

*Treaty 8 Tribal Association  
Treaty and Aboriginal Rights Research*

10233—100th Avenue, Fort St. John, B.C. • V1J 1Y8  
Phone (604) 785-0612 • Fax (604) 785-2021

## **ORAL HISTORY**

### **Information Package**

National Research Directors Conference

23 - 25 February 1994

Vancouver, B.C.

Sample protocols, question sheets, releases, and other material used by the Treaty and Aboriginal Rights Research (TARR) Program of the Treaty 8 Tribal Association in the conduct of Elder interviews.

Prepared and compiled by Peter Havlik

## ELDER INTERVIEW PROTOCOL

Elder Name: \_\_\_\_\_ Band: \_\_\_\_\_

### BEFORE THE INTERVIEW

☐

Locate if required disinterested, qualified interpreter. Arrange salary. Arrange transportation and meeting time and place. Arrange preliminary meeting with interpreter to familiarize him with planned conduct of interview, translation requirements (ie no leading, no abbreviation - must be verbatim).

☐

Arrange attendance of Commissioner for Oaths.

☐

Arrange to bring along release forms, interview question checklist.

☐

Ensure availability of video camera and tape recorder (if required). Ensure sufficient supply of cassettes. Camera and film.

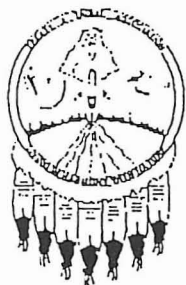
### PRELIMINARY INTERVIEW

☐

Arrange and carry out preliminary familiarization session between interviewer, interpreter, and Elder. Ask if the Elder would object to videotaping, audio recording, and swearing an affidavit. Bring tobacco (sign out first). Arrange acoustically favourable location for interview.

☐

Arrange to bring along release forms, interview question checklist.



*Treaty 8 Tribal Association*  
*Treaty and Aboriginal Rights Research*

10233—100th Avenue, Fort St. John, B.C. • V1J 1Y8  
Phone (604) 785-0612 • Fax (604) 785-2021

## ORAL HISTORY

### Information Package

National Research Directors Conference  
23 - 25 February 1994  
Vancouver, B.C.

Sample protocols, question sheets, releases, and other material used by the Treaty and Aboriginal Rights Research (TARR) Program of the Treaty 8 Tribal Association in the conduct of Elder interviews.

Prepared and compiled by Peter Havlik

## ELDER INTERVIEW PROTOCOL

Elder Name: \_\_\_\_\_ Band: \_\_\_\_\_

### BEFORE THE INTERVIEW

☐

Locate if required disinterested, qualified interpreter. Arrange salary. Arrange transportation and meeting time and place. Arrange preliminary meeting with interpreter to familiarize him with planned conduct of interview, translation requirements (ie no leading, no abbreviation - must be verbatim).

☐

Arrange attendance of Commissioner for Oaths.

☐

Arrange to bring along release forms, interview question checklist.

☐

Ensure availability of video camera and tape recorder (if required). Ensure sufficient supply of cassettes. Camera and film.

### PRELIMINARY INTERVIEW

☐

Arrange and carry out preliminary familiarization session between interviewer, interpreter, and Elder. Ask if the Elder would object to videotaping, audio recording, and swearing an affidavit. Bring tobacco (sign out first). Arrange acoustically favourable location for interview.

☐

Arrange to bring along release forms, interview question checklist.



## INTERVIEW

☐

Sign out tobacco.

☐

Do preliminary research on the Elder's Band to identify flag topics.

☐

Time, date, and Band name of Elder, and translator. Name of interviewer, and cameraman. Translator to introduce self and qualifications.

☐

Ensure camera is focused , and close. Widen shot to include interviewer and translator when they speak . Never lose sight of the Elder when including translator/interviewer.

☐

Do not exhaust the Elder. Better to have two, two hour interviews than one four hour one.

☐

Make sure to use interviewer question checklist.

☐

Begin the interview by trying to get the Elder to talk about the use of oral history by them and their people. This is to establish the importance of oral history and therefore its accuracy . Ask them for a brief autobiography.

☐

Ensure each tape (2 hours) is sworn to by affidavit. Before the tape runs out.

☐

Make sure and take a still picture of your elder at the end of the interview.

**POST INTERVIEW**☐

Ensure direct transport of video/audio cassettes into locked storage (to be designated) at office.

☐

Ensure accurate and full labelling of tapes.

☐

Arrange tape copying.

☐

Arrange tape transcription.

☐

Arrange affidavit of final translation.

# INTERVIEW QUESTION CHECKLIST

Elder Name: \_\_\_\_\_ Band: \_\_\_\_\_

## GENERAL

"The objective is to gather any information the Elder may recall regarding unjust interactions between their people and white authority in the past."

"The purpose is to identify and document breaches of Treaty, statute (Indian Act), or fiduciary trust obligation by the Crown or her agents."

