

INDIAN CLAIMS COMMISSION

JAMES SMITH CREE NATION CHAKASTAYPASIN IR 98 INQUIRY

PANEL

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To the Indian Claims Commission
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SUMMARY

JAMES SMITH CREE NATION CHAKASTAYPASIN IR 98 INQUIRY Saskatchewan

This report may be cited as Indian Claims Commission, *James Smith Cree Nation: Chakastaypasin IR 98 Inquiry* (Ottawa, March 2005).

This summary is intended for research purposes only. For a complete account of the inquiry, the reader should refer to the published report.

Panel: Chief Commissioner R. Dupuis (Chair), Commissioner A. Holman

Treaties – Interpretation – Treaty 6 (1876) – Migration of Band Members – Transfer of Membership – Royal Prerogative – Surrender – Land Disposition – Fraud – Statutory Duties – Fiduciary Duties – Trespass

THE SPECIFIC CLAIM

In May 1984, the James Smith Cree Nation (JSCN) submitted a claim to the Minister of Indian Affairs and Northern Development challenging the validity of the surrender and sale of the Chakastaypasin Band's Indian Reserve (IR) 98. The claim regarding the validity of surrender was rejected. On January 19, 1998, Canada offered to negotiate a beyond lawful obligation regarding the land sales on the grounds that senior federal officials were involved in fraudulent activities in connection with the sale of 71 of the 114 quarter sections of the reserve at below fair market value. The offer to negotiate, however, was conditional upon the identification of all potential beneficiary First Nations and agreement among the beneficiaries regarding how any compensation would be divided. On June 18, 1999, the Indian Claims Commission (ICC) accepted the JSCN's request to conduct an inquiry into the surrender and sale of IR 98. On November 1, 2002, the panel ruled that the other Host Bands would be allowed to submit evidence and submit legal arguments but would not be included as parties to the inquiry.

BACKGROUND

The Chakastaypasin Band signed Treaty 6 in 1876. On May 17, 1889, IR 98 was confirmed by order in council for the Band. Following the North-West Rebellion in 1885, some members of the Band fled from the reserve, but others stayed. In the months following the rebellion, the Department of Indian Affairs sought to implement policies to punish those Indians labelled "rebels" and to reward those determined to be "loyal." The Chakastaypasin Band was branded as "rebel," and the department decided to "break up the Band" and "amalgamate them with others." Within three years of this decision, the department would come to rely upon band members' "transfer" to other bands as resulting in the abandonment of IR 98, thus opening the way for the complete surrender of IR 98 in 1897.

ISSUES

Was a surrender of Chakastaypasin IR 98 required prior to the sale of those lands? If the answer is yes, then what were the requirements of surrender? If no, did the fact that Canada took a surrender nevertheless create a fiduciary obligation on the part of Canada? Did Canada breach any obligation which may arise under Issues 2 or 3? Is the effect of any breach such that it invalidates the surrender of IR 98 or gives rise to a claim for damages? What were the obligations of Canada in disposing of IR 98, including Sugar Island? Did Canada breach any further obligation concerning the sale of IR 98? What obligations did Canada have regarding Sugar Island prior to the alleged surrender of 1897? Did Canada breach these obligations?

FINDINGS

The physical relocation of band members does not in and of itself prove the transfer of membership. For the individuals and families of the Chakastaypasin Band transferring to IR 100A, what is required by section 140 of the *Indian Act* is evidence of the consent of the receiving band at IR 100A. In this case, the receiving band is the whole of the Cumberland Band, including those resident at IR 20. There is no evidence of this consent, and, therefore, there were no valid transfers from Chakastaypasin into IR 100A.

The nine signatories to the IR 98 surrender document were all members who allegedly transferred to IR 100A. The Department of Indian Affairs was aware, however, of members residing at other locations at the time of the surrender. Canada had an obligation to seek the consent of all eligible voters to the IR 98 surrender, not just those resident at IR 100A. Canada cannot rely upon its prerogative power to take control of the Band's reserve lands. A surrender vote is required. There is no evidence of the government's attempts to meet with or seek the consent of these other members outside IR 100A. The surrender is therefore invalid.

In disposing of IR 98 lands, Canada owes a treaty, statutory, and fiduciary duty to administer reserve land sales as a prudent fiduciary to maximize the Band's benefit. Canada breached these duties when it permitted the sale in 86 of the 114 quarter sections at below fair market value. Further, we are unable to conclude, on the basis of the evidence, fraud beyond the transactions to which Canada has admitted a beyond lawful obligation.

Finally, Canada owes a treaty, statutory, and fiduciary obligation to protect reserve lands, once created, from exploitation. We find Canada in breach of these duties for permitting a continuous trespass to IR 98 lands and resources.

RECOMMENDATION

That the James Smith Cree Nation's Chakastaypasin Indian Reserve 98 claim be accepted for negotiation under Canada's Specific Claims Policy.

REFERENCES

In addition to the various sources noted below, ICC inquiries depend on a base of oral and documentary research that is fully referenced in the report.

ICC Reports Referred to

ICC, *Kahkewistahaw First Nation: 1907 Reserve Land Surrender Inquiry* (Ottawa, February 1997), reported (1998) 8 ICCP 3; ICC, *Moosomin First Nation: 1909 Reserve Land Surrender Inquiry* (Ottawa, March 1997), reported (1998) 8 ICCP 101; ICC, *Chippewas of Kettle and Stony Point First Nation: 1927 Surrender Inquiry* (Ottawa, March 1997), reported (1998) 8 ICCP 209; ICC, *Sumas Indian Band: 1919 Indian Reserve 7 Surrender Inquiry* (Ottawa, August 1997), reported (1998) 8 ICCP 281.

Cases Referred to

Snake v. The Queen, 2001 FCT 858; *Wewayakum Indian Band v. Canada*, [2002] 4 SCR 245; *Blueberry River Indian Band v. Canada*, [1996] 2 CNLR 25; *Fales v. Canada Permanent Trust Co.*, [1977] 2 SCR 302; *Lalonde v. Sun Life Assurance Co. of Canada*, [1992] 3 SCR 261.

Treaties and Statutes Referred to

Treaty 6; *Indian Act*, RSC 1886; 1888 *Indian Land Regulations*.

Other Sources Referred to

F. Laurie Barron, "Indian Agents and the North-West Rebellion," in F.L. Barron and James B. Waldram, eds., *1885 and After: Native Society in Transition* (Regina: Canadian Plains Research Center, 1986); Blair

Stonechild and Bill Waiser, *Loyal till Death: Indians and the North-West Rebellion* (Calgary: Fifth House Publishers, 1997); Sarah A. Carter, *Lost Harvests: Prairie Indian Reserve Farmers and Government Policy* (Montreal: McGill-Queen's University Press, 1990); D.W.M. Waters, *The Law of Trusts in Canada*, 2nd ed. (Toronto: Carswell, 1984).

COUNSEL, PARTIES, INTERVENORS

William Selnes for the James Smith Cree Nation; Uzma Ihsanullah and Robert Winogron for the Government of Canada; Kathleen N. Lickers to the Indian Claims Commission; Doug Kovatch for the One Arrow First Nation; Ron Cherkewich for the Muskoday First Nation; David Knoll and David Gerecke for the Sturgeon Lake First Nation; Bruce Slusar for the Kinistin Saulteaux First Nation.

KEY HISTORICAL NAMES CITED

Adams, Charles, Acting Indian Agent for the Carlton District, 1886; purchased part of one quarter section within the surrendered Chakastaypasin IR 98 in 1902.

Adamson, A.J., purchased 11 quarter sections in the Chakastaypasin IR 98 sale in 1901.

Allan, D.J., Superintendent of Reserves and Trusts, Indian Affairs Branch, in 1950.

Big Head, *see* Kahtapiskowat.

Burgess, A.M., Deputy Minister of the Interior, in 1883–96.

Chakastaypasin, signed Treaty 6 in 1876 as Chief of the Chakastaypasin Band; remained Chief until he was deposed by the Department of Indian Affairs in 1885, following the North-West Rebellion. A number of spelling variations of this name appear in the documents.

Chapman, Peter, signed Treaty 5 in 1876 as headman of the Cumberland Band; later moved to Fort à la Corne in Treaty 6 territory, along with some other Cumberland Band members; regarded by the Cumberland people living at Fort à la Corne as their leader until his death in 1892.

Chisholm, W.J., Inspector of Indian Agencies, Battleford Inspectorate, in 1903.

Christie, W.J., Treaty Commissioner for Treaty 6.

Daly, Thomas M., Superintendent General of Indian Affairs and Minister of the Interior, October 1892–April 1896.

Davis, Thomas O., Member of Parliament for Prince Albert and a member of the Davis group; also purchased lands in the Cumberland IR 100A sale in 1903.

Davis group, group of 16 Prince Albert residents, including Member of Parliament Thomas O. Davis, who tendered for Chakastaypasin IR 98 lands in 1901; they were successful in the purchase of 14 parcels in the sale.

Dewdney, Edgar, Indian Commissioner, May 1879–August 1888; Superintendent General of Indian Affairs and Minister of the Interior, September 1888–October 1892.

Forget, A.E., Assistant Indian Commissioner, August 1888–October 1895; Indian Commissioner, October 1895–October 1898.

Glass, Floyd B., purchased Sugar Island in July 1956.

Gordon, William, settler from Boucher settlement (near Chakastaypasin IR 98).

Green, T.D., Dominion Land Surveyor, carried out subdivision survey of Chakastaypasin IR 98 in 1898.

Kahtapiskowat, also known as Big Head; signed Treaty 6 in 1876 as headman of the Chakastaypasin Band; signed the surrender of part of IR 100A and the amalgamation agreement between the Cumberland Band 100A and the James Smith Band in 1902. A number of spelling variations of this name occur in the documents. The names Kahtapiskowat and Big Head appear interchangeably throughout the historical record.

Laird, David, Lieutenant Governor of the North-West Territories, 1876–81; Indian Superintendent for the North-West Superintendency in 1877–78; Indian Commissioner, 1879–88 and 1898–1914.

Lamont, J.H., Prince Albert attorney and a member of the Davis group; also purchased lands in the Cumberland IR 100A sale in 1903.

Macarthur, James, Indian Agent for the Duck Lake Agency, 1903–12.

Macdonald, John A., Prime Minister, October 1878–June 1891; Superintendent General of Indian Affairs, October 1878–October 1887; Minister of the Interior, October 1878–October 1883; Acting Superintendent General of Indian Affairs, May 1888–September 1888.

Macdonald, R.C., Winnipeg resident who offered to purchase the entire Chakastaypasin IR 98 in early 1901; purchased 14 quarter sections in the IR 98 sale in late 1901.

Macrae, J. Ansdell, Indian Agent for the Carlton District in 1884.

McDonald, Kenneth, purchased four quarter sections in the Chakastaypasin IR 98 sale in 1901.

McGibbon, Alexander, Inspector of Indian Agencies and Reserves, North-West Territories, in 1889–96.

McKenna, J.A.J., Assistant Indian Commissioner in 1904–6.

McKenzie, R.S., Indian Agent for the Duck Lake Agency, 1887–1900.

McLean, J.D., Secretary for the Department of Indian Affairs; later promoted Assistant Deputy and Secretary for the same department.

Mitchell, J.W., and **J.C. Neeley**, offered, or an offer was made in their names, to purchase the entire Chakastaypasin IR 98 in 1900–1.

Newcombe, E.L., Deputy Minister of Justice in 1897.

Orr, W.A., official in the Lands and Timber Branch, Department of Indian Affairs.

Ostrander, J.P.B., Regional Supervisor of Indian Agencies, Saskatchewan, in 1949–50.

Pedley, Frank, Deputy Superintendent General of Indian Affairs, November 1902–October 1913; previously held the positions of Superintendent of Immigration and Inspector of Immigration Offices within the Department of the Interior.

Ponton, A.W., Dominion Land Surveyor, surveyed IR 100 for the James Smith Band and completed the survey of IR 98 for the Chakastaypasin Band in 1884.

Rae, J.M., Indian Agent for the Carlton District, 1880–83, 1885 to early 1886, late 1886 to 1887.

Reed, Hayter, Acting Assistant Indian Commissioner, 1883–84; Assistant Indian Commissioner, 1884–88; Indian Commissioner, 1888–93; Deputy Superintendent General of Indian Affairs, 1893–97.

Sifton, Clifford, Superintendent General of Indian Affairs and Minister of the Interior, November 1896–February 1905.

Smart, James A., Deputy Superintendent General of Indian Affairs, July 1897–November 1902.

Smith, J.W., purchased a majority of the lands in the Chakastaypasin IR 98 sale in 1901. It was later discovered by the Ferguson Commission that these tenders were submitted on behalf of DSGIA James A. Smart, Superintendent of Immigration (and later SGIA) Frank Pedley, and Immigration Inspector William J. White, as represented by Toronto lawyer A.C. Bedford-Jones.

Smith, James, signed Treaty 6 in 1876 as Chief of the James Smith Band and held the office of Chief from 1876 until his death in 1902.

Stewart, Elihu, Dominion Land Surveyor, surveyed IR 98 for the Chakastaypasin Band in 1878.

Vankoughnet, Lawrence, Deputy Superintendent General of Indian Affairs, 1874–93.

Von Racjs, Zoltan, offered to purchase the entire Chakastaypasin IR 98 in 1899 on behalf of a group of settlers.

Wadsworth, T.P., Inspector of Indian Agencies, North-West Territories, in 1883–88.

Walker, James, Acting Indian Agent and Inspector of the North-West Mounted Police in 1877.

PREFACE

As a panel, we have proceeded concurrently throughout the Indian Claims Commission (ICC) Inquiries into the James Smith Cree Nation: Indian Reserve (IR) 100 A Claim, the Cumberland House Cree Nation: IR 100A Claim, the James Smith Cree Nation: Chakastaypasin IR 98 Claim, and the James Smith Cree Nation: Treaty Land Entitlement (TLE) Claim. Although our decision in each inquiry reflects our consideration of the specific issues raised in each claim, we have, from the first planning conference to our final deliberations, worked towards gaining the most complete understanding of all events at issue. Thus, all historical documentation, expert reports, community evidence, and legal submissions have been thoroughly considered, not in isolation but as complementary elements. Each report presents the background needed for the matters at issue, but the James Smith Cree Nation: IR 100A and Cumberland House Cree Nation: IR 100A Inquiries present the most detailed historical background.

The original inquiry panel was P.E. James Prentice, Commission Co-Chair; Elijah Harper, Commissioner; and Carole Corcoran, Commissioner. By 2001, the current panel took carriage of this inquiry.

It has taken this Commission, the First Nations, and Canada's representatives five years to conclude our process, and we would like to thank all those involved for the dedication, commitment, and hard work they have applied.

PART I
INTRODUCTION

BACKGROUND TO THE INQUIRY

On May 17, 1889, Order in Council 1151 confirmed Indian Reserve (IR) 98 for the Chakastaypasin Band, in accordance with the terms of Treaty 6. Located on the “South Branch” on the South Saskatchewan River, just south of Prince Albert, the reserve was surveyed for 12 families under Chief Chakastaypasin and contained an area of 62 square kilometres.¹

Despite the Department of Indian Affairs’ “incapacity to furnish enough material for agriculture” and its general reluctance to provide agricultural support to this group, members of the Chakastaypasin Band worked to build houses and cultivate their reserve land in the years after they signed Treaty 6 in 1876. When the North-West Rebellion broke out in March 1885, however, the Chakastaypasin Band was directly affected, and the uprising, led by Louis Riel, became a pivotal event in its history. Because the battle sites at Duck Lake and Batoche were not far from IR 98, members of the Band feared for their lives during the hostilities. Leaders of the uprising sent runners to the reserve seeking assistance in the fight and threatening those who refused. They told the band members “they would be massacred by the soldiers in the event of the insurgents being defeated, whether they had fought or not.”²

In this atmosphere of fear, many members of the Chakastaypasin Band fled the reserve, and yet some remained. Chakastaypasin headman Kahtapiskowat, or Big Head, and his family were among those who stayed. In the months following the rebellion, the Department of Indian Affairs tried to implement a policy of “punishing” those Indians it labelled as “rebels” and rewarding those it determined to be “loyal.” The Chakastaypasin Band was initially branded as “rebels,” and, by June 1885, the Department of Indian Affairs categorically decided that the Band had “violated the terms

¹ Order in Council PC 1151, May 17, 1889, p. 50 (ICC Exhibit 6b). This same Order in Council confirmed IR 100A “[f]or the Indians of Cumberland District (of Treaty No. 5).”

² John A. Macdonald, Superintendent General of Indian Affairs (SGIA), to the Governor General, January 1, 1886, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1885*, xii.

of the Treaty made with them” and that it was advisable to “break up the band” and “amalgamate them with others.”³

Within three years of this decision, the Department of Indian Affairs came to rely on the Band’s voluntary “transfer” of its members to other bands as proof that it had “abandoned” IR 98, thereby opening the way for the complete surrender of IR 98 on June 23, 1897. At issue in this inquiry is the propriety of that 1897 surrender.

In May 1984, the James Smith Cree Nation (JSCN) submitted a claim under the Specific Claims Policy regarding the surrender and sale of IR 98. On June 27, 1994, the First Nation submitted a revised claim in which it submitted that “Canada breached its lawful and beyond lawful obligations to the Chacastapasin Band in obtaining the alleged surrender and disposition of Chacastapasin Reserve #98.”⁴ On February 6, 1996, the Manager of Specific Claims West, Gay Reardon, informed the James Smith Band that Canada owed no outstanding lawful obligation with regard to the surrender and sale of the reserve.⁵ On April 11, 1997, Anne-Marie Robinson of the Specific Claims Branch clarified that “the taking in 1897 of the surrender of reserve #98 was not necessary,” and therefore that the First Nation’s arguments that Canada had breached its fiduciary obligations by obtaining the surrender had not been addressed.⁶

On January 19, 1998, Assistant Deputy Minister John Sinclair offered to negotiate a settlement on “a ‘beyond lawful obligation’ basis on the grounds that senior federal officials were involved in fraudulent activities in connection with the sale of 71 quarter sections of the reserve, below the appraised value.”⁷ However, the offer to negotiate was conditional on the identification

³ Edgar Dewdney, Indian Commissioner, to SGIA, June 19, 1885, Library and Archives Canada (LAC), RG 10, vol. 3714, file 21088-2, and vol. 3584, file 1130 (ICC Exhibit 1, pp. 188, 193).

⁴ Anne-Marie Robinson, Acting Director, Policy and Research Directorate, Specific Claims Branch, Department of Indian Affairs and Northern Development (DIAND), to Chief Terry Sanderson, James Smith Cree Nation, April 11, 1997 (ICC Exhibit 4b, p. 2).

⁵ Gay Reardon, Manager, Specific Claims Branch West, DIAND, to Chief Terry Sanderson, James Smith Cree Nation, February 6, 1996 (ICC Exhibit 4a, p. 2).

⁶ Anne-Marie Robinson, Acting Director, Policy and Research Directorate, Specific Claims Branch, DIAND, to Chief Terry Sanderson, James Smith Cree Nation, April 11, 1997 (ICC Exhibit 4b, p. 4).

⁷ John Sinclair, Assistant Deputy Minister, Claims and Indian Government, DIAND, to Chief Eddie Head, James Smith Cree Nation, January 19, 1998 (ICC Exhibit 4c, p. 1).

of all the “potential beneficiary First Nations” and agreement among the beneficiaries regarding how any compensation would be divided among them.⁸

The James Smith Cree Nation submitted additional arguments in 1995 and 1997, to which Paul Cuillerier, the Director General of the Specific Claims Branch, replied in detail on December 29, 1998. Canada took the position that it owed no outstanding lawful obligation to the JSCN, he said, or to any other First Nation with respect to the surrender of IR 98 in 1897. As a result of the “abandonment” of IR 98 and the addition of the names of its members to other paylists, “the Chacastapasin Band ceased to exist.”⁹ Canada also argued that Big Head’s insistence on receiving compensation for IR 98 had led, in part, to the taking of the surrender in 1897, although the surrender was not required.¹⁰ With respect to fiduciary obligations, Canada held that “there was no band to whom Canada could owe a fiduciary obligation, and no band whose best interests could be served.”¹¹ Finally, Mr Cuillerier stated:

It is Canada’s position that the benefits received by the former Chacastapasin Band members were in excess of what they were entitled to as a matter of law. Even if Canada were to conclude that it had breached a fiduciary duty to the Chacastapasin Band members, it would be Canada’s position that the overall benefits received by former Chacastapasin Band members surpass any losses which they might have incurred.¹²

On March 31, 2003, Canada completed its review of the portions of the claim relating to Sugar Island, located at the western edge of the territory occupied by the Band. Assistant Deputy

⁸ John Sinclair, Assistant Deputy Minister, Claims and Indian Government, DIAND, to Chief Eddie Head, James Smith Cree Nation, January 19, 1998 (ICC Exhibit 4c, p. 2).

⁹ Paul Cuillerier, Director General, Specific Claims Branch, DIAND, to Chief Eddie Head, James Smith Cree Nation, December 29, 1998 (ICC Exhibit 4d, p. 3).

¹⁰ Paul Cuillerier, Director General, Specific Claims Branch, DIAND, to Chief Eddie Head, James Smith Cree Nation, December 29, 1998 (ICC Exhibit 4d, p. 4).

¹¹ Paul Cuillerier, Director General, Specific Claims Branch, DIAND, to Chief Eddie Head, James Smith Cree Nation, December 29, 1998 (ICC Exhibit 4d, p. 6).

¹² Paul Cuillerier, Director General, Specific Claims Branch, DIAND, to Chief Eddie Head, James Smith Cree Nation, December 29, 1998 (ICC Exhibit 4d, p. 7).

Minister Michel Roy informed the James Smith Cree Nation that “the Crown’s failure to attempt to sell the Sugar Island lots when there was an apparently adequate market for them was a breach of its fiduciary duty to act in the best interests of the Indians, in the manner of a reasonable and prudent person.”¹³ However, other aspects of the claim relating to Sugar Island were rejected. Canada took the position that it owed no outstanding lawful obligation with respect to “treaty, statutory or fiduciary obligations obliging Canada to pro-actively protect the timber on Sugar Island during the pre-surrender period.”¹⁴ In addition, Mr Roy stated that “the evidence provided does not support the undervalue sale allegation” in the post-surrender period.¹⁵

On June 18, 1999, the Indian Claims Commission accepted the request of the James Smith Cree Nation to conduct an inquiry into the surrender and sale of IR 98. As a result of Canada’s invitation to seven other Host Bands to participate in this inquiry, the panel heard argument from the parties and these other Host Bands on the question of adding the other Host Bands as parties to this inquiry. On November 1, 2002, the panel ruled that these seven “Host Bands”¹⁶ would be allowed to submit evidence and make legal arguments, but would not be included as parties to the inquiry.¹⁷

The events at issue in this claim share their history with the other James Smith Cree Nation claim involving IR 100A. By necessity, this panel has worked carefully and diligently to ensure that our findings in each case, and the reasons that support them, are cogent, consistent, and coherent.

A chronology of the written submissions, documentary evidence, transcripts, and the balance of the record in this inquiry is set forth in Appendix B of this report.

¹³ Michel Roy, Assistant Deputy Minister, Claims and Indian Government, DIAND, to Chiefs Sol Sanderson, Walter Constant, and Delbert Brittain, James Smith Cree Nation, March 31, 2003 (ICC Exhibit 4f, p. 2).

¹⁴ Michel Roy, Assistant Deputy Minister, Claims and Indian Government, DIAND, to Chiefs Sol Sanderson, Walter Constant, and Delbert Brittain, James Smith Cree Nation, March 31, 2003 (ICC Exhibit 4f, p. 2).

¹⁵ Michel Roy, Assistant Deputy Minister, Claims and Indian Government, DIAND, to Chiefs Sol Sanderson, Walter Constant, and Delbert Brittain, James Smith Cree Nation, March 31, 2003 (ICC Exhibit 4f, p. 2).

¹⁶ The “Host Bands” are the Fishing Lake, Gordon, Kinistin, Muskoday, One Arrow, Sturgeon Lake, and Yellow Quill First Nations.

¹⁷ ICC, *James Smith Cree Nation: Chakastaypasin IR 98 Surrender – Interim Ruling* (Ottawa, November 2002) reproduced as Appendix A to this report.

MANDATE OF THE COMMISSION

The mandate of the Indian Claims Commission is set out in federal Orders in Council providing the Commissioners with the authority to conduct public inquiries into specific claims and to issue reports on “whether a claimant has a valid claim for negotiation under the [Specific Claims] Policy where the claim was already rejected by the Minister.”¹⁸ This Policy, outlined in the Department of Indian Affairs and Northern Development’s 1982 booklet entitled *Outstanding Business: A Native Claims Policy – Specific Claims*, states that Canada will accept claims for negotiation where they disclose an outstanding “lawful obligation” on the part of the federal government.¹⁹ The term “lawful obligation” is defined in *Outstanding Business* as follows:

The government’s policy on specific claims is that it will recognize claims by Indian bands which disclose an outstanding “lawful obligation,” i.e., an obligation derived from the law on the part of the federal government.

A lawful obligation may arise in any of the following circumstances:

- i) The non-fulfillment of a treaty or agreement between Indians and the Crown.
- ii) A breach of an obligation arising out of the *Indian Act* or other statutes pertaining to Indians and the regulations thereunder.
- iii) A breach of an obligation arising out of government administration of Indian funds or other assets.
- iv) An illegal disposition of Indian land.²⁰

Furthermore, Canada is prepared to consider claims based on the following circumstances:

- i) Failure to provide compensation for reserve lands taken or damaged by the federal government or any of its agencies under authority.
- ii) Fraud in connection with the acquisition or disposition of Indian reserve land by employees or agents of the federal government, in cases where the fraud can be clearly demonstrated.

¹⁸ Commission issued September 1, 1992, pursuant to Order in Council PC 1992-1730, July 27, 1992, amending the Commission issued to Chief Commissioner Harry S. LaForme on August 12, 1991, pursuant to Order in Council PC 1991-1329, July 15, 1991.

¹⁹ DIAND, *Outstanding Business: A Native Claims Policy – Specific Claims* (Ottawa: Minister of Supply and Services, 1982), 20; reprinted in (1994) 1 *Indian Claims Commission Proceedings* (ICCP) 171–85 (hereafter *Outstanding Business*).

²⁰ *Outstanding Business*, 20; reprinted in (1994) 1 ICPP 179–80.

It should also be explained that, when the original mandate of the Commission was still under discussion, Tom Siddon, then Minister of Indian Affairs and Northern Development, wrote to then National Chief Ovide Mercredi of the Assembly of First Nations setting out the basis for what the Commission first referred to as its “supplementary mandate” in the Athabasca Denesuline Inquiry Claim of the Fond du Lac, Black Lake and Hatchet Lake First Nations:

If, in carrying out its review, the Commission concludes that the policy was implemented correctly but the outcome is nonetheless unfair, I would again welcome its recommendations on how to proceed.²¹

In an October 1993 letter to the Commission, the Minister of Indian Affairs, Pauline Browes, reiterated the position taken by her predecessor. Minister Browes’s letter makes two key points in relation to the Commission’s jurisdiction:

(1) I expect to accept the Commission’s recommendations where they fall within the Specific Claims Policy; (2) I would welcome the Commission’s recommendations on how to proceed in cases where the Commission concluded that the policy had been implemented correctly but the outcome was nevertheless unfair ...²²

²¹ Tom Siddon, Minister of Indian Affairs and Northern Development, to Ovide Mercredi, National Chief, Assembly of First Nations, November 22, 1991, reprinted in (1995) 3 ICCP 244–46. *Athabasca Denesuline (Fond du Lac, Black Lake, and Hatchet Lake First Nations): Treaty Harvesting Rights Inquiry* (Ottawa, December 1993), reported (1995) 3 ICCP 3 at 15.

²² Pauline Browes, Minister of Indian Affairs and Northern Development, to Harry S. LaForme, Chief Commissioner, Indian Claims Commission, October 13, 1993, reprinted in (1995) 3 ICCP 242–43.

PART II

HISTORICAL BACKGROUND

FROM TREATY 6 TO THE SURVEY OF IR 98, 1876–85

Treaty 6, 1876

On August 23 and 28, 1876, Treaty Commissioner Alexander Morris and “the Plain and Wood Cree and the other Tribes of Indians” living in what are now the central portions of Saskatchewan and Alberta concluded Treaty 6 near Fort Carlton.²³

Treaty 6 provided for reserves of one square mile (or 640 acres) for each family of five “or in that proportion for larger or smaller families.” It stipulated that these “reserves of land, or any interest therein, may be sold or otherwise disposed of by Her Majesty’s Government for the use and benefit of the said Indians entitled thereto, with their consent first had and obtained.”²⁴ Provisions were also made to grant farming implements, tools, oxen, and seed to “any Band of the said Indians who are now cultivating the soil, or who shall hereafter commence to cultivate the land.” These articles were “to be given once [and] for all for the encouragement of the practice of agriculture among the Indians.”²⁵ Treaty 6 bands were also promised yearly annuities, a medicine chest, assistance during “pestilence” or “famine,” and provisions to help those making the transition to agriculture.²⁶

²³ *Treaty No. 6 between Her Majesty the Queen and the Plain and Wood Cree Indians and Other Tribes of Indians at Fort Carlton, Fort Pitt and Battle River with Adhesions* (Ottawa: Queen’s Printer, 1964), 1 (ICC Exhibit 6a, p. 1).

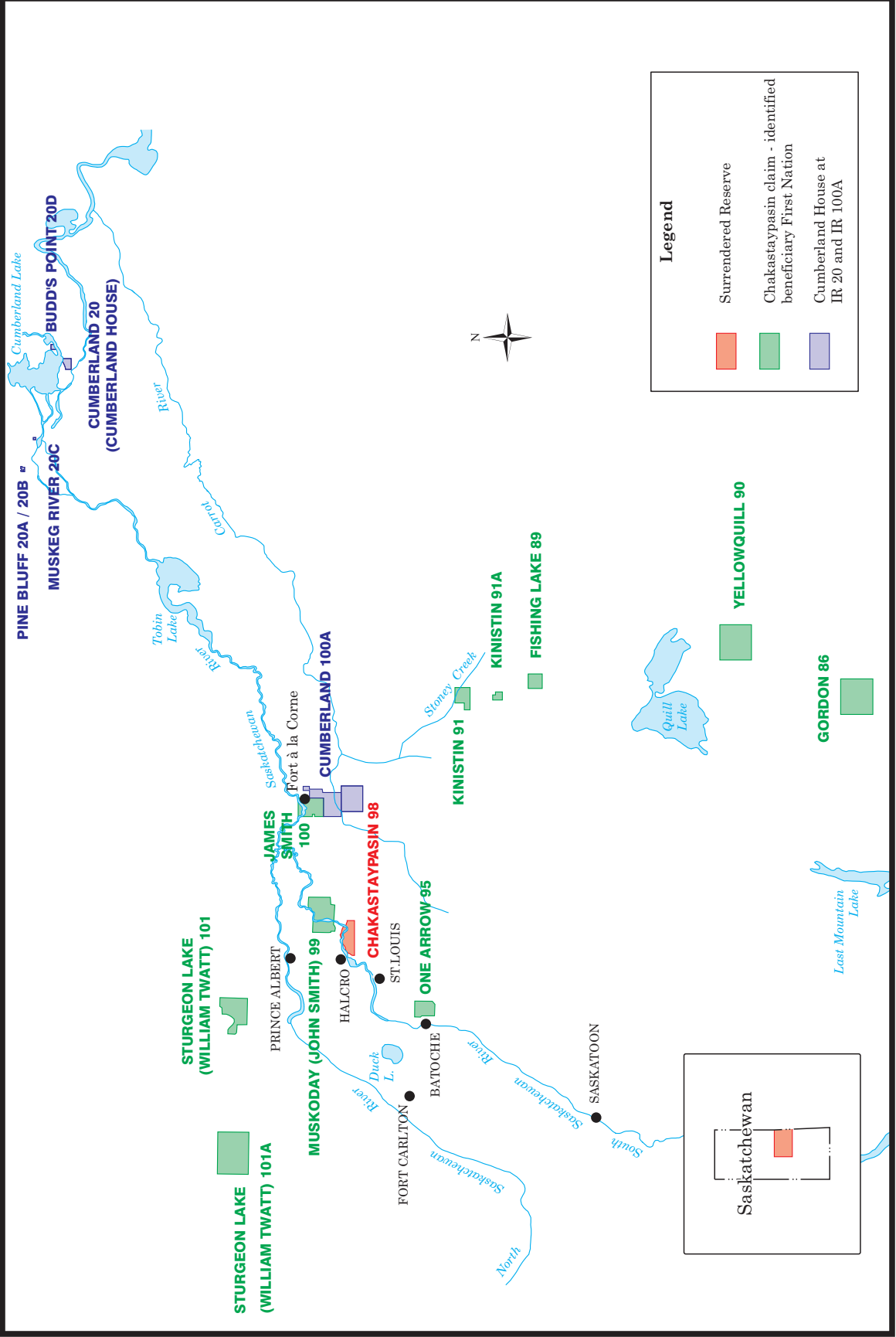
²⁴ *Treaty No. 6 between Her Majesty the Queen and the Plain and Wood Cree Indians and Other Tribes of Indians at Fort Carlton, Fort Pitt and Battle River with Adhesions* (Ottawa: Queen’s Printer, 1964), 3 (ICC Exhibit 6a, p. 3).

²⁵ *Treaty No. 6 between Her Majesty the Queen and the Plain and Wood Cree Indians and Other Tribes of Indians at Fort Carlton, Fort Pitt and Battle River with Adhesions* (Ottawa: Queen’s Printer, 1964), 4 (ICC Exhibit 6a, p. 4).

²⁶ *Treaty No. 6 between Her Majesty the Queen and the Plain and Wood Cree Indians and Other Tribes of Indians at Fort Carlton, Fort Pitt and Battle River with Adhesions* (Ottawa: Queen’s Printer, 1964), 3–4 (ICC Exhibit 6a, pp. 3–4).

Map 1

Claim Area Map



Chief Chakastaypasin and four headmen – Kahtapiskowat, Kahkeeneequanasum, Napatch, and Musinowkeemow – signed the treaty on behalf of the Chakastaypasin Band.²⁷

The James Smith Band and Treaty 6, 1876

Chief James Smith signed Treaty 6 on behalf of his Band at the same time as the Chakastaypasin Band.²⁸ Smith and his people chose to have their reserve surveyed on the Saskatchewan River near Fort à la Corne, approximately 50 kilometres from the Chakastaypasin reserve. The survey was completed in 1884, and IR 100 was confirmed by Order in Council on May 17, 1889.²⁹

Cumberland Band Adhesion to Treaty 5, 1876

In September 1875, Treaty Commissioner Alexander Morris and “the Saulteaux and Swampy Cree tribes of Indians” inhabiting an area of 260,000 square kilometres surrounding Lake Winnipeg in Manitoba signed Treaty 5 at Beren’s River and Norway House.³⁰ On September 7, 1876, the “Cumberland Band,” represented by Chief John Cochrane and headmen Peter Chapman and Albert Flett, signed an adhesion to Treaty 5 at The Pas.³¹ The adhesion defines the “Cumberland Band” as “the Band of Saulteaux and Swampy Cree Indians residing at ... Cumberland Island, Sturgeon River,

²⁷ *Treaty No. 6 between Her Majesty the Queen and the Plain and Wood Cree Indians and Other Tribes of Indians at Fort Carlton, Fort Pitt and Battle River with Adhesions* (Ottawa: Queen’s Printer, 1964), 5–6 (ICC Exhibit 6a, pp. 5–6); Treaty annuity payroll, Chakastaypasin Band, 1876, no file reference available (ICC Exhibit 12a, p. 206).

²⁸ *Treaty No. 6 between Her Majesty the Queen and the Plain and Wood Cree Indians and Other Tribes of Indians at Fort Carlton, Fort Pitt and Battle River with Adhesions* (Ottawa: Queen’s Printer, 1964), 5, 7 (ICC Exhibit 6a, pp. 5, 7).

²⁹ Order in Council PC 1151, May 17, 1889, pp. 52–53 (ICC, James Smith Cree Nation TLE Inquiry, Exhibit 1, pp. 652–54).

³⁰ *Treaty No. 5 between Her Majesty the Queen and the Saulteaux and Swampy Cree Tribes of Indians at Beren’s River and Norway House with Adhesions* (Ottawa: Queen’s Printer, 1969), 3, 7 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 2a, pp. 3, 7).

³¹ *Treaty No. 5 between Her Majesty the Queen and the Saulteaux and Swampy Cree Tribes of Indians at Beren’s River and Norway House with Adhesions* (Ottawa: Queen’s Printer, 1969), 10–11 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 2a, pp. 10–11).

Angling River, Pine Bluff, Beaver Lake and the Ratty Country.”³² IR 20 was surveyed for the Cumberland Band in 1882 at Cumberland Lake in Treaty 5 territory.³³

Beginning in 1882, some members of the Cumberland Band moved to Fort à la Corne and settled near the site of the future James Smith reserve. They received their own payroll in 1886, and IR 100A was surveyed in 1887 for “the contingent of the Cumberland Band and such other Indians as may be assigned locations therein.”³⁴ The reserve was confirmed by Order in Council on May 17, 1889, “[f]or the Indians of Cumberland District (of Treaty No. 5).”³⁵

Survey of Chakastaypasin IR 98, 1876–78

At the time of treaty, the Chakastaypasin Band occupied a large territory that stretched from Red Deer Hill in the west to the Carrot River valley in the east.³⁶ Both Cree and Saulteaux (Plains Ojibway) people were represented in the Band, according to Kinistin First Nation member Louise Smokeyday.³⁷ They lived a traditional way of life that included hunting, fishing, trapping, and gathering, and the seasons dictated their movement among the traditional campsites within this territory.³⁸ One of these camps was located on or near the site of what came to be the Chakastaypasin

³² *Treaty No. 5 between Her Majesty the Queen and the Saulteaux and Swampy Cree Tribes of Indians at Beren’s River and Norway House with Adhesions* (Ottawa: Queen’s Printer, 1969), 10 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 2a, p. 10).

³³ W.A. Austin, Dominion Land Surveyor (DLS), to SGIA, April 1883, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1883*, 159–68 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 1, pp. 70–78).

³⁴ Treaty annuity payroll, “Cumberland Band Paid at Fort La Corne,” 1886, no file reference available (ICC Exhibit 12a, p. 233); John C. Nelson, DLS, to SGIA, December 30, 1887, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1883*, 274–75 (ICC Exhibit 15, pp. 80–81).

³⁵ Order in Council PC 1151, May 17, 1889, pp. 54–55 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 4a).

³⁶ ICC Transcript, January 28–29, 2003 (ICC Exhibit 16b, pp. 14–17, Sol Sanderson); chart showing “Chak. Traditional Lands and Resource Territory and Camps (families),” presented at the community session, January 28–29, 2003 (ICC Exhibit 21b, p. 1).

³⁷ ICC Transcript, May 27–29, 2003 (ICC Exhibit 17b, pp. 30, 66, 76, Louise Smokeyday, Kinistin First Nation; p. 46, Peter Nippi, Kinistin First Nation).

³⁸ ICC Transcript, January 28–29, 2003 (ICC Exhibit 16b, p. 21, Sol Sanderson).

reserve.³⁹ Sugar Island, located at the western edge of this area, was traditionally used for making maple sugar in the spring by various Saulteaux bands,⁴⁰ and Lieutenant Governor David Laird promised the Chakastaypasin Band that it would be reserved for them.⁴¹

In October 1876, Treaty Commissioner W.J. Christie reported that Chief “Cha-kas-ta-pasin” wanted his reserve “behind Prince Albert settlement on the south side of South Branch,” where “they have had Houses and Gardens ... for some time.”⁴² The South Branch was situated just south of Prince Albert, on the Saskatchewan River. Acting Indian Agent James Walker reported again in August 1877 that “Chakastaypasin and band have taken up their reservation” on the “south side of the South Branch” and had 20 acres under cultivation.⁴³

In the fall of 1878, Dominion Land Surveyor Elihu Stewart arrived at the South Branch to survey Chakastaypasin IR 98, based on instructions he had received from Lieutenant Governor David Laird.⁴⁴ He reported that “the number of souls in the band for which this survey has been made is 110.” To calculate the area of the lands to be set aside, Stewart added 10 per cent to the population of 110 “for increase,” arriving at a total base population of 121.⁴⁵

³⁹ ICC Transcript, January 28–29, 2003 (ICC Exhibit 16b, p. 22, Sol Sanderson).

⁴⁰ ICC Transcript, January 28–29, 2003 (ICC Exhibit 16b, p. 22, Sol Sanderson; p. 150, Albert Sanderson; p. 206, Jake Sanderson); ICC Transcript, May 27–29, 2003 (ICC Exhibit 17b, pp. 216–17, Jerry Kayseas and Francis Nippi, Fishing Lake First Nation; p. 229, Michael Desjarlais, Fishing Lake First Nation).

⁴¹ Office of the North-West Indian Superintendency to L. Vankoughnet, Department of the Interior, May 20, 1879, LAC, RG 10, vol. 3680, file 12185 (ICC Exhibit 1, p. 25e); letter with unidentified author and recipient, November 19, 1880, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 54).

⁴² W.J. Christie, Indian Commissioner, Treaty 6, to unidentified recipient, October 10, 1876, LAC, RG 10, vol. 3636, file 6694-1 (ICC Exhibit 1, p. 13).

⁴³ James Walker, Acting Indian Agent and Inspector of the North-West Mounted Police, to the Lieutenant Governor of the North-West Territories, August 20, 1877, LAC, RG 10, vol. 3656, file 9092 (ICC Exhibit 1, pp. 21–22).

⁴⁴ Natural Resources Canada, Field book 729 Canadian Lands Surveys Records (CLSR), Elihu Stewart, DLS, “Indian Reserve Survey, Diary, 1878–1879,” May 31, 1878, to January 15, 1879 (ICC Exhibit 6b, item 5, pp. 33–36); Natural Resources Canada, Field book 434 CLSR, Elihu Stewart, DLS, “Field Notes of Chacastapasin Reserve,” 1878 (ICC Exhibit 6b, item 6, p. 57).

⁴⁵ Natural Resources Canada, Plan 1034 CLSR, “Plan of the Chacastapasin Indian Reserve No. 98 on the South Saskatchewan River,” surveyed by E. Stewart, DLS, October 1878 (ICC Exhibit 6b, item 7, p. 1).

Based on instructions from David Laird, Stewart ran the southern boundary of the reserve to include what he believed was Sugar Island.⁴⁶ His report noted that in the midst of the survey, “the Chief of this Band[,] who with nearly all his followers had been absent from the locality,” arrived to meet him.⁴⁷ The Band informed him that he had misidentified Sugar Island, which was actually a large island farther south on the river. Stewart reported that “after further consultation with the Chief and members of his band as well as with settlers in the vicinity I was convinced that the upper island was the one mutually agreed upon between His Honor and the Chief, to form part of the Reserve.”⁴⁸ Stewart resurveyed the southern boundary of the reserve in order to include “the island on which they made sugar in the spring” and the lands opposite the island, which “the Indians had selected for their settlement and on which a little improvement had been made.”⁴⁹ To compensate for the additional lands added to the southern portion of the reserve, Stewart proposed that the eastern boundary surveyed by him be moved westward to an existing meridian line. In his report, he noted that “this I was assured by the Chief would be satisfactory to the Band.”⁵⁰ However, because the season was too far advanced to finalize the survey at this time, Stewart left the eastern boundary undefined on the ground.⁵¹ His proposed boundaries were apparently accepted, though, as they were used in a description prepared by the department in 1880.⁵² He reported: “[T]he soil in and about this

⁴⁶ Natural Resources Canada, Field book 434 CLSR, Elihu Stewart, DLS, “Field Notes of Chacastapasin Reserve,” 1878 (ICC Exhibit 6b, item 6, p. 58).

⁴⁷ Natural Resources Canada, Field book 434 CLSR, Elihu Stewart, DLS, “Field Notes of Chacastapasin Reserve,” 1878 (ICC Exhibit 6b, item 6, p. 58).

⁴⁸ Natural Resources Canada, Field book 434 CLSR, Elihu Stewart, DLS, “Field Notes of Chacastapasin Reserve,” 1878 (ICC Exhibit 6b, item 6, p. 58).

⁴⁹ Natural Resources Canada, Field book 434 CLSR, Elihu Stewart, DLS, “Field Notes of Chacastapasin Reserve,” 1878 (ICC Exhibit 6b, item 6, pp. 57–58).

⁵⁰ Natural Resources Canada, Field book 434 CLSR, Elihu Stewart, DLS, “Field Notes of Chacastapasin Reserve,” 1878 (ICC Exhibit 6b, item 6, pp. 59–60).

⁵¹ Natural Resources Canada, Field book 434 CLSR, Elihu Stewart, DLS, “Field Notes of Chacastapasin Reserve,” 1878 (ICC Exhibit 6b, item 6, pp. 57–58).

⁵² [Lindsay Russell], Dominion Lands Office, Surveys Branch, November 9, 1880, LAC, RG 10, vol. 6663, file 109A-3-1 (ICC Exhibit 1, pp. 42–43).

Reserve is excellent and the country well watered[,] though considerable alkali is met with.”⁵³ The official plan of the reserve identified Sugar Island and noted that it was to be “included in Reserve.”⁵⁴

Stewart’s report, field notes, and final plan do not mention the size of the surveyed reserve. According to the Treaty 6 formula of 640 acres per family of five (or 128 acres per person), a band of 121 people would have been entitled to 15,488 acres, or 24.2 square miles, of reserve land. Inspector T.P. Wadsworth noted in April 1884 that the Chakastaypasin reserve “contains about 15,500 acres.”⁵⁵

Stewart reported that “so far, the members of this Band have [scarcely] commenced to practice any of the arts of civilized life, but they are a rather superior band of Indians and as far as I could observe need only a good example set them ... to very much improve their present condition.”⁵⁶ He also noted that his mistake about the lands the band members desired for their reserve might have been avoided “had their improvements been sufficient to show where they intended to permanently settle.”⁵⁷

Almost immediately after the survey of IR 98, it became apparent that nearby settlers opposed the inclusion of Sugar Island within the reserve. Dominion Land Surveyor J. Lestock Reid notified the Surveyor General on January 28, 1879, that settlers in the area were circulating a petition to the Minister of the Interior, asking that “no island in the Saskatchewan river be granted to Indians as Reserves.”⁵⁸ He explained that the settlers on the South Branch obtained their building timber from

⁵³ Natural Resources Canada, Field book 434 CLSR, Elihu Stewart, DLS, “Field Notes of Chacastapasin Reserve,” 1878 (ICC Exhibit 6b, item 6, p. 60).

⁵⁴ Natural Resources Canada, Plan 1034 CLSR, “Plan of the Chacastapasin Indian Reserve No. 98 on the South Saskatchewan River,” surveyed by E. Stewart, DLS, October 1878 (ICC Exhibit 6b, item 7, p. 1).

⁵⁵ T.P. Wadsworth to the Deputy Minister, April 22, 1884, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 118).

⁵⁶ Natural Resources Canada, Field book 434 CLSR, Elihu Stewart, DLS, “Field Notes of Chacastapasin Reserve,” 1878 (ICC Exhibit 6b, item 6, p. 60).

⁵⁷ Natural Resources Canada, Field book 434 CLSR, Elihu Stewart, DLS, “Field Notes of Chacastapasin Reserve,” 1878 (ICC Exhibit 6b, item 6, p. 60).

⁵⁸ J. Lestock Reid, DLS, to Lieutenant-Colonel J.S. Dennis, January 28, 1879, LAC, RG 10, vol. 3680, file 12185 (ICC Exhibit 1, p. 25a).

Sugar Island, as there was no other timber for logs “within available distance.”⁵⁹ On May 20, 1879, the Indian Superintendent at Battleford confirmed Lieutenant Governor Laird’s promise that two islands in the South Saskatchewan River should be reserved: one was to be included in the John Smith reserve (now the Muskoday reserve), and the other in Chakastaypasin’s reserve. However, the Superintendent noted that the islands “are not always called by the same names[,] which prevents us from knowing precisely which Islands were promised to the Indians by His Honor.”⁶⁰ In November 1880, the Dominion Lands Office prepared a description of the Chakastaypasin reserve, noting that Sugar Island was included “as agreed upon at the date of the Treaty.”⁶¹

Although Sugar Island was reserved for the Chakastaypasin Band, settlers from surrounding areas continued to take timber from the island. The Band complained to the Indian Agent in the spring of 1882 that settlers were stealing timber from Sugar Island, a claim that was substantiated following an investigation by the farming instructor.⁶²

Chakastaypasin Population and Land Use, 1876–85

The Chakastaypasin Band entered Treaty 6 with 82 people in 1876 and grew to a population of 107 by 1880. Thereafter, the population was reduced to a total of 69 people in 1884, although only 52 were paid that year. Most of this decrease can be accounted for by the disappearance of 19 families from the Chakastaypasin payroll without explanation during this period. Eleven of these families

⁵⁹ J. Lestock Reid, DLS, to Lieutenant-Colonel J.S. Dennis, January 28, 1879, LAC, RG 10, vol. 3680, file 12185 (ICC Exhibit 1, pp. 25a–25b).

⁶⁰ Office of the North-West Indian Superintendency, to L. Vankoughnet, Department of the Interior, May 20, 1879, LAC, RG 10, vol. 3680, file 12185 (ICC Exhibit 1, p. 25e).

⁶¹ [Lindsay Russell], Dominion Lands Office, Surveys Branch, November 9, 1880, LAC, RG 10, vol. 6663, file 109A-3-1 (ICC Exhibit 1, p. 43); unidentified author and recipient, November 19, 1880, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 54).

⁶² Harry Loucks, Farming Instructor, to unidentified recipient, c. 1885, no file reference available, quoted in Four Arrows, “Draft Historical Report, Chacastapasin Cree Nation,” March 1995 (ICC Exhibit 10, pp. 52–53).

moved to the James Smith paylists between 1878 and 1883, and the others married into other bands, died, or have not been traced.⁶³

During the same period, the Chakastaypasin band members made slow but steady progress in agriculture. However, they were somewhat hampered in the transition to agriculture by a lack of implements, work animals, and adequate farm instruction. The implements promised under Treaty 6 were not delivered until August 1877, a full year after treaty was signed and too late in the season to do any farming that year.⁶⁴ At the beginning of the 1878 season, the Chakastaypasin Band received seed and provisions as promised by the treaty in roughly equal proportion to the surrounding bands.⁶⁵ However, a “Statement showing distribution of Implements, Cattle, Seed, Grain, &c.” to the Indians of Treaty 6 up to June 30, 1878, shows that the Chakastaypasin Band received fewer implements than most of the surrounding bands within the Treaty 6 area.⁶⁶ It is not certain whether the Band ever received the other implements, as later statements show only what the department spent generally on implements and cattle for the entire Treaty 6 area in the following years.⁶⁷

A farming instructor was assigned to the Chakastaypasin, John Smith, James Smith, and Sturgeon Lake reserves in 1880, but his efforts were focused on the John Smith reserve, where he

⁶³ Treaty annuity paylists, Chakastaypasin Band, 1876–84, no file reference available (ICC Exhibit 12a, pp. 206–14); Treaty annuity paylists, James Smith Band, 1878–83, no file reference available (ICC Exhibit 12a, pp. 292–97); see also Sturgeon Lake First Nation, “Families of the Chakastapaysin Band: Remarks on Homik’s Tracing Study from the Perspective of the Sturgeon Lake First Nation,” revised May 1997 (ICC Exhibit 17c).

⁶⁴ James Walker, Acting Indian Agent and Inspector of the North-West Mounted Police, to the Lieutenant Governor of the North-West Territories, August 18, 1877, LAC, RG 10, vol. 3656, file 9092 (ICC Exhibit 1, p. 20).

⁶⁵ Statement of Provisions Distributed to Indians at Seed Time, Canada, *Report of the Deputy Superintendent General of Indian Affairs for the Year Ended December 31, 1878*, 59 (ICC Exhibit 15, p. 4).

⁶⁶ “Statement showing distribution of Implements, Cattle, Seed, &c. to Indians of Treaty No. 6 up to the 30th June, 1878,” Canada, *Report of the Deputy Superintendent General of Indian Affairs for the Year Ended December 31, 1878*, 62–63 (ICC Exhibit 15, pp. 5–6); David Laird, Lieutenant Governor and Indian Superintendent of the North-West Territories, to SGIA, December 5, 1878, Canada, *Report of the Deputy Superintendent General of Indian Affairs for the Year Ended December 31, 1878*, 37 (ICC Exhibit 15, p. 2).

⁶⁷ Canada, Parliament, *Sessional Papers*, 1880, No. 5, “Appropriation Accounts for Fiscal Year Ended 30th June 1879,” 204–5 (ICC Exhibit 1, pp. 29–30); Canada, Parliament, *Sessional Papers*, 1881, No. 8, “Appropriation Accounts for Fiscal Year Ended 30th June 1880,” 165 (ICC Exhibit 1, p. 38); Canada, Parliament, *Sessional Papers*, 1882, No. 10, “Appropriation Accounts for Fiscal Year Ended 30th June 1881,” 321 (ICC Exhibit 1, p. 70).

was stationed.⁶⁸ Out of these four bands, the John Smith Band was the only one to have made any substantial gains in agriculture by the end of 1881.⁶⁹ Indian Agent J.M. Rae reported in early 1881 that the Chakastaypasin band members were recovering from sickness and had not received much aid, but they were anxious to put in a large crop.⁷⁰ They had 22 acres broken that year, but frost destroyed much of the crop.⁷¹ In the fall of 1881, a number of chiefs living near Carlton, including Chief Chakastaypasin, repeated their requests from a year earlier for more working animals, as well as implements to assist those trying to get started in agriculture.⁷² Chief Chakastaypasin stated: “Farming implements and animals is what we require, also the help that these others have asked for. We want help besides what was given at the Treaty.”⁷³ The Chakastaypasin Band itself had only one yoke of oxen for its own use by this time, although it received a second yoke in 1882.⁷⁴

Up until late 1880, the Chakastaypasin Band had little supervision. From 1876 until late 1880, a succession of different Indian agents were responsible for the Band. The same agent had broad responsibility for all the operations in the entire Treaty 6 area – an impossible requirement that

⁶⁸ Statement of Farming Agencies and Indian Reservations, Treaties 4, 6, and 7, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1880*, 95–96 (ICC Exhibit 1, p. 68).

