

INDIAN CLAIMS COMMISSION

REPORT ON THE MEDIATION

OF THE

METEPENAGIAG MI'KMAQ NATION

HOSFORD LOT AND

RED BANK INDIAN RESERVE 7

NEGOTIATIONS

May 2008

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SUMMARY

METEPENAGIAG MI'KMAQ NATION HOSFORD LOT AND RED BANK INDIAN RESERVE 7 NEGOTIATIONS MEDIATION New Brunswick

The report may be cited as Indian Claims Commission, *Metepenagiag Mi'kmaq Nation: Hosford Lot and Indian Reserve 7 Negotiations Mediation* (Ottawa, May 2008).

*This summary is intended for research purposes only.
For greater detail, the reader should refer to the published report.*

Indian Act – Surrender; Mandate of Indian Claims Commission – Mediation; New Brunswick

THE SPECIFIC CLAIM

The Hosford Lot and Indian Reserve (IR) 7 claims were researched jointly by Canada and the First Nation in a pilot project initiated in May 1996. The IR 7 claim was submitted to the Department of Indian Affairs and Northern Development (DIAND) in July 1996 and was accepted for negotiation in 1998. The parties negotiated an agreement in principle in 1999 but that settlement was not ratified in two votes held in the community. The Hosford Lot claim was submitted to the department in January 1999 and accepted for negotiation on January 22, 2001.

In 2002, Canada agreed to reopen discussions on the IR 7 claim and to include it in negotiations for the Hosford Lot claim. The parties negotiated the claims without assistance until April 2005 when difficulties arose and they asked that the Indian Claims Commission (ICC) provide neutral, third-party facilitation.

BACKGROUND

The ICC's involvement in these claims related only to its mediation mandate. As such, the ICC did not receive historical records or legal submissions from the parties.

The IR 7 claim was based on the allegation that Canada alienated parts of that reserve without the benefit of a surrender. A survey conducted in 1904 resulted in the First Nation losing approximately 64 acres of land from Red Bank IR 7, located approximately 25 kilometres southwest of Miramichi, New Brunswick.

The Hosford Lot claim involves approximately 100 acres of land in another of the First Nation's reserves, Big Hole Tract No. 8, located about 20 kilometres northwest of Miramichi, which was sold and patented to William Hosford in April 1906 without a surrender as required under the *Indian Act*.

MATTERS FACILITATED

The ICC's role was to chair the negotiation sessions, provide an accurate record of the discussions, follow up on undertakings, and consult with the parties to establish acceptable agendas, venues, and times for meetings.

OUTCOME

On June 14, 2007, the Metepenagiag Mi'kmaq Nation ratified the proposed settlement of \$1.4 million in compensation, with authorization to purchase 300 acres of replacement land which can be converted to reserve status.

REFERENCES

The ICC does no independent research during mediation and draws on background information and documents submitted by the parties. The mediation discussions are subject to confidentiality agreements.

PART I
INTRODUCTION AND BACKGROUND

The two specific claims relating to the Hosford Lot and Red Bank Indian Reserve (IR) 7, put forward by Metepenagiag Mi'kmaq Nation, relate to events dating back over 100 years. The Indian Claims Commission (ICC) assisted in the negotiation of this claim in 2005 and 2006, leading to the settlement of the claim in 2007.

The Metepenagiag Mi'kmaq Nation (also known as the Red Bank First Nation) have a total of 3,907 hectares of land in four reserves near the confluence of the Little Southwest and Northwest branches of the Miramichi River in northeastern New Brunswick, about 22 kilometres west of Newcastle and 160 kilometres northwest of Moncton. This is an area with many prehistoric archeological sites with artifacts dating back some 2,500 years:

From the age, number, size and type of archeological sites present, it is clear that Red Bank was an important social and cultural center for the ancestors of the Miramichi Micmac.¹

As of January 2008, the registered population of the Metepenagiag Mi'kmaq Nation is 553, of whom 387 live on reserve (primarily on Red Bank IR 4).²

This report will provide a brief summary of the Hosford Lot and IR 7 land claims. It will also summarize the events leading up to the settlement of the claim and describe the Commission's role in the resolution process.

