

1998-1999

ANNUAL

REPORT



INDIAN

CLAIMS

COMMISSION





1998-1999

ANNUAL

REPORT



INDIAN

CLAIMS

COMMISSION

© Minister of Public Works and Government Services Canada 1999

Cat. No. CP22-48/1999

ISBN 0-662-64692-4

Design: Wavertree Communications Inc.

Cover photo: National Archives C-020818
On the shores of Nootka
Edward Sheriff Curtis



CONTENTS

Message from the Commissioners		3
Commission's Recommendations to Government 1998/99		4
ICC Activities For 1998/99 – Carrying out the Mandate		7
Inquiries and Reports, Special Projects and Initiatives		7
Overview		8
Mediation and Facilitation		8
Plans for 1999/2000		9
Appendices		10
Appendix A	Status of Claims as of March 31, 1999	11
	Summary of Claims as of March 31, 1999	22
	Inquiry Reports, 1998/99	22
	Mid-inquiry Acceptances, 1998/99	26
	Inquiries	28
	Mediation and Facilitation	34
Appendix B	Operational Overview	39
Appendix C	The Commissioners	41





TO HER EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL

MAY IT PLEASE YOUR EXCELLENCY

In 1998/99, the Indian Specific Claims Commission continued to fulfill its mandate to conduct inquiries and to mediate specific claims in circumstances where First Nations and Canada request. In this fiscal year, the Commission's activities were focused largely on mediation activities and, to a lesser extent, upon the conduct of new inquiries. Over the course of the year, Canada accepted a number of claims during the inquiry process. In three other situations, the Commission completed and released inquiry reports. As of March 31, 1999, inquiries into 46 claims had been completed and reported on, and another six reports were in progress. This report summarizes our major achievements and activities in relation to specific claims last year.

As in our previous Annual Reports, we take this opportunity to make important recommendations with regard to the creation of a more fair and efficient claims system. We recommend bold changes to address the current gridlock that stalls the settlement of specific claims in Canada. We call on the federal government to augment the powers of the Commission, to increase resources directed to the settlement of specific claims and to make public an inventory of claims in the federal system.

It is with pleasure that we submit our Annual Report for 1998/99.

Yours truly,

Daniel J. Bellegarde
Commission Co-Chair

P.E. James Prentice, QC
Commission Co-Chair

December 1999





MESSAGE FROM THE COMMISSIONERS

By the end of the 1998/99 fiscal year, the Indian Claims Commission had completed seven years of operation. Under our inquiry mandate, we have conducted 46 inquiries and reported on 42 of them. Under our mediation mandate, we have reviewed, considered, and facilitated the acceptance or negotiation of many other claims. In addition, when requested by parties to negotiations, the Commission has coordinated joint research and assisted in those negotiations. It is clear that, in an overwhelming number of cases, the Indian Claims Commission is the only viable alternative for First Nations whose claims have been rejected by Canada or whose claims have not received a response from Canada.

At the heart of the Commission's efforts is a firm commitment to help resolve longstanding grievances – grievances that detract from Canada's reputation as a fair and just society. It has been the Commission's intention "not to become part of the problem" but to provide an effective alternative to a litigious and unproductive relationship between Canada and First Nations. In our last six annual reports, we have made recommendations aimed at resolving claims and improving the claims process. These recommendations were made with the understanding that the ICC had a temporary and limited mandate, pending a change in claims policy and the creation of a permanent, independent claims review body. (In fact, the Commission has recommended, in three previous annual reports, the creation of an independent claims body.) Further, the Commission has attempted to work as effectively as possible within its mandate to address a wide range of both substantive and procedural

issues related to specific claims. These concerns have been noted in past annual reports and recommendations.

It is our belief that the efficient, effective, and fair review of longstanding, unresolved claims is critical to establishing a new and better working relationship between Canada and First Nations. As the Supreme Court of Canada has so eloquently stated, "the honour of the Crown is always at stake in dealings with Indian people" (R. v. Badger, [1996] 1 SCR 771 at 794). Any improvement to that relationship will benefit future generations, aboriginal and non-aboriginal. However, no improvement will be made until commitment moves from rhetoric to reality. If we are to ensure that unresolved claims do not become a sad legacy and financial burden for future generations, we must encourage all parties, in particular the Government of Canada, to make the just resolution of claims a priority.

In our opinion, it is time for a new process for resolving specific claims. Our recommendations follow from that view. We hope that all parties will give serious consideration to our recommendations in light of the positive contribution the Commission has made and can make to the specific claims process and resolution.

COMMISSION'S RECOMMENDATIONS TO GOVERNMENT 1998/99

RECOMMENDATION 1: The Commission recommends that Canada take such steps as are necessary to provide the Indian Claims Commission with the mandate (a) to accept or reject claims in the first instance, without the current requirement that they first be rejected by Canada; and (b) to make decisions respecting acceptance or rejection of claims which are binding on the parties.

Under the current system, a First Nation with a specific claim must first submit its claim to Canada; Canada responds, in most cases years later, with either an acceptance to negotiate or a rejection. The two major problems with this system have been clearly identified by everyone affected by it.

The first is that Canada acts as both defendant and arbiter of a claim against itself. Only Canada can decide if the claim has merit.

The second problem is the amount of time claims take in the government review process, primarily because Canada does not allocate enough resources to this activity. According to claims statistics provided by the Department of Indian Affairs and Northern Development, to the end of 1997/98, 283 claims had been submitted but had not yet been reviewed, 151 claims were in negotiations, and about 60 new claims were being filed each year. This backlog, combined with the lack of resources to address claims, has created a virtual "gridlock" within government. Indeed, the Commission is constantly frustrated in its own inquiry/mediation process by government's inability to act quickly owing to a lack of resources.

There have been repeated calls for Canada to address these problems through the creation of an independent, adequately funded claims body. Beginning in 1961 with a Parliamentary Committee Report, this suggestion was repeated in reports from the Canadian Bar Association (1988), the Royal Commission on Aboriginal Peoples (1994), and a Joint First Nations–Canada Task Force in 1998. The Liberal Party of Canada committed itself to this kind of process in its 1993 Red Book, and it was further affirmed in the subsequent *Gathering Strength and Agenda for Action* policies of the current federal government.

However, during the course of the last year, it has become apparent that the independent claims body will not become a reality in the near future. Nevertheless, it is also abundantly clear that it is simply unfair for the Government of Canada to continue to decide whether to accept or reject claims against itself. The Commission cannot make an independent assessment of the claim unless or until Canada has rejected it. Therefore, the Commission's inquiry process amounts to an expensive re-examination – albeit from a neutral perspective – of a claim that has already been researched and assessed by the Department of Indian Affairs and the Department of Justice.

Despite the ICC's limited mandate, it has become evident that, for many First Nations, the Commission is the only practical alternative to the courts or to Canada's overburdened claims resolution system. Also, since the establishment of a permanent, independent claims body is not imminent, the ICC is the only practical vehicle for making incremental changes in the system. The Commission has established a solid



reputation based on credible and principled work which enables it to address claims issues in a fair, just, and effective manner.

As a move towards an eventual permanent claims body, steps should be taken to remove Canada from its position of inherent conflict of interest and to reduce the costs of the current system. Accordingly, the Commission should be empowered to review claims in the first instance, without the necessity of a prior rejection by Canada. Similarly, the Commission should be empowered to issue binding orders with respect to the acceptance or rejection of claims, after hearing from Canada and the First Nation (and any other interested parties).

Such changes to the Commission's mandate would remain in force only until the creation of a permanent, independent claims body.

The Commission is aware of the implications of this recommendation, especially those contained in the second part. It will require consultation, legislation, and, above all, political commitment. The claims being made by First Nations, most of which have been unaddressed for years, are not going to go away. We have concluded that the current system of specific claims resolution has practically ground to a halt. A difficult situation is being made worse; it is time for action.

RECOMMENDATION 2: The Commission recommends that Canada immediately increase the level of funding available to the Department of Indian Affairs' Specific Claims Branch and the Department of Justice's Legal Services to a level commensurate with the number of outstanding claims awaiting negotiation.

The resources that Canada applies to the negotiation of accepted claims are inadequate and, until sufficient resources are provided, any real progress in claims resolution will be impossible.

The value of such resources has been illustrated in those cases where Canada participated in pilot projects using joint research. Without adequate resources, however, Canada will not be able to take part in joint research in other claims, despite the potential to accelerate negotiations and alleviate the sense of grievance that accompanies a claim. Joint research emphasizes coming to an agreement on facts and issues before negotiations even begin; it therefore requires increased expenditures at the start of the process. The success to date of pilot projects indicates that such expenditures are warranted since they do improve the process.

