

3-1-2001

# Governing Municipalities in a Dual Context: An Examination of Urban Indian Reserve Creation Under Article 9 of the Saskatchewan Treaty Land Entitlement Framework Agreement

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## Recommended Citation

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**GOVERNING MUNICIPALITIES IN A DUAL CONTEXT: AN EXAMINATION OF  
URBAN INDIAN RESERVE CREATION UNDER ARTICLE 9 OF THE  
SASKATCHEWAN TREATY LAND ENTITLEMENT FRAMEWORK  
AGREEMENT**

**MPA Research Report**

**Submitted to**

**The Local Government Program  
Department of Political Science  
The University of Western Ontario**

**March 2001**

**Wes Stevenson**

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### **List of Abbreviations**

FSIN	Federation of Saskatchewan Indian Nations
TLEFA	Saskatchewan Treaty Land Entitlement Framework Agreement
TLE	Treaty Land Entitlement
OTC	Office of the Treaty Commissioner
FCM	Federation of Canadian Municipalities

### **Please Note**

It should be noted that for the purposes of this paper, "First Nations" and "Indian" are used interchangeably since they both refer to those Canadian indigenous people who are governed and provided special status by the *Indian Act*. These two names do not refer to the Inuit or Metis.

## **I. Introduction**

The Federation of Saskatchewan Indian Nations (FSIN), the Province of Saskatchewan and the Government of Canada entered into a tripartite agreement in 1992 with the signing of the Saskatchewan Treaty Land Entitlement Framework Agreement (TLEFA). As a result of this historic signing, many of the outstanding land claims owed to several First Nations in Saskatchewan are now being settled. Article 9 of the TLEFA outlines a formal process for the creation of urban reserves. This highly significant article has a direct impact on Saskatchewan municipalities because, historically in Canada, the relationship between municipalities and First Nations' bands has been ambiguous at best. It has also been a relationship left ungoverned by legislation. The signing of the TLEFA has forced municipalities and First Nations' bands, for the first time, to define their relationship. It is the purpose of this paper to examine and demonstrate that although the Saskatchewan Treaty Land Entitlement Framework Agreement did not provide a full prescription for municipal land to be turned into reserve, the lessons learned in the past decade still make this framework agreement significant. It can serve as a template for other Canadian First Nations' bands and municipalities that are, or will be, facing the growing phenomenon of urban reserves. This report includes a survey of those municipalities and First Nations bands in Saskatchewan that have experience in urban reserve creation under Article 9 of the TLEFA. As well, the examination will include the challenges of establishing new relationships within a legislative void,

legislative and jurisdictional differences, and the requirement for a strong, collaborative dual municipal governance system. First, however, an historical basis for this paper and its topic must be established.

## **II. Historical Background of First Nations' & non-First Nations' Relations**

The 1700's were filled with power struggles in North America. During the early 1700's the French and British governments were in constant war for exclusive rights to hunting, trapping and settlement. Tribes such as the Micmac and Iroquois allied themselves with the French or the British. In fact, "the Micmac alliance was a real source of military advantage to France in its confrontation with the British in Acadia whereas the Iroquois sought to play French and English off against each other to their own advantage".<sup>1</sup> Following France's defeat in 1760, Britain was faced with the American war of independence. During this time, the British government relied on Indian tribes north of the 49<sup>th</sup> parallel to maintain British sovereignty over British land. In his book, *Skyscrapers Hide the Heavens: A History of Indian-White Relations in Canada*, J.R. Miller explains, "the alignment of the various Indian nations was extremely important. Thanks to the influence of geography and commerce, the British were supported by more of the Indian groups than were the land-hungry Americans".<sup>2</sup> When relations between the newly formed United States of America and Great Britain stabilized, "this reconciliation removed the threat from the south and diminished the military

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<sup>1</sup>J. R. Miller, *Skyscrapers Hide the Heavens. A History of Indian White Relations in Canada*, Revised ed. (Toronto Buffalo London: University of Toronto Press, 1991), p. 65, 67.

<sup>2</sup> *ibid.*, p. 75.

significance of Indians in the eyes of British planners”.<sup>3</sup> There was no longer a need to use Indian tribes for military alliances.

As well, the fur trade had been well established, and the Indians were no longer needed to guide explorers and trappers. When the Hudson’s Bay Company amalgamated in 1821 with its main rival, the Montreal-based North West Company, it established its own means of securing pelts. The amalgamation had a significant negative effect on Indian participation in the fur trade because it “stopped fur-trade operations from Montreal at a single stroke, commercial cooperation between eastern Indians and the Europeans was drastically diminished”.<sup>4</sup> Britain was quickly becoming independent of Indian knowledge of Canada, and began establishing a colony along its own vision. As part of this vision, expansion continued westward. Lands that had remained unneeded or unwanted were now desired for settlement. The end of the Montreal-based fur trade and a need for settlement land “changed the European’s approach to the relationship with the indigenous population. The association was no longer one that emphasized military alliance, but rather one in which the dominant partner sought the removal of the Indian from the path of agricultural settlement. Increasingly, the Indian was an impediment to the objectives that the white population had in an era of peace and settlement. The British government in

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<sup>3</sup> J. R. Miller, Skyscrapers Hide the Heavens, A History of Indian White Relations in Canada, Revised ed. (Toronto Buffalo London: University of Toronto Press, 1991), p. 83.

<sup>4</sup> Ibid., p. 83.

