INDIAN CLAIMS COMMISSION

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1995-1996

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LETTER OF TRANSMITTAL

Indian Claims Commission

Commission des revendications des Indiens

TO HIS EXCELLENCY
THE GOVERNOR GENERAL IN COUNCIL

MAY IT PLEASE YOUR EXCELLENCY

Over the course of 1995/96, the Indian Specific Claims Commission completed 14 inquiries and released 10 reports on specific claims. We have also released a report on the settlement of a treaty land entitlement claim in Manitoba which was resolved with the assistance of the Commission's mediation team. In 1995/96, the Commission was involved in 57 inquiries which are at various stages in the inquiry process.

The last year has been productive for the Commission and this report provides a summary of our major achievements and activities in relation to specific claims. The experience we have gained conducting inquiries and mediating and resolving disputes between Canada and First Nations provides the Commission with a unique perspective on these important matters. In this report, we make three major recommendations designed to address some of the perceived shortcomings of the Specific Claims Policy and process. First, there is a fundamental need for policy reform and the creation of an independent claims body with sufficient authority and powers to resolve disputes between First Nations and Canada in a fair, just and cost-effective manner. Second, it is necessary for Canada to provide timely and appropriate responses to Commission reports to preserve the integrity of this interim process. Finally, we strongly encourage Canada and First Nations to make greater use of the Commission's mediation and alternative dispute resolution services to assist in the timely settlement of specific claims.

It is with pleasure that we submit our Annual Report for 1995/96.

Yours truly,

Daniel Bellegarde
Co-Chair

James Prentice
Co-Chair

November 1996

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Message From the Commissioners

We are pleased to present the Annual Report of the Indian Claims Commission for fiscal year 1995/96. This year has been one of the most productive for our Commission. From April 1995 to March 1996 we completed 14 inquiries into specific claims and released 10 reports on specific claims rejected by the federal government. We also released a report on the succesful mediation of a treaty land entitlement claim involving the Roseau River Anishinabe First Nation and Canada, one that demonstrates the importance of mediation and alternative dispute resolution in the settlement of specific claims.

The content of these reports and the contributions they make to the resolution of historical grievances between First Nations and Canada will become part of the legacy of the Indian Claims Commission. A number of our reports offer innovative approaches to resolving difficult and contentious issues in land claims policy. Our deliberations are guided in part by a careful analysis of evolving case law on aboriginal and treaty rights and the fiduciary obligations of the Crown towards First Nations. Equally important, we consider broad principles of equity and fairness that strike a balance between the interests of First Nations and Canadians in general.

The Commission's trilogy of reports on the treaty land entitlement (TLE) claims of the Fort McKay First Nation, Kawacatoose First Nation, and the Lac La Ronge Indian Band provide critical analysis of policies and practices in relation to treaty land entitlement and offer pragmatic recommendations for researching and assessing these complex claims. The difficulty with TLE claims relates to the different understandings between First Nations and the Crown over the terms of the treaties signed in western Canada during the 1870s. Not only have these conflicting interpretations created problems in ascertaining the nature and extent of the Crown's legal obligations, but shifts in federal policies on TLE have further hampered the government's ability to fulfil its obligations and settle these grievances. In our Fort McKay inquiry report, we took into account the broad historical context of the treaties and articulated reasoned and fair policy guidelines that can apply to all TLE cases. When read as a whole, our trilogy of TLE reports defines a consistent set of principles that will assist in the settlement of many other TLE cases in Canada. The reports offer a new direction for TLE claims policy.

The resolution of the Roseau River Anishinabe First Nation claim against the Government of Canada is another milestone in our Commission's history. That claim was unresolved for one hundred years after it was first made, and remained stalled after a full 14 years of negotiations between the two parties. We are most proud of the fact that the claim was resolved with the assistance of the Commission's mediation team. We believe that mediation is a preferable and superior method of resolving disputes and settling claims. Mediation is less adversarial than other options such as litigation, and it saves both time and money if the parties are sincere in their desire to resolve the dispute in a fair and efficient manner. By bringing everyone to the table as equals and encouraging open discussion about competing interests and concerns, experienced mediators can bridge communication gaps and foster a healthy relationship between the parties. Our experience confirms that mediation has a key role in the long-term goal of settling claims and building stronger, self-sufficient First Nations communities.

The Nak'azdli First Nation claim in British Columbia is another success story from the past year. In this case, Canada had rejected the First Nation's claim. However, after hearing directly from members of

the Nak'azdli First Nation during the course of the inquiry, Canada reversed its decision and accepted the claim for negotiation. The testimony from the First Nation's elders at a community session played a major role in Canada's decision to reconsider the claim. The use of oral testimony and respect for First Nations' traditions are distinctive features of the ICC process, which aims to include the views of all community members affected by the government's decision. We are convinced that oral testimony is necessary to supplement the written historical records and gain a complete understanding of the issues in a claim.

Since our creation in 1991, at least nine claims have been settled or accepted for negotiation as a result of the direct or indirect involvement of the Indian Claims Commission. Our process has proven effective. We are pleased with our achievements over the past year, though there have been limitations on our success. Our recommendations, of course, are not binding on the parties, and some reports are still awaiting response from the federal government. Our achievements point to the need for a body which can mediate and adjudicate decisively, with a view toward the ultimate resolution of all outstanding claims. We have laid the groundwork on which to build a permanent Independent Claims Body, one with appropriate power and authority to break impasses and settle land claims in a fair, decisive, and binding manner. The creation of such a body is the main recommendation in this report.

To expedite the transition towards a permanent and Independent Claims Body, Commissioners decided to cease accepting new inquiries as of August 31, 1996. The current Commissioners will endeavour to complete the existing case load under the present mandate by the end of March 1997. During this final phase of operation, we hope to see the government and First Nations work towards substantial reform of the land claims policy and process that is so crucial to resolving these claims. Part of this reform must focus on the creation and the implementation of an Independent Claims Body. The just resolution of First Nations' claims is in the best interest of all Canadians and is an investment in the future of this country. The time to act is now.

Fred Cattroll

Standing: Commissioners Roger Augustine, Carole Corcoran and Aurélien Gill
Seated: Co-Chairs James Prentice and Daniel Bellegarde

COMMISSION'S RECOMMENDATIONS TO GOVERNMENT, 1995/96

Recommendation 1

"The Creation of an Independent Claims Body"

Canada and First Nations should establish an Independent Claims Body empowered to settle the legitimate historical grievances of First Nations with regard to land and other issues.

Ghislain Picard, Assembly of First Nations Vice-Chief for Quebec, and I.C.C. Legal Counsel Isa Gros-Louis Ahenakew at the A.F.N. Quebec and Labrador Chiefs Conference on Land Claims Reform in Montreal June 18 to 19, 1996.

RATIONALE

Again this year, our primary recommendation is that Canada and First Nations work together to create an Independent Claims Body (ICB) with sufficient powers and authority to resolve disputes between First Nations and Canada in a fair, just, and cost-effective manner. Based on our direct experience, an ICB could help to address and correct many of the flaws and inequities in the current system.

A permanent body should be established to deal with land claims. The Indian Claims Commission (ICC) is an interim body, and we are entering our final phase of operation. We have seen first hand the value of having an impartial body in place to review rejected claims. The very existence of the ICC has caused the federal government to take greater care and thought in its assessment of claims.

Still, we do not believe that a body with the limitations of this Commission is the most effective way to deal with claims in the long term. Our recommendations are non-binding, and we lack the authority to compel the government to acknowledge and to act on its legal responsibilities. For reasons of moral and fiscal responsibility, aboriginal claims should be dealt with in a constructive environment that is balanced, non-adversarial, and designed to foster a greater understanding of the parties' goals and perspectives. An ICB, with the authority to employ a broad range of dispute resolution techniques, can resolve issues effectively by reducing the likelihood of costly and confrontational procedures such as court cases and full-scale inquiries.

An ICB should not be seen as revolutionary — it is clearly evolutionary. It is the next natural step in the development of a progressive claims policy in Canada. Our concerns with the current process stem from some fundamental flaws that are built into the existing system. These flaws have been well documented by First Nations, academics, independent institutions, and government representatives.

First Nations view the current system as unfair because there is an inherent conflict of interest in the process. The Department of Justice (DOJ) exercises a great deal of control over decision-making, even though Indian Affairs is accountable for the specific claims budget. Indian Affairs will not negotiate a claim unless the DOJ concludes, on a balance of probabilities, that Canada owes an outstanding

lawful obligation to a First Nation. This process presupposes that the law on aboriginal and treaty rights is clear and that a legal opinion provided by Canada's lawyers always amounts to a correct statement of the law. This is not the case. The DOJ opinion should not be treated as if it were a court decision, particularly where there is no effective right of appeal from that decision and no mechanism to expose the opinion to critical analysis and public scrutiny. Although it is essential for both parties to obtain legal advice to formulate a reasonable negotiating position, the policy should be reformed to allow negotiations to proceed where there is a possibility rather than a probability that the Crown is liable to a First Nation. This type of risk assessment is common in private disputes and is more conducive to interest-based negotiations that take into account a broad spectrum of settlement options.

As it stands, Canada acts as both judge and jury in claims against itself. This blatant conflict of interest must be removed. Creating an Independent Claims Body will ensure fairness in the negotiation process and accelerate the settlement of the current backlog of claims.

There seems to be some political will to deal with this issue. On November 28, 1995, a private members motion, brought by Mr. Len Taylor (The Battlefords Meadow Lake, NDP), was debated in the House of Commons. That motion read as follows:

> That, in the opinion of this House, the government should consider the advisability of establishing a new independent aboriginal land claims commission, as recommended in the 1994-95 annual report of the Indian Claims Commission.

Although this motion never came to a vote, it received all-party support during the debate on November 28, 1995. Our 1994/95 Annual Report and our special report on land claims reform ([1995] 2 Indian Claims Commission Proceedings) both referred to the vast body of work dating back to the early 1960s on the need for an ICB.

Many details relating to an ICB need to be negotiated between First Nations and Canada, but there are some broad areas of consensus. Building on these common themes, we offer the following recommendations about the structure and powers that should characterize an ICB:

1) ***Legislative base:*** The ICB should be established by an Act of Parliament and ratified by the Chiefs in Assembly, so it will have the legislative base it needs to be truly independent of the federal government. This base will create a secure environment in which the ICB can fulfil its mandate properly and will give the ICB the power to deal effectively with claims and claims issues.

2) ***Independence:*** An independent body is needed to ensure neutrality throughout the negotiation process as well as accountability and fairness to all parties. This body will guarantee that the interests of both Canada and First Nations will be given appropriate consideration and weight when deliberations occur.

3) ***Power to validate claims for negotiation:*** Validation power should be transferred from Canada to an ICB, to allow for a less complicated and lengthy negotiation process. In contrast to the legal wrangling and costly infrastructure associated with protracted negotiations, this body would permit limited resources to be used for claims settlement.

4) ***Ability to break impasses:*** An ICB would provide an effective way to break deadlocks, one of the major problems of the existing process. The courts are not a viable alternative for well documented reasons. The use of mediation and other dispute resolution mechanisms have proved to be effective in appropriate cases. An ICB would be able to employ these same alternative mechanisms to resolve disputes.

5) ***Authority to make binding decisions:*** An ICB must have the authority to make binding decisions, so the process will not only have finality but will provide incentives to the parties to pur-

sue a negotiated rather than an imposed solution. Negotiated settlements reached by the parties will always remain as the preferred option, but the parties must have access to some form of adjudication when they have exhausted all other options.

6) ***Review by the courts:*** The decisions of the ICB should be subject to appeal to the existing court structure under certain limited circumstances.

Recommendation 2

"Response to Commission Reports"

Canada should respond in a timely and appropriate fashion to ICC inquiry reports, past, present, and future.

RATIONALE

Since 1992 the Commission has issued reports on 18 completed inquiries. Appendix A to this report provides a chart of inquiry reports, summarizing the nature of the claim, the date of release, the Commission's recommendations, and Canada's response (or lack thereof). In reviewing the chart, it is clear that Canada has yet to respond to many of the Commission's reports. Rather, the chart suggests that Canada, typically, will respond in a timely and positive manner only when the Commission has agreed with the Minister's rejection of the claim or where no substantive recommendations have been made to the parties. To date, Canada has yet to accept a single claim for negotiation on the strength of our recommendation that an outstanding lawful obligation is owed by the Crown to the First Nation. Furthermore, in the case of the Lax Kw'alaams Band, no formal response has yet been received from Canada 20 months after the report was issued.