RECOMMENDATION 3: The Commission recommends that Canada compile and make public an inventory of all outstanding claims in the Specific Claims system, as well as all potential claims.

In a number of recent cases, the public has been taken by apparent surprise by either the settlement of a claim (e.g., Caldwell First Nation in Ontario), or the release of a judicial decision on a claim. The general public awareness of the number and importance of outstanding claims is alarmingly low.

Canada should provide basic information about the number, nature, size, and location of all claims. The inventory should include claims submitted, under review, in negotiation, in litigation, and settled. This complete inventory will give all Canadians an understanding of how many outstanding claims there are and where they are located.

This inventory, and the contingent liability it represents, may help to clarify how resources can best be applied to resolve a problem of enormous proportions.

This inventory could help to speed up the settlement process. For example, First Nations with similar claims can be encouraged to work together to submit their claims as a group. This method succeeded for the six First Nations of the Qu'Appelle Valley Indian Development Authority (QVIDA) who brought their flooding claims as a group to the Commission, and for the six First Nations who, in two groups, pursued their Primrose Lake Air Weapons Range claims. The QVIDA claims have been accepted for negotiation of a settlement and the claim of the Canoe Lake First Nation of Saskatchewan has already been settled. Canada should encourage more creative funding methods to allow First Nations to do joint claims research.



ICC ACTIVITIES FOR 1998/99 - CARRYING OUT THE MANDATE INQUIRIES AND REPORTS, SPECIAL PROJECTS AND INITIATIVES

In 1998/99, the Commission issued reports on the Gamblers First Nation's treaty land entitlement claim, the Nekaneet First Nation's treaty benefits claims and the Moose Deer Point First Nation's claim into the rights of the Pottawatomi in Canada. Since its inception, the Indian Claims Commission has reported on 46 inquiries and one mediation.

Fourteen claims that went to Commission inquiries were accepted by the Government of Canada for negotiation last year, four of them before formal reports were issued. The Chippewa Tri-Council Collins Treaty claim was settled. These early acceptances illustrate that just bringing the parties together to review the facts can provide new perspectives on a claim and can lead to acceptance by Canada before a full inquiry has been completed.

Among those accepted for negotiation last year were:

- the six Qu'Appelle Valley Indian Development Authority flooding claims in Saskatchewan
- the Athabasca Chipewyan First Nation treaty benefit claim
- the Bigstone Cree Nation treaty land entitlement claim

- the Blood Tribe/Kainaiwa Akers surrender claim
- the Fort McKay First Nation treaty land entitlement claim
- the Gamblers First Nation treaty land entitlement claim
- the Kawacatoose First Nation 1907 surrender claim
- the Nekaneet First Nation treaty benefit claim
- the Peguis Indian Band treaty land entitlement claim.

The Prairie Land Surrenders project, *First Nation Land Surrenders on the Prairies, 1896-1911*, by Dr Peggy Martin-McGuire has been completed and has been well received. The study brings to light a wealth of information about the history behind these prairie land surrenders, the forces that drove them, and how they were accomplished. It identifies the federal legislative and policy framework that prevailed during this brief but significant period, as well as the extent to which social, economic, political, and cultural factors influenced the actions of key government officials and agencies.

OVERVIEW

46	Completed inquiries – 42 reports
1	Mediation report
6	Reports in progress
12	Inquiries in various stages of process
13	Claims in mediation/facilitation
26	Claims settled or accepted for negotiations

MEDIATION AND FACILITATION

Since its inception, the Indian Claims Commission has seen 26 specific claims settled or accepted for negotiation by Canada. These successes are a result of the Commission's unique inquiry process and its ability to provide mediation assistance at any stage in the claims process when requested by the First Nation and Canada.

Over the last year, the Commission has seen its mediation work grow. The Commission continues to facilitate the six Fort William First Nation claims in Ontario, bringing the federal government and First Nation

together in a non-adversarial environment and helping to move the claims along quickly. The Commission also continues to facilitate the negotiation of the Fishing Lake First Nation claim in Saskatchewan and to work with DIAND and the First Nation on the Michipicoten Pilot Project in Ontario. These claims demonstrate how a neutral third party can foster cooperation between potential disputants. At present, the Commission is providing mediation services to 13 First Nations and, in 1998, it hired a director of mediation to keep up with First Nation requests.



PLANS FOR 1999/2000

The 1999/2000 fiscal year will mean business as usual for the Indian Claims Commission. As it is not possible to say when a new body will be up and running, the Government of Canada and the Assembly of First Nations have urged us to continue in our duties.

We have augmented our mediation support to meet First Nation demand and we anticipate that demand will continue to grow over the next year as First Nations turn to the Commission in this interim period for creative solutions to stalled claims negotiations.

We plan, also, to begin public education on specific claims and the historical and legal issues that ground them. These claims are lessons in some of the key events of Canadian history.

Over the past year, we have seen good will from First Nations and the federal government as they work together towards pragmatic solutions

to old problems. The cooperative process of policy reform, launched through the Joint Task Force on Specific Claims to design an independent claims body, has fostered among First Nation claimants and the federal government a new sense of optimism that historical wrongs can be put right and the mutual goal of a better relationship can be reached. Government has embraced the idea of joint research, such as that launched through the ICC's Michipicoten and Fort William First Nation Pilot Projects, and has come to see the inherent value of oral history to an understanding of First Nation claims. Many First Nations are actively pursuing mediation to reach claims settlements.

We hope this spirit of cooperation and innovation will continue as we all move towards the resolution of outstanding specific claims.

APPENDICES

- A Status of Claims as of March 31, 1999
 - Summary of Claims as of March 31, 1999
 - Inquiry Reports, 1998/99
 - Mid-inquiry Acceptances, 1998/99
 - Inquiries
 - Mediation and Facilitation
- B Operational Overview
- C The Commissioners



APPENDIX A STATUS OF CLAIMS AS OF MARCH 31, 1999

ICC Inquiry, Nature of Claim and Recommendation	Date of Report	Date of Response	Nature of Response to Recommendation	Accepted/Settled
1 Athabasca Chipewyan W.A.C. Bennett Dam and environmental damage to IR 201 <i>Recommended claim be accepted for negotiation</i>	March 1998	None	No response from Canada	
2 Athabasca Chipewyan Treaty entitlement to economic benefits		None required	Claim accepted by Canada for negotiation	Accepted June 1998
3 Athabasca Denesūliné Aboriginal and treaty harvesting rights north of 60th parallel <i>Recommended Canada acknowledge treaty rights</i>	December 1993	August 1994	Canada rejected recommendations made in December 1993 report – No response to Supplementary Report submitted by ICC in November 1995	
4 Bigstone Cree Nation Treaty land entitlement		None required	Claim accepted by Canada for negotiation	Accepted October 1998
5 Blood Tribe/Kainaiwa Akers surrender		None required	Claim accepted by Canada for negotiation	Accepted April 1998

ICC Inquiry, Nature of Claim and Recommendation	Date of Report	Date of Response	Nature of Response to Recommendation	Accepted/Settled
<p>6 Buffalo River Primrose Lake Air Weapons Range – loss of commercial and treaty harvesting rights <i>Part of claim recommended for negotiation</i></p>	September 1995	None	No response from Canada	
<p>7 Canoe Lake Primrose Lake Air Weapons Range – breach of treaty and fiduciary obligations <i>Recommended claim be accepted for negotiation</i></p>	August 1993	March 1995	Accepted on qualified basis – no breach of treaty or fiduciary obligation but need to improve economic and social circumstances Claim settled	Settled June 1997
<p>8 Chippewas of Kettle and Stony Point 1927 surrender <i>Recommended claim be accepted for negotiation</i></p>	March 1997	None	No response – Supreme Court of Canada is hearing appeal on Ontario Court of Appeal decision re: validity of 1927 surrender	
<p>9 Chippewa Tri-Council Collins Treaty <i>Accepted with assistance of Commission</i></p>	March 1998	None required	Claim settled	Settled December 1998



ICC Inquiry, Nature of Claim and Recommendation	Date of Report	Date of Response	Nature of Response to Recommendation	Accepted/Settled
10 Chippewas of the Thames Unlawful surrender of reserve <i>Settled with assistance of Commission</i>	December 1994	None required	Claim settled	Settled January 1995
11 Cold Lake Primrose Lake Air Weapons Range – breach of treaty and fiduciary obligations <i>Recommended claim be accepted for negotiation</i>	August 1993	March 1995	Accepted on qualified basis – no breach of treaty or fiduciary obligation but need to improve economic and social circumstances	Accepted March 1995
12 Cowessess QVIDA flooding claim <i>Recommended claim be accepted for negotiation</i>	February 1998	December 1998	Claim accepted by Canada for negotiation	Accepted December 1998
13 Eel River Bar Eel River Dam <i>Recommended claim not be accepted for negotiation</i>	December 1997	None required	No substantive response from Canada required – ICC considering First Nation's request for reconsideration	

