

**C-130.**

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First Session, Twenty-Sixth Parliament, 12 Elizabeth II, 1963.

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**THE HOUSE OF COMMONS OF CANADA.**

**BILL C-130.**

An Act to provide for the Disposition of Indian Claims.

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First reading, December 14, 1963.

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**THE MINISTER OF CITIZENSHIP AND IMMIGRATION.**

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ROGER DUHAMEL, F.R.S.C.  
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY  
OTTAWA, 1963

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## COMMISSION ESTABLISHED.

- 3.** (1) There shall be a Commission to be called the Indian Claims Commission, consisting of a Chairman and four other commissioners appointed by the Governor in Council.
- Commission established.**
- (2) Each commissioner shall hold office during good behaviour for a period not exceeding ten years, but may be removed at any time by the Governor in Council upon address of the Senate and House of Commons. 5
- Tenure of office.**
- (3) The Chairman and at least one other commissioner shall be 10
- Qualifications.**
- (a) a judge or a former judge of the Supreme Court of Canada, the Exchequer Court of Canada or a superior, county or district court of any of the provinces of Canada; or
- (b) a barrister or advocate of at least ten years standing at the bar of any of the provinces. 15
- 4.** If a commissioner is by reason of absence or any incapacity unable to perform the duties of his office, the Governor in Council may appoint a temporary substitute commissioner upon such terms and conditions as the Governor in Council may prescribe. 20
- Temporary substitute commissioners.**

## DUTIES OF COMMISSION.

- 5.** Subject to this Act, the Commission shall hear and consider every claim that is brought before it as provided in this Act and that comes within any of the following classes of claims, namely, 25
- Duties of Commission.**
- (a) that lands in any area that now forms part of Canada were taken from Indians by the Crown or by an officer, servant or agent of the Crown on behalf thereof without any agreement or undertaking to give compensation therefor; 30
- (b) that lands set apart for Indians in any area that now forms part of Canada were disposed of by the Crown or by any officer, servant or agent of the Crown and no compensation was given in respect thereof to such Indians or the compensation given was so inadequate as to be unconscionable; 35
- (c) that moneys held by the Crown for Indians living in any area that now forms part of Canada were improperly used by the Crown or by any officer, servant or agent of the Crown on behalf thereof; 40

- (d) that the Crown failed to discharge any obligation to Indians living in any area that now forms part of Canada, arising under any treaty, agreement or undertaking; or
- (e) that the Crown or any officer, servant or agent of the Crown on behalf thereof, in any transaction or dealing with Indians in any area that now forms part of Canada, other than a transaction or dealing relating to lands, failed to act fairly or honourably with those Indians and thereby caused injury to them.

#### WHO MAY BRING A CLAIM.

Who may be claimants.

- 6.** (1) Subject to this Act, a claim relating to any band may be brought before the Commission against the Crown in right of Canada by
- (a) the council of that band on behalf of the band or in the case of a band that has a chief but no council, by the chief on behalf of that band;
  - (b) an adult member of that band on behalf of the band if the band has no council or chief and the member satisfies the Commission that he has been authorized by the band to bring the claim on its behalf;
  - (c) a council or a person described in paragraph (a) or (b) on behalf of a band where that band has amalgamated with, or was formed as a result of the amalgamation of, one or more bands any of which, if they had remained separate bands, could have had a claim brought on its behalf pursuant to paragraph (a) or (b); or
  - (d) a council or a person described in paragraph (a) or (b) on behalf of a band where that band was formed as a result of the division of a former band into two or more new bands which former band could, if it had not been divided, have had a claim brought on its behalf pursuant to paragraph (a) or (b).

Time limit for bringing claims.

(2) No claim shall be heard by the Commission unless notice thereof is filed with the Commission by a council or person described in subsection (1) within two years from the coming into force of this Act.

Notice of claim.

(3) Every notice of a claim shall be in writing and shall set out the particulars of the claim with reasonable certainty and detail.