Since the creation of this Commission, at least 43 First Nations have requested an inquiry, on the assumption that an independent process would facilitate an efficient, cost-effective, and fair review of their claim. The inquiry process, because it is much less costly and adversarial than the courts, represents a real alternative to litigation. Canada's failure to provide a prompt and fair response to our reports, however, undermines the effectiveness of the process and creates the impression that Canada is not sincere in its commitment to resolve First Nations' claims. It is only fair to expect that Canada will respond to our reports in good faith and in a timely manner, both to ensure an expeditious resolution of claims disputes and to demonstrate a commitment to the process.

In the coming months, the Assembly of First Nations and the Department of Indian Affairs will be conducting a joint review into the effectiveness of this Commission and its operations. In the interests of fairness to those First Nations with completed reports and those who are currently in the inquiry process, we strongly urge that the parties develop a protocol or joint forum (as in the case of the British Columbia Treaty Commission or the Indian Commission of Ontario) to oversee the operations of the Commission and to ensure that Canada provides a full and timely response to our reports.

Recommendation 3

"Mediation and Alternative Dispute Resolution"

Canada should use the existing mediation mandate of the Commission to facilitate the resolution of claims.

RATIONALE

This Commission has a proven track record in mediation. Our experience demonstrates that when First Nations and Canada agree to mediation or to assisted negotiations, our mediation team can assist the parties in the resolution of claims. To date, the use of mediation has led to the final settlement of two claims involving the Chippewas of the Thames and the Roseau River Anishinabe First Nation. Moreover, another nine claims have been settled or accepted for negotiation by Canada as a result of the direct or indirect involvement of the Commission. This number could be higher if Canada's Specific Claims Policy is reformed to provide incentives for the parties to participate in mediation or assisted negotiations before the parties reach an impasse.

With the assistance of skilled and experienced mediators, issues can be discussed openly, impasses broken, and claims settled. The Roseau River Anishinabe First Nation claim against the Government of Canada (summarized in our section on 1995/96 Completed Inquiry Reports) is one example. The First Nation's treaty land entitlement had remained unfulfilled for more than one hundred years and had been in negotiation for 14 years before the parties agreed to ICC-sponsored mediation. With the perseverence and good will of the parties and the assistance of Mr. Robert F. Reid, QC, Legal and Mediation Advisor to the Commission, an Agreement in Principle was initialled within six months. A final settlement agreement was ratified by the First Nation in November 1995.

Canada exercises a great deal of control over the specific claims process, and its reluctance to participate in mediation or assisted negotiations creates an impression among First Nations that the process is unfair and imbalanced. In our view, Canada's reluctance to participate in assisted negotiations is counterproductive, since the involvement of an "honest broker" can go a long way towards restoring a sense of balance in the negotiating power of the parties. In the interests of fairness and economy, we encourage Canada to develop and to implement a new policy on alternative dispute resolution for land claims and resource disputes involving First Nations. Although such services are being provided by independent bodies such as the ICC, the British Columbia Treaty Commission, and the Indian Commission of Ontario, they have to be enhanced to promote the resolution of outstanding claims. Open discussion among equal participants in a consensual process can help to promote a healthy dialogue and, equally important, a better understanding and relationship among the parties.

We have little to add to our 1994/95 recommendation on this subject, other than to encourage the Crown to use mediation to a greater extent. For a discussion of the Commission's mediation mandate, please refer to Appendix B.

Responses to Last Year's Recommendations

The Commission made six recommendations to the Government of Canada in its 1994/95 Annual Report. While the government has yet to respond formally to those recommendations, we can make some general observations on developments in land claims and land claims policy relevant to the work of the ICC.

Recommendation 1

A New Claims Policy and Process

We recommended that "Canada and First Nations should develop and implement a new claims Policy and process that does not involve the present circumstances wherein Canada judges claims against itself."

Comment: Both the government and the AFN have formally expressed their commitment to develop and to implement a new claims policy. Despite this stated commitment and our 1994/95 recommendation, no such policy has been implemented. We have not seen substantive action on either policy reform or the parallel task of creating an Independent Claims Body.

Dean Janiver

I.C.C. Co-chair Daniel Bellegarde (left) at "A Working Conference on Land Claims: Taking Care of Outstanding Business" co-sponsored by the Federation of Saskatchewan Indian Nations and the Indian Claims Commission, June 28-29, 1996.

The creation of a permanent body is needed to replace the ICC, which was established as an interim body. When the ICC was set up in 1991, a Joint First Nations/Government Working Group (JWG) was also created to develop a new claims policy and process. Part of its focus was to develop a permanent claims body, designed in such a way as to eliminate the power imbalance in the current system. Although the JWG achieved consensus on some issues, the group dissolved in 1993 before making substantive recommendations on claims reform and the creation of an Independent Claims Body.

We are pleased to note that in recent months, discussions have resumed between the AFN and Canada. The parties plan to review the Indian Claims Commission and to implement positive changes in the area of specific claims. Reform is the overarching goal of all our collective efforts. The Commission is ready and willing to assist in this collective effort by sharing our views and experiences and by offering facilitators and mediators to work with the parties to reach a broad consensus on reform.

Recommendation 2

Fairness in the Current Claims Policy and Process

Our recommendation stated that "The current specific claims policy and process must be administered by Canada in a manner that is fair and equitable towards the First Nations claimants," including "disclosure of the substance of the legal opinions relied upon by the Minister to determine whether to accept or reject a claim; and a detailed account of

Canada's interpretation of its 'lawful obligation' in any given claim."

Comment: Since our 1994/95 Annual Report, improvements have been made in this area. Canada, to its credit, recently accepted the Nak'azdli First Nation's claim for negotiation on the strength of oral testimony from elders during a community session held by the Commission. Canada's decision to accept the claim for negotiation saved the Commission and the parties a great deal of time and expense. It also demonstrates the value of obtaining information directly from First Nations to assess the merits of a specific claim.

Letters of acceptance and rejection from government appear to have improved in recent years, in that they now disclose a summary of the reasons for Canada's decision. However, there is room for improvement. To promote fairness and to ensure that claimants are aware of the case against them, Canada should disclose the legal basis for its decisions.

Recommendation 3

Response Protocol

We stated that "An Inquiry will be officially closed when the parties to an Inquiry . . . respond formally, at a meeting in the First Nation community, to the Report issued by the Commission." These meetings were to be held 90 days after the release of the Commission's inquiry report so as to expedite Canada's response to our report and to facilitate the resolution of any outstanding issues.

Comment: Canada has not attended any meetings to discuss the Commission's findings and recommendations within the 90-day timeframe, and has yet to respond adequately to a number of inquiry reports completed by the Commission (see Appendix A). Recommendation 2 in this report urges Canada and the Assembly of First Nations to develop a protocol or joint forum to ensure that Canada provides First Nations with a full and timely response to our reports.

Recommendation 4

Mediation

"That Canada and First Nations make greater use of the Commission's mediation services and alternative dispute resolution mechanisms in the interests of reaching claim settlements in a timely and efficient manner. In order for mediation to be a viable alternative to courts and inquiries, Canada must abandon inhibiting attitudes and policies in favour of a case by case analysis of whether mediation is appropriate in light of the facts and matters in issue."

Comment: Despite our modest successes in the area of mediation, the Crown still seems reluctant to agree to mediation when it is requested by a First Nation. There is no indication that Canada's policy on mediation has been modified to ensure that alternative dispute resolution mechanisms are built into Canada's specific claims policy and process.

In Recommendation 3 in this report we have again urged the Crown to use mediation in a more constructive, pro-active manner.

Recommendation 5

Notice of Removal of the Pre-Confederation Bar

"Canada needs to identify and review all claims that were rejected based on the ban of pre-Confederation claims and notify all affected First Nations."

Comment: To the best of our knowledge, a formal review of First Nations' claims has not been conducted. There has been no official response to this recommendation.

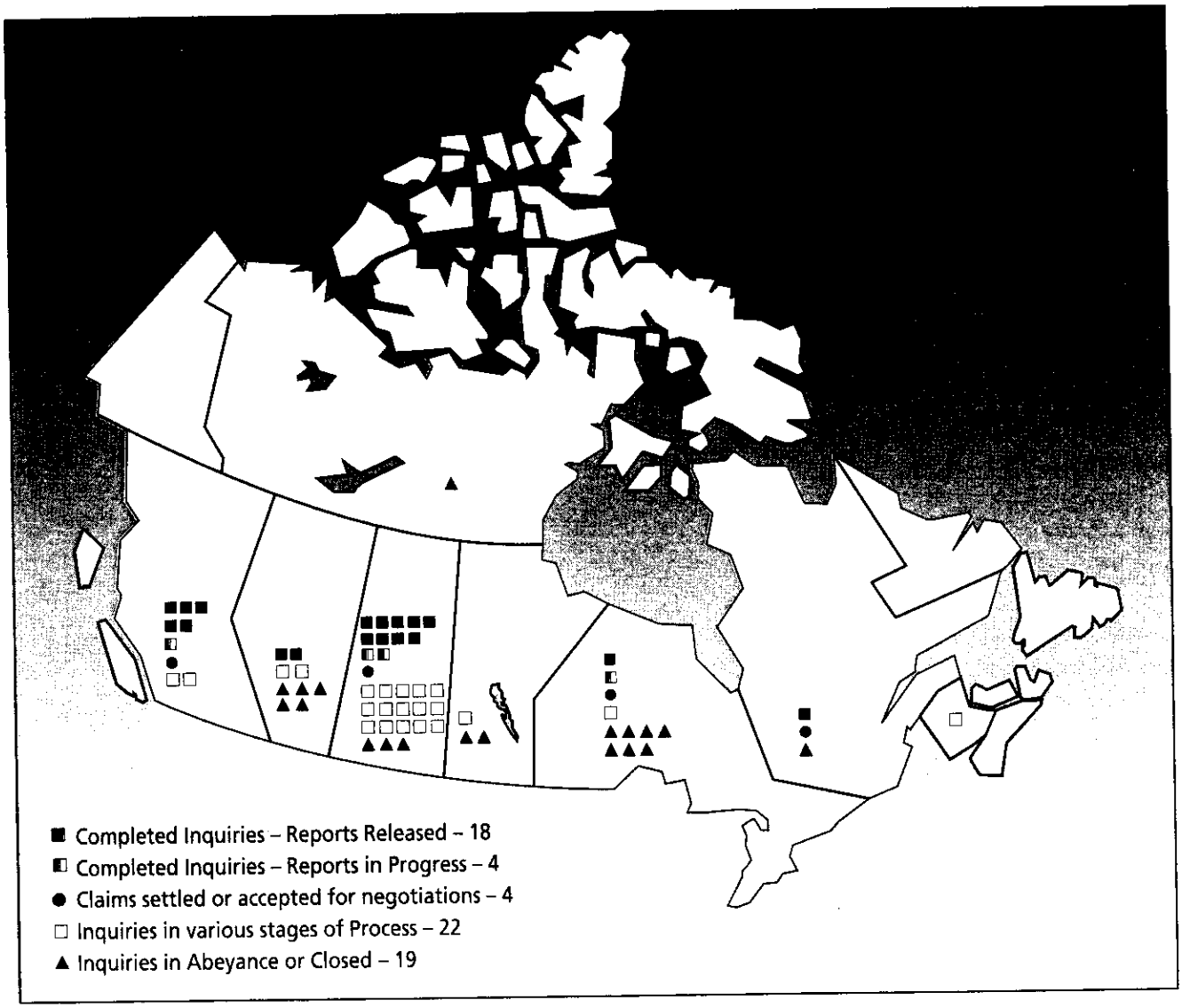
Recommendation 6

Extinguishment

"Canada should stop insisting on the express extinguishment of aboriginal rights and title as part of the settlement of specific claims."

Comment: This recommendation arose from our inquiry into the claim of the Lax Kw'alaams Indian Band in northern British Columbia. In the intervening two years since this recommendation was put forth, similar recommendations have been made in a March 1995 report by the Royal Commission on Aboriginal Peoples, and in a study prepared for the Minister of Indian Affairs by Mr. Justice Hamilton in the summer of 1995. We encourage the Crown to re-examine its position on the issue of surrender in light of these recommendations and to resume negotiations with the Lax Kw'alaams Band to settle this outstanding issue.

Status of Inquiries as of March 31, 1996



In 1995/96 the Commission was involved in 57 inquiries. Of these, 10 were completed and reports for them were issued. The remaining inquiries are at various stages of the process. This section offers a synopsis of the Commission's findings and recommendations for each report released in the last year. A status report and a summary for all inquiry files is attached as Appendix C to this report. Appendix A is a chart and summary of reports issued in 1993/94 and 1994/95.