ICC Inquiry, Nature of Claim and Recommendation	Date of Report	Date of Response	Nature of Response to Recommendation	Accepted/Settled
14 Fishing Lake 1907 surrender <i>Canada accepted claim for negotiation after considering evidence revealed during ICC community session</i>	March 1997	None required	Claim accepted by Canada for negotiation	Accepted August 1996
15 Flying Dust Primrose Lake Air Weapons Range - loss of commercial and treaty harvesting rights <i>Part of claim recommended for negotiation</i>	September 1995	None	No response from Canada	
16 Fort McKay Treaty land entitlement <i>Recommended that Canada owed outstanding entitlement of 3,815 acres to Band</i>	December 1995	April 1998	Canada adopted ICC recommendation after internal TLE review	Accepted April 1998
17 Friends of the Michel Society 1958 enfranchisement <i>No lawful obligation found, but recommended that Canada grant special standing to submit specific claims</i>	March 1998	None	No response from Canada	



ICC Inquiry, Nature of Claim and Recommendation	Date of Report	Date of Response	Nature of Response to Recommendation	Accepted/Settled
18 Gamblers First Nation Treaty land entitlement <i>Outstanding treaty land entitlement, if any, should be calculated based on an 1877 date of first survey</i>	October 1998	November 1998	Canada accepted ICC finding	Accepted November 1998
19 Homalco Statutory or fiduciary obligation to obtain 80 acres of land from province of BC <i>Part of claim recommended for negotiation re: 10 acres</i>	December 1995	December 1997	Canada rejects ICC recommendation as being outside scope of the Specific Claims Policy	
20 Joseph Bighead Primrose Lake Air Weapons Range - loss of commercial and treaty harvesting rights <i>Recommended claim not be accepted for negotiation</i>	September 1995	None required	No substantive response from Canada required	
21 Kahkewistahaw Treaty land entitlement <i>Recommended claim not be accepted for negotiation</i>	November 1996	None required	No substantive response from Canada required	

ICC Inquiry, Nature of Claim and Recommendation	Date of Report	Date of Response	Nature of Response to Recommendation	Accepted/Settled
<p>22 Kahkewistahaw 1907 surrender <i>Recommended claim be accepted for negotiation</i></p>	February 1997	December 1997	Claim accepted by Canada for negotiation	Accepted December 1997
<p>23 Kawacatoose Treaty land entitlement <i>Recommended that Canada owed shortfall of 8,576 acres to Band, subject to confirming research</i></p>	March 1996	April 1998	Claim accepted by Canada for negotiation	Accepted April 1998
<p>24 Lac La Ronge Treaty land entitlement <i>Recommended claim not be accepted for negotiation</i></p>	March 1996	None required	No substantive response required from Canada	
<p>25 Lax Kw'alaams Demand for absolute surrender as pre-condition to settlement <i>Recommended that Canada exclude aboriginal rights from scope of surrender clause</i></p>	June 1994	None	No substantive response from Canada – parties continue to meet in attempt to reach a settlement agreement	



ICC Inquiry, Nature of Claim and Recommendation	Date of Report	Date of Response	Nature of Response to Recommendation	Accepted/Settled
<p>26 Lucky Man Cree Treaty land entitlement <i>Recommended parties undertake further research to establish the proper treaty land entitlement population</i></p>	March 1997	May 1997	<p>Canada accepted ICC recommendation for further research; research completed February 1998, indicating no TLE shortfall</p> <p>First Nation reviewing work and conducting own research</p>	
<p>27 Mamaleleqala Qwe'Qwa'Sot'Enox McKenna-McBride applications <i>Recommended claim be accepted for negotiation</i></p>	March 1997	None	No response from Canada	
<p>28 Micmacs of Gesgapegiag Pre-Confederation claim to 500-acre island <i>No substantive recommendations made because Canada agreed to reconsider merits of claim</i></p>	December 1994	None required	No substantive response required – March 1995, Canada acknowledged receipt of report and advised claim was in abeyance pending outcome of related court case	
<p>29 Mikisew Cree Economic entitlements under Treaty 8 <i>Canada accepted claim for negotiation after planning conference session</i></p>	March 1997	None required	Claim accepted by Canada for negotiation	Accepted December 1996

ICC Inquiry, Nature of Claim and Recommendation	Date of Report	Date of Response	Nature of Response to Recommendation	Accepted/Settled
30 Moose Deer Point First Nation Pottawatomi rights <i>Recommended additional research to define Canada's obligations arising from the Crown's promises of 1837 and to verify whether those obligations have been fulfilled</i>	March 1999		No response from Canada to recommendation for joint research	
31 Moosomin 1909 surrender <i>Recommended claim be accepted for negotiation</i>	March 1997	December 1997	Claim accepted by Canada for negotiation	Accepted December 1997
32 Muscowpetung QVIDA flooding claim <i>Recommended claim be accepted for negotiation</i>	February 1998	December 1998	Claim accepted by Canada for negotiation	Accepted December 1998
33 Nak'azdli Aht-Len-Jees IR 5 and Ditchburn-Clark Commission <i>Canada accepted claim for negotiation after considering evidence revealed during ICC community session</i>	March 1996	None required	Claim accepted by Canada for negotiation	Accepted January 1996



ICC Inquiry, Nature of Claim and Recommendation	Date of Report	Date of Response	Nature of Response to Recommendation	Accepted/Settled
34 'Namgis Cormorant Island <i>Recommended claim be accepted for negotiation based on breach of obligation under order in council and fiduciary obligation</i>	March 1996	None	No response from Canada	
35 'Namgis McKenna-McBride applications <i>Recommended that part of claim be accepted for negotiation</i>	February 1997	None	No substantive response from Canada – In September 1997, Canada indicated it commissioned additional research to assist in establishing broader context for claims relating to McKenna-McBride	
36 Nekaneet First Nation Entitlement to treaty benefits	March 1999	None required	Claim accepted by Canada for negotiation	Accepted October 1998
37 Ochapowace QVIDA flooding claim <i>Recommended claim be accepted for negotiation</i>	February 1998	December 1998	Claim accepted by Canada for negotiation	Accepted December 1998
38 Pasqua QVIDA flooding claim <i>Recommended claim be accepted for negotiation</i>	February 1998	December 1998	Claim accepted by Canada for negotiation	Accepted December 1998

ICC Inquiry, Nature of Claim and Recommendation	Date of Report	Date of Response	Nature of Response to Recommendation	Accepted/Settled
39 Peguis Treaty land entitlement		None required	Claim accepted by Canada for negotiation	Accepted June 1998
40 Sakimay QVIDA flooding claim <i>Recommended claim be accepted for negotiation</i>	February 1998	December 1998	Claim accepted by Canada for negotiation	Accepted December 1998
41 Standing Buffalo QVIDA flooding claim <i>Recommended claim be accepted for negotiation</i>	February 1998	December 1998	Claim accepted by Canada for negotiation	Accepted December 1998
42 Sturgeon Lake Agricultural lease <i>Accepted for negotiation with assistance of Commission</i>	March 1998	None required	Claim accepted by Canada for negotiation	Accepted August 1997
43 Sumas IR 6 railway right of way and reversionary rights of Band <i>Recommended claim be accepted for negotiation</i>	February 1995	December 1995	No substantive response – Canada rejected claim on grounds that it involved issues which are before the courts in other cases	



ICC Inquiry, Nature of Claim and Recommendation	Date of Report	Date of Response	Nature of Response to Recommendation	Accepted/Settled
<p>44 Sumas 1919 surrender of IR 7 <i>Recommended joint research to assess fair market value of surrendered land</i></p>	<p>August 1997</p>	<p>January 1998</p>	<p>Canada willing to explore possibility of joint research to determine if evidence exists for a claim</p>	
<p>45 Waterhen Lake Primrose Lake Air Weapons Range - loss of commercial and treaty harvesting rights <i>Recommended part of claim be accepted for negotiation</i></p>	<p>September 1995</p>	<p>None required</p>	<p>No response from Canada – First Nation has requested meeting to discuss concerns re: findings of Commission</p>	
<p>46 Young Chipeewayan Unlawful surrender claim <i>Recommended that claim not be accepted for negotiation but that further research be undertaken by parties re: surrender proceeds</i></p>	<p>December 1994</p>	<p>February 1995</p>	<p>Funding proposal submitted by Band for research and consultation under consideration by Indian Affairs</p>	

SUMMARY OF CLAIMS AS OF MARCH 31, 1999

In 1998/99, the Commission released three reports. The Government of Canada accepted 14 claims for negotiation. Four claims were accepted before inquiries were completed: the Nekaneet First Nation claim, the Bigstone Cree Nation claim, the Blood Tribe/Kainaiwa claim and the Peguis Indian Band claim. A summary of the findings and recommendations made by the Commission in each inquiry is set out below.