## POWERS OF COMMISSION AT HEARINGS.

- 7.** (1) The Commission, in hearing any claim pursuant to this Act, shall not be bound by the legal rules of evidence but it shall make no award in respect of a claim unless that claim is supported by
- (a) evidence in writing that is reasonably contemporaneous to the time when the subject matter of the claim arose; or
  - (b) oral evidence that is corroborated in a material particular by evidence other than oral evidence.
- (2) Subject to the approval of the Governor in Council, the Commission may make such rules as it deems necessary or advisable respecting
- (a) the conduct of its hearings and the procedures for the bringing of claims, and
  - (b) the production and inspection of any documents that are in possession of the Crown in right of Canada and that are required by any person acting for or on behalf of a band in respect of a claim.
- (3) The Commission has, as regards the attendance, summoning and examination of witnesses and the production and inspection of documents, all such powers, rights and privileges as are vested in a superior court of record in civil cases.
- (4) The Commission may sit at such times and places as it considers necessary or desirable for the hearing of any claim brought pursuant to this Act.
- 8.** Where, in the opinion of the Commission, claims brought on behalf of two or more bands of Indians arise out of the same matter, the Commission may direct that the claims be heard and considered together.

## DECISIONS AND AWARDS OF THE COMMISSION.

- 9.** (1) Subject to this Act, the Commission shall, as soon as possible after the completion of the hearing of any claim pursuant to this Act, render in writing a decision on the claim setting forth the reasons for its decision and the amount of money, if any, awarded by it in respect thereof.
- (2) Where by any decision of the Commission on a claim an amount of money is awarded in respect thereof, the decision shall specify the band or bands to which the money should be paid and the proportionate share of each such band.

Notice to  
be given of  
decisions.

**10.** Notice of a decision of the Commission on a claim and of the award, if any, made by it shall be given to the band on whose behalf the claim is brought and to the Minister in such manner as the Commission directs.

Payment  
of awards.

**11.** All moneys awarded to a band in respect of a claim made pursuant to this Act shall be paid out of moneys appropriated for that purpose by Parliament and shall be paid into the capital moneys of that band for the use of that band or for distribution to the members thereof to the same extent and under the same terms and conditions as moneys derived from the sale of surrendered lands.

Orders and  
decisions  
final.

Jurisdiction  
as to prerog-  
ative writs.

**12.** (1) Except as provided in this Act, every decision or order of the Commission is final and conclusive.

(2) The Exchequer Court of Canada has exclusive original jurisdiction to hear and determine every application for a writ of *certiorari*, prohibition or *mandamus* or for an injunction in relation to any decision or order of the Commission or any proceedings before the Commission.

Limitations.

(3) A decision or order of the Commission is not subject to review or to be restrained, removed or set aside by *certiorari*, prohibition, *mandamus* or injunction or by any other process or proceeding in the Exchequer Court on the ground that a question of law or fact was erroneously decided by the Commission or that the Commission erred as to its jurisdiction, but any party to a claim brought before the Commission may refer to the Exchequer Court any decision or order of the Commission on the ground

- (a) that the Commission had no jurisdiction to entertain the proceedings in which the decision or order was made or to make the decision or order, or
- (b) that the Commission's decision or order was based upon an erroneous view of its jurisdiction.

Appeal to  
Supreme  
Court.

**13.** (1) An appeal lies from a decision of the Exchequer Court made pursuant to section 12 to the Supreme Court of Canada, upon leave therefor being obtained from a judge of the Supreme Court upon application made within one month after the making of the decision sought to be appealed from or within such further time as the judge under special circumstances allows.

Entry of  
appeal.

(2) No appeal lies after leave therefor has been obtained under subsection (1) unless it is entered in the Supreme Court within sixty days from the making of the order granting leave to appeal.

## COMMISSION AND STAFF.

Other employment prohibited.

**14.** The commissioners shall devote the whole of their time to the performance of their duties under this Act, and shall not accept or hold any office or employment inconsistent with their duties and functions under this Act.

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Inquiries and investigations by single member, etc.

**15.** The Commission may authorize one or more of its members or any person designated by it to conduct an inquiry or investigation on behalf of the Commission in relation to any claim and for that purpose the Commission may delegate to that member or members or person such of its powers under this Act as the Commission deems necessary for the carrying out of that inquiry or investigation.

Quorum.

**16.** A majority of the commissioners constitutes a quorum of the Commission for the hearing and determination of any claim.

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Delivery of decisions.

**17.** All of the commissioners present at the hearing of a claim need not take part in the rendering of a decision on that claim, and in the absence of any commissioner, the decision may be rendered by a majority of the commissioners who were present at the hearing of the claim.

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Vacancies.

**18.** A vacancy in the membership of the Commission does not impair the right of the remainder to act.

Oath of office.

**19.** Every commissioner shall, before entering upon the duties of his office, take and subscribe before the Clerk of the Privy Council an oath in the following form:

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“I, A.B., do solemnly swear that I will truly and faithfully, to the best of my skill and knowledge, execute and perform the office of (commissioner or Chairman as the case may be) of the Indian Claims Commission. So help me God.”