Overview of Inquiries

18 Completed inquiries and reports (to date)
4 Claims settled or accepted for negotiation
4 Reports in progress
22 Inquiries in various stages of process
19 Inquiries in abeyance or closed

Completed Inquiries and Reports (18)

1993/94 Reports (3)

Cold Lake [Primrose Lake Air Weapons Range I]
Canoe Lake [Primrose Lake Air Weapons Range I]
Athabasca Denesuline [Treaty Harvesting Rights]

1994/95 Reports (5)

Lax Kw'alaams Band [Tsimpsean IR 2]
Young Chipeewayan Band
[Stony Knoll Indian Reserve]
Chippewas of the Thames [Muncey Village]
Micmacs of Gesgapegiag Band [Horse Island]
Sumas Indian Band [IR 6 Railway Right of Way]

1995/96 Reports (10)

Buffalo River [PLAWR II]
Flying Dust 105 [PLAWR II]
Joseph Bighead Band [PLAWR II]
Waterhen Lake First Nation [PLAWR II]

Homalco Indian Band [Aupe IR 6 and 6A]
Fort McKay First Nation [Treaty Land Entitlement]
Kawacatoose First Nation
[Treaty Land Entitlement]
Lac La Ronge Indian Band
[Treaty Land Entitlement]
Nak'azdli First Nation [Aht-Len-Jees IR 5]
'Namgis First Nation [Cormorant Island]

Claims Settled or Accepted for Negotiation (4)

Micmacs of Gesgapegiag [Highway 132 Claim] *
Roseau River Anishinabe First Nation
[Treaty Land Entitlement] *
Squamish Nation [Capilano IR 5 - Boullion Claim]
Washagamis Bay First Nation [Indian Reserve 38D]

Reports in Progress (4)

Chippewas of Kettle & Stony Point
[1927 Surrender]
Kahkewistahaw First Nation
[Treaty Land Entitlement]
Kahkewistahaw First Nation [1907 Surrender]
'Namgis First Nation
[McKenna-McBride Applications 1914]

Inquiries in Various Stages of Process (22)

Athabasca Chipewyan First Nation
[#201 W.A.C. Bennett Dam]
Carry the Kettle Band [1905 Surrender]
Clearwater River Dene Nation
[Treaty Land Entitlement]
Cowessess First Nation [QVIDA Flooding]
Eel River Bar First Nation [Eel River Dam]
Fishing Lake First Nation [1907 Surrender]
Gamblers First Nation [Treaty Land Entitlement]
Kahkewistahaw First Nation [QVIDA - Flooding]
Key Band [1909 Surrender]
Lucky Man Cree Nation [Treaty Land Entitlement]
Mamaleleqala'Qwe'Qwa Sot Enox Band
[McKenna-McBride Applications]
Mikisew Cree First Nation
[Treaty Entitlement to Economic Benefits]
Moose Deer Point First Nation
[Recognition of Pottawatomi Rights in Canada]
Moosomin First Nation [1909 Surrender]
Muskowpetung First Nation [QVIDA Flooding]
Sakimay First Nation [QVIDA Flooding]
Ocean Man Band [Treaty Land Entitlement]
Ochapowace First Nation [QVIDA Flooding]
Pasqua First Nation [QVIDA Flooding]
Piapot First Nation [QVIDA Flooding]
Standing Buffalo First Nation [QVIDA Flooding]
Sumas Indian Band [IR 7 Surrender]

Inquiries in Abeyance or Closed (19)

Alexander First Nation [1905 Surrender]
Chippewas of Beausoleil Rama and Georgina
Island [Collins Treaty]
Duncan's Indian Band [Wrongful Surrender]

** Files related to Mediation*

Lac La Ronge Indian Band [Candle Lake]
Lac La Ronge Indian Band [School Lands]
Long Plain First Nation [Loss of Use]
Michel Group [Band Enfranchisement]
Micmacs of Gesgapegiag
[Transmission Right of Way]
Mississauga Tribal Claims Council
[1923 Williams Treaty]
Mississauga Tribal Claims Council
[Crawford Purchase]
Mississauga Tribal Claims Council [Gunshot Treaty]
Mississauga Tribal Claims Council
[Toronto Purchase]
Montana Band [Bobtail Claim]
Peguis [Treaty Land Entitlement]
Roseau River Anishinabe First Nation
[1903 Surrender]
Swan River First Nation [Treaty Land Entitlement]
Walpole Island First Nation [Anderdon Township]
Wauzhushk Onigum [Sultana Island]
Yellowknives Dene [Treaty 8/11 Conflict]

MAIN ACTIVITIES OF THE ICC FOR 1995/96

COMPLETED INQUIRY REPORTS

In 1995/96 the Commission released reports into 10 completed inquiries. A summary of the findings and recommendations made by the Commission in each report is set out below. Also included in this section is a mediation report on the treaty land entitlement claim of the Roseau River Anishinabe First Nation.

Buffalo River, Flying Dust, Joseph Bighead, and Waterhen Lake First Nations [Primrose Lake Air Weapons Range II]

The claims of these four First Nations arose from the loss of their traditional hunting, trapping, and fishing lands when they were excluded from 4,500 square miles of Crown land in northern Alberta and Saskatchewan which had been used to establish the Primrose Lake Air Weapons Range (PLAWR) in 1954. The issue before the Commission was whether Canada owed an outstanding lawful obligation to the claimants arising from the creation of the range.

In 1993 the Commission released a report into similar claims involving the Cold Lake and Canoe Lake First Nations. In those inquiries, the Commission concluded that Canada breached its treaty and fiduciary obligations towards the First Nations because their treaty harvesting activities and commercial trapping economies were devastated when the Bands were precluded from exercising their rights over most of their traditional territories. The claimants in this claim also asserted that the Crown breached its treaty and fiduciary obligations by excluding Band members from exercising their commercial and food harvesting rights in the range.

The Commission concluded that Canada owed a fiduciary duty to the Flying Dust, Buffalo River, and Waterhen First Nations to ensure that Band members were compensated for lost commercial harvesting rights caused when portions of their Fur Conservation Areas were taken up by the range. Under the circumstances, a particular fiduciary duty arose when the Crown undertook to compensate individuals with property rights in trap lines and other commercial interests that were affected by the creation of the range. Since no compensation was paid to Flying Dust, Buffalo River, and Waterhen Lake Band members for the loss of commercial harvesting rights, the Crown breached its fiduciary duties to these First Nations.

Flying Dust Community Session, August 29, 1994. Left to right: Band Councillor Leon Matchee, Counsel for Flying Dust First Nation John R. Beckman, Elder Thomas Merasty (seated), Translator Marcel Piche, Commission Counsel Ron Maurice, Elder Joe Derocher (seated), Commission Counsel Diana Belevsky.

With regard to the issue of breach of treaty, the Commission found that the Crown did not breach its treaty obligations to the claimant First Nations. Although the traditional area in which the claimants could exercise their treaty food-harvesting rights had been reduced after the range was created, it was not to the extent that they were unable to continue to exercise their treaty rights in a reasonable manner (as had been the case with the Cold Lake and Canoe Lake First Nations).

Therefore, the Commission recommended that the claims of the Flying Dust, Buffalo River, and Waterhen First Nations, with respect to lost commercial harvesting rights only, be accepted for negotiation, and that the claim of the Joseph Bighead First Nation was properly rejected by the Minister pursuant to the Specific Claims Policy.

Homalco Indian Band [Aupe Indian Reserves 6 and 6A]

The Homalco Indian Band claimed that inadequate lands were provided for them at Aupe IR 6 and 6A, located in the Bute Inlet area of British Columbia's Pacific Coast. The three main issues in the inquiry were as follows:

1) Did Canada breach a lawful obligation in the allotment process for IR 6?

2) Did Canada have an obligation to acquire 80 additional acres of reserve land when requested by the Band in 1907? If so, did Canada breach that obligation?

3) Did Canada have an obligation to protect the Band's settlement lands from a pre-emption claim? If so, did Canada breach that obligation?

The Commission concluded that:

1) The discrepancy in acreage was handled unprofessionally, and that the extent of the discrepancy in the allotment of land should have been investigated and resolved by the Crown.

2) Although Canada breached its statutory obligations with respect to the allotment of reserve lands, Canada was not under a statutory, constitutional or fiduciary obligation to acquire additional acres of reserve land as requested by the Band in 1907.

3) The false declarations made by the schoolteacher employed by the Department of Indian Affairs in his application to pre-empt the lands within the Band's settlement constitutes fraud, as the acquisition of Indian land by an employee of the federal government. Canada had a duty to protect the Band's lands, and it breached that duty. Had the Crown fulfilled its duty, the Band would have received an additional 9.62 acres.

In its report of December 14, 1995, the Commission recommended that the claim of the Homalco Indian Band with respect to 9.62 acres of land be accepted for negotiation under Canada's Specific Claims Policy.

Fort McKay First Nation [Treaty Land Entitlement]

This inquiry dealt with the issue of outstanding treaty land entitlement (TLE) for the Fort McKay First Nation of northern Alberta. The First Nation claimed that Canada had not fulfilled its obligation in Treaty 8 to set aside one square mile of reserve land per family of five (or 160 acres for every member of the Band). The First Nation asserted that enough land was set aside for 105 individuals in 1915, but that it was entitled to additional land because another 54 individuals described as "landless transfers" and "late adherents" joined the band after the date of first survey (DOFS) in 1915.

Treaty Commissioner for Indian Claims leaving Edmonton May 29, 1899. PA-C5007

In 1983 Indian Affairs issued policy guidelines stating that every treaty Indian is entitled to be included in a TLE calculation and that absentees, late adherents, and landless transfers should be counted for the purposes of determining the amount of land to be set aside as reserve for the band under treaty.

However, in 1993 the government unilaterally changed its policy and the First Nation was informed that Canada would no longer count these additions for TLE purposes. Canada now views treaty land entitlement as a band's collective right that crystallizes on the date of first survey of the reserve. According to this view, unless there is a DOFS shortfall owed to the band, new additions to the band do not result in an outstanding land entitlement.

As an aid to interpreting the treaty, Canada's historical practices and policies on TLE claims were examined in considerable detail. Since Treaty 8 contains no stipulation that individual Indians must be members of a band on the date of first survey in order to be included in an entitlement calculation, the Commission concluded that there was nothing in the treaty to support Canada's argument that additions to the band should not be counted after the date of first survey. The Commission found that the Crown was obliged to provide land for all Indians in Treaty 8 when they became members of a band or when they elected to take "land in severalty."

In its final report, released in December 1995, the Commission recommended that the claim be accepted for negotiation under the Specific Claims Policy. The Commission concluded that Canada owes a lawful obligation to the Fort McKay First Nation to provide treaty land for all members, including absentees, late adherents, and landless transferees. To date, there has been no substantive response from the government.

Kawacatoose First Nation [Treaty Land Entitlement]

The Kawacatoose First Nation of southern Saskatchewan claimed an outstanding land entitlement under Treaty 4, signed by Chief Kawacatoose in September 1874. Although enough land was surveyed for 212 people in 1876, the First Nation asserted that two families were not counted as members of the Band, resulting in a shortfall of land on the date of first survey. They also argued that a number of people either adhered to treaty or joined the Band after the date of first survey, and that none of these people have been counted for entitlement purposes elsewhere.

Cathy Compton

Commissioner Chief Roger Augustine presenting tobacco to Elders John Kay (right) and Fred Poorman (left) at Kawacatoose Information Session, November 15, 1994.

Canada rejected the Band's claim, despite the fact that similar claims had been accepted and settled under the 1992 Saskatchewan Framework Agreement (to which Kawacatoose was not a party). By agreement of the parties, three questions were placed before the Commission:

1) Who should be included as a member of the Band?

2) What happens if treaty Indians join the Band after the reserve has been surveyed?

3) What is the applicability of the 1992 Saskatchewan TLE Framework Agreement to the Kawacatoose First Nation?

After an extensive analysis of the evidence provided in the documents and by elders of the First Nation, the Commission found as follows:

1) Thirteen individuals of two families were members of the Kawacatoose Band and should be included in calculating treaty land entitlement.

2) In determining the full and proper meaning of the land entitlement formula set out in Treaty 4, every Indian entitled to be included in Kawacatoose's entitlement calculation had not been included.

3) The terms of the 1992 Saskatchewan Framework Agreement did not impose an obligation on Canada to accept the claim for negotiation. However, the Commission did recommend that Canada and Saskatchewan support an extension of the principles of settlement contained in that Agreement if the claim is accepted for negotiation.

