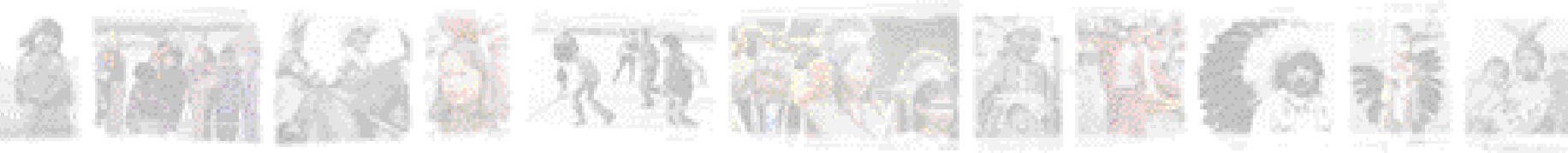


INDIAN CLAIMS COMMISSION
Annual Report
2002 - 2003





Annual Report 2002 - 2003





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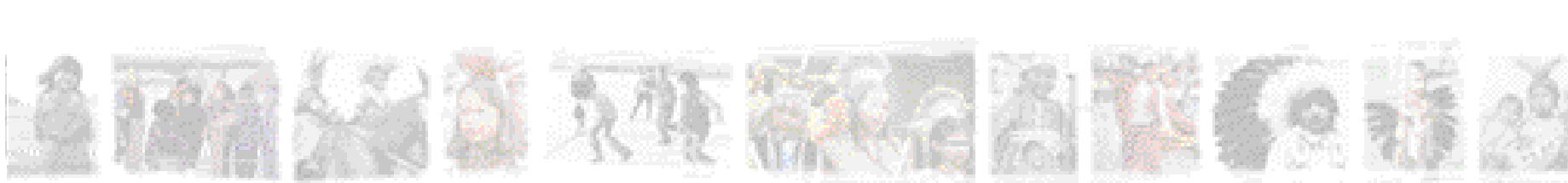
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Indian Claims Commission

To Her Excellency The Governor General In Council

MAY IT PLEASE YOUR EXCELLENCY

In 2002-2003, the Indian Specific Claims Commission completed and released two reports. As of March 31, 2003, inquiries into 57 claims had been completed. This report summarizes our major achievements and activities in relation to specific claims last year.

Yours truly,

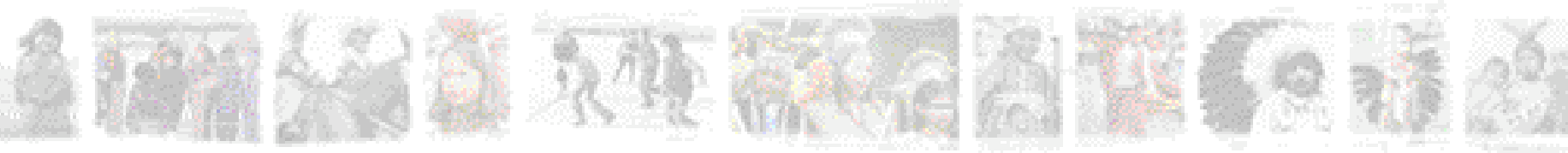
Phil Fontaine
Chief Commissioner

June 2003



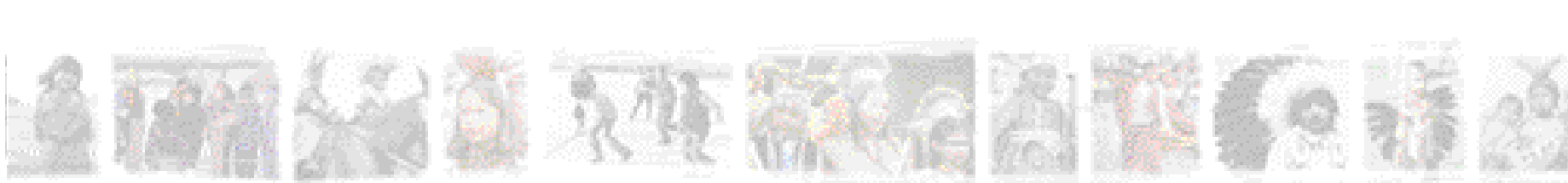
Contents

MESSAGE FROM THE CHIEF COMMISSIONER	1
COMMISSION'S RECOMMENDATION TO GOVERNMENT, 2002-2003	4
APPENDICES	7
APPENDIX A	
STATUS OF CLAIMS AS OF MARCH 31, 2003	10
SUMMARY OF CLAIMS AS OF MARCH 31, 2003	23
Inquiry Reports, 2002-2003	23
Inquiries	26
SUMMARY OF MEDIATION AND FACILITATION AS OF MARCH 31, 2003	40
Mediation Reports, 2002-2003	40
Mediation and Facilitation	41
APPENDIX B	
OPERATIONAL OVERVIEW	52
ORGANIZATION CHART	53
APPENDIX C	
THE COMMISSIONERS	56



Annual Report 2002 - 2003





Indian Claims Commission

Message From The Chief Commissioner

It is a pleasure, on behalf of my colleagues, to present the report of the Indian Claims Commission for the year 2002-2003.

In November 2002, the Commission welcomed a new member following the appointment of Jane Dickson-Gilmore of Ottawa.

Early in the fiscal year, the Commission was encouraged by news that the wheels had been set in motion to create an independent claims body to replace the Commission. The Commission has been urging the government to establish such a body almost since its inception. On June 13, 2002, the Minister of Indian Affairs and Northern Development tabled Bill C-60, legislation to establish the Canadian Centre for the Independent Resolution of First Nations Specific Claims. The legislation died on the Order Paper in September 2002, when Parliament was prorogued. It was reinstated as Bill C-6 in early October 2002.

On November 26, 2002, my colleagues and I appeared before the House of Commons Standing Committee on Aboriginal Affairs, Northern Development and Natural Resources to present our views on Bill C-6. Our brief was based on the Commission's more than 11 years of experience in the field of specific claims. It outlined some basic principles that the Commission believes should be followed in the creation of a new specific claims body. It urged committee members to evaluate the legislation against these principles.

The bill was debated at third reading in the House in February 2003 and is scheduled to proceed to the Senate sometime this spring.

Since the tabling of the legislation, the Commission has continued to exercise its mandate and will continue to do so until such time as the new body is proclaimed. In the past fiscal year, the Commission issued two reports on claims by the Alexis First Nation (TransAlta Utilities rights of way) and by the Chippewa Tri-Council (Coldwater-Narrows reservation surrender). We are at



Annual Report 2002 - 2003

present conducting a total of 27 inquiries. As of March 31, 2003, the Commission completed 57 inquiries, 26 of which have either been settled or accepted for negotiation.

In March 2003, the Commission issued its report on a claim by the Alexis First Nation involving the federal Crown's grants of three rights of way to Calgary Power (now known as TransAlta Utilities) during the 1950s and 1960s. The focus of the claim was Calgary Power's construction of a transmission line across the reserve in 1969, for which the Band received a lump sum payment. The First Nation claimed that Canada failed to achieve fair and reasonable value for the use of its reserve land by the utility, resulting in continuing loss of revenue to the Band. The Commission supported the First Nation's claim, finding that the federal government had failed to prevent an improvident or exploitative arrangement between the parties, and it recommended that the claim be accepted for negotiation.

In the same month, the Commission reported on a claim by the Chippewa Tri-Council, consisting of the Beausoleil First Nation, Chippewas of Georgina Island First Nation, and Chippewas of Mnjikaning (Rama) First Nation. The claim alleges the improper surrender of the Coldwater-Narrows reservation to the Crown in the early part of the 19th century. The Commission suspended its inquiry into the claim since both parties agreed to enter into negotiations. As a result of the Commission's involvement in the process, each of the three First Nations requested us to provide mediation/facilitation services for the negotiation of the claim.

The Commission is heartened by the level of demand for its mediation and facilitation services. In 2002-2003, the Commission's mediation unit issued one mediation report and provided mediation services in 15 ongoing claims. Of these, 12 are being carried out in formal negotiations between the First Nations and the federal government, while three claims are being pursued as pilot projects. The unit has participated in a total of 135 meetings on the 15 ongoing claims.



Indian Claims Commission

In January 2003, the Commission issued a mediation report on the settlement of the Kahkewistahaw First Nation's land claim, involving more than 33,248 acres of land surrendered under questionable circumstances in 1907. In November 2002, this Saskatchewan First Nation ratified a \$94.6 million settlement agreement with Canada. The Commission is proud of the role it played in helping to settle the claim. We facilitated – at the request of the parties – the process that allowed the First Nation and Canada to negotiate a final agreement and we acted as coordinator for the loss-of-use studies that needed to be done. The Commission helped the parties to maintain focus and momentum in their discussions and served as an objective and steady influence at the negotiations table.

As the Commission waits for Bill C-6 to move through the parliamentary process, we assure First Nations with claims before us and the federal government that we will continue to carry on the business of the Commission with a minimum of disruption.

*Phil Fontaine,
Chief Commissioner,
Indian Claims Commission*



Annual Report 2002 - 2003

Commission's Recommendation To Government, 2002-2003

Since its inception, the Commission has advocated for a process of responding to claims that is ethical, rational and fair to all parties.

The Commission believes that, in order to be an effective instrument of social justice for all Canadians, the new, independent claims body proposed in Bill C-6 must be based on a core of fundamental principles. We believe that the eight principles outlined and described here constitute the minimum standards that must be met to achieve a fair, just and final claims process.

In creating a new body, we caution the federal government to keep in mind one important reality – resources. We believe there must be both adequate dollars and sufficient human resources available for settling claims. Without such resources, the claims process will be undermined fundamentally, agreements will not be final and social justice will be compromised.

The Commission therefore recommends that the government of Canada apply the following eight principles in the creation of a new, independent claims body:

- The new body must be independent. True independence resides in a body that is self-governing and not dependent on an outside body, such as the Department of Indian Affairs and Northern Development or the Minister, for its validity. This independence can be enhanced through consultation in making appointments to the new body.
- The new body must have the authority to make binding decisions. This is necessary to a fair and just claims process. It is imperative that this authority apply not only to the validity of claims, but also to the participation of the parties to the process.

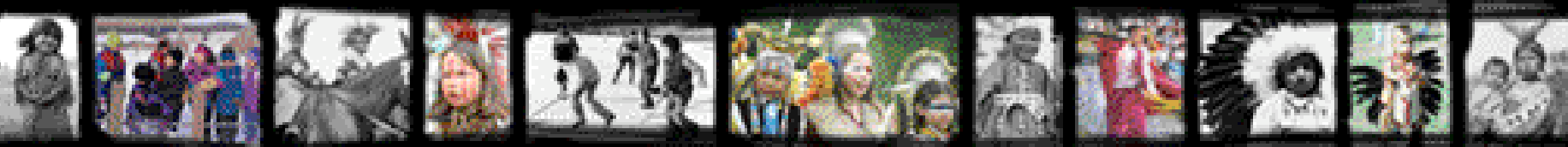


Indian Claims Commission

- The new body must constitute a viable alternative to litigation for the parties involved. It must be seen by all parties as cost-efficient, expeditious and final.
- The new body must recognize and uphold the right of First Nations to provide oral testimony of their history as a valid and important source of evidence and information about a claim.
- The new body must provide mechanisms for alternative dispute resolution.
- The new body must ensure access to justice. A First Nation must have reasonable access to the claims process to ensure justice is both done and seen to be done. Resource limitations in the proposed legislation – the cap on settlements, for example – as well as the "prescribed limits" to research funding may impede access to justice.
- The new body must ensure access to information. Full and fair participation in the claims process presumes parties will have equal access to evidence, including that which may be found in government files.
- The new body must ensure the primacy of the fiduciary relationship between First Nations and the federal Crown. We are concerned that this constitutional principle is in danger of being compromised by transferring responsibility for some elements of claims to provincial governments, an act that would diminish the federal responsibility.









