection I feel it my duty to respectfully call your attention to the fact that this issue was first made at the time of the signing of these two treaties, respectively, and has been continued yearly since, the distribution being made at the time of the payment of treaty annuities. I felt certain that the abrupt termination of this issue will cause considerable discontent with the possibilities of other undesired consequences.

> It may be pointed out that although the issue of tobacco is not covered by any treaty stipulation, **there is no doubt that the Indians believe that it is and they will feel that the terms of the treaties are being violated**. (Parc 1/1 11-5. Emphasis added.)

If treaties are to be interpreted as the Indians naturally would have understood them, we may assume that anything that was customarily given at annuity payment time (for example a feast, rations etc.) would have been perceived as a Treaty right.

Albert Davis (in a statement to the Elders' Council Meeting May 29-30, 1991, at Blueberry River) obviously sees rations as a Treaty right which has been violated:

> *Although this is true that when it came to Treaty payment that the people were giving food and shells but now that is all come to an end. Maybe they feel they are giving too much now. The Government now in one year they give us 5 dollars. What can you buy with 5 dollars? That is nothing.*

2.10 TAXATION AND MILITARY SERVICE

2.10.1 What the Commissioners' Report States

> *There was expressed at every point the fear that the making of the treaty would be followed by the curtailment of the hunting and fishing privileges, and many were impressed with the notion that* ***the treaty would lead to taxation and enforced military service.***
>
> *We* ***assured them*** *that the treaty would not lead to any forced interference with their mode of life,* ***that it did not open the way to the imposition of any tax, and that there was no fear of enforced military service.***

2.10.2 What the Text of Treaty 8 States

There is no mention of taxes or military exemption in the text of the actual Treaty document.

2.10.3 Discussion

Oberle's Task Force report writes that:

> it would be difficult however, to misunderstand the intent of the above promises however. There was certainly a promise that they would not be subject to the draft. (Task Force 1986 A:20)

Curiously enough, the Task Force Report does not mention the tax exemption promise. Equally, this promise would be difficult to misunderstand especially if the interpretation was based on the simple plain language approach (an approach used by the courts which does not allow for the examination of the spirit and intent of treaties). The Indians understood, and understand today, that they would not have to pay "any taxes" period. This is one of the few benefits which is not accompanied by a saving clause or statement.

George Desjarlais, Chief of West Moberly, commented that, "Although Indians are protected from conscription under Treaty 8, Indians hid in the hills during the war" (personal communication, August 1993). Others commented that when Indians did serve in the war, they "lost land" and were enfranchised.

2.11 MEDALS AND FLAGS

2.11.1 What the Commissioners' Report States

The Report of the Commissioners does not explicitly mention the provision for medals and flags.

2.11.2 What the Treaty Says

> *FURTHER, Her Majesty agrees that each Chief, after signing the treaty, shall receive a silver medal and a suitable flag, and next year, and every third year thereafter, each Chief and Headman shall receive a suitable suit of clothing.*

2.11.3 Discussion

In addition to annuities and food, a number of other items are granted Indians by Treaty 8. For example, the (one time) provision of medals and flags and the provision for suits for chiefs (every three years).

It is documented that the last medal issued in Treaty 8 country was issued to Chief Big Foot in 1910 (which was turned over to an RCMP museum for safe-keeping). The medal and flag symbolically validate the claims of a nation-to-nation agreement. Some critics claim that words like "the Treaty was to be as long as the sun rose" were never spoken to the Indians. They do not appear in the Commissioners' Report or in the Treaty itself. The medals serve as a symbolic representation of those words (it graphically depicts a sun rising, and the grass growing at the feet of a Chief and a Commissioner shaking hands).

2.12 SELF-GOVERNMENT

2.12.1 What the Commissioners' Report States

> ***None of the tribes appear to have any very definite organization***. *They are held together mainly by the language bond. The chiefs and headmen* ***are simply the most efficient*** *hunters and trappers. They are not law-makers and leaders in the sense that the chiefs and headmen of the plains and of old Canada were.*
>
> *Although in manners and dress the Indians of the North are much further advanced in civilization than other Indians were when treaties were made with them, they stand as much in need of* ***the protection afforded by the law*** *to aborigines as do any other Indians of the country, and are as fit subjects for the paternal care of the Government.*

2.12.2 What the Text of Treaty 8 States

ARTICLES OF A TREATY made and concluded at the several dates mentioned therein, in the year of Our Lord one thousand eight hundred and ninety-nine, ***between Her most Gracious Majesty the Queen*** *of Great Britain and Ireland, by Her Commissioners the Honourable David Laird, of Winnipeg, Manitoba, Indian Commissioner of the said Province and the Northwest Territories; James Andrew Joseph McKenna, of Ottawa, Ontario, Esquire, and the Honourable James Hamilton Ross, of Regina, in the Northwest Territories, of the one part;* ***and the Cree, Beaver, Chipewyan and other Indians, inhabitants of the territory within the limits hereinafter defined and described, by their Chiefs and Headmen, hereunto subscribed, of the other part:-***

WHEREAS, the Indians inhabiting the territory hereinafter defined have, pursuant to notice given by the Honourable Superintendent General of Indian Affairs in the year 1898, been convened to meet a Commission representing Her Majesty's Government of the Dominion of Canada at certain places in the said territory in the present year 1899, to deliberate upon certain matters ***of interest to Her Most Gracious Majesty, of the one part, and the said Indians of the other.***

AND WHEREAS, the Indians of the said tract, duly convened in council at the respective points named hereunder, and being requested by her Majesty's Commissioners to name certain ***Chiefs and Headmen who should be authorized on their behalf to conduct such negotiations and sign any treaty to be founded thereon,*** *and to become responsible to her Majesty for the faithful performance by their respective bands of such obligation as shall be assumed by them, the said Indians have therefore acknowledged for that purpose the several Chiefs and headmen who have subscribed hereto.*

It is further agreed between ***Her Majesty and Her said Indian subjects*** *that such portions of the reserves and lands above indicated as may at any time be required for public works, buildings, railways, or roads of whatsoever nature may be appropriated for that purpose by Her Majesty's Government of the Dominion of Canada . . .*

And with a view to show the satisfaction of Her Majesty with the behaviours and good conduct of ***Her Indians****, and in extinguishment of all their past claims, She hereby, through Her Commissioners, agrees to make each Chief a present of thirty-two dollars in cash, to each Headman twenty-one dollars, and to every other Indian of whatever age, of the families represented at the time and place of payment, twelve dollars.*

2.12.3 Discussion

The Oberle report had this to contribute to the understanding of Treaty 8 and self-government:

> The treaty makes no reference to Indian self-government in explicit political or institutional terms. Nevertheless, it is necessary to assume that the Commissioners, in line with the procedure set down by the Royal Proclamation, adhered to protocol which at least implied that the Crown was dealing with coherent and responsible Indian polities capable of entering into solemn agreements with the crown.
>
> Indeed to this day, Indians in the N.W.T. sector of Treaty 8 [and I might add in B.C.] believe that what had been negotiated with them was a Peace Treaty, rather than a land surrender. The strong implication that Treaties acknowledged that fact of Indian government, not only by the procedures that were followed, but also by the symbols that were employed. The payments to Chiefs and Headmen of differential rates of annuities in perpetuity, and the provision of flags, medals and uniforms appear to amount to a "de facto:" and ceremonial recognition of indigenous governments. In this context, many Indians have argued through the years that subsequent legislated attempts to recast Indian governments into a totally foreign mode [DIA Government] is a violation of the spirit of the treaty. (Task Force 1986:36)

The view of Treaty 8 as a nation-to-nation agreement between the Queen and Native nations is problematic and requires more research in order to illicit the Indian understanding of the nature of the relationship. The Government's position is clearly ambiguous. On the one hand the Treaty lays out in contract form an agreement between the Queen and the groups signatory to the Treaty as a nation-to-nation agreement. On the other hand the Commissioners point out that chiefs and headmen are not leaders as seen in other parts of Canada, and the Treaty refers to Indians as wards - in need of protection and the paternal care of the government.