The Commission report, released in March 1996, recommended that the treaty land entitlement claim of the Kawacatoose First Nation be accepted for negotiation under Canada's Specific Claims Policy. To date, we have received no response from Canada.

Lac La Ronge Indian Band [Treaty Land Entitlement]

The Lac La Ronge Indian Band claimed that the Government of Canada had not fulfilled its obligations under Treaty 6 (signed in 1876) to set aside sufficient reserve land for the use and benefit of the band. The dispute between Canada and the Band centred on the interpretation of Treaty 6, which provides a formula to calculate the amount of land owed to a band but does not expressly state when a band's population should be counted to determine the size of its reserve land entitlement. Nor does the treaty offer any guidance on the rights and obligations of the parties when a band does not receive its full entitlement to land on the first survey of the reserve.

Based on the extensive evidence relating to the past practices and policies of the government and established principles of law on the interpretation of Indian treaties, the Commission made the following findings about the nature and extent of the Crown's treaty obligations:

1) The purpose and intention of the treaty is that each band is entitled to 128 acres of land for each member of the band, and that every treaty Indian is entitled to be counted in an entitlement calculation as a member of a band.

2) For a band without reserves, the quantum of land entitlement crystallizes no later than the date of the first survey and shall be based on the actual band membership, including band members who were absent at the time of the survey.

3) If a band received its full land entitlement at the date of first survey, Canada's treaty obligations are satisfied, subject to the principle that "late additions" are entitled to be counted for entitlement purposes.

4) If a band did not receive its full entitlement at date of first survey, or if a new or additional shortfall arose as a result of "late additions" joining the band after first survey, the band has an outstanding treaty entitlement to the shortfall acreage, and Canada must provide at least this amount of land in order to discharge its obligation to provide reserve lands under treaty.

5) Canada's failure to provide the full land entitlement at date of first survey, or subsequently to provide sufficient additional land to fulfil any new treaty land entitlement arising by virtue of "late additions" joining the band after first survey, constitutes a breach of the treaty and a corresponding breach of fiduciary obligation. A breach of treaty or fiduciary obligation can give rise to an equitable obligation to provide restitution to the band.

6) Natural increases or decreases in the band's population after the date of first survey have no bearing on the amount of land owed to the band under the terms of treaty.

The Lac La Ronge Band received a total of 107,147 acres over a 75-year period from 1897 to 1973. Applying the principles to the facts in this case, the Commission found that Canada had satisfied the

Band's treaty land entitlement of 61,952 acres by 1968, and that 45,195 additional acres had been set aside as reserve for the Band in excess of Canada's obligations under Treaty 6. However, the fact remains that Canada did not completely satisfy its treaty obligation to the Band until 1968, some 70 years after the date of first survey.

In view of the fact that the Commission had not received submissions from either Canada or the Lac La Ronge Band as to the legal or equitable consequences that should flow from this 70-year time lapse, the Commission declined to consider this issue. Since the claims advanced by the Band regarding the Crown's fiduciary obligations are inextricably connected to the Candle Lake and School Lands claims, the Commission declined to consider whether Canada owed a specific and distinct fiduciary obligation to the Band. Nor did it consider the nature and extent of any such obligation in the absence of evidence and argument with respect to those related claims.

Nak'azdli First Nation [Aht-Len-Jees IR 5]

The sole issue before the Commission was whether Aht-Len-Jees IR 5 ceased to be a "reserve" of the Nak'azdli First Nation by virtue of its "disallowance" by Commissioners Ditchburn and Clark in 1923. By its Final Report in 1916, the Royal Commission on Indian Affairs for the Province of British Columbia confirmed Aht-Len-Jees as a reserve of 300 acres set aside for Nak'azdli. However, a second joint federal-provincial commission was established seven years later to "review" the final report of the Royal Commission. The Ditchburn-Clark Commission disallowed Aht-Len-Jees IR 5 as a reserve and in "exchange" established Uzta IR 7A as a reserve of the Nak'azdli First Nation. Although the Ditchburn-Clark Commission stated that the exchange had been made at the request of the First Nation, the evidence adduced by elders of the Nak'azdli First Nation during this inquiry confirmed that they were not made aware of such an exchange, nor any of the circumstances surrounding the loss of Aht-Len-Jees IR 5.

After reviewing all the evidence and hearing from the community, Canada reconsidered its position and offered to negotiate the Nak'azdli First Nation claim within its fast-track process. The Nak'azdli First Nation accepted Canada's offer on January 31, 1996, and the Commission released its final report in March 1996.

'Namgis First Nation [Cormorant Island]

The 'Namgis First Nation, on the west coast of British Columbia, claimed that Canada was negligent and in breach of both a statutory and a fiduciary obligation when it failed to refer a dispute over lands to a Supreme Court judge as stipulated in the terms of reference for the Joint Reserve Commission of 1879-80. In 1879 and 1880 Indian

Kateri Akiwenzie-Damm

Left to right: Commissioner Aurélien Gill, Peggy Svanvik (seated), Legal Counsel Kim Fullerton, Co-chair Daniel Bellegarde, Elder Ethel Alfred (seated), Legal Counsel Isa Gros-Louis Ahenakew at the Namgis B.C. Community Session, April 20-21, 1995.

Reserve Commissioner G.M. Sproat visited 'Namgis and allotted approximately 1500 acres of Cormorant Island as reserve for the First Nation. This allotment was disallowed by the Provincial Chief Commissioner of Lands and Works in 1882. In 1884 Mr. Sproat's successor, Peter O'Reilly, reallotted two reserves on Comorant Island comprising only 48.12 acres to the 'Namgis First Nation.

The 'Namgis First Nation contends that Canada acted improperly in that it failed to refer the disagreement over Mr. Sproat's original allotment to a judge of the British Columbia Supreme Court, as required by the existing Order in Council appointing Mr. Sproat as Indian Reserve Commissioner.

In its final report issued in March 1996, the Commission found that Canada breached its statutory and fiduciary obligations to the 'Namgis First Nation by failing to refer the dispute to a judge of the Supreme Court. Moreover, there is a strong likelihood that the Band would have been allotted more land than it obtained if Canada had used the dispute resolution process stipulated in both the terms of reference for the Joint Reserve Commission and the relevant order in council.

Claims Settled or Accepted for Negotiation

Micmacs of Gesgapegiag [Highway 132 Claim]

The Micmacs of Gesgapegiag claimed that compensation was not paid for the expropriation of a reserve road and lands taken by the province of Quebec at Maria Indian Reserve (now known as Gesgapegiag No. 2).

Before the Planning Conference, the parties agreed to negotiate a settlement. The First Nation and the Minister of Indian Affairs and Northern Development signed an agreement on March 29, 1996, settling this outstanding specific claim.

Roseau River Anishinabe First Nation Mediation [Treaty Land Entitlement]

The Band's claim stemmed from events surrounding the signing of Treaty 1 in 1871, wherein treaty promises were made to the Band, mainly concerning land, which the Band alleges were not fulfilled.

In 1983 the government accepted the claim for negotiation, but substantive negotiations did not begin until 1993. The central issues were the amount of compensation offered by Canada and the actual acreage to be set aside as reserve to fulfil the First Nation's outstanding treaty land entitlement. By March 1993 negotiations had come to an impasse, since the parties had reached agreement on only a few specific points. Frustrated over the lack of progress, the First Nation commenced litigation against Canada in the Federal Court action *Alexander v. Her Majesty.*

In February 1994 the litigation was discontinued by agreement of the parties. Negotiations reopened in October 1994 in an attempt to resolve the major issues of land quantum and compensation. Once again, negotiations faltered and a degree of acrimony arose which led to the parties refusing to speak to each other. It became glaringly apparent that negotiations would not resume without outside assistance.

After several attempts at negotiation failed to resolve the dispute, the First Nation and the Crown agreed to appoint a mediator from the Commission. A written Agreement in Principle was initialled on August 7, 1995, and ratified by the First Nation on November 23, 1995. The Commission released its report on this successful mediation in March 1996.

Squamish First Nation [Capilano IR 5 - Bouillon Claim]

This claim concerns the alleged pre-emption of Squamish Capilano IR 5 in the 1880s. After the Commission's inquiry process had been commenced, the Minister of Indian and Northern Affairs accepted the claim for negotiation under Canada's Specific Claims Policy. The parties requested that Mr. Robert F. Reid, QC, continue to assist them in compensation negotiations. As of this date, the talks are still in progress.

Washagamis Bay [IR 38D]

The Washagamis Bay First Nation claims that 11 agricultural (garden) islands in an area known as Indian Reserve 38D are in fact not considered reserve land by Canada.

At the Commission's second Planning Conference, representatives from the Department of Justice decided to recommend acceptance of the claim, which was officially accepted for negotiation in April 1995.

Focus for 1996/97: A Look Ahead

Our ongoing priority will be to provide fair, objective reviews of specific land claim disputes through our inquiry process. At the same time, we will continue to adopt innovative means of streamlining our process and of improving the quality and number of our inquiry reports.

The Commission will continue to seek opportunities for mediation and other forms of alternative dispute resolution as the preferred means of settling the backlog of claims in the secific claims process. Consistent with the Commission's mediation mandate, we are offering the assistance of our mediation team to the Government of Canada and the Assembly of First Nations to assist in the upcoming discussions on policy reform and the creation of an Independent Claims Body. Our experience with the Commission has provided us with insights into the effectiveness of the inquiry process and the Specific Claims Policy in general. From the perspective of a neutral and non-partisan participant in the claims process, we can offer our expertise and views on the role of dispute resolution techniques in this difficult and complex area of law and social policy.

Over the course of the 1996/97 fiscal year, the Commission will offer the following assistance to the Government of Canada and First Nations in their discussions of claims policy reform:

- When requested, the Commission will participate in and provide technical assistance to regional forums on land claims issues and alternatives.
- The Commission will conduct a survey of First Nations involved in the inquiry process to obtain information on their perception of the value of the process and to determine how it might be improved.
- The Commission will assist the Assembly of First Nations and the Department of Indian Affairs and Northern Development in their joint review of the Indian Claims Commission by consulting and meeting with the parties as required, and by sharing information on the Commission's operations, as well as information on its effectiveness in resolving disputes in the specific claims process.
- The Commission will provide a cost-benefit analysis of the financial and social costs of the specific claims process and the implications of not developing more effective and efficient models for the resolution of specific claims.
- The Commission will provide neutral facilitation or mediation to assist negotiations on claims reform and the establishment of an Independent Claims Body.
- The Commission will continue to build and to provide an objective, independent information base on specific claim disputes and on alternative approaches to the negotiation and settlement of legitimate historical grievances.

Special Projects and Initiatives

The Commission will begin a special research project on the increasing number of claims involving prairie land surrenders in the years 1896 to 1930. The results of this research and analysis should be completed and released to the parties and the public by the winter of 1996. Other information will be gathered and presented on alternative settlement approaches, with the object of building better relationships between First Nations and Canada and of achieving lasting and equitable settlements.

The Commission will also embark on a number of initiatives to enhance an understanding, within their historical context, of claims, treaties, the Crown's fiduciary relationship with First Nations, and other land and resource issues. We plan to establish a Commission Web site on the Internet to furnish a wide range of information to the public, including newsletters, inquiry reports, ICC Proceedings, and research studies on land and resource issues.

In keeping with the Commission's commitment to an efficient and effective use of its budget, the Commission will complete the final recommendation of the independent financial audit by updating its guidelines on financial authorities and policy.

The ICC offices can be contacted for information on any of these items. We will continue to keep the general public informed and up to date on our work over the next 12 months.

Dept. of Indian and Northern Affairs Canadda collection.

Chief Samson Beardy (standing) and Commissioners Cain and Awey (seated at table) during negotiations of Treaty 9 payments. Trout Lake, Ont., July 1929. PA94969.

Edward Curtis

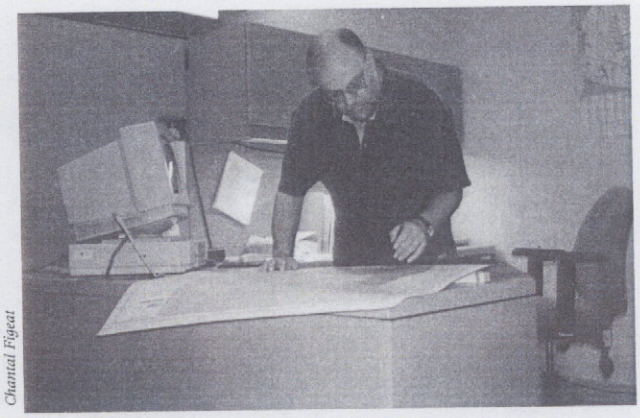
Three Piegan Chiefs, Alberta 1900. PA19992

Operational Overview

Staffing and Staff Training

The Commission employs 42 staff persons, 50 per cent of whom are aboriginal.