Appendix A

Status of Claims as of March 31, 2003

Summary of Claims as of March 31, 2003

Inquiry Reports, 2002-2003

Inquiries

Summary of Mediation and Facilitation as of March 31, 2003

Mediation Reports, 2002-2003

Mediation and Facilitation



Annual Report 2002 - 2003

Status Of Claims As Of March 31, 2003

<i>ICC Report, Nature of Claim and Recommendation</i>	<i>Date of Report</i>	<i>Date of Response</i>	<i>Nature of Response from Canada to Recommendation</i>	<i>Accepted/Settled/Other</i>
1 Alexis TransAlta Utilities rights of way <i>Recommended claim be accepted for negotiation</i>	March 2003	NONE	NO RESPONSE FROM GOVERNMENT	
2 Athabasca Chipewyan W.A.C. Bennett Dam and damage to IR 201 <i>Recommended claim be accepted for negotiation</i>	March 1998	April 2001	Government rejected recommendations made in March 1998: "Canada did not have a fiduciary duty to protect Reserve No. 201 against damage caused by construction and the operation of the Bennett Dam by a third party. Canada did not have the duty to invoke the provisions of the <i>Navigable Waters Protection Act</i> to stop the construction of the Bennett Dam or dispose of it once it was built. Furthermore, Canada did not have an obligation on the basis of Treaty No. 8 to ensure that the reserve would be protected from any damage resulting from the construction and operation of the Bennett Dam."	Rejected April 2001
3 Athabasca Denesuline Aboriginal and treaty harvesting rights north of 60th parallel <i>Recommended government acknowledge treaty rights</i>	December 1993 Supplementary report November 1995	August 1994	Government rejected recommendations made in December 1993 report; no response to November 1995 supplementary report	Rejected August 1994

Indian Claims Commission

<i>ICC Report, Nature of Claim and Recommendation</i>	<i>Date of Report</i>	<i>Date of Response</i>	<i>Nature of Response from Canada to Recommendation</i>	<i>Accepted/Settled/Other</i>
4 Bigstone Cree Nation Treaty land entitlement <i>Accepted with assistance of Commission</i>	March 2000	None required	Government accepted claim for negotiations	Accepted October 1998
5 Blood Tribe/Kainaiwa Akers surrender <i>Accepted with assistance of Commission</i>	June 1999	None required	Government accepted claim for negotiations	Accepted April 1998
6 Buffalo River Primrose Lake Air Weapons Range – loss of commercial and treaty harvesting rights <i>Part of claim recommended for negotiation</i>	September 1995	March 2002	Government rejected recommendations made in September 1995 report, stating: "compensation for commercial harvesting rights was not based on either Indian status or membership in an Indian Band; rather, it was to be paid to anyone who held a licence on the land which became the Primrose Lake Air Weapons Range"	Rejected March 2002
7 Canoe Lake Primrose Lake Air Weapons Range – breach of treaty and fiduciary obligations <i>Recommended claim be accepted for negotiation</i>	August 1993	March 1995	Government accepted the claim on a qualified basis – no breach of treaty or fiduciary obligation but need to improve economic and social circumstances	Settled June 1997 for \$13,412,333 in federal compensation and a requirement that the First Nation purchase between 2,786 hectares and 20,224 hectares of land



Annual Report 2002 - 2003

<i>ICC Report, Nature of Claim and Recommendation</i>	<i>Date of Report</i>	<i>Date of Response</i>	<i>Nature of Response from Canada to Recommendation</i>	<i>Accepted/Settled/Other</i>
8 Carry the Kettle Cypress Hills <i>Pursuant to supplementary mandate, recommended government recognize the Carry the Kettle First Nation's historical connection to the Cypress Hills and restore to the Assiniboine people their connection to the territory</i>	July 2000	January 2001	Government agreed with the Commission's conclusion that the claim did not disclose a lawful obligation on the part of the government under the Specific Claims Policy. The government rejected the Commission's recommendation to restore to the Assiniboine people their connection to the territory.	Rejected January 2001
9 Chippewas of Kettle and Stony Point 1927 surrender <i>Recommended claim be accepted for negotiation</i>	March 1997	NONE	NO RESPONSE FROM GOVERNMENT In 1998, the Supreme Court of Canada rendered its decision in the First Nation's appeal of the Ontario Court of Appeal's finding that the surrender was valid. The Supreme Court of Canada upheld the reasons of the lower court to find the surrender valid.	
10 Chippewa Tri-Council Coldwater-Narrows Reservation surrender <i>Accepted with assistance of Commission</i>	March 2003	None required	Government accepted claim for negotiation	Accepted July 2002
11 Chippewa Tri-Council Collins Treaty <i>Accepted with assistance of Commission</i>	March 1998	None required	Government accepted claim for negotiation	Settled December 1998 for \$565,000 in federal compensation

Indian Claims Commission

<i>ICC Report, Nature of Claim and Recommendation</i>	<i>Date of Report</i>	<i>Date of Response</i>	<i>Nature of Response from Canada to Recommendation</i>	<i>Accepted/Settled/Other</i>
12 Chippewas of the Thames Clench Defalcation claim <i>Accepted with assistance of Commission</i>	March 2002	None required	Government accepted claim for negotiation	Accepted June 2001
13 Chippewas of the Thames Muncey land claim <i>Settled with assistance of Commission</i>	December 1994	None required	Government accepted claim for negotiation	Settled January 1995 for \$5,406,905 in federal compensation
14 Cold Lake Primrose Lake Air Weapons Range – breach of treaty and fiduciary obligations <i>Recommended claim be accepted for negotiation</i>	August 1993	March 1995	Government accepted the claim on a qualified basis – no breach of treaty or fiduciary obligation but need to improve economic and social circumstances	Settled March 2002 for \$25.5 million in federal compensation
15 Cowessess QVIDA flooding claim <i>Recommended claim be accepted for negotiation</i>	February 1998	December 1998	Government accepted claim for negotiation	Accepted December 1998
16 Cowessess 1907 surrender <i>Recommended the portion of IR 73 surrendered in 1907 be accepted for negotiation</i>	March 2001	March 2002	Government rejected recommendations of March 2001 report, but will proceed to Phase II of this inquiry as previously agreed upon by the parties	Rejected March 2002



Annual Report 2002 - 2003

<i>ICC Report, Nature of Claim and Recommendation</i>	<i>Date of Report</i>	<i>Date of Response</i>	<i>Nature of Response from Canada to Recommendation</i>	<i>Accepted/Settled/Other</i>
17 Duncan's 1928 surrender <i>Recommended that the surrender of IR 151E be accepted for negotiation</i>	September 1999	June 2001	Government rejected recommendation made in September 1999 report, stating: "the Commission did not examine the terms of the proposed lease and, as a result, made no finding that the 1923 lease proposal was either more or less advantageous to the First Nation than a surrender"	Rejected June 2001
18 Eel River Bar Eel River Dam <i>Recommended claim not be accepted for negotiation</i>	December 1997	None required	No substantive response from government required	
19 Esketemc IR 15, 17 and 18 <i>Recommended that the disallowance or reduction of IR 15, 17 and 18 be accepted for negotiation</i>	November 2001	NONE	NO RESPONSE FROM GOVERNMENT	
20 Fishing Lake 1907 surrender <i>Settled with assistance of Commission</i>	March 1997	None required	Government accepted claim for negotiation after considering evidence revealed during ICC community session	Settled August 2001 for \$34.5 million in federal compensation

Indian Claims Commission

<i>ICC Report, Nature of Claim and Recommendation</i>	<i>Date of Report</i>	<i>Date of Response</i>	<i>Nature of Response from Canada to Recommendation</i>	<i>Accepted/Settled/Other</i>
21 Flying Dust Primrose Lake Air Weapons Range – loss of commercial and treaty harvesting rights <i>Part of claim recommended for negotiation</i>	September 1995	March 2002	Government rejected recommendations made in September 1995 report, stating: "compensation for commercial harvesting rights was not based on either Indian status or membership in an Indian Band; rather, it was to be paid to anyone who held a licence on the land which became the Primrose Lake Air Weapons Range"	Rejected March 2002
22 Fort McKay Treaty land entitlement <i>Recommended that Government owed outstanding entitlement of 3,815 acres to First Nation</i>	December 1995	April 1998	Government accepted claim for negotiation	Accepted April 1998
23 Friends of the Michel Society 1958 enfranchisement <i>No lawful obligation found, but recommended that government grant special standing to submit specific claims</i>	March 1998	October 2002	Government rejected recommendation made in March 1998 report, stating: "Canada has declined to accept the ISCC's recommendation to grant the Friends of the Michel Society special standing to advance specific claims"	Rejected October 2002
24 Gamblers Treaty land entitlement <i>Outstanding treaty land entitlement, if any, should be calculated based on an 1877 date of first survey</i>	October 1998	November 1998	Government accepted claim for negotiation	Accepted November 1998



Annual Report 2002 - 2003

<i>ICC Report, Nature of Claim and Recommendation</i>	<i>Date of Report</i>	<i>Date of Response</i>	<i>Nature of Response from Canada to Recommendation</i>	<i>Accepted/Settled/Other</i>
25 Homalco Aupe IR 6 and 6A – statutory or fiduciary obligation to obtain 80 acres of land from province of BC <i>Part of claim recommended for negotiation re: 10 acres</i>	December 1995	December 1997	Government rejected recommendations made in December 1995 report	Rejected December 1997
26 Joseph Bighead Primrose Lake Air Weapons Range – loss of commercial and treaty harvesting rights <i>Recommended claim not be accepted for negotiation</i>	September 1995	None required	No substantive response from government required	
27 Kahkewistahaw Treaty land entitlement <i>Recommended claim not be accepted for negotiation</i>	November 1996	None required	No substantive response from government required	
28 Kahkewistahaw 1907 surrender <i>Settled with assistance of Commission</i>	February 1997	December 1997	Government accepted claim for negotiation	Settled November 2002 for \$94.65 million in federal compensation

Indian Claims Commission

<i>ICC Report, Nature of Claim and Recommendation</i>	<i>Date of Report</i>	<i>Date of Response</i>	<i>Nature of Response from Canada to Recommendation</i>	<i>Accepted/Settled/Other</i>
29 Kawa catoose Treaty land entitlement <i>Recommended that government owed a shortfall of 8,576 acres to Band, subject to confirming research</i>	March 1996	April 1998	Government accepted claim for negotiation	Settled October 2000 for \$23 million in federal compensation
30 Key 1909 surrender <i>Recommended claim not be accepted for negotiation</i>	March 2000	None required	No substantive response from government required	
31 Lac La Ronge Treaty land entitlement <i>Recommended claim not be accepted for negotiation</i>	March 1996	None required	No substantive response from government required	
32 Lax Kw'alaams Demand for absolute surrender as precondition to settlement <i>Recommended that government exclude aboriginal rights from scope of surrender clause</i>	June 1994	NONE	NO RESPONSE FROM GOVERNMENT	
33 Long Plain Loss of use of treaty entitlement land <i>Recommended claim be accepted for negotiation</i>	March 2000	August 2000	Government rejected recommendations made in March 2000 report, on basis that the Commission did not address the implications of <i>Venne</i>	Rejected August 2000

