

BREAKING THE CHAIN OF DEPENDENCY: USING TREATY LAND ENTITLEMENT TO  
CREATE FIRST NATIONS ECONOMIC SELF-SUFFICIENCY IN SASKATCHEWAN

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By

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## **THESIS ABSTRACT**

In the 1970's, discussions began regarding the settlement of outstanding land claims from First Nations, the settling of Treaty Land Entitlement (TLE). The Office of the Treaty Commissioner (OTC) was developed to facilitate intergovernmental agreements with First Nations bands. This endeavour created discussions that led to the signing of the Treaty Land Entitlement Framework Agreement (TLEFA) in 1992. Lands purchased through TLE can be leased, creating revenues for the First Nations band. Those revenues can then be used to facilitate economic development and wealth creation for the band. It is through this access to capital that First Nations are starting to break their financial dependency on the Crown. It has been almost two decades since the signing of the TLEFA, and one can begin to measure the economic impact TLE has had for First Nations communities. Muskeg Lake Cree Nation (MLCN) is one such band that has been deemed successful, both by themselves and by outsiders, in the area of economic development. Success depends on a community developing an economic model that incorporates Aboriginal cultural values. By doing so, a cultural-oriented confidence is created, and this confidence can help foster economic success. The framework for this study is based around the Harvard Project on Indian Economic Development and its basis for economic success being founded on a community having confidence in their business model as it fits with their worldview. The methods employed in this study include a survey of primary and secondary documents in the area of TLE/TLEFA, and in economic development related to First Nations bands. Interviews were conducted with those involved in the signing and the overseeing of the TLEFA. Archival materials have been made available courtesy of Roy Romanow during his time as Attorney General for Saskatchewan. The research demonstrates that First Nations bands can break their financial dependency with the Crown through economic development strategies that are congruent with the First Nations cultural values.

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## Chapter 1

# **USING TREATY LAND ENTITLEMENT FOR ECONOMIC DEVELOPMENT AND BREAKING DEPENDENCY**

### **1.1 Introduction**

The dismal economic circumstance for First Nations people in Saskatchewan is not unlike the dire economic situation for Indigenous peoples worldwide. It is very difficult for First Nations to develop economically without productive and transferable assets such as land. In many parts of Canada, First Nations are owed land from unfulfilled treaty promises, land that can be used for economic development. When a band believes they have an outstanding claim, they can put forward a land claim – a Specific land claim. A Comprehensive land claim is pursued when there is no prior arrangement for land or Aboriginal title. The form of land claim that is sought is dependent on the land treaty situation from which they originate.<sup>1</sup> In Saskatchewan, a Specific Claims process of Treaty Land Entitlement (TLE) was developed to rectify the land settlement issues.<sup>2</sup> Through the settlement of the TLE in Saskatchewan, First Nations are acquiring land for economic development and developing urban reserves. Many Canadians are unaware of how urban reserves came into being and without sound knowledge of why they are occurring, people have little or a cavalier interest in the topic. First Nations bands are settling land agreements that have been ignored and dishonoured for many years, and it is through settling these agreements that opportunities for economic development are being created.

There have been many benefits for First Nations communities as a result of the TLE settlements, and some of these include social improvements, economic development, and the strengthening of governance structures.<sup>3</sup> Benefits derived from the TLE process are not mutually exclusive; the achievements from the process have found to instil renewed confidence in First Nations communities, by both community members and non-community members. The benefits are demonstrated by the band's websites, and the observations made in the interview process for this research. A non-community member in this research refers to someone who does not have

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<sup>1</sup> Indian and Northern Affairs Canada, Land Claims, <http://www.ainc-inac.gc.ca/al/lcd/index-eng.asp>, November 2008 (accessed July 4, 2010).

<sup>2</sup> Indian and Northern Affairs Canada, Comprehensive Claims, <http://www.ainc-inac.gc.ca/al/lcd/ccl/index-eng.asp>, November 2008 (accessed April 3, 2010).

<sup>3</sup> Joseph Garcea, Encyclopedia of Saskatchewan, University of Regina and Canadian Plains Research Center, [http://esask.uregina.ca/entry/urban\\_reserves.html](http://esask.uregina.ca/entry/urban_reserves.html), 2006 (accessed April 3, 2010).

band membership with the First Nations band being discussed. This research will demonstrate how First Nations communities are using their land settlements to foster economic development and what economic elements contribute to the success that the bands are experiencing. Bands such as Muskeg Lake Cree Nation (MLCN) are able to work towards breaking dependency from the Crown by developing well-suited business plans in accordance with the needs of the band and this progress is possible because of the funds from TLE settlements. MLCN has been successful in their business endeavours because they reflect four economic strategies Harvard Project on Indian Economic Development, as will be demonstrated in the findings in chapter three.

To select a band for this case study of the Saskatchewan TLE process, there were a number of important aspects or criterion to consider; that the band has been working on economic development for an extended period of time; that the economic development was the result of a land claims settlement; that the band is a Treaty Land Entitlement Framework Agreement (TLEFA) signatory; and that their claim was widely discussed so that a variety of sources could be accessed. Muskeg Lake Cree Nation (MLCN) was selected as the case study for this research because the band met the above criterion and offered the following characteristics:

- a) It was one of the first bands to receive a TLE settlement in Saskatchewan; and
- b) It is moving forward with economic development as a result of a TLE settlement.

The questions that have guided the research are:

- a) How has MLCN utilized the land from the TLE process for economic development?
- b) How has this progress facilitated Aboriginal self-determination and Aboriginal self-governance?

A consideration that has guided this research was that success would depend on a First Nations community choosing or developing a business strategy based on their own cultural values and aspirations. This matching of a business strategy that coincides with a First Nations worldview is described as “cultural match” in much of the literature, as will be discussed in Chapters Two and Three. With a cultural match, a First Nations band develops confidence in its ability to design and implement economic strategy. This confidence can help foster economic success. The framework for this research is based upon the Harvard Project on Indian Economic Development, and its economic strategies and ingredients for success.<sup>4</sup> The Harvard Project is a comprehensive

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<sup>4</sup> The Harvard Project on American Indian Economic Development, John F. Kennedy School of Government,



study on Indigenous economic development in the United States of America (U.S.A.) and Nations-Building. The foundation for success is explained in the Harvard Project as being grounded in a community that has confidence in their business strategy as it fits with their worldview.<sup>5</sup> Put simply, the economic framework is constructed upon a foundation of Aboriginal values and worldview. It can be established that MLCN is successful in the economic development spurred by TLE as they blend economic strategies recognized by the Harvard Project, and they incorporate the band's values and worldview.

## **1.2 Historical Perspective**

At the end of the 19<sup>th</sup> Century and in the early parts of the 20<sup>th</sup> Century, the federal government needed access to lands to further push the western frontier of Canada. For the federal government to settle western Canada, treaties had to be made with the Nations that held the title to the land.<sup>6</sup> Six Numbered Treaties were made with First Nations in Saskatchewan, and in the process reserves were created.<sup>7</sup> When examining the history of particular reserve communities, it becomes evident that many First Nations have long standing grievances about land from the reserve creation process. In 1992, Saskatchewan became the first province to establish its own provincial land entitlement framework, and this framework was accomplished according to *Canada's Specific Claims* process to deal with outstanding lands owed. Now other jurisdictions and bands can learn from the Saskatchewan framework, particularly those who are in the process of developing their own framework.

Until the *Treaty Land Entitlement Framework Agreement* (TLEFA) in 1992, the First Nations only retained one percent of all land that was covered by Treaty in Saskatchewan.<sup>8</sup> According to Peggy Martin-McGuire, an academic in the field of TLE and once special advisor to the Office of the Treaty Commissioner (OTC), "when all new land is acquired and converted

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Harvard University, <http://www.hks.harvard.edu/hpaied/> (accessed May, 9, 2009).

<sup>5</sup> Stephen Cornell and Joseph Kalt, *What Can Tribes Do? Strategies and Institutions in American Indian Economic Development*, edited by Stephen Cornell and Joseph Kalt, (Los Angeles: University of California, 1993): 48-51.

<sup>6</sup> BC Treaty Commission, *Why Treaties – a legal perspective*, [www.bctreaty.net/files/pdf\\_documents/why\\_treaties.pdf](http://www.bctreaty.net/files/pdf_documents/why_treaties.pdf) (accessed April 10, 2010): 3. Arthur J. Ray, Jim Miller, and Frank Tough, *Bounty and Benevolence: A History of Saskatchewan Treaties* (Kingston: McGill-Queen's University Press, 2000): 34.

<sup>7</sup> Canadiana.org, "Specific Events and Topics: Numbered Treaty Overview," in *Canada in the Making*, 2005, [http://www.canadiana.org/citm/specifique/numtreatyoverview\\_e.html](http://www.canadiana.org/citm/specifique/numtreatyoverview_e.html) (accessed April 9, 2010). Ray, Miller, and Tough.

<sup>8</sup> Peggy Martin-McGuire, "The Importance of the Land: Treaty Entitlement and Self-Government in Saskatchewan," in *Aboriginal Self-Government in Canada* (Saskatoon: Purich Publishing Inc., 1999): 274.

to Reserve status under the TLEFA, the figure will only be two percent.”<sup>9</sup> Reserve land that was promised in the Treaties was surveyed and based on the First Nations band’s population. “With the exception of Treaty 5, the allotment was one square mile per family of five, or a portion thereof.”<sup>10</sup> This calculation works out as follows: in Treaty 5 the allotment is 32 acres per band member, but in all other Saskatchewan treaties the allotment is 128 acres per band member.<sup>11</sup> The negotiations for settlement of TLE in Saskatchewan are based upon these calculations, which makes these calculations the basis of TLEFA.

For the federal government to be able to handle land claims, the Office of Native Claims (ONC) was created in 1974, and their responsibility was “to determine the validity of an increasing number of claims being researched and submitted to the Federal Government.”<sup>12</sup> The process began shortly after the Calder decision of 1973, a legal case that acknowledged the existence of Aboriginal title to land. There was a split decision in court that led to a federal willingness to negotiate and settle First Nations Land Claims.<sup>13</sup> This legal decision about land rights resulted in fifteen claims being validated in Saskatchewan by 1980.<sup>14</sup> Originally, First Nations bands had been restricted to selecting Crown lands for settlement.<sup>15</sup> This did not leave a lot of options for bands pursuing claims. Although the federal government was resistant to a purchase policy, Saskatchewan saw it as necessary. “The provincial government was reluctant to shoulder the costs of a purchase policy” without the federal government’s help.<sup>16</sup> The debate and the level of tension between the two levels of government were constant from the beginning of the Treaty Land Entitlement process because neither side wanted to shoulder too much of the costs involved in settlement. Although the federal government wanted to expedite the settlement process, they were resistant to compromise on matters. Ironically, this resistance made the

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<sup>9</sup> Martin-McGuire, *Aboriginal Self-Government in Canada*, 274.

<sup>10</sup> Martin-McGuire, *Aboriginal Self-Government in Canada*, 275.

<sup>11</sup> Martin-McGuire, *Aboriginal Self-Government in Canada*, 275.

<sup>12</sup> David C. Knoll, “Unfinished Business: Treaty Land Entitlement and Surrender Claims in Saskatchewan,” in *Saskatchewan Indian Federated College Journal* 3, issue 2 (1987): 27.

<sup>13</sup> *Calder v. Attorney General of British Columbia*, [1973] S.C.R. 313; David A. Cruickshank, “Calder Case,” in *The Canadian Encyclopedia*, Institute Historica Dominion Institute, <http://www.thecanadianencyclopedia.com/index.cfm?PgNm=TCE&Params=A1ARTA0001169> (accessed June 30, 2010); David W. Elliot, *Canadian Legal Studies Series – Law and Aboriginal Peoples in Canada*, 5<sup>th</sup> edition (Concord, ON: Captus Press, 2005): 44-46.

<sup>14</sup> Knoll, 28.

<sup>15</sup> Peggy Martin-McGuire, “Treaty land Entitlement in Saskatchewan: A Context for the Creation of Urban Reserves,” in *Urban Indian Reserves: Forging New Relationships in Saskatchewan* (Saskatoon: Purich Publishing Inc., 1999): 62.

<sup>16</sup> Martin-McGuire, *Urban Indian Reserves*, 67.

federal government spend *more* money than they might have been legally bound to disperse in the first place.<sup>17</sup> Unfortunately, by only using Crown land, most of the land that the First Nations bands would be able to choose from to satisfy their claims would not be economically viable. With the Office of Native Claims (ONC) created, there was room for land claims to be settled in the Canadian political framework and for the regulatory framework to develop for the settlement of outstanding land entitlements such as the TLEFA.

A land entitlement agreement was reached in Saskatchewan in 1992, and the Treaty Land Entitlement Framework Agreement (TLEFA) addressed past issues that had been fought over for decades by the parties at the table. The *Agreement* ratified a new land formula that appeared to be the solution all parties were looking for. The first portion of the new land entitlement process involved shortfall acres. The shortfall acres are the acres that are owed from the time of reserve creation. Any shortfall acres owed were to be purchased using the formula of population at the time of original survey of the reserve, or the Date of First Survey (DOFS). The equation for the shortfall acres was “the total number of acres a Band was entitled to at the DOFS, [then] calculated by multiplying the DOFS population by the number of acres allocated to each Band member, according to the appropriate treaty.”<sup>18</sup> The second portion of the new land entitlement process was to compensate First Nations with new lands based on band populations “after 1955 and up to March 31, 1991.”<sup>19</sup> This portion of the land entitlement process was to compensate First Nations for the equity that had been earned over the years in lands owed that could not be used by the First Nations. “Equity Acres were...to compensate Bands for the lost use of occupancy of lands they were entitled to since the DOFS.”<sup>20</sup> This new compensation idea was not in any of the previous formulae explored by governments. This new formula for land selection allows First Nations bands to select lands that are best suited to their needs and economic plans.

### **1.3 Rational, Purpose of Study and Research Questions**

The purpose of this study is to examine the elements present in Muskeg Lake Cree Nation’s (MLCN) economic development strategy to understand what characteristics made this

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<sup>17</sup> Martin-McGuire, *Urban Indian Reserves*, 67.

<sup>18</sup> Brenda V. McLeod, “Appendix V: Treaty Land Entitlement in Saskatchewan,” in *Treaty Land Entitlement in Saskatchewan: Conflicts in Land Use and Occupancy in the Occupancy Lake Area*, Thesis, Master of Arts, Native Studies (Saskatoon: University of Saskatchewan, 2001): 207.

<sup>19</sup> McLeod, 207.

<sup>20</sup> McLeod, 208.

strategy successful. Both MLCN's definition of success and the non-band member's definition will be assessed. A non-band member is someone who is not a member of the band that is being discussed. The major research questions concerning this research are:

- a) How are bands using TLE to foster economic development?
- b) What makes MLCN a success in the area of economic development?
- c) What are some of the problems with the agreement or settlement process that need to be addressed?

#### **1.4 Importance of Inquiry**

Examining MLCN is meant to serve both First Nations and non-First Nations governments, as success in this area can lead to bands breaking dependency from the Crown and advancing to higher levels of self-determination and self-governance. It is determined that MLCN has been successful in Saskatchewan in economic development terms because the band uses a blend of four economic strategies outlined in the Harvard Project, and they incorporated their community's worldview and values as discussed in Chapter Three. There have been many positive outcomes for First Nations communities who have been able to settle land claims under the TLEFA. The interest that underlines this research area is to explore the how and why business ventures were being developed from their settlement claims and how they have been portrayed in the media, such as television news and newspapers.

#### **1.5 Issues Surrounding TLE**

Problems associated with TLE become observable once the process is put into practice. The most evident problems revealed themselves in the interview process for this research. The problems identified by the politicians included; the lack of plan for implementation in the beginning; breakdowns in communication; and bureaucratic delays – these are all problems that relate to time. It is not that the process is too quick, but rather it is too slow. The slowness of the TLE settlements delays economic development for First Nations, which then lengthens the time that the band is dependent on the Crown. When a band breaks dependency from the Crown, they are more capable of making decisions for the betterment of their community. Now that some of the problems with the TLE settlement process and economic development are known, they are issues that can better be addressed.

## **1.6 Methodology**

### **1.6.1 Materials Used**

The methods employed in this study include a survey of primary and secondary documents in the area of TLE and the TLEFA with respect to First Nations and Economic Development. Included in the materials of this research are the Harvard Project, TLE and the TLEFA materials, as well as articles relating to urban reserves. Interviews were held with key political players who were involved in the signing and, in some ways, the overseeing of the development of the TLEFA. Interviews were conducted with: Roy Romanow, former Premier of Saskatchewan and former Attorney General; Bill McKnight, former Minister of Indian Affairs, government of Canada; Harry Lafond, former Chief of Muskeg Lake Cree Nation (MLCN); and Roland Crowe, the former chief of Federation of Saskatchewan Indian Nations (FSIN). The interviews conducted cannot be collaborated with documentation at this time, as the Saskatchewan Archives have not yet catalogued Mr. Romanow's paper from his time as Premier of the province, which makes reviewing all the correspondence impossible at this time. It is for this reason that the presentation of the materials from the interviews is given in the context of reflections. Mr. Romanow facilitated access to archival materials corresponding to his time as Attorney General for Saskatchewan. These papers include correspondences between the people involved in the process, offering insight to some of the complications in the early years of development of the TLEFA. As Mr. Romanow's papers for his time as Premier of Saskatchewan are not yet available, there is a gap in the research. Further research should be undertaken when these materials are made accessible.

### **1.6.2 Process of Research**

The research began with surveying the secondary documents. After reviewing these materials, MLCN was examined. For the MLCN case study, the band's website and materials were used to get a survey of the community and to observe development from their point of view. These materials helped to understand the bands measure of success in their economic development. The last area of examination was through the interview process. The interviews were valuable as they were reflections from the people who were involved in the TLEFA process. Issues could be identified that were unknown until the Agreement was put into practice. Once the research was concluded, the economic development strategies were explored and discussed in relation to other academic strategies. Muskeg Lake Cree Nation (MLCN) is discussed and

analyzed in the context of Harvard Project's economic strategies findings. It was through this examination that it was determined what characteristics make MLCN economically successful. The interviews were developed in tandem with the archival materials, and contextualized with the developments that took place. As these areas of research were developed, the findings and conclusions were worked through and organized for analysis.

### **1.7 Chapter Organization**

The chapters for this research are organized as building blocks for understanding TLE and how it is being used to create economic development opportunities for First Nations in Saskatchewan. This organization explains how the development is helping bands break economic dependency with the Crown. Chapter One serves as the foundation of knowledge in the area of TLE and the TLEFA. It is through the TLE settlements that this research is based. This chapter is also an examination of the materials available in the area being explored. Land Claims is a process that first began in the 1970s, and it was in the 1990s that Saskatchewan saw its own process come to fruition with the TLEFA. The chapters that follow develop the groundwork for economic development strategies that are involved in First Nations economic development, how MLCN utilizes development strategies and key ingredients for success, and is followed by an examination of the TLE process now that it has been functioning for almost twenty years. The research then closes with a discussion of findings as a result of the investigation conducted.

The Harvard Project on Indian Economic Development is outlined in the second chapter, as well as other aspects of economic development and considerations that need to be taken into account when planning economic development for First Nations bands.<sup>21</sup> This chapter involves input from other academics working in the area of economic development for First Nations bands, particularly those in Saskatchewan. The Harvard Project largely focuses on the American situation, but the development strategies proposed are relevant to the economic development occurring with First Nations in Canada. Academics that work in the Canadian Indigenous field such as Robert Alexander Innes and Terrence Pelletier often apply the Nation-Building model from the Harvard Project on American Indian Economic Development when looking at Canadian matters.<sup>22</sup> Other academics that look to the use of this project in Canada include Brian Calliou

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<sup>21</sup> The Harvard Project on American Indian Economic Development, John F. Kennedy School of Government, Harvard University, <http://www.hks.harvard.edu/hpaied/> (accessed May, 9, 2009). Cornell and Kalt.

<sup>22</sup> Robert Alexander Innes and Terrence Ross Pelletier, "Cowessess First Nation: Self-Government, Nation-

and Collette D. Manuel.<sup>23</sup> In outlining economic strategies, the academics bring awareness to elements that should be present in First Nations economic development so that the development that occurs has the highest probability of being successful and self-sustaining.

Chapter three presents the findings of the MLCN case study. The findings show that MLCN uses a blended economic development strategy by incorporating notions of economic development that match the community's worldview and fits with the Harvard Project model. The First Nations is used as the case model for First Nations success in economic development because they are viewed as successful according to their own measure, by measure of academics and government officials, and by the measure of time.<sup>24</sup> By facilitating strong economic development, MLCN has been able to bring its band into a position that allows for decision-making and self-determination through access to funds. By exercising more control they are breaking their economic dependency with the Crown.

To develop an economic perspective, the fourth chapter asked Roland Crowe, Roy Romanow, Bill McKnight and Harry Lafond to reflect on how TLE has shaped economic development for First Nations in Saskatchewan. Is it what they expected? What would they change given the opportunity? The answers to these questions highlight what is positive about the TLEFA process and what has been some of the drawbacks that need to be brought forward and discussed. The positive that was discussed was that people are becoming more accepting of First Nations economic development, bands are being welcomed by non-First Nations communities, and the business world has made accommodations to facilitate First Nations economic development by adapting some business loan practices (as will be discussed later by Chief Harry Lafond and Chief Roland Crowe). The flaws observed were: the lack of a contingency plan for implementation; the breakdowns in communication; and the administrative or bureaucratic delays. These are flaws that have become evident now that the process has been implemented for several years. The problems that were identified were unavoidable as the process was itself a learning experience. By looking at the strengths and weaknesses, parties

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Building and Treaty Land Entitlement," in *Aboriginal Self-Government in Canada: Current Trends and Issues*, 3<sup>rd</sup> edition, ed. Yale Belanger (Saskatoon: Purich Publishing Inc., 2008): 241-243.

<sup>23</sup> Brian Calliou, "The Significance of Building Leadership and Community Capacity to Implement Self-Government," in *Aboriginal Self-Government in Canada: Current Trends and Issues*, 3<sup>rd</sup> edition, edited by Yale D. Belanger, (Saskatoon: Purich Publishing Inc., 2008): 332-347; Collette D. Manuel, *Canadian First Nation Community Economic Development Planning: Key Factors for Success*, A Master's Degree Project Submitted to the Faculty of Environmental Design (Calgary, January 30, 2007).

<sup>24</sup> Robert Brent Anderson, *Economic Development among the Aboriginal Peoples in Canada: The Hope for the Future* (Concord, ON: Captus Press, 1999): 162.

negotiating in the future are able to learn from previous experiences and can implement good points, and develop solutions where there is weakness.

In the final chapter, conclusions are offered with respect to the research that was conducted. Perspective of the research is being discussed for the benefit of other jurisdictions and bands that plan to implement their own version of the TLEFA or settlement agreement. Chapter Five explores the strengths and problems the players of the TLEFA identified. It also summarizes the economic strategy options and elements available to be drawn from, as well as demonstrates how MLCN is a success because of its' blending of economic strategies and these elements. By analyzing both the strengths and weaknesses found in the Saskatchewan model of TLE, other jurisdictions and bands can learn from Saskatchewan when developing settlement claims and economic development for their particular First Nations.

## **1.8 Literature Review**

Literature examined for this research can be segmented into three broad topic areas – areas of economic development, policy, and history. Often times the literature that discusses economic development touches on some of the other areas listed, especially self-government and self-sufficiency. When looking at government negotiations, policy must be explored, as it is the foundation that guides government negotiations. For example, the relationships at the negotiating table for the TLE are filtered through the *Royal Proclamation of 1763* and the *Indian Act*.<sup>25</sup> Within several of the materials explored, an historical context is provided; however, there are materials that deal specifically with the history of treaties and land rights, land claims, or the TLE history of Saskatchewan. Combining these materials with archival documents and interviews, allows for a broader picture of the TLE settlement process in Saskatchewan and how bands can utilize the process to develop economically, and strengthen as a whole to become more self-sufficient.

In the area of economic development, a comprehensive study available is the Harvard Project on Indian Economic Development by Stephen Cornell and Joseph Kalt. The Harvard Project provides an analytic framework and touches on many important aspects of economic development – strong governance, dependency, elements and ingredients to success, economic strategies, and the importance of confidence and cultural match. Some other academics that cover economic development and discuss some of the aspects the Harvard Project explore

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<sup>25</sup> King George III, *The Royal Proclamation of 1763* (England: October 7, 1763).



include: Laurie Barron and Joseph Garcea, John H. Hylton, John Borrows and Sarah Morales, Brian Calliou, Michael Gertler, and Bradford W. Morse.<sup>26</sup> There are also public organizations, non-academics such as people working in government, and lawyers that have produced materials in the area, Dwight Dorey (former Chief of Congress of Aboriginal Peoples – CAP), David C. Hawkes, attorney, James Parker, communications officer, Amy Jo Ehman, journalist, and Western Economic Diversification Canada to name a few.<sup>27</sup> Very few of these materials deal with a single topic, many materials cross over in the areas mentioned above.