Canada had come to the determination that Indians had little contribution left to make; they had become irrelevant."<sup>5</sup>

In order to address the pressure of expansion to the west, the government of Canada was faced with two options. The first option was to conquer the Indian tribes outright and eliminate their sovereignty. However, this option came with two difficulties: humanitarian concerns and economic limitations. Canada was afraid of world public outcry if it began to eliminate its Indian population. As well, Canada looked at the American experience. In the 1860s and 70s, the American government was fighting with Indians and spending millions of dollars per year to do so. Canada was not in a financial position to do the same. Instead, the government chose the second option. It decided that the most cost-effective and politically acceptable way to acquire Indian land for agricultural settlement was through the use of legislation and treaties, and "so began developing Indian policy as well as implementing programs designed to assimilate the Indians."<sup>6</sup>

Since their inception between 1890 and 1920, Indian reserves have traditionally been parcels of land in rural settings; however, the concept of an urban Indian reserve is not new in Canada. In the early 1900s, Fredericton, New Brunswick enveloped the St. Mary's Indian Reserve and the first urban reserve evolved quietly and without public attention. Municipal urban sprawl has replicated the Fredericton/St. Mary band experience in other Canadian cities. Examples may be

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<sup>5</sup> J. R. Miller, Skyscrapers Hide the Heavens, A History of Indian White Relations in Canada, Revised ed. (Toronto Buffalo London: University of Toronto Press, 1991), p. 83-84.

<sup>6</sup> Ibid., p. 95



found in other parts of the country, including Kahanawake in Montreal, the Huron in Quebec City, and the Musqueam Reserve in Vancouver. In each case the municipality encompassed the reserve, creating a dual governance system with the Chief and council governing reserve land and the Mayor and council doing the same for the rest of the municipality. These relationships have not been legislated, developing out of necessity and are based on goodwill and cooperation. In most instances they have resulted in mutual benefit and positive co-existence.

As Canada developed democratically into three levels of government—federal, provincial, and municipal—so the power hierarchy developed with power trickling downward from the federal to the provincial and then to the municipal level. Urban municipalities view themselves as a child of the province since they were created by an Act of the provincial legislature. Since the Second World War, the growing First Nations population, in combination with the assertion of First Nations' rights, has resulted in an aggressive fourth level of government in Canada. Because historical treaties with the Federal Crown created Indian reserves, it could be said that an Indian reserve, therefore, is the “child” of the Queen. From a First Nations' perspective, a reserve is a piece of land that is vested with the aboriginal title of First Nations and, as such, capable of being governed in accordance with the First Nations' inherent power to rule itself. Today, First Nations' bands continue to view their relationship with the Queen with seriousness and sanctity. A case in point is the refusal of the Joseph

Bighead First Nation of northwestern Saskatchewan to sign the TLEFA in 1992.

They continue to believe that their treaty was signed with the Queen and her representatives and it is with her that they negotiate.

### **III. Treaty Land Entitlement in Saskatchewan**

When the First Nations' signatories of Treaties 4, 5, 6, 8 and 10 (1874 to 1906)<sup>7</sup> relinquished ownership to most of Saskatchewan, they were promised that in exchange for giving up their traditional lands they would receive new land and support in areas such as education and training, health, hunting and agricultural tools, etc. However, after signing the treaties and upon moving to the designated land, many of the bands found that they were given only a portion of the land promised. For many years the First Nations' bands complained about the shortfall of land that was promised, but it wasn't documented until 1992 when the Office of the Treaty Commissioner produced a report which indicated that the amount of land given to the First Nations was supposed to be 128 acres per individual or approximately 1% of the Saskatchewan land base. The report went on to say that what the First Nations' bands were actually given amounted to approximately half of that promised. Therefore, Treaty Land Entitlement can be defined as the compensation for land to First Nations' bands that was promised but never received.

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<sup>7</sup> J. R. Miller, Skyscrapers Hide the Heavens. A History of Indian White Relations in Canada. Revised ed. (Toronto Buffalo London: University of Toronto Press, 1991), p. 204

The survey of reserves began in 1875 in Saskatchewan and continues today since many bands still feel that they were "short changed."<sup>8</sup> Reserves were selected in two main ways. These included joint selection by the band leadership, the surveyor, and in some cases, the involvement of the Indian agent while the government selected others without any Indian involvement.<sup>9</sup> Because surveyors did not have accurate band populations and Indians were still relocating during the early survey period most reserves fell short of their required size. As early as 1930 it was common knowledge of both the federal and provincial governments that there was a shortfall of reserve lands, however, it was not until the 1970s that the federal, provincial, and First Nations' governments began to systematically identify the shortfalls.<sup>10</sup>

As a result, the federal and provincial governments developed the Saskatchewan Formula in the mid-1970s to address the outstanding shortfalls. However, tax loss compensation to school divisions, as well as to rural and urban municipalities was not included in the formula, nor was compensation for third-party interests. Further, the entitlement bands found that there was not sufficient crown land, especially in southern Saskatchewan, from which to choose. For these reasons, this agreement did not work and by the mid-1980s only a few settlements had been reached. There were still twenty-seven First Nations with

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<sup>8</sup> Peggy Martin-McGuire, "The Importance of the Land: Treaty Land Entitlement and Self-Government in Saskatchewan," Aboriginal Self-Government in Canada, 2<sup>nd</sup> ed., ed. John H. Hylton. (Saskatoon: Purich Publishing Ltd., 1999), p. 275.

<sup>9</sup> Ibid., p. 275.