Annual Report 2002 - 2003

<i>ICC Report, Nature of Claim and Recommendation</i>	<i>Date of Report</i>	<i>Date of Response</i>	<i>Nature of Response from Canada to Recommendation</i>	<i>Accepted/Settled/Other</i>
34 Lucky Man Treaty land entitlement <i>Recommended further research to establish the proper TLE population</i>	March 1997	May 1997	Government accepted recommendation: government research indicated no TLE shortfall; First Nation is reviewing and conducting its own research	Accepted May 1997
35 Mamaleleqala Qwe'Qwa'Sot'Enox McKenna-McBride applications <i>Recommended claim be accepted for negotiation</i>	March 1997	December 1999	Government rejected recommendations made in March 1997 report	Rejected December 1999
36 Micmacs of Gesgapegiag Pre-Confederation claim to 500-acre island <i>No substantive recommendations made because government agreed to reconsider merits of claim</i>	December 1994	None required	In March 1995, government acknowledged receipt of report and advised claim was in abeyance pending outcome of related court case	
37 Mikisew Cree Economic entitlements under Treaty 8 <i>Accepted with assistance of Commission</i>	March 1997	None required	Government accepted claim for negotiation	Accepted December 1996
38 Mistawasis 1911, 1917 and 1919 surrenders <i>Accepted with assistance of Commission</i>	March 2002	None required	Government accepted claim for negotiation	Settled September 2001 for \$16.3 million in federal compensation

Indian Claims Commission

<i>ICC Report, Nature of Claim and Recommendation</i>	<i>Date of Report</i>	<i>Date of Response</i>	<i>Nature of Response from Canada to Recommendation</i>	<i>Accepted/Settled/Other</i>
39 Moose Deer Point Pottawatomie rights <i>Recommended additional research</i>	March 1999	March 2001	Government rejected recommendations made in March 1999 report	Rejected March 2001
40 Moosomin 1909 surrender <i>Recommended claim be accepted for negotiation</i>	March 1997	December 1997	Government accepted claim for negotiation	Accepted December 1997
41 Muscowpetung QVIDA flooding claim <i>Recommended claim be accepted for negotiation</i>	February 1998	December 1998	Government accepted claim for negotiation	Accepted December 1998
42 Nakazdli Aht-Len-Jees IR 5 and Ditchbum-Clark Commission <i>Accepted with assistance of Commission</i>	March 1996	None required	Government accepted claim for negotiation	Accepted January 1996
43 'Namgis Comorant Island <i>Recommended claim be accepted for negotiation</i>	March 1996	May 2001	Government rejected recommendations made in March 1996 report	Rejected May 2001
44 'Namgis McKenna-McBride applications <i>Recommended part of claim be accepted for negotiation</i>	February 1997	December 1999	Government rejected recommendations made in February 1997 report	Rejected December 1999



Annual Report 2002 - 2003

<i>ICC Report, Nature of Claim and Recommendation</i>	<i>Date of Report</i>	<i>Date of Response</i>	<i>Nature of Response from Canada to Recommendation</i>	<i>Accepted/Settled/ Other</i>
45 Nekaneet Entitlement to treaty benefits claim <i>Accepted with assistance of Commission</i>	March 1999	None required	Government accepted claim for negotiation	Accepted October 1998
46 Ochapowace QVIDA flooding claim <i>Recommended claim be accepted for negotiation</i>	February 1998	December 1998	Government accepted claim for negotiation	Accepted December 1998
47 Pasqua QVIDA flooding claim <i>Recommended claim be accepted for negotiation</i>	February 1998	December 1998	Government accepted claim for negotiation	Accepted December 1998
48 Peguis Treaty land entitlement <i>Accepted with assistance of Commission</i>	March 2001	None required	Government accepted claim for negotiation	Accepted June 1998
49 Roseau River Anishinabe Medical aid <i>Recommended claim be accepted for negotiation</i>	February 2001	NONE	NO RESPONSE FROM GOVERNMENT	
50 Sakimay QVIDA flooding claim <i>Recommended claim be accepted for negotiation</i>	February 1998	December 1998	Government accepted claim for negotiation	Accepted December 1998

Indian Claims Commission

<i>ICC Report, Nature of Claim and Recommendation</i>	<i>Date of Report</i>	<i>Date of Response</i>	<i>Nature of Response from Canada to Recommendation</i>	<i>Accepted/Settled/Other</i>
51 Standing Buffalo QVIDA flooding claim <i>Recommended claim be accepted for negotiation</i>	February 1998	December 1998	Government accepted claim for negotiation	Accepted December 1998
52 Sturgeon Lake Agricultural lease <i>Accepted with assistance of Commission</i>	March 1998	None required	Government accepted claim for negotiation	Settled October 1998 for \$190,000 in federal compensation
53 Sumas IR 6 railway right of way <i>Recommended claim be accepted for negotiation</i>	February 1995	December 1995	Government rejected recommendations made in February 1995 report on grounds that claim involved issues before the courts in other cases	Rejected December 1995
54 Sumas 1919 surrender of IR 7 <i>Recommended joint research to assess fair market value of surrendered land</i>	August 1997	January 1998	Government willing to explore possibility of joint research to determine if evidence exists for a claim	
55 Walpole Island Boblo Island <i>Recommended First Nation resubmit its claim under the Comprehensive Claims Policy</i>	May 2000	None required	No substantive response required from government	



Annual Report 2002 - 2003

<i>ICC Report, Nature of Claim and Recommendation</i>	<i>Date of Report</i>	<i>Date of Response</i>	<i>Nature of Response from Canada to Recommendation</i>	<i>Accepted/Settled/ Other</i>
<p>56 Waterhen Lake Primrose Lake Air Weapons Range – loss of commercial and treaty harvesting rights <i>Recommended part of claim be accepted for negotiation</i></p>	September 1995	March 2002	Government rejected recommendations made in September 1995 report, stating: "compensation for commercial harvesting rights was not based on either Indian status or membership in an Indian Band; rather, it was to be paid to anyone who held a licence on the land which became the Primrose Lake Air Weapons Range"	Rejected March 2002
<p>57 Young Chipeewayan Unlawful surrender claim <i>Recommended that claim not be accepted for negotiation but that further research be undertaken regarding the surrender proceeds</i></p>	December 1994	February 1995	Funding proposal submitted by Band for research and consultation under consideration by Department of Indian Affairs and Northern Development	



Indian Claims Commission

Summary Of Claims As Of March 31, 2003

In 2002-2003, the Commission released two reports. A summary of the findings and recommendations made by the Commission in each inquiry is set out below.

Inquiry Reports, 2002-2003

Alexis First Nation

TransAlta Utilities rights of way, Alberta

The Alexis First Nation inquiry involved an examination of how the Crown's fiduciary obligations were discharged in the granting of three rights of way over the Alexis Indian Reserve (IR) 133 to Calgary Power (now TransAlta Utilities) in 1959, 1967 and 1969. These rights of way were to be used for electrical distribution and transmission lines.

The First Nation challenged the propriety of the three agreements negotiated by Canada on its behalf. Generally, the Commission made a factual finding that, in the 1950s and 1960s, the First Nation was vulnerable and dependent upon Canada to represent its interests in the negotiations with

Calgary Power. The First Nation was not compensated for the 1959 electrical distribution line that brought electricity to the Alexis Day School and argued that this lack of compensation was a breach of treaty. The Commission found that the First Nation did not advance this argument with sufficient detail to enable the Commission to make a decision. Further, the Commission found that Canada had no fiduciary obligation to obtain compensation for the First Nation in these circumstances.

The First Nation received \$195 in compensation for the 1967 distribution line; this line was originally intended to service a



Annual Report 2002 - 2003

community outside the reserve but it ultimately serviced the First Nation as well. The Commission decided that, in the absence of evidence that \$195 was patently unreasonable, Canada did not have an obligation to obtain higher compensation for the First Nation.

The First Nation placed the main focus of its claim on the 1969 right of way, granted for a transmission line to service the province of Alberta, for which the First Nation received a lump sum payment of \$4,296. The First Nation asserted that Canada breached its fiduciary obligations by failing to obtain annual payments for the First Nation, failing to advise the First Nation of its taxation powers contained in the agreement, and failing to assist the First Nation to realize such tax revenue. Essentially, the Commission found that Canada breached its fiduciary obligation by failing to prevent an exploitative bargain in approving the transaction, which it knew contained inadequate compensation terms. The Commission further found that, given the inadequacy of the compensation, the Crown had a fiduciary duty to explain to the First Nation its authority to tax Calgary Power, which the

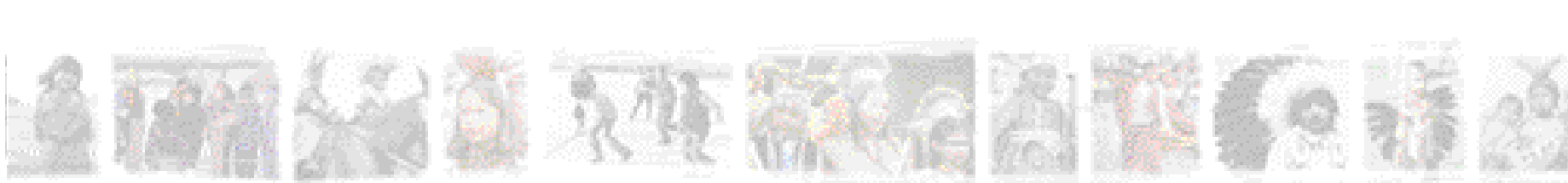
Crown failed to do. The Commission also found that, in these circumstances, Canada had a duty to use the First Nation's taxation authority to obtain tax revenues for the First Nation, which Canada failed to do.

Ultimately, the Commission recommended that the claim of the Alexis First Nation be accepted for negotiation under Canada's Specific Claims Policy.

Chippewa Tri-Council

Coldwater-Narrows reservation, Ontario

This pre-Confederation claim was brought forward by the Beausoleil First Nation, the Chippewas of Georgina Island First Nation and the Chippewas of Mnjikaning (Rama) First Nation, jointly constituting the Chippewa Tri-Council. In the claim, the First Nations denied the validity of the November 1836 surrender of their Coldwater-Narrows Reserve, situated in the area between Matchedash Bay on Lake Huron and Lake Simcoe. The Chippewa Tri-Council contended that undue and unfair pressure by Crown authorities had prevented their ancestors from fully understanding the



Indian Claims Commission

nature and meaning of the treaty they subsequently signed and that the Crown had thus breached the fiduciary obligation it owed to the Chippewa Tri-Council.

In November 1991, the Chippewa Tri-Council submitted its claim to the Department of Indian Affairs and Northern Development. In April 1996, the claim was rejected on the grounds that the Chippewa Tri-Council had failed to demonstrate an outstanding lawful obligation on the part of the Government of Canada.