⁶⁹ Statement of Farming Agencies and Indian Reservations, Treaties 4, 6, and 7, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1880*, 95–96 (ICC Exhibit 1, p. 68).

⁷⁰ Carlton Indian Office to unidentified recipient, March 23, 1881, quoted in John A. Macdonald, SGIA, to the Governor General, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1881*, x (ICC Exhibit 1, p. 74).

⁷¹ Statement of Farming Agencies and Indian Reservations, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1881*, 44 (ICC Exhibit 1, p. 88); Carlton Indian Office to unidentified recipient, October 1, 1881, quoted in John A. Macdonald, SGIA, to the Governor General, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1881*, xiii (ICC Exhibit 1, p. 78).

⁷² W. Palmer Clark, Indian Agent, Carlton District, to SGIA, September 1, 1880, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1880*, 102 (ICC Exhibit 1, p. 41); Summary of the Council held at Carlton, undated, LAC, RG 10, vol. 3768, file 33642 (ICC Exhibit 1b, pp. 3–15).

⁷³ Summary of the Council held at Carlton, undated, LAC, RG 10, vol. 3768, file 33642 (ICC Exhibit 1b, p. 10).

⁷⁴ Carlton Indian Office to unidentified recipient, May 28, 1881, quoted in John A. Macdonald, SGIA, to the Governor General, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1881*, xi (ICC Exhibit 1, p. 76); Statement of Farming Agencies and Indian Reservations, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1882*, 270–71 (ICC Exhibit 1, pp. 105–6).

seems to have contributed to the high turnover.⁷⁵ In 1880, the Treaty 6 territory was broken down into three smaller areas, including the Carlton District. The Indian agent for the Carlton District was stationed at Prince Albert and was responsible for a number of bands, including the Chakastaypasin and the James Smith bands.⁷⁶ J.M. Rae held this position from late 1880 until 1883. He was known for his “strict economy,” and he kept the issue of implements and rations to a bare minimum during his tenure.⁷⁷ His successor, J. Ansdell Macrae, noted that “owing to the close economy practised by Mr. Rae in the conduct of agricultural operations, the Indians had, during the year 1883, no more implements than were indispensable for the required purposes.” By the end of the season, he noted, many implements “had become useless and beyond repair.”⁷⁸

As early as 1878, Chakastaypasin families began leaving the reserve to live with other bands. Harold Kingfisher’s great-grandparents, Ooteepayinisew and Nesoquam, were paid with the Chakastaypasin Band in 1876 and 1877, but they moved to the James Smith band payroll in 1878 to stay with Ooteepayinisew’s brother, Chekoosoo.⁷⁹ The stories passed down to Mr Kingfisher say that rations and many other items were withheld from the Band at IR 98, causing families to leave the reserve. He explained:

They starved them out, they didn’t give them rations. They didn’t give them rations they were supposed to have got, like they were doing to other First Nations communities. But Chak wasn’t getting them rations, they were eventually pushing

⁷⁵ F. Laurie Barron, “Indian Agents and the North-West Rebellion,” in F.L. Barron and James B. Waldram, eds., *1885 and After: Native Society in Transition* (Regina: Canadian Plains Research Center, 1986), 146–47.

⁷⁶ F. Laurie Barron, “Indian Agents and the North-West Rebellion,” in F.L. Barron and James B. Waldram, eds., *1885 and After: Native Society in Transition* (Regina: Canadian Plains Research Center, 1986), 146.

⁷⁷ F. Laurie Barron, “Indian Agents and the North-West Rebellion,” in F.L. Barron and James B. Waldram, eds., *1885 and After: Native Society in Transition* (Regina: Canadian Plains Research Center, 1986), 143.

⁷⁸ J. Ansdell Macrae, Indian Agent, to SGIA, August 11, 1884, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1884*, 78 (ICC Exhibit 1, p. 134).

⁷⁹ Treaty annuity paylists, Chakastaypasin Band, 1876–77, no file reference available (ICC Exhibit 12a, pp. 206–7); Treaty annuity paylists, James Smith Band, 1878–81, no file reference available (ICC Exhibit 12a, pp. 292–95); ICC Transcript, May 27–29, 2003 (ICC Exhibit 17b, pp. 157–58, Harold Kingfisher, Sturgeon Lake First Nation).

them out slowly. That was in the early years, and then when the Rebellion came along already my grandparents had moved to James Smith.⁸⁰

However, Ooteipayinisew and Nesoquam continued to plant crops at IR 98 for a number of years and had a cabin at the reserve.⁸¹ It is unclear when they stopped using the land at IR 98, but it may have been sometime around the North-West Rebellion in 1885. Mr Kingfisher described how, during the uprising, they hid on the reserve in a dugout concealed with logs,⁸² and, later, how the North-West Mounted Police would come around the reserve looking for “renegades” and steal from their gardens.⁸³ He says that Nesoquam went to Sturgeon Lake around the time of the rebellion and was afraid to return to the Chakastaypasin reserve.⁸⁴

By 1883, the Inspector of Indian Agencies, T.P. Wadsworth, reported that, although the Band was “still very backward in farming,”

they have made considerable progress since my last visit, having about twenty-five acres under crop. Big Head, a headman with three married sons and two sons-in-law have built houses and broken land at intervals along the river front. The chief lives five miles back from the river, and has ten acres in wheat, barley and potatoes.⁸⁵

⁸⁰ ICC Transcript, May 27–29, 2003 (ICC Exhibit 17b, p. 158, Harold Kingfisher, Sturgeon Lake First Nation).

⁸¹ ICC Transcript, May 27–29, 2003 (ICC Exhibit 17b, pp. 158, 160, Harold Kingfisher, Sturgeon Lake First Nation).

⁸² ICC Transcript, May 27–29, 2003 (ICC Exhibit 17b, p. 160, Harold Kingfisher, Sturgeon Lake First Nation).

⁸³ ICC Transcript, May 27–29, 2003 (ICC Exhibit 17b, pp. 158–59, Harold Kingfisher, Sturgeon Lake First Nation).

⁸⁴ ICC Transcript, May 27–29, 2003 (ICC Exhibit 17b, pp. 162, 164, Harold Kingfisher, Sturgeon Lake First Nation). Nesoquam was paid on the Sturgeon Lake band payroll from 1881 on.

⁸⁵ T.P. Wadsworth, Inspector of Indian Agencies, to SGIA, October 9, 1883, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1883*, 120–21 (ICC Exhibit 1, pp. 102–3).

By the end of 1884, department officials reported that few Chakastaypasin band members were living on the reserve.⁸⁶ That year, Inspector T.P. Wadsworth noted that although the Chakastaypasin reserve was excellently suited for agriculture, “scarcely half” of the Chakastaypasin Band actually resided there.⁸⁷ Wadsworth remarked that because of the band’s small size, “the Department have never considered them of sufficient importance to go to the expense of sending them a Farming Instructor.”⁸⁸

Indian Agent J. Ansdell Macrae reported in August 1884 that “very few” of the Chakastaypasin members lived on their reserve, but that “such as do are maintaining a steady rate of progress.” He also commented: “Nothing prevents all of our Indians from being settled on their reserves, except our incapacity to furnish enough material for agriculture. They are all desirous of settling, but have not the wherewithal to enable them to commence farming.”⁸⁹ He specifically noted that the “wandering members” of Chakastaypasin’s Band would “doubtlessly come in and settle when the Government decides to put them actively to work.”⁹⁰ By this time, at least 16 families had already moved to other bands or otherwise disappeared from the Chakastaypasin band paylists. As noted above, Harold Kingfisher’s relatives were among those who had moved to another band, although they continued to plant gardens at IR 98.⁹¹

In the same letter, Macrae also reported a “constant feud” between two factions of the Chakastaypasin Band. He explained that the factions were “headed respectively by one of the

⁸⁶ John A. Macdonald, SGIA, to the Governor General, January 1, [1885], Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1884*, ix (ICC Exhibit 15, p. 28).

⁸⁷ T.P. Wadsworth, Inspector of Indian Agencies, to the Deputy Minister, April 22, 1884, LAC, RG 10, vol. 3786, file 27580 (ICC Exhibit 1, p. 118).

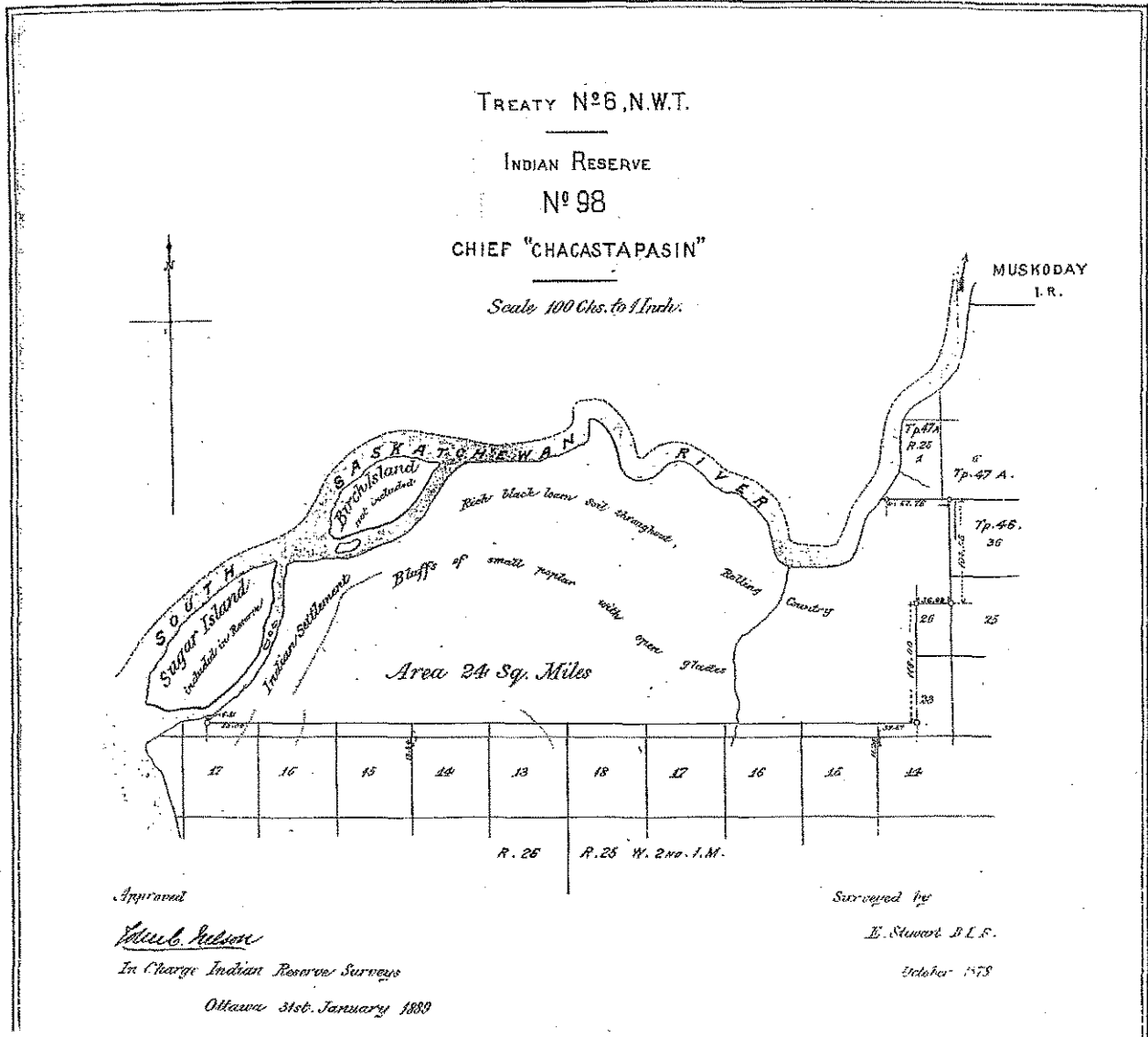
⁸⁸ T.P. Wadsworth, Inspector of Indian Agencies, to the Deputy Minister, April 22, 1884, LAC, RG 10, vol. 3786, file 27580 (ICC Exhibit 1, p. 119).

⁸⁹ J. Ansdell Macrae, Indian Agent, Carlton District, to SGIA, August 11, 1884, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1884*, 80 (ICC Exhibit 1, p. 136).

⁹⁰ J. Ansdell Macrae, Indian Agent, Carlton District, to SGIA, August 11, 1884, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1884*, 83 (ICC Exhibit 1, p. 139).

⁹¹ ICC Transcript, May 27–29, 2003 (ICC Exhibit 17b, pp. 158, 160, Harold Kingfisher, Sturgeon Lake First Nation).

Map 2 Indian Reserve 98



councillors and the chief, and when it becomes necessary to commence more active agriculture, a better chief will have to be elected.”⁹² Kahtapiskowat was the only headman paid with the Chakastaypasin Band at this time, so it is likely that he was the councillor or headman referred to by Macrae.⁹³ Chakastaypasin elder Patrick Stonestand and Sturgeon Lake elder Harold Kingfisher recall hearing about disagreements among the Band’s leaders; some of the stories suggest that the conflict was related to the succession of leadership within the Band.⁹⁴ However, other Chakastaypasin elders do not recall hearing about such conflict within the Band or among its leaders.⁹⁵

Sugar Island and the IR 98 Survey, 1884

By early 1884, the surrounding settler communities and local department officials were still not clear whether Sugar Island had been reserved for the Chakastaypasin Band. On January 15, 1884, Indian Agent J.A. Macrae recommended that Sugar Island be reserved for the Chakastaypasin Band, if it had not already been done. He noted that the island was “well covered by timber, which being scarce in their vicinity is likely to be encroached upon by white settlers,” and reported that the Crown Timber Agent had received applications from settlers asking for permits to cut timber on the island.⁹⁶ Macrae recommended that the timber on Sugar Island be sold to fund the purchase of cattle and other items for the Chakastaypasin Band, explaining that because of damage to the timber caused by erosion and fire, the band members “would be more benefited by a discriminating disposal being

⁹² J. Ansdell Macrae, Indian Agent, Carlton District, to SGIA, August 11, 1884, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1884*, 83 (ICC Exhibit 1, p. 139).

⁹³ Treaty annuity paylists, Chakastaypasin Band, 1882–84, no file reference available (ICC Exhibit 12a, pp. 212–14).

⁹⁴ ICC Transcript, January 28–29, 2003 (ICC Exhibit 16b, pp. 157–58, 164–65, Patrick Stonestand); ICC Transcript, May 27–29, 2003 (ICC Exhibit 17b, pp. 171–72, Harold Kingfisher, Sturgeon Lake First Nation).

⁹⁵ ICC Transcript, January 28–29, 2003 (ICC Exhibit 16b, p. 42, Sol Sanderson; p. 117, Raymond Sanderson).

⁹⁶ J. Ansdell Macrae, Indian Agent, to the Indian Commissioner, January 15, 1884, LAC, RG 10, vol. 3576, file 280 (ICC Exhibit 1, p. 107).

made of it now, than by any attempted preservation for future use.”⁹⁷ Hayter Reed, the Acting Assistant Indian Commissioner, concurred with Macrae’s recommendations in a letter to the Deputy Superintendent General of Indian Affairs (DSGIA), Lawrence Vankoughnet.⁹⁸ Vankoughnet replied only to confirm that Sugar Island was already reserved for the Chakastaypasin Band, but that the other islands should be left open to the public, “as the wood being scarce in that locality the public generally should have the benefit of any surplus over and [above] what the Indians actually require.”⁹⁹

In August 1884, Surveyor A.W. Ponton arrived at the Chakastaypasin reserve to complete the survey of the reserve first started by Elihu Stewart in 1878. He reported that the eastern boundary by this time “was so grown with brush that nothing remained to show its existence but a post lost in the bushes.”¹⁰⁰ Once this marker was located, he ran a short line from the eastern boundary “westerly to the River” to enclose the reserve. He did not state the final acreage of the reserve, but noted in his report that the boundaries resulted in a reserve acreage with “no appreciable difference” from the first survey.¹⁰¹ Ponton’s revised survey plan of the Chakastaypasin reserve included Sugar Island within the limits of the reserve.¹⁰²

Chakastaypasin IR 98 was confirmed by Order in Council PC 1151, dated May 17, 1889. The Order in Council stated that the reserve was surveyed for 12 families under Chief Chakastaypasin and described the reserve as

⁹⁷ J. Ansdell Macrae, Indian Agent, to the Indian Commissioner, January 15, 1884, LAC, RG 10, vol. 3576, file 280 (ICC Exhibit 1, pp. 107–8).

⁹⁸ Hayter Reed, Acting Assistant Indian Commissioner, to SGIA, February 20, 1884, LAC, RG 10, vol. 3677, file 11466 (ICC Exhibit 1, p. 111).

⁹⁹ L. Vankoughnet, DSGIA, to Hayter Reed, Acting Assistant Indian Commissioner, March 11, 1884, LAC, RG 10, vol. 3576, file 280 (ICC Exhibit 1, p. 114).

¹⁰⁰ A.W. Ponton, Indian Reserve Surveyor, to Edgar Dewdney, Indian Commissioner, December 31, 1884, LAC, RG 10, vol. 3682, file 12628 (ICC Exhibit 1, pp. 150–51).

¹⁰¹ A.W. Ponton, Indian Reserve Surveyor, to Edgar Dewdney, Indian Commissioner, December 31, 1884, LAC, RG 10, vol. 3682, file 12628 (ICC Exhibit 1, p. 151).

¹⁰² Natural Resources Canada, Plan 53186 CLSR, “Treaty No. 6, Plan, Indian Reserve No. 98, Chief Chacastapasin, drawn from surveys by E. Stewart, DLS, 1878, and A.W. Ponton, DLS, 1884,” March 19, 1885 (ICC Exhibit 6b, item 8, p. 1).

containing an area of twenty-four square miles, more or less; and containing moreover, Sugar Island at the south-western corner of this reserve.

The country is high and rolling and the soil a rich black sandy loam. About half the reserve is covered with poplar, generally running in ridges with open glades between.¹⁰³

THE NORTH-WEST REBELLION AND ITS AFTERMATH, 1885–88

The North-West Rebellion (or Riel Rebellion) broke out in March 1885, and, although the fighting lasted less than two months, it was a pivotal event for the Chakastaypasin Band. The sites of the battles at Duck Lake and Batoche were not far from IR 98. Leaders of the uprising sent runners to many reserves in the North-West, asking for assistance in the fight and threatening those who refused, stating “that they would be massacred by the soldiers in the event of the insurgents being defeated, whether they had fought or not.”¹⁰⁴ John A. Macdonald, the Prime Minister and Superintendent General of Indian Affairs (SGIA), noted that the mood on the reserves in the North-West during 1885 was tense and uneasy, especially in areas near the conflict or on the travel routes for government soldiers.¹⁰⁵

Elders’ testimony recounted that many members of the Chakastaypasin Band left their reserve in order to avoid being drawn into the conflict, motivated both by loyalty to the treaty and by fear stemming from threats made by the scouts who came to their reserve.¹⁰⁶ As elder Robert Constant put it, “They didn’t want to shoot the queen. They honoured the treaty, because they made the

¹⁰³ Order in Council PC 1151, May 17, 1889, p. 50 (ICC Exhibit 6b).

¹⁰⁴ John A. Macdonald, SGIA, to the Governor General, January 1, 1886, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1885*, xii.

¹⁰⁵ John A. Macdonald, SGIA, to the Governor General, January 1, 1886, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1885*, xii–xiii.

¹⁰⁶ ICC Transcript, June 27–28, 2001 (ICC Exhibit 16a, pp. 88, 110, Walter Sanderson; pp. 28, 49, 51, Robert Constant); ICC Transcript, January 28–29, 2003 (ICC Exhibit 16b, p. 110, Raymond Sanderson; p. 214, Jake Sanderson; pp. 73–74, Terry Sanderson).

treaty.”¹⁰⁷ There is testimony of one family hiding on the reserve at some point during the rebellion, but others left the reserve because they were afraid of being found if they hid there.¹⁰⁸

On May 6, 1885, Indian Commissioner Edgar Dewdney issued a notice ordering “all good and loyal Indians”¹⁰⁹ to remain on their reserves:

Whereas, the troubles in the North have necessitated the bringing of large bodies of troops into the country to suppress the troubles, and punish those causing them, and when these troops meet any Indians off their Reserves they may be unable to tell whether they are hostile or friendly, and may attack them;

And Whereas, runners are constantly being sent by Riel throughout the country spreading lies and false reports, trying to induce different bands of Indians to join him, by threat and otherwise;

And Whereas, it is the intention of the troops to arrest and punish such runners wherever the same may be found, and it will be necessary for them, in order to accomplish this, to arrest all Indians, or any suspicious persons whom they may see, in order to ascertain whether or not they are runners from Riel;

And Whereas, it is expedient that all good and loyal Indians should know how to act under the present circumstances so as to secure their own safety and the good will of the Government;

Now, this is to give notice that all good and loyal Indians should remain quietly on their Reserves where they will be perfectly safe and receive the protection of the soldiers; and that any Indian being off his Reserve without special permission in writing from some authorized person, is liable to be arrested on suspicion of being a rebel, and punished as such.¹¹⁰

It is uncertain if all members of the Chakastaypasin Band had already left their reserve by this time.

At the end of the North-West Rebellion, a number of Indian “rebels,” including three prominent Chiefs, were tried and imprisoned for their alleged role in the uprising. A few were

¹⁰⁷ ICC Transcript, June 27–28, 2001 (ICC Exhibit 16a, p. 49, Robert Constant).

¹⁰⁸ ICC Transcript, June 27–28, 2001 (ICC Exhibit 17b, p. 160, Harold Kingfisher, Sturgeon Lake First Nation).

¹⁰⁹ The terms “loyal” and “rebel” are based on the department’s use in correspondence during this period. For ease of reference, these terms are used in this report. The Indian Claims Commission does not intend to pass any judgments on the involvement or non-involvement of any Chakastaypasin members by the use of these terms.

¹¹⁰ Edgar Dewdney, Indian Commissioner, May 6, 1885, LAC, RG 10, vol. 3584, file 1130 (ICC Exhibit 1, p. 163).

sentenced to death by hanging for their involvement in the rebellion, and their penalties were carried out in November 1885.¹¹¹

The Chakastaypasin “Rebels”

The Department of Indian Affairs initially branded the entire Chakastaypasin Band as “rebels,” guilty of involvement in the rebellion, although there is no information to suggest the basis for the charges. The nearby One Arrow, Beardy’s, and Okemasis bands were also accused of involvement in the uprising.¹¹² Indian Commissioner Dewdney informed the SGIA in June 1885 that the Chakastaypasin Band had “violated the terms of the Treaty made with them” and that it would be advisable to break up the Band and amalgamate it with others.¹¹³ He also recommended that annuities be withheld from “Indians who have participated in any way whatever in the late Rebellion,” both as a means of punishment and a way to recover the costs for damage to government property.¹¹⁴ On June 27, 1885, Dewdney instructed the Indian Agent at Prince Albert that, “[w]ith regard to rations, those Indians who have behaved well must be well looked after, while those who have given the trouble should only receive such assistance as actual humanity necessitates.”¹¹⁵

In his July 29, 1885, memorandum on the “Future Management of Indians,” Hayter Reed, the Assistant Indian Commissioner, outlined a number of recommendations for dealing with those “who during the late troubles [had] been disloyal or troublesome,” including:

¹¹¹ Blair Stonechild and Bill Waiser, *Loyal till Death: Indians and the North-West Rebellion* (Calgary: Fifth House Publishers, 1997), 199–213; see also John A. Macdonald, SGIA, to the Governor General, January 1, 1886, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1885*, ix, xliii, lii.

¹¹² Edgar Dewdney, Indian Commissioner, to SGIA, August 27, 1885, LAC, RG 10, vol. 3710, file 19550-3 (ICC Exhibit 18b, p. 13).

¹¹³ Edgar Dewdney, Indian Commissioner, to SGIA, June 19, 1885, LAC, RG 10, vol. 3714, file 21088-2 (and copy of letter, vol. 3584, file 1130) (ICC Exhibit 1, pp. 188, 193).

¹¹⁴ Edgar Dewdney, Indian Commissioner, to SGIA, June 19, 1885, LAC, RG 10, vol. 3714, file 21088-2 (and copy of letter, vol. 3584, file 1130) (ICC Exhibit 1, pp. 187, 191); E. Dewdney, Indian Commissioner, to SGIA, December 23, 1887, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1887*, 189 (ICC Exhibit 15, p. 67).

¹¹⁵ Edgar Dewdney, Indian Commissioner, to the Indian Agent, June 27, 1885, LAC, RG 10, vol. 1591 (ICC Exhibit 1, p. 194).

- the abolishment “in so far as compatible with the treaty” of the “tribal system,” by deposing the Chiefs and councillors of “rebel tribes” and dealing directly with individuals;
- withholding annuity money from bands or individuals who participated in the rebellion;
- withholding rations from certain bands “unless they are reduced to an extreme state by starvation and really cannot provide for themselves”;
- strict requirements “that each and every Indian now works for every pound of provisions given to him”;
- disarmament of rebel bands and withholding of ammunition; and
- directions that “no rebel Indians should be allowed off the reserves without a pass signed by an [Indian Department] official.”¹¹⁶

Aside from these general suggestions, Reed made a specific recommendation for dealing with the One Arrow and Chakastaypasin bands:

One Arrow’s [Band] should be joined with that of Beardy & Okemasis, and their present Reserve be surrendered. Chakastaypasin’s [Band] should be broken up, and its reserve surrendered; the [Band] being treated as suggested with One Arrow’s. Neither of these [bands] are large enough to render it desirable to maintain instructors permanently with them, and as they are constituted of bad and lazy Indians, nothing can be done without constant supervision for them. The action suggested therefore would have been wise in any case; their rebellion justifies the pursuit.¹¹⁷

Other department documents provide a different view of the Chakastaypasin Band and its role in the uprising. In August 1885, Indian Commissioner Dewdney remarked that “a few of these men I think were loyal but are not deserving of any special recognition.”¹¹⁸

Hayter Reed’s recommendations for the “future management of Indians” were generally upheld by the SGIA. On October 28, 1885, Indian Commissioner Dewdney was informed that the SGIA “considers that Chakastapaysin’s Band should be broken up; the [Reserve of this band] when

¹¹⁶ Hayter Reed, Assistant Indian Commissioner, to the Indian Commissioner, July 29, 1885, Glenbow Archives, Edgar Dewdney Papers, document M320, box 4, file 66, pp. 1414–19 (ICC Exhibit 18a, pp. 1–6).

¹¹⁷ Hayter Reed, Assistant Indian Commissioner, to the Indian Commissioner, July 29, 1885, Glenbow Archives, Edgar Dewdney Papers, document M320, box 4, file 66, pp. 1417–18 (ICC Exhibit 18a, pp. 4–5).

¹¹⁸ Edgar Dewdney, Indian Commissioner, to SGIA, August 27, 1885, LAC, RG 10, vol. 3710, file 19550-3 (ICC Exhibit 18b, p. 14).

the members of the same are distributed among other Bands to be handed over to the Government and the necessary addition to be made to the Reserves to which they may be moved”¹¹⁹

With respect to the pass system, Lawrence Vankoughnet, the DSGIA, felt that the system “should be introduced as far as practicable in the loyal Bands as well,” but that it “should not be insisted upon as regards loyal Indians” if they resisted on the basis of their treaty rights.¹²⁰ The pass system was a means of reinstating and strengthening government control over Indian movements and whereabouts following the rebellion. Indian Agents received books of passes in 1886, and the system was strictly enforced, especially in the years immediately following the rebellion.¹²¹

In February 1886, Commissioner Dewdney issued a notice to “the Indians of the North West Territories” informing them that the government intended to send “a large number of soldiers and police into the country” in order to “keep the peace,” and that “any Indians found with fire-arms, off his Reserve, without permission of the Agent, will be liable to arrest.”¹²²

Government Treatment of “Rebel” and “Loyal” Chakastaypasin Band Members

Four families (17 people), including Chief Chakastaypasin and his family, were denied annuity payments from 1885 to 1889 because the government viewed them as “rebels.”¹²³ In addition to the policies designed to punish those who had taken part in the rebellion, it was determined that rewards

¹¹⁹ L. Vankoughnet, DSGIA, to Edgar Dewdney, Indian Commissioner, October 28, 1885, LAC, RG 10, vol. 3584, file 1130, part 1B (ICC Exhibit 1, p. 206). Words in brackets are modified from plural to singular, since these directions also apply to the One Arrow Band.

¹²⁰ L. Vankoughnet, DSGIA, to Edgar Dewdney, Indian Commissioner, October 28, 1885, LAC, RG 10, vol. 3584, file 1130, part 1B (ICC Exhibit 1, p. 202).

¹²¹ Sarah A. Carter, *Lost Harvests: Prairie Indian Reserve Farmers and Government Policy* (Montreal: McGill-Queen’s University Press, 1990), 145–46, 149–56 (ICC, Cumberland House Cree Nation IR 100A Inquiry, Written Submissions on Behalf of the Cumberland House Cree Nation, August 28, 2003, tab 1).

¹²² E. Dewdney, Lieutenant Governor and Indian Commissioner, to the Indians of the North-West Territories, February 16, 1886, LAC, RG 10, vol. 1598 (ICC Exhibit 1, pp. 224–25).

¹²³ Treaty annuity paylists, Chakastaypasin Band, 1885–89, no file reference available (ICC Exhibit 12a, pp. 215, 216, 218, 220). The families denied annuities were no. 1 – Chief Chakastaypasin; no. 6 – Pascal; no. 7 – Madeline; and no. 31 – Edward Koopekeweyin.

should be offered for “the good conduct of loyal Indians.”¹²⁴ Commissioner Dewdney notified the Acting Agent at Prince Albert on May 25, 1886:

“Big Head” or Kah-tip-is-kee-wat from Chakastapaysin’s Band behaved himself in such a manner during the Rebellion as to merit recognition and I would accordingly beg that you will place his name upon the list of those to be rewarded for loyalty, the present which it is proposed to give him being two heifers.¹²⁵

This decision seems to mark the start of a more cordial attitude towards the “loyal” elements of the Chakastaypasin Band, especially those members associated with Big Head. Although no band members received annuities on the Chakastaypasin 1885 payroll, six Chakastaypasin families, including Big Head, appeared on the James Smith payroll for 1885 and were paid annuities.¹²⁶ One family also received annuities in 1885 with John Smith.¹²⁷ It should be noted that while some families received their annuities with other bands in 1885, the Indian Agent was later informed that he did not have the authority to pay them that year.¹²⁸ However, two Chakastaypasin families received arrears for 1885 the following year,¹²⁹ and another family received arrears for 1885 in

¹²⁴ L. Vankoughnet, DSGIA, to Edgar Dewdney, Indian Commissioner, October 28, 1885, LAC, RG 10, vol. 3584, file 1130, part 1B (ICC Exhibit 1, p. 208).

¹²⁵ E. Dewdney, Indian Commissioner, to the Acting Indian Agent, May 25, 1886, LAC, RG 10, vol. 1591 (ICC Exhibit 1, p. 234).

¹²⁶ Treaty annuity payroll, James Smith Band, 1885, LAC, RG 10, vol. 9418 (ICC Exhibit 12a, p. 300). The six Chakastaypasin families appearing on this payroll were no. 2 – Big Head; no. 21 – Asnieapow; no. 8 – Kasookakeseyclock; no. 35 – Katapiskwat’s 2nd Son; no. 14 – Nanapatam; and no. 27 – Kootapachekeyin.

¹²⁷ Treaty annuity payroll, John Smith Band, 1885, no file reference available (ICC Exhibit 21d, p. 11). See no. 27 – Kootapachekeyin.

¹²⁸ Treaty annuity payroll, James Smith Band, 1885, LAC, RG 10, vol. 9418 (ICC Exhibit 12a, 300); Treaty annuity payroll, John Smith Band, 1885, no file reference available (ICC Exhibit 26d, p. 11); unidentified author and recipient, undated, no file reference available (ICC Exhibit 27a, p. 3).

¹²⁹ Treaty annuity payroll, Chakastaypasin Band, 1886, no file reference available (ICC Exhibit 12a, p. 216). See no. 3 – Kahkeenokanasum and Peter Hourie’s Wife.

1887.¹³⁰ On the 1886 Chakastaypasin payroll, the Indian Agent noted that two additional families “were due” arrears for 1885. It appears, however, that they never received them.¹³¹

Location of Chakastaypasin Band Members, 1885–87¹³²

The evidence regarding the location of Chakastaypasin band members during the period 1885–87 is very sketchy. James Smith and Chakastaypasin elders testified that Chakastaypasin band members left IR 98 after receiving threats from scouts involved in the uprising.¹³³ It appears that many initially went to the area near Stoney Creek and the Carrot River valley,¹³⁴ one of their traditional hunting territories.¹³⁵ The Carrot River ran through what would later become the northern township of IR 100A, south of the James Smith reserve. Stoney Creek was located a little farther south, outside the boundaries of the future IR 100A. Some families scattered to other reserves initially, including John Smith’s and James Smith’s reserves, most likely to join relatives in those places for safety while the fighting was going on.¹³⁶ Oral tradition mentions that Chakastaypasin members also went

¹³⁰ Treaty annuity payroll, Chakastaypasin Band, 1887, no file reference available (ICC Exhibit 12a, p. 217). See no. 32 – Koopooayouakin.

¹³¹ Treaty annuity payroll, Chakastaypasin Band, 1886, no file reference available (ICC Exhibit 12a, p. 216). See no. 28 [illegible] and no. 33 – Kapatowat.

¹³² Although the panel is satisfied that members moved at least to the bands involved in this inquiry, we have not been asked to perform independent research to identify all the “Host Bands.” Therefore, we are relying on research previously completed by these parties. Those involved in the inquiry have self-identified as “Host Bands.”

¹³³ ICC Transcript, January 28–29, 2003 (ICC Exhibit 16b, p. 110, Raymond Sanderson; p. 214, Jake Sanderson).

¹³⁴ ICC Transcript, June 27–28, 2001 (ICC Exhibit 16a, p. 28, Robert Constant); ICC Transcript, January 28–29, 2003 (ICC Exhibit 16b, p. 110, Raymond Sanderson); ICC Transcript, May 27–29, 2003 (ICC Exhibit 17b, p. 87, Louise Smokeyday, Kinistin First Nation).

¹³⁵ ICC Transcript, January 28–29, 2003 (ICC Exhibit 16b, pp. 15–16, 43, Sol Sanderson).

¹³⁶ ICC Transcript, June 27–28, 2001 (ICC Exhibit 16a, p. 29, Robert Constant; pp. 90–91, Walter Sanderson); ICC Transcript, January 28–29, 2003 (ICC Exhibit 16b, pp. 73–74, Terry Sanderson); ICC Transcript, May 27–29, 2003 (ICC Exhibit 17b, pp. 34, 50, Louise Smokeyday, Kinistin First Nation); Treaty annuity payroll, John Smith Band, 1885, no file reference available (ICC Exhibit 26d, p. 11); Treaty annuity payroll, James Smith Band, 1885, LAC, RG 10, vol. 9418 (ICC Exhibit 12a, p. 300).

to the Montreal Lake, Sturgeon Lake, One Arrow, and Kinistin Bands, and some went as far south as the Touchwood Hills.¹³⁷

Many elders recall that Chief James Smith invited the Chakastaypasin families who went to Stoney Creek to camp on the James Smith reserve until the fighting subsided.¹³⁸ In November 1885, six Chakastaypasin families were paid their annuities with James Smith.¹³⁹ The evidence suggests that many of those who initially went to James Smith were part of Big Head's extended family.¹⁴⁰ In 1886, the Losses Claims Commission, a body set up to provide compensation to those who lost property during the rebellion, received a claim from Big Head for his personal property and cattle. The Agent noted that Big Head's cattle were taken "after he had driven them down to La Corne, 50–60 miles from his reserve."¹⁴¹

Kinistin elder Louise Smokeyday maintained that "the Saulteaux portion" of the Chakastaypasin Band "came to their relatives at Kinistin" who lived in the Stoney Creek area.¹⁴² The oral history passed down to Kinistin elders says that Chief Chakastaypasin came to stay with his relatives at Stoney Creek after his "land was taken."¹⁴³ Indian Agent R.S. McKenzie reported in 1888 that the Chakastaypasin band members, "with the exception of Big Head and eighteen souls," left

¹³⁷ ICC Transcript, January 28–29, 2003 (ICC Exhibit 16b, p. 90, Walter Sanderson); ICC Transcript, May 27–29, 2003 (ICC Exhibit 17b, p. 55, Besigan Nippi, Kinistin First Nation).

¹³⁸ ICC Transcript, June 27–28, 2001 (ICC Exhibit 16a, p. 32, Robert Constant; p. 117, Violet Sanderson); ICC Transcript, January 28–29, 2003 (ICC Exhibit 16b, pp. 84–85, 88, Terry Sanderson; p. 111, Raymond Sanderson; p. 217, Jake Sanderson).

¹³⁹ Treaty annuity payroll, James Smith Band, 1885, LAC, RG 10, vol. 9418 (ICC Exhibit 12a, p. 300).

¹⁴⁰ Treaty annuity payroll, James Smith Band, 1885, LAC, RG 10, vol. 9418 (ICC Exhibit 12a, p. 300); ICC Transcript, January 28–29, 2003 (ICC Exhibit 16b, p. 226, Sol Sanderson); Sturgeon Lake First Nation, "Families of the Chakastapaysin Band: Remarks on Homik's Tracing Study from the Perspective of the Sturgeon Lake First Nation," revised May 1997 (ICC Exhibit 17c, pp. 50–53); Treaty annuity payroll, "Supplement, Beardy Band paid at Prince Albert," 1886, LAC, RG 10, vol. 9418 (ICC Exhibit 26a, p. 20).

¹⁴¹ Charles Adams, Acting Indian Agent, to George Young, Secretary, Losses Claims Commission, July 31, 1886, no file reference available (ICC Exhibit 1, pp. 250–51).

¹⁴² ICC Transcript, May 27–29, 2003 (ICC Exhibit 17b, pp. 31, 67, Louise Smokeyday, Kinistin First Nation).

¹⁴³ ICC Transcript, May 27–29, 2003 (ICC Exhibit 17b, p. 34, Louise Smokeyday, Kinistin First Nation).

their reserve in 1885 and had been living near the Carrot River ever since, “making a living by hunting,” and that they could not “be induced to return to their reserve, preferring to live off it.”¹⁴⁴

A tabular statement in the 1885 Annual Report notes that 12 members of the Chakastaypasin Band were “with Red Lake Saulteaux.”¹⁴⁵ No further information is available to explain this remark.

The Chakastaypasin paylists during this period are of little assistance in determining where band members were living. The 1885 payroll simply lists the same families who were paid in 1884 and the “money due them if paid in 1885.”¹⁴⁶ Seven families received their annuities at Fort à la Corne and at the John Smith reserve that year, but the whereabouts of the remaining nine families during 1885 cannot be determined from the documentary evidence.¹⁴⁷ After 1885, the 12 “loyal” families received their annuities each year on the Chakastaypasin band payroll (and later on the Cumberland Band 100A payroll), and they can be traced. The four “rebel” families were listed on the same Chakastaypasin band payroll in 1885 and 1886, and on a separate Chakastaypasin Band “rebel” payroll in 1887 and 1888. However, the statistics were not updated for “rebel” members from 1885 until 1889, making it impossible to trace these four Chakastaypasin families during this four-year period. In fact, when their annuities were reinstated in 1889, two of these families had disappeared.

The evidence regarding the location and activities of Chakastaypasin members during the year 1886 is very unclear. A new Acting Indian Agent, Charles Adams, was appointed in February 1886 and remained in that position until August of the same year.¹⁴⁸ After hearing in early spring that

¹⁴⁴ R.S. McKenzie, Indian Agent, Duck Lake Agency, to SGIA, September 10, 1888, LAC, RG 10, vol. 9098, book 4, p. 140 (ICC Exhibit 1, p. 431).

¹⁴⁵ “Number of Indians in the North-West Territories, and their Whereabouts in October, 1885,” Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1885*, 218 (ICC Exhibit 15, p. 45).

¹⁴⁶ Treaty annuity payroll, Chakastaypasin Band, 1885, no file reference available (ICC Exhibit 12a, p. 215).

¹⁴⁷ Treaty annuity payroll, James Smith Band, 1885, LAC, RG 10, vol. 9418 (ICC Exhibit 12a, p. 300); Treaty annuity payroll, John Smith Band, 1885, no file reference available (ICC Exhibit 26d, p. 11); Treaty annuity payroll, Chakastaypasin Band, 1884, no file reference available (ICC Exhibit 12a, p. 214); Treaty annuity payroll, Chakastaypasin Band, 1886, no file reference available (ICC Exhibit 12a, p. 216).

¹⁴⁸ E. Dewdney, Indian Commissioner, to Acting Indian Agent, August 24, 1886, LAC, RG 10, vol. 1591 (ICC Exhibit 1, p. 253).

Indian Department property was being stolen from IR 98, Adams dispatched someone to investigate. He later reported that, during this investigation, “no Indians were on the reserve[,] as they had not returned since fleeing from the French at the commencement of the rebellion,” and that their farm implements had been left out and frozen into the ground.¹⁴⁹ It is not known who was stealing from the reserve or how that information came to the attention of the Indian Agent. In May, Adams reported that “the Chakastaypasin band at La Corne came in there to plant a little stuff and of course made a call on us for provisions.”¹⁵⁰ It is uncertain whether Adams was referring to band members planting gardens at IR 98 or somewhere near Fort à la Corne.¹⁵¹

In June and July 1886, a series of department correspondence shows that instructions were given to amalgamate the Chakastaypasin Band with the bands at Fort à la Corne. In June, Acting Indian Agent Adams wrote to the farm instructor at Fort à la Corne to inform him “that in accordance with the recommendation of the Indian Commissioner, Big Head and his band are to be amalgamated with James Smiths band – you will therefore give them the same attention as the other, distributing provisions, etc. proportionally.”¹⁵² Assistant Indian Commissioner Hayter Reed wrote to Adams in July, stating that, “if it is at all feasible this band may settle on John Smith’s and P. Chapman’s reserves as you mention[,] although it would be better if they were a little scattered with different bands.”¹⁵³ Reed also told Adams to “let them have a yoke of oxen from those now on hand,” if they need one so much,” and to allow them to take their farming implements from IR 98 to Fort à la

¹⁴⁹ Charles Adams to J.M. Rae, Indian Agent, January 2, 1887, LAC, RG 10, vol. 1591 (ICC Exhibit 1, pp. 316–17).

¹⁵⁰ Charles Adams, Acting Indian Agent, to the Indian Commissioner, May 31, 1886, no file reference available (ICC Exhibit 1, pp. 236–37).

¹⁵¹ Charles Adams, Acting Indian Agent, to the Indian Commissioner, May 31, 1886, no file reference available (ICC Exhibit 1, p. 236).

¹⁵² Acting Indian Agent to George Goodfellow, Farming Instructor, June 17, 1886, no file reference available (ICC Exhibit 1, p. 238).

¹⁵³ Hayter Reed, Assistant Indian Commissioner, to the Acting Indian Agent, July 10, 1886, no file reference available (ICC Exhibit 1, p. 239).

Corne.¹⁵⁴ On the same day, Reed instructed that the Chakastaypasin Band “may settle with any other band they choose and the increased land can be added to such Reserve for them and they may be aided as others are.” Reed also refers in this letter to “the old Reserve,” noting that it is still Indian land and therefore not open to settlement.¹⁵⁵

An undated letter, written by Charles Adams sometime in mid-June 1886, recounts a visit with Big Head. The legibility of this letter is extremely poor, but it appears to refer to an agreement by Big Head to move to Fort à la Corne, near the James Smith reserve. The letter does not give any reason for Big Head’s agreement to the move. However, Adams informed the Indian Commissioner that “[t]he old man is glad to get down [to] La Corne i.e. if he can get land,” and that he communicated his request for assistance with the move and compensation for buildings and improvements “on the old reserve.”¹⁵⁶ Adams also noted in this letter that Big Head had left IR 98 at the time of the rebellion and was only “now to [Prince] Albert on a visit.”¹⁵⁷ Many years later, Charles Adams explained that the Chakastaypasin Band made a request in 1886 for its reserve to be exchanged for one near Fort à la Corne:

To my knowledge when Acting Ind. Agent in '86, the Chakastaypasin Indians petitioned Gov't for land at La Corne, in lieu of this reserve. They rec'd answer in affirmative, as they did not like living here on account of the late rebellion, the party that first petitioned were the “Big Head” party, loyal ones. They lived on the reserve ever since.¹⁵⁸

¹⁵⁴ Hayter Reed, Assistant Indian Commissioner, to the Acting Indian Agent, July 10, 1886, no file reference available (ICC Exhibit 1, p. 239); Hayter Reed, Assistant Indian Commissioner, to the Acting Indian Agent, July 10, 1886, LAC, RG 10, vol. 1591 (ICC Exhibit 1, p. 241).

¹⁵⁵ Hayter Reed, Assistant Indian Commissioner, to the Acting Indian Agent, July 10, 1886, LAC, RG 10, vol. 1591 (ICC Exhibit 1, pp. 240–41).

¹⁵⁶ Charles Adams, Acting Indian Agent, to the Indian Commissioner, undated, LAC, RG 10, vol. 9098, book 1, pp. 269–70, cited in Four Arrows, “Chacastapasin Cree Nation Historical Report,” March 1, 1995 (ICC Exhibit 10, p. 112).

¹⁵⁷ Charles Adams, Acting Indian Agent, to the Indian Commissioner, undated, LAC, RG 10, vol. 9098, book 1, pp. 269–70, cited in Four Arrows, “Chacastapasin Cree Nation Historical Report,” March 1, 1995 (ICC Exhibit 10, p. 112).

¹⁵⁸ Charles Adams to T.O. Davis, Member of Parliament, April 6, 1900, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, pp. 1018–19).

Although there was a move during the summer of 1886 to amalgamate the Chakastaypasin Band with those living at Fort à la Corne, it appears that at least Big Head visited IR 98 in August of that year. Adams wrote to the farm instructor at Fort à la Corne on August 19, 1886, stating:

Big Head has been around the South Branch now for quite a long time on the plea that his sons were ill. He is here again and I now give him provisions to go home and make hay. In their work you will see that they are supplied with provisions & anything you may have that they require.¹⁵⁹

Many of the circumstances surrounding this initial effort to move the Band in 1886 are unclear. While the department's view of the situation was that the Band had agreed to be amalgamated with the bands at Fort à la Corne, and possibly had requested an exchange of its reserve,¹⁶⁰ the oral history of James Smith and Chakastaypasin elders is less clear about the band members' motives for leaving IR 98. Some elders say that the Agent or the police ordered or encouraged the Chakastaypasin members to leave IR 98, and that they had no choice about leaving and were not allowed to return.¹⁶¹ Other elders refer to a time of starvation and deprivation, although it is not clear when this might have happened or where the Chakastaypasin Band lived at the time.¹⁶² However, Chakastaypasin elder Raymond Sanderson said that the Indian Agent who encouraged the Chakastaypasin members to leave their reserve was the same Agent who had not supplied them with implements and supplies earlier.¹⁶³

In any case, it appears that the 12 "loyal" Chakastaypasin families received their annuities on the Chakastaypasin band payroll at Fort à la Corne in September 1886, including

¹⁵⁹ Charles Adams, Acting Indian Agent, to George Goodfellow, Farming Instructor, August 19, 1886, no file reference available (ICC Exhibit 1, p. 252).

¹⁶⁰ Hayter Reed, Assistant Indian Commissioner, to SGIA, April 14, 1888, LAC, RG 10, vol. 3793, file 46008 (ICC Exhibit 1, p. 388).

¹⁶¹ ICC Transcript, January 28–29, 2003 (ICC Exhibit 16b, pp. 48, 60, Sol Sanderson; p. 111, Raymond Sanderson); Affidavit of James Burns, May 16, 2003 (ICC Exhibit 16c, p. 3).

¹⁶² ICC Transcript, June 27–28, 2001 (ICC Exhibit 16a, p. 54, Robert Constant); ICC Transcript, January 28–29, 2003 (ICC Exhibit 16b, p. 208, Jake Sanderson).

¹⁶³ ICC Transcript, January 28–29, 2003 (ICC Exhibit 16b, p. 111, Raymond Sanderson).

Kahtapiskowat.¹⁶⁴ In December, Agent Rae distributed blankets to the Indians at Fort à la Corne, including some Chakastaypasin members, and reported that many of the people were away hunting when he visited.¹⁶⁵

Hayter Reed reported that in the spring of 1887, after having “previously consented to join Peter Chapman’s Band,” “a number of the Chakastaypasin Band” moved to Fort à la Corne to plant gardens and put up houses.¹⁶⁶ If this report is accurate, it is not certain where the Chakastaypasin band members were moving from, or exactly where they planted their gardens or built houses that summer. IR 100A was not surveyed until late July of that year, and the surveyor’s report does not mention Chakastaypasin band members living at that location during his survey.¹⁶⁷ Reed reported that all of those who planted gardens at Fort à la Corne in the summer “returned” to IR 98 in the fall of 1887.¹⁶⁸ Indeed, the Chakastaypasin payroll for 1887 notes that the Band was “paid at South Branch” that year (i.e., at IR 98). All the loyal families were paid on this list, except for one that was paid with James Smith.¹⁶⁹ A tabular statement of the “Number of Indians in the North-West and their Whereabouts in October 1887” reported the presence of 58 people at the Chakastaypasin reserve.¹⁷⁰

¹⁶⁴ Treaty annuity payroll, Chakastaypasin Band, 1886, no file reference available (ICC Exhibit 12a, p. 216).

¹⁶⁵ J.M. Rae, Indian Agent, to the Indian Commissioner, December 21, 1886, LAC, RG 10, vol. 9098, book 2, p. 588 (ICC Exhibit 1, p. 301).

¹⁶⁶ Hayter Reed, Assistant Indian Commissioner, to SGIA, April 14, 1888, LAC, RG 10, vol. 3793, file 46008 (ICC Exhibit 1, p. 388).

¹⁶⁷ John C. Nelson, In Charge, Indian Reserve Surveys, to SGIA, December 30, 1887, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1887*, 275 (ICC Exhibit 15, p. 81).

¹⁶⁸ Hayter Reed, Assistant Indian Commissioner, to SGIA, April 14, 1888, LAC, RG 10, vol. 3793, file 46008 (ICC Exhibit 1, p. 388).

¹⁶⁹ Treaty annuity payroll, Chakastaypasin Band, 1887, no file reference available (ICC Exhibit 12a, p. 217); Treaty annuity payroll, James Smith Band, 1887, no file reference available (ICC Exhibit 12a, p. 305). See “Peter Hourie’s wife.”

¹⁷⁰ “Number of Indians in the North-West Territories and Their Whereabouts, in October, 1887,” Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1887*, 266 (ICC Exhibit 1, p. 333).

Two months later, another tabular statement reported only 35 on the Chakastaypasin reserve “near Fort a la Corne.”¹⁷¹

Creation of the Duck Lake Agency, 1887

By Order in Council PC 1088, dated May 23, 1887, the Carlton (or Prince Albert) District was divided into two smaller agencies, “with a view to closer supervision and better attention being given to the Indians in the Prince Albert and Battleford Districts.”¹⁷² The newly created Duck Lake Agency, with headquarters on Beardy’s reserve at Duck Lake, encompassed “the Bands whose Reserves lie south of the River viz: those of James Smith, John Smith, Chakastapaysin, One Arrow, Beardy and White Cap.”¹⁷³ J.M. Rae continued for a short time as Indian Agent, pending the appointment of R.S. McKenzie as the new Indian Agent for the Duck Lake Agency on October 27, 1887.¹⁷⁴

Movement of Chakastaypasin Members from IR 98, 1888

In early 1888, Indian Agent R.S. McKenzie reported to Indian Commissioner Reed that there were “two sections” of the Chakastaypasin Band – one section living at IR 98, and another living near Fort à la Corne in the vicinity of James Smith IR 100 and Cumberland IR 100A. McKenzie reported visiting IR 98, which he called “the Chacastipasin or Big Heads Reserve,” where he found

only 19 persons in all on this Reserve, as most of them were away hunting at that time. ... I found all the Indians on this Reserve live in one small hut and are a very miserable lot for all I have supplied them with clothing and food. I may say any of the men that were there were old and unfit for work. There were only Big Head and his family staying there.

¹⁷¹ Tabular Statement, “Farming Agencies and Indian Reservations: Approximate Return and Grain and Roots Sown and Harvested,” Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1887*, 213 (ICC Exhibit 1, p. 338).

¹⁷² Order in Council PC 1088, May 23, 1887, LAC, RG 10, vol. 3777, file 38047 (ICC Exhibit 1, p. 327).

¹⁷³ Order in Council PC 1088, May 23, 1887, LAC, RG 10, vol. 3777, file 38047 (ICC Exhibit 1, p. 327).

