Historical Papers

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Québec 1989
Volume 24, Number 1, 1989

URI: id.erudit.org/iderudit/031002ar
https://doi.org/10.7202/031002ar

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Publisher(s)

The Canadian Historical Association/La Société historique du Canada

ISSN 0068-8878 (print)
1712-9109 (digital)

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Article abstract

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Cite this article

Pitsula, J. M. (1989). The Blakeney Government and the Settlement of Treaty Indian Land Entitlements in Saskatchewan, 1975-1982. *Historical Papers*, 24(1), 190–209. https://doi.org/10.7202/031002ar

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JAMES M. PITSULA

Résumé

Between 1975 and 1982 a concerted effort was made to fulfil treaty Indian land entitlements in Saskatchewan. The provincial NDP government led by the Hon. A.E. Blakeney proposed the "Saskatchewan formula" as the basis for a settlement. The process of settling entitlements was a complex one, but a close analysis of the federal-provincial negotiations suggests that most of the responsibility for the lack of progress belongs to the federal government. The flexible approach taken by the Saskatchewan government, who interpreted land entitlements in the context of the "spirit and intent" of the treaties, collided with the relatively inflexible approach of the federal Office of Native Claims, who were wedded to the concept of "lawful obligation." When the problem was delayed in its solution, various groups had time to mount opposition to the proposed settlement. Consequently, a great opportunity was missed to achieve a major breakthrough and bring about an easing of tensions between Indians and non-Indians in Canada.

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En Saskatchewan, entre 1975 et 1982, un effort concerté a été fait pour respecter les traités avec les Amérindiens concernant la propriété des terres. Le gouvernement provincial néo-démocrate dirigé par le premier ministre A.E. Blakeney proposait "la formule Saskatchewan" comme base de règlement. Etablir la propriété des terres était complexe, mais une analyse serrée des négociations fédérales-provinciales montre que le gouvernement fédéral est le grand responsable du peu de progrès accompli. Il y avait opposition entre l'approche souple du gouvernement de la Saskatchewan qui s'inspirait davantage de "l'esprit et de l'intention" des traités et l'attitude rigide du Bureau fédéral des revendications des Autochtones qui s'en tenait à "la lettre de la loi". Comme la solution au problème tardait à venir, plusieurs groupes ont eu le temps de préparer une opposition au règlement proposé. En conséquence, on a manqué l'occasion d'en venir à une solution et de mettre fin aux tensions avec les autochtones du Canada.

The author gratefully acknowledges a research grant from the Canada Council, which helped make the preparation of this paper possible.

This essay examines the efforts made in the period 1975-82 to settle unfulfilled treaty Indian land entitlements in Saskatchewan. Although the provincial New Democratic Party government led by the Hon. A.E. Blakeney supported a prompt and just settlement, only about 10 per cent of the valid entitlements were transferred to the Indians by the time the government was defeated in April of 1982. The process of settling entitlements was a complex one, but a close analysis of the negotiations suggests that most of the responsibility for the lack of progress belongs to the federal government. The flexible approach taken by the Saskatchewan government, who interpreted land entitlements in the context of the "spirit and intent" of the treaties, collided with the relatively inflexible approach taken by the federal Office of Native Claims, who were wedded to the concept of "lawful obligation." When the problem was delayed in its solution, various groups had time to mount opposition to the proposed settlement. Consequently, what had started out in a promising way faltered, and land entitlements remained unfulfilled.

Aboriginal rights to land have been recognized in both British and Canadian law.[1] This legal principle underlay the negotiation between 1871 and 1923 of eleven distinct Indian treaties, covering what are now the prairie provinces, most of northern Ontario and the Peace River district of British Columbia, the Northwest Territories, and the Yukon.[2] The Indians surrendered their lands to the Crown in exchange for various guarantees, one of which was the setting aside of reserve lands for the exclusive use of the signatory bands. The treaties pertaining to Saskatchewan promised 128 acres per band member, but failed to stipulate the date when the band population should be counted for the purpose of calculating the size of the reserve. The silence of the treaties on this point was at the root of much of the controversy over Indian land entitlements.

At the time the treaties were negotiated, the Indians were told that they did not have to select their reserves immediately. Many of the bands still followed a nomadic way of life and were not yet ready to settle permanently. When a band did indicate a desire to choose its lands, the Department of Indian Affairs sent out surveyors to mark out a reserve, the size of which was determined by multiplying the band population at the time, or within a year of the survey, by 128 acres. If the band received its full entitlement at the time of the first survey, well and good: the government of Canada had completely fulfilled its responsibilities to the band with respect to the land provisions of the treaty. If, however, the band received no land or only a portion of what it was entitled to, an outstanding obligation still remained.

In the following years, the Department of Indian Affairs occasionally tried to satisfy the residual entitlement of a band. Bands made selections and new parcels of land were added to the original reserves. At the time of the second survey, an interesting

1. Peter A. Cumming and Neil H. Mickenberg, eds., *Native Rights in Canada* (Toronto, 1972), 3.
2. Ibid., 123. Information on the treaties with Indians in Western Canada can be found in Alexander Morris, *The Treaties of Canada with the Indians of Manitoba and the North West Territories* (Toronto, 1971); Rene Fumoleau, *As Long as This Land Shall Last: A History of Treaty 8 and Treaty 11, 1870-1939* (Toronto, 1973); and Richard C. Daniel, *A History of Native Claims Processes in Canada* (Ottawa, 1980).

question arose: how would the size of the band's entitlement be determined? One possibility was that the band was entitled to the difference between the number of acres that the band had been entitled to at the time of the first survey and the number of acres the band had actually received at the time of the first survey. We will call, for the sake of convenience, this method of calculating entitlement "the first survey formula." Another possibility was that the band was entitled to an amount of land determined by multiplying the band population at the time of the second survey by 128 acres and then subtracting the acreage the band had already received. The same principle would apply for the second, third, and any subsequent survey. Since the basis for the calculation was the current population at the time of the most recent survey, this formula is known as the "current population formula."

The use of one formula rather than the other could have major implications for the amount of land the Indians received and the treaties themselves shed no light on this issue. None the less, the Department of Indian Affairs had to make a decision if any progress was to be made in satisfying residual entitlements. A choice was made: the department invariably used the current population formula to determine the size of entitlements.

In 1930 another complication entered the process of settling treaty Indian land entitlements. The government of Canada transferred jurisdiction over Crown lands in the three prairie provinces to the respective provincial governments. In doing so, Canada made special provision for Indian lands, as can be seen in section 10 of the Natural Resources Transfer Act (hereafter NRTA) with Saskatchewan: "[Saskatchewan shall] from time to time, upon the request of the Superintendent General of Indian Affairs, set aside, out of the unoccupied Crown lands hereby transferred to its administration, such further areas, as the said Superintendent General may, in agreement with the appropriate Minister of the Province, select as necessary to enable Canada to fulfill its obligations under the treaties with the Indians of the province...."[3]

The province, as the supplier of land, now had an important role to play in the settlement of entitlements. Saskatchewan was obliged to make unoccupied Crown land available for the purpose of creating Indian reserves, but such land transfers could take place only "in agreement with the appropriate Minister of the Province." The fulfilment of entitlements now required the cooperation of three parties: the Indians, the federal government, and the provincial government.

