

To Her Excellency
The Governor General in Council

MAY IT PLEASE YOUR EXCELLENCY

In 2003-2004, the Indian Specific Claims Commission completed eight inquiries and mediations and released six reports. This report summarizes our major achievements and activities in relation to specific claims last year.

Yours truly,

A handwritten signature in black ink, reading "Renée Dupuis". The signature is written in a cursive, flowing style.

Renée Dupuis
Chief Commissioner

November 2004



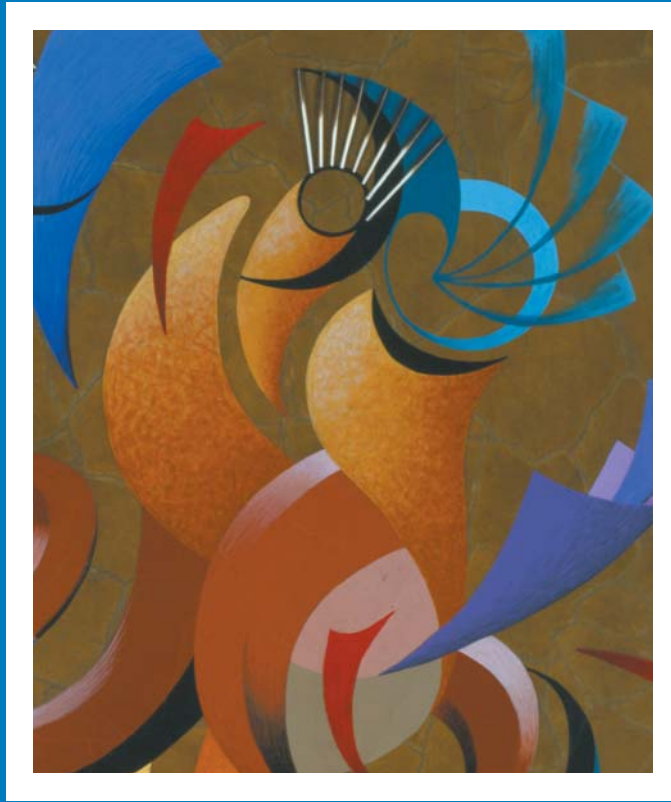
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Introduction

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MESSAGE FROM THE CHIEF COMMISSIONER

It is my pleasure to present the report of the Indian Claims Commission (ICC) for the year 2003–2004.

It has been 13 years since this Commission was established. As we have conducted public inquiries and offered mediation services regarding specific land claims disputes between First Nations and the Government of Canada, we have earned a reputation as an independent and effective institution. Our reports have had a direct bearing on the resolution of a number of specific claims. At times, they also have redefined Canadian government policy. Our initiative in considering the testimony of elders and others as important sources of evidence in specific land claims was in advance of the Supreme Court of Canada's 1997 decision on *Delgamuukw*, which reached a similar conclusion.

During the past year, the Commission has completed important work. For example, two of our inquiries dealt with the construction of a highway and bridge on the Betsiamites reserve in Quebec. As a result of these inquiries, the Government of Canada revised its earlier position and agreed to negotiate the two claims. The outcome of these claims may serve as an important precedent for similar situations involving other First Nations in Quebec.

Another inquiry process involved disputed surrender of land by the Mississaugas of the New Credit First Nations (Ontario). The claim involves a substantial tract of land in the City of Toronto including the Toronto Islands. The Commission completed its work after additional argumentation provided by the band convinced the Government of Canada to change its position and enter into compensation negotiations.

The Commission's inquiry into a claim by the Canupawakpa First Nation found that the surrender of the Turtle Mountain Reserve was valid. The Commission nevertheless recommended that Canada, the Canupawakpa Dakota and Sioux Valley Dakota First Nations cooperate to acquire and protect burial sites at the former reserve, which had not been protected despite a promise by the Crown.

The last inquiry completed by the Commission involved the File Hills Colony claim by the Peepeekisis First Nation. For over two decades from 1898, Indian Affairs placed Indian industrial school graduates on the Peepeekisis reserve as farmers. These non-band members were given band membership, farming plots and special assistance, displacing original band members. The Commission found this conduct to breach the original band members' treaty rights, the Indian Act and the Crown's fiduciary duty respecting the original band members' land.

The Commission also facilitated separate negotiations between Canada and three First Nations in Saskatchewan - Moosomin, Standing Buffalo and Thunderchild. These mediation processes managed by the ICC resulted in agreements between Canada and the three First Nations for compensation in the amounts of \$41 million, \$3.6 million and \$53 million respectively.





This report is our vehicle for sharing these contributions and successes with parliamentarians, First Nations, government and the public. It outlines the work of the Commission over a year that has been marked by change in the field of aboriginal affairs. Not the least of these changes was the fact that the bill to establish a new claims body to replace the Commission received royal assent in November 2003 and is now awaiting proclamation. When that occurs, the Centre for the Independent Resolution of First Nations Specific Claims will come into being.

While we support the creation of the new Centre, we feel strongly that the expertise and practices that we have developed should not be lost as the transition to a new organization takes place. We will work closely with Indian and Northern Affairs Canada, the Privy Council Office and others to ensure that the new Centre benefits from our experience and talent.

Throughout this period, we have continued to exercise our mandate and to seek ways to improve the inquiry process in order to make it more effective and efficient. We are encouraged by the fact that First Nations continue to turn to the Commission for assistance and advice.

This is the last year of the United Nations International Decade of the World's Indigenous People. At the start of this ten-year period, hopes were expressed that, by decade's end, the UN General Assembly would adopt a declaration on the rights of indigenous peoples. A considerable portion of the draft declaration relates to land claims. Included in the document are principles that strongly emphasize the paramount importance of their traditional lands to aboriginal peoples. Equally significant are the needs to compensate aboriginal peoples removed from their lands and to ensure that both the intent and the spirit of treaties and agreements made between aboriginal peoples and governments are honoured.

As of March 31, 2004, the declaration had not yet been approved. Yet the Indian Claims Commission continues to be guided by these principles as we help to settle specific land claim disputes between First Nations and Canada. The Commission's role is to bring understanding and fairness to disputes that have been going on for years and, in some instances, for centuries.

In conclusion, the Commission bids farewell and offers its thanks to Chief Commissioner Phil Fontaine, who resigned on June 3, 2003, and whom I had the honour to replace. We also express our gratitude to Commissioner Roger Augustine, who resigned on November 10, 2003, after more than 11 years of service.

Renée Dupuis,
Chief Commissioner
Indian Claims Commission

WHAT'S IN THE REPORT

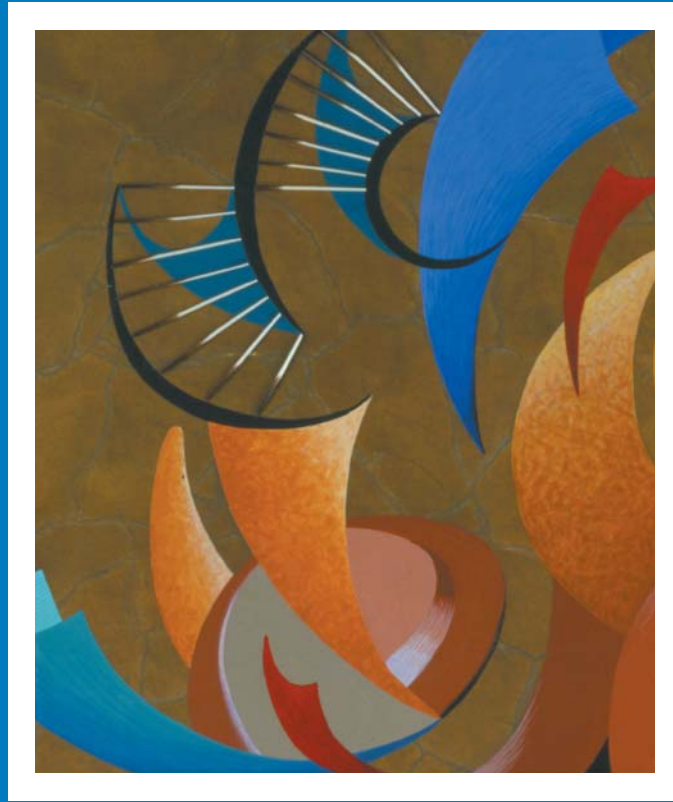
This report of the Indian Claims Commission describes the work of the Commission from April 1, 2003, to March 31, 2004. It focuses on the Commission's achievements and its contribution to the settlement of specific land claims that have been rejected by Canada and then submitted by First Nations to the Commission for inquiry. It also makes recommendations to government on how to improve the process.

The report is divided into four sections. The **Introduction** includes a message from Chief Commissioner Renée Dupuis. This is followed by the Commission's **Recommendation**. The section entitled **Who We Are** outlines the mandate, process, and organizational structure of the Commission; provides a brief history of the Commission and specific land claims; and includes biographical sketches of the Commissioners. It is followed by **What We Do**, the section that constitutes the core of the report, setting out the status of all claims on which the Commission has worked since its inception.

The focus of the report continues to be the summary of claims, which provides information on claims currently before the Commission either in inquiry or in mediation/facilitation. It is followed by a table of claims that have been completed.

The current reports are listed first so that the reader can quickly find the results of work conducted by the Commission over the reporting year. The concluded claims table tracks the progress of each claim through the specific claims process once the Commission has completed its inquiry or provided mediation/facilitation services.





Commission's Recommendation to Government, 2003-2004

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- 9 **Commission's recommendation to government, 2003-2004**
One recommendation to the government regarding specific claims

COMMISSION'S RECOMMENDATION TO GOVERNMENT, 2003-2004

The Commission is concerned about the Government of Canada's response to the Commission's process, as illustrated by Canada's inordinate delays in following up on Commission recommendations and by its refusal to provide research funding to assist First Nations' claimants with their claims.

The Commission notes the excessive amount of time taken by Canada to consider a number of claims – claims which were then accepted for inquiry by the Commission on the basis that the delay amounted to rejection of the claims by Canada. In the claim of the Peepeekisis First Nation, for example, Canada declined to decide whether to accept or reject the claim for more than 15 years, at which point the Commission convened an inquiry at the First Nation's request.

There have been many such cases in recent years, including claims by the Mikisew Cree, Nekanect, and Alexis First Nations, as well as three claims put forward either individually or in groups by members of the Treaty 8 Tribal Association in British Columbia. The Commission accepted each of these claims for inquiry as a "deemed rejection," a decision based largely on the extensive amount of time that Canada had the claim under review.

In establishing the Commission, Canada provided First Nations with an alternative to taking their specific land claims to the courts for resolution. In so doing, Canada made it clear that this would be a funded process, a measure designed to lend credibility to the process and to instill confidence in it.

Recent actions of the Research and Negotiations Funding Unit of the Claims and Indian Government Sector of the Department of Indian and Northern Affairs are worrisome. The unit is responsible for allocating funds to First Nations to enable them to research their claims and, where the Commission convenes an inquiry, to participate.

The Commission is particularly troubled by instances in which the Commission has interpreted its mandate to proceed with an inquiry under the *Inquiries Act*, only to have the funding unit refuse funding to a First Nation claimant.

The experience of the Treaty 8 Tribal Association provides a good example. Three separate claims put forward by the Association, either by an individual member of the Association or together with one or more other members, were denied funding by Canada because the Commission deemed them to have been rejected. Canada has also declined to participate in or fund inquiries where it has disagreed with the Commission's decision to inquire into compensation criteria pursuant to the second part of the Commission's mandate.



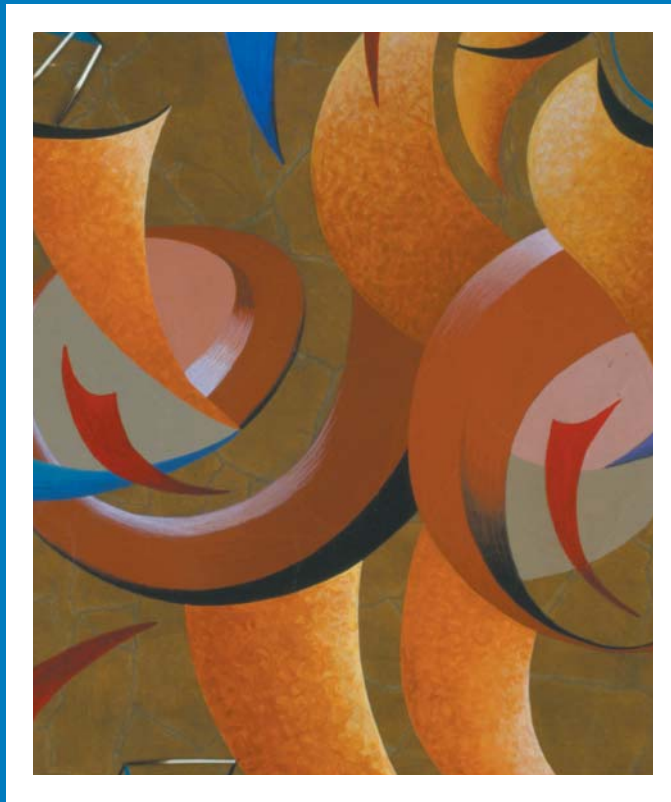


This Commission was established and given its mandate by order of the Governor in Council. Its exercise of jurisdiction under this mandate should be challenged by a party, including Canada, only by way of due process—namely a challenge to jurisdiction before the Commission, followed (should the party disagree) by judicial review in the Federal Court. Refusal to participate and unilateral denial of funding by the Department of Indian and Northern Affairs undermines the mandated process and shows disrespect not only for the Commission and the First Nation claimant but also for the authority of the Governor in Council.

Canada has a responsibility to ensure that a First Nation claimant is afforded reasonable access to the process in order that justice be done and be seen to be done. The Commission views funding that permits First Nations to participate in the Commission's inquiry process as an access to justice issue.