¹⁷⁴ Order in Council PC 3130, October 27, 1887, LAC, RG 10, vol. 3777, file 38047 (ICC Exhibit 1, p. 336).

I must say that I find he has taken good care of the implements they have, and also their cattle look well, and are in good condition.¹⁷⁵

McKenzie also stated that he met with “a number of this Band” living at Fort à la Corne who requested “that the Department would take back the Reserve on the South Branch, and give them a Reserve near James Smith’s at La Corne.”¹⁷⁶ An undated marginal note on McKenzie’s report initialled by Indian Commissioner Edgar Dewdney states: “I think this most desirable.”¹⁷⁷ McKenzie recommended that their request be granted, “as it will be much more convenient to look after them when they are all together, than in the shape they are at present.” His report concludes with a note that he supplied “the two sections of the Band” with rations and clothing for the winter.¹⁷⁸

Hayter Reed forwarded McKenzie’s report to the SGIA on February 13, 1888, explaining that “with regard to the desire of the Chakastaypasin Band of Indians to be allotted a Reserve near James Smith,” permission had already been granted to the previous Agent, “but was not acted upon.”¹⁷⁹ Consequently, Reed instructed the Agent to “induce” those Chakastaypasin members who make a living “by cultivating the soil to join some of the Bands who have a Farming Instructor, and those who mainly depend upon hunting and fishing for a livelihood to join some of the Bands at Fort La Corne.”¹⁸⁰ Lawrence Vankoughnet, the DSGIA, informed Reed on February 23, 1888, that the exchange of IR 98 for a reserve near James Smith “would be most desirable.”¹⁸¹

¹⁷⁵ R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, January 31, 1888, LAC, RG 10, vol. 3793, file 46008 (ICC Exhibit 1, pp. 342–43).

¹⁷⁶ R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, January 31, 1888, LAC, RG 10, vol. 3793, file 46008 (ICC Exhibit 1, p. 343).

¹⁷⁷ Marginal note written by Indian Commissioner Edgar Dewdney on letter from R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, January 31, 1888, LAC, RG 10, vol. 3793, file 46008 (ICC Exhibit 1, p. 343).

¹⁷⁸ R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, January 31, 1888, LAC, RG 10, vol. 3793, file 46008 (ICC Exhibit 1, pp. 343–44).

¹⁷⁹ Hayter Reed, Assistant Indian Commissioner, to SGIA, February 13, 1888, LAC, RG 10, vol. 3793, file 46008 (ICC Exhibit 1, p. 358).

¹⁸⁰ Hayter Reed, Assistant Indian Commissioner, to the Indian Agent, Duck Lake Agency, February 13, 1888, LAC, RG 10, vol. 1592 (ICC Exhibit 1, p. 361).

¹⁸¹ [L. Vankoughnet, DSGIA], to Hayter Reed, Assistant Indian Commissioner, February 23, 1888, LAC, RG 10, vol. 3793, file 46008 (ICC Exhibit 1, p. 366).

Agent McKenzie visited the Chakastaypasin reserve again in March and reported that

in a conversation I had with Big Head and his men they informed me that they were prepared to relinquish the reserve at any time and join Peter Chapman's Band but that they expected the Dept. to give them something for so doing no matter how small. I told them the Dept. would not in my opinion give them anything but that I would give them provisions to move with. They insisted that I should write to you and that they would wait your reply.¹⁸²

McKenzie's report concludes with a comment about Kahtapiskowat: "I find this Indian rather of a good disposition[,] always being satisfied with what is done for him."¹⁸³ Hayter Reed forwarded this report to the SGIA, commenting that

a number of Chakastipasin's Band had previously consented to join Peter Chapman's Band and last spring, had moved there with their families, put up a few houses, and planted barley and potatoes, but returned in the fall. I do not see how any remuneration can be given them for joining, but I have directed the Agent to assist them with provisions &c.¹⁸⁴

On May 23, 1888, McKenzie reported that on a visit to the "South Branch" (the vicinity of IR 98), he found that "Big Head & his band had left on the 9th for La Corne to join Chapman's Band," after receiving supplies from the Agency to make the move.¹⁸⁵

Settler Requests for Timber Harvesting on Sugar Island, 1888

On February 17, 1888, Indian Commissioner Hayter Reed notified McKenzie that a nearby settler had applied for permission to cut wood on the Chakastaypasin reserve. Reed instructed the agent that "on no account can any outsider be allowed to obtain green wood from any of the Reserves," and that

¹⁸² R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, March 31, 1888, LAC, RG 10, vol. 3793, file 46008 (ICC Exhibit 1, p. 377).

¹⁸³ R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, March 31, 1888, LAC, RG 10, vol. 3793, file 46008 (ICC Exhibit 1, p. 377).

¹⁸⁴ Hayter Reed, Assistant Indian Commissioner, to SGIA, April 14, 1888, LAC, RG 10, vol. 3793, file 46008 (ICC Exhibit 1, p. 388).

¹⁸⁵ R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, May 23, 1888, LAC, RG 10, vol. 9098, book 4, p. 95 (ICC Exhibit 1, p. 394).

the cutting of dead timber could be allowed only after obtaining the consent of the Band in writing.¹⁸⁶

Given these facts, he wrote:

I beg however to point out the proceeds derived from allowing an outsider to cut dead wood, are necessarily small, and that they would have to be forwarded to Ottawa to be invested for the benefit of the Band, thus making the result, unless the cutting were on a large scale, hardly appreciable.

It is much better therefore to let the Indians perform the labour, and sell the wood to the party requiring it. The Indians cutting should pay some small dues upon the wood, but having done this, they have the balance of what it will fetch, for their own use.¹⁸⁷

SETTLEMENT OF CHAKASTAYPASIN MEMBERS AT FORT À LA CORNE

It does not appear that the Chakastaypasin people immediately settled on either the Cumberland IR 100A or the James Smith IR 100 reserves at Fort à la Corne. Inspector T.P. Wadsworth reported in July 1888 that “Chief Chacastapaysin and Big Head had about concluded to settle on or near the Cumberland reserve,” and that the group numbered “some fourteen families” in all.¹⁸⁸ The following month, Agent McKenzie reported that Big Head was living “about 15 to 20 miles from La Corne, near Stony Creek.”¹⁸⁹ He also reported that Peter Chapman had informed him that three of “Chakastaypasin’s men” had already “joined” the Cumberland Band at Fort à la Corne.¹⁹⁰ McKenzie expected the rest of the members of the Chakastaypasin Band to join either Peter Chapman’s or James Smith’s Band quite soon, “as the men say they are about tired, following Big Head and

¹⁸⁶ Hayter Reed, Assistant Indian Commissioner, to the Indian Agent, Duck Lake Agency, February 17, 1888, LAC, RG 10, vol. 1592 (ICC Exhibit 1, p. 363).

¹⁸⁷ Hayter Reed, Assistant Indian Commissioner, to the Indian Agent, Duck Lake Agency, February 17, 1888, LAC, RG 10, vol. 1592 (ICC Exhibit 1, pp. 363–64).

¹⁸⁸ T.P. Wadsworth, Inspector of Indian Agencies, to the Indian Commissioner, July 26, 1888, LAC, RG 10, vol. 3809, file 53828-1 (ICC Exhibit 1, p. 407).

¹⁸⁹ R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, August 1888, LAC, RG 10, vol. 3793, file 46008 (ICC Exhibit 1, p. 421).

¹⁹⁰ R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, August 1888, LAC, RG 10, vol. 3793, file 46008 (ICC Exhibit 1, p. 420).

Chacastapasin, as they have no settled place, so I think the whole band is about broken up.”¹⁹¹ He noted in his annual report a few days later, dated September 10, 1888, that “Big Head and his party” had requested permission to join the Cumberland Band and were now “transferred” to that Band and “engaged in farming.”¹⁹²

Treaty Annuity Paylists, 1888–89

In 1888, as in the previous year, two separate treaty annuity paylists were created for the Chakastaypasin Band, each listing either the “loyal” or the “rebel” members.

The first payroll is dated October 13, 1888, and indicates that annuities were paid at “Agency.”¹⁹³ Only one family received its annuities on this payroll (no. 28 – 1 woman, 1 daughter).¹⁹⁴ Of the remainder, one family was absent (no. 16 – The Mink, who received annuities that year with the Sturgeon Lake Band);¹⁹⁵ one member family had died; six families (including Big Head) had “transferred to the Cumberland Band”; and two families had “transferred to James Smith’s Band.” These “transfers” appear to be supported by the examination of the corresponding paylists of the other bands. The October 1888 payroll for the “Cumberland Band paid at Peter Chapman’s Reserve” shows six Chakastaypasin families grouped at the end of the payroll according to their Chakastaypasin treaty numbers and marked with an “A,” among them Kahtapiskowat, who received the extra annuity as headman. All the Chakastaypasin band members on this payroll have the notation “now transf[erre]d” or “transf[erre]d from Chakastaypasin” beside their names.¹⁹⁶ A seventh family,

¹⁹¹ R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, August 1888, LAC, RG 10, vol. 3793, file 46008 8 (ICC Exhibit 1, p. 421).

¹⁹² R.S. McKenzie, Indian Agent, Duck Lake Agency, to SGIA, September 10, 1888, NA, RG 10, vol. 9098, book 4, pp. 140–41 (ICC Exhibit 1, pp. 431–32)

¹⁹³ Treaty annuity payroll, Chakastaypasin Band, 1888, no file reference available (ICC Exhibit 12a, p. 219). “Paid at Agency” indicates that the band members were paid at the Agency headquarters at Duck Lake.

¹⁹⁴ Treaty annuity payroll, Chakastaypasin Band, 1888, no file reference available (ICC Exhibit 12a, p. 219). The payroll states that no. 28 married a member of the One Arrow Band.

¹⁹⁵ Treaty annuity payroll, Chakastaypasin Band, 1888, no file reference available (ICC Exhibit 12a, p. 219); Sturgeon Lake First Nation, “Families of the Chakastapaysin Band: Remarks on Homik’s Tracing Study from the Perspective of the Sturgeon Lake First Nation,” revised May 1997 (ICC Exhibit 17c, pp. 89–90).

¹⁹⁶ Treaty annuity payroll, “Cumberland Band Paid at Peter Chapman’s Reserve,” 1888, no file reference available (ICC Exhibit 12a, p. 235).

“transferred” that year from the James Smith Band to the Cumberland 100A payroll, was likely a former Chakastaypasin family, paid under Chakastaypasin ticket no. 13 from 1876 to 1880.¹⁹⁷

The second Chakastaypasin payroll of 1888 noted the family composition of four families (including Chief Chakastaypasin). The Indian Agent’s remarks beside each name state that they were “last paid in 1884.”¹⁹⁸ It should be noted that these four families did not receive annuities from the year of the North-West Rebellion in 1885 until the discontinuation of the Chakastaypasin Band annuity payroll in 1889.¹⁹⁹ The annuities of two families were reinstated in 1889: Chakastaypasin and his grandson Neesoopahtawein were paid with the Cumberland Band 100A, and Pascal (no. 6) appeared on the One Arrow payroll.²⁰⁰ The remaining two “rebel” families disappeared, and no definite records of their whereabouts have been found.²⁰¹ Chakastaypasin was no longer recognized as a Chief, and he did not receive the additional annuity associated with that position, but Kahtapiskowat continued to be paid and designated as a headman.²⁰² A February 1889 statement of chiefs and headmen described Chakastaypasin as a “rebel” who had “not been recognized as Chief

¹⁹⁷ Treaty annuity payroll, “Cumberland Band Paid at Peter Chapman’s Reserve,” 1888, no file reference available (ICC Exhibit 12a, p. 235); Treaty annuity paylists, Chakastaypasin Band, 1876–80, no file reference available (ICC Exhibit 12a, pp. 206–10); Treaty annuity payroll, James Smith Band, 1881, no file reference available (ICC Exhibit 12a, p. 295); see also Sturgeon Lake First Nation, “Families of the Chakastapaysin Band: Remarks on Homik’s Tracing Study from the Perspective of the Sturgeon Lake First Nation,” revised May 1997 (ICC Exhibit 17c, pp. 65, 82, 85). Note that a few Chakastaypasin families, including this one, are noted on the James Smith payroll as being “from Pas.” The Sturgeon Lake tracing study deals with this issue.

¹⁹⁸ Treaty annuity payroll, Chakastaypasin Band, 1888, no file reference available (ICC Exhibit 12a, p. 220).

¹⁹⁹ See Treaty annuity paylists, Chakastaypasin Band, 1885–88, no file reference available (ICC Exhibit 12a, pp. 215–20).

²⁰⁰ Treaty annuity payroll, “Cumberland Band Paid at Reserve,” 1889, no file reference available (ICC Exhibit 12a, p. 238); Treaty annuity payroll, One Arrow Band, 1889, no file reference available (ICC Exhibit 26e, p. 21).

²⁰¹ Sturgeon Lake First Nation, “Families of the Chakastapaysin Band: Remarks on Homik’s Tracing Study from the Perspective of the Sturgeon Lake First Nation,” revised May 1997 (ICC Exhibit 17c, pp. 69, 98); see also Teresa Homik, “Chacastapasin Tracing Study,” prepared for Specific Claims Branch West, April 1996 (ICC Exhibit 3c, pp. 14–15, 17–18).

²⁰² Treaty annuity payroll, “Cumberland Band Paid at Reserve,” 1889, no file reference available (ICC Exhibit 12a, pp. 236, 238).

since the outbreak,” and Kahtapiskowat as a “loyal” and “good Indian” who had been a headman since the time of treaty.²⁰³

The October 1889 payroll of the “Chakastaypasin Band paid at La Corne” shows that none of the former Chakastaypasin members were being paid on that payroll.²⁰⁴ Indian Agent McKenzie reported to the Indian Commissioner on October 23, 1889, that “band No. 98 is now thoroughly broken up” and its members settled with the One Arrow, James Smith, and Cumberland Bands.²⁰⁵ As noted in the next section, the procedures for the transfer of individuals to other bands were not formalized until 1889. Furthermore, section 140 of the *Indian Act*, which provided the statutory basis for such membership transfers, did not come into force until 1895.

Department Procedures for Transfers of Band Membership

In late 1888 and early 1889, ongoing correspondence between Indian Commissioner Hayter Reed and department officials led to the establishment of a procedure for the transfer of membership between bands. On November 12, 1888, a discussion began within the department regarding band amalgamations and membership transfers. In a letter to the SGIA on that date, DSGIA Lawrence Vankoughnet expressed his general opposition to amalgamations, on the basis of his feeling that “the more Indian Bands are kept separate from one another the better, and more especially is this the case where the Bands are divided in religious sentiment.”²⁰⁶ He did, however, make an exception in cases where at least one party was “small and unprogressive and might be benefitted.”²⁰⁷ He explained that his general reservations were based on experience in “the older Provinces,” where the practice

²⁰³ Statement of “Chiefs and Headmen of Chekastaypasin’s and John Smith’s Bands,” c. February 1889, no file reference available (ICC Exhibit 1, pp. 504–5).

²⁰⁴ Treaty annuity payroll, Chakastaypasin Band, 1889, no file reference available (ICC Exhibit 12a, p. 221). The notations on this payroll state that no. 28 was paid at the One Arrow reserve and that no. 16 was absent.

²⁰⁵ R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, October 23, 1889, LAC, RG 10, vol. 3831, file 62987 (ICC Exhibit 1, p. 535).

²⁰⁶ L. Vankoughnet, DSGIA, to E. Dewdney, SGIA, November 12, 1888, LAC, RG 10, vol. 3806, file 52332 (ICC Exhibit 1, p. 475).

²⁰⁷ L. Vankoughnet, DSGIA, to E. Dewdney, SGIA, November 12, 1888, LAC, RG 10, vol. 3806, file 52332 (ICC Exhibit 1, p. 476).

has almost invariably been productive of very serious complications ... causing bitterness of feeling among the members of the respective Bands in regard to their rights upon the Reserve on which they had been jointly located. ... As a rule, when a Band has been allotted a Reserve, it should be kept strictly to that Reserve, and ... no other Indians than the members of the Band should be allowed to locate thereon.²⁰⁸

Two weeks later, on November 23, 1888, Vankoughnet informed Indian Commissioner Hayter Reed that “it is contrary to the law” to “transfer” anyone to another band, except in cases where a woman marries into it.²⁰⁹ Reed disagreed with the department’s thinking on this point. He argued that the *Indian Act* should be amended to allow “transfers” of membership when necessary, noting that “it has been our endeavour, in the past, to prevent, as much as possible, the removal either permanent or temporary of Indians from one reserve to another; but there were occasionally cases where a judicious discretion had to be exercised.”²¹⁰ In support of this proposal, he noted as an example “the breaking up of some of the reserves in the north after the late rebellion, and the consequent scattering of the Indians among other reserves,” a fluid situation that “necessarily” created a large number of applications for transfer.²¹¹

In response, the department argued that if transfers of membership were allowed, there would likely be much confusion regarding land and treaty rights, especially for those joining a band within a different treaty area.²¹² Furthermore, the department stated that the *Indian Act* was designed to protect the rights of Indians owning particular reserves:

²⁰⁸ L. Vankoughnet, DSGIA, to E. Dewdney, SGIA, November 12, 1888, LAC, RG 10, vol. 3806, file 52332 (ICC Exhibit 1, pp. 477–78).

²⁰⁹ [L. Vankoughnet, DSGIA], to Hayter Reed, Indian Commissioner, November 23, 1888, LAC, RG 10, vol. 3807, file 52583-2 (ICC Exhibit 1, p. 481).

²¹⁰ Hayter Reed, Indian Commissioner, to SGIA, January 21, 1889, LAC, RG 10, vol. 3807, file 52583-2 (ICC Exhibit 1, p. 494).

²¹¹ Hayter Reed, Indian Commissioner, to SGIA, January 21, 1889, LAC, RG 10, vol. 3807, file 52583-2 (ICC Exhibit 1, p. 495).

²¹² [L. Vankoughnet, DSGIA], to the Indian Commissioner, January 29, 1889 [in LAC, RG 10, vol. 3807, file 52583-2] (ICC Exhibit 1, pp. 490–91).

No end of complicat[ed] questions have arisen in connection with the ownership of land and the treaty rights of Indians who were in years gone by irregularly admitted to the membership of Bands in the older Provinces of which they had not originally been members and whose rights and those of their descendants to membership and ownership were subsequently disputed by the original members of the Band.²¹³

Reed persisted in his attempt to have the department reconsider its position, bringing attention to cases that would benefit from a change in policy. He suggested, as a possible mechanism for such transfers, that a written statement of the person desiring transfer, as well as the consent of the Chief and council of the receiving Band, should be required.²¹⁴

The department seems to have acquiesced to Reed's suggestions. In a letter dated March 18, 1889, it was conceded that, in exceptional cases, transfers should be allowed. However,

the circumstances connected with any case of transfer should be of the most exceptional nature to justify the same, and it should be done in the most formal manner, viz. the person whom it is proposed to transfer should be allowed to do so by a vote of the majority of the ~~Indians~~ voting members of the Band to whom this Indian to be transferred belonged, and a paper expressing their consent to his or her being transferred should be signed by the Chief & Headmen [illegible] also the ~~party to be~~ "transferree" should in like manner be admitted only upon a vote of the majority of the voting members of the Band to which he or she is to be transferred consenting to the same and after full explanation [having] been given to the Band that the Indian who it is proposed shall join that Band shall be entitled to share in all land and other privileges of said Band and a document signifying that such consent has been given should be signed by the Chief & Headmen of the Band to which the applicant has been admitted and should be certified by the Agent.²¹⁵

The procedure for handling such transfers – requiring the written consent of a majority of the voting members of both the originating and the receiving bands – appears to be what was to become department practice.

²¹³ [L. Vankoughnet, DSGIA], to the Indian Commissioner, January 29, 1889 [in LAC, RG 10, vol. 3807, file 52583-2] (ICC Exhibit 1, pp. 492–93).

²¹⁴ Hayter Reed, Indian Commissioner, to DSGIA, March 14, 1889, LAC, RG 10, vol. 3807, file 52583-2 (ICC Exhibit 1, p. 506).

²¹⁵ [L. Vankoughnet, DSGIA], to the Indian Commissioner, March 18, 1889, LAC, RG 10, vol. 3807, file 52583-2 (ICC Exhibit 1, pp. 507–9). Text is as it appears on the document, with "Indians" and "party to be" struck out.

Settlement of Chakastaypasin Members at IR 100A

It appears that at least some of the Chakastaypasin members were living at IR 100A and beginning to farm by the spring or summer of 1889. In April 1889, Agent McKenzie reportedly gave Big Head 10 bales of wheat “to get him started as he has not done any farming since the Rebellion.”²¹⁶ The same letter reports that Chief Chakastaypasin had “come in on to the reserve” at IR 100A after wintering at Stoney Creek, since “he cannot support himself any longer.”²¹⁷ In reply, Assistant Commissioner A.E. Forget instructed that “as chief Cha-kas-tay-pay-sin has decided to remain on a reserve, he should be put with some other Band.”²¹⁸ Although Chief Chakastaypasin received his annuities at Fort à la Corne (IR 100A) in the fall of 1889, it appears that he and other Indians from Nut Lake again wintered at Stoney Creek, where they were reported to be in a “very destitute condition.”²¹⁹ Chief Chakastaypasin returned to IR 100A in May 1890, and McKenzie reported that “Chekastaypasin and his small Band have decided to remain on Reserve and farm in future.”²²⁰

In August 1890, McKenzie visited “the South West end of the Cumberland reserve where Big Head and Chakastaypasin reside,” so he could brand cattle. He noted that the Band had done very little farming, due to “only having located themselves on this portion of the reserve some fifteen months past.”²²¹ The 1890 annual report of the Inspector of Indian Agencies, Alexander McGibbon, regarding “Peter Chapman’s No. 100A” noted that “Big Head of the same Band has his place at the extreme South West corner of the Reserve,” where he had 8½ acres planted “near his house” and

²¹⁶ R.S. McKenzie, Indian Agent, Duck Lake Agency, to Hayter Reed, Indian Commissioner, April 30, 1889, LAC, RG 10, vol. 3793, file 46008 (ICC Exhibit 1, p. 513).

²¹⁷ R.S. McKenzie, Indian Agent, Duck Lake Agency, to Hayter Reed, Indian Commissioner, April 30, 1889, LAC, RG 10, vol. 3793, file 46008 (ICC Exhibit 1, p. 513); Statement of “Chiefs and Headmen of Chekastaypasin’s and John Smith’s Bands,” c. February 1889, no file reference available (ICC Exhibit 1, pp. 504–5).

²¹⁸ A.E. Forget, Assistant Indian Commissioner, to the Indian Agent, Duck Lake Agency, June 13, 1889, LAC, RG 10, vol. 1592 (ICC Exhibit 1, p. 520).

²¹⁹ R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, March 1890, LAC, RG 10, vol. 3793, file 46008 (ICC Exhibit 1, pp. 551, 555).

²²⁰ R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, May 31, 1890, LAC, RG 10, vol. 3793, file 46008 (ICC Exhibit 1, p. 558).

²²¹ R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, August 31, 1890, LAC, RG 10, vol. 3793, file 46008 (ICC Exhibit 1, p. 571).

another 4 acres planted “five miles off.”²²² On the day of McGibbon’s visit to this part of the reserve in mid-August, he noted that “twelve lodges or tepees” were camped and that “the Chief” and two others were putting up houses for themselves.²²³ McGibbon may be referring to Chief Chakastaypasin, since Big Head apparently already had a house on the reserve.

It appears that the Chakastaypasin Band was well supplied at Fort à la Corne. A statement of expenses for the Duck Lake Agency in 1890 shows separate issues of cattle to both “Big Head’s Band” and “Chakastapaysen’s Band,” as well as a wagon purchased for Chakastaypasin’s Band.²²⁴ Inspector McGibbon noted in his 1890 annual report that the Band had 72 head of cattle.²²⁵ Chakastaypasin and James Smith elders recall that the Chakastaypasin Band received treaty items and supplies for agriculture at Fort à la Corne.²²⁶

It is not certain whether Chakastaypasin ever really settled at IR 100A. His death early in 1891 was recorded in the “Register of Indian Deaths for Band 100A” and the 1891 Cumberland 100A payroll,²²⁷ although the stories passed on by elders say either that the Chief disappeared or that he was buried somewhere outside the reserve.²²⁸

The documentary record suggests that the department considered IR 98 “abandoned” by 1890 at the latest. A tabular statement in the annual report that year stated that the reserve was vacant and

²²² Alexander McGibbon, Inspector of Indian Agencies, to the Indian Commissioner, September 1, 1890, LAC, RG 10, vol. 3843, file 72695-1 (ICC Exhibit 1, p. 586).

²²³ Alexander McGibbon, Inspector of Indian Agencies, to the Indian Commissioner, September 1, 1890, LAC, RG 10, vol. 3843, file 72695-1 (ICC Exhibit 1, p. 586).

²²⁴ Financial Statement for the Duck Lake Agency, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1890*, part II, 94–95 (ICC Exhibit 15, pp. 96–97).

²²⁵ Alexander McGibbon, Inspector of Indian Agencies, to the Indian Commissioner, September 1, 1890, LAC, RG 10, vol. 3843, file 72695-1 (ICC Exhibit 1, p. 587).

²²⁶ ICC Transcript, June 27–28, 2001 (ICC Exhibit 16a, pp. 52–54, Robert Constant; pp. 126–27, Violet Sanderson); ICC Transcript, January 28–29, 2003 (ICC Exhibit 16b, p. 177, Violet and Alex Sanderson).

²²⁷ “Register of Indian Deaths for Band 100A,” entry for March 11, 1891, LAC, RG 10, vol. 9995 (ICC Exhibit 27e, p. 33); Treaty annuity payroll, Cumberland Band Paid at Reserve, 1891, no file reference available (ICC Exhibit 12a, p. 245).

²²⁸ ICC Transcript, January 28–29, 2003 (ICC Exhibit 16b, p. 42, Sol Sanderson; pp. 220–21, Jake Sanderson).

remarks: “Chief dead, Indians joined John Smith’s and other Bands.”²²⁹ The oral tradition of Chakastaypasin descendants suggested that some people continued to return to the reserve after 1885 because it was a traditional gathering and fishing area, and relatives were buried there.²³⁰ Chakastaypasin elder Jake Sanderson testified that the people “always looked after that place” and travelled back and forth to the reserve.²³¹ However, many people were afraid to return to IR 98 after the rebellion. Kinistin First Nation elder Besigan Nippi recalled that people were afraid to return to the reserve because they feared government reprisals, and because people wanted to dissociate themselves from the rebellion.²³² Yellow Quill Chief Robert Whitehead also stated that many people wanted to dissociate themselves from the rebellion, out of fear that anyone even remotely connected to it would be hanged.²³³

Other elders spoke of a flood at Sugar Island one spring that killed many people, and how they were told not to go back after this event.²³⁴ Harold Kingfisher said that First Nations custom prevented people from returning after the flood because so many had died there.²³⁵ One story mentions that Chief John Smith came to warn the people that a flood was coming,²³⁶ so this event may have occurred while he was still Chief.²³⁷ Elder Besigan Nippi says that people were afraid to return to Sugar Island after the rebellion, and that they were told not to go back, although they didn’t

²²⁹ “Number of Indians in the North-West Territories and Their Whereabouts in 1890,” Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1890*, 207 (ICC Exhibit 1, p. 610).

²³⁰ ICC Transcript, January 28–29, 2003 (ICC Exhibit 16b, p. 48, Sol Sanderson; p. 84, Terry Sanderson; p. 232, Jake Sanderson).

²³¹ ICC Transcript, January 28–29, 2003 (ICC Exhibit 16b, p. 232, Jake Sanderson).

²³² ICC Transcript, May 27–29, 2003 (ICC Exhibit 17b, p. 78, Besigan Nippi, Kinistin First Nation).

²³³ ICC Transcript, May 27–29, 2003 (ICC Exhibit 17b, pp. 126–27, Robert Whitehead, Yellow Quill First Nation).

²³⁴ ICC Transcript, January 28–29, 2003 (ICC Exhibit 16b, p. 151, Albert Sanderson).

²³⁵ ICC Transcript, May 27–29, 2003 (ICC Exhibit 17b, p. 184, Harold Kingfisher, Sturgeon Lake First Nation).

²³⁶ ICC Transcript, January 28–29, 2003 (ICC Exhibit 16b, p. 151, Albert Sanderson).

²³⁷ Treaty annuity payroll, John Smith Band, 1894, no file reference available (ICC Exhibit 26d, p. 45); “Census of Religion of Indians of John Smith’s Band No. 99, Duck Lake Agency,” October 1897, LAC, RG 10, vol. 9994 (ICC Exhibit 27d, p. 16). John Smith was Chief from 1876 until at least October 1897.

know why.²³⁸ The exact time for this event cannot be determined any more precisely. However, Chakastaypasin elder Jake Sanderson recalls that some people travelled back and forth to do ceremonies for the people who disappeared from Sugar Island and for others buried at IR 98.²³⁹

The Cumberland band 100A payroll, dated October 13, 1891, indicates that the former Chakastaypasin members were given new Cumberland band ticket numbers that year.²⁴⁰ Quatwaywayweein, the son of Hard Sounding Flute, moved from the James Smith Band to the Cumberland Band in 1891 after marrying the daughter of one of the Chakastaypasin members.²⁴¹ No Consent to Transfer was signed for his entry to the Cumberland Band 100A.

Big Head's Reserve

There are various references in the documents and oral history to “Big Head’s Reserve,” which is said to be somewhere within the present-day James Smith reserve. It is possible that this reference to “Big Head’s Reserve” meant only to demark the southwest corner of the former IR 100A, where the Chakastaypasin people initially settled, since there is no indication that a separate reserve was set aside. Patrick Stonestand’s father told him that, at the time the Chakastaypasin people came to Fort à la Corne, “we were given a spot to live, or area to live, and a lot of our people just thought it was Bighead reserve, but it was a place where we could live.”²⁴² However, even after an 1899 surrender for exchange which relinquished 1½ sections at the southwest corner of the IR 100A, people were said to be from “Big Head’s reserve” or from “Katipiskowat’s part of the James Smith reserve.” Martha Opoonechaw-Stonestand says her aunts were born around the turn of the century “on Bighead reserve ... that’s in James Smith someplace, I guess.”²⁴³ Patrick Stonestand also says

²³⁸ ICC Transcript, May 27–29, 2003 (ICC Exhibit 17b, p. 88, Besigan Nippi, Kinistin First Nation).

²³⁹ ICC Transcript, January 28–29, 2003 (ICC Exhibit 16b, p. 237, Jake Sanderson).

²⁴⁰ Treaty annuity payroll, “Cumberland Band Paid at Reserve,” 1891, no file reference available (ICC Exhibit 12a, p. 247).

²⁴¹ Treaty annuity payroll, “Cumberland Band Paid at Reserve,” 1891, no file reference available (ICC Exhibit 12a, p. 247). Quatwaywayweein was the grandson of Kahtapiskowat.

²⁴² ICC Transcript, January 28–29, 2003 (ICC Exhibit 16b, p. 163, Patrick Stonestand). Patrick Stonestand’s family was paid with the James Smith Band in 1888 and did not join Big Head’s Band.

²⁴³ ICC Transcript, January 28–29, 2003 (ICC Exhibit 16b, p. 156, Martha Opoonechaw-Stonestand).

that his father was born on Big Head's reserve, although the date is not certain.²⁴⁴ Lazarus Sanderson's marriage certificate, dated August 7, 1902, states that he was from "Katipiskawat's part of the James Smith's Reserve Fort a la Corne."²⁴⁵ Following the alleged amalgamation of the James Smith and Cumberland 100A Bands in 1902, department officials continued to refer to the "Big Head end of the reserve" and to "the Bighead section of the band." It seems that Big Head and others continued to live at the southern end of the reserve, separately from the James Smith Band.²⁴⁶

Discussions about the Surrender of Chakastaypasin IR 98, 1891

In 1891, a brief discussion ensued within the Department of Indian Affairs regarding the possible surrender and sale of IR 98. In response to an apparent inquiry from SGIA Edgar Dewdney on the matter, DSGIA Lawrence Vankoughnet informed him on May 13, 1891, that the reserve had "never been regularly settled upon ... by the Indians who own it."²⁴⁷ Nevertheless, he explained that "it was allotted to them under the conditions of the Treaty and I think that as long as there are any of them in existence, even though they may be residing upon other Reserves, we could not legally bring the Reserve into the market without previously obtaining a surrender from them."²⁴⁸ Vankoughnet commented that, if the department felt that taking a surrender was the desirable course of action, "the

²⁴⁴ ICC Transcript, January 28–29, 2003 (ICC Exhibit 16b, p. 158, Patrick Stonestand).

²⁴⁵ Diocese of Saskatchewan, Marriage Certificate of Lazarus Sanderson and Mary Ann McLeod, August 7, 1902, no file reference available (ICC Exhibit 19, p. 8).

²⁴⁶ W.J. Chisholm, Inspector of Indian Agencies, Battleford Inspectorate, to SGIA, September 14, 1903, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1903*, 198 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 1, p. 911); J. Macarthur, Indian Agent, to David Laird, Indian Commissioner, May 4, 1904, LAC, RG 10, vol. 1612, p. 202 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 1, p. 924); J. Macarthur, Indian Agent, to David Laird, Indian Commissioner, February 3, 1905, LAC, RG 10, vol. 3562, file 82, part 9 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 1, p. 977).

²⁴⁷ L. Vankoughnet to E. Dewdney, SGIA, May 13, 1891, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 615).

²⁴⁸ L. Vankoughnet, to E. Dewdney, SGIA, May 13, 1891, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 615).

band anyway is a small one, and I do not anticipate that we would have any difficulty in obtaining their consent to the sale of the Reserve.”²⁴⁹

Vankoughnet wrote to Indian Commissioner Hayter Reed the next day to inquire whether the reserve should be sold for the benefit of the Band, and if any difficulty in obtaining a surrender was anticipated.²⁵⁰ Reed replied on May 20, 1891, to inform Vankoughnet that “the surviving Indians of the Chacastapasin Band” had been “amalgamated” with the Cumberland, James Smith, and One Arrow Bands.²⁵¹ With respect to the question of surrender, Reed suggested that a surrender should be taken and that “the Council be summoned at the James Smith’s Reserve.” He did not “anticipate that any difficulty would arise,” but suggested that “in case any might seem to threaten,” both he and the Indian Agent should be given authority to obtain surrender.²⁵² Regarding the sale of the lands, Reed concluded: “I would not, although it might be well to take the surrender, recommend that the sale be proceeded with until the settlement of a good deal of the vacant land in the neighbourhood[,] and other changes, make the land more valuable.”²⁵³ In view of the advice that any sale of Chakastaypasin lands be delayed, Vankoughnet replied that “the taking of a surrender may also be deferred for awhile.”²⁵⁴

Transfer of Nanequaneum to Cumberland Band, 1891

By 1889, it appears that most of the Cumberland band members were settled on the northern portion of IR 100A, while most of the Chakastaypasin members chose to settle separately on the southern

²⁴⁹ L. Vankoughnet, to E. Dewdney, SGIA, May 13, 1891, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 616).

²⁵⁰ [L. Vankoughnet, DSGIA], to the Indian Commissioner, May 14, 1891, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, pp. 617–18).

²⁵¹ Hayter Reed, Indian Commissioner, to DSGIA, May 20, 1891, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 619).

²⁵² Hayter Reed, Indian Commissioner, to DSGIA, May 20, 1891, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 619).

²⁵³ Hayter Reed, Indian Commissioner, to DSGIA, May 20, 1891, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 620).

²⁵⁴ [L. Vankoughnet, DSGIA], to Hayter Reed, Indian Commissioner, May 30, 1891, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 622).

portion.²⁵⁵ For their own convenience and for administrative purposes, however, local department officials reported jointly on the activities and agricultural progress of both groups at IR 100A.²⁵⁶

On September 4, 1891, Chakastaypasin and Cumberland band members, described as “members of the Band owning the Reserve ... known as Cumberland Reserve No. 100A,” signed a Consent to Transfer for Nanequaneum from Beardy’s Band. The Consent stated:

We the undersigned Councillors and members of the Band of Indians owning the Reserve situated in treaty No. 6 and known as the Cumberland Reserve No. 100A do by these presents certify that the said Band has by vote of the majority of its voting members present at a meeting summoned for the purpose according to the Rules of the Band, and held in the presence of the Indian Agent for the locality on the 4th day of September 1891, granted leave to “Nanequaneum” No. 35 of Beardy’s Band No. 97 to be transferred from said band to this our Band of Indians owning the Reserve as situated at Fort a la Corne in Treaty No. 6 and known as Cumberland Reserve to which transfer, we the undersigned hereby give our consent.²⁵⁷

The consent contains the signatures of five Cumberland members and two Chakastaypasin members, George Sanderson and “Big Head per G. Sanderson.” The department approved the transfer of

²⁵⁵ John C. Nelson, DLS, In Charge of Indian Reserve Surveys, to SGIA, December 30, 1887, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1887*, 275 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 17, p. 35); Alexander McGibbon, Inspector of Indian Agencies and Reserves, to the Indian Commissioner, September 1, 1890, LAC, RG 10, vol. 3843, file 72695-1 (ICC Exhibit 1, p. 586); see also Justus Wilson, Farmer, John Smith Reserve, to R.S. McKenzie, Indian Agent, Duck Lake Agency, February 24, 1891, LAC, RG 10, vol. 1596 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 1, p. 352); Diary of Justus Wilson, John Smith’s Reserve, July 1891, LAC, RG 10, vol. 1596 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 1, p. 355).

²⁵⁶ R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, June 1889, LAC, RG 10, vol. 3793, file 46008 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 1, pp. 320–21); R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, September 1889, LAC, RG 10, vol. 3793, file 46008 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 1, pp. 330–31); Return showing crops sown and harvested by Individual Indians in Duck Lake Agency, 1890, in Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1890*, 284 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 17, p. 94); Alexander McGibbon, Inspector of Indian Agencies and Reserves, to the Indian Commissioner, September 1, 1890, LAC, RG 10, vol. 3843, file 72695-1 (ICC Exhibit 1, pp. 585–87); Return showing crops sown and harvested by Individual Indians in Duck Lake Agency, 1891, in Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1891*, 314 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 17, p. 105); Alexander McGibbon, Inspector of Indian Agencies and Reserves, to SGIA, September 9, 1892, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1892*, 89 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 17, pp. 108–9).

²⁵⁷ Consent of Band to Transfer, September 4, 1891, LAC, RG 10, vol. 3862, file 83104 (ICC Exhibit 1, p. 632).

Nanequaneum to “Peter Chapman’s Band” on October 20, 1891,²⁵⁸ and he appeared the next year as ticket no. 105 on the 1892 payroll for “Big Head’s Band 100A.”²⁵⁹

Separate Paylists for Big Head Band and Cumberland Band 100A, 1892–96

An important departmental effort to make a distinction between the Cumberland and Chakastaypasin band members living at IR 100A began in 1892, but lasted for only four years. On the instructions of DSGIA Vankoughnet, who was concerned about maintaining the distinction of the Cumberland Band’s Treaty 5 status,²⁶⁰ Commissioner Hayter Reed informed the Indian Agent in May 1892 that he should keep the Cumberland people separate from all others on the paylists and returns. He conceded that this distinction might be difficult, since “a portion of the Chekastaypaysin’s Band, and possibly some other Indians of Treaty Six[,] are merged with them.”²⁶¹ That year, a new payroll was created for “Big Head’s Band,”²⁶² and the Agent’s tabular statements list the “100A Big Head’s” and the “100A Cumberland” bands separately.²⁶³

Transfers into Big Head’s Band, 1892–95

During the existence of the Big Head band payroll at IR 100A from 1892 to 1896, there were a number of transfers into Big Head’s Band by various methods. In 1890 and 1891, several communications between department officials concerned a man named Paskoostequan, the brother

²⁵⁸ Unidentified author and recipient, October 20, 1891, LAC, RG 10, vol. 3862, file 83104 (ICC Exhibit 1, p. 672).

²⁵⁹ Treaty annuity payroll, Big Head Band, 1892, no file reference available (ICC Exhibit 12a, p. 223).

²⁶⁰ [L. Vankoughnet, DSGIA], to Hayter Reed, Indian Commissioner, April 22, 1892, LAC, RG 10, vol. 3736, file 27580 (ICC, James Smith Cree Nation IR100A Inquiry, Exhibit 1, pp. 359–60).

²⁶¹ Hayter Reed, Indian Commissioner, to the Indian Agent, Duck Lake Agency, May 7, 1892, no file reference available (ICC Exhibit 1, p. 673).

²⁶² Treaty annuity payroll, Big Head Band, 1892, no file reference available (ICC Exhibit 12a, pp. 222–23).

²⁶³ “Farming Agencies and Indian Reservations: Approximate Return of Grain and Roots Sown and Harvested,” Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1892*, 322 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 17, p. 120); “Return showing Crops sown and harvested by Individual Indians in Duck Lake Agency, season of 1892,” Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1892*, 378–79 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 17, p. 122).

of Chief One Arrow, who wished to enter treaty. The department denied his request, but his wife and three children were admitted to treaty after his death. “Paskoostequan’s widow,” a daughter of Chief Chakastaypasin,²⁶⁴ appeared on the Big Head band payroll in October 1892 along with two of her children. The Indian Agent’s remark beside her name states that her request to enter treaty without arrears had been granted on September 2, 1891,²⁶⁵ although 1892 was the first year that her family received annuities. In 1894, her son moved from the One Arrow payroll to her ticket on the Big Head band payroll.²⁶⁶ No Consent to Transfer forms were signed for his admission to the Band.

On March 26, 1894, a Consent to Transfer form was signed for the admission of Yellow Quill member Mahsahkeekask to “Big Head’s Band No. 100A.” The Consent states:

We the undersigned Chiefs and Councillors of the Band of Indians owning the Reserve situated in Treaty No. 6 and known as Big Head’s Cumberland Reserve No. 100A, do by these presents certify that the said Band has by vote of the majority of its voting members present at a meeting summoned for the purpose according to the rules of the Band, and held in the presence of the Indian Agent for the locality on the twenty-sixth day of March, 1894, granted leave to Mah-sah-kee-ask No. 84 of Yellow Quill’s Band to join our said Band as a member thereof to share in all land and other privileges of the Band, to which admission we the undersigned also give full consent.²⁶⁷

Three Big Head band members signed the Consent, namely George Sanderson, John Sanderson, and Big Head, along with two members of the Cumberland Band 100A.²⁶⁸ The Yellow Quill Band signed

²⁶⁴ Sturgeon Lake First Nation, “Families of the Chakastapaysin Band: Remarks on Homik’s Tracing Study from the Perspective of the Sturgeon Lake First Nation,” revised May 1997 (ICC Exhibit 17c, pp. 44, 46).

²⁶⁵ Treaty annuity payroll, Big Head Band, 1892, no file reference available (ICC Exhibit 12a, p. 223).

²⁶⁶ Treaty annuity paylists, Big Head Band, 1894–95, no file reference available (ICC Exhibit 12a, pp. 227, 230); Treaty annuity payroll, One Arrow Band, 1894, no file reference available (ICC Exhibit 26e, p. 42). It is unknown whether this was Alexander Baldhead, who received his own ticket the following year, or a younger son. See the Sturgeon Lake Tracing Study (ICC Exhibit 17c, pp. 47–48).

²⁶⁷ Consent of Band to Transfer, March 26, 1894, LAC, RG 10, vol. 3936, file 119149 (ICC Exhibit 1, p. 686).

²⁶⁸ Consent of Band to Transfer, March 26, 1894, LAC, RG 10, vol. 3936, file 119149 (ICC Exhibit 1, p. 686).

the corresponding Consent for the transfer on July 16, 1894.²⁶⁹ In a letter to the DSGIA on September 25, 1894, Assistant Commissioner Forget reported that he had approved Mahsahkeekask's "transfer" to the Big Head Band "because he has been living on Big Head's reserve for the last three years, and would not return to Yellow Quill's reserve, as he said he could not make a living there, and all his wife's relations live in the neighbourhood of La Corne."²⁷⁰ Forget also reported that "this transfer was strongly urged by Indian Agent Mr. McKenzie."²⁷¹ The DSGIA subsequently approved the "transfer" on October 1, 1894.²⁷²

The final transfer into Big Head's Band executed during this period was for the admission of Muskohepakemit of Yellow Quill's Band into "Big Head's Band 100A" residing at "Cumberland 100A Indian Reserve." The wording on the Consent form is the same as that on the Consent for the transfer for Mahsahkeekask, except for the identification of signatories. This form states that the transfer is approved by the "Chiefs and Councillors of the Band of Indians owning the Reserve situated in Treaty No. 6 and known as Cumberland 100A Reserve." It was signed entirely by members of the Big Head Band, including Kahtapiskowat, who signed as headman.²⁷³ The department approved the "transfer" in October 1894.²⁷⁴

Amendment to the *Indian Act*, 1895

In 1895, the *Indian Act* was amended and provisions were added to formalize the procedures for transfer of membership between bands. Section 140 provided:

²⁶⁹ Consent of Band to Transfer, July 16, 1894, LAC, RG 10, vol. 3936, file 119149 (ICC Exhibit 1, p. 689).

²⁷⁰ A.E. Forget, Assistant Indian Commissioner, to DSGIA, September 25, 1894, LAC, RG 10, vol. 3936, file 119149 (ICC Exhibit 1, p. 698).

²⁷¹ A.E. Forget, Assistant Indian Commissioner, to DSGIA, September 25, 1894, LAC, RG 10, vol. 3936, file 119149 (ICC Exhibit 1, p. 698).

²⁷² Acting DSGIA to Assistant Indian Commissioner, Regina, October 1, 1894, LAC, RG 10, vol. 3936, file 119149 (ICC Exhibit 1, p. 700).

²⁷³ Consent of Band to Transfer, September 25, 1894, LAC, RG 10, vol. 3936, file 119588 (ICC Exhibit 1, p. 699).

²⁷⁴ Acting DSGIA to Assistant Indian Commissioner, October [15], 1894, LAC, RG 10, vol. 3936, file 119588 (ICC Exhibit 1, p. 703).

When by a majority vote of a band, or the council of a band, an Indian of one band is admitted into membership in another band, and his admission thereinto is assented to by the superintendent general, such Indian shall cease to have any interest in the lands or moneys of the band of which he was formerly a member, and shall be entitled to share in the lands and moneys of the band to which he is so admitted; but the superintendent general may cause to be deducted from the capital of the band of which such Indian was formerly a member his per capita share of such capital and place the same to the credit of the capital of the band into membership in which he had been admitted in the manner aforesaid.²⁷⁵

Transfer of Chakastaypasin Members to Cumberland Band 100A, 1896

Sometime before the fall of 1895, Thomas M. Daly, the SGIA and Minister of the Interior, visited the North-West Territories and took notice of the “very fine tracts of land” within the “unoccupied and unused” Chakastaypasin and Young Chippewayan reserves.²⁷⁶ On October 18, 1895, he instructed his Deputy Minister, A.M. Burgess, to “open a correspondence with Mr. Reed as to these reserves being surrendered.”²⁷⁷ Soon after, on November 9, 1895, Hayter Reed, the DSGIA, wrote to Indian Commissioner A.E. Forget and inquired “whether the members of Chacastapasin Band were formally transferred to the other Bands with which they become amalgamated, and if not to request that the formal application for such transfer and consent of the Bands concerned to receive applicants may be obtained without delay – and transmitted to the Dept.”²⁷⁸

On the same day Reed wrote to Burgess and stated:

Relative to the advisability of throwing open for settlement the Reserves set apart for the Bands of Chiefs Young Chippewayan and Chakastapasin respectively; and acquainting me with the Minister’s views as to the desirability of these Reserves being surrendered, and in reply to suggest for consideration the question as to whether under the circumstances any necessity exists for taking a surrender at all. With regard to the Indians of Young Chippewayan’s Reserve, the question presents

²⁷⁵ *Indian Act*, RSC 1886, c. 43, s. 140, as amended by SC 1895, c. 35, s. 8 (ICC Exhibit 25a, p. 59).

²⁷⁶ J. McTaggart, Dominion Lands Agent, to T. Mayne Daly, Minister of the Interior, October 12, 1895, LAC, RG 15, Series D-II-1, vol. 724, file 390906 (ICC Exhibit 1, p. 717).

²⁷⁷ Marginal note written on letter from J. McTaggart, Dominion Lands Agent, to T. Mayne Daly, Minister of the Interior, October 12, 1895, LAC, RG 15, Series D-II-1, vol. 724, file 390906 (ICC Exhibit 1, p. 717).

²⁷⁸ DSGIA to A.E. Forget, Indian Commissioner, November 9, 1895, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 722).

itself as to whether the fact of their having been rebels in 1885, and having left the Country after the rebellion would not afford sufficient and reasonable grounds for dispossessing them of such rights as they originally had to the Reserve. As to such of them as have since returned they are in the same position as the Indians of Chacastapasin Band in so much as they have all become amalgamated with or merged to other Bands with the members of which they enjoy equal privileges.²⁷⁹

He concluded: “If the matter can be dealt with by Order in Council, there are reasons which would seem to make the adoption of that method preferable to an endeavour to obtain surrender.”²⁸⁰

Reed wrote again to Indian Commissioner Forget in January 1896 asking him whether “action has been completed relative to the formal transfer” of the Chakastaypasin members to other bands. He explained that the Department of Indian Affairs intended to hand control of the Chakastaypasin reserve over to the Department of the Interior, “but desires assurance in the direction indicated before proceeding.”²⁸¹

On February 3, 1896, Commissioner Forget instructed the Indian Agent at Duck Lake to immediately “obtain the consent of the councils of the several Bands into which these Indians have gone, to their formal admission thereinto,” since it appeared that “no formal transfer of these Indians to the Bands with which they subsequently amalgamated has apparently ever been obtained.”²⁸² With this letter he enclosed a memorandum “showing the dispersion of the Band as it was in 1888, and tracing each member from that date to 1895.”²⁸³ Forget’s tabular statement traces nine of the 10 families who appeared on the 1887 Chakastaypasin band payroll and shows that they were living with the Big Head, James Smith, and One Arrow Bands as of 1895.

²⁷⁹ Hayter Reed, DSGIA, to A.M. Burgess, Deputy Minister of the Interior, November 9, 1895, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 726).

²⁸⁰ Hayter Reed, DSGIA, to A.M. Burgess, Deputy Minister of the Interior, November 9, 1895, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 727).

²⁸¹ Hayter Reed, DSGIA, to A.E. Forget, Indian Commissioner, January 23, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 734).

²⁸² A.E. Forget, Indian Commissioner, to the Indian Agent, Duck Lake Agency, February 3, 1896, LAC, RG 10, vol. 1594 (ICC Exhibit 1, p. 735).

²⁸³ A.E. Forget, Indian Commissioner, to the Indian Agent, Duck Lake Agency, February 3, 1896, LAC, RG 10, vol. 1594 (ICC Exhibit 1, p. 735).

In a letter to Commissioner Forget dated February 8, 1896, Hayter Reed confirmed that the department intended to use the provisions of section 140 to obtain control of the Chakastaypasin reserve. He wrote that “the Department does not propose to take any surrender of the Chakastaypasin Reserve ... and it is largely on that account that it desires to have the transfer to other Bands, by which the original owners have forfeited all rights in the Reserve set apart for them, formally completed.”²⁸⁴ In subsequent communications with the Agent, Forget instructed that all Chakastaypasin members should be transferred to the “Cumberland Band No. 100A,” and Big Head’s Band “done away with.”²⁸⁵ In addition, Forget instructed that all the former Chakastaypasin members being paid with the James Smith Band should be transferred to the Cumberland Band 100A as well, since they had “never ... formally transferred” to James Smith.²⁸⁶ However, the Indian Commissioner later agreed that “in the event of the Cumberland Band refusing to sanction the admission,” the Agent could try to obtain the approval of the James Smith Band if the transferees were willing to become members of that Band and live on that reserve.²⁸⁷

While the Indian Agent and the Indian Commissioner were attempting to organize the formal transfers of Chakastaypasin members, the Department of the Interior continued to press Reed for “early action” in transferring control of the Chakastaypasin and Young Chipeewayan reserves. The Secretary for the Department of the Interior informed Reed on April 22, 1896, that “some applications have been received in this department for portions of the reserves in question” and that “with the approach of summer it is expected that other applications will be put in.”²⁸⁸ Immediately following this communication from the Department of the Interior, Reed wrote to Forget asking him

²⁸⁴ Hayter Reed, DSGIA, to A.E. Forget, Indian Commissioner, February 8, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 743).

²⁸⁵ A.E. Forget, Indian Commissioner, to the Indian Agent, Duck Lake Agency, February 17, 1896, no file reference available (ICC Exhibit 1, p. 744).

²⁸⁶ F.H. Paget, for the Indian Commissioner, to the Indian Agent, Duck Lake Agency, April 27, 1896, LAC, RG 10, vol. 1594 (ICC Exhibit 1, p. 758).

²⁸⁷ F.H. Paget, for the Indian Commissioner, to the Indian Agent, Duck Lake Agency, May 2, 1896, LAC, RG 10, vol. 1594 (ICC Exhibit 1, p. 774).

