AN OVERVIEW OF THE CURRENT SITUATION IN POLICY, PROCESS, AND PROGRESS FOR THE RESOLUTION OF LAND CLAIMS IN NORTHERN ONTARIO
MOU with Canada & Ontario

On April 1, 2008 a Memorandum of Understanding (MOU) was signed by all three parties, Canada, Ontario and NAN. The MOU deals with research issues and does not speak to policy matters or issues that may arise during negotiations. A joint three year work plan and target dates for the review of land claims is part of the MOU. This year, for the first time, Ontario has made a financial contribution to the process. The tri-party research process has proved very productive and beneficial. Both governments are at the table with NAN at the outset.

Significant problems and differences of opinion between the parties and approaches to the NAN TLEs can be tackled jointly, so that claims move beyond the research stage for submission and review. Constructive challenges to both governments’ positions with respect to TLEs have been put forward and are discussed.

Currently the NAN tri-party TLE process is the most transparent and cooperative land claims process in Canada.

Accomplishments

Our target date with respect to the research and development of land claims is still on track with the recent negotiations made eight years ago, to research in 10 years ALL the NAN First Nations’ treaty land entitlement claims (TLEs), to establish a timeline of the claim and to submit those claims that have reached a stage where the draft treaty is produced. The payoff for every First Nation in NAN has been collected and analyzed using a relational data-base developed specifically for the NAN First Nations’ TLE claims. The history of most of the First Nations in NAN has been researched. In 15 Treaty Land Entitlement Claims have been submitted to Canada and Ontario for their review. Three have been accepted and are currently in negotiation (Mississinew, Chapleau Cree and Chapleau Ojibwe). We have learned to make a great deal more about the making of Treaty No. 9, the process of reserve selection and the roles of Canada and Ontario in the treaty. All of this research has impacted on our understanding of the NAN TLEs and how to proceed with them in the best interest of the First Nations.

James Bay Treaty (Treaty 9) in 1905 and 1906

The 1905 and 1906 Treaty covered the territory of the Algonquin people in the Algonquin River (Ontario’s northern boundary) at the time to the northern limits of the Robinson Treaties. Three Treaty Commissioners were appointed to take Treaty in 1905/06. Two Commissioners were nominated by Canada; Duncan Campbell Scott and Samuel Stewart, Daniel G. MacMartin, was nominated by the Government of Ontario.

In the summer of 1905 the tr Formatting the Treaty

The Federal Commissioners had been empowered by Order in Council to meet with the Indians whose hunting grounds were north of the Albian River (and therefore technically outside of the geographic boundaries of Ontario and the treaty) but who travelled to the HBC Post on the Albian River. Consequently, the “bands” created at the HBC posts along the Albian River consisted of numerous family groups whose hunting grounds spanned both sides of the river. These were the following communities: Mistissini-Mamakapit (Ottawa), Talamackinac (Fort Hope), Osagi (Marten’s Falls) and Fort Albany (Kashechewan & Fort Albany).

At Fort Albany the Treaty Commissioners included some families from Attawapiskat and Winnik in the treaty. Almost all of the reserve were located north of the Albian River, outside of Ontario’s boundaries at the time. Over the subsequent century many of those families were amalgamated into the “band” and also the Alribin River, have since assimilated that they be recognized as separate and distinct First Nations, resulting in the creation of new bands, (i.e. Cat Lake First Nation, Landaasoe House, Nilinamkak, Webequie and Attawapiskat First Nations).

The Commissioners also went to the HBC English River Post on the Kenogami River, where they met with a small gathering of Cree whom they believed actually belonged to the Fort Albany Band. The Commissioners therefore did not feel it necessary to ‘treat’ with the English River people separately, and the people did not sign the treaty. The English River group was nevertheless enrolled on a payroll, paid the treaty money and provided with a reserve, the dimensions of which were based on the known population of the “English River Band” at the time of the treaty. From Fort Albany the Commissioners sailed to the Moose Factory Post on James Bay, at the mouth of the Moose River on Factory Island. Here they enrolled over 300 Cree, creating the “Moose Factory Band,” and a reserve was set aside on the east shore of the French River. The reserve was set about 12 miles away from the HBC Post and Factory Island where services were available. The next HBC Post visited was located on a branch of the Attikibi River, known as the “New Post Band,” took treaty and a reserve was set aside. The “New Post” went to Lake Alibiit to meet with the Algonquin of that region but most of the Indians had left for their hunting grounds, therefore treaty was not made until the following year.