The Commission provides staff with cross-cultural and mediation training courses, and offers opportunities for individuals to further their personal development.



Chantal Figeat

ICC Researcher Gilles Couture examining a map of Canadian Indian treaties at ICC offices. Ottawa, August 1995.

Administration

In the interest of streamlining our operations, the Commission has developed internal guidelines with respect to finances, contract management, security, confidentiality, terms and conditions of employment, inventory management, and other general administrative issues. An update of these guidelines will be completed in the coming year. Automated systems provide communication of messages, documents, and data through a computer network. A database of First Nations, associations, government contacts, media, and researchers can be used for information retrieval, for research and for the management of claim files.

Finance

The Commission underwent an independent audit of its finances. The Commission has now responded to the minor recommendations made by the auditor.

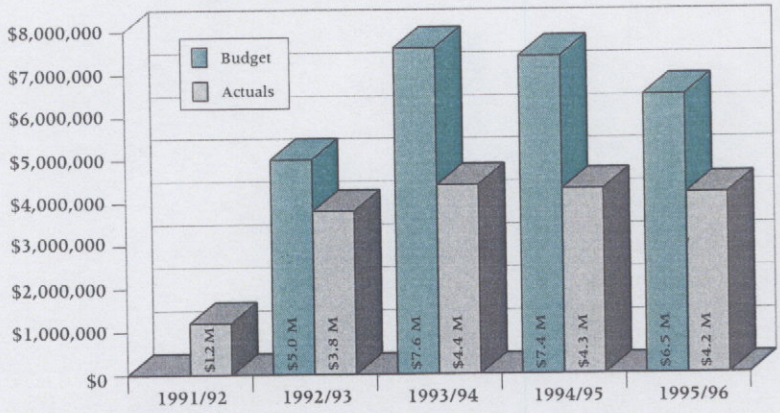
Organizational Development

The Commission has established a Management Committee, which oversees the operations of the Commission. This committee reports to the Co-Chairs and provides day-to-day operational direction to the staff.

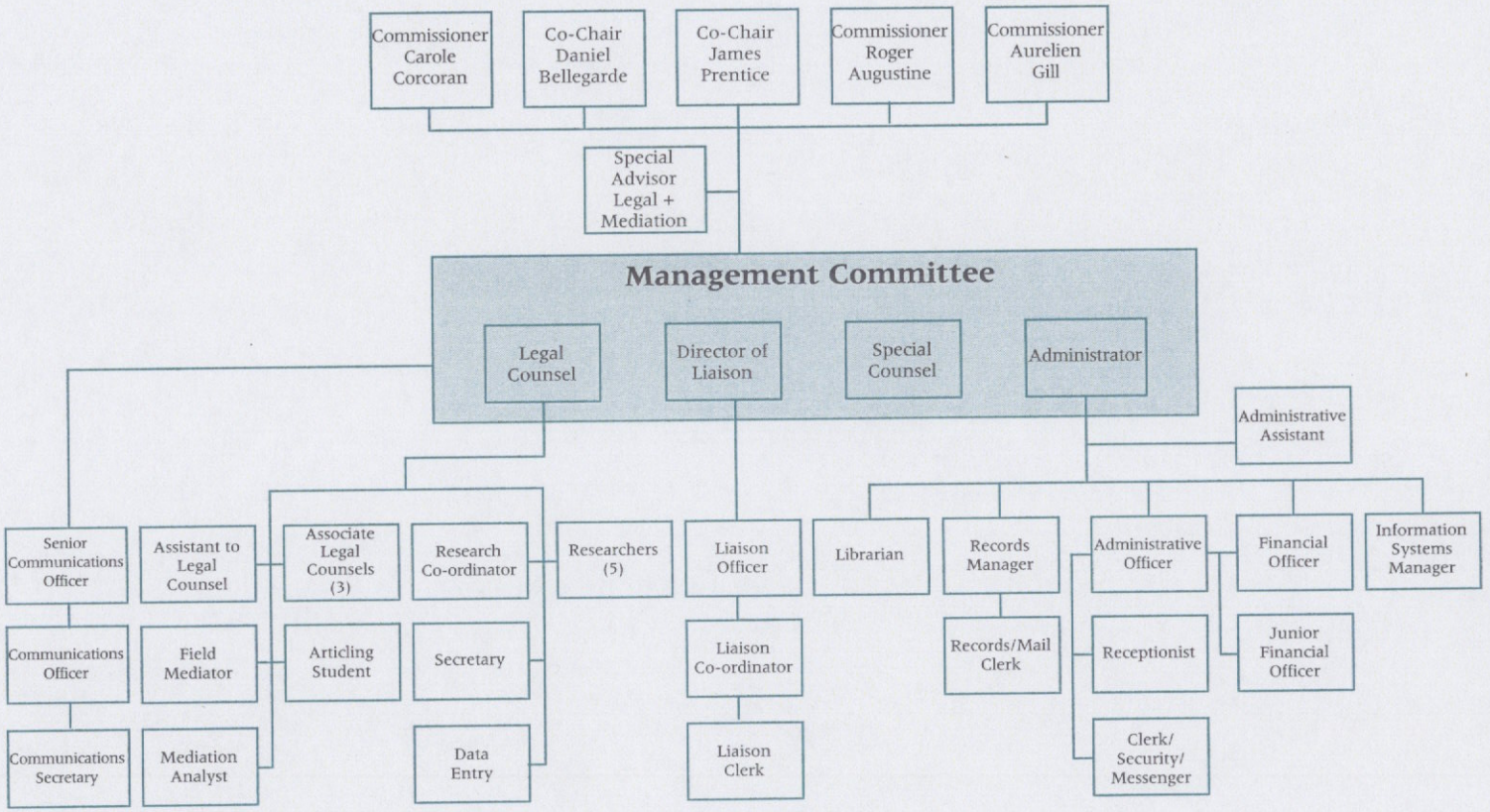
Operating Budget to Date, 1991 1995/96

1991/92	$1.2 M.
1992/93	$3.8 M.
1993/94	$4.4 M.
1994/95	$4.3 M.
1995/96	$4.2 M.

The graph below represents the amounts budgeted and the actual amounts expended by the Commission. It is clear that prudent fiscal management has allowed the Commission to be under budget by $10 million. The Commission has received an allocation of $5.7 million for 1996/97.



INDIAN CLAIMS COMMISSION



May 1996

Appendix A: Chart and Summary of ICC Reports

ICC Report, Nature of Claim, and Recommendation	Date of Report	Date of Response	Nature of Response to Recommendations
1. Cold Lake: Primrose Lake Air Weapons Range Breach of treaty and fiduciary obligations *Recommended for acceptance*	August 1993	March 1995 (18 months)	*Accepted on qualified basis:* no breach of treaty or fiduciary obligation, but need to improve economic and social circumstances
2. Canoe Lake: Primrose Lake Air Weapons Range Breach of treaty and fiduciary obligations *Recommended for acceptance*	August 1993	March 1995 (18 months)	*Accepted on qualified basis*: no breach of treaty or fiduciary obligation, but need to improve economic and social circumstances
3. Athabasca Denesuline Aboriginal and treaty harvesting rights *Recommended that Canada acknowledge treaty rights north of 60th parallel*	December 1993	August 1994 (8 months)	*Rejected recommendations* made in December 1993 report. *No response* to Supplementary Report submitted by ICC in November 1995
4. Lax Kw'alaams Demand for absolute surrender as pre-condition to settlement *Recommended that Canada exclude aboriginal rights from scope of surrender clause*	June 1994	None	ICC arranged informal meetings among parties to explore settlement, but *no formal response* provided by Minister to date
5. Young Chipeewayan Unlawful surrender claim *Recommended that claim not be accepted for negotiations;* additional research required	December 1994	February 1995 (3 months)	*Funding proposal* submitted by Band for research and consultation *under consideration* by Indian Affairs
6. Chippewas of the Thames Unlawful surrender of reserve *Settled with assistance of Commission*	December 1994	March 1995 (3 months)	Acknowledgment of ICC assistance in settlement. *No substantive response required*
7. Micmacs of Gesgapegiag Pre-Confederation claim to 500-acre island *No substantive recommendations made because Canada agreed to reconsider merits of claim*	December 1994	March 1995 (3 months)	*No substantive response required.* Canada acknowledged receipt of report and advised claim was in abeyance pending outcome of related court case

8. Sumas Railway right of way and reversionary rights of band *Recommended for negotiation*	February 1995	December 1995 (10 months)	*Canada did not provide substantive response to report, but rejected* it on grounds that claim involved issues that are before the courts in other cases
9. Buffalo River: Primrose Lake Air Weapons Range Loss of commercial and treaty harvesting rights *Part of claim recommended for negotiation*	September 1995	None	*No response* from Canada. First Nation has requested meeting to discuss concerns re: findings of Commission
10. Flying Dust: Primrose Lake Air Weapons Range Loss of commercial and treaty harvesting rights *Part of claim recommended for negotiation*	September 1995	None	*No response* from Canada. First Nation has requested meeting to discuss concerns re: findings of Commission
11. Joseph Bighead: Primrose Lake Air Weapons Range Loss of commercial and treaty harvesting rights *Recommended that claim not be accepted for negotiation*	September 1995	None	*No substantive response from Canada required.* First Nation has requested meeting to discuss concerns re: findings of Commission
12. Waterhen Lake: Primrose Lake Air Weapons Range Loss of commercial and treaty harvesting rights *Part of claim recommended for negotiation*	September 1995	None	*No response from Canada.* First Nation has requested meeting to discuss concerns re: findings of Commission
13. Homalco Alleged that Canada owed statutory or fiduciary obligation to obtain 80 acres of land from province of BC *Part of claim recommended for negotiation re: 10 acres*	December 1995	None	*No response from Canada.* First Nation requested opportunity to make supplementary submissions
14. Fort McKay Treaty land entitlement *Recommended that Canada owed outstanding entitlement of 3815 acres to Band*	December 1995	March 1996	*No substantive response from Canada.* Minister refused to meet with First Nation or respond to report because claim is in litigation and further research is required. ICC reiterated request for meeting because litigation is in abeyance and research is premature. *No response to request*
15. Kawacatoose Treaty land entitlement *Recommended that Canada owed shortfall of 8576 acres to Band, subject to confirming research*	March 1996	None	*No response from Canada*

16. Nakazdli Aht-Len-Jees IR 7 and Ditchburn-Clark Commission *Canada accepted claim for negotiation after considering evidence revealed during ICC community session*	March 1996	None	*No substantive response required from Canada because claim accepted for negotiation*
17. Lac La Ronge Treaty land entitlement *Recommended that claim not be accepted for negotiation because treaty obligation satisfied; any claim based on restitutionary or fiduciary grounds should form subject of separate inquiry*	March 1996	None	*No substantive response required from Canada.* First Nation withdrew inquiries into Candle Lake and School Lands claims
18. 'Namgis Cormorant Island *Recommended that claim be accepted for negotiation based on breach of obligation under order in council and fiduciary obligation*	March 1996	None	*No response from Canada*
19. Roseau River Anishinabe Mediation in treaty land entitlement negotiations *Claim settled: recommended that Canada amend policy and instruct officials to actively seek opportunities for mediation*	March 1996	None	*No response from Canada*

1. *Cold Lake Inquiry - Primrose Lake Air Weapons Range (August 1993)*

   Report: The ICC recommended that the claim be accepted for negotiation because Canada breached treaty and fiduciary obligations by abruptly expelling Band members from the majority of their traditional hunting, trapping, and fishing territories in 1954 when an air weapons range was created covering 4500 square miles of land in northern Alberta and Saskatchewan. The inquiry produced compelling testimony of economic, social, and cultural devastation that resulted from this breach, with a corresponding failure to compensate Band members adequately for their losses and to rehabilitate them.

   Response: In March 1995, 18 months after the report's release, the Minister of Indian Affairs commended the ICC for its delineation of key issues and its clear presentation of historical fact. With regard to the Commission's findings, the Minister stated that "the Government of Canada continues to believe that there has been no breach of treaty or fiduciary obligations that would qualify these claims for acceptance under the Specific Claims Policy." However, in light of the "unusually severe impacts" that the bombing range's creation had upon the Canoe Lake and Cold Lake First Nations, Canada offered to enter into negotiations with the First Nation to reach a settlement aimed at improving the economic and social circumstances of the First Nations and to resolve the claims and grievances related to the creation of the bombing range. No legal analysis or rationale was offered to explain why Canada disagreed with the Commission's conclusion that the Crown had breached its treaty and fiduciary obligations.