²⁸⁸ J. Hall, Secretary, Department of the Interior, to Hayter Reed, DSGIA, April 22, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 755).

to instruct the Agent “not to allow any evitable delay” in completing the formal transfers.²⁸⁹ Reed explained to the Department of the Interior that “it is felt desirable to make sure that all necessary formalities have been duly observed” with respect to the transfer of the surviving Chakastaypasin members, in order “to avoid the possibility of complications arising in the future.”²⁹⁰

Consents to Transfer Signed by Cumberland Band 100A

On May 18, 1896, Indian Agent McKenzie wrote to the Indian Commissioner, enclosing “the consents of the members of the Cumberland Band No. 100A to accept into their Band the remnant of Chakastapasins Band No. 98.” McKenzie forwarded 22 Consent forms at this time, admitting 16 Big Head Band families (on 15 forms) and seven James Smith families into the Cumberland Band 100A.²⁹¹ He explained that a number of the names on the Consents had never appeared on the Chakastaypasin paylists, but that “these people are descendants or have become members since 1888 and have never been legally transferred to any band, even although some of them have been paid Treaty with James Smith’s Band.”²⁹² Among those referred to by McKenzie were Chakastaypasin members who had moved to the James Smith paylists before the rebellion in 1885. Others were not former Chakastaypasin band members, but had previously transferred into the Big Head Band or had family connections to members of the Band. A notation on the Consent forms for these individuals states that they wished “to be transferred to Cumberland Band with the remnant of Chakastaypasin 98.”²⁹³

²⁸⁹ Hayter Reed, DSGIA, to A.E. Forget, Indian Commissioner, April 23, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 756).

²⁹⁰ Hayter Reed, DSGIA, to A.M. Burgess, Deputy Minister of the Interior, April 29, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 772).

²⁹¹ R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, May 18, 1896, enclosing 22 Consent of Band to Transfer forms dated May 10, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, pp. 776–802).

²⁹² R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, May 18, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 777).

²⁹³ Consents of Band to Transfer, May 10, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, pp. 792–97, 802); see also Sturgeon Lake First Nation, “Families of the Chakastapaysin Band: Remarks on Homik’s Tracing Study from the Perspective of the Sturgeon Lake First Nation,” revised May 1997 (ICC Exhibit 17c, pp. 46–47, 107–10). The members referred to were Paskoostequan’s widow (Baldhead), Alexander Baldhead, Oopeepequankahkissewaywake (Hard Sounding Flute), Quaytwaywayweein, William Hard Sounding Flute,

An additional Consent to Transfer form admitting one former Chakastaypasin member into the James Smith Band was also forwarded at this time, making 23 Consent forms in total.²⁹⁴ McKenzie noted that The Mink was drawing treaty with the Sturgeon Lake Band, and that the Agent at Carlton was taking care of the formal transfer.²⁹⁵ It should be noted that some of the original Chakastaypasin members or their descendants who had moved to the James Smith paylists in the early 1880s were overlooked by McKenzie, and Consent forms were not signed for these individuals.

The Consent to Transfer forms admitting the Chakastaypasin band members into “Cumberland Indian Reserve No. 100A La Corne” are dated May 10, 1896, and read as follows:

We the undersigned Chief and Councillors of the Band of Indians owning the reserve situated in Treaty No. Six and known as “Cumberland Reserve,” do, by these presents certify that the said Band has by vote of the majority of its voting members present at a meeting summoned for the purpose, according to the rules of the band, and held in the presence of the Indian Agent for the locality on the tenth day of May 1896, granted leave to ... join our said band, and as a member thereof to share in all land and other privileges of the Band, to which admission we the undersigned also give full consent.²⁹⁶

Sixteen of the forms have the words “Chief and Councillors” struck out and replaced with the word “members.” All the forms are certified by Agent R.S. McKenzie, witnessed by John S. Gordon and Angus McKay, and signed by seven Cumberland Band members with an “X” mark.²⁹⁷ Although the Consent to Transfer forms were evidently signed by Cumberland members, Delbert Brittain says that

Mahsakask, and Maskochepatemit.

²⁹⁴ Consent of Band to Transfer, March 17, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 779); Consents of Band to Transfer, May 10, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, pp. 780–802).

²⁹⁵ R.S. McKenzie, Indian Agent, to the Indian Commissioner, May 18, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 777).

²⁹⁶ Consents of Band to Transfer, May 10, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, pp. 780–802).

²⁹⁷ Consents of Band to Transfer, May 10, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, pp. 780–802).

the elders do not remember having a meeting to accept the Chakastaypasin members into their Band.²⁹⁸

In his covering letter forwarding the Consent forms, McKenzie explained that the Cumberland band members had delayed giving their consent because “they wished to know if by so doing they would be allowed to appoint a Chief and Councillors.” However, he was able to get them “to sign the papers without any difficulty” after explaining that their request probably would not be granted, but that he would submit it to the department for consideration.²⁹⁹ McKenzie reported, however, that the Chakastaypasin members had not yet consented to join the Cumberland Band. He explained that

Chakastapaysin’s or Big Head’s Band state that by joining the Cumberland Band they do not wish to give up their claim to their Reserve and ask to be informed what the Department proposes doing with the Reserve, and what they will receive if they give up their claim to the Reserve. I explained that I was not in a position to give them any information but that I would receive instructions from the Department before they would be asked to sign any document.³⁰⁰

In a letter to the DSGIA, Commissioner Forget commented that “it will be seen that these Indians either do not comprehend the full effect of their transferring themselves to another Band or have only accepted the same conditionally.”³⁰¹ Reed replied:

With regard to the unwillingness of the members of the Chakastaypasin Band to surrender their title to the Reserve which they have left, and their request to be informed as to what they will receive for relinquishing their claim thereto, the Agent should be instructed to tell them that since by admission to other Bands they share all privileges with the Bands concerned, including the right to the Reserves, they can not, in the opinion of the Department, expect any compensation for relinquishing

²⁹⁸ ICC Transcript, June 26, 2002 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 18c, p. 46, Delbert Brittain).

²⁹⁹ R.S. McKenzie, Indian Agent, to the Indian Commissioner, May 18, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 776).

³⁰⁰ R.S. McKenzie, Indian Agent, to the Indian Commissioner, May 18, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, pp. 776–77).

³⁰¹ F.H. Paget, for the Indian Commissioner, to DSGIA, May 23, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 806).

their own Reserve, and have in fact already done so by leaving it and taking up permanent abode upon others.

They should be reminded that it is somewhat late for them to set up such a claim after they have been virtually members of other Bands for years, which they joined entirely of their own accord, the Department refraining from making any objection; and they should be told, moreover, that in order to complete the transfers and make the privileges accorded them by the other Bands secure they should make no delay with regard to formal application for admission.

The Agent should be further instructed to act promptly in this matter, as the longer time the Indians have to think about and talk it over, and to be influenced by others, the more unreasonable they are likely to become.³⁰²

By May 10, 1896, the department had obtained the consent of the Cumberland Band 100A to the admission of the Chakastaypasin members into its Band, but did not yet have the consent of Chakastaypasin members themselves for the transfers.

Applications for Admission to Cumberland Band 100A and James Smith Band

On June 5, 1896, Commissioner Forget instructed Agent McKenzie to obtain an application from each Chakastaypasin head of family for admission “into membership in the Band which has consented to receive them,” even though consent for their admission to IR 100A had already been obtained on May 10, 1896. Forget noted that this procedure was “necessary” “in the absence of the customary consent of band to release members applying for transfer, which cannot in this case be procured as the whole band[,] or remnant thereof, is being transferred.”³⁰³ He wrote: “No time should be lost in having the work completed and the papers forwarded, for the longer the matter is allowed to stand open the more chance there is of the present tendency to opposition developing into a pronounced refusal, and this it is desired to avoid.”³⁰⁴ He also instructed the Agent to tell the Chakastaypasin Band that admission into other bands entailed

³⁰² Hayter Reed, DSGIA, to A.E. Forget, Indian Commissioner, June 2, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, pp. 811–12).

³⁰³ F. Paget, for the Indian Commissioner, to the Indian Agent, Duck Lake Agency, June 5, 1896, no file reference available (ICC Exhibit 1, p. 813).

³⁰⁴ F. Paget, for the Indian Commissioner, to the Indian Agent, Duck Lake Agency, June 5, 1896, no file reference available (ICC Exhibit 1, p. 813).

all the privileges including the right to lands, which they enjoyed as members of a separate band, and for this reason they cannot expect compensation where no loss is sustained. ... In any case they have practically relinquished all claim to their old reserve by abandoning it and taking up their abode on others and after years of practical membership in such other bands, which was not opposed by the Department, it is now somewhat late to set up any claims to lands ... They might also be informed that in order to definitely assure themselves of the privileges now offered them in connection with other bands, they had better, in their own interests, make no unnecessary delay in accepting the offer while it remains open.³⁰⁵

On receipt of these instructions, Agent McKenzie called a meeting “of the members who were not absent” on June 12 and made an unsuccessful attempt to get their signatures on an application for transfer. He reported that “they flatly refuse unless they are allowed something for the Checastapasins Reserve,” and that, in any case, only a few members were present.³⁰⁶ He suggested that “[t]he only time it will be possible to get the Band together will be at Treaty payments and I am in hopes by that time to induce them to sign the document but I cannot say positively that I shall be able.”³⁰⁷ Hayter Reed, the DSGIA, reluctantly agreed to this plan of action, commenting to Commissioner Forget that “apparently nothing can be done in the matter pending the fresh effort to be made by the Agent later on, but you will see that it is not lost sight of.”³⁰⁸ However, he instructed that, “should the Agent find it less difficult to get the Indians to make individual applications,” he should pursue that course rather than trying to get all the signatures on a single application.³⁰⁹ Forget communicated these instructions to the Agent, informing him that since it was “useless” to approach the Chakastaypasin members as a whole “except in making the trial you

³⁰⁵ F. Paget, for the Indian Commissioner, to the Indian Agent, Duck Lake Agency, June 5, 1896, no file reference available (ICC Exhibit 1, p. 814).

³⁰⁶ R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, June 20, 1896, in LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 815).

³⁰⁷ R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, June 20, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 815).

³⁰⁸ Hayter Reed, DSGIA, to A.E. Forget, Indian Commissioner, July 2, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 816).

³⁰⁹ Hayter Reed, DSGIA, to A.E. Forget, Indian Commissioner, July 2, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 816).

suggest at the approaching treaty payments,” the Agent should “take the members individually and endeavour to win them over one by one, obtaining their signatures as occasion offers.”³¹⁰

The Department of the Interior notified the Department of Indian Affairs on July 8, 1896, that another application had been received for land within the Chakastaypasin reserve and inquired as to the status of the reserve.³¹¹ In response, Hayter Reed informed Deputy Minister Burgess that “unforeseen difficulties” had arisen in completing the formal transfers, but that he hoped these would be “overcome” at the next treaty payments in the fall.³¹²

On October 15, 1896, at the time of the treaty payments, 27 former Chakastaypasin families applied for admission to the Cumberland Band at IR 100A, and another family applied for admission to the James Smith Band.³¹³ No information is available regarding the circumstances surrounding the signing of these applications or any meetings that may have taken place to discuss the transfers. Chakastaypasin and James Smith elders do not recall stories of a meeting or a vote to transfer Chakastaypasin members to another band or any talk of “becoming one band.”³¹⁴ It is unclear from their statements whether the elders were referring to the 1896 transfer to the Cumberland Band or the 1902 amalgamation with the James Smith Band.

The application for admission to the “Cumberland Band No. 100A” is a single sheet with the names of 27 Chakastaypasin members, dated October 15, 1896 (although June is crossed out). It reads as follows:

³¹⁰ A.E. Forget, Indian Commissioner, to the Indian Agent, Duck Lake Agency, July 6, 1896, no file reference available (ICC Exhibit 1, p. 817).

³¹¹ John R. Hall, Secretary, Department of the Interior, to D.C. Scott, Secretary, Department of Indian Affairs, July 8, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 818).

³¹² Hayter Reed, DSGIA, to A.M. Burgess, Deputy Minister of the Interior, July 10, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 820).

³¹³ Application for admission to “Cumberland Band No. 100A,” October 15, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 836); Application for admission to the James Smith Band, October 15, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 837).

³¹⁴ ICC Transcript, June 27–28, 2001 (ICC Exhibit 16a, p. 45, Robert Constant; pp. 122–23, Violet Sanderson); ICC Transcript, January 28–29, 2003 (ICC Exhibit 16b, pp. 35, 38–39, Sol Sanderson; pp. 77, 85, Terry Sanderson; pp. 164–65, Raymond Sanderson, Martha Opoonechaw-Stonestand, Albert Sanderson, Patrick Stonestand; p. 218, Jake Sanderson).

We, the undersigned, members of the Band of Treaty Indians known as Chacastapasin's Band No. 98, formerly occupying the Reserve of that name situated in the Duck Lake Agency, but now resident on the Reserve of the Cumberland Band No. 100A, in the same Agency, do hereby make application to be admitted into membership in the said Cumberland Band No. 100A.³¹⁵

The applications are witnessed by Agent R.S. McKenzie and Sandy Thomas, the Agency interpreter. Included among the applicants are all nine men who later signed the surrender of Chakastapasin IR 98 on June 23, 1897.³¹⁶

No annuity payments are recorded on the payroll for "Big Head's Band Paid at Fort a La Corne," dated October 14 and 15, 1896. Each name has a note beside it, stating that its ticket had been "transferred to Cumberland Band No. 100A" and referencing the Indian Commissioner's letter dated June 5, 1896, as the authority for the transfer.³¹⁷ As mentioned previously, this letter contained instructions from Forget to Agent McKenzie to "obtain the signatures of each head of family or adult member thereof, to an application to be transferred to and admitted into membership in the Band which had consented to receive them."³¹⁸ The payroll shows that 17 families, containing 48 people, were transferred from Big Head's Band to the Cumberland Band 100A at that time.³¹⁹

The payroll for the "Cumberland No. 100A Band, Paid at Reserve Fort a la Corne," on October 14 and 15, 1896, reflects the transfers of the 17 families from the Big Head band payroll. In addition, 10 families (28 people) from the James Smith Band also appear on this payroll, with a note stating that they were now "transferred" to the Cumberland Band and referencing the Commissioner's letter dated June 5, 1896. In all, 27 families (with 76 people) transferred to the

³¹⁵ Application for admission to "Cumberland Band No. 100A," October 15, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 836).

³¹⁶ Surrender for sale of Chakastapasin IR 98, June 23, 1897, no file reference available (ICC Exhibit 1, p. 899).

³¹⁷ Treaty annuity payroll, Big Head Band, 1896, no file reference available (ICC Exhibit 12a, pp. 231-32).

³¹⁸ F. Paget, for the Indian Commissioner, to the Indian Agent, Duck Lake Agency, June 5, 1896, no file reference available (ICC Exhibit 1, p. 813).

³¹⁹ Treaty annuity payroll, Big Head Band, 1896, no file reference available (ICC Exhibit 12a, pp. 231-32).

Cumberland Band 100A at that time.³²⁰ The James Smith band payroll also notes the transfer of one person from Big Head's Band to the James Smith Band on the same date, citing the same Commissioner's letter as the authority for the transfer.³²¹

Although all 27 Chakastaypasin families who applied for admission to the Cumberland Band on October 15, 1896, were added to the Cumberland 100A payroll and said to be "transferred," it was noted that Consent forms had been obtained for the transfer of only 24 of these families. Some confusion was caused by variant spellings of names on the Consent forms and the application for admission, but it was finally determined that four additional Consents to Transfer and one application for admission were required to complete the formal transfers. The Indian Commissioner instructed the Agent on December 10, 1896, to obtain them "with as little delay as possible."³²²

On February 2, 1897, a single Consent to Transfer was obtained from the Cumberland Band 100A for the admission of three outstanding Chakastaypasin members. The Consent, signed by 10 Cumberland members with an "X" and certified by Agent McKenzie, has similar wording to the other Consent to Transfer forms. This form, unlike the previous 23 Consent forms, has no signature of an interpreter or other witness.³²³

Also on February 2, Paskoostequan's widow applied for admission to the Cumberland Band 100A. Her application has the same wording as the application signed by the other 27 Chakastaypasin families and is signed by Agent R.S. McKenzie. Again, there was no signature of an interpreter or other witness on this application, unlike the other applications for admission.³²⁴ Her admission to the Cumberland Band 100A had previously been consented to in May 1896.³²⁵

³²⁰ Treaty annuity payroll, "Cumberland No. 100A Band paid at Reserve," 1896, no file reference available (ICC Exhibit 12a, pp. 256-59).

³²¹ Treaty annuity payroll, James Smith Band, 1896, no file reference available (ICC Exhibit 12a, p. 349).

³²² F. Paget, for the Indian Commissioner, to the Indian Agent, Duck Lake Agency, December 10, 1896, no file reference available (ICC Exhibit 1, p. 841).

³²³ Consent of Band to Transfer, February 2, 1897, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 854).

³²⁴ Application for admission to the "Cumberland Band," February 2, 1897, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 852).

³²⁵ Consent of Band to Transfer, May 10, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 802).

On February 25, 1897, the Indian Commissioner informed McKenzie that the consent of the Cumberland Band was still outstanding for the admission of one final Chakastaypasin family whose name appeared on the October 15, 1896, application for admission.³²⁶ A blank Consent form was supplied to the Agent on March 9.³²⁷ On March 12, 1897, the Consent to Transfer for the admission of “Nahmeenahweekahpahweeweequan” to the “Cumberland Band No. 100A” was signed by nine Cumberland Band 100A members and certified by Agent McKenzie.³²⁸ No other witness or interpreter signed the Consent form. With this final Consent form signed, the formal transfer, under section 140 of the *Indian Act*, of 27 Chakastaypasin families to the Cumberland Band 100A and one family to the James Smith Band was complete.

Transfers of Chakastaypasin Members to Other Bands

Aside from these formal section 140 transfers to the Cumberland and James Smith Bands in 1896 and 1897, only one other Chakastaypasin family was formally transferred under these provisions. On October 23, 1896, the Chiefs and councillors of the William Twatt Band at Sturgeon Lake signed a form consenting to the admission of “The Mink” to their Band. The wording is similar to other Consent to Transfer documents and is signed by three headmen and an interpreter and witnessed by William Badger.³²⁹ The Mink’s corresponding application for admission to that Band was not obtained until July 27, 1897, a month after the surrender of the Chakastaypasin reserve. The wording of this application is different from that of the applications made by other Chakastaypasin members for admission to the James Smith and Cumberland Bands. It reads as follows:

I hereby make application to be transferred from Band No. 98 Chacastapasin Reserve to that of William Twatts Band No. 101, Sturgeon Lake Reserve to which Band I

³²⁶ Indian Commissioner to the Indian Agent, Duck Lake Agency, February 25, 1897, LAC, RG 10, vol. 1594 (ICC Exhibit 1, p. 850).

³²⁷ F.H. Paget, for the Indian Commissioner, to the Indian Agent, Duck Lake Agency, March 9, 1897, LAC, RG 10, vol. 1594 (ICC Exhibit 1, p. 856).

³²⁸ Application for admission to “Cumberland Band No. 100A,” October 15, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 836); Consent of Band to Transfer, March 12, 1897, in LAC, RG 10, vol. 1594 (ICC Exhibit 1, p. 857).

³²⁹ Consent of Band to Transfer, October 23, 1896, LAC, RG 10, vol. 3982, file 161097 (ICC Exhibit 1, p. 834).

have obtained consent of Headmen & Indians to join. *In consideration of this application being granted I waive and give up any claim I may have to said Chacastapasin Reserve.* I sign this application is the presence of several Indians.³³⁰

The application was signed by Indian Agent H. Keith, four headmen, and Rupert Pratt as witness and interpreter.³³¹ It is interesting to note that although The Mink received treaty with the Sturgeon Lake Band until his death in 1922, he may have lived at the John Smith (Muskoday) reserve at the time this application was signed. Harold Kingfisher related oral history from his mother about The Mink, saying that he was a medicine man who travelled among all the different reserves but who actually lived at the Muskoday reserve, where his daughter Hannah had married. The oral history says that he moved to that reserve as early as 1887, before Hannah was married.³³² However, other oral evidence suggests that The Mink may have lived at Sturgeon Lake for a number of years before moving to Muskoday.³³³

Forget's tracing report also noted the woman formerly paid under Chakastaypasin ticket no. 28 who married into the One Arrow Band before 1889. He deemed that a section 140 transfer was not required in her case because she would have given up Chakastaypasin Band membership by her marriage into another band.³³⁴

Laird's Tracing of Chakastaypasin Members, 1902

A few years later, following the sale of the Chakastaypasin reserve lands in December 1901, Secretary J.D. McLean wrote to Indian Commissioner David Laird, asking for a statement "showing

³³⁰ Application for admission to the William Twatt Band, July 27, 1897, LAC, RG 10, vol. 3982, file 161097 (ICC Exhibit 1, p. 912). Emphasis added.

³³¹ Application for admission to the William Twatt Band, July 27, 1897, LAC, RG 10, vol. 3982, file 161097 (ICC Exhibit 1, p. 912).

³³² ICC Transcript, May 27–29, 2003 (ICC Exhibit 17b, p. 317, James Smith, Muskoday First Nation; p. 336, Harold Kingfisher, Sturgeon Lake First Nation).

³³³ ICC Transcript, May 27–29, 2003 (ICC Exhibit 17b, p. 339, Harold Kingfisher, Sturgeon Lake First Nation); "Families of the Chakastaypasin Band: Remarks on Homik's Tracing Study from the Perspective of the Sturgeon Lake First Nation," revised May 1997 (ICC Exhibit 17c, p. 89).

³³⁴ Statement showing "Dispersion and present whereabouts of Chekastapasin's Band, No. 98," attached to A.E. Forget, Indian Commissioner, to Indian Agent, Duck Lake Agency, February 3, 1896, no file reference available (ICC Exhibit 1, pp. 738–39).

the name of each individual Indian and the Band to which he now belongs in order that a per capita division may be made” of the sale revenues.³³⁵ Laird forwarded his report on March 26, 1902, explaining that the delay stemmed from the “considerable time” spent searching the records in his office. In order to determine the proper beneficiaries of the sale proceeds, Laird traced the Chakastaypasin members in two categories: “the original owners of the Chacastapasin Reserve as per the annuity pay-sheets of 1884,” and “those Indians who joined the Band previous to the formal transfer dated the 15th of October 1896.”³³⁶

Laird’s report traced each family in detail, where possible, and summarized the number of those eligible from each Band. According to his findings, 83 persons were entitled to a share of the proceeds as of 1901, divided among the One Arrow, John Smith, Sturgeon Lake, Kinistin, Gordon’s, James Smith, and Cumberland Bands. Two other persons paid with the James Smith Band were identified, but not included in the total pending a department decision on their eligibility.³³⁷ Laird was unable to trace seven Chakastaypasin families, as well as the granddaughter of one Chakastaypasin band member and the daughter of a Big Head band member.³³⁸ The department eventually divided the sale proceeds, on the basis of 85 shares, among the bands identified by Laird.³³⁹

Trespasses on the Chakastaypasin Reserve, 1896–97

Concurrent with the effort to obtain formal transfer of Chakastaypasin members to other bands, local demand for the use of timber and other resources on the reserve continued. In 1895, former Indian

³³⁵ J.D. McLean, Secretary, to David Laird, Indian Commissioner, January 3, 1902, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 1165).

³³⁶ David Laird, Indian Commissioner, to the Secretary, Department of Indian Affairs, March 26, 1902, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 1168).

³³⁷ David Laird, Indian Commissioner, to the Secretary, Department of Indian Affairs, March 26, 1902, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, pp. 1169–83).

³³⁸ The families untraced by Commissioner Laird were Chakastaypasin Band nos. 4, 5, 7, 15, 26, 31, 32 (one granddaughter only), and 34; Big Head Band no. 107 (one daughter only). The Sturgeon Lake First Nation tracing study has successfully traced some of these families and individuals (see ICC Exhibit 17c).

³³⁹ J.D. McLean, Assistant Deputy and Secretary, Department of Indian Affairs, to C.P. Schmidt, Indian Agent, Duck Lake Agency, January 29, 1926, LAC, RG 10, vol. 6663, file 109A-3-1, part 2 (ICC Exhibit 1, p. 1403).

Agent Charles Adams requested permission to homestead and build a ferry landing on the northern part of the reserve, and he inquired about how he might obtain a grazing lease there as well.³⁴⁰ The Acting DSGIA informed Adams in December 1895 that since the question of “throwing open” the reserve “for settlement” was under consideration, his request could not be dealt with at that time.³⁴¹ Adams wrote again on March 4, 1896, asking Hayter Reed to “get me permission to build houses and stables, etc. on the Chakastapasin Indian Reserve for the purpose of working a licensed ferry at that place.”³⁴² Reed informed him on March 10, 1896, that, because “it is intended at an early day to hand over the Chakastapasin Reserve to the Department of the Interior,” his request could not be granted.³⁴³ A few days later, Adams wrote to his Member of Parliament, D.H. MacDowall, saying that he was “inclined to take chances & build,” and he asked for assurance that he would not “be driven off or have any property confiscated, should I Build on reserve.”³⁴⁴ George Moffatt of the North-West Mounted Police notified the Indian Commissioner in May 1896 that “the man Adams who is running the ferry is at present building upon the Reserve and I make this report in case permission has not been given by you.”³⁴⁵ After being informed of the trespass, DSGIA Reed stated to the Indian Commissioner in June 1896 that Adams was building at his own risk, though “as the ferry is for the convenience of the public[,] the Department does not think it worth while to appear to notice the trespass.”³⁴⁶

³⁴⁰ Charles Adams to Hayter Reed, DSGIA, November 21, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, pp. 729–30).

³⁴¹ Acting DSGIA to Charles Adams, December [23], 1895, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 732).

³⁴² Charles Adams to Hayter Reed, DSGIA, March 4, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 747).

³⁴³ Charles Adams to Hayter Reed, DSGIA, March 4, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 747); Hayter Reed, DSGIA, to Charles Adams, March 10, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 750).

³⁴⁴ Charles Adams to D.H. MacDowall, MP, March 20, 1896, LAC, RG 15, Series D-II-1, vol. 724, file 390906 (ICC Exhibit 1, p. 752).

³⁴⁵ George B. Moffatt, Superintendent Commanding, North-West Mounted Police, to the Indian Commissioner, May 23, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 807).

³⁴⁶ Hayter Reed, DSGIA, to A.E. Forget, Indian Commissioner, June 2, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 809).

As in previous years, settler interest in the timber on Sugar Island continued. In February 1896, William Gordon from the Boucher settlement made an application to “cut and remove 50,000 lenial feet of black poplar logs” on Sugar Island.³⁴⁷ In a letter to the Indian Commissioner regarding this application, Agent McKenzie noted that “the timber on the island referred to is all of very large size, of poor quality and only fit for the purpose named.”³⁴⁸ However, the DSGIA informed Indian Commissioner A.E. Forget that “as it is proposed, at an early day, to hand over this Reserve to the Department of the Interior, [it] is not considered advisable that this Department should grant permission to cut any timber thereon.”³⁴⁹

A few months later, Gordon made another application for permission to cut timber at Sugar Island. When the new SGIA, Clifford Sifton, brought it to Hayter Reed’s attention in January 1897,³⁵⁰ Reed informed Gordon two weeks later that, “as the Indians have not made a formal surrender in accordance with the provision of the *Indian Act*, no alienation of any part of this Reserve can be made,” and therefore his application could not be granted.³⁵¹ Gordon quickly replied, saying that, if he could not get a permit, the department should “see that the Island is protected from the wholesale slaughter of logs which is cut year by year without a permit or Limit.” Furthermore, he noted that “there is lots of good logs on the island, but these are wasted every year.”³⁵²

³⁴⁷ William Gordon to R.S. McKenzie, Indian Agent, Duck Lake Agency, February 26, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 745).

³⁴⁸ R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, February 26, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 746).

³⁴⁹ DSGIA to A.E. Forget, Indian Commissioner, March 7, 1896, no file reference available (ICC Exhibit 1, p. 748).

³⁵⁰ Clifford Sifton to Hayter Reed, DSGIA, January 13, 1897, in LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 843).

³⁵¹ Hayter Reed, DSGIA, to William Gordon, January 29, 1897, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 846).

³⁵² William Gordon to DSGIA, February 10, 1897, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, pp. 847–48).

After receiving Gordon's letter, the Indian Commissioner instructed Agent McKenzie to make a "searching inquiry into the alleged illegal cutting of timber" on Sugar Island.³⁵³ McKenzie reported back to the Indian Commissioner on March 22, 1897. He found that settlers from both of the nearby Halcro and Boucher settlements were cutting timber on Sugar Island and that William Gordon "had cut more timber on that Island than any other man in that locality."³⁵⁴ One settler claimed to be unaware that cutting the timber was illegal, since he understood "that the Island had been thrown open."³⁵⁵ During his inspection of Sugar Island, McKenzie found that "considerable timber had been taken out, but the fact of the matter is, the timber is so thick and tall that one could hardly see what had been taken. There is an immense quantity of timber here and though there are signs of it having been cut for a number of years, it does not appear to have done any damage."³⁵⁶ McKenzie concluded his investigation by visiting T.O. Davis, the Member of Parliament for Prince Albert, who was "conversant with the whole matter."³⁵⁷ He concluded his report by stating that "but little damage is done and the settlers have no other place to get their building material."³⁵⁸

In light of McKenzie's discovery that William Gordon was responsible for much of the cutting, the Indian Commissioner wrote to Gordon on April 12, 1897, saying: "The Department regrets very much to learn this and trusts that henceforth you will be good enough to aid it in the protection of this timber, by assuring yourself that timber cut for you by any person is not taken from

³⁵³ F. Paget, for the Indian Commissioner, to the Indian Agent, Duck Lake Agency, March 1, 1897, LAC, RG 10, vol. 1594 (ICC Exhibit 1, p. 855).

³⁵⁴ R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, March 22, 1897, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 862).

³⁵⁵ R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, March 22, 1897, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 862).

³⁵⁶ R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, March 22, 1897, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 860).

³⁵⁷ R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, March 22, 1897, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, pp. 862, 864).

³⁵⁸ R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, March 22, 1897, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 864).

any portion of this reserve.”³⁵⁹ McKenzie was notified on the same day that “notices forbidding trespass” would be sent to him shortly, “to be posted in conspicuous places on the Island.”³⁶⁰ A few days earlier, on April 7, 1897, the department informed the Indian Commissioner that the illegal timber should be seized, but it is unknown whether this action was carried out.³⁶¹ There is no evidence that any other action was taken at this time to prevent future cutting on the island.

SURRENDER OF CHAKASTAYPASIN IR 98, 1897

In June 1896, a federal election brought the Liberal Party to power, led by Sir Wilfrid Laurier. In November 1896, Clifford Sifton was appointed Superintendent General of Indian Affairs. He, in turn, consolidated the posts of Deputy Minister of the Interior and Deputy Minister of Indian Affairs, and he appointed James A. Smart to the position in April 1897.³⁶²

On January 13, 1897, Sifton wrote to Hayter Reed to bring his attention to an application from a settler wishing to cut logs on Sugar Island, noting that “the settlers of St. Louis de Langevin have no other available lumber and that the Indians have left the Reserve over ten years.”³⁶³ Reed replied to Sifton on January 26, 1897, outlining the recent history of the Chakastaypasin reserve and the department’s efforts to obtain control of it. Reed explained that, until the department was certain that “the transfers now made embrace all of the original members of the band,” it would be impossible to dispose of the timber without a surrender.³⁶⁴ On this point, he informed Sifton:

³⁵⁹ F. Paget, for the Indian Commissioner, to William Gordon, April 12, 1897, LAC, RG 10, vol. 1594 (ICC Exhibit 1, p. 873).

³⁶⁰ F. Paget, for the Indian Commissioner, to the Indian Agent, Duck Lake Agency, April 12, 1897, LAC, RG 10, vol. 1594 (ICC Exhibit 1, p. 874).

³⁶¹ Unidentified author to Indian Commissioner, April 7, 1897, LAC, RG 10, vol. 6663, file 109A-3-1, pt. 1 (ICC Exhibit 1, p. 872).

³⁶² Record of Employment for James Allan Smart, Department of Indian Affairs Establishment Book, Inside Service, c. 1860–1935, LAC, RG 10, vol. 9179.

³⁶³ Clifford Sifton to Hayter Reed, DSGIA, January 13, 1897, in LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 843).

³⁶⁴ Hayter Reed, DSGIA, to Clifford Sifton, SGIA, January 26, 1897, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, pp. 844–45).

The Department of Justice has given the following opinion with regard to the question as to whether a reserve once given to a band can afterwards be reduced in extent without the sanction of the remaining members,

“There is no provision in the law that I am aware of under which a reserve set apart under this Treaty (No. 6) for a particular band can, on account of a reduction for any cause of the original number of the band, be reduced in extent without the sanction of those who still continue to be members.

The lands in a reserve belong, as a reserve, to the Indians who remain members of the band, and if surrendered and sold or disposed of, the proceeds should be devoted to the use and benefit of such Indians.”³⁶⁵

T.O. Davis, MP for Prince Albert, wrote to Sifton on March 31, 1897, reminding him that they had previously spoken about “the opening of the Chakastapasin Reserve” and drawing his attention to the desirability of throwing open the Young Chipeewayan (Stoney Knoll) reserve as well, “as there are no Indians, nor never was to my knowledge on this Reserve.” Davis pointed out that it was the intention of the previous government to open these reserves, and that he hoped Sifton would “have it done as early as possible.”³⁶⁶ Sifton replied the next day, saying that he would “give the matter attention.”³⁶⁷

In response to Davis’s request, the Minister asked for a report on the status of the Chakastaypasin reserve. Commissioner Forget promptly informed the Superintendent General on April 3, 1897, that, “in so far as can be traced, there only remains one Indian whose transfer to a band in the Carlton Agency is now in process.”³⁶⁸ However, he did not agree “that such transfers to other bands in any way obviates the necessity for taking a surrender” as required by the *Indian Act*.³⁶⁹ At

³⁶⁵ Hayter Reed, DSGIA, to Clifford Sifton, SGIA, January 26, 1897, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 845).

³⁶⁶ Thomas O. Davis, MP, to Clifford Sifton, SGIA, March 31, 1897, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 868).

³⁶⁷ Clifford Sifton, SGIA, to T.O. Davis, MP, April 1, 1897, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 870).

³⁶⁸ A.E. Forget, Indian Commissioner, to SGIA, April 3, 1897, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 871).

³⁶⁹ A.E. Forget, Indian Commissioner, to SGIA, April 3, 1897, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 871).

the same time, Forget felt that “nothing should hinder” the opening of the Stoney Knoll reserve for settlement. With respect to the Stoney Knoll reserve, he reasoned:

Although set aside for the use of Indians it [has] never been settled by them. The members took part in the rebellion in '85 and most of them left the country at the time and such who remained in the country or returned since, have amalgamated themselves with other bands.³⁷⁰

Following Forget’s report, Acting Secretary J.D. McLean wrote a memorandum on April 14, 1897, outlining three matters for the Minister’s consideration with respect to the Chakastaypasin reserve:

- 1st. Is it desirable to abandon control of the Chakastapasin Reserve?
- 2nd. Is a surrender necessary and if so should an effort be made to obtain one from the Indians interested?
- 3rd. Should the attempt if made be to get a surrender without compensation, or should the Indians be told that the lands will be sold for their benefit, and in that case will the bands who have adopted the members of the Chakastapasin Reserve, benefit pro rata in the proceeds of the sales.³⁷¹

McLean noted that he could see “no reason why the Indians should not receive compensation – the owners of the reserve for relinquishing it, and others for taking them in and sharing their lands with them, and thus relieve the Government pro tanto from the burden of contributing to their maintenance.”³⁷² A marginal notation initialled by Clifford Sifton stated that the Department of Justice should decide whether a surrender of the Chakastaypasin reserve would be necessary.³⁷³

On April 17, 1897, “B. Cook” of Prince Albert wrote to Clifford Sifton enclosing a petition for “subdivision of an Indian reserve” and advising that “at an early date further petitions for the

³⁷⁰ A.E. Forget, Indian Commissioner, to SGIA, April 3, 1897, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 871).

³⁷¹ J.D. McLean, Acting Secretary, to unidentified recipient, April 14, 1897, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 875).

³⁷² J.D. McLean, Acting Secretary, to unidentified recipient, April 14, 1897, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, pp. 875–76).

³⁷³ Marginal note written by SGIA Clifford Sifton on letter from J.D. McLean, Acting Secretary, to unidentified recipient, April 14, 1897, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 875).

same object” would be sent.³⁷⁴ The petition, from the “settlers of the Halcro and surrounding settlements,” stated:

That a large section of country known as Chakastapasin Indian Reserve is now and has been for years lying idle. That these vacant sections of country retard development of surrounding settlements ... That it is composed almost entirely of valuable farming lands, that would soon be cultivated were settlers allowed to enter for the same. That the Indian band for whom this land was reserved have abandoned the same about 1885 and have never occupied any portion of it since. And we understand have secured another reserve in another section of the country.³⁷⁵

The petition concludes with a request that the reserve be subdivided and “opened to the public for homesteading purposes.”³⁷⁶ J.D. McLean replied to Cook on April 28, 1897, saying that the petition would “receive due consideration.”³⁷⁷

On April 26, 1897, the Department of Indian Affairs wrote to E.L. Newcombe, the Deputy Minister of Justice, asking

whether or not in your opinion the Crown can resume possession and dispose of an Indian Reserve without first obtaining a surrender from the Indians, under the following circumstances:

The reserve concerned is within the limits of Treaty No. 6 and has for a good many years past been abandoned by the members of the band for which it was set apart, and such members or at any rate all of them who can be traced, have been formally transferred by their own request to other bands, which have consented to receive them into membership.³⁷⁸

³⁷⁴ B. Cook to Clifford Sifton, Minister of the Interior, April 17, 1897, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 877).

³⁷⁵ Petition from “settlers of the Halcro and surrounding settlements” to Clifford Sifton, Minister of the Interior, undated, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 878).

³⁷⁶ Petition from “settlers of the Halcro and surrounding settlements” to Clifford Sifton, Minister of the Interior, undated, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 878).

³⁷⁷ Acting Secretary to B. Cook, April 28, 1897, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 883).

³⁷⁸ Acting Secretary to E.L. Newcombe, Deputy Minister of Justice, April 26, 1897, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 880).

Before a response was received from the Department of Justice, Clifford Sifton submitted a Memorandum to Council on May 3, 1897, recommending that authority be granted “for the relinquishment by the Department of Indian Affairs, and resumption by the Department of the Interior, of the control of the lands” comprising the Young Chipeewayan Stoney Knoll reserve.³⁷⁹ The request was approved by Order in Council on May 11, 1897.³⁸⁰

Three days after the Order in Council approving the transfer of the Stoney Knoll reserve to the Department of the Interior, Newcombe wrote to the Acting Secretary of Indian Affairs, setting out his legal opinion on surrenders as previously requested. He wrote:

As at present advised I do not think that the land in question can, in view of the provisions of the section referred to, be sold or otherwise alienated until the same has been released or surrendered in the manner provided by the Act. The section positively forbids, subject to certain exceptions, which have no application to the present case, the sale, alienation or lease of any reserve or portion of a reserve without such release or surrender.

There does not appear from your statement of the facts to have been anything amounting to a dissolution of the band. As to the members said to have been transferred to other bands, I do not find any express authority for such transfer in the Statutes, and there may be some question as to the legal effect of what has taken place, but in the absence of further information on the subject, I do not think that the lands in the reserve are relieved in the hands of the Crown from the trust in favour of the band, so far as these members are concerned, or that the Crown is dispensed as to them from compliance with Section 39 before disposing of such lands. Then it seems from your statement that there are other members of the band who have not been traced, and therefore may not have been transferred to other bands.³⁸¹

It should be noted that section 140 of the *Indian Act*, which provided the statutory basis for membership transfers, had been enacted two years earlier. Acting Secretary J.D. McLean wrote a memorandum on May 26, 1897, asking, in view of the opinion from the Department of Justice,

³⁷⁹ Clifford Sifton, SGIA, to the Governor General in Council, May 3, 1897, LAC, RG 10, vol. 6663, file 109A-3-2 (ICC Exhibit 1, p. 884).

³⁸⁰ Order in Council PC 1155, May 11, 1897, LAC, RG 10, vol. 6663, file 109A-3-2 (ICC Exhibit 1, p. 885).

³⁸¹ E.L. Newcombe, Deputy Minister of Justice, to Acting Secretary, Department of Indian Affairs, May 14, 1897, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, pp. 887–88).

whether the Minister desires that an effort should be made to get a surrender of the Chakastaypasin Reserve from the Indians interested, in order that the lands comprising it may be sold, and the proceeds placed, pro rata, to their credit and that of the several Bands with whom they have become amalgamated. ... The Indians have already refused to make a gratuitous surrender.³⁸²

A marginal note on this memorandum with the notation “yes” and initialled “C.S.” indicated Sifton’s agreement with this course of action.³⁸³

McLean forwarded the Form of Surrender to Agent McKenzie on June 11, instructing him that, “in accordance with the provisions of the *Indian Act*, you will summon a meeting of the Indians formerly owning the Chakastaypasin Reserve and obtain from them their signatures to the enclosed documents.”³⁸⁴ McKenzie was also instructed to explain “that the moneys which may be derived from the sale of the lands to be surrendered will be placed to their credit and that of the several Bands with whom they have become amalgamated.”³⁸⁵

On June 23, 1897, nine former members of the Chakastaypasin Band signed a surrender of Chakastaypasin IR 98. At the time of the surrender, the department was aware of Chakastaypasin members having been dispersed among several bands. In 1896, Indian Commissioner Forget specifically identified Chakastaypasin members living with Big Head’s, James Smith’s, and One Arrow’s Bands.³⁸⁶ Chakastaypasin members or their descendants were also living in other locations,

³⁸² J.D. McLean, Acting Secretary, to unidentified recipient, May 26, 1897, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 894).

³⁸³ Marginal note, J.D. McLean, Acting Secretary, to unidentified recipient, May 26, 1897, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 894).

³⁸⁴ J.D. McLean, Acting Secretary, to R.S. McKenzie, Indian Agent, Duck Lake Agency, June 11, 1897, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 896).

³⁸⁵ J.D. McLean, Acting Secretary, to R.S. McKenzie, Indian Agent, Duck Lake Agency, June 11, 1897, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 896).

³⁸⁶ Statement showing “Dispersion and present whereabouts of Chekastaypasin’s Band, No. 98,” attached to A.E. Forget, Indian Commissioner, to the Indian Agent, Duck Lake Agency, February 3, 1896, no file reference available (ICC Exhibit 1, pp. 738–39).

including the Sturgeon Lake, Gordon's, and John Smith's reserves.³⁸⁷ The text of the surrender document is set out below:

Know all Men by these Presents, that we, the undersigned Chief and Principal men of Chacastapasin's Band formerly resident on our Reserve in the Duck Lake Agency in the Province of Saskatchewan and Dominion of Canada, for and acting on behalf of the whole people of our said Band in Council assembled, Do hereby release, remise, surrender, quit claim and yield up unto Our Sovereign Lady the Queen, her Heirs and Successors forever, All and Singular, that certain parcel or tract of land and premises, situate, lying and being in the Chacastapasin Reserve in the Duck Lake Agency and Province of Saskatchewan containing by admeasurement twenty four square miles be the same more or less and being composed of the Chacastapasin Indian Reserve No. 98 aforesaid.

To Have and to Hold the same unto Her said Majesty the Queen, her Heirs and Successors forever, in trust to sell the same to such person or persons, and upon such terms as the Government of the Dominion of Canada may deem most conducive to our welfare and that of our people.

And upon the further condition that all moneys received from the sale thereof, shall, after deducting the usual proportion for expenses of management, be placed pro rata to our credit and that of the several Bands with whom we have become amalgamated.

And we the said Chief and Principal men of the said Band of Indians do, on behalf of our people and for ourselves, hereby ratify and confirm, and promise to ratify and confirm, whatever the said Government may do, or cause to be lawfully done, in connection with the disposal of the said land and of the money to be derived from the sale thereof.

In witness whereof, we have hereunto set our hands and affixed our seals this 23rd day of June in the year of Our Lord one thousand eight hundred and ninety seven.³⁸⁸

³⁸⁷ Consent of Band to Transfer, March 12, 1894, in LAC, RG 10, vol. 3936, file 119582 (ICC Exhibit 1, p. 685); Consent of Band to Transfer, October 23, 1896, LAC, RG 10, vol. 3982, file 161097 (ICC Exhibit 1, p. 834); Application for admission to the William Twatt Band, July 27, 1897, LAC, RG 10, vol. 3982, file 161097 (ICC Exhibit 1, p. 912); see also David Laird, Indian Commissioner, to the Secretary, Department of Indian Affairs, March 26, 1902, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, pp. 1169–83); Sturgeon Lake First Nation, "Families of the Chakastapaysin Band: Remarks on Homik's Tracing Study from the Perspective of the Sturgeon Lake First Nation," revised May 1997 (ICC Exhibit 17c); Teresa Homik, "Chacastapasin Tracing Study," prepared for Specific Claims West, April 1996 (ICC Exhibit 3c).

³⁸⁸ Surrender for sale of Chakastapasin IR 98, June 23, 1897, no file reference available (ICC Exhibit 1, pp. 897–99).

The surrender document contains the signatures of nine former Chakastaypasin band members, all of whom were “transferred” to the Cumberland Band 100A under section 140 of the *Indian Act* in October 1896. The signatories were Kahtapiskowat, Neesooptahtawein, George Sanderson, John Sanderson, Nahnahahpeastah, Charles Sanderson, John Fox, Ahsineeweekahpow, and James Ahsineeweekahpow, all of whom signed with “X” marks. The surrender document is also signed by Indian Agent R.S. McKenzie and J.H. Price, the farming instructor at Fort à la Corne.³⁸⁹ There is no interpreter’s signature, and no information to indicate whether J.H. Price was capable of acting as interpreter for those who signed.

An affidavit attesting to the surrender was signed on June 25, 1897, by “Robert Sullivan McKenzie of the settlement of Duck Lake in the district of Saskatchewan in the North West Territories, Indian Agent of the Duck Lake Agency,” and by “Kah-ta-pis-co-wat, Chief Headman of the said Band of Indians, namely Chacastapasin’s Band No. 98 Reserve.”³⁹⁰ The text of the affidavit reads as follows:

And the said Robert Sullivan McKenzie for himself saith:

That the annexed Release or Surrender was assented to by a majority of the male members of the said Band of Indians of the Chacastapasin Indian Reserve No. 98, of the full age of twenty-one years then present.

That such assent was given at a meeting or council of the said Band summoned for that purpose and according to their Rules.

That he was present at such meeting or council and heard such assent given.

That he was duly authorized to attend such council or meeting by the Superintendent General of Indian Affairs.

³⁸⁹ Surrender for sale of Chakastaypasin IR 98, June 23, 1897, no file reference available (ICC Exhibit 1, p. 899); “Officers and Employees of the Department of Indian Affairs on the 31st December, 1897,” Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1897*, 491 (ICC Exhibit 15, p. 134).

³⁹⁰ Affidavit of R.S. McKenzie, Indian Agent, Duck Lake Agency, and Kahtapiskowat, Headman, Chakastaypasin Band, June 25, 1897, no file reference available (ICC Exhibit 1, p. 900). Text is as it appears on the document, with “Chief” crossed out.

That no Indian was present or voted at said council or meeting who was not a member of the Band or interested in the land mentioned in the said Release or Surrender.

That there is no Chief of said Band of Indians but said Kah-ta-pis-co-wat is their Headman.

And the said Headman, Kah-ta-pis-co-wat, Headman of said Band of Indians, there being no Chief, says:

That the annexed Release or Surrender was assented to by him and a majority of the male members of the said Band of Indians of the full age of twenty-one years then present.

That such assent was given at a meeting or council of the said Band of Indians summoned for that purpose, according to their rules, and held in the presence of the said Kah-ta-pis-co-wat.

That no Indian was present or voted at such council or meeting who was not an habitual resident on the Reserve of the said Band of Indians or interested in the land mentioned in the said Release or Surrender.

That he is a ~~Chief~~ Headman of the said Band of Indians and entitled to vote at the said meeting or council.³⁹¹

The affidavit was sworn on June 25, 1897, in Prince Albert, before J.H. McGuire, Judge of the Superior Court of the North-West Territories.³⁹² As in the surrender document, there is no interpreter's signature or statement that the contents of the affidavit were interpreted for Kahtapiskowat.

Indian Agent McKenzie forwarded the surrender and affidavit to the Deputy Superintendent General of Indian Affairs on July 1, 1897, merely stating that the documents had been "duly signed and executed before Judge McGuire."³⁹³ His accompanying report noted only:

³⁹¹ Affidavit of R.S. McKenzie, Indian Agent, Duck Lake Agency, and Kahtapiskowat, Headman, Chakastaypasin Band, June 25, 1897, no file reference available (ICC Exhibit 1, p. 900). Text is as it appears on the document, with "Chief" crossed out.

³⁹² Affidavit of R.S. McKenzie, Indian Agent, Duck Lake Agency, and Kahtapiskowat, Headman, Chakastaypasin Band, June 25, 1897, no file reference available (ICC Exhibit 1, p. 900).

³⁹³ R.S. McKenzie, Indian Agent, Duck Lake Agency, to DSGIA, July 1, 1897, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 902)

In connection with the surrender I would inform you that the Indians made a request that they may be supplied with a copy of the documents signed by them. I would therefore request that if this can be done that you will kindly send me a copy to hand to “Kah-tapis co wat.”³⁹⁴

No other information was provided regarding any meeting or vote, or whether notice was provided to Chakastaypasin members living at either IR 100A or other reserves.

The surrender of IR 98 was quickly accepted by Order in Council 2135 on July 21, 1897. The Order in Council states:

On a report dated 12th July 1897, from the Superintendent General of Indian Affairs, submitting herewith a surrender made by the Indians of Chacastapasins Band of their Reserve No. 98, in the Duck Lake Agency, in the District of Saskatchewan, with a view to the same being sold for their benefit.

The Minister states that the surrender has been duly assented to, executed and attested in the manner required by the 39th Section of the *Indian Act*, and he recommends that the same be accepted by Your Excellency in Council as required by that Section ... The Committee advise that the said surrender be accepted accordingly.³⁹⁵

Many of the Chakastaypasin elders at the community session testified that neither a meeting to surrender IR 98 nor a surrender vote ever occurred.³⁹⁶ Elder Violet Sanderson stated: “They never released it. They never gave permission to release their land. They didn’t know who sold the land, they didn’t know that the reserve was ever sold. ... It was only recently that they realized that their

³⁹⁴ R.S. McKenzie, Indian Agent, Duck Lake Agency, to DSGIA, July 1, 1897, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 902).

³⁹⁵ Order in Council PC 2135, July 21, 1897, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 905).

³⁹⁶ ICC Transcript, June 27–28, 2001 (ICC Exhibit 16a, pp. 34–35, Robert Constant); ICC Transcript, January 28–29, 2003 (ICC Exhibit 16b, pp. 37–38, Sol Sanderson; p. 85, Terry Sanderson; pp. 118, 125–26, Raymond Sanderson; pp. 164–65, Martha Opoonechaw-Stonestand, Albert Sanderson, and Patrick Stonestand; p. 174, Violet Sanderson; p. 218, Jake Sanderson); ICC Transcript, May 27–29, 2003 (ICC Exhibit 17b, pp. 71, 86, Besigan Nippi, Kinistin First Nation; p. 71, Gassion Thomas, Kinistin First Nation; p. 304, Melvin Smith, Muskoday First Nation).

land was sold.”³⁹⁷ Many elders refer to the sale of the Chakastaypasin lands as a “crooked deal” carried out without their consent.³⁹⁸

As well, there are some stories from the Sturgeon Lake and Muskoday elders about the way the Chakastaypasin lands were lost. Harold Kingfisher never heard of a vote to surrender the lands, but his mother told him of a meeting that took place:

[T]he only thing she said was there was only a certain amount of people that were allowed, that were picked up for a meeting. That’s all she said, she didn’t mention how many people were picked up but there was only several people that were picked up for a meeting but never told what kind of a meeting it was.³⁹⁹

Mr Kingfisher explained that only the men were

picked up on their houses, where they were living in the houses in Chakastaypasin. ... At Chakastaypasin. And probably, according to mom, they had a ration house. ... And that’s where they had a building there, a log building with some kind of an office, and that’s where they did haul them to.⁴⁰⁰

The stories passed on to Harold Kingfisher reflect a sense that the land was “stolen.”⁴⁰¹ He was told that

they didn’t consult everybody, they only handpicked people that they could manipulate. ... And how they manipulated people was through giving them rations and et cetera, you know, maybe giving them a horse. That’s how government manipulated First Nations people.⁴⁰²

³⁹⁷ ICC Transcript, June 27–28, 2001 (ICC Exhibit 16a, p. 118, Violet Sanderson).

³⁹⁸ For example, see ICC Transcript, May 27–29, 2003 (ICC Exhibit 17b, p. 284, Eric Bear, Muskoday First Nation; p. 302, Melvin Smith, Muskoday First Nation).

³⁹⁹ ICC Transcript, May 27–29, 2003 (ICC Exhibit 17b, p. 170, Harold Kingfisher, Sturgeon Lake First Nation).

⁴⁰⁰ ICC Transcript, May 27–29, 2003 (ICC Exhibit 17b, p. 182, Harold Kingfisher, Sturgeon Lake First Nation).

⁴⁰¹ ICC Transcript, May 27–29, 2003 (ICC Exhibit 17b, p. 175, Harold Kingfisher, Sturgeon Lake First Nation).

⁴⁰² ICC Transcript, May 27–29, 2003 (ICC Exhibit 17b, p. 176, Harold Kingfisher, Sturgeon Lake First Nation).

Muskoday elder Melvin Smith, a descendant of The Mink, was told that “the chief wasn’t there at the time it was sold. Just the councillors.”⁴⁰³ He also stated that when the lands were taken, “there was just a few people living on that reserve at the time and somehow it was sold” after the people “were asked to move.”⁴⁰⁴ The timing of these events is uncertain.