In August 1996, the Chippewa Tri-Council requested that the Commission conduct an inquiry into the rejection of its claim. Two planning conferences were held later that year, in November and December 1996, at which the parties explained their positions and agreed that additional research was needed. In December 1997, a third planning conference was held, at which time Canada and the Chippewa Tri-Council dealt with questions arising from the additional research. The year 1998 saw two more planning conferences and a resolution of the claim seemed near. When a sixth

planning conference finally took place in October 2001, and did not produce the progress anticipated by the Chippewa Tri-Council, they called for a full inquiry into the claim.

At a pre-hearing conference (in fact, a seventh planning conference) in February 2002, Canada's representative explained that the claim was still under consideration by the Minister. As a next step in the inquiry called for by the Chippewa Tri-Council, the Commission planned a staff visit to the First Nations' communities. At this juncture, the parties jointly decided to hold an eighth planning conference to review Canada's position on the claim. At that meeting, in March 2002, Canada agreed to accept the claim for negotiation. In March 2003, the Commission issued its report on this inquiry.



Annual Report 2002 - 2003

Inquiries

Blood Tribe/Kainaiwa

Big Claim, Alberta

In January 2003, the Blood Tribe requested that the Commission conduct an inquiry into the rejection of its claim. The First Nation alleges that Canada failed to fulfill its obligations under an 1880 land exchange agreement and that an 1884 surrender of reserve lands pursuant to Treaty 7 was invalid. The First Nation also challenges the base payroll chosen for calculating its treaty land entitlement. The first planning conference will be scheduled in the 2003-2004 fiscal year.

Canupawakpa Dakota First Nation

Turtle Mountain surrender, Manitoba

In May 2000, the Canupawakpa Dakota First Nation requested that the Commission conduct an inquiry, asserting that the 1909 surrender of the Turtle Mountain Indian Reserve was invalid. The First Nation alleges coercion and undue influence by governmental officials, as well as non-compliance with provisions of the 1906 *Indian Act* in respect to the surrender and

disposition of reserve land. Planning conferences were held in October 2000, February 2001 and July 2001 to define the issues and discuss research questions. In March 2001, the Commission, with the agreement of Canupawakpa Dakota and the government, welcomed the participation of the Sioux Valley Dakota First Nation in the inquiry, since some of its ancestors lived at Turtle Mountain prior to the surrender in 1909.

Community sessions were held in December 2001 at Sioux Valley Dakota First Nation reserve and in January 2002 at Canupawakpa Dakota First Nation reserve. Written submissions from both parties were completed in the summer of 2002, oral sessions were held in October and November 2002. The Commission's findings will be forthcoming.

Carry the Kettle First Nation

1905 surrender, Saskatchewan

The First Nation claims that a surrender of 5,760 acres of the Assiniboine reserve taken in 1905 is invalid. The First Nation maintains that the Department of Indian Affairs took no record of a band membership vote and that there is insufficient evidence of the outcome of the surrender meeting.



Indian Claims Commission

The First Nation requested that oral arguments be postponed to await completion of a research study it commissioned. In August 1998, the First Nation requested that the claim be put in abeyance until the Commission completed its inquiry into the Cypress Hills claim.

The Carry the Kettle – Cypress Hills inquiry report was released by the Commission in July 2000. In April 2001, the Commission wrote to the First Nation requesting confirmation of its intention to resume the inquiry into the 1905 surrender. The First Nation has not yet responded.

Conseil de Bande de Betsiamites

Highway 138 and the Betsiamites reserve, Quebec

This claim alleges that neither the federal government nor the provincial government obtained a right of way for the construction of a road (Highway 138) through the Betsiamites reserve, and that band funds were illegitimately used for the construction and maintenance of this road. In June 2000, the First Nation asked the Commission to conduct an inquiry into the rejection of this claim. In May 2002, the

Commission heard additional oral evidence, and in July 2002, Canada submitted further documentary evidence. The Commission received the First Nation's written submission in September 2002. Canada then requested that the inquiry be placed in abeyance while it reconsiders the First Nation's claim. The First Nation agreed to this and Canada's review of its position is now pending.

Conseil de Bande de Betsiamites

Bridge over the Betsiamites River, Quebec

In June 2000, the Conseil de Bande de Betsiamites asked the Commission to conduct an inquiry into the rejection of this claim, which alleges that no right of way was obtained for the construction of a bridge on the Betsiamites reserve. In May 2002, the Commission heard additional oral evidence, and in July 2002, Canada submitted further documentary evidence. The Commission received the First Nation's written submission in September 2002. Canada then requested that the inquiry be placed in abeyance while it reconsiders the First Nation's claim. The First Nation agreed to this and Canada's review of its position is now pending.



Annual Report 2002 - 2003

Cowessess First Nation

1907 surrender – Phase II, Saskatchewan

In October 2002, the First Nation formally requested that the Commission resume Phase II of this inquiry. Phase II deals with a breach of pre-surrender fiduciary duties, the meaning of majority vote and the question of band membership at the time of the surrender. A planning conference was held in January 2003.

Cumberland House Cree Nation

Claim to IR 100A, Saskatchewan

In February 2000, the First Nation requested that the Commission conduct an inquiry to protect its interests in Cumberland IR 100A, which is also the subject of a claim before the Commission by the James Smith Cree Nation. Planning conferences were held in May 2000 and March 2001, and much of that year was spent in discussions with James Smith Cree Nation representatives regarding the mutual sharing of documents.

In June 2001, in response to the Cumberland House application to intervene in the James Smith – Peter Chapman 100A inquiry, the Commission panel decided against merging the two inquiries, but rather to convene a single fact-finding process and to include both the James Smith Cree Nation and the Cumberland House Cree Nation, as well as Canada, as full participants in that process. The joint fact finding is to apply to both the documentary records and the oral evidence gathered at community sessions. Once that process is complete, the Commission will convene separate oral argument sessions.

Following the Cumberland House Cree Nation community session in November 2001, and the James Smith Cree Nation community session in June 2002, both First Nations undertook additional research and timetables were set for the final phase of the inquiry.



Indian Claims Commission

James Smith Cree Nation

Chakastaypasin IR 98, Saskatchewan

The First Nation alleges that the federal government unlawfully surrendered and disposed of the Chakastaypasin reserve. In December 1998, the government rejected the claim, stating that by 1898, all Chakastaypasin Band members had moved off IR 98, their names had been added to other bands' paylists, and as a result, the Chakastaypasin Band had ceased to exist. The government argues that, under these circumstances, no surrender under the *Indian Act* was required and the government had the authority to dispose of the abandoned reserve through the Crown's prerogative power, without compensation to the former Chakastaypasin Band members. Nevertheless, the Crown argued that the government did try to comply with the *Indian Act* surrender provisions by gathering together the former band members eligible to vote, and placed the sale proceeds to the credit of the bands to which Chakastaypasin Band members had transferred.

The First Nation requested that the Commission conduct an inquiry into the rejection of this claim in May 1999. Since that

time, a total of seven planning conferences have been held to define issues and deal with research questions. As well, the Commission held a full community session in January 2003.

There have been a number of meetings and conference calls to try to determine whether the various First Nations who accepted membership transfers from Chakastaypasin people in 1898 (the other Host Bands) will participate in the inquiry, and if so, to what degree. After a hearing on the issue in August 2002, the panel ruled in November 2002 that the other Host Bands would be invited to participate, but not as parties to the inquiry. They will be allowed to present evidence, convene a community session, reply to Canada and James Smith Cree Nation's written submissions and participate in oral arguments.

In March 2003, Canada communicated its partial acceptance of one small aspect of the claim – the pre-surrender and post-surrender obligations regarding Sugar Island, a part of Chakastaypasin reserve that was not sold until nearly 50 years after the surrender.



Annual Report 2002 - 2003

James Smith Cree Nation

Peter Chapman IR 100A, Saskatchewan

The First Nation asserts that the 1902 surrender of IR 100A was invalid and that the subsequent sale of the land was in breach of the federal government's fiduciary duty to the First Nation. The government rejected the claim in March 1998, asserting that the Peter Chapman 100A Band consented to the surrender. The First Nation requested that the Commission conduct an inquiry into the rejection of this claim in May 1999. In November 1999, the government challenged the Commission's mandate to consider some aspects of this claim, but, after receiving submissions from both parties, the panel rejected this challenge in May 2000.

A total of eight planning conferences have been held to define the issues and discuss research requirements. As well, the Commission convened a second community session in June 2002. Following the community session, the First Nation completed additional research and timetables were set for the final phase of the inquiry.

James Smith Cree Nation

Treaty land entitlement, Saskatchewan

In 1884, under Treaty 6, the First Nation had 17,792 acres set aside as reserve land. The First Nation claims that it did not receive sufficient land at that time and that it is owed additional acreage under the terms of the treaty. In 1984, the government acknowledged that the First Nation did not receive all the land to which it was entitled at the time the reserve was first surveyed, but argued that the land gained in 1902 when the Cumberland Band amalgamated with the James Smith Cree Band more than made up the difference. In November 1999, the government challenged the Commission's mandate to conduct an inquiry into certain aspects of this claim and, in May 2000, the Commission panel ruled that the inquiry could proceed. Planning conferences were held in October 2000, December 2000 and January 2001 to discuss issues, research questions and general scheduling matters. Both the government and the First Nation conducted their own payroll research, according to specific claims guidelines, which had been revised in October 1998. This research was completed in early 2003.



Indian Claims Commission

Following a community session in October 2002, both parties undertook to deliver additional materials.

Kluane First Nation

Kluane Game Sanctuary and Kluane National Park Reserve creation, Yukon

In October 1999, the First Nation requested that the Commission conduct an inquiry. In January 2000, the federal government challenged the Commission's authority to hold an inquiry arguing that the claim falls under the federal Comprehensive Claims Policy and not within the jurisdiction of the Commission. In December 2000, the Commission rejected the government's challenge and ruled that the inquiry should proceed. In March 2001, the government advised the Commission that negotiations with the First Nation had begun in an attempt to accept this claim under the Comprehensive Claims Policy. The file was put into abeyance while the parties pursued this path.

In August 2001, the First Nation asked the Commission to reactivate the inquiry. However, in October 2001, Canada advised the Commission that it was withdrawing from the

inquiry process because the claim did not fall within its Specific Claims Policy.

In April 2002, the First Nation advised the Commission that its claim had been tentatively accepted by Canada within the federal government's Comprehensive Claims Policy. The First Nation requested that the inquiry be put into abeyance pending the ratification of a final agreement.

Mississaugas of the New Credit First Nation

Crawford Purchase, Ontario

The First Nation claims that compensation was never paid for lands that the government took improperly in 1783. It also alleges that the government breached its fiduciary duty and the First Nation suffered damages from misrepresentation and equitable fraud in the government's failure to compensate the First Nation for its interest in the land.

A planning conference was held in July 1998. In September 1998, the First Nation requested that the claim be put in abeyance while its Toronto Purchase claim is under consideration.



Annual Report 2002 - 2003

Mississaugas of the New Credit First Nation

Gunshot Treaty, Ontario

The First Nation claims damages for loss of certain lands and rights to fish, hunt and trap in the area east of Toronto. It argues that these damages are a result of the non-binding nature of the 1788 Gunshot Treaty, under which the land was surrendered, and the government breached its fiduciary duty to protect the First Nation in its possession of these lands.