2. *Canoe Lake Inquiry: Primrose Lake Air Weapons Range (August 1993)*

   Report: See summary on Cold Lake Inquiry for ICC recommendation and Canada's response.

3. *Athabasca Denesuline Inquiry: Treaty Harvesting Rights (December 1993)*

   Report: The ICC recommended that Canada formally recognize the existence of treaty rights of the Athabasca Denesuline to hunt, trap, and fish in areas beyond the boundaries of Treaties 8 and 10 and north of the 60th parallel. The ICC concluded that an examination of the relevant historical evidence disclosed no intention on the part of either the Treaty Commissioners or the Denesuline to extinguish harvesting rights in traditional lands outside the treaty boundaries.

   Response: In August 1994 (8 months later), the Minister of Indian Affairs reaffirmed Canada's position that "the claimant bands do not have, under Treaties 8 and 10, treaty rights in the Nunavut Settlement Area." Canada provided no legal analysis or rationale to justify this conclusion. Despite this decision the Minister appointed Parliamentary Secretary Jack Anawak, MP, to facilitate discussions on an overlap agreement, but the Inuit refused to negotiate with the Denesuline unless Canada acknowledged the existence of aboriginal and/or treaty rights in the claim area. In September 1995 the Ministers of Justice and Indian Affairs agreed to re-examine the issue. In November 1995 the ICC issued a supplementary report to summarize its findings and to assist Canada in this review. Canada has not yet completed its review of the claim or responded to the Commission's supplementary report.

4. *Lax Kw'alaams Inquiry: Tsimpsean IR 2 (June 1994)*

   Report: This unlawful surrender claim had been accepted by Canada for negotiation and the parties reached agreement on the major terms of settlement. However, in 1991, a dispute arose over Canada's demand for an absolute surrender as a condition to final settlement. The Lax Kw'alaams Band objected to the absolute surrender because it might extinguish the

Tsimpsean's aboriginal title in the subject lands. The ICC recommended that the surrender clause be modified to expressly exclude aboriginal interests from the effect of the surrender of the reserve interest and that clauses respecting release, indemnity, and set-off be included to protect Canada against the possibility of double compensation. The ICC differentiated between reserve interests and aboriginal interests, and noted that Canada had attempted to insert the surrender clause into the draft agreement without having made aboriginal interests the subject of negotiation.

Response: The Commission arranged meetings between the parties to explore a number of options but senior officials within the Department of Indian Affairs and Northern Development and the Department of Justice have not endorsed any of the recommendations made by the negotiators at the table and have refused to meet further to discuss settlement options. Canada has yet to provide a formal response to this report.

5. *Young Chipeewayan Inquiry: Stoney Knoll IR 107 (December 1994)*

Report: This claim involved an alleged surrender of reserve without lawful authority and without the consent of the Young Chipeewayan Band. The ICC recommended that this claim not be accepted for negotiation under the Specific Claims Policy on the grounds that the claimants' ancestors had dispersed and ceased to be a band at the time the reserve was sold by Canada. However, the ICC observed that it was necessary to conduct further research to determine whether the bands that absorbed Young Chipeewayan members were entitled to an additional treaty land entitlement. Alternatively, Canada may have an obligation to disperse the proceeds of the sold land on a pro rata basis among those members who transferred to other bands.

Response: In February 1995 (within 3 months), the Minister for Indian Affairs noted that the findings support Canada's rejection of the claim. He further stated that original Band members would likely have been eligible to be counted as landless transfers for those Entitlement Bands into which they had been absorbed for the purposes of settling treaty land entitlement (TLE) claims under the 1992 Saskatchewan TLE Framework Agreement. The Minister added that Indian Affairs was reviewing a funding proposal submitted by the Federation of Saskatchewan Indian Nations for research and consultation needed to verify these conclusions.

6. *Chippewas of the Thames Inquiry: Muncey Land Claim (December 1994)*

Report: This claim involved a dispute that arose during settlement negotiations over Canada's demand for an absolute surrender as a condition to settlement. Although the parties negotiated in good faith and ultimately reached an agreement in principle to settle the claim, the Band membership rejected the proposed agreement on three successive ratification votes. The ICC agreed to conduct an inquiry, but the dispute was resolved during the planning conference stage of the process. With the assistance of ICC-sponsored mediation, a settlement agreement was concluded and ratified by the Band in January 1995.

Response: No substantive response was required in light of the settlement agreement. In March 1995 (within 3 months), the Minister for Indian Affairs acknowledged the assistance of the ICC in achieving progress on this claim.

7. *Micmacs of Gesgapegiag Inquiry: Horse Island (December 1994)*

Report: The ICC was asked to conduct an inquiry into the First Nation's claim to a 500-acre island at the mouth of the Cascapedia River. However, during the planning conference stage Canada agreed to conduct a review of the claim on its

merits. Previously a review had been rejected because of the pre-Confederation bar.

Response: No formal response was required, but in March 1995 (within 3 months) the Minister of Indian Affairs acknowledged receipt of this report and informed the ICC that the Band had put the claim in abeyance pending the outcome of a related court case.

8. *Sumas Inquiry: Railway Right of Way (February 1995)*

   Report: The ICC recommended that this claim be accepted for negotiation, because it found that Canada breached its fiduciary obligations to the Sumas Band when it failed to provide for the restoration to reserve status of a railway right of way, once it was no longer used for railway purposes.

   Response: Canada has not yet responded to the substance of the report, but in December 1995 (10 months later) the Minister of Indian Affairs rejected the ICC recommendation, stating that the courts were considering these issues in several related actions and that it was necessary to await judicial guidance. No explanation was offered on either the legal or the policy rationale for this decision, or on the relationship between the Sumas claim and other actions.

9. *Buffalo River Inquiry: Primrose Lake Air Weapons Range II (September 1995)*

   Report: The ICC recommended that this claim be accepted for negotiation with respect to that aspect of the claim dealing with the loss of commercial harvesting rights and failure to provide compensation for the loss of 15 per cent of the Band's allotted Fur Conservation Area in 1954. The ICC found, however, that the claim for breach of treaty had been properly rejected, since the Band had been left with significant areas within its traditional hunting grounds on which to exercise its treaty food-harvesting rights.

   Response: There has been no response from Canada to date. The First Nation has requested a meeting with the ICC to discuss concerns about the findings of the Commission and the inquiry process.

10. *Flying Dust Inquiry: Primrose Lake Air Weapons Range II (September 1995)*

    Report: The ICC recommended that this claim be accepted for negotiation with respect to that aspect of the claim dealing with the loss of commercial harvesting rights and failure to provide compensation for loss of one-third of the Band's allotted Fur Conservation Area in 1954. The ICC found, however, that the claim for breach of treaty had been properly rejected, since the Band had been left with significant areas within its traditional hunting grounds on which to exercise its treaty food-harvesting rights.

    Response: There has been no response from Canada to date. The First Nation has requested a meeting with the ICC to discuss concerns about the findings of the Commission and the inquiry process.

11. *Joseph Bighead Inquiry: Primrose Lake Air Weapons Range II (September 1995)*

    Report: The ICC recommended that this claim be considered properly rejected by the Minister. The ICC found that, after 1930, the Natural Resources Transfer Agreement limited the treaty right to a food-harvesting right and that this Band had been left with significant areas within its traditional hunting grounds on which to exercise that right. Unlike the Flying Dust, Waterhen Lake, and Buffalo River First Nations, the Joseph Bighead Band did not have any commercial interests in trap lines or conservation areas expropriated by virtue of the creation of the bombing range.

    Response: No substantive response was required from Canada. The First Nation has requested a meeting with the ICC to discuss

concerns about the findings of the Commission and the inquiry process.

12. *Waterhen Lake Inquiry: Primrose Lake Air Weapons Range II (September 1995)*

    Report: The ICC recommended that this claim be accepted for negotiation with respect to that aspect of the claim dealing with the loss of commercial harvesting rights and failure to provide compensation for loss of one-third of the Band's allotted Fur Conservation Area in 1954. The ICC found, however, that the claim for breach of treaty had been properly rejected, since the Band had been left with significant areas within its traditional hunting grounds on which to exercise its treaty food-harvesting rights.

    Response: There has been no response from Canada to date. The First Nation has requested a meeting with the ICC to discuss concerns about the findings of the Commission and the inquiry process.

13. *Homalco Inquiry: Aupe IR 6 and 6A (December 1995)*

    Report: The ICC recommended that this claim be accepted for negotiation on the grounds that Canada breached a lawful obligation arising out of an order in council and fraud on the part of a government employee, or, in the alternative, breach of fiduciary duty with respect to its dealings with that employee. The loss to the Band was calculated by the ICC to be approximately 10 acres. The ICC rejected the argument that Canada was under a statutory or fiduciary obligation to obtain 80 acres of land from the Province of British Columbia in 1907.

    Response: There has been no response from Canada to date. The First Nation has requested the opportunity to make additional submissions.

14. *Fort McKay Inquiry: Treaty Land Entitlement (December 1995)*

    Report: The ICC recommended that this TLE claim be accepted for negotiation on the basis that Canada owed an outstanding treaty land entitlement of 3815 acres to the Fort McKay Band.

    Response: In March 1995 the ICC requested a meeting among the parties three months after the release of the report to discuss the findings and recommendations and whether Canada was prepared to accept the claim for negotiation. On April 1, 1996, the Minister responded that there was active litigation against Canada on this issue and that "[i]t is not the practice of this department to attempt resolution of claims while we are being sued." He recommended that the Band place this litigation in abeyance, and, further, that the ICC conduct additional research on which Band members are entitled to be counted for entitlement purposes in accordance with the ICC's recommended approach. The ICC reiterated its request for a meeting in July 1996, because the litigation is in abeyance and, in any event, it would be premature to conduct the research suggested by the Minister without first determining whether Canada agreed with the principles and method for calculating treaty entitlement outlined in the report. There has been no response from Canada to the report or to the request for a meeting.

15. *Kawacatoose Inquiry: Treaty Land Entitlement (March 7, 1996)*

    Report: The ICC recommended that this TLE claim be accepted for negotiation on the basis that the date of first survey population figures are the most reasonable and fair basis for calculation if they include landless transfers, absentees, and late adherents, but not their descendants. The ICC offered a preliminary calculation of the shortfall of reserve land owing at 8576

acres, the entitlement for an extra 67 Band members, subject to further research by the parties. The ICC further recommended that Canada and Saskatchewan extend to the Kawacatoose Band the principles of settlement embodied in the 1992 Saskatchewan Framework Agreement.

Response: The Minister of Indian Affairs has not yet provided a response to this report.

16. *Nakazdli Inquiry: Aht-Len-Jees IR 5 (March 28, 1996)*

Report: The ICC reported that this claim had been accepted for negotiation following a reconsideration by Canada of its position in light of statements made at the ICC community session by three of the First Nation's elders. The Ditchburn-Clark Commission had recommended the exchange of IR 5 for IR 7 in 1923, claiming that the First Nation had requested it. The elders, however, stated they had no knowledge of the request, and the Band alleged that Canada had failed to protect its interest in the original reserve.

Response: No substantive response is required from Canada.

17. *Lac La Ronge Inquiry: Treaty Land Entitlement (March 29, 1996)*

Report: The ICC recommended that this TLE claim not be accepted for negotiation on the basis that Canada has satisfied its treaty obligation to provide land. The ICC agrees that the date of first survey population figures are the most reasonable and fair basis for calculation if they include landless transfers, absentees, and late adherents, but not their descendants. The ICC further recommended that claims based on restitutionary or fiduciary grounds should be submitted in a separate inquiry into the Candle Lake and Lac La Ronge School Lands claims.

Response: No substantive response is required from Canada. On December 19, 1995, the First Nation withdrew all its applications for inquiry with the ICC in light of its findings on the Fort McKay TLE claim released two weeks earlier.

18. *'Namgis Inquiry: Cormorant Island (March 29, 1996)*

Report: The ICC recommended that this claim be accepted for negotiation, on the basis that Canada breached an obligation pursuant to both an order in council and a fiduciary obligation to refer a dispute over reserve allotment to a judge of the British Columbia Supreme Court.

Response: There has been no response from Canada to date.

19. *Roseau River Mediation Report: Treaty Land Entitlement (March 29, 1996)*

Report: The ICC reported on the successful mediation and settlement of this claim and recommended that Canada amend its policy so as to include mediation as a normal aspect of the specific claims process. Further, the ICC recommended that its representatives be instructed to seek opportunities for mediation actively and to participate meaningfully when such opportunities are sought by claimants.