Canada must demonstrate a high level of good faith in its approach to the Commission's inquiries and a willingness to be bound by its process. Canada's refusal to bring a mandate challenge for a determination of jurisdiction and its denial of funding, thereby preventing an inquiry from proceeding, are unacceptable and constitute an obstacle to the work of the Commission.

The Commission therefore recommends that Canada challenge the Commission's exercise of jurisdiction before the Commission, following which Canada should bring an application for judicial review in the Federal Court, if it disagrees with the Commission's assumption of jurisdiction. The Commission further recommends that Canada not deny fair process to a claimant First Nation in these circumstances simply by refusing to fund the First Nation's claim.



The ICC – Who We Are

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AUTHORITY, MANDATE & OPERATIONS

The Indian Claims Commission is a Commission of Inquiry established by Order-in-Council under Part I of the *Inquiries Act* in 1991. The Commission has a double mandate: to inquire, at the request of First Nations, into First Nations' specific land claims that have been rejected by the Minister of Indian and Northern Affairs Canada; and to provide mediation services for claims in negotiation.

As part of its mandate to find more effective ways to resolve specific claims, the Commission has established a process to inquire into and review government decisions regarding the merits of a claim and the applicable compensation principles when negotiations have reached an impasse. Since the Commission is not a court, it is not bound by strict rules of evidence, limitation periods, and other technical defenses that might present obstacles in litigation of grievances against the Crown. This flexibility removes those barriers and gives the Commission the freedom to conduct fair and objective inquiries in as expeditious a way as possible. In turn, these inquiries offer the parties innovative solutions in their efforts to resolve a host of complex and contentious issues of policy and law. Moreover, the process emphasizes principles of fairness, equity, and justice to promote reconciliation and healing between aboriginal and non-aboriginal Canadians.

The Commission provides broad mediation and facilitation services at the request of both the First Nation and the Government of Canada. Together with the mediator, the parties decide how the mediation process will be conducted. This method ensures that the process fits the unique circumstances of each particular negotiation.

The process used by the Commission for handling claims is aimed at increasing efficiency and effectiveness in resolving specific claims. There are five stages to the inquiry process, which begins when a request is received from a First Nation. Each of these stages is explained in the chart that follows.



THE ICC'S PROCESS

STAGE ONE

REQUEST FOR INQUIRY OR MEDIATION

A First Nation with a rejected or stalled claim writes to the Commission to request an inquiry or mediation. The Commission assesses the claim.

INQUIRY

PREPARATION FOR INQUIRY

The Commission brings representatives of the First Nation and government together face-to-face, often for the first time, to discuss the rejected claim, plan research, clarify legal issues.

COMMUNITY SESSION

Commissioners visit the First Nation to hear oral testimony from elders and community members.

WRITTEN AND ORAL SUBMISSIONS

Lawyers for the First Nation and government provide submissions on facts and law.

FINAL INQUIRY REPORT

Based on the evidence presented during the inquiry, Commissioners release their findings and recommendations to the federal government, the First Nation, and the public.

MEDIATION

MEDIATION

The mediator will host meetings, set timetables, assign tasks, facilitate negotiations, or break through impasses.

STAGE TWO

STAGE THREE

STAGE FOUR

STAGE FIVE

MEDIATION REPORT

While respecting the confidentiality of all parties involved, the Commission may release a brief report on the mediation process and ensuing results of the negotiations.

HISTORY OF THE ICC AND SPECIFIC CLAIMS IN CANADA

From colonial times through the first half century of Confederation, the federal government and First Nations entered into treaties that created mutual obligations. Many claims derive from the assertion by First Nations that certain treaty provisions have not been honoured by the government. Claims can also derive from breaches of obligation arising out of the *Indian Act* and other statutes, legal duties of the Crown, improper administration of Indian funds or other assets, or illegal disposition of Indian land.

Government policy divides claims into two categories: specific and comprehensive. **Specific claims** arise from the breach or non-fulfillment of government obligations found in treaties, agreements, or statutes. **Comprehensive claims** are based on unextinguished aboriginal title.

In the fall of 1990, the federal government asked First Nation Chiefs to recommend ways to improve the claims process. Following consultations with their communities, the Chiefs Committee on Claims produced the First Nations Submission on Claims. It received the support of a special assembly of the Assembly of First Nations in December of that year.

Among their 27 recommendations, the Chiefs proposed that an “independent and impartial body ... with authority to ensure expeditious resolution of claims” be established. This body would assist the negotiation process by bringing the parties together and recommending solutions to contentious issues.

In July 1991, the federal government responded to the Chiefs’ submission by creating the Indian Specific Claims Commission as a Commission of Inquiry. Justice Harry S. LaForme served as the first Chief Commissioner until February 1994, when he was appointed a Justice of the Ontario Court (General Division). He was replaced in April 1994 by Commissioners Daniel J. Bellegarde and P.E. James Prentice, who acted as Co-Chairs until Phil Fontaine’s appointment as Chief Commissioner in August 2001. In June 2003, Renée Dupuis was appointed Chief Commissioner following Mr Fontaine’s resignation.

The mandate of the Indian Claims Commission is to address disputes arising out of the specific claims process. This process is based on Canada’s Specific Claims Policy called *Outstanding Business*, which was published in 1982.

Under the government’s current policy, First Nations must research and submit specific claims to the government. The government then decides whether to accept a claim for compensation negotiations.

Negotiation of validated claims may result in an offer of compensation to First Nations. However, concerns have been raised that restitution is currently restricted by government criteria that First Nations often believe to be unfair or applied in ways that are unfair.





For many years, First Nation and government negotiators have attempted to put an end to deadlocked land claims, but there has been little progress. Negotiations have been slow and difficult, and only a few settlements have been reached. This backlog of unresolved claims is not acceptable.

Before the creation of the Indian Claims Commission, First Nations were unable to challenge government decisions without going to court. As an alternative to court action, the ICC has offered a fresh and positive approach for First Nations that desire an independent review of government decisions.

For many years, the Commission urged the federal government to create a permanent, independent claims body. On November 4, 2003, Parliament passed the *Specific Claims Resolution Act*, legislation to establish the new Canadian Centre for the Independent Resolution of First Nations Specific Claims. The Centre will replace the Indian Claims Commission, once the legislation is proclaimed. In the meantime, the Commission continues to exercise its mandate.

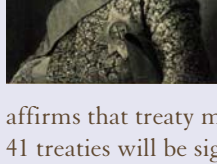
An early land claims chronology:

Early 1700s



The first formal treaties are made with eastern First Nations as the English and French compete for control of the fur trade.

1763



In response to Chief Pontiac's war, an uprising by First Nations around forts in the Great Lakes region, King George III issues the *Royal Proclamation of 1763*, which confirms aboriginal rights and affirms that treaty making must precede European settlement. Over the next few decades, 41 treaties will be signed covering southern Ontario and parts of British Columbia.

1812

After the War of 1812, treaties between First Nations and the British open up much of Ontario for settlement.

1867

At Canadian Confederation, the responsibilities of the British Crown are transferred to the federal Government of Canada.



1871-77

The first wave of treaty signing between the Government of Canada and First Nations covers northwestern Ontario and the southeastern Prairies. The treaties signed at this time, Treaty 1 to Treaty 7, are known as the Numbered Treaties.

1899-1921

The second wave of the Numbered Treaties, covering parts of northern Alberta, British Columbia and Saskatchewan and southern parts of the North West Territories, start with Treaty 8 and end with Treaty 11.

1927

An amendment is added to the *Indian Act* which discourages land claims. Fines are levied against lawyers who raise funds for a claim or represent a First Nation in a claim against Canada.

Events leading to the creation of the Commission:

1948

A joint parliamentary committee recommends that a claims commission be set up to assess and settle all claims.

1951

The *Indian Act* is revised to remove the provision that made it an offence to raise funds or hire a lawyer to advance a land claim without the government's permission.

1961-65

A joint parliamentary committee again recommends the creation of a claims body. The bill dies on the order paper.

1969



The White Paper introduces the term “specific claim” based on “lawful obligation.” The paper recommends the creation of an independent claims body. Dr Lloyd Barber is appointed to explore the creation of an impartial claims body.

1973

The Supreme Court of Canada's decision in the *Calder* case recognizes the existence of aboriginal title.

The federal government announces its claims policy, designating specific and comprehensive claims.

1981

Gerard La Forest, in a report commissioned by the government, recommends the creation of “an independent administrative tribunal” to resolve claims.

¹ From the collection of the Clements Library, University of Michigan. *King George III*.

² Glenbow Archives NA-5-9. *Women from the Blood reserve in Alberta collect their treaty payments from Indian Agent Ken Brown*.

³ CP. *In June 1970, Harold Cardinal, leader of the Alberta Indians, suggests to Prime Minister Pierre Trudeau that Indian claims be handed over to an impartial claims commission for settlement.*





1982

Canada publishes *Outstanding Business: A Native Claims Policy – Specific Claims*, which focuses on the processes and guidelines for submitting specific claims.

The *Constitution Act, 1982* is proclaimed. Section 35 deals with aboriginal peoples and recognizes and affirms existing aboriginal and treaty rights.



1984

In the *Guerin* case, the Supreme Court finds that, under the provisions of the *Indian Act*, Parliament has conferred on the Crown a “fiduciary” or trust-like obligation to protect First Nations’ interests in transactions with third parties.

1987

The Canadian Bar Association recommends the creation of a “specific claims tribunal.”

1990



The Supreme Court, in its comments on the *Sparrow* case, recognized an existing aboriginal right to fish based on the facts of that case, and interpreted section 35 of the *Constitution Act, 1982*, for the first time.

Elijah Harper helps to block the Meech Lake accord over lack of aboriginal participation.

Violence erupts in Oka, Quebec, over a rejected land claim.

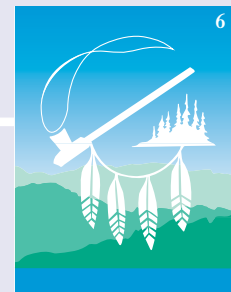
The federal government announces its Native Agenda, committing it to the acceleration of specific claims settlement.

The Indian Commission of Ontario, in a discussion paper commissioned by the federal government and the Assembly of First Nations, recommends the creation of an independent claims body.

The Chiefs Committee on Claims also recommends the creation of an independent claims body and of a Joint Working Group on Claims to continue exploring reform of the claims policy with the federal government.

1991

The Indian Specific Claims Commission, known as the Indian Claims Commission, is created, and Harry S. LaForme is appointed Chief Commissioner.



1992

The Commission's mandate is amended following objections from the Assembly of First Nations, and revisions recommended by a Joint First Nations/Government Working Group are incorporated. Six additional Commissioners are appointed: Roger Augustine, Dan Bellegarde, Carole Corcoran, Carol Dutchshen, Charles Hamelin, and P.E. James Prentice.

Recent developments...

1995

The Supreme Court hands down its decision in the *Apsassin* case. In its decision, the Court contemplates a number of scenarios when a pre-surrender fiduciary duty would come into effect: when a band's understanding of the terms of surrender is inadequate; where the conduct of the Crown has tainted dealings in a manner that makes it unsafe to rely on the band's understanding and intention; where the band has abnegated its decision-making authority in favour of the Crown in relation to the surrender; and where the surrender is so foolish or improvident as to be considered exploitive.

1997

In the *Delgamuukw* case, the Supreme Court finds that to disallow First Nations' oral history and tradition as evidence would put an impossible burden of proof on aboriginal peoples, since that is the way First Nations kept records. The Court also directly addresses the definition of aboriginal title; it finds that a First Nation has a right to claim "aboriginal title" to lands that it has used in order to maintain its traditional way of life. Aboriginal title comes from a nation's use and occupancy of the land for generations; it is therefore a communal right that cannot be held by an individual.

1999

The Supreme Court hands down the *Marshall* decision. Given the language contained in a treaty between the Crown and the Mi'kmaq and Maliseet communities in New Brunswick, the Court finds that Mr Donald Marshall Jr did have a right to earn a "moderate livelihood" from selling his catch of eels.

2001

The First Nations Governance Initiative is introduced by the Minister of Indian and Northern Affairs Canada (INAC), Robert Nault, on the Siksika First Nation in Alberta. The package of legislation contains the *Specific Claims Resolution Act*, which would create the Canadian Centre for the Independent Resolution of First Nations Specific Claims. The new Centre would replace the Indian Claims Commission.

In August, Phil Fontaine is appointed Chief Commissioner of the ICC.

2003

In June, Mr Fontaine resigns as Chief Commissioner and is replaced by Renée Dupuis.

In November, the *Specific Claims Resolution Act* is adopted and receives Royal Assent. Until the legislation is proclaimed and the new centre is created, the ICC continues to fulfill its mandate.