## QUESTIONS

☐

What does the Elder remember about their parents telling them about the signing of the Treaty and what they were promised?

☐

What does the Elder remember about their Reserve land, and transactions pertaining to it, eg. expropriations, leases, right of ways, surrenders, timber licenses, etc?

☐

What does the Elder remember about their Indian Agents and their dealings with them?

☐

What does the Elder remember about family relations (genealogy)?

☐

Hunting/Fishing/Trappings areas and use, focussing on impacts of developments and government actions. Impact of trapline registration and restriction of trapping areas

☐

Do they remember the survey of their Reserve?

☐

Do they remember promises made regarding education and whether they were met, and any problems with the residential schools?

## ELDER INTERVIEW AFFIRMATION

Order No. 92-420

Asking you to make the following affirmation does not mean we are calling you a liar. We believe that you tell the truth. We only ask you to make the affirmation because we must do so according to the law.

You must be aware that the affirmation you are about to give carries the same weight in law as if you were in a court of law.

DO YOU, \_\_\_\_\_, SOLEMNLY PROMISE,  
AFFIRM, AND DECLARE THAT THE EVIDENCE  
GIVEN BY YOU TODAY IN THIS INTERVIEW SHALL  
BE THE WHOLE TRUTH AND NOTHING BUT THE  
TRUTH?

No. 92-420

ORDER FOR THE APPOINTMENT OF  
A COMMISSIONER FOR TAKING AFFIDAVITS

Pursuant to the provisions of the British Columbia *Evidence Act*, I hereby appoint

Mr. Peter Rudolph Joseph Havlik

a Commissioner for Taking Affidavits for British Columbia only in the course of the  
discharge of his/her duties as

Director of Treaty & Aboriginal Rights Research  
Treaty 8 Tribal Association

at

10233 - 100th Avenue  
Fort St. John, British Columbia  
V1J 1Y8

THIS APPOINTMENT IS RESTRICTED AS FOLLOWS:

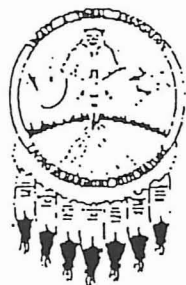
This appointment expires on May 31, 1995

June 1, 1992

Effective Date

Handwritten signature of Colin Robbman in cursive script.

Attorney General



*Treaty 8 Tribal Association*  
*Treaty and Aboriginal Rights Research*

10233—100th Avenue, Fort St. John, B.C. • V1J 1Y8  
Phone (604) 785-0612 • Fax (604) 785-2021

## ELDER INTERVIEW QUESTION SHEET

### Treaty Issues

#### 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 away?

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?

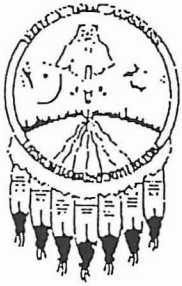
46. Do you know if your reserve got hoes, spades and other farming tools (like mowing machines and a reaper) when they started to live on the reserve? Did the Chief get horses and oxen. Seeds? Each family get one cow and the Chief the bull?

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.



*Treaty 8 Tribal Association*  
*Treaty and Aboriginal Rights Research*

10233—100th Avenue, Fort St. John, B.C. • V1J 1Y8  
Phone (604) 785-0612 • Fax (604) 785-2021

### Background Note

#### T8TA TARR Elder Interview Release Form Requirements

1. Release, Assignment and Waiver form to be signed by individuals interviewed.
2. Sale, Assignment and Waiver to be signed by individuals who donate tapes.

First of all note that the Releases provide for the payment of ten (10.00) dollars to the individual being interviewed or the person donating an audio and/or video tape. In order to have a valid contract in law the T8TA should pay for the tapes. If the person making or donating the tape does not receive payment, the contract may be set aside. If the ten (\$10.00) dollar amount is too large, a lesser amount can be provided for in Releases. Many contracts provide for the payment of one (\$1.00) dollar although more recently the ten dollar amount is used as there may be some argument that, in today's world, one dollar is not adequate compensation. In any event, it must be ensured that some payment is made by the T8TA to the individual that is being interviewed or providing a tape to the T8TA.

Also note that the second paragraph of the Release, Assignment and Waiver and the third paragraph of the Sale, Assignment and Waiver state that the signatories thereto remise, release and forever discharge the T8TA from any and all causes of actions etc. that may arise with respect to the audio and/or video tapes.

### Copyright

Copyright is defined by the *Copyright Act* as the right to multiply copies of a published work, or to make a work public and still retain the beneficial interest therein. A "work" is that which signifies the product of an author's activities. Copyright subsists in "every original literary, dramatic, musical and artistic work." This includes every original production in the literary, scientific or artistic domain, whatever may be the mode or form of its expression. Copyright does not subsist in ideas, only in the form of expression of those ideas.