Response: There has been no response from Canada to date.

Appendix B: Mediation Report

Introduction

From its inception, the Indian Claims Commission has been empowered to "provide and arrange, at the request of the parties, such mediation services as may in their opinion, assist the Government of Canada and an Indian Band in respect of any matter relating to an *Indian Specific Claim.*" The Commission has advanced the use of its mediation services whenever possible as a logical alternative to the inquiry process or court action. The Commission believes that the expanded use of alternative dispute resolution (ADR) will greatly expedite the currently lengthy and expensive claims process and help promote a spirit of cooperation between the parties. Although there have been some encouraging results, the rigid application of the Specific Claims Policy on the part of Canada has put any expanded role for mediation in doubt.

Delay and Expense

Both First Nations and Canada prefer negotiation to litigation, but negotiations can become protracted and expensive without third-party assistance. Added to the delay is the time consumed by the initial process of submitting a claim to the Department of Indian Affairs and Northern Development (DIAND) and then awaiting the department's response, thereby extending a First Nation's prospect for settlement over several years.

In 1994/95 the federal government provided $25 million to First Nations and other claimant groups to negotiate claims, yet final agreements in the specific claims process continue to be elusive. Only 25 claims were settled in 1994/95, and currently there are 242 claims under review by Indian and Northern Affairs Canada. In the interest of assisting First Nations and Canada to negotiate agreements in a fair and expedient manner, the Commission is prepared to offer a broad range of ADR services from its Mediation Unit tailored to address these specific concerns.

Services Provided

The Commission's mediation services are divided into two main areas: Planning Conferences and Mediation. An adjunct to the Commission's Inquiry process, the planning conference is held at a preliminary stage of the inquiry, with representatives of the parties meeting in an informal setting for open discussion. The parties identify issues raised by the claim and plan the inquiry on a cooperative basis. As a result, there is a better prospect for early settlement of the dispute; indeed, this process is typical of mediation.

In addition to planning conferences, the Mediation Unit's process facilitation continues to play an important role in claims resolution, mainly at the negotiation stage. A facilitator acts as a "keeper of the process," providing the parties with an accurate record of meetings and following up on undertakings from previous discussions. The facilitator often helps to establish the ground rules for negotiation and may also provide impartial technical assistance to the parties. On the request of the parties, the facilitator can mediate disputes that may arise in the course of negotiations. These responsibilities are generally mutually established by the parties at the onset of negotiations (usually in the *terms of reference or the protocol agreement*) and can be tailored to suit the particular needs of the parties. The primary function of process facilitation, then, is to allow the parties to concentrate on the important matters of negotiation and to ensure that administrative details do not become an obstacle to progress.

The Commission is also able to provide more traditional mediation, should the parties request it. From time to time, disputants have opted to meet with a mediator from the Commission who assumes a

proactive role in negotiations. The neutral chair may be required by the parties to facilitate open and frank discussion and to provide suggestions for overcoming difficult hurdles that come up during negotiations.

Opportunities for Mediation

Although the demand for Alternative Dispute Resolution (ADR) continues to grow, the Commission's mediation services remain greatly underemployed. Sometimes, federal personnel appear willing to explore the avenue of mediation more aggressively, but they are invariably hampered by an unyielding Specific Claims Policy that limits the instances in which mediation can be used.

There are six stages in the specific claims process: claim preparation; claim submission; acceptance/rejection by Canada; negotiation; band ratification of settlement; and, finally, if successful, implementation of the agreement. Unfortunately, the specific claims bureaucracy is still oriented to consider mediated intervention only when the claim has reached the negotiation phase. There have been some exceptions, but this practice continues in the majority of cases.

The non-threatening and flexible nature of mediation makes it ideally suited for use in all stages of the current process and, in particular, in the acceptance or rejection of a claim. This step most often involves a legal review by the Department of Justice of issues related to lawful obligation and potential criteria for compensation. First Nations are seldom informed of the reasoning behind the rejection of a claim, even though that decision becomes a crucial aspect in the resolution of a rejected claim.

The Commission believes that the open exchange of ideas and positions through a neutral party would build trust by lifting the veil of secrecy that shrouds the decision to accept or reject a claim.

Court Action

The Department of Justice typically regards its legal opinion as the determining factor in whether or not an outstanding lawful obligation exists on the part of Canada in a claim. If the opinion states that there is no lawful obligation, then Canada assumes that mediation is not justified since there is, in its view, no lawful claim. Even when there has been an attempt to mediate within the negotiation stage, federal negotiators have no mandate to negotiate on the basis of risk assessment or to consider any other factors outside the existing legal opinion. Ironically, Justice lawyers have more latitude when the prospect of mediation arises in the context of land claims litigation.

Should a First Nation opt to pursue its claim in court, the parties' lawyers are expected to make recommendations to their respective clients on the advisability of settlement over a trial. There are inherent risks involved in court actions, the first and most important of which is the prospect of losing. The parties must consider the compensation that might be ordered; the costs of litigation (win or lose); the multitude of resources devoted; the emotional costs in terms of anxiety and animosity; and the possibility of appeal. After examining these factors, the prospect of a mediated settlement often appears more attractive to the parties. These same considerations should also govern parties when they are contemplating mediation within the specific claims process.

Continued Success

In the past year, the Commission's Mediation Unit responded to many requests for assistance from First Nations. Though not all these requests resulted in active mediation, they demonstrate a great deal of interest in the process. Representatives from mediation are regularly invited by First Nations throughout Canada to discuss the Commission's mediation mandate or to attend negotiation meetings as observers. When observing, the Commission is able to stay abreast of developments and, should more active involvement be requested, the Commission can step in without delay. Various native groups have relied on this informal yet valuable function as a method of expediting the negotiation process.

In addition to claims accepted for negotiation or settled with ICC involvement (see the Claims Accepted section), the Mediation Unit has responded to many more requests on a less formal level. For example, the Commission has had preliminary discussions with 11 other First Nations about potential responses from the Department of Indian Affairs. A number of claims in 1995/96 were resolved through mediation, and many more are back in negotiation owing to neutral intervention. However, many of the same structural and policy restrictions that have hampered the use of ADR in the past remain. The specific claims process must open up to include a more flexible approach to claim settlement and ADR. Otherwise, the process will continue to be marked by frustration and delay. The Commission will continue to offer a variety of services that are tailored to the needs of the parties and that are oriented towards fair, expedient, and, ultimately, less expensive results.

As noted earlier, mediation is now widely accepted in many divergent sectors as a feasible alternative to litigation and the inquiry process. It is hoped that through the promotion of ADR in settling land claims, First Nations and Canada will cooperate in establishing a dispute resolution process based on trust and understanding.

APPENDIX C REPORT ON ICC INQUIRIES

Alexander First Nation [1905 Surrender], Alberta

This claim deals with a large portion of the Alexander Reserve surrendered in 1905, under questionable circumstances, and allegedly in breach of the Crown's fiduciary responsibility to the First Nation. At the first planning conference, the parties decided that further research might clarify their respective positions and allow them to reach agreement. The parties have subsequently reopened negotiations, and the First Nation has requested that this inquiry be put in abeyance pending further notice.

Athabasca Chipewyan First Nation [IR #201 - W.A.C. Bennett Dam], Alberta

The claimant alleges that BC Hydro's construction of the W.A.C. Bennett Dam on the Peace River has affected the flow levels on the Athabasca River, thereby damaging the lands, waters, and environment of IR #201. The First Nation submits that the dam has had an adverse impact on the First Nation's economy and that the Crown failed to take proper steps to prevent or mitigate the damage caused to the reserve. The first planning conference is scheduled for May 1996.

Buffalo River First Nation [Primrose Lake Air Weapons Range II], Saskatchewan

For information on this claim, please see the section Completed Inquiry Reports for 1995/96 and the final report, released in September 1995.

Carry the Kettle Band [1905 Surrender], Saskatchewan

The Band claims that a surrender of 5760 acres of the Assiniboine reserve in 1905 is invalid because, first, no record of the Band membership vote was taken by the Department of Indian Affairs and, second, there is insufficient evidence regarding the outcome of the surrender meeting. A community session was held in October 1995. Oral arguments have not yet been scheduled.

Chippewas of Beausoleil, Rama, and Georgina Island [Collins Treaty], Ontario

The Chippewa Tri-Council claims that lands covered by the "Collins Treaty" of 1785 were never properly surrendered and should never have been included in the 1923 Williams Treaty. The Council also claims that the Crown failed to compensate the Chippewa Nation for the loss of its land, hunting, fishing, and trapping rights. A planning conference was held in June 1995, and another meeting is scheduled for October 1996 to plan the conduct of the inquiry.

Chippewas of Kettle and Stony Point First Nation [1927 Surrender], Ontario

The claim before the Commission concerns the surrender and sale of 88 acres in the late 1920s. The First Nation claims that the surrender was invalid because it was obtained as a result of Canada's negligence or through breach of its trust or fiduciary obligations. This inquiry is completed and the Commission is drafting the final report for release.

Clearwater River Dene Nation [Treaty Land Entitlement], Saskatchewan

The claimant alleges that the Crown owes it additional reserve land under Treaty 8. At the request of the First Nation, this claim has been placed in abeyance pending further notice.

Cowessess First Nation [QVIDA - Flooding], Saskatchewan

Cowessess First Nation is a member of the Qu'Appelle Valley Indian Development Authority (QVIDA), an association of eight Saskatchewan First Nations (the other QVIDA First Nations are listed seperately in this section). The First Nations allege that they are owed compensation for the flooding and degradation of 14,000 acres of unsurrendered land on various reserves, from the extensive damming of the Qu'Appelle River system, in breach of the Crown's fiduciary duty. Community sessions are scheduled for September 1996.

Duncan's Indian Band [Wrongful Surrender], Alberta

This claim relates to the 1928 surrenders of Indian Reserves 151 and 151B to 151H, near Peace River, which the Band argues were null and void owing to non-compliance with the Indian Act. A planning conference was held in June 1995, and a community session will be scheduled in the near future.

Eel River Bar First Nation [Eel River Dam], New Brunswick

The claimant alleges that inadequate compensation was negotiated for the abrogation of treaty harvesting rights in 1963 when the nearby town of Dalhousie dammed the Eel River, causing loss of clams, eels, salmon, and other resources, which devastated both the First Nation's subsistence and commercial economy. Further, the First Nation claims that Canada improperly handled the expropriation of access lands and the ratification process. The Commissioners will hear the claim at Eel River Bar in April 1996 and expect to hear the parties' oral arguments in January 1997.

Fishing Lake First Nation [1907 Surrender], Saskatchewan

Fishing Lake First Nation maintains that the 1907 surrender of more than half of the Fishing Lake Reserve was null and void owing to Crown misconduct, and that the surrender was obtained in breach of the Crown's trust or fiduciary obligations. Evidence was presented at the community session held in July 1995, and, at the time of writing, Canada had accepted this claim for negotiation.

Flying Dust First Nation [Primrose Lake Air Weapons Range II], Saskatchewan

For further information on this claim, please see the section Completed Inquiry Reports for 1995/96 and the final report, released in September 1995.

Fort McKay First Nation [Treaty Land Entitlement], Alberta

For a summary of this claim and the Commission's final report, released in December 1995, see the section entitled Completed Inquiry Reports.

Gamblers First Nation [Treaty Land Entitlement], Manitoba

The claimant alleges that the Crown owes it nearly 5000 additional acres of reserve land under Treaty 4. A planning conference has been scheduled for June 1996.

Homalco Indian Band [Aupe IR #6 & #6A], British Columbia

For a summary of this claim and the Commission's final report, released in December 1995, see the section entitled Completed Inquiry Reports.

Joseph Bighead First Nation [Primrose Lake Air Weapons Range II], Saskatchewan

For further information on this claim, please see the section Completed Inquiry Reports for 1995/96 and the final report, released in September 1995.

Kahkewistahaw First Nation [1907 Surrender], Saskatchewan

The First Nation contends that the surrender of 33,281 acres of its reserve is invalid owing to Crown misconduct and breach of Crown fiduciary and trust obligations owed to the First Nation. Oral arguments were presented in February 1996 in Saskatoon. The Commission's final report is in progress.

Kahkewistahaw First Nation [Treaty Land Entitlement], Saskatchewan

The Kahkewistahaw First Nation claims that the Crown owes it an additional 29,600 acres under Treaty 4. Oral arguments were presented in February 1996. The final report of the Commission is in progress.

