

MANITOBA TREATY LAND ENTITLEMENT

INTRODUCTION

Most of the Indian Bands of Manitoba are covered by 7 Treaties (Numbers 1 to 6, and 10), each of which specifies particular quantities of land for reserve status. In fact many of these Bands have been waiting upwards of a century to receive their full allocation of land, for a variety of reasons.

Federal Crown land was transferred to the Province of Manitoba through an agreement of 1929 similar to those reached with Alberta and Saskatchewan. The federal and provincial legislation which gave effect to this specified the future availability of land for reserves as follows:

"... the Province will from time to time, upon the request of the Superintendent General of Indian Affairs, set aside, out of the unoccupied Crown lands hereby transferred to its administration, such further areas as the said Superintendent General may, in agreement with the Minister of Mines and Natural Resources of the Province, select as necessary to enable Canada to fulfil its obligations under the treaties with the Indians of the Province,..."

(Section 11, Manitoba Natural Resources Transfer Act)

This agreement was subsequently scheduled under Section 1 of the British North America Act, 1930 (now the Constitution Act, 1950) and thus assumed the nature of a constitutional amendment, as opposed to simple federal or provincial legislation.

By late 1982 the Minister of Indian Affairs and Northern Development had accepted the claims of some 20 Bands in Manitoba under the Specific Claims policy (see CJNS II, 2:547-551), ruling that they were entitled to receive additional land in fulfillment of treaty requirements. Six further claims were under review at that time. On September 15, 1982, the Province of Manitoba established the Manitoba Treaty Land Entitlement Commission under Mr. Leon Mitchell, Q.C. The task of the Commission was to receive representations from interested parties and formulate a set of principles to guide the development of a policy under which Manitoba could meet its obligation to provide land to Canada for the satisfaction of these claims. The Commission reported on January 18, 1983. As these recommendations may well influence policy for several provinces and the federal government, they are clearly important. We

present herewith a summary of the recommendations.

It is worth drawing attention to three features of these, viz.: Section III (2): The value of land to be added to reserves. Section IV: The expropriation of this land for later provincial use. Sections V (1) and VI: The acquisition of privately-held land.

Reader's comments are, of course, invited, but please bear in mind that these are only recommendations. Negotiations continue among the Bands, Manitoba and Canada, and these recommendations are now clearly a part of the negotiating process. The complete report can be obtained by writing the Queen's Printer, 200 Vaughan Street, Winnipeg, Manitoba, R3C 1T5, enclosing \$3.00 and requesting the Report of the Treaty Land Entitlement Commission.

SUMMARY OF RECOMMENDATIONS

I. Tripartite Negotiations and Agreement

I recommend that the authorized representatives of Governments of Canada and Manitoba should forthwith meet with the authorized representatives of the Bands whose unfulfilled land entitlement claims have been "validated" by Canada and those Bands whose claims are still being reviewed by Canada and/or may hereafter be "validated" by Canada. All these Bands have established a Land Entitlement Chiefs Committee whose chairman is Chief Jim Bear of the Brokenhead Reserve. The purpose of the meeting ought to include, inter alia, the making of every reasonable effort to conclude a mutually acceptable agreement in writing that will contain the major terms and conditions to be implemented by each of the parties in order to settle, with finality, each and every outstanding unfulfilled land entitlement due to each Band. Such agreement ought also to contain an enforceable mechanism for implementation of all provisions in the agreement as expeditiously as practical.

II. The Method of Calculating the Amount of Land Remaining due to a Band

1. I recommend that in the interest of uniformity the Saskatchewan formula as agreed be the compromise, rather than the principle of current band membership. If this compromise is accepted by all parties it will mean that the applicable population date in Manitoba will also be December 31, 1976 and "beyond that date entitlement will not grow", as stated by the Hon. Warren Allmand in his letter to Premier Schreyer of Manitoba dated July 13, 1977.
2. In order to encourage the parties to address the negotiations for settlement with dispatch and make every reasonable effort to conclude an agreement, the parties may agree that an independent neutral person

acceptable to each of the parties be appointed to assist their efforts to reach agreement. Such a person ought to be the mediator, and the parties may agree to authorize such a mediator to give an opinion as to the failure of any party to negotiate in good faith and to set out in writing the basis on which he relies in reaching such a conclusion. The party or parties named ought to be given the opportunity to respond promptly and explain its alleged misconduct in writing. After this exchange of correspondence between the mediator and the parties affected the said correspondence may be made public by any party to the negotiations.