<sup>10</sup> Ibid., p. 275.

recognized shortfalls and with the demise of the Saskatchewan Formula some First Nations began legal action to make good on the claims.<sup>11</sup>

As an alternative to litigation, in 1989 the FSIN and the federal government established the Office of the Treaty Commissioner (OTC), under the leadership of former Saskatoon Mayor, Clifford Wright. Its mandate was to develop a way for settling the recognized shortfalls of the outstanding entitlement claims. In the following year the OTC released a report and this "framework," or template, formed the basis for negotiations. The negotiations culminated in September 1992 when the FSIN, on behalf of twenty-seven bands, and the governments of Canada and Saskatchewan signed the Saskatchewan TLEFA . (See Figure 1)

Contained in the policy framework is Article 9, which established a process for First Nations bands to select urban land for reserve creation. Theresa Dust, Saskatoon City Solicitor, describes a TLEFA urban reserve as:

"...land within a city, town or village purchased on the open market by a TLE band, for a specific purpose. It can be for residential, commercial, industrial or institutional purposes. It can be an industrial park, an office building, and a neighbourhood shopping centre...or a downtown hotel. It can be as small as one lot or as large as a whole subdivision. It can be raw land or developed land. It can have aboriginal or non-aboriginal tenants. Most importantly, it is located within a city, surrounded by urban land and developments, intimately connected

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<sup>11</sup> Peggy Martin-McGuire, "The Importance of the Land: Treaty Land Entitlement and Self-Government in Saskatchewan," Aboriginal Self-Government in Canada, 2<sup>nd</sup> ed., ed. John H. Hylton. (Saskatoon: Purich Publishing Ltd., 1999), p. 275.

to the non-reserve land around it by roads, sewers, traffic patterns, business patterns".<sup>12</sup>

Since Indian reserves have had such a negative implication for First Nations, it has been unexpected that First Nations leaders would give such widespread endorsement for more to be formed. But the reasons for creating urban-based reserves are much different from the historical reasons that the federal government used during colonization. Today's leaders look at these new urban reserves as a future base for social and economic benefits for their members.<sup>13</sup> It should be noted that about 70 percent of the First Nations population of Canada now live in larger urban settings and not on reserve.<sup>14</sup> The census data gathered in 1996 indicates that 4 percent of Regina's residents are First Nations peoples, and that Saskatoon has 3.2 percent.<sup>15</sup> Other cities with significant First Nations populations include Calgary, Edmonton, Vancouver, Thunder Bay, Toronto, and Montreal.

Despite First Nations' interest in urban reserves, and an apparent need for them (based on population growth), urban reserve creation has been challenging. As late as 1980, the Alberta-based Samson First Nation tried to create an urban reserve in Hay River and it was prevented by a decision of the Federal Court.

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<sup>12</sup> T. M. Dust, Common Questions About Urban Development Centres in Saskatchewan, Essay p. 9.

<sup>13</sup> F. L. Barron and J. Garcea, "Aboriginal Self-Government and the Creation of New Indian Reserves: A Saskatchewan Case Study," Aboriginal Self-Government in Canada, 2<sup>nd</sup> ed., ed. John H. Hylton. (Saskatoon: Purich Publishing Ltd., 1999), p. 289.

<sup>14</sup> Adele Furrie Consulting Inc., A Demographic Profile of First Nations and Metis of Saskatchewan (March 1998), p. 2.

<sup>15</sup> Ibid., p. 7.

The municipality sought, as plaintiff, to prevent the creation of a reserve within its boundary and their request was upheld.<sup>16</sup> Therefore, in 1980, the Federal Court system was not, as yet, prepared to examine the nature of treaties and to look at the Indian band/municipal relationship. As well, at its annual meeting in 1981 in Regina, the Federation of Canadian Municipalities passed a resolution that “strongly opposed the creation of a jurisdiction within a jurisdiction within an urban municipality for an Indian reserve.”<sup>17</sup> However, as a result of being party to the new round of Indian land claims in Canada and signing documents such as the TLEFA in Saskatchewan, which recognizes urban reserve creation potential, the Government of Canada has opened the door to urban reserve creation across Canada. Furthermore, the Federation of Canadian Municipalities has reversed its decision regarding urban reserves.

Under the *Indian Act*, urban reserves have the same legal status as Indian reserves found in rural areas. In Saskatchewan, the first urban reserves were created on federal Crown lands that First Nations acquired as part of their land claims negotiations with the federal government. In 1982 the Peter Ballantyne First Nation created the first urban reserve in Prince Albert. Since then, eight such reserves have been created in seven municipalities: Prince Albert (two reserves), Saskatoon, Yorkton, Fort Qu’Appelle, Lebret, Meadow Lake, and Duck Lake<sup>18</sup>. As well, there are a number of properties owned by First Nations’ bands

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<sup>16</sup> D. L. Hawley, Canada, Laws, Statutes, (Government Publication, 1984), p. 157.

<sup>17</sup> F. L. Barron and J. Garcea, Urban Indian Reserves, Forging New Relationships in Saskatchewan, (Saskatoon: Purich Publishing Ltd., 1999), p. 32

<sup>18</sup> Ibid., p. 3.

in various municipalities waiting for reserve designation. One of the more prominent of these is the twenty-eight acres of university land the University of Regina has given to the Saskatchewan Indian Federated College (SIFC). The Cowessess First Nation has chosen this land and the Chief and council of this reserve will have it designated as reserve land for the benefit of all First Nations' post-secondary students in perpetuity.

The urban reserve phenomenon has created its own set of concerns for urban municipalities relative to legal, political, social and economic change. While some believe that urban reserves are good for Saskatchewan and Canada's future, others are entirely opposed. Opponents believe that these reserves will have a negative effect on future municipal development since municipal planning by-laws do not apply to reserves. Others feel that urban reserves will have a negative impact on the tax base if a First Nation refused to pay municipal taxes or service fees. As well, some fear the potential for widening pockets of poverty and crime to develop. Underlying these fears is apprehension, on both sides, of co-existence with new rules and a new, culturally different neighbor. (See Table 1)

#### **IV. Building Partnerships within a Legislative Void**

Urban reserves and local governments derive their authority from two different sources. A Chief and council, who get their powers from the federal

government's *Indian Act*, govern urban reserves. Municipalities get their powers from provincially enacted urban municipalities acts. This creates a host of potential problems since there is no legislation from any level of government to establish the formal relationship between municipalities and Indian bands. The *Indian Act* is often a barrier to agreements between municipalities and First Nations since it was written with the assumption that reserves are rural and residential. For example, economic development initiatives, the major reason for such creations, are hampered since reserve land and its assets cannot be used as collateral when getting a loan.