After the 1930 NRTA, the Department of Indian Affairs continued to use the current population formula in calculating the size of outstanding entitlements. Not until the 1960s was there some departure from it, when the government of Manitoba refused to supply land for a band in the north-central part of the province on the basis of current population. This was the first time in the history of entitlement transactions that a government insisted upon using the first survey formula.[4] Manitoba argued that the long-

3. *Statutes of Canada*, 1930, Chap. 41.
4. Ken Tyler and Bennett McCardle, "Treaty Land Entitlement in Cases of Multiple Survey," unpublished paper prepared for the Indian Association of Alberta and the Federation of Saskatchewan Indians, Appendix D, 4.

established practice of calculating entitlements by the current population formula was simply that, a long-established practice that needed to be changed in the light of evolving circumstances.[5]

Alberta and Saskatchewan joined the campaign against the current population formula, with the result that the federal government came up with the so-called "compromise formula." Suppose a band with a population of one hundred in 1890 had received a reserve of 9800 acres. Suppose also that in 1960 the band, now with a population of three hundred, requested its full entitlement. Under the first survey formula, the band would be entitled to another four thousand acres (128 x 100 = 12,800; 12,800 - 9,800 = 4,000). The current population formula would give the band 28,600 acres (128 x 300 = 38,400; 38,400 - 9,800 = 28,600). The compromise formula took current population as the basis for calculating the amount of land owed to the band, but then gave only the percentage of the acreage by which the reserve fell short of full entitlement at the time of the first survey. In our hypothetical case, the band would be entitled to 8,832 acres in addition to what it had originally received, 9,800 being 77 per cent of 12,800 acres. The band is still owed 23 per cent of its entitlement. The entitlement in 1960 is 300 x 128 = 38,400, and 23 per cent of 38,400 is 8,832.

The substitution of the compromise formula for the current population formula meant a drastic reduction in the size of entitlements, a reduction Indians were not prepared to accept quietly. The federal government, meanwhile, was revamping its whole policy with respect to native claims. The lingering grievance of Saskatchewan bands about unfulfilled entitlements was only one of many reasons for the policy review. Indians had commenced litigation based on aboriginal title in the Mackenzie Valley region of the Northwest Territories and in the James Bay region of Quebec, proposed sites respectively of major pipeline and hydro-electric projects. Numerous other claims were coming forward, based on causes as varied as seizure of reserve lands without lawful surrender to embezzlement of band funds by Department of Indian Affairs officials. The federal government responded in 1973 with a recognition of two broad categories of claims and a mechanism for dealing with them: "comprehensive claims," those based on the notion of unextinguished aboriginal title, and "specific claims," those based on lawful obligations related to the administration of land and other Indian assets and the fulfilment of Indian treaties. In July 1974, the Office of Native Claims (hereafter ONC) was set up as a unit within the Department of Indian Affairs to deal with both types of claims.[6]

On 18 August 1975, the Hon. Judd Buchanan, minister of Indian Affairs tried to give some impetus to settling native claims arising out of the treaties by writing to the three prairie premiers, appealing for their cooperation.[7] Premier Blakeney of Saskatchewan

5. Donald J. McMahon, "The Enforceability at Law of the Numbered Treaty Provisions Relating to Land," unpublished paper prepared for Professor Brian Slattery, Osgoode Hall Law School, 1986, 17.
6. David C. Knoll, "Unfinished Business: Treaty Land Entitlement and Surrender Claims in Saskatchewan," *Saskatchewan Indian Federated College Journal* 3:2 (1987): 27.
7. Saskatchewan Archives Board (SAB), Bowerman Papers, R-1103-V-41, Buchanan to A.E. Blakeney, 18 August 1975.

responded promptly, promising to support the federal initiative. The Saskatchewan cabinet designated the Hon. G.R. Bowerman, minister for the Department of Northern Saskatchewan, as the minister responsible for land entitlements matters. The senior civil servant was Rob Milen, a lawyer in private practice, who was persuaded to join the government as coordinator of treaty Indian land entitlements for the express purpose of energizing the settlement process.

Milen set about formulating recommendations for a provincial policy on entitlements. A legal opinion from the Attorney-General's department identified the major difficulty: the absence of any real assistance in the language of the treaties or in judicial authority to decide the question of when the band's population should be counted to determine the size of the entitlement. The law officers concluded that, on the basis of past practice by the Department of Indian Affairs, "the preferable interpretation is that acreage entitlement where the band had increased in numbers likely needs recalculation at the time of each subsequent selection."[8] This opinion lent support to either the current populalation formula or the compromise formula, and undermined the first survey formula.

The Attorney-General's department made the further observation that the province had two options. It could pursue a settlement of entitlements through litigation (that is, allow the courts to impose a solution), or it could negotiate an agreement acceptable to the Indians and the federal government. The province chose the latter course, partly because of the NDP government's disposition to deal with the Indians in a manner consistent with the "spirit and intent" of the treaties. What this meant was clearly spelled out in a letter from Lloyd Barber, the federal Indian claims commissioner, to Blakeney. Barber maintained that the historical records showed that part of the original intention of the reserve land provisions of the prairie treaties was to provide a base for economic development. Farming on the reserves was expected gradually to replace the traditional ways of making a living, and reserve lands were to be selected with this in mind. Although agriculture was not feasible in the northern parts of the prairie provinces, the same principle should apply, that is, the reserves in the north had to provide a worthwhile land base to allow bands to make a decent living. This line of argument, suggesting a generous, rather than a narrowly legalistic, settlement of entitlements, found favour with the Saskatchewan government.[9]

Provincial government thinking was also influenced by the realization that Indians faced formidable economic and social problems, which, in the last analysis, only they could solve. By contrast, the fulfilment of treaty obligations was a different kind of problem in that the responsibility for providing a solution belonged, not to the Indians, but to Canadian society. Here was an opportunity to demonstrate to native people that the "system" did not always work against them, but could work for them as well. The resolution of entitlements could potentially usher in a new era of hope and achievement in which Indians would no longer be distracted by costly battles for recognition of their

8. Ibid., R-1103-V-18-3/3, Dave A. Tickell to Romanow, 24 March 1975.
9. Ibid., R-1103-V-18-2/3, Barber to Blakeney, 8 July 1974.

treaty rights and could turn their attention instead to such pressing problems as unemployment, inadequate education, crime, and alcohol and drug abuse.[10]

Blakeney and his government were therefore inclined to work hard to bring about a negotiated settlement. In December 1975 Milen outlined for the executive of the Federation of Saskatchewan Indians (FSI), the organization acting on behalf of the bands in the province, the various methods that could be used to calculate entitlements. As expected, the FSI took a firm stand for the current population formula.[11] Later that month, Milen met with Bill Fox, the federal official responsible for Indian claims on the prairies, and was told that the federal government was "not married" to the compromise formula. Ottawa also indicated that it would not insist on the three prairie governments having a common position on entitlements before proceeding with settlements in Saskatchewan. This was significant because both Alberta and Manitoba were at that time refusing to accept anything resembling the current population formula. Ottawa was not going to allow those two provinces to block progress in Saskatchewan.[12]

A Saskatchewan government proposal to settle entitlements was sent on 23 August 1976 (coincidentally, the one hundredth anniversary of the signing of Treaty 6) to Chief David Ahenakew of FSI and Judd Buchanan, the federal minister of Indian Affairs. The province suggested that land entitlements be determined by multiplying the band population at 31 December 1976 by 128 acres and then subtracting the amount of land the band had already received. This formula resembled the current population formula, but differed from it in one important respect. Rather than taking the population at the time of each successive survey, the new formula, which soon came to be known as the "Saskatchewan formula," pegged band population permanently at that as of 31 December 1976 for the purpose of calculating entitlements.

