



Treaty 8 Tribal Association
Treaty and Aboriginal Rights Research

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SPECIFIC CLAIM STRUCTURE
Using the Example of a Typical
TREATY LAND ENTITLEMENT CLAIM
(Saulteaux First Nation)

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Introductory Comments

The structure and content of the Treaty Land Entitlement Claims developed by T8TA TARR, on behalf of its client First Nations, is reflective of strategies developed to address problems identified through analysis of the historical record associated with the Treaty Land Entitlement process. In particular, the structural characteristics of the submissions reflect the need for a comprehensive and accurate statement of facts and supporting legal argument to ensure that the full attention of the Government is focused upon the grounds and merits of the claim, ensuring therefore the swiftest possible response and resolution. The organization of the Claims reflect further certain key implications derived from the unique characteristics of the land entitlement provisions of Treaty No. 8.

The attached Table of Contents, taken from the *Treaty No. 8 Land Entitlement Claim of the Saultheaux First Nation*, may serve as an example of the methods adopted by T8TA TARR in this matter.

General Organization

The Claim is divided into five volumes. Volume One contains the Statement of Facts and Legal Argument. Volumes Two, Three and Four encompass the supporting documentation, the primary evidence referred to in the factual and legal analysis presented in Volume One. Volume Five contains analysis and evidence associated with the genealogical portion of the Claim.

Sections A and B

A list of Key Actors and Key Dates is provided to aid analysis of the Statement of Facts.

Section 1.0

The primary basis for the Claim is asserted, pursuant to the Specific Claims policy of the Government of Canada. The Crown is cited as having failed to perform fully its obligations under the land entitlement provisions of Treaty No. 8.

Section 2.0

This Section begins the Statement of Facts. Relevant information is provided relating to the unique history of relations between the Federal Government and the Province of British Columbia with respect to Indian Affairs. The historical events identified provide a factual background to legal arguments supplied in section 12.0 concerning Crown behavior prior to seeking adhesions to Treaty No. 8 in British Columbia.

Sections 3.0 and 4.0

A detailed factual history is furnished with respect to events surrounding the prelude to, and making of, Treaty No. 8. The aim here is to provide as complete and comprehensive a record as possible, given the legal relevance attached to pertinent historical facts in matters concerning the interpretation of Treaty terms.

Section 5.0

With the exception of Treaty No. 10, the land entitlement provisions of Treaty No. 8 are unique amongst the numbered Treaties in that "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 historical origin of the severalty provision is provided, as is a factual account of Crown failure to perform its obligations in this area, particularly in Treaty No. 8 British Columbia.

Section 6.0 and 7.0

A proper determination of applicable population figures is a necessary element for fulfillment by the Crown of its obligations pursuant to the land entitlement provisions of Treaty No. 8. Noted in Section 6.0 is the fact that the Federal Government was empowered to determine properly the Indian population within the Treaty area. Separate and specific legislative requirements for British Columbia are noted in Section 7.0

Section 8.0

Historical facts pertaining to the selection and survey of East Moberly Lake Indian Reserve No. 169 are supplied. Once again, the aim is to provide as complete and comprehensive a record as possible.

Section 9.0 and 10.0

Crown reluctance to honour the land in severalty provisions of Treaty No. 8 is examined utilizing specific examples. Several statutory declarations for land, made in Treaty No. 8 British Columbia, are noted in Section 9.0. All were rejected, despite the presence of the land in severalty provisions. Section 10.0 examines, in greater detail, a case applicable directly to the Sauteaux First Nation. This Section concludes the Statement of Facts.

Section 11.0

This Section begins analysis of the outstanding legal obligations of the Crown to the Sauteaux First Nation. The current policy of the Government of Canada with respect to Specific Claims is set forth.

Section 12.0

The current policy of the Crown with respect to the issue of Treaty Land Entitlement is described and compared with the requirements of the land entitlement provisions of Treaty No. 8.

Section 13.0

Evidence is advanced to indicate the presence of a shortfall at Date of First Survey for the Saulteaux First Nation.

Section 14.0

Various general legal principles applicable to the interpretation of Treaties with First Nations are examined.

Section 15.0

Legal principles pertaining to the creation of Indian Reserves pursuant to the terms of Treaty No. 8 are noted.

Section 16.0

Principles and evidence related to the interpretation of the land entitlement provisions of Treaty No. 8 are supplied. The interpretation of the Claimants is advanced.

Section 17.0

The applicability of principles related to contract law on the matter of Treaty interpretation is examined.

Section 18.0

Specific assertions of Crown failure to perform its legal obligations under the land entitlement provisions of Treaty No. 8 are advanced and supported.

Section 19.0

General authority and elements of the fiduciary duties of the Crown to the First Nations are addressed, as are more specific responsibilities with respect to the performance of Treaty obligations. Assertions of breach are advanced by the Claimants.

Section 20.0

Legal principles with respect to remedies for breach of fiduciary duty are examined. Specific remedies applicable to a breach by the Crown of its fiduciary duty to perform the land entitlement provisions of Treaty No. 8 are noted. This Section concludes analysis of the outstanding legal obligations of the Crown to the Saukteaux First Nation.

Section 21.0

A summary of the essential elements of the Claim (facts, legal argument and compensation) is supplied. A final statement is also provided.

Sections 22.0, 23.0 and 24.0

An index of historical documents and references related to the Claim is provided, divided into a Chronological Documents List, Case Law References, and a listing of Secondary Sources utilized.

Section 25.0

A full index of Appendices to documents referred to in the Statement of Facts and Legal Argument, and contained in Volumes Two - Four, is supplied.

Concluding Comments

Specific Claims concerning Treaty Land Entitlement prepared by T8TA TARR reflect the general philosophy of the organization with respect to the involvement of its clients in the Specific Claims process: to reduce, as much as may be possible, the time taken from initial submission by the First Nation to final acceptance for negotiation by the Government of Canada. To this end, every effort is made to include, *in the initial submission*, all facts and legal arguments necessary to support the specific grievance at issue. The general organization and structure of the Claims reflect this philosophy.

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