James Bay Treaty Highlights that Impact TLE claims

The James Bay Treaty, (Treaty 9), was made on two separate occasions: 1905, in 1905 and 1906 and secondly in 1929 and 1930 when the Adhesions were taken. The area covered by Treaty 9 includes most of present day northern Ontario, comprising approximately 200,000 square miles. The territory covered by the Treaty lies north of the Ontario-Manitoba border and stretches between the Manitoba border on the west, the Quebec on the east and James Bay on the north. The Aboriginal people of the territory are Cree, Oji-Cree and Algonquins. Treaty 9 is unique among the numbered treaties because the Province played an active role in the making of the treaty and placed limitations on the locations of reserves.

The Government of Ontario stipulated that reserves should not include potential water power sites, be located near settled areas, or conflict with timber and mining activities. The treaty provided that each Indian was to receive a one time payment of $8.60 at treaty time and an annuity of $4.00 every year thereafter. A reserve was to be given to each ‘band’ and the reserve’s population which was determined as 128 acres per member or one (1) square mile per five members. (This is known as the Treaty formula.)

NOTE: The word “present” is the word used in the Text of the Treaty.
Making of Treaty 9 in 1906

The Abitibi Post was the first place visited by the Treaty Commission in 1906. Upon that point, all of the Hudson’s Bay Company posts visited were within Ontario and the North West Territories. However, the traditional territories of the Abitibi Algonquin Indians straddled the boundaries of Quebec and Ontario, and the post was within the boundaries of the Province of Quebec. These families traded at the HBC Abitibi Post located a few miles east of the post in Ontario, inside the Province of Quebec.

Although the HBC had identified the native population at Abitibi as candidates for Treaty 9, the Commissioners were not empowered to make treaty with those people whose hunting grounds were located in the province of Quebec. The Dominion government had made numerous efforts prior to 1906 to come to an agreement with Quebec regarding the Abitibi Indians without success.

A treaty was therefore made with the people whose hunting grounds were within Ontario only. This group became known as “Ontario Abitibi Band” (Waughogish First Nation). A reserve was selected on Lake Abitibi and the dimensions were based on the population of the Ontario Indians only. However, promises were made to the Quebec Indians that a conference would be held with them later and that the Dominion would try to “secure” a reserve for them at their selected locations.

From here the Commissioners headed south to the Matarowin HBC post in the Matarowin Band. The reserve described in the Commissioner’s report to the Superintendent General of Indian Affairs was located inside the boundaries of the Robinson Huron Treaty and was within the Temagami Timber Reserve.

The dimensions of the Reserve were “fixed” according to the known population of the band at the time of treaty. Next, the Commissioners traveled to Fort Nipigon, Flying Post, New Brunswick House Post, and finally Long Lac, located just east of Lake Nipigon. Along the route they encountered the Abitibi Cree and the members of the Cree Reserve at Nipigon who made arrangements with the Reserve in the Province of Quebec.

The Abitibi Cree Indians were to be added to Treaty 9, were enrolled on a Dominion paylist and paid that year. All financial support were provided.

The two groups were recognized as treaty bands by Canada. The Ontario Indians would allow the Quebec group an equal share of their existing reserve at Abitibi Lake. The Cree group also agreed to waive all claims to a reserve in the Province of Quebec or elsewhere in Canada.

That year 119 Ontario Indians were paid and 332 Quebec (Dominion) Indians were paid annuity. No additional land was provided as stipulated in Treaty 9 to fulfill the land entitlement, under the treaty formula.