The First Nation and the Specific Claims Branch (SCB) of the Department of Indian Affairs and Northern Development (DIAND) agreed in May 1996 to jointly research various potential claims involving Metepenagiag's land and assets. The Red Bank IR 7 claim was submitted to DIAND in July 1996 and accepted for negotiation in 1998, "based on the allegation that Canada alienated certain parts of the reserve without the benefit of a surrender. A survey, conducted in 1904, resulted in the First Nation losing approximately 64 acres of land from the Red Bank Indian Reserve No. 7,

¹ Patricia Allen, *Metepenagiag: New Brunswick's Oldest Village* (Fredericton, NB: Goose Lane and Red Bank First Nation, 1994), 19.

² Canada, Indian and Northern Affairs Canada [INAC], First Nation Profiles, Metepenagiag Mi'kmaq Nation, <http://sdiprod2.inac.gc.ca/fnprofiles> (consulted January 6, 2008).

located 25 km south-west of Miramichi, New Brunswick.”³ An agreement in principle was reached in 1999, but the settlement was not ratified in two votes held in the community.

The Hosford Lot is approximately 100 acres of land in Big Hole Tract No. 8, located about 20 kilometres northwest of Miramichi. This parcel was sold and patented to William Hosford in April 1906 without a surrender as required under the *Indian Act*. The claim was submitted to the department in January 1999 and accepted for negotiation on January 22, 2001. The First Nation and Canada negotiated the claim without assistance until April 2005 when difficulties arose and they asked that the ICC provide neutral, third-party facilitation.

THE COMMISSION’S MANDATE AND MEDIATION PROCESS

The Indian Claims Commission was created as a joint initiative after years of discussion between First Nations and the Government of Canada on how the process for dealing with Indian land claims in Canada might be improved. Following the Commission’s establishment by Order in Council⁴ on July 15, 1991, Harry S. LaForme, a former commissioner of the Indian Commission of Ontario, was appointed as Chief Commissioner. With the appointment of six Commissioners in July 1992, the ICC became fully operative. The ICC is currently being led by Chief Commissioner Renée Dupuis (QC), along with Commissioners Daniel J. Bellegarde (SK), Jane Dickson-Gilmore (ON), Alan C. Holman (PEI), and Sheila G. Purdy (ON).

The Commission has a double mandate: to inquire, at the request of a First Nation, into specific claims; and to provide mediation services, with the consent of both parties, for specific claims at any stage of the process. An inquiry may take place when a claim has been rejected or when the Minister has accepted the claim for negotiation but a dispute has arisen over the compensation criteria being applied to settle the claim.

As part of its mandate to find more effective ways to resolve specific claims, the Commission has established a process to inquire into and review government decisions regarding the merits of

³ INAC Press Release, November 30, 2007, Backgrounder.

⁴ The original Commission has been substantively amended in the years since 1991, most recently on November 22, 2007, whereby the Commissioners are, inter alia, directed to complete all inquiries by December 31, 2008, including all inquiry reports, and to cease, by March 31, 2009, all their activities and all activities of the Commission, including those related to mediation.

a claim and the applicable compensation principles when negotiations have reached an impasse. Since the Commission is not a court, it is not bound by strict rules of evidence, limitation periods, and other technical defences that might present obstacles in litigation of grievances against the Crown. This flexibility removes those barriers and gives the Commission the freedom to conduct fair and objective inquiries in as expeditious a way as possible. In turn, these inquiries offer the parties innovative solutions in their efforts to resolve a host of complex and contentious issues of policy and law. Moreover, the process emphasizes principles of fairness, equity, and justice to promote reconciliation and healing between Aboriginal and non-Aboriginal Canadians.