When examining TLE and the land history in Saskatchewan within the scope of land claims, several academics have produced substantial work. Some pieces were produced in relation to a particular band in Saskatchewan. Academics in the area include Sarah Carter, Noel Dyck, Peggy Martin-McGuire, Brenda McLeod, Robert A. Innes and Terrance Pelletier, James Pitsula, Bill Waiser, Arthur Ray, Frank Tough and Jim Miller.<sup>28</sup> Lawyers such as Richard

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<sup>26</sup> Laurie Barron and Joseph Garcea, "Aboriginal Self-Government and the Creation of New Indian Reserves: A Saskatchewan Case Study," in *Aboriginal Self-Government in Canada: Current Trends and Issues*, 2<sup>nd</sup> edition, edited by John H. Hylton (Saskatoon: Purich Publishing Ltd., 1999): 289-309. John H. Hylton, "The Case for Self-Government: A Social Policy Perspective," in *Aboriginal Self-Government in Canada: Current Trends and Issues*, 2<sup>nd</sup> edition, edited by John H. Hylton, (Saskatoon: Purich Publishing Ltd., 1999): 78-91; John Borrows and Sarah Morales, "Challenge, Change and Development in Aboriginal Economies," in *Legal Aspects of Aboriginal Business Development*, edited by Dwight Dorey and Joseph Magnet, (Markham: LexisNexis Canada Inc., 2005): 137-166; Calliou; Michael Gertler, "Indian Urban Reserves and Community Development: Social Issues," in *Urban Indian Reserves: Forging New Relationships in Saskatchewan*, edited by Laurie Barron and Joseph Garcea, (Saskatoon, Purich Publishing Ltd., 1999): 263-279; Bradford W. Morse, "The Inherent Right of Aboriginal Governance," in *Aboriginal Self-Government in Canada* (Saskatoon: Purich Publishing Inc. 1999): 16-44; Anderson; Wanda Wuttunee, *Living Rhythms: Lessons in Aboriginal Economic Resilience and Vision* (Toronto: McGill-Queen's University Press, 2004).

<sup>27</sup> Dorey, Dwight, "Development Unreserved: Aboriginal Economic Development for the Twenty-First Century," in *Legal Aspects of Aboriginal Business Development*, edited by Dwight Dorey and Joseph Magnet, (Markham: LexisNexis Canada Inc., 2005): 9-27; David C. Hawkes, "Rebuilding the Relationship: The 'Made in Saskatchewan' Approach to First Nations Governance," In *Canada: The State of the Federation 2003 – Reconfiguring Aboriginal State Relations*, ed. Michael Murphy, Institute of Intergovernmental Relations, School of Policy studies (Kingston, Queen's University by McGill-Queen's University Press, 2005): 120-132; Amy Jo Ehman, "Health Policy – First Nations' clinics: Gateway to privatization?" in *Synopsis*, In *Canadian Medical Association Journal* 170, no. 8 (April 13, 2004): 1215; Western Economic Diversification Canada, "Saskatoon: Creation of Muskeg Lake Cree Nation Urban Reserve, in *Urban Reserves in Saskatchewan*, Government of Canada, Western Economic Diversification Canada, modified December 22, 2008 <http://www.wd.gc.ca/eng/10950.aps>. (accessed January 20, 2009).

<sup>28</sup> Sarah Carter, "Cultural Crossroads: The Red River Settlement," in *Aboriginal People and the Colonizers of Western Canada to 1900*, edited by Sarah Carter, (Toronto: University of Toronto Press, 1999): 62-82; Noel Dyck, "The Negotiation of Indian Treaties and Land Rights in Saskatchewan," in *Aboriginal Land and Land Rights*, eds. Nicolas Peterson and Marcia Langton (Canberra Australian Institute of Aboriginal Studies, 1983); Martin-McGuire, *Urban Indian Reserves*, 53-77; McLeod; Innes and Pelletier, 240-259; James M. Pitsula, "The Blakeney Government and the Settlement of Treaty Indian Land Entitlements in Saskatchewan, 1975-1982," in *The Journal of the Canadian Historical Association: Historical Papers*, Vol. 24, No. 1, (1989): 190-209; Bill Waiser, "Chapter 2: Our Shared Destiny?" in *The Heavy Hand of History: Interpreting Saskatchewan's Past*, ed. G. P. Marchildon (Regina: Canadian Plains Research Center, 2005): 7-30; Ray, Miller, and Tough.

Bartlett, and David C. Knoll have also produced materials in discussing the history of TLE in Saskatchewan.<sup>29</sup> Policy and government documents are important when exploring tripartite government agreements and often reflect the relationships involved between the parties. The foundation of the Aboriginal policy and relationships in Canada is found in the *Royal Proclamation of 1763*.<sup>30</sup> This document establishes the relationship framework for which all following policy is organized. The federal government provides important documents such as the *Indian Act*, government agreements, and policy documents.<sup>31</sup> Other branches and levels of government produce documents on policy, and they can be found with the Department of Justice, the OTC, the government of Saskatchewan and First Nations organizations producing materials that include CAP, Assembly of First Nations (AFN), and FSIN as well as local band-level governments.<sup>32</sup> When researching multi-level government agreements – tripartite agreements – like that of the TLEFA, in most instances governments will have policy for which their position in the agreement is based. Examining various points of view of agreements provides insight into how and why the agreement took place.

When conducting research and reading the available materials, gaps in the research become evident. The Romanow papers for his time as Premier of Saskatchewan have not yet been organized and catalogued by the Saskatchewan Archives Board. When reading materials, gaps are also made evident when research questions go unanswered or new ones are created. Academics also point to gaps in their own writing, where more research needs to be conducted. Of the academics, authors, and government documents listed, Barron and Garcea worked the most closely and extensively in Saskatchewan land claims settlements and economic development.<sup>33</sup> It is for this reason that the gaps they identified in the research are most pertinent

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<sup>29</sup> Richard H. Bartlett, “Native Land Claims: Outstanding Treaty Land Entitlement in Saskatchewan, 1982-89,” in *Devine Rule in Saskatchewan: A Decade of Hope and Hardship*, ed. Leslie Biggs (Saskatoon: Purich Publishing, 1990): 137-148; Knoll.

<sup>30</sup> King George III, *The Royal Proclamation of 1763* (England: October 7, 1763).

<sup>31</sup> Department of Justice, “Indian Act (R.S., 1985, c. 1-5),” *Servicing Canadians*, Government of Canada. Department of Justice Canada, updated January 19, 2009, <http://laws.justice.gc.ca/en/I-5/> (accessed January 20, 2009).

<sup>32</sup> Department of Justice. Office of the Treaty Commissioner, *About Us*, Office of the Treaty Commissioner, updated 2009, [http://www.otc.ca/About\\_Us/](http://www.otc.ca/About_Us/) (accessed January 20, 2009); Government of Saskatchewan, “Saskatchewan Treaty Areas,” in *First Nations and Métis Relations* <http://www.fnmr.gov.sk.ca/community/maps/treaties> (accessed February 9, 2008); Assembly of First Nations, “Annual Report 2006-2007,” in *Resolution of Claims*, 2007, <http://www.afn.ca/article.asp?id=127> (accessed July 4, 2010); Federation of Saskatchewan Indian Nations, *Lands and Resources Secretariat*, <http://www.fsin.com/index.php/lands-a-resources.html> (accessed July 4, 2010).

<sup>33</sup> Barron and Garcea.

to this research.

Garcea and Barron identified critical gaps in the existing research, as well they list the areas that require attention in the context of urban reserves and business opportunities; as there is no focus on rural property their list does not provide examples for economic development as a whole. The research, according to Garcea and Barron, is lacking because it does not take into account bands that have chosen to invest their TLE money in rural property and business opportunities.<sup>34</sup> There is research available in the area of urban reserves and in TLE and TLEFA because many of the urban reserves are themselves products of TLE settlements and part of economic development goals.

Barron and Garcea note that the first area that needs more attention is in the area of cost-benefit analysis for reserves.<sup>35</sup> Cost-benefit analysis for reserves is important when looking at the prospects for business development or opportunity. This is a concept that is addressed in a later discussion about reserve creation for economic development; it will be discussed in the second chapter in relation to market opportunity being a factor on whether or not a band will be economically successful.

According to Barron and Garcea, the second area that needs more attention is the analysis of management practices.<sup>36</sup> The study on the Muskeg Lake Cree Nation (MLCN) does not conduct an examination of internal management practices of Saskatchewan First Nations bands, but will identify the options for management practices. MLCN is chosen for the case model as it is held up by many academics as a model of success, and because they develop successful enterprises, which makes them an ideal case study to explore factors leading to success.<sup>37</sup> It is important to note how MLCN sees their own band as successful, and to use their definition of success when examining the band. Determinants of success should not be externally imposed on the community; they should be able to define their own success.

The final area that Barron and Garcea believe needs attention is with the changing function of the reserves and their values over time.<sup>38</sup> Although this study does not address this area with the same intent the authors have, it is addressed. This study accounts for the passage of

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<sup>34</sup> F. Laurie Barron and Joseph Garcea, "Conclusion," in *Urban Indian Reserves: Forging New Relationships in Saskatchewan* (Saskatoon: Purich Publishing Inc., 1999): 297.

<sup>35</sup> Barron and Garcea, 297.

<sup>36</sup> Barron and Garcea, 297.

<sup>37</sup> Anderson, 162.

<sup>38</sup> Barron and Garcea, 297.

time, as it is prudent to see how economic development has progressed over time. MLCN's land entitlement settlement is now more than twenty years old along with the band's economic development plans. Not only have MLCN been successful, but also they have been successful for a number of years, which has allowed for enough time to study the long-term implications for their TLE settlement.

There are academics that conduct crossover research similar to what is being examined in this study; however, their work does not pertain to economic development as a result of specific claims or how TLE is being used. Robert B. Anderson has done extensive research when examining economic development and comprehensive claims in Canada, and even contrasts some of this with examples from Aotearoa New Zealand. Anderson develops concepts of theory (dependency, modernization, and contingency) and explores the concept of Aboriginal title to land as determined by the Calder decision. This author focuses greatly on the Mackenzie Pipeline as well as the British Columbia situation, the Northern Territories, and the Meadow Lake Tribal Council in Saskatchewan, none of which are developments that resulted from Specific Claims or TLE, but strong examples of development nonetheless. Wanda Wuttunee is another academic working within the area of Indigenous economic development and self-sufficiency; she too looks at strong economic examples, but not examples resulting from TLE Specific Claims. Wuttunee explores business development in Northern Alberta and the Northern Territories, as her studies are examples of economic development and self-sufficiency. This information does not look at these developments in the context of TLE or Specific Claims, which is were this study being conducted focuses and helps build the literature. The author explores business that result from different business initiatives, initiatives that began as independent projects or done by individuals, as well as examining funding avenues that are available to people and bands that do not have access to funds via TLE.

Aside from the gaps identified by the academics, gaps become exposed when reviewing the literature available. There is nothing available to examine when looking at bands using TLE settlements for economic development in the context of organizational strategy, such as elements and ingredients employed. It is acknowledged that the Harvard Project does not specifically deal with Saskatchewan land claims. The Harvard model can be seen by some as inapplicable in the Canadian situation as it is an American model and as such, has a different historical background. In the United States of America, there is no Indian Act as there is in Canada, which makes the

foundation of operations different for American Indians than Canadian First Nations. In Canada, the Canadian federal government works with First Nations according to the relationships outlined in the Royal Proclamation of 1763 and the Indian Act. There is also the matter of sovereignty. It was established in the United States through a court case, *Cherokee v. Georgia* that the American Indians have a form of limited sovereignty, something that has not yet been determined the same way in Canada.<sup>39</sup> As demonstrated in the following chapter, however, many academics apply the Harvard Project model and elements to the Canadian experience of First Nations economic development. It is a broad model with portions that can be workable in Canada, and be customized to the development and land situation when a First Nations is striving for economic self-determination. Elements found in the Harvard Project that work in Canadian situations, are found to be applicable in the Saskatchewan context of First Nations economic development.

### **1.9 Conclusion**

Although there are flaws in the TLEFA process, it is still a template in Canada from which other jurisdictions and bands have to work. The interviews are used to highlight potential flaws in the process so other jurisdictions and bands can learn from the barriers in the current Saskatchewan model. The TLEFA is a blueprint within Specific Claims for the First Nations governments and non-First Nations governments that need to deal with outstanding claims and are looking for a process to resolve the claims. First Nations bands should explore various strategies and create a model that fits with the economic development they wish to accomplish with the settlements they receive from land entitlement claims. It appears that MLCN is successful in its endeavour with their use of the four economic strategies presented by the Harvard Project. MLCN succeeds because they chose a strategy for development that fit their community's worldview. Their experience suggests that it is through economic success in development that bands can put themselves on the path to self-determination and break the dependency with the Crown.

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<sup>39</sup> *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1; Peter d'Errico, *John Marshall: Indian Lover?* [http://www.umass.edu/legal/derrico/marshall\\_jow.html](http://www.umass.edu/legal/derrico/marshall_jow.html) (accessed August 11, 2010) as appeared in *Journal of the West* 39, no. 3 (Summer 2000).

## Chapter 2

### **STRATEGIES AVAILABLE FOR FIRST NATIONS ECONOMIC DEVELOPMENT**

#### **2.1 Introduction**

For many years governments imposed barriers on First Nations that prevented economic development.<sup>1</sup> As Laurie Barron and Joe Garcea pointed out, “the federal government favoured the creation of reserves as a means of circumscribing the land holdings and mobility of Indians.”<sup>2</sup> As such, reserves hindered economic development for First Nations peoples because it was a land system that left people with no capital for investment, or even capital to borrow against. This system for regulating First Nations and confining them to reserves created a First Nations dependency on the Crown. Even though the federal government first used reserves as tools of repression and assimilation, First Nations are now using reserves as tools for empowerment as they are “now creating [Reserves] as a means to further their economic, social, cultural, and political development objectives.”<sup>3</sup> Now that TLE settlements are creating economic development and reserves are a source of revenue for many First Nations, the bands are now in a position to start breaking free from the Crown-imposed dependency.

This chapter explores the burden of dependency First Nations have experienced and continue to face, as well as other barriers, such as land control issues, natural resource management, government programs, and geographic location that have impeded First Nations’ economic development. Programs for economic development for First Nations in Canada occurred in the latter part of the 20<sup>th</sup> century and were developed by the federal government. However, problems ensued with the process because non-First Nations peoples developing the programs did not understand First Nations’ worldview. The core of the chapter is to explore the elements involved in successful economic development and strategies of economic development,

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<sup>1</sup> Native Women’s Association of Canada (NWAC), “Leadership Creation: Economic Development and Removing Barriers, Self-Government and Traditional Knowledge/Governance,” prepared for the *Second National Aboriginal Women’s Summit II* (NWAC, Yellowknife, NWT, July 29-31, 2008): 7, 10, 11, 14. Hon. Gerry St. Germain and Hon. Nick Sibbeston, “Part III: Indian Act Barriers to Economic Development on Reserve,” in *Sharing Canada’s Prosperity: A Hand Up, Not A Handout – Final Report Special Study on the Involvement of Aboriginal Communities and Businesses in Economic Development Activities in Canada*, Standing Senate Committee on Aboriginal Peoples, March 2007.

<sup>2</sup> Laurie Barron and Joseph Garcea, “Aboriginal Self-Government and the Creation of New Indian Reserves: A Saskatchewan Case Study,” in *Aboriginal Self-Government in Canada: Current Trends and Issues*, 2<sup>nd</sup> edition, edited by John H. Hylton (Saskatoon: Purich Publishing Ltd., 1999): 289.

<sup>3</sup> Barron and Garcea, “Aboriginal Self-Government and the Creation of New Indian Reserves: A Saskatchewan Case Study,” 289.

such as cultural match, that must be taken into account when First Nations are looking to develop economic self-sufficiency.

The foundation of the chapter is the Nation Building model developed by the Harvard Project on Indian Economic Development led by Stephen Cornell and Joseph Kalt. The model developed within the American study is used as a comparison to the literature available in Canada. Through the American project and the Canadian models and elements that are available for examination, various strategies for First Nations economic development are explored and developed further in this chapter: *Federal Control, Tribal Enterprise, Private Enterprise with a Tribal Member owning the business, and non-Tribal members involved in Private Enterprise*. In considering potential strategies, certain factors that impact the economic development process become evident. In order to break government dependency and advance economic development and self-determination through economic self-sufficiency, the First Nations require a resource base, a good economic business plan, and good governance.<sup>4</sup> Furthermore, and more importantly, these elements must all be based on a strong cultural match that is in harmony with the First Nations' community value systems as will be explored in the chapter.

The federal government created a burden of dependency by making First Nations dependent on government cooperation while they were procuring land for settlement of non-First Nations people. First Nations people were put on reserves, and limited by legal and social barriers that kept them in a submissive position under the Canadian government.<sup>5</sup> With the advent of the TLE developments in Saskatchewan, the idea of reserves has since become an infrastructure for acquiring assets and creating economic development for First Nations. Once more land and assets had been made available for First Nations settlement and economic development, strategies had to be chosen by bands that best suited their development needs. Not only does the economic strategy have to match the band's economic development needs, but they should be intertwined to match the bands' cultural development needs as well.<sup>6</sup> If a band can select a strategy that integrates elements of their own culture, a confidence in the economic strategy can be developed, and the business or economic development has a better chance of

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<sup>4</sup> Stephen Cornell and Joseph Kalt, *What Can Tribes Do? Strategies and Institutions in American Indian Economic Development*, edited by Stephen Cornell and Joseph Kalt, (Los Angeles: University of California, 1993).

<sup>5</sup> Barron and Garcea, 289. Dorey, Dwight, "Development Unreserved: Aboriginal Economic Development for the Twenty-First Century," in *Legal Aspects of Aboriginal Business Development*, edited by Dwight Dorey and Joseph Magnet, (Markham: LexisNexis Canada Inc., 2005): 12.

<sup>6</sup> Cornell and Kalt, 6.

success.

## **2.2 Burden of Dependency**

Stephen Cornell explains that the *Burden of Dependency* is one of the heaviest burdens First Nations peoples have to experience. The *Burden of Dependency*, according to Stephen Cornell, occurs through “the expropriation of Indigenous lands, (and) the social welfare policies,” among other interactions.<sup>7</sup> Laurie Barron and Joseph Garcea have similar views to that of Cornell when discussing this idea of dependency. The common thread between Cornell, and Barron and Garcea, is that there is a lack of human capital (lack of a trained work force), plus this the dependency on social welfare as a result of unemployment, and these are then added to the lack of employability generally in First Nations’ home communities.<sup>8</sup>

Control over people to gain access to lands would be a motivating factor as to why governments created an environment of dependency. There would have to be a motivating factor or incentive for creating dependency because governments will not take on unnecessary economic cost. Looking at the cost-benefit, the government in all likelihood saw the access to land as more valuable than the costs of supporting a race that was supposed to vanish. The government-created dependency undermined the political autonomy of First Nations government that the non-First Nations government wished to marginalize. According to Cornell, this policy has left “Indigenous nations hostage to policy decisions made by other governments, serving interests that may depart significantly from those nations’ own concerns.”<sup>9</sup> The Canadian government has used the burden of dependency as a way to supersede First Nations governments, take control, make way for settlement, and create the Euro/Canadian context deemed superior. This process also sets up the ‘other’ power imbalance theory between the Canadian government and the First Nations. This imbalance refers to a situation where one party becomes the dominant controlling party, while the other party becomes the submissive, though not unresistant, controlled party.<sup>10</sup>

The Canadian government was able to secure much of the Indigenous land for their own

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<sup>7</sup> Stephen Cornell, “What Makes First Nations Enterprises Successful? Lessons From the Harvard Project,” in *Legal Aspects of Aboriginal Business Development*, eds. Dwight Dorey and Joseph Magnet (Markham: LexisNexis Canada Inc., 2005): 52.

<sup>8</sup> Cornell, 52. Barron and Garcea, “The Genesis of Urban Reserves and the Role of Government Self-Interest,” 24.

<sup>9</sup> Cornell, 53.

<sup>10</sup> Sarah Carter, “Cultural Crossroads: The Red River Settlement,” in *Aboriginal People and the Colonizers of Western Canada to 1900*, edited by Sarah Carter, (Toronto: University of Toronto Press, 1999): 78-79.



settlement in exclusion to the First Nations, which is common to the colonial experience.<sup>11</sup> As previously mentioned, the government created and used reserves as tools to implement policies so that settlers could make use of non-reserve land and so that First Nations could be kept away from settlers. Reserves “evolved as islands of underdevelopment, sometimes in the midst of rich regional economies.”<sup>12</sup> Barron and Garcea explain that First Nations have one of the smallest per capita land bases in the world.<sup>13</sup> Dwight Dorey, former National Chief of the Congress of Aboriginal Peoples (CAP), asserts, “Reserves were not created for the collective economic benefit or development of First Nations as Nations,” but that the reserves were nothing but “a crude form of assisted termination.”<sup>14</sup> The federal government attempted to assimilate First Nations through the reserve system, which left the First Nations very economically weak.<sup>15</sup> With little or no opportunity left for the First Nations peoples, the government was able to exercise strict political policies and create a dependency on the federal government in order to further carry out assimilation and forcing First Nations to exist under the colonial customs. These types of control allowed the colonizer to access and control the resource bases of the First Nations people.

### **2.3 Barriers for First Nations Economic Development**

The barriers to First Nations development take various forms, and happen in two avenues – through communities as a whole, and through the individual. Until the 1980s, the development policy for First Nations in Canada had two premises, “one – reserve-based community development, and two – integration or assimilation of Aboriginal people as individuals into the wider economy.”<sup>16</sup> These contradictory methods demonstrate how the government was interested in trying different methods until they were satisfied with the outcome. The economic opportunities on reserves were often government jobs with a limited number of positions available. There was not enough work to provide employment for an entire community and this lack of employment created a dependency. Trans-generational welfare dependency can develop into a lack of opportunity for employment, especially for those who live in reserve communities

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<sup>11</sup> Susan C. Mapp, “International Social Development,” in *Human Rights and Social Justice in a Global Perspective: an Introduction to International Social Work*, (New York, N.Y.: Oxford University Press, 2008): 13.

<sup>12</sup> Barron and Garcea, “The Genesis of Urban Reserves and the Role of Government Self-Interest,” 24.

<sup>13</sup> Barron and Garcea, “The Genesis of Urban Reserves and the Role of Government Self-Interest,” 24.

<sup>14</sup> Dorey, 12.

<sup>15</sup> John L. Tobias, “Protection, Civilization, Assimilation: An Outline History of Canada’s Indian Policy,” in *As Long as the Sun Shines and the Water Flows*, eds. Getty and Lussier (Vancouver: University of British Columbia Press, 1983): 41.

<sup>16</sup> Dorey, 12/13. St. Germain and Sibbeston.

that are remote. People cannot become economically self-sufficient when government policies are placed upon them that limit opportunity.

Stephen Cornell and Joseph Kalt detail the ‘obstacles to development’, that First Nations communities face in economic development as of a list that includes many of the factors observed by a number of scholars. John Borrows and Sarah Morales explain a similar concept and outlook of First Nations economic impediment as “Barriers to Aboriginal Economic Success”. Both Cornell and Kalt’s views, as well as Borrows and Morales’ views about First Nations economic development acknowledge the lack of resources in First Nations communities, with land being the primary resource that First Nations are lacking.

In Cornell and Kalt’s evaluation, this lack of land control is directly connected to a general lack of resources. Cornell and Kalt observe that American “Reservations are poor in natural resources,” and for those reservations that are not, they have a “lack of sufficient control over them.”<sup>17</sup> If there is no control over land or resources, how can a First Nations band take the initiative to overcome development constraints or barriers? Borrows and Morales also include resources in the land discussion, and explain that the Canadian federal government “allocated reserve resources and economic opportunities to others, and itself participated in confiscating the most valuable reserve resources – sometimes illegally.”<sup>18</sup> Without access to or control over resources, there is no revenue that bands can generate economic wealth from.

According to Borrows and Morales, natural resources are the cornerstone of First Nations communities regardless of the type of economy sought, whether it is for subsistence, wage provision, or profit seeking.<sup>19</sup> First Nations need to have control over land and natural resources to develop their economy. Borrows and Morales argue “communities will have difficulty creating healthy economies for their citizens,” unless they have sufficient control over said resources.<sup>20</sup> The ability of First Nations to control their land and resources and assert decision-making power will facilitate self-determination while decreasing government dependency and control. Borrows and Morales explain the impact and significance of the problems with reserves. Reserves are seen as small islands of land, often with little resources for the First Nations

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<sup>17</sup> Cornell and Kalt, 6.