III. The Selection of Land; Settlement of Third Party Interests; Funding of Independent Expert Advice

1. a) that each Indian Band with land entitlement be given the opportunity to select provincial Crown land of such quality and in such location as the Band may decide, provided:
 - (i) that selection of land by a Band is within the area ceded by the treaty to which the Band is signatory, and
 - (ii) that selection of land by a Band is from Crown land that was unoccupied Crown land as at July 15, 1930.
- b) that the land which has been selected be transferred to reserve status subject to settlement of any third party interests in the land, in a manner acceptable to such third party and the governments of Canada and Manitoba, provided:
 - (i) that settlement of any third party interests must be reached within a time limitation (one year, for example) as may be agreed by Canada, the Bands and Manitoba, and,
 - (ii) if settlement is not reached within that prescribed and agreed upon term and the third party has not negotiated in good faith, the land will be transferred to reserve status in a manner which honors the existing rights of such third party.
2. I consider that any agreement which will increase productivity, generate greater economic activity, improve the well-being of under-privileged Indian people, and thereby reduce economic dependency on governments, is consistent with the public interest.
3. It is also essential that the Indian Bands be provided with adequate funds to enable them to make a prudent land selection based on independent expert advice as to the viability each parcel of land may furnish to an owner.
4. I would recommend that the work of the experts employed be made available to each party in order to avoid unnecessary duplication and

expense. If work has already been done in this area then the documentation and findings should be shared with all parties. If the parties cooperate in sharing information both time and money will be saved.

IV. Procedure to be followed where Province requires land hereafter transferred to Reserve for bona fide public purpose

1. The Commission recommends that when lands to be transferred to fulfil entitlement may be required by the province for a specific project to serve a bona fide public purpose, that the principle outlined in Treaty 10 (para. 14) shall apply, and that it be given practical effect.
2. The Commission recommends that the procedure which will be described be included in the proposed agreement to govern only lands to be transferred as reserve land to fulfil the outstanding land entitlement due to certain bands. This procedure shall be followed in circumstances where the Province requires a portion of reserve land for a specific project required to serve bona fide public purposes.
3. The procedure recommended is:
 - (a) The province shall undertake to give written notice to Canada and each Band affected of its requirement to obtain certain reserve land. The said notice shall describe the area of land required for the specific project to serve bona fide public purpose.
 - (b) If Canada and the Band(s) which may be affected agree that the public purpose is bona fide, then the authorized representatives of Canada, the Bands affected and those of the Province shall meet not later than 30 days thereafter, unless the authorized representatives unanimously agree otherwise, to hear explained fully the project for which the area of land is needed and the adverse and/or favorable impacts the specific project is expected to have on the Band's assets and/or its residents. If any of the parties, including the Bands affected, question in writing within four weeks after receipt of the notice, the bona fides of the specific project as one required by the Province to serve the public interest, then this issue shall forthwith be referred to the tribunal consisting of one or four persons as hereinafter described, for final and binding determination. If the tribunal determines that the specific project is required to serve the public interest, then the bands affected hereby agree that such determination shall constitute consent by each of those bands to Canada to proceed to do what is necessary to convey the land required to the Province on such terms as the tribunal may have imposed.
 - (c) If neither the Bands affected nor Canada question the bona fides

of the need of the reserve land by the Province for the aforesaid purposes, than it shall be held that each Band affected has given its consent to Canada to do what is necessary to convey the land required by the Province for that project, by reason of such Band(s) having received land entitlements pursuant to the terms of this agreement.

The said representatives shall commence forthwith to negotiate and make every reasonable effort to reach a mutually acceptable settlement concerning compensation and/or selection of alternate lands and/or other forms of compensation which may be acceptable to the parties.