The government of Saskatchewan acknowledged that the question of deciding which bands had valid entitlements was essentially a matter for discussion between the two parties to the treaties, namely, the Canadian government and the Indians. Canada had already validated eleven claims and had another thirteen claims under consideration. If all the claims proved valid, the Saskatchewan formula would result in a land transfer estimated at 1.3 million acres.

The 23 August 1976 letter set forth the elements of an agreement by which land could be made available. Under the NRTA 1930, the province had an obligation to supply unoccupied Crown land for this purpose. The problem was that in the southern part of the province such land was in very short supply. To help overcome the difficulty, Saskatchewan offered to go beyond its legal obligations and make available its occupied as well as its unoccupied Crown lands. However, occupied lands would be transferred only on the condition that the occupants had been satisfied. In addition, the province offered bands the option of revenue sharing in resources and the joint development of currently disposed of land in lieu of reserve acreage. Any band whose entitlement could not be fulfilled by these means would have to look to the Canadian government for

10. Interview, Rob Milen, 13 July 1988.
11. Bowerman Papers, R-1103-V-93, Dore to Bowerman, 16 September 1980
12. Ibid., R-1103-V-26, Milen to Bowerman, 12 December 1975.

satisfaction since Canada had alienated almost all of the suitable land in the south prior to the 1930 NRTA.[13]

The FSI praised the "good faith and commitment" evident in the Saskatchewan proposal and lost no time accepting it.[14] The federal government took much longer to reply. After waiting for three months, the Hon. G.R. Bowerman, the Saskatchewan minister responsible for entitlements, finally wrote Warren Allmand, the new minister of Indian Affairs, asking when the province might expect to have a response.[15] After another three months had passed, Bowerman wrote again, posing the same question. Premier Blakeney even telephoned Allmand to try to get an answer.[16]

The much awaited reply came from Ottawa on 14 April 1977. Allmand reported that the federal cabinet had considered Saskatchewan's proposal for dealing with entitlements and "generally agreed" with it. In particular, the federal government accepted the Saskatchewan formula as the basis for determining the amount of land owed the Indians. Canada hoped that all outstanding entitlements could be satisfied from provincial Crown lands or through the surrender of entitlements in exchange for resource revenue-sharing or joint ventures, but "was prepared to consider making available federal lands where possible."[17]

The federal government made public its commitment to the Saskatchewan formula in a press release dated 24 August 1977. At the press conference, Allmand stated that federal Crown lands would be made available for selection of reserves by bands and that, if necessary, the federal government would purchase private lands to fulfil entitlements.[18] Canada's endorsement of the Saskatchewan formula was reinforced by letters commending it to the governments of Manitoba and Alberta.[19]

Despite all these assurances, however, the government of Saskatchewan soon had reason to doubt the federal government's commitment to settling entitlements. At a meeting on 11 October 1977, members of the ONC made the surprising and disconcerting assertion that the federal government would not make its Crown lands available for selection and would not, under any circumstances, purchase private land for reserve purposes. These statements directly contradicted what Allmand had already promised. In September of 1977, Hugh Faulkner replaced Allmand as minister of Indian Affairs. Bowerman tried in vain to obtain from the new minister a prompt clarification of the federal position. The silence from Ottawa was deafening until Faulkner, at long last, replied in January 1978. He essentially reiterated that Saskatchewan would have to

13. SAB, Blakeney Papers, R-565-V-44, Bowerman to Ahenakew, 23 August 1976.
14. Ibid., Ahenakew to Bowerman, 31 August 1976.
15. Ibid., Bowerman to Allmand, 2 December 1976.
16. Ibid., Bowerman to Allmand, 8 March 1977.
17. Ibid., Allmand to Bowerman, 14 April 1977.
18. Ibid., Department of Indian Affairs communique, 24 August 1977; *Leader Post* (Regina), 25 August 1977.
19. Allmand to Schreyer, 13 July 1977; Allmand to Hyndman, 23 June 1977, quoted in *The Report of the Manitoba Treaty Land Entitlement Commission* (Winnipeg, 1983), 65-67.

supply the land to fulfil entitlements, and conceded only that he would recommend to his cabinet colleagues that federal Crown lands be made available to satisfy the entitlements of *some* of the bands in the agricultural belt.[20]

Faulkner's position appears somewhat hypocritical in the light of a policy paper prepared by the ONC and dated 27 October 1977. The paper, which was leaked to the FSI and the Saskatchewan government, pointed out that "despite Saskatchewan's responsibility under the NRTA 1930, the obligations to ensure that the treaties are fulfilled falls clearly on Canada."[21] The paper strongly implied that the real reason for the federal government's procrastination and failure to cooperate with the province was ONC opposition to the Saskatchewan formula.

The formula gave the Indians of Saskatchewan about one million acres as compared with 320,000 acres if the compromise formula were used. The more generous formula would cost the federal government an estimated thirty-nine million dollars for the purchase of private land in southern Saskatchewan and an additional twelve million dollars for similar purchases in Alberta and Manitoba. The ONC paper expressed doubt as to whether Canada had actually endorsed the formula: "It must be made clear whether Canada has accepted the Saskatchewan formula as its own or agreed that the formula constitutes the basis on which Saskatchewan can provide lands... it should be noted that the Saskatchewan formula is an extremely generous interpretation of both Canada's obligations under the treaties and Saskatchewan's obligations under the Natural Resources Transfer Agreement."[22] The paper made reference to a Department of Justice opinion that the Saskatchewan formula was not legally binding upon Canada until such time as the federal government had contributed either money or land to fulfil an entitlement on the basis of the formula. The implication was clear: since Canada had not yet made such a contribution, the formula could still be discarded.