INQUIRY REPORTS, 1998/99

Gamblers First Nation

Treaty land entitlement, Manitoba October 1998

The central question in this inquiry was whether the Gamblers First Nation had received its full treaty land entitlement (TLE) as part of a group of Saulteaux Indians, known as the Fort Ellice Band.

During Treaty 4 negotiations, O-ta-ha-o-man, or “The Gambler,” was the main spokesperson for the Band, although Treaty 4 indicates that the Band was led by Chief Waywayseecappo. In 1877, the Government of Canada surveyed a reserve for Chief Waywayseecappo’s Band. Then, in 1883, the Gambler and his followers in Waywayseecappo’s Band sought and received recognition as a separate Band, and the government surveyed a reserve for them.

The Commission was asked to consider whether the Gamblers TLE should be based on the population of the Fort Ellice Band under Chief Waywayseecappo in 1877 or on the population of the Gamblers Band in 1883, when the survey was completed for the separate reserve.

Under the terms of Treaty 4, Canada agreed to set aside reserves of one square mile for each family of five, or 128 acres per person. However, the treaty did not specify when a band’s population was to be calculated for the purposes of determining the area of reserve land to be set aside for its collective use, nor did the treaty specify the respective rights and obligations of factions within a band.



The Commission's extensive review of the historical record confirmed that the Gambler and his followers and Waywayseecappo and his followers were a single band in 1877 and that it later split into two. A part of the original reserve was surrendered in exchange for the new reserve set apart for the Gamblers Band in 1883. But the 1877 survey had already been properly approved by the entire Band. As a result, the Commission concluded that the First Nation failed to establish that its TLE should be based on the population at the time of the 1883 survey, and its outstanding entitlement, if any, should be based on the 1877 population. The Commission was not asked in this inquiry to determine how much land the First Nation may be entitled to or whether an outstanding entitlement to land is still owed by the federal government. A report was released in October 1998.

Nekaneet First Nation

Entitlement to treaty benefits, Saskatchewan March 1999

In October 1998, before the Commission inquiry could be completed, the Government of Canada accepted for negotiation the Nekaneet First Nation's claim to agricultural, twine, and ammunition benefits under Treaty 4, making this, according to Canada, the first historical claim to treaty agricultural benefits ever to be negotiated. Canada agreed that, under Treaty 4, it has an existing and outstanding obligation to provide the First Nation with farm implements, tools, and livestock.

The Nekaneet First Nation requested a Commission inquiry after waiting almost 10 years for DIAND to respond to the claim submitted in 1987. The First Nation maintained that the delay amounted to a rejection of

the claim. Canada initially challenged the Commission's authority to review the claim, saying the claim was still under review. The Commission argued, as it did in the Mikisew Cree treaty benefit claims in Alberta, that a significant delay was a constructive rejection and that the Nekaneet First Nation claim fell within its mandate. The inquiry began in November 1997.

The First Nation claims that Canada failed to provide treaty agricultural benefits to the First Nation from 1883 until 1968 and failed to establish a reserve until 1913.

Whether these agricultural benefits should have been provided hinged on whether the Nekaneet members actually took up farming. The Commission's review of the historical record suggests that the Band followed Nekaneet, or "Foremost Man." The First Nation says when Treaty 4 was signed in 1874, members were living in the area around Cypress Hills in southwestern Saskatchewan. Federal government records show that Nekaneet and his followers received their annual treaty payments in 1881 and 1882 at Fort Walsh, in the Cypress Hills. In 1882, however, the government stopped providing treaty benefits to bands who would not move north of the Cypress Hills. The Nekaneet First Nation would not move; therefore, between 1882 and 1975, the Nekaneet First Nation did not receive treaty payments.

For some time, the federal government was not clear whether the Nekaneet First Nation was a separate band or part of the Kahkewistahaw Band and it did not set aside a reserve for the Nekaneet

First Nation until 1913, when 1440 acres were provided near Maple Creek. In 1914, the First Nation twice wrote to the federal government requesting help, and the correspondence suggests that the Band was growing crops, although without much success. Departmental officials at the time thought the land near Maple Creek unsuitable for farming.

The Commission found evidence that, through the 1940s, 1950s, and 1960s, the Band turned to raising hay, horses, and cattle and, in 1958, the Department of Indian Affairs bought a bull for the Band. No evidence was presented that the government provided hunting or fishing supplies to the Nekaneet First Nation.

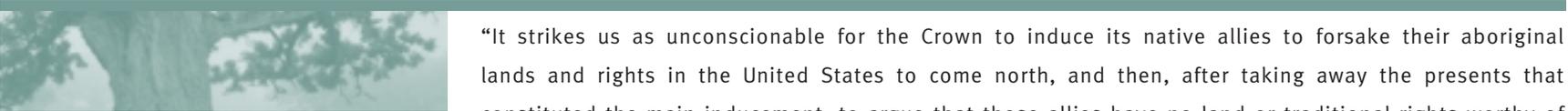
As Canada accepted this claim mid-inquiry, the Commission report, released in March 1999, made no finding of fact or law.

Moose Deer Point First Nation

Recognition of Pottawatomi rights, Ontario March 1999

This pre-Confederation claim involves the rights of aboriginal military allies who moved to Canada following the War of 1812. The Moose Deer Point First Nation, descendants of the Pottawatomi, asked the Commission to inquire into its claim for the land, presents, protection, and equality it says were promised in a 1837 speech by a British official and not delivered. The federal government rejected the First Nation's claim in 1995.

Because of the historical nature of this claim, the First Nation and Canada agreed a community session was unnecessary. After an extensive review of the historical record, the Commission found that the promises made in the 1837 speech had the weight and effect of a treaty



“It strikes us as unconscionable for the Crown to induce its native allies to forsake their aboriginal lands and rights in the United States to come north, and then, after taking away the presents that constituted the main inducement, to argue that those allies have no land or traditional rights worthy of forming the subject matter of a treaty.”

ICC Report on the rights of the Pottawatomi



and should have been honoured. The inquiry found that the effect of breaching the promises particularly harmed the Pottawatomi. The report, released in March 1999, recommended further research to establish the nature of promises and whether they had been fulfilled.

The Pottawatomi were allies of the British in the War of 1812. Their traditional territory was in the Lake Michigan area of the United States, but both before and after the War, the British provided them with presents of guns, powder, clothes and other things as a matter of diplomacy and commerce.

The Pottawatomi, for their part, were concerned they would lose their traditional lands around Lake Michigan. At the time, the US government was pushing First Nations west of the Mississippi, requiring them to relinquish their annuities and their rights to land in exchange for new lands in the West. As a result of the 1837 promise, at least 3000 Pottawatomi released their rights to land and annuities in the United States to move to Canada.

In the 1850s, however, concerns about cost outweighed concerns about US aggression, and the government stopped delivery of presents to all aboriginal military allies, including the Pottawatomi.

The Commission's inquiry revealed that this hurt all aboriginal military allies, especially the Pottawatomi. It left the Pottawatomi without annuities, a recognized land base, or the inducements promised in the 1837 speech that had brought them to Canada in the first place. The Pottawatomi had no aboriginal rights in Canada and, unlike other aboriginal military allies, were not party to the Robinson-Huron Treaty of 1850 or the Williams Treaty of 1923. Canada, in fact, did not consider the Pottawatomi eligible to receive treaty benefits. It was only by the intervention of a benefactor that Moose Deer Point Indian Reserve was set apart for the First Nation on the east shore of Georgian Bay in 1917.

MID-INQUIRY ACCEPTANCES, 1998/99

Bigstone Cree Nation

Treaty land entitlement, Alberta

On October 13, 1998, the Government of Canada agreed that the Bigstone Cree Nation had a valid claim to more land under Treaty 8. The acceptance came mid-inquiry as a result of the Commission's work on TLE and resulting changes in federal policy in April 1998.

The First Nation claims that federal representatives, in their surveys, did not include the total population of all Bigstone Cree settlements as required by Treaty 8. Many settlements were isolated, some adhered to Treaty 8 at later dates, and many community members were still leading a semi-nomadic life at that time. The TLE claim was rejected by DIAND in 1989 and again in 1996, after which the First Nation brought it to the Commission. At issue are the appropriate date for TLE calculation, who is to be counted, as well as Canada's fiduciary, legal, equitable, or other treaty obligations. The Commission held three community sessions and two pre-hearing conferences between October 1996 and December 1997 before the First Nation requested its claim be put in abeyance while Canada reviewed the claim in light of the 1998 TLE policy change. The parties are now negotiating a settlement.