It is a principle of copyright that the work must be an original production. Novelty and inventiveness of the ideas themselves is not the test; the test is whether the work is original in the sense that is originated from the author and he did not copy it. However, the use of information generally available, even assembled in a form used by others, still possesses copyright if it is the result of creative work and not copies from others. A copyright must have originality from the author as a result of substantial skill, industry or experience by him, but otherwise does not have to be novel.

The term of copyright lasts for the life of the author and fifty years after his death or if there is not an identifiable author, the copyright will last for fifty years from the date the work is first published.

Registration is not essential under the provisions of the *Copyright Act* as the right to claim copyright subsists whether or not there is registration. That is, registration merely assists in proving that the person who registered copyright is the actual author and entitled to claim copyright in the work.

### Assignment of Copyright

Any assignment of the whole or any part of the copyright in a work, or any right by way of a licence, must be in writing, signed by the owner. A distinction should be made between an assignment which is a transfer of the whole of a right leaving nothing in the grantor, and a license which is a transfer of a beneficial interest but not of ownership. An assignment of copyright does not in itself also waive any claim by the author respecting "moral rights", such waiver must be specifically addressed. The simple transfer of physical possession of the work itself does not thereby assign copyright in the work. Accordingly, for those audio and/or video tapes that are to be "donated" to the T8TA, a written assignment will be required in order to transfer the author's copyright in them.

Where a copyright in the work has been registered, then a registered assignment of that copyright takes precedence over a previous unregistered assignment unless the registered assignee has notice of the previous assignment.

Section 14 of the *Copyright Act* states that where the author of a work is the first owner of the copyright therein, not assignment of the copyright and no grant of any interest therein, made by him, otherwise than by will is operative to vest in the assignee or grantee any rights with respect to the copyright in the work beyond the expiration of twenty-five years from the death of the author. That is, twenty-five years after the death of the author, copyright reverts to the legal representatives for the author's estate, notwithstanding any agreement to the contrary, and any agreement entered into by the author as to disposition of such reversionary interest is void.

It is important to note that Section 14 only applies where the author is the first owner of the copyright. Thus, in the present circumstances where a cameraman/producer of an Elder Interview Program video tape is likely the author of such a work, because such cameraman/producer is a salaried employee of T8TA, the first owner of the copyright will be the T8TA and therefore the reversionary provisions of Section 14 will not apply.

These reversionary provisions also do not apply to the assignment of a copyright in a collective work or to a licence to publish a work as part of a collective work. Again note that the reversionary interest provision applies only to works where the author is the first owner of copyright. Thus the provision does not apply, for instance, to photographs, records, or works made for hire, or works of Crown copyright.

A "collective work" is defined in Section 2 of the *Copyright Act* as:

- a. an encyclopedia, dictionary, year book or similar work,
- b. a newspaper, review, magazine or similar periodical, and
- c. any work written in distinct parts by different authors, or in which works or parts of works of different authors are incorporated.

Accordingly, with respect to the tapes that are made by individuals other than T8TA employees and that are "donated" under the Sale, Assignment and Waiver, if the T8TA or its employee was not the author of such tapes, any assignment or waiver of the copyright in them may be subject to reversion under the Section 14. If so, this would render any copyright gained by the T8TA under the Sale, Assignment and Waiver void twenty-five years after the death of the author as such copyright would revert back to the author's estate.

With respect to the copyright under tapes made pursuant to the Elder Interview Project, as long as the authors of the tapes are in the employment of the T8TA or under a contract of service (as opposed to a contract for service, unless such contract expressly disclaimed any right to claim copyright) and the tapes were made in the course of employment by such person, the first owner of the copyright will be the T8TA. Thus, the reversionary interest provisions of the *Copyright Act* would not apply (See Section 13(3) of the *Copyright Act* which discusses works made in the course of employment). Therefore, if the T8TA is to be the first owner of copyright, all tapes made pursuant to the Elder Interview Project should be filmed and produced by employees of the T8TA. If such individuals are not employees of the T8TA then the individual filming/producing the tapes would be both the author and the first owner of copyright and therefore even if such individual signed a Release, Assignment and Waiver, the copyright in the tape produced would revert back to this individual's (i.e. the author's) estate twenty-five years after his death.

Note that the T8TA may be able to claim copyright in tapes which are "donated" if such tapes are edited using the substantial skill, industry or experience by employees of the T8TA such as to result in an original work.

### Moral Rights

The concept of "moral rights" is discussed in the last paragraph of the Release (see also Sections 14.1. and 28.2 of the *Copyright Act* attached). The Copyright Act was amended in June of 1988 to provide for moral rights which mean the author of a work has the right to the integrity of the work, that is, to prevent the work from being distorted or mutilated and to prevent it from being used in association with a product, service, cause or institution; and where the work is copied, published performed or otherwise dealt with as set out in Section 3(1) of the *Copyright Act* and, where reasonable in the circumstances, to be associated with the work as author by name, pseudonym or remain anonymous. Such rights are not enforceable against a person who owned the copyright in the work, or was licensed or authorized to use the copyright as of June 9, 1988.