<sup>18</sup> John Borrows and Sarah Morales, “Challenge, Change and Development in Aboriginal Economies,” in *Legal Aspects of Aboriginal Business Development*, edited by Dwight Dorey and Joseph Magnet, (Markham: LexisNexis Canada Inc., 2005): 143.

<sup>19</sup> Borrows and Morales, 146.

<sup>20</sup> Borrows and Morales, 146.

peoples, leaving the band economically weak and adding to the dependency problem, making it difficult for communities to meet their basic needs.<sup>21</sup> With a small land base and no control of resources, it is almost impossible to develop any type of economic action plan. This forces First Nations to maintain dependency upon the federal government.

Cornell and Kalt explain that the problem with the American reservation system is either that there is lack of effective planning or that the reservations are often the “subject to too much planning and not enough action.”<sup>22</sup> This is a result of government agencies being over-involved in policy development, and interfering in the daily activities of the First Nations people through policy and legislation while not following up on the plans and actions put in place. Dwight Dorey acknowledges this aspect of reserve life in the types of programming First Nations have seen in Canada. Programs include training programs, community development programs and other policy directed initiatives. John Hylton adds to this discussion with his analysis of social programs that have been imposed upon First Nations by the Canadian government. John Hylton concludes that programs imposed on First Nations have failed because non-First Nations peoples who do not understand the people they are planning for are designing the programs. Hylton also points out that programs designed and implemented by First Nations have for the most part been successful and no more costly than programs run by non-First Nations peoples or governments.<sup>23</sup> Programs provided by governments often limit a person or a band’s potential by forcing them to operate within government placed boundaries. When First Nations peoples or First Nations governments design programs, there is a better chance that the program will have more of a cultural fit than programs designed solely by government officials, as First Nations people creating programs better understand the needs of the people.<sup>24</sup>

An additional hindrance for First Nations communities that contributes to the problems of economic development and dependency is the lack of investment capital available for both financial and natural resources. According to Borrows and Morales, the “most direct barrier to Aboriginal economic success is the lack of access to natural or physical capital,” be it tangible

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<sup>21</sup> Borrows and Morales, 143.

<sup>22</sup> Cornell and Kalt, 5.

<sup>23</sup> John H. Hylton, “The Case for Self-Government: A Social Policy Perspective,” in *Aboriginal Self-Government in Canada: Current Trends and Issues*, 2<sup>nd</sup> edition, edited by John H. Hylton, (Saskatoon: Purich Publishing Ltd., 1999): 78.

<sup>24</sup> Shelley Trevethan, “Is There a Need for Aboriginal-Specific Programming for Aboriginal Offenders,” in *Not Strangers in These Parts*, eds. David Newhouse and Evelyn Peters (Canada, Policy Research Initiative: 2003): 197.

assets or a labour force.<sup>25</sup> Cornell and Kalt make a similar observation about there being a lack of access to financial capital for First Nations bands and individuals. They explain that this is because many bands are not able to persuade investors to come to reserves, as they are receiving “intense competition from non-Indian communities.”<sup>26</sup> It is hard to compete against non-First Nations communities when distance from markets can be a factor, but this is something that is changing with the creation of urban reserves. As urban reserves emerge, investment capital will become more readily available, which will reduce one of the major developmental barriers First Nations bands face.

Borrows and Morales assert that financial institutions are hesitant to invest in small First Nations communities, as the location and size are often perceived as high-risk ventures, which is why many institutions refuse to get involved.<sup>27</sup> Harry Lafond later explains in Chapter Four that financial policies needed to change because of the risk involved with First Nations business. These reasons of apprehensions are exacerbated by the fact that many First Nations applicants have little experience, training, and/or have a minimal business record.<sup>28</sup> Borrows and Morales acknowledge that there is a lack of capital in First Nations communities and that this is a problem that is particularly prevalent for small business.<sup>29</sup> What makes this different from Cornell and Kalt’s view is that instead of focusing on market competition from the outside, Borrows and Morales look to the high unemployment in First Nations communities and the low incomes that leave very “little opportunity for individuals to accumulate savings that might be used for investment.”<sup>30</sup> This relates to the idea of land and property because without control of natural resources on the small land bases there is little way of drawing in capital for investment.

First Nations peoples cannot use their land for personal loans, so without resource capital or outside investment, there are no funds for economic development. This leaves the people and communities dependent on the federal system. This cycle repeats and is the principal obstacle in economic development and self-sustainability. Since First Nations do not own their home on reserves, there is no capital to establish credit.<sup>31</sup> To compound this, there is little chance for most First Nations to acquire savings for business investment when they have a lower average yearly

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<sup>25</sup> Borrows and Morales, 150.

<sup>26</sup> Cornell and Kalt, 6.

<sup>27</sup> Borrows and Morales, 150.

<sup>28</sup> Borrows and Morales, 151.

<sup>29</sup> Borrows and Morales, 150.

<sup>30</sup> Borrows and Morales, 150.

<sup>31</sup> Borrows and Morales, 145.

income than non-First Nations in Canada. Between 1985 and 1995, the “non-Aboriginal average income increased to \$19,831, compared to \$13,020 for Aboriginal Canadians as a whole.”<sup>32</sup> These numbers demonstrate that there are other areas of economic development and employment that warrant study with respect to First Nations peoples and communities; however, individual employment disparities are not the focus of the study being conducted. It is an area that must be acknowledged and cannot continue to be ignored.

The geographic location for First Nations’ reserves has been a cause for dependency because not all services are offered on reserve and this too has been a barrier for economic development. Michael Gertler discusses rural First Nations peoples as being doubly marginalized as a result of the location of the reserve. Although many reserves are in remote locations, they have not always been, as nearby towns that were once economic hubs are now in an extreme economic decline.<sup>33</sup> Gertler explains that the other way rural First Nations peoples are marginalized is through the gravitation to urban centres.<sup>34</sup> Many leave their home communities to seek out employment, and in many cases, this can be observed as the loss of human capital – as such, it is an observable impediment for economic development in First Nations reserve communities.

Cornell and Kalt discuss the distance from markets and that this affects a community because transportation to the market is so costly.<sup>35</sup> The cost of development of resources, and then for transportation from the First Nations community to local markets, needs to be worthwhile and profitable to be a sustainable development. Borrows and Morales take the same stance as Cornell and Kalt in that they observe that “in many cases, reserves are located far from markets and services,” and the challenge the reserve communities face is that of “high transportation costs [that] make it difficult for some Aboriginal peoples living on-reserve to participate in the larger market economy.”<sup>36</sup> The remoteness of reserves is becoming less of a problem in Saskatchewan because many bands have bought land near or in urban centres.

There is one other obstacle to development that First Nations communities endure, and

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<sup>32</sup> Borrows and Morales, 150; Unknown, *Strengthening Aboriginal Participation in the Economy*, Report of the Working Group on Aboriginal Participation in the Economy to Federal-Provincial/Territorial Ministers Responsible for Aboriginal Affairs and National Aboriginal Leaders (May 11, 2001): 6.

<sup>33</sup> Michael Gertler, “Indian Urban Reserves and Community Development: Social Issues,” in *Urban Indian Reserves: Forging New Relationships in Saskatchewan*, edited by Laurie Barron and Joseph Garcea, (Saskatoon, Purich Publishing Ltd., 1999): 272.

<sup>34</sup> Gertler, 272.

<sup>35</sup> Cornell and Kalt, 6.

<sup>36</sup> Borrows and Morales, 146.

that is the governance system. Cornell and Kalt found in their research that many First Nations bands “have unworkable and /or externally imposed systems of government.”<sup>37</sup> This is problematic because it is hard for a political system to work when people do not feel a sense of ownership over the system they are using. This is why the systems in place have brought corruption into band politics – corruption through band politicians and bureaucrats.<sup>38</sup> Cornell and Kalt observe: “on-reservation factionalism destroys stability in tribal decisions, and legitimacy.”<sup>39</sup> Borrows and Morales concur with Cornell and Kalt stating, “[e]xcessive factionalism has sometimes hindered stability in Aboriginal decision-making and development.”<sup>40</sup> They explain that this causes an economic barrier, potentially keeping outsiders from investing or participating in First Nations businesses.<sup>41</sup> This economic barrier reduces confidence in the band’s development and creates a risky environment for investment.

#### **2.4 Programming Occurring in Canada**

In Canada, the federal government has been closely involved in economic development, or the lack thereof, for First Nations peoples. Prior to the 1970s, and prior to any discussion of TLE, the federal government was involved in programming for First Nations peoples. In this earlier period, programming for First Nations was a three-pronged approach targeting the individual, targeting the communities, and embracing business.<sup>42</sup> Although the programs were mostly developed prior to TLE discussion, much of the federal programming continued into the twenty-first century.

On the individual level, the federal government introduced a program called ‘Pathways to Success’ that provided market training and employment-entry programs.<sup>43</sup> Dorey would like to see these types of programs handed over to First Nations people so that the programs can be refocused from the “transition to the mainstream.” This would make the programs more stable and culturally specific.<sup>44</sup> People will be more responsive to programs that reflect their culture in

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<sup>37</sup> Cornell and Kalt, 7.

<sup>38</sup> Cornell and Kalt, 7.

<sup>39</sup> Cornell and Kalt, 7.

<sup>40</sup> Borrows and Morales, 148.

<sup>41</sup> Borrows and Morales, 148.

<sup>42</sup> Dorey, 13.

<sup>43</sup> Dorey, 14. Employment and Immigration Canada, 1991, Ottawa, *Pathways to Success: Aboriginal Employment and Training Strategy: A Background Paper*, Canada, Employment and Immigration Canada (Dept.) Public Affairs Branch.

<sup>44</sup> Dorey, 14. Roger Maaka and Augie Fleras, “Mainstreaming Indigeneity by Indigenizing Policymaking: Towards an Indigenous grounded analysis framework as policy paradigm,” in *Indigenous Policy Journal* XX, no. 3 (Fall 2009): 25/45.

various ways, more so than when they are pushed through programs that are not representative of their worldview, similar to what Hylton has presented.

The community development programming developed by the federal government was also limited. The Department of Indian Affairs and Northern Development (DIAND) administered these loan-funding programs for Indian and Inuit,<sup>45</sup> with the intent to “improve the collective capacity of Aboriginal communities to attract development.”<sup>46</sup> As First Nations development was quite stagnant, especially prior to the TLE negotiations in Saskatchewan, it became evident that the government’s development strategy for First Nations communities was not really creating successful business performance. If this process were successful, more bands in Saskatchewan would have experienced economic development prior to the TLE settlements.

According to Dorey, the first funding for First Nations entrepreneurs was seen in Canada in the middle of the 1980s with a ‘Native Economic Development Program’, followed by ‘Industry Canada’s Aboriginal Business Canada Program’ that was first offered in 1989.<sup>47</sup> The problem with this type of programming is that it is top-down from the federal government down to First Nations people, and is not a proper support system for economic development for First Nations. There is no mention of a cultural match in these business development opportunities. Also, the funding system is problematic because the federal government controls the expenditures and has the power to cut funding at any time, and moreover has often done so. The entrepreneurial support is already on the decline as the overall spending by the federal government is rapidly decreasing.<sup>48</sup> With federal funding on the decline it is becoming increasingly important that First Nations develop strong economic development that is more self-supporting and self-sustaining.

Dwight Dorey discusses programming for First Nations peoples at length in “Development Unreserved: An Economic Development for the Twenty-First Century,” and begins by examining the individual programs the federal government has imposed on First Nations over the years. Many of the programs that Dwight Dorey discusses can be found and

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<sup>45</sup> Dorey, 15.

<sup>46</sup> Dorey, 15.

<sup>47</sup> Dorey, 15. Industry Canada, “1996-97 Estimates – Report on Plans and Priorities,” in *Industry and Science Development Program, Section II – Analysis and Activity: D. Other Operations*, modified June 10, 2010 <http://www.ic.gc.ca/eic/site/ic1.nsf/eng/00373.html> (accessed July 29, 2010). Saskatchewan Indian, “Funding Approved Under the Native Economic Development Program,” in *Saskatchewan Indian*, May 1989, [www.sicc.sk.ca/saskindian/a89may17.htm](http://www.sicc.sk.ca/saskindian/a89may17.htm) (accessed July 29, 2010): 17.

<sup>48</sup> Dorey, 15.

supported in materials produced by academics such as Jim Miller, and in government ministries, such as Industry Canada.<sup>49</sup> Individual programs were administered through the federal government via the *Indian Act*. In the 1850s, the federal government first imposed voluntary enfranchisement, which was used and enforced until 1951, and was not officially abolished until 1985. In 1920 involuntary enfranchisement was enforced as a measure for a couple years, and a return to voluntary enfranchisement occurred until abolished.<sup>50</sup> Although First Nations resisted this policy, it was a top-down instrument that the First Nations had limited control over. Once enfranchised, a person ceased to be a First Nations person under law, thus not being allowed to participate in the development of a First Nations economy, as they were no longer legally considered to be a First Nations person.<sup>51</sup> It was thought that this policy would push First Nations peoples from the traditional lifestyle to the agrarian lifestyle that the federal government was imposing and encouraging.<sup>52</sup> This perpetuates dependency by forcing First Nations to become dependent on a new economic system and causes the First Nations to rely on the federal government for help through this transition. This attempted shift was not workable, and has left the First Nations people economically weak.

The individual programs then shifted in the 1980s away from the social engineering concept to individual assistance programs. Dorey explains this new transition as a shift towards economic investment into human capital that assists in labour market training and employment entry programs.<sup>53</sup> These business initiatives and programs can be seen as oppressive because the federal government is conducting them. Also, more programming is not necessarily good programming. In fact, most of the programming to date was not helpful because it did not account for First Nations' worldviews. However, the need for this type of programming addresses a well-known obstacle to economic development, and that is the issue of human capital and workforce training. While this type of programming was intended to help, it should first be tailored to the First Nations community that it is meant to help.

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<sup>49</sup> J.R. Miller, "Petitioning the Great White Mother: First Nations' Organizations and Lobbying in London," in *Reflections on Native-Newcomer Relations: Selected Essays*, (Toronto: University of Toronto Press, 2004): 230. Industry Canada, "1996-97 Estimates – Report on Plans and Priorities," in *Industry and Science Development Program, Section II – Analysis and Activity: D. Other Operations*, modified June 10, 2010 <http://www.ic.gc.ca/eic/site/ic1.nsf/eng/00373.html> (accessed July 29, 2010).

<sup>50</sup> Dorey, 13. Miller, 230 - 231.

<sup>51</sup> Dorey, 13. Miller, 230.

<sup>52</sup> Dorey, 13. J.R. Miller, "Canada and the Aboriginal Peoples 1867-1927," in *Reflections on Native-Newcomer Relations: Selected Essays*, (Toronto: University of Toronto Press, 2004): 186.

<sup>53</sup> Dorey, 14.



According to Cornell and Kalt, “Entrepreneurial skills and experience are scarce,”<sup>54</sup> and without these skills present in the people of the community, the community will have to depend on outsiders. This is not economic self-sufficiency, and is yet another form of dependency and an obstacle to First Nations driven development. Both Cornell and Kalt, and Borrows and Morales acknowledge one other reason for a lack of human capital, outside of lack of training, education, or experience. And that other reason is social problems. Social problems, such as alcohol, drugs, and family dysfunction contribute to the loss of human capital.<sup>55</sup> These personal problems affect the community as a whole and must be acknowledged, but will not be discussed further as the social problems of reserve communities are not the focus of the research presented here.

## **2.5 Elements for Successful Economic Development in the Harvard Project’s Nation-Building Model**

In their research, Cornell and Kalt found that there are four key elements involved in economic development that are required for the First Nations bands to experience success.<sup>56</sup> Again, just because First Nations follow particular business practices or elements does not mean that the business is guaranteed to be successful. However, certain elements being present do contribute towards success. The four key elements that are present in successful bands are as follows:

- Take Control – the band assumed local autonomy and set their own direction and made their own decisions.
- Establish Effective Institutions – setting up rules and mechanisms on how to relate to a community committed to business growth.
- Strategic Direction – the leaders set a vision and a mission for the community along with plans for the long term.
- Action Oriented Leaders (AOL) – with the education, knowledge, and skills to carry out their roles and responsibilities for implementation of the strategic plan and monitoring and evaluating performance and results.<sup>57</sup>

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<sup>54</sup> Cornell and Kalt, 7.

<sup>55</sup> Cornell and Kalt, 7. Borrows and Morales, 148.

<sup>56</sup> Cornell and Kalt, 34-41.

<sup>57</sup> Brian Calliou, “The Significance of Building Leadership and Community Capacity to Implement Self-Government,” in *Aboriginal Self-Government in Canada: Current Trends and Issues*, 3<sup>rd</sup> edition, edited by Yale D. Belanger, (Saskatoon: Purich Publishing Inc., 2008): 335.

Cornell and Kalt point out that these four elements require a business strategy to be chosen before steps can be taken to make them present. The business strategy or philosophy chosen for an economic model can shape the four elements. Once a business strategy is chosen, depending on the strategy, it can help determine the level of control and types of business decisions the community will make and what shape the four elements mentioned above will take.

To explore the types of business strategies that are ‘usable’ for First Nations economic development, one can see them transpire within what Cornell and Kalt consider being the ‘development ingredients.’ These ingredients can shape the business strategies that take hold in First Nations communities. Cornell and Kalt have broken down development into three categories: (1) external opportunity; (2) internal assets; and (3) development strategy.<sup>58</sup>

Within the category of external opportunity, many of the critical factors are elements that have a double-edged sword effect in that the factors for success can also be the reason for economic challenges. The external critical factors include: (a) political sovereignty – this involves the extent of control over decision-making power; (b) market opportunity – opportunities from assets or attributes; (c) access to financial capital – in the ability to secure either private or public investment; and (d) proximity to local markets – will the distance and cost of transportation be worthwhile?<sup>59</sup> The external critical factors are elements that will help determine the business strategy possibilities. Nevertheless, not all business strategies will be practical. For instance, access to capital will play a pivotal role in the business options a First Nations community will have. Any business strategy that does not account for this would be severely limited in scope.

The internal assets will determine the course of action a First Nations band will take when deciding upon a business plan and how governance will be organized. This is because their business options will depend on what assets are readily available to them, be it natural resources, human capital, the institutions of governance, or the peoples’ culture.<sup>60</sup> Human capital includes people with skills, knowledge, and expertise to carry out specific tasks. Without adequate skill sets in the human capital area, the band must look to outsiders for help, losing some autonomy in the process. In the area of capacity-building and governance, the structure of the internal assets will depend on leadership and human capital. There needs to be strong governance in decision-

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<sup>58</sup> Cornell and Kalt, 8.

<sup>59</sup> Cornell and Kalt, 8.

<sup>60</sup> Cornell and Kalt, 9.

making for choosing an economic development strategy, and strong governance would be based in the leadership and skill set of the leader(s). Lastly, culture is an important internal asset as the development plan should be a cultural match with the community – culture is defined as the general reflections of the community, how they perceive the world and ways of knowing.<sup>61</sup> These three elements: human capital, governance, and community are all inter-related, and a good combination thereof will determine the scope of the band’s development choices. Natural resources are important to have at hand, but the combination of these other three elements will be more important to the band in any long-term plan.

The development strategy is the third development ingredient that Cornell and Kalt discuss with respect to the Harvard Project and First Nations economic development. There are two elements to this ingredient: the first being the overall economic system, which is the organization of the reserve economy, and the second being the choice of development activity.<sup>62</sup> These two elements go hand-in-hand as the type of development activity can influence the type of business strategy chosen, and also because the type of reserve economy can determine if the First Nation decides to get involved with a particular business or development opportunity. A business strategy must be chosen, and it must coincide with the beliefs or visions of the community to ensure community support of the business. If the opportunity can be explored within a business concept that the community will be able to accept, then the band is one step closer to successful economic development.

## **2.6 Economic Strategies for Development from the Harvard Project**

Cornell and Kalt’s research has led them to certain observations as to what is involved when choosing an effective development strategy. The economic system, of which there are four strategies, must compliment the governance structure and vice versa for the best potential outcome in economic development. The first of the four strategies discussed is the strategy of *Federal Control*. The Harvard Project explains this strategy as the “default mode of tribal economic organization and historically (is) the most common.”<sup>63</sup> This strategy designates the federal government as the primary decision-makers, especially when it comes to decisions about what business or economic ventures the band should pursue.<sup>64</sup> This strategy of economic

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<sup>61</sup> Cornell and Kalt, 9.

<sup>62</sup> Cornell and Kalt, 10.

<sup>63</sup> Cornell and Kalt, 34.

<sup>64</sup> Cornell and Kalt, 35.

development is often an inappropriate strategy for First Nations' bands, as non-First Nations government business plans often do not culturally fit with the community's worldview.<sup>65</sup> This is not surprising, because as Dorey discussed much of the economic policy that the government developed was not a cultural fit and therefore did not work.

The next strategy to discuss is *Tribal Enterprise*; the First Nations band becomes the business developer in this strategy. Here, the band owns and operates their own business and economic development. Problems with this strategy can arise if the governing band is not careful. Cornell and Kalt point out two particular problems: one, there can be a problem with motivating the management; and two, the First Nations government ownership makes it difficult at times to separate politics from the day-to-day business management.<sup>66</sup> Although there are these risks, if they are readily identified any band can take preventative measures. A solution that Cornell and Kalt offer for this particular problem of separating band politics from business is to make the band members stockholders or stakeholders.<sup>67</sup> An alternative management system could be put in place where the band would "set up (an) independent board to manage tribal enterprises."<sup>68</sup> Otherwise, the best bet for success is to have the band set up a chief executive form of governance to carry out development plans that are separate from the band government itself. To better insulate bandleaders from pressures in making executive decisions it is suggested that independent boards be established.<sup>69</sup> It is important for bands to have their own enterprises as the business strategies and practices will better reflect community goals, rather than operate under an entity like the federal government which may not understand those goals. Past practices under the *Federal Control* strategy have not been successful in promoting and developing economic self-sufficiency and development as its' foundation is that of outside control over band control. The *Tribal Enterprise* strategy is much more workable.

The reason why the strong chief executive form of government is an element required in band business ownership is because a strong governance system incorporates accountability. People who can assume serious responsibility for their actions will help to promote good decision-making for the good of the band. Cornell and Kalt explain that culture must be an element involved in this type of business practice so that the business practices are seen as

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<sup>65</sup> Cornell and Kalt, 35.

<sup>66</sup> Cornell and Kalt, 37.

<sup>67</sup> Cornell and Kalt, 37.

<sup>68</sup> Cornell and Kalt, 37.

<sup>69</sup> Cornell and Kalt, 37.

legitimate in the eyes of the band members involved and the community that is affected by them.<sup>70</sup> There still is no guarantee that the band-controlled business will be successful. However, confidence gained in the community can and will most likely strengthen governance and economic development. As stated by Cornell and Kalt, “neither forms can guarantee that tribally owned businesses will be either free from politics, or successful as businesses,”<sup>71</sup> but to this point, these are the best-recommended safeguards. There will always be the risk that the centralized authority in this strategy will be susceptible to corruption or that decisions will be made to personally benefit members of the executive, including the chief.<sup>72</sup> However, insulation of business from governance will increase the odds of business success.

Another economic strategy a band could choose for economic development is that of *Private Enterprise with a Tribal Member owning the business*. In this case the business or enterprise would be owned and operated by an individual, a family or an entrepreneurship run by band members.<sup>73</sup> Here, the band may buy shares in the private enterprise or give grants in return for a portion of its profits. According to the Harvard Project, this type of enterprise occurs in this small business style:

The microenterprise strategy is particularly appropriate where cultural norms support individual accumulations of at least modest wealth; where individual achievement is honored and not cause for personal rejection; where there is cultural resistance to the importation of non-member management that might otherwise be needed, at least for a time, to run large enterprises; where larger businesses that require ‘bosses and workers’ hierarchies are incompatible with cultural standards regarding who can tell whom what to do; and where people’s political allegiances may not be fixed on central tribal authorities.<sup>74</sup>

*Cultural appropriateness* is an element that keeps surfacing in the discussion of economic development.<sup>75</sup> Cultural input should come from the community and not from any outside influence. A culturally appropriate strategy can legitimize the business plan in the eyes of the community, making it easier for them to support the business venture.

The last economic strategy that Cornell and Kalt point out is that of *Private Enterprise with a non-tribal member*, which involves non-First Nations businesses setting up on reserve land

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<sup>70</sup> Cornell and Kalt, 38.

<sup>71</sup> Cornell and Kalt, 38.

<sup>72</sup> Cornell and Kalt, 39.

<sup>73</sup> Cornell and Kalt, 39.

<sup>74</sup> Cornell and Kalt, 40.