There is evidence, however, very strong evidence, in favour of the Indian interpretation of the Treaty as a nation-to-nation agreement to insure peace and friendship. Important clauses which show that Treaty 8 was probably explained as a peace and friendship treaty are cited below.

The Commissioners' Report states:

> *Unfortunately the Indians had dispersed and gone to their hunting grounds before the messenger arrived and weeks before the date originally fixed for the meeting, and when the Commissioners get within some miles of St. John the messenger met them with a letter from the Hudson's Bay Company's officer there advising them that the Indians after consuming all their provisions set off on the 1st June in four different bands and in as many different directions for the regular hunt; that there was not a man at St. John who knew the country and could carry word of the*

> *Commissioners' coming, and even if there were it would take three weeks or a month to get the Indians in. Of course there was nothing to do but return. It may be stated, however, that what happened was not altogether unforeseen. We had grave doubts of being able to get to St. John in time to meet the Indians, but as they were* ***reported to be rather disturbed and ill-disposed on account of the actions of miners passing through their country****, it was thought that it would be well to show them that the Commissioners were prepared to go into their country, and that they had put forth every possible effort to keep the engagements made by the Government.*

The Text of Treaty 8 states:

> *AND WHEREAS, the said Indians have been notified and informed by Her Majesty's said Commission that it is Her desire to open for settlement, immigration, trade, travel, mining, lumbering, and such purposes as to Her Majesty may seem meet, a tract of country bounded and described as hereinafter mentioned, and to obtain the consent thereto of Her Indian subjects inhabiting the said tract,* ***and to make a treaty, and arrange with them, so that there may be peace and good will between them and Her Majesty's other subjects,*** *and that Her Indian people may know and be assured of what allowances they are to count upon and receive from Her Majesty's bounty and benevolence.*
>
> *And the undersigned Cree, Beaver, Chipewyan and other Indian Chiefs and Headmen, on their own behalf and on behalf of all the Indians whom they represent,* ***DO HEREBY SOLEMNLY PROMISE and engage to strictly observe this Treaty, and also to conduct and behave themselves*** *as good and loyal subjects of Her Majesty the Queen.*
>
> *THEY PROMISE AND ENGAGE that they will, in all respects, obey* ***and abide by the law; that they will maintain peace between each other, and between themselves and other tribes of Indians, and between themselves and others of Her Majesty's subjects, whether Indians, half-breeds or whites****, this year inhabiting and hereafter to inhabit any part of the said ceded territory; and that* ***they will not molest the person or property of any inhabitants of such ceded tract, or of any other district or country, or interfere with or trouble any person passing or travelling through the said tract or any part thereof, and that they will assist the officers of Her Majesty in bringing to justice and punishment any Indian offending against the stipulations of this Treaty or infringing the law in force in the country so ceded.***

The Paulette case clearly shows, using oral historical evidence, that in the N.W.T., Treaty 8 was presented as a peace and friendship agreement not as a land surrender agreement.

2.13 SPECIAL STATUS AND THE TREATY

2.13.1 What the Commissioners' Report Says

> *We showed them that, whether treaty was made or not, they were* ***subject to the law****, bound to obey it, and liable to punishment for any infringements of it. We pointed out that the* ***law was designed for the protection of all, and must be respected by all the inhabitants of the country, irrespective of colour or origin; and that****, in requiring them to live at peace with white men who came into the country, and not to molest them in person or in property, it* ***only required them to do what white men were required to do as to the Indians****.*
>
> *As to education, the Indians were assured that there was* ***no need of any special stipulation****, as it was the policy of the Government to provide in every part of the country, as far as circumstances would permit, for the education of Indian children, and that* ***the law, which was as strong as a treaty, provided for non-interference with the religion*** *of the Indians in schools maintained or assisted by the Government.*
>
> *We told them that the Government was always ready to give relief in cases of actual destitution, and that in seasons of distress they would without* ***any special stipulation in the treaty receive such assistance as it was usual to give in order to prevent starvation among Indians in any part of Canada;****. . . .*

2.13.2 What the Text of Treaty 8 States

The Treaty text does not concern itself with issues of collective versus individual rights.

2.13.3 Discussion

Although Treaty 8 grants its members special status - rights that the other people in Canada do not have (like exemption from military service), it is clear from the Commissioners' Report, that the issue of granting special rights to one segment of society, was of some concern to government. Conflicting statements include:

1. Treaty 8 Indians should receive special right (hunting, fishing, and trapping rights, tax exemption).

2. Treaty 8 Indians will not be treated differently than other Indians in Canada (education, social assistance).

3. All Canadians are subject to the same laws.

The main issue seems to be the inherent conflict between government policy and rights granted under Treaty.

2.14 CONCLUSIONS - CLAUSE-BY-CLAUSE ANALYSIS

When examining the spirit and intent of Treaty 8, a number of summary statements can be made:

1. The government had a completely different understanding of Treaty 8 than did Native peoples.

2. Government policy implemented through the Department of Indian Affairs overrode both the plain language of the Treaty and the spirit and intent of Treaty 8.

3. Wrangling between the Provincial and the Federal Governments and provincial considerations - game laws and lands - had a negative impact on Treaty 8 beneficiaries.

4. Deep-seated grievances have arisen, both in the past, and at present over the failure of the government to recognize and fulfil Treaty obligations.

The next section of this report addresses a further problem - what happens when the claims system, designed to address grievances, perpetuates discontent and injustice?

3.0 ADDRESSING GRIEVANCES THROUGH THE SPECIFIC CLAIMS PROCESS

3.1 Introduction

It is in the interest of all Canadians to have both specific and comprehensive claims resolved. Claims are made in an effort to redress historical grievances, and failure to resolve them perpetuates discontent and injustice.

We are not making progress in this area because the Government of Canada continues to insist on controlling the entire resolution process. Canada has consistently been called upon by the First Nations and others to establish an independent claims resolution process, but no clear commitment to this reasonable approach has been obtained.

The Government of Canada continues to act as judge and jury over claims against itself, thereby failing to address the conflict of interest that it is in. The main objective of its claims policy continues to be the minimization of the costs of claims settlement. In essence, it is attempting to coerce the long-suffering First Nations into the most minimal settlements possible despite its fiduciary obligation to represent and promote First Nation interests.

3.2 Problems and Proposed Solutions

1. Problem: The existing claims policy is too narrow.

The existing Federal claims policy, in place since 1982, allows claims based only on breaches of the Crown's lawful obligation (excepting some technical defences such as limitation statutes and Crown immunity). This strictly legalistic approach is incompatible with the government's stated objective to redress historical native grievances because these grievances are not limited to breaches of lawful obligation as determined by the white judicial system. They are often grievances based on breaches of the Crown's honour; claims based on principles of equity and claims based on the spirit and intent (as opposed to the letter of) the Treaty.