The moral rights given by the *Copyright Act* belong to the author and assignment of copyright does not, by that act alone, constitute any waiver of moral rights. Moral rights cannot be assigned but may be waived in whole or in part. This need for a waiver is the impetus for including such a clause in the Releases.

Where moral rights are waived in favour of an owner or licensee of the copyright, such waiver may be invoked by any person using the work under authority of the owner or licensee unless the contrary is indicated in the waiver.

Moral rights subsist for the same term as copyright and, upon the death of the author, pass upon specific bequest, failing which they pass to the copyright owner, failing which they pass to the person entitled to the property in respect of which the author dies intestate. Moral rights subsist in respect of a work created before the amendments to the Act came into force June 8, 1988.

In order to provide for a broad use of the audio and/or video tapes produced by the T8TA a waiver of moral rights as well as assignment and transfer of copyright has been included in the Release.

### S.3 HUGHES ON COPYRIGHT AND INDUSTRIAL DESIGN

"telecommunication" means any transmission of signs, signals, writing, images or sounds or intelligence of any nature by wire, radio, visual, optical or other electromagnetic system; [1988, c. 65, s. 61.]

"work" includes the title thereof when such title is original and distinctive;

"work of joint authorship" means a work produced by the collaboration of two or more authors in which the contribution of one author is not distinct from the contribution of the other author or authors;

"work of sculpture" includes casts and models. [R.S., c. C-30, s. 2; R.S., c. 10 (4th Supp.), s. 1.]

## COPYRIGHT

### SECTION 3. DEFINITION OF "COPYRIGHT"

(1) For the purposes of this Act, "copyright" means the sole right to produce or reproduce the work or any substantial part thereof in any material form whatever, to perform, or in the case of a lecture to deliver, the work or any substantial part thereof in public or, if the work is unpublished, to publish the work or any substantial part thereof, and includes the sole right

- (a) to produce, reproduce, perform or publish any translation of the work,
- (b) in the case of a dramatic work, to convert it into a novel or other non-dramatic work,
- (c) in the case of a novel or other non-dramatic work, or of an artistic work, to convert it into a dramatic work, by way of performance in public or otherwise,
- (d) in the case of a literary, dramatic or musical work, to make any record, perforated roll, cinematograph film or other contrivance by means of which the work may be mechanically performed or delivered,
- (e) subject to subsection (2), in the case of any literary, dramatic, musical or artistic work, to reproduce, adapt and publicly present the work by cinematograph, if the author has given the work an original character,
- (f) in the case of any literary, dramatic, musical or artistic work, to communicate the work to the public by telecommunication, and [1988, c. 65, s. 62(1).]



COPYRIGHT ACT

S.4

(g) to present at a public exhibition, for a purpose other than sale or hire, an artistic work created after the coming into force of this paragraph, other than a map, chart or plan or cinematographic production that is protected as a photograph; [R.S., c. 10 (4th Supp.), s. 2.]

and to authorize any such acts.

(1.1) *Simultaneous fixing*.—A work that is communicated in the manner described in paragraph (1)(f) is fixed even if it is fixed simultaneously with its communication. [1988, c. 65, s. 62(2).]

(1.2) *Interpretation*.—For the purpose of paragraph (1)(f), persons who occupy apartments, hotel rooms or dwelling units situated in the same building are part of the public and a communication intended to be received exclusively by such persons is a communication to the public. [1988, c. 65, s. 62(2).]

(1.3) *Restriction*.—For the purpose of paragraph (1)(f), a person whose only act in respect of the communication of a work to the public consists of providing the means of telecommunication necessary for another person to so communicate the work does not communicate that work to the public. [1988, c. 65, s. 62(2).]

(1.4) *Networks*.—For the purpose of paragraph (1)(f), where a person, as part of a network whose object is to communicate works to the public, transmits by telecommunication a work that is communicated to the public by another person, the transmission and communication of the work by those persons constitute a single communication to the public for which those persons are jointly and severally liable. [1988, c. 65, s. 62(2).]

(1.5) *Exception*.—A work is not communicated in the manner described in paragraph (1)(f) or subsection (1.4) where a signal carrying the work is retransmitted to a person who is a retransmitter to whom section 28.01 applies. [1988, c. 65, s. 62(2).]

(2) *Idem*.—Where the author of any work described in paragraph (1)(e) has not given it any original character, the cinematographic production referred to in that paragraph shall be protected as a photograph. [R.S., c. C-30, s. 3; R.S., c. 10 (4th Supp.), s. 2.]

SECTION 4. DEFINITION OF "PUBLICATION"

(1) For the purposes of this Act, "publication", in relation to any work, means the issue of copies of the work to the public, and does not include the performance in public of a dramatic or musical work, the

### S.13 HUGHES ON COPYRIGHT AND INDUSTRIAL DESIGN

period of fifty years from the date of the first publication of the work.  
[R.S., c. C-30, s. 11.]