- (d) If the parties agree that a deadlock has occurred in the negotiations concerning alternate lands and/or compensation, or a period of more than three months have elapsed, whichever occurs later, and each party has negotiated in good faith and made every reasonable effort to reach a mutually acceptable settlement, then any party having conducted itself as contemplated herein may give notice in writing that it wishes to refer the matter of compensation for final and binding decision to an impartial tribunal.
- (e) If the party giving notice seeks a four person tribunal, it shall in its notice give the name and address of its nominee, and each of the parties receiving the notice shall in writing give the name and address of its nominees to the other parties within ten (10) working days after receipt of the notice. The nominees of each of the parties shall meet within ten (10) working days of the date of their nomination for the purpose of agreeing to a fourth member who shall be the chairman of the tribunal. If they are unable to agree on a chairman within five (5) working days of their first meeting or if any party has failed to appoint its nominee then the nominees shall so inform the parties, and any party may then request Justice R.A. Matas of the Court of Appeal or Justice Guy Kroft of the Court of Queens Bench or Judge Patrick Ferg of the County Court to appoint the fourth member of the tribunal, or the nominee of any party that failed to nominate its nominee.
- (f) Each of the nominees shall, when agreeing to act, also indicate in writing that he is able and willing to act expeditiously and will make himself available without any undue delay
- (g) The tribunal shall first endeavour to assist the parties to reach a mutually acceptable resolution, and only if no progress is made within a reasonable time in the opinion of the chairman, shall the tribunal hold quasi-judicial hearings, and determine the following

matters;

(i) Whether the specific project as described is or is not for a bona fide public purpose, if that is a matter of contention between the parties referred to the tribunal; and

(ii) If the tribunal decides that it is not for a bona fide public purpose then that is the end of the matter. If it is bona fide, then the tribunal shall decide what ought to be the amount of compensation in land, money, remedial measures or other like compensation, it being understood that the band shall have the opportunity to decide what form or forms of compensation it shall receive.

(iii) The decision of the tribunal shall be in writing and shall be delivered by Registered Mail to each of the parties within 40 working days after the date of the first meeting of the tribunal.

(h) The parties or the tribunal may by unanimous agreement extend or alter any or all time limits mentioned herein.

V. Expropriation of Privately-owned Land; Loss of Revenue by a Municipality or Local Government District; Land used for Public Parks, Wildlife Management Areas or similar Public Purposes; Land occupied or used by third parties

The Commission commends the following proposals of the Land Entitlement Chiefs Committee:

1. That no privately owned land be expropriated to settle land entitlement.
2. That Municipalities and Local Government Districts be reimbursed for net loss in tax revenue due to transfer of land within their jurisdiction to fulfil Indian land entitlement.
3. That Public Parks, Wildlife Management Areas and similar public interest projects not be available for selection to fulfil land entitlement due to a Band.
4. That existing vested rights of present users or occupiers be honored but that if such land is selected and no agreement is reached within a specified period then the land shall be transferred in settlement of entitlement subject to the existing vested rights.

VI. The Practical Necessity for Funding a Land Purchase Policy

The Commission recommends that the parties negotiate a realistic purchase

policy which will enable the bands to purchase from willing owners of quality land such quantum of land as the parties agree the band is entitled to receive and may be available for purchase from time to time in payment of the remaining agreed upon land entitlement due. The parties may consider establishing an interest bearing trust fund to which Canada may contribute annually as a means for giving practical effect to this policy.

VII. Appointment of a Special Advisor to the Premier on Indian Land Entitlement

The Commission is of the view that the Province should appoint a suitable, experienced and competent person to act as a Special Advisor to the Premier on all matters relating to land entitlement with specified scope of authority.

VIII. A Mechanism for Implementation of the Agreement Concluded; A Board of Implementation; A Tribunal to resolve differences as a meaning of Agreement

1. The Commission recommends that parties agree to establish a Board of Implementation with specified duties to monitor progress in implementing terms of agreement.
2. The Commission further recommends establishment of a quasi-judicial tribunal to resolve differences regarding meaning, intention or application of the terms of the agreement similar to tribunals for final and binding settlement of differences as provided in Labour Relations Acts.