

Chapter 22

Treaty Land Entitlement

This chapter introduces some basic principles involved in Treaty Land Entitlement research in BC. It identifies the Indigenous communities that signed Treaty 8 and lists some technical points to consider and resources to consult.

Key Terms

Treaty Land Entitlement (TLE) is a government term that refers to a specific claim made by those Indigenous communities that have not received the full amount of reserve land they were entitled to under their treaty. Outstanding TLE cases are frequently found in areas where the so-called numbered treaties have been negotiated, such as Northern BC, Manitoba, Saskatchewan, Alberta, parts of the Northwest Territories and North Western Ontario. In British Columbia, TLE is generally considered to apply to the signatories to Treaty 8.

The numbered treaties are based upon a **land quantum formula** (a certain amount of land per person) used to calculate the amount of reserve land an Indigenous community was entitled to receive. Treaty 8 entitlements are 128 acres of land per person up to a maximum of 640 acres per family of five or that in proportion thereof. Treaty 8 also includes a **land in severalty** clause that states 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.”¹



Treaty 8 Map, 1900 (Library and Archives Canada). In British Columbia, TLE is generally considered to apply to the signatories to Treaty 8.²

Historical Overview

There are seven Indigenous communities that signed Treaty 8 between 1899 and 1961. They are: Doig River, Fort Nelson, Halfway River, Prophet River, Salteau, Tsekani and West Moberly. In April 2000 the McLeod Lake First Nation signed into Treaty 8 under the Treaty 8 Adhesion Settlement Agreement. The Canadian government accepted TLE claims from West Moberly Lake and Halfway River First Nations with the BC government joining the negotiations in February 2003.

Researching Treaty Land Entitlement

The general principle applied to establish whether your community has an outstanding TLE is as follows: every Indian band is entitled to a certain amount of land based on the number of its members, and each individual who is eligible to be counted as a member of the band has the right to be included in an entitlement calculation.

The government often failed to fulfill TLE obligations because of inaccurate records of band members or incorrect allocations of land when reserves were first surveyed. Your job as a researcher is to piece together all the available information and provide proof of the population of your community's settlements that confirms or disputes the original calculations. You will need to undertake some of all of the following tasks:

- Identify your community's name(s) in historical records. The first important step is to determine the names that your community has been called. This will help you identify the specific treaty that applies to you. It is not uncommon for a community's current name to be different than the name originally entered on the treaty document, although the reasons for this are varied. Many Indigenous names on the treaty documents originally stem from the name of the first chief recognized by Canada at the treaty negotiations or the location of the treaty negotiations. The government treaty negotiators often imposed these names and many Indigenous communities have since changed the names by which they are known.
- Research the history of your community and treaty. It is important to understand the historic background to your treaty and decide if the claim is based on an unfulfilled outstanding treaty obligation. Indian and Northern Affairs Canada (INAC) has a treaty guide for the numbered treaties on their website. It includes the treaty text, maps and images, research reports and other printed resources and is available at: http://www.ainc-inac.gc.ca/pr/trts/hti/site/guindex_e.html.
- Conduct some basic reserve research to understand the history of your community's allotted reserves. See Chapter 5: Basic Reserve Research for more information on this topic.
- Determine if your band **amalgamated** (joined with at least one other band). One of the federal government's main objectives in creating treaties was to open land for non-Indigenous settlement. At the same time, it wanted treaties to be concluded as economically as possible. Canada

would frequently attempt to amalgamate several smaller bands into one larger band for greater administrative convenience. The effect of this was to cut down on the cost of treaties so there would be less agricultural implements to distribute and fewer chiefs and councillors to pay. Many of the treaties were made with bands that had been forced to amalgamate. Often this information will become available once you have researched the history of your band.

- Research if your community was included in an **adhesion agreement**. Not all Indigenous communities are located in the treaty area to which they were signatories. In some cases, the community may not have signed the original treaty and they may have been added later in an adhesion. For example, in 1982 McLeod Lake made an application to pursue an adhesion to Treaty 8 and signed into Treaty 8 on April 29, 2000 under the Treaty 8 Adhesion Settlement Agreement. To research if your band made an agreement on an adhesion to a treaty you will need to check archived Indian Affairs records (**RG 10**).
- Find out the date of the first survey of your community's lands. The date of the survey has a direct impact on the land quantum calculations (minimum or maximum amount of reserve land due) for your community. See Chapter 4: Documents and Chapter 10: Maps and Surveys for further information on these documents.
- Research reserve lands received for entitlement purposes. Not all of your current reserve land may have been set aside for treaty entitlement purposes. For example, a community may have exchanged one parcel of reserve land set aside for entitlement purposes for other land. Or in some cases land may have been set aside for purposes other than the fulfillment of treaty. If reserve land has been surrendered for sale, this would also affect the calculation. In other cases, land may have been purchased and converted to reserve status. All of these factors affect the calculation of reserve land for entitlement purposes. It is important to refer to the text of the original treaty which can be found on the INAC website.
- Research population at the "date of first survey" (DOFS). The calculation of the amount of reserve land due under treaty is dependent on the population of the community at the DOFS. As a result, it is vital that all eligible community members are included in the calculations. There were no censuses done at the date of first survey for most Indigenous communities in the numbered treaty areas so the surveyors and Indian agents would most often use the previous year's treaty annuity pay sheets to determine the population base. The pay sheets would only include those members who were paid annuities in that year. There are five other categories applied to determine the full extent of eligible community members to be counted in the calculation of TLE:
 - Population: Those members that were paid annuity at the time of first survey.
 - Absentee/arrears: Individuals who were away at the DOFS and were paid arrears in subsequent years. Or, individuals who were



- absent and not paid arrears but were entitled to receive payment if they were not included in another community's DOFS.
- o Late adherents: Individuals who transferred into the community after its DOFS who are entitled to be part of the treaty but had not yet entered.
 - o Marriages to non-treaty women: Marriages to non-treaty women who were never included in a DOFS calculation. It must also be proven that these women are not descendants of a person who had been previously counted in a DOFS. Métis women may also be included in this category provided that they are not descendants of someone who had taken Métis Land Scrip.
 - o Double counts: Individuals who have been included in a DOFS calculation for another band and then transferred in to the band that has yet to receive land for entitlement purposes.

Notes

¹ Canada, Department of Indian Affairs and Northern Development (DIAND). 1996. *Treaty No. 8, Made June 21, 1899 and Adhesions, Reports, Etc.* Ottawa: Queen's Printer: 12-13.

² Treaty 8 Map, 1900. Library and Archives Canada. Online: <http://www.collectionscanada.ca/treaty8>.

Resources

For more information about treaty land entitlement in BC, contact the Treaty 8 Tribal Association or visit the Treaty 8 Treaty & Aboriginal Rights Research Centre in Fort St. John. Contact information:

10233-100th Avenue
 Fort St. John, BC V1J 1Y8
 Ph: 250-785-0612 Fax: 250-785-2021