## OWNERSHIP OF COPYRIGHT

### SECTION 13. OWNERSHIP OF COPYRIGHT

(1) Subject to this Act, the author of a work shall be the first owner of the copyright therein.

(2) *Engraving, photograph or portrait.*—Where, in the case of an engraving, photograph or portrait, the plate or other original was ordered by some other person and was made for valuable consideration in pursuance of that order, in the absence of any agreement to the contrary, the person by whom the plate or other original was ordered shall be the first owner of the copyright.

(3) *Work made in the course of employment.*—Where the author of a work was in the employment of some other person under a contract of service or apprenticeship and the work was made in the course of his employment by that person, the person by whom the author was employed shall, in the absence of any agreement to the contrary, be the first owner of the copyright, but where the work is an article or other contribution to a newspaper, magazine or similar periodical, there shall, in the absence of any agreement to the contrary, be deemed to be reserved to the author a right to restrain the publication of the work, otherwise than as part of a newspaper, magazine or similar periodical.

(4) *Assignment of right by owner.*—The owner of the copyright in any work may assign the right, either wholly or partially, and either generally or subject to territorial limitations, and either for the whole term of the copyright or for any other part thereof, and may grant any interest in the right by licence, but no assignment or grant is valid unless it is in writing signed by the owner of the right in respect of which the assignment or grant is made, or by his duly authorized agent.  
[R.S., c. C-30, s. 12.]

### SECTION 14. LIMITATION WHERE AUTHOR IS FIRST OWNER OF COPYRIGHT

(1) Where the author of a work is the first owner of the copyright therein, no assignment of the copyright and no grant of any interest

COPYRIGHT ACT

S.14

therein, made by him, otherwise than by will, after June 4, 1921, is operative to vest in the assignee or grantee any rights with respect to the copyright in the work beyond the expiration of twenty-five years from the death of the author, and the reversionary interest in the copyright expectant on the termination of that period shall, on the death of the author, notwithstanding any agreement to the contrary, devolve on his legal representatives as part of the estate of the author, and any agreement entered into by the author as to the disposition of such reversionary interest is void.

(2) *Restriction.*—Nothing in subsection (1) shall be construed as applying to the assignment of the copyright in a collective work or a licence to publish a work or part of a work as part of a collective work.

(3) *Ownership in case of partial assignment.*—Where, under any partial assignment of copyright, the assignee becomes entitled to any right comprised in copyright, the assignee, with respect to the rights so assigned, and the assignor, with respect to the rights not assigned, shall be treated for the purposes of this Act as the owner of the copyright, and this Act has effect accordingly. [R.S., c. C-30, s. 12.]

(4) [Repealed R.S., c. 10 (4th Supp.), s. 3.]

COPYRIGHT ACT

S.15

MORAL RIGHTS

SECTION 14.1. MORAL RIGHTS

(1) The author of a work has, subject to section 28.2, the right to the integrity of the work and, in connection with an act mentioned in section 3, the right, where reasonable in the circumstances, to be associated with the work as its author by name or under a pseudonym and the right to remain anonymous.

(2) *No assignment of moral rights.*—Moral rights may not be assigned but may be waived in whole or in part.

(3) *No waiver by assignment.*—An assignment of copyright in a work does not by that act alone constitute a waiver of any moral rights.

(4) *Effect of waiver.*—Where a waiver of any moral right is made in favour of an owner or a licensee of copyright, it may be invoked by any person authorized by the owner or licensee to use the work, unless there is an indication to the contrary in the waiver. [R.S., c. 10 (4th Supp.), s. 4.]

**Note:** The above section is applicable as provided by R.S.C. 1985, c. 10 (4th Supp.), ss. 23(1) and (3).

SECTION 14.2. TERM

(1) Moral rights in respect of a work subsist for the same term as the copyright in the work.

(2) *Succession.*—The moral rights in respect of a work pass, on the death of its author, to

- (a) the person to whom those rights are specifically bequeathed;
- (b) where there is no specific bequest of those moral rights and the author dies testate in respect of the copyright in the work, the person to whom that copyright is bequeathed; or
- (c) where there is no person described in paragraph (a) or (b), the person entitled to any other property in respect of which the author dies intestate. [R.S., c. 10 (4th Supp.), s. 4.]

COMPULSORY LICENCES

SECTION 15. WHERE OWNER OF COPYRIGHT COMPELLED TO GRANT LICENCE TO REPRODUCE

Where, at any time after the death of the author of a literary.

S.28.01 HUGHES ON COPYRIGHT AND INDUSTRIAL DESIGN

## RETRANSMISSION

### SECTION 28.01 INTERPRETATION

(1) In this section,

"retransmitter" does not include a person who uses Hertzian waves to retransmit a signal but does not perform a function comparable to that of a cable retransmission system;

"signal" means a signal that carries a literary, dramatic, musical or artistic work and is transmitted for free reception by the public by a terrestrial radio or terrestrial television station.