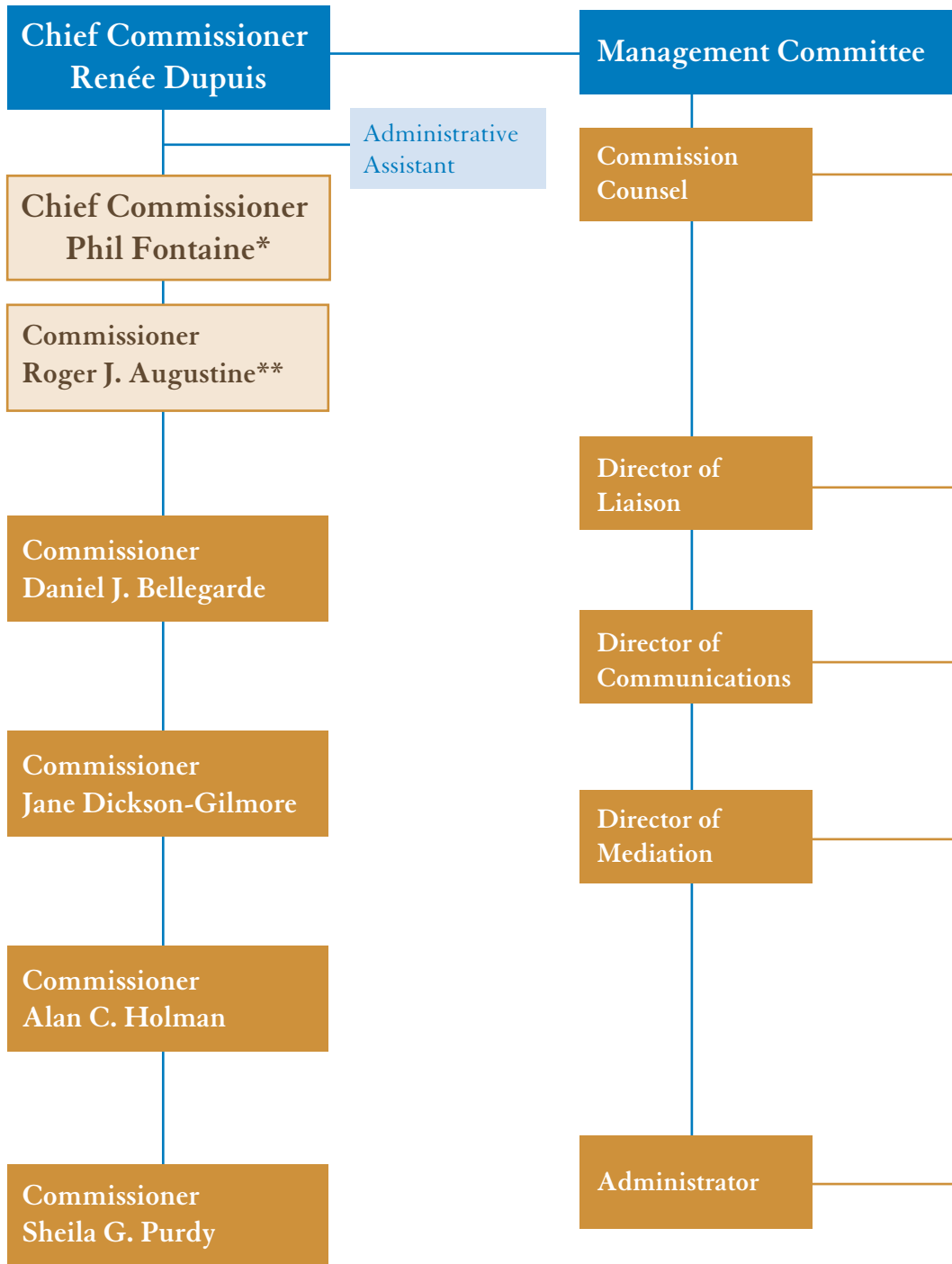
⁴ CP/Ron Poling. In April 1982, *Queen Elizabeth II signed Canada's constitutional proclamation in Ottawa as Prime Minister Pierre Trudeau looked on.*

⁵ CP/Ryan Remiorz. *Mohawks use a video camera to tape the media and passersby as a young Mohawk plays in front of a log bunker on the Kanesatake First Nation in July 1990.*

⁶ ICC's logo.

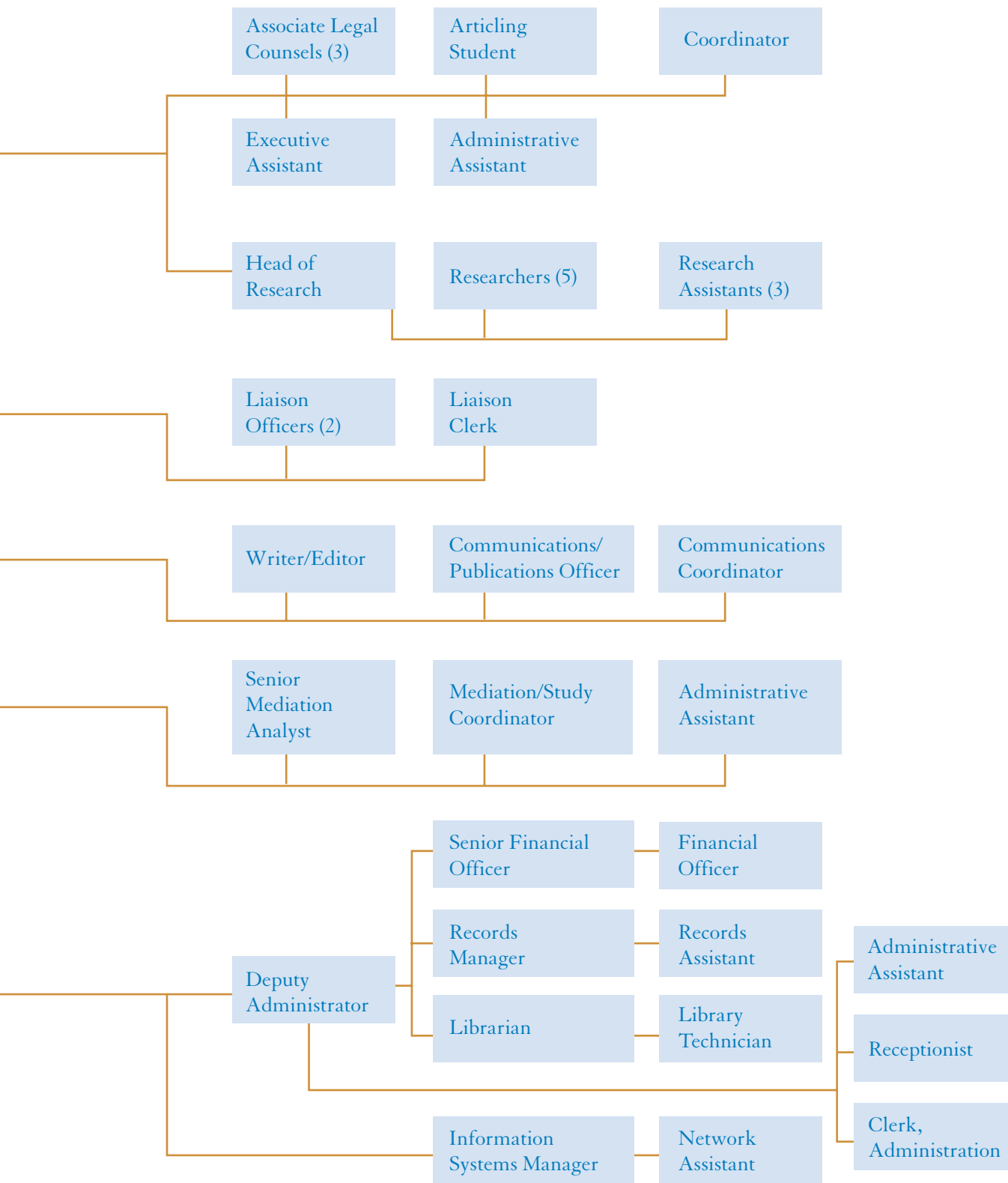


ORGANIZATIONAL STRUCTURE



* resigned in June 2003
 ** resigned in November 2003





THE COMMISSIONERS



Chief Commissioner Renée Dupuis has had a private law practice in Quebec City since 1973, where she specializes in the areas of aboriginal peoples, human rights, and administrative law. Since 1972, she has served as legal advisor to a number of First Nations and aboriginal groups in her home province, including the Indians of Quebec Association, the Assembly of First Nations for Quebec and Labrador, and the Attikamek and the Innu-Montagnais First Nations, representing them in their land claims negotiations with the federal, Quebec, and Newfoundland governments and in constitutional negotiations. From 1989 to 1995, Madame Dupuis served two terms as Commissioner of the Canadian Human Rights Commission, and she is Chair of the Quebec Bar's committee on law relating to aboriginal peoples. She has served as consultant to various federal and provincial government agencies, authored numerous books and articles, and lectured extensively on administrative law, human rights, and aboriginal rights. She is the recipient of the Quebec Bar Foundation's 2001 Award for her book *Le statut juridique des peuples autochtones en droit canadien* (Carswell), the 2001 Governor General's Literary Award for Non-fiction for her book *Quel Canada pour les Autochtones?* (published in English by James Lorimer & Company under the title *Justice for Canada's Aboriginal Peoples*), the YWCA's Women of Excellence Award 2002 for her contribution to the advancement of women's issues, and the Quebec Bar Association's 2004 Christine Tourigny Merit Award. Madame Dupuis is a graduate in law from Université Laval and holds a master's degree in public administration from the École nationale d'administration publique. She was appointed Commissioner of the Indian Claims Commission on March 28, 2001, and Chief Commissioner on June 10, 2003.



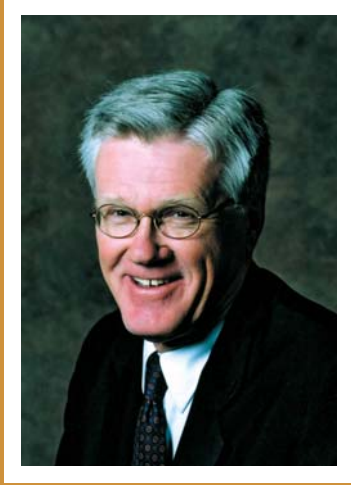


Daniel J. Bellegarde is an Assiniboine/Cree from the Little Black Bear First Nation in southern Saskatchewan. From 1981 to 1984, Mr Bellegarde worked with the Meadow Lake District Chiefs Joint Venture as a socio-economic planner. He was president of the Saskatchewan Indian Institute of Technologies from 1984 to 1987. In 1988, he was elected first Vice-Chief of the Federation of Saskatchewan Indian Nations, a position he held until 1997. He is currently president of Dan Bellegarde & Associates, a consulting firm specializing in strategic planning, management and leadership development, self-governance, and human resource development in general. Mr Bellegarde was appointed Commissioner, then Co-Chair, of the Indian Claims Commission on July 27, 1992, and April 19, 1994, respectively. He held the position of Co-Chair until August 2001.



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



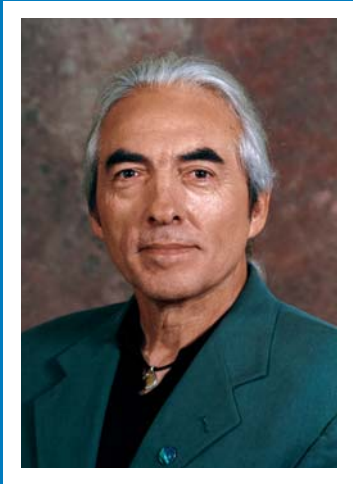


Alan C. Holman is a writer and broadcaster who grew up on Prince Edward Island. In his long journalistic career, he has been an instructor at Holland College in Charlottetown, PEI; editor-publisher of a weekly newspaper in rural PEI; a radio reporter with CBC in Inuvik, NWT; and a reporter for the Charlottetown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

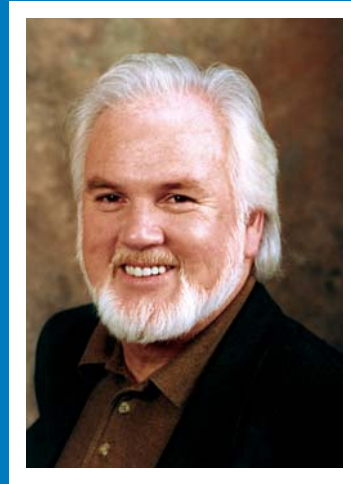


Sheila G. Purdy was born and raised in Ottawa. Between 1996 and 1999, she worked as an advisor to the government of the Northwest Territories on the creation of the Nunavut territory. Between 1993 and 1996, she was senior policy advisor to the Minister of Justice and the Attorney General of Canada on matters related to the Criminal Code and aboriginal affairs. In the early 1990s, Ms Purdy was also special advisor on aboriginal affairs to the Leader of the Opposition. Previously, she provided legal services on environmental matters and worked as a legal aid lawyer representing victims of elder abuse. After graduating with a law degree from the University of Ottawa in 1980, Ms Purdy worked as a litigation lawyer in private practice until 1985. Her undergraduate degree is from Carleton University, Ottawa. Ms Purdy is on the executive of the Canadian Biodiversity Institute, the Advisory Council of Canadian Arctic Resources Committee, and the Women's Legal, Education and Action Fund (LEAF). She was appointed Commissioner of the Indian Claims Commission on May 4, 1999.

RESIGNATIONS



Chief Commissioner Phil Fontaine is an Ojibway from the Sagkeeng First Nation in Manitoba. He has worked for many years on behalf of First Nations and has also served as an elected leader in a number of senior positions in both the federal and First Nations governments. He served as National Chief of the Assembly of First Nations (AFN) for three years until July 2000 and previously was Grand Chief of the Assembly of Manitoba Chiefs. Before serving as Grand Chief, Mr Fontaine represented Manitoba at the AFN as Vice-Chief. His experience with the federal public service includes the positions of director general of the Yukon Region of the Department of Indian Affairs and Northern Development and deputy coordinator of the Native Economic Development Program. Mr Fontaine received a National Aboriginal Achievement Award in 1996 in recognition of his public service. He holds a bachelor of arts degree with a major in political studies from the University of Manitoba. Mr Fontaine was appointed Chief Commissioner of the Indian Claims Commission on August 29, 2001 and resigned on June 3, 2003.



Roger J. Augustine is a Mi'kmaq born in Eel Ground, New Brunswick, where he served as Chief from 1980 to 1996. He was elected president of the Union of NB-PEI First Nations in 1988, and completed his term in January 1994. He received the prestigious Medal of Distinction from the Canadian Centre on Substance Abuse for 1993 and 1994 in recognition of his efforts in founding and fostering both the Eel Ground Drug and Alcohol Education Centre and the Native Alcohol and Drug Abuse Rehabilitation Centre. In June 1996, he was named Miramichi Achiever of the Year by the Miramichi Regional Development Corporation. Mr Augustine was appointed Commissioner of the Indian Claims Commission on July 27, 1992 and resigned on September 18, 2003.