<sup>75</sup> Cornell and Kalt, 40. Wanda Wuttunee, *Living Rhythms: Lessons in Aboriginal Economic Resilience and Vision*, Toronto: McGill-Queen’s University Press, 2004).

or otherwise sharing in the band's resources, often taking the form of joint-ventures.<sup>76</sup> Michael Gertler explains that joint-ventures can cause problems for First Nations development because non-First Nations investors may try to do everything their way by using their "experience and muscle" to be in a position of control as opposed to being culturally sensitive.<sup>77</sup> This development strategy is often used in areas surrounding manufacturing and resource processing, but is only recommended for bands are: self-confident, have the cultural standards that align with the business venture (especially big business with outsiders), and can handle the hierarchy of bosses and workers.<sup>78</sup> This strategy will not work for small bands or bands that are still focusing on cultural preservation, as the culture would still be in a position of being threatened through loss of language or tradition. The band should be in a strong prominent position, or the band may get lost in the process or lose control of the economic development that is taking place.

## **2.7 Other Elements to Consider**

Dwight Dorey has similar views to those expressed in the Harvard Project in that economic success will come to First Nations peoples by having them in a position to control the business venture and/or the natural resources. Dorey sees that there needs to be four decisions that need to be addressed, and by doing so, First Nations should be able to be in a position to exercise economic development. The first decision Dorey discusses is the "decision to accept that Aboriginal economic performance requires access to resources and control over lands."<sup>79</sup> The answer for this, according to Dorey, is the requirement of new agreements concerning lands and resources. He explains, "Few reject this idea that resources and control over land is a crucial determinant of society's economic performance and capacity for self-reliance."<sup>80</sup> Roger Maaka and Augie Fleras support is by explaining that land is important to the big picture of exercising self-determination.<sup>81</sup> This is why TLE is pivotal to the capacity-building for successful development and enterprise. It is a return of land and resources to First Nations based on what was promised to them via longstanding Treaty agreements that were made with the federal government more than 100 years ago. It now presents access to capital in various ways to allow for economic development that can be controlled by First Nations' initiatives. Through TLE,

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<sup>76</sup> Cornell and Kalt, 41.

<sup>77</sup> Gertler, 270.

<sup>78</sup> Cornell and Kalt, 41.

<sup>79</sup> Dorey, 17.

<sup>80</sup> Dorey, 18.

<sup>81</sup> Roger Maaka and Augie Fleras, *The Politics of Indigeneity: challenging the state in Canada and Aotearoa New Zealand* (New Zealand: University of Otago Press, 2005): 37.

capital is brought in to purchase land owed, and this land can then be leased to start a cash flow for First Nations bands. This connects to the Harvard Project's first key element present in economically successful bands, the idea of First Nations taking back control to make their own decisions. Dorey explains that land is essential for becoming self-reliant, and that control over lands has to be regained for First Nations development to succeed.

The next decision Dorey presents is the need to address governance and 'Aboriginal' institutions. He explains that 'Aboriginal' governance should be accountable, transparent, and open.<sup>82</sup> This form of effective governance is the concept of a strong, secure government that Cornell and Kalt discuss in the Harvard Project, bringing particular attention to their list of key elements present in successful bands. Effective governance is directly connected to establishing effective institutions, and governance is a form of an institution. Dorey comes to the idea of accountability by pointing out that many First Nations governments do not practice this but that it is a capacity that is essential in the exercise of authority.<sup>83</sup> The practice of good governance will enable First Nations to have confidence in their governing system and as Dorey explains "[g]ood governance is essential for development."<sup>84</sup> It would not only instil confidence from within, but also instil confidence in potential outside investors of the band. Robert Chaskin takes this one step further in the discussion of 'Building Community Capacity', as will be discussed later.

Decision number three for Dorey is that all levels of government, First Nations and non-First Nations, should work towards an equitable participation in development projects,<sup>85</sup> which could include the implementation of inclusive decision-making strategies and creation of job opportunities. This decision is not that different than the fourth element Cornell and Kalt presented when discussing the elements present in economically successful bands. This is because it would take action-oriented leaders to implement these kinds of decisions, as a certain level of comprehension of responsibility is required and they would need to possess certain skill sets to be successful. When a strong leader is in place that has confidence in the decisions they make, the community would be more inclined to place trust in their leader and the skills they

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<sup>82</sup> Dorey, 17.

<sup>83</sup> Dorey, 23. Moses N. Kiggundo, "Chapter 11: Canada-Aboriginal Partnership: Challenges for a New Relationship," in *Collaborative Government: Is there a Canadian Way?* eds. Susan Delacourt and Donald G. Lenihan (Toronto: Institute of Public Administration of Canada, 1999): 102.

<sup>84</sup> Dorey, 21.

<sup>85</sup> Dorey, 17. S. Owen, "Chapter 4: Managing for Sustainability," in *The Cornerstone of Development: Integrating Environmental, Social, and Economic Policies*, eds. Jamie Schnurr and Susan Holtz (Ottawa: Lewis Publishers and CRC Press LLC, 1998): 125.

possess.

The fourth and final decision Dorey says has to be made for First Nations communities to be in a position for economic development success is that “Aboriginal and non-Aboriginal government efforts to manage natural resources must be co-ordinated and harmonized.”<sup>86</sup> The direction or the business strategy that is chosen will determine this. This relates to the Harvard Project’s ‘strategic direction’, the third element present in economically successful bands. Any particular path chosen to account for resource management would not reflect a short-term policy arrangement, just as the strategic direction in the Harvard Project is not a short-term community plan. Resource management is always a long-term plan. Harmonization is significant because in many areas of Treaty settlement – provincial, federal, and municipal – arrangements must compliment each other in order to have functioning relationships that are productive. Without such harmonization a lot of time will be wasted with parties engaged in political battles and heavy-handed posturing.

Robert Chaskin and his collaborators explain that governance is a portion of the bigger picture when looking at community sustainability. According to Chaskin, a community involves certain elements: stability, safety, density, opportunity structure, migration patterns, and class and power distribution.<sup>87</sup> These elements shape communities, and can either constrain or promote community development. This is dependent upon the presence of and the form that the element takes. For example, stability could be measured in a lack thereof, or it could be measured by assessing whether or not capital is invested from outsiders. Stability is a good example from Mr. Chaskin’s list because it is one of the most important elements for investors. Stability can be seen as an element of financial safety and predictability because if there is little stability then there is a greater risk of losing an investment. Borrows and Morales discuss success in First Nations economic development in a very similar way to Chaskin in that the “development requires institutions that are stable, fair, efficient and reasonable.”<sup>88</sup> Cornell and Kalt explain that these institutions must be “capable of protecting investors and entrepreneurs from political interference with their capital commitments, and capable of enforcing workable business.”<sup>89</sup> There is a level of security needed for investment to take place. Deference to and respect for

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<sup>86</sup> Dorey, 17.

<sup>87</sup> Calliou, 336.

<sup>88</sup> Borrows and Morales, 138.

<sup>89</sup> Cornell and Kalt, 40.



these elements as listed will instil confidence and legitimacy in outside investors and they will be able to see a business venture as less risky or less susceptible to band politics.

From here, Chaskin, and Borrows and Morales, take two different directions in the discussion of First Nations economic development. Chaskin goes in the direction of community capacity-building by highlighting elements that are central to the development strategies such as “leadership, organizational development, organizing for action, and organizational collaboration.”<sup>90</sup> Similarities to the Harvard Project are drawn upon, in that the key elements for capacity-building are “strong leadership, organizational development through the establishment of institutions and processes for good governance, and doing what is necessary to put the plans into action.”<sup>91</sup>

Borrows and Morales expand this discussion of successful First Nations by looking at specific cultural undertones that could operate in tandem with First Nations political control – political control being necessary to protect the concept of citizenship.<sup>92</sup> This is not to say that Cornell and Kalt or the Harvard Project did not discuss the importance of culture and cultural match, but Borrows and Morales take it a little deeper by discussing the concept of learning culturally significant approaches from the ancient teachings.

Borrows and Morales introduce a specific element of culture when examining how culture needs to fit the economic strategy for First Nations in economic development. When looking at culture and cultural fit, Borrows and Morales demonstrate how the ancient teachings should be applied to economic development. “Many Aboriginal peoples have teachings related to their growth and development. While some of these teachings must be turned aside as irrelevant or inappropriate because they do not accord with contemporary Aboriginal sensibilities, others are of great significance.”<sup>93</sup> It is acknowledged that not all teachings from the past are useful in this modern era. However, Borrows and Morales emphasize the importance of the ancient teachings because some are very relevant to long-term First Nations development, such as lessons “that bring peace, prosperity, responsibility, and success.”<sup>94</sup> These ancient teachings have left imprints in culture, and if some teachings are resurrected and used, the worldview that was built upon the teachings will be reflected in the economic development. Thus, using the ancient teachings as a

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<sup>90</sup> Calliou, 336.

<sup>91</sup> Calliou, 336.

<sup>92</sup> Borrows and Morales, 138.

<sup>93</sup> Borrows and Morales, 138.

<sup>94</sup> Borrows and Morales, 138.

business strategy foundation may reinforce the business's legitimacy within the community.

## **2.8 Breaking the Dependency**

Stephen Cornell not only explains how dependency exists as a political and economic mechanism, but he also provides some ideas on “Escaping the Dependency Leash.” To break this dependency from the government, under this model, two areas need to be developed. The first area to develop is the need to provide economic opportunity – First Nations need business prospects and subsistence resources in order to grow.<sup>95</sup> The other area that needs to be developed is funding for First Nations governments, which will help enable and develop “law-making, decision-making and implementation, judicial function and enforcement, and service provision.”<sup>96</sup> The economic development is part and parcel to breaking the dependency on the federal government for First Nations, because it not only develops their economic strength and creates economic freedom, but it also helps in the area of governance. First Nations governance that is able to break from the federal government, secure and invest funds flowing in from development, take control of decisions and is generally self-determining will be able to shore up economic development. Economic development and governance are completely interdependent in terms of obtaining economic success.

There are many reasons for the economic hardship First Nations peoples face. Most of the hardship is rooted in dependency – a dependency that the federal government created and controlled for a number of years. The federal government's primary motive for creating a dependency was to secure land and put First Nations into an easy position to be assimilated. Ingrained in this dependency are several developmental roadblocks that First Nations peoples' face, all preventing economic success. Such roadblocks to development include: programming and policy; lack of financial capital; lack of human capital; and governance structuring. The poor quality land bases and a lack of control over resources confound these roadblocks. Cornell and Kalt and the Harvard Project explain, along with other academics, that there are ways of breaking dependency and ways to create successful economic development when certain key elements are present. However, following the business strategies, setting up governance structures best suited for them, and acquiring a strong resource base through land or resources does not guarantee economic success for First Nations. What is important for First Nations development is to break

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<sup>95</sup> Cornell, 53.

<sup>96</sup> Cornell, 53.

the dependency that has been created. What can support this break of dependency is ensuring that the business development and governance institutions are cultural matches for those involved.

Between literature and research from Cornell and Kalt, Borrows and Morales, Barron and Garcea, Brian Calliou, and Dwight Dorey at least one now has the ability to analyze the different components involved in economic development regardless of whether or not they hinder or advance development. Knowing about these components is half the battle. Through all the discussion of economic strategies brought forward by the academics, common threads include the ideas of capacity-building and regaining control over businesses, and lands and resources – these are the elements that are needed for First Nations bands to be economically successful and break dependency. All of this is backed by a community confidence in a business system, a confidence that can be fostered in cultural matches that align with governance and development.

For First Nations to be economically successful there needs to be a strong business plan in place, and preferably a plan that is a good cultural match; however, even a good cultural match and business plan cannot guarantee success. One element that would help prevent business failure that must be acknowledged is good governance, as it is the backbone of First Nations communities. However, even if a band does everything right – economic success is still a small matter of good fortune. The Harvard Project, under the advisement of Cornell and Kalt, has researched economic development in the United States, and some cases in Canada. It has discovered that “economic development had to be part of community development and self-determination,” which involves “a well-governed and stable community with a vision to grow businesses.”<sup>97</sup> Again, there is no guarantee that First Nations’ economic development and business will be successful, but those bands *that are* successful have certain elements present in the organization of the band and business. Whether it is separation between band politics and business, or having a good cultural match, it has been established that the key to successful economic development will always depend primarily on a great amount of motivation and self-determination by the band and its members.

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<sup>97</sup> Calliou, 335.

## Chapter 3

### **MLCN: A BAND USING TLE TO BREAK DEPENDENCY**

#### **3.1 Introduction**

Some bands in Saskatchewan started to settle their Treaty Land Entitlement (TLE) before the signing of the Treaty Land Entitlement Framework Agreement (TLEFA) in 1992, but that does not mean they cannot be considered a TLE band. In fact, Muskeg Lake Cree Nation (MLCN) started their settlement prior to 1992, and they still signed the agreement in 1992 as an entitlement band. MLCN is an excellent community to use as a case study when examining TLE and the TLEFA because as an early signatory entitlement band, they were the first in Saskatchewan and Canada to establish an urban reserve for economic development and since their settlement is now twenty years old, the band's sustainability can start to be measured. MLCN has been able to focus on economic development by using assets derived from the TLE settlement, developing layers of business and managing to separate business from band politics as will be discussed further. The band has been successful in economic development because they blended business strategies and they have incorporated the band's worldview, which has allowed for the community to develop a confidence in the band's economic endeavours. In this way, MLCN began breaking dependency with the Crown.

This chapter explores how MLCN's economic schemes reflect the four strategies presented by Stephen Cornell and Joseph Kalt in the Harvard Project on Indian Economic Development. When a band is selecting a business strategy for economic development, they are not restricted to one strategy, but instead should blend whatever strategies are needed according to the community's objectives and economic goals. It is important to see how MLCN has used business strategies to shape their economic development, but it is also important to see how the government has created room for bands to start breaking dependency from the Crown. The 'Made in Saskatchewan Approach' was an avenue created for parties to sit and negotiate various levels of self-determination and governance subsequent to successful demonstration of economic and decision-making progress that resulted from the TLEFA. Self-determination in the context of this subject matter involves the capacity for decision-making with strategic direction for the future of the First Nations band – i.e.: creating band-specific economic goals. Self-government more specifically refers to the release of power by the federal government and their recognition

of a negotiated self-government that is determined by specific agreements with First Nations bands.

To illustrate how bands have been using their TLE settlements, a case model was selected. It is through the case model of MLCN, and its background, that it becomes clear as to why MLCN is often held up as the example of a successful TLE band.<sup>1</sup> This chapter works through the layers of business, and MLCN is using a variety of economic strategies. The settlement and the urban reserve creation begin the discussion to explain how the band is starting to break their dependency with the Crown. The break from dependency and the confidence that is being created is a desired outcome by all parties involved in the negotiation process as can be seen in the development of the ‘Made in Saskatchewan’ approach, and if it were not so, then the ‘Made in Saskatchewan Approach’ would not have been developed. It is important that when a band is deemed a success in their economic development, that it is also from the band’s perspective and not just outsiders. For the band to be truly successful in business and economic development, the community members must hold a confidence in the system, and a strategy must be chosen that culturally fits with the community engaged in the development projects.

### **3.2 Background**

Muskeg Lake Cree Nation (MLCN) is a band located in central Saskatchewan in Treaty Six territory. MLCN Chief Kitowehow (1876-1879) signed Treaty Six August 23, 1876, and subsequently had a reserve surveyed for the First Nations band – 26,880 acres,<sup>2</sup> based on 640 acres per family of five, or 128 acres per person.<sup>3</sup> Many of the problems surrounding land are due to population counts determined at that time by surveyors who used inaccurate paylists, leaving the band with less land than what was owed to them for a reserve. Bands in Saskatchewan who have shortfall claims of acres owing for reserve allocation are Treaty Land Entitlement Claims (TLE Claims).<sup>4</sup> The TLE owing was the basis for the TLEFA and the catalyst that led to the process of more efficient TLE settlement claims in Saskatchewan.

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<sup>1</sup> Robert Brent Anderson, *Economic Development among the Aboriginal Peoples in Canada: The Hope for the Future* (Concord, On: Captus Press Inc: 1999): 162.

<sup>2</sup> Muskeg Lake Cree Nation Archives Inc., *Leaders*, <http://muskeglakearchives.com/leaders.html> (accessed January 20, 2009). Christian Thompson, *Muskeg Lake Cree Nation* (University of Regina and Canadian Plains Research Center, 2007) [http://esask.uregina.ca/tmc/cms/modules/customcode/includes/print\\_entry.cfm?entryid=734F0DCF-1560-95DA-438112857299A85E](http://esask.uregina.ca/tmc/cms/modules/customcode/includes/print_entry.cfm?entryid=734F0DCF-1560-95DA-438112857299A85E) (accessed November 18, 2008).

<sup>3</sup> Muskeg Lake Cree Nation, “History,” in *Treaty Land Entitlement History*, Muskeg Lake Cree Nation, 2006, [www.muskeglake.com/tleHISTORY.htm](http://www.muskeglake.com/tleHISTORY.htm) (accessed October 17, 2007).

<sup>4</sup> Muskeg Lake Cree Nation, “History.”

Muskeg Lake Cree Nation was an active player in the development of TLE in Saskatchewan as it initiated one of the earlier claims in the province. Not long after the establishment of the Specific Claims policy (1973), the federal government agreed to make lands available for the settlement of TLE Claims, and that they would be using the population counts from December 31, 1976, for determining the shortfall acres owed.<sup>5</sup> In 1983 the federal government recognized that MLCN had a valid claim, with 48,640 acres owed to them from the 1976 population base.<sup>6</sup> Muskeg Lake had, by 1984, made selection of Crown land for some of the shortfall acres owing. In 1988, an agreement was reached for a transfer of land in Sutherland, a suburb of Saskatoon, consisting of 35 acres.

It is in the elements of the TLEFA that the economic groundwork was laid for the development and management of land, businesses and assets. This made TLE a springboard for economic development, and a conductor for breaking dependency from the Crown. It is not that urban reserves did not exist prior to the MLCN settlement. The previous urban reserves were pre-existing reserves that had their borders surrounded by municipalities through municipality border expansion. The MLCN urban reserve that was created in Saskatoon in 1988 was established with the specific intention of becoming a First Nations economic development project.<sup>7</sup>

### **3.3 How MLCN Uses the Economic Strategies**

The Harvard Project discussed four economic strategies for First Nations bands to choose from when establishing their economic development.<sup>8</sup> MLCN has employed elements out of all four business strategies rather than using just one strategy. The band has been able to insulate their economic development from band politics and they have modelled the business plan around the band's worldview. This method helps to create community support for the economic development and confidence in the decisions being made. The band outlines their community's business initiatives and goals on their website, and development strategies are reflective of the community's world philosophies. Confidence is key in First Nations economic development

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<sup>5</sup> Muskeg Lake Cree Nation, "History."

<sup>6</sup> Muskeg Lake Cree Nation, "History."

<sup>7</sup> Western Economic Diversification Canada, "Saskatoon: Creation of Muskeg Lake Cree Nation Urban Reserve, in *Urban Reserves in Saskatchewan*, Government of Canada, Western Economic Diversification Canada, modified December 22, 2008 <http://www.wd.gc.ca/eng/10950.aps>. (accessed January 20, 2009).

<sup>8</sup> Stephen Cornell and Joseph Kalt, *What Can Tribes Do? Strategies and Institutions in American Indian Economic Development*, edited by Stephen Cornell and Joseph Kalt, (Los Angeles: University of California, 1993): 34-41.

because business cannot grow if there is no confidence from internal and external bodies; i.e. band members, members of government, businesses and financial institutions. All of these players are involved with and trust MLCN business because of the MLCN's use of the four business strategies.

### *3.3.1 Federal Control*

Federal control has most often been the default business strategy for First Nations bands because the federal government has default control over the First Nations peoples through the Indian Act, and because the federal government expects to have input into any dollars they give First Nations for spending. However, this is changing. As bands have opportunities to create economic development, the federal government is demonstrating a confidence in the way outside funding is beginning to work. Outside funding agencies, such as the government of Canada's Department of Indian Affairs and Northern Development (DIAND) and the Finance Minister for Canada, have contributed to MLCN and some of their initiatives, demonstrating that confidence from outside organizations for the band's economic development exists. In 2004, MLCN and Canadian Magnetic Imaging co-operated to buy a Magnetic Resonance Imaging device (MRI), and establish a clinic in Saskatoon.<sup>9</sup> At this point the MRI clinic plans have been put on hold until an agreement can be reached with respect to jurisdictional issues related to the health system.<sup>10</sup> This collaboration created some controversy as some saw this as a privatization of healthcare in Saskatchewan. Lester Lafond, a business advisor to MLCN, and also a MLCN band member, defends the MRI on the basis that it promotes self-determination and self-governance. He states, "this is not a private clinic, we are a government, and we will establish a Crown Corporation to own and operate this machine. We're trying to find an arrangement that is mutual and beneficial [to us and the Province]."<sup>11</sup> The federal government demonstrated their openness to the possibility of First Nations bands running a responsible medical clinic by providing \$15,000.00 for a MLCN clinic feasibility study by DIAND.<sup>12</sup> This is a modified version of the *Federal Control* strategy offered by the Harvard Project in that it does involve non-

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<sup>9</sup> Thompson.

[http://esask.uregina.ca/tmc/cms/modules/customcode/includes/print\\_entry.cfm?entryid=734F0DCF-1560-95DA-438112857299A85E](http://esask.uregina.ca/tmc/cms/modules/customcode/includes/print_entry.cfm?entryid=734F0DCF-1560-95DA-438112857299A85E) (accessed November 18, 2008).

<sup>10</sup> Chief Cliff Tawpisin provided this information when contacted. The MLCN band office was contacted for verification, and I was transferred to the chief. The information could not be found online, which is why the band office was contacted November 5, 2009. 4:30 p.m. (306) 466-4959.

<sup>11</sup> Amy Jo Ehman, "Health Policy – First Nations' clinics: Gateway to privatization?" in *Synopsis*, In *Canadian Medical Association Journal* 170, no. 8 (April 13, 2004): 1215.

<sup>12</sup> Ehman, 1215.

First Nations governance funding, but the funding is not completely under the control of the non-First Nations government.<sup>13</sup> While there is federal involvement there is not complete federal control over the funding.

This has not been the only way that federal government has demonstrated confidence for the MLCN band and its economic development. It was reported in mid-2005 that the federal government was to contribute \$392,700.00 to help develop infrastructure for further development of the MLCN urban reserve.<sup>14</sup> Then Minister of Finance, Ralph Goodale, made this contribution on behalf of Andy Scott (the then Minister of Indian Affairs and Northern Development), as Goodale saw the contribution as an opportunity to improve the living conditions for the community members. He stated “Our investment in infrastructure on the Asimakaniseekan Askiy Reserve (MLCN urban reserve located in the Sutherland neighbourhood of Saskatoon, Saskatchewan), will create more economic opportunities for members of the Muskeg Lake Cree Nation and the people of Saskatoon.”<sup>15</sup> The federal government took this opportunity to acknowledge everything that the MLCN urban reserve has done in the areas of economic and social development. The federal government also took this as an opportunity to discuss relationships and partnerships and how they can benefit everyone – that the expansion of urban reserve development will “make a good relationship even better.”<sup>16</sup>

Chief Ledoux (the then chief of MLCN) acknowledged how the federal investment in infrastructure will help the community meet their long-term goals.<sup>17</sup> Ledoux explains, “Muskeg Lake Cree Nation understands economic development is a key factor in improving living standards and building self-sufficiency...the expansion of our urban Reserve will support and stimulate business activity that will help bring about true independence for our people.”<sup>18</sup> It appears that the bands see this as an opportunity of actualizing their goal of self-determination. In other words, this was a contribution from the federal government to help break the dependency relationship the band has with the federal government.

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<sup>13</sup> Stephen Cornell and Joseph Kalt, *What Can Tribes Do? Strategies and Institutions in American Indian Economic Development*, edited by Stephen Cornell and Joseph Kalt, (Los Angeles: University of California, 1993): 34.

<sup>14</sup> James Parker, “Canada Invests in MLCN Commercial Development”, in *Indian and Northern Affairs Canada*, 2-02675, Government of Canada, Indian and Northern Affairs Canada, 2005, [www.ainc-inac.gc.ca/ai/mr/nr/m-a2--5/2-02\\_](http://www.ainc-inac.gc.ca/ai/mr/nr/m-a2--5/2-02_) (accessed November 18, 2008).

<sup>15</sup> Parker.

<sup>16</sup> Parker.

<sup>17</sup> Parker.

<sup>18</sup> Parker.