(2) *Retransmission of local signals.*—It is not an infringement of copyright to communicate to the public by telecommunication any literary, dramatic, musical or artistic work if

- (a) the communication is a retransmission of a local or distant signal;
- (b) the retransmission is lawful under the Broadcasting Act;
- (c) the signal is retransmitted simultaneously and in its entirety, except as otherwise required or permitted by or under the laws of Canada; and
- (d) in the case of the retransmission of a distant signal, the retransmitter has paid any royalties, and complied with any terms and conditions, fixed under this Act.

(3) *Regulations.*—The Governor in Council may make regulations defining "local signal" and "distant signal" for the purposes of this section. [1988, c. 65, s. 63.]

## MORAL RIGHTS INFRINGEMENT

### SECTION 28.1. INFRINGEMENT GENERALLY

Any act or omission that is contrary to any of the moral rights of the author of a work is, in the absence of consent by the author, an infringement of the moral rights. [R.S., c. 10 (4th Supp.), s. 6.]

### SECTION 28.2. NATURE OF RIGHT OF INTEGRITY

(1) The author's right to the integrity of a work is infringed only if the work is, to the prejudice of the honour or reputation of the author,

- (a) distorted, mutilated or otherwise modified; or
- (b) used in association with a product, service, cause or institution.

## COPYRIGHT ACT

S.34

(2) *Where prejudice deemed.*—In the case of a painting, sculpture or engraving, the prejudice referred to in subsection (1) shall be deemed to have occurred as a result of any distortion, mutilation or other modification of the work.

(3) *When work not distorted, etc.*—For the purposes of this section,

(a) a change in the location of a work, the physical means by which a work is exposed or the physical structure containing a work, or

(b) steps taken in good faith to restore or preserve the work shall not, by that act alone, constitute a distortion, mutilation or other modification of the work. [R.S., c. 10 (4th Supp.), s. 6.]

SECTIONS 29 TO 33. [Repealed, R.S.C. 1985, c. 10 (4th Supp.), s. 7.]

Note: Sections 29-33 were repealed by R.S.C. 1985, c. 10 (4th Supp.), s. 7. Section 25 of the amending Act states, "It shall be deemed not to be an infringement of copyright in any musical, literary or dramatic work for any person to make within Canada during the six months following the coming into force of section 7 records, perforated rolls or other contrivances by means of which sounds may be reproduced and by means of which the work may be mechanically performed, if the person proves

(a) that before the coming into force of section 7, the person made such contrivances in respect of that work in accordance with section 29 or 30 of the *Copyright Act* and any regulation made under section 33 of that Act, as they read immediately before the coming into force of section 7; and

(b) that the making would, had it occurred before the coming into force of section 7, have been deemed not to have been an infringement of copyright by section 29 or 30 of the *Copyright Act*, as it read immediately before the coming into force of section 7."

## CIVIL REMEDIES

### SECTION 34. CIVIL REMEDIES

(1) Where copyright in any work has been infringed, the owner of the copyright is, subject to this Act, entitled to all remedies by way of

## S34

## HUGHES ON COPYRIGHT AND INDUSTRIAL DESIGN

injunction, damages, accounts and otherwise that are or may be conferred by law for the infringement of a right.

(1.1) *Moral rights*.—In any proceedings for an infringement of a moral right of an author, the court may grant to the author all remedies by way of injunction, damages, accounts or delivery up and otherwise that are or may be conferred by law for the infringement of a right. [R.S., c. 10 (4th Supp.), s. 8.]

**Note:** For application of s-s. (1.1), see R.S.C. 1985, c. 10 (4th Supp.), s. 23(2).

(2) *Costs*.—The costs of all parties in any proceedings in respect of the infringement of copyright shall be in the absolute discretion of the court.

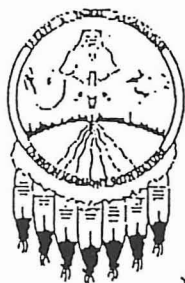
(3) *Presumptions respecting copyright and ownership*.—In any action for infringement of copyright in any work in which the defendant puts in issue either the existence of the copyright or the title of the plaintiff thereto,

- (a) the work shall, unless the contrary is proved, be presumed to be a work in which copyright subsists; and
- (b) the author of the work shall, unless the contrary is proved, be presumed to be the owner of the copyright.

(4) *Idem*.—Where any question referred to in subsection (2) is at issue, and no grant of the copyright or of an interest in the copyright, either by assignment or licence, has been registered under this Act,

- (a) if a name purporting to be that of the author of the work is printed or otherwise indicated thereon in the usual manner, the person whose name is so printed or indicated shall, unless the contrary is proved, be presumed to be the author of the work; and
- (b) if no name is so printed or indicated, or if the name so printed or indicated is not the author's true name or the name by which he is commonly known, and a name purporting to be that of the publisher or proprietor of the work is printed or otherwise indicated thereon in the usual manner, the person whose name is so printed or indicated shall, unless the contrary is proved, be presumed to be the owner of the copyright in the work for the purpose of proceedings in respect of the infringement of copyright therein. [R.S. c. C-30, s. 20; R.S., c. 10 (4th Supp.), s. 8.]