Milen had by early 1978 become thoroughly disgusted with the federal government's tactics. He was, in the words of Lloyd Barber, "a bureaucrat who believed,"[23] and he could not abide the Canadian government's deliberate stalling and obfuscation. Frustrated by having made no progress after more than two years of work, Milen took an extended leave of absence: "I don't know if I'll be back. I don't know if I'll be replaced.... It's all over as far as I am concerned."[24]

Actually, it was far from over. A letter from Faulkner on 25 April 1978 showed movement on the federal side. First, the minister acknowledged the generosity of the province in exceeding its legal obligation by putting on the table occupied as well as unoccupied provincial Crown lands. He then announced that federal Crown land would be made available on the same basis as provincial Crown land. This was the first time this

20. Bowerman Papers, R-1103-V-41, Faulkner to Bowerman, 10 January 1978.
21. Ibid., R-1103-V-14, "Federal Role in Fulfilment of Outstanding Treaty Land Entitlements in Saskatchewan," ONC, 27 October 1977.
22. Ibid.
23. Interview, Lloyd Barber, 10 August 1988.
24. Blakeney Papers, R-800-XXXVI-44, *Northerner* (La Ronge), 16 February 1978.

commitment had been confirmed in writing. The federal government had previously been willing to provide Crown lands only for a limited number of bands in the south.

Faulkner also agreed to purchase private lands for reserves on the condition that the provincial government shared the cost. The federal government argued that the province had the duty to do this because Canada had transferred enough unoccupied Crown land in 1930 to fulfil the entitlements. It was not Canada's fault that Saskatchewan had alienated most of this land. The nub of the federal position was that the NRTA 1930 required the province to supply from "the unoccupied lands hereby transferred to its administration" lands for reserves, whether those lands which had been unoccupied in 1930 were still unoccupied or not.[25]

The provincial government's counterargument consisted of two parts. First, the province denied that the federal government had in 1930 transferred sufficient suitable unoccupied Crown lands in southern Saskatchewan to fulfil entitlements. It was meaningless to assert that enough land had been transferred, unless the location and the quality of the land were taken into account. The land had to be reasonably close (say, within a block of 144 townships) to the original reserves and of sufficiently good quality to be worth farming. When these two factors were considered, the federal government could be shown not to have transferred enough land in 1930 to satisfy entitlements. This point was admitted even by the federal government in the leaked ONC policy paper.[26]

The second part of Saskatchewan's case against the federal position was that the province could not have been expected in 1930 to have placed a freeze on the alienation of Crown land until such time as the federal government informed Saskatchewan of the existence of unfulfilled Indian land entitlements. The province had not been told about the entitlements in the agricultural belt until 1975, some forty-five years after the unoccupied Crown land had been transferred to provincial jurisdiction. Saskatchewan should not have to pay a penalty because the land did not still belong to the Crown. The Canadian government, not Saskatchewan, had signed the treaties, and, therefore, the primary responsibility for seeing that the terms of the treaties were respected rested with the Canadian government. If, through inattention or for whatever reason, Canada had failed to fulfil its treaty responsibilities within a reasonable period of time, Canada had to bear the consequences, including the purchase of private land to make up for the lack of Crown land. Here again the leaked ONC paper provided damning testimony against the federal government: "historical federal government policy was counter-productive to fulfilment of residual entitlements... opposite to adding land to reserves, the federal government policy from the early 1900s into the 1930s was aimed at reducing reserves through surrender."[27]

In addition to disagreeing about cost-sharing the purchase of privately owned lands, the federal and provincial governments differed on the issue of compensation for

25. Bowerman Papers, R-1103-V-41, Faulkner to Bowerman, 25 April 1978.
26. Ibid., R-1103-V-14, "Federal Role in Fulfilment of Outstanding Treaty Land Entitlements in Saskatchewan," ONC, 27 October 1977.
27. Ibid.

improvements and assets on occupied Crown lands. The province expected to be compensated, by either the federal government or the Indian bands, for such improvements as fences, dugouts, buildings, etc. on community pastures that were transferred for reserve purposes.[28] Faulkner asked Saskatchewan to "write off" such improvements, in the same way that the federal government planned to write off the assets on its Crown land. The province held that, having already exceeded its legal obligations by offering occupied Crown land, it should not have to sustain a financial loss.

Saskatchewan was not the only party quarrelling with the federal government over land entitlements. The Department of Indian Affairs was also doing battle with the Indians. For example, the ONC interpreted the Saskatchewan formula to mean that those Indians in a band who had been formally registered on 31 December 1976 had an entitlement. Those who were eligible to be registered, but for some reason had not been, were denied land. The FSI, backed by the Saskatchewan government, regarded this ploy as a pedantic, bureaucratic injustice.

Another dispute erupted when the ONC withdrew its recognition of the entitlement of the Nikaneet Band. Ottawa stated that Saskatchewan could, if it so desired, give land to this band for socio-economic reasons, but that no treaty right existed. The province could not possibly give land for other than treaty reasons without opening a flood-gate of land claims by disadvantaged groups.[29] When the ONC took away the Nikaneet entitlement, Milen advised his minister to consider legal action against the Canadian government: "Can there be no [sic] doubt in anyone's mind now that Ottawa is not serious about resolution?"[30]

The ONC caused more distress at a meeting with the FSI on 27 June 1978. The federal government representatives explained that a band did not have a valid entitlement in cases of multiple survey (that is, if land had been provided for a reserve on more than one occasion) if the band had received in total what it had been entitled to at the time of the first survey. If the band did have a valid entitlement, judged by the preceding criterion, then the Saskatchewan formula would apply. Ken Tyler, an FSI researcher, challenged J.R. Goudie, the ONC director of specific claims, to cite one case in the history of land entitlement settlements since the signing of the treaties when the Department of Indian Affairs had ever attempted to fulfil entitlement for a band upon the basis of only making up the land due at the date of the first survey. Goudie admitted that he could not, but that historical precedent had no bearing on what the Department of Indian Affairs would do now.[31]

The wrangling between the ONC, on the one hand, and the Indians and the government of Saskatchewan, on the other, was attributable to the fundamental

28. Ibid., R-1103-V-60-1/2, Bowerman to Blakeney, 6 April 1978.
29. Ibid., R-1103-V-36, Faulkner to Chief Gordon Oakes, 9 March 1978.
30. Ibid., Milen to Kovatch, 24 April 1978; see also R-1103-V-41, J.R. Goudie to Milen, 16 August 1977.
31. McCardle and Tyler, "Treaty Land Entitlement In Cases of Multiple Survey," Tyler to Anita Gordon, 6 November 1978, document 65, 173-79.

opposition of the ONC to the Saskatchewan formula. Joe Dion, president of the Indian Association of Alberta, made precisely that accusation in a letter to Faulkner in November 1978: "many of the people in your Department who are responsible for negotiating the fulfilment of outstanding entitlement have not accepted the Saskatchewan formula and, notwithstanding the direction given by your predecessor and the Federal Cabinet, are attempting to subvert it."[32] Chief David Ahenakew from Saskatchewan echoed these sentiments when he alleged that the Department of Indian Affairs had a "hidden agenda" aimed at frustrating the land entitlements process to a point where bands gave up and took something other than what was their legal due.[33]

Milen also saw the ONC as the villain of the piece. The relations between the federal and provincial governments on this issue became so sour that even a relatively minor disagreement about who was responsible for cancelling a meeting caused a flurry of hostile letters, telexes, and phone calls.[34] Milen had no doubt that the ONC was trying to sabotage the whole process: "Mr. Faulkner continues to make reference to federal and provincial officials getting together to work on this or that. This is garbage. The Office of Native Claims are impossible to work with and are constantly throwing up road blocks. Further, meetings are a waste of time given the Office of Native Claims' present attitude. The FSI concur in their opinion."[35]

