

Case in Point



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Emerging Partnerships Under TLE: Redefining the Relationship Between the Town of the Pas and the Opaskwayak Cree Nation

Land use has long been a central concept in planning, combining ideas of utility with location. But by focusing on the utilitarian question of "Where do things belong?" we tend to miss the underlying issue of distributive justice, "To whom do things belong?"

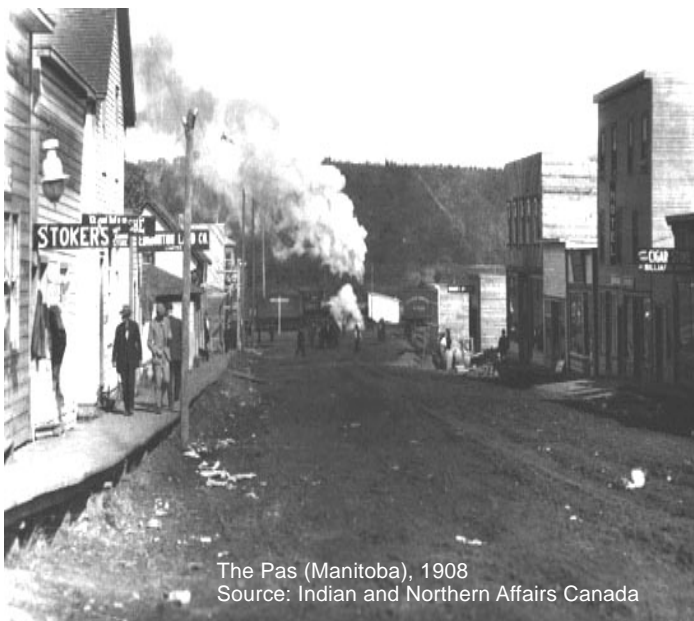
Donald A. Krueckeberg

The 'traditional' relationships between First Nations communities and Municipalities across Canada are being redefined by land claims negotiations under Treaty Land Entitlement (TLE) legislation. The complexity of land claim negotiations associated with TLE is demanding unprecedented interaction between First Nations communities and adjacent Municipalities. These types of evolving relationships herald the growing need for a 'new' cooperative planning environment between Municipalities and First Nations – especially as the flexibility needed to design innovative inter-jurisdictional arrangements is critical in sustaining positive relationships between local municipal governments and First Nations communities.



Plains Indian camp near site of Treaty No. 6 signing in 1871.
Source: Library and Archives of Canada.

In terms of planning, evolving partnerships between First Nations communities and Municipalities have direct implications on the way in which planners 'know' and practice their profession. As planners, we often ask, "Where do things belong?" This perspective illuminates an often-overlooked problem with "land use" planning, namely its presumption of neutrality and appearance of objectivity. The advent of Treaty Land Entitlement rights demand that planners re-evaluate their professional outlook in relation to land ownership/use/development, municipal service agreements, and taxation. This is particularly critical from a professional planning perspective as TLE is the current focal point for efforts directed at successfully redefining the relationship between Indian Bands and adjacent Municipalities.

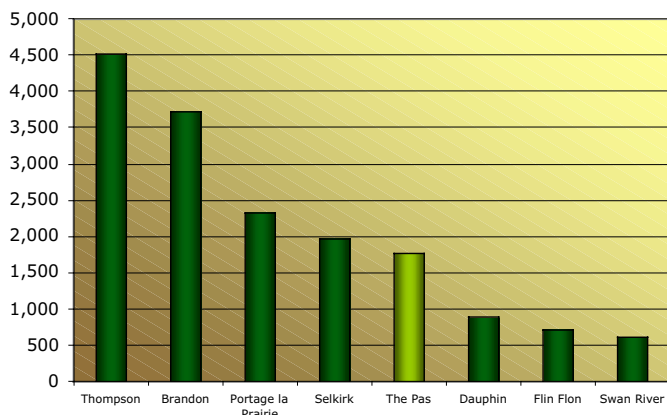


The Pas (Manitoba), 1908
Source: Indian and Northern Affairs Canada

Overview of Manitoba Treaty Land Entitlement

Manitoba Treaty Land Entitlement refers to land that Canada owes to specific Bands under the terms of the original treaties entered into with Indian Bands in Manitoba between 1871 and 1910. In keeping with this constitutional obligation, the control and administration of all unallocated Crown lands in Manitoba has been transferred to the Province in order to set aside sufficient unoccupied Crown land so Canada can satisfy its outstanding treaty obligations.