The policy is so narrow that it will not even accept claims involving loss of Treaty-guaranteed hunting, fishing, and trapping rights. This particular arbitrary restriction has meant that the Treaty 8 First Nations have not been able to redress past breaches of lawful obligation by the Crown such as trapline registration and hunting restrictions; key issues which have always been, and continue to be central to the culture and way of life here. Due to such self-serving restrictions built into the policy by the Department of Indian Affairs, it continues to fail the

people of Treaty 8 in B.C.

a. Solution: Policy overhaul by independent authority.

A thorough renovation of the existing claims policy based on consultations with First Nations is required. Hopefully, this will be brought about by the Joint Canada/First Nations Working Group (J.W.G.)

2. Problem: Claims process is too slow.

Since 1974, only 65 specific claims have been settled in all of Canada. In 1991, there were 623 claims before the Office of Native Claims. The Prime Minister has committed the government to settling all outstanding claims by the year 2000.

a. Solution: Allocation of Additional Resources

Due to limited resources for research and settlement of claims, there are many delays in the process. The obvious solution is to dedicate more realistic resources to facilitate the settlement of claims within the government's own time-line.

3. Problem: The existing claims process is biased.

The existing claims policy forces Bands to submit claims against the Department of Indian Affairs to the Department of Indian Affairs. Claims research allocations are made by the Department, and the Department makes the final decisions on claim validation and settlement. This is a clear conflict of interest; the Department is the respondent in a claim, but it also acts as judge, jury, executioner, and banker.

This results in a profoundly unfair process which is stacked against First Nation claimants. Claims must meet unilateral and arbitrary standards set by the respondent, and then the respondent has the exclusive right to validate or invalidate the claim without even having to justify why (Department of Justice advice to the Office of Native Claims concerning claims validation is not available to the claimants, and so the Department of Indian Affairs is not even obligated to fully disclose or justify to the claimants why their claim has been rejected). Surely this is not a fair or realistic way of settling historical grievances.

A further conflict arises due to the Department's status as (fiduciary) trustee of the First

Nation interest. In this capacity, the Department should be championing the First Nation cause; not obstructing it in the courts with every available technical defence, and not restricting the claims process unilaterally and arbitrarily.

a. Solution: Develop an independent claims process.

The Joint Canada/First Nations Working Group will be addressing this point, but it is obvious that a fully unbiased and independent mechanism beyond the Specific Claims Commission will be required to resolve this fundamental conflict of interest in the claims process. This mechanism would need to have binding authority over funding, policy, and settlement. It must also be in accord with the recommendations set out in the December 14, 1990 Chiefs' Committee on Claims position paper.

There have been a number of evaluations of the existing claims process, and almost all have recommended the establishment of a more independent process. The Canadian Bar Association, the Standing Committee on Aboriginal Affairs, and the Canadian Human Rights Commission, among others, have made such recommendations.

Whatever the independent claims process which is chosen, First Nations claimants within that process should only be responsible for demonstrating a *prima facia* case that their claim is valid, at which point the Department should discharge its fiduciary obligation by requiring itself to demonstrate that it was not in breach of its fiduciary, equitable, legal, or Treaty obligation to the claimant.

b. Solution: First Nations to come to the negotiating table as equals.

This is primarily a question of adequate resources, impartially and equitably distributed to Treaty and Aboriginal Rights Research associations. Long term, stable and increased funding must be made available to the First Nations in order to match the resources available to the Crown. Only if this is achieved can adequate internal capacity to research and negotiate claims be created such that there will be a "level playing field."

For the four year period from 1991 to 1995, the funding allocation for the Federal Government (Department of Justice and the Office of Native Claims) for research on specific claims is $69.6 million, while contributions to First Nations research organizations are less than half of that at $31.2 million. The discrepancy becomes all the more absurd when one considers that INAC's work is centralized and benefits from economies of scale, established expertise, full

access to all information without restrictions or delays, and close proximity to archival and other research sources. This is a basic inequity which must be redressed.

In addition, equal weight must be given to the methods of historical record-keeping by both sides. In the current claims process and court system, greater weight is given to the Crown's documentary records than the First Nation's oral history system. This is ethnocentric and biases the process in favour of the respondent. The First Nation's Treaty signatories did not maintain written records of Treaty negotiations, for example, because the promises made to them would be passed on to younger generations by the elders. Oral history is as legitimate to the First Nations as written history is to the non-indigenous population, and elder testimony should, therefore, be considered a definitive source of historical evidence.

4. Problem: Intergovernmental wrangling over jurisdiction is an impediment to claims settlement.

The province of British Columbia has traditionally been reluctant to become involved in the claims process because, it has argued, this is a federal responsibility. Although this is slowly changing with the implementation of the B.C. Task Force on Claims recommendations in the creation of the B.C. Treaty Commission, it has not yet been demonstrated that there will be effective cooperation between the two orders of government on cost-sharing and claims policy.

In the past, there have been many legal complications arising from the lack of clarity as to jurisdiction. Section 91(24) of the *Constitution Act 1867* clearly gives Canada responsibility for "Indians, and lands reserved for Indians." The definition of "lands reserved for the Indians," however, is unclear. *The British Columbia Terms of Union* (1871), Clause 13 reads as follows:

> The charge of the Indians, and the trusteeship and management of the lands reserved for their use and benefit, shall be assumed by the Dominion Government, and a policy as liberal as hitherto pursued by the British Columbia Government shall be continued by the Dominion Government after the Union.
>
> To carry out such policy, tracts of land of such extent as it has hitherto been the practice of the British Columbia Government to appropriate for that purpose, shall from time to time be conveyed by the Local Government to the Dominion Government in trust for the use and benefit of the Indians… (Emphasis added.)

The practice of the B.C. Government until 1871 had been very *illiberal*, and so the B.C. Government has not considered itself legally obligated to meet the terms of the more liberal, federally negotiated Treaty 8. Consequently, B.C. has been historically reluctant to cooperate or

become involved in the claims process.

Because British Columbia entered confederation with control of natural resources, the *Natural Resources Transfer Agreement* (1930) did not apply to British Columbia. In other provinces where the NRTA was in effect, it required those provinces to make lands available for the settlement of Land and other Treaty Entitlements of First Nations. Because it did not apply to British Columbia, however, the Provincial Government has not considered itself obligated in law to make lands or other resources available to the Federal Crown for the purpose.

In effect, it could be said that the Federal Crown made promises in Treaty No. 8 which it did not have the power to honour in British Columbia without the Province's cooperation. The Province has, to date, largely chosen to not cooperate.

Fortunately for the Bands in northeastern British Columbia, however, the Federal Government owned a large tract of land in the area known as the "Peace River Block." Four Reserves were set aside from this land in 1914, before the Peace River Block was returned to the province in 1930. Since the Federal Government no longer controls the land, any outstanding Treaty Land Entitlements, Hunting Fishing Trapping claims, subsurface rights, or any other natural resource-related, Treaty-based claims cannot now be resolved without provincial cooperation.

a. Solution: Independent claims process which incorporates a trilateral and binding dispute resolution mechanism and cost-share formula.