The *Indian Act* contains regulations governing the election of Chiefs and councilors of a band. Section 74(2) states that "Unless ordered by the Minister, the council of a band in respect of which an order has been made under subsection (1) shall consist of one chief and one councilor for every one hundred members of the band, but the number of councilors shall be not less than two nor more than twelve and no band shall have more than one chief" (Indian Act, 67). The *Indian Act* gives the chief and council full legal and jurisdictional authority to govern the land: "The council of a band may make by-laws not inconsistent with this Act or with any regulation made by the Governor in Council or the Minister, for any or all of the following purposes, namely: health, education, observance of law and order, social programming..."<sup>19</sup>

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<sup>19</sup> Canada. Indian Act. R.S.C. 1985, p. C1-5



With this legislation in place, a Chief and council have authority similar to the elected officials of a municipal government. Legal notice has been made of the similarity between the two in the interpretation of the Act: "The powers conferred by section 81 are first of all, powers to regulate, and to regulate only administrative statutes. The power to give effect to regulations cannot extend beyond these administrative statutes; they are accessory and no more".<sup>20</sup> The Chief and council have jurisdiction only within the boundaries of their reserve, since "a band by-law has no effect outside the reserve"<sup>21</sup> and the band is responsible for the by-law's enactment and enforcement. In cases of legal action, "A court cannot take judicial notice of an Indian band by-law. It is incumbent on the party relying on a by-law to adduce proof of it in admissible form".<sup>22</sup>

Furthermore, the band's Chief and council have a different relationship with the federal government than do urban municipalities to the provincial government, and some of an Indian band's regulations can supersede federal legislation. Hawley explains, "A by-law becomes a statutory instrument and has the force of law and is effective within the boundaries of the reserve. When a properly drafted and enacted by-law is inconsistent with a federal law, such as the fisheries regulations, the application of the federal law ceases at the boundaries of the reserve".<sup>23</sup> Hence, once an urban reserve is created it becomes its own sovereign self-governing entity. The municipality loses authority over that piece

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<sup>20</sup> D. L. Hawley, Canada, Laws, Statutes, (Government Publication, 1984), p. 77.

<sup>21</sup> ibid., p. 74.

<sup>22</sup> ibid., p. 80.

<sup>23</sup> ibid., p. 76.

of land since it is owned by the Crown and set aside as an Indian reserve with its own governance and judicial systems. This has tended to alarm municipal politicians and administrators.

As is the case with First Nations and the *Indian Act*, urban municipalities and the act by which they are governed provide their own hindrances. Legislation limits the municipalities in the way they carry out their duties and exercise power. The acts specify what services municipalities are allowed to provide, and unless written, municipalities cannot assume responsibility for new services. These legislative restrictions on the powers of municipal governments often stall negotiations and frustrate First Nations' negotiators. The Federation of Canadian Municipalities, at its annual meeting in 1993, stated:

"During consultations across the country, it became apparent that both municipalities and Aboriginal peoples are frequently not knowledgeable of each other's difficulties and concerns. To some degree, the aspirations of both local governments and Aboriginal peoples have been marginalized and compromised by federal and provincial governments. As a result, the interface of municipal/Aboriginal interests...has been rendered all but completely invisible."<sup>24</sup>

Municipalities often do not have the ability and/or capacity to develop culturally relevant services, nor to negotiate adequate agreements. Likewise, First Nations are limited in their abilities to deal with their new municipal partners. Without a clear legislative 'road map', these new partners must not only find a common path, but they must also create it.

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<sup>24</sup>Terry Mountjoy, "Municipal Government Perspectives on Aboriginal Self-Government," Aboriginal Self-Government in Canada, 2<sup>nd</sup> ed., ed. John H. Hylton. (Saskatoon: Purich Publishing Ltd., 1999), p. 315.

Since local governments are "creatures of the province" and are placed under a high degree of provincial control, the provincial government is a key stakeholder and holds a critical role in the future development of local government and First Nations' band relationships. As well, the federal government's fiduciary responsibility for First Nations' people will require it to negotiate with the province on some of the basic issues, such as housing, social services, and education. Because all levels of government are stakeholders in urban reserves, a new model of governance is being invented. (See Figure 3)

Regardless of the risk and challenge of establishing a new partnership and sharing governing power with their new neighbor, local governments see many benefits for moving forward into agreements with First Nations' bands. The Federation of Canadian Municipalities in its same 1993 report lists the following benefits:

- To provide adequate services to reserves;
- To create partnerships;
- To provide equal services at equal costs to all residents on and off reserve
- To facilitate the compatible development of lands within municipal boundaries;
- To provide emergency back up services upon request;
- To build understanding;
- To maintain an open and cooperative relationship;
- To establish mutually acceptable solutions with respect to the provision of services;
- To foster harmonious relationships between municipalities and First Nations and to share resources;
- To establish mutual cooperation to benefit the community as a whole;
- To achieve relative taxation equity, service equity and uniformity of regulations; and

- To assist the First Nations' community to achieve their potential, recognizing their authority and our collective need to develop mutually satisfactory solutions.