Melvin Smith and Eric Bear both recall the existence of some kind of agreement with respect to the Chakastaypasin lands. Eric Bear recalls that Chakastaypasin members were promised that, “if the agreement was made, that the monies would be paid from the other lands to the third generation.”⁴⁰⁵ He did not know if anyone ever received the money promised, but explained that “the agreement was made to Hannah Mink family that the third and final payment would go ... to the third generation.”⁴⁰⁶

Melvin Smith understood that the agreement was to lease or loan the land to settlers, and that the band members could return to the land in the future. The stories he was told say that when “the people left, there was this agreement that they could come back later, that the land was not ... the way it sounded like it wasn’t sold, that they could come back at a later time.”⁴⁰⁷ Furthermore, part of the agreement was that

the people that were moving on to this reserve after the land was sold were not to build – they could build houses there, but they could not build houses on foundations, like cement or basements. This is in the event that if they had – the Natives got the land back, that they could have them move their houses away from there.⁴⁰⁸

With respect to the sale of the lands, Melvin Smith explained that when his father spoke of it,

⁴⁰³ ICC Transcript, May 27–29, 2003 (ICC Exhibit 17b, p. 301, Melvin Smith, Muskoday First Nation).

⁴⁰⁴ ICC Transcript, May 27–29, 2003 (ICC Exhibit 17b, p. 299, Melvin Smith, Muskoday First Nation).

⁴⁰⁵ ICC Transcript, May 27–29, 2003 (ICC Exhibit 17b, p. 284, Eric Bear, Muskoday First Nation).

⁴⁰⁶ ICC Transcript, May 27–29, 2003 (ICC Exhibit 17b, p. 289, Eric Bear, Muskoday First Nation).

⁴⁰⁷ ICC Transcript, May 27–29, 2003 (ICC Exhibit 17b, pp. 301–2, Melvin Smith, Muskoday First Nation).

⁴⁰⁸ ICC Transcript, May 27–29, 2003 (ICC Exhibit 17b, p. 330, Melvin Smith, Muskoday First Nation).

he put it in several different ways. Like it might have been sold and it might not have been sold. I believe it was just leased out or something, the way it was put at that time. If it was sold, it might have been crooked work he said.⁴⁰⁹

He did not recall hearing of a meeting or a vote, his father “just said that the land was given up, and it was either bought or sold, or leased out.”⁴¹⁰ However, Melvin Smith also says that the Band found out later that the interpreter who explained the agreement “wasn’t telling the truth” and misrepresented the terms of the agreement.⁴¹¹ He explained:

He was telling the people one thing. The government was telling him something to say to the people, but when he said something to the people, he was saying something different. He was making promises, I guess, that he wasn’t supposed to.⁴¹²

Chakastaypasin elder Raymond Sanderson also recalls hearing of improper interpretation, although he did not specifically relate that to the surrender agreement. He says that “on two occasions I could say that I heard people mention that interpreters did not interpret properly.”⁴¹³

Muskoday elder James Smith heard that the lands were taken because people wanted the timber.⁴¹⁴ There are also stories that a Member of Parliament from Prince Albert “used to go see the Chief Chakastaypasin about whether he could sell that land” and would bribe “honoured people within the community.”⁴¹⁵ The timeframe of these visits is uncertain, but Harold Kingfisher says they

⁴⁰⁹ ICC Transcript, May 27–29, 2003 (ICC Exhibit 17b, p. 302, Melvin Smith, Muskoday First Nation).

⁴¹⁰ ICC Transcript, May 27–29, 2003 (ICC Exhibit 17b, pp. 303–4, Melvin Smith, Muskoday First Nation).

⁴¹¹ ICC Transcript, May 27–29, 2003 (ICC Exhibit 17b, p. 311, Melvin Smith, Muskoday First Nation).

⁴¹² ICC Transcript, May 27–29, 2003 (ICC Exhibit 17b, p. 311, Melvin Smith, Muskoday First Nation).

⁴¹³ ICC Transcript, January 28–29, 2003 (ICC Exhibit 16b, p. 129, Raymond Sanderson).

⁴¹⁴ ICC Transcript, May 27–29, 2003 (ICC Exhibit 17b, p. 315, James Smith, Muskoday First Nation).

⁴¹⁵ ICC Transcript, May 27–29, 2003 (ICC Exhibit 17b, pp. 171, 177, Harold Kingfisher, Sturgeon Lake First Nation).

occurred at a time when “they were trying to get rid of the Chakastaypasin band members out of the Chakastaypasin reserve.”⁴¹⁶

SALE OF CHAKASTAYPASIN IR 98 LANDS

The Department of Indian Affairs instructed Commissioner Forget in September 1897 to arrange for the survey and subdivision of IR 98 “at as early a date as may be convenient.”⁴¹⁷ However, the subdivision survey was delayed until the following year owing to a lack of funds.⁴¹⁸ Meanwhile, MP T.O. Davis again pursued the opening of IR 98 for settlement. On August 30, 1897, following acceptance of the surrender by Order in Council 2135, DSGIA James A. Smart forwarded an inquiry to the department Secretary from Davis, who wished to know “when it is intended to open Stony Knoll and Chapasticolion Reserves for settlement.”⁴¹⁹ Davis wrote to the department again in April 1898, stating that the even sections of the Chakastaypasin reserve should be “thrown open for Homestead entry.”⁴²⁰

Survey and Valuation, 1898

Dominion Land Surveyor T.D. Green carried out the subdivision survey of IR 98 in June and July 1898 and submitted his report, valuations, and detailed descriptions of each quarter section to the department on August 4, 1898. He noted that the soil throughout the reserve consisted of “sandy

⁴¹⁶ ICC Transcript, May 27–29, 2003 (ICC Exhibit 17b, p. 177, Harold Kingfisher, Sturgeon Lake First Nation).

⁴¹⁷ A.N. McNeill, Assistant Secretary, Department of Indian Affairs, to A.E. Forget, Indian Commissioner, September 28, 1897, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 924).

⁴¹⁸ A.E. Forget, Indian Commissioner, to DSGIA, October 4, 1897, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 932).

⁴¹⁹ James A. Smart, DSGIA, to J.D. McLean, Department of Indian Affairs, August 30, 1897, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 920).

⁴²⁰ T.O. Davis, MP, to the Minister of the Interior, April 13, 1898, no file reference available (ICC Exhibit 1, p. 941).

loam,” with good hay meadows and “good bluffs of green poplar” in the southern portion.⁴²¹ As to the valuations, he said:

Two dollars (\$2.00) per acre is the price adopted as a fair saleable one for all the ordinary sections. Good land bordering on the river and good wood lots are valued at \$2.50 per acre. The Dominion Lands in this district are all held at \$3.00 per acre, so that at the price I have valued the land, it should be easily disposed of.⁴²²

Sugar Island itself was subdivided into 40-acre parcels “for the purpose of selling it for wood lots”⁴²³ and valued between \$2.00 and \$2.50 per acre, with the majority valued at the higher figure.⁴²⁴ The majority of parcels on the mainland portion of the reserve were valued at \$2.00 or \$2.50 per acre, as noted by Green, although six parcels were assigned a lower valuation of \$1.00 or \$1.50 per acre.⁴²⁵ In November 1898, Lands Branch clerk W.A. Orr wrote to Green to inquire whether his valuations were premised on the lands “being disposed of unconditionally or subject to actual settlement and improvement” conditions.⁴²⁶ Green replied that his valuations were set “with the idea of being disposed of unconditionally.”⁴²⁷

Orr forwarded Green’s report to the Secretary on November 9, 1898, recommending that the Chakastaypasin reserve lands be placed in the hands of the Indian Agent at Prince Albert to be sold “without any conditions as to settlement or improvements.” He noted that Green’s valuation of \$2.00

⁴²¹ T.D. Green, DLS, to the Secretary, Department of Indian Affairs, August 4, 1898, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, pp. 946–47).

⁴²² T.D. Green, DLS, to the Secretary, Department of Indian Affairs, August 4, 1898, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 947).

⁴²³ T.D. Green, DLS, to the Secretary, Department of Indian Affairs, August 4, 1898, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 946).

⁴²⁴ T.D. Green, DLS, to the Secretary, Department of Indian Affairs, August 4, 1898, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, pp. 948–49).

⁴²⁵ T.D. Green, DLS, to the Secretary, Department of Indian Affairs, August 4, 1898, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, pp. 950–55).

⁴²⁶ W.A. Orr, Department of Indian Affairs, to T.D. Green, November 8, 1898, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1a, p. 51).

⁴²⁷ Marginal note written on memorandum from W.A. Orr, Department of Indian Affairs, to T.D. Green, November 8, 1898, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1a, p. 51).

per acre “seems a fair and reasonable one and I think as much as the Department is warranted in asking for the land.” As well, he recommended that Sugar Island be reserved from the sale, “to be disposed of in the future to actual settlers on the Reserve.”⁴²⁸ Sifton did not wish to waive settlement conditions, however, and Order in Council 2622, dated November 19, 1898, authorized Indian Agent W.B. Goodfellow to dispose of the reserve lands, “subject to the Regulations of the Department of Indian Affairs.”⁴²⁹ Once it was determined that Agent Goodfellow was stationed too far from Prince Albert to handle the Chakastaypasin sales,⁴³⁰ the Order in Council was amended on January 23, 1899, to allow the Dominion Lands Agent at Prince Albert to dispose of the lands and to change the conditions of sale to “one year’s residence (without improvements) instead of the three years’ residence and improvements required by the Land Regulations of the Department of Indian Affairs.”⁴³¹ In his instructions to the Dominion Lands Agent charged with conducting the sale, the DSGIA highlighted the change in settlement conditions and noted that Sugar Island was to be reserved from sale “for the purpose of disposing of the wood lots on the Island in the future to actual settlers.”⁴³²

Proposals for Sale of Entire Reserve, 1899–1901

Four months after these arrangements were finalized, DSGIA James Smart notified the Secretary that an offer to purchase the whole reserve had been received from a group of Hungarian settlers.⁴³³ It may be noted that, although this offer was ostensibly made by a Hungarian named Zoltan Von

⁴²⁸ W.A. Orr, Department of Indian Affairs, to the Secretary, Department of Indian Affairs, November 9, 1898, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1a, p. 52).

⁴²⁹ Order in Council PC 2622, November 19, 1898, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1a, p. 55).

⁴³⁰ W.A. Orr, Department of Indian Affairs, to the Secretary, Department of Indian Affairs, January 12, 1899, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1a, p. 54).

⁴³¹ Order in Council PC 148, January 23, 1899, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1a, p. 58).

⁴³² James A. Smart, Deputy Minister, to the Dominion Lands Agent, February 7, 1899, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 982).

⁴³³ James A. Smart, DSGIA, to J.D. McLean, Secretary, Department of Indian Affairs, June 10, 1899, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1a, p. 235).

Racjs,⁴³⁴ the name of T.O. Davis is the one that actually appears throughout the department correspondence on the matter. Smart noted that valuations were already placed on the land, but suggested that if the entire reserve could be sold *en bloc* with settlement conditions, the lands “could be sold at a less rate per acre than where it is sold in small quantities.”⁴³⁵ After meeting with Davis on June 12 to negotiate terms, Secretary J.D. McLean notified the DSGIA of the offer made by “the Hungarian settlers”: the sale of the entire reserve, excepting Sugar Island, would be made at the rate of \$1.50 per acre; every section would be settled with one settler within three years; settlement duties would include three years’ residence and clearing of 5 per cent of the total acreage; and one-fifth of the purchase money would be paid in cash, and the balance in four equal annual instalments at 6 per cent interest.⁴³⁶ Order in Council 1553, dated August 16, 1899, rescinded previous orders regarding the sale of the Chakastaypasin lands and authorized the sale to the “Hungarian settlers.” The terms were essentially the same as those negotiated by Davis, except that five years were allowed for fulfillment of settlement duties, and the down payment would be due within three months. The order noted: “It is considered that the price offered, viz. \$1.50 per acre is a fair and reasonable one.”⁴³⁷ The down payment was never produced to finalize the sale, and Davis informed the department on May 2, 1900, that the Hungarian offer had been abandoned.⁴³⁸

On April 28, 1900, a second offer to purchase the Chakastaypasin reserve *en bloc* was made by “J.W. Mitchell” and “J.C. Neeley” of Council Bluffs, Iowa, claiming to represent “a large number of fairly well-to-do farmers in Iowa and bordering states” looking to organize a colony.⁴³⁹

⁴³⁴ Unidentified author to T.O. Davis, MP, December 21, 1900, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1a, p. 264); James A. Smart, Deputy Minister of the Interior, to Clifford Sifton, January 8, 1901, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1a, p. 67).

⁴³⁵ James A. Smart, DSGIA, to J.D. McLean, Secretary, Department of Indian Affairs, June 10, 1899, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1a, pp. 235–36).

⁴³⁶ J.D. McLean, Secretary, Department of Indian Affairs, to DSGIA, June 12, 1899, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1a, p. 237).

⁴³⁷ Order in Council PC 1553, August 16, 1899, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1a, pp. 247–48).

⁴³⁸ W.A. Orr, Department of Indian Affairs, to the Secretary, Department of Indian Affairs, May 2, 1900, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1a, p. 256).

⁴³⁹ J.W. Mitchell and John C. Neeley to James A. Smart, Deputy Minister of the Interior, April 28, 1900, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1a, pp. 254–55).

Interestingly, the terms of their offer were identical to those set out in the Order in Council authorizing the sale to “Hungarian settlers.”⁴⁴⁰ The sale to Mitchell and Neeley was authorized by Order in Council 218 on February 6, 1901.⁴⁴¹ The necessary down payment did not arrive within the three months allowed, but the authorization was not rescinded until October 22, 1901.⁴⁴² Tyler and Wright’s research on the Chakastaypasin sale notes a significant body of evidence, including typewriter analysis conducted by Roy Huber, to show that DSGIA James A. Smart, Superintendent of Immigration Frank Pedley, and Immigration Inspector William J. White were behind the forged Mitchell and Neeley offer.⁴⁴³

During 1901, other inquiries were made regarding the possibility of purchasing Chakastaypasin lands, including at least three offers for the purchase of the entire reserve.⁴⁴⁴ One of these offers apparently involved T.O. Davis, as he notified the department on September 29, 1901, that “some parties in Winnipeg” wished to purchase the reserve on the same terms offered “two years ago,” presumably referring to the terms of the Hungarian offer he had orchestrated.⁴⁴⁵ R.C. Macdonald of Winnipeg contacted the department two days later to make an offer for the whole

⁴⁴⁰ See Order in Council 1553, August 16, 1899, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1a, pp. 247–48); J.W. Mitchell and John C. Neeley to James A. Smart, Deputy Minister of the Interior, April 28, 1900, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1a, pp. 254–55).

⁴⁴¹ Order in Council PC 218, February 6, 1901, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1a, pp. 283–85).

⁴⁴² Order in Council, October 22, 1901, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1a, p. 83).

⁴⁴³ Tyler and Wright Research Consultants, Working draft of Chacastapasin report, c. 1978 (ICC Exhibit 7, pp. 87–116).

⁴⁴⁴ Joseph H. Adams to P.G. Keyes, Secretary, Department of the Interior, June 3, 1901, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1a, p. 68); C.P. Douglas to Minister of the Interior, February 28, 1901, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1a, p. 293); T.O. Davis, MP, to Clifford Sifton, SGIA, September 29, 1901, LAC, MG 27, II, D15, vol. 87 (ICC Exhibit 1a, p. 306); R.C. Macdonald, Mining Broker & Insurance, to Clifford Sifton, Minister of the Interior, October 1, 1901, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1a, pp. 307–8); Almor Stern and others to Clifford Sifton, Minister of the Interior, November 9, 1901, LAC, RG 10, vol. 6663, file 109A-3-3 (ICC Exhibit 1a, pp. 317–19).

⁴⁴⁵ T.O. Davis, MP, to Clifford Sifton, SGIA, September 29, 1901, in MG 27, II, D15, vol. 87 (ICC Exhibit 1a, p. 306).

reserve at \$1.50 per acre; it is possible that he was one of the “parties in Winnipeg” mentioned by Davis.⁴⁴⁶

Decision to Sell Chakastaypasin Lands by Tender

On October 2, 1901, when it was clear that the “Mitchell & Neeley” sale would not be completed, DSGIA Smart recommended that the reserve be sold by public tender without settlement conditions, in a similar manner to the “Moose Mountain sale” also being conducted at that time.⁴⁴⁷ The previous Orders in Council relating to the Chakastaypasin sale were rescinded by a new Order in Council dated October 22, 1901, which granted authority “for the disposal of the Reserve upon such terms and in such manner as may be deemed advisable in the interest of the Indians.”⁴⁴⁸

The draft notice of sale, dated October 11, 1901, specified that separate tenders for each quarter section would be accepted until November 15, 1901. The terms state that each tender required a 5 per cent deposit, and that one-quarter of the total purchase price would be due “upon advice of acceptance of Tender,” with the balance to be paid in four equal annual instalments at 5 per cent interest.⁴⁴⁹ The notice lists all the sections containing any part of the reserve, including Sugar Island, but provides no information about the land or the acreage of parcels, or which quarter sections or fractional quarter sections were not included within the reserve boundaries. There is also no information regarding where any information about the reserve lands might be obtained.⁴⁵⁰ The

⁴⁴⁶ R.C. Macdonald, Mining Broker & Insurance, to Clifford Sifton, Minister of the Interior, October 1, 1901, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1a, pp. 307–8).

⁴⁴⁷ James A. Smart, DSGIA, to J.D. McLean, October 2, 1901, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1a, p. 70); James A. Smart to Clifford Sifton, SGIA, October 7, 1901, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1a, p. 73). The “Moose Mountain sale” mentioned by James Smart refers to the sale of the Ocean Man and Pheasants Rump reserves in Treaty 4.

⁴⁴⁸ Order in Council, October 22, 1901, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1a, p. 83).

⁴⁴⁹ Draft sale notice signed by J.D. McLean, Secretary, Department of Indian Affairs, October 11, 1901, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1a, pp. 77–78).

⁴⁵⁰ Draft sale notice signed by J.D. McLean, Secretary, Department of Indian Affairs, October 11, 1901, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1a, pp. 77–78).

wording of this notice is very similar to the notice issued for the Moose Mountain sale, which was written under the close supervision of DSGIA James Smart.⁴⁵¹

Advertising of the sale was limited. On October 19, 1901, sale posters were sent to those with a previously expressed interest in the Chakastaypasin lands and to all the postmasters in Saskatchewan.⁴⁵² In addition, advertisements were authorized for the *Manitoba Free Press* and *L'Echo de Manitoba* in Winnipeg, and the Prince Albert *Advocate*. The *Manitoba Free Press* ran the advertisement four times between October 22 and 25, 1901, and *L'Echo de Manitoba* ran the notice on October 31, November 7, and November 14, 1901.⁴⁵³ However, it appears that the initial sale notice did not appear in the *Advocate* in Prince Albert. After seeing the notice in a Winnipeg paper on October 29, Prince Albert lawyer and prominent Liberal J.H. Lamont immediately wrote to the Secretary to inform him that “[t]his advertisement has not appeared in any Prince Albert newspaper and it seems remarkable that that land will be offered for sale in close proximity to this town without a Notice of the Sale being published in some paper in the vicinity.”⁴⁵⁴ He went on to request an extension until December 15 in order to give some clients in the United States the opportunity to inspect the land before tendering.⁴⁵⁵ The Prince Albert *Advocate* ran an editorial on November 4, 1901, stating:

There is something mighty queer about the manner of calling for tenders for the Chacastapasin Indian reserve land which is now on the market. There seems to be a desire that the people of Saskatchewan should know nothing about the proposed sale

⁴⁵¹ Tyler and Wright Research Consultants, Working draft of Chacastapasin report, c. 1978 (ICC Exhibit 7, pp. 119–23).

⁴⁵² W.A. Orr, Department of Indian Affairs, October 19, 1901, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1a, p. 81).

⁴⁵³ Tyler and Wright Research Consultants, Working draft of Chacastapasin report, c. 1978 (ICC Exhibit 7, pp. 123–24); Document Summary (ICC Exhibit 3a, Appendix A, p. 58).

⁴⁵⁴ J.H. Lamont, Hannon & Lamont, to J.D. McLean, Secretary, Department of Indian Affairs, October 29, 1901, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1a, p. 84).

⁴⁵⁵ J.H. Lamont, Hannon & Lamont, to J.D. McLean, Secretary, Department of Indian Affairs, October 29, 1901, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1a, p. 85).

of this property. Advertisements have appeared in the Winnipeg papers asking for tenders, but not a line in a paper in Saskatchewan.⁴⁵⁶

In response to Lamont's letter, W.A. Orr informed the Secretary on November 6 that the *Advocate* had been authorized to insert the advertisement on October 21 and that he was "not aware that the same was not duly inserted therein."⁴⁵⁷ James Smart instructed McLean on November 8 to look into whether the advertisements had ever appeared in the Prince Albert paper, and he noted: "I have decided, at any rate, at the request of Mr. J.H. Lamont, to extend the time for a week."⁴⁵⁸ It is not certain whether any further action was taken to determine whether the advertisements ever actually appeared in the *Advocate*. Tyler and Wright note that the first advertisement eventually ran in a Prince Albert newspaper on November 18, 1901.⁴⁵⁹

On November 11, 1901, J.D. McLean drafted a revised sale notice extending the deadline for tenders until November 22, 1901, according to Smart's instructions.⁴⁶⁰ The *Manitoba Free Press* printed the revised notice six times between November 12 and 18, 1901,⁴⁶¹ and *L'Echo de Manitoba* published the revised notice once on November 21, one day before the deadline.⁴⁶² The *Advocate* published the notice four times: on November 18 and 25, and December 2 and 9, 1901.⁴⁶³ However,

⁴⁵⁶ "Information Wanted," [Prince Albert] *Advocate*, November 4, 1901 (ICC Exhibit 1a, p. 87).

⁴⁵⁷ W.A. Orr to the Secretary, November 6, 1901, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1a, p. 88).

⁴⁵⁸ James A. Smart, DSGIA, to J.D. McLean, November 8, 1901, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1a, p. 90).

⁴⁵⁹ Tyler and Wright Research Consultants, Working draft of Chacastapasin report, c. 1978 (ICC Exhibit 7, pp. 123–27).

⁴⁶⁰ Draft sale notice signed by J.D. McLean, Secretary, Department of Indian Affairs, November 11, 1901 (ICC Exhibit 1a, pp. 91–92).

⁴⁶¹ King's Printer to *Manitoba Free Press*, November 11, 1901, LAC, RG 10, vol. 6663, file 109A-3-4 (ICC Exhibit 1a, p. 94); *Manitoba Free Press* to the Department of Indian Affairs, November 12, 1901, LAC, RG 10, vol. 6663, file 109A-3-4 (ICC Exhibit 1a, p. 95).

⁴⁶² Tyler and Wright Research Consultants, Working draft of Chacastapasin report, c. 1978 (ICC Exhibit 7, p. 127); Document Summary (ICC Exhibit 3a, Appendix A, p. 58).

⁴⁶³ Tyler and Wright Research Consultants, Working draft of Chacastapasin report, c. 1978 (ICC Exhibit 7, pp. 126–27).

only the first notice appeared before the deadline for receipt of tenders in Ottawa. Tyler and Wright note that it would have been impossible for someone who saw the notice on November 18, 1901, in Prince Albert to submit a tender by the advertised deadline.⁴⁶⁴

On November 26, 1901, T.O. Davis wired a brief message to DSGIA James Smart, saying, “Do not sell Sugar Island[.] Chacastapasin reserve settlers object.”⁴⁶⁵ Smart forwarded Davis’s telegram to McLean, asking him to “bring this up when the tenders are received so that I may bring it to the attention of the Minister.”⁴⁶⁶

Following this initial extension, a number of unofficial extensions were made at the requests of T.O. Davis and J.H. Lamont, but there is no record that any public notice was made regarding these changes.⁴⁶⁷ It was not until Lamont finally notified DSGIA James Smart on December 14, 1901, that his clients’ tenders had been submitted that instructions were given to open the tenders.⁴⁶⁸

Tenders for Land

The tenders were opened in the department on December 16, 1901. W.A. Orr prepared an analysis of the tenders for the Secretary, in which he brought attention to Davis’s telegram asking the department not to sell Sugar Island:

⁴⁶⁴ Tyler and Wright Research Consultants, Working draft of Chacastapasin report, c. 1978 (ICC Exhibit 7, pp. 126–27).

⁴⁶⁵ T.O. Davis, MP, to James A. Smart, November 26, 1901, LAC, RG 10, vol. 6663, file 109A-3-3 (ICC Exhibit 1a, p. 112).







⁴⁶⁶ James A. Smart, DSGIA, to J.D. McLean, November 29, 1901, LAC, RG 10, vol. 6663, file 109A-3-3 (ICC Exhibit 1a, p. 113).

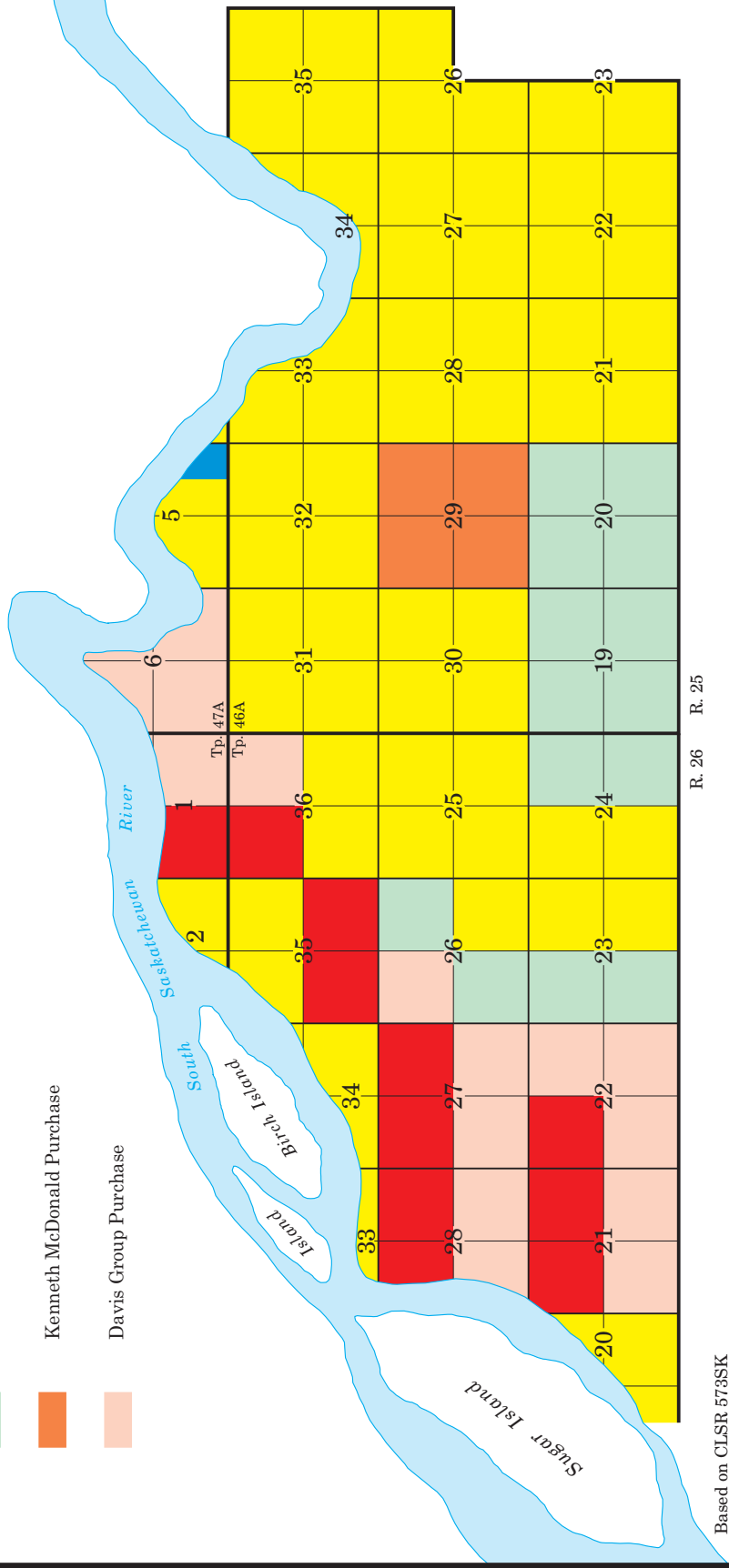
⁴⁶⁷ J. H. Lamont to Department of Indian Affairs, November 21, 1901, quoted in Tyler and Wright Research Consultants, Working draft of Chacastapasin report, c. 1978 (ICC Exhibit 7, p. 133); T.O. Davis to Clifford Sifton, December 1, 1901, LAC, RG 10, vol. 6663, file 109A-3-3 (ICC Exhibit 1a, p. 114); James A. Smart, Department of the Interior, to T.O. Davis, MP, December 2, 1901, LAC, RG 10, vol. 6663, file 109A-3-3 (ICC Exhibit 1a, p. 115); James A. Smart, Deputy Minister of the Interior, to J.D. McLean, December 2, 1901, LAC, RG 10, vol. 6663, file 109A-3-3 (ICC Exhibit 1a, p. 116); T.O. Davis to James A. Smart, December 3, 1901, LAC, RG 10, vol. 6663, file 109A-3-3 (ICC Exhibit 1a, p. 117); James A. Smart, Department of the Interior, to T.O. Davis, MP, December 4, 1901, LAC, RG 10, vol. 6663, file 109A-3-3 (ICC Exhibit 1a, p. 118); J.H. Lamont to James A. Smart, Deputy Minister of the Interior, December 4, 1901, LAC, RG 10, vol. 6663, file 109A-3-3 (ICC Exhibit 1a, p. 119).

⁴⁶⁸ J.H. Lamont to James A. Smart, Deputy Minister of the Interior, December 14, 1901, LAC, RG 10, vol. 6663, file 109A-3-3 (ICC Exhibit 1a, p. 1047).

Map 3

Land Disposition Chakastaypasin Reserve No.98

-  "J.W. Smith" Purchases
-  Charles Adams Purchase
-  A.J. Adamson Purchases
-  R. C. Macdonald Purchases
-  Kenneth McDonald Purchase
-  Davis Group Purchase



Based on CLSR 573SK

In this connection [I] beg to state that Tenders were called for the whole Reserve, including Sugar Island, but as the advertisement calling for Tenders stated that the highest or any Tender would not necessarily be accepted, there would not appear to be any objection to reserving Sugar Island as desired by Mr. Davis.⁴⁶⁹

All the Chakastaypasin lands were purchased by six separate groups or individuals, four of which submitted their tenders after the official November 22 deadline. The successful purchasers were “J.W. Smith,” Charles Adams, R.C. Macdonald, A.J. Adamson, Kenneth McDonald, and a group of individuals associated with T.O. Davis. The lands as a whole were sold for a sum below their assessed value of \$30,376.82 for all 114 parcels, an average of approximately \$2.04 per acre. The amount actually bid by successful purchasers amounted to \$25,710.59, or an average of \$1.73 per acre.⁴⁷⁰

“J.W. Smith” [Sales 1–69 and 71]

J.W. Smith, a Toronto salesman, signed tenders dated November 20, 1901, for every parcel of land in the surrendered Chakastaypasin reserve, including Sugar Island.⁴⁷¹ He was successful in the purchase of 70 quarter sections (8,799.12 acres, or 59 per cent of the total land sold), for a total price of \$12,554.19, or approximately \$1.43 per acre.⁴⁷² This amount was significantly below the assessed

⁴⁶⁹ W.A. Orr, Department of Indian Affairs, to the Secretary, Department of Indian Affairs, December 16, 1901, LAC, RG 10, vol. 6663, file 109A-3-3 (ICC Exhibit 1a, p. 124).

⁴⁷⁰ T.D. Green, DLS, to the Secretary, Department of Indian Affairs, August 4, 1898, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1a, pp. 39–44); Department of Indian Affairs, Land Sale Book, Chakastaypasin IR 98 Land Sales, sales 1–114 (ICC Exhibit 1a, pp. 370–439, 648, 737–50, 839–44, 927, 965–68, 1013–23, 1105–7, 1188–89, 1234, and 1275); see also Document Summary (ICC Exhibit 3a, Appendix A, p. 66).

⁴⁷¹ J.W. Smith to J.D. McLean, Secretary, Department of Indian Affairs, November 20, 1901, LAC, RG 10, vol. 6664, file 109A-3-17 (ICC Exhibit 1a, pp. 97–110, 440–508, 751–64, 846–52, 928, 969–72, 1028–38, 1112–15, 1192–93, 1235, 1276).

⁴⁷² There are some discrepancies among the various documents regarding the total acreage purchased by Smith: the correspondence states a total of 8,683 acres, and the Land Sale Book shows 8,799.12 acres. The document summary prepared by Specific Claims Branch West shows 8,884.24 acres.

value of \$17,818.98.⁴⁷³ These purchases comprise sales 1–69 and 71 in the Land Sale Book.⁴⁷⁴ In many cases, Smith was the only tenderer and was therefore able to purchase some quarter sections for as little as \$0.50 per acre.

The first instalment of money for the lands was due immediately, according to the terms of sale, but the payment was not made until the lands were resold three months later. On March 18, 1902, A.C. Bedford-Jones sold Smith's lands to A.J. Stade of Devil's Lake, North Dakota.⁴⁷⁵ Following completion of this agreement, Bedford-Jones wrote to the department on April 2, 1902, forwarding an assignment from J.W. Smith to himself, as well as the money due for the first instalment.⁴⁷⁶ The remaining money due on the sale was paid to the department according to the terms of sale, the last payment being made on December 8, 1905.⁴⁷⁷ Bedford-Jones assigned the lands to A.J. Stade on January 8, 1906, and the lands were patented to him the same year.⁴⁷⁸

It was later revealed by the Ferguson Commission in 1915 that the J.W. Smith tenders were actually submitted by James A. Smart (then the DSGIA and Deputy Minister of the Interior), Frank Pedley (the Superintendent of Immigration, who became DSGIA in 1902), and William J. White (an Immigration Inspector with the Department of the Interior). The Toronto lawyer A.C. Bedford-Jones, a former law partner of Pedley, acted as a front man for the true purchasers, just as he did in the Moose Mountain sale and others in which these three individuals were involved.⁴⁷⁹

⁴⁷³ T.D. Green, DLS, to the Secretary, Department of Indian Affairs, August 4, 1898, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1a, pp. 39–44); Document Summary (ICC Exhibit 3a, Appendix A, p. 66).

⁴⁷⁴ Department of Indian Affairs, Land Sale Book, Chakastaypasin IR 98 Land Sales, Sales 1–69 and 71 (ICC Exhibit 1a, pp. 370–439).

⁴⁷⁵ Agreement between A.C. Bedford-Jones and A.J. Stade, March 18, 1902, LAC, RG 10, vol. 6664, file 109A-3-17 (ICC Exhibit 1a, pp. 545–52).

⁴⁷⁶ A.C. Bedford Jones, Barrister & Solicitor, to the Secretary, Department of Indian Affairs, April 2, 1902, LAC, RG 10, vol. 6664, file 109A-3-17 (ICC Exhibit 1a, p. 563).

⁴⁷⁷ Bank of Montreal receipt to A.C.B. Jones, December 28, 1905, LAC, RG 10, vol. 6664, file 109A-3-17 (ICC Exhibit 1a, p. 617).

⁴⁷⁸ A.C. Bedford-Jones, Managing Director, Canada National Land & Development Company, to the Secretary, Department of Indian Affairs, January 8, 1906, LAC, RG 10, vol. 6664, file 109A-3-17 (ICC Exhibit 1a, p. 618); J.D. McLean, Secretary, Department of Indian Affairs, to A.J. Stade, February 9, 1906, LAC, RG 10, vol. 6664, file 109A-3-17 (ICC Exhibit 1a, p. 623).

⁴⁷⁹ Canada, House of Commons, *Debates* (April 14, 1915), 2549–80 (ICC Exhibit 1, pp. 1337, 1368).

Charles Adams [Sale 70]

Charles Adams purchased 36.44 acres of the Chakastaypasin reserve for \$63.27, or approximately \$1.75 per acre.⁴⁸⁰ He submitted a tender on November 7, 1901, for part of the quarter section on the Chakastaypasin reserve occupied by him, but his tender was refused and the purchase awarded to J.W. Smith.⁴⁸¹ However, T.O. Davis intervened on Adams's behalf, stating that Adams had been on the land "for the past eight years having obtained permission from the late Govt" and had "considerable improvements upon the place."⁴⁸² On March 5, 1902, J.D. McLean notified Adams that he would be allowed to purchase the portion of the quarter section he occupied at the same rate as the highest tenderer.⁴⁸³ After repeated delays, Adams finally completed payment in February 1912, and he received the patent in 1913.⁴⁸⁴

R.C. Macdonald [Sales 72–85]

R.C. Macdonald of Winnipeg submitted tenders for 44 quarter sections of Chakastaypasin lands on December 6, 1901, two weeks after the official deadline.⁴⁸⁵ He was successful in the purchase of 14 parcels (1,899.53 acres, or 13 per cent of the total lands sold), for a total price of \$3,324.19, or \$1.75

⁴⁸⁰ Department of Indian Affairs, Land Sale Book, Chakastaypasin IR 98 Land Sales, Sale 70 (ICC Exhibit 1a, p. 648).

⁴⁸¹ Charles Adams to J.D. McLean, Department of Indian Affairs, November 7, 1901, LAC, RG 10, vol. 6663, file 109A-3-5 (ICC Exhibit 1a, pp. 654-55); J.D. McLean, Secretary, Department of Indian Affairs, to Charles Adams, December 19, 1901, LAC, RG 10, vol. 6663, file 109A-3-5 (ICC Exhibit 1a, p. 656).

⁴⁸² T.O. Davis to James A. Smart, December 31, 1901, LAC, RG 10, vol. 6664, file 109A-3-17 (ICC Exhibit 1a, p. 657); J.D. McLean, Secretary, Department of Indian Affairs, to J.W. Smith, January 8, 1902, LAC, RG 10, vol. 6664, file 109A-3-17 (ICC Exhibit 1a, p. 658).

⁴⁸³ W.A. Orr, Department of Indian Affairs, to the Secretary, Department of Indian Affairs, January 29, 1902, LAC, RG 10, vol. 6664, file 109A-3-17 (ICC Exhibit 1a, p. 662).

⁴⁸⁴ Charles Adams to unidentified recipient, February 14, 1912, LAC, RG 10, vol. 6664, file 109A-3-17 (ICC Exhibit 1a, p. 718); J.D. McLean, Assistant Deputy & Secretary, Department of Indian Affairs, to Charles Adams, July 7, 1913, LAC, RG 10, vol. 6664, file 109A-3-17 (ICC Exhibit 1a, p. 723).

⁴⁸⁵ R.C. Macdonald to SGIA, December 4, 1901, LAC, RG 10, vol. 6663, file 109A-3-15 (ICC Exhibit 1a, pp. 765–78); W.A. Orr, Department of Indian Affairs, to the Secretary, Department of Indian Affairs, December 16, 1901, LAC, RG 10, vol. 6663, file 109A-3-3 (ICC Exhibit 1a, pp. 126, 129, 130, 134–37).

per acre.⁴⁸⁶ This amount is approximately 15 per cent below the assessed value \$3,851.53.⁴⁸⁷ Macdonald assigned his lands to Charles V. Alloway on January 6, 1902, only a few days after being notified of his successful purchases.⁴⁸⁸ The banking company Alloway & Champion completed the payments on January 2, 1906, according to the terms of sale, and the lands were patented to Charles Valentine Alloway in February 1906.⁴⁸⁹

A.J. Adamson [Sales 97–107]

A.J. Adamson⁴⁹⁰ submitted a bulk tender for 11 quarter sections on December 10, 1901.⁴⁹¹ It appears that he was able to submit a tender so long after the deadline thanks to the intervention of J.H. Lamont, who persuaded Smart to hold the other tenders.⁴⁹² Adamson was successful in the purchase of all 11 parcels tendered for, and he acquired 1,635.50 acres at the rate of \$2.56 per acre.⁴⁹³ This

⁴⁸⁶ Department of Indian Affairs, Land Sale Book, Chakastaypasin IR 98 Land Sales, Sales 72-85 (ICC Exhibit 1a, pp. 737–50); J.D. McLean, Secretary, Department of Indian Affairs, to R.C. Macdonald, Mining Broker, January 2, 1902, LAC, RG 10, vol. 6663, file 109A-3-15 (ICC Exhibit 1a, pp. 784–85).

⁴⁸⁷ T.D. Green, DLS, to the Secretary, Department of Indian Affairs, August 4, 1898, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1a, pp. 39–44); Document Summary (ICC Exhibit 3a, Appendix A, p. 66).

⁴⁸⁸ R.C. Macdonald, Provident Springs Life Assurance Society, to the Secretary, Department of Indian Affairs, January 6, 1902, LAC, RG 10, vol. 6663, file 109A-3-15 (ICC Exhibit 1a, p. 786).

⁴⁸⁹ Alloway & Champion, Bankers & Brokers, to the Department of Indian Affairs, January 2, 1906, LAC, RG 10, vol. 6663, file 109A-3-15 (ICC Exhibit 1a, p. 812); J.D. McLean, Secretary, Department of Indian Affairs, to Alloway & Champion, February 13, 1906, LAC, RG 10, vol. 6663, file 109A-3-15 (ICC Exhibit 1a, p. 816).

⁴⁹⁰ A.J. Adamson was mentioned in connection with the Ferguson Commission reports. See Tyler and Wright Research Consultants, “The Royal Commission of Thomas Roberts Ferguson,” May 1977 (ICC Exhibit 5, pp. Z14, Z16–20); Canada, House of Commons, *Debates* (April 14, 1915), 2546–47, 2596 (ICC Exhibit 1, pp. 1334–35, 1384); see also Peggy Martin-McGuire, “First Nation Land Surrenders on the Prairies, 1896–1911,” unpublished study prepared for the Indian Claims Commission (Ottawa, September 1998), p. 471.

⁴⁹¹ A.J. Adamson, Banker, to James A. Smart, Deputy Minister of the Interior, December 10, 1901, LAC, RG 10, vol. 6663, file 109A-3-7 (ICC Exhibit 1a, pp. 1045–46).

⁴⁹² J.H. Lamont to Department of Indian Affairs, November 21, 1901, and James A. Smart to J.H. Lamont, November 22, 1901, no file reference available, quoted in Tyler and Wright Research Consultants, Working draft of Chacastaypasin report, c. 1978 (ICC Exhibit 7, p. 133); J.H. Lamont to James A. Smart, Deputy Minister of the Interior, December 4, 1901, LAC, RG 10, vol. 6663, file 109A-3-3 (ICC Exhibit 1a, p. 119); J.H. Lamont to James A. Smart, Deputy Minister of the Interior, December 14, 1901, LAC, RG 10, vol. 6663, file 109A-3-3 (ICC Exhibit 1a, p. 1047).

⁴⁹³ J.D. McLean, Secretary, Department of Indian Affairs, to A.J. Adamson, December 20, 1901, LAC, RG 10, vol. 6663, file 109A-3-7 (ICC Exhibit 1a, pp. 1054–55); Department of Indian Affairs, Land Sale Book, Chakastaypasin IR 98 Land Sales, Sales 97-107 (ICC Exhibit 1a, pp. 1013–23).

price was slightly above the assessed value for these lands of \$3,613.75.⁴⁹⁴ The payments on Adamson's purchases were made in large part by the Canada Territories Corporation and were completed in September 1906.⁴⁹⁵ The patent was issued to the Canada Territories Corporation Limited in May 1908.⁴⁹⁶

Kenneth McDonald [Sales 93–96]

Kenneth McDonald of Ottawa submitted separate tenders for four quarter sections on December 2, 1901, and was successful in each case.⁴⁹⁷ He obtained 640 acres of reserve lands for \$1,300 (approximately \$2.03 per acre), slightly above the appraised value of \$1,280.⁴⁹⁸ McDonald completed payments in December 1905, according to the terms of sale, and received the patent in January 1906.⁴⁹⁹

“Davis Group” [Sales 86–92 and 108–14]

A group of 16 tenderers from Prince Albert submitted 24 tenders for Chakastaypasin lands on three separate days in November 1901. The group was successful in purchasing 16 quarter sections (1,855.93 acres, or 12.5 per cent of the total lands sold) for \$4,282.06, an average of \$2.31 per

⁴⁹⁴ T.D. Green, DLS, to the Secretary, Department of Indian Affairs, August 4, 1898, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1a, pp. 39–44); Document Summary (ICC Exhibit 3a, App. A, p. 66).

⁴⁹⁵ E. Halroyde, Canada Territories Corporation Limited, to the Secretary, Department of Indian Affairs, September 5, 1906, LAC, RG 10, vol. 6663, file 109A-3-7 (ICC Exhibit 1a, p. 1080).

⁴⁹⁶ Secretary, Department of Indian Affairs, to A.J. Adamson, MP, May 14, 1908, LAC, RG 10, vol. 6663, file 109A-3-7 (ICC Exhibit 1a, p. 1087).

⁴⁹⁷ Kenneth McDonald, Farm and Garden Supplies, to J.D. McLean, Secretary, Department of Indian Affairs, December 2, 1901, LAC, RG 10, vol. 6663, file 109A-3-9 (ICC Exhibit 1a, pp. 973–76); J.D. McLean, Secretary, Department of Indian Affairs, to Kenneth McDonald, December 20, 1901, LAC, RG 10, vol. 6663, file 109A-3-9 (ICC Exhibit 1a, p. 977).

⁴⁹⁸ Department of Indian Affairs, Land Sale Book, Chakastaypasin IR 98 Land Sales, Sales 93–96 (ICC Exhibit 1a, pp. 965–68); T.D. Green, DLS, to the Secretary, Department of Indian Affairs, August 4, 1898, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1a, p. 40); Document Summary (ICC Exhibit 3a, App. A, p. 66).

⁴⁹⁹ Kenneth McDonald, Farm and Garden Supplies, to J.D. McLean, Secretary, Department of Indian Affairs, December 21, 1905, LAC, RG 10, vol. 6663, file 109A-3-9 (ICC Exhibit 1a, p. 993); Secretary, Department of Indian Affairs, to Kenneth McDonald, January 24, 1906, LAC, RG 10, vol. 6663, file 109A-3-9 (ICC Exhibit 1a, p. 998).

acre.⁵⁰⁰ This amount is about one-fifth more than the assessed value of \$3,492.56 for those lands.⁵⁰¹ These parcels are included in 14 sales, comprising sale numbers 86–92 and 108–14 in the Land Sale Book. The lands were patented in 1905, 1906, 1908, and 1914 to Margaret Mackey, J.H. Lamont, Rebecca Davis, W.E. Gladstone, J.W. Good, and T.O. Davis (in that order).⁵⁰² The transactions are examined in more detail below.

The Davis group submitted three distinct blocks of tenders. On November 8, nine persons, including T.O. Davis and J.H. Lamont, submitted 10 separate tenders, offering \$2.00 per acre for two clusters of land bordering the South Saskatchewan River.⁵⁰³ The department acknowledged the seven successful offers individually on December 19 and issued receipts for the deposits in the names of each tenderer. On December 30, 1901, each purchaser sent in an almost identically worded

⁵⁰⁰ Department of Indian Affairs, Land Sale Book, Chakastaypasin IR 98 Land Sales, Sales 86–92 and 108–14 (ICC Exhibit 1a, pp. 839–44, 927, 1105–7, 1188–89, 1234, 1275).

⁵⁰¹ T.D. Green, DLS, to the Secretary, Department of Indian Affairs, August 4, 1898, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1a, pp. 39–44); Document Summary (ICC Exhibit 3a, App. A, p. 66).

⁵⁰² J.D. McLean, Secretary, Department of Indian Affairs, to A. Mackey, September 1, 1905, LAC, RG 10, vol. 6664, file 109A-3-16 (ICC Exhibit 1a, p. 957); Secretary, Department of Indian Affairs, to J.H. Lamont, February 9, 1906, LAC, RG 10, vol. 6664, file 109A-3-16 (ICC Exhibit 1a, p. 1225); Secretary, Department of Indian Affairs, to T.O. Davis, Senator, July 10, 1906, LAC, RG 10, vol. 6664, file 109A-3-16 (ICC Exhibit 1a, p. 1260); Assistant Secretary, Department of Indian Affairs, to T.O. Davis, Senator, October 30, 1906, LAC, RG 10, vol. 6664, file 109A-3-16 (ICC Exhibit 1a, p. 1322); J.D. McLean, Secretary, Department of Indian Affairs, to J.W. Good, MD, January 9, 1908, LAC, RG 10, vol. 6664, file 109A-3-16 (ICC Exhibit 1a, p. 918); W.A. Orr, In Charge, Lands and Timber Branch, Department of Indian Affairs, to T.O. Davis, Senator, April 2, 1914, LAC, RG 10, vol. 6664, file 109A-3-16 (ICC Exhibit 1a, p. 1178).

⁵⁰³ J.H. Lewis to J.D. McLean, Secretary, Department of Indian Affairs, November 8, 1901, LAC, RG 10, vol. 6663, file 109A-3-10 (ICC Exhibit 1a, p. 845); Thomas O. Davis to J.D. McLean, Secretary, Department of Indian Affairs, November 8, 1901, LAC, RG 10, vol. 6663, file 109A-3-5 (ICC Exhibit 1a, p. 1024); B. Sutherland to J.D. McLean, Secretary, Department of Indian Affairs, November 8, 1901, LAC, RG 10, vol. 6663, file 109A-3-5 (ICC Exhibit 1a, p. 1026); Frank Heath Clinch to J.D. McLean, Secretary, Department of Indian Affairs, November 8, 1901, LAC, RG 10, vol. 6663, file 109A-3-5 (ICC Exhibit 1a, p. 1027); R. Young to J.D. McLean, Secretary, Department of Indian Affairs, November 8, 1901, LAC, RG 10, vol. 6663, file 109A-3-6 (ICC Exhibit 1a, p. 1109); H.C. Adams to J.D. McLean, Secretary, Department of Indian Affairs, November 8, 1901, LAC, RG 10, vol. 6663, file 109A-3-14 (ICC Exhibit 1a, p. 1110); J.H. Lamont to J.D. McLean, Secretary, Department of Indian Affairs, November 8, 1901, LAC, RG 10, vol. 6663, file 109A-3-13 (ICC Exhibit 1a, p. 1111); J.F.A. Stull to J.D. McLean, Secretary, Department of Indian Affairs, November 8, 1901, LAC, RG 10, vol. 6663, file 109A-3-12 (ICC Exhibit 1a, p. 1190); Frank Heath Clinch to J.D. McLean, Secretary, Department of Indian Affairs, November 8, 1901, LAC, RG 10, vol. 6663, file 109A-3-11 (ICC Exhibit 1a, p. 1191).

assignment, transferring six parcels to T.O. Davis and one parcel to J.W. Good.⁵⁰⁴ Davis assigned two of his parcels to J.H. Lamont on May 23, 1902.⁵⁰⁵ He did not complete payments on the remaining three parcels in his name until 1913,⁵⁰⁶ after repeated notices from the department and cancellation threats.⁵⁰⁷ The lands were patented in Davis's name in 1914.⁵⁰⁸

A second group of very similarly worded tenders dated November 26 offered \$2.51 per acre for seven quarter sections.⁵⁰⁹ The tenders were submitted by seven separate individuals, two of whom had previously submitted tenders on November 8. On November 27, the last set of tenders was made out for an additional seven quarter sections, offering between \$2.50 and \$2.53 per acre.⁵¹⁰ These

⁵⁰⁴ J.H. Lewis to J.D. McLean, Secretary, Department of Indian Affairs, December 30, 1901, LAC, RG 10, vol. 6663, file 109A-3-10 (ICC Exhibit 1a, p. 861); Robert Young to J.D. McLean, Secretary, Department of Indian Affairs, December 30, 1901, LAC, RG 10, vol. 6663, file 109A-3-6 (ICC Exhibit 1a, p. 1123); J.H. Lamont to J.D. McLean, Secretary, Department of Indian Affairs, December 30, 1901, LAC, RG 10, vol. 6663, file 109A-3-13 (ICC Exhibit 1a, p. 1124); H. Adams to J.D. McLean, Secretary, Department of Indian Affairs, December 30, 1901, LAC, RG 10, vol. 6663, file 109A-3-14 (ICC Exhibit 1a, p. 1125); F.H. Clinch to J.D. McLean, Secretary, Department of Indian Affairs, December 30, 1901, LAC, RG 10, vol. 6663, file 109A-3-11 (ICC Exhibit 1a, p. 1199); J.F.A. Stull to J.D. McLean, Secretary, Department of Indian Affairs, December 30, 1901, LAC, RG 10, vol. 6663, file 109A-3-12 (ICC Exhibit 1a, p. 1200).

⁵⁰⁵ T.O. Davis to J.D. McLean, Secretary, Department of Indian Affairs, May 23, 1902, LAC, RG 10, vol. 6663, file 109A-3-11 (ICC Exhibit 1a, p. 1214).

⁵⁰⁶ Bank of Montreal receipt to T.O. Davis, November 14, 1913, LAC, RG 10, vol. 6664, file 109A-3-16 (ICC Exhibit 1a, p. 1176).

⁵⁰⁷ Secretary, Department of Indian Affairs, to T.O. Davis, November 28, 1908, LAC, RG 10, vol. 6664, file 109A-3-16 (ICC Exhibit 1a, p. 1154); J.D. McLean, Assistant Deputy & Secretary, Department of Indian Affairs, to T.O. Davis, September 23, 1913, LAC, RG 10, vol. 6664, file 109A-3-16 (ICC Exhibit 1a, p. 1172).