As part of a new, independent claims process, there will need to be some mechanism for binding the B.C. Provincial Government to it. The current B.C. Treaty Commission is geared primarily to the negotiation of modern-day Treaties to resolve comprehensive claims, and its terms of reference were drafted without adequate consultation with the Treaty 8 First Nations. It does not have binding powers over the Provincial government.

A solution is possible, however. The Saskatchewan Treaty Land Entitlement negotiations process involving the Office of the Treaty Commissioner, for example, serve to demonstrate the feasibility of overcoming intergovernmental jurisdictional bickering through trilateral negotiation. In this negotiation process, a cost-share formula was arrived at which was acceptable to all parties.

The First Nations signed their Treaty with the Crown, which they considered indivisible. The principle of the honour of the Crown is at stake when it enters into Treaty but, through internal divisions, it fails to live up to the terms of that Treaty. The onus, therefore, is on the Provincial and Federal Crowns to promptly and finally resolve the question of jurisdiction one way or the other, and to integrate a binding mechanism to enforce this resolution in an independent claims process.

5. Problem: Grievances upon which claims are based are being generated even as historical grievances are being settled through the claims process.

For every historical claim settled through the claims process, new ones are being created. This is the direct result of the continuing failure of the Crown to fully meet the terms of the spirit and intent of the Treaty, and to recognize its fiduciary obligation to the First Nations.

Over the last 100 years, there have been devastating impacts of various resource-based developments on the land base and ecology of our First Nations' traditional use areas. It should be obvious, by now, that there is a demonstrable and directly causal relationship between these developments and the erosion of the local indigenous traditional economy and mode of life. The maintenance of the First Nation's mode of life is guaranteed in Treaty No. 8, and the failure to protect it constitutes a breach of the Crown's fiduciary obligation to the First Nations, and an ongoing breach of that Treaty.

a. Solution: Thorough Treaty Review.

When the First Nations negotiated the Treaty, they agreed to terms set out verbally at the time, and as they understood them. They did not agree to the text of the Treaty as prepared later, and printed in a foreign language in Ottawa. The written document contains concepts that the First Nations signatories could not have understood and, therefore, could not have agreed to. The courts of Canada are finally recognizing this fact. It is necessary to document the First Nations signatories' understanding of the meaning of the Treaty, and only then will it be possible to proceed to fully implement it.

The "spin-off benefit" of a Treaty Review would be the elimination of arbitrary Government interpretation, definition, or limitation of Treaty benefits. For example, nowhere in the Treaty or Treaty negotiation proceedings was it ever specified that there was a date at which Treaty Land Entitlement becomes fulfilled; it was merely agreed that there would be a reserve land allotment of 128 or 160 acres per person. The existing claims policy, however, has operated with the unilaterally and arbitrarily determined "date of first survey" as the date on which land quantum is to be calculated for a Band. The Band's Treaty Land Entitlement is deemed fulfilled if there is no shortfall on that day, and even if the Band population was to triple within the next generation, no further Treaty Land Entitlement would be acknowledged by the Crown. If the findings of a Treaty Review based on First Nations' understanding of the Treaty was to be integrated into the terms of reference of an independent claims process, a more satisfactory policy would result.

b. Solution: Recognition of the indivisibility and obligation of the Crown in fully implementing the spirit and intent of the Treaty through the recognition of the Treaty as existing between sovereign nations and enforceable as such.

Fully implementing the Treaty is predicated upon it being respected by the Crown for what it was; a peace treaty signed on a nation-to-nation basis. It should also be understood that the First Nations have lived up to their end of the bargain, while the Crown has not. It is up to the Crown, therefore, to begin meeting its Treaty (and Fiduciary) obligations so that claims are not being generated faster than the claims process can resolve them.

c. Solution: Recognition by the Crown of its fiduciary obligation to the First Nations.

In order to prevent the ongoing creation of grievances which could become the source of future claims and, more importantly, in order to ensure that the conduct of the Crown with respect to First Nations is legal, equitable, and in full accord with the spirit and intent of Treaty, the Crown must recognize its fiduciary obligation to the First Nations. With that recognition will necessarily come the acceptance of the standards of conduct of a fiduciary towards the beneficiary, and this will facilitate the reform of the claims process as well as improving relations between the Crown and First Nations in general.

A fiduciary (the Crown) must act with utmost loyalty, and represent the interests of the beneficiary (Indigenous peoples) first. The fiduciary standard does not admit any conflict of interest; the interests of the indigenous peoples prevail over all other interests, be they economic or otherwise. There falls upon the fiduciary many other duties like conducting itself in an honest and fair manner and adhering to the most generous interpretations of the terms of Treaty. If the Crown were to be held to this standard, the potential for the generation of yet more grievances, such as those we are attempting to redress in the claims process, would be minimized.

6. Problem: Inadequate claims process forces claimants into litigation

Due to the flaws in the existing claims process which have already been elaborated, First Nations have been forced into expensive litigation in a legal system which is both inappropriate and almost as flawed as the claims process. Previous to the creation of the Specific Claims Commission, there existed no appeal procedure if a claim was rejected. The creation of the Commission may go some way toward addressing this problem, but it does not help those claimants whose claims fall outside the existing policy.

a. Solution: Legal reform.

As an interim measure, until the Claims Process can be made to fairly and equitably deal with all types of claims, special steps must be taken to accommodate First Nations' claims in the courts.

The first question is which courts should be dealing with claims against the Crown. If the Treaty was signed on a nation-to-nation basis, why are the First Nations obligated to put their cases before the Canadian courts? Ideally, the Canadian government should agree to refer claims involving Treaty to the Hague.

Failing this, a number of considerations should be made in reforming the existing judicial system. First, there should be systematic training of judges in the history of First Nations and modern native culture. In the alternative, a separate bench should be created for judges specializing in Native Law. Second, the remedies available to judges must be broadened because many cases involve a demand for land, not monetary compensation. Third, a litigation fund for Treaty and Aboriginal Rights cases should be established.

Statutory reform should be implemented such that the Crown cannot fall back on technical defences such as Crown immunity, laches, or limitation statutes. As an example of the impropriety of technical defences such as limitation statutes, it was illegal for Indians under the Indian Act to retain legal counsel until 1951. To then argue, as the Crown succeeded in doing in the court case pertaining to the surrender of the Fort St. John Band's Montney Reserve referred to as *Apsassin v. The Queen* that the appellants should have filed a statement of claim prior to this date is absurd, not to mention patently unjust.

If the Crown is in fact committed to affirming Aboriginal and Treaty Rights, it should be in court <u>defending</u> them instead of driving each case to the Supreme Court, or falling back on technical defences. The government, therefore, should reconsider its position in court generally.

Further Recommendations for the Canadian/First Nations Joint Working Group on Claims Process:

a. An Independent Claims Body should have the authority to initiate and expedite discussions on interim measures for preventing further alienation of land or other resources when a preliminary claim is accepted for research and while negotiations are under way.

b. There should be a clause committing the federal and provincial governments to a liberal interpretation of any legal, treaty, or other obligation of the Crown where there is any ambiguity or question.

c. There should be a shifting of the onus to (dis)prove outstanding legal obligation of the Crown onto the federal government as per its fiduciary obligation, once a prima facie argument has been made by the claimant.

d. The provinces must sign on at some stage of this process in order to give an independent claims body the authority to compel them to participate in the implementation of settlement agreements, as per the fiduciary obligation of the provincial Crown, otherwise the whole process becomes an expensive but ineffectual exercise.

e. There must be a mechanism in place to ensure Provincial compliance with the implementation of negotiated settlements.

f. An independent claims body must have recourse to meaningful sanctions beyond going to the media or, alternatively, ending up in a court of law to try to force the federal and provincial crowns to honour their past and present commitments to First Nations.

g. An independent claims body should make the final decision regarding claim validation. And the federal government should make a commitment to abide by those recommendations.