*Treaty 8 Tribal Association*  
*Treaty and Aboriginal Rights Research*

10233—100th Avenue, Fort St. John, B.C. • V1J 1Y8  
 Phone (604) 785-0612 • Fax (604) 785-2021

**SALE, ASSIGNMENT AND WAIVER**

KNOW ALL PERSONS BY THESE PRESENTS THAT I, \_\_\_\_\_  
 of the \_\_\_\_\_ of \_\_\_\_\_ in the Province of British Columbia, in consideration of the  
 payment of TEN (\$10.00) Dollars and other valuable consideration, the receipt and sufficiency  
 of which is hereby acknowledged, hereby sell the audio and/or video tapes described in the  
 attached Schedule "A" to the Treaty 8 Tribal Association.

LET IT BE FURTHER KNOWN THAT, I hereby assign, remise, release and forever  
 disclaim, in favour of the Treaty 8 Tribal Association, all and any right or interest I have had,  
 or may presently have, or in the future may have in and to the audio and/or video tapes  
 described in the attached Schedule "A".

LET IT FURTHER BE KNOWN THAT, I and all of my successors and assigns hereby  
 remise, release and forever discharge Treaty 8 Tribal Association from any and all actions and  
 causes of action, claims and demands whatsoever, whether known or unknown, whether or not  
 well founded in fact or in law, and of and from any and all suits, reckonings, agreements,  
 promises, claims and demands whatsoever in law or in equity which I have had, now have or  
 which my heirs, executors, administrators or assigns may have hereafter have with respect to  
 the audio and/or audio video tapes described in the attached Schedule "A".

LET IT BE KNOWN THAT I hereby specifically assign and transfer to the Treaty 8  
 Tribal Association any and all right or interest (if any) I may have to claim copyright, as  
 copyright is defined under the *Copyright Act*, R.S.C. 1985, c. C-42, as amended (the "*Copyright  
 Act*" ) in the audio and/or video tapes described in the attached Schedule "A".

LET IT FURTHER BE KNOWN THAT by these presents I hereby waive, in favour of  
 the Treaty 8 Tribal Association, any moral rights that I have or which my heirs, executors, and  
 administrators and assigns may have, to the audio and /or video tapes described in the attached  
 Schedule "A" as such moral rights are defined under the *Copyright Act*.

LET IT FURTHER BE KNOWN THAT I understand and acknowledge that the audio  
 and/or video tapes described in the attached Schedule "A" may be edited and copied and written  
 transcripts of each may be produced in connection with the educational, research, litigation and  
 claims purposes of the Treaty and Aboriginal Rights Research Program of the Treaty 8 Tribal  
 Association.

IN WITNESS WHEREOF I hereby acknowledge that I have read, have had read to me  
 or have had read to me in my language of understanding and native tongue, as the case may be,  
 this document and that I understand the content and effect of this document as evidenced by my  
 signature hereto, this \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_.

Witness Signature: \_\_\_\_\_ Signature: \_\_\_\_\_

Witness Name: \_\_\_\_\_ Name: \_\_\_\_\_



SCHEDULE "A" to the Sale, Assignment and Waiver dated this \_\_\_\_ day of \_\_\_\_, 199 \_\_.

\_\_\_\_\_

Tape No. 1

Date: \_\_\_\_\_

Location: \_\_\_\_\_

Subject: \_\_\_\_\_

Tape No. 2

Date: \_\_\_\_\_

Location: \_\_\_\_\_

Subject: \_\_\_\_\_

Tape No. 3

Date: \_\_\_\_\_

Location: \_\_\_\_\_

Subject: \_\_\_\_\_

Tape No. 4

Date: \_\_\_\_\_

Location: \_\_\_\_\_

Subject: \_\_\_\_\_

Tape No. 5

Date: \_\_\_\_\_

Location: \_\_\_\_\_

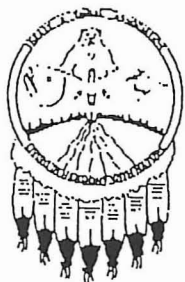
Subject: \_\_\_\_\_

Tape No. 6

Date: \_\_\_\_\_

Location: \_\_\_\_\_

Subject: \_\_\_\_\_



*Treaty 8 Tribal Association*  
*Treaty and Aboriginal Rights Research*

10233—100th Avenue, Fort St. John, B.C. • V1J 1Y8  
Phone (604) 785-0612 • Fax (604) 785-2021

**RELEASE, ASSIGNMENT AND WAIVER**

KNOW ALL PERSONS BY THESE PRESENTS THAT I, \_\_\_\_\_  
of the \_\_\_\_\_ of \_\_\_\_\_ in the Province of British Columbia, in consideration of the  
payment of TEN (\$10.00) Dollars and other valuable consideration, the receipt and sufficiency  
of which is hereby acknowledged, hereby assign, remise, release and forever disclaim in favour  
of the Treaty 8 Tribal Association all and any right or interest I have had, may presently have,  
or in the future may have in and to the audio and/or video tapes described in the attached  
Schedule "A" which were prepared by the Treaty 8 Tribal Association and the TARR Program  
pursuant to the Elder Interview Project.