The Commission held a planning conference in July 1998. In September 1998, the First Nation requested that the claim be put in abeyance while its Toronto purchase claim is under consideration.

Mississaugas of the New Credit First Nation

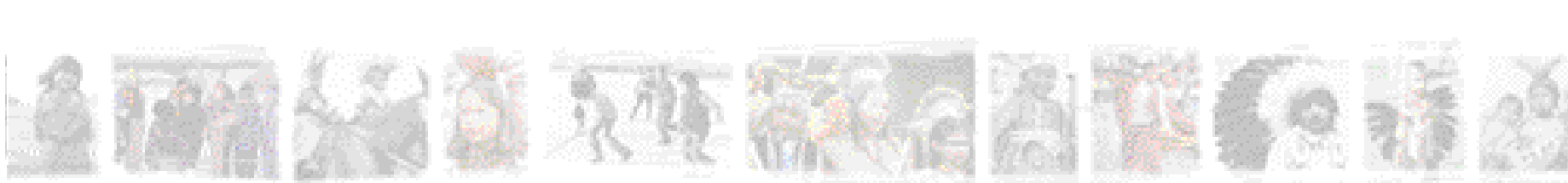
Toronto Purchase, Ontario

The First Nation claims that the federal government, in a breach of trust, failed to explain adequately the circumstances around the purchase of traditional land in 1787 (known as the Toronto Purchase) and failed to inform the First Nation that the 1787 surrender was invalid. The First

Nation also maintains that a second surrender in 1805, intended by the government to ratify the 1787 purchase and validate the surrender, included more land than was originally agreed to by the First Nation in the 1787 surrender. The 1805 surrender included the Toronto Islands, which the First Nation asserts were explicitly excluded from the 1787 surrender. The First Nation never accepted the boundaries laid out under the 1805 surrender.

A total of 11 planning conferences have been held since the First Nation asked the Commission to inquire into the rejection of this claim in July 1998. Through 1999, the government and the First Nation worked together to complete the research required, hiring independent researchers and agreeing on terms of reference. The First Nation's legal counsel completed a revised legal submission in the year 2000, and steps were taken for the claim to proceed through the specific claims system.

As of March 31, 2003 the First Nation was awaiting the response of the Minister of Indian Affairs and Northern Development to this claim.



Indian Claims Commission

Ocean Man First Nation

Treaty land entitlement, Saskatchewan

In March 1994, the First Nation requested an inquiry into this claim, alleging that the federal government still owes the Ocean Man First Nation land under the terms of Treaty 4 (1874). Six planning conferences have been held since 1994. In 1999, in light of changes in the federal treaty land entitlement (TLE) policy resulting from the Commission's Fort McKay and Kawacatoose findings, new research was conducted to determine if there was an outstanding TLE obligation. In October 1999, the government provided a payroll analysis indicating a shortfall of treaty land under the existing TLE policy. However, in May 2000, before Canada could complete its review process, the First Nation filed a claim in the courts against the federal government relating to issues not within the scope of the Commission's inquiry which may or may not have an impact on the current TLE claim. Canada took the position that the issues in the litigation were incompatible with those of the TLE claim and refused to complete its review until the litigation was resolved.

In April 2002, the First Nation requested that the inquiry be placed in abeyance.

Opaskwayak Cree Nation

Streets and lanes claim, Manitoba

In June 2002, the First Nation requested that the Commission conduct an inquiry into the rejection of its claim, alleging that band funds were misused to improve lands that no longer had reserve status. Planning conferences were held in December 2002 and February 2003 to define the issues related to this inquiry.

Pasqua First Nation

1906 surrender, Saskatchewan

The First Nation alleges that the 1906 surrender of IR 79 was invalid and that the federal government breached its fiduciary obligations to the Band, both in the taking of the surrender and in the subsequent sale and administration of sale proceeds. Following the government's rejection of the claim in July 1997, the First Nation conducted additional research and submitted a supplementary legal submission in March 2000.



Annual Report 2002 - 2003

The First Nation requested that the Commission conduct an inquiry into the rejection of this claim in November 2002, and a planning conference was scheduled for April 2003.

Paul Indian Band

Kapasawin townsite, Alberta

The First Nation submitted a claim to the Specific Claims Branch in June 1996, regarding the mismanagement of the sale of IR 133B. The claim was reviewed and accepted for negotiation in July 1998. The First Nation did not agree with the basis for negotiation and in October 2001, requested that the Commission hold an inquiry regarding the criteria used by the government for determining compensation.

In April 2002, a planning conference was held with Canada informing the parties that the claim had been referred to the Department of Justice for its opinion. After a series of conference calls in the summer of 2002, the parties agreed to adjourn the inquiry until the fall of 2003 and await Canada's findings.

Peepeekisis First Nation

File Hills Colony, Saskatchewan

This claim alleges that William Morris Graham, an agent of the Department of Indian Affairs, breached obligations to the Peepeekisis Band by establishing a farming colony for industrial school graduates on the Peepeekisis reserve in the early 1900s and transferred residential school graduates as colonists into the Peepeekisis Band. The First Nation initially approached the Commission in November 1997, but only requested an inquiry in March 2001, asking the Commission to consider the Minister's failure to respond to its claim as a rejection.

In April 2002, a planning conference was held with the full participation of Canada. Meanwhile documents and exhibits were compiled. In September 2002, the Commission heard testimony from Peepeekisis First Nation elders. From October 2002 to January 2003, the parties made their written submissions. In February 2003, the Commission accepted additional evidence submitted by Canada. Supplementary submissions were made by the parties to address this new evidence.



Indian Claims Commission

Roseau River Anishinabe First Nation

1903 surrender, Manitoba

This claim questions the validity of the 1903 surrender of a portion of the Roseau River reserve and the management of the subsequent land sales. The First Nation requested that the Commission conduct an inquiry in May 1993. At a planning conference held in December 1993, both the government and the First Nation agreed that additional research was required and jointly engaged an independent contractor, under the management of the Commission. On the basis of this research, counsel for the First Nation submitted a legal analysis to Canada. In July 2001, the Minister of Indian Affairs formally rejected the claim.

A planning conference was held in April 2002. In May 2002, the First Nation's legal counsel submitted a consolidated legal opinion and the parties agreed upon the legal issues. In July and September 2002, community sessions were held on the Roseau River reserve. In January 2003, terms of reference were finalized for an additional joint research project.

Sandy Bay Ojibway First Nation

Treaty land entitlement, Manitoba

In April 1998, the First Nation requested an inquiry into this claim alleging that it did not receive sufficient land under the terms of Treaty 1. Shortly after submitting its rejected claim to the Commission, the First Nation restated its legal arguments because the original claim had been filed in November 1982 without the benefit of legal counsel. In November 1998, the government challenged the Commission's mandate to inquire into this claim, on the basis that the restatement essentially represented a new claim. In June 1999, the Commission panel ruled that the inquiry would proceed. The First Nation contends that at the date of first survey, the government allotted a certain amount of land for a particular population, including a portion of non-arable land that should not have been counted in its treaty land entitlement. The First Nation maintains that subsequent additions of land in 1930 and 1970 were not given by the government in fulfilment of its treaty land entitlement obligation towards the First Nation and should therefore not be counted in the TLE calculation.



Annual Report 2002 - 2003

Planning conferences were held in August and November 2002 during which the issues of this claim were discussed. During the winter of 2002-2003, a joint working group, including representatives of the First Nation, Canada, and the Commission, was formed to discuss a payroll analysis of the First Nation. Further planning conferences are scheduled.

Siksika First Nation

1910 surrender, Alberta

This is a multi-faceted claim involving irregularities in the surrender vote; the reservation of coal, oil, and gas rights from the 1910 land surrender; and the reduction and subsequent discontinuance of perpetual rations from the proceeds of the sale of surrendered lands. The claim was first submitted to the Department of Indian Affairs in 1985. The First Nation and the government conducted a series of cooperative research studies, and by 1995 the claim was submitted to the Department of Justice for its review.

By November 2001, Canada had failed to produce an opinion and the First Nation requested that the

Commission conduct an inquiry. In March 2002, a planning conference was held in which the parties agreed to begin the initial stages of the inquiry process (document compilation) while Canada finalized its legal review. Two planning conferences were held in May 2002 and March 2003. In the first planning conference, the inquiry was put into abeyance by agreement of all the parties pending the completion of Canada's legal review. During the March 2003 planning conference, the First Nation introduced new documentation that may have an impact upon Canada's legal review.

Stanjikoming First Nation

Treaty land entitlement, Ontario

In July 1999, the First Nation requested an inquiry, arguing that the federal government's lack of response to its TLE claim amounted to a "constructive rejection." The claim involves an alleged shortfall of 1,408 acres of treaty land. In February 2000, the government stated that it would file a mandate challenge to the Commission's inquiry, but this was set aside when the parties agreed to discuss alternatives to



Indian Claims Commission

further this claim. In March 2000, the government proposed to review the claim and provide the First Nation with a preliminary position at an early date. In April 2000, the First Nation asked the Commission to put the inquiry in abeyance.

In 2002-2003, Canada proposed 1908 as date of first survey. A payroll analysis and additional flooding research will be conducted. In 2002-2003, five conference calls were held to discuss the progress of the claim. In January 2003, the parties reaffirmed their desire to have the Commission continue its role as facilitator.

Stó:lō Nation

Douglas reserves, British Columbia

Fourteen separate Bands within the Stó:lō Nation are bringing this claim forward. They are the Aitchelitz, Kwantlen, Kwaw-Kwaw-Apilt, Lakahahmen, Matsqui, Scowlitz, Skowkale, Skwah, Skway, Soowahlie, Squiala, Sumas, Tzeachten, and Yakweawkwoose Bands.

This claim alleges that, in 1864, James Douglas, Governor of the Colony of British Columbia, established reserves for the

various bands of the Stó:lō Nation, reserves that were subsequently illegally reduced, and that, when British Columbia entered Confederation in 1871, Canada inherited the duty to rectify this situation. In July 2000, the Stó:lō Nation made an initial request, confirmed a year later, for a Commission inquiry. Scheduling of the first planning conference has been postponed until the conditions and nature of the parties' participation in this inquiry are determined. In the meantime, documentary evidence is being gathered and compiled by the Commission.

Sturgeon Lake First Nation

1913 surrender, Saskatchewan

In August 1996, the First Nation requested that the Commission conduct an inquiry into this claim on the grounds of irregularities regarding the surrender vote of 1913. At issue is whether a majority of eligible voters participated in a surrender vote in 1913 and whether they "habitually resided" on the reserve at the time of the vote. In September 1996, the First Nation submitted additional research to the Commission in support of its claim. In December 1996, the



Annual Report 2002 - 2003

government began supplementary confirming research and the inquiry was placed in abeyance. In May 1998, the government advised the First Nation that no lawful obligation arises out of the 1913 surrender. In June 1998, the First Nation asked the Commission to resume the inquiry. However, in April 1999, the First Nation advised the Commission that it was conducting interviews with the elders of the First Nation in relation to the claim and subsequently asked the Commission to put the inquiry in abeyance.

In November 2002, the First Nation asked the Commission to resume the inquiry. A planning conference was held in March 2003 at which the issues were discussed.