4.0 CONCLUSIONS

This report has examined an issue of critical importance linking most areas of concern to Treaty 8 Tribal Association member nations - the interpretation of Treaty rights according to the spirit and intent of Treaty 8 - the content of the agreement defined previously as First Nations would have naturally understood them at the signing of the Treaty (including the understanding of verbal promises) given the historical and cultural context of the time with the content being construed and resolved in the favour of First Nations. Based on this common theme, problems encountered by the T8TA Communities were examined, and possible solutions were proposed.

The report supports a recent MOU Protocol agreement for negotiations under the B.C. Treaty Commission, because it documents, in a preliminary fashion:

1) The failure of the Canadian government to implement the spirit and intent of Treaty 8;
2) Supports the claim that B.C. laws are in conflict with the spirit and intent of Treaty 8, and further shows that because of "Treaty neglect";
3) B.C. and Canada must recognize and implement the existing B.C. treaty as a meaningful prerequisite to other negotiations.

The Treaty Review Project was designed to take stock of what information is already stored in TARR Archives. While an attempt was made to focus on the specific concerns and interpretations of the B.C. case, the report is predicated partly on the assumption that the spirit and intent of Treaty 8 does not differ significantly from region to region. Materials related to Treaty 8 Alberta and N.W.T. were examined, and applied where appropriate. The evidence in this report confirms that many of the understandings in B.C. were similar to those found elsewhere.

It must be emphasized that the Treaty Review component of the report is the result of four months of research and write-up time, and that the preliminary work barely scratches the surface of the issues raised in this report. As Chief Stewart Cameron (personal communication, August 1993) states:

> A few months is not enough time to document almost 100 years of history on the spirit and intent of Treaty 8. That would require, at minimum, 10 years of work.

While this report recommends some directions for future research, even these suggestions are based on a brief acquaintance with available materials. These materials, which are related to

all facets of the spirit and intent of Treaty 8, are vitally important, not only for well-documented evidence to present to hearings like the ones held by the Royal Commission on Aboriginal Peoples, but as evidence which may be used in court cases and specific claims.

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APPENDIX 1: TEXT OF THE REPORT OF COMMISSIONERS FOR TREATY NO. 8 (1899); ARTICLES OF TREATY NO. 8 (1899)

[The following are excerpts from *Treaty No. 8 Made June 21, 1899 and Adhesions, Reports, Etc.*, Land Publication No. QS-0576-000-EE-A-16]

REPORT OF
COMMISSIONERS FOR TREATY NO. 8
Winnipeg, Manitoba, 22nd September, 1899.

[Preamble at page 121... "Sir,--We have the honour to transmit herewith the treaty..."]

We met the Indians on the 20th, and on the 21st the treaty was signed.

As the discussions at the different points followed on much the same lines, we shall confine ourselves to a general statement of their import. There was a marked absence of the old Indian style of oratory. Only among the Wood Crees were any formal speeches made, and these were brief. The Beaver Indians are taciturn. The Chipewyans confined themselves to asking questions and making brief arguments. They appeared to be more adept at cross-examination than at speech-making, and the Chief at Fort Chipewyan displayed considerable keenness of intellect and much practical sense in pressing the claims of his band. They all wanted as liberal, if not more liberal terms, than were granted to the Indians of the plains. Some expected to be fed by the Government after the making of treaty, and all asked for assistance in seasons of distress and urged that the old and indigent who were no longer able to hunt and trap and were consequently often in distress should be cared for by the Government. They requested that medicines be furnished. At Vermilion, Chipewyan and Smith's Landing, an earnest appeal was made for the services of a medical man. There was expressed at every point the fear that the making of the treaty would be followed by the curtailment of the hunting and fishing privileges, and many were impressed with the notion that the treaty would lead to taxation and enforced military service. They seemed desirous of securing educational advantages for their children, but stipulated that in the matter of schools there should be no interference with their religious beliefs.

We pointed out that the Government could not undertake to maintain Indians in idleness; that the same means of earning a livelihood would continue after the treaty as existed before it, and that the Indians would be expected to make use of them. We told them that the Government was always ready to give relief in cases of actual destitution, and that in seasons of distress they would without any special stipulation in the treaty receive such assistance as it was usual to give in order to prevent starvation among Indians in any part of Canada; and we stated that the attention of the Government would be called to the need of some special provision being made for assisting the old and indigent who were unable to work and dependent on charity for the

means of sustaining life. We promised that supplies of medicines would be put in the charge of persons selected by the Government at different points, and would be distributed free to those of the Indians who might require them. We explained that it would be practically impossible for the Government to arrange for regular medical attendance upon Indians so widely scattered over such an extensive territory. We assured them, however, that the Government would always be ready to avail itself of any opportunity of affording medical service just as it provided that the physician attached to the Commission should give free attendance to all Indians whom he might find in need of treatment as he passed through the country.

Our chief difficulty was the apprehension that the hunting and fishing privileges were to be curtailed. The provision in the treaty under which ammunition and twine is to be furnished went far in the direction of quieting the fears of the Indians, for they admitted that it would be unreasonable to furnish the means of hunting and fishing if laws were to be enacted which would make hunting and fishing so restricted as to render it impossible to make a livelihood by such pursuits. But over and above the provision, we had to solemnly assure them that only such laws as to hunting and fishing as were in the interest of the Indians and were found necessary in order to protect the fish and fur-bearing animals would be made, and that they would be as free to hunt and fish after the treaty as they would be if they never entered into it.

We assured them that the treaty would not lead to any forced interference with their mode of life, that it did not open the way to the imposition of any tax, and that there was no fear of enforced military service. We showed them that, whether treaty was made or not, they were subject to the law, bound to obey it, and liable to punishment for any infringements of it. We pointed out that the law was designed for the protection of all, and must be respected by all the inhabitants of the country, irrespective of colour or origin; and that, in requiring them to live at peace with white men who came into the country, and not to molest them in person or in property, it only required them to do what white men were required to do as to the Indians.

As to education, the Indians were assured that there was no need of any special stipulation, as it was the policy of the Government to provide in every part of the country, as far as circumstances would permit, for the education of Indian children, and that the law, which was as strong as a treaty, provided for non-interference with the religion of the Indians in schools maintained or assisted by the Government.

We should add that the chief of the Chipewyans of Fort Chipewyan asked that the Government should undertake to have a railway built into the country, as the cost of goods which the Indians require would be thereby cheapened and the prosperity of the country enhanced. He was told that the Commissioners had no authority to make any statement in the matter further than to say that his desire would be made known to the Government.

When we conferred, after the first meeting with the Indians at Lesser Slave Lake, we came to the conclusion that it would be best to make one treaty covering the whole of the territory ceded, and to take adhesions thereto from the Indians to be met at the other points rather than to make several separate treaties. The treaty was therefore so drawn as to provide three ways in which assistance is to be given to the Indians, in order to accord with the conditions of the country and to meet the requirements of the Indians in the different parts of the territory.