The 1908 Adhesion of the Quebec Indians at Abitibi to Treaty 9

In 1908 Samuel Stewart, one of the Treaty 9 Dominion Commissioners, was authorized by the Superintendent General of Indian Affairs to have a treaty conference with the Quebec Abitibi Indians. Stewart’s party arrived at the Revillon Brothers and HBC post in Quebec on June 22, 1908, where both the Ontario and Quebec Abitibi groups had assembled.

The following arrangements were made with them: The Abitibi Quebec Indians were admitted to Treaty 9, they were enrolled on a Dominion paylist and paid that year. No additional financial support was provided to them.

The two groups were recognized as one band by Canada. The Ontario Indians would allow the Quebec group an equal share of their existing reserve at Abitibi Lake. The Cree group also agreed to waive all claims to a reserve in the Province of Quebec or elsewhere in Canada.

That year 119 Ontario Indians were paid and 332 Quebec (Dominion) Indians were paid annuity. No additional land was provided as stipulated in Treaty 9 to fulfill the land entitlement, under the treaty formula.

Adhesions to Treaty 9 made in 1929 and 1930

By the Ontario Boundaries Extension Act of 1912, the northern boundary of Ontario was changed to what it is today by including the land north of the Albany River as far as Hudson Bay.

The Cree and Ojibway of the area had sent numerous petitions for a treaty. Finally, two decades after the first Treaty (1905/06), Canada and Ontario decided it was time to make treaty with the aboriginal people of the region and to offer them the same terms and conditions as in the Treaty of 1905/06. Ontario was again involved and similar restraints were placed on reserve locations.

Two Commissioners were appointed, one by each government: H.N. Avery from Canada, and W. C. Cain from Ontario. They set out in the summer of 1929 to treat with the Indians north of the Albany.

The Encouter with the Chapleau Cree, Chapleau Ojibway and Missanabo Cree

The Commissioners misjudged the affiliations of the Cree and Abitibi Indians whom they encountered at Missanabo and at Chapleau.

They mistakenly believed that all three groups belonged to other bands that had already signed treaty and been allotted reserves elsewhere. In the case of the Chapleau Ojibway and Chapleau Cree, the Commissioners provided them with small residential reserves of 150 acres for 70 or more people, which fell significantly below the treaty land entitlement formula. Missanabo Cree were not provided land at all. Moreover, none of the three First Nations had been included in the population counts of any other NAN First Nations, as had been presumed by the Commissioners.

How Reserves were Selected

At each location there newly created "bands" were asked to select a reserve for themselves, which in the government's eyes was to serve ALL the members and future generations forever. Not much time was devoted to the selection of the reserve, arguably the most tangible benefit the treaty provided. In two cases the Chief and members petitioned for an alternate reserve location just a few years after the treaty was made because they did not have time to consider the matter properly. The majority of First Nations did not know what the reserve was to be used for, since they had been promised that they could hunt and trap anywhere as they and their foreparents had done. In some instances the reserves were designated on a headmark on the Chief's trapping grounds. The reserves were generally not visited by the Treaty Commissioners. Most of the reserves were selected in remote areas removed from access to services. Many were not settled, nor were services provided, until the mid 1960's and some are still unsettled today.

The size of the reserves set aside under the provisions of the 1905/06 Treaty was one square mile per family of five, or 128 acres per member.

The population was generally based on the number enrolled on each band's first paylist at the time the treaty was made.

The size and location of each reserve was drawn up by the Commissioners in a "Schedule of reserves" and appended to the treaty after the treaty was concluded. All the reserves under the provisions of the 1905-06 Treaty were surveyed between 1907 and 1913, based on the descriptions and size set out in the schedule.

Surveys of the reserves

The A B line

A map of the Treaty territory was included in the Commissioners' report on the making of the Adhesions to Treaty 9. The map includes a line drawn in a north westerly direction, extending from Cat Lake in the interior (point A) to James Bay on the coast at Cape Henrietta near Attawapiskat (point B). The commissioners took the position that all the Indians living north of the Albany River and south of the AB Line had been taken into treaty in 1905 and were included in the "bands" located along the Albany River.