Taku River Tlingit First Nation

Wenah specific claim, British Columbia

In June 2002, the First Nation requested an inquiry into the rejection of this claim, which involves the creation of a townsite on traditional Wenah lands. A planning conference was scheduled for December 2002, but was cancelled due to Canada's decision not to participate in the inquiry. Canada maintains that the claim does not fit the criteria of a specific

claim and that it deals with aboriginal title. Two conference calls have been conducted with the First Nation, Canada, and representatives from the Federal Treaty Negotiation Office to determine if these issues were currently part of comprehensive claims negotiations. The Commission is attempting to proceed with the inquiry.

Williams Lake First Nation

Village site, British Columbia

In June 2002, the First Nation requested that the Commission conduct an inquiry into this claim, alleging that, by permitting third parties to pre-empt settlements that were occupied by the First Nation and reserved from pre-emption, the Colonial government of British Columbia breached its statutory and fiduciary obligations to the Band, a breach for which the federal government is now liable.

A planning conference was held in December 2002. During a conference call in February 2003, the parties agreed upon a joint statement of issues. A community session is planned for summer 2003.



Indian Claims Commission

Wolf Lake First Nation

Reserve lands, Quebec

One of the few landless First Nations in Canada, Wolf Lake alleges that the federal government has not fulfilled its fiduciary duty or commitment to provide reserve lands. In January 2002, the First Nation requested that the Commission conduct an inquiry. In March 2002, this inquiry was placed in abeyance at the request of the parties, and the Commission was asked to facilitate and monitor Canada's review of the claim.

In July 2002, Canada sent the First Nation a letter formally rejecting the claim, and in September a planning conference was held during which the First Nation submitted documentation to Canada and the Commission. After a series of research meetings and planning conferences, the parties agreed on the manner of proceeding. The First Nation will submit, without prejudice, a draft claim based on a limited portion of its evidence relevant to a specific time period. Canada will then provide feedback on this draft before the First Nation submits a final version of its claim.



Annual Report 2002 - 2003

Summary Of Mediation And Facilitation As Of March 31, 2003

Under its mediation mandate, the Indian Claims Commission works to help the parties in a dispute arrive at a settlement that is agreeable to both. In 2002-2003, the Commission issued one mediation report. A summary of the Commission's mediation activities is set out below.

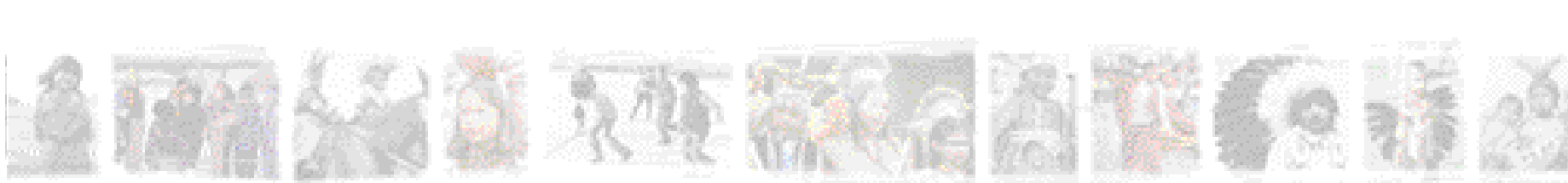
Mediation Reports, 2002-2003

Kahkewistahaw First Nation

1907 surrender, Saskatchewan

This claim resulted from the 1907 surrender of 33,281 acres – nearly three-quarters – of the Kahkewistahaw First Nation's reserve. The 13,535 acres left to the Band after the surrender were unsuitable for cultivation. The claim has been in negotiation since late 1998, considerable time being spent completing the land appraisals and loss-of-use studies. In addition to acting as facilitator/mediator for the negotiations, the Commission also acted as study coordinator. The loss-of-use studies formed the basis for a negotiated settlement agreement. By the end of the 2001-

2002 fiscal year, Canada had received its mandate and made a formal offer to the First Nation, which was accepted. During 2002-2003, work has focussed on drafting and finalizing the settlement and trust agreements. In November 2002, the community voted to ratify these agreements. The date for a signing ceremony has yet to be established.



Indian Claims Commission

Mediation And Facilitation

Blood Tribe/Kainaiwa

1889 Akers surrender, Alberta

Blood Indian Reserve (IR) 48 was first surveyed in 1882-83. In 1884, David Akers requested 330 acres of homestead lands, which officials of the day determined were not part of the reserve, and letters patent were issued. It was subsequently discovered that the lands were indeed part of the reserve, and a surrender was purportedly taken in 1889 for 440 acres.

This claim, involving the 440 acres surrendered in 1889, was brought before the Commission in 1996. Two years later, the Government of Canada accepted the claim for negotiation. Since 1999, the Commission has been monitoring land-use studies and providing facilitation and mediation services at the negotiation table.

The 2002-2003 fiscal year has seen the completion of the oil and gas research, as well as serious discussions on the amount of compensation and terms of a potential

settlement. By the end of February 2003, the elements of an offer had been agreed upon; however, several outstanding issues remained for the negotiating parties to work out.

Chippewa Tri-Council

Coldwater-Narrows reservation, Ontario

The Coldwater-Narrows reservation consisted of a strip of land, 14 miles long, averaging one and one-half miles wide, running from the Narrows at Lakes Couchiching and Simcoe, westward to Matchedash Bay, comprising an area of approximately 10,000 acres. The Chippewa Tri-Council, composed of the Beausoleil First Nation, Chippewas of Georgina Island First Nation and Chippewas of Mnjikaning (Rama) First Nation, claimed that the surrender in 1836 was not consistent with the instructions set out in the *Royal Proclamation of 1763*.

Originally submitted to Canada in November 1991, the claim was not officially accepted for negotiation until July 2002 and only then following an inquiry conducted by the Commission into Canada's 1996 rejection of the claim. The



Annual Report 2002 - 2003

Commission provided facilitation for the planning conferences from the outset and as a result of its involvement in that process, in July 2002, each of the three First Nations provided a Band Council Resolution requesting that the Commission provide mediation/facilitation services for the negotiation of the claim.

Since negotiations began in October 2002, the negotiation process has included discussions of the negotiation protocol, the mediation/facilitation protocol, communications plan, compensation criteria, heads of damage, future additions to reserve and the development of maps to identify and quantify the claim lands. By the end of the year, the table had begun discussing loss-of-use studies.

Chippewas of the Thames

Clench defalcation, Ontario

This claim dates back some 150 years to the mid-19th century. The Chippewas of the Thames claim that moneys owed to the First Nation from the sale of surrender lands were wrongfully appropriated around 1854 by Joseph Brant Clench, an officer

with the Indian Department who had been appointed agent for the sale of lands in southern Ontario in 1845.

The claim was accepted for negotiation in June 2001 and negotiations began in November of that same year. Issues facing the negotiating parties included identifying the date and amount of the defalcation and agreeing upon an approach to valuing nominal amounts in current dollars. By the end of 2002-2003, agreement had been reached on the amount of the settlement, and the parties had turned to negotiating the settlement agreement, the trust agreement, and the ratification voting guidelines. It is anticipated that a ratification vote will take place in early fall 2003.

Cote First Nation

Pilot project, Saskatchewan

This project relates to 13 transactions involving the Cote First Nation's lands, beginning with the railway taking in 1903 and ending in the reconstitution of reserve lands in 1963. Originally brought to the Commission as an inquiry, the project changed in approach to allow the negotiating parties



Indian Claims Commission

to work together on the many interrelated transactions and issues. The mediation unit of the Commission has facilitated the workings of the pilot project since its inception in 1997.

Considerable joint research has taken place with the result that 13 potential claims were identified. The complexity and interrelatedness of the claims led the parties to group them into bundles. Canada's legal counsel is currently working on a legal opinion for the 1905, 1907, 1913 and 1914 surrender claims.

Cote, Keeseekoose and Key First Nations

Pelly Haylands, Saskatchewan

This claim involves 12,800 acres northeast of Regina, known as the Pelly Haylands, which were set aside as a reserve in 1893 for the Cote, Keeseekoose and Key First Nations. Canada accepted the claim for negotiation acknowledging that it breached a lawful obligation by disposing of part of the Pelly Haylands in 1898 and 1905 without a surrender.

As was the case in the last fiscal year, most of this fiscal year was spent on study-related pursuits. Negotiations were stalled for a period of approximately six months due to band

council elections in all three communities and study-related funding issues. By the end of March 2003, the consultants had submitted their draft final reports for the parties' review, and in some cases had started working on the final reports. At the negotiation table, discussions continued on a number of settlement issues including communications, release and indemnity, and ratification.

Fort William First Nation

Pilot project, Ontario

Since 1998, the Commission has been participating in a pilot project to facilitate the resolution of a number of specific claims identified through independent research. The claims involve surrenders and expropriations of reserve lands for settlement, railway right-of-way, mining, and military purposes.

The Rifle Range Claim was the first of Fort William First Nation's eight claims to be jointly submitted to the Department of Justice. It was accepted by Canada for negotiation in July 2000. The claim involves a parcel of land surrendered in 1907 for a rifle range. In 1914, at the local



Annual Report 2002 - 2003

militia's request, land initially surrendered was exchanged to ensure that targets fronted on Mount McKay. After more than 18 months of negotiation, agreement on compensation was reached and the formalities of settlement begun.

The Grand Trunk Pacific Railway claim relates to the expropriation of approximately 1,600 acres of the reserve's best land along the river and the subsequent relocation of the Indian village. Approximately 1,100 acres of railway lands were subsequently returned to the First Nation. Canada had accepted the claim for negotiation prior to the end of the 2002-2003 fiscal year; however, negotiations have not yet begun.

Remaining claims include a mining claim, a hydro right-of-way claim, a timber claim, the Chippewa Park and Neebing surrender claims, and a water pipeline claim. At the end of 2002-2003, Canada was continuing its legal review on the Neebing surrender claim with an opinion anticipated by late June 2003; in addition, the hydro lands were to be added to the reserve, and all remaining joint research had been completed on the other claims.

Keeseekoowenin First Nation

1906 lands claim, Manitoba

This claim concerns a portion of IR 61A known to the First Nation as the "1906 lands," acquired by the Department of Indian Affairs in exchange for land surrendered in Riding Mountain IR 61, which is the Keeseekoowenin Band's main reserve. In 1906, these lands were wrongly included in a description of the Riding Mountain Forest Reserve, established by the *Dominion Forest Reserves Act*. In 1935, Canada forcibly removed the First Nation from the 1906 lands when the Riding Mountain National Park was established.

Negotiations began in 1997 and in April 2002, the Commission's mediation unit became involved. The Commission has employed a "shuttle mediation" approach (the mediator/facilitator meets with the negotiating parties individually to ascertain their positions to determine whether or not a negotiated settlement is possible), for many of the meetings between the parties. The success of this approach is reflected in a tentative settlement agreement. However, a number of hurdles remain before a settlement can be concluded.



Indian Claims Commission

Michipicoten First Nation

Pilot project, Ontario

Most of the land claims by the Michipicoten First Nation negotiated under the Michipicoten pilot project stem from the 1850 Robinson-Superior Treaty and involve the rights of Michipicoten members to make a living that were granted by the treaty (such as hunting and fishing), and the reserve that was promised under the treaty, as well as the numerous takings of land from the reserve.