In addition to the annuity, which we found it necessary to fix at the figures of Treaty Six, which covers adjacent territory, the treaty stipulates that assistance in the form of seed and implements and cattle will be given to those of the Indians who may take to farming, in the way of cattle and mowers to those who may devote themselves to cattle-raising, and that ammunition and twine will be given to those who continue to fish and hunt. The assistance in farming and ranching is only to be given when the Indians actually take to these pursuits, and it is not likely that for many years there will be a call for any considerable expenditure under these heads. The only Indians of the territory ceded who are likely to take to cattle-raising are those about Lesser Slave Lake and along the Peace River, where there is quite an extent of ranching country; and although there are stretches of cultivable land in those parts of the country, it is not probable that the Indians will, while present conditions obtain, engage in farming further than the raising of roots in a small way, as is now done to some extent. In the main the demand will be for ammunition and twine, as the great majority of the Indians will continue to hunt and fish for a livelihood. It does not appear likely that the conditions of the country on either side of the Athabasca and Slave Rivers or about Athabasca Lake will be so changed as to affect hunting or trapping, and it is safe to say that so long as the fur-bearing animals remain, the great bulk of the Indians will continue to hunt and to trap.

The Indians are given the option of taking reserves or land in severalty. As the extent of the country treated for made it impossible to define reserves or holdings, and as the Indians were not prepared to make selections, we confined ourselves to an undertaking to have reserves and holdings set apart in the future, and the Indians were satisfied with the promise that this would be done when required. There is no immediate necessity for the general laying out of reserves or the allotting of land. It will be quite time enough to do this as advancing settlement makes necessary the surveying of the land. Indeed, the Indians were generally averse to being placed on reserves. It would have been impossible to have made a treaty if we had not assured them that there was no intention of confining them to reserves. We had to very clearly explain to them that the provision for reserves and allotments of land were made for their protection, and to secure to them in perpetuity a fair portion of the land ceded, in the event of settlement advancing.

After making the treaty at Lesser Slave Lake it was decided that, in order to offset the delay already referred to, it would be necessary for the Commission to divide. Mr. Ross and

Mr. McKenna accordingly set out for Fort St. John on the 22nd of June. The date appointed for meeting the Indians there was the 21st. When the decision to divide was come to, a special messenger was despatched to the Fort with a message to the Indians explaining the delay, advising them that Commissioners were travelling to meet them, and requesting them to wait at the Fort. Unfortunately the Indians had dispersed and gone to their hunting grounds before the messenger arrived and weeks before the date originally fixed for the meeting, and when the Commissioners get within some miles of St. John the messenger met them with a letter from the Hudson's Bay Company's officer there advising them that the Indians after consuming all their provisions set off on the 1st June in four different bands and in as many different directions for the regular hunt; that there was not a man at St. John who knew the country and could carry word of the Commissioners' coming, and even if there were it would take three weeks or a month to get the Indians in. Of course there was nothing to do but return. It may be stated, however, that what happened was not altogether unforeseen. We had grave doubts of being able to get to St. John in time to meet the Indians, but as they were reported to be rather disturbed and ill-disposed on account of the actions of miners passing through their country, it was thought that it would be well to show them that the Commissioners were prepared to go into their country, and that they had put forth every possible effort to keep the engagements made by the Government.

The Commissioners on their return from St. John met the Beaver Indians of Dunvegan on the 21st day of June and secured their adhesion to the treaty. They then proceeded to Fort Chipewyan and to Smith's Landing on the Slave River and secured the adhesion of the Cree and Chipewyan Indians at these points on the 13th and 17th days of July respectively.

In the meantime Mr. Laird met the Cree and Beaver Indians at Peace River Landing and Vermilion, and secured their adhesion on the 1st and 8th days of July respectively. He then proceeded to Fond du Lac on Lake Athabasca, and obtained the adhesion of the Chipewyan Indians there on the 25th and 27th days of July.

After treating with the Indians at Smith, Mr. Ross and Mr. McKenna found it necessary to separate in order to make sure of meeting the Indians at Wabiscow on the date fixed. Mr. McKenna accordingly went to Fort McMurray, where he secured the adhesion of the Chipewyan and Cree Indians on the 4th day of August, and Mr. Ross proceeded to Wabiscow, where he obtained the adhesion of the Cree Indians on the 14th day of August.

The Indians with whom we treated differ in many respects from the Indians of the organized territories. They indulge in neither paint nor feathers, and never clothe themselves in blankets. Their dress is of the ordinary style and many of them were well clothed. In the summer they live in tepees, but many of them have log houses in which they live in winter. The Cree language is the chief language of trade and some of the Beavers and Chipewyans speak it in addition to their

own tongues. All the Indians we met were with rare exceptions professing Christians, and showed evidences of the work which missionaries have carried on among them for many years. A few of them have had their children avail themselves of the advantages afforded by boarding schools established at different missions. None of the tribes appear to have any very definite organization. They are held together mainly by the language bond. The chiefs and headmen are simply the most efficient hunters and trappers. They are not law-makers and leaders in the sense that the chiefs and headmen of the plains and of old Canada were. The tribes have no very distinctive characteristics, and as far as we could learn no traditions of any import. The Wood Crees are an off-shoot of the Crees of the South. The Beaver Indians bear some resemblance of the Indians west of the mountains. The Chipewyans are physically the superior tribe. The Beavers have apparently suffered most from scrofula and phthisis, and there are marks of these diseases more or less among all the tribes.

Although in manners and dress the Indians of the North are much further advanced in civilization than other Indians were when treaties were made with them, they stand as much in need of the protection afforded by the law to aborigines as do any other Indians of the country, and are as fit subjects for the paternal care of the Government.

It may be pointed out that hunting in the North differs from hunting as it was on the plains in that the Indians hunt in a wooded country and instead of moving in bands go individually or in family groups.

Our journey from point to point was so hurried that we are not in a position to give any description of the country ceded which would be of value. But we may say that about Lesser Slave Lake there are stretches of country which appear well suited for ranching and mixed farming; that on both sides of the Peace River there are extensive prairies and some well wooded country; that at Vermilion, on the Peace, two settlers have successfully carried on mixed farming on a pretty extensive scale for several years, and that the appearance of the cultivated fields of the Mission there in July showed that cereals and roots were as well advanced as in any portion of the organized territories. The country along the Athabasca River is well wooded and there are miles of tar-saturated banks. But as far as our restricted view of the Lake Athabasca and Slave River country enabled us to judge, its wealth, apart from possible mineral development, consists exclusively in its fisheries and furs.

In going from Peace River Crossing to St. John, the trail which is being constructed under the supervision of the Territorial Government from moneys provided by Parliament was passed over. It was found to be well located. The grading and bridge work is of a permanent character, and the road is sure to be an important factor in the development of the country.

We desire to express our high appreciation of the valuable and most willing service rendered by

Inspector Snyder and the corps of police under him, and at the same time to testify to the efficient manner in which the members of our staff performed their several duties. The presence of a medical man was much appreciated by the Indians, and Dr. West, the physician to the Commission, was most assiduous in attending to the great number of Indians who sought his services. We would add that the Very Reverend Lacombe, who was attached to the Commission, zealously assisted us in treating with the Crees.