The ICC – What We Do

What you'll find in this section:

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Quick facts on ICC's inquiries, 1991-2004

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Facts on specific claims at the ICC

OVERVIEW OF ICC'S ACTIVITIES FROM 1991 TO 2004

The following section represents an overview of the various specific claims submitted to the ICC. Since its inception in 1991, the Commission has issued reports on 60 inquiries and 6 mediations.

Quick Facts on ICC Inquiries:

Total requests for inquiry	124
Total accepted requests for inquiry	112
Total denied requests for inquiry	11
Total pending requests for inquiry	1

Total accepted requests for inquiry	112
Active files <i>(see summaries of each file provided in following section)</i>	38
<i>Reports in progress</i>	2
<i>Within inquiry process</i>	30
<i>In abeyance</i>	6
Closed inquiries	14
<i>Closed at request of the First Nation</i>	2
<i>Closed by the ICC owing to lack of file activity</i>	12
Inquiry completed with report <i>(see concluded claims table on page 65)</i>	60



ICC RECOMMENDATIONS

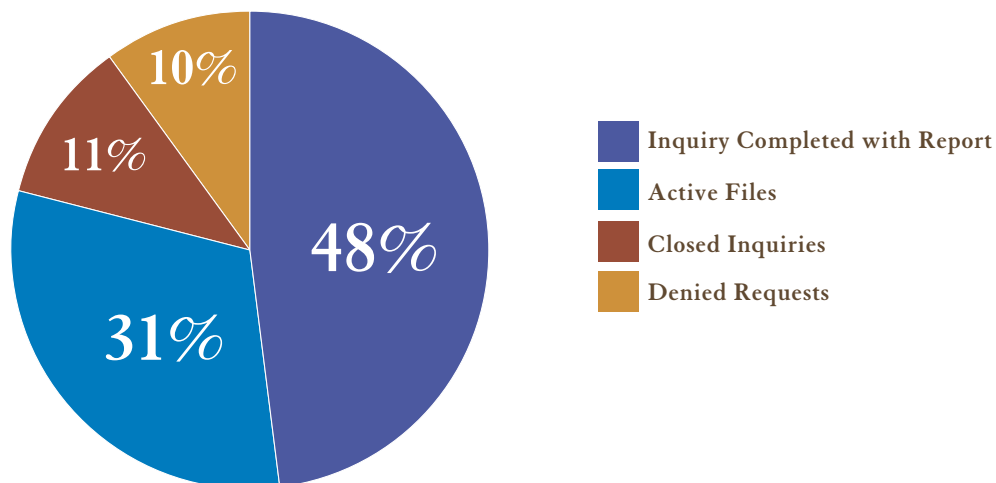
Claims the ICC has recommended be accepted for negotiation	28
Claims the ICC has not recommended for negotiation	6
Claims in which the ICC recommended additional research	3
Claims settled or accepted for negotiation with the ICC's help	15
Other recommendations	8

RESPONSES TO RECOMMENDATIONS

Claims accepted for negotiation by INAC	28
Claims rejected by INAC	18
No response received from INAC to the ICC report	5
No substantive response from INAC required	6
Other responses	3

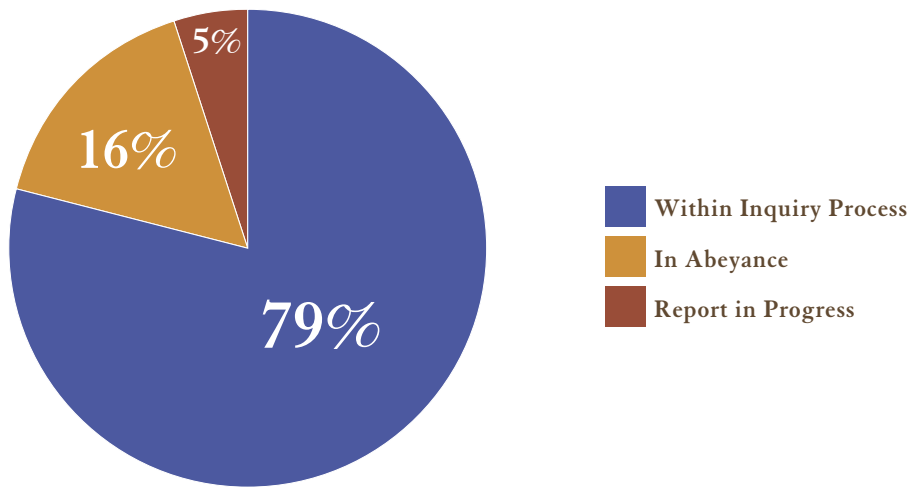
The following pie chart contains a breakdown of the 124 requests for inquiry received by the ICC since its inception in 1991.

ICC's Total Requests For Inquiry, 1991-2004



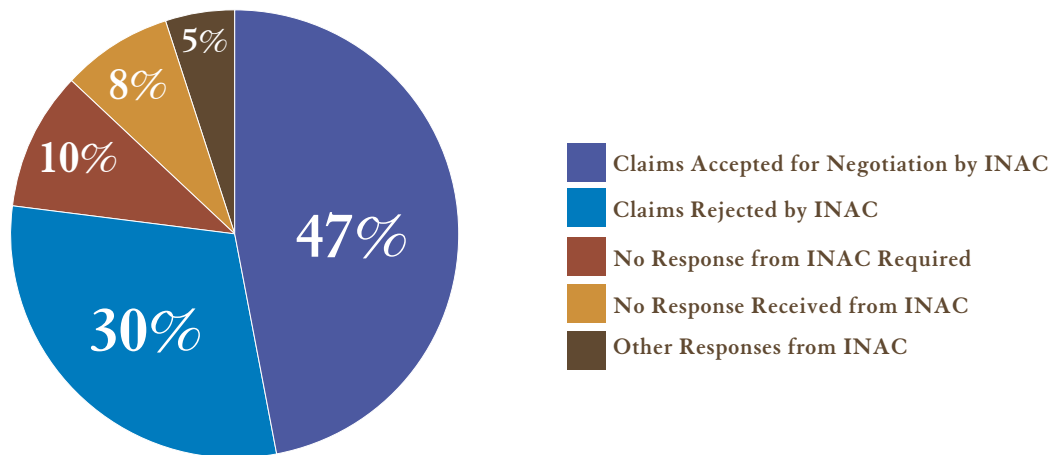
The following pie chart provides a breakdown of the status of the claims that were under review by the ICC from April 1, 2003 to March 31, 2004.

Active Files, 2003-2004



The following pie chart provides information regarding the response of the Minister of Indian and Northern Affairs Canada (INAC) to the Commission’s recommendations in each completed claim (i.e., an inquiry report has been published). For more information regarding the status of completed claims see page 65.

Government Responses To ICC Recommendations, 1991-2004

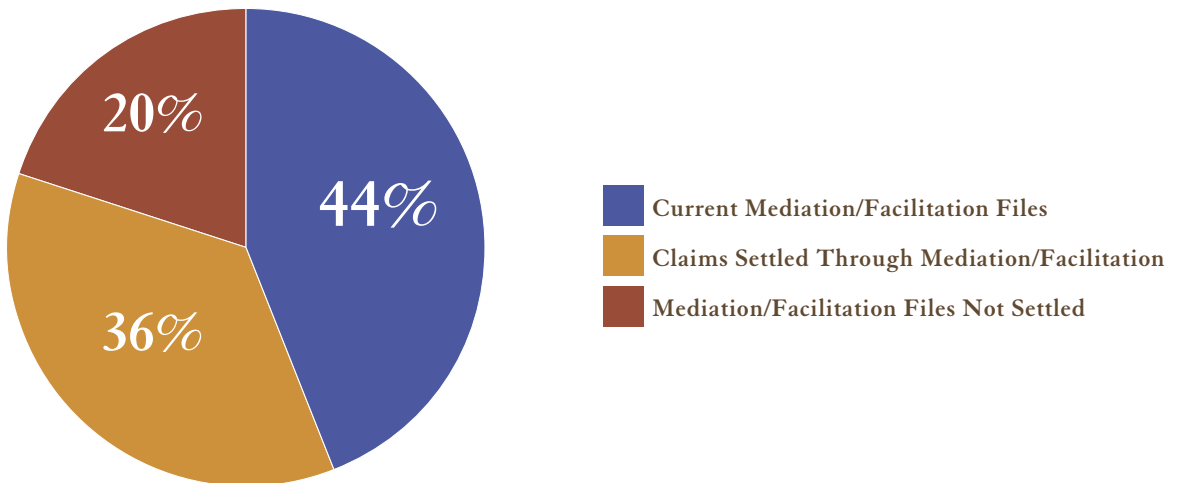


Quick Facts on ICC Mediation/Facilitation

Total requests for mediation/facilitation	36
Current mediation/facilitation files	16
Claims settled through mediation/facilitation	13
Mediation/facilitation files not settled	7

The following pie chart provides a breakdown of the 36 requests for ICC's mediation/facilitation services received since the ICC began to offer full mediation services to specific claims negotiation tables (1998).

Total Requests for Mediation/Facilitation, 1998-2004



ICC's Achievements In 2003-2004

INQUIRIES

What you'll find in this section:

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- 34 Inquiries Completed in 2003-2004**
Summarizes each inquiry completed by the ICC in 2003-2004
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Describes each claim in inquiry at the ICC and lists the ICC's activities over the past year within each file



WHAT ARE INQUIRIES?

Inquiries may take place at the request of a First Nation when

- 1) the Minister of Indian and Northern Affairs Canada (INAC) has rejected the First Nation's claim; or
- 2) the Minister has accepted the claim for negotiation, but a dispute has arisen over the compensation criteria being applied to settle the claim.

Inquiries can be initiated at the sole request of the First Nation, provided the request relates to a rejected claim or a dispute over compensation criteria. After receiving a First Nation's request for an inquiry, an initial planning conference is held between the parties to plan the process. This first conference is followed by a series of stages, concluding with a formal report of the Commissioners' findings and recommendations on the issues. These recommendations are intended to assist the parties in resolving the dispute, but they are not binding on either Canada or the First Nation. If it is requested by the First Nation, one important stage of the process is a visit by Commissioners to the First Nation community to hear directly from elders and community members in regard to the claim.

INQUIRIES COMPLETED IN 2003-2004

Under its mandate, the Indian Claims Commission inquires, upon request, into First Nations' specific land claims. From April 1, 2003, to March 31, 2004, the Commission completed five separate claims. A summary of each of these inquiries is found below.

1 Conseil de bande de Betsiamites

Highway 138 and the Betsiamites reserve, Quebec

In May 1995, the Betsiamites Band Council submitted a claim to Canada alleging that neither the federal nor the provincial government had obtained a right of way for a road through the reserve (now Highway 138) that was built and expanded from the 1910s to the 1950s, and that band funds had been illegitimately used for the construction and maintenance of this road. Canada rejected the claim in April 1999, and, in June 2000, the Band asked the Commission to conduct an inquiry into the rejection of this claim and another separate claim relating to the construction of a bridge on the Betsiamites reserve (for the same Highway 138) in the 1950s.

The Band's request was accepted, and at a March 2001 planning conference the parties agreed on the legal issues in question. They also agreed that a single inquiry process would address the two rejected claims simultaneously but separately. In June 2001, the Commission panel visited the Betsiamites reserve and heard oral testimony from elders there. In August, the Band submitted the written reports of two expert witnesses it wished to have testify.

In September 2002, the Commission received the Band's written submission. After reviewing this submission, Canada requested, in October 2002, that the inquiry be placed in abeyance while it reconsidered its rejection of the Band's claim. The Band agreed to this request, and Canada, in



January 2004, extended an offer to negotiate, which was accepted by the Band. The Commission completed its inquiry into this claim in March 2004.

2 Conseil de bande de Betsiamites

Bridge over the Betsiamites River, Quebec

In May 1995, the Betsiamites Band Council submitted a claim to Canada alleging that neither the federal nor the provincial government had obtained a right of way for the construction of a bridge (for what is now Highway 138) on the Betsiamites reserve in the 1950s. Canada rejected this claim in April 1999, and, in June 2000, the Betsiamites Band asked the Commission to conduct an inquiry into the rejection of the claim and another separate claim relating to the construction of a road through the Betsiamites reserve, from the 1910s to the 1950s, and the use of band funds for the construction and maintenance of this road (now Highway 138).

The Band's request was accepted, and at a March 2001 planning conference the parties agreed on the legal issues in question. They also agreed that a single inquiry process would address the two rejected claims simultaneously but separately. In June 2001, the Commission panel visited the Betsiamites reserve and heard oral testimony from elders there. In August, the Band submitted the written reports of two expert witnesses it wished to have testify.

In September 2002, the Commission received the Band's written submission. After reviewing this submission, Canada requested, in October 2002, that the inquiry be placed in abeyance while it reconsidered its rejection of the Band's claim. The Band agreed to this request, and Canada, in January 2004, extended an offer to negotiate, which was accepted by the Band. The Commission completed its inquiry into this claim in March 2004.

3 Canupawakpa Dakota First Nation

Turtle Mountain surrender, Manitoba

The Canupawakpa Dakota First Nation submitted a claim in 1993 to Canada relating to the surrender of Turtle Mountain reserve IR 60 on behalf of all descendants of the Turtle Mountain Band. After agreeing to conduct an inquiry into the rejected claim in May 2000, the Commission, with the parties' agreement, permitted the Sioux Valley Dakota First Nation to participate in the claim.