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Residence of Commissioner.

**20.** Each commissioner shall, during his term of office, reside in the City of Ottawa or within twenty-five miles thereof or within such other distance thereof as the Governor in Council may fix.

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Salaries of commissioners.

**21.** Each commissioner other than a commissioner in receipt of salary under the *Judges Act* shall be paid such salary as may be fixed by the Governor in Council and is entitled to be paid reasonable travelling and other expenses incurred by him in the performance of his duties while away from his ordinary place of residence.

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Secretary. **22.** There shall be a secretary of the Commission who shall be appointed by the Governor in Council to hold office during pleasure and shall be paid such salary as the Governor in Council may fix.

Application of **23.** (1) The secretary and other officers and 5  
Public employees of the Commission shall be deemed to be persons  
Service employed in the Public Service for the purpose of the  
Super- *Public Service Superannuation Act.*  
annuation Act.

Idem. (2) The Governor in Council may declare any person for the time being holding the office of a com- 10  
missioner, other than a person who is in receipt of a salary under the *Judges Act*, to be a person employed in the Public Service for the purpose of the *Public Service Superannuation Act*.

#### INDIAN CLAIMS APPEAL COURT.

Court established. **24.** There shall be an Indian Claims Appeal Court 15  
which shall hear and determine all appeals brought pursuant to section 25.

Appeals to Court. **25.** (1) An appeal from a decision of the Commission may be brought to the Indian Claims Appeal Court  
(a) by the Crown or any band on whose behalf a 20  
claim is brought before the Commission on the ground that the award of the Commission in respect of that claim was unreasonable; and  
(b) by any band on whose behalf a claim is 25  
brought before the Commission on the ground that no award was made by the Commission in respect of that claim and that the failure to make any award was unreasonable.

Time limit for bringing appeal. (2) Every appeal to the Indian Claims Appeal 30  
Court shall be brought within six months from the date of the decision of the Commission being appealed from, by notice of appeal filed with the Registrar.

Powers of Court. **26.** (1) Upon the hearing of an appeal brought pursuant to this Act, the Indian Claims Appeal Court 35  
may confirm or vary the decision of the Commission or may refer the claim back to the Commission for such further hearing as the Court may direct.

Decisions final. (2) The decision of the Indian Claims Appeal Court on any appeal brought pursuant to section 25 is 40  
final and conclusive.

Judges. **27.** (1) The judges of the Exchequer Court of Canada are *ex officio* judges of the Indian Claims Appeal Court.

- President. (2) The Governor in Council shall designate one of the judges of the Indian Claims Appeal Court to be the President thereof and he shall preside at any sittings of the Court at which he is present and shall appoint another judge to preside at any sittings of the Court at which he is not present. 5
- Sittings and hearings. (3) The Indian Claims Appeal Court may sit and hear appeals at any place or places, and the President of the Court shall arrange for sittings and hearings as may be required. 10
- Quorum and decision on appeal. (4) Three judges of the Indian Claims Appeal Court constitute a quorum and the decision on any appeal shall be determined by a vote of the majority of the judges present and in the event of an equality of the votes, the President or other presiding judge has a second or casting 15 vote.
- Superior court of record. Expenses. (5) The Indian Claims Appeal Court is a superior court of record. (6) A judge of the Indian Claims Appeal Court is entitled to be paid travelling allowances under the 20 *Judges Act* as for attendances as judge of the Exchequer Court.
- Rules of Court. **28.** Subject to the approval of the Governor in Council, the Indian Claims Appeal Court may make such rules respecting the conduct of appeals and the procedure 25 for the bringing of appeals as it deems necessary to enable it to discharge its duties under this Act.
- Registrar. **29.** The Registrar of the Exchequer Court is *ex officio* the Registrar of the Indian Claims Appeal Court.

## GENERAL.

- Payment of moneys by Crown not admission of validity of claim. **30.** The payment at any time by the Crown of any 30 moneys in respect of a claim shall not constitute an admission as to the validity of that claim, but the amount of any moneys so paid and the money value of any other compensation given in relation to the matter out of which a claim arose shall be deducted by the Commission from any award 35 it may make in respect of that claim.
- Payment of award full discharge of claim. **31.** The payment by the Crown to a band of the amount of money awarded by the Commission or fixed by the Indian Claims Appeal Court in respect of a claim made by that band pursuant to this Act, is full discharge and 40 satisfaction by the Crown of that claim.
- Coming into force. **32.** This Act shall come into force on a day to be fixed by proclamation of the Governor in Council.