⁵⁰⁸ W.A. Orr, In Charge, Lands and Timber Branch, Department of Indian Affairs, to T.O. Davis, Senator, April 2, 1914, LAC, RG 10, vol. 6664, file 109A-3-16 (ICC Exhibit 1a, p. 1178).

⁵⁰⁹ Horace Adams to Clifford Sifton, Minister of the Interior, November 26, 1901, LAC, RG 10, vol. 6664, file 109A-3-16 (ICC Exhibit 1a, p. 853); F.W. Kerr to Clifford Sifton, Minister of the Interior, November 26, 1901, LAC, RG 10, vol. 6664, file 109A-3-16 (ICC Exhibit 1a, p. 854); Ellen Kerr to Clifford Sifton, Minister of the Interior, November 26, 1901, LAC, RG 10, vol. 6664, file 109A-3-16 (ICC Exhibit 1a, p. 929); James D. Stirton to Clifford Sifton, Minister of the Interior, November 26, 1901, LAC, RG 10, vol. 6663, file 109A-3-5 (ICC Exhibit 1a, p. 1039); James Stirton to Clifford Sifton, Minister of the Interior, November 26, 1901, LAC, RG 10, vol. 6663, file 109A-3-5 (ICC Exhibit 1a, p. 1040); Anna Dowler Stirton to Clifford Sifton, Minister of the Interior, November 26, 1901, LAC, RG 10, vol. 6663, file 109A-3-5 (ICC Exhibit 1a, p. 1041); Rebecca Davis to Clifford Sifton, Minister of the Interior, November 26, 1901, LAC, RG 10, vol. 6664, file 109A-3-16 (ICC Exhibit 1a, p. 1236).

⁵¹⁰ F.W. Kerr to Clifford Sifton, Minister of the Interior, November 27, 1901, LAC, RG 10, vol. 6664, file 109A-3-16 (ICC Exhibit 1a, p. 855); J.W. Good to Clifford Sifton, Minister of the Interior, November 27, 1901, LAC, RG 10, vol. 6664, file 109A-3-16 (ICC Exhibit 1a, p. 856); T.O. Davis to Clifford Sifton, Minister of the Interior, November 27, 1901, LAC, RG 10, vol. 6663, file 109A-3-5 (ICC Exhibit 1a, pp. 1042–43); Joseph Savard to Clifford

tenders were submitted by five separate individuals, including T.O. Davis and J.W. Good, but each one is similarly worded and written on House of Commons letterhead. Rather than acknowledging the sales to each purchaser as was customary, J.D. McLean wrote to T.O. Davis directly, informing him that eight of the tenders “submitted by you,” out of the 14 submitted on November 26 and 27, had been accepted.⁵¹¹ A receipt was also made out to T.O. Davis for the deposit sent with each of these successful tenders.⁵¹² On December 30, 1901, and January 21, 1902, four of the purchasers assigned their interest to J.W. Good, and one assigned interest to J.W. Stirton.⁵¹³ Payments on the quarter section purchased by Stirton were completed in 1905, and the lands were patented to Margaret Mackey in the same year.⁵¹⁴ The remaining three purchases from this group were originally made in the names of J.W. Good, Rebecca Davis (the wife of T.O. Davis), and W.E. Gladstone and were never assigned to others.

In the case of W.E. Gladstone’s purchase, Gladstone notified the department on January 17, 1902, that he had never submitted a tender for the Chakastaypasin lands.⁵¹⁵ Smart instructed the Secretary to write to Davis for an explanation, and on April 1, 1902, McLean wrote a memorandum recounting Davis’s explanation: “I beg to state that Mr. Davis was at the Department some little time

Sifton, Minister of the Interior, November 27, 1901, LAC, RG 10, vol. 6663, file 109A-3-5 (ICC Exhibit 1a, p. 1044); W.E. Gladstone to Clifford Sifton, Minister of the Interior, November 27, 1901, LAC, RG 10, vol. 6664, file 109A-3-16 (ICC Exhibit 1a, p. 1277).

⁵¹¹ J.D. McLean, Secretary, Department of Indian Affairs, to T.O. Davis, MP, December 20, 1901, LAC, RG 10, vol. 6664, file 109A-3-16 (ICC Exhibit 1a, p. 858).

⁵¹² Bank of Montreal receipt to T.O. Davis, December 21, 1901, LAC, RG 10, vol. 6664, file 109A-3-16 (ICC Exhibit 1a, p. 859).

⁵¹³ F.W. Kerr to J.D. McLean, Secretary, Department of Indian Affairs, December 30, 1901, LAC, RG 10, vol. 6664, file 109A-3-16 (ICC Exhibit 1a, pp. 862–63); Ellen Kerr to J.D. McLean, Secretary, Department of Indian Affairs, December 30, 1901, LAC, RG 10, vol. 6664, file 109A-3-16 (ICC Exhibit 1a, p. 932); H. Adams to J.D. McLean, Secretary, Department of Indian Affairs, January 21, 1902, LAC, RG 10, vol. 6664, file 109A-3-16 (ICC Exhibit 1a, p. 867).

⁵¹⁴ Bank of Montreal receipt to A. MacKey, August 15, 1905, LAC, RG 10, vol. 6664, file 109A-3-16 (ICC Exhibit 1a, p. 953); Bank of Montreal receipt to A. MacKay, no date, LAC, RG 10, vol. 6664, file 109A-3-16 (ICC Exhibit 1a, p. 954); J.D. McLean, Secretary, Department of Indian Affairs, to A. Mackey, September 1, 1905, LAC, RG 10, vol. 6664, file 109A-3-16 (ICC Exhibit 1a, p. 957).

⁵¹⁵ W.E. Gladstone to Clifford Sifton, January 17, 1902, LAC, RG 10, vol. 6664, file 109A-3-16 (ICC Exhibit 1a, p. 1282).

ago and explained that he did not sign Gladstone's name – that it was someone else did so."⁵¹⁶ After receiving Gladstone's repeated assertions that he had never tendered for the land, W.A. Orr recommended on June 6, 1902, that the quarter section be resold.⁵¹⁷ J.H. Lamont and Davis attempted to have the sale reassigned to Lamont, but they were informed that "the Department is not disposed at present to sell this quarter section."⁵¹⁸ Finally, Davis informed McLean on October 24, 1902, that "Mr. Gladstone wishes to get the land now if it is still open."⁵¹⁹ The department agreed, but Davis continued to advocate for the redistribution of the land to Lamont.⁵²⁰ He was again unsuccessful, and all the further correspondence and payments on this sale were made through Davis, supposedly acting on Gladstone's behalf. The payments for this sale were completed in 1906, and the lands were patented to W.E. Gladstone in the same year.⁵²¹

⁵¹⁶ Marginal note written on memorandum from W.A. Orr, Department of Indian Affairs, to the Secretary, Department of Indian Affairs, January 20, 1902, LAC, RG 10, vol. 6664, file 109A-3-16 (ICC Exhibit 1a, p. 1283); J.D. McLean, Secretary, Department of Indian Affairs, to DSGIA, April 1, 1902, LAC, RG 10, vol. 6664, file 109A-3-16 (ICC Exhibit 1a, p. 1286).

⁵¹⁷ W.E. Gladstone to J.D. McLean, Secretary, Department of Indian Affairs, April 21, 1902, LAC, RG 10, vol. 6664, file 109A-3-16 (ICC Exhibit 1a, p. 1290); W.A. Orr, Department of Indian Affairs, to the Secretary, Department of Indian Affairs, June 6, 1902, LAC, RG 10, vol. 6664, file 109A-3-16 (ICC Exhibit 1a, p. 1296).

⁵¹⁸ J.H. Lamont to J.D. McLean, Secretary, Department of Indian Affairs, June 30, 1902, LAC, RG 10, vol. 6664, file 109A-3-16 (ICC Exhibit 1a, p. 1297); J.D. McLean, Secretary, Department of Indian Affairs, to J.H. Lamont, Barrister, July 8, 1902, LAC, RG 10, vol. 6664, file 109A-3-16 (ICC Exhibit 1a, p. 1299).

⁵¹⁹ Thomas O. Davis, MP, to J.D. McLean, October 24, 1902, LAC, RG 10, vol. 6664, file 109A-3-16 (ICC Exhibit 1a, p. 1300).

⁵²⁰ J.D. McLean, Secretary, Department of Indian Affairs, to T.O. Davis, MP, November 4, 1902, LAC, RG 10, vol. 6664, file 109A-3-16 (ICC Exhibit 1a, p. 1303); J.D. McLean, Department of Indian Affairs, to W.A. Orr, Department of Indian Affairs, March 25, 1903, LAC, RG 10, vol. 6664, file 109A-3-16 (ICC Exhibit 1a, p. 1304); J.D. McLean, Secretary, Department of Indian Affairs, to the Lands Branch, May 1, 1903, LAC, RG 10, vol. 6664, file 109A-3-16 (ICC Exhibit 1a, p. 1306); T.O. Davis to Frank Pedley, Deputy Minister of Indian Affairs, September 28, 1905, LAC, RG 10, vol. 6664, file 109A-3-16 (ICC Exhibit 1a, p. 1309).

⁵²¹ [Duncan C. Scott], Accountant, Department of Indian Affairs, September 25, 1906, LAC, RG 10, vol. 6664, file 109A-3-16 (ICC Exhibit 1a, p. 1318); Assistant Secretary, Department of Indian Affairs, to T.O. Davis, Senator, October 30, 1906, LAC, RG 10, vol. 6664, file 109A-3-16 (ICC Exhibit 1a, p. 1322).

Establishment of Trust Fund and Expenditure of Land Sale Proceeds

Trust account No. 293 for the “Cumberland Reserve, N.W.T.” was established in the fiscal year 1902/1903. It seems clear that the account was established for the “Cumberland Reserve” at Fort à la Corne, since revenue from both the Chakastaypasin IR 98 and the Cumberland IR 100A land sales was deposited in the capital account that year, and management fund and survey fees relating to the sale of IR 100A were disbursed.⁵²² An Order in Council dated March 7, 1903, authorized the costs for the subdivision survey of township 46 to be charged to the capital account of the “Cumberland Indians.”⁵²³ Following the alleged amalgamation of the James Smith Band and Cumberland Band 100A, David Laird recommended that their trust accounts be combined as well.⁵²⁴ He was notified on July 2, 1903, that the separate accounts had been combined into account 293, the number originally belonging to the Cumberland Band 100A.⁵²⁵ It was known as the “Cumberland (James Smith) Band” account until 1918, when the name was changed to James Smith Band account 293.⁵²⁶

Most of the 10 per cent share of the proceeds from sale, which the surrender document promised would be used for “implements, waggons, harness and other useful articles,” became available in 1904 and was spent on agricultural implements, oxen, a threshing machine, and miscellaneous other items.⁵²⁷

⁵²² Auditor General’s Report, 1902/1903, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1903*, part J, 168 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 17, p. 333). A cursory search of the trust accounts from this period did not reveal a trust account for the Cumberland Band residing at IR 20.

⁵²³ Order in Council, March 7, 1903, LAC, RG 10, vol. 3736, file 27580 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 1, p. 815).

⁵²⁴ David Laird, Indian Commissioner, to the Secretary, Department of Indian Affairs, May 30, 1903, no file reference available (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 1, p. 860).

⁵²⁵ Secretary, Department of Indian Affairs, to David Laird, Indian Commissioner, July 2, 1903, LAC, RG 10, vol. 3736, file 27580 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 1, p. 886).

⁵²⁶ See the Auditor General’s Reports, 1903–18, Canada, *Annual Report of the Department of Indian Affairs* (ICC Exhibit 23a). See Trust Account 293.

⁵²⁷ “Statement of James Smith Band A/C 293,” July 1, 1904–March 13, 1906, LAC, RG 10, vol. 6664, file 109A-9-1A (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 1, pp. 1051–54).

It is also important to note that Kahtapiskowat received a pension from January 1904 to January 1906, which totalled \$183.⁵²⁸ These payments are reflected in the statement provided to David Laird in response to the James Smith Band's request for an accounting of the proceeds and expenditures from the sale of the surrendered portion of IR 100A. Big Head died sometime between 1906 and 1907.⁵²⁹ The last known pension payment made to Kahtapiskowat was made on January 10, 1906.⁵³⁰ He was the only person to receive this type of payment from the trust account.

Ferguson Commission, 1913–15

The T.R. Ferguson Commission, established in 1913 to investigate issues relating to Dominion and Indian lands, tabled a report in the House of Commons on April 14, 1915.⁵³¹ Before the official tabling of the report, numerous newspapers reported that “well known government officials” would likely face charges related to their involvement in the administration of Indian lands in the West.⁵³² DSGIA Frank Pedley tendered his resignation on October 11, 1913, soon after the first newspaper report was published, and his resignation was accepted by Order in Council “without prejudice to any action which the Crown may be advised to take against him.”⁵³³

⁵²⁸ “Statement of James Smith Band A/C 293,” July 1, 1904–March 13, 1906, LAC, RG 10, vol. 6664, file 109A-9-1A (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 1, pp. 1051–54); Auditor General's Report, 1903/1904, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1904*, part J, 168 (ICC Exhibit 23a, p. 37); Auditor General's Report, 1904/1905, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1905*, part J, 138 (ICC Exhibit 23a, p. 44); Auditor General's Report, 1905/1906, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1906*, part J, 128 (ICC Exhibit 23a, p. 52).

⁵²⁹ Treaty annuity payroll, James Smith Band, 1906–7, no file reference available (ICC, James Smith Cree Nation Chakastaypasin IR98 Inquiry, Exhibit 12a, pp. 393, 401). See ticket no. 5.

⁵³⁰ “Statement of James Smith Band A/C 293,” July 1, 1904–March 13, 1906, LAC, RG 10, vol. 6664, file 109A-9-1A (ICC Exhibit 1, p. 1054).

⁵³¹ Canada, House of Commons, *Debates* (April 14, 1915), 2539–601 (ICC Exhibit 1, pp. 1327–89).

⁵³² Tyler and Wright Research Consultants, “The Alienation of Indian Reserve Lands during the Administration of Sir Wilfrid Laurier, 1896–1911. Addendum: The Royal Commission of Thomas Roberts Ferguson,” May 1977 (ICC Exhibit 5, pp. 1–2, G1, L1–L12). Ferguson's final reports cannot be located. The only evidence available regarding these reports comes from the excerpt of the debates in the House of Commons when the reports were tabled, as well as a few pieces of correspondence and newspaper articles from that time.

⁵³³ Order in Council PC 2585, October 11, 1913, LAC, RG 10, vol. 3059, file 253792 (ICC Exhibit 1, p. 1325).

The transcript of the debates in the House of Commons refers to the involvement of James A. Smart, Frank Pedley, and William J. White in the sale of three Indian reserves and relates how the three “formed a company of some kind to acquire Indian lands,”⁵³⁴ represented by A.C. Bedford-Jones.⁵³⁵ The three had access to the department’s data on the value of the lands and the tenders received, and they used the information partially to fill out their own tenders for the same lands. These tenders were then sent to Bedford-Jones in Toronto, who completed them and submitted them to the department.⁵³⁶ The group reportedly made a total profit of \$84,000 through the sales of the three reserves.⁵³⁷ Moose Mountain is the only reserve mentioned by name in the debates, but other newspaper accounts of the day make reference to the sale of Chakastaypasin lands as well.⁵³⁸ Unfortunately, researchers have been unable to locate any copies of Ferguson’s reports.

Sale of Sugar Island

As noted above, Sugar Island was excluded from the sale of the Chakastaypasin reserve in 1901 at the request of T.O. Davis. In June 1903, 13 settlers from the area near the reserve petitioned to have the island reserved “for the benefit of the settlers,” because building materials were “very scarce [sic] in this locality.”⁵³⁹ DSGIA Frank Pedley replied that Sugar Island had been reserved from the recent sale of the Chakastaypasin reserve, but that, “in case of any proposed disposition thereof, your request will receive due consideration.”⁵⁴⁰ Early in January 1904, Davis wrote to Pedley on behalf of a settler who wished to put in a sawmill, saying, “I think this would be a good thing for the settlers

⁵³⁴ Canada, House of Commons, *Debates* (April 14, 1915), 2549, 2580 (Ottawa: King’s Printer, 1915) (ICC Exhibit 1, pp. 1337, 1368).

⁵³⁵ Canada, House of Commons, *Debates* (April 14, 1915), 2580 (ICC Exhibit 1, p. 1368).

⁵³⁶ Canada, House of Commons, *Debates* (April 14, 1915), 2580 (ICC Exhibit 1, p. 1368).

⁵³⁷ Canada, House of Commons, *Debates* (April 14, 1915), 2560, 2580 (ICC Exhibit 1, pp. 1348, 1368).

⁵³⁸ Tyler and Wright Research Consultants, “The Alienation of Indian Reserve Lands during the Administration of Sir Wilfrid Laurier, 1896–1911. Addendum: The Royal Commission of Thomas Roberts Ferguson,” May 1977 (ICC Exhibit 5, pp. Z1–13).

⁵³⁹ W.C. Ramsay and others to Clifford Sifton, Minister of the Interior, June 27, 1903, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 1196).

⁵⁴⁰ Frank Pedley, DSGIA, to W.C. Ramsay, July 14, 1903, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 1197).

as a lot of it is going to waste.”⁵⁴¹ The local Indian Agent at that time, J. Macarthur, made an investigation of Sugar Island and recommended on March 7, 1904, that the island be sold in 20-acre timber lots to settlers, “and no one settler to be allowed to purchase more than two lots.”⁵⁴² His report notes that “the large Island on the map just below Sugar Island is well culled over now.”⁵⁴³ Assistant Indian Commissioner J.A.J. McKenna rejected the Agent’s recommendation, stating:

I cannot agree that we, from the standpoint of the Indians’ interests, should restrict a purchaser to two lots. My view is that the property should be disposed of en bloc, or in lots, by auction after due notice, and should be sold to the highest bidder irrespective of the number of lots he bids for, if sold in lots.⁵⁴⁴

Pedley informed Davis on April 11, 1904, that “it is considered that it would be most advantageous in the interest of the Indians, to sell the lots by public competition.”⁵⁴⁵ Similar applications to cut or purchase timber were received in the following years up until at least 1911, but they were rejected by the department with the reply that “this Island is not at present in the market.”⁵⁴⁶

⁵⁴¹ T.O. Davis to Frank Pedley, DSGIA, January 6, 1904, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, pp. 1198–99).

⁵⁴² J. Macarthur, Indian Agent, Duck Lake Agency, to David Laird, Indian Commissioner, March 7, 1904, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 1205).

⁵⁴³ J. MacArthur, Indian Agent, Duck Lake Agency, to David Laird, Indian Commissioner, March 7, 1904, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 1204).

⁵⁴⁴ J.A.J. McKenna, Assistant Indian Commissioner, to the Secretary, Department of Indian Affairs, March 19, 1904, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 1207).

⁵⁴⁵ DSGIA to T.O. Davis, MP, April 11, 1904, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 1208).

⁵⁴⁶ J.A.J. McKenna, Assistant Indian Commissioner, to the Secretary, Department of Indian Affairs, February 16, 1906, LAC, RG 10, vol. 6663, file 109A-3-1, part 2 (ICC Exhibit 1, p. 1272); J.D. McLean, Secretary, Department of Indian Affairs, to David Laird, Indian Commissioner, February 20, 1906, LAC, RG 10, vol. 6663, file 109A-3-1, part 2 (ICC Exhibit 1, p. 1273); James Sinclair to the Minister, Department of Indian Affairs, January 4, 1910, LAC, RG 10, vol. 6663, file 109A-3-1, part 2 (ICC Exhibit 1, p. 1310); W.H. Grimes to the Department of Indian Affairs, January 6, 1910, LAC, RG 10, vol. 6663, file 109A-3-1, part 2 (ICC Exhibit 1, p. 1311); S. Stewart, Assistant Secretary, Department of Indian Affairs, to W.H. Grimes, January 13, 1910, LAC, RG 10, vol. 6663, file 109A-3-1, part 2 (ICC Exhibit 1, p. 1313); James Sinclair to the Secretary, Department of Indian Affairs, February 21, 1910, LAC, RG 10, vol. 6663, file 109A-3-1, part 2 (ICC Exhibit 1, pp. 1314–16); J.J. Bird to Department of Indian Affairs, December 23, 1911, LAC, RG 10, vol. 6663, file 109A-3-1, part 2 (ICC Exhibit 1, p. 1318); J.D. McLean, Secretary, Department of Indian Affairs, to J.J. Bird, January 3, 1912, LAC, RG 10, vol. 6663, file 109A-3-1, part 2 (ICC Exhibit 1, p. 1319).

The matter of selling the lots was briefly raised again in 1933 but apparently not pursued.⁵⁴⁷ On July 21, 1947, the James Smith Band passed a Band Council Resolution (BCR) stating that it was “interested in the disposal of the balance of the land in the Chacastapasin Indian Reserve 98 ... being the area known as Sugar Island.” The resolution stated that “this is a particularly appropriate time to attempt to make a sale of this ... there are a very considerable number of people looking for land and if this island was cleaned up, we believe it could be made into reasonably good farming land.”⁵⁴⁸

In June 1948, a resident of nearby Fenton offered \$200 to the department for the entire island,⁵⁴⁹ but the offer was rejected because it was felt that the land was worth more.⁵⁵⁰ The Superintendent of Reserves and Trusts advised the Indian Agent that the matter of sale should “be left in abeyance until such time as either your office or the Department receives an offer to purchase which is considered close to the approximate value of the land which you have estimated at \$2.00 to \$3.00 an acre.”⁵⁵¹ A subsequent offer of \$3,000 for the island in 1949 was also rejected, as the agent felt that “eventually we will receive a higher offer.”⁵⁵² J.P.B. Ostrander, the Regional Supervisor of Indian Agencies, agreed, remarking that

if it were not for the fact that the land is surrounded by water it would be worth at least \$25.00 an acre. ... the money which it might be necessary to spend on a ferry could be saved by the fact that the land requires no fencing. The area is large enough

⁵⁴⁷ R. Weire, Minister of Agriculture, to T.G. Murphy, Minister of the Interior, January 25, 1933, LAC, RG 10, vol. 6663, file 109A-3-1, part 2 (ICC Exhibit 1, p. 1411); H.W. McGill, DSGIA, to Mr Buskard, May 1, 1933, LAC, RG 10, vol. 6663, file 109A-3-1, part 2 (ICC Exhibit 1, p. 1418).

⁵⁴⁸ James Smith Band, Band Council Resolution, July 21, 1947, DIAND file 674/30-4-100 (ICC Exhibit 24c, p. 5).

⁵⁴⁹ L.E. Thorimbert, General Merchant, to the Department of Indian Affairs, June 24, 1948, DIAND file 674/30-4-100 (ICC Exhibit 24c, p. 10).

⁵⁵⁰ D.J. Allan, Superintendent of Reserves and Trusts, to L.E. Thorimbert, September 7, 1948, DIAND file 674/30-4-100 (ICC Exhibit 24c, p. 11).

⁵⁵¹ Superintendent of Reserves and Trusts to N.J. McLeod, Superintendent, Duck Lake Agency, September 20, 1948, DIAND file 674/30-4-100 (ICC Exhibit 24c, p. 12).

⁵⁵² H.J. Thorimbert to the Department of Indian Affairs, October 28, 1949, DIAND file 674/30-4-100 (ICC Exhibit 24c, p. 13); N.J. McLeod, Superintendent, Duck Lake Agency, to J.P.B. Ostrander, Regional Supervisor of Indian Agencies, November 16, 1949, DIAND file 674/30-4-100 (ICC Exhibit 24c, p. 14).

for quite a large farm, and while I have not seen it, I am informed that it is excellent soil, resulting from the gathering of river silt for hundreds of years.⁵⁵³

His letter concludes with the comment: “If we have to hold the land for several years before selling it I cannot see that it would make a great deal of difference to the band, or to anyone else.”⁵⁵⁴ D.J. Allan, the Superintendent of Reserves and Trusts, concurred with Ostrander’s recommendation.⁵⁵⁵

On January 15, 1952, a five-year renewable lease was granted to Hugh Struthers of Prince Albert, with terms requiring certain improvements and payment in crop share.⁵⁵⁶ The lease was cancelled only a year later, after Struthers failed to fulfill the conditions of the lease.⁵⁵⁷ There is no further information regarding what improvements, if any, were actually completed under the terms of the lease, although the 1956 sale agreement noted that there were no buildings on the land.⁵⁵⁸

Floyd B. Glass of Prince Albert purchased Sugar Island on July 26, 1956, for \$2,501. The “Memorandum for Sale of Indian Land” states that, according to an appraisal done by the “V.L.A.” in 1955, the lands were worth \$1,500 in total.⁵⁵⁹ The sale memorandum contains a notation stating: “Tenders called and one received. Island not too desirable covered with dense growth – greatest value seems to be as a game sanctuary but provincial authorities offer only \$2000.”⁵⁶⁰ This assessment is in stark contrast to previous discussions within the department regarding the value and

⁵⁵³ J.P.B. Ostrander, Regional Supervisor of Indian Agencies, to the Indian Affairs Branch, Department of Mines and Resources, November 19, 1949, DIAND file 674/30-4-100 (ICC Exhibit 24c, p. 16).

⁵⁵⁴ J.P.B. Ostrander, Regional Supervisor of Indian Agencies, to the Indian Affairs Branch, Department of Mines and Resources, November 19, 1949, DIAND file 674/30-4-100 (ICC Exhibit 24c, p. 16).

⁵⁵⁵ D.J. Allan, Superintendent of Reserves and Trusts, to J.P.B. Ostrander, Regional Supervisor of Indian Agencies, January 5, 1950, DIAND file 674/30-4-100 (ICC Exhibit 24c, p. 17).

⁵⁵⁶ Lease to Hugh Struthers, January 15, 1952 [DIAND file 674/30-4-100] (ICC Exhibit 24c, pp. 19–23).

⁵⁵⁷ Memorandum to file, G. Jamieson, May 21, 1954 [DIAND file 674/30-4-100] (ICC Exhibit 1, p. 1434).

⁵⁵⁸ Floyd B. Glass, Memorandum for Sale of Indian Land, July 6, 1956, LAC, RG 10, vol. 6663, file 109A-3-1, part 2 (ICC Exhibit 24c, p. 26).

⁵⁵⁹ Floyd B. Glass, Memorandum for Sale of Indian Land, July 6, 1956, LAC, RG 10, vol. 6663, file 109A-3-1, part 2 (ICC Exhibit 24c, p. 26).

⁵⁶⁰ Floyd B. Glass, Memorandum for Sale of Indian Land, July 6, 1956, LAC, RG 10, vol. 6663, file 109A-3-1, part 2 (ICC Exhibit 24c, p. 26).

potential usage of the Sugar Island lands, and the final sale price was essentially the same as that proposed by T.D. Green in 1898, 58 years earlier.

Some Chakastaypasin elders recall the sale of Sugar Island and say that many Chakastaypasin people were angry that the James Smith band council had agreed to sell the land, arguing that they had no right to do so.⁵⁶¹ Later, Edward Burns said that he had never signed the document agreeing to sell the land.⁵⁶² His signature appears on a James Smith BCR dated July 21, 1947, requesting the department to sell Sugar Island, and on another BCR dated December 7, 1951, authorizing the long-term lease of Sugar Island “for agricultural purposes.”⁵⁶³

⁵⁶¹ ICC Transcript, January 28–29, 2003 (ICC Exhibit 16b, p. 107, Terry Sanderson; p. 130, Raymond Sanderson; p. 158, Patrick Stonestand).

⁵⁶² ICC Transcript, May 27–29, 2003 (ICC Exhibit 17b, p. 251, Marcel Paul, One Arrow First Nation).

⁵⁶³ Band Council Resolution, July 21, 1947, DIAND file 674/30-4-100 (ICC Exhibit 24c, p. 5); Band Council Resolution, December 7, 1951, [DIAND file 674/30-4-100] (ICC Exhibit 24c, p. 18).

PART III
ISSUES

The Indian Claims Commission is inquiring into the following issues:

Validity of Surrender Issues

- 1 Was a surrender of Chakastaypasin IR 98 required prior to the sale of those lands? The consideration of this issue may include the following related issues:
 - (a) the alleged abandonment of IR 98;
 - (b) the transfer of First Nation members to other bands; and
 - (c) the consent of First Nation members to any such transfers.
- 2 If the answer to Issue 1 is yes, then what were the requirements of surrender according to
 - (a) Treaty No. 6;
 - (b) the *Indian Act*; and
 - (c) the fiduciary obligations of Canada?
- 3 If the answer to Issue 1 is no, and Canada was not legally required to take a surrender of Chakastaypasin IR 98, did the fact that Canada took a surrender nevertheless create a fiduciary obligation(s) on the part of Canada?
 - (a) and if so, what were these obligations?
- 4 Did Canada breach any obligation(s) which may arise under Issue 2 or 3?
- 5 Is the effect of any breach(es) such that it invalidates the surrender of IR 98 or otherwise gives rise to a claim for damages?

Land Disposition Issues

- 6 What were Canada's obligations in disposing of IR 98 lands, including Sugar Island, according to
 - (a) Treaty No. 6;
 - (b) the *Indian Act* and its Regulations; and
 - (c) the fiduciary obligations of Canada?
- 7 Did Canada, having accepted as a validated claim that it breached its beyond lawful obligation to legally sell 71 quarters of IR 98, breach any further obligation which may arise under Issue 6 concerning the sale of IR 98, including Sugar Island? In considering this issue, the parties agree to address the following:

- (a) the application of the Indian Land Regulations;
- (b) allegations regarding the manipulation of the land tendering process;
- (c) allegations of fraud as regards the remaining 44 quarter sections that Canada asserts were legally sold and for which Canada has not accepted a validated claim; and
- (d) the actions of Canada in the administration of the sales of the land.

Sugar Island Issues⁵⁶⁴

- 8 What obligations did Canada have regarding Sugar Island prior to the alleged surrender of 1897?
- 9 Did Canada breach these obligations?
- 10 What obligations did Canada have regarding Sugar Island after the alleged surrender of 1897?
- 11 Did Canada breach these obligations?
- 12 If the answer to 9 or 11 is yes, does Canada have an outstanding lawful obligation?

⁵⁶⁴ On March 31, 2003, Canada partially accepted the James Smith Cree Nation's claim relating to Sugar Island. With this partial acceptance, the only issues that remain to be determined are issues 8 and 9; Canada has addressed issues 10, 11, and 12 in its letter of March 31, 2003 (ICC Exhibit 4f, p. 2).

PART IV
ANALYSIS

We have organized our analysis to follow the three themes under which the issues are set out in Part III: validity of surrender, land disposition, and Sugar Island.

ISSUES 1–5 VALIDITY OF SURRENDER

- 1 Was a surrender of Chakastaypasin IR 98 required prior to the sale of those lands? The consideration of this issue may include the following related issues:**
 - (a) the alleged abandonment of IR 98;**
 - (b) the transfer of First Nation members to other bands; and**
 - (c) the consent of First Nation members to any such transfers.**

- 2 If the answer to Issue 1 is yes, then what were the requirements of surrender according to**
 - (a) Treaty No. 6;**
 - (b) the *Indian Act*; and**
 - (c) the fiduciary obligations of Canada?**

- 3 If the answer to Issue 1 is no, and Canada was not legally required to take a surrender of Chakastaypasin IR 98, did the fact that Canada took a surrender nevertheless create a fiduciary obligation(s) on the part of Canada?**
 - (a) and if so, what were these obligations?**

- 4 Did Canada breach any obligation(s) which may arise under Issue 2 or 3?**

- 5 Is the effect of any breach(es) such that it invalidates the surrender of IR 98 or otherwise gives rise to a claim for damages?**

We will begin our analysis with a consideration of Issue 1.

Was a Surrender of Chakastaypasin IR 98 Required before the Sale?

The James Smith Cree Nation (JSCN) argues that a surrender was and is always required under treaty and under the *Indian Act* before a reserve can be sold by Canada.⁵⁶⁵ More specifically, it says, IR 98 was established under Treaty 6, and it could cease to exist only if the Indians for whom it was

⁵⁶⁵ Written Submissions on Behalf of the Chakastaypasin Cree Nation, November 7, 2003, p. 111, para. 231.

created, the Chakastaypasin Band, chose to surrender the reserve within the terms of that treaty. Thus, unless this Band agreed to surrender the reserve, it continued to be its reserve under Treaty 6.

Further, JSCN argues that there is no provision in the 1886 *Indian Act* for disposing of a band's interest in its reserve other than by surrender. Thus, if Canada wished to proceed to obtain IR 98 by means other than a surrender, it was bound to amend the *Indian Act*. It did not. JSCN argues that Canada could not create a right to dispose of a reserve without surrender by transferring all the members of the Chakastaypasin Band to other bands. Finally, JSCN argues that Canada was bound by the surrender provisions of the *Indian Act* to find the members of the Band and to ask them if they wanted to surrender IR 98, whether or not these members had been transferred to other bands.⁵⁶⁶

Canada takes the position that a surrender was not required with respect to IR 98. It argues that, by royal prerogative, the Crown has the authority to create Indian reserves. A corollary right to the Crown's prerogative power to establish an Indian reserve is the Crown's prerogative power to dispose of an Indian reserve. This power, Canada argues in its written submission to this inquiry, is limited only by legislation – in this case, by the relevant provisions of the *Indian Act*. However, during legal argument, Canada acknowledged that the treaty will also operate as a limit on the Crown's prerogative. This admission came during an exchange between Commissioner Holman and counsel for Canada in oral submissions:

Commissioner Holman: ... You make the argument that the Crown used its prerogative right to create the reserves and it has a corollary right to take away the reserve – if I'm reading that right – and that the only limitation on the Crown's prerogative is statute. But when the Crown commits itself, as it does in a treaty, and it's spelled out in a treaty what is required for the disposition or to take away a reserve, is that not also a limitation on the Crown's prerogative?

Mr. Winogron: Absolutely.⁵⁶⁷

It is Canada's submission that the Chakastaypasin Band ceased to exist as a band within the meaning of section 3 of the 1876 *Indian Act* by at least 1888, when all the band members had joined

⁵⁶⁶ Written Submissions on Behalf of the Chakastaypasin Cree Nation, November 7, 2003, pp. 113–14, paras. 234–37.

⁵⁶⁷ ICC Transcript, May 4, 2004, p. 242, lines 18–25, and p. 243, lines 1–3 (Commissioner Holman); p. 243, line 4 (Robert Winogron).

other bands. Before the introduction of section 140 to the *Indian Act* in 1895, the section that formalized the procedure for transfer of Indians between bands, Canada sometimes facilitated informal transfers by means of the annuity paylists. All the Chakastaypasin members were transferred to other bands via the paylists, in recognition of the fact that they were living with other bands. The legal effect of these transfers was that the Chakastaypasin Band ceased to exist.⁵⁶⁸ At the same time, IR 98 was abandoned.⁵⁶⁹ Although Canada admits that neither the case law nor Treaty 6 addresses the question of what happens to an Indian reserve when a band ceases to exist, it argues that other areas of the law – trust and property law concepts – may be helpful to discern analogous principles that we can apply to this case.⁵⁷⁰

Canada submits that the principles of trust law are generally analogous to the facts of this case. The relationship between aboriginal peoples and the Crown has been described by the courts as “trust-like,” but not a trust. For a valid trust to exist, there must be three parties – a settler, a trustee (who may be the same as the settler), and a beneficiary – and the certainties in creating a trust must be met: certainty of intention, certainty of subject matter, and certainty of objects.⁵⁷¹ Canada takes the position that the objects of the trust must be ascertainable. By analogy, the object of the trust is the Chakastaypasin Band. If the object of the trust ceases to exist, under trust law principles, the subject matter of the trust results back to the settler. In this case, the subject of the trust is IR 98. Thus, Canada submits that when the Chakastaypasin Band ceased to exist, its interest in IR 98 can be considered to have reverted to the Crown.

Furthermore, Canada submits that property law principles are also analogous to the facts in this case, although it admits that these principles do not apply to the nature of the interest of an Indian band in a reserve. Canada argues that if A (the legal title-holder) grants exclusive use and occupation (and still retains legal title of the estate) to B for life, when B dies, the part of the estate granted to B reverts back to A. Applying these principles to this case, when IR 98 was granted to the

⁵⁶⁸ Written Submissions on Behalf of the Government of Canada, February 2, 2004, p. 45, para. 103.

⁵⁶⁹ Written Submissions on Behalf of the Government of Canada, February 2, 2004, pp. 33–37, paras. 59–70.

⁵⁷⁰ Written Submissions on Behalf of the Government of Canada, February 2, 2004 p. 39, para. 79.

⁵⁷¹ Written Submissions on Behalf of the Government of Canada, February 2, 2004, pp. 39–40, paras. 80–82, citing D.W.M. Waters, *The Law of Trusts in Canada*, 2nd ed. (Toronto: Carswell, 1984), chaps. 4 and 5.

Chakastaypasin Band, the Crown held legal title to the reserve. However, the use and occupation of IR 98 belonged to the Band. When the Band ceased to exist, it could not exercise its interest in IR 98, and the reserve reverted back to the Crown.⁵⁷²

Canada concludes by stating that “the status of land as reserve lands, by virtue of the definition [in the *Indian Act*], is dependent upon the continued existence of the band for whom the band [sic] is set apart. It [sic] the band ceases to exist the status of the land as reserve land cannot continue.”⁵⁷³

Based on Canada’s position in this inquiry, the crux of determining whether a surrender of IR 98 was required before the sale of these lands is first decided by answering whether the Chakastaypasin Band ceased to exist and, if so, when. Canada relies on the transfer of all band members to other bands as evidence of the Band’s ceasing to exist. We will therefore begin our analysis with this question, which will necessarily involve a review of the evidence regarding the transfer of members to other bands.

Did the Chakastaypasin Band Cease to Exist?

We believe it is helpful to consider the evidence surrounding the transfer of Chakastaypasin members in two periods: pre-1895, and 1895 (when section 140 of the *Indian Act* was introduced).

Before 1895

It is not disputed in this inquiry that the Chakastaypasin Band, represented by Chief Chakastaypasin and four of his headmen (including Kahtapiskowat, also known as Big Head), entered Treaty 6 with the Crown on August 23, 1876, at Fort Carlton. It is also undisputed that IR 98, including Sugar Island, was selected, surveyed, and set aside for this Band.

The population of the Chakastaypasin Band when it entered treaty has been recorded as totalling 82, and it grew to 107 by 1880. Thereafter the population declined to 69 people in 1884,

⁵⁷² Written Submissions on Behalf of the Government of Canada, February 2, 2004, pp. 41–42, paras. 86–91.

⁵⁷³ Written Submissions on Behalf of the Government of Canada, February 2, 2004, p. 43, para. 92.

and we see from the paylists that many of the Chakastaypasin families were paid on the James Smith paylists between 1878 and 1883.⁵⁷⁴

There is little evidence to explain the reasons for the early migration out of IR 98. However, during the community session on May 27, 2003, Mr Harold Kingfisher of the Sturgeon Lake First Nation recounted that his great-grandparents, Ooteipayinisew and Nesoquam, left IR 98 for the James Smith Band when Chakastaypasin band members were denied rations before the North-West Rebellion in 1885.⁵⁷⁵

During this same period, the Inspector of Indian Agencies, T.P. Wadsworth, reported in 1883 that, although the Band was “still very backward in farming, they have made considerable progress ... about twenty-five acres under crop. Big Head ... [has] built houses and broken land ... The chief ... has ten acres in wheat, barley and potatoes.”⁵⁷⁶ We see from the evidence the effort of band members to pursue agriculture despite Wadsworth’s report the following year that “the Department have never considered them of sufficient importance to go to the expense of sending them a Farming Instructor.”⁵⁷⁷

In 1884, we also see evidence of the department’s lack of support for agriculture when Indian Agent Macrae reports that “very few” of the Chakastaypasin members lived on their reserve, but that “such as do are maintaining a steady rate of progress”⁵⁷⁸ ... Nothing prevents all of our Indians from being settled on their reserves, except our incapacity to furnish enough material for agriculture. They are all desirous of settling, but have not the wherewithal to enable them to commence farming.”⁵⁷⁹

⁵⁷⁴ Treaty annuity payroll, Chakastaypasin Band, 1876, no file reference available (ICC Exhibit 12a, pp. 206–14); James Smith band paylists, 1878–83 (ICC Exhibit 12a, pp. 292–97).

⁵⁷⁵ ICC Transcript, May 27–29, 2003 (ICC Exhibit 17b, p. 158, Harold Kingfisher, Sturgeon Lake First Nation).

⁵⁷⁶ T.P. Wadsworth, Inspector of Indian Agencies, to SGIA, October 9, 1883, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1883*, 120–21 (ICC Exhibit 1, pp. 102–3).

⁵⁷⁷ T.P. Wadsworth, Inspector of Indian Agencies, to the Deputy Minister, April 22, 1884, LAC, RG 10, vol. 3786, file 27580 (ICC Exhibit 1, p. 119).

⁵⁷⁸ J. Ansdell Macrae, Indian Agent, Carlton District, to SGIA, August 11, 1884, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1884*, 80 (ICC Exhibit 1, p. 139).

⁵⁷⁹ J. Ansdell Macrae, Indian Agent, Carlton District, to SGIA, August 11, 1884, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1884*, 80 (ICC Exhibit 1, p. 136).

In the evidence, we do not see further migration from IR 98 until the rebellion in March 1885. At that time, as the elders recounted to this Commission, band members left the reserve to avoid being drawn into the conflict and were motivated both by loyalty to treaty and by fear stemming from threats made by scouts who came to their reserve.⁵⁸⁰ The words of elder Oliver Constant are particularly poignant: “They didn’t want to shoot the queen. They honoured the treaty, because they made the treaty.”⁵⁸¹

At the time of the rebellion, most, if not all, Chakastaypasin band members had fled IR 98. However, by 1887, some members, including Big Head, had returned to IR 98 and received their annuities there.⁵⁸² Chief Chakastaypasin and his family continued to be denied annuity payments from 1885 to 1889 because the government viewed them as “rebels.”

The department’s designation of “rebel” and “loyal” Indians in the aftermath of the North-West Rebellion merits particular attention in this inquiry, as such designations had a direct impact on the Chakastaypasin Band. The Department of Indian Affairs initially branded the entire Chakastaypasin Band as “rebels,” and, in June 1885, Indian Commissioner Dewdney informed the SGIA that the Chakastaypasin Band had “violated the terms of the Treaty made with them” and that it would be advisable to break up the band and amalgamate the members with other bands.⁵⁸³

At about the same time, Hayter Reed, the Assistant Indian Commissioner, outlined a number of general recommendations for dealing with the “Future Management of Indians” following the rebellion. Aside from his general recommendations, Reed made a specific recommendation for dealing with the Chakastaypasin Band:

Chakastapaysin’s [Band] should be broken up, and its reserve surrendered ... Neither of these [One Arrow and Chakastaypasin bands] are large enough to render it

⁵⁸⁰ ICC Transcript, June 27–28, 2001 (ICC Exhibit 16a, pp. 88, 110, Walter Sanderson; pp. 28, 49, 51, Robert Constant); ICC Transcript, January 28–29, 2003 (ICC Exhibit 16b, p. 110, Raymond Sanderson; p. 214, Jake Sanderson; pp. 73–74, Terry Sanderson).

⁵⁸¹ ICC Transcript, June 27–28, 2001 (ICC Exhibit 16a, p. 49, Oliver Constant).

⁵⁸² R.S. McKenzie, Indian Agent, Duck Lake Agency, to SGIA, September 10, 1888, LAC, RG 10, vol. 9098, book 4, p. 140 (ICC Exhibit 1, p. 431).

⁵⁸³ Edgar Dewdney, Indian Commissioner, to SGIA, June 19, 1885, LAC, RG 10, vol. 3714, file 21088-2, and vol. 3584, file 1130 (ICC Exhibit 1, pp. 188, 193).

desirable to maintain instructors permanently with them, and as they are constituted of bad and lazy Indians, nothing can be done without constant supervision of them. The action suggested therefore would have been wise in any case; their rebellion justifies the pursuit.⁵⁸⁴

On October 28, 1885, Indian Commissioner Dewdney's advice was approved by the Superintendent General of Indian Affairs, who said:

[The SGIA] considers that Chakastapaysin's Band should be broken up; the [Reserve of this Band] when the members of the same are distributed among other Bands to be handed over to the Government and the necessary addition to be made to the Reserves to which they may be moved.⁵⁸⁵

By January 1886, the department appeared willing to treat those it considered "rebel" and "loyal" differently. We see in the evidence that Chief Chakastaypasin was regarded as a "rebel" and denied his treaty annuities, unlike Kahtapiskowat, who was rewarded for his loyalty. In January 1886, the department formalized its different treatments through the creation of a "rebel payroll" and a "loyal payroll." In May 1886, Commissioner Dewdney then notified the Acting Agent at Prince Albert that "Big Head or Kah-tip-is-kee-wat from Chakastapaysin's Band" was to be "rewarded for loyalty" during the rebellion.⁵⁸⁶ We see from the evidence that Big Head's "loyalty" was rewarded on numerous occasions: he received a gift of two heifers in 1886;⁵⁸⁷ he and his family were paid annuities with James Smith in 1885,⁵⁸⁸ when no other band members received annuities on the Chakastaypasin band payroll that year; he was not deposed of his designation of headman, although Hayter Reed had recommended the abolishment of the "tribal system" by deposing the chiefs and

⁵⁸⁴ Hayter Reed, Assistant Indian Commissioner, to the Indian Commissioner, July 29, 1885, Glenbow Archives, Edgar Dewdney Papers, document M320, box 4, file 66, pp. 1417–18 (ICC Exhibit 18a, pp. 4–5).

⁵⁸⁵ L. Vankoughnet, DSGIA, to Edgar Dewdney, Indian Commissioner, October 28, 1885, LAC, RG 10, vol. 3584, file 1130, part 1B (ICC Exhibit 1, p. 206).

⁵⁸⁶ E. Dewdney, Indian Commissioner, to the Acting Indian Agent, May 25, 1886, LAC, RG 10, vol. 1591 (ICC Exhibit 1, p. 234).

⁵⁸⁷ E. Dewdney, Indian Commissioner, to the Acting Indian Agent, May 25, 1886, LAC, RG 10, vol. 1591 (ICC Exhibit 1, p. 234).

⁵⁸⁸ Treaty annuity payroll, James Smith Band, 1885, LAC, RG 10, vol. 9418 (ICC Exhibit 12a, p. 300).

councillors of “rebel tribes”;⁵⁸⁹ and, when paid his annuities, he also received payment of a “pension” during the years 1904 to 1906, for a total of \$183 – a payment not provided to any other band member.

Based on the evidence, what we see during this period is the department taking active steps to encourage the movement of Chakastaypasin band members from IR 98, or, at the very least, to discourage further settlement on the reserve. Before the rebellion, we see evidence of the department’s characterization that “they are a rather superior band of Indians and as far as I could observe need only a good example set them ... to very much improve their present condition.”⁵⁹⁰ Only a year before the rebellion, Indian Agent Macrae reported that the few members on IR 98 “are maintaining a steady rate of progress ... nothing prevents all of our Indians from being settled on their reserves, except our incapacity to furnish enough material for agriculture. They are all desirous of settling, but have not the wherewithal to enable them to commence farming.”⁵⁹¹ Within a year of these remarks, we see in the evidence a complete shift in the department’s characterization of this Band. By July 1885, Assistant Indian Commissioner Hayter Reed remarked: “[A]s they are constituted of bad and lazy Indians, nothing can be done without constant supervision for them. The action suggested [breaking up the Band and surrendering its reserve] therefore would have been wise in any case; their rebellion justifies the pursuit.”⁵⁹²

Throughout the years 1886 to 1888, the evidence indicates that at least Big Head and 11 “loyal” families continued to use and occupy IR 98. Other band members were reported to be living near Fort à la Corne in the vicinity of the James Smith Band.⁵⁹³ In 1888, Indian Agent McKenzie referred to “two sections” of the Chakastaypasin Band – one section living at IR 98 and another

⁵⁸⁹ Hayter Reed, Assistant Indian Commissioner, to the Indian Commissioner, July 29, 1885, Glenbow Archives, Edgar Dewdney Papers, document M320, box 4, file 66, pp. 1414–19 (ICC Exhibit 18a, pp. 1–6).

⁵⁹⁰ Natural Resources Canada, Field book 434 CLSR, Elihu Stewart, DLS, “Field Notes of Chacastapasin Reserve,” 1878 (ICC Exhibit 6b, item 6, p. 60).

⁵⁹¹ J. Ansdell Macrae, Indian Agent, Carlton District, to SGIA, August 11, 1884, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1884*, 80 (ICC Exhibit 1, p. 136).

⁵⁹² Hayter Reed, Assistant Indian Commissioner, to the Indian Commissioner, July 29, 1885, Glenbow Archives, Edgar Dewdney Papers, document M320, box 4, file 66, pp. 1417–18 (ICC Exhibit 18a, pp. 4–5).

⁵⁹³ R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, January 31, 1888, LAC, RG 10, vol. 3793, file 46008 (ICC Exhibit 1, pp. 342–43).

living near Fort à la Corne. The existence of two sections is, in our view, very important, when viewed from the perspective of whether the entire Band consented to the surrender of its reserve; we will revisit the existence of these two sections and return to the matter of surrender later in this report. Nevertheless, in Agent McKenzie's September 1888 annual report, he wrote that "Big Head and his party" had requested permission to join the Cumberland Band, and were now "transferred" to that band and "engaged in farming."⁵⁹⁴ The following year, on October 23, 1889, McKenzie reported to the Indian Commissioner that "band No. 98 is now thoroughly broken up" and its members settled with the One Arrow, James Smith, and Cumberland Bands.⁵⁹⁵

The Crown today argues that when members of Chakastaypasin's Band chose to leave IR 98 and join other bands, they were choosing to stop participating in the relationship between the Crown and Chakastaypasin's Band and to begin participating in the relationship between the Crown and the other bands. Further, "these people must be considered to be 'autonomous actors'; the Department of Indian Affairs could not make them remain on IR 98. If they wanted to join other bands, to participate in another relationship with the Crown, it was appropriate to permit them the transfers they sought."⁵⁹⁶

The evidence is unequivocal that, in the aftermath of the North-West Rebellion, the Indian Department of the day wanted the Chakastaypasin Band "broken up." Yet, if such a policy was to be carried out by the transfer of members to other bands, the department had no statutory process and procedure in place to effect such transfers before 1895. Before that year, what we see in the evidence is the development of a transfer practice in March 1889 to require, first, the "written consent of a majority of the voting members of both the originating and receiving bands" and, second, the assurance that these votes came after a full explanation that the transferee would be entitled to a share in all lands and other privileges of the receiving band.⁵⁹⁷

⁵⁹⁴ R.S. McKenzie, Indian Agent, Duck Lake Agency, to SGIA, September 10, 1888, NA, RG 10, vol. 9098, book 4, pp. 140–41 (ICC Exhibit 1, pp. 431–32).

⁵⁹⁵ R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, October 23, 1889, LAC, RG 10, vol. 3831, file 62987 (ICC Exhibit 1, p. 535).

⁵⁹⁶ Written Submissions on Behalf of the Government of Canada, February 2, 2004, p. 44, paras. 96–97.

⁵⁹⁷ [L. Vankoughnet, DSGIA], to the Indian Commissioner, March 18, 1889, LAC, RG 10, vol. 3807, file 52583-2 (ICC Exhibit 1, pp. 507–8).

We see in the evidence that six Chakastaypasin families were paid their annuities with James Smith in November 1885, including Big Head. In 1886, Big Head and 11 “loyal” families received their annuities on the Chakastaypasin band payroll. In 1887, all of the “loyal” families were again paid, including Big Head, except for one family that was paid with the James Smith Band. In 1888, the Chakastaypasin Band had two paylists: the first, dated October 13, 1888, noted Big Head as headman and was paid at “Agency.” This payroll noted that six families, including Big Head, had “transferred to the Cumberland Band” and two families had “transferred to James Smith Band.” The corresponding 1888 payroll for the “Cumberland Band paid at Peter Chapman’s Reserve” shows six Chakastaypasin families grouped at the end of the payroll according to their Chakastaypasin treaty numbers and marked with an “A,” including Big Head, who received the extra headman’s annuity. All the Chakastaypasin band members on this payroll have the notation “now transfd” or “transfd from Chakastapaysin” beside their names.⁵⁹⁸ By 1889, the Chakastaypasin band payroll was discontinued.

We are struck by the department’s use of the language “now transfd” appearing for the first time in the 1888 paylists, when the departmental position had previously been “that it is contrary to the law” to “transfer” anyone to another band, except in cases where a woman marries into it.⁵⁹⁹ It was this categorical refusal to allow transfers that may have precipitated the development of the department’s practice in 1889 to require the written consent of a majority of the voting members of both the originating and the receiving bands, in the years before the formal amendment to the *Indian Act* in 1895 with the introduction of section 140.

We also see in the evidence that the Cumberland band payroll of October 31, 1891, indicated that the former Chakastaypasin members were given new Cumberland Band ticket numbers.⁶⁰⁰ One

⁵⁹⁸ Treaty annuity payroll, Chakastaypasin Band, 1876, no file reference available (ICC Exhibit 12a, pp. 206–10, 219, 235, 295). See also Sturgeon Lake First Nation, “Families of the Chakastapaysin Band: Remarks on Homik’s Tracing Study from the Perspective of the Sturgeon Lake First Nation,” revised May 1997 (ICC Exhibit 17c, pp. 89–90).

⁵⁹⁹ [L. Vankoughnet, DSGIA], to Hayter Reed, Indian Commissioner, November 23, 1888, LAC, RG 10, vol. 3807, file 52583-2 (ICC Exhibit 1, p. 481).