Kahkewistahaw First Nation [QVIDA- Flooding], Saskatchewan

See Cowessess First Nation [QVIDA - Flooding].

Kawacatoose First Nation [Treaty Land Entitlement], Saskatchewan

For a summary of this claim and the Commission's final report, released in March 1996, see the section entitled Completed Inquiry Reports.

Key Band [1909 Surrender], Saskatchewan

The Band argues that the Crown breached its lawful and beyond lawful obligations in 1909 in obtaining the surrender of 11,500 acres of its reserve. A community session was held in January 1996.

Lac La Ronge Indian Band [Candle Lake and School Lands], Saskatchewan

The parties agreed that inquiries into these two claims would proceed jointly in view of the similarity of the issues raised about the principles that govern the establishment of an Indian reserve. A community session was held in Lac La Ronge on July 31, 1995, and oral submissions were scheduled for March 5, 1996. However, at the request of the Lac La Ronge Band, inquiries into these claims were discontinued and closed pending further notice from the Band.

Lac La Ronge Indian Band [Treaty Land Entitlement], Saskatchewan

For a summary of this claim and the Commission's final report, released in March 1996, see the section entitled Completed Inquiry Reports.

Long Plain First Nation [Loss of Use], Manitoba

The First Nation claims compensation for loss of use of lands which it was entitled to under treaty but which it did not receive until 1994. A planning conference was held in August 1995, and another meeting is scheduled for October 1996 to resume the inquiry.

Lucky Man Cree Nation [Treaty Land Entitlement], Saskatchewan

The claimant alleges that the Crown owes it additional land and benefits under Treaty 6. A planning conference is scheduled for July 1996.

Mamaleleqala Qwe'Qwa'Sot' Enox Band [McKenna-McBride Applications], British Columbia

The Band alleges that Canada is in breach of its fiduciary duty in connection with its applications to the McKenna-McBride Commission in 1914 for the addition of 12 traditional sites to its reserve holdings. The Band also questions the limited scope of the Specific Claims Policy, as delineated in *Outstanding Business*. A community session is scheduled for May 1996, with a report to be released later in the year.

Michel Group [Band Enfranchisement], Alberta

The claimant contends that the enfranchisement of many original Band members in 1928 and again in 1958 was illegal and improper. A planning conference was held in March 1996, but the group has asked that the claim be put in abeyance until further notice.

Micmacs of Gesgapegiag [Transmission Right of Way], Quebec

The Band claims that the Crown was negligent and in breach of its fiduciary duty when it allowed various utility companies to use and occupy reserve lands without the Band's consent and in contradiction of the *Indian Act*. The Band further claims that the compensation paid for easements was inadequate and that the period specified was unconscionable. At a planning conference held in September 1995, the claimant agreed to provide additional information to the Department of Justice and to Specific Claims Central/East. The claim is in abeyance pending review and assessment of this information.

Mikisew Cree First Nation [Treaty Entitlement to Economic Benefits], Alberta

The main issue is whether the Crown has an outstanding obligation to provide Treaty entitlements to the Mikisew Cree First Nation pursuant to the economic benefits clause of Treaty 8. A planning conference will be scheduled.

Mississauga Tribal Claims Council [1923 Williams Treaty], Ontario

The Mississaugas of New Credit and the Moose Deer Point First Nation claim an interest, under the Specific Claims Policy, in the negotiations pertaining to the 1923 Williams Treaty. Canada, however, denies their interest, on the basis that they were not parties to the treaty. The inquiry is currently in abeyance.

Mississauga Tribal Claims Council [Crawford Purchase], Ontario

The Mississauga Tribal Council claims that the Mississauga Nation was never compensated for part of its land, the surrender of which was improperly taken in 1783. Furthermore, it is alleged that the Crown breached its fiduciary duty in relation to possession of these lands and that the First Nation suffered damages from misrepresentation and equitable fraud. The inquiry is currently in abeyance.

Mississauga Tribal Claims Council [Gunshot Treaty], Ontario

The Mississauga Tribal Council claims that the Mississauga Nation is owed damages for loss of certain lands and rights to fish, hunt, and trap in the area east of Toronto owing to the non-binding nature of the 1788 Gunshot Treaty under which the land was surrendered, and to the Crown's breach of its fiduciary duty to protect the Mississauga Nation in their possession of these lands. The inquiry is currently in abeyance.

Mississauga Tribal Claims Council [Toronto Purchase], Ontario

The Mississauga Tribal Council claims that certain lands were never properly surrendered by the Mississauga Nation because the Crown's instructions on the negotiation and conclusion of treaties were not followed. The ICC inquiry is currently in abeyance, pending further notice from the Tribal Council.

Montana Band [Bobtail Claim], Alberta

The Montana Band alleges that the Crown owes it compensation for the alienation of its reserve in 1909. This inquiry is currently in abeyance.

Moose Deer Point First Nation [Recognition of Pottawatomi Rights in Canada], Ontario

The claimant asserts that the Crown has an outstanding lawful obligation to grant Pottawatomis the same aboriginal rights as other First Nations in Canada. A planning conference will be scheduled when the parties have submitted documentation to the ICC.

Moosomin First Nation [1909 Surrender], Saskatchewan

The claimant alleges that the Crown wrongfully induced the surrender of more than 14,700 acres in 1909, failed to comply with the strict requirements of the *Indian Act,* and conducted the sale of the surrendered lands unfairly. A community session was held in February 1996, and oral arguments are scheduled for September 1996.

Muskowpetung First Nation [QVIDA - Flooding], Saskatchewan

See Cowessess First Nation [QVIDA - Flooding].

Nak'azdli First Nation [Aht-Len-Jees #5], British Columbia

For a summary of this claim and the Commission's final report, released in March 1996, see the section Completed Inquiry Reports.

'Namgis First Nation [Cormorant Island], British Columbia

For a summary of this claim and the Commission's final report, released in March 1996, see the section entitled Completed Inquiry Reports.

'Namgis First Nation [McKenna-McBride Applications 1914], British Columbia

The claimant alleges that Canada is in breach of its fiduciary duty in connection with the First Nation's applications to the McKenna-McBride Commission in 1914 for the addition of seven traditional sites to its reserve holdings. The Commission's final report on this inquiry is scheduled for release in the summer of 1996.

Ocean Man Band [Treaty Land Entitlement], Saskatchewan

The claimant alleges that the Crown owes the Ocean Man Band an additional 7680 acres of reserve land under Treaty 4. At issue is the appropriate date for calculation according to the treaty formula. A third planning conference will be scheduled for May 1996.

Ochapowace First Nation [QVIDA - Flooding], Saskatchewan

See Cowessess First Nation [QVIDA - Flooding].

Pasqua First Nation [QVIDA- Flooding], Saskatchewan

See Cowessess First Nation [QVIDA - Flooding].

Piapot First Nation
[QVIDA - Flooding], Saskatchewan

See Cowessess First Nation [QVIDA - Flooding].

Peguis Indian Band
[Treaty Land Entitlement], Manitoba

The claimant alleges that the Band is owed over 22,000 additional acres under Treaty 1. In 1907 the Band agreed to surrender its reserve in exchange for another as full satisfaction of its claims; the Band alleges that this 1907 surrender was also unjust. It was agreed at the initial planning conferences in 1995 that the surrender claim would be submitted to the Department of Justice for review before the Commission would proceed. The inquiry is therefore in abeyance pending the outcome of this review.

Roseau River Anishinabe First Nation
[1903 Surrender], Manitoba

The claimant alleges that the Crown is in breach of both its fiduciary and its Treaty 1 obligations in connection with its persistent initiation of the surrender of 12 square miles of reserve land, as well as its questionable handling of the auctioning of individual lots. The inquiry has been in abeyance since September 1994 because the claim was re-submitted to Canada.

Sakimay First Nation [QVIDA - Flooding], Saskatchewan

See Cowessess First Nation [QVIDA - Flooding].

Standing Buffalo First Nation
[QVIDA - Flooding], Saskatchewan

See Cowesses First Nation [QVIDA - Flooding].

Sumas Indian Band [IR #7], British Columbia

The Band maintains that the Crown is in breach of its fiduciary or trust obligations in connection with its role in the 1919 surrender and sale of the entire Sumas IR #7. Also at issue are the validity of the surrender and the compliance-with-surrender procedures under the *Indian Act*. A combined community session/oral argument will be held in April 1996. The final report on this inquiry is scheduled for release later in the year.

Swan River First Nation
[Treaty Land Entitlement], Alberta

The First Nation submits that Canada owes it additional reserve land under Treaty 8. Because the claimants have added new information and resubmitted the claim to Canada, this inquiry has been in abeyance since January 1996.

Walpole Island First Nation
[Anderdon Township], Ontario

The First Nation claims that the terms of its surrender of 300 acres of land in Anderdon Township, Ontario, in 1848 were never fulfilled and that funds from the land sale were not credited to their account. To their original claim submission, the claimants added a further allegation which led to resubmission of the claim. As a result, the inquiry is in abeyance pending the review.

Waterhen First Nation
[Primrose Lake Air Weapons Range II], Saskatchewan

For further information on this claim, please see Completed Inquiry Reports for 1995/96 and the final report, released in Septmber 1995.

Wauzhushk Onigum [Sultana Island], Ontario

The claimant is currently negotiating compensation for this claim with both the provincial and the federal governments under the auspices of the tripartite Indian Commission of Ontario. Accordingly, the First Nation has requested that the ICC place this inquiry in abeyance until further notice.

Yellowknives Dene [Treaty 8/11 Conflict], Northwest Territories

The Yellowknives Dene of Treaty 8 claim that they were not consulted during the negotiation of an interim protection agreement between the federal government and the Dogrib Treaty 11 Council. They argue that the agreement overlaps into their own traditional territories as well as that of the Tusel K'e and Lutsel K'e Dene First Nations. Neither party to the agreement is willing to adjust its terms. The inquiry is in abeyance at the request of the parties.

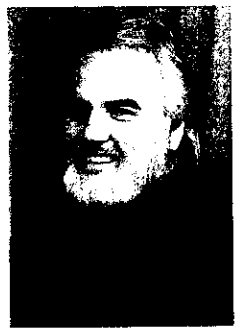
MEMBERS OF THE COMMISSION

Co-Chair

Daniel J. Bellegarde is an Assiniboine/Cree from the Little Black Bear First Nation in southern Saskatchewan. From 1981 to 1984, Mr. Bellegarde worked with the Meadow Lake District Chiefs Joint Venture as a socio-economic planner. From 1984 to 1987, he was president of the Saskatchewan Indian Institute of Technologies. Since 1988, he has held the position of First Vice-Chief of the Federation of Saskatchewan Indian Nations. He was appointed Co-Chair of the Indian Claims Commission on April 19, 1994.

Co-Chair

P.E. James Prentice, Q.C. is a lawyer with the Calgary law firm of Rooney Prentice. He has an extensive background in Native land claims and administrative law, including work as legal counsel and negotiator for the Province of Alberta in the tripartite negotiations that brought about the Sturgeon Lake Indian Claim Settlement of 1989. He was appointed to the Indian Claims Commission in 1991, and was appointed Co-Chair of the Commission on April 19, 1994.



Roger J. Augustine is a Micmac born at Eel Ground, New Brunswick, where he has been Chief since 1980. In 1988, he was elected President of the Union of NB-PEI First Nations and completed his term in January of 1994. In addition to his work with the ICC, Chief Augustine is involved with many other Boards and Committees in areas such as economic development, environmental management, and social issues. Currently, he is the President of Black Eagle Management Enterprises and was recently appointed a director to the National Aboriginal Economic Development Board in February 1996.

Carole T. Corcoran is a Dene from the Fort Nelson Indian Band in northern British Columbia. Mrs. Corcoran is a lawyer with extensive experience in Aboriginal government and politics at the local, regional and provincial levels. She served as a Commissioner on the Royal Commission on Canada's Future in 1990/91, and as a Commissioner to the British Columbia Treaty Commission from 1993 to 1995. She was appointed as a Commissioner to the Indian Claims Commission in July 1992.

Aurélien Gill is a Montagnais from Mashteuiatsh (Pointe-Bleue) Quebec. He helped found many important Aboriginal organizations, starting with the Conseil Atikamekw et Montagnais, and including the Conseil de la Police amérindienne, the Corporation de Développement économique Montagnaise and the National Indian Brotherhood (now the Assembly of First Nations.) He served as Quebec Regional Director in the Department of Indian Affairs and Northern Development, and is a member of the National Aboriginal Economic Development Board. In 1991 he was named to the Ordre national du Québec. He was appointed Commissioner in December, 1994.