Aboriginal Identity Population, Selected Manitoba Urban Municipalities, 2001 Census



Of Manitoba's 61 First Nations there are 31 First Nations (Bands) with outstanding TLE claims. A total of 19 Manitoba based Entitlement First Nations (EFNs) signed the TLE Framework Agreement, along with Canada and Manitoba, on May 29, 1997. As per the Framework Agreement, the Opaskwayak Cree Nation (OCN) initiated the process of approving and entering into a specific land entitlement agreement with the Town of the Pas.

The Case of OCN and the Town of The Pas

In 1999, the Manitoba Treaty Land Entitlement Committee (TLEC) held a workshop in Thompson to educate bands about TLE and the associated land selection process. One member of the Opaskwayak Cree Nation (OCN) band council and one member of their administrative staff attended the workshop. The information provided in the workshop consisted of previous draft agreements, an overview of the timelines involved in the process, as well as information about tracking selections made by various bands.

The workshop positioned OCN to enter into discussions with the Town of the Pas concerning the development of Federal surplus land within the Town. The interest in Federally owned lots, for the purpose of TLE, actually dates prior to the ratification of the TLE Framework Agreement (1997); whereas access to Federal land within the Pas became valid for OCN upon the signing of their TLE Agreement in 1998. The existing development on and around the Federal land in the Pas presented OCN with the prospect of engaging in a variety of land improvement opportunities. Moreover, OCN viewed some of the land selections as potential short-term solutions to the housing shortage problem they were facing.

In the fall of 2000, the government of Manitoba circulated two identical questionnaires to the OCN and the town of The Pas to gain insight into the viewpoints of both parties in terms of creating a reserve within the boundaries of the town of the Pas. The questionnaires considered the emerging TLE process under the key headings of: Coordination; Consultation; Negotiation; and Implementation.

Coordination

'Ideally, local governments and First Nation governments will treat each other as co-equals'

Building and maintaining interdependent relationships is fundamental to achieving best outcomes and requires open, honest, face-to-face dialogue. Prior to the TLEFA being signed, the Opaskwayak Cree Nation (OCN) requested a meeting with the Town of the Pas to inform them about their intentions over the next few years with regard to TLE and 'new' reserve creation. The role of OCN's band council in the initial process was to sign a Band Council Resolution identifying the selection areas, followed by sending the Town a formal request to begin negotiations for a Municipal Development and Services Agreement (MDSA).

Consultation

'Education about differences and similarities in governance models and cultural practices helps prevent problems arising from ignorance or misunderstanding.'

OCN acknowledges that a major challenge has been educating band members about TLE and the land selection process. An often-fielded ques-

tion is “why do we have to buy our land back?” Consequently, OCN’s administrative staff provides clarification about the process and its origins to those who have expressed such concerns. In addition, OCN conducted a survey of their band members to gain insight into what kinds of land the band should be selecting and 65 % of band members responded that the selections should be used for residential development. This response has guided OCN in its land selections.

The OCN publishes general reports directed to OCN band members (available to anyone) containing information about land selections and their proposed uses. OCN also encourages band members to phone their offices with any concerns and/or questions. OCN admitted that, while most band members are generally supportive of the process, new reserve creation is not necessarily in the forefront of their minds. Many have more pressing issues to deal with in terms of day-to-day concerns.

While OCN had initial consultations with the TLEC in order to obtain draft agreements, they [OCN] expressed strong concern that the Town was receiving little, if any, information about the TLE process. Consequently, OCN felt that it would have been helpful if the Town had received briefings about the process early on, as they had from the TLEC. Similarly, the Town expressed their desire to ensure that its residents are informed and educated about the TLE process and that the process remains transparent.

Negotiation

‘Good technical people involved in the drafting process are necessary, but good drafting does not necessarily create good relationships’.

OCN’s negotiating committee is comprised of one senior minister of staff, one member of OCN’s Board, one administrative staff member, and one member from OCN’s Band Council. Recommendations to OCN’s negotiation committee typically come from OCN’s Board. Recommendations by the Board generally concern land selections, the kind of services the Band wants, as well as the rates of compensation (to the Town) for service delivery. Additionally, OCN has made extensive use of the legal expertise that it has at its disposal and stated that access to “experts” is an important factor during the entire TLE process (from the land selection to negotiating and drafting of a MSDA).

The Town’s negotiating committee was formed by a resolution of Town Council. The committee consists of the Mayor, the CAO, the Town Clerk, and one Town councillor. The Town’s committee members negotiated a draft municipal services agreement, with advice provided by a local law office and the Municipal Services Officer. The Town felt that the key elements of the MSDA were: maintenance of tax revenue, by-law compatibility, dispute resolution mechanisms, and details of actual service provision. The Town’s negotiating committee was particularly interested in the details of service provision (i.e. the types of services to be provided and the associated rates of compensation for those services) as they noted that the kinds of services that a municipality provides are difficult to administer in a piecemeal fashion.

