

THE ANATOMY OF COWS AND PLOWS NEGOTIATIONS

Treaty 8

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, **reserve two hoes, one spade, one scythe and two hay forks for every family so settled, and for every three families so settled one plow and one harrow, and to the Chief, for the use of his band, two horses, 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 persons, two cows, and for 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.**

Analysis of Treaty benefits for “first time” requests for agriculture benefits under Treaty.

“based on legal opinions provided to the Crown, it appears that Canada could not fulfill its agricultural benefit obligations by providing the specific historic implements set out in Treaty 8, which now serve limited agricultural purposes.”¹

¹ Serecon Report dated March 30, 2004.

During Treaty negotiations, it was understood by both parties that these economic benefits would provide assistance for both the training and resources necessary to establish an alternative economy base to those bands ... The government viewed agriculture as an alternative economic base ...

“It seems evident that the government promised more than what was actually written in within the Treaty.”

“The level and nature of assistance must be sufficient to provide for sound economic development and must not be restricted to the specific written terms of the Treaties. It should be sufficient to provide a solid new economic base for communities ...

James N. Tanner, PhD.

In 2007, I was asked by the Mikisew Cree First Nation to review the status of the Agriculture Benefits negotiations, which had been going on for years and appeared to be shackled by disagreements and the Mikisew TLE claim. The government was proposing to decide Mikisew's two claims together which was an obstacle and they were also promoting the Big Stone settlement as a precedent. The government negotiators did not trust the independent reports provided by the other First Nations at the Cows and Plows table.

I realized that these economic benefit negotiations had progressed to a critical point. Jerome Slavik had successfully organized the negotiations so that several well qualified technical people were assisting in the assessment of the amounts which the Federal Government would have to pay under this term of the Treaty. As an economist, I too reviewed the documents and the appraisals and made a report on the amounts recommended. It became clear to me that there were significant mistakes in the report upon which the government was relying but the government negotiators did not trust our side to make that claim. The government wanted to use an incomparable settlement, which was almost ratified, as a precedent and of course the amount was quite a bit lower than the other Reports. To deal with the TLE, we asked Ron Maurice to write a persuasive note to the government to separate the TLE and as a result of the relationship developed during the LBTA negotiations and the government negotiators good will, we were able to move the TLE claim settlement forward independently of the Cows and Plows.

Jerry Slavik (I call him Jerry because I knew him in school) and I met with the Big Stone lawyers and we found out the formula that was used in their settlement was not comparable nor applicable for other First Nations. Their settlement discounted the Economic Benefits of Treaty because it was a comprehensive claim involving a TLE and a Band split as well as reconciliation

of past issues. So, the precedent was not a precedent at all. With the quantification of the Big Stone settlement in hand we went back to our negotiation table and provided the government with an analysis of the errors in the Serecon Report and provided the reports of several other experts. Specifically, we had Carl Beal from the University in Regina do the historical analysis, Dick Schoney, PhD. from the University of Saskatchewan, provided an expert estimate and Stan Lore of Calgary provided a balanced report. And I provided an analysis of the errors in the Serecon report.

All these reports generally came up with similar numbers – it showed that the independent experts, quite separately, had come up with numbers which were very close. When we corrected the errors in the Serecon Report it too was at the same level. The government was surprised but not entirely convinced and then announced that they would make an offer to all of the First Nations in Edmonton. We all attended – several Chiefs and Councilors were there – and when we all were in attendance Mr. Brant, from INAC, told us all that they would offer the Big Stone low-ball amount. Needless to say, everyone was shocked and immediately rejected the offer – explaining that it was too late and too lame for them to be playing such obvious bad faith games.

It took a while but after some lobbying with the Minister's office, we finally brought the original negotiators back to the table. We had been working on building trust with the government negotiators and we were finally able to get them to recognize the convergence of expert opinions. Once back at the table we agreed to get one more opinion, together. So, the Federal negotiator and I gave instructions on the parameters of the final assessment. We spent a good amount of time ensuring that Mr. Thompson, who was selected by both parties, was clearly aware of the objectives. To make a long story short, Mr. Thompson basically agreed with the numbers that had been put forward and came up with the amount of \$ 42,174.00.

Without too much difficulty, we were able to come to an agreement with the government that this was a reasonable amount. So, we went up the line of INAC and Justice to get approval. This was not as easy and took some time but finally we were able to get support. Next was going to Treasury Board for final approval.

This process took years! I was first involved in 2007 and it was 2010 before we got basic agreement and we continued to lobby well into 2011. But this was the time that the anti-rights Conservative Government was gaining more power and they were not about to approve such a deal even if it had undergone such a thorough and complete negotiation process.

We even spoke to several Conservative politicians to no avail including Brian ----- the MP representing the constituency of the ATC First Nations. Unfortunately, that Conservative Government was not interested in living up to their Treaty responsibilities. The deal was shelved just like the LBTA – until we finally got rid of them in 2015. Now there may be at least 25,000 First Nations people to benefit making this one of the largest settlement amounts at over 1 billion dollars.

Fortunately, we were able to complete the Mikisew TLE claim before they shut the entire consultation process and claims processes down completely which provided the Mikisew First Nation with some well-deserved capital.

It is now time to re-introduce the Long-Term Benefits Agreement! But this time it should be done, not only for the 5 First Nations in the Athabasca region but for all First Nations who have been denied their Treaty Right to harvest and continue their traditional livelihood. Some First Nations were denied this right, immediately after they signed Treaty, as if the Government was saying – **GOTCHA** – now you signed Treaty the land is ours!! Then the Government ignored the Treaty promise ensuring that First Nations could continue their traditional livelihood as if they had never signed Treaty.

The denial of hunting and gathering rights is being exposed in historical research done in conjunction with the TLE processes and more of this information is coming out in historical traditional land use studies. The infringements on hunting and gathering rights has contributed in a major way to the diabetes epidemic and many other health problems as well as diminishing the use of traditional languages. **It has made the First Nations beggars in their own territories,** as they were illegally restricted to their reserves and manipulated with rations.

There are two First Nations who have started actions based on the cumulative impacts on their lands. This is a start, but it is not enough! First Nations must group together, showing, as they did in Wood Buffalo, that they all used similar territories. There was cumulative use of the lands by many First Nations and **when one piece of land was taken up it would hurt several First Nations, not just one and even several entire tribes would be affected.** This fact was never fully acknowledged, until the negotiations for the LBTA where 5 First Nations were considered together. Yet, now it is again being ignored.