This area included the people at Cat Lake, Landdawine House (Naskantaga), Summer Beaver (Nibinamik), Webequie, and Attawapiskat.
The 1929 Adhesion to Treaty 9 at Big Trout Lake:

When the Commissioners traveled to Big Trout Lake, they traveled by float plane which limited their ability to meet with the Indians on their hunting grounds. The Commissioners attempted to gather a large number of people from other settlements to the Trout Lake Post to take treaty.

This large gathering of Cree was then amalgamated into one large band. Three separate reserves were allotted, because the "band" hunted over such a large territory: one at Trout Lake, one at Sasagich Lake, and another at Wamunmin Lake.

Over the last half of the century, the people who were amalgamated into the Big Trout Lake band have since divided into smaller groups.

North Caribou Lake

Among those the Commissioners intended to gather at Trout Lake were the Caribou and Round Lakes from the North Caribou Lake region. These Indians did not show up at the Big Trout HBC Post in 1929. By sheer accident the Commissioners did meet some of them in their traditional territory at Nilip Lake when they had to make an emergency landing in 1929 on their way to Lansdowne House.

No treaty was made with them that year, but it was agreed they would be met on their own territory the following year.

Attawapiskat

The Commissioners also intended to meet with the native people who traded at the Attawapiskat post and who had been included on the Fort Albany paylist in 1905. Since that time the Department of Indian Affairs had come to recognize the people at Attawapiskat as a separate "band.

Only Canada's treaty commissioner met with them in 1929 (the Ontario commissioner's plane had crashed), and he proceeded to divide the Albany band, removing Attawapiskat members from the Fort Albany paylist and enrolling them on their own paylist. A reserve selection would be made the following river.

Adhesion to Treaty 9 in 1930

In the summer of 1930 the Commissioners went back to complete the Adhesions to Treaty Nine. They first treated with the people at Caribou Lake as a separate band, distinct from the Big Trout Lake Band. A new paylist was created for the Caribou Lake Band and a reserve was selected. The reserve dimensions were based on the known population of the Band at the time of treaty.

Attawapiskat revisited

The Commissioners returned to Attawapiskat in August of 1930. They did not take treaty with the people at Attawapiskat, since they believed that the people there had already adhered to Treaty 9 in 1905 at Fort Albany.

A reserve was selected inland, on the Ekwan River. The size of the reserve was determined in an unorthodox manner. The Commissioners determined that the Fort Albany reserve should remain as it was, and that the Attawapiskat Band was entitled to whatever amount of land was remaining if the populations of both "bands" were added together.

The Surveys of the Adhesion Reserves

Whereas the reserves set aside in 1905-06 were surveyed within a decade, the reserves selected in 1929 and 1930 were not surveyed as systematically nor in as timely a manner.

With respect to the reserves set aside under the Adhesions, a significant time gap exists between the making of the Treaty and the survey of the reserves. In 1938 a round of surveys took place in the interior due to mineral finds and included the following: Sasagicho Lake, one of the reserves for the Big Trout Lake Band, the Reserve on Caribou Lake, the Sandy Lake Reserve for the Deer Lake Band, and a small reserve of 500 acres for the Indians trading at the Cat Lake Post.

Cat Lake is where the Commissioners' AB line begins, and a separate reserve was surveyed although the people were considered to be part of the "Onasburgh Band", the first Band to signed Treaty No.9 in 1905.

No further surveys were made until the 1960s. In part this was due to the fact that the Commissioners' decision to amalgamate the Indians into larger artificial groups did not conform to traditional native society.

The First Nations were assured they could continue their traditional way of life and could hunt, trap and fish as their ancestors had done on their traditional territories.

The people spent much of the next five decades unraveling the artificially amalgamated bands into traditionally smaller communities. The choice of reserves was also burdened with the misunderstanding of what a reserve was intended for.

As had been the case in 1905-06, the First Nations were assured that they could continue their traditional way of life and could hunt, trap and fish as their ancestors had done on their traditional territories.

Many of the coastal Cree originally chose reserves in the interior with a view of protecting their hunting grounds, but when they began to receive more and more services located nearer the coast and close to their summer gathering places, they began to request that their reserves be relocated.