Blood Tribe/Kainaiwa

Akers surrender 1889, Alberta

On April 15, 1998, after 110 years, Canada agreed, mid-inquiry, to negotiate a resolution of the Akers surrender claim. The claim involves a clerical error that led to a surrender in 1889 of 440 acres of land from the Blood reserve in southern Alberta.

The Blood Tribe/Kainaiwa alleges that Canada had broken its fiduciary obligation to the First Nation. It claims that Canada breached *Indian Act* regulations regarding the surrender of reserve land by not holding a vote of all eligible male band members, and that Canada used an "unconscionable bargain," "undue influence," "negligent misrepresentation," and "duress" to secure the surrender. The First Nation also argues that the government should have taken steps to protect the mines and minerals on the land for the benefit of the First Nation. After two community sessions in October and December 1997, DIAND agreed to review the claim in light of new case law and evidence gathered at the community sessions.



“The Chieftains of the time knowingly would never sell or would never sign any document that proposed to sell or give away land. If in fact they did sign or place their mark, there must have been much by way of deceit. That was the time when none of our leaders neither understood nor could write nor read the English language. They had to rely on interpreters who in many cases were also unqualified to properly interpret what was being discussed ... Now, if in fact Red Crow and the other leaders were made to sign a document, I can only suspect that it was another act of deceit on somebody’s part.”

Blood Tribe/Kainaiwa Elder

Louise Crop Eared Wolf

Peguis Indian Band

Treaty land entitlement, Manitoba

On June 29, 1998, after five Commission planning conferences, Canada accepted the First Nation’s TLE claim, and an additional reserve surrender claim, for negotiation of a settlement.

The Commission was asked to review only the TLE claim. Canada and the First Nation were at an impasse. Canada maintained that the 75,000

acres given in 1908 more than met the First Nation’s TLE; the First Nation did not agree. The First Nation maintains that it is owed over 22,000 additional acres under Treaty 1. The parties then undertook additional research on the TLE, which was completed in December 1997. Canada reviewed the claim in light of the new research, and accepted both claims for negotiation.

INQUIRIES

Carry the Kettle Band 1905 surrender, Saskatchewan

The First Nation claims that a surrender of 5760 acres of the Assiniboine reserve taken in 1905 is invalid. The First Nation maintains that the Department of Indian Affairs took no record of a band membership vote and that there is insufficient evidence of the outcome of the surrender meeting.

The First Nation requested that oral argument be postponed to await completion of a research study it commissioned. This claim remains in abeyance.

Carry the Kettle Band Cypress Hills, Saskatchewan

The First Nation claims that a 340-square-mile block of land north of the Cypress Hills was established as a reserve, and that the land was subsequently taken by Canada in violation of the *Indian Act*.

In February 1998, Canada supplied a research report it had prepared on the claim, to which the First Nation responded in November 1998. Both Canada and the First Nation submitted their written arguments on this claim in February 1999. The scheduled oral hearing was postponed until May 1999 so that the parties could resolve issues around new documents included with the written submissions.

Chippewas of the Thames Clench defalcation claim, Ontario

This is a pre-Confederation claim relating to the misappropriation of \$30,000 derived from the sale of land surrendered in 1834 by the Chippewas of the Thames to Indian Superintendent Joseph Brant Clench. After the First Nation made several unsuccessful attempts to address this grievance in 1890 and 1900, a settlement was reached with Canada in 1906. The First Nation passed a Band Council Resolution accepting the offer and an Order in Council was passed confirming both the offer and the acceptance.

The First Nation maintains, however, that Canada's primary obligation was to secure for the Chippewas of the Thames fair value for the land surrendered in trust for sale. It is irrelevant that some of the money owed by Clench was recovered; the nature of Canada's fiduciary obligation upon the surrender of the lands requires Canada to make restitution of the loss to the Chippewas of the Thames. Canada rejected the claim in 1975.

In August 1998, the First Nation requested an inquiry into the rejection of its claim. Planning conferences were held on December 14, 1998, and February 12, 1999. The parties agreed that additional research should be done under jointly established terms of reference. At the request of the parties, the Commission will manage the research contract.



Chippewa Tri-Council Coldwater-Narrows Reservation, Ontario

This claim involves the Coldwater-Narrows Reservation that was set aside in 1830 and surrendered under the 1836 Coldwater Treaty. The First Nation maintains that the 1836 surrender was inconsistent with the instructions set out in the Royal Proclamation of 1763, and that proper compensation was never received for the loss of the reserve.

In December 1997, the parties agreed to further research. The first phase was completed on May 11, 1998. A planning conference was held on August 7, 1998, to review the findings. The second phase of the research was received on October 16, 1998. At a fifth planning conference, held on November 12, 1998, Canada agreed to provide a fresh legal opinion by the end of May 1999.

Cote First Nation No. 366 1905 surrender, Saskatchewan

This claim, first brought to the Commission in July 1996, is limited to the sale of lands surrendered by the Cote First Nation in 1905.

In April 1997, a newly elected Chief and Council requested that the inquiry be put in abeyance and that the Commission participate in a joint research project with Canada and the First Nation. The research would compile what had already been done and complete the

information required on all reserve expropriations, surrenders, exchanges, land restorations, and farmland and town site sales, so that all land transactions for the First Nation could be dealt with in a comprehensive manner. In March 1998, the parties agreed that the next stage in the research would focus on a 1903 expropriation of land for railway purposes and a subsequent 1904 surrender of land for station grounds and town site. Terms of reference were developed jointly and a contractor hired; the completed report is expected in June 1999. A meeting of all parties was held with the Chief, Council, and elders in Yorkton, Saskatchewan, in February 1999 to report on the project.

Cowessess Nation 1907 surrender, Saskatchewan

The First Nation alleges that the surrender of 20,704 acres of reserve land in 1907 is invalid because it was taken by Canada in violation of the *Indian Act*. The First Nation argues that the surrender was an unconscionable bargain and that Canada breached its pre-surrender fiduciary duty to the First Nation.

The Commission held a community session on March 11, 1998. In September 1998, the parties agreed to use a neutral evaluator, yet to be selected, to draft a legal opinion and analysis regarding certain arguments central to the inquiry. Written and oral arguments have been postponed.

Duncan's First Nation 1928 surrender, Alberta

This claim relates to the surrenders of Indian reserves 151 and 151B to 151G near Peace River, Alberta, in 1928. (The First Nation's original submission included IR 151H, but this claim was accepted by Canada in May 1997.) The First Nation argues that the surrenders are null and void because they were taken by Canada in violation of the 1927 *Indian Act*.

A community session was convened in September 1995; oral submissions were held in November 1997. Additional research, required to respond to some of the issues, was completed in February 1999 and the report is in progress.

Key Band 1909 surrender, Saskatchewan

The First Nation argues that the surrender of 11,500 acres of the Key reserve in 1909 is invalid because it was taken by Canada in violation of the *Indian Act*. The Band further argues that Canada breached its pre-surrender fiduciary obligation in taking the land surrender and that Canada used undue influence to secure the Band's agreement.

Community sessions to gather oral input from elders were held in January 1997, November 1997, and March 1998. An expert session was convened on January 25, 1999, to hear evidence relating to signatures in the surrender documents. Written and oral submissions are scheduled to be completed by June 1999.

Long Plain First Nation Treaty land entitlement loss of use, Manitoba

The First Nation claims compensation for loss of use of lands to which it was entitled under treaty, but which it did not receive until 1994.

In May, June, and July 1997, the Commission participated in a number of conference calls to help the parties reach agreement on a statement of facts. Written submissions were received from the First Nation in August 1997 and from Canada in September 1997. The First Nation submitted a written rebuttal in October 1997. The Commissioners heard oral arguments on October 17, 1997, in Winnipeg. The report on this inquiry is now being drafted.

Mississaugas of the New Credit First Nation Toronto purchase, Ontario

The First Nation claims that Canada, in a breach of trust, failed to explain adequately circumstances around the purchase of traditional land in 1787 (known as the Toronto Purchase) and failed to inform the First Nation that the 1787 surrender was invalid. The First Nation also maintains that a second surrender in 1805, intended by Canada to ratify the 1787 purchase and validate the surrender, included more land than was originally agreed to by the First Nation in the 1787 surrender. The 1805 surrender included the Toronto Islands, which the First Nation asserts it believed were explicitly excluded from the 1787 surrender. The First Nation never accepted the boundaries laid out under the 1805 surrender.