⁶⁰⁰ Treaty annuity payroll, “Cumberland Band paid at Reserve,” 1891, no file reference available (ICC Exhibit 12a, p. 247).

month previously, on September 4, 1891, Chakastaypasin and Cumberland band members signed a “Consent to Transfer” that stated:

We the undersigned Councillors and members of the Band of Indians owning the Reserve situated in treaty No. 6 and known as the Cumberland Reserve No. 100A do by these presents certify that the said Band has by vote of the majority of its voting members present at a meeting summoned for the purpose according to the Rule of the Band, and held in the presence of the Indian Agent for the locality on the 4th day of September 1891, granted leave to “Nanequaneum” No. 35 of Beardy’s Band No. 97 to be transferred from said band to this our Band of Indians owning the Reserve as situated at Fort a la Corne in Treaty No. 6 and known as Cumberland Reserve to which transfer, we the undersigned hereby give our consent.⁶⁰¹

This Consent is signed by five Cumberland people and two Chakastaypasin members, George Sanderson and Big Head. The department approved the transfer of Nanequaneum to “the Band of Indians owning the Reserve situate in treaty No. 6 and known as the Cumberland Reserve No. 100A” on October 20, 1891, and he appeared the next year as ticket no. 105 on the 1892 payroll for “Big Head’s Band 100A.”⁶⁰² We believe from the evidence that the creation of this “Big Head’s Band 100A” payroll results from the department’s effort to make a distinction between the Cumberland band members, who were Treaty 5 Indians, and Chakastaypasin members, who were Treaty 6 Indians, both living at IR 100A.⁶⁰³

At the time the above Consent to Transfer was executed, there is no evidence explaining how Big Head and George Sanderson were transferred into the Cumberland Band at IR 100A beyond Agent McKenzie’s notation on the 1888 payroll that they were now “transferred.” They had moved to Fort à la Corne, but, as we shall see, there was no attempt at formal transfer until 1896. So, on the facts, we see that these people had moved to Fort à la Corne, but the department would not seek to formalize their transfer for another 12 years.

⁶⁰¹ Consent of Band to Transfer, September 4, 1891, LAC, RG 10, vol. 3862, file 83104 (ICC Exhibit 1, p. 632).

⁶⁰² Treaty annuity payroll, Big Head Band, 1892, no file reference available (ICC Exhibit 12a, p. 223).

⁶⁰³ [L. Vankoughnet, DSGIA], to Hayter Reed, Indian Commissioner, April 22, 1892, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, James Smith Cree Nation, IR 100A Inquiry, pp. 359–60); Hayter Reed, Indian Commissioner, to the Indian Agent, Duck Lake Agency, May 7, 1892, no file reference available (ICC Exhibit 1, p. 673).

In 2001, the Federal Court of Canada in *Snake v. The Queen* considered the movement of Young Chipeewayan members from their Stoney Knoll IR 107 (also a Treaty 6 band) to other bands, as evidenced only by the paylists of these other bands, and the effect such movement had on their membership. In that case, Mr Justice Gibson stated:

... counsel for the defendant urged that, as members of the Band dispersed, they became members of other bands. I have greater difficulty with this submission. While, as previously noted, the names of members of the Band began to appear on the paylists of other bands, I am not satisfied that that constitutes evidence that they became members of those bands. Rather, I would prefer to interpret this reality as evidence of nothing more than an *administrative convenience* accomplished by, and for the benefit of, those charged with distributing annuities.

I am assured that there was no statutory provision relating to the transfer of membership from one band to another before 1895, except as previously noted, on marriage. Transfers, if they took place, were achieved informally, largely based upon physical relocation of an individual or a family. Physical relocation was entirely consistent with the history of the Plains Indians. That being said, *physical relocation of an individual or family onto the reserve of a band of which those relocating were not traditional members was not, on the evidence before me, consistent with assumption of membership in the band to which the reserve had been dedicated or with granting or acknowledgement of membership in that band by its members.*⁶⁰⁴

In this inquiry, Canada has argued that the Chakastaypasin Band ceased to exist as a band at least by 1888, when all its members had joined other bands. Further, Canada argues that the movements of Chakastaypasin members from IR 98 were informal transfers facilitated by means of the annuity paylists, in recognition of the fact that these people were living with other bands. With great respect, we must disagree. On the basis of *Snake*, the physical relocation of members does not in and of itself prove the transfer of membership. With membership comes rights and privileges shared by the whole band. Surely, something more than the administrative documents used by the department to distribute treaty annuity payments is required as proof of transfer. Clearly, by 1889 the Department of Indian Affairs set out what would be required: “written consent of a majority of the voting members of both the originating and receiving bands.” For the individuals and families transferring to IR 100A, on the basis of our findings in both the *Cumberland House Cree Nation IR 100A Inquiry* and the *James Smith Cree Nation IR 100A Inquiry*, what is required is evidence of

⁶⁰⁴ *Snake v. The Queen*, 2001, FCT 858. Emphasis added.

the consent of the whole of the Cumberland Band, including those resident at IR 20, to accept the transfer of Chakastaypasin members. There is no evidence of the consent of the whole Cumberland Band. Consequently, we find there were no valid transfers before 1895 from Chakastaypasin into IR 100A. This finding is confirmed by the fact that the government took steps in 1896 – unsuccessfully, in our view – to bring about the “formal” transfer of these people.

In 1895

We note that following the introduction of section 140 to the *Indian Act* in 1895, the DSGIA questioned, some seven years after McKenzie’s 1888 report, “whether the members of Chakastaypasin Band were formally transferred to the other bands with which they became amalgamated.”

In 1895, the *Indian Act* was amended with the introduction of section 140, which formalized the procedures for transfer of membership between bands. Section 140 reads:

When by a majority vote of a band, or the council of a band, an Indian of one band is admitted into the membership in another band, and his admission thereto is assented to by the superintendent general, such Indian shall cease to have any interest in the lands or moneys of the band of which he was formerly a member, and shall be entitled to share in the lands and moneys of the band to which he is so admitted; but the superintendent general may cause to be deducted from the capital of the band of which such Indian was formerly a member his per capita share of such capital and place the same to the credit of the capital of the band into membership in which he had been admitted in the manner aforesaid.⁶⁰⁵

With the introduction of section 140, DSGIA Hayter Reed wrote to Indian Commissioner A.E. Forget and asked

whether the members of Chakastapaysin Band were formally transferred to other Bands with which they become amalgamated, and if not to request that the formal application for such transfer and consent of the Bands concerned to receive applicants may be obtained without delay – and admitted to the Department.⁶⁰⁶

⁶⁰⁵ *Indian Act*, RSC 1886, c. 43, s. 140 (added by SC 1895, c. 35, s. 8) (ICC Exhibit 25a, p. 59).

⁶⁰⁶ DSGIA to A.E. Forget, Indian Commissioner, November 9, 1895, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 722).

On the same day, Reed wrote to the Deputy Minister of the Interior, A.M. Burgess, and stated:

Relative to the advisability of throwing open for settlement the Reserves set apart for the Bands of Chiefs Young Chippewayan and Chakastapaysin respectively; and acquainting me with the Minister's views as to the desirability of these Reserves being surrendered, and in reply to suggest for consideration the question as to whether under the circumstances any necessity exists for taking a surrender at all. With regard to the Indians of Young Chippewayan's Reserve, the question presents itself as to whether the fact of their having been rebels in 1885, and having left the Country after the rebellion would not afford sufficient and reasonable grounds for dispossessing them of such rights as they originally had to the Reserve. As to such of them as have since returned they are in the same position as the Indians of Chacastapasin Band in so much as they have all become amalgamated with or merged to other Bands with the members of which they enjoy equal privileges.⁶⁰⁷

We see next in the evidence that Indian Commissioner Forget instructed the Indian Agent at Duck Lake, on February 3, 1896, to immediately "obtain the consent of the councils of the several Bands into which these Indians have gone, to their formal admission thereinto," because it appeared that "no formal transfer of these Indians to the Bands with which they subsequently amalgamated has apparently ever been obtained."⁶⁰⁸ Commissioner Forget enclosed a tabular statement with his letter to the Indian Agent, "showing the dispersion of the Band as it was in 1888, tracing each member from that date to 1895." This statement shows that, by 1895, nine of the 10 families that had appeared on the 1887 payroll for the Chakastapasin Band were living with the Big Head, James Smith, and One Arrow Bands.

The necessity of "formally" transferring the Chakastapasin band members to other bands in 1896 was clearly evidenced by DSGIA Hayter Reed in his letter of February 8, 1896, to Indian Commissioner Forget. He wrote:

The Department does not propose to take any surrender of the Chakastapaysin Reserve ... and it is largely on that account that it desires to have the transfer to other

⁶⁰⁷ Hayter Reed, DSGIA, to A.M. Burgess, Deputy Minister of the Interior, November 9, 1895, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 726).

⁶⁰⁸ A.E. Forget, Indian Commissioner, to the Indian Agent, Duck Lake Agency, February 3, 1896, LAC, RG 10, vol. 1594 (ICC Exhibit 1, p. 735).

Bands, by which the original owners have forfeited all rights in Reserve set apart for them, formally completed.⁶⁰⁹

On May 18, 1896, Indian Agent McKenzie forwarded 22 “consents of the members of the Cumberland Band No. 100A to accept into their Band the remnant of Chakastapaysin’s Band No. 98.” McKenzie also forwarded one Consent to Transfer form admitting one former Chakastaypasin member into the James Smith Band. The Consents to Transfer were signed by seven members of the Cumberland Band at IR 100A: Samuel Brittain, Joseph Head, James Head, Moses Cameron, Frederick Okeekkeep, James Okeekkeep, and Andrew Brittain.

It is important to note that in this same May 18, 1896, letter, Agent McKenzie reported that “the reason the Cumberland Band did not give their consent sooner was because they wished to know if by so doing they would be allowed to appoint a Chief and Councillors. However, after I explained to them that I did not expect this privilege would be extended to them but that I would submit their desire to the Department, I got them to sign the papers without any difficulty.”⁶¹⁰ In evidence, the marginalia to this letter reads: “The Agent will be asked to inform the band that their request cannot be granted, F.W.P. for Commr.”

Equally important to note is that McKenzie also reported in this same letter that the Chakastaypasin members had not yet consented to join the Cumberland Band. This comment contradicts his September 10, 1888, annual report, where he stated that “Big Head and his party” had requested permission to join the Cumberland Band, and were now “transferred” to that band. On May 18, 1896, he explained:

Chakastapaysin’s or Big Head’s Band state that by joining the Cumberland Band they do not wish to give up their claim to their Reserve and ask to be informed what the Department proposes doing with the Reserve, and what they will receive if they give up their claim to the Reserve. I explained that I was not in a position to give them any

⁶⁰⁹ Hayter Reed, DSGIA, to A.E. Forget, Indian Commissioner, February 8, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 743).

⁶¹⁰ R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, May 18, 1896, enclosing 22 Consent of Band to Transfer forms dated May 10, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, pp. 776–802).

information but that I would receive instructions from the Department before they would be asked to sign any document.⁶¹¹

In an attempt to answer Agent McKenzie's request for information from the department on how to proceed, F.H. Paget, writing for the Indian Commissioner, forwarded McKenzie's letter to the DSGIA and stated: "[I]t will be seen that these Indians either do not comprehend the full effect of their transferring themselves to another Band or have only accepted same conditionally. As this is the first instance of the kind which has arisen, I should be glad to be advised as to the course the Department desires to pursue in the matter."⁶¹²

On June 2, 1896, DSGIA Hayter Reed replied to the Indian Commissioner's request for instructions. Reed directed that "the Agent should be instructed to tell them that since by admission to other Bands they share all privileges with the Bands concerned, including the right to the Reserves, they cannot, in the opinion of the Department, expect any compensation for relinquishing their own Reserve, and have in fact already done so by leaving it and taking up permanent abode upon others. They should be reminded that it is somewhat late for them to set up such a claim after they have been virtually members of other Bands for years, which they joined entirely of their own accord, the Department refraining from making any objection."⁶¹³

From the evidence it appears that, as of 1896, there was a fundamental difference of understanding between Chakastaypasin band members and the department on the effect of transfer to another band. Indeed, on June 5, 1896, the Indian Commissioner instructed Agent McKenzie to explain the situation to the Chakastaypasin members:

[Y]ou may inform them that by their admission to other Bands they receive, with the band which they enter, all the privileges including the right to lands, which they enjoyed as members of a separate band, and for this reason they cannot expect

⁶¹¹ R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, May 18, 1896, enclosing 22 Consent of Band to Transfer forms dated May 10, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, pp. 776-77).

⁶¹² F.H. Paget, for the Indian Commissioner, to DSGIA, May 23, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 806).

⁶¹³ Hayter Reed, DSGIA, to A.E. Forget, Indian Commissioner, June 2, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, pp. 811-12).

compensation where no loss is sustained. They would be in the enjoyment of no greater privileges or benefits were they on a Reserve of their own.

In any case they have practically relinquished all claim to their old reserve by abandoning it and taking up their abode on others and after years of practical membership in such other bands, which was not opposed by the Department, it is now somewhat late to set up any claim to lands that as a matter of fact they hardly occupied.

They might also be informed that in order to definitely assure themselves of the privileges now offered them in connection with other bands, they had better, in their own interests, make no unnecessary delay in accepting the offer while it remains open.⁶¹⁴

There is no evidence to indicate that Agent McKenzie acted on these instructions to inform the Chakastaypasin members on the consequences of transfer, but we do see in the evidence that he called a meeting “of the members who were not absent.” On June 12, 1896, he made an unsuccessful attempt to get their signatures on an application for transfer, but “they flatly refuse[d] unless they are allowed something for the Chacastapasin’s Reserve.” In any case, he explained, only a few members were present.⁶¹⁵ When he reported on his lack of success, Agent McKenzie suggested that he would try again when the Band gathered for its treaty annuities. On receipt of this report, Commissioner Forget reluctantly agreed with the Agent’s approach, but he instructed that, “should the Agent find it less difficult to get the Indians to make individual applications,” he should pursue that course rather than try to get all the signatures on a single application. Further, since it was “useless” to approach the Chakastaypasin members as a whole, “except in making the trial you suggest at the treaty payments,” the Agent should “take the members individually and endeavour to win them over one by one, obtaining their signatures as occasion offers.”⁶¹⁶

On October 15, 1896, at the time of the treaty payments, 27 Chakastaypasin families applied for admission to the Cumberland Band at Fort à la Corne, and one family applied for admission to the James Smith Band. The application for admission to the “Cumberland Band No. 100A” reads:

⁶¹⁴ F. Paget, for the Indian Commissioner, to the Indian Agent, Duck Lake Agency, June 5, 1896, no file reference available (ICC Exhibit 1, pp. 813–14).

⁶¹⁵ R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, June 20, 1896, in NA, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 815).

⁶¹⁶ A.E. Forget, Indian Commissioner, to the Indian Agent, Duck Lake Agency, July 6, 1896, no file reference available (ICC Exhibit 1, p. 817).

We, the undersigned members of the Band of Treaty Indians known as Chacastapasin's Band No. 98, formerly occupying the Reserve of that name situated in the Duck Lake Agency, but now resident on the Reserve of the Cumberland Band IR 100A, in the same Agency, do hereby make application to be admitted into membership in the said Cumberland Band No. 100A.⁶¹⁷

The application is witnessed by Agent McKenzie and Sandy Thomas, the Agency interpreter, and signed by 27 members.⁶¹⁸ Included among the signatories are all nine men who later signed the surrender of the Chakastaypasin IR 98 on June 23, 1897.

Because this application for admission was taken at the time of the treaty payments, there is a contemporaneous "Cumberland No. 100 A Band, Paid at Reserve Fort a la Corne" paylist dated October 14 and 15, 1896. It reflects the transfer of 17 families from the Big Head band paylist, and it includes Big Head and his family among the names listed.

In our view, even if the Chakastaypasin individuals and families seeking to transfer could do so under section 140, a valid transfer required the consent of the receiving band. In this case, the 27 Chakastaypasin individuals and families, including Big Head, required the consent of the whole of the Cumberland Band – both those resident at IR 20, as the receiving band, and those at IR 100A. For the reasons stated in the *Cumberland House Cree Nation: IR 100A Inquiry* and the *James Smith Cree Nation: IR 100A Inquiry*, IR 100A was reserved for the whole of the Cumberland Band, including those resident at IR 20. There is no compelling evidence that a separate band was created or had evolved from the original Treaty 5 signatory Cumberland Band. For this reason, the seven signatories to the October 1896 Consent to Transfer to IR 100A may represent the consent of some members of the Cumberland Band, but there is no evidence of consent of the whole of the Cumberland Band, including those at IR 20. As such, the October 25, 1896, "transfer" is not in compliance with the section 140 requirement of consent "of the receiving band," and, consequently, it must be found invalid.

⁶¹⁷ Application for admission to "Cumberland Band No. 100A," October 15, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 836).

⁶¹⁸ Consent of Band to Transfer, March 12, 1897, in LAC, RG 10, vol. 1594 (ICC Exhibit 1, p. 857).

Canada has also argued that the Chakastaypasin band members' migration from IR 98 is inextricably linked to whether IR 98 was thereby abandoned. We will next consider the question of IR 98's abandonment.

Was IR 98 Abandoned?

It is Canada's position that IR 98 was abandoned in the 1880s and that the abandonment was real and intended to be permanent. Canada submits that "had the former members of Chakastapaysin had any intention of remaining a separate band or retaining any interest in IR 98, they would not have moved to 100A, consented to transfer to that band, inquired about compensation with respect to IR 98 and signed a surrender with respect to the same."⁶¹⁹

Further, Canada submits that by the time of the IR 98 surrender in 1897, members of the Chakastaypasin Band had already been living at IR 100A for about nine years. They had formalized their membership with the Cumberland Band in 1896, according to Canada, when they signed the application for admission into IR 100A.

The James Smith Cree Nation submits that, following the North-West Rebellion, Canada used the uprising to implement policies designed to break up the Chakastaypasin Band once it was labelled a "rebel" band. This policy was implemented by the department's designation of the Band as "rebel," by the department's stated decision to "break up the band," by the Crown's deliberate prevention of members from returning to the reserve after the rebellion, and by pressure from department officials for members to leave IR 98.⁶²⁰

The "Two Sections" of the Band and the Consent to Surrender

In his January 1888 report, Agent McKenzie referred to "two sections" of the Chakastaypasin Band: one section was living at Fort à la Corne both before and after the North-West Rebellion, and the other section remained on IR 98. It is important to reflect on how department officials were dealing with each section. We know from the evidence that Agent McKenzie reported in January 1888 on his meeting with the members of the Chakastaypasin Band living at Fort à la Corne who, at that time,

⁶¹⁹ Written Submissions on Behalf of the Government of Canada, February 2, 2004, p. 53, para. 121.

⁶²⁰ Written Submissions on Behalf of the Chakastaypasin Cree Nation, November 7, 2003, pp. 117–18.

requested “that the Department would take back the Reserve on the South Branch, and give them a Reserve near James Smith’s at La Corne.”⁶²¹ He concluded his January 1888 report by advising the Indian Commissioner that this request should be granted, “as it will be much more convenient to look after them when they are all together, than in the shape they are at present.”⁶²²

In response, Assistant Indian Commissioner Hayter Reed instructed Agent McKenzie to “induce” those Chakastaypasin members who make a living “by cultivating the soil to join some of the Bands who have a Farming Instructor, and those who mainly depend upon hunting and fishing for a livelihood to join some of the Bands at Fort La Corne.”⁶²³ In February 1888, DSGIA Vankoughnet informed Hayter Reed that the Indian Commissioner thought it “desirable” for the department to implement Agent McKenzie’s January 1888 report. In that report, McKenzie had recommended that the department grant the request that IR 98 be relinquished and that a reserve near James Smith at Fort à la Corne be established for the Chakastaypasin Band.⁶²⁴

During the course of legal argument, Canada referred to Agent McKenzie’s January 1888 report as evidence of the Band’s intention to surrender. We caution, however, that, with regard to the Band’s intention to surrender, McKenzie was reporting only on his meeting with those Chakastaypasin band members living at Fort à la Corne – only one section of the Band. Members of the other section were still living on IR 98. Thus, we cannot attribute a request coming from only one section of the Band to be the expression of the entire Band in January 1888.

When Agent McKenzie visited the Chakastaypasin reserve in March 1888, his report confirms that some members, including Big Head, continued to use and occupy IR 98 and that “they were prepared to relinquish the reserve at any time and join Peter Chapman’s Band but that they expected the Dept. to give them something for so doing[,] no matter how small. I told them the Dept.

⁶²¹ R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, January 31, 1888, LAC, RG 10, vol. 3793, file 46008 (ICC Exhibit 1, p. 343).

⁶²² R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, January 31, 1888, LAC, RG 10, vol. 3793, file 46008 (ICC Exhibit 1, pp. 343–44).

⁶²³ Hayter Reed, Assistant Indian Commissioner, to the Indian Agent, Duck Lake Agency, February 13, 1888, LAC, RG 10, vol. 1592 (ICC Exhibit 1, p. 361).

⁶²⁴ [L. Vankoughnet, DSGIA], to Hayter Reed, Assistant Indian Commissioner, February 23, 1888, LAC, RG 10, vol. 3793, file 46008 (ICC Exhibit 1, p. 366).

would not in my opinion give them anything but that I would give them provisions to move with. They insisted that I should write to you [the Indian Commissioner] and that they would await your reply.”⁶²⁵ There is no evidence that the Indian Commissioner replied to this correspondence or, if there was a reply, that the Chakastaypasin band members living at IR 98 were supplied with it. What is particularly striking about this correspondence is that, at the time of his meeting in March 1888, Indian Agent McKenzie neglected to inform the members of their rights as the lawful owners of IR 98 – owners who, at that time, were using and occupying IR 98. It was wrong to have left the Band with the limited view that their interest in their reserve amounted to nothing.

Following the movement of Chakastaypasin members away from IR 98, debate continued within the department about the necessity for a taking a surrender. The matter seemed finally resolved when the Deputy Minister of Justice delivered his positive opinion on the matter of a surrender. On June 11, 1897, Indian Agent McKenzie was instructed, “in accordance with the provisions of the *Indian Act*, [to] summon a meeting of the Indians formerly owning the Chakaspatasin Reserve and obtain from them their signatures to the enclosed documents.”⁶²⁶ On June 23, 1897, Agent McKenzie met with some members of Chakastaypasin at IR 100A. Based on the documents, nine members of the Chakastaypasin Band signed a surrender of Chakastaypasin IR 98. At the time of the surrender, the department was aware of Chakastaypasin members having been dispersed among several bands. In 1896, Indian Commissioner Forget specifically identified Chakastaypasin members living with the Big Head, James Smith, and One Arrow Bands. Chakastaypasin members or their descendants were also living in other locations, including the Sturgeon Lake, Gordon, and John Smith reserves.⁶²⁷

According to Canada, the nine signatories to the surrender document were all members who had allegedly “transferred” to the Cumberland Band under section 140 of the *Indian Act* in October 1896. Viewed from this perspective, Canada’s argument today is inconsistent. If, as Canada argues,

⁶²⁵ R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, March 31, 1888, LAC, RG 10, vol. 3793, file 46008 (ICC Exhibit 1, p. 377).

⁶²⁶ J.D. McLean, Acting Secretary, to R.S. McKenzie, Indian Agent, Duck Lake Agency, June 11, 1897, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 896).

⁶²⁷ Teresa Homik, “Chacastapasin Tracing Study,” prepared for Specific Claims Branch West, April 1996 (ICC Exhibit 3c).

these nine signatories had validly transferred and were therefore no longer members of the Chakastaypasin Band, but members of IR 100A, they no longer had the legal capacity to dispose of IR 98 by surrender. Yet Canada did, in fact, seek a surrender from Chakastaypasin members at IR 100A the year following their “transfer.” As we have said, we find the October 15, 1896, transfers of Chakastaypasin members into IR 100A to be invalid.

There is no evidence that Agent McKenzie attempted to meet with or to seek the consent of those Chakastaypasin members living on reserves other than Cumberland IR 100A, even though the department was aware of their settlement with these other bands. Moreover, the surrender document itself promised a “pro rata” credit to the “several of the Bands with whom we have become amalgamated.” The question of the status of these other members is not an issue before us in this inquiry, and we make no findings with respect to the validity of transfers to locations other than IR 100A. Based on the evidence in this inquiry, we are not satisfied, on the face of these documents, to rely on the expression of nine signatories as providing consent for the whole of the Chakastaypasin Band when there is no evidence of the department having made an effort to seek the consent of members residing at several other locations – locations that the department was aware of before the vote.

Canada takes the position that, regardless, the Band had ceased to exist and that no surrender was required. With respect, we must disagree. In *Snake*, the Federal Court of Canada considered the question of whether a surrender of Stoney Knoll IR 107 was required from the Young Chipeewayan Band, whose members had dispersed among other bands – and, as a result Canada argued, had ceased to exist as a band. In that case, no effort was made to locate the members of the Band or to seek their consent, and control of the reserve was, allegedly, passed to the Crown by Order in Council. Mr Justice Gibson disposed of the case on the basis that none of the plaintiffs had established that they were descendants in an unbroken line of members of the Young Chipeewayan Band. However, he went on to deal with the question of whether the “Order in Council P.C. 1155 of 1897, which purported to transfer the administration of the lands comprising Stony Knoll Reserve,” was valid. The Crown in *Snake* took the same position that Canada does in this inquiry – namely, that neither the treaty nor the *Indian Act* is relevant to the matter of surrender because the Band had ceased to exist. In *Snake*, Mr Justice Gibson was not satisfied on the evidence of the

paylists, offered as proof of transfer to other bands, that the Young Chipeewayan Band had ceased to exist. In light of this conclusion, he stated:

I am satisfied that the onus was on the defendant in this regard since it is the defendant that alleges the action of the Governor in Council was justified ... and in light of the fact that the evidence before me discloses that no efforts were made at consultation with members of the Band regarding the release or surrender and, in the result, no assent of any kind to the release or surrender was obtained from the Band.⁶²⁸

Thus, on the reasoning of Mr Justice Gibson in *Snake*, even if the members had dispersed to other bands – and there is no compelling proof of their transfer – Canada is under a duty to seek the members’ consent to surrender, and it cannot rely on its prerogative power to take control of the reserve lands. On the facts of this inquiry, Canada was under a duty to seek the consent of all eligible voters of the whole Chakastaypasin Band to the surrender of IR 98, pursuant to section 39 of the *Indian Act*, and not only the consent of those members assembled at one of six possible locations.

Compliance with Section 39 of the *Indian Act*

Based on the evidence, there is some dispute as to the number of eligible voters. The First Nation submits there were at least 35, but Canada argues there were 15 adult males eligible to vote on the matter of surrender.⁶²⁹

Because nine members apparently signed or affixed their marks to the surrender document, there is some evidence to suggest that certain members of the Band were asked to approve and assented to the surrender of IR 98. The complete absence of any further evidence means that we cannot determine whether the surrender meeting was called according to the rules of the Band. Assuming there was such a meeting, there are no details of any notice; of when and to whom notice was given; of the number of persons present at the meeting; of whether an actual vote was taken and, if so, of the number of votes for and against the surrender. In addition to the absence of evidence

⁶²⁸ *Snake v. The Queen*, 2001, FCT 858 at 34.

⁶²⁹ Written Submissions on Behalf of the Chakastaypasin Cree Nation, November 7, 2003, p. 168, para. (i).

concerning the circumstances surrounding how the nine members came to approve a surrender, there is no evidence that the department sought the consent of those members living on reserves other than IR 100A. We are also struck by the total absence of any oral history evidence surrounding these events.

Nonetheless, whatever the intention of the nine signatories was, we believe the expression of this consent was vitiated by the conduct of the Crown. In *Wewayakum*, Mr Justice Binnie for the Supreme Court of Canada stated: “Once a reserve is created, the content of the fiduciary duty [of the Crown] expands to include the protection and preservation of the Band’s interest from exploitation.”⁶³⁰

As previously stated, we reject Canada’s argument that the Chakastaypasin Band ceased to exist by 1888. Thus, the Band continued to hold an interest in its reserve – an interest that could be disposed of only by surrender.

Canada’s Pre-Surrender Fiduciary Obligations

The Indian Claims Commission has considered the question of the Crown’s fiduciary duties to First Nations in the context of reserve land surrenders in many cases: *Kahkewistahaw First Nation: 1907 Reserve Land Surrender Inquiry*; *Moosomin First Nation: 1909 Reserve Land Surrender Inquiry*; *Chippewas of Kettle and Stony Point First Nation: 1927 Surrender Inquiry*, and *Sumas Indian Band: 1919 Indian Reserve 7 Surrender Inquiry*.⁶³¹

We will not review all the jurisprudence leading up to the hallmark decision of *Apsassin* and the Crown’s pre-surrender fiduciary duties. Instead, we will begin our analysis with *Apsassin*. At issue in *Apsassin* was the validity of two land surrenders in 1940 and 1945. In 1940, the Beaver Indian Band surrendered the mineral rights in its reserve to the Crown, in trust, “to lease” for its benefit. In 1945 the Band agreed to surrender its entire interest in the reserve to the Crown for “sale

⁶³⁰ *Wewayakum Indian Band v. Canada*, [2002] 4 SCR 245 at 250.

⁶³¹ ICC, *Kahkewistahaw First Nation: 1907 Reserve Land Surrender Inquiry* (Ottawa, February 1997), reported (1998) 8 ICCP 3; ICC, *Moosomin First Nation: 1909 Reserve Land Surrender Inquiry* (Ottawa, March 1997), reported (1998) 8 ICCP 101; ICC, *Chippewas of Kettle and Stony Point First Nation: 1927 Surrender Inquiry* (Ottawa, March 1997), reported (1998) 8 ICCP 209; ICC, *Sumas Indian Band: 1919 Indian Reserve 7 Surrender Inquiry* (Ottawa, August 1997), reported (1998) 8 ICCP 281.

or lease.” The Department of Indian Affairs sold the reserve to the director of the *Veterans’ Land Act* (DVLA) in 1948 for \$70,000; through “inadvertence,” however, it also transferred the mineral rights. Following the sale, the lands were found to contain oil and gas deposits. Once these facts were discovered, the Band commenced an action for damages resulting from the improper transfer of the mineral rights. It sought a declaration that the 1945 land surrender was invalid on the ground that the Crown committed several acts and omissions that constituted negligence and breach of fiduciary obligation owed to the Band. The case proceeded all the way to the Supreme Court of Canada, where a unanimous court concluded that the Crown, in “inadvertently” selling the mineral rights in the reserve lands to the DVLA, and then failing to use its statutory power to cancel the sale once the error had been discovered, had breached its post-surrender fiduciary obligation to dispose of the land in the best interests of the Band. With respect to the Crown’s pre-surrender fiduciary duties, Mr Justice Gonthier and Madam Justice McLachlin differed in their analysis of these duties yet concluded that the Crown had discharged its duties on the facts of the case.

Madam Justice McLachlin conducted her pre-surrender fiduciary analysis from two perspectives: first, as an inquiry into whether the *Indian Act* imposed a fiduciary obligation on the Crown with respect to the surrender; and, second, as an inquiry into whether the facts and circumstances of the case gave rise to any fiduciary duties.

On the matter of Madam Justice McLachlin’s first perspective – whether the *Indian Act* imposed a fiduciary duty – she stated:

My view is that the Indian Act’s provisions for surrender of band reserves strikes a balance between the two extremes of autonomy and protection. The band’s consent was required to surrender its reserve. Without that consent the reserve could not be sold. But the Crown, through the Governor in Council, was also required to consent to the surrender. The purpose of the requirement of Crown consent was not to substitute the Crown’s decision for that of the band, but to prevent exploitation ... It follows that under the Indian Act, the Band had the right to decide whether to surrender the reserve, and its decision was to be respected. At the same time, if the Band’s decision was foolish or improvident – a decision that constituted exploitation – the Crown could refuse to consent. In short, the Crown’s obligation was limited to preventing exploitative bargains.⁶³²

⁶³² *Blueberry River Indian Band v. Canada (Department of Indian Affairs and Northern Development)*, [1995] 4 SCR 344 at 370 (referred to as *Apsassin*), McLachlin J.

Thus, the *Indian Act* does not impose a fiduciary duty on the Crown to withhold its consent to the surrender unless the band's decision is foolish or improvident, or amounts to an exploitative bargain.

Madam Justice McLachlin's second perspective considered whether the facts of the case resulted in a fiduciary relationship "being superimposed on the regime for alienation of Indian lands contemplated by the *Indian Act*." On the facts in *Apsassin*, Madam Justice McLachlin found that "the Band trusted the Crown to provide it with information as to its options and their foreseeable consequences, in relation to the surrender," but there was no evidence to suggest that the Band "abnegated or entrusted its power of decision over the surrender of the reserve to the Crown."

Mr Justice Gonthier, in his pre-surrender fiduciary analysis in *Apsassin*, concerned himself with giving "effect to the true purpose of the dealings" between the Band and the Crown. He wrote that he would have been "reluctant to give effect to this surrender variation if [he] thought that the Band's understanding of its terms had been inadequate, or if the conduct of the Crown had somehow tainted the dealings in a manner which made it unsafe to rely on the Band's understanding and intention."⁶³³

At the heart of Mr Justice Gonthier's reasoning is the notion that "the law treats Aboriginal peoples as autonomous actors with respect to the acquisition and surrender of their lands, and for this reason, their decisions must be respected and honoured."⁶³⁴ Thus, in Mr Justice Gonthier's view, a band's decision to surrender its land should be respected unless the band's understanding of the terms was inadequate or there were tainted dealings involving the Crown which make it unsafe to rely on the band's decision as an expression of its true understanding and intention.

Inadequate Understanding and Tainted Dealings

On the facts of this case, the weight of the evidence leads us to conclude that any "intention to surrender" shown by some members of the Chakastaypasin Band was single-handedly created and pursued by the Crown, and, at best, the action of "giving effect to the Band's intention" was contrived.

⁶³³ *Blueberry River Indian Band v. Canada (Department of Indian Affairs and Northern Development)*, [1995] 4 SCR 344 at 362, Gonthier J.

⁶³⁴ *Blueberry River Indian Band v. Canada (Department of Indian Affairs and Northern Development)*, [1995] 4 SCR 344 at 358, Gonthier J.

On our view of the evidence, the notion of surrendering IR 98 was motivated by the decision among the highest officials within the Indian Department to “break up the band” following the North-West Rebellion. As early as June 1885, Indian Commissioner Dewdney directed that “the Chakastapaysin Band had violated the terms of the Treaty made with them” and that it would be advisable to break up the Band and amalgamate them with others.⁶³⁵ By July 1885, Assistant Indian Commissioner Hayter Reed recommended that “Chakastaypasin’s [Band] should be broken up, and its reserve surrendered ... the action suggested would be wise in any case; their rebellion justifies the pursuit.”⁶³⁶ Following the rebellion, the department initially branded the entire Chakastaypasin Band as “rebel,” and it acted to abolish the “tribal system” by deposing the Chiefs and councillors of “rebel tribes” and dealing directly with individuals.⁶³⁷ Chief Chakastaypasin was thereby denied recognition of his leadership and treaty annuities from 1885 to the discontinuation of the Chakastaypasin band annuity payroll in 1889.⁶³⁸ In contrast, Kahtapiskowat, or Big Head, was regarded by the department as “loyal” and a “good Indian,” and he continued to be recognized in his position as headman until his death.

By October 1889, the Indian Agent reported that “band No. 98 is now thoroughly broken up” and its members settled with other bands.⁶³⁹ By the year of Chief Chakastaypasin’s death in 1891, the department was continuing with its pursuit of the surrender of IR 98, but it deferred taking action until the lands increased in value.⁶⁴⁰ Sometime before the fall of 1895, the Minister of the Interior, T.M. Daly, instructed his Deputy Minister, A.M. Burgess, to “open correspondence with Mr. Reed

⁶³⁵ Edgar Dewdney, Indian Commissioner, to SGIA, June 19, 1885, LAC, RG 10, vol. 3714, file 21088-2 (and copy of letter, vol. 3584, file 1130) (ICC Exhibit 1, pp. 188, 193).

⁶³⁶ Hayter Reed, Assistant Indian Commissioner, to the Indian Commissioner, July 29, 1885, Glenbow Archives, Edgar Dewdney Papers, document M320, box 4, file 66, pp. 1417–18 (ICC Exhibit 18a, pp. 4–5).

⁶³⁷ Hayter Reed, Assistant Indian Commissioner, to the Indian Commissioner, July 29, 1885, Glenbow Archives, Edgar Dewdney Papers, document M320, box 4, file 66, pp. 1414–19 (ICC Exhibit 18a, pp. 1–6).

⁶³⁸ Treaty annuity paylists, Chakastaypasin Band, 1885–89, no file reference available (ICC Exhibit 12a, pp. 215–20).

⁶³⁹ R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, October 23, 1889, LAC, RG 10, vol. 3831, file 62987 (ICC Exhibit 1, p. 535).

⁶⁴⁰ [L. Vankoughnet, DSGIA], to Hayter Reed, Indian Commissioner, May 30, 1891, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 622).

[the DSGIA] as to these reserves [Chakastaypasin and Young Chipeewayan] being surrendered.”⁶⁴¹ Indian Commissioner Hayter Reed replied that, “relative to the advisability of throwing open for settlement the Reserves set apart for the Bands of Chiefs Young Chipeewayan and Chakastapasin,” and “in so much as they have all become amalgamated with or merged to other Bands,” the matter of opening up IR 98 to settlement could be accomplished by order in council – a “method preferable to an endeavour to obtain surrender.”⁶⁴²

By February 1896, Hayter Reed confirmed that the department intended to use the provisions of section 140 of the *Indian Act* to obtain control of the Chakastaypasin reserve: “[T]he Department does not propose to take any surrender of the Chakastapaysin Reserve ... and it is largely on that account that it desires to have the transfer to other Bands, by which the original owners have forfeited all rights in the Reserve set apart for them, formally completed.”⁶⁴³

From this time forward, our view of the record is clear: Indian Agent McKenzie was pressured “not to allow any evitable delay” in completing the formal transfers.⁶⁴⁴ Yet the department understood that section 140 was intended to address the situation of an individual Indian transferring to another band, and not the scheme it was seeking to undertake: the transfer of the whole band. Thus, on June 5, 1896, Indian Commissioner Forget instructed Indian Agent McKenzie, “in the absence of the customary consent of band to released members applying for transfer, which cannot in this case be procured as the whole band[,] or the remnant thereof, is being transferred,” to obtain an application from each Chakastaypasin head of family for admission into its respective host bands.⁶⁴⁵ Equally compelling is the department’s acknowledgment that, if left too long, “the more

⁶⁴¹ J. McTaggart, Dominion Lands Agent, to T. Mayne Daly, Minister of the Interior, October 12, 1895, LAC, RG 15, Series D-II-1, vol. 724, file 390906 (ICC Exhibit 1, p. 717).

⁶⁴² Hayter Reed, DSGIA, to A.M. Burgess, Deputy Minister of the Interior, November 9, 1895, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 727).

⁶⁴³ Hayter Reed, DSGIA, to A.E. Forget, Indian Commissioner, February 8, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 743).

⁶⁴⁴ Hayter Reed, DSGIA, to A.E. Forget, Indian Commissioner, April 23, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 756).

⁶⁴⁵ F. Paget, for the Indian Commissioner, to the Indian Agent, Duck Lake Agency, June 5, 1896, no file reference available (ICC Exhibit 1, p. 813).

chance there is of the present tendency to opposition developing into a pronounced refusal and this it is desired to avoid.”⁶⁴⁶

In all the dealings with the Chakastaypasin Band and its IR 98 lands, the department actively sought the “relinquishment” of “all the privileges[,] including the right to lands,” which the members of the Chakastaypasin Band had previously enjoyed by their “transfer” to other bands.⁶⁴⁷ The question of whether any surrender was truly desired by the Band, or in its best interests, was never asked or considered by department officials. In our view, the department’s only interest in IR 98 was to “break up the band” and take a surrender. Further, its only inquiries into the matter related to the means and conditions by which members could be “transferred” to other bands, thereby making it easier to obtain such a surrender. In our view, the department gave no consideration to the best interests of the Band.

Conclusion

We turn now to Issues 4 and 5, to draw our conclusion on the validity of the surrender issues:

- 4 Did Canada breach any obligation(s) which may arise under Issue 2 or 3?**
- 5 Is the effect of any breach(es) such that it invalidates the surrender of IR 98 or otherwise gives rise to a claim for damages?**

As regards the validity of surrender, we find that a surrender of IR 98 was required before the sale of these lands. On the matter of Chakastaypasin transfers into IR 100A, we find that the alleged pre-1895 and 1896 transfers of Chakastaypasin members to IR 100A must be found invalid for their failure to meet not only the minimum department requirements pre-1895, but also the statutory requirement, by section 140 of the *Indian Act*, of the consent of the receiving band – in this case the whole of the Cumberland Band, including those resident at IR 20.

⁶⁴⁶ F. Paget, for the Indian Commissioner, to the Indian Agent, Duck Lake Agency, June 5, 1896, no file reference available (ICC Exhibit 1, p. 813).

⁶⁴⁷ F. Paget, for the Indian Commissioner, to the Indian Agent, Duck Lake Agency, June 5, 1896, no file reference available (ICC Exhibit 1, p. 814).

The Crown was required by the terms of Treaty 6 and the *Indian Act* to have sought the consent of all eligible voters of the Chakastaypasin Band, and not only those members residing at IR 100A, to effect a valid surrender. Contrary to Canada's argument today, Canada was under a treaty and statutory duty to have sought the Band's informed consent to the question of extinguishing its interest in IR 98. Canada cannot rely on its prerogative to have disposed of the Band's interest in its reserve land, particularly when its interest in IR 98 was created by Treaty 6.

In our view, the terms of this treaty limit the exercise of the Crown's royal prerogative, especially where that prerogative is being exercised to deprive a band of its reserve land. As regards the surrender of land, Treaty 6 clearly states that "reserves of land or any interest therein may be sold or otherwise disposed of by Her Majesty's Government for the use and benefit of the said Indians entitled thereto, with their consent first had and obtained."⁶⁴⁸

Thus, the treaty expressly requires the consent of the band before Canada can lawfully dispose of its interest. In our view, the express language of the treaty must prevail over the exercise of the Crown's prerogative, particularly where the exercise of prerogative operates to deprive the band of its interest in its treaty reserve land without its knowledge or consent. We further accept and acknowledge that, in an exchange between Commissioner Holman and counsel for Canada during oral submissions in this inquiry, Canada admitted that Treaty 6 is a limit on the exercise of royal prerogative:

Commissioner Holman: ... You make the argument that the Crown used its prerogative right to create the reserves and it has a corollary right to take away the reserve – if I'm reading that right – and that the only limitation on the Crown's prerogative is statute. But when the Crown commits itself, as it does in a treaty, and it's spelled out in a treaty what is required for the disposition or to take away a reserve, is that not also a limitation on the Crown's prerogative?

Mr. Winogron: Absolutely.⁶⁴⁹

For these reasons, we find that the surrender of IR 98 was invalid.

⁶⁴⁸ *Treaty No. 6 between Her Majesty the Queen and the Plain and Wood Cree Indians and Other Tribes of Indians at Fort Carlton, Fort Pitt and Battle River with Adhesions* (Ottawa: Queen's Printer, 1964) (ICC Exhibit 6a).

⁶⁴⁹ ICC Transcript, May 4, 2004, p. 242, lines 18–25, and p. 243, lines 1–3 (Commissioner Holman); ICC Transcript, May 4, 2004, p. 243, line 4 (Robert Winogron).

Participation of Host Bands

The panel acknowledges that, on November 1, 2002, it invited seven other Host Bands to participate in this inquiry. As participants, some of these other Host Bands submitted evidence and made written and oral arguments on the issues defined by the James Smith Cree Nation and Canada. We believe it is important to state here, unequivocally, that this Commission was not asked to address the specific terms of the surrender agreement as it relates to these other Host Bands. In particular, we were not asked to determine whether Canada fulfilled its obligation, as per the terms of surrender, “that all moneys received from the sale thereof, shall, after deducting the usual proportion for expenses of management, be placed pro rata to our credit and that of the several Bands with whom we have become amalgamated.” Similarly, we were not asked to determine the validity of the Chakastaypasin members’ “amalgamations” to these other bands. We therefore make no findings on these issues.

ISSUES 6 AND 7: LAND DISPOSITION

We will begin our consideration of the disposal of IR 98 lands with Issue 6 and discuss it under the next four subheadings.

Issue 6

- 6 What were the obligations of Canada in disposing of IR 98 lands, including Sugar Island, according to**
- (a) Treaty 6;**
 - (b) the *Indian Act* and its Regulations; and**
 - (c) the fiduciary obligations of Canada?**

Although the parties have, by agreement, framed this issue as considering Canada’s obligations in disposing of all IR 98 lands, they disagree on Canada’s decision to limit its acceptance of its outstanding “beyond lawful obligation” to only 71 of the 114 quarter sections of land disposed of. In its partial acceptance letters of February 6, 1996, and January 19, 1998, Canada acknowledged its outstanding beyond lawful obligation regarding the 71 quarter sections that involved James Allan Smart, Frank Pedley, and William J. White, and it offered to negotiate these claims, subject to the identification of all “beneficiary bands.” In Canada’s view, it is the remaining 44 quarter sections

that are the only issue for consideration in this inquiry regarding the disposal of IR 98 lands. In Canada's written and oral submissions, it argues that the James Smith Cree Nation has tried, unsuccessfully, to argue that the purchase of 14 quarter sections by T.O. Davis should also be impugned for the same reasons as the Smart, Pedley, and White sales – transactions that were fraudulent. In Canada's view, there is no evidence that clearly demonstrates there was any fraudulent action on the part of any of the bidders on the remaining 44 sections, including those purchased by Davis. Canada relies on the findings in the Homik Report to support its position. With respect to the remaining 44 sections not purchased by Pedley, Smart, and White, Ms Homik states:

The remaining acreage was acquired by ordinary speculators and at least one local resident ... the claim does not offer any documentary evidence of governmental fraud with respect to the latter sales ... some of these other speculators paid prices in excess of the appraised value of the land they acquired. The irregularities in the tendering process ... are cited in the claim as examples of the manipulation of the sales process by three main conspirators ... notwithstanding, there is no direct documentary proof of the motivation underlying the Department's failure to adhere to the published terms of sale and the disposition of the Chakastaypasin Reserve to the purchasers other than Smith.⁶⁵⁰

Canada submits that clear evidence of fraud is required under the policy and, while the First Nation has "rightfully pointed out all of the improper transactions that occurred in the course of disposing of IR 98 ... the Crown has already conceded these actions were improper ... it has offered to negotiate these as a result of these actions."⁶⁵¹

The James Smith Cree Nation argues that, in 1898, when IR 98 was surveyed for subdivision by T.D. Green, he valued IR 98 land at \$2.00 to \$2.50 per acre. In that year, land in the same area was being sold for at least \$3.00 per acre, and there is no evidence that Surveyor Green had any experience or expertise in valuing land. In addition, JSCN argues that, with the passage of time between the alleged surrender of the land in 1897 and the first land sales in 1901, Canada had an obligation to revalue the land to ensure fair market value. Its failure to carry out this land valuation for all IR 98 lands is a breach of duty.

⁶⁵⁰ Teresa Homik, "'The Chacastapasin Claim' report prepared at the request of Specific Claims (West)," January 27, 1995 (ICC Exhibit 3b).

⁶⁵¹ ICC Transcript, May 4, 2004, p. 199, lines 9–15 (Robert Winogron).

The First Nation further argues that “Canada bungles the sale process of IR 98” numerous times. First, as regards the two proposals for the sale “en bloc” of IR 98, one from the group of Hungarian settlers in 1899 and the second by Americans J.W. Mitchell and J.C. Neeley of Iowa in 1900, Canada was prepared to sell the entire reserve, except Sugar Island, at a rate of \$1.50 per acre. When the necessary down payments did not arrive within the three months allowed, each transaction was cancelled. Today, the James Smith Cree Nation argues that Canada, charged with the duty to conduct itself as a prudent fiduciary, was obliged to have rejected these two proposals outright as being grossly unfair. It did not and, instead, was prepared to carry out the terms of these sales but for the inability of the purchasers to meet the down-payment requirements. For the First Nation, Canada was under a duty to cancel the sales and not rely on the abandonment of each deal by the prospective purchasers. For Canada, nothing today turns on these transactions, as each ultimately failed. Instead, what is required is a review of the sales that actually occurred.

When IR 98 lands were still unsold by October 1901, DSGIA Smart recommended that the reserve be sold by public tender without settlement conditions. The October 22, 1901, Order in Council granted authority “for the disposal of the Reserve upon such terms and in such manner as may be deemed advisable in the interest of the Indians.” While the correspondence exchanged immediately following the posting of the notice of sale would suggest a rather hurried attempt by government officials to close the tender process, we are unwilling to speculate on what might have occurred had the notice been posted both within a larger area and for a longer period of time. The evidence indicates what can only be described as a limited advertisement of the sale: the *Manitoba Free Press* (Winnipeg) ran advertisements four times between October 22 and 25, 1901, and six times between November 12 and 18, 1901; while *L’Echo de Manitoba* (Winnipeg) ran the notice four times, and the *Advocate* in Prince Albert ran it only once before the November 22, 1901, deadline for receipt of tenders in Ottawa. In their 1978 report, Tyler and Wright noted: “[I]t would have been impossible for someone who saw the notice on November 18, 1901 in Prince Albert to submit a tender by the advertised deadline of November 22, 1901.”⁶⁵²

All the IR 98 lands were purchased by six separate groups or individuals, four of which submitted their tenders after the official November 22, 1901, deadline. The successful purchasers

⁶⁵² Tyler and Wright, Working draft of Chacastapasin report, c. 1978 (ICC Exhibit 7, pp. 126–27).

were “J.W. Smith,” who purchased 70 quarter sections of land, or sales 1–69 and 71 (8,884.24 acres, or 59 per cent of the total land sold), for a total of \$12,554.19, or approximately \$1.44 per acre. In 1915, the Ferguson Commission revealed that the J.W. Smith tenders were actually submitted by James A. Smart (then the DSGIA and Deputy Minister of the Interior), Frank Pedley (the Superintendent of Immigration who became DSGIA in 1902), and William J. White (a Department of the Interior Immigration Inspector).⁶⁵³ Canada has admitted a beyond lawful obligation in the sale of these quarter sections and has offered to negotiate on them.

Charles Adams purchased part of a quarter section he already occupied, 36.44 acres (sale 70), for \$63.27 (or approximately \$1.75 per acre). His original tender, containing a lower offer, was at first refused and the purchase awarded to J.W. Smith. However, when T.O. Davis, the MP from Prince Albert, intervened on Adams’s behalf, J.D. McLean (then Secretary of the Department of Indian Affairs) notified Adams that he would be allowed to purchase the portion of the quarter section at the same rate as the highest tenderer.⁶⁵⁴

R.C. Macdonald of Winnipeg submitted tenders for 44 quarter sections and was successful in the purchase of 14 parcels (1,899.53 acres, or 13 per cent of the total land sold) for a total of \$3,324.19, or \$1.75 per acre. Macdonald ultimately assigned his lands to the banking company Alloway & Champion, which completed the required payments in 1906.

A.J. Adamson submitted a bulk tender for 11 quarter sections (weeks after the November 22, 1901, deadline) and was successful in the purchase of all of them (1,635.50 acres) at a rate of \$2.56 per acre.

Kenneth McDonald of Ottawa submitted separate tenders for four quarter sections (again past the November 22, 1901, deadline) and was successful in each case. He purchased 640 acres for \$1,300.00, or approximately \$2.03 per acre.

The remaining sections (sales 86–92, 108–14) were bid on by a group of 16 tenderers who submitted 24 tenders. This group included T.O. Davis, the local MP. They were successful in

⁶⁵³ Canada, House of Commons, *Debates* (April 14, 1915), 2549–80 (ICC Exhibit 1, pp. 1337, 1368).

⁶⁵⁴ W.A. Orr, Department of Indian Affairs, to the Secretary, Department of Indian Affairs, January 29, 1902, LAC, RG 10, vol. 6664, file 109A-3-17 (ICC Exhibit 1a, p. 662).

purchasing 14 parcels (or 16 quarter sections) (1,855.93 acres, or 12.5 per cent of the total) for \$4,282.06, or approximately \$2.31 per acre.

We will now turn to the consideration of the above transactions within the context of the agreed-upon issues framed by the parties.

Canada's Treaty Obligations in Disposing of IR 98

With respect to selling or disposing of reserve lands, Treaty 6 states:

Provided however, that Her Majesty reserves the right to deal with any settlers within the bounds of any lands reserved for any Band as She shall deem fit, and also that the aforesaid reserves of land, or any interest therein, may be sold or otherwise disposed of by Her Majesty's Government for the use and benefit of the said Indians entitled thereto, with their consent first had and obtained.⁶⁵⁵

Canada takes the position that "this issue [Canada's treaty obligations on surrender] does not require consideration since the surrender was unnecessary in these circumstances." It argues, further, that its position on this issue is presented "in the alternative only, without conceding that a surrender was required."⁶⁵⁶

In the alternative, then, Canada argues that

Treaty 6 provides that a reserve may be sold or disposed of, for the benefit of the 'said Indians entitled thereto,' with their consent. This provision does not create obligations on the part of the Crown that are different than any obligations which may have been imposed by the *Indian Act* at the time of the 1897 surrender. There are no obligations in the treaties which are separate or different than what was contained in the *Indian Act*. As such, the *Indian Act* governs the obligations of the Crown in the disposition of Indian lands.⁶⁵⁷

Further, in Canada's view, "the only allegation the First Nation makes with respect to Treaty 6 is that Canada assumed responsibility for the sale of reserve lands, and that the best method of sale for

⁶⁵⁵ *Treaty No. 6 between Her Majesty the Queen and the Plain and Wood Cree Indians and Other Tribes of Indians at Fort Carlton, Fort Pitt and Battle River with Adhesions* (Ottawa: Queen's Printer, 1964) (ICC Exhibit 6a).