Despite the inability of the Canadian and Saskatchewan governments to come to a formal agreement on the settlement of land entitlements, Faulkner agreed in February 1979 that the two governments should proceed on an *ad hoc* basis to fulfil, where possible, the entitlements of individual bands. In effect, Canada and Saskatchewan agreed to disagree on certain matters (for example, the cost-sharing of purchases of private land), in order to settle at least some of the entitlements. Both sides made some concessions. Ottawa now accepted the FSI and provincial position that band population for the purpose of calculating entitlements should be based on those eligible to be registered on 31 December 1976, as well as those actually registered. However, Ottawa still refused to acknowledge a valid entitlement for the Nikaneet band.[36]

Saskatchewan, for its part, offered to transfer all improvements and fixed assets on provincial community pastures "for the sum of one dollar and other valuable considerations." "Valuable considerations" meant that the federal government would have to protect the interests of pasture patrons by allowing them to continue to use the pastures for a three- to five-year period after the land had been transferred to Indian status. During this transition period, those who lost grazing rights would have time to make the necessary adjustments to maintain the viability of their operations.[37] Both governments felt optimistic that an agreement for the transfer of pasture lands could be worked out, but nothing had been finally decided when the Trudeau Liberal government went down to defeat in May 1979.

32. Ibid., Joe Dion to Faulkner, 30 November 1978.
33. Bowerman Papers, R-1103-V-41, Ahenakew to Faulkner, 2 May 1978.
34. Ibid., Sharon Kovatch to Judith Moses, 12 October 1978.
35. Ibid., R-1103-V-14, Milen to Bowerman, 14 November 1978.
36. Ibid., R-1103-V-41, Faulkner to Bowerman, 27 February 1979.
37. Ibid., R-1103-V-63, Milen to Bowerman and Kaeding, 6 April 1979.

The election of the Conservatives set the whole land entitlement process back to the beginning. Jake Epp, the new minister of Indian Affairs, informed Bowerman in October 1979 that Saskatchewan's proposal regarding pasture lands was under review, as was "the availability of federal lands for entitlement purposes and the interpretation of government obligations under the treaties and the NRTA."[38] Epp was under pressure from pasture patrons and Conservative members of Parliament in the West who objected to giving up federal Prairie Farm Rehabilitation Act (PFRA) pastures.[39] A statement made by the minister in the House of Commons on 27 November 1979, suggesting that the Conservative government was trying to back away from the Saskatchewan formula, elicited a swift rebuke from FSI chief, Sol Sanderson.[40] Epp responded with assurances of his intention to respect the formula,[41] but his wavering gravely concerned both the Indians and the Saskatchewan government. Milen blamed the incident on the ONC, who, every time a new minister was appointed, seized the opportunity to have the formula scuttled.[42]

More than four years had passed since the federal minister of Indian Affairs had written Premier Blakeney urging him to assist in the speedy and just resolution of treaty land entitlements. Those years had been marked by frustration and procrastination, mainly due to the obstructionist attitude of the ONC. Federal inaction provided an excuse for provincial inaction. The two provincial departments responsible for Crown lands likely to be selected by Indian bands were the Department of Mineral Resources and the Department of Tourism and Renewable Resources. Jack Messer, the Minerals minister, argued that his responsibility to protect the province from the loss of revenues resulting from the alienation of mineral rights forced him to oppose giving mineral-bearing lands to the Indians.[43] Milen condemned this approach as contrary to the spirit of the treaties, the intent of which, in part, was to provide natives with a base for economic development. The refusal to grant lands with valuable minerals lent credence to what some Indians called the "asshole-of-the-world theory," that is, Indians could have whatever land they wanted, as long as nobody else wanted it.[44] Milen considered Messer's position to be contrary not only to the spirit of the treaties but also the spirit of the NDP:

> I can, in particular, recall a blustery night in 1971. I had run (unsuccessfully) for a nomination in the provincial constituency of Regina Whitmore Park. After the nomination, Gerry Pout-MacDonald, Roy Romanow, Jack Messer and I enjoyed a few suds at a local watering hole. I shall always recall with clarity Jack Messer's view of a new Saskatchewan, of his commitment and dedication to the people. What has happened to this commitment?[45]

38. Ibid., R-1103-V-93, Epp to Bowerman, 19 October 1979.
39. Ibid., R-1103-V-41, Bowerman to file, 29 November 1979.
40. Ibid., R-1103-V-60-2/2, Sanderson to Epp, 28 November 1979.
41. Canada, House of Commons, *Debates*, 4 December 1979, 1983.
42. Bowerman Papers, R-1103-V-41, Milen to Bowerman, 26 November 1979.
43. Blakeney Papers, R-800-LXII-2-1/5, Messer to Bowerman, 2 October 1979 and 17 November 1980.
44. Interview, Milen, 13 July 1988.
45. Bowerman Papers, R-1103-V-27, Milen to Bowerman, 15 October 1979.

The other department closely involved with land selections was Tourism and Renewable Resources. Adolph Matsalla, the minister, strongly advised in July 1978 that provincial parks not be on the table. He maintained that to surrender recreational property would "inflame the strong anti-Indian feeling that exists among some of the white population."[46] The transfer of commercial forest land was complicated by third-party interests in the form of timber dispositions and forest management license agreements. Simpson Timber Company, for example, refused to consent to land transfers until it had been assured that its commercial activities would not be disrupted.[47] The department was also subject to pressure from groups, such as the Saskatchewan Wildlife Federation, who professed concern about the Indians' ability to manage the winter habitat of large numbers of wildlife. Local citizens' groups opposed the loss of potential recreational areas.[48] As a result, the Department of Renewable Resources was very slow in responding to selections of forest lands made by Indian bands. Milen found the delays extremely frustrating and damaging to the credibility of the government. He warned in December 1979 of the possibility of sit-ins and demonstrations by Indians against the department: "At that point you may reasonably expect my resignation from this government. I do not want to be in a position of having to explain what brought on about [sic] such bold actions, that is, I do not want to criticize our government by suggesting any delays on our part."[49]

The accumulation of frustrations both with the federal government and certain departments in the provincial government caused Milen to resign in May of 1980. Since his authority as treaty land entitlement coordinator was merely persuasive, not coercive, he felt powerless to bring about land transfers. Although his letter of resignation indirectly faulted Premier Blakeney for not forcing his ministers to support the settlement process more vigorously, Milen continued to have high regard for the premier: "more and more people rightfully perceive you to have crossed that invisible line separating politician from statesman."[50]