Similarly, OCN feels that service delivery will be a key issue in the negotiations progress. The OCN did note that the main issue so far has been which form of the MSDA draft document to use. The OCN has an existing service agreement in place with the Town (dealing with water and sewer service to a trailer court site) and there are ongoing discussions as to whether or not this existing agreement should be incorporated into, or replaced by, a new MSDA. Considering the complicated circumstances surrounding the drafting of a new MSDA, both parties stressed that assistance from professional planners and land use managers is needed. They stated that such individuals should be included in the process right from the beginning.

Another kind of “expert” advice that was discussed was that of elders and spiritual advisers. OCN noted that, as a whole, the elders are supportive of TLE and the land selection process. These individuals are often present at OCN Board and Band Council meetings and the perspective that elders offered was often different from the norm at the meetings. In particular, they are known to raise concerns surrounding the monitoring of the land selections once they are granted reserve status. The proposed uses of the selections are of particular concern to the elders; they tend to be more wary of getting the most benefit from a land selection (be that residential, economic, traditional/spiritual), particularly in the long term.

The Town stated that legal expertise is very important to the process, and that such expertise comes from local sources in order to ensure a level of comfort and familiarity with all parties involved. The Town feels that they have not received adequate financial support for research and legal advice. Moreover, they noted, that while they do receive information about the process, it is often slow in coming. The Town also stressed the need for one-on-one legal/interpretive support – particularly for documents that they receive from the Province (e.g. the copy of the TLEFA).

In terms of weaknesses in the TLE process, OCN expressed frustration (with both sides) at the slow response times that have become characteristic of the correspondence process. In one particular case, there was a 5-month period between replies. However, OCN recognizes that their land selection are just one of many issues that the Town has to deal with, and they also recognize their own role in the delays.

The OCN believes that the MDSA should contain provisions for joint committees. They feel that such committees would be beneficial in dealing with zoning issues, and also in dealing with service delivery (should the needs of the band in this area change over time). Similarly, the Town felt that the MDSA should include provisions for joint committees. They stated that this would be particularly relevant for issues surrounding by-law compatibility and dispute resolution.

In addition to their good working relationship already in place, the OCN and the Town identified a number of strengths of the negotiating process. OCN understands that there has to be payments to the Town for the services and infrastructure required to support their land selections and feel that the town is understanding of OCN's position that they will not compensate the Town (or school boards) for losses of school tax revenue. Moreover, OCN stated that they sense that the Town has achieved a good understanding of the TLEFA and its obligations. The Town saw the strengths of the process to date being the quality of information and support that they received from the Department of Northern and Aboriginal Affairs, as well as the Department of Intergovernmental Affairs. In addition they cited the willingness of both the Town and OCN to reach a fair agreement as being a major strength of the process.

Implementation

'Recognize and act upon the importance of identifying common interests and the pursuit of mutual benefits'

The Town of the Pas familiarized itself with similar TLE negotiations in Saskatchewan, and saw how the creation of an urban reserve had been a beneficial venture for several municipalities in that province. Similarly, the Town of the Pas viewed building upon their existing relationship with OCN as mutually beneficial. Moreover, the Town recognizes that TLE settlements are inevitable and the most favourable outcomes will come through negotiating an MDSA with OCN.

The TLEC met with Town Council and gave them information about the history of the TLE process as well as an explanation of the procedure for establishing an MDSA. Town Council's role in the initial process was to give direction to the Chief Administrative Office (CAO) to begin research into potential urban land selections. The CAO and staff then consulted with OCN's administrative staff to



exchange land assessment and budgetary information. Other than some written correspondence, the Town had minimal contact with the Federal Government in the initial stages of the process. Contact with the Province included receiving information from Aboriginal and Northern Affairs, as well as from the Department of Intergovernmental Affairs. The Town stressed that there was no municipal representation or consultation during the process of development of Manitoba's TLEFA. However, the Association of Manitoba Municipalities (AMM) provided information about the process at several of their conventions as well as lobbied the Province regarding the issue of tax loss compensation.

The Town feels they need the most legal advice about the content and wording of the MDSA document. The Town engaged legal advice after the first negotiation meeting (noting that OCN already had their legal representation present at the first meeting). The Town is employing local legal representation and expects their legal costs to be substantial. Consequently, the Town maintains that the Federal and Provincial Governments could have provided funding to assist with the negotiation, research, and the legal costs involved in drafting the MDSA.