As in the first round of treaty adhesions made in 1905 and 1906, the 1929 and 1930 treaty process afforded insufficient time and consideration for the reserve selection.
Treaty 9 and the Schedule of Reserves

A schedule of reserves was appended to both the written text of the 1905/06 treaty and the 1929/30 Adhesions. The schedules describe the general locations of the reserves as supposedly agreed to by the Chief Headmen and the Commissioners at the time of treaty. The schedules also fixed the size of the reserves, using the treaty formula and based on the known population of the bands at the time treaty was made. This was different from some other numbered treaties where there was no attempt to fix the size of the reserves at the time of treaty. Instead the size of the reserves was based on the population of the First Nations when the reserve was surveyed.

Background to Treaty 5
(signed 1875-76, and 1909-10)

Treaty 5 was originally signed in 1875 and covered an area of 100,000 square miles in Ontario and Manitoba, roughly from the border of Treaty 3 northwards to Favourable Lake, and to Lake Winnipeg in Manitoba and to the limit of Treaty 4. In 1876, an adhesion to this treaty was taken with the bands living on either side of Lake Winnipeg, including along the Beresford River, which crosses into Ontario.

Most adhesions were taken in 1909 and 1910, covering an area of 133,400 square miles. The adhesion of 1909 was taken with bands in Northern Ontario. The adhesion of 1910 also included Northern Manitoba bands, as well as the band at Deer Lake (which would be included within the boundary of the province of Ontario two years later).

Seven communities who are now members of Nishnawbe Aski Nation are part of Treaty 5 and the adhesions.

What Are Land Claims?

In 1973 the Federal Government confirmed, in its “Statement of Claims of Indian and Inuit People,” the right of First Nations to bring claims against the Crown. The 1973 statement recognized two broad classes of claims:

Comprehensive Claims apply to Aboriginal people (Indian and Inuit) who have never ceded or surrendered their aboriginal title through a treaty. Comprehensive Claims settlement are in effect modern-day treaties. Nunnok is a good example of a recent Comprehensive Claim settlement. It is not foreseeable that either Canada or Ontario would negotiate a comprehensive claim within a treaty territory that includes all of the NAN territory covered by Treaties No. 9 and No.5. Any NAN First Nation with a claim under NANs treaties is unlikely to ever consider a comprehensive claim would most likely have to proceed to Court.

Specific Claims are those claims based on failures of the federal government to follow the Indian Act in transactions concerning First Nations and their assets or failure to fulfill treaty obligations. The specific claims that NAN First Nations are dealing with in this tripartite process are Treaty Land Entitlement (TLE) Claims, which address the Crown’s lawful obligation to provide to the First Nation with the quantum of land promised in the treaty, based on the treaty formula. Specific Claims generally do not address off-reserve harvesting issues (hunting and fishing rights).

Government policies on land claims

Canada's most recent Treaty Land Entitlement Policy was published in 1999 in a paper titled "Historic Treaty Land Entitlement (TLE) Shortfall Policy Validation Criteria and Research Guidelines."

The policy used the Date of First Survey (ODFS) as the crystallization date. Ontario, meanwhile, has no written policy regarding land claims and has no stated policy regarding TLE claims. In practice Ontario appears to use a Date of Treaty (DOT) approach for Treaty 9.

Submission, Validation and Settlement of NAN First Nation TLE's

NAN's Land Rights and Treaty Research Unit receives funding to conduct research and submit claims on behalf of the NAN First Nations.

In the tripartite process NAN, Canada and Ontario jointly identify issues as well as problem areas where the three parties do not agree. The research claim which includes an historical report and a legal statement of claim are presented to the First Nations for its approval and authorization to submit it both governments for validation or rejection.

Canada and Ontario review the claim, and in the case of TLEs they each complete their own panel analysis to determine if they agree or not with a First Nation's submission on the TLE shortfall. If there is some disagreement regarding the shortfall, (i.e. who should be compensated) there is room for additional research and discussion to come to an agreement.