By the mid-1990s, the First Nation had identified 13 potential claims that it wanted to pursue. To this end, it proposed a joint research project with Canada designed to identify, research, and resolve all of its specific claims in a coherent, cooperative and timely fashion. The joint research would be conducted in two phases: Phase I, claims assessment; and Phase II, negotiations.

To date, five claims have been resolved, either through negotiation and settlement or through administrative referral. Four claims were jointly researched as part of the

pilot project, and it was the decision of the First Nation not to pursue them. At present, four claims are outstanding: three Algoma Central Railway surrender claims are in negotiation and nearing settlement, and the boundary claim is awaiting the Minister's decision.

Moosomin First Nation

1909 surrender, Saskatchewan

This claim deals with the 1909 surrender of Moosomin IR 112 and 112A, comprising approximately 25 square miles of fertile agricultural land (IR 112A was used as a joint hay reserve by both the Moosomin and Thunderchild First Nations). The bulk of the surrendered lands, located about 12 miles north and west of Battleford, Saskatchewan, were disposed of by auction in November 1909 and June 1910.

At the end of the 2001-2002 fiscal year, Canada's newly appointed federal negotiator, reflecting a different approach to claims negotiation, requested and received an offer to settle from the First Nation. Following further negotiation, the parties agreed on a tentative settlement and Canada's



Annual Report 2002 - 2003

team began its internal work. Legal counsel for both Canada and the First Nation are continuing their work on the terms of the settlement and trust agreements. A ratification vote is expected to take place in summer or early fall 2003.

Nekaneet First Nation

Treaty benefits claim, Saskatchewan

In February 1987, the Nekaneet First Nation submitted a specific claim to the Minister of Indian Affairs and Northern Development seeking compensation under Treaty 4 for items promised but never provided, including agricultural benefits, programs and services, and annual payments to band members. The First Nation also sought damages for failure to provide a reserve at the time the treaty was signed in 1874.

In July 2002, the Commission's mediation unit was asked to participate at the negotiation table as mediator/facilitator. Before negotiations could get underway, however, Canada asked for time to review the policy regarding modern implementation of treaty benefits relating to the provision of agricultural implements. The Commission continues to monitor Canada's progress.

Qu'Appelle Valley Indian Development Authority (QVIDA)

Flooding, Saskatchewan

Between 1888 and 1961, the federal and provincial governments built or financed four major dams and 150 smaller ones on the Qu'Appelle River system in Saskatchewan, thereby flooding and degrading over 14,000 acres of land. The lands were lost through recurrent and, in some areas, continuous flooding attributed to water storage projects constructed under the *Prairie Farm Rehabilitation Act*. At issue to the First Nation communities involved in this claim is damage caused by the construction, in the 1940s, of eight water control structures along the Qu'Appelle River.

QVIDA is a group of Saskatchewan First Nations pursuing claims against Canada for this flooding of their reserve lands. Currently involved are the Muscowpetung, Pasqua, Cowessess, Sakimay, and Ochapowace First Nations. In addition, Piapot and Kahkewistahaw First Nations are pursuing almost identical claims with the goal of joining in the QVIDA negotiations.



Indian Claims Commission

The claim was accepted for negotiation in 1999, and the Commission became involved as mediator/facilitator for the table in early 2000. Since that time, negotiations have been tumultuous. The complexity of the issues, the number of participants to the negotiations, and changes in negotiating team members have presented many challenges. As a result, negotiations have stalled at various points on important issues. By the end of the 2002-2003 fiscal year, request for proposal packages had been prepared and forwarded to prospective consultants for loss-of-use studies. It was anticipated that the survey work would be completed by late spring 2003, at which time negotiation meetings would resume.

Standing Buffalo Dakota Nation

Flooding, Saskatchewan

Although part of the QVIDA inquiry into the flooding claims concluded by the Commission in February 1998, Standing Buffalo Dakota Nation chose to pursue its flooding claim negotiations with Canada outside the larger organization. At issue is approximately 58 acres of land around water control structures erected in the 1940s. Also at issue is an area of

land known as IR 80B, in which both Standing Buffalo Dakota Nation and Muscowpetung First Nation (part of QVIDA) claim an interest.

In the 2002-2003 fiscal year, negotiations progressed very slowly. By July 2002, however, Canada had made an informal offer to the First Nation and a tentative agreement was reached in September. In December 2002, a ratification vote was held in the Standing Buffalo community. This vote was not successful, but the deal was ratified at a second vote in March 2003. The Commission will issue its mediation report in summer 2003.

Thunderchild First Nation

1908 surrender, Saskatchewan

This claim deals with the 1908 surrender of Thunderchild IR 115, 115A and half of 112A, the latter being a joint hay reserve with the adjacent Moosomin IR 112. In total, Thunderchild's interest in these reserves amounted to approximately 20,572 acres of fertile agriculture land.



Annual Report 2002 - 2003

Initially brought to the Commission as a request for an inquiry, the claim soon moved into mediation, and by May 2002, an informal agreement was reached on compensation and terms of settlement. A ratification vote is expected during summer 2003.

Touchwood Agency

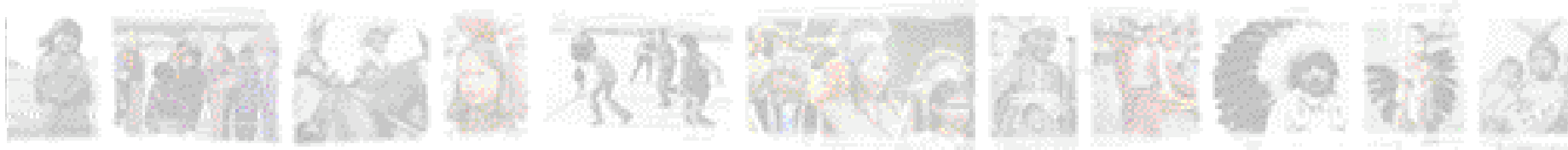
Mismanagement claim, Saskatchewan

This is a claim for compensation by a number of the First Nation communities from whose accounts moneys were diverted over the years by their Indian Agents. In 1998, the claim was submitted collectively by the five Touchwood Agency First Nations: Day Star, Fishing Lake, Gordon, Kawacatoose and Muskowekwan. The claim was accepted for negotiation in March 1998, when the First Nations and Canada began a process of joint research to resolve it.

Negotiations had been progressing steadily since 1998 but came to a halt over staffing changes to Canada's negotiation team, as well as disagreements that had arisen between the negotiating parties over recommendations contained in a

joint research report. The parties subsequently requested that the Commission facilitate negotiations.

Following limited initial success at the negotiating table, two unsuccessful settlement offers from Canada, and the discontinuance of negotiation funding to the First Nation, negotiations ended in March 2002. The First Nations are in discussions with the Minister of Indian and Northern Affairs in an effort to resolve this claim.