Planning conferences were held on July 16, October 1, and November 25, 1998, and February 8, 1999. The First Nation submitted an updated legal position on March 8, 1999, and Canada agreed to respond by April 12, 1999.

Mississaugas of the New Credit First Nation Crawford purchase, Ontario

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

A planning conference was held on July 16, 1998. On September 28, 1998, the First Nation requested that the claim be put in abeyance until further notice.

Mississaugas of the New Credit First Nation Gunshot Treaty, Ontario

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

The Commission held a planning conference on July 16, 1998. On September 28, 1998 the First Nation requested that the claim be put in abeyance until further notice.

Mistawasis First Nation 1911, 1917, and 1919 surrenders, Saskatchewan

This claim relates to issues concerning surrenders in 1911, 1917, and 1919. The First Nation claims that the surrenders may have been taken without a surrender meeting, in violation of the *Indian Act*, that the Band may not have fully understood the reasons for the surrender, and that Canada breached its pre-surrender fiduciary obligations and the terms of Treaty 6.

The First Nation requested an inquiry in May 1998, and the Commission held a planning conference on January 5, 1999. Both parties provided their documentary evidence, and a conference call was held on March 3, 1999, to discuss issues and schedule a community session.

Mistawasis First Nation Compensation criteria, Saskatchewan

The First Nation and Canada had agreed to negotiate a settlement compensation for mineral rights and prime agricultural land alleged to have been lost in the 1911, 1917, and 1919 surrenders when talks broke down. At issue is the appropriate compensation and whether compound interest should apply.

The First Nation requested an inquiry in May 1998 and the Commission held planning conferences on July 6, 1998, and January 6, 1999. The parties are now considering the issues to be addressed in the inquiry.

Ocean Man Band

Treaty land entitlement, Saskatchewan

The First Nation alleges that Canada owes the Ocean Man Band an additional 7680 acres of reserve land under Treaty 4. At issue is the appropriate date for calculating the TLE, the categories of individuals entitled to be counted, and the implications of an amalgamation of the Ocean Man Band with White Bear and Pheasant's Rump Bands in 1901.

In July 1998, the Commission agreed to assist the parties in reassessing previous pay list research in light of DIAND's new TLE policy, which as a result of the Commission's work includes additional categories of people, and Canada undertook research on the amalgamation issue. In February 1999, discussions began to focus on determining the proper date of first survey and base payroll for TLE calculations.

Roseau River Anishinabe First Nation

Medical aid, Manitoba

This claim involves the alleged misappropriation of Band funds to pay for medical care between 1909 and 1934. The First Nation argues that medical aid is a treaty right, as laid out in the negotiation of Treaty 1.

In November 1997, the First Nation tabled a settlement offer, which Canada rejected. In March 1998, Canada conducted additional research to investigate whether the federal government was authorized to deduct medical expenses from the Band's trust accounts, which contained moneys generated from a 1903 surrender of reserve lands. The parties differ in their respective interpretations of the additional research. The Commission held a community session in July 1998. Written and oral submissions were received in February and March 1999. The Commission is now preparing its final report on this inquiry.

Sandy Bay Ojibway Nation

Treaty land entitlement, Manitoba

The original claim argued that the First Nation was still owed land under Treaty 1. The First Nation maintained that the addition of extra land to the reserve in 1930 and 1970 did not fulfil the Band's treaty land entitlement because of disagreement over the date to use for an accurate population count to calculate the entitlement. The First Nation also argued that lands occupied and improved by band members prior to taking Treaty 1 should not be included in the TLE calculations. Canada rejected this claim in January 1985.

The First Nation requested an inquiry in April 1998. Shortly after submitting its rejected claim to the Commission, the First Nation restated its legal arguments. Canada argues that the claim is so altered that it should be considered a new claim under the Specific Claims Policy, and



that the ICC therefore has no mandate to conduct an inquiry. In February 1999, the First Nation provided its legal submission on the mandate challenge. Canada is to respond in 1999/2000, and the Commission will consider the arguments.

Sturgeon Lake First Nation 1913 surrender, Saskatchewan

At issue is whether a majority of eligible voters participated in a surrender vote in 1913 and whether they were resident on reserve at the time.

After the claim was brought to the Commission in August 1996, the First Nation delivered supplementary research which Canada reviewed and sent to the Department of Justice for a fresh opinion. On May 26, 1998, Canada informed the First Nation that its claim had been rejected. The First Nation asked the ICC to proceed with an inquiry. On September 15, 1998, the Commission held a planning conference. On October 29, 1998,

legal counsel for the First Nation informed the ICC that it wished to defer the residency issue until oral arguments and that it will talk to elders to determine whether a community session is required to examine the events surrounding the surrender. The First Nation has not yet informed the Commission whether a community session will be required.

Walpole Island First Nation Boblo Island, Ontario

This claim concerns the alleged surrender of Boblo Island in 1786. In February 1998, Canada challenged the Commission's mandate to inquire into this matter; in September, after reviewing the legal submissions presented, the Commissioners ruled that the issues were within their jurisdiction. Joint research was undertaken and a report submitted in February 1999. A pre-hearing conference took place in Toronto in January 1999 and the parties' written submissions were delivered in March 1999. An oral hearing is scheduled for April 8, 1999.

MEDIATION AND FACILITATION

Fishing Lake First Nation

1907 surrender, Saskatchewan

In 1907, approximately 13,170 acres of land were surrendered from the Fishing Lake Reserve. On April 23, 1989, the First Nation submitted a claim to the Government of Canada under Canada's Specific Claims Policy challenging the validity of the surrender. The First Nation maintains that the surrender is invalid because it was taken by Canada in violation of the *Indian Act*. It also maintains that Canada breached its fiduciary duty to the First Nation in obtaining the surrender.

In August 1996, Canada accepted the claim and the parties entered negotiations for compensation. In December 1996, they asked the Commission to facilitate negotiations.

The Fishing Lake claim is unique in that the parties have agreed to hire one set of consultants to conduct land appraisals and loss-of-use studies on behalf of both, to develop a consistent and agreed-to set of facts to ground the claim. The parties, with the assistance of the Commission, developed terms of reference for the various studies necessary for the compensation negotiations.

A preliminary meeting with the consultants was held in Fishing Lake in May 1997. Public and band information sessions have been held in connection with the general table meetings. The consultants completed their preliminary reports and meetings were held in September and October 1997 to review them.

Fort William First Nation

Pilot project, Ontario

On February 23, 1998, the Fort William First Nation proposed that the Commission participate in a pilot project to facilitate the resolution of six specific claims identified through its independent research. The claims involve surrenders and expropriations of reserve land for settlement, railway, rights-of-way, mining, and military purposes. Only one of these claims was in the Specific Claims process; the others had not yet been submitted.

Meetings to discuss the proposal were held at the ICC offices on February 27 and March 30, 1998. In attendance were representatives of the First Nation and its legal counsel, DIAND's Specific Claims Branch, Research Funding Division, and Negotiation Directorate, legal counsel from the Department of Justice, and staff from the ICC. On June 2, 1998, Canada and the First Nation signed a protocol agreement setting out the aims and objectives of the pilot project. The full table met seven times in this fiscal year, including once at Fort William. A research sub-group met periodically between meetings to review and amend the draft reports and discuss document selection.

All parties agreed to attempt to settle the historical and legal issues cooperatively at the table. The parties agreed to begin with a claim involving a parcel of land surrendered in 1907 so that the local Militia unit could establish a firing range. In 1914, an "exchange" of land took place to accommodate the Militia's desire to ensure that their targets



fronted on Mount McKay. The pilot project table agreed to focus its work on issues relating to the exchange and worked jointly to produce an historical report which represents an agreed statement of fact, an executive summary and a selection of documents to be considered by the Department of Justice. The claim was presented to the Department of Justice on February 11, 1999, and its review is ongoing.

The second claim to be considered is the Grand Trunk Pacific Railway claim. This relates to the expropriation of approximately 1600 acres of the reserve's best land along the river and the subsequent relocation of the Indian village. The draft report of the joint researcher was tabled in September 1998 and in October the table agreed to limit the issue to the alleged undervalue of the land at the time it was expropriated. To this end, a contract was issued to have an historical land appraisal of the subject lands completed. That report is to be presented at a meeting of the full table in April 1999.

At the request of the table, the ICC entered into a contract for a review of the pilot project to date, to develop recommendations for pragmatic ways to resolve specific land claims. That report will be completed in April 1999.