### 3.3.2 *Tribal Enterprise*

As per the MLCN settlement agreement, the band established a corporation to handle band economic development called ‘Aspen Developments.’ This is the organization that holds the lease of the Sutherland property. The band decided to make the corporation band-owned and controlled, which allowed for community-based benefits. This roughly translates to the community ‘owning’ the band business as a collective. As individuals, there is access to capital for business in private entrepreneurship. The *Tribal Enterprise* strategy is the second strategy outlined in the Harvard Project. The band has taken an additional safeguard by using a corporation to control business ownership by making the band members shareholders.<sup>19</sup> The philosophy that is demonstrated is also reflected in the MLCN ‘Missions and Vision for Economic Development.’ “The Mission of MLCN Economic Development initiatives is to create collective wealth and to provide opportunities for individuals to create wealth.”<sup>20</sup> Included in this mission statement is an affirmation that the band created their independence by seizing the opportunity for TLE settlement. “MLCN will ensure this [wealth] happens ... by increasing their own capacity to support initiatives and programs to enable MLCN to have increasing amounts of control over the future.”<sup>21</sup> It appears this is already happening as there is funding for community members that wish to create small businesses. This speaks to breaking the dependency and creating self-determination, as well as demonstrates the need to do it in MLCN’s own way by creating their own, unique model that is a cultural fit with their community.

MLCN determines what they deem as success for their band. The band determines that “Economic Development will have established feedback loops that evaluate programs constantly with regards to their success rate and what they contribute to entrepreneurship and wealth creation.”<sup>22</sup> The feedback loop is a means of communication as it is a feedback of progress, which can inform certain decisions for the future with respect to the development being examined, supervised or terminated. The progress of economic development is transmitted back to the people making decisions and the community so that they can make informed decisions about the direction for the future. This allows for a form of transparency and functions as a

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<sup>19</sup> Cornell and Kalt, 37.

<sup>20</sup> Muskeg Lake Cree Nation, “Mission and Vision,” in *Muskeg Lake Cree Nation – Businesses and Partnerships*, Muskeg Lake Cree Nations Archives Inc., 2008 [http://www.muskeglake.com/ml\\_mission.html](http://www.muskeglake.com/ml_mission.html) (accessed November 17, 2008).

<sup>21</sup> Muskeg Lake Cree Nations, “Mission and Vision.”

<sup>22</sup> Muskeg Lake Cree Nations, “Mission and Vision.”

checks and balances procedure. It is difficult to hide wrongdoings when all the information on the matter must be made available to the people. The band's economic development plan appears capable of enjoying perpetual prosperity as it has now become organic and self-propelling for the community. As long as the business succeeds and contributes to the community, then everyone succeeds.

There is a bottom dollar amount when considering success, as any business would have, but it is clear in this case that community contribution plays just as large of a role in the formula for this community's success. Community contribution is important because the profits that are returned back to the community go into community development. As part of the business initiative, when a band member accesses funds to establish a business, they are expected to return a portion of the profits back to the community. The band owns the development corporation, but the development corporation runs and makes the decisions about the band's economic development. There is a separation between the political arm of the band government and the development corporation. By operating economic development in this fashion, it allows for the business development to be arms length from the MLCN band politics. Aspen Developments is the first development corporation for MLCN; a second corporation of Creek Investments Limited was created in 1993.<sup>23</sup> The band continues to add to new development initiatives to its repertoire such as the Muskeg Lake Electrical Company and the Muskeg Lake Cree Nations Care Home Corporation.<sup>24</sup> The fact that the corporations are expanding according to the band's goals and that they see the development as a success demonstrates that the feedback loops are working.

### 3.3.3 Tribal Member Owning the Business

MLCN has been able to assist in the economic development of the band through the development corporations it has established, and as a result the corporations have contributed to business initiatives in the urban environment. This incorporates the third strategy in the Harvard Project, that of *Private Enterprise with a Tribal Member owning the business*.<sup>25</sup> According to the MLCN website, there are "more than 40 (forty) successful business organizations and this number continues to grow as development continues on the Urban Lands."<sup>26</sup> As of late 2008, the

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<sup>23</sup> Thompson.

<sup>24</sup> Muskeg Lake Cree Nation, "Businesses," in *Muskeg Lake Cree Nation – Businesses and Partnerships*, Muskeg Lake Cree Nation Archives Inc., 2008 [www.muskeglake.com/ml\\_businesses.html](http://www.muskeglake.com/ml_businesses.html) (accessed November 17, 2008).

<sup>25</sup> Cornell and Kalt, 39.

<sup>26</sup> Muskeg Lake Cree Nation, "Muskeg Lake Cree Nation Urban Lands", in *Muskeg Lake Cree Nation –*

MLCN website provides this comprehensive list of established businesses on Muskeg Lake urban lands, which all contribute to the community's success:

- Petro Canada Service Station – “CreeWay Gas”
- Dry Cleaning – “Phoenix Dry Cleaning”
- Art and Framing – Ernie Scoles Gallery
- Dental Office
- Medical Clinic/Family Doctor's Office
- SGI Insurance Broker/Motor License Issuer
- Saskatchewan Indian Gaming Authority (SIGA)
- Saskatchewan Indian Equity Foundation (SIEF)
- First Nation's Agriculture Council of Saskatchewan Inc. (FNACS)
- Federation of Saskatchewan Indian Nations (FSIN)
- Peace Hills Trust Bank
- Saskatoon Tribal Council (STC)
- Kocsis Transport – Long Haul Trucking Company
- Three Legal Firms
- Film Production – “Blue Hills Productions”
- Saskatchewan Indian Institute of Technologies (SIIT)<sup>27</sup>

It is obvious by the number of businesses developed, and the land being leased to organizations such as SIIT, or SIGA, that MLCN business enterprises have been successful in keeping up an economic momentum as more economic opportunities emerge. By increasing their land base through the TLE process, MLCN is now able to produce economic opportunity by providing access to capital for business development. Exclusive MLCN decision-making powers are provided for in the settlement agreement, which is the foundation of the confidence in MLCN business developments. The success and developing confidence demonstrates that the economic strategy fits with the community worldview. As well, it demonstrates the strategy chosen was the best choice for MLCN as it also instils confidence in funding benefactors outside of the First Nations community.

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*Urban Lands*, Muskeg Lake Cree Nation Archives Inc., 2008, [www.muskeglake.com/ml\\_gov-urbanlands.html](http://www.muskeglake.com/ml_gov-urbanlands.html) (accessed November 17, 2008).

<sup>27</sup> Muskeg Lake Cree Nation, “Muskeg Lake Cree Nation Urban Lands.”

### 3.3.4 Private Enterprise with a non-Tribal Member

Partnerships do not only occur between the band and the provincial, federal and municipality governments, but also with development corporations from other bands. These partnerships between band corporations demonstrate a confidence between bands with respect to economic development. This is the fourth strategy demonstrated in the Harvard Project – Private Enterprise with a non-Tribal member.<sup>28</sup> This strategy usually involves co-operatives, partnerships and joint ventures, including joint ventures with other bands. An example of this is the partnership between MLCN, Whitecap Dakota First Nation, and the Lac La Ronge Indian Band in the Dakota Dunes Golf Links.<sup>29</sup> Although the partnership is between bands, the partnership is an initiative by the Whitecap community through the development of a ‘land use planning study’.<sup>30</sup> What this partnership demonstrates is the confidence that is held between the bands that exists as a result of confidence from their communities. A business would not extend too far without community confidence. When the community has control over and can shape the business, it has a stake in prosperous economic development – a prosperity that can help strengthen and build communities.

### **3.4 MLCN’s Reserve Creation and Settlement**

Lack of capital is most often the reason First Nations bands struggle to create economic development for their people. Through the money received for purchasing lands owed on TLE settlements, bands now have access to capital. This has cleared a barrier to economic development and has allowed for the process of breaking dependency. According to MLCN, there were five major elements present in the land entitlement agreement made:

- (1) The federal government set aside land for partial fulfilment of the reserve land owing on MLCN’s TLE;
- (2) MLCN was to lease land to a development company owned entirely by the band for industrial park development;
- (3) The band was to determine lease agreements through member votes;
- (4) A service agreement was to be established with the City for services in the way of infrastructure; and

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<sup>28</sup> Cornell and Kalt, 41.

<sup>29</sup> Dakota Dunes Golf Links, “About Dakota Dunes”, in *Dakota Dunes Golf Links – About Us*, Dakota Dunes Golf Links, 2008, <http://www.dakotadunes.ca/content/view/1/2/> (accessed December 2, 2008).

<sup>30</sup> Dakota Dunes Golf Links.

(5) Development needed to be in accordance with the laws and bylaws of the province and the City.<sup>31</sup>

One important decision a band must make is to pick a development strategy, and one that allows for enough transparency to ensure the continued confidence of the band. There also has to be a cultural match for the band involved and the business plan they are considering. MLCN decided to have complete band control of development corporations. This allowed for large decisions to be made by the collective. This is done through community committees and boards that represent the community as a whole.<sup>32</sup> Band economic development is guaranteed and protected by providing transparency in having a member-wide referendum concerning the use of lands. By negotiating services and infrastructure, the band is negotiating their political position within the Canadian governance structure. One major point key academics in the field make about First Nations development is that the First Nations bands are land poor, a problem being rectified through the fulfilment of Treaties and the TLE process. This fulfilment creates the foundation for Saskatchewan First Nations bands to create economic development by providing access to equity and assets.

Once MLCN acquired the land in Sutherland to help fulfil Treaty obligations, the federal government still had to be converted to reserve status. A band referendum was held October 15, 1990, to convert the land to reserve status and was passed in the community with a majority vote.<sup>33</sup> The Privy Council then officially established the reserve August 13, 1991, creating reserve # 102A, Asimakaniseekan Askiy – Soldier’s Land, in memory of the veterans that served in wars from MLCN.<sup>34</sup> This created the first Saskatchewan urban reserve.<sup>35</sup> According to Lester Lafond, the negotiation process for the development of this reserve was mostly positive and cordial. However, developing and implementing the jurisdictional agreements was time consuming.<sup>36</sup> Enough time has passed to begin studying the sustainability of the settlement and development process of MLCN.

MLCN’s agreement for the TLE came not too long after a Protocol of Agreement was

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<sup>31</sup> Muskeg Lake Cree Nation, “History.”

<sup>32</sup> Ivan Morin, “Profile – Harry Lafond,” in *Aboriginal Faces of Saskatchewan*, June 1999, Eagle Feather News reprint, <http://www.sicc.sk.ca/faces/mlafoha.htm> (accessed November 11, 2009).

<sup>33</sup> Muskeg Lake Cree Nation, “History.”

<sup>34</sup> Muskeg Lake Cree Nation, “History.”

<sup>35</sup> Western Economic Diversification Canada.

<sup>36</sup> Lester Lafond, “Creation, Governance, and Management of the McKnight Commercial Centre in Saskatoon,” in *Urban Indian Reserves: Forging New Relationships in Saskatchewan*, edited by F. Laurie Barron and Joseph Garcea (Saskatoon: Purich Publishing Inc., 1999): 191.

entered and as discussions concerning a province-wide settlement system was being established. In June 1989, the Office of the Treaty Commissioner was established to encourage bilateral negotiations between FSIN and the federal government.<sup>37</sup> This development led to the event of January 1991 when “the Government of Canada, FSIN and the Assembly of Entitlement Chiefs signed a Protocol of Agreement which would govern the aspects of negotiations for the Treaty Land Entitlement Framework Agreement.”<sup>38</sup> These successful events were the ‘catalyst’ to the negotiations that took place throughout 1991-92, concluding on September 22, 1992, with the TLEFA being signed in the presence of: Brian Mulroney, Prime Minister of Canada (1984-1993); Roy Romanow, Premier of Saskatchewan (1991-2001); Roland Crowe, the Chief of FSIN (1986-1994); and twenty-two entitlement bands.<sup>39</sup> A specific formula was reached in the TLEFA for divvying up land owed, along with an agreement that works in conjunction with the TLEFA – a ‘Band Specific Trust Agreement’. In order to ratify any TLEFA settlement, the Band Specific Trust Agreement must be voted on and ratified by band members and there must be no doubt of majority in the ratification.<sup>40</sup>

For MLCN, the Muskeg Lake Treaty Land Entitlement Specific Agreement “was ratified and entered into on June 25, 1993,” and now the band and trustees govern the band and its entitlement money through the Band Trust Agreement.<sup>41</sup> Prior to the shortfall acres acquisition, “the capital funds could only be used for land purchases, [and] the purchase of land improvements.”<sup>42</sup> According to MLCN, they met their shortfall acreage September of 1997, which has now left MLCN with “choices for the expenditures of the remaining TLE settlement dollars.”<sup>43</sup> This leaves capital for further land purchases, profits of which can be used to invest in other private enterprises within the band.

### **3.5 Breaking Dependency**

The economic development that happened on MLCN’s urban reserve was a result of TLE dollars. TLE dollars have been the foundation for economic development for many bands in Saskatchewan. Many bands are also realizing the economic and developmental potential

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<sup>37</sup> Muskeg Lake Cree Nation, “History.”

<sup>38</sup> Muskeg Lake Cree Nation, “History.”

<sup>39</sup> Muskeg Lake Cree Nation, “History.”

Federation of Saskatchewan Indian Nations, “Past Leaders of the Federation of Saskatchewan Indian Nations,” in *About FSIN*, [www.fsin.com/aboutfsin/pastfsinleaders.html](http://www.fsin.com/aboutfsin/pastfsinleaders.html) (accessed January 20, 2009).

<sup>40</sup> Muskeg Lake Cree Nation, “History.”

<sup>41</sup> Muskeg Lake Cree Nation, “History.”

<sup>42</sup> Muskeg Lake Cree Nation, “History.”

<sup>43</sup> Muskeg Lake Cree Nation, “History.”

involved in establishing urban reserves, and that urban reserves encourage economic self-sufficiency and self-determination. There are two key components to breaking dependency:

- (1) Through control over decision making-power; and
- (2) Through capacity of decision-making power.

This expanding power over self is a result of access to dollars that are made available from TLE settlements.

Discussions and analysis are developing surrounding the level of success and life improvement for First Nations in Saskatchewan as a result of TLE settlements.<sup>44</sup> Western Economic Diversification Canada, a federal government department, has released a report: “Have Urban Reserves Made a Difference?” The report examines the economic and social impact of urban reserves on First Nations communities. It was established that there is “more potential for self-generating revenue (on urban reserves) than on rural land reserves.”<sup>45</sup> Asimakaniseekan Askiy is the urban reserve that is held up as a model of success.<sup>46</sup> This success can be easily measured by looking back at the raw land with which the community began and by looking now at the developments and infrastructure on that land that are estimated to be worth 18 million dollars.<sup>47</sup> Urban reserves are acknowledged for the way they have increased employment opportunities, especially for First Nations peoples. It has stimulated economic growth and development through taxation benefits, and supported an environment for First Nations’ owned businesses. It is believed that this growth and strategy has the potential to encourage youth to become entrepreneurs.<sup>48</sup> This is reflected in the amount of private enterprise being developed by band members of MLCN. The band is building a stable and profitable future.

What is really interesting about this report is that the federal government acknowledges the role urban reserves play in the reduction of dependency. In a section of the report titled ‘Community and Social Impacts’, the federal government mentions how the economic success of

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<sup>44</sup> Wuttunee, Wanda, *Living Rhythms: Lessons in Aboriginal Economic Resilience and Vision*, Toronto, McGill - Queen's University Press: 2004, 102. Indian and Northern Affairs Canada, “Canada Celebrates Historic TLE Settlement Agreement with Sturgeon Lake First Nation and Province of Saskatchewan,” in *About INAC – Media Room: 2007 News Releases*, <http://www.ainc-inac.gc.ca/ai/mr/nr/m-a2007/2-2897-eng.asp>, June 19, 2007, (accessed July 30, 2010).

<sup>45</sup> Unknown, “Have Urban Reserves Made a Difference?” in *Have Urban Reserves Made a Difference?* Government of Canada, Western Economic Diversification Canada, 200?, [http://www.wd.gc.ca/eng/rpts/research/urban\\_reserves/2a\\_e.asp](http://www.wd.gc.ca/eng/rpts/research/urban_reserves/2a_e.asp) (accessed November 17, 2008).

<sup>46</sup> Lafond, 204.

<sup>47</sup> Western Economic Diversification.

<sup>48</sup> Western Economic Diversification.

urban reserves could reduce dependency on federal government funding.<sup>49</sup> The discussion continues by explaining that it is expected that urban reserves will raise the standard of living as the band acquires fiscal assets resulting from their continued operation. What this means is that the economic success of urban reserves increases people's ability to contribute to the community and assist in the cultural and political objectives of the band.<sup>50</sup> The federal government acknowledges the benefits of urban reserves in contributing to First Nations governance by stating that "urban reserves also encourage a more structured governance model."<sup>51</sup> The acknowledgement of and continued support detailing how urban reserves help to break dependency and promote structured band governance shows that the federal government is supportive of self-sufficiency and self-determination for Saskatchewan First Nations.

The last area of the federal report is titled 'Impacts on the Communities in which Urban Reserves are Established.' This section assesses how urban reserves have impacted municipalities, relationships between governments, the trust or confidence exhibited by some communities, and the misunderstandings in other urban areas.<sup>52</sup> Not all communities have been supportive of urban reserves. However, some communities were able to see the benefits that urban reserves created for them in revenue, and were not as resistant or difficult during negotiations.

In this report released by the federal government, one is able to not only see how urban reserves have contributed to economic development, but also how the urban reserves have contributed to breaking dependency from the federal government and how they have strengthened First Nations governance and elements of self-determination. A strong government with their own finances allows for independent decision-making and removes the need for the federal government to control all elements of First Nations life and order.

The Saskatchewan Chamber of Commerce has also completed their own background report on urban reserves about the impact they have had and how they have been functioning. This report acknowledges, "[t]here is little hard research on the overall success of the concept but it is widely held by those close to the issue that the benefits are real."<sup>53</sup> It is predicted that more

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<sup>49</sup> Western Economic Diversification.

<sup>50</sup> Western Economic Diversification.

<sup>51</sup> Western Economic Diversification.

<sup>52</sup> Western Economic Diversification.

<sup>53</sup> Saskatchewan Chamber of Commerce, in *Background Paper – Urban Reserves*, June 2008, In Regina Leader Post, April 21, 2008, A1-A2.



time needs to pass before we can measure the success in long-term results for First Nations and their communities, as the concept of urban reserves is still new. Many First Nations bands in Saskatchewan are still in the settlement or development phase. Once there is more data available, a more accurate picture of urban reserves and their success in economic development will be able to be addressed. It will take time for other bands in Saskatchewan to reach the development stages that MLCN has reached.

The report presented in 2008 by the Saskatchewan Chamber of Commerce provides a background on the history of TLE and the TLEFA and it explains that:

According to the City of Saskatoon, in addition to fulfilling original Treaty commitments, Treaty Land Entitlement (TLE) agreements have already led to greater economic and social independence and self-sufficiency for Saskatchewan First Nations.<sup>54</sup> This report expresses the City of Saskatoon's 'Strategic Plan' and how they are establishing and necessitating a mutually beneficial relationship and co-operation with the First Nations peoples. This is demonstrated by explaining how the TLEFA works with respect to arrangements made between municipalities and First Nations bands – including issues and concerns made from other businesses in the neighbourhood (i.e. with respect to taxation and product sales such as tobacco). The report concludes that urban reserves are beneficial economically for First Nations bands and non-First Nations governments, as bands such as MLCN have been able to reduce unemployment numbers.<sup>55</sup> This report acknowledges that there still are problems with public support for urban reserves, but points out that “the growth of urban Reserves are a fact and deemed by those in the First Nations economic development field to be a valuable part of the growth of Aboriginal business in the Province.”<sup>56</sup> It is basically expressed that, despite the lack of public support, the TLEFA and urban reserves have been successful thus far, and beneficial for not only First Nations people, but for all Saskatoon citizens. According to the report, urban reserves are a required element in the economic success for First Nations. They provide First Nations bands with access to markets that they do not have in their rural communities. Urban reserves will continue to play an important role in economic development and self-sufficiency in the fight to break dependency.

It has been acknowledged that not only does First Nations economic development require a good governance system, but strong communal leadership is also needed in order to break

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<sup>54</sup> Saskatchewan Chamber of Commerce.

<sup>55</sup> Saskatchewan Chamber of Commerce.

<sup>56</sup> Saskatchewan Chamber of Commerce.

dependency from the federal government. Academics acknowledge the importance of a secure governance system. As David Hawkes points out, “There is increasing evidence worldwide that socio-economic well-being is directly linked to ‘good governance’,” and Hawkes supports this position by quoting from the findings of the Royal Commission on Aboriginal Peoples (RCAP).<sup>57</sup> With such a link to governance, First Nations economic development cannot be discussed without discussing governance and the road to self-determination. There must be confidence by the community in the business strategy chosen, as well as confidence in the governance system that is involved in business strategy selection – including the area of cultural match.

In Canada, the Indian Act controls the rules, regulations and management of First Nations governance. The Indian Act lays out the rules for band governance along with many other rules First Nations peoples must abide by.<sup>58</sup> If First Nations bands want to modify their government structure, the First Nations leaders must modify it in accordance with the Indian Act while trying to remain culturally attuned to the communities they represent. It is because of the Indian Act that First Nations bands must negotiate self-government with the federal and provincial governments. Unless a band can negotiate their way out of the Indian Act they remain under the control of non-First Nations governments in some way or fashion.

Brian Calliou points out what First Nations bands can do to negotiate self-governance as part of a land claims settlement. This could be an option in Saskatchewan with the TLEFA.<sup>59</sup> A successful use of this negotiation tactic can be seen in the taxation arrangements that have been made through TLE. As previously mentioned, tax compensation arrangements had been made in the TLE settlements with municipalities in Saskatchewan. Also, bands such as MLCN have been able to create their own taxation through taxing businesses, goods and services. This is relevant because it is through this tax foundation that bands can secure revenues that can be used to make a band self-sustaining, or at least to help fund programs and services. Calliou addresses this topic

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<sup>57</sup> David C. Hawkes, “Rebuilding the Relationship: The ‘Made in Saskatchewan’ Approach to First Nations Governance,” In *Canada: The State of the Federation 2003 – Reconfiguring Aboriginal State Relations*, ed. Michael Murphy, Institute of Intergovernmental Relations, School of Policy studies, Kingston, Queen’s University by McGill-Queen’s University Press, 2005, 121.

<sup>58</sup> Congress of Aboriginal Peoples, “What is the Indian Act?” in *Indian Act/Bill C-31 – Part I*, CAP, 2008, <http://www.abo-peoples.org/programs/C-31/c-31-1.html#Act%20is> (accessed January 20, 2009).

Department of Justice, “Indian Act (R.S., 1985, c. 1-5),” in *Servicing Canadians*, Government of Canada, Department of Justice Canada, Updated January 19, 2009, <http://laws.justice.gc.ca/en/I-5/> (accessed January 20, 2009).

<sup>59</sup> Brian Calliou, “The Significance of Building Leadership and Community Capacity to Implement Self-Government,” in *Aboriginal Self-Government in Canada: Current Trends and Issues*, 3<sup>rd</sup> edition, edited by Yale D. Belanger, (Saskatoon: Purich Publishing Inc., 2008): 333.

by explaining, “many Aboriginal community leaders are taking a pragmatic, or business approach to self-government and are achieving economic success as a result, generating wealth to create their own source of revenue.”<sup>60</sup> This, as Calliou discusses, demonstrates a vision of self-government to break monetary dependency with government agencies. This is a reflection of the views of the First Nations leaders as they “see successful business and economic development as a key to true self-determination and freedom from dependence upon government transfer payments.”<sup>61</sup> There needs to be the governance in place for successful economic development, and in turn, that economic development will enable stronger governance.

Good business development supports good governance and the two elements involved in breaking dependency support each other creating a strong self-determination – self-determination that stems from having the power to make decisions. This allows for more decisions to be made by First Nations bands and less by non-First Nations governments. The more self-determination that is created, the more empowered a band will be. This is like creating a foundation based on reading – if you give someone the basic skills to read, the reader will eventually be able to figure out the larger words on their own with practice – it is a snowball effect. With respect to bands, there must be community confidence and legitimacy of leadership for this to work. These values can be maintained with a strong cultural match in business and in governance, providing a strong foundation for self-determination.

### **3.6 The ‘Made in Saskatchewan’ Approach**

Self-determination and some aspects of self-government have been realized through TLE in Saskatchewan, and the First Nations taxation system that was created is evidence of this, as exercised by such bands as MLCN. MLCN demonstrates already achieved levels of self-determination in the decision-making capacity involved in handling their TLE settlement. Confidence with the organization of the TLE economic development strategy is what is needed to secure confidence for the development of self-government, or some level of governance autonomy. Outright and serious discussions of such issues were not formalized until the 1990s in Saskatchewan after the signing of the TLEFA. According to David Hawkes, a ‘Made in Saskatchewan’ process was designed to sort out jurisdictional issues – the exclusive decision-making abilities of various levels in governments. This impacts on First Nations good

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<sup>60</sup> Calliou, 333.