The inquiry involved allegations of coercion, undue influence by Crown officials, and non-compliance with the *Indian Act* in respect of the 1909 surrender of Turtle Mountain reserve. The claim turned on the question of whether one of the five remaining voting members of the Band in 1909 was habitually resident on the reserve at the time of the surrender vote. The Commission found that he was habitually resident and that his vote in favour of surrender was therefore valid. As a result, the three-to-two vote to surrender was also valid under the *Act*.

The Commission also found that the band members were told and understood the consequences of a surrender – that they would be giving up their rights to Turtle Mountain forever, that they would relocate to other Sioux communities, and that they would receive the proceeds of sale of the reserve.



The final decision by the band members to surrender was taken without haste and with full opportunity to discuss it among themselves and with the Indian Agent.

Although the Crown wanted a surrender for political and practical reasons, there was insufficient evidence to conclude that officials engaged in coercion or systematic depopulation to effect that result. On the contrary, the evidence showed that the Crown conducted itself as a reasonable and prudent trustee. Moreover, this was a situation in which, from the perspective of the majority of voting band members, the decision to surrender was in their best interests. The Commission was not prepared in these circumstances to undo the autonomy of the Band to determine its future.

Under its supplementary mandate, the Commission can make recommendations in cases in which the Crown complied with its lawful obligations, but the outcome was nevertheless unfair. In recognition of the historical connection between the Dakota Sioux people and Turtle Mountain and on the basis of written evidence that the Crown had promised to protect certain burial sites at IR 60 in the event of a surrender but had failed to do so, the Commission recommended that Canada and the First Nations work together to acquire and properly designate these burial sites.

4 Mississaugas of the New Credit First Nation

Toronto Purchase, Ontario

In June 1986, the Mississauga Tribal Claims Council submitted a number of claims, including the Toronto Purchase claim, to Canada. The claims were submitted on behalf of five First Nations, one of which was the Mississaugas of the New Credit. In June 1993, Canada advised the Chiefs of the five First Nations that their claims had been rejected because they did not fall within the scope of the Specific Claims Policy.

On March 10, 1998, the Mississaugas of the New Credit First Nation asked the ICC to conduct an inquiry into the rejection of this claim and, in May 1998, the Commission informed Canada of its intention to do so.

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

After a series of planning conferences, the First Nation forwarded a new legal submission to Canada in March 1999. The new submission related the applicable law to the factual allegations in greater detail than had the earlier submission. As well, the new document reiterated that, for the purpose of the inquiry, the First Nation was prepared to recognize that the 1805 purchase was a valid treaty. More important, however, it confirmed that the First Nation did not take the position that the



Toronto Islands were excluded from the purchase, which was what had given rise to Canada's concern that the claim fell outside the Specific Claims mandate.

As a result of the new legal submission, Canada agreed to review the claim on its merits, in accordance with the issues set out in the March 1999 legal submission.

Over the next six months, the parties received several updates on the status of the claim by conference call. There were no further developments, however, until the Minister of Indian and Northern Affairs notified the First Nation in July 2002, that Canada was willing to accept the claim in part. Canada took the position that it would negotiate under the Specific Claims Policy on the basis that the 1805 surrender amounted to a non-fulfillment of a treaty or agreement between the Indians and the Crown. It did not concede that there had been a breach of fiduciary duty in the negotiation of the 1805 surrender such that there existed an outstanding lawful obligation on the part of Canada. Canada set out the compensation criteria by which it was willing to negotiate the claim and outlined various other conditions governing the negotiation process.

The First Nation accepted Canada's offer to negotiate and, as a result, the Commission ended its inquiry into the claim. In June 2003, the Commission issued a report of its findings.

5 Peepeekisis First Nation

File Hills Colony, Saskatchewan

After waiting for 15 years for a decision from the Minister of Indian Affairs and Northern Development on the validity of its claim, the Peepeekisis First Nation requested that the Commission conduct an inquiry in 2001 on the basis of constructive rejection. Canada subsequently rejected the claim.

The inquiry involved the Crown's decision in 1898 to create an Indian farming colony on the Peepeekisis reserve. The Scheme required the placement of Indian graduates from industrial schools on the Peepeekisis reserve as farmers. In order to implement the plan, Acting Indian Agent William Graham brought the graduates to the reserve, placed them on farming plots, provided special farming assistance to them, and was instrumental in orchestrating their transfers into the Band. The Crown also subdivided most of the 26,624-acre reserve into lots, allocating them to the graduate farmers.

As a result, most of the prime agricultural land on the reserve was taken up by the File Hills Colony, and the graduates, as they transferred into the Band, began to outnumber the original members and to assume control of band affairs. Meanwhile, the original members were pressured to relocate to inferior land on the reserve and soon found themselves displaced on their own reserve. After the original members repeatedly complained about their treatment and the membership transfers, several investigations into membership validity were held during the 1940s and 1950s. The last of the membership reviews took place in 1956, when a judge confirmed the validity of all disputed memberships.

The Commission found that Indian Agent Graham did not inform the Band about the Crown's Scheme or seek its consent. Handing over exclusive use and control of reserve land to non-band



individuals was a *de facto* disposition of reserve land, which contravened the Treaty 4 requirement for prior consent. The unilateral imposition of this Scheme also breached the *Indian Act's* policy of inalienability of Indian lands. Moreover, the Crown breached its fiduciary obligation to use ordinary diligence to avoid invading or destroying the Band's quasi-proprietary interest in its reserve. In this case, it was the Crown, not a third party, that exploited a vulnerable band with no Chief by imposing the Colony on them.

The Crown also breached the *Indian Act* by placing non-band members on the reserve and by allocating lots to them for their exclusive use and occupation, without following the strict provisions of the Act. As a result, the Band's collective right to occupy the entire reserve gradually shifted to individual rights over most of the land. Each allocation was a disposition and each disposition affected the Band's legal interest in its reserve.

Canada's primary defence to this claim was the doctrine of *res judicata*, or issue estoppel, arguing that the 1956 judgment on validity of memberships prevented the First Nation from succeeding with its claim. The Commission agreed that the question of validity of memberships could not be reopened, but determined that issue estoppel did not apply to its findings of breach of treaty, statute, and fiduciary obligation, as these questions were either not before the judge in 1956 or, at best, collateral to the judgment.

The Commission concluded that the Crown appropriated the land of an unsuspecting band for its Indian farming colony and embarked on a series of illegal practices that infringed on the Band's legal interest in reserve land and forever changed its identity. In so doing, the Crown was in serious breach of its lawful obligations under the Specific Claims Policy.

SUMMARY OF SPECIFIC CLAIMS IN INQUIRY BETWEEN APRIL 1, 2003, AND MARCH 31, 2004

This section provides a summary of the Commission's activities in each of the 36 claims in inquiry during the 2003-2004 fiscal year. The First Nation, the title of the claim, and the province the claim is geographically situated in are followed by a description of the issues and the Commission's progress in each of the files during the year

Athabasca Chipewyan First Nation

Compensation criteria for agricultural benefits, Alberta

In May 2003, the First Nation requested an inquiry into the suspension of negotiations on the acceptance of its claim. The First Nation had submitted the claim in February 1994, and Canada accepted it for negotiation in May 1998. However, Canada suspended the negotiations while it considered further its policy on agricultural benefits. A planning conference was held in March 2004. Before that meeting of the parties, Canada questioned the Commission's jurisdiction to hold an inquiry. Canada has maintained its previous position that it has not yet developed any policy concerning agricultural benefits, and it therefore may not participate in the inquiry process. The Commission continues to pursue the inquiry.



Blood Tribe/Kainaiwa

Big Claim, Alberta

In January 2003, the Blood Tribe requested that the Commission conduct an inquiry into the rejection of its claim. The First Nation alleges that Canada failed to fulfill its obligations under an 1880 land exchange agreement and that an 1884 surrender of reserve lands pursuant to Treaty 7 was invalid. The First Nation also challenges the base payroll chosen for calculating its treaty land entitlement. In August 2003, a planning conference was held in which the issues were discussed. A community session was scheduled for June 2004.

Cowessess First Nation

1907 surrender – phase II, Saskatchewan

In October 2002, the First Nation formally requested that the Commission resume phase II of this inquiry. Phase II deals with a breach of pre-surrender fiduciary duties, the meaning of majority vote, and the question of band membership at the time of the surrender. A planning conference was held in January 2003. Early in 2003, the parties decided that additional research was required; however, they could not agree on the terms of reference. The parties chose to pursue their own research according to their respective terms of references. The First Nation's research included the quality of land, as well as patterns of use, of Cowessess IR 73. Meanwhile, Canada's research pertained only to the Band's agricultural activities between 1885 and 1935. A total of five conference calls were held to discuss the status of the research undertaken by both parties. It is expected that three additional research reports will be concluded in the spring of 2004, and the timetable for the remainder of the inquiry for phase II will then be set.

Cumberland House Cree Nation

Claim to IR 100A, Saskatchewan

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

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

The Cumberland House Cree Nation community session was held in November 2001, and the James Smith Cree Nation community sessions took place in November 2001 and June 2002. Following the completion of additional research, a joint oral argument session was held in January 2004.



James Smith Cree Nation

Chakastaypasin IR 98, Saskatchewan

The First Nation alleges that the federal government unlawfully surrendered and disposed of the Chakastaypasin reserve. In December 1998, the government rejected the claim, stating that, by 1888, all Chakastaypasin Band members had moved off IR 98, their names had been added to other bands' paylists, and, as a result, the Chakastaypasin Band had ceased to exist. The government argues that, under these circumstances, no surrender under the *Indian Act* was required and the government had the authority to dispose of the abandoned reserve through the Crown's prerogative power, without compensation to the former Chakastaypasin Band members. Nevertheless, the Crown argued that the government did try to comply with the *Indian Act* surrender provisions by gathering together the former band members eligible to vote and by placing the sale proceeds to the credit of the bands to which Chakastaypasin Band members had transferred.

In May 1999, the First Nation requested that the Commission conduct an inquiry into the rejection of this claim. Since that time, a total of seven planning conferences have been held to define issues and deal with research questions. The Commission also held a community session in January 2003.

A number of meetings and conference calls have been held to try to determine whether the various First Nations who accepted membership transfers from Chakastaypasin people (the other Host Bands) will participate in the inquiry and, if so, to what degree. After a hearing on the issue in August 2002, the panel ruled in November that the other Host Bands would be invited to participate, but not as parties to the inquiry. They were allowed to present evidence, convene a community session, reply to both Canada's and the James Smith Cree Nation's written submissions, and participate in oral arguments. A community session was held for all the other Host Bands in May 2003, and oral arguments were to be made in May 2004.

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

James Smith Cree Nation

Peter Chapman IR 100A, Saskatchewan

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



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

James Smith Cree Nation

Treaty land entitlement, Saskatchewan

In 1884, under Treaty 6, the First Nation had 17,792 acres set aside as reserve land. The First Nation claims that it did not receive sufficient land at that time and that it is owed additional acreage under the terms of the treaty. In 1984, the government acknowledged that the First Nation did not receive all the land to which it was entitled at the time the reserve was first surveyed, but it argued that the land gained in 1902, when the Cumberland Band amalgamated with the James Smith Cree Band, more than made up the difference. In November 1999, the government challenged the Commission's mandate to conduct an inquiry into certain aspects of this claim and, in May 2000, the Commission panel ruled that the inquiry could proceed.

Planning conferences were held in October 2000, December 2000, and January 2001 to discuss issues, research questions, and general scheduling matters, and a community session was held in October 2002. Both the government and the First Nation conducted their own paylist research, according to specific claims guidelines, which had been revised in October 1998. This research was completed in early 2003. Following the submission of additional materials, the evidentiary record was closed and the First Nation made written legal submissions. Because new issues were raised during the course of this inquiry, the parties have agreed to hold two separate oral argument sessions. A hearing on the amalgamation issues respecting this claim was scheduled for June 2004, and a final hearing on the remaining issues will be scheduled on receipt of Canada's legal opinion on those issues.

Kluane First Nation

Kluane Game Sanctuary and Kluane National Park Reserve creation, Yukon

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

In August 2001, the First Nation asked the Commission to reactivate the inquiry. However, in October 2001, Canada advised the Commission that it was withdrawing from the inquiry process because the claim did not fall within its Specific Claims Policy.

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



In the summer of 2003, the Kluane First Nation ratified a comprehensive claims settlement agreement with Canada.

Lheidli T'enneh Band

Surrender Fort George IR 1, British Columbia

In November 2003, the First Nation requested that the Commission conduct an inquiry into the rejection of its claim, alleging that Canada breached its pre-surrender fiduciary duties. A planning conference is scheduled to be held in June 2004.

Little Shuswap, Neskonlith & Adams Lake First Nations

Neskonlith Reserve, British Columbia

The First Nations formally requested that the Commission conduct an inquiry into their rejected specific claim in May 2003. The First Nations allege that an Indian reserve was validly established under the authority of Governor Douglas in 1862 and later unlawfully reduced. The First Nations are in the process of preparing their documentation for the Commission's review.

Lower Similkameen Indian Band

Victoria, Vancouver and Eastern Railway right of way, British Columbia

In November 1995, the Lower Similkameen Indian Band submitted a specific claim regarding the taking of a railway right of way through their reserves 2, 7, and 8 by the Victoria, Vancouver and Eastern Railway and Navigation Company in 1905. The claim was rejected in September 1996.

In March 2003, the Band requested that the ICC conduct an inquiry into the issues of compensation and reversion of the right of way lands to reserve status. A planning conference was held in September 2003 to frame the issues and to discuss further research, and a community session is scheduled to be held in April 2004.

Lucky Man Cree Nation

Treaty land entitlement – phase II, Saskatchewan

In December 1995, counsel for Lucky Man Cree Nation requested that the ICC conduct an inquiry to determine the appropriate date for calculating the First Nation's population for treaty land entitlement (TLE) purposes. In March 1997, the ICC issued its report, which concluded that the appropriate date for calculating the Lucky Man Band's TLE population is the date of first survey (DOFS) of IR 116 in 1887. The panel recommended that the parties undertake further research and payroll analysis to establish Lucky Man's proper DOFS population. Furthermore, the report stated that "it will be up to the parties to negotiate a settlement of the outstanding entitlement, failing which it will remain open to the First Nation to request a further inquiry before the Commission to address this aspect of the claim" [(1998) 6 ICCP 109 at 115].