Kahkewistahaw First Nation 1907 surrender, Saskatchewan

In February 1997, the Commission released its report on the inquiry into the surrender in 1907 of 33,281 acres – nearly three-quarters – of the Kahkewistahaw First Nation's reserve. The Commission concluded that, although the surrender was valid and unconditional, Canada had breached its pre-surrender fiduciary obligation to the First Nation. The Commission concluded that the Crown's agents had engaged in "tainted dealings" by taking advantage of the First Nation's weakness and lack of leadership to induce its members to consent to the surrender. Moreover, the First Nation effectively ceded its decision-making power to Canada regarding the surrender, but Canada failed to exercise that power conscientiously and without influencing the outcome of the surrender vote. Finally, when offered the opportunity to prevent a surrender that was clearly foolish, improvident, and exploitative, the Governor in Council did not.

In December 1997, Canada accepted the ICC recommendation to negotiate a settlement with the Kahkewistahaw First Nation under the Specific Claims Policy. In November 1998, the First Nation and Canada asked the Commission to facilitate negotiations, and in January 1999 a Protocol Agreement was signed by the parties. The negotiations continue.

Kwanlin Dun First Nation**Lot 226, Yukon**

The First Nation contends that the Government of Canada has breached its lawful obligations to the Band. It claims that Canada has denied or refused to admit “that Whitehorse Indian Reserve No. 8, Whitehorse, Yukon is a reserve within the meaning of the *Indian Act*” and has “wrongfully alienating portions of Whitehorse Indian Reserve to third parties.”

In December 1998, the Commission was advised that its assistance may be needed. In February 1999, Commission Legal and Mediation Advisor, Mr Robert F. Reid and Commission Director of Mediation, Mr Ralph Brant met with the First Nation and Canada. The Commission believes a mediated settlement is close.

Lax Kw'alaams First Nation**Extinguishment, British Columbia**

In the first quarter of this century, the Government of Canada unilaterally divided Tsimpsean Indian Reserve 2 between the Lax Kw'alaams and the Metlakatla Bands. No surrender was obtained at the time. A few years later, the Metlakatla Band surrendered lands to the Grand Trunk Railway Company without the consent of Lax Kw'alaams Band. In 1985, Lax Kw'alaams and Canada entered negotiations for compensation, and in 1991 they reached an agreement in principle. A final agreement was not reached, however, because the First Nation, also pursuing an aboriginal title claim under the British Columbia Treaty Process, would not agree to Canada's insistence on an “absolute surrender” to all interest in the land.

The Commission inquired into the claim and in 1994 recommended that the language of the surrender clause in the final agreement be modified to exclude the aboriginal interests so that those interests could be dealt with in the BC Treaty Process. The report further recommended that release, indemnity and set-off clauses be added to satisfy Canada's concerns that the First Nation be compensated once and for all for the surrendered lands. The report also recommended that the parties redraft the terms of settlement, and that the Band, Canada, and the Commission meet one month after the release of the report to discuss its findings and recommendations. Since January 1995, a number of options have been tabled by the parties, and the parties continue to meet with the ICC mediation group in an attempt to resolve this impasse.

Michipicoten First Nation**Pilot project, Ontario**

In October 1996, the First Nation proposed to then-Minister of Indian Affairs and Northern Development, Ronald Irwin, that Canada and the First Nation develop jointly a process for the timely and just resolution of a number of outstanding specific claims. The First Nation suggested a unique process based on joint historical research, joint identification of issues, coordinated legal research, and joint presentation of submissions to the Department of Justice if required.

The pilot project has had a remarkable year. On September 3, 1998, Canada accepted that it has an outstanding lawful obligation relating to



two small claims for survey expenses incurred in 1898 and 1899. An offer to settle was made in December 1998, which was accepted by the First Nation. Ratification by the Band is in progress.

In February 1998, the table had submitted to the Department of Justice two claims relating to surrenders of reserve land in 1899 and 1900 and the subsequent sale of the land to the Algoma Central Railway. Canada accepted these claims for negotiation on December 7, 1998, and settlement negotiations are proceeding.

The report and documents to support the claim relating to a 1855 surrender and sale of Gros Cap Peninsula was submitted to the Department of Justice in July 1998 for review, which is ongoing.

Research and discussions relating to possible claims relating to the relocation of the First Nation's village from its original location have resulted in a proposal for an innovative approach to resolve the grievance. The First Nation would like an apology from Canada for the devastation to its community by the relocations, and as a symbolic gesture to demonstrate that Canada could have done more to prevent the various relocations, it has asked for its assistance in reclaiming its original church bell from the Roman Catholic diocese and assistance in building a suitable structure to house the bell in their present village. The table has agreed to consider this proposal.

Preparation of the report and documents for the large Boundary Claim is currently in progress.

Roseau River Anishinabe First Nation 1903 surrender, Manitoba

The First Nation alleges that the Crown is in breach of both its fiduciary and its obligations under Treaty 1 in connection with its persistent initiation of the surrender of 12 square miles of reserve land, as well as its questionable handling of the auctioning of individual lots.

When the claim was first presented to Canada in 1982, it dealt only with the compensation arising from the government management of land sales following a 1903 surrender. In a December 1993 planning conference at the ICC, the First Nation also advanced as an issue the validity of the surrender. In November 1996, the parties agreed to conduct tripartite (Canada, First Nation, ICC) research on the validity issue and then to resubmit the claim to the Specific Claims Branch. The terms of reference for the joint project were finalized in February 1997. The Commission monitored the work of the contractor throughout the research. The report was completed in September 1997 and the parties met at the ICC office in October 1997 to discuss the findings. When counsel for the First Nation completes his legal opinion, the claim will be given to the Department of Justice for review.

Salt River First Nation**Treaty land entitlement, Northwest Territories**

In 1992, Canada accepted an outstanding lawful obligation to fulfil the First Nation's treaty land entitlement claim. The First Nation became dissatisfied with the progress of negotiations with Canada and, in February 1996, requested mediation by Mr Robert F. Reid of the ICC. In May 1996, Canada rejected this proposal. The Commission continues to monitor the claim.

Squamish First Nation**Capilano IR 5 - Bouillon claim, British Columbia**

This claim concerns the alleged pre-emption of Squamish Capilano Indian Reserve 5 in the 1880s. After the Commission's inquiry process commenced, the Minister of Indian and Northern Affairs accepted the claim for negotiation under Canada's Specific Claims Policy. The ICC was initially requested in 1995 to assist the parties in negotiations, and continues to meet with them.

Thunderchild First Nation**1908 surrender, Saskatchewan**

In November 1996, the parties agreed to continue negotiations with third-party assistance from the ICC. The claim is currently being actively mediated by the Commission's Legal and Mediation Advisor, Mr Robert F. Reid, and deals with certain compensation criteria of the Specific Claims Policy relating to compensation for loss of use. Initial meetings took place in January 1997, and sessions have continued throughout this fiscal year.

Treaty 8 Tribal Corporation**Treaty land entitlement, Northwest Territories**

Canada accepted the Treaty 8 Tribal Corporation's treaty land entitlement claim for negotiation in 1992. The Commission's involvement was requested by Canada's negotiator, who advised that the Treaty 8 Tribal Council had expressed an interest in having the Commission facilitate the negotiations. Information material was sent to Canada's negotiator so he could explore the possibility of having the ICC at a joint meeting of the parties in Lutsel K'e in September 1997. After further discussion within DIAND's Comprehensive Claims Branch, Canada advised that there is some reticence in involving the Commission at this stage because it is not clear that the issues fall within the scope of the Specific Claims Policy. The Commission continues to monitor the situation.

Woodstock First Nation**Settlement negotiations, New Brunswick**

The Woodstock First Nation and Canada have been involved in negotiations since February 1984. In August 1998, at the request of the Woodstock First Nation and Canada, the Commission convened a conference call to discuss the status of settlement negotiations. In September 1998, the Commission Legal and Mediation Advisor, Mr Robert F. Reid, attended a meeting with parties to discuss the nature of the claim, the parties' positions, and the options available to resolve the dispute over compensation. In October 1998, the Commission received notice that negotiations had not been resolved and that the Woodstock First Nation would pursue other options.