When a TLE claim is validated by Canada, the bands negotiating the claim negotiate a treaty settlement which is set out in the beginning. Usually that is the agreed upon shortfall determined by all parties in the validation phase. Ontario will do the same. The role of NAN in the land claims process ends here.

Settlement negotiations are between the First Nation and the Governments.

Treaty Land Entitlement (TLE) Claims

All the numbered treaties have a formula based on the population of a “Band” to determine the size of a reserve for that “Band”. The Treaties vary in formula. Within NAN for example the Treaty 9 formula is one square mile per family of five, or 128 acres per member, whereas the Treaty 5 formula is only 160 acres per family of five, or 32 acres per member. A TLE claim is based on a ‘shortfall’ in the quantum of land owed to the Band under the treaty formula.

There are two questions to be answered to determine a TLE shortfall:

1. When is the population calculation made? The date at which the population is calculated to determine the size of the reserve is known as crystallization. Unfortunately none of the numbered treaties actually state when the calculation is to be done. For some treaties the date of crystallization has been determined by the Courts to be the date of first survey (ODFS) which is the date that the government first surveyed the reserve. In Treaty No. 9 the Commissioner attempted to fix the size of the reserve based on the population at date of treaty.

2. Should a be included as a member of the Band? This includes people who adhered to treaty after the date of crystallization’s determination: a ‘late adherents’. This question requires that the research reconstruct the membership of the First Nation at the date of crystallization, whenever that is determined to be.
The Law

Regarding Treaty Land Entitlement Claims

To date there has been only one major court decision regarding TLE claims in Canada. It is the Lac La Ronge case from Saskatchewan dealing with Treaty 6. The trial judge found that the First Nation was entitled to a reserve based on its current population, if it had never received its full TLE land quantum in a previous survey. That was the "current population minus lands received" TLE formula that was used in some cases in the prairies.

The Abitibi
Quebec Indians were admitted to Treaty 9, enrolled onto a Dominion
paylist and paid that year.

This was the state of the law at the time that the previous brochure was prepared in 2001 and that is why the brochure states that NAN First Nations are entitled to a TLE calculation based on their current population. Later in 2001 the trial decision was overturned by the Saskatchewan Court of Appeal and that decision was upheld by the Supreme Court of Canada. The Court of Appeal found that for Treaty 6, the intention of the parties was that the site of a First Nation's reserve was to be based on its population at time of first survey, DOFS. This means that it is highly unlikely that either Canada or Ontario would look at settling NAN TLE claims on the basis of current population. It also makes it highly unlikely that a Court or the Specific Claims Tribunal would do so either.

Canada, Changes in the Land Claims Process: The Specific Claims Tribunal Act (Bill C-30)

The Specific Claims Tribunal Act came into effect on October 16, 2008. It is a tribunal made up of Superior Court Judges appointed by Canada with the power to make binding decisions with respect to Specific Claims filed with Canada. The Tribunal has a limit to award no more than $1.50 million per claim. The Tribunal does not have jurisdiction over Ontario unless Ontario agrees to be involved. Even then the Tribunal has no authority to award land, only money. All of the NAN TLE claims involve Ontario and all NAN TLE claims involve a claim for more reserve land pursuant to the Treaty promises. The Tribunal is therefore of limited use to NAN First Nations wishing to resolve TLE claims, unless Ontario can be persuaded to participate.

Ontario: A New Political Climate

Following the Ipperwash inquiry Report Ontario has made a number of positive changes regarding native issues. Most importantly Ontario created a stand alone Ministry, the Ministry of Aboriginal Affairs (MAA), with its own Minister, currently The Honourable Brad Duguid.

Canada & Ontario TLE Policy respecting Treaty 9

Prior to the Court of Appeal decision in Lac La Ronge, NAN was researching and submitting TLE claims based on current population minus lands received.

Following the Court of Appeal decision in Lac La Ronge, NAN began submitting TLE claims based on a date of first survey shortfall (DOFS). In January 2006, following a review of the NAN TLE claims, Canada formally advised NAN that the treaty land entitlement shortfall under the provisions of Treaty 9 will be considered on a DOT shortfall and not a DOFS shortfall. Ontario has always taken this position regarding the Treaty 9 TLEs. The two governments' positions are founded on the fact that a "Schedule of Reserves" was appended to the treaty which they interpret as the intent of the parties to fix the size of the reserves at DOT.