<sup>61</sup> Calliou, 333.

governance. There are two complimentary processes involved in the ‘Made in Saskatchewan’ approach: (1) the Exploratory Treaty Table; and (2) the Common Table. It is through these two tables that all parties involved are able to communicate ideas.

The Exploratory Table, as explained by Hawkes, is a bilateral process between the Canadian federal government and the Federation of Saskatchewan Indian Nations (FSIN). The FSIN represents seventy-four First Nations bands in the province. The purpose of the exploratory table is to discuss the historic Treaties, as both parties interpret the Treaties differently. The province of Saskatchewan is not involved directly, but is allowed to participate as an observer.<sup>62</sup> This process came about after the TLEFA as it was mandated in 1995.<sup>63</sup> The Office of the Treaty Commissioner (OTC), a position that was created in 1989,<sup>64</sup> and renewed in 1996 by the FSIN, oversees this process and enables “an impartial and effective forum for advancing Treaty discussions.”<sup>65</sup> This table functions as a means for settling on a common understanding between parties regarding the interpretation of the Treaties and how jurisdiction can be divided and shared regarding such matters as: child welfare, education, shelter, health, justice, Treaty annuities, hunting, fishing, trapping and gathering, and lands and resources.<sup>66</sup> The objective of this process is to discuss the intentions of the parties involved and enable the relationships between the parties to grow as each side begins to understand the other and their positions.<sup>67</sup> The objective was working in some respects, as the Exploratory Treaty Table has led up to the published works, “Statement of Treaty Issues: Treaties as a Bridge to the Future” in 1998. This explained the common understandings found in the Treaty relationship. These works were validated through the endorsement of the publication by both DIAND and FSIN.<sup>68</sup>

The Common Table process is the second aspect of the ‘Made in Saskatchewan’ approach to Treaties and First Nations governance. The process began in 1996 as part of a protocol agreement signed between the government of Canada, the province of Saskatchewan and the FSIN. It was designed “to facilitate effective processes for negotiating and implementing First

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<sup>62</sup> Hawkes, 123.

<sup>63</sup> Hawkes, 123.

<sup>64</sup> Office of the Treaty Commissioner, *About Us*, Office of the Treaty Commissioner, Updated 2009, [http://www.otc.ca/About\\_Us/](http://www.otc.ca/About_Us/) (accessed January 20, 2009).

<sup>65</sup> Hawkes, 123.

<sup>66</sup> Hawkes, 123.

<sup>67</sup> Hawkes, 123-124.

<sup>68</sup> Hawkes, 124.

Nations governance in Saskatchewan, building on the existing Treaty relationship.”<sup>69</sup> The Common Table pays particular attention to self-government. Its primary function is to “negotiate and implement self-government arrangements and discuss treaty issues when they affect all three parties.”<sup>70</sup> This demonstrates that there is room for several levels of self-determination, and a desire by all parties for First Nations to break dependency from the Crown.

There are two other functions, or subgroups of the Common Table. One is the Fiscal Relations Table, which was established under the Common Table in 1997, and the other is the Governance Table that was established in 1998.<sup>71</sup> Working groups included areas of education, family, and child services. The working groups under the two sub-tables have since amalgamated (in 2002) to create a single table under the Common Treaty Table process.<sup>72</sup>

In 2000, the Framework Agreement on Governance and Fiscal Relations’ was signed. It is used as a mechanism to develop “effective and efficient governance structures that will allow for a legitimate, accountable, transparent, and culturally appropriate exercise of governance by First Nations that builds on the Treaty relationship between Saskatchewan First Nations and Canada.”<sup>73</sup> The Agreement’s other purpose is “to develop a new fiscal relationship and appropriate funding mechanisms in support of First Nations governance,” as well as identifying principles that are essential in the development of ‘agreeable’ inter-governmental relationships.<sup>74</sup> The existence of these agreements reinforces all parties’ desires for First Nations bands to become more self-sufficient and less dependent on the government.

These tables, common and exploratory, have led to further developments of self-determination and self-government. The signed agreement addressed issues such as jurisdiction and authority, and how that reflects “their values, traditions, and cultures, and the facilitation of a smooth transition from the Indian Act to a new system of governance by First Nations in Saskatchewan.”<sup>75</sup> The development of this agreement led to both a bilateral and trilateral ‘Agreement in Principle’, which were agreed upon on July 17, 2003.<sup>76</sup> The process that contributed to TLE and the TLEFA was the Specific Claims Process and the Office of the Treaty

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<sup>69</sup> Hawkes, 124.

<sup>70</sup> Hawkes, 124.

<sup>71</sup> Hawkes, 124.

<sup>72</sup> Hawkes, 124.

<sup>73</sup> Hawkes, 124.

<sup>74</sup> Hawkes, 124.

<sup>75</sup> Hawkes, 124-125.

<sup>76</sup> Hawkes, 125.

Commission. The process has also provided viable options for economic development, helping to break dependency. This combination of the TLEFA and economic development, and the OTC, has led to many discussions and continued development in self-governance. The Agreement in Principle, with particular regard to mandates about phasing out the Indian Act and solving jurisdictional issues, represent proof that positive actions are being taken to sever non-First Nations governmental control of First Nations governments.

The ‘Made in Saskatchewan’ approach for First Nations governance had to be developed as a province-wide system, as it was an offshoot development from another province-wide settlement formula – the TLEFA. Another reason this approach developed as a province-wide system is because of the province-wide structure of the parties involved in the negotiations (i.e. the FSIN). It was a mass negotiation with First Nations bands instead of a band-by-band basis. The system provides the formula for establishing jurisdictional boundaries, and bands are able to apply their cultural thumbprint to their governance mechanism. The system is allowing First Nations governments to develop in more than seventy communities with more than 115,000 people.<sup>77</sup> Under FSIN, Saskatchewan bands are organized into Tribal Councils and these councils function within the established Treaty areas in the province. This is not that different than the way the Agreement in Principle outlines the manner First Nations governance will be operating as a whole; this is another reason as to why the province-wide principle of organization is sought. What is proposed in the agreement is that there would be “a single province wide government, a series of about five regional governments (based on tribal areas or Treaty areas), and more than seventy community First Nations governments.”<sup>78</sup> Although this is a province-wide system, there is room for bands to involve expression of culture, which allows for legitimacy.

An expression of culture can be negotiated into First Nations band governance because even with a province-wide formula and agreement, there is room for sensitive areas, such as family services. To carry out the Agreement in Principle, each community enters into it giving consent to a province-wide First Nations government (i.e. FSIN) to control law-making powers, creating one law for all First Nations in Saskatchewan. It is believed that, “in addition to achieving economies of scale, this would dramatically increase the possibility of meaningful,

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<sup>77</sup> Hawkes, 125.

<sup>78</sup> Hawkes, 125.

effective and efficient governance.”<sup>79</sup> Hawkes expresses that this form of governance is necessary to harmonize First Nations laws with provincial and federal laws. By having every band follow under one province-wide system, laws would be less complicated to harmonize than it would be with all the individual bands.<sup>80</sup> The author also believes that “aggregating jurisdiction should also make it easier for First Nations to organize a professional public service and develop sound intergovernmental relations with the governments of Canada and Saskatchewan.”<sup>81</sup> There are flaws in the governance system developed in the ‘Made in Saskatchewan’ approach. One particular flaw that requires mentioning is that the individual voices of bands may be lost and their culture minimalized. Questions that should be asked are: Are there protections to prevent this from happening? What happens to the bands that have already negotiated these laws in their TLEFA settlements – does one supersede the other?

The ‘Made in Saskatchewan’ approach is pertinent to this discussion because it demonstrates advancements in relationships and agreements as a result of the TLEFA and corresponding relationships. Successful bands, such as MLCN, have demonstrated sound decision-making with their handling of their TLE settlements and consequently validated leadership and levels of self-determination being experienced. This develops a confidence in the area of self-government for bands that are proven ready. The TLE land claims settlement process provided bands with decision-making capacity and some level of self-determination. With success and good practices, confidence develops, providing the proof needed that a band is ready for more autonomy and self-determination, which can be achieved through forms of self-government. This process makes the ‘Made in Saskatchewan’ approach the next logical step for bands to break dependency with the Crown.

### **3.7 Conclusion**

Although MLCN was not the first urban reserve in Canada, as previously mentioned, it was the first urban reserve created with specific economic development objectives. It is for this reason that MLCN is a good model for study of TLE-based economic development and self-sufficiency. Also, the band recently celebrated Asimakaniseekan Askiy’s twentieth anniversary (the urban reserve in Sutherland), providing enough time to examine how the band has implemented the TLE settlement for MLCN. Every government and every business will have

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<sup>79</sup> Hawkes, 125.

<sup>80</sup> Hawkes, 125.

<sup>81</sup> Hawkes, 126.

problems along the way, but by all intents and purposes, MLCN is deemed as being economically successful by themselves and by outsiders. In all likelihood, the success of MLCN is a result of employing and integrating all four economic strategies that the Harvard Project outlines. In respect to the first strategy, there is still at this time the continuation of financial contributions from the federal government while the MLCN retains most of the decision-making power. The second business strategy of the Harvard Project is represented by the business management of the community through corporations like Aspen Developments. This strategy enables the separation of business from politics within the band. The third strategy promotes privately owned businesses by band members; MLCN band members have been successful in starting their own businesses, as evidenced by Scoles Fine Arts and Framing. Lastly, MLCN engages in joint ventures such as the Dakota Dunes Golf Course. It is not only because the band integrates the four economic strategies from the Harvard Project that MLCN is successful, but also because other crucial economical elements are present.

There is confidence in the economic development of MLCN because there are strong cultural matches with business development and the governance structure. When the culture of the people is reflected in governance and business, people can have a sense of pride as they see their worldview in the practices of governance and their community's business. The success MLCN has found in business, as a result of TLE dollars, has enabled the community to develop economic self-sufficiency. This has helped to break dependency with the federal government. Since the development of the TLEFA, more bands are discovering a sense of freedom in economic success, self-government and self-determination. All these topics have received a great deal of attention, allowing strategies such as the "Made in Saskatchewan" approach to develop. There will still be growing pains as self-determination and self-sufficiency progress through TLE and the 'Made in Saskatchewan Approach', however the ideas for breaking dependency continue to evolve. The strategies being developed still need work, but any flaws are steadily replaced and reinforced by innovative ideas and new management systems. The move towards self-determination and breaking dependency from the non-First Nations government will continue to gain momentum as the needs of First Nations peoples continue to be identified and relationships continue to grow. Since MLCN was the first band to have an urban reserve created with the intent of economic development, its grand success can be used as an inspirational springboard for TLE urban reserves in other municipalities and provinces across Canada.



## Chapter 4

### **BEHIND THE MASK: INTERVIEWS FROM INSIDE THE TREATY LAND ENTITLEMENT FRAMEWORK AGREEMENT**

#### **4.1 Introduction**

The discussion surrounding outstanding First Nations land claims in Saskatchewan began in the 1970s, and it was a result of these initial discussions that years of negotiation and debate ensued and culminated in the Treaty Land Entitlement Framework Agreement (TLEFA). Some of the people involved in developing the TLEFA were available for interviews for this thesis, which helped fill some of the gaps in the academic research. With the interviews that were conducted in combination with Roy Romanow's archival materials, information was available to conduct research in the area of the Treaty Land Entitlement (TLE) and the TLEFA. Once the Romanow Papers from Mr. Romanow's time as Premier are available, the TLE picture will broaden once again and new research should be undertaken. This primary research will not only serve as a start to further TLE research in Saskatchewan, but also serves as a learning experience for First Nations and governments as new settlements take place.

This chapter focuses on what some of the major players involved in the development process of treaty land entitlement in Saskatchewan in the 1980s and 1990s had to say about the Agreement now that it has been in place for more than fifteen years. The 1980s began to see settlements, however most settlements did not happen until the 1990s, after the signing of the TLEFA. People involved in the process were interviewed for their perspective and reflection of the agreement now that considerable time has passed. The people involved in the interview process were: Roy Romanow, the former Premier of Saskatchewan; Bill McKnight, former Indian Affairs Minister for the federal government and now Treaty Commissioner for Saskatchewan; Roland Crowe, Chief of FSIN when the TLEFA was signed; and Harry Lafond, former Chief of Muskeg Lake Cree Nation (MLCN). Mr. Lafond was the Chief that signed the TLEFA on behalf of his band. He is now a director at the Treaty Commission in Saskatchewan and is working with Bill McKnight. The interviewees helped develop and implement the TLE process in Saskatchewan. They were asked about whether or not the TLEFA and its' development process had met their expectations. The purpose of the interviews was to gain perspective from various areas of government, and a better understanding through personal

reflections. This is being discussed in relation to the political attitudes at the time of the TLEFA's development and signing.

When looking through the archival materials and conducting the interviews, several themes emerged with respect to the development of the TLEFA and its process. The archival materials were able to illuminate the background and foundation for the TLEFA process; moreover, they provided a place to start the interviews. It was discovered through the interviews that there are problems with the TLE process that can be seen now that the TLEFA has been implemented, problems such as lack of plan for implementation, breakdowns in communication, and administrative or bureaucratic delays. What makes the Agreement unlike typical government programming for First Nations is that this not a funded program delivering services, the TLEFA is a settlement agreement that had to be negotiated between parties. Common threads of criticism were identified between both public government and First Nations government officials. To round off the discussion, the interviewees were asked about their perspective of the attitudes and responses of the people of Saskatchewan towards the TLEFA. In this area the responses were mixed, which was evidence that a shift in attitudes had begun and that the future could be perceived as more positive through continued education on the subject. Settlement agreements are tripartite, in that the federal, provincial, and First Nations governments involved must agree to reach a settlement. Provincial governments are further divided into municipalities, making the agreement process that much more challenging. Tripartite agreements can be arranged more smoothly if certain measures and protocols are put in place to guarantee co-operation on all sides.

#### **4.2 Background**

The discussion surrounding TLE was initiated in the 1970's, and took place over several decades. Former Premier Roy Romanow saw the introduction of TLE discussion of settlements during his time as Attorney General of Saskatchewan. As questions began to develop about the outstanding TLE claims in Saskatchewan, correspondence demonstrates how provincial and federal officials immediately started looking for effective ways to address those questions. The First Nations land settlements in Saskatchewan came into question when Romanow was serving as Saskatchewan's Attorney General and while Jean Chretien was the minister of Indian Affairs in P.E. Trudeau's Liberal government. Initially the federal government was only willing to deal with land claims of those who had not yet entered into Treaty. In 1973, K. Lysyk (Deputy Attorney General) sent a letter to Romanow outlining the federal government's position stating

“the federal government is prepared to enter into negotiations in order to settle the claims of those Indians who have not signed treaties with the government.”<sup>1</sup> Evidently this position of the federal government has changed as TLE developments continued throughout the decade. Proof is demonstrated in the discussion and development of a Saskatchewan Formula and the advent of the TLEFA.

In 1976, the provincial government made a commitment to settle outstanding claims with David Ahenakew, who then was the Chief of the Federation of Saskatchewan Indians - FSI (Now FSIN – Federation of Saskatchewan Indian Nations). In all likelihood, the commitment to settle happened at this time because of the attention garnered from the national First Nations organization and to court decisions, such as the Calder decision.<sup>2</sup> Ted Bowerman (M.L.A Department of Northern Saskatchewan) wrote Chief Ahenakew on behalf of the provincial government stating that “the Province is prepared to negotiate with the Federation of Saskatchewan Indians and Canada on settlement of outstanding Treaty Indian land claims based on the Treaties, 1930 commitments in ‘The Natural Resources Transfer Agreement’ and using the FSI formula.”<sup>3</sup> The negotiations covered issues such as the formula for settlement, government responsibilities, and the settlement of third party interests. These negotiations continued throughout the early 1970s and reached their climax at the birth of the TLEFA in September of 1992.

It is not until agreements are put in place that the deficiencies in such agreements become visible. The shortcomings in the TLEFA can now be observed and rectified as similar agreements develop in other jurisdictions, including Saskatchewan. Bill McKnight briefly pointed to the process occurring in Manitoba, but explained that it is barely existent. Provinces that are carrying out the first stages of agreement implementation will be able to learn from the growing pains of the process in Saskatchewan. This knowledge based on experiences of others should make for a smoother process in the future because obstacles that the Saskatchewan

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<sup>1</sup> R900, V 159 g 1/9, *Indian and Métis General*, Dept. Memo, Government of the Province of Saskatchewan, from K. Lysyk, to The Honourable Roy J. Romanow Qc, Att. General, re: Claims of Indian and Inuit People (November 1, 1973).

<sup>2</sup> *Calder v. Attorney General of British Columbia*, [1973] S.C.R. 313; David A. Cruickshank, “Calder Case,” in *The Canadian Encyclopedia*, Institute Historica Dominion Institute, <http://www.thecanadianencyclopedia.com/index.cfm?PgNm=TCE&Params=A1ARTA0001169> (accessed June 30, 2010; David W. Elliot, *Canadian Legal Studies Series – Law and Aboriginal Peoples in Canada*, 5<sup>th</sup> edition (Concord, ON: Captus Press, 2005): 44-46.

<sup>3</sup> R900, V 159 e 3/12, *FSI: General*, Minister of the Dept. of Northern Saskatchewan, from Ted Bowerman, to Chief Ahenakew, re: Unfulfilled Treaty Indian Land Claims (August 23, 1976).

experience has encountered can be more easily planned for and removed.

### **4.3 No Contingency Plans for Implementation**

Of the primary themes that emerged from interviewing people involved with the TLEFA and the Muskeg Lake Cree Nation (MLCN) settlement, it was found that there was no real process in place in the beginning for the implementation of the TLEFA. There is one important difference between MLCN and the other entitlement bands, and that is the way in which their settlement occurred. The other entitlement bands followed the settlement formula set out in the TLEFA signed in 1992, but MLCN followed an older formula for the settlement of its urban reserve in Saskatoon some years prior to the signing. What connects MLCN to this research is that the band is a signatory to the TLEFA as an entitlement band, but they have one of the oldest TLE settlements in Canada. As explained by Bill McKnight, when MLCN began their settlement process there was no brochure or document on how the settlement process was going to operate; it was only just a theory.<sup>4</sup> There was nothing outlining how governments were supposed to interact with each other; there was only a general guideline that they were to work collaboratively.<sup>5</sup> The infrastructure had yet to be developed. Understanding this, one of the contributing parties should have planned for or acknowledged a plan for implementation.

When discussing the development of the TLEFA with Roland Crowe, the former Chief of FSIN, he noted that there should have been a twelve-year plan for the implementation of the TLEFA and reserve creation.<sup>6</sup> The idea of the twelve-year plan would have provided “ample (time) to have land acquisition in place, and business to be started, and reserve creation.”<sup>7</sup> He explained that from start to finish, twelve years should have been enough time to acquire land and have it converted to reserve status. In other words, any band should see financial returns twelve years from the beginning of its TLE settlement process. The land selection and purchase does not take a lot of time. What is time-consuming is the conversion of land from fee-simple to reserve status. It is time consuming because there is a bureaucratic process that must take place before the land is approved for reserve status. The Auditor General of Canada has found in the area of Treaty Land Entitlement obligations, that in both Saskatchewan and Manitoba, there is limited progress in the conversion of lands to reserve status. Since the first examination, the

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<sup>4</sup> Bill McKnight, 2009, interviewed by Rebecca Major (Saskatoon, SK, March 23, 2009).

<sup>5</sup> Bill McKnight, 2009.

<sup>6</sup> Roland Crowe, 2009, interviewed by Rebecca Major (Saskatoon, SK, March 2, 2009).

<sup>7</sup> Roland Crowe.

auditor general has found that both provinces have picked up the pace of progress and made a concerted effort to work more closely with First Nations.<sup>8</sup> There is a specific procedure in place for converting land to reserve status, however, by inspection of the Auditor General of Canada, it is a process that is slower than necessary. Upon inspection and critique, the branches of government have started to work to shorten the process. Had any of the parties pushed for a plan of implementation, the time delays found by the auditor general would not have happened. The time delays prove unnecessary being as once investigated, both provinces picked up the pace.

Mr. Crowe discussed lack of capacity on a large scale. He believed that there should have been measures or safeguards put in place for land purchasing. He believes that if an implementation plan were put in place, the land value would not have greatly affected the size of settlements for First Nations bands in Saskatchewan. Purchase values with a variety of options could have been provided, i.e.: cost of lands with improvements, so that better informed decisions about land selection could have been possible. From this point of view, it is clear that measures should have been put in place to ensure that settlement could happen in a timely fashion. This structure would then allow for quicker access to development for First Nations bands because they would not have to wait so long for the land settlement and reserve conversion to be pushed through the bureaucracy. If settlement happened in a timely fashion, bands would not have to wait as long to become more self-determining economically or for a break in dependency with the Crown.

The TLEFA was designed as a framework document but it did not offer much in the way of operating instructions. Mr. Lafond explained that it was the band that was made to hire and pay for the experts to walk them through the TLEFA process. Mr. Lafond's observation is that many bands have found the process of finding and hiring experts to be quite challenging, as everyone in the initial settlements was new to the operation of the TLE settlements and to the TLEFA itself.<sup>9</sup> The TLEFA affirms that TLE settlements were to occur in Saskatchewan, and that there were certain responsibilities involved, but the Agreement had not detailed the way in which people should go about fulfilling their responsibilities. For example, Article 16.01 of the TLEFA explains that responsibilities are to be honoured according to the obligations of the

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<sup>8</sup> Sheila Fraser, FCA, "Message from the Auditor General of Canada – Status Report 2009," in *2009 March Status Report of the Auditor General of Canada*, [http://www.oag-bvg.gc.ca/internet/English/parl\\_oag\\_200903\\_00\\_e\\_32287.html](http://www.oag-bvg.gc.ca/internet/English/parl_oag_200903_00_e_32287.html), Auditor General of Canada: Ottawa, Canada (accessed July 10, 2010).

<sup>9</sup> Harry Lafond, 2009, interviewed by Rebecca Major (Saskatoon, SK, March 23, 2009).

Natural Resources Transfer Agreement (NRTA). The NRTA transferred subsurface rights from the federal government to the provincial government. This brings the Saskatchewan government to the TLE table, and impacts the way selection in some mineral-rich areas are handled. This means that what is designed in the TLEFA for settling TLE with Saskatchewan bands cannot violate or override the NRTA. There are no real operation templates for how the TLEFA is supposed to function; the framework only exists as a means for bands to settle outstanding claims; however, there are provisions in the TLEFA regarding matters of dispute. It is explained in Section 17 that issues of dispute should go to arbitration, but there are no specifics as to how handle the issue.<sup>10</sup> It appears that the TLEFA was a plan for settlement in the way of intent, more than a specific plan or procedure for how to settle outstanding claims.

The federal government also had obstacles to overcome in the TLE settlement process and operation of the TLEFA. For example, they had to hire and train staff to deal with the new and complicated matter of settling TLE. Mr. Lafond explained that the non-First Nations governments were not prepared to facilitate the TLE settlement process as they too “had to staff-up, they had to train, and all that takes time. We’re talking months and even years before they were up to speed on taking the extra volume of work that was involved in land purchasing and assessing the land, etc.”<sup>11</sup> In the beginning, the TLE settlement process was incredibly slow as all parties learned their roles and responsibilities to the process. It was not only the First Nations that had to train and learn the process without a plan for implementation. It would have been more cost effective for all parties involved to have a plan for implementation drawn up.

Mr. Lafond’s observations came from his extensive experience in the process as he was the First Nations leader of MLCN during the TLEFA process and is now Executive Director of the Office of the Treaty Commissioner (OTC). Bill McKnight and Roy Romanow also provided some insight into obstacles in the process from the non-First Nations government perspective. Bill McKnight observed that the way TLE proceeded was very paternalistic and explains, “Officials who have been given a job to do, try and do that job. They don’t worry about how long it takes, or how long it takes to get return on First Nation investments and land, they’re going to do their job.”<sup>12</sup> McKnight describes the stance taken by government was akin to that of

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<sup>10</sup> Government of Canada, *Saskatchewan Treaty Land Entitlement Framework Agreement* (September 1992): 108-111.

<sup>11</sup> Harry Lafond.

<sup>12</sup> Bill McKnight.

a parent taking care of a child. The government also had problems playing both the parent and the opposite negotiating party when no one was sure what the process for settlement was and how to effectively change roles. This created obstacles for the First Nations governments, especially with respect to the amount of time it took to reach a settlement and finish the settlement process, as it was the best interests of the non-First Nations governments that were being safeguarded as the end result. The federal government will take the time they need to ensure that the deal being reached is the best deal for them.