## **V. Issues to be Resolved in Support of a Dual Governance System**

The research for this paper included a survey (Table 2) directed to local government Solicitors' Offices and Coordinators of the TLEFA bands. The respondents were chosen based on which TLEFA First Nations bands made urban selections, and which municipalities were affected. The survey was conducted in June of 2000 and the response rate for municipalities was 62.5% (10 respondents out of 16) while First Nations' response was 88.8% (16 respondents out of 18.) Whereas the TLEFA provides a clearly defined process for the conversion of rural or crown lands into Indian reserves, the same cannot be said in relation to creation of reserves in urban settings where the parties have been left to define their own processes and conduct their own negotiations on an ad hoc basis. The intent of the survey was to establish the issues and the progress made in fulfilling treaty land entitlement in relation to the creation of urban reserves.

In this survey, two key issues emerged relative to the creation and operation of the land—jurisdictional and financial. The major jurisdictional issues that emerged related to the applicability and enforcement of various types of federal and provincial laws, as well as on-reserve city and band bylaws. These issues are important to First Nations who wish both ownership of the land, as well as the

right to govern the land using their own law-making jurisdiction. This wish for separate First Nations' jurisdiction raises questions about the applicability of federal and provincial laws on First Nations' land and the enforcement not only of federal and provincial laws, but also of laws enacted by First Nations. A municipality's by-laws do not apply to urban reserves located within its boundaries. Municipal bylaws are enacted within a framework of provincial legislation and most do not apply to reserves as they infringe on the federal jurisdiction concerning Indians and "lands reserved for Indians."<sup>25</sup> Therefore, effective governance will depend more on a strong, trusting relationship than on actual jurisprudence.

The negotiators of the Saskatchewan Treaty Land Entitlement Framework Agreement made an attempt to address the broader issues of creating an urban reserve. Under the TLEFA, Article 9, a band must satisfy five conditions prior to land being transferred to reserve. The band must:

1. work out a servicing agreement with the municipality,
2. establish a set of compatible by-laws,
3. negotiate a fair tax loss compensation package with the municipality and the school boards,
4. perform an environmental assessment of the land to be designated, and
5. set up an appropriate dispute resolution mechanism for possible future disagreements.

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<sup>25</sup> Canada. Indian Act. R. S. C. 1985, p.24

Should a municipality or school board not be willing to negotiate in good faith or if a servicing agreement cannot be achieved, the Minister of Indian Affairs can unilaterally create the new reserve (without a servicing agreement and/or tax-loss compensation). In the TLEFA Article 9.01, Section 78 (b) ii states:

"In the event that an agreement has not been entered into between an Entitlement Band and one or more of the other affected parties within five (5) months...Canada may set apart such Entitlement Land as an Entitlement Reserve without such an agreement where the affected Entitlement Band is prepared to enter into a reasonable and adequate agreement in respect of the reasonable concerns raised by the affected Urban Municipality or affected school division."

To-date this process has, fortunately, not been needed.

In 1998, the Federation of Canadian Municipalities (FCM) did a survey<sup>26</sup> to find out what major issues/questions Canadian municipalities had relative to urban reserve creation. The results are as follows:

1. Economic Development
  - How can aboriginal opportunities be improved?
  - How can Aboriginal opportunities be integrated into general community growth?
2. Local Taxation
  - Who pay for increases in services?
  - How do towns and cities replace tax revenue for property transferred to Aboriginal control?
3. Land Use and Development
  - Are building, road and garbage standards for urban reserves going to be the same as for the rest of the municipality?
  - How would the current density rules be applied?
4. Representation in City Decision-making Processes
  - Who will represent Aboriginal interest in municipal decisions?

<sup>26</sup> Terry Mountjoy, "Municipal Government Perspectives on Aboriginal Self-Government," Aboriginal Self-Government in Canada, 2<sup>nd</sup> ed., ed. John H. Hylton. (Saskatoon: Purich Publishing Ltd., 1999), p. 316.

- How do we get representation?
- 5. Provision of Municipal Services to Aboriginal Governments
  - Are services to be purchased?
  - What happens in a situation of default?
  - What conditions does either party attach?
- 6. Revenue Collection
  - Who collects the taxes?
  - On what basis are taxes calculated?
  - Will there be reciprocal arrangements?
- 7. Capital Expenditures
  - Do Aboriginal organizations or governments have access to capital funds?
  - What special conditions are going to be added to tendering processes?
- 8. Improved collaboration/partnerships
  - How do we develop understanding of each other's needs, limitations, circumstances, and the political context?
- 9. Self-government
  - What does it mean?
- 10. Service Agreements
  - How are they negotiated?
  - How are they enforced?
- 11. Improved planning
  - Can we be less reactive and anticipate and plan better?

The issues identified in the FCM survey indicate there is still much confusion, apprehension, and more questions than answers. Regardless, Canadian municipalities continue to be optimistic about the future. The FCM presented a brief to the Royal Commission on Aboriginal Peoples, indicating "relations between municipalities and Aboriginal peoples are emerging in spite of legislative and constitutional limitations".<sup>27</sup>

## **VI. Lessons of the First Decade**

As Barron and Garcea (1999) have pointed out,

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<sup>27</sup> Submission to the Royal Commission of Aboriginal Peoples. (Ottawa: Federation of Canadian Municipalities, 1993), p. 18.

"Rarely if ever is there unanimous support for or opposition to the creation of a satellite (urban) reserve. This is true even among members of First Nations that proceed with development. Support or opposition tends to vary according to an array of factors. The most notable of these relates to the perceptions of various stakeholders and residents regarding the effect the reserve would have on both their pecuniary personal interests and the broader community interests."<sup>28</sup>

Despite good intentions and relationships of municipalities' and First Nations' officials, the process of urban reserve creation has proven challenging. The complexity of intertwining federal, provincial, municipal and First Nations' laws into an agreement has been difficult. The TLEFA fell short of a full prescription for creating urban reserves; however, Mr. Marty Irwin, former City Commissioner of Saskatoon, reflects and says, "Do not let an imperfect policy framework on the creation of urban reserves get in the way of a good working relationship. Policy frameworks are no substitute for political and administrative leadership in such matters."<sup>29</sup>

Several lessons have been learned throughout the TLEFA experience in Saskatchewan. One major lesson is that a good relationship between municipal and First Nations' governments are more important than any agreement. A good relationship will provide flexibility and lead to initiatives that far exceed any policy framework. The reserve itself is the cornerstone from which other important initiatives will follow. The reserve then becomes a means to an end, not an end in itself.