The government found a replacement for Milen in the person of Tom Dore, who assumed his duties in September 1980. His arrival on the scene coincided with a revival of interest in the whole question of fulfilling Indian land entitlements, after the Liberal return to power in Ottawa in February of 1980. The minister of Indian Affairs, John Munro, appointed his parliamentary secretary, Bernard Loiselle, to deal with entitlements in Saskatchewan. Bowerman and Loiselle met in September 1980 and managed to make progress toward a federal-provincial agreement. The federal government removed one barrier by restoring entitlement to the Nikaneet Band. Both the FSI and the government of Saskatchewan had considered the earlier revoking of this entitlement to be a major injustice. The federal and provincial governments confirmed that their respective pasture lands were available for selection, with improvements included for the nominal sum of

46. Ibid., R-1103-V-27, Matsalla to Bowerman, 14 September 1978.
47. Ibid., R-1103-V-35, Milen to Al Gross, 31 October 1978.
48. Ibid., R-1103-V-92, R. Gross to Bowerman, 3 January 1980.
49. Ibid., R-1103-V-35, Milen to John Burton, 18 December 1979.
50. Blakeney Papers, R-800-LXII-2-1/5, Milen to Bowerman, 12 May 1980 and Milen to Blakeney, 17 June 1980.

one dollar. Third-party interests, while protected, would not be allowed to hold up land transfers.[51]

The renewal of federal initiatives to settle entitlements put pressure on Saskatchewan to do likewise. Bowerman noted that the "Indians perceive some [provincial government] back-peddling, and the federal government, which, up until now, has been a cover for our inaction, is coming on positive under the new Minister John Munro."[52] Part of the reason for inertia in the provincial departments administering Crown lands had been concern that Ottawa wanted all the provincial land to be used up before placing federal land on the table. As Milen had observed, some Saskatchewan cabinet ministers appeared "unwilling to move lest the federal government dump everything on our laps."[53] Now that Ottawa was more forthcoming, the province could afford to be more cooperative.

Dore helped to persuade the Department of Mineral Resources to abandon its policy of opposing the transfer of mineral-rich lands to Indian bands. An understanding was reached whereby bands who so desired could trade acres for minerals, that is, accept lesser amounts of land if the land was especially valuable because of its mineral wealth.[54] Dore also made inroads with the department responsible for forests, though some timber companies holding dispositions proved more cooperative than others.[55] However, the biggest push in land transfers involved the provincial community pastures. The main opposition came from pasture patrons, rural municipalities, the Saskatchewan Wildlife Federation, and those elements of the public who disagreed in principle with giving more land to the Indians.

Pasture patrons had very limited rights, in the narrow legal sense, because their permits had to be renewed annually. However, by custom and tradition, annual renewal had been virtually automatic. The province took the position that the patrons had a right to reasonable satisfaction of their interests, but "frivolous or vexatious objections would not be a bar to transfer."[56] "Reasonable satisfaction" of community pasture patrons essentially meant they would be given a transition period of at least five years in which to adjust their operations to the loss of access to the pasture. In some instances, they would be able to graze their cattle on Indian-owned pastures, paying the rental to the band rather than the provincial government.

A key difficulty in transferring pastures was securing the approval of the patrons. The provincial government adopted a strategy whereby the province would provide the framework for negotiations, but place the onus for the satisfaction of the patrons on the federal government and the Indian bands involved. From the political point of view, the government of Saskatchewan wanted to be perceived as actively participating in the entitlement process without giving the impression of supporting one group of citizens at

51. Bowerman Papers, R-1103-VO-73, Loiselle to Bowerman, 29 September 1980.
52. Blakeney Papers, R-800-LXII-2-1/5, Bowerman to Messer, 24 October 1980.
53. Bowerman Papers, R-1103-V-93, Milen to Bowerman, 25 June 1980.
54. Ibid., Moncur to Dore, 18 February 1981.
55. Interview, Tom Dore, 22 July 1988.
56. Bowerman Papers, R-1103-V-28, Bowerman to Doug Anguish, 8 October 1981.

the expense of another group.[57] In the words of Tom Dore, the province did not want to appear to be "ganging up with the Indians against a small bunch of farmers."[58] Moreover, the sole obligation of the province under the NRTA 1930 was to supply unoccupied land; the act said nothing about an obligation to supply occupied land or to satisfy occupants. The ultimate responsibility rested with the parties who had signed the treaties in the first place.

Thus, in one sense, the province tried to be viewed as merely the facilitator of the negotiations with the patrons, the honest broker providing advice and information to both parties. In another sense, however, the Saskatchewan government tried to accelerate the transfer of pasture land. The government did this in March 1981 by changing the definition of the phrase "commitment to transfer." The procedures for dealing with land selections were as follows. First, the band passed and sent a band council resolution to the Department of Indian Affairs outlining lands selected for the partial fulfilment of their outstanding land entitlement. If the selection was made from provincial Crown land, Canada forwarded the resolution, plus accompanying maps, to the province and officially requested the land be reviewed for all existing encumbrances and dispositions. All of the provincial government departments having an interest in the land then had an opportunity to review the selections. When a complete review of the lands in question had been carried out, Canada was informed of all encumbrances and dispositions in the area. The third-party interests in the selected lands then had to be dealt with. Prior to March, 1981 these interests had to be satisfied before the provincial government would formally "commit to transfer" the lands to the federal government. Once the federal government had ownership of the land and certain technical matters had been cleared away, such as obtaining a legal description of the property, the land could be given reserve status. In 1981 the province gave "commitment to transfer" lands a new meaning. Lands were now committed for transfer on the condition that the federal government and the Indian bands could satisfy the occupants. The commitment to transfer would perhaps nudge the patrons towards a settlement by leading them to understand that the transfer was virtually a *fait accompli*, with only a few details to be ironed out.[59] In accordance with this approach, the province "committed to transfer" eleven parcels of land, totalling 142,434 acres, in March of 1981 and an additional seven parcels, comprising 69,452 acres, in April of 1981.[60]

The strategy may have backfired. Dore found plenty of evidence of the "not-in-my-backyard" syndrome. Even those patrons who agreed in principle with land entitlements wanted somebody else's land transferred, not their own. The province was blamed for the loss of the community pastures whether it wanted to be or not. As Milen had noted in an earlier memo, "given the federal government's usual remoteness, the bulk of the wrath will be directed at the province."[61] When the word got out that pastures had been "committed for transfer," patrons became nervous and sometimes panicky. Moreover, by seeking

57. Ibid., R-1103-V-61, Bowerman to cabinet, 25 February 1981; cabinet minute no. 7729.
58. Interview, Dore, 22 July 1988.
59. Ibid.
60. Bowerman Papers, R-1103-V-93, Bowerman to Munro, 27 March 1981 and 30 April 1981.
61. Ibid., R-1103-V-62, Milen to Bowerman, 25 June 1979.

to withdraw from direct negotiations, the province impaired its own ability to allay these anxieties.