OCN recommends that First Nations and municipalities set timelines for the negotiation process from the onset. For example, OCN has set a two-year timeline for the reserve creation process (from land selection to granting of reserve status). However, OCN notes that no deadline has been set for the completion of negotiations for the MDSA. The only set (and met) timeline was the first MDSA draft prepared after the first meeting between the OCN and the Town. The Town stated that, although they agreed with the utility of a timeline, without proper resources in place to meet them, a series of deadlines would present a significant challenge.

The Town maintains that the negotiation process carries the potential to reinforce the positive relationship that they already enjoy with OCN. They feel that it is necessary for the political leadership of both the Town and OCN to be "pro-active" in how they handle the negotiation process itself, and in how they relate the process to their constituents. The Town observed a need to educate the public concerning tax loss compensation, particularly the issue of school taxes. Having the

Mayor and Chief jointly address the public could serve this need.

In terms of promoting a 'new' partnership, the Town noted that OCN has the business resources and a proven business record necessary to increase commercial activity in The Pas. The Town did note that some difficulties could arise if OCN were to establish businesses similar to those already in existence in The Pas (especially in terms of Aboriginal consumers not having sales tax applied to purchases made on the reserve). The Town suggested that it would be useful to look at the potential of a mobile tax incentive to deal with this situation. They emphasized the need to be proactive and creative in dealing with the various situations that the reserve creation process could create.

Lessons Learned

Traditionally, First Nations and Municipalities have not had to deal with each other through any kind of formal, legal process. The advent of TLE negotiations has brought local government and First Nations relationships to the forefront, stressing the need for cross-cultural awareness and open access to information. As of late April 2004, after approximately a dozen draft agreements, the Town of the Pas and the OCN are in the process of fine-tuning what is considered to be a 'workable' MDSA. The remaining issues to be resolved are primarily related to land code issues and general language concerns. A key lesson learned is that the special nature of TLE and MDSA constitute unique types of agreements that require special principles of interpretation. In resolving the negotiation process, both parties must be sensitive to the unique cultural and linguistic differences between the partners.

For both parties, education about the specifics of the TLE process and varying cultural perspectives are an integral part in achieving success. At the local governance level, the TLE process implies an extensive re-learning of assumed ways of 'knowing' and practicing both land-use control and taxation. It would appear that municipalities require more assistance in term of being educated about the TLE process than do First Nations (who have the benefit of initiating the TLE process, as well as having the TLEC as an information re-

source). However, First Nations stand to benefit as much as municipalities, if not more, from incentives directed at educating the public (i.e. both band members and municipal citizens) about TLE and urban reserve creation. Public support is key if the MDSA is to establish or reaffirm a good relationship between a municipality and a First Nation. Even in the Pas, where relations between OCN members and Town citizens are thought to be generally positive at present, officials expressed concerns that failure to adequately educate Town citizens could possibly result in a setback of relations between the two communities.

A key strength of this particular case is the good working relationship between the Town and OCN. Both parties continue to express a desire to work together in negotiating an MDSA that would be mutually beneficial and both are eager to use the negotiating process to reaffirm and build upon the current, productive climate. The challenge is to ensure that continuing support to First Nations and municipalities negotiating under TLE is equitable. This entails recognizing the different support needs of First Nations and municipalities as they enter into MDSA negotiations, and responding accordingly. The goal is to have both parties as educated as possible about the specifics of the process (legal, environmental, city planning, etc.) so that they experience as few difficulties as possible. In the end, TLE and urban reserve creation is only as successful as the combined efforts of the involved parties.

Relevance to Planning

New opportunities are being created out of reflection upon more 'traditional' methods of planning practice. Treaty Land Entitlement negotiations are breaking new ground and offer the opportunity to expand the effective realm of the planning profession. Although little mention was made of the role of professional planners in the TLE negotiations between the Opaskwayak Cree Nation and the Town of the Pas, both parties advocate the need to actively participate planners in the TLE process. Moreover, cross-cultural perspectives on land-use/administration demand that planners push the boundaries of assumed planning knowledge, empowering the planning professional to discover 'new' ways of 'knowing' and practicing their cho-

sen profession. A professional who reflects upon the negotiations between the Opaskwayak Cree Nation and the Town of the Pas will likely come upon numerous opportunities and ideas for improving the ongoing TLE process. For the proactive planner, TLE offers an exciting and challenging environment to play a part in redefining the 'traditional' relationship between First Nation communities and adjacent municipalities.

Reference

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Other Resources

Phone interview with John Marnock, CAO of the Town of the Pas, Tuesday, April 27, 2004.

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