Canada accepted the ICC's recommendations in May 1997 and agreed to undertake further research, which it delivered in February 1998. The Band responded with its own research report in June 2002.



In November 2003, in response to Lucky Man's research, Canada took the position that nothing in the First Nation's research "would require the conclusions reached in the September 1997 Paylist Analysis to be reassessed, revised or abandoned." In December 2003, at the First Nation's request, the Commission agreed to open a second phase of the inquiry into the issue of the DOFS population.

Mississaugas of the New Credit First Nation

Crawford Purchase, Ontario

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

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

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 that the government breached its fiduciary duty to protect the First Nation in its possession of these lands.

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

Muskowekwan First Nation

1910 and 1920 surrender claims, Saskatchewan

In September 1992, the Muskowekwan First Nation submitted a specific claim regarding the surrender of 160 acres from IR 85 in 1910, and a surrender of 7,485 acres from the same reserve in 1920. The claim was rejected in May 1997, and the First Nation made a supplementary submission in 1999 respecting its claim. The Band requested that the ICC conduct an inquiry into its rejected claim in November 2003, and the Commission accepted the request in December 2003.

Nadleh Whut'en Indian Band

Lejac School, British Columbia

In May 1992, the Nadleh Whut'en First Nation submitted a claim to Canada, alleging that the government had not properly obtained reserve lands or compensated it for their use from 1922 to 1976 for the erection and operation of Lejac Residential School. This original claim also included allegations of unlawful use of hay fields by the Oblate Order between 1955 and 1969. In 1994, these allegations were separately reformulated as two specific claims, and the Hay Fields claim was



accepted for negotiation. The Lejac School claim, however, was rejected by Canada in September 1995. The First Nation made a supplementary submission in February 1997, but no response was received by June 2002, when the First Nation contacted the Commission to ask if an inquiry could be held on the grounds of undue delay.

By December 2002, the request for inquiry was accepted. At a planning conference in March 2003, the parties agreed, after much discussion, that the First Nation would resubmit a revised claim with additional evidence for expedited review by Canada and that the inquiry would not proceed unless Canada rejected the First Nation's allegations, at least one of which was new. Canada also agreed to conduct further research on residential school policy in British Columbia. This research was undertaken and completed by December 2003, and the First Nation made a revised submission in March 2004, accompanied by its own additional research. In a subsequent conference call, Canada agreed to obtain further documentation required by the First Nation to finalize its claim submission and to begin reviewing the completed portion of the submission. On receipt of the additional documentation, the revised submission will be submitted to Canada for full review.

Ocean Man First Nation

Treaty land entitlement, Saskatchewan

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

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

Opaskwayak Cree Nation

Streets and lanes claim, Manitoba

In June 2002, the First Nation requested that the Commission conduct an inquiry into the rejection of its claim, alleging that band funds were misused to improve lands which no longer had reserve status, and that land sale practices were conducted which, allegedly, were not in the best interest of the Band and led to the alienation of streets and lanes. Planning conferences were held in December 2002 and February 2003 to define the issues related to this inquiry. It was decided by both parties that additional research ought to be completed. Canada undertook to conduct further research, and its report was submitted to the Commission in August 2003. Canada also undertook research to provide further information on typical land sale practices around the time of the surrender of 1906.



In addition, a third planning conference was held in July 2003, and four conference calls took place during the year. The First Nation stated that there will not be any oral testimony for this inquiry, and, therefore, no community session will be scheduled. Additional research is to be completed, and the remainder of the inquiry is to be scheduled.

Pasqua First Nation

1906 surrender, Saskatchewan

In 1987, the Pasqua First Nation submitted a claim to Canada alleging that the 1906 surrender of IR 79 was invalid and that the federal government had breached its fiduciary obligations to the Band, both in the taking of the surrender and in the subsequent sale and administration of land sale proceeds. Following the government's rejection of the claim in July 1997, the First Nation conducted additional research and submitted a supplementary legal submission in March 2000.

The First Nation requested that the Commission conduct an inquiry into the rejection of this claim in November 2002. At a planning conference in April 2003 and in subsequent conference calls, the parties agreed that Canada would review the First Nation's 2000 submission, taking into consideration additional soil analysis and oral testimony, both of which were completed in the fall of 2003. It was also agreed that the Commission would compile the record and prepare to proceed with an inquiry, in the event that Canada's review results in a rejection of the claim.

Paul Indian Band

Kapasawin townsite, Alberta

In June 1996, the First Nation submitted a claim to Canada regarding the mismanagement of the sale of IR 133B. Canada reviewed the claim and accepted it for negotiation in July 1998. The First Nation did not agree with the basis for negotiation and, in October 2001, requested that the Commission hold an inquiry into the criteria used by the government for determining compensation. The First Nation also submitted a claim in 2000 regarding the wrongful surrender of Kapasawin townsite.

In April 2002, Canada informed the parties during a planning conference that the surrender claim had been referred to the Department of Justice. Canada also informed the First Nation that it, Canada, would not negotiate the mismanagement claim while the surrender claim remained outstanding.

The parties agreed to adjourn the inquiry and await Canada's findings on the surrender claim. In July 2003, the Minister of Indian and Northern Affairs informed the First Nation that the surrender claim would not be accepted for negotiation. In August 2003, the First Nation requested that the Commission conduct an inquiry into the rejection of the Kapasawin townsite surrender claim.

The issues relating to this claim were discussed in conference calls held during September and December 2003. In January 2004, the issues were finalized by the parties.



Roseau River Anishinabe First Nation

1903 surrender, Manitoba

This claim, originally submitted to Canada in 1982 and rejected in 1986, questions the validity of the 1903 surrender of a portion of the Roseau River reserve and the management of the subsequent land sales. The First Nation requested that the Commission conduct an inquiry in May 1993. At a planning conference held in December 1993, however, both the government and the First Nation agreed that additional research was required, and they jointly engaged an independent contractor, under the management of the Commission. On the basis of this research, counsel for the First Nation submitted a legal analysis to Canada. In July 2001, the Minister of Indian and Northern Affairs formally rejected the claim. In September 2001, the First Nation requested a full Commission inquiry into this second rejection.

A planning conference was held in April 2002. In May 2002, the parties agreed on the legal issues. In July and September 2002, community sessions were held on the Roseau River reserve. In January 2003, terms of reference were finalized for an additional joint research project. A report is now being finalized.

Sakimay First Nation

Treaty land entitlement, Saskatchewan

The Sakimay First Nation submitted a claim to Canada in 1997, in which it was argued that the treaty land entitlement (TLE) owed to the First Nation had not been fulfilled. In May 2000, having received no response to its claim, the First Nation made an initial request for a Commission inquiry on the grounds that the delay should be deemed a rejection. Before this request was formalized, however, Canada informed the First Nation that its confirming research, which TLE policy revisions had delayed, would likely be completed by December 2000. As a result, the First Nation did not pursue its request for an inquiry.

Canada's research was sent to the First Nation in January 2002, and the First Nation's claim rejected. In July 2003, the First Nation renewed its earlier request for a Commission inquiry, and this request was accepted in September 2003. In February, by conference call and planning conference, the parties clarified and refined the issues before the Commission. Canada indicated that its position was preliminary and subject to review depending on further research. The Commission proposed a joint research project, which was accepted by both parties and is now under way.

Sandy Bay Ojibway First Nation

Treaty land entitlement, Manitoba

In April 1998, the First Nation requested an inquiry into this claim, alleging that it did not receive sufficient land under the terms of Treaty 1. Shortly after submitting its rejected claim to the Commission, the First Nation restated its legal arguments because the original claim had been filed in November 1982 without the benefit of legal counsel. In November 1998, the government challenged the Commission's mandate to inquire into this claim, on the basis that the restatement essentially



represented a new claim. In June 1999, the Commission panel ruled that the inquiry would proceed. The First Nation contends that, at the date of first survey, the government allotted a certain amount of land for a particular population, including a portion of non-arable land that should not have been counted in its treaty land entitlement. The First Nation maintains that subsequent additions of land in 1930 and 1970 were not given by the government in fulfilment of its TLE obligation towards the First Nation and should not be counted in the TLE calculation.

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

Siksika First Nation

1910 surrender, Alberta

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

By November 2001, Canada had failed to produce an opinion and the First Nation requested that the Commission conduct an inquiry. In March 2002, a planning conference was held in which the parties agreed to begin the initial stages of the inquiry process (document compilation) while Canada finalized its legal review. Two planning conferences were held in May 2002 and March 2003. In the first planning conference, the inquiry was put into abeyance by agreement of all the parties pending the completion of Canada's legal review. During the March 2003 planning conference, the First Nation introduced new documentation that may have an impact on Canada's legal review.

Stanjikoming First Nation

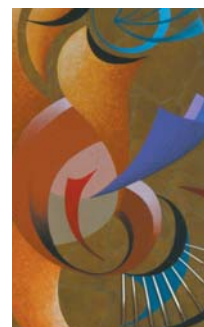
Treaty land entitlement, Ontario

In July 1999, the Stanjikoming First Nation requested that the Commission conduct an inquiry, arguing that the federal government's lack of response to its TLE claim amounted to a "constructive rejection." The claim involves an alleged shortfall of 1,408 acres of treaty land. In April 2000, the First Nation requested that the Commission put the inquiry in abeyance. The Commission continues to facilitate discussions.

Stó:lō Nation

Douglas reserves, British Columbia

Fourteen separate bands within the Stó:lō Nation are bringing forward this claim, which was originally submitted to Canada in 1988; it was rejected in 1997 and again in 1999, after a



supplementary submission had been made. The bands are the Aitchelitz, Kwantlen, Kwaw-Kwaw-Apilt, Lakahahmen, Matsqui, Scowlitz, Skowkale, Skwah, Skway, Soowahlie, Squiala, Sumas, Tzeachten, and Yakweakwioose.

This claim alleges that, in 1864, James Douglas, Governor of the Colony of British Columbia, established reserves for the various bands of the Stó:lō Nation, reserves that were subsequently illegally reduced, and that, when British Columbia entered Confederation in 1871, Canada inherited the duty to rectify this situation. In July 2000, the Stó:lō Nation made an initial request, confirmed a year later, for a Commission inquiry. Scheduling of the first planning conference was postponed, however, pending clarification of the conditions and nature of the parties' participation in the inquiry. Subsequent conference calls did not resolve these issues and, in September 2003, the Stó:lō Nation requested that the inquiry be placed in abeyance.

Sturgeon Lake First Nation

1913 surrender, Saskatchewan

In August 1996, the First Nation requested that the Commission conduct an inquiry into this claim on the grounds of irregularities regarding the surrender vote of 1913. At issue is whether a majority of eligible voters participated in a surrender vote in 1913 and whether they habitually resided on the reserve at the time of the vote. In September 1996, the First Nation submitted additional research to the Commission in support of its claim. In December 1996, the government began supplementary confirming research, and the inquiry was placed in abeyance. In May 1998, the government advised the First Nation that no lawful obligation arises out of the 1913 surrender. In June 1998, the First Nation asked the Commission to resume the inquiry. However, in April 1999, the First Nation advised the Commission that it was conducting interviews with the elders of the First Nation in relation to the claim and subsequently asked the Commission to put the inquiry in abeyance.

In November 2002, the First Nation asked the Commission to resume the inquiry. After a series of conference calls and one planning conference in 2003, a community session has tentatively been scheduled for the fall of 2004.

Taku River Tlingit First Nation

Wenah specific claim, British Columbia

In June 2002, the First Nation requested that the Commission conduct an inquiry into Canada's rejection of this claim, which involves the creation of a townsite on traditional Wenah lands. A planning conference was scheduled for December 2002, but was cancelled owing to Canada's decision not to participate in the inquiry because, it stated, the claim did not fit the criteria of the Specific Claims Policy.

The Commission convened a series of conference calls with the First Nation, Canada, and representatives from the Federal Treaty Negotiation Office. Once it was determined that the issues were not before the comprehensive claims negotiations table, the Commission advised the parties that it was prepared to pursue an inquiry. In June 2003, the parties were informed that the inquiry



would be continued. However, in September 2003, Canada advised both the First Nation and the Commission that it would not participate because the claim was not within the realm of the Specific Claims Policy. A planning conference was held with the First Nation in January 2004 to determine the scope of the inquiry. A community session has been scheduled for May 2004, with final legal submissions due by the end of the summer of 2004.

Touchwood Agency Tribal Council

Mismanagement claim – compensation criteria, Alberta

Early in 1998, the Day Star, Fishing Lake, Gordon, Kawacatoose, and Muskowekwan First Nations of the Touchwood Agency Tribal Council collectively submitted to Canada a claim alleging that their assets had been mismanaged by government agents from 1920 to 1924. Canada promptly accepted this claim for negotiation in March 1998, and negotiations commenced; however, they eventually reached an impasse and, despite facilitation provided by the Commission's mediation services, they came to a halt in March 2002.

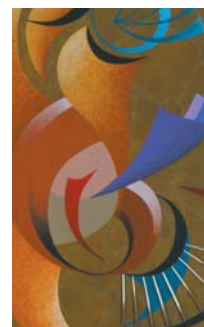
In August 2003, after the failure of further discussions with the Minister of Indian and Northern Affairs, the First Nations requested a Commission inquiry into the application of compensation criteria. This request was accepted in September 2003. The Commission then attempted to obtain the necessary documentation and a list of issues from both parties, but disagreement regarding disclosure of documentation, the scope of the inquiry, and the Commission's mandate led to an impasse. The Commission panel requested submissions from both parties on the disclosure of documentation, and, from Canada, either a list of issues or a formal mandate challenge. Both parties have made submissions regarding disclosure of documentation, and Canada has submitted a list of issues. The panel will render a decision on the first matter while the parties attempt to come to an agreement on the issues, in order that the inquiry may proceed.