The Commission provides broad mediation and facilitation services at the request of both the First Nation and the Government of Canada. Together with the mediator, the parties decide how the mediation process will be conducted. This method ensures that the process fits the unique circumstances of each particular negotiation. The process used by the Commission for handling claims is aimed at increasing efficiency and effectiveness in resolving specific claims.

PART II
NEGOTIATION AND MEDIATION OF THE CLAIM

In 2002, Canada agreed to reopen discussions on the IR 7 claim and to include it in negotiations for the Hosford Lot claim. The Indian Claims Commission was not involved with these negotiations at the beginning. It was not until April 2005 that both the federal and First Nation negotiating teams agreed to ask the ICC to play a facilitation and mediation role because the negotiations were not progressing satisfactorily. The ICC subsequently chaired three meetings in May 2005, January 2006, and May 2006, providing accurate records of those discussions, following up on undertakings, and consulting with the parties to establish mutually acceptable agendas, venues, and times for the meetings.

Although the Commission is not at liberty, based on an agreement made with the negotiating parties and addressing in part the confidentiality of negotiations, to disclose the discussions that took place, it can be stated that with the assistance and support of the ICC, the First Nation and representatives of DIAND were able to overcome their differences and arrive at a mutually acceptable resolution of the Hosford Lot and IR 7 claims.

Shortly after the parties reached agreement on the nature of the Commission's role in the negotiations, the First Nation presented a "without prejudice" offer to settle in May 2005. Working from this initial offer, Canada and the First Nation were able to arrive at an agreement in principle in January 2006. The next stages in the settlement process involved drafting the agreement and organizing the referendum; the parties decided that they could continue this work without the facilitation services of the ICC. In his letter to the ICC in June 2006, the federal negotiator thanked the Commission for its "positive contribution to the future settlement of these claims" and left it open for the ICC to become involved in the future, if required.⁵

By April 2007, the settlement agreement was completed and initialled by the parties. At a referendum held on June 14, 2007, "70 per cent of the eligible Metepenagiag members who voted

⁵ Martin Sampson, Federal Negotiator, Quebec and Atlantic Negotiations, INAC, to Ralph C. Brant, Director, Mediation, Indian Claims Commission, June 13, 2006, ICC file 2100-11-1M.

cast their votes in favour of the agreement.”⁶ More than 100 years after the unlawful alienation of those two parcels of land, Canada agreed to provide approximately \$1.4 million in compensation, which the First Nation could use to purchase 300 acres of replacement lands.

⁶ INAC, News Release, “Land Claim Settlement Provides Economic Boost for Metepenagiag Mi’kmaq Nation,” <http://www.ainc-inac.gc.ca/nr/prs/s-d2007/2-2972-eng.asp> (consulted December 6, 2007).

PART III
CONCLUSION

ICC FACILITATION: EXPERIENCED AND SKILLED

Negotiations can break down at any time and for any number of reasons and, if the parties are not able to overcome their differences, many months or years of work can be lost and the settlement of a long-standing grievance delayed or halted altogether. When the discussions relating to the Hosford Lot and IR 7 claims became stalled, the parties decided to ask the Indian Claims Commission to assist them in the negotiations. The skill and expertise that the ICC has acquired over the years enabled it to enter into ongoing discussions, to be a neutral third party that can help to keep the parties focused on the issues, and to provide informal mediation during meetings so that the negotiations can move forward toward a successful resolution. The parties still control the process and, as in these claims, they can elect to forgo facilitation once the hurdle has been cleared, with the understanding that the ICC is willing and able to come back should its assistance be needed in the future.

FOR THE INDIAN CLAIMS COMMISSION

A handwritten signature in black ink, appearing to read "Renée Dupuis". The signature is fluid and cursive, with a large initial "R" and "D".

Renée Dupuis, C.M., *Ad.E.*
Chief Commissioner

Dated this 23rd day of May, 2008.