LET IT FURTHER BE KNOWN THAT, I and all of my successors and assigns hereby  
remise, release and forever discharge Treaty 8 Tribal Association from any and all actions and  
causes of action, claims and demands whatsoever, whether known or unknown, whether or not  
well founded in fact or in law, and of and from any and all suits, reckonings, agreements,  
promises, claims and demands whatsoever in law or in equity which I have had, now have or  
which my heirs, executors, administrators or assigns may have hereafter have with respect to  
the audio and/or audio video tapes described in the attached Schedule "A".

LET IT BE KNOWN THAT I hereby specifically assign and transfer to the Treaty 8  
Tribal Association any and all right or interest (if any) I may have to claim copyright, as  
copyright is defined under the *Copyright Act*, R.S.C. 1985, c. C-42, as amended (the "*Copyright  
Act*" ) in the audio and/or video tapes described in the attached Schedule "A".

LET IT FURTHER BE KNOWN THAT by these presents I hereby waive, in favour of  
the Treaty 8 Tribal Association, any moral rights that I have or which my heirs, executors, and  
administrators and assigns may have, to the audio and /or video tapes described in the attached  
Schedule "A" as such moral rights are defined under the *Copyright Act*.

LET IT FURTHER BE KNOWN THAT I understand and acknowledge that the audio  
and/or video tapes described in the attached Schedule "A" may be edited and copied and written  
transcripts of each may be produced in connection with the educational, research, litigation and  
claims purposes of the Treaty and Aboriginal Rights Research Program of the Treaty 8 Tribal  
Association.

IN WITNESS WHEREOF I hereby acknowledge that I have read, have had read to me  
or have had read to me in my language of understanding and native tongue, as the case may be,  
this document and that I understand the content and effect of this document as evidenced by my  
signature hereto, this \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_\_\_.

Witness Signature: \_\_\_\_\_ Signature: \_\_\_\_\_

Witness Name: \_\_\_\_\_ Name: \_\_\_\_\_

SCHEDULE "A" to the Sale, Assignment and Waiver dated this \_\_\_\_ day of \_\_\_\_, 199 \_\_\_\_.

\_\_\_\_\_

Tape No. 1

Date: \_\_\_\_\_

Location: \_\_\_\_\_

Subject: \_\_\_\_\_

Tape No. 2

Date: \_\_\_\_\_

Location: \_\_\_\_\_

Subject: \_\_\_\_\_

Tape No. 3

Date: \_\_\_\_\_

Location: \_\_\_\_\_

Subject: \_\_\_\_\_

Tape No. 4

Date: \_\_\_\_\_

Location: \_\_\_\_\_

Subject: \_\_\_\_\_

Tape No. 5

Date: \_\_\_\_\_

Location: \_\_\_\_\_

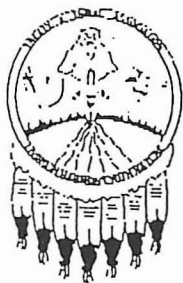
Subject: \_\_\_\_\_

Tape No. 6

Date: \_\_\_\_\_

Location: \_\_\_\_\_

Subject: \_\_\_\_\_



*Treaty 8 Tribal Association*  
*Treaty and Aboriginal Rights Research*

10233—100th Avenue, Fort St. John, B.C. • V1J 1Y8  
Phone (604) 785-0612 • Fax (604) 785-2021

## DONOR AGREEMENT

Donor: \_\_\_\_\_

Donor Address: \_\_\_\_\_

Total Number of Audio/Video Tapes \_\_\_\_\_

I, \_\_\_\_\_ hereby give the recordings identified below to the Treaty and Aboriginal Rights Research (TARR) program of the Treaty 8 Tribal Association (T8TA). Archival copies and written transcripts of each may be produced in connection with the educational, research, litigation, and claims purposes of the TARR program, the T8TA, and member Bands. These recordings are given without restriction.

Tape #1

Date: \_\_\_\_\_

Location: \_\_\_\_\_

Subject: \_\_\_\_\_

Tape #2

Date: \_\_\_\_\_

Location: \_\_\_\_\_

Subject: \_\_\_\_\_

Tape #3

Date: \_\_\_\_\_

Location: \_\_\_\_\_

Subject: \_\_\_\_\_

Tape #4

Date: \_\_\_\_\_

Location: \_\_\_\_\_

Subject: \_\_\_\_\_

Donor Signature: \_\_\_\_\_

Donor Name: \_\_\_\_\_

Witness Signature: \_\_\_\_\_

Witness Name: \_\_\_\_\_

Date: \_\_\_\_\_