Treaty 8 Tribal Association

Consolidated annuity claim, British Columbia

On December 6, 1898, the provision to extend Treaty 8 to a portion of British Columbia was approved by Order in Council PC 2749. The Order stated that "it will neither be politic nor practicable to exclude from the treaty the Indians whose habitat is in the territory lying between the height of land and the eastern boundary of British Columbia." The treaty was to ensure safe passage for non-Indians travelling through the Peace River region and northern British Columbia to the Klondike. The treaty also acquired land from the Indians comprising 324,900 square miles, of which 107,000 square miles covered northeastern British Columbia.

The treaty promised a gratuity, along with annuities to be paid to Indians accepting treaty. Because the claimants signed or were accepted into treaty at different times, however, they maintain that Canada owes them annuities from the date of treaty, rather than from their accepting or being admitted to treaty.



The seven claimant First Nations – Doig River, Blueberry River, Fort Nelson, Halfway River, West Moberly, Saulteau, Dene Tsa Tse K’Nai (Prophet River) – submitted their claim to Canada in February 1995. In August 2003 the claimants formally asked the Commission to conduct an inquiry, and, in November, the Commission agreed to their request. Canada was informed of the Commission’s decision to hold the inquiry. In December 2003, however, Canada advised the Commission that it would not participate in the inquiry because the claim had not been formally rejected.

Treaty 8 Tribal Association

Highway right of way – IR 172 claim, British Columbia

The claimants – the Blueberry River and Doig River First Nations – allege that Canada breached its legal and fiduciary obligations to them by agreeing to transfer lands within Fort St John IR 172 to the Province of British Columbia in 1934, without either their consent or compensation to them.

The claimants requested that the Commission deem the claim rejected because of Canada’s lack of response to their claim. The claimants received a response from the Minister of Indian and Northern Affairs in February 2000 asking them to be patient.

In August 2003 the claimants formally asked the Commission to conduct an inquiry, and, in November, the Commission agreed to their request. Canada was informed of the Commission’s decision to hold the inquiry. In December 2003, however, Canada stated that it would not fund inquiries “deemed rejected” by the Commission.

Treaty 8 Tribal Association

Treaty land entitlement and land in severalty claims, British Columbia

The Saulteau First Nation alleges that Canada breached its legal and fiduciary duty by failing to perform its obligations under the land entitlement provision of Treaty 8. The First Nation claims a shortfall of 4,898 acres. The First Nation also maintains that a claim to land known as Deadman Creek should be recognized as entitlement under the severalty provision of Treaty 8.

The claimant requested that the Commission deem the claim rejected because of Canada’s lack of response to its claim, which was submitted in February 1995. The claimant received a response from the Minister of Indian and Northern Affairs in February 2000, asking it to be patient.

In August 2003, the claimant formally asked the Commission to conduct an inquiry, and, in November, the Commission agreed to the request. Canada was informed of the Commission’s decision to hold the inquiry. In December 2003, however, Canada stated that it would not fund inquiries “deemed rejected” by the Commission.

U’mista Cultural Centre

Prohibition of the potlatch, British Columbia

In January 1998, the U’mista Cultural Centre and the ’N̓amgis First Nation, as well as 13 other Kwakwaka’wakw First Nations and the Nuyumbalees Cultural Centre, submitted a claim to



Canada. They alleged a breach of Canada's fiduciary obligation in their regard through *Indian Act* amendments in 1884, 1895, and 1918 that prohibited the potlatch and also through measures taken by the government and its officials in enforcing such legislation, particularly in the case of a potlatch held at Village Island in December 1921. In December 1999, this claim was rejected by Canada as being outside the specific claims process.

In April 2002, the claimants, represented by the 'Namgis First Nation, requested a Commission inquiry, and the Commission accepted this request. After a planning conference in October 2002 and several subsequent conference calls, the parties came to an agreement on the issues before the Commission in February 2003. At the end of that same month, a community session was held at the 'Namgis First Nation. In March, the Commission initiated discussions with Canada regarding the possibility of looking at the claim under the Claims of a Third Kind Policy. By July, the parties agreed on this manner of proceeding, but progress has been delayed because of a lack of funds in the budget. Once funding is obtained from the new fiscal year's budget, the First Nation will revise and submit the claim under the Claims of a Third Kind Policy.

Whitefish Lake First Nation

Agricultural benefits pursuant to Treaty 8, Alberta

June 2003, the Whitefish Lake First Nation requested an inquiry into its claim. The First Nation alleges that Canada breached its fiduciary duty through its failure to provide agricultural benefits pursuant to Treaty 8. It first submitted the specific claim in September 1994. In its rejection, Canada stated that there was not enough historical evidence to determine if the request for agricultural benefits had ever been made. However, Canada was willing to accept the claim for negotiation on a "first-time request" basis, where the claim submission of 1994 would be considered a first-time request. Two conference calls were held in 2002–2003 to discuss the issues of the inquiry. Initially, Canada requested the Commission's basis for accepting this claim for inquiry, given that it had already been accepted for negotiation based on the 1994 claim submission "first-time request." The Commission advised both parties that it had accepted the rejected historical claim for inquiry, and it recommended to the First Nation that the compensation criterion aspect be put into abeyance.

Williams Lake First Nation

Village site, British Columbia

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

During a conference call in February 2003, the parties agreed on a joint statement of issues. A community session was held in the summer of 2003, and written submissions were presented by the end of 2003. Oral arguments were scheduled for March 2004. However, just before this session, new evidence was uncovered which resulted in the parties finding it essential to conduct a joint



research project. After the research project has been completed, an oral submission is scheduled for the fall of 2004.

Wolf Lake First Nation

Reserve lands, Quebec

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

A series of research meetings and planning conferences has since been held, during which the parties have refined the scope of the evidence required and the issues in question and have also established a joint statement of fact. On this basis, the First Nation is now finalizing a revised claim submission for expedited review by Canada.



ICC's Achievements In 2003-2004

MEDIATION AND FACILITATION

What you'll find in this section:

- 54 What Is Mediation and Facilitation?**
Introduction and definitions
- 54 Mediations and Facilitations Completed in 2003-2004**
Summarizes each mediation/facilitation completed by the ICC in 2003-2004
- 56 Summary of Specific Claims in Mediation and Facilitation between April 1st, 2003, and March 31st, 2004**
Describes each claim in mediation/facilitation at the ICC and lists the ICC's activities over the past year within each file



WHAT IS MEDIATION AND FACILITATION?

Mediation is a consensual way of resolving disputes. In this process, a neutral third party, the mediator, assists the parties to reach a settlement that each of them can accept.

Mediation can advance negotiations by

- narrowing the issues in dispute;
- helping the parties reach an agreed-upon settlement; or
- providing independent advice on a particular issue.

The mediator facilitates discussions by bringing the two sides together to examine the issues in dispute and the particular interests, needs, and concerns of each side. Out of the discussions emerge options for a binding settlement.

The Indian Claims Commission provides broad mediation services at the request of both the First Nation and the Government of Canada. Together with the mediator, the parties decide how the mediation process will be conducted. This method ensures that the process fits the unique circumstances of each particular negotiation.

The Commission's mediation services can include

- arranging for and chairing negotiation meetings;
- coordinating joint studies (e.g., loss-of-use studies);
- monitoring the parties' decisions and following up on their undertakings; and
- providing or arranging for mediation on specific issues when the parties have reached an impasse.

The Indian Claims Commission provides facilitative mediation services that are culturally sensitive, informal, non-threatening, and flexible.

Open discussion among equal parties conducted under these four conditions can promote a healthy dialogue and a better understanding and relationship between the parties. In this atmosphere, settlements are easier to reach and can successfully reflect the needs and interests of each of the parties.

MEDIATIONS AND FACILITATIONS COMPLETED IN 2003-2004

Under its mediation mandate, the Indian Claims Commission works to help parties in negotiations arrive at a settlement that is agreeable to both.

From April 1, 2003, to March 31, 2004, the Commission published three mediation reports. A summary of each of these reports follows.



1 Moosomin First Nation

1909 surrender, Saskatchewan

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

At this time last year, legal counsel for Canada and the First Nation were finalizing the terms of the settlement and trust agreements. In July 2003, the settlement agreement was initialled by Chief Mike Kahpeaysewat and Silas Halyk, the chief federal negotiator. The settlement was ratified by the members of the Moosomin First Nation in September 2003, and the Minister of Indian and Northern Affairs signed the settlement in October 2003. The settlement was implemented later that fall, providing \$41 million in compensation to the Band. The Commission published its mediation report in March 2004.

2 Standing Buffalo Dakota Nation

Flooding claim, Saskatchewan

Originally part of the Qu'Appelle Valley Indian Development Authority (QVIDA) inquiry into flooding claims, which was concluded by the Commission in February 1998, Standing Buffalo Dakota Nation stepped outside the larger organization to negotiate its flooding claim with Canada. At issue was approximately 58 acres of land around water-control structures erected in the 1940s. Also at issue was an area of land known as IR 80B, in which both Standing Buffalo Dakota Nation and Muscowpetung First Nation (also originally a member of QVIDA) claimed an interest. The First Nation and Canada came to an agreement on compensation in late 2002, but a ratification vote that December was unsuccessful. A second vote held in March 2003 was successful. The settlement agreement provided \$3.6 million in compensation to the band and the ability to acquire up to 640 acres of agricultural land which would be set apart as reserve land pursuant to Canada's Additions to Reserves Policy. The Commission published its report on the negotiation of this claim in March 2004.

3 Thunderchild First Nation

1908 surrender, Saskatchewan

This claim deals with the 1908 surrender of Thunderchild IR 115, 115A, and half of 112A, the latter being a joint hay reserve with the adjacent Moosomin IR 112. In total, Thunderchild's interest in these reserves amounted to approximately 20,572 acres of fertile agriculture land. Initially brought to the Commission as a request for an inquiry, the claim soon moved into mediation, and by May 2002, an informal agreement had been reached on compensation and terms of settlement.

Since that time, legal counsel for Canada and the First Nation have finalized the terms of the settlement and trust agreements. In July 2003, the settlement agreement was initialled by Chief Delbert Wapass and Silas Halyk, the chief federal negotiator. The settlement was ratified by



members of the Thunderchild First Nation in September 2003, and the Minister signed the settlement in October 2003. The settlement was implemented later that fall, providing \$53 million in compensation to the Band. In addition, the First Nation was given the ability to acquire up to 5,000 acres of land within 15 years of the settlement, to be set apart as a reserve. The Commission published its mediation report in March 2004.

SUMMARY OF SPECIFIC CLAIMS IN MEDIATION AND FACILITATION BETWEEN APRIL 1, 2003, AND MARCH 31, 2004

This section reports on the Commission's mediation activities in 2003–2004. The First Nation, the title of the claim, and the province the claim is geographically situated in are followed by a description of the issues, and the Commission's progress in each of the 16 files during the year.

Blood Tribe/Kainaiwa

1889 Akers surrender, Alberta

The subject of this claim was 440 acres given to David Akers in 1884 for homesteading. Officials of the day had determined that the lands were not part of the Blood Indian Reserve (IR) 48. When the land subsequently was proved to be part of the reserve, the Government of Canada took a surrender from the Blood Tribe in 1889.

In 1990, 219 of the 440 acres were returned to reserve status. In April 1995, the Blood Tribe filed claims alleging inappropriate compensation and invalid surrender. Later that year, Canada accepted the inadequate compensation claim but rejected the invalid surrender claim. Compensation negotiations for the lands were completed in 1996. In late 1996, the Blood Tribe requested that the Commission review the rejected portion of the claim – that is, the validity of the surrender. By April 1998, during the course of the inquiry, Canada reviewed its position on this issue and subsequently accepted it for negotiation on the basis that it was a legally invalid surrender.

Since 1999, the Commission has been providing facilitation and mediation services at the negotiation table and coordinating loss-of-use studies. Of significance to the final agreement for compensation was the existence of oil and gas on the lands. In January 2003, the parties came to an agreement on compensation for these losses, and by the end of February, a complete compensation deal had been worked out. Agreement on the number of acres that the Blood Tribe could add to its reserve remained outstanding, together with the form of surrender and the voting age.

Negotiations over the following months resulted in a final agreement between the parties. The settlement agreement was initialled in Calgary in September 2003, and in November 2003, the Blood Tribe successfully ratified the deal. The Commission will issue its mediation report in 2004–2005.

Chippewa Tri-Council

Coldwater-Narrows reservation claim, Ontario

The Coldwater-Narrows reservation consisted of a strip of land, 14 miles long, averaging one and one-half miles wide, running from the narrows at Lakes Couchiching and Simcoe, westward to



Matchedash Bay, comprising approximately 10,000 acres. The Chippewa Tri-Council, composed of three First Nations (Beausoleil First Nation, Chippewas of Georgina Island First Nation, and Chippewas of Mnjikaning [Rama] First Nation), claimed that the surrender in 1836 was not consistent with the instructions set out in the *Royal Proclamation of 1763*.

Originally submitted to Canada in November 1991, the claim was not officially accepted for negotiation until July 2002 – and only then following an inquiry conducted by the Commission into Canada's 1996 rejection of the claim. The ICC provided facilitation for the planning conferences from the outset. In July 2002, as a result of its involvement in that process, each of the three First Nations provided a band council resolution requesting the Commission's mediation/facilitation services for the negotiation of the claim.

Over the past year, the negotiating parties have been working towards initiating and completing land appraisals and loss-of-use studies. A newsletter was jointly published by Canada and the First Nations in the summer of 2003, with another being planned for late spring 2004.