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<sup>28</sup> F. Laurie Barron and Joseph Garcea, ed., Urban Indian Reserves, Forging New Relationships in Saskatchewan, (Saskatoon: Purich Publishing, 1999), p. 300.

<sup>29</sup> F. Laurie Barron and Joseph Garcea, ed., Urban Indian Reserves, Forging New Relationships in Saskatchewan, (Saskatoon: Purich Publishing, 1999), p. 300..



Another lesson learned is the importance of communication. Meetings held on an on-going basis have sustained positive relationships. If parties meet only when problems need to be discussed, there is a tendency for each side to develop an unsubstantiated paranoia of the other. The communications plan must include a public education program. Although the benefits of urban reserves are becoming more apparent, there are still those who are adamantly against it. This vocal minority does not understand the history, politics or opportunities relative to First Nations peoples and/or urban reserve/municipal partnerships.

And finally, the third lesson indicates there needs to be strong collaboration and cooperation in how to govern a municipality in a changing environment. To prosper, or perhaps survive, both the municipality and the First Nations' governments "must be reinvented to meet the new global realities that confront their respective communities."<sup>30</sup>

Based on the Saskatchewan experience, municipalities have learned that it is just as risky to resist urban reserve creation as it is to accept it and work with the First Nations' governments. With the growing numbers of First Nations, they will be a major partner and contributor to Saskatchewan's future. While there is no guarantee of success for either side, resistance could lead to missed financial, social and political opportunities.

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<sup>30</sup> C. Richard Tindal and Susan Nobes Tindal, Local Government in Canada 4<sup>th</sup> ed. (Scarborough; McGraw-Hill Ryerson, 1995) p. 323.

## **VII. Conclusion**

During the past decade of urban reserve creation, Saskatchewan municipalities and First Nations' governments have been forced to "reinvent" themselves as they forge new territory, and both sides can take pride in their accomplishments. Saskatchewan's experience with the creation of urban reserves provides several insights on various aspects of this new trend - insights from which others can learn. First, the most significant effect of the creation of an Indian reserve in any municipality is the loss of some control by the municipal government over what was previously part of its territory. Given the desire of First Nations in Saskatchewan and other parts of Canada to acquire large tracts of land to serve their purposes within urban centres, the potential continues to exist for the loss of such control.

Second, it reveals that loss of such control is not always problematic. Although in theory such a loss of control could make it difficult to produce a comprehensive physical development plan for a municipality, Saskatchewan's experience over the past eight years suggests that such concerns are not well founded. In the eight years that urban reserves have existed in Saskatchewan there have been no major planning problems and no visible negative effects to the communities.

Third, it reveals that, although the TLEFA did not contain a full prescription, the policy framework did establish the template and parameters for municipal and First Nations' governments to negotiate the creation and operation of urban

reserves. Although the task has been a difficult one, Saskatchewan's experience with the creation and operation of urban reserves suggests that it is possible, not only in Saskatchewan, but in all parts of Canada.

Fourth, Saskatchewan's experience reveals that it is possible for two different governments or jurisdictional authorities to live and work side by side within a limited geographical setting and in a spirit of positive co-existence. Furthermore, it suggests that not only do they live and work side by side but that they can undertake a joint and collaborative approach to community development which is successful and mutually beneficial. Establishing a successful collaboration of aboriginal and non-aboriginal jurisdictions within the same community is largely a function of political will and good leadership. The importance of such will and leadership has been abundantly clear over the past eight years. The on-going negotiation process has highlighted the importance of good leadership, and particularly one that is willing to work cooperatively. Good working relationships must have a strong level of understanding and trust among the leadership, and an ability of those leaders to convince the constituents within their community of the benefits of urban reserves. Active promotion of economic and social development as well as racial harmony goes a long way when the leadership is at the forefront of such promotion.

Fifth, Saskatchewan's experience with the creation and operation of urban reserves reveals that in the future, as in the past, effective community

development and planning will require careful communication and coordination between municipal and First Nations' governments. Such communication and coordination will help to ensure that in the future the various communities not only continue to prosper economically but do so in a social context in which racial harmony prevails. Within this type of positive atmosphere both jurisdictions are able to pursue their own objectives while exercising their respective jurisdictional authorities. And finally, the experience has clearly shown that the creation, governance, and management of urban reserves could be improved significantly, as well as expedited, if the officials of all levels of government, both First Nations and non-First Nations, were to become more knowledgeable about this new trend and about the various relevant acts, policies, rules, and regulations that govern it.

Marty Irwin, former City Commissioner of Saskatoon, looks at the future of Saskatchewan municipalities and believes that:

"We are moving into a post-municipal government era towards what might be termed a local governance era. The demographics of many major urban municipalities in Saskatchewan require the creation of physical and social space for Aboriginal people within what was previously considered the exclusive preserve of municipal governments. In effect, then, we are moving beyond municipal governance to local governance in which there is a sharing of the local space and in which more than one order of government has jurisdictional authority. The key to success in the future, therefore, is how well these orders of government are able to collaborate within that local space for their mutual benefit."<sup>31</sup>

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<sup>31</sup> Marty Irwin, "Municipal Perspectives from Saskatoon," Urban Indian Reserves p. 229

Doug Cuthand, a First Nations journalist in Saskatchewan, recently wrote a commentary titled "Urban Reserves Are A Success Story." In his commentary, Mr. Cuthand says,