One example of patron opposition was the protest against the transfer of the Cabana Provincial Community Pasture in partial fulfilment of the Canoe Lake Band entitlement. Bowerman wrote the Cabana patrons, explaining that the band had offered to let the patrons have continued use of the pasture for a twenty-year period. Bowerman reminded the patrons that while "reasonable objections" to transfers would be considered, their "refusal to negotiate in good faith" did not constitute a reasonable objection: "it must be remembered that the lands involved are Crown lands and as such, the Province, as owner, may be called upon to provide for the orderly transition of lands as well as existing occupier interests."[62] The patrons did not bow to the pressure. Instead, they replied defiantly that they failed to understand why they should have to pay the price for the debt Canada owed to the Indians.[63] At the time the NDP government was defeated in April 1982, only one community pasture, the Bapaume pasture, was ready for transfer. The patrons had given their consent and most of the legal work had been done, but the election intervened before the necessary order-in-council could be passed.[64]

In addition to the opposition of the patrons, the rural municipalities impeded the transfer of pastures. Edgar Kaeding, minister of Rural Affairs, expressed concerns on behalf of local rural governments who stood to lose tax revenue. Whereas the province paid grants in lieu of taxes to rural municipalities for community pastures, Indian reserves could not be taxed.[65] The province maintained that compensation for lost taxes should be paid by the federal government. The latter seemed to agree. At least, there was "some support at the bureaucratic level within the federal government," and a request to compensate rural municipalities was included in the 1982-83 federal budget cycle.[66]

Another source of opposition to the land transfers was the membership of the Saskatchewan Wildlife Federation. Wearing their distinctive yellow jackets, they crowded into meetings to denounce the government for trying to give so much land to the Indians. At one such meeting, Dore was provoked to raise his hand and ask, "Where can I get my sheet?"[67] The Saskatchewan Wildlife Federation voiced concern about the future of wildlife habitat if more land came under Indian control. They also perceived a link between the battle against entitlements and their fight against the special hunting rights given by the treaties to the Indian.[68]

62. Ibid., R-1103-V-99, Bowerman to Cabana Pasture Patrons, 7 December 1981.
63. Ibid., Cabana Pasture Advisory Board to Bowerman, 19 February 1982.
64. Ibid., R-1103-V-79, Dore to R.P. Courturier, 6 October 1981 and Dore to Ben Partyka, 1 February 1982.
65. Ibid., R-1103-V-92, Kaeding to Bowerman, 14 August 1981 and same to same, 9 November 1981.
66. Ibid., Bowerman to Kaeding, 11 January 1982.
67. Interview, Dore, 22 July 1988.
68. Bowerman Papers, R-1103-V-63, "Who are the Falsifiers?" pamphlet produced by the Alberta Fish and Game Association and the Saskatchewan Wildlife Federation; R-1103-V-99, Dore to Bowerman, 24 March 1982.

Behind the Saskatchewan Wildlife Federation and other opponents of the land entitlement process was a body of public opinion with a negative view of Indians. A letter to the Prince Albert *Daily Herald*, signed by 107 people, challenged the justification for land entitlements: "The Indian people feel they are entitled to certain land settlements because Indian people were here first. If this is the case, then I demand an equal settlement. I am as much a native Canadian as any of them, in fact I have been a Canadian longer than many of those who will benefit from land transfers. If any one questions this fact, I have a certificate to prove that I was born in Shellbrook, Saskatchewan...."[69]

A poll commissioned by the Saskatchewan government in the fall of 1979 revealed that between 40 and 45 per cent of respondents were "reasonably firm" supporters of Indian rights and the immediate fulfilment of entitlements.[70] Television advertisements, aimed at educating the public and broadening the base of support for paying the debt owed to Indians, were prepared but never aired. The cabinet thought the ads failed to fix the primary responsibility for fulfilling the treaties on the federal government and left the impression that the Saskatchewan government would, in the absence of federal action, ensure that justice was done.[71] The province confined its publicity efforts to the publication and wide distribution of pamphlets explaining the historical basis for land entitlements. In addition, the minister and the treaty land entitlement coordinator carried the same message in speeches to numerous farm groups and community organizations.

The task of winning public support for settlement of entitlements was not made any easier by the escalation of FSI demands. Sol Sanderson, the chief who succeeded David Ahenakew as head of the FSI, began making claims for more and more land. He asserted (inaccurately) that the federal government had validated not one million, but two million, entitlement acres in Saskatchewan. In addition, he laid claim to 416,000 acres, lost through fraudulent land surrenders between 1896 and 1930; an interest in between eight and nine million acres of lands traditionally used for hunting, trapping, fishing, and gathering; and an indeterminate number of acres still owed to the nearly one thousand Saskatchewan Indian veterans of World War II.[72] The Indians were becoming increasingly impatient with the lack of progress in transferring lands. An FSI pamphlet pointed out that, in the three years following the adoption of the Saskatchewan formula, one thousand new members had been born into bands with valid entitlements. Since the formula pegged population at 31 December 1976, the Indians had, in effect, sacrificed 128,000 acres. The FSI blamed the federal and provincial governments for not putting more pressure on third parties who were blocking transfers. Third-party interests, the Indians alleged, were being treated as first-party interests.[73] Thus, the province was under attack from both sides, from the opponents of settling entitlements for doing too much, and from the Indians, for doing too little.

69. Blakeney Papers, R-800-LXV-40-3/12, Ernie Zdrill to John C. Crosby, 26 November 1981.
70. Ibid., R-800-XXXVIII-35-d-2/2, Indian Land Entitlement Survey by GDE consultants; Sheila Page to AEB, 20 November 1979.
71. Ibid., R-800-V-136-p, Mitchell to Bowerman, 12 March 1980.
72. Bowerman Papers, R-1103-V-93, Saskatoon *Star Phoenix*, 14 October 1981.
73. "Treaty Land Entitlement of Indian Nations in Saskatchewan," undated FSI pamphlet.

Despite the more cooperative attitude displayed by Ottawa after 1980, the process of settling entitlements still did not go smoothly. Various elements in the Saskatchewan public, particularly the patrons of community pastures, the rural municipal governments, and the Saskatchewan Wildlife Federation, objected loudly to land transfers. The delays caused the Indians to be less conciliatory, and this, in turn, stirred up antipathy to the Indian cause. There also continued to be unresolved issues in federal-provincial negotiations. Although some of the key differences had been overcome, the two governments had not settled with certainty such questions as how the rural municipalities would be compensated for the erosion of their tax base and whether the purchase of private lands would be cost-shared. The province was also disturbed by the growing list of bands seeking entitlements and sought clarification from Ottawa about how many claims would be validated and by what date.[74]

It is difficult to say whether these problems could have been solved had there not been a change of government in Saskatchewan in April 1982. Some of the difficulties seemed on their way to a solution. The federal government was considering seriously the compensation of rural municipalities, and the two governments were closer than ever to agreement on financing purchases of privately owned land. On the latter issue, Dore wrote on 12 March 1982: "The province may listen to federal advances if the federal representative were to come to us with a suitcase full of new thousand dollar bills — maybe."[75]

The atmosphere of the discussions changed completely when the Conservatives took power in Saskatchewan. They had backed community pasture retention committees, whose activities, in Blakeney's opinion, had contributed to the loss of NDP seats in rural parts of the province.[76] Neal Hardy, a future Conservative cabinet minister, told Dore before the election, "When we're in, you're out." The prophecy came true. Shortly after the change of government, Dore handed a briefing book to George McLeod, the new minister responsible for land entitlements. McLeod was blunt: "I don't want to see that. The policy is different now."[77]