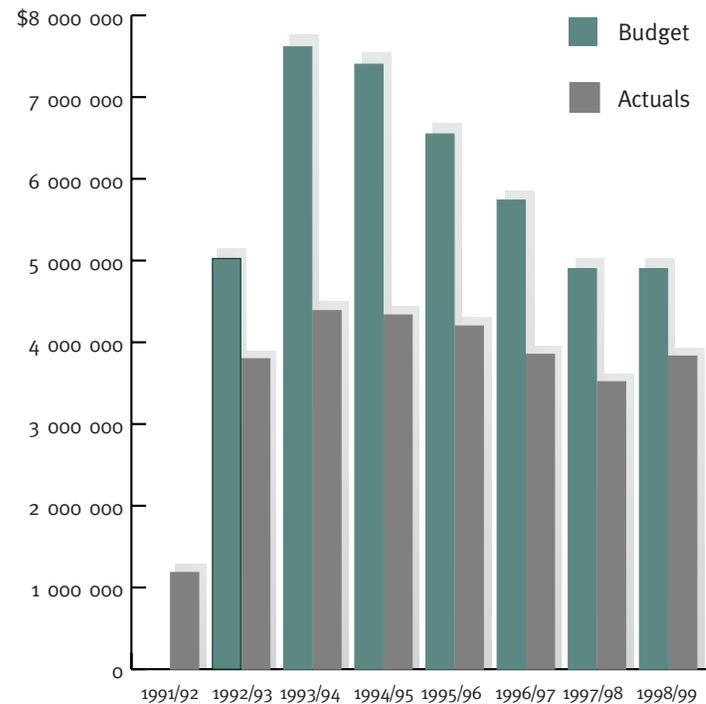


APPENDIX B OPERATIONAL OVERVIEW

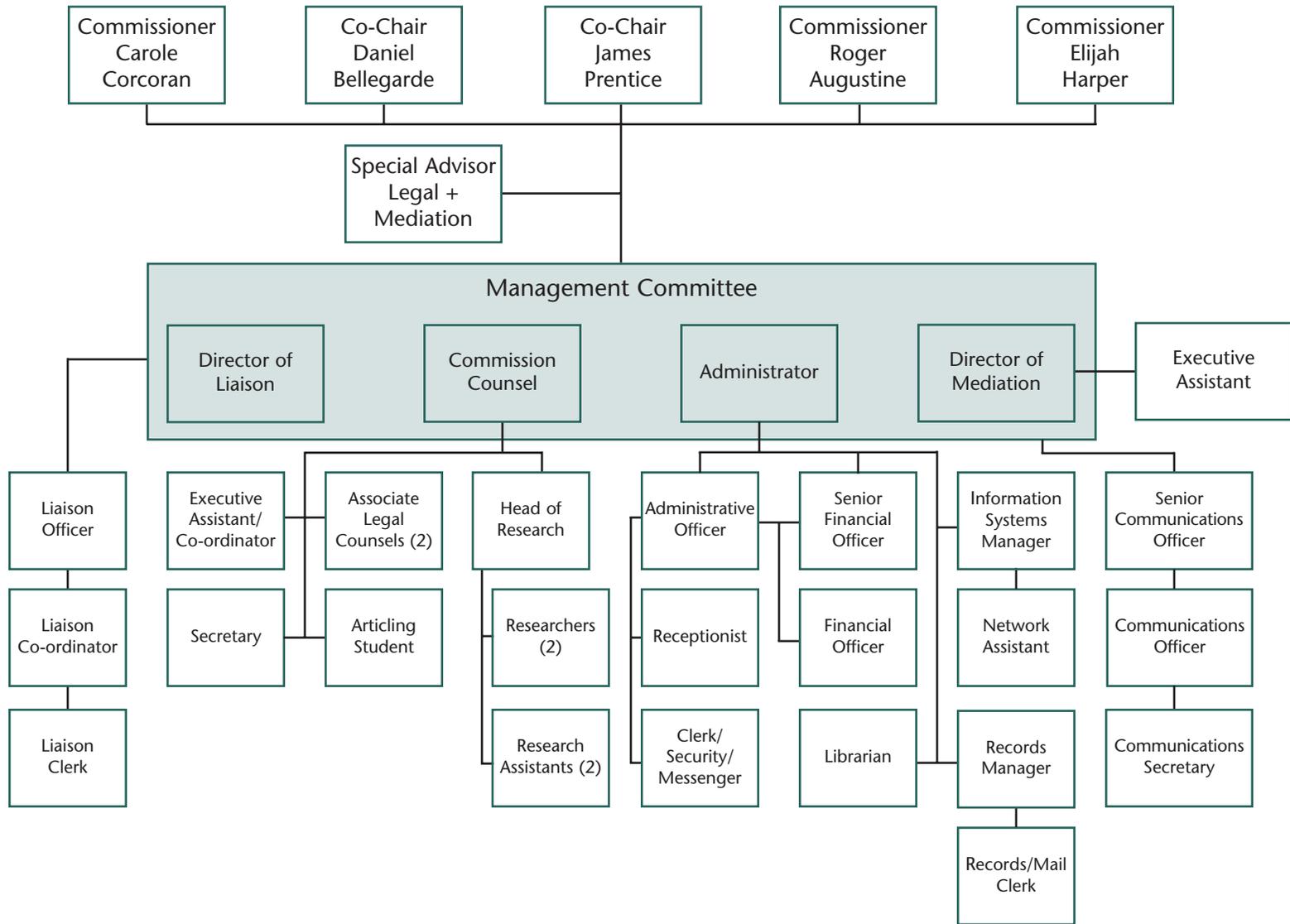
The Indian Claims Commission maintains a staff of approximately 40 people, 50 per cent of whom are aboriginal. The Commission has a Management Committee, consisting of its Administrator, Commission Counsel, Director of Mediation, and Director of Liaison. The Management Committee oversees the operations of the Commission. This committee reports to the Co-Chairs and, with their strategic direction, provides day-to-day management of the organization.

FINANCE

The Commission continues to focus on prudent fiscal management practices. The figure below depicts the amounts budgeted and the actual amounts expended by the Commission since its inception. In 1998/99, the Commission expended \$3.8 million against an approved budget of \$4.9 million, for an additional saving of approximately \$1.1 million. The total accumulated savings since the beginning of the Commission now represent some \$14.2 million.



ORGANIZATION CHART INDIAN CLAIMS COMMISSION



APPENDIX C THE COMMISSIONERS

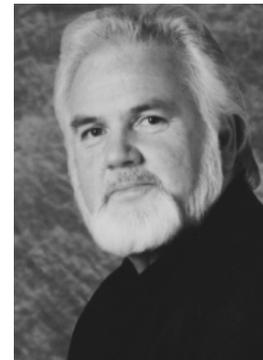
**Daniel J. Bellegarde**

Co-Chair Daniel J. Bellegarde is an Assiniboine/Cree from the Little Black Bear First Nation in southern Saskatchewan. From 1981 to 1984, Mr Bellegarde worked with the Meadow Lake District Chiefs Joint Venture as a socioeconomic planner. He was president of the Saskatchewan Indian Institute of Technologies from 1984 to 1987. In 1988, he was elected first vice-chief of the Federation of Saskatchewan Indian Nations, a position he held until 1997. He is currently president of Dan Bellegarde & Associates, a consulting firm specializing in strategic planning, management and leadership development, self governance, and human resource development in general. Mr Bellegarde was appointed Commissioner, then Co-Chair of the Indian Claims Commission on July 27, 1992, and April 19, 1994, respectively.

**P.E. James Prentice, QC**

Co-Chair P.E. James Prentice, QC, is a lawyer with the Calgary law firm of Rooney Prentice. He has an extensive background in native land claims, commencing with his work as legal counsel and negotiator for the Province of Alberta in the tripartite negotiations that brought about the Sturgeon Lake Indian Claims Settlement of 1989. Since that time, Mr Prentice has participated in

the inquiry or mediation of some 70 treaty land entitlement and surrender claims across Canada. Mr Prentice was appointed Queen's Counsel in 1992. He has also been the Facility Leader at the Banff Centre for Management's annual program on Specific Claims since 1994. He was appointed to the Indian Claims Commission, then Co-Chair of the Indian Claims Commission on July 27, 1992 and April 19, 1994, respectively.

**Roger J. Augustine**

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



Carole T. Corcoran

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



Elijah Harper

Elijah Harper is an Ojibwa-Cree born in Red Sucker Lake, Manitoba, where he was Chief from 1978 to 1981. Mr Harper is perhaps best known for his role in the debate surrounding the Meech Lake Accord, during which, as a member for Rupertsland in the Manitoba Legislative Assembly (1981-92) he stood silent, holding a sacred Eagle's feather in a symbolic

stand against the Accord, citing the lack of adequate participation and recognition of aboriginal people in the constitutional amendment process. In 1986, Mr Harper was appointed Minister without Portfolio Responsible for Native Affairs and, in 1987, Minister of Northern Affairs. He was instrumental in setting up the Manitoba Aboriginal Justice Inquiry. Between 1993 and 1997, he sat as a Liberal Member of Parliament for Churchill, Manitoba. In 1995, Mr Harper launched a Sacred Assembly to promote spiritual reconciliation and healing between aboriginal and non-aboriginal Canadians, which brought together people of all faiths from across Canada. In 1996, Mr Harper received a National Aboriginal Achievement Award for public service. He was appointed a Commissioner of the Indian Claims Commission in January 1999.