"Urban reserves are a major economic expansion for any community in Saskatchewan. In the future, urban reserve businesses will take their place within the greater economy, but remain uniquely First Nations. The growth and development of urban reserves has not been the disaster that was predicted. In fact, it has been a shot in the arm for First Nations economic development. We have developed workable agreements that address zoning, land use, environmental protection and so on. The new agreements go beyond the old fears of the urban pockets of poverty that were predicted. I'm sure this is what our old people had in mind when they told us that we must develop in our own way."<sup>32</sup>

Since 1992 a new partnership has been evolving in the municipal council chambers and the First Nations' band offices of Saskatchewan. This province's experience with urban reserves has eight successful years of history. As a pioneer in forging new municipal/First Nations partnerships, the rest of Canada can use its experience and framework in addressing their own urban reserve creation challenges. As the survey indicated, apprehension and distrust were present prior to the two sides sitting down to negotiate. However, once the agreements were executed much of the apprehension subsided and the relationship moved from good/bad to excellent. As well, both sides believed that the subsequent urban reserve did not have a negative impact on the community. These observations are the true test of the framework agreement's effectiveness and success.

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<sup>32</sup> Doug Cuthand, "Urban Reserves Are A Success Story," Regina Leader-Post, October 2, 2000, p.3.

Table 1

A study by Frideres in 1988 is summarized in the following table that highlights the "value differences that exist between Native and White societies."<sup>33</sup>

<b>Indian Values</b>	<b>White Values</b>
Group Emphasis	Individual emphasis
Co-operation (group concern)	Competition (self-concern)
Present oriented	Future Oriented
Non-Awareness of time	Awareness of time
Age	Youth
Harmony with nature	Conquest of nature
Giving	Saving
Practical	Theoretical
Patience	Impatience
Extended family	Immediate family
Non-materialistic	Materialistic
Modest	Overstates (over-confident)
Silent	Noisy
Low self-value	Strong self-value
Respects other religions	Converts others to own religion
Religion a way of life	Religion a segment of life
Land, water, forests and other resources belong to all, and are used reasonably	Land, water, forests and other resources belong to the private domain, and are used in a greedy manner
Equality	Wealth
Face-to-face government	Representative government

While Frideres recognizes that these value systems are in a state of flux and not all Indians or Caucasians fully subscribe to either, they do help explain some of the inherent fears, misunderstandings and difficulties faced by the two sides as they negotiate a new partnership.