⁶⁵⁶ Written Submissions on Behalf of the Government of Canada, February 2, 2004, p. 74, para. 164.

⁶⁵⁷ Written Submissions on Behalf of the Government of Canada, February 2, 2004, p. 75, para. 168.

IR 98 would be to follow the *Indian Act* regulations.”⁶⁵⁸ Canada ultimately rejects the applicability of these regulations to the sale of IR 98 lands in its consideration of its statutory obligations under the *Indian Act*.

The James Smith Cree Nation argues that, as a signatory to Treaty 6, Canada assumed responsibility for the sale of reserve land, once surrendered, and agreed that such sales would be conducted for the “use and benefit of the said Indian entitled thereto.” Thus, “Canada’s unequivocal duty was to obtain the most favourable terms for the sales of the surrendered lands.” Further, Canada was required to sell IR 98 for no less than fair market value. In its view, the best method of sale “would have been to follow the *Indian Act* regulations on land sales. When Canada accepted prices below fair market value and did not follow the *Indian Act* regulations on land sales, it breached its treaty obligations as it was not conducting the sales for the ‘use and benefit’ of the Band,” nor was Canada seeking to obtain “the most favourable terms for the sales of the surrendered lands.”⁶⁵⁹

In our view, a treaty right gives rise to a separate lawful obligation of the Crown. A treaty right does not owe its existence to the *Indian Act*. While the surrender and sale provisions of the *Indian Act* give expression to the procedural rights of an Indian band to be consulted with by the Crown, this statutory expression of consent may be subject to change over time. In contrast, a treaty right is today a constitutional right, protected by section 35 of the *Constitution Act, 1982*, and cannot be infringed upon except by the clearest intent. Thus, we cannot accept Canada’s argument that fulfilling its statutory obligation defined by the *Indian Act* will, as a consequence, address its obligations arising under treaty. Canada cannot limit its analysis to the *Indian Act* and ignore the treaty, simply because they are different obligations.

Under treaty, Canada had an obligation to seek and obtain the Chakastaypasin Band’s consent to the surrender of its lands. Once given, Canada has a general treaty right obligation to sell the land for its “use and benefit.” We interpret “use and benefit” to mean an obligation, as fiduciary, to act as a prudent fiduciary when disposing of the land by sale and to maximize the Band’s benefit.

⁶⁵⁸ Written Submissions on Behalf of the Government of Canada, February 2, 2004, p. 76, para. 170.

⁶⁵⁹ Written Submissions on Behalf of the Chakastaypasin Cree Nation, November 7, 2003, pp. 238–39, para. 639–45.

Canada's Statutory Obligations under the Indian Act

Canada accepts that the *Indian Act Regulations* are set out in Order in Council 1787, dated September 15, 1888, and provided the following:

- Any one purchaser could not purchase more than one quarter section;
- One-fifth of the purchase price was to be paid at date of sale, with the balance in four equal annual consecutive instalments with interest at 6%;
- The purchaser had to settle on the land bought. More specifically, within 6 months from the date of sale, the purchaser had to occupy and improve the land and continue to do so for three years, during which time certain improvements had to be made;
- No timber was to be cleared before a Crown patent was issued, except under licence; and
- Any violations of these conditions would result in the land and any moneys paid to date to be forfeited by order of the SGIA.⁶⁶⁰

These regulations, in Canada's view, were a lawful exercise of power given to the Governor in Council by section 41 of the *Indian Act*. Section 41 of the 1886 *Indian Act* provides:

41. All Indian lands, which are reserves or portions of reserves, surrendered or to be surrendered to Her Majesty, shall be deemed to be held for the same purpose as before the passing of this Act and shall be managed, leased and sold as the Governor in Council directs, subject to the conditions of surrender and the provisions of this Act.

It is Canada's position that section 41 of the *Indian Act* authorized the Governor in Council to create the *Indian Land Regulations* and gave it the authority to "direct" otherwise in a specific situation. In this case, Canada argues, the Governor in Council had the authority to direct that IR 98 be sold on terms different from those specified in the 1888 *Land Regulations*.⁶⁶¹ Such a direction was specified in the Order in Council dated October 22, 1901, which stated: "IR 98 was to be disposed of upon such terms and in such manner as may be deemed advisable in the interests of the

⁶⁶⁰ Written Submissions on Behalf of the Government of Canada, February 2, 2004, pp. 76–77, para. 173.

⁶⁶¹ Written Submissions on Behalf of the Government of Canada, February 2, 2004, p. 79, para. 178.

Indians.”⁶⁶² The effect of this 1901 Order in Council, Canada argues, was to override the 1888 *Land Regulations*.

In its written submission, the First Nation does not address the matter of the 1901 Order in Council overriding the *Indian Land Regulations* and the Orders in Council dated October 26, 1887, and September 15, 1888, and instead argues that “selling the land pursuant to the Regulations was the best method for achieving the best terms for Chakastaypasin ... When Canada failed to sell under the Regulations, it breached its obligation and invalidated the sales.”⁶⁶³

In our view, the legal maxim *generalia specialibus non derogant* must apply here. In *Lalonde v. Sun Life Assurance Co. of Canada*, the Supreme Court of Canada considered the interpretation to be given the *Insurance Act*, a general statute, which on its face appeared to derogate from the *Husbands and Parents Life Insurance Act*, a special statute, in determining the validity of a husband’s revocation of wife as a beneficiary. The Court applied the maxim to give precedence to the special Act. Mr Justice Gonthier for the Court said:

The principle is, therefore, that where there are provisions in a special Act and in a general Act on the same subject which are inconsistent, if the special Act gives a complete rule on the subject, the expression of the rule acts as an exception to the subject-matter of the rule from the general Act ...⁶⁶⁴

In this inquiry, we view the 1888 *Indian Land Regulations* to be of general application. The October 22, 1901, Order in Council, however, is a specific expression of the Governor in Council’s intention as regards the disposition of IR 98 on behalf of the Chakastaypasin Band. Thus, the 1901 Order in Council accepting the surrender and directing that “IR 98 was to be disposed of upon such terms and in such manner as may be deemed advisable in the interests of the Indians” – an order that was a more particular expression of the administration of the sale of IR 98 lands than the more general 1888 *Indian Land Regulations* – must override the regulations.

⁶⁶² Written Submissions on Behalf of the Government of Canada, February 2, 2004, p. 79, para. 179, and ICC Exhibit 1, p. 1124.

⁶⁶³ Written Submissions on Behalf of the Chakastaypasin Cree Nation, November 7, 2003, p. 241, para. 652.

⁶⁶⁴ *Lalonde v. Sun Life Assurance Co. of Canada*, [1992] 3 SCR 261 at 278–79.

The Crown’s Fiduciary Obligations in Disposing of IR 98

Canada accepts that, upon surrender, the Crown’s fiduciary obligation “is to deal with the surrendered land for the benefit of the Indians” – an obligation defined by the Supreme Court of Canada in both *Guerin* and *Blueberry River Indian Band v. Canada (“Apsassin”)*. Canada submits that, upon surrender, “the Crown has a fiduciary obligation to fulfill the terms of the surrender, and if that was not possible, to advise the band and consult with them about alternative ways to proceed.”⁶⁶⁵ Further, Canada defines the standard of care which the Crown must meet in fulfilling its fiduciary obligations by adopting the standard defined by Madam Justice McLachlin in *Apsassin*: “The duty on the Crown as fiduciary was ‘that of a man of ordinary prudence in managing his own affairs.’”⁶⁶⁶ In this case, Canada submits that “this standard of care can be expressed as a duty to take reasonable care to obtain fair market value for the lands in a timely fashion.”⁶⁶⁷

In its written submission, the First Nation accepts the definition of the Crown’s standard of care defined by Madam Justice McLachlin and argues that “Canada assumed a greater fiduciary responsibility with regard to the surrender of Chakastaypasin land when it inserted language in the surrender document that Canada could sell and distribute the sale proceeds unconditionally. No terms or prices are set. Canada has assumed an unconditional responsibility to justly sell the surrendered land.”⁶⁶⁸

Under statute, Canada has an obligation, pursuant to section 41 of the *Indian Act*, to exercise its discretion granted by this section as a prudent fiduciary. As we stated in the previous section of this report, the 1901 Order in Council, authorized by section 41 of the *Indian Act*, was a more specific expression of the administration of the sale of IR 98 than the 1888 *Indian Land Regulations*. As a fiduciary, Canada has an obligation to sell reserve lands, once surrendered, for a reasonable price on the facts of each case.

⁶⁶⁵ Written Submissions on Behalf of the Government of Canada, February 2, 2004, p. 80, para. 182.

⁶⁶⁶ Written Submissions on Behalf of the Government of Canada, February 2, 2004, pp. 80–81, para.183, and *Apsassin*, para. 104, quoting *Fales v. Canada Permanent Trust Co.*, [1977] 2 SCR 302 at 315.

⁶⁶⁷ Written Submissions on Behalf of the Government of Canada, February 2, 2004, p. 81, para. 183.

⁶⁶⁸ Written Submissions on Behalf of the Chakastaypasin Cree Nation, November 7, 2003, p. 242, paras. 655–56.

In addition, Canada has an obligation, in administering the sale of reserve land, to ensure its compliance with section 110 of the *Indian Act*. As such, this compliance will require diligent oversight of the conduct of those Crown employees acting as “agent for the sale of Indian lands.” Where such agents act to contravene section 110, such sales shall be void.

Conclusion

In our view, when disposing of IR 98 lands, Canada had a treaty obligation to sell the land for the “use and benefit” of the Chakastaypasin Band – an obligation we interpret to mean to act as a prudent fiduciary to maximize the Band’s benefit. Further, Canada had a statutory obligation, pursuant to section 41 of the *Indian Act*, to exercise its discretion granted by this section as a prudent fiduciary – an obligation that, likewise, created a fiduciary obligation to sell reserve lands, once surrendered, for a reasonable price. In addition, Canada had a statutory duty to ensure the compliance of its agents to section 110 of the *Indian Act*, and, where the conduct of these agents contravened section 110, such sales would be void. Finally, both the treaty and the statutory obligations should have triggered a fiduciary obligation upon the Crown to manage the sale of reserve lands as a prudent fiduciary.

We will now go on to Issue 7 in our consideration of the disposal of IR 98 lands, and we will discuss it under four subheadings:

Issue 7

- 7 Did Canada, having accepted as a validated claim that it breached its beyond lawful obligation to legally sell 71 quarters of IR 98, breach any further obligation which may arise under Issue 6 concerning the sale of IR 98, including Sugar Island? In considering this issue the parties agree to address the following:**
- (a) the application of the *Indian Land Regulations*;**
 - (b) allegations regarding the manipulation of the land tendering process;**
 - (c) allegations of fraud as regards the remaining 44 quarter sections that Canada asserts were legally sold and for which Canada has not accepted a validated claim; and**
 - (d) the actions of Canada in the administration of the sales of the land.**

Fair Market Value

The First Nation argues in its written submissions that the sale of IR 98 lands did not begin until four and a half years after the alleged surrender. At the time of the land sales, the First Nation argues, the land values had increased, and not decreased, as evidenced by the valuation assigned to IR 100A lands in 1902 at \$5.00 per acre. In the First Nation’s submission, IR 100A land “is no better than Chakastaypasin’s land.”⁶⁶⁹ In the First Nation’s view, Canada had an obligation, four and a half years after the surrender, “to determine if the prices being offered by tender were fair.”⁶⁷⁰

Canada’s confirming research report explains that Surveyor T.D. Green was given the job of assessing the value of IR 98 land. The research report says that, in 1898, “he [T.D. Green] stated that Dominion Lands in the area were priced at \$3.00 per acre. Generally he priced the quarter sections at \$2.00 per acre and those fronting on the river at \$2.50 per acre. The land on Sugar Island was similarly priced. The reduced figure was expected to hasten the disposal of the land.”⁶⁷¹ The First Nation argues that, “when it was finally decided to tender the land for sale in 1901, Canada had an obligation to appraise the land again to determine fair value at the time.”⁶⁷² The First Nation submits that “the tenders which were received were all below the appraised value of 1897.”⁶⁷³

In response to this argument, a review of the historical records, as well as the research reports prepared by T. Homik and Public History Inc., indicate that in 29 of the 44 quarter sections that remain at issue, speculators paid prices within the appraised value of the land they acquired.

⁶⁶⁹ ICC Transcript, May 4, 2004, p. 94, lines 7–11 (William Selnes).

⁶⁷⁰ ICC Transcript, May 4, 2004, p. 97, lines 10–13 (William Selnes).

⁶⁷¹ Canada's confirming Research – 1985 “Memo: R.M. Connelly, Director, Specific Claims, Office of Native Claims, to Mary Temple, Legal Services, Department of Justice, re: Chacastapasin Claims Submission, 20 June 1985, with appendices”: see Appendix C: Chacastapasin Claim Submission (ICC Exhibit 3a, p. 28).

⁶⁷² Written Submissions on Behalf of the Chakastaypasin Cree Nation, November 7, 2003, p. 248, para. 679.

⁶⁷³ Written Submissions on Behalf of the Chakastaypasin Cree Nation, November 7, 2003, p. 249, para. 680.

The First Nation further argues that the two *en bloc* offers involving, first, the Hungarian group and, second, the Americans Mitchell and Neeley should have been rejected outright by the Crown, acting as a prudent fiduciary, for each offer “was far below market value.”⁶⁷⁴

In considering the First Nation’s arguments regarding the *en bloc* offers, we are mindful of the fact that neither of these transactions came to fruition. It is, in our view, too speculative to attribute any wrongdoing to Canada’s conduct regarding these transactions, and, instead, we believe our focus must remain on the sales that were actually made of IR 98 lands. In this regard, based on the evidence, we find Canada in breach of its treaty, statutory, and fiduciary duties for accepting tenders on the sections of land sold to Charles Adams, R.A. Macdonald, and “J.W.Smith” – all sales that fell below the appraised value of \$2.00 to \$2.50 assigned by Surveyor Green in 1897.

Tendering

The First Nation has argued a number of procedural irregularities with Canada’s handling of the tendering process. These irregularities include limiting the advertising of the sale; setting terms of sale different from the minimum requirements of the 1888 *Indian Land Regulations*; and delivering tenders to DSGIA Frank Pedley, and not Secretary McLean. Further, the First Nation argues that, without these irregularities, the tendering process would have resulted in a greater benefit to the First Nation. Based upon the evidentiary record in this inquiry, we have reviewed all tenders (accepted and rejected) for the IR 98 land sales. The evidence reveals that the highest offers were accepted for all sales, and we have addressed in the previous section our view of Canada’s obligation in accepting bids that fell below fair market value. As regards the tendering process itself, it would be, in our view, too speculative to conclude that, had Canada altered any one of the above-described “irregularities,” such changes would have resulted in a better outcome for the First Nation.

Fraud

It is Canada’s position that, “with the exception of that portion of the sales for which we have acknowledged a ‘beyond lawful obligation’ on the basis of fraud by Crown employees, it is our view

⁶⁷⁴ Written Submissions on Behalf of the Chakastaypasin Cree Nation, November 7, 2003, pp. 243–44, paras. 662–72.

that the sale of the lands was conducted in the best interest of the beneficiaries.”⁶⁷⁵ Canada submits that, “although there were some minor procedural irregularities in the land-tendering process, it nevertheless resulted in the purchase of 44 quarter sections by the highest bidders. This result was in the beneficiaries’ best interests ... procedural irregularities, in and of themselves, do not amount to a breach of fiduciary obligation.”⁶⁷⁶ More specifically, “the allegations of fraud against Mr. Davis, a Member of Parliament, do not give rise to any obligation on Canada. As a Member of Parliament, T.O. Davis was holder of an office. He was not a Crown employee or agent.”⁶⁷⁷ In any event, Canada submits that “there is little, if any, evidence of any arrangement of T.O. Davis to engage in fraud.”⁶⁷⁸

The First Nation argues that, “while Canada has agreed that it breached its duties to Chakastaypasin members when officials purchased 71 quarters of the reserve, it has not acknowledged that it was equally wrong to sell the rest of the reserve for unfair prices.”⁶⁷⁹ Further, “Canada cannot excuse itself from responsibility by saying there may have been no law or policy against a Member of Parliament participating in a reserve purchase; there are laws against participation of any individual in fraudulent, deceitful, and corrupt ways, particularly when this involves conspiracy with very senior public officials.”⁶⁸⁰

The First Nation has alleged that T.O. Davis fraudulently acquired land on IR 98 by using a consortium of individuals to purchase the land and, subsequently, assign their interest to him. As set out in the historical portion of this report, we have carefully reviewed the historical record as it relates to the tenders submitted by the “Davis group.” During the course of this inquiry, the Specific Claims Branch contracted Public History Inc. to conduct additional research to “search for any evidence of a ‘grand scheme orchestrated by T.O. Davis’ to acquire surrendered land on

⁶⁷⁵ Written Submissions on Behalf of the Government of Canada, February 2, 2004, p. 82, para. 185.

⁶⁷⁶ Written Submissions on Behalf of the Government of Canada, February 2, 2004, p. 85, para. 193.

⁶⁷⁷ Written Submissions on Behalf of the Government of Canada, February 2, 2004, p. 95, para. 230.

⁶⁷⁸ Written Submissions on Behalf of the Government of Canada, February 2, 2004, p. 96, para. 232.

⁶⁷⁹ Written Submissions on Behalf of the Chakastaypasin Cree Nation, November 7, 2003, p. 251, para. 688.

⁶⁸⁰ Written Submissions on Behalf of the Chakastaypasin Cree Nation, November 7, 2003, p. 253, para. 702.

Chakastaypasin IR 98”; determine what T.O. Davis had done with the land he acquired on IR 98; and try to determine whether the department had guidelines regarding the sale and purchase of Indian lands.⁶⁸¹ This report found that there is insufficient evidence to conclude that Davis’s actions were fraudulent. The report was provided to the First Nation for review and comment, and, in response, it produced a research report prepared by Four Arrows. However, the Four Arrows report limited its focus on the role of T.O. Davis in the IR 100A surrender and sale, and it is therefore of little assistance in this case.

The fact that the Davis group purchased 16 of the quarter sections tendered for does not in and of itself establish any wrongdoing. As a matter of law, a Member of Parliament is not an employee or agent of the federal government. Further, the First Nation has not submitted any case law or authority to counter this view. The fact that T.O. Davis was a sitting MP and part of a group to submit tenders on IR 98 lands is not proof of fraud. Unlike the facts that implicate Smart, Pedley, and White, a situation investigated by the 1915 Ferguson Commission, the facts in this case do not support a finding of fraud on the part of T.O. Davis. That he was involved and likely knew the other actors involved does not make him guilty by association, as the First Nation would have us conclude. The evidence reveals that the Davis group submitted 10 tenders on November 8, 1901, before the close of sale, and the department accepted seven of them as successful bids. A second group of tenders was submitted on November 26, 1901, after the closing date, for seven quarter sections. A final set of tenders was made out for an additional seven quarters on November 27, 1901, again after the closing date. Of the 14 tenders submitted on November 26 and 27, J.D. McLean wrote to T.O. Davis, informing him that eight of the tenders “submitted by you” had been accepted.⁶⁸² The evidence further indicates that each accepted tender either met or exceeded the value of the land (estimated at \$2.00 to \$2.50 per acre by Surveyor T.D. Green in 1898). Public History Inc. determined that “the available records provide no clear indication as to whether this group acted as a consortium. It is clear, however, from a review of the land sales records that not all of these

⁶⁸¹ Public History Inc., “Research on ‘Davis Group’ and ‘Prendergast Group’: Final Historical Report,” with documents, prepared for Specific Claims Branch, DIAND, November 2000 (ICC Exhibit 11b, pp. i-ii).

⁶⁸² J.D. McLean, Secretary, Department of Indian Affairs, to T.O. Davis, MP, December 20, 1901, LAC, RG 10, vol. 6664, file 109A-3-16 (ICC Exhibit 1a, p. 858).

individuals assigned their interests to T.O. Davis. Of the 11 individuals identified as part of the ‘Davis group,’ only 5 actually assigned their interests to T.O. Davis,” and it is “not clear why [they] assigned their interests to T.O. Davis less than one month after submitting their tenders. However, a schedule of tenders for lands on Chacastapaysin IR 98 prepared circa 1902 indicates that Davis submitted his own tender for two quarter sections, neither of which was accepted by the Department as Davis failed to submit the highest price. In our view, Mr. Davis’s transactions were conducted overtly at all times, using his own name in the tenders submitted[,] and it appears that Davis simply wanted to purchase land on Chacastapaysin IR 98, whether by purchasing directly from the Department of Indian Affairs or from third parties.”⁶⁸³

Conclusion

On the totality of evidence put before us, we find Canada in breach of its treaty, statutory, and fiduciary duties in its disposition of IR 98 lands and conclude that Canada owes an outstanding lawful obligation for the breach of these duties. As regards Canada’s beyond lawful obligation, we cannot conclude that a fraud was perpetrated outside the transactions that Canada has admitted with respect to “J.W. Smith.”

ISSUES 8–12: SUGAR ISLAND

During the course of this inquiry, on March 31, 2003, Canada accepted the argument that it has breached its lawful obligations to the First Nation following the surrender of Sugar Island, thereby rendering the consideration of Issues 10 to 12 moot.⁶⁸⁴ With Canada’s acceptance, the only issues that remain for inquiry are Issues 8 and 9, which concern Canada’s pre-surrender obligations, if any.

⁶⁸³ Public History Inc., “Research on ‘Davis Group’ and ‘Prendergast Group’: Final Historical Report,” with documents, prepared for Specific Claims Branch, DIAND, November 2000 (ICC Exhibit 11b, pp. 17–18).

⁶⁸⁴ Robert D. Nault, Minister of Indian Affairs and Northern Development, to Chief Sol Sanderson, Chief Walter Constant, and Chief Delbert Brittain, James Smith Cree Nation, March 31, 2003 (ICC Exhibit 4e, p. 1).

- 8 What obligations did Canada have regarding Sugar Island prior to the alleged surrender of 1897? and**
- 9 Did Canada breach these obligations?**

We shall now turn to our analysis of Canada's pre-surrender obligations regarding Sugar Island.

Issue 8 Pre-Surrender Obligations

Treaty Obligations

Counsel for Canada and counsel for the James Smith Cree Nation direct the panel to consider two separate passages of Treaty 6 in considering whether Canada had a positive duty to keep IR 98, and specifically Sugar Island, secure for the Chakastaypasin Band.

Counsel for Canada highlighted the following section of Treaty 6:

And Her Majesty the Queen hereby agrees and undertakes to lay aside reserves for farming lands, due respect being had to lands at present cultivated by the said Indians, and other reserves for the benefit of the said Indians, *to be administered and dealt with* for them by Her Majesty's Government of the Dominion of Canada ... [Emphasis Canada's.]

Arguing that this section "may have some bearing on the issue," Canada submits that "the JSCN has not offered any evidence with respect to the negotiations of the treaty or the historical context which could shed any light on how the phrase 'to be administered and dealt with' should be interpreted nor have they made any submissions that the treaty includes some oral terms, implicit or explicit, regarding protection of reserves."⁶⁸⁵ Further, "Treaty 6 does not address the issue of the protection of reserve lands. The Crown's obligations with respect to reserves pursuant to Treaty 6 was limited to establishing them, dealing with settlers within their boundaries, and selling or disposing of surrendered reserve lands. The Crown had no obligation under Treaty 6 to protect reserve lands prior to surrender."⁶⁸⁶

Counsel for the First Nation quoted the section of Treaty 6 that addresses sale or disposition:

⁶⁸⁵ Written Submissions on Behalf of the Government of Canada, February 2, 2004, p. 106, para. 267.

⁶⁸⁶ Written Submissions on Behalf of the Government of Canada, February 2, 2004, p. 107, para. 269.

Provided[,] however, that Her Majesty reserves the right to deal with any settlers within the bounds of any lands reserved for any Band as She shall deem fit, and also that the aforesaid reserves of land, or any interest therein, may be sold or otherwise disposed of by Her Majesty's Government for the use and benefit of the said Indians entitled thereto, with their consent first had and obtained.

The First Nation argued that, “when Canada allowed squatters, trespassers, thieves and looters to descend upon Sugar Island through Canada’s indifference, Canada was not disposing of the reserve for the use and benefit of the Chakastaypasin Band.”⁶⁸⁷

In our view, the language of Treaty 6, “to be administered and dealt with for them by Her Majesty’s Government,” is a trigger on the Crown and creates a fiduciary obligation to act as a prudent fiduciary in administering the IR 98 lands on behalf of the Chakastaypasin Band. In *Wewayakum*, Mr Justice Binnie for the Supreme Court of Canada stated, “once a reserve is created, the content of the fiduciary duty [of the Crown] expands to include the protection and preservation of the Band’s interest from exploitation.”⁶⁸⁸ Thus, the authority that the Crown reserves to itself in Treaty 6 to “administer” reserve lands creates a fiduciary obligation from which it derives a duty to act as a prudent fiduciary. Further, the Crown also reserves to itself in Treaty 6 the right to “deal with” reserve lands. This right is another discretionary authority that gives rights to the Crown to “deal with” settlers on reserve lands as it deems fit. It is necessary, in acting as a fiduciary, to give expression to this right. Thus, to permit settlers to trespass on reserve lands set aside under treaty is a breach of treaty and a breach of the fiduciary obligation that derives from treaty.

Statutory Obligations

Canada submits that, during the pre-surrender period, 1878–97, there were three main aspects to the relevant *Indian Act* regarding timber on reserve: a prohibition against trespass on reserves by “cutting, carrying away or removing therefrom any of the trees, saplings, shrubs, underwood, timber

⁶⁸⁷ Written Submissions on Behalf of the Chakastaypasin Cree Nation, November 7, 2003, p. 280, paras. 786–88.

⁶⁸⁸ *Wewayakum Indian Band v. Canada*, [2002] 4 SCR 245.

of hay thereon”; the granting of licences to cut timber on reserves and penalties for failure to obtain such licence; and trespass to maple trees on reserves.⁶⁸⁹

Canada argues that while these aspects are present in the Act, all sections are “silent with respect to the imposition of an obligation or duty to perform any positive action with respect to the protection or preservation of reserve lands or the timber thereon ... Absent a statutorily imposed duty, the Crown had discretion regarding enforcement. The Crown did not have any statutory duty to enforce these provisions and had no obligation to exercise its discretion to enforce.”⁶⁹⁰

The First Nation, in contrast, argues that these sections were “the statutory embodiment of the treaty commitment to keep the reserve for the use and benefit of the Indians entitled to that reserve.” Further, because “only Canada could enforce the provisions of the Act, the Bands were dependent on Canada taking action against any who breach the *Indian Act*.” Thus, “when Canada allowed the continuing trespasses and theft of timber of Sugar Island, it was sanctioning breaches of the legislation it had enacted to protect the reserves.”⁶⁹¹

In our view, because the Act prohibits trespass, directs a penalty for failure to obtain the proper licence to cut timber, and creates a discretion within the Crown to grant such licences, the fact that the Crown did not exercise its discretion to protect IR 98 lands and resources is a breach of its statutory obligation. We therefore agree with the First Nation’s characterization that, “when Canada allowed the continuing trespasses and theft of timber of Sugar Island, it was sanctioning breaches of the legislation it had enacted to protect the reserve.” In failing to act, and thereby permitting the removal of timber resources from IR 98, the Crown also failed to act as a prudent fiduciary.

⁶⁸⁹ Written Submissions on Behalf of the Government of Canada, February 2, 2004, pp. 107–8, paras. 271–73.

⁶⁹⁰ Written Submissions on Behalf of the Government of Canada, February 2, 2004, p. 109, para. 274.

⁶⁹¹ Written Submissions on Behalf of the Chakastaypasin Cree Nation, November 7, 2003, p. 286, paras. 790–94.

Fiduciary Obligations

Canada submits that “there is no case law which establishes that there is a general fiduciary duty on the part of the Crown to protect Indian lands.”⁶⁹² Rather, in order for a fiduciary duty to arise, Canada argues, there must first occur some triggering event: either the fiduciary has the unilateral power or discretion to affect the beneficiary who is thereby made vulnerable to the exercise of the fiduciary’s discretion or power, or, by statute, agreement, or conduct of the Crown, the First Nation has a reasonable expectation that the Crown will act in a fiduciary capacity.⁶⁹³

With respect to the power/vulnerability approach, Canada argues that “the Crown had the power to try and enforce the provisions of the *Indian Act* which prohibited unauthorized cutting of timber on Sugar Island; however this power was not unilateral or exclusive.”⁶⁹⁴ In Canada’s view,

the Indians could have taken practical steps to protect the timber themselves by occupying the reserve or monitoring the area, or they could have sought to cut it themselves and reap the profits. They could also have made complaints of trespass themselves, or with the further assistance of appropriate Crown personnel, i.e. farm instructor, Indian Agent. There is no evidence that any of these steps were taken nor is there evidence of any further complaint by the Band.⁶⁹⁵

Finally, Canada argues that the “JSCN has not identified in its submission any statute, agreement, course of conduct or unilateral undertaking on the part of the Crown that would give rise to a reasonable expectation on the part of the First Nation that the Crown would act in a fiduciary capacity with respect to protecting and/or preserving the timber on Sugar Island.”⁶⁹⁶

⁶⁹² Written Submissions on Behalf of the Government of Canada, February 2, 2004, p. 109, para. 276.

⁶⁹³ Written Submissions on Behalf of the Government of Canada, February 2, 2004, p. 110, paras. 277–78; p. 111, paras. 280–82.

⁶⁹⁴ Written Submissions on Behalf of the Government of Canada, February 2, 2004, p. 111, para. 282.

⁶⁹⁵ Written Submissions on Behalf of the Government of Canada, February 2, 2004, p. 112, para. 284.

⁶⁹⁶ Written Submissions on Behalf of the Government of Canada, February 2, 2004, p. 113, para. 287.

In contrast, the First Nation argues that “Chakastaypasin members could not protect their reserve. They were told they had no interest in their reserve. They were dependent on Canada.”⁶⁹⁷ The First Nation points in evidence to farming instructor Harry Loucks’s account of Chief Chakastaypasin’s complaint in the spring of 1882 “that the settlers in the Halcro Settlement were stealing their timber from the island.” The farming instructor “was requested to investigate and report to the Agent as to this complaint.” He reported:

After a careful and thorough search into the whole matter, the writer found that practically every settler in the Halcro Settlement had taken some timber from the island, and reported accordingly to the Agent. As a result of this investigation, every settler in the District mentioned was summoned to appear before Judge Richardson sitting in Prince Albert in June 1882. The writer, as farm instructor, and the Indians of the Reserve, were the complainants. When the case came up, Judge Richardson dismissed the criminal action, and not as a civil case.

The Government authorities took no further interest in the matter and as a result, there was great dissatisfaction among the band on this Reserve. ...

Here again came in the *difficulty of making the Indians understand the technicalities and fine points of the white man’s law. They had been assured when they made their treaty with the great white Queen through her representatives that the land within their Reserve and all that grew upon it would be theirs “while the grass grew and water run,” yet on this first opportunity that the white men had to defend the rights of the Indian against his fellow white, he failed lamentably to fulfil his obligations.*⁶⁹⁸

That the Crown understood the need to protect the valuable timber resource found at Sugar Island for the use and benefit of the Chakastaypasin Band is highlighted by Acting Commissioner Hayter Reed’s letter to Superintendent General John A. Macdonald in 1884, where he writes: “[T]hese islands are well covered with timber, which being scarce in their vicinity, are being encroached upon by white settlers ... I would respectfully urge that they be set aside for the benefit

⁶⁹⁷ Written Submissions on Behalf of the Chakastaypasin Cree Nation, November 7, 2003, p. 288, para. 801.

⁶⁹⁸ Written Submissions on Behalf of the Chakastaypasin Cree Nation, November 7, 2003, p. 264, para. 743, quoting ICC Exhibit 10, pp. 52–53. Emphasis added.

of the Indians, not only to meet their own wants, but as a means under a discriminating disposal of the timber under the *Indian Act*, to their future benefit.”⁶⁹⁹

The First Nation further points in evidence to the department’s awareness of the scarcity of timber in the area and its decision, once “the Indians have sufficient timber,” to open up other nearby islands so that “the public generally should have the benefit of any surplus over and above what the Indians actually require.”⁷⁰⁰ By 1894, the department was made aware of “the wholesale slaughter of logs which are cut year by year without permit,” and, in response, Indian Agent McKenzie was instructed “to post some notices on the island and in the vicinity.”⁷⁰¹ Finally, as late as April 1897, the department, while prepared to consider the action of cutting timber on Sugar Island as “trespass,” did not take action and, instead, trusted that the “chief offender” of trespass, Mr Gordon, “will aid the Department in the matter of preserving the timber by exercising more care in purchasing from trespassers.”⁷⁰²

Based on the totality of evidence, the First Nation argues that “a prudent fiduciary would not allow an asset to be used and abused while under the control of the fiduciary.” Further, it states, Canada recognized its responsibility and authority over the reserve, but took no action to protect the reserve.⁷⁰³

In our view, the Crown confuses the characterization of its unilateral or exclusive power. The fact that the First Nation has some other recourse available to it does not negate the Crown’s fiduciary duty. It is the existence of a discretionary power within the Crown, and the exercise of this discretion unilaterally, that gives rise to the fiduciary duty. Thus, the question becomes: Did the

⁶⁹⁹ Written Submissions on Behalf of the Chakastaypasin Cree Nation, November 7, 2003, p. 266, para. 745, quoting ICC Exhibit 10, p. 56.

⁷⁰⁰ Written Submissions on Behalf of the Chakastaypasin Cree Nation, November 7, 2003, p. 266, para. 746.

⁷⁰¹ Written Submissions on Behalf of the Chakastaypasin Cree Nation, November 7, 2003, p. 267, para. 749.

⁷⁰² Written Submissions on Behalf of the Chakastaypasin Cree Nation, November 7, 2003, p. 273, para. 760.

⁷⁰³ Written Submissions on Behalf of the Chakastaypasin Cree Nation, November 7, 2003, p. 288, paras. 803–4.

Crown exercise its discretion to protect the First Nation's reserve lands? On the evidence, clearly the answer is no. For nearly 20 years, Canada permitted the continuing trespass to IR 98 lands and resources that put it in breach of its fiduciary duty.

In conclusion, we find that there were treaty, statutory, and fiduciary duties owed and breached by Canada which, today, give rise to outstanding lawful obligations.

PART V
CONCLUSIONS AND RECOMMENDATION

Based on the totality of the evidence, we find, first, that a surrender of IR 98 was required before Canada could lawfully dispose of these reserve lands. In our view, there were no valid transfers of Chakastaypasin members into IR 100A at any relevant point in time. Before the introduction of section 140 of the *Indian Act* in 1895, something more than the administrative documents used by the Department of Indian Affairs to distribute treaty annuity payments is required as proof of transfer. After the introduction of section 140, a valid transfer required the consent of the receiving band. In this case, the 27 Chakastaypasin individuals and families, including Big Head, required the consent of the whole of the Cumberland Band, including those resident at IR 20, as the receiving band at IR 100A. This consent of the Cumberland Band was neither sought nor obtained by Canada.

Secondly, we find the surrender that Canada sought to be invalid. We are not satisfied, on the face of the June 23, 1897, surrender, to rely on the expression of nine signatories at IR 100A as providing consent for the whole of the Chakastaypasin Band. In our view, on the basis of *Snake v. The Queen*, even if members had dispersed to other bands and there is no compelling proof of their transfer, Canada is under a duty to seek the members' consent to surrender, and it cannot rely on its prerogative power to take control of the reserve lands. In this case, there is no evidence of the department's effort to seek the consent of Chakastaypasin members residing in several locations other than IR 100A, even though it was aware of these locations before the alleged June 23, 1897, vote. Finally, the evidence leads us to conclude that any "intention to surrender" shown by some members of the Band was single-handedly created and pursued by the Crown following the North-West Rebellion in 1885, and the action of giving effect to the Band's intention was, in our view, contrived at best.

Thus, with regard to the validity of surrender issues in this inquiry, we find Canada in breach of its treaty, statutory, and fiduciary obligations for its failure to have sought and obtained the consent of the whole of the Chakastaypasin Band to the surrender of IR 98.

With regard to the disposition of IR 98, Canada has a treaty obligation to sell the land for the "use and benefit" of the Chakastaypasin Band – an obligation we interpret to mean to act as a prudent fiduciary to maximize the Band's benefit. Further, Canada has a statutory obligation, pursuant to section 41 of the *Indian Act*, to exercise its discretion granted by this section as a prudent

fiduciary – an obligation that, likewise, creates a fiduciary obligation to sell reserve lands, once surrendered, for a reasonable price. In addition, Canada has a statutory duty to ensure the compliance of its agents to section 110 of the *Indian Act*; and, where the conduct of these agents contravenes section 110, such sales shall be void. Finally, both the treaty and the statutory obligations will trigger a fiduciary obligation on the Crown to manage the sale of reserve lands as a prudent fiduciary. On the totality of evidence put before us, we find Canada in breach of its treaty, statutory, and fiduciary duties in its disposition of IR 98 lands, and we conclude that Canada owes an outstanding lawful obligation for the breach of these duties. With regard to Canada’s beyond lawful obligation, we cannot conclude that a fraud was perpetrated outside of the fraudulent transactions that Canada has admitted with respect to “J.W. Smith.”

Finally, with regard to Sugar Island, we find that the language of Treaty 6 concerning a reserve once created, “to be administered and dealt with for them by Her Majesty’s Government,” is a trigger on the Crown and that it creates a fiduciary duty to act as a prudent fiduciary in administering IR 98 lands on behalf of the Chakastaypasin Band before any surrender of these lands. Based on the evidence, to permit settlers to trespass on and take timber from reserve lands, set aside under Treaty 6, is a breach of treaty and a breach of the fiduciary obligation that derives from treaty. Further, the Crown’s failure to exercise its discretion to protect IR 98 lands and resources pursuant to the *Indian Act* is a breach of its statutory and fiduciary obligations. Thus, Canada owes an outstanding lawful obligation for the breach of these treaty, statutory, and fiduciary duties.

We therefore recommend to the parties:

That the James Smith Cree Nation’s Chakastaypasin Indian Reserve 98 claim be accepted for negotiation under Canada’s Specific Claims Policy.

FOR THE INDIAN CLAIMS COMMISSION



Renée Dupuis
Chief Commissioner



Alan C. Holman
Commissioner

Dated this 17th day of March, 2005.

APPENDIX A

INDIAN CLAIMS COMMISSION

JAMES SMITH CREE NATION: CHAKASTAYPASIN IR 98 SURRENDER INTERIM RULING

The James Smith Cree Nation brought forward its claim into the Chakastaypasin IR 98 Surrender to the Commission on May 10, 1999. It was rejected on April 11, 1997 and then partially accepted on January 19, 1998. Canada accepted to negotiate on a “beyond lawful obligation” basis on the grounds that senior federal officials were involved in fraudulent activities in connection with the sale of 71 quarter sections of the reserve. This partial acceptance came with three conditions, two of which are relevant to the issue of the other Host Bands:

“.....

2. Agreement amongst the beneficiary First Nations as to their respective share, based on their review of the apportionment of the proceeds of sale of the reserve as of the date of the 1897 surrender.
3. That the Department of Justice (DOJ) be satisfied that all potential beneficiary First Nations have been identified.”

The January 19, 1998 letter also states that, “in the event that a final settlement is reached, Canada must obtain a formal release from each First Nation with an interest in this claim. This is to ensure that this portion of the claim cannot be reopened.”

Canada’s letter of December 1998, which rejects the claim on the validity of the surrender, states that “the evidence does not establish an outstanding lawful obligation on Canada’s part to the First Nations sharing an interest in the Chakastaypasin (sic) claim with respect to the validity of the 1897 surrender”, and reiterates the offer to negotiate with all interested First Nations with respect to the 71 quarter sections.

The issue of participation of the other Host Bands in the James Smith Cree Nation inquiry first arose before this Commission in the Fall of 1999. In November 1999 the Commission was provided with a copy of a Protocol Agreement including seven of the eight Host Bands, which had been in place since June 9, 1998. This Agreement expressed that the other Host Bands supported Chakastaypasin in its reinstatement efforts, and that the James Smith Cree Nation would take the lead role in the claim, negotiation and pending settlement of the Chakastaypasin IR 98 claim.

On April 19, 2001 Canada’s counsel, Ms. Uzma Ihsanullah, on behalf of Canada, unilaterally wrote to each of the other Host Bands informing them of the activity on the James Smith Cree Nation - Chakastaypasin IR 98 claim. This letter expressed Canada’s view that the other Host Bands should be added as *parties* to the James Smith Cree Nation - Chakastaypasin IR 98 Inquiry, although reserving Canada’s right to make any arguments.

In response to Canada's April 19, 2001 letter, the Commission wrote to the other Host Bands on November 9, 2001 and June 5, 2002, to invite them to participate in the James Smith Cree Nation - Chakastaypasin IR 98 Inquiry to the extent of providing oral evidence in a community session(s) and Reply submissions to Canada's and James Smith Cree Nation's written legal submissions.

During the 7th Planning Conference of the James Smith Cree Nation, the parties (Canada and James Smith Cree Nation) indicated their without prejudice agreement to the limited participation of the other Host Bands outlined in the Commission's November 2001 and June 2002 correspondence. During a June 10, 2002 conference call, counsel for James Smith Cree Nation - Bill Selnes - expressed concern over the scope and manner of the participation outlined in the Commission's June 5, 2002 letter. Following this call, the Commission received a series of correspondence from James Smith Cree Nation - Chakastaypasin IR 98 which attempted to severely limit the other Host Bands' participation.

In response to this correspondence, the Commission wrote to the parties and the other Host Bands to indicate that the Commission would hear submissions on the manner of the other Host Bands' participation on August 22, 2002, with written submissions being due by August 1, 2002. During the Host Band Planning Conference on June 24, 2002, it became clear that the parties would also seek to argue the issue of the matter of the other Host Bands' participation, and that James Smith Cree Nation would raise a challenge to the Commission's mandate.

The Commission convened a hearing of the parties and the other Host Bands on August 22, 2002. After careful consideration of the issues, the Commission panel has rendered its decision. Each issue is addressed in turn, below:

1. Does the Commission have the mandate to allow an Indian Band to participate in the Inquiry of another Band when the Band seeking participation does not have a rejected specific claim relating to the subject matter of the Inquiry?

Yes. The Commission panel have heard and considered the objections and arguments of the James Smith Cree Nation, Canada and the other Host Bands to this issue and have concluded that yes, the Indian Claims Commission pursuant to its Order in Council and the *Inquiries Act*, has the power to exercise its discretion to hear any evidence and argument it deems requisite to the full investigation of the matters into which it is mandated to examine. In this regard, the Commission panel in this case is not limited to hearing the evidence and/or argument of only Bands that have submitted a claim or only those Bands who have a rejected claim.

2. If yes, does the Commission have the mandate to allow participation in the Inquiry to an Indian Band claiming an interest in a rejected specific claim of another Band, which claim is subject of an Inquiry by the Commission, without the consents of Canada and the Band whose claim has been rejected?

Yes. In the exercise of its discretion pursuant to its Order in Council and the *Inquiries Act*, the Commission panel may seek out and hear whatever witnesses it deems would be beneficial to its understanding of the issues. As previously stated, the Commission's authority is not limited to hearing from only those Bands with a rejected claim. In exercising this discretion, the Commission panel does not require the consent of either party to the inquiry.

Pursuant to its Order in Council, the Commission panel may adopt whatever method it deems expedient for the conduct of the inquiry. The flexibility of adopting its own procedures for inquiry means that the Commission has the power not only to adopt its own procedures, but it also has the power to control its own process. In so saying, it has the power to determine who it will hear in the absence of the parties' consent.

3. If yes to 1 and 2, does the Commission have the mandate to allow a Band seeking participation to have party status at the Inquiry?

In the case of the Commission's Inquiry into the James Smith Cree Nation - Chakastaypasin IR 98 surrender, the parties are the James Smith Cree Nation and Canada. The Commission, as previously stated has the discretion to allow other groups to appear before it to introduce evidence and make argument. From the outset, Canada has insisted on the participation of the other Host Bands to the James Smith Cree Nation - Chakastaypasin IR 98 Inquiry. The Commission panel cannot now, continue to proceed with this Inquiry as if it had not been made aware of the other Host Bands. The Commission has the power to adopt whatever methods it deems expedient for the conduct of an inquiry. In this case, the Commission panel has deemed it expedient to hear from the other Host Bands. In so saying, and with further refinement below as to the extent of that participation, the other Host Bands will be invited to participate but not as parties to this inquiry. There are only two parties to this inquiry: the James Smith Cree Nation and Canada.

4. The Commission welcomed argument on the manner of the participation of the other Host Bands into the IR 98 Inquiry.

The Commission panel have heard and considered the arguments of the James Smith Cree Nation, Canada and the other Host Bands regarding the manner of the other Host Bands participation, should it be allowed. The Commission panel has decided that it will hear any and all evidence the other Host Bands wish to put forward in the James Smith Cree Nation Inquiry into IR 98 and the panel will welcome whatever arguments the other Host Bands wish to advance respecting this evidence. The Commission panel will not however, permit the other Host Bands to expand or in any way alter the Inquiry as raised by the James Smith Cree Nation.

The Commission panel welcomes whatever documentary and/or community evidence the other Host Bands may have ready to submit and that will be beneficial to the panel's investigation in this case. The Commission panel is prepared to receive this evidence as soon as possible. Should the other Host Bands wish to put forward the evidence of Elders in their respective communities, the panel directs that the other Host Bands coordinate the logistics of how to present this evidence with

Commission Counsel. Further, the panel is aware that Elders' evidence must still be gathered at James Smith Cree Nation regarding the Chakastaypasin IR 98 claim. This session will therefore proceed first. The Commission panel will respect the wish of the James Smith Cree Nation to close this session to outside observers, should this request be made. A transcript of this session will be provided to all parties and the other Host Bands. The other Host Bands will not be participants at the gathering of the James Smith Cree Nation Community Session. Specifically, the other Host Bands will not be permitted to ask questions of the James Smith Cree Nation Elders through Commission Counsel.

Once provided with a transcript of the James Smith Cree Nation Community Session into Chakastaypasin IR 98, the other Host Bands will have six (6) weeks from receipt of the transcript to convene their respective community sessions should that be necessary. At these sessions, the James Smith Cree Nation and Canada will have the right to participate as parties to the inquiry. In this way, both James Smith Cree Nation and Canada will have the right to ask questions of the Elders' of the other Host Bands however, this right is limited, as is always the case, to posing questions through Commission Counsel. There will be no right to cross examine.

Should either the James Smith Cree Nation or the other Host Bands wish to introduce expert evidence that is not Elders' evidence, then as is always the case, such evidence must be introduced in a written report first, upon receipt of which, the Commission panel will determine whether or not it will be necessary to hear orally from the expert witness. All parties and the other Host Bands will have the right to cross examine the expert witness.

In fairness to the James Smith Cree Nation, it will have the full and final opportunity to provide further evidence in response to either the documentary or witness evidence that may be presented by the other Host Bands.

At the conclusion of the evidence gathering (documentary, oral history or other expert evidence) the historical record will be closed and the inquiry will proceed to legal argument. The Commission directs that this stage of inquiry proceed as follows:

- The James Smith Cree Nation will first submit its written legal submissions;
- Canada will then submit its responding legal submissions;
- The other Host Bands will submit their reply submissions (if any) to the submissions of James Smith Cree Nation and Canada;
- Canada will submit a reply submission (if any) to the James Smith Cree Nation and the other Host Bands; and
- James Smith Cree Nation will submit a final reply (if any) to all.

The exchange of legal submissions will be followed by an oral session wherein the Commission panel will hear directly from the parties and the other Host Bands on their respective written legal submissions. Due to the amount of time necessary to allow all parties and the other Host Bands to be heard, the Commission panel will plan to convene the oral session over two days.

In conclusion, the Commission panel wishes to make clear that the decision to include the other Host Bands as participants in this Inquiry does not in any way alter the fundamental purpose and scope of this Inquiry. Namely, to inquire into the rejection of the James Smith Cree Nation - Chakastaypasin IR 98 surrender claim as it was raised by the James Smith Cree Nation.

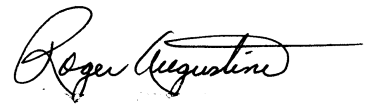
FOR THE INDIAN CLAIMS COMMISSION



Renee Dupuis



Alan Holman



Roger Augustine

November 1, 2002

APPENDIX B

CHRONOLOGY

JAMES SMITH CREE NATION: CHAKASTAYPASIN IR 98 INQUIRY

- 1 **Planning conferences**

Saskatoon, September 20–21, 1999
Ottawa, November 9–10, 1999
Ottawa, October 24–25, 2000
Saskatoon, December 5–6, 2000

Ottawa, January 10–11, 2001
Melfort, June 5–6, 2001
Saskatoon, August 29, 2001
Prince Albert, November 21, 2001
Ottawa, May 16–17, 2002
Saskatoon, June 24, 2002
- 2 **Community sessions**

James Smith Cree Nation, June 27–28, 2001

The Commission heard from Jim Brittain, Charlotte Brittain, Robert Constant, George Whitehead, Walter Sanderson, and Violet Sanderson.

Melfort, Saskatchewan, January 28–29, 2003

The Commission heard from Chief Sol Sanderson, Terry Sanderson, Raymond Sanderson, Martha Opoonechaw-Stoneland, Albert Sanderson, Patrick Stoneland, Alex Sanderson, Violet Sanderson, and Jake Sanderson.

Muskoday First Nation, May 27–29, 2003 (Host Bands)

The Commission heard from *Kinistin First Nation*: Chief Felix Thomas, Louise Smokeyday, Besigan Nippi, Peter Nippi, Quao Smokeyday, and Gassion Thomas; *Yellow Quill First Nation*: Chief Robert Whitehead, Verna Cachene, and Larry Cachene; *Sturgeon Lake First Nation*: Chief Earl Ermine and Harold Kingfisher; *Fishing Lake First Nation*: Chief Michael Desjarlais, Jerry Kayseas, Milton Paquachan, and Lawrence Desjarlais; *One Arrow First Nation*: Chief Dwayne Paul, Marcel Paul, and Joseph Ernest Paintednose; and from *Muskoday First Nation*: Chief Austin Bear, Melvin Smith, Eric Bear, James Smith, Clarence Olson, and Keith Guay.
- 3 **Interim ruling**

November 1, 2002
- 4 **Written legal submissions**

Other Host Bands' participation – Challenge

- Submission on Behalf of the Government of Canada, August 1, 2002
- Submission on Behalf of the James Smith Cree Nation, August 1, 2002
- Submission on Behalf of the One Arrow First Nation, August 1, 2002
- Submission on Behalf of the Yellow Quill First Nation, undated
- Submission on Behalf of the Sturgeon Lake First Nation, July 22, 2002
- Submission on Behalf of the Muskoday First Nation, July 25, 2002
- Submission on Behalf of the Kinistin First Nation, August 1, 2002
- Fishing Lake First Nation, no submission provided
- Gordon First Nation, no submission provided
- Panel Hearing: “Host Bands” Participation, held at Sheraton Cavalier, Saskatoon, August 22, 2002
- Ruling: *James Smith Cree Nation: Chakastaypasin Inquiry – Interim Ruling* (Ottawa, November 2002)

Written submissions

- Written Submissions on Behalf of the James Smith Cree Nation, November 7, 2003
- Written Submissions on Behalf of the Government of Canada, February 2, 2004
- Reply Submissions on Behalf of the One Arrow First Nation, March 2, 2004
- Reply Submission on Behalf of the Muskoday First Nation, March 17, 2004
- Reply Submission on Behalf of the Kinistin First Nation, March 19, 2004
- Reply Submission on Behalf of the Yellow Quill First Nation, March 19, 2004
- Reply Submission on Behalf of the Sturgeon Lake First Nation, March 21, 2004
- Reply Submission on Behalf of the Government of Canada, April 29, 2004
- Reply Submission on Behalf of the James Smith Cree Nation to Canada's Submission, April 29, 2004
- Reply Submission on Behalf of the James Smith Cree Nation to the Other Host Bands' Submissions, May 3, 2004

5 Oral legal submissions

Interim hearing Saskatoon, Saskatchewan, August 22, 2002

Other Host Bands participation hearing. The Commission heard arguments from William Selnes for James Smith Cree Nation; Uzma Ihsanullah for Canada; David Knoll for Sturgeon Lake First Nation; Bruce Slusar for Kinistin First Nation; Doug Kovatch for One Arrow First Nation; and Donna Driedger for Yellow Quill First Nation.

Oral session Saskatoon, Saskatchewan, May 4–6, 2004

6 Content of formal record

The formal record of the James Smith Cree Nation Chakastaypasin IR 98 Inquiry consists of the following materials:

- the document collection (12 volumes of documents, with annotated indices) (Exhibits 1, 1a and 1b)
- Exhibits 2–27 tendered during the inquiry
- transcripts of community sessions (4 volumes) (Exhibits 16a, 16b, and 17b)
- transcript of interim hearing (1 volume) (Exhibit 17a)
- transcript of oral session (3 volumes)

The report of the Commission and letter of transmittal to the parties will complete the formal record of this inquiry.