["Articles" at page 127]

Winnipeg, Man., September 22, 1899.

TREATY NO. 8

ARTICLES OF A TREATY made and concluded at the several dates mentioned therein, in the year of Our Lord one thousand eight hundred and ninety-nine, between Her most Gracious Majesty the Queen of Great Britain and Ireland, by Her Commissioners the Honourable David Laird, of Winnipeg, Manitoba, Indian Commissioner of the said Province and the Northwest Territories; James Andrew Joseph McKenna, of Ottawa, Ontario, Esquire, and the Honourable James Hamilton Ross, of Regina, in the Northwest Territories, of the one part; and the Cree, Beaver, Chipewyan and other Indians, inhabitants of the territory within the limits hereinafter defined and described, by their Chiefs and Headmen, hereunto subscribed, of the other part:-

WHEREAS, the Indians inhabiting the territory hereinafter defined have, pursuant to notice given by the Honourable Superintendent General of Indian Affairs in the year 1898, been convened to meet a Commission representing Her Majesty's Government of the Dominion of Canada at certain places in the said territory in the present year 1899, to deliberate upon certain mattes of interest to Her Most Gracious Majesty, of the one part, and the said Indians of the other.

AND WHEREAS, the said Indians have been notified and informed by Her Majesty's said Commission that it is Her desire to open for settlement, immigration, trade, travel, mining, lumbering, and such purposes as to Her Majesty may seem meet, a tract of country bounded and described as hereinafter mentioned, and to obtain the consent thereto of Her Indian subjects inhabiting the said tract, and to make a treaty, and arrange with them, so that there may be peace and good will between them and Her Majesty's other subjects, and that Her Indian people may know and be assured of what allowances they are to count upon and receive from Her Majesty's bounty and benevolence.

AND WHEREAS, the Indians of the said tract, duly convened in council at the respective points named hereunder, and being requested by her Majesty's Commissioners to name certain Chiefs and Headmen who should be authorized on their behalf to conduct such negotiations and sign any treaty to be founded thereon, and to become responsible to her Majesty for the faithful performance by their respective bands of such obligation as shall be assumed by them, the said Indians have therefore acknowledged for that purpose the several Chiefs and headmen who have subscribed hereto.

AND WHEREAS, the said Commissioners have proceeded to negotiate a treaty with the

Cree, Beaver, Chipewyan and other Indians, inhabiting the district hereinafter defined and described, and the same has been agreed upon and concluded by the respective bands at the dates mentioned hereunder, the said Indians DO HEREBY CEDE, RELEASE, SURRENDER AND YIELD UP to the Government of the Dominion of Canada, for Her Majesty the Queen and Her successors for ever, all their rights, titles and privileges whatsoever, the lands included within the following limits, that is to say:-

Commencing at the source of the main branch of the Red Deer River in Alberta, thence due west to the central range of the Rocky Mountains, thence northwesterly along the said range to the point where it intersects the 60th parallel of north latitude, thence east along said parallel to the point where it intersects Hay River, thence northeasterly down said river to the south shore of Great Slave Lake, thence along the said shore northwesterly (and including such rights to the islands in said lakes as the Indians mentioned in the treaty may possess), and thence easterly and northeasterly along the south shores of Christie's Bay and McLeod's Bay to old Fort Reliance near the mouth of Lockhart's River, thence southeasterly in a straight line to and including Black Lake, thence southwesterly up the stream from Cree Lake, thence including said lake southwesterly along the height of land between the Athabasca and Churchill Rivers to where it intersects the northern boundary of Treaty Six, and along the said boundary easterly, northerly and southwesterly, to the place of commencement.

AND, ALSO the said Indian rights, titles and privileges whatsoever to all other lands wherever situated in the Northwest Territories, British Columbia, or in any other portion of the Dominion of Canada.

TO HAVE AND TO HOLD the same to Her Majesty the Queen and Her successors for ever.

And Her Majesty the Queen HEREBY AGREES with the said Indians that they shall have right to pursue their usual vocation of hunting, trapping and fishing through the tract surrounded as heretofore described, subject to such regulations as may from time to time be made by the Government of the country, acting under the authority of Her Majesty, and saving and excepting such tracts as may be required or taken up from time to time for settlement, mining, lumbering, trading or other purposes.

And Her Majesty the Queen hereby agrees and undertakes to lay aside reserves for such bands as desire reserves, the same not to exceed in all one square mile for each family of five for such number of families as may elect to reside on reserves, or in that proportion for larger or smaller families; and for such families or individual Indians as may prefer to live apart from band reserves, Her Majesty undertakes to provide land in severalty to the extent of 160 acres to each Indian, the land to be conveyed with a proviso as to non-alienation without the consent of

the Governor General in Council of Canada, the selection of such reserves, and lands in severalty, to be made in the manner following, namely, the Superintendent General of Indian Affairs shall depute and send a suitable person to determine and set apart such reserves and lands, after consulting with the Indians concerned as to the locality which may be found suitable and open for selection.

Provided, however, that Her Majesty reserves the right to deal with any settlers within the bounds of any lands reserved for any band as She may see fit; and also that the aforesaid reserves of land, or any interest therein, may be sold or otherwise disposed of Her Majesty's Government for the use and benefit of the said Indians entitled thereto, with their consent first had and obtained.

It is further agreed between Her Majesty and Her said Indian subjects that such portions of the reserves and lands above indicated as may at any time be required for public works, buildings, railways, or roads of whatsoever nature may be appropriated for that purpose by Her Majesty's Government of the Dominion of Canada, due compensation being made to the Indians for the value of any improvements thereon, and an equivalent in land, money or other consideration for the area of the reserve so appropriated.

And with a view to show the satisfaction of Her Majesty with the behaviours and good conduct of Her Indians, and in extinguishment of all their past claims, She hereby, through Her Commissioners, agrees to make each Chief a present of thirty-two dollars in cash, to each Headman twenty-one dollars, and to every other Indian of whatever age, of the families represented at the time and place of payment, twelve dollars.

Her Majesty also agrees that next year, and annually afterwards for ever, She will cause to be paid to the said Indians in cash, at suitable places and dates, of which the said Indians shall be duly notified, to each Chief twenty-five dollars, each Headman, not exceed four to a large Band and two to a small Band, fifteen dollars, and to every other Indian, of whatever age, five dollars, the same, unless there be some exceptional reason, to be paid only to heads of families for those belonging thereto.

FURTHER, Her Majesty agrees that each Chief, after signing the treaty, shall receive a silver medal and a suitable flag, and next year, and every third year thereafter, each Chief and Headman shall receive a suitable suit of clothing.

FURTHER, Her Majesty agrees to pay the salaries of such teachers to instruct the children of said Indians as to Her Majesty's Government of Canada may seem advisable.

FURTHER, Her Majesty agrees to supply each Chief of a Band that selects a reserve, for

the use of that Band, ten axes, five hand-saws, five augers, one grindstone, and the necessary files and whetstones.