This means that the population increase (if any) between the time of treaty and the time of the survey could not be counted in the shortfall. Late adherents are still counted.

Date of First Survey (DOFS) versus Date of Treaty (DOT)

In response to this position NAN undertook two major studies, which unveiled interesting options for First Nations:

1) A Risk Assessment Analysis in which every First Nation's treaty land entitlement shortfall was analyzed to determine the difference between a DOFS shortfall and a DOT shortfall. The results of this study showed that a DOT shortfall calculation for the First Nations who signed the Treaty in 1995 and 1996 was not significantly different from a DOFS shortfall. Since the surveys were conducted within seven years of the treaty there was no significant population growth. Indeed, for some First Nations the DOT population was greater than the DOFS population. (Missanabie Cree was not included in this risk assessment analysis because they had no date of first survey.)

This is NOT the case for the First Nations that adhered to Treaty 9 in 1929 and 1930. The surveys of the reserves for most First Nations took place several decades after treaty was made and therefore the population of the First Nations significantly increased between DOT and DOFS. A TLE shortfall based on DOT would negatively impact the outcome of NAN TLE claims from 1929/30.

2) A report titled "The Reserve Provision in Treaty Nine" dated November 2007, by Dr. J. Armacost. The point of this research was to examine the process by which the reserves were selected, the intent of the parties with respect to the size and location of the reserves and the extent of the Commissioners' mandate to fix the size of the reserves.

Native women and children assembling for the feast to be held after the James Bay Treaty signing ceremony at Cooberagh House [July 12th, 1965]
Options for NAN Treaty Land Entitlements

For the First Nations who adhered to treaty in 1905 and 1906: Proceed with submitting claims on Date of Treaty basis.

Based on NAN’s risk assessment analysis it is in the interests of most 1905/06 NAN First Nations to proceed with TLE claims based on a Date Of Treaty (DOT) shortfall, on a without prejudice basis. These claims can be settled within the current framework of the governments’ policies in the existing claims process.

For the First Nations who adhered to treaty in 1929 and 1930: It is NOT in their interests to submit a TLE claim based on Date Of Treaty (DOT).

Some possible solutions are as follows:

1) Negotiate an alternative approach for these TLEs
2) Bring the issue to the Specific Claims Tribunal
3) Bring a court challenge

Next Steps:
The three year work plan in the MOU signed by NAN, Canada and Ontario extends to the end of fiscal year 2011. During that time NAN will complete and submit all the TLE Claims for the First Nations who signed the Treaty in 1905 and 1906, where a shortfall at Date of Treaty (DOT) has been demonstrated by the research. An approach to the 1929-30 Adhesion Claims will be developed based on the options discussed above.

Other Preferences for First Nations
NAN submits claims on behalf of First Nations with their concurrence. Should a First Nation not wish to negotiate a TLE based on the above approach, they are free to bring a court challenge, take their claim to the Specific Claims Tribunal or wait for changes in law or government policy. The research conducted on their behalf by NAN is available to them.

Additional Benefits of TLE Claims
In the current atmosphere of intensified resource development in NAN territory these land claims provide notice to governments and third parties that there are outstanding lawful obligations owed to NAN First Nations for additional reserve land under the treaties. This is a tremendous safeguard against unwanted development in NAN territory.
Nishnawbe Aski Nation

Head Office
100 Back Street
Thunder Bay, ON
P7J 1L2

Tel: (807) 623-8228
Toll Free: (800) 465-9952
Fax: (807) 623-7730

Administration Office
710 Victoria Avenue East
Thunder Bay, ON
P7C 5P7

Tel: (807) 623-8228
Toll Free: (800) 465-9952
Fax: (807) 623-7730

Eastern Office
145 Wilson Avenue
Timmins, ON
P4N 2T2

Tel: (705) 360-5502
Toll Free: (866) 737-0737
Fax: (705) 360-1863