As for the Blakeney government, a hopeful beginning to the settlement of treaty Indian land entitlements failed to produce a satisfactory conclusion. Prior to 1982, the government of Canada validated a total of twenty-one claims representing 1,069,140 acres of land in Saskatchewan. Only 58,494 acres (or 6 per cent) were actually transferred to reserve status, while an additional, 41,315 acres (or 4 per cent) were in the process of being transferred.[78] Only one band, the Stoney Rapids Band, received its full entitlement.[79] While many complicating issues entered into the negotiations among the three principal parties — the Federation of Saskatchewan Indians, the government of Saskatchewan, and the government of Canada — the blow-by-blow account of what transpired

74. Bowerman Papers, R-1103-V-93, Bowerman to Munro, 19 October 1981 and same to same, 12 November 1981.
75. Ibid., Dore to Bowerman, 12 March 1982.
76. Interview, A.E. Blakeney, 16 August 1988.
77. Interview, Dore, 15 August 1988.
78. *Report of the Manitoba Treaty Land Entitlement Commission*, 65.
79. Knoll, 37; Blakeney Papers, R-800-LXII-2-2/5, Bowerman to Munro, 24 February 1981.

between 1975 and 1982 reveals that the federal government was mainly to blame for the failure to achieve a major breakthrough.

The process began in earnest with the provincial government proposal on 23 August 1976 to settle land claims in accordance with the Indian population as it stood on 31 December 1976. Although Warren Allmand, the minister of Indian Affairs, indicated that the federal cabinet "generally agreed" with the Saskatchewan formula, no formal agreement was ever signed. Two major sticking points were the compensation for provincial assets on Crown land and the cost-sharing of the purchase of private lands. The province gave in on the former, agreeing to give up the assets for one dollar, but held firm on the latter. Saskatchewan justified its position by arguing that by 1930, when the federal government transferred jurisdiction over Crown land to the province, there was not enough unoccupied Crown land of suitable quality in the vicinity of the bands with unfulfilled entitlements. Moreover, even if there had been sufficient land in 1930, that was not the case in the 1970s. The province could not reasonably have been expected to prevent land from being patented until the federal government, in its own good time, thought to inform them about entitlements. Canada had signed the treaties, not Saskatchewan; therefore, Canada should bear the brunt of responsibility, not the province. Despite all this, Saskatchewan was still willing to exceed its legal obligations under the NRTA 1930 by making available occupied as well as unoccupied land. If entitlements could not be satisfied on this basis, then the federal government would have to do whatever was necessary, including the purchase of private lands, to ensure that the treaties were respected.

The trouble was the federal government was not disposed to cooperate or compromise. It threw up a succession of roadblocks in the path of a settlement. First, Canada said that federal Crown lands were on the table for selection, then said they were not, before finally agreeing that they were. Canada initially insisted that only band members who were actually registered on 31 December 1976 would be counted, before eventually conceding that those qualified to be registered would count as well. A third example concerned the Nikaneet Band. Its entitlement was validated, then withdrawn, and at last revalidated. The federal government waffled also on the purchase of private land — first agreeing, then totally refusing, and in the end proposing cost-sharing.

This pattern of federal government obstruction to settling land entitlements in Saskatchewan resulted from a fundamental opposition in the Office of Native Claims to the Saskatchewan formula. The leaked ONC policy paper of October 1977 laid bare the officials' deep misgivings about what was termed a "very generous" method for determining entitlements. Ministerial endorsements of the formula notwithstanding, those misgivings were still there in 1983, when the Manitoba Treaty Land Entitlement Commission reported:

> the Federal Office of Native Claims appears to take the position that the Saskatchewan formula is beyond Canada's interpretation of its 'lawful obligation' under the numbered treaties, while, at the same time, the Minister of Indian Affairs described the formula as 'fair' 'equitable,' and 'reasonable'.... The Office of Native Claims is acting inconsistent [sic] with the Canadian Government Policy and the expressed position of its present Minister

and the Ministers who preceded the Hon. J.C. Munro, namely the Hon. Hugh Faulkner and the Hon. Warren Allmand.[80]

At the heart of the ONC's opposition to the Saskatchewan formula was the concept of "lawful obligation."[81] Since the treaties did not specify when the band population should be counted, neither the Saskatchewan formula nor any other formula was, in the strictest sense, a lawful outcome of the treaty. The ONC was facing in the 1970s a deluge of native claims, both comprehensive and specific. To exceed lawful obligations in one instance might have wide-reaching ramifications for other cases.

It may also have been true that the officials of the ONC were influenced in their thinking by the general assumptions underlying the Department of Indian Affairs' white paper of 1969. The paper had infuriated Indian people by recommending that Indians forget about their treaty rights and assimilate into Canadian society. Although the paper was officially withdrawn, many people, including the ministers responsible for native affairs in the four western provinces, suspected that the attitudes and principles underlying the document were still alive and well in the federal government.[82] Chief David Ahenakew, who shared this suspicion, linked the lack of federal action in fulfilling entitlements to a "hidden agenda" to assimilate Indians.[83] A generous settlement of entitlements in keeping with the "spirit and intent" of the treaties ran counter to a strategy of making Indians equal citizens participating fully in Canadian life. At one point in the federal-provincial negotiations, an ONC official accused Milen, the Saskatchewan representative, of trying to "entrench proverty" by extending reserves.[84] This comment was revealing of the ONC tendency to view reserves as part of the old and allegedly discredited way of viewing Indians as being out of the mainstream of Canadian society and in need of special protection.

Whatever the reason for the ONC resistance to the Saskatchewan formula, that opposition lay at the root of the failure between 1975 and 1982 to make more progress in the settlement of unfulfilled land entitlements in Saskatchewan. Matters were not helped by the fact that between 1975 and 1982, the Department of Indian Affairs was led by five different men, four of them Liberals and one a Conservative. Every time a new minister was appointed, the officials in the ONC had a fresh opportunity to "educate" him to their point of view. The delaying tactics by Ottawa gave time for the opposition in Saskatchewan to mount against the settlement of entitlements. Groups such as the patrons of community pastures, rural municipal governments, and the Saskatchewan Wildlife Federation objected loudly to land transfers.

A great opportunity was missed to achieve a major breakthrough and bring about an easing of tensions between Indians and non-Indians. Instead of fighting with governments for their land rights as they continue to do, Indians in Saskatchewan could have turned their full attention to alleviating their social and economic problems. Had the federal government in 1976 embraced the Saskatchewan formula with enthusiasm, there is a good chance that entitlements in one prairie province would now be settled.

80. *Report of the Manitoba Treaty Land Entitlement Commission,* 69 and 71.
81. Knoll, 28-29.
82. Bowerman Papers, R-1103-V-41, Hon. G.A. Williams et al to W.R. Bennett et al, n.d.
83. Ibid., Ahenakew to Faulkner, 2 May 1978.
84. Interview, Milen, 13 July 1988.