FURTHER, Her Majesty agrees that each Band that elects to take a reserve and cultivate the soil, shall, as soon as convenient after such reserve is set aside and settled upon, and the Band has signified its choice and is prepared to break up the soil, receive two hoes, one spade, one scythe and two hay forks for every family so settled, and for every three families one plough and one harrow, and to the Chief for the use of his Band, two horse or a yoke of oxen, and for each Band potatoes, barley, oats and wheat (if such seed be suited to the locality of the reserve), to plant the land actually broken up, and provisions for one month in the spring for several years while planting such seeds; and to every family, one cow, and every Chief one bull, and one mowing-machine and one reaper for the use of his Band when it is ready for them; for such families as prefer to raise stock instead of cultivating the soil, every family of five person, two cows, and every Chief two bulls and two mowing-machines when ready for their use, and a like proportion for smaller or larger families. The aforesaid articles, machines and cattle to be given one for all for the encouragement of agriculture and stock raising; and for such Bands as prefer to continue hunting and fishing, as much ammunition and twine for making nets annually as will amount in value to one dollar per head of the families so engaged in hunting and fishing.

And the undersigned Cree, Beaver, Chipewyan and other Indian Chiefs and Headmen, on their own behalf and on behalf of all the Indians whom they represent, DO HEREBY SOLEMNLY PROMISE and engage to strictly observe this Treaty, and also to conduct and behave themselves as good and loyal subjects of Her Majesty the Queen.

THEY PROMISE AND ENGAGE that they will, in all respects, obey and abide by the law; that they will maintain peace between each other, and between themselves and other tribes of Indians, and between themselves and others of Her Majesty's subjects, whether Indians, half-breeds or whites, this year inhabiting and hereafter to inhabit any part of the said ceded territory; and that they will not molest the person or property of any inhabitants of such ceded tract, or of any other district or country, or interfere with or trouble any person passing or travelling through the said tract or any part thereof, and that they will assist the officers of Her Majesty in bringing to justice and punishment any Indian offending against the stipulations of this Treaty or infringing the law in force in the country so ceded.

IN WITNESS WHEREOF Her Majesty's said Commissioners and the Cree Chief and Headmen of Lesser Slave Lake and the adjacent territory, HAVE HEREUNTO SET THEIR HANDS AT Lessor Slave Lake on the twenty-first day of June, in the year herein first above written.

APPENDIX 2: ELDER INTERVIEW QUESTIONNAIRE ON THE TREATY

General Questions

How was your history passed on before the time of writing? (General statement on the importance of oral history.)

1. Do you know anything about the signing of Treaty 8?

2. Were you present at the signing of the Treaty? If so, how old were you at the time?

3. If you were not there, was there anyone present at the signing of Treaty 8 who told you about it, and if so, what was that person's relation to you? Who are your parents and grandparents?

4. Can you describe the events of the day?

5. Can you tell me some of the names of the Indians and whites present?

6. Did you or your relative (whoever was present at the signing) see a copy of the Treaty? Have you ever seen a copy of the Treaty? Can you read English? Do you know how the Treaty was explained to the people? Translated?

7. Can you tell me what Treaty 8 is? What is your understanding of the Treaty? (Please tell me in as much detail as possible your complete understanding of the Treaty.)

8. Why did people sign the Treaty? What rights were verbally promised by the people presenting the Treaty?

9. Did the Indians give away any rights?

10. Is it your understanding that the people gave away the land?

11. Do you remember when your reserve was first surveyed?

12. What were people doing back then to make a living? As well as hunting, fishing, and trapping were they doing anything else? (Ask what family members were doing.)

Specific Questions to be Asked

13. When the Treaty was signed, were white people coming into the territory and disrupting the people who were here?

14. Did the treaty people present the Treaty to the Indians as a "Peace and Friendship" deal? Is this why people signed? To bring law and order?

15. What do you remember about Indian Agents and your dealings with them? Were people suspicious of the Treaty people? If so, why?

16. Were they worried that hunting, fishing, and trapping rights would be curtailed (threatened) or taken way?

17. Were they worried about taxation and military service? How did the Indians know about TAXATION?

18. What did they understand about education for their children? About religious practises and beliefs? Did the government promise to pay the salaries of teachers?

19. Were they promised assistance in times of distress? For the elderly?

20. Were they promised free medicines and access to the services of a doctor?

21. Did the Treaty Commission promise that the same means of earning a living would continue after the Treaty as existed before it? That the Indians would be expected to make use of their current ways of making a living rather than getting government help (welfare)?

22. Were the people worried about laws that would curtail rights to pursue their livelihood?

23. Did the Commissioner promise that if laws were passed that they would be in the Indians' best interest? Were they told that the Treaty would protect Indians?

24. Did they promise that they would be as free to hunt, fish and trap and other activities as if they never entered into the Treaty?

25. How did they understand their special rights in relation to the Treaty? Did the Indians understand that they were subject to the law like Non-Natives?

26. Were they promised that the Treaty was as strong as the law? What does that mean to you today?

27. Had they heard about the terms that the prairie Indians received through their treaties?

Did they hear about the other groups who signed Treaty 8?

28. What were the people told about agricultural provisions of the Treaty? Did they think that settlement would eventually interfere with hunting, fishing, and trapping?

29. Did the Treaty people tell (warn) them that it might?

30. Did they understand that the Treaty was an on-going relationship and if they wanted agriculture in the future that this option would be open to them? The option to have more land if population grew?

31. Do you think that the Treaty is a Nation-to Nation agreement?

32. Do you think that the government promised to take care of the Indians forever?

33. Why did the Indians not want to take up and be measured for reserves?

34. Did the Treaty people (in B.C.) tell you that as a family you could have land?

35. Did you think that eventually you would have to have reserves? Did you think that if you did not select reserves that you would never have to have them? Were you assured that there was no intention of confining you to reserves?

36. Were you told that reserves would be for your protection?

37. Were you told that settlement would be advancing?

38. Did you understand that settlers coming into the region wanted the timber and minerals and all the good agricultural land?

39. Did you (or your relatives) have any idea what white peoples' development was like?

40. Did you understand that the government could do anything it wanted with the land if that paper (the Treaty) was signed or did you think that Indian people had to be consulted?

41. Were you told that the government could appropriate land (take it without prior permission, and against your wishes, if they paid for it).

42. The Indian people who signed the Treaty were they working for the Indians or the government? Do you think that they did their best for the people (as well as they could given the circumstances).

43. Did anyone ever mention that the Indians gave up their land to the Dominion of Canada? Do you know that that is what the government thinks? If so, when did you find out that?

44. How would you say CEDE, RELEASE, SURRENDER AND YIELD UP RIGHTS, TITLES AND PRIVILEGES in your language. If this was said to the people at the time do you think they would know what it meant?

45. In those days the Chiefs and Headmen were promised suits. How many years would those last? How often would they be worn? Have you ever been shown the medals the Chiefs received? Where are these today?

46. Do you know if your reserve got hoes, spades and other farming tools (like mowing machines and a reaper) when they started to live on the reserve? Did the Chief get horses and oxen? Seeds? Each family get one cow and the Chief the bull?

47. Do you know if most of the families got the money that they were promised each year? Do you know how much each family got per person?

48. Did you think that any parts of the Treaty were a one-time deal? Did you think it would be a forever deal?

49. Have your people kept the terms of the Treaty? Have they generally abided by the law, kept peace with other tribes and with Whites?

50. Have the white people kept their part of the Treaty? In what ways haven't they? Subtly ask about the promises made regarding education and whether they were met by residential schools. Ask about the registered trapline system. Ask what the elder remembers about reserve land, and transactions relating to it (leases, right of ways, surrenders and timber licenses). Ask about multinational corporations' activities.