Roy Romanow pointed out that a similar situation was occurring with the provincial government during the negotiation and execution of the TLEFA. The interests of the government were much different than First Nations. The government's interests ignored the fact that most First Nations were not well equipped to implement TLE settlements, as the government was also in the midst of learning the procedures. Romanow states that he had to balance the interests of the province, First Nations and the federal government with his own personal views. This task proved challenging for him. Romanow explained this by saying that his:

Own personal disposition would be very much to side with the constructionist, traditional, original concept of Treaty as Chief Crowe and others have advocated, but when you wear a Premier's hat, and you've got Ottawa at the table as well, because this involves never violating the principle that the Treaty obligation is between the Crown and the government representing the Crown, federal government, it makes it a little more difficult.<sup>13</sup>

Romanow was not able to promote his personal views of TLE, but instead had to work within the legal scope that the people of the Saskatchewan and the government were willing to accept. Romanow himself was not in any major opposition with the First Nations' interpretation of TLE; however, he could not express his personal views when dealing with TLE during his time in office – this is because it was not in the interest of the province. Using the official stance of the government body, wanting the narrowest settlement possible, slowed down TLE settlements and the negotiation of the TLEFA. Governments will look out for themselves first in terms of settlement, which that in itself takes time. The non-First Nations governments do not feel the same urgency as First Nations bands for settlements as they are in a position of defendant against a claimant. Lawyers and government experts are needed and have to be trained to examine all angles of settlements to ensure that governments are meeting only the minimum requirements for

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<sup>13</sup> Roy Romanow, 2009, interviewed by Rebecca Major (Saskatoon, SK, March 5, 2009).

settlement within its obligations in the framework agreement. The federal and provincial governments experienced their own growing pains from which they are still learning and recovering. All sides had to build capacity, or in other words, they had to work from within the structure of the TLEFA and with other bodies also working to learn that structure when implementing TLE settlements, all the while, attempting to protect the interests of the parties they represented. The capacity building for the settlement process was necessary but time consuming and was an obstacle in and of itself for finalizing the TLEFA and reaching settlement agreements.

#### *4.3.1 Capacity-Building*

There should have been an arrangement or an ingredient for capacity-building in the institutional structuring of the TLEFA. Mr. Lafond explained that capacity-building was not part of the TLE process and that “bands had to find money to do that, granted the federal government made some programs available, but it wasn’t until after the fact.”<sup>14</sup> The initial TLE bands paved the way in organizing the TLE settlement skeleton by developing the structural formula that was needed to settle the claims resulting from the TLE. Without any real guide, these bands had to create the structure for settlement of outstanding claims and hire and train staff to work within the settlement process. The problem was that the government had only developed a plan for implementation in the middle of this process. Harry Lafond explains that “you had instances where bands were buying land that was of limited value and really didn’t fit their economic plan and social plan, and mistakes like that cost money and then what do you do with that land?”<sup>15</sup> It was a case of the blind leading the blind in the initial stages, before the settlements became common practice in the province. Mr. Lafond’s complaint about land purchases was along the same lines as what Mr. Crowe was saying about a need for a land-purchasing safeguard.

This was a new process for all parties involved, and many bands were taking risks as they developed their economic plan and chose land. There should have been a game plan in place for development from the land settlements so that bands could have ideas as to how to select land that would fit their development and economic needs. It appears that more than one band incurred problems with selecting land and a business strategy to develop assets gained after settlement. There are now bands that could be looked to as the model for success with land entitlements and economic development. As well, there are strategies spelled out, such as

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<sup>14</sup> Harry Lafond.

<sup>15</sup> Harry Lafond.



strategies found in the Harvard Project from which bands can choose – making land selection easier and understanding how certain strategies can facilitate success in economic development.

While discussing the lack of settlement infrastructure in place, Mr. Lafond referred to barriers for the First Nations bands. “Just when you thought you were breaking free, or you were overcoming a barrier, you’d find another barrier just waiting for you.”<sup>16</sup> The TLEFA gave rise to communication barriers, negotiation barriers, land selection barriers, and general barriers related to capacity-building. By looking at the process in this manner, one can assume that it was a very frustrating learning experience.

Barriers can be discouraging at the best of times; it would seem even more difficult when there are onlookers of a new political experiment. The TLEFA was a political experiment because the Agreement was the first of its kind in Canada. It was a new method for settling Specific Claims and it involved a new organization of tripartite governance relationships, which necessitated interaction and cooperation with municipalities. Other jurisdictions in Canada that embark on settling outstanding land agreements with First Nations can be made aware of the problems that can arise from lack of infrastructure and compensate for that in their own settlement process. Mr. McKnight carried this discussion further in supporting Mr. Lafond by explaining that he also saw a deficiency in the process with the lack of infrastructure to implement the TLEFA. Despite this, he explained that Saskatchewan is the leading example for the process up to this point because the other example, Manitoba, is so terrible.<sup>17</sup> It is generally accepted that Manitoba has made very little progress in land settlements in the way of TLE up to this point, as observed by Mr. McKnight.

The issue of the lack of infrastructure for the implementation of the TLEFA directly correlates with the other two primary themes that emerged from the interview process – the problems of breakdowns in communication and of bureaucracy. Mr. Lafond related the issues of lack of infrastructure to the length the settlement process has taken. The process was long because of bureaucratic delays and the length of time needed to hire and train new employees to work through the settlements – the lack of contingency plan for the implementation of the TLEFA. When asked about the deficiencies, Mr. Lafond explained that the waiting times were extremely problematic. For MLCN, it took *fifteen* years for them to *start* development on a

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<sup>16</sup> Harry Lafond.  
<sup>17</sup> Bill McKnight.

property that was selected.<sup>18</sup> The band had to wait for the finalization of land before they could begin development. Fifteen years is a long time to wait for development to start, which is why Roland Crowe wanted to see a twelve-year Treaty implementation plan. Mr. Crowe expected that twelve years would be enough time, which makes fifteen years quite excessive. It is clear that the lack of planning for implementation caused avoidable time delays in the settlement process.

#### **4.4 Breakdowns in Communication**

For the TLEFA to function, the relationships must not only be developed, but there must be effective communication. When interviewing Mr. Romanow, he mentioned that there must be political will for the TLEFA to function properly and for claims to get settled.<sup>19</sup> But what happens when there is no political will? The answer is that the settlement process can get held up for years, as has been the case for many bands that have experienced time delays. In discussion of the TLEFA development, Mr. Romanow explains that “Ottawa was a mystery, sometimes it would not be engaged, and sometimes it would be very engaged, both ways: (a) with the provincial government at the expense of the First Nations governments, or (b) to its suiting with the First Nations governments.”<sup>20</sup> With this type of back and forth movement in negotiations, the bureaucracy – or layers of government administration – can slow down the process and create voids in communication. This is why there should be measures put in place so that the communication remains consistent. If it were stipulated in the TLEFA that meetings must happen in a timely fashion, a smoother negotiation process would occur. For instance, a provision stating that no more than three months can pass without proper consultation or meetings may have been appropriate. The TLEFA should clearly spell out what qualifies as proper modes of communication. Measures would be as simple as having templates in place informing bands of the economic goals and options that are available to them through certain land purchases.

These issues of engagement affected the speed at which settlements occurred. Mr. Romanow explained that some of the difficulties that related to communication breakdowns involved the debates surrounding “the place of Treaties in our Constitutional, social, economic

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<sup>18</sup> Harry Lafond.  
<sup>19</sup> Roy Romanow.  
<sup>20</sup> Roy Romanow.

and legal framework.”<sup>21</sup> One of the problems with tripartite agreements, according to Mr. Romanow, is that they are complicated in their very nature.<sup>22</sup> Tripartite agreements take time, as all sides have their own agenda, and they have to work together to create an agreement that is amenable to everyone involved. Delays in agreements can occur because of issues such as responsibility interpretation.

With respect to TLE, all governments involved had the obstacle of trying to agree upon the meaning and intent of the Treaties. This is important as it directly relates to the jurisdictional responsibilities within levels of government. The political issues that were debated often caused delays and obstacles to the process. For example, with the case in Saskatchewan, Mr. Romanow says:

In my time, there would be a greater statement of Treaty Entitlements and what Treaty means, primarily from First Nations negotiators, which frequently would be interpreted by Ottawa and provincial government negotiators as being excessive or inaccurate, or to put in simple, pragmatic terms, unrealistic with respect to the amount of land that should be actually transferred to meet the obligation of the Treaty.<sup>23</sup>

Mr. Romanow explained that there remains a breakdown in understanding the intent of the Treaties, and that this is yet to be truly resolved.<sup>24</sup> This comment arose when asked about deficiencies in the TLEFA process. The government often embraces a limited view of Treaties, releasing itself from as much responsibility as possible. The bureaucratic layers of government and political positions can cause obstacles, time delays or roadblocks; unfortunately, there are no answers on how to deal with this in the way of developing an infrastructure. It is interesting that when the auditor general developed a progress report that the speed of the settlement process increased.

Mr. McKnight was asked if he felt that the TLEFA process was a success, and he too pointed to problems with communication. His response to the question was that initially it had met his expectations, however, as time passed, he realized that there were communication problems and breakdowns in understandings.<sup>25</sup> He said “as I become more familiar with today’s history of TLE, where there seems to be a breaking down of communication in between the

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<sup>21</sup> Roy Romanow.  
<sup>22</sup> Roy Romanow.  
<sup>23</sup> Roy Romanow.  
<sup>24</sup> Roy Romanow.  
<sup>25</sup> Bill McKnight.

province and the First Nations who are entitled to TLE.”<sup>26</sup> Acknowledging this proves that implementation plans for communication would have made for a more timely process. As Mr. McKnight is now Treaty Commissioner in Saskatchewan, he is able to see another side to the process of the TLE. He is now in a key position to watch all of the parties interact, and determine where other problems with the TLEFA exist.

Mr. Lafond also had a comment on communication as he had encountered problems when trying to communicate with all the entitlement bands involved in the TLEFA. Lack of communication was something that Mr. Lafond noted as a barrier to the settlement of the TLEFA. In addition, he mentioned that while governmental bureaucracy might have been intended to create avenues for communication, it instead created barriers to communication.<sup>27</sup> The avenues for communication should have been outlined in a plan for implementation, making the process more expedient and less dependent on political will, as will be discussed in the following section.

#### **4.5 Administrative/Bureaucratic Delays**

Bureaucratic hold-ups were the most problematic issue for all leaders involved in the interviews. Mr. Lafond saw bureaucracy - or administrative layers of government - as a roadblock, explaining that; “some of the existing legislation and policies that existed within the federal government, both in Indian Affairs and in the Department of Justice, stood in the way of a smoothly functioning process.”<sup>28</sup> Administrative layers created a lot of red tape through paperwork and process, which developed time delays. Mr. Lafond also explained that the reason the process was able to move forward was because of the relationship building that was occurring, such as the relationships between the communities of MLCN, the municipality, and provincial and federal levels of government.<sup>29</sup> The process for assessing land and creating reserves should have been planned and detailed in the TLEFA rather than having the governments design the process as they went. This is something that could have been placed in a purchase policy. Because of this late planning they had to educate the people involved as the settlements developed, as discussed previously, and they had to work through the layers of government.

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<sup>26</sup> Bill McKnight.

<sup>27</sup> Harry Lafond.

<sup>28</sup> Harry Lafond.

<sup>29</sup> Harry Lafond.

Mr. Lafond discussed administrative delays further by explaining that he saw the reserve creation process as “too embedded with barriers.”<sup>30</sup> He pointed to the fact that the process was too tightly tied to the Department of Justice and their legal obstacles, and tied too closely to environmental concerns. These barriers once again point to delays due to the layers of government involved, creating administrative entanglements. One particular instance of this administrative delay is shown in MLCN’s settlement with the Sutherland location in Saskatoon. After the MLCN chose this land, the federal government first took fifteen years to validate its reserve status before it took another ten years for returns to reach the community, making it a total of twenty-five years before the community could begin to see returns.<sup>31</sup> The lack of effective land selections and reserve creation procedures greatly undermined MLCN’s ability to develop and implement a sound economic strategy for their land in a timely fashion. If infrastructure were in place for land selection and reserve creation, it would not have taken longer than twelve years for this to happen for First Nations bands in Saskatchewan. The delay was because of the lack of process in place and because of the layers of administration that created barriers.

Mr. McKnight explained that some of the delay was due to the paternalism found within the bureaucracy. He said “a lot of [the delays are] happening because of government saying ‘We’re going to be sure that everything is fine and that there’s nothing wrong with this land.’ Even though the First Nations had lived beside the land or on it for the last one-hundred and fifty years, the government insisted that they were ‘going to make sure it is a good deal for you’.”<sup>32</sup> Mr. McKnight was quite clear in saying that he does not believe that First Nations always need to be held by the hand, like a parent leads a child, as that just adds more unnecessary paternalism to the process.<sup>33</sup> If anything, this paternalistic view towards the First Nations generates more indignation than it does comfort. Instead, what can help smooth out the whole process is having infrastructure guidelines for *all* sides to follow, thus removing the paternalistic approach that appears to be solely directed at First Nations. By having this infrastructure in place, the administrative levels of government would not hold the process up because everyone would be clearly aware of their role. This would also remove layers of red tape because the settlement

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<sup>30</sup> Harry Lafond.

<sup>31</sup> Harry Lafond.

<sup>32</sup> Bill McKnight.

<sup>33</sup> Bill McKnight.

procedure would be developed. Had the federal government had this anti-paternalistic attitude at the time of settlement, the time for land assessment would not have slowed down the process.

At this point, the settlements process can continue to move forward through the relationships that have been created and maintained with all parties involved. For example, Mr. McKnight explains that a continued relationship between the bands and municipalities has been essential, and MLCN has been a good example of how those relationships have been maintained.<sup>34</sup> This is the same strength in relationships that Mr. Lafond acknowledged. It is important to acknowledge this relationship as it stresses how important the lines of communication are, and perhaps in the future there needs to be a framework designed to ensure less bureaucracy and political delays, allowing for better communication between parties. Measures need to be put in place to guarantee on-going communication and engagement.

Mr. Romanow also discussed how bureaucracy, or administrative levels of government, held the process up and that it can be intentional or unintentional as described in his discussion of Ottawa. A problem that Mr. Romanow pointed to was that “the frequency and urgency of meetings was often lacking”<sup>35</sup> in the development stages of the TLEFA and in settlement negotiations. He explained that in order for the process to move forward, the governments involved needed to feel a sense of commitment, which is tied back to political will (a form of determination fuelled by a particular incentive). This was because at the best of times, one had to keep pushing their staff to move ahead in the development of the TLEFA. “What I’m really saying is that there has to be a political imperative present in the process.”<sup>36</sup> Without this commitment, the settlement process can get lost in administration and cause lengthy delays. This perspective is demonstrated with the auditor general report, it created the political will to accelerate the process of settlement in Saskatchewan and Manitoba. In Saskatchewan there was a political imperative as First Nations leaders were pushing the agenda.

Mr. Crowe perceived that the length of time it took to achieve settlement was a result of delays caused mostly by non-First Nations governments. He believed that “The province to some degree in those years and today are trying to block large acquisitions of land by First Nations people”<sup>37</sup> by causing delays and holding up the settlement process as could be perceived by the

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<sup>34</sup> Bill McKnight.

<sup>35</sup> Roy Romanow.

<sup>36</sup> Roy Romanow.

<sup>37</sup> Roland Crowe.

time that land purchases were taking in the assessment stage. Mr. Romanow had pointed to the back and forth of Ottawa. In all likelihood, the government delays happened in all branches of government, whether intentional or unintentional. The bureaucratic time delays tie into Mr. Crowe's desire to have a twelve-year plan of implementation. When there are plans for implementation in place, guidelines for continued communication and templates from which to work, less administrative delays and time delays can transpire. These are problems that can be resolved with time limits.

A shortcoming that Mr. Crowe also pointed to is that there should have been better acquisition packages made available from the levels of government. In the selection packages, Mr. Crowe believes that there should have been some diversity and not just a preoccupation with limited types of resources such as lumber.<sup>38</sup> This way, the band would have access to diverse economic pools to generate funds from when there are economic problems that arise. This illustrates the fact that governments should have been better prepared to handle the settlement process. MLCN is seen as the example of success in TLE economic development and this is attributed to the diversity employed in their business plan. They use a blend of four economic strategies demonstrated in the Harvard Project on Indian Economic Development. The assembly of economic option packages by governments would have given the TLE bands choices in accessing various profitable resources that could be developed. Of course it is easy to see this in hindsight, but it is a way that people who are still reaching settlement agreements or frameworks can better prepare for the future. Now that particular errors have been pointed out in development strategies, future bands can learn and better prepare for their own economic development. Bands in Saskatchewan are becoming models of success and can be looked upon by current settlement bands for ideas in developing their own economic development plan. Stronger preparation and implementation strategies are emerging, and economical successes are becoming more prevalent. As Mr. McKnight pointed out, "when there is success economically, people now are starting to understand that we all benefit."<sup>39</sup>

#### **4.6 Attitudes and Responses Continue to be Mixed**

The reactions to the TLE process by the people in Saskatchewan continue to be mixed. When Mr. Crowe was asked about how the people of Saskatchewan have reacted to TLE and the

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<sup>38</sup> Roland Crowe.

<sup>39</sup> Bill McKnight.

economic success that has been created by the First Nations peoples, he responded based on his personal experience. He said he was pleasantly surprised by the warm reception he received by the communities that were approached for land purchases made through TLE. Initially, Piapot – Mr. Crowe’s band – was one of the first communities to start purchasing land through TLE after the TLEFA was signed, and they found people very opposed to the new land purchases. But as time passed, and other non- Native communities were approached, the band began to be welcomed. When a meeting was held in Perry, Saskatchewan, near Piapot First Nation, Mr. Crowe was surprised that two of the three reeves stood up and said, “We want to welcome our new neighbours.”<sup>40</sup> Mr. Crowe explained that this unexpected kindness gave him goose bumps;<sup>41</sup> it marked an impression in his mind that people in Saskatchewan were becoming more accepting of the process. Mr. Crowe believed that this acceptance was due to the people’s gradual realization that TLE would have positive economic benefits for them as well as First Nations people.

Mr. Romanow experienced problems with TLE while he was in public office serving as the Premier of Saskatchewan. In 1999, Mr. Romanow encountered resistance to the process while on the campaign trail. He explained that “there were hostile voices directed at me, voices which argued that governments were prepared to provide ‘handouts’, or, using my word, concessions, to First Nations people, but all the while some of the communities who were non-First Nations did not similarly receive benefits.”<sup>42</sup> He continued by saying that “the anger toward the government, to my surprise and a little to my dismay, was often described in the context of belief that somehow we had been coddling, promoting First Nations people that have special rights the others didn’t have.”<sup>43</sup> Mr. Romanow did explain that he does not remember this happening in any other election – not even the one that was lost in 1982. He did note that now there seemed to be “openness about the presence of the economic development potential,” and he believes that things are changing and the process is gradually being accepted.<sup>44</sup> This is not that different from what Mr. Crowe was saying about how initially there was opposition, except Mr. Romanow found the resistance once settlements had been occurring, rather than in the initial stages. With time, these barriers of opposition are being overcome. The people of Saskatchewan

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<sup>40</sup> Roland Crowe.

<sup>41</sup> Roland Crowe.

<sup>42</sup> Roy Romanow.

<sup>43</sup> Roy Romanow.

<sup>44</sup> Roy Romanow.



are going through a change in attitude, shifting to a more positive outlook of TLE and the far-reaching economic development that that process fosters.

Mr. Lafond and Mr. McKnight see this change in attitude across the province in a different light. Mr. Lafond measures the change in attitude in the province by looking at the way First Nations business is being handled in the non-First Nations community on a professional level. Harry Lafond refers to this shift in terms of a barometer when describing the way things have changed for First Nations since the 1992 TLEFA; there have been institutional changes in the business world to accommodate the First Nations situation. He notes that the banks have been open to First Nations bands and have been willing to extend opportunities for economic development. “They went so far as to modify their policies and to up the risk, ‘cause they know there is a higher risk where dealing with us because of legislation like the Indian Act.”<sup>45</sup> This coincidentally relates back to the problems surrounding bureaucracy, as it is administration and legislation that has made it difficult for First Nations to do business. Banks have limits on the level of risk they are allowed to take on, and traditionally First Nations business development has been high risk. This is because bands did not traditionally have assets at their disposal. Economic development for First Nations is accessible now through funds made available from TLE. Bands are making economic development their primary objective when making decisions about their settlements for lands owed, thus alleviating the banks’ perception of risk significantly and creating the shift in the business world.

Mr. McKnight explained that there has been an attitude shift in the people of Saskatchewan, but that he cannot attribute the shift solely to the implementation of the TLEFA. This is not to say that the paternalism embedded in the non-First Nations government has ceased to exist, but has eased as time has passed a society has evolved. Mr. McKnight sees TLE as a primary reason for the shift in attitudes towards First Nations and their economic development, but the change has also been due to the efforts of First Nations’ leadership and the efforts by non-First Nations people in the business community. The shift in attitude has also happened because of First Nations leaders and politicians stressing the successes that are happening with First Nations business. This answer is similar to the one Mr. Lafond gave about the changes in perceptions held by the business community and the banking industry.<sup>46</sup> There has been a

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<sup>45</sup> Harry Lafond.

<sup>46</sup> Harry Lafond.

concerted effort by many, including the Office of the Treaty Commissioner, to promote and demonstrate the successes that have resulted for First Nations peoples and bands within the province. As a result of this promotion, the Saskatchewan people are able to see the good that is coming from TLE and the settlement process, and they have come to accept it and admit the good that is being created.<sup>47</sup> This goes back to the idea of economic success being beneficial to the province in its entirety. The people of the province are likely to support endeavours that will benefit the people of the province economically, creating less of a need or reliance on public dollars.

#### **4.7 Conclusion**

These interviews were conducted to reflect on the TLEFA and its process now that it has been functioning for more than fifteen years. There are certain reasons as to why there are problems with the system, but all the problems relate back to the key issue of how time-consuming the process is. Although the process has met the expectations of the people interviewed for the most part, the interviewees were able to look back and indicate where there were problems in the process that need to be addressed. The reflections also demonstrate a shift in attitude by themselves, the people, and the government as bands create successes over the years because of TLE settlements.

It is established that the TLEFA negotiation process, and now the settlement process is time consuming because of the lack of contingency planning for the implementation of the TLE process, because of breakdowns in communication and understandings, and because of administrative hold-ups. Michel Foucault sees governmentality as “an inescapable fact of social life,” all aspects of life is to govern.<sup>48</sup> The bureaucracy must be navigated through and instruments must be implemented to create space for this settlement process within the apparatus of government, as the governance through bureaucracy is inescapable. All four of the interview participants made note of the fact that there needed to be provisions instructing how to implement the TLEFA. Provisions for the infrastructure or a procedural apparatus for First Nations bands and governments to follow should have been put in place for negotiations and settlements. For instance, there were no contingency efforts in the TLEFA for how land selection and reserve creation was to happen. It was a learning experience as it was developed. If guidelines were in

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<sup>47</sup> Harry Lafond.

<sup>48</sup> Barry Smart, *Michel Foucault* (Taylor & Francis, October 2002): xiv, <http://lib.mylibrary.com/Browse/open.asp?ID=10957%loc=xiv> (accessed June 22, 2010).

place, another problem would be alleviated – the problem of breakdowns in communication. If there were communication protocols in existence, communications between different levels of government would be less likely to be lost in translation. If methods of communication were mandated, they would become a part of the process that could not be ignored. These problems are directly related to the bureaucratic hold-ups or administrative delays, and political issues that were observed by the interviewees. Mr. Romanow explained how the urgency for TLE-related meetings was undermined and Mr. Crowe noted that the bureaucratic hold-ups were at times intentional. There would be few delays in the settlement process and with the communications between different levels of government if protocols were mandated and operational guidelines were created to carry them out.

Although there were observable changes in the attitudes from the people of the province of Saskatchewan, the changes have been slow. The problem of *time* is a key theme emerged that out of the problems observed by key players that acted within the settlement process. Mr. Lafond would have liked to have seen quicker results, Mr. Crowe would have liked to have seen time limits by having a twelve-year plan and infrastructure, and Mr. McKnight and Mr. Romanow would have liked to have seen less paternalism and more political will to speed up the process. By accounting for these problems, other governments can have a smoother process and can learn from the Saskatchewan model. Contingency plans should be put in place to reduce the problems that can occur in settling outstanding land claims with First Nation bands. Future settlements will be more efficient and expedient, and bands will benefit by acknowledging that new changes and developments to the process are necessary to strengthen it.

## Chapter 5

### **BREAKING DEPENDENCY IN SASKATCHEWAN**

#### **5.1 Introduction**

The Treaty Land Entitlement Framework Agreement (TLEFA) that came about because of the need to settle outstanding Treaty Land Entitlement (TLE) in Saskatchewan was the first agreement of this nature in Canada. Since the creation of the Office of the Treaty Commissioner (OTC) in 1989, and the TLEFA in 1992, other provinces have begun to look to Saskatchewan as the example to follow. The Saskatchewan model would only be considered for a template if it were deemed to be a success by the other jurisdictions and by the province itself. The same can be said of Muskeg Lake Cree Nations (MLCN). MLCN would not be considered a model for economic development if they were not successful in their development. For a province-wide settlement model to work, or for the community economic development strategy to be successful, there must be confidence from within the system as well as a confidence by outside parties. Another important element that must be present is political will. With confidence and political will present, bands can work towards breaking dependency from the Crown through economic development.