Indian Claims Commission

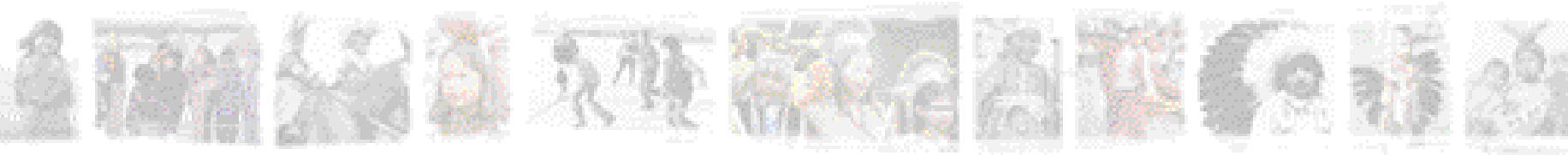




Appendix B

Operational Overview

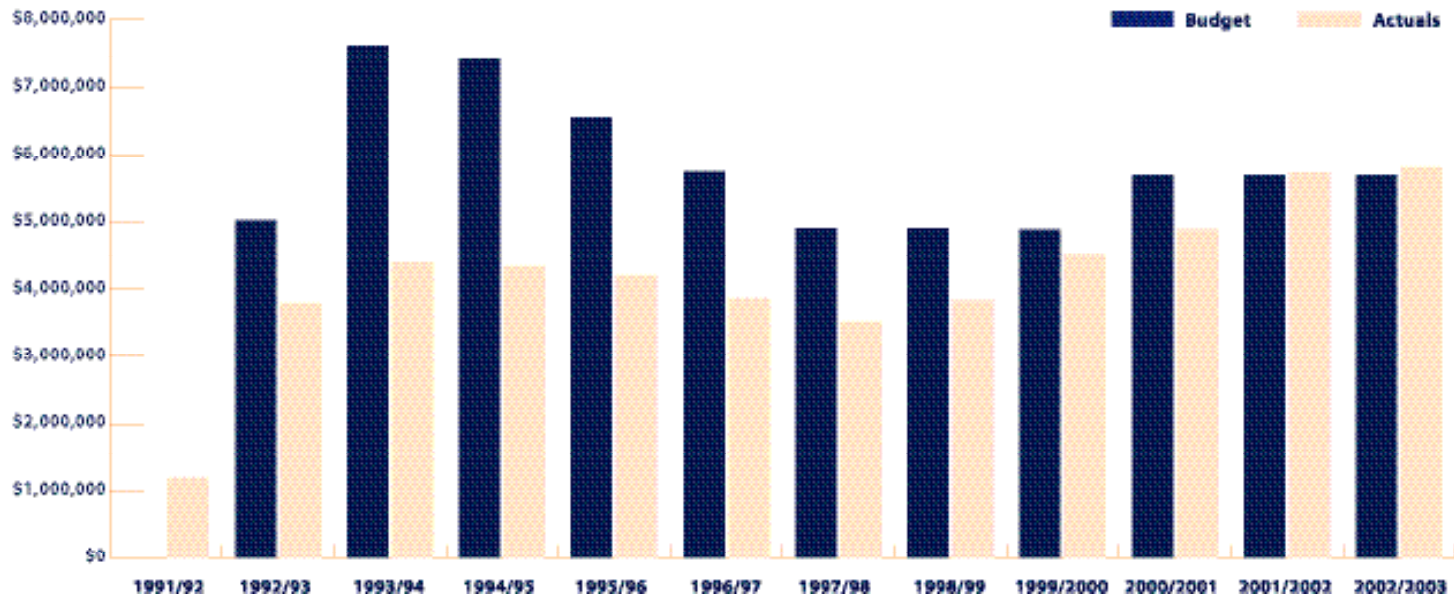
Organization Chart



Annual Report 2002 - 2003

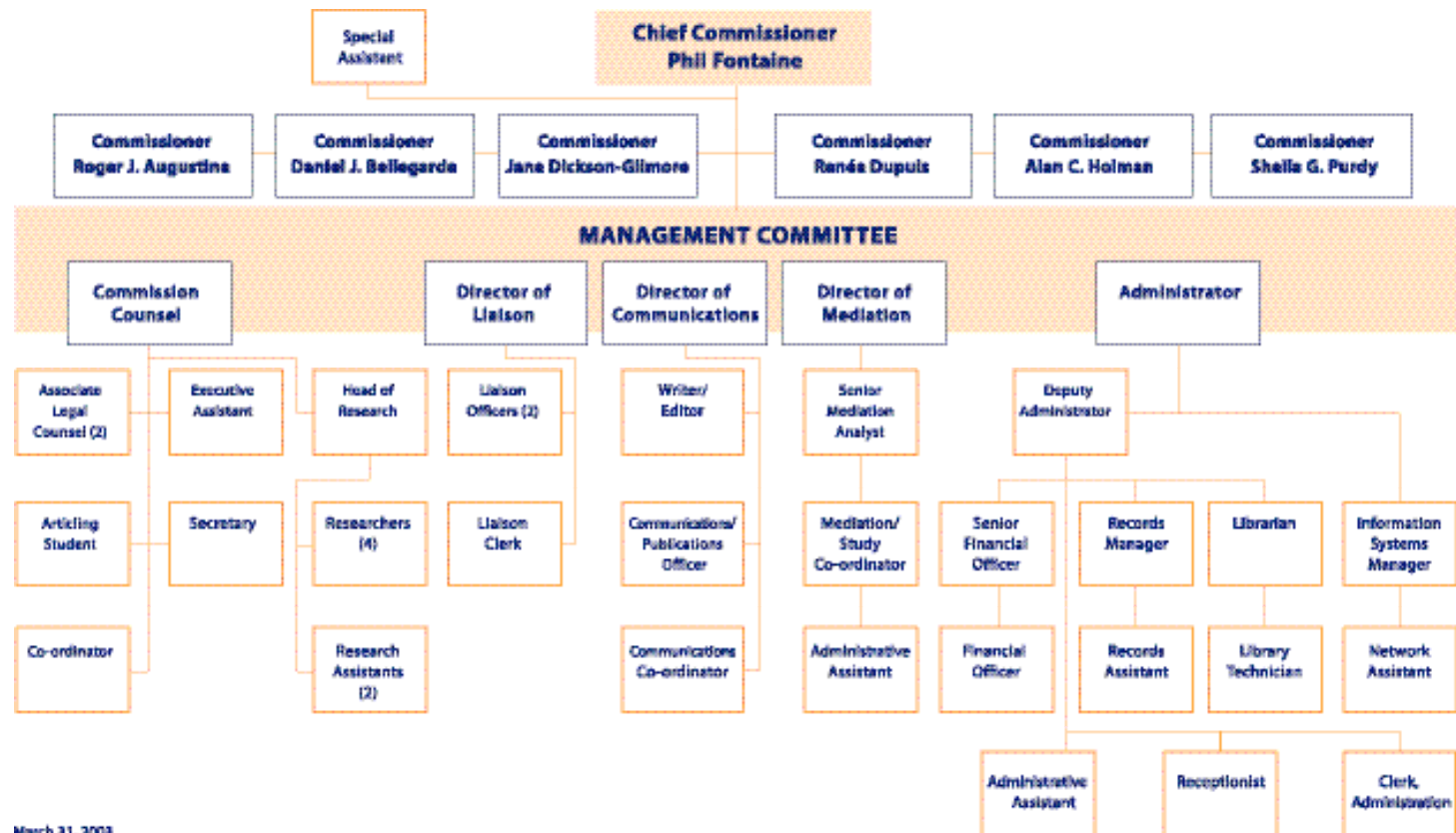
Operational Overview

The activities of the Commission have significantly increased with an emphasis on mediation services and public education, in addition to ongoing inquiries. The figure above represents the amounts budgeted and the actual amounts expended by the Commission since its inception. In 2002-2003, the Commission expended \$5.821 million against an approved budget of \$5.7 million, resulting in a deficit of \$121,000.



Indian Claims Commission

Organization Chart



March 31, 2003





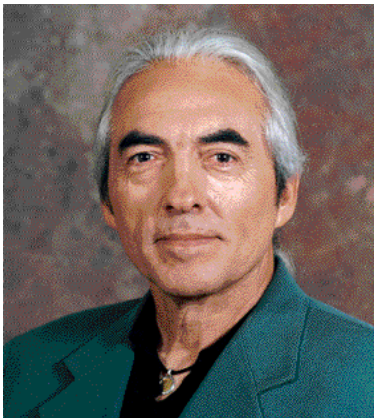
Appendix C

The Commissioners

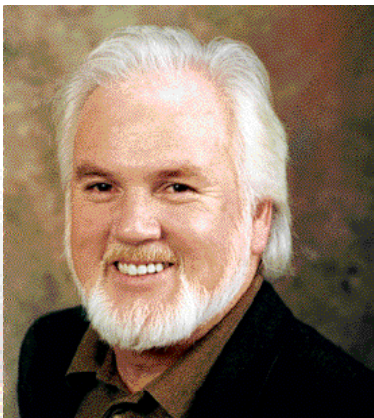


Annual Report 2002 - 2003

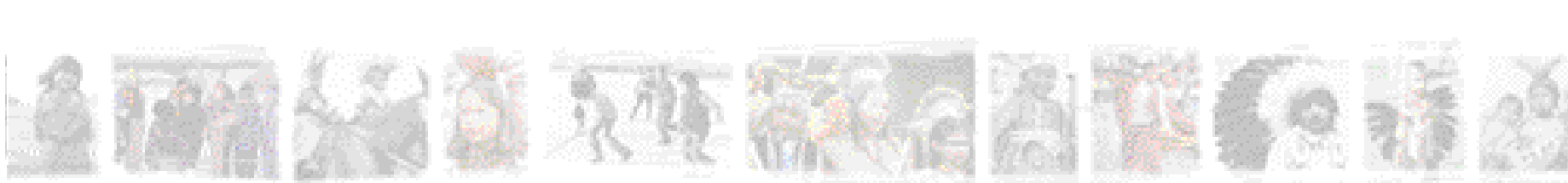
The Commissioners



Chief Commissioner Phil Fontaine is an Ojibway from the Sagkeeng First Nation in Manitoba. He has worked for many years on behalf of First Nations and has also served as an elected leader in a number of senior positions in both the federal and First Nations governments. He served as National Chief of the Assembly of First Nations (AFN) for three years until July 2000 and previously was Grand Chief of the Assembly of Manitoba Chiefs. Before serving as Grand Chief, Mr Fontaine represented Manitoba at the AFN as Vice-Chief. His experience with the federal public service includes the positions of director general of the Yukon Region of the Department of Indian Affairs and Northern Development and deputy coordinator of the Native Economic Development Program. Mr Fontaine received a National Aboriginal Achievement Award in 1996 in recognition of his public service. He holds a BA in political studies from the University of Manitoba. Mr Fontaine was appointed Chief Commissioner of the Indian Claims Commission on August 29, 2001.



Roger J. Augustine is a Mi'kmaq born in Eel Ground, New Brunswick, where he served as Chief from 1980 to 1996. He was elected president of the Union of NB-PEI First Nations in 1988, and completed his term in January 1994. He received the prestigious Medal of Distinction from the Canadian Centre on Substance Abuse for 1993 and 1994 in recognition of his efforts in founding and fostering both the Eel Ground Drug and Alcohol Education Centre and the Native Alcohol and Drug Abuse Rehabilitation Centre. In June 1996, he was named Miramichi Achiever of the Year by the Miramichi Regional Development Corporation. Mr Augustine was appointed Commissioner of the Indian Claims Commission on July 27, 1992.



Indian Claims Commission



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. He was president of the Saskatchewan Indian Institute of Technologies from 1984 to 1987. In 1988, he was elected first Vice-Chief of the Federation of Saskatchewan Indian Nations, a position he held until 1997. He is currently president of Dan Bellegarde & Associates, a consulting firm specializing in strategic planning, management and leadership development, self-governance and human resource development in general. Mr Bellegarde was appointed Commissioner, then Co-Chair of the Indian Claims Commission, on July 27, 1992 and April 19, 1994, respectively. He held the position of Co-Chair until the appointment of Phil Fontaine as Chief Commissioner.



Jane Dickson-Gilmore, born in Alberta and raised in British Columbia, is an associate professor of law at Carleton University, where she teaches such subjects as aboriginal community and restorative justice, as well as conflict resolution. Active in First Nations communities, she serves as an advisor for the Oujé-Bougoumou Cree First Nation Community Justice Project and makes presentations to schools on aboriginal culture, history and politics. She also provides expert advice to the Smithsonian Institution–National Museum of the American Indian. Ms Dickson-Gilmore has been called upon to present before the Standing Committee of Justice and Human Rights, as well as to act as an expert witness in proceedings before the Federal Court and Canadian Human Rights Commission. A published author and winner of numerous academic awards, Ms Dickson-Gilmore is a graduate of the London School of Economics with a PhD in law and holds a BA and MA in criminology from Simon Fraser University. Ms Dickson-Gilmore was appointed a Commissioner of the Indian Claims Commission on October 31, 2002.



Annual Report 2002 - 2003



Renée Dupuis has had a private law practice in Quebec City since 1973. From the outset, she focussed largely on human rights and specifically on the rights of Canada's aboriginal peoples. From 1972 to 1975, she served as lawyer for the Association of Indians of Quebec and beginning in 1978, acted as legal advisor to the three Attikamek and nine Montagnais bands in her home province, representing the bands in their land claims negotiations with the federal, Quebec, and Newfoundland governments, as well as in the constitutional negotiations. From 1989 to 1995, Mme Dupuis served two terms as Commissioner of the Canadian Human Rights Commission. She has served as consultant to various federal and provincial government agencies, authored numerous books and articles, and lectured extensively on human rights, administrative law and aboriginal rights. Mme Dupuis is a graduate in law from the Université Laval and holds a MA in public administration from the École nationale d'administration publique. She was appointed Commissioner of the Indian Claims Commission on March 28, 2001.



Alan C. Holman is a writer and broadcaster who grew up on Prince Edward Island. In his long journalistic career, he has been an instructor at Holland College in Charlottetown, PEI; editor-publisher of a weekly newspaper in rural PEI; a radio reporter with CBC in Inuvik, NWT; and a reporter for the Charlottetown *Guardian*, *Windsor Star* and *Ottawa Citizen*. From 1980 to 1986, he was Atlantic parliamentary correspondent for CBC-TV news in Ottawa. In 1987, he was appointed parliamentary bureau chief for CBC radio news, a position he held until 1994. That same year, he left national news reporting to become principal secretary to then-PEI Premier Catherine Callbeck. He left the premier's office in 1995 to head public sector development for the PEI Department of Development. Since the fall of 2000, Mr Holman has worked as a freelance writer and broadcaster. He was educated at King's College School in Windsor, NS, and Prince of Wales College in Charlottetown, where he makes his home. He was appointed Commissioner of the Indian Claims Commission on March 28, 2001.



Indian Claims Commission



Sheila G. Purdy has been an advisor to the government of the Northwest Territories on justice and other matters relating to territorial division and the creation of Nunavut. From 1993 to 1996, she was senior policy advisor to the Minister of Justice and the Attorney General of Canada on a number of justice issues, including aboriginal justice, the *Canadian Human Rights Act* and violence against women. From 1991 to 1993, she acted as policy analyst on the constitution, justice, aboriginal affairs, women, human rights and also for the Solicitor General. In 1992 and 1993, she was a special advisor on aboriginal affairs to the Office of the Leader of the Opposition, and from 1989 to 1991, she was legal consultant on environmental issues. She has been active in advocating against abuse of the elderly, and in 1988, she received the Award of Merit from Concerned Friends for her work in this area. She worked as a lawyer in private practice from 1982 to 1985 after graduating with a law degree from the University of Ottawa in 1980. She was appointed Commissioner of the Indian Claims Commission on May 4, 1999.