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Figure 1

# TREATY LAND ENTITLEMENT FIRST NATIONS

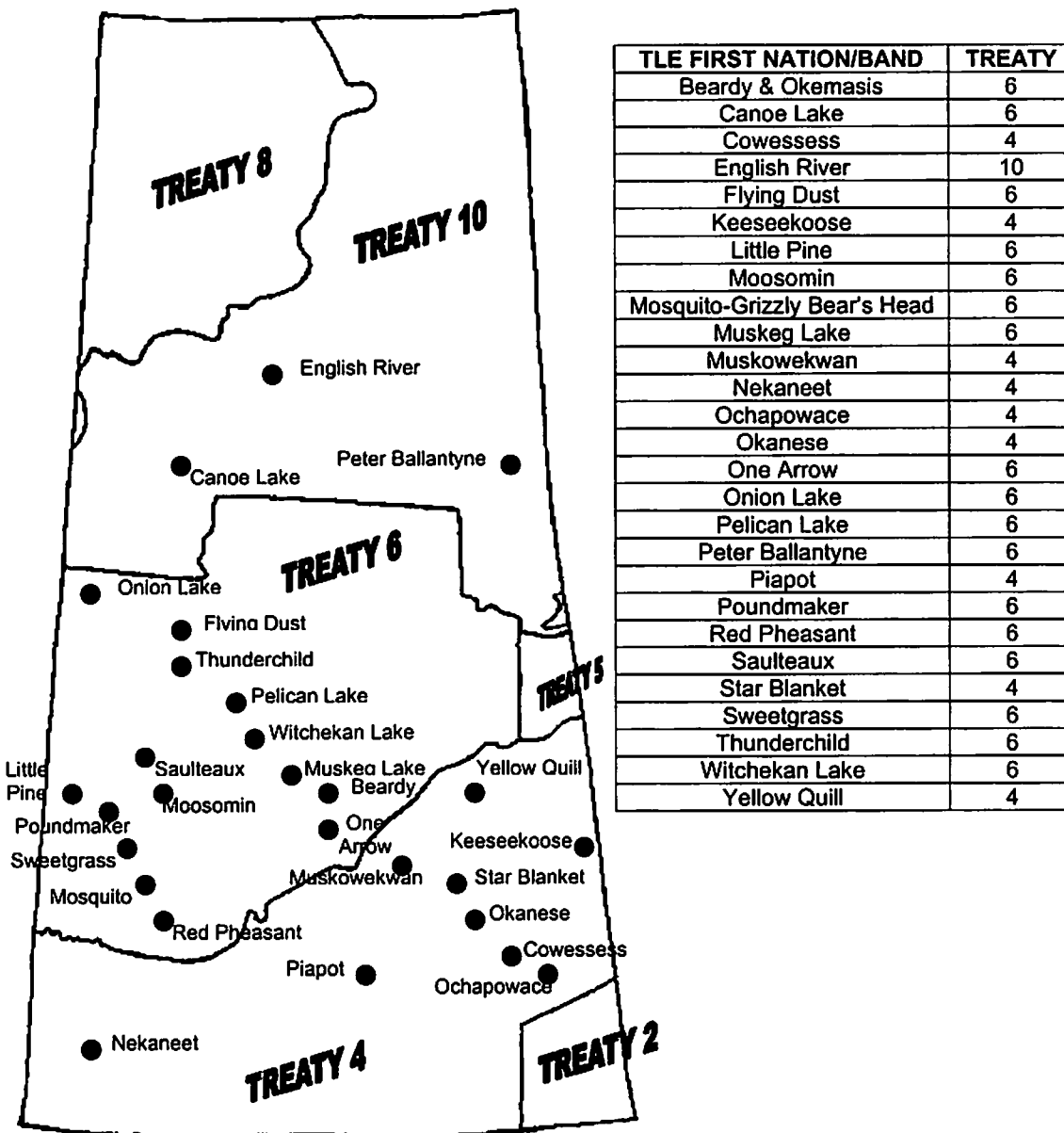
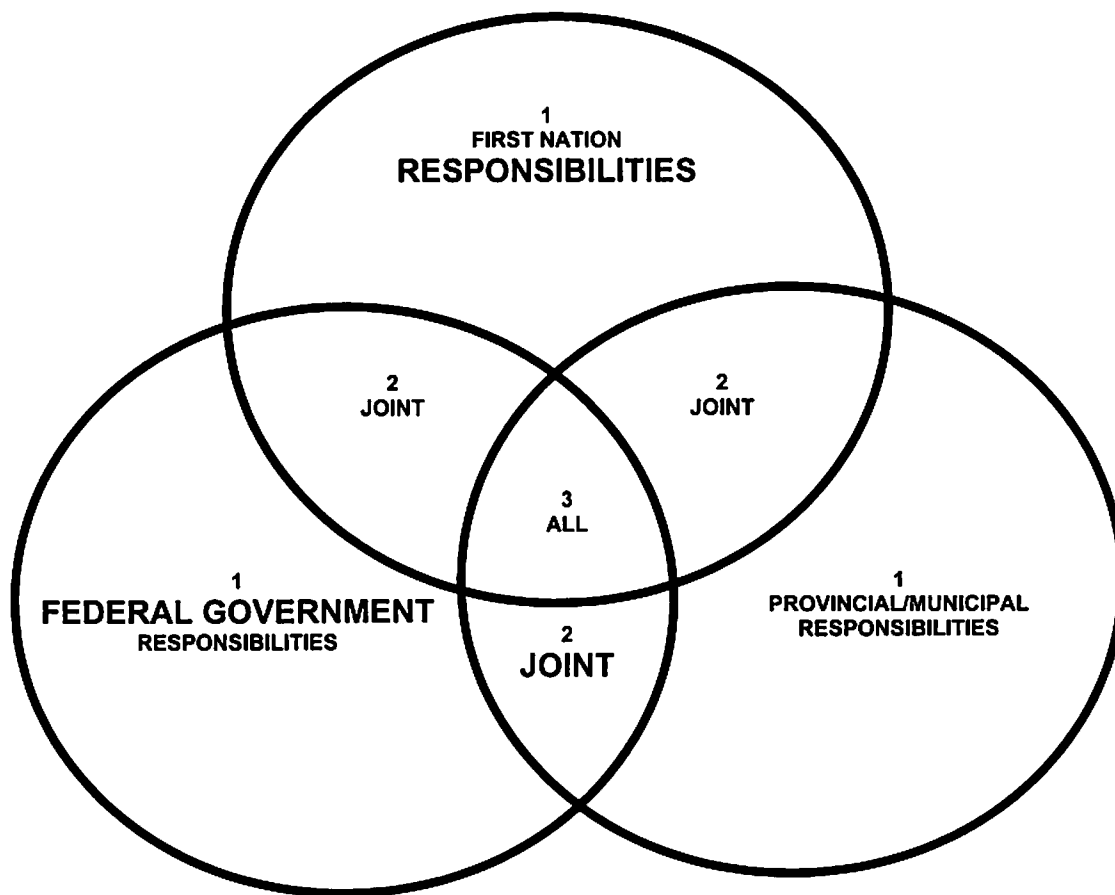


Figure 2

## Overlapping Circle Model



**This represents the different relationships that could exist between the various interested parties.**



Table 2

## Summary of Survey Results

### Saskatchewan Urban Reserve Creation Issues and Progress

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Since 1992 when the Saskatchewan Treaty Land Entitlement Framework Agreement was signed, urban Indian reserves have become a significant issue to both municipalities and to First Nations bands. For the first time, these two entities have had to enter into formal agreements and partnerships as urban reserves are created within municipal boundaries. Your municipality or First Nation has been chosen as a survey participant because of your work in this area. We would like to ask you some questions about the specific issues you are dealing (or have dealt with in the last 8 years), and what progress you have made.

Q-1. Please circle the top three issues your municipality or band has encountered during the urban reserve creation process.

	<u>Municipal Response</u> 10	<u>First Nations' Response</u> 16
1. Authority/Jurisdiction	80%	87.5%
2. Financial (who pays for what)	80%	50%
3. Lack understanding/Appreciation of each other	60%	75%
4. Cultural differences	40%	50%
5. Distrust/Fear	30%	37.5%
6. Other (Please list)	0%	0%

Q-2. At the beginning of the process, how would you describe your relationship with the other?

	<u>Municipal Response</u>	<u>First Nations' Response</u>
1. Excellent	20%	31.25%
2. Good	70%	56.25%
3. Bad	10%	12.5%

Q-3. At the conclusion of the process and into the new partnership, how would you describe your relationship with the other?

	<u>Municipal Response</u>	<u>First Nations' Response</u>
1. Excellent	70%	62.5%
2. Good	20%	25%
3. Bad	10%	12.5%

Q-4. In your opinion do you believe that the urban reserve has had a negative effect on the municipality?

	<u>Municipal Response</u>	<u>First Nations' Response</u>
1. Yes	10%	0%
2. No	70%	100%
3. Don't Know	20%	0%

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