#### **5.2 Findings**

In this research, it was found that for a band to be economically successful – by their measure standards and by the measure standards of others – there needs to be many elements at work. To begin, for a settlement agreement or framework to develop, such as the TLEFA, there must be political will present from various levels of government. On the individual band settlement level, there must be confidence from the community in the development strategy that has been chosen. The community or band must agree to the settlement offered, and then must agree on the development strategy. Confidence in the development strategy is often a result of the strategy reflecting the band's worldviews. It is also important that the band have confidence in the leaders that are negotiating the settlement and the process for establishing the development strategy. With these elements present in development, a band can work towards economic self-sufficiency.

The research began by asking questions as outlined in chapter one, and by reading the available materials on the subject. It was through this initial research that it became known that

more work in the area must be conducted and that this project could help in understanding how TLE settlements have been used to create economic development for First Nations in Saskatchewan. Through the chapters that developed from the research came the understanding of the TLEFA process and how it has contributed to economic development. Throughout the chapters, TLE and the TLEFA is explained, the economic strategies available for development are explored, MLCN is studied to see what has made this particular band successful, and the problems with the process are identified. Other than a more developed understanding of the TLEFA, it was discovered that MLCN has been successful in their economic development. This First Nations success is because they used a blended economic strategy that incorporates the band's worldview and has developed internal and external confidences in their economic endeavours.

### *5.2.1 Chapter One*

The first chapter of this research on TLE and the TLEFA is meant to serve as a contextual chapter. It included some of the background on the TLE process. The purpose of this is to demonstrate where more primary work in the area needs to be done once more archival materials become available. Not all of the Romanow Papers are available through the Provincial Archives at this time. By reviewing the available literature on TLE and the TLEFA, the current gaps in the research become evident. In establishing the foundation for the research, the context is shaped and the rationale for conducting the research is explained. There has been research concluded in the area of TLE, the TLEFA, and urban reserves, but the research being conducted here ties the agreements to economic development by reviewing development strategy options and examining the strategy that MLCN is using. The intent of the first chapter is to guide and shape the research being conducted.

### *5.2.2 Chapter Two*

In looking at the development options for First Nations bands, it becomes apparent that certain elements must be embedded into strategies for the strategies to work. The Harvard Project demonstrates the economic strategy options First Nations bands have from which to choose, but it is expressed in the project that the strategy alone cannot make a band economically successful. For the band to be successful, they need access to resources, strong governance, and economic development that fits with their community worldview. These elements working together can solidify the community confidence prescribed for the economic strategy to work.

Confidence by the community will not guarantee that economic development will be successful, but it can help develop the confidence needed to attract investment and further development. The economic development strategy is to help First Nations become more independent from the Crown and outsiders; however, when looking at business investment, attracting outside investment helps contribute to economic development and economic expansion.

The economic development strategies are essential to studying the economic development that is taking place in Saskatchewan as a result of the TLEFA because it is through the development strategies that bands are creating self-sufficiency. Bands in Saskatchewan are using their financial opportunities found through outstanding land claims and the TLEFA process to develop economic opportunities. The economic strategies available for examination demonstrate options and avenues First Nations bands have to create economic development. For a break of dependency to happen through economic development, there needs to be certain measures in place. For instance, there needs to be a strong resource base. Some bands in Saskatchewan have this capability at their disposal because of lands owed to the bands. This creates access to capital in the settlement process and creates a resource base by acquiring lands. Capital is made available to purchase lands and those lands can then be leased to create more capital for economic development. There are roadblocks that First Nations bands have to overcome, one of the largest roadblocks being a lack in resources. Once a band is in a position to overcome the roadblocks, paths need to be created and decisions made for a design of operations that will allow for a break in dependency from the Crown.

The Harvard Project on Indian Economic Development explained that there are four key elements involved in economic development: the need to take control, establish institutions, have a strategic direction, and have Action Oriented Leaders (AOL). External opportunity, internal assets, and a development strategy are the ingredients that shape a business strategy chosen by a First Nations band, and influence the key elements in the Harvard Project. Some of the external factors connect to the elements in breaking dependency. The factors relate to good governance with decision-making powers and the requirement to access financial capital – this is aligned with the need to have a strong resource base. Within the internal assets is the need for there to be a strong cultural match with the economic development of First Nations economy. Finally, the development strategy *hinges* on the idea of the need for a good business plan, which is where the Harvard Project's four strategies come into the picture.

For the four strategies to work successfully for economic development, the strategy must compliment the governance structure of the First Nations band implementing development. Governance and economic development should operate within the cultural views of the band. John Borrows and Sarah Morales discuss economic development for First Nations within the context of Canada, and they too stress how important it is that First Nations attempting economic development should make sure that the economic strategy they chose to employ fits with the band's culture. Escaping Crown dependency through economic development is certainly possible for First Nations in Saskatchewan and the rest of Canada as long as certain elements are present for the community. There must be a cultural fit with the economic strategy chosen and the band's governing structures.

Dwight Dorey is quite explicit as to what has to happen for First Nations economic development to be facilitated and successful in Canada. He explained that it has to be accepted that First Nations economic development requires access to resources and control over lands. This is something that is occurring in Saskatchewan through TLE. Mr. Dorey expressed the importance of good governance, and that there needs to be transparency and accountability. Good governance demonstrates stability and reduces risk in business development. It is understood by Mr. Dorey that all levels of governments should be working together for equitable participation in development. Finally, Mr. Dorey explained how First Nations and non-First Nations government should work together for the management of resources. This is operationalized through the duty to consult, which usually occurs in the mining industry in Saskatchewan. However, it may be more applicable to settlements like those seen in the Comprehensive Claims in Nunavut and the James Bay of Quebec.

A break in dependency from the Crown is possible for First Nations in Saskatchewan as long as there is a strong resource base, be it land or financial capital, a good economic plan and good governance. For this to be possible, there must be a strong cultural match between the community's view and the economic strategy chosen and the governance that is in operation. One of the largest barriers First Nations bands experience when looking to develop an economy is the lack of resources. Some bands in Saskatchewan are able to overcome this barrier because of TLE. The TLEFA has allowed for economic development, which has made room for a progression to self-determination. Evidence of this is in the decision-making power bands are acquiring. The TLEFA appears to be a strong facilitation for First Nations economic

development and that is a good reason as to why other jurisdictions are starting to look at the Saskatchewan TLE process. There are economic options available to bands and certain elements that, when made present, can help First Nations economic development become successful.

### *5.2.3 Chapter Three*

MLCN is held up as the success strategy for economic development in Saskatchewan, which is why the band was used as the case model in chapter three. The band was able to develop economically because of receiving a TLE settlement for lands owed. MLCN became the case model to examine in this process not only because it is the first to work within this process in Saskatchewan and had been functioning for the longest period of time, but also because academics and public officials hold the band up as the success story from which others can learn. Time is a reason for measure as it demonstrates resilience of the economic strategy and is a test for whether or not the process is able to function and progress organically. Although MLCN technically settled before the TLEFA, they are still the first TLE band in Saskatchewan to create economic development and thus the best band to examine for this study.

It can be surmised that MLCN has been successful because they blended all four strategies for economic development expressed in the Harvard Project. The Harvard Project's four strategies were federal control, tribal enterprise, private enterprise with a tribal member owning the business, and private enterprise with a non-tribal member owning or involved in the business. With respect to federal control, MLCN accepts funds for development and advancement from the federal government; however, the federal government no longer has absolute decision-making power in all cases, which is why MLCN's situation falls into an adapted version of the federal control strategy. Also, some of the federal funding projects are demonstrating a level of confidence they have in some of the First Nations band economic development projects by not interfering in projects that they invest in. The second strategy is demonstrated by the way MLCN uses a corporation to administer the economic development for the band, keeping business at arms-length from band politics. This was a recommendation that the Harvard Project made when discussing the use and implementation of this economic strategy. MLCN uses the development corporation to facilitate the third business strategy - that of a tribal member owning a private business. The individual takes a loan out from the development corporation and then uses that capital to start his or her own business, all the while contributing back to the community in interest payments. The fourth strategy for economic development is



also handled under the band's development corporation, which has allowed for joint ventures with other First Nations development corporations. MLCN has been successful in economic development because they have blended all four strategies with their culture and worldview.

If economic success were not creating a break in dependency from the Crown, then there would not have been specific agreements in place for First Nations governance in Saskatchewan. A 'Made in Saskatchewan' approach has been developed to facilitate discussion of First Nations governance in Saskatchewan. In this approach, an Exploratory Table and a Common Table were created so all parties could have a venue for discussion. These types of venues were needed in the TLEFA settlement process, but now they can be models for other jurisdictions to immediately use when they are trying to establish a similar, but smoother processes. Although this agreement is not quite the same as TLE because TLE is about land settlement instead of governance development, it speaks to the process and how the TLE process should be functioning.

The Exploratory Table is a bilateral arrangement for the federal government and the FSIN to have a way to meet and have discussions, which are facilitated by the OTC. This is a process to encourage discussion, a measure that should have been in place for the TLEFA. It allows for the parties at the table to declare intentions or air grievances, and it is a means for parties to come to a common understanding. The common table is a process that involves FSIN, the provincial government and the federal government, and this table pays particular attention to the development of self-government. The fact that this is a recognizably large topic of conversation demonstrates how the progression of bands becoming economically self-sufficient through TLE has led to discussions of self-government. It is reasonable to see how this road of economic development can translate to a breaking of dependency from the Crown, and creating space to allow for the path of self-determination and self-government.

There are flaws in this 'Made in Saskatchewan' approach, which have now been accounted for, such as minimalizing individual voices of First Nations, but it is a learning curve from which other jurisdictions will benefit. Problems with the 'Made in Saskatchewan' approach involved the question of the province-wide formula because there is doubt that there is room for culture in all relevant areas. By having a province-wide system, there are various cultures involved in one body, which may make it difficult to have pan-provincial First Nations governance when it is not a pan-culture.

Also, the other major flaw in this approach is that with so many bands under one body,

culture may be minimalized and the voices of the individual bands may be lost or go unheard. We will continue to learn from flaws found in processes, and there will always be flaws as there is no perfect system. We are definitely on a road of progression, which translates to a break in dependency for First Nations initiated through economic development. Although this 'Made in Saskatchewan' approach is not part of the TLEFA process, it can be an option for implementation in other jurisdictions looking to implement TLE. It could be the measure needed to continue or strengthen the lines of communication.

#### *5.2.4 Chapter Four*

The interview process that shaped chapter four involved interviewing: Roy Romanow, the former Premier and Attorney General of Saskatchewan; Bill McKnight, the former Minister of Indian Affairs under Prime Minister Mulroney; Roland Crowe, the former Chief of the Federation of Saskatchewan Indian Nations (FSIN); and Harry Lafond, the former Chief of MLCN. The interviews addressed the problems with the TLEFA and its process now that time has passed since its implementation. These people were selected for the interviews as they were some of the main people involved in the creation of the TLEFA and were aware of the intent of the TLEFA and its process. The interviewees were able to look back and see where problems developed, and where there should have been measures put in place to allow for a smoother and quicker process. There were principle themes that emerged from the interview process with these individuals. The themes that emerged identified issues such as; the lack of a plan for the implementation of the TLE and the TLEFA process, communication breakdowns, and bureaucratic and administrative hold-ups. These problems are connected to the issue of how time consuming the process of settlement can be, which slows down the economic development process.

The lack of effective planning in the way of settlement implementation appears to be a problem for the interviewees as it was seen as a reason for the slowness in the TLEFA settlement process. Even though the interviewees complain of too much bureaucracy, the solution to some of the problems appears to be the need to implement more bureaucracy or administrative procedure in particular areas. Mr. Roland Crowe explained that there should have been a twelve-year plan in place for settlement implementation thereby ensuring that there was a guideline to follow. Settlement would have occurred within the twelve years and bands would not have had such long waiting periods had there been a template or contingency plan implemented. Mr.

Lafond discussed how they had to develop process and pay for it as they went along. Mr. McKnight also discussed how process had to develop as bands and governments began implementing the settlement methodology. There was no contingency plan built into the TLEFA on how to implement the exercise. Mr. Lafond explained that the procedure had to develop on the First Nations governance side and the non-First Nations governance side, which doubly slowed the process of settlement implementation. Mr. Romanow discussed his experience by explaining how difficult the process and organization was between the federal and provincial governments. If a plan for implementation had been imbedded in the TLEFA, there would have been less confusion in the settlement process and it would have been less time consuming. By politicians and leaders being able to observe the flaws within the system that they helped build, other jurisdictions can learn from this and take measures to eliminate the issues to allow for a smoother process.

Although the TLEFA process had bureaucratic problems that caused delays because of too much bureaucracy (or too many layers of government administration), there was a common thread emerging out of all the delay issues – breakdowns in communication. Mr. Lafond pointed out that there were breakdowns in communication occurring within entitlement bands. He had seen difficulties in coordinating the Saskatchewan First Nations bands involved in the TLEFA development process and settlement process. Mr. Romanow explained that there needed to be a political will involved in the process to keep the conversations moving. He clarified that there needed to be a political imperative; politicians have to continue to push their people to keep the settlement process moving. Mr. McKnight agreed that the breakdown in communication was one of the major flaws in the entire process. There needed to be safeguards established to ensure that communication continued and did not breakdown or slow the process; however, adding to this process is just implementing more bureaucracy. Bureaucracy is something that is already criticized for being too prevalent and intrusive in the process. That being said, this addition to the process appears to be needed as the interviews pointed to a lack of communication as being the primary cause of delay.

The way that the bureaucracy is currently organized within the TLEFA caused delays, and some of these delays might have been intentional. Roland Crowe mentioned how there appeared to be intentional blocks involved in the process of land acquisition. Mr. Romanow had similar views in that there had been problems with the government's political will to continue moving

the process along. It was explained by Mr. Romanow that there was a lack of frequency and urgency when it came to the need for meetings to take place for the settlement process to move forward. Mr. Lafond's role as MLCN chief provided perspective into the band that had participated extensively in the process of TLEFA and land claims settlements. He explained that the process was embedded with barriers that slowed settlements down by being tangled up in bureaucracy. Mr. McKnight's complaint about the bureaucracy was that it was loaded with paternalism, like a parent taking care of a child. Paternalism slowed the process down where the federal government would act like a protectionist to the First Nations in land settlement and selection. Bureaucracy appeared to be a problem for the leaders that were interviewed and it was tied into the process taking too long.

The result of the interviews conducted for chapter four was that although there were problems with the settlement and implementation of the TLEFA, it was important for a band to have access to resources if they wanted to create economic development. All the interviewees discussed that the TLEFA happened because of strong leadership and political will. The political will was present at some point because the TLEFA was developed and implemented. The strong leadership was tied to political will because the leaders had to have the will to develop the relationships needed to push the TLEFA and land settlements forward. Relationship building was a necessity to the development of the TLEFA, and it was the political will that drove the agenda.

### **5.3 Conclusions**

It can be concluded that the TLEFA can work as a model in other jurisdictions looking to use a model for settlement of outstanding land claims and economic development. Now that the TLEFA has been implemented for almost two decades in Saskatchewan, it can be observed where there are flaws are in the Saskatchewan model. These flaws can be corrected or have measures put in place in other jurisdictions so they do not experience the same problems that arose in Saskatchewan. By interviewing the people who were involved in the process, the research was able to shed light on the operation of the TLEFA now that the interviewees are able to see how the process has functioned over time. In that time bands have been able to start economic development for themselves by having secured assets in outstanding land claims settlements. MLCN was looked at as the example for this as they are often held up as the example of success by academics, business people, government officials, and members from other bands. For this

reason, the band's economic strategy selection was explored, and it has been found that they have used a blend of all four strategies that are recommended in the Harvard Project. The First Nation still uses federal money, they have a development corporation established so the band owns the business initiatives, private band members' access capital to start businesses, and joint ventures exist with non-band members. MLCN also pays attention to elements recommended by both the Harvard Project and other academics, such as having a strong cultural match in their development systems, and having Action Oriented Leaders (i.e. Harry Lafond) involved in the process. It is for this reason that MLCN and others have found MLCN's economic developments to be successful. This economic development started the road to breaking dependency from the Crown.

The successes that have been occurring is likely to be what led to the 'Made in Saskatchewan' approach for First Nations governance discussions. This area warrants further research. However, this will only be truly achievable when more of the archival materials are made available for research. This lack of information for a particular period time in Saskatchewan political history leaves gaps that later will need to be addressed. As it stands, other jurisdictions, such as other provinces, can look to the Saskatchewan model for TLE settlements and can improve the process by taking into account elements that were needed in the Saskatchewan agreement but were missed. As well, bands looking to implement economic development through TLE can look at what MLCN has done to make themselves a success, and can bring in the ideas and questions of other academics to ensure their economic plan fits well with their band's objectives. This, in all likelihood, will lead to more bands beginning their break of dependency from the Crown, creating self-determination for that band.

As for the success that MLCN has experienced, it can be observed by exploring the band's website. The band is very detailed, as they include what they see as economic success for their community and provide a list of businesses they have helped facilitate within the community. By using their blended strategy, MLCN has insulated their business from band politics by funnelling business from the corporation to the band members who develop personal enterprises. This blended strategy is functioning because there was strong leadership that prepared the strategy, and because the strategy fit with the worldview of the band. Through the exercise of their decision-making powers MLCN has aligned their economic development with the community's needs and worldview, and as a result the band is breaking away from Crown

dependency.

As I came to draw and finesse my conclusions, I was honoured to hear former Assembly of First Nations (AFN) Chief Ovide Mercredi speak in Northern Saskatchewan for a Treaty Six celebration. In his talk, Mr. Mercredi showed the crowd a book commissioned by the Saskatchewan OTC, and explained that it was developed because there was a political will to do so. He took questions after his talk and one of the questions was mine. I asked if the same political will to settle outstanding land claims existed in other provinces. Mercredi responded with a quick “no,” explaining that Saskatchewan is the leader in TLE in Canada and that it is a result of the political will being present. The political will is present as illustrated by the fact that First Nations leaders were able to successfully advocate and develop a process. The former Chief’s response solidified the idea that the TLEFA would only have happened with strong leaders working on the process and a strong political will. This political will developed the TLEFA that was needed for bands to have access to resources to create economic development and break dependency.

## APPENDIX A

### Invitation for Participation in a Study

February 10 2009

Address  
Saskatoon, SK Postal Code  
Phone:  
Fax:

Dear

**An invitation to participate in a study of: Self-Determination of First Nations Peoples in Saskatchewan: an investigation of Treaty Land Entitlement**

This is an invitation to participate in a study of Indigenous rights. This study will analyze business models used in the management of Treaty Land Entitlement (TLE) for First Nation peoples in Saskatchewan and will examine TLE as a vehicle for self-determination and sustainability. As First Nations reach settlements, there is an opportunity to learn from earlier settlements and decide on a governance model that is both successful and compatible with their own lifestyles and philosophies.

I would like to interview you about your opinion and knowledge in the area of Treaty Land Entitlement and self-determination. All materials recovered from these interviews will remain confidential, kept in secure storage for five years by the research supervisor, until the time of disposal where the materials will be destroyed beyond recognition. An interview will take place after the consent form has been signed. On the consent form is a list of the questions being asked, and the details of the study. Once the transcription has been done, you will be asked to verify the material, if you wish, you may remain involved until the project is completed. In the event that you choose to leave the project, you may do so at any time, and at which time, you would be debriefed, and all materials acquired from you the participant will be destroyed beyond repair.

The interviews are one portion of the research involved for this project. I would be happy to share the specifics of the project in detail, should you show interest in joining the study. I ask that you consider this, as it may aid in future developments of bringing rights to Indigenous peoples in the world, or understanding political position at the very least. If you agree to participate, I will need confirmation by February 20, 2009, as I would like to commence the interview process by March 10, 2009. I appreciate your consideration. It is acknowledged that the U of S Beh-REB has reviewed this ethics proposal, and has approved the project.

Sincerely,

Rebecca Major

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U of S Beh-REB Research Ethics Office

Phone: 306-966-2084

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Room 306 Kirk Hall, University of Saskatchewan, 117 Science Place,  
Saskatoon, SK S7N 5E6



## Letter of Consent - Interview

### Self-Determination of First Nations Peoples in Saskatchewan: an investigation of Treaty Land Entitlement

Rebecca Major, MA student at the University of Saskatchewan will conduct this study under the supervision of Robert Innes, PhD., Department of Native Studies at the University of Saskatchewan. It is acknowledged that the U of S Beh-REB has reviewed this ethics proposal, and has approved the project.

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The purpose of this study is to improve upon the understanding of Treaty Land Entitlement in Saskatchewan and its implementation. It is hoped that First Nations communities will be able to look to this document as a resource for potential ideas of TLE management and implementation. Please read the information below and ask any questions you may have before deciding whether to take part. As your participation is voluntary, you can stop your participation at any time and your refusal will not influence current or future relationships. Materials will be held for five years with the research supervisor, upon which time the materials will either be given to archives with consent of the participant, or be destroyed beyond recognition or recovery. Should you decide to stop participation all materials contributed by you the participant, will be destroyed beyond recovery. Simply tell the researcher, should you wish to stop participation. The researcher will provide you with a copy of this consent for your records. Once the interview has been completed, you, the participant, will be given a debriefing with a copy of the debriefing in

print. Upon completion of the transcriptions from the interview, you will be given a copy of the transcripts for review. This is to ensure validity and quality control. You will be asked to review the materials for correctness. At this time, you will still have the opportunity to opt out of the project. As the participant, you have the right to ask for credit for the information they provide, for publication, and upon publication, you will be given a copy of the completed project. It should also be mentioned that you have the choice of not answering any questions they choose, and must tell the researcher when you feel uncomfortable.

If you agree to this study, you will be asked the following questions:

### **Interview Questions for Public Officials**

1. Looking back, has Treaty Land Entitlement met your expectations?
2. What do you consider were the deficiencies in the process and the end result?
3. What was envisioned when negotiating TLE? – Aspirations, disappointments?
4. What would you change if anything?
5. Did you anticipate the economic success First Nations have been experiencing as a result of TLE? Did you expect more economic success by this point?
6. How has the economic development that has been created by TLE affected public perceptions towards First Nations peoples in the Province of Saskatchewan?

The time for this should be adjusted accordingly. You may review these questions and judge whether you have the time to participate in this project. It also is an opportunity for you to decide if they feel comfortable answering the questions. The time for the interview is expected to last one hour and should **not exceed 2 hours**, and the total interview period of the project is expected to last over the period of three months.

There are no anticipated risks involved in this project. You are able to review the questions ahead of time. This demonstrates that there is no deception. There is no intent of injury, and confidentiality will be kept.

There will be no official compensation for this project in the way of rewards, as the research does not want the study to be compromised. In the areas of tradition and traditional protocols, the necessary provisions will be made. For example, when interviewing Indigenous elders, it is customary to give the gift of tobacco.

The records of this study will be stored securely and kept confidential. There will be one copy kept with the researcher, while the other copy will be kept at the University of Saskatchewan, for a period of five years. Authorized persons from The University of Saskatchewan have the legal right to review your research records and will protect the confidentiality of those records to the extent permitted by law. As mentioned above, you will have a chance to be acknowledged in the work if you so choose. Throughout the study, the researcher, Rebecca Major, will notify you of new information that may become available and that might affect your decision to remain in the study. This is why there is a provision for you to leave the project at any time and is given many opportunities. This study is politically sensitive, and the researcher wants to give you, the participants options.

If there are any questions at any time, you may ask the researcher or the supervisor, through the

contact methods above. You may withdraw at any time.

You, the participant, may respond via mail, secure fax, or email as provided by the researcher – Rebecca Major.

*You will be given a copy of this information to keep for your record*

**Statement of Consent:**

I have read the above information and have sufficient information to make a decision about participating in this study. I consent to participate in the study.

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

\_\_\_\_\_  
Signature of Person Obtaining Consent Date: \_\_\_\_\_

Signature of Investigator: \_\_\_\_\_ Date: \_\_\_\_\_

### **Interview Questions**

1. Looking back, has Treaty Land Entitlement met your expectations?
2. What do you consider were the deficiencies in the process and the end result?
3. What was envisioned when negotiating TLE? – Aspirations, disappointments?
4. What would you change if anything?
5. Did you anticipate the economic success First Nations have been experiencing as a result of TLE? Did you expect more economic success by this point?
6. How has the economic development that has been created by TLE affected public perceptions towards First Nations peoples in the Province of Saskatchewan?

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