Chippewas of the Thames

Clench defalcation, Ontario

This claim dates back some 150 years to the mid-1800s. The Chippewas of the Thames claim that moneys owed to the First Nation from the sale of surrender lands were wrongfully appropriated around 1854 by Joseph Brant Clench, an officer with the Indian Department who had been appointed agent for the sale of lands in southern Ontario in 1845. The claim is referred to as the Clench Defalcation (*defalcation* is a legal term referring to misappropriation of trust funds or money held in a fiduciary obligation).

The claim was accepted for negotiation in June 2001, with negotiations getting under way in November of that year. Issues facing the negotiating parties included identifying the date and amount of the defalcation and agreeing on an approach to valuing nominal amounts in current dollars. Having reached agreement on the amount of compensation at the end of fiscal year 2002–2003, the parties then turned to drawing up the settlement agreement, the trust agreement, and the ratification voting guidelines. In late March 2004, the parties reached agreement on these documents. It is anticipated that the ratification vote will take place in mid-2004.

Cote First Nation

Pilot project, Saskatchewan

This project relates to 13 transactions involving the Cote First Nation's lands, beginning with the railway taking in 1903 and ending in the reconstitution of reserve lands in 1963. Originally brought to the Commission as an inquiry, the project changed in approach to allow the negotiating parties to work together on the many interrelated transactions and issues. The mediation unit of the Commission has facilitated the workings of the pilot project since its inception in 1997.

Considerable joint research has taken place, with the result that 13 potential claims have been identified. The complexity and interrelatedness of the claims led the negotiation table to group them



into bundles. Canada's legal counsel has been working on the first legal opinion covering the validity of the 1905, 1907, 1913, and 1914 surrenders. Further research and analysis are required to complete this opinion.

Cote, Keeseekoose, and Key First Nations

Pelly Haylands, Saskatchewan

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

As was the case for the past two years, the negotiation table spent most of this past fiscal year on study-related pursuits. By the end of March 2004, the final reports of all studies had been completed and reviewed by the parties. Negotiations will continue this coming year on the value of the losses and on approaches to compensation as the parties work towards the settlement of this claim.

Fort William First Nation

Pilot project, Ontario

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

The Rifle Range Claim, which involves a parcel of land surrendered in 1907 for a rifle range, was the first of the Fort William First Nation's eight claims to be jointly submitted to the Department of Justice. It was accepted by Canada for negotiation in July 2000. In 1914, at the local militia's request, land initially surrendered was exchanged to ensure that targets fronted on Mount McKay. An agreement on compensation was reached in January 2002 and has been updated in the past year. The settlement and trust agreements are currently being finalized. However, a number of outstanding issues are delaying the conclusion of this claim, the primary reason being Canada's requirement that an environmental assessment of the lands be completed prior to settlement.

The Grand Trunk Pacific Railway claim relates to the expropriation in June 1906 of approximately 1,600 acres of the reserve's best land along the river and the subsequent relocation of the Indian village. Approximately 1,100 acres of railway lands were subsequently returned to the First Nation in June 1999. Canada accepted the claim for negotiation almost two years ago; however, the negotiations have not yet begun.

At the end of the fiscal year, the status of the remaining claims was as follows: research was ongoing on the mining claim; the First Nation agreed to withdraw its hydro claim if the lands at issue were transferred to reserve status; the First Nation was considering whether to proceed with the timber claim; the First Nation would submit the Chippewa Park claim in the new fiscal year; the Department



of Justice had advised that further review and analysis was required on the Neebing claim; and the First Nation would provide its legal opinion on the water claim in the new fiscal year.

The ICC is also assisting the First Nation and Canada as they negotiate Fort William's boundary claim. While not actually facilitating or mediating the negotiations, the Commission is participating as study coordinator, working as a liaison between the negotiation table and independent consultants hired to undertake a number of studies, including forestry loss of use, agriculture loss of use, mines and minerals loss of use, and a historical research study looking at other land developments. At the conclusion of this past fiscal year, these studies were just getting under way.

Keeseekoowenin First Nation

1906 land claim, Manitoba

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

Negotiations began in 1997, but it wasn't until the April 2002 assignment of Canada's newest negotiation team that the Commission's mediation unit became involved. At the request of the negotiation table, the ICC agreed to participate as mediator-facilitator. Using a "shuttle mediation" approach (the mediator-facilitator meets with the negotiating parties individually to ascertain their positions and to determine whether a negotiated settlement is possible), the Commission was able to help the parties get past their difficulties. To the credit of the negotiating teams, they have worked together so well over the past year that an agreement on compensation was reached, with settlement documents currently being completed. The parties are now working towards a fall 2004 ratification vote.

Michipicoten First Nation

Pilot project, Ontario

Most of the land claims by the Michipicoten First Nation and the Michipicoten Pilot Project for Specific Claims stem from the 1850 Robinson-Superior Treaty, the rights of Michipicoten members to make a living granted by the treaty (such as hunting and fishing), the reserve that was promised under the treaty, and numerous takings of land from the reserve.

By the mid-1990s, the First Nation had identified 13 potential claims that it wanted to pursue. To this end, it proposed a joint research project with Canada designed to identify, research, and resolve all its specific claims in a coherent, cooperative, and timely fashion. The joint research would be conducted in two phases: phase I – claims assessment, and phase II – negotiations. To date, six claims have been resolved, either through negotiation and settlement or through administrative referral. Four claims were jointly researched as part of the pilot project, and it was the decision of the First Nation not to pursue them.



Over the past year, the Algoma Central Railway surrender claims of 1855, 1899, and 1900 were negotiated and settled. In March 2004, the settlement agreement was signed by the Minister of Indian and Northern Affairs, and compensation was expected to be deposited in the First Nation's trust account early in the new fiscal year. The First Nation was planning a signing ceremony for the spring of 2004.

The last remaining claim is Michipicoten's boundary claim. Accepted for negotiation by Canada in the last fiscal year, the parties have already agreed on the approach to be used to value losses and have identified the studies to be undertaken.

Missanabie Cree First Nation

Treaty land entitlement, Ontario

In 1993, the Missanabie Cree First Nation submitted a claim to Canada alleging that, under the terms of Treaty 9, a reserve should have been set aside for its members. Following Canada's initial review, the First Nation and Canada jointly undertook research in support of the claim, and in 1999, Canada accepted the claim for negotiation. A year after submitting its claim to the Province of Ontario, the First Nation was issued a land-use permit for lands within the Chapleau Game Preserve. This permit allowed the First Nation to set up trailers to accommodate a band office, housing for temporary workers, and facilities for band gatherings. An application to purchase these lands remains outstanding. Tripartite negotiation meetings are ongoing.

The ICC is also at the negotiation table as study coordinator, lending its experience and expertise to efforts to settle this claim. In this role, the Commission acts as a liaison between the table and the independent consultants hired to complete research and loss-of-use studies. The parties have agreed to undertake a natural resource study, which will include several components: minerals; forestry and water; traditional activities; a mapping project; and loss-of-use studies covering tourism, recreation, and agriculture. At the conclusion of the fiscal year, the negotiation table was drafting the terms of reference for this work.

Mississaugas of the New Credit First Nation

Toronto Purchase claim, Ontario

This claim pertains to the Crown's purchase in 1805 of 250,880 acres of land from the River Credit Mississaugas. Through the purchase, the Mississaugas surrendered much of what is now Metropolitan Toronto, including the Toronto Islands.

Submitted in 1986, the claim was rejected by Canada in 1993. In February of 1998, the ICC was asked to conduct an inquiry into this rejection. During the course of the inquiry, the First Nation revised its allegations and submitted additional research. In response to this development, Canada conducted a legal review of the revised submission and new evidence and determined that the claim disclosed an outstanding lawful obligation. In July 2002, Canada accepted the claim for negotiation.

A federal negotiator was appointed to lead Canada's negotiating team later that year and in May 2003, the ICC began providing facilitation services to the parties at their request. As of March 2004,



Canada and the Mississaugas of the New Credit First Nation had come to agreement on a negotiation protocol and had begun joint research and discussion of shared communications issues.

Muscowpetung First Nation

Flooding claim, Saskatchewan

Originally part of the Qu'Appelle Valley Indian Development Authority (QVIDA), the Muscowpetung First Nation was one of a number of First Nations whose lands were lost to recurrent and, in some areas, continuous flooding caused by the construction in the 1940s of a series of water-control structures under the *Prairie Farm Rehabilitation Act*. When negotiations between Canada and QVIDA broke down in August 2003, the Muscowpetung First Nation chose to resume negotiations with Canada on a one-on-one basis. The Commission is at the negotiation table as mediator-facilitator as well as study coordinator.

Negotiations at this table have two goals. The first goal is to settle the claim for damages from the time the dams were constructed to the present. The second is to reach an agreement permitting Canada and the Province of Saskatchewan to enter onto First Nation lands to operate the water-control structures over the spring and summer of 2004. Negotiation meetings held in the six-month period ending in March 2004 have necessarily focused on the latter goal.

By the end of March 2004, the First Nation, Saskatchewan, and Canada were working towards a tripartite interim agreement allowing these structure operations to commence.

Nekaneet First Nation

Treaty benefits, Saskatchewan

In February 1987, the Nekaneet First Nation submitted a specific claim to the Minister of Indian Affairs and Northern Development seeking compensation under Treaty 4 for outstanding provisions of agricultural benefits, programs and services, annual payments to band members, and damages for failure to provide a reserve at the time the treaty was signed in 1874.

In July 2002, the Commission's mediation unit was asked to participate at the negotiation table as mediator-facilitator. Before negotiations could get under way, however, Canada asked for time to undertake a policy review of the modern implementation of treaty benefits relating to the provision of agricultural implements. Canada's review continues.

Pasqua First Nation

Flooding claim, Saskatchewan

Originally part of the Qu'Appelle Valley Indian Development Authority (QVIDA), the Pasqua First Nation was one of a number of First Nations whose lands were lost to recurrent and, in some areas, continuous flooding caused by the construction in the 1940s of a series of water-control structures under the *Prairie Farm Rehabilitation Act*. When negotiations between Canada and QVIDA broke down in August 2003, the Pasqua First Nation chose to resume negotiations with Canada on a one-on-one basis. The Commission is at the table as mediator-facilitator as well as study coordinator.



Negotiations at this table have two goals. The first goal is to settle the claim for damages from the time the dams were constructed to the present. The second is to reach an agreement permitting Canada and the Province of Saskatchewan to enter onto First Nation lands to operate the water-control structures over the spring and summer of 2004. Negotiation meetings held in the six-month period ending in March 2004 have necessarily focused on the latter goal.

By the end of March 2004, the Pasqua First Nation, Saskatchewan, and Canada were working towards a tripartite interim agreement allowing structure operations to commence.

Qu'Appelle Valley Indian Development Authority (QVIDA)

Flooding claim, Saskatchewan

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

The Qu'Appelle Valley Indian Development Authority (QVIDA) is a group of Saskatchewan First Nations pursuing claims against Canada for this flooding of their reserve lands. The claim was accepted for negotiation in 1999, and the Commission became involved as mediator-facilitator for the table in early 2000. At that point, QVIDA member First Nations included the Muscowpetung, Pasqua, Cowessess, Sakimay, and Ochapowace First Nations. The Piapot and Kahkewistahaw First Nations were also members, active to varying degrees in the negotiations between Canada and QVIDA, though they had not yet had their flooding claims accepted for negotiation.

From the beginning, negotiations were tumultuous. The complexity of the issues, the number of participants, and the changes in negotiating team members presented many challenges to the negotiating process. As a result, negotiations stalled at various points on important issues. At this time last year, land surveys and loss-of-use studies were under way, with negotiation meetings being postponed until study results were in.

Negotiations between QVIDA and Canada broke down in August 2003. The Commission has closed its file on the QVIDA negotiations and will issue a mediation report in 2004–2005. The Commission remains involved, however, with two First Nations who chose to break with QVIDA for the purpose of undertaking negotiations directly with Canada. The Commission is acting as mediator-facilitator at both of these negotiation tables. For more information on the progress of these claim negotiations, see the summaries of the Muscowpetung First Nation flooding claim and Pasqua First Nation flooding claim.



Skway First Nation

Schweyey Road claim, British Columbia

Accepted for negotiation by Canada in April 2003, this claim concerns the dyke and road on Skway IR 5. In its claim submission, the First Nation successfully established that Canada had breached its lawful obligation to the Skway First Nation, in that the lands for the dyke and road across IR 5 (4.52 acres) were not lawfully taken, and the First Nation had not been properly compensated for this taking.

Negotiations commenced in the fall of 2003, with the Commission at the table as mediator-facilitator. Parties to the negotiation include Canada, the province, the City of Chilliwack, and Skway First Nation. Issues being negotiated include current ownership of the dyke and road; options to surrender; land appraisals and damages studies; form of conveyance allowing for future use of the dyke and road; and the availability of Crown lands as a component of settlement in addition to an agreement on a cash payment.

Touchwood Agency

Mismanagement claim, Saskatchewan

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

Negotiations progressed steadily from 1998, but in September 2002 the parties reached an impasse on the compensable losses and the Commission was asked to facilitate the negotiations. Following limited initial success at the negotiating table, settlement offers from both Canada and the First Nations were unsuccessful and negotiations were discontinued in March 2003. Further attempts by the First Nations to re-start negotiations were unsuccessful, and a short time later the First Nations approached the Commission to conduct an inquiry. The Commission will issue a report on the mediation of this claim in 2004–2005.



Concluded Claims

What you'll find in this section:

66 **Concluded Claims**

Table providing information on the status of each claim ICC has completed



CONCLUDED CLAIMS

This table updates readers on the status of claims for which the Commission has completed its inquiry or mediation activities. In all the claims listed below, an inquiry or mediation report has been published and is available from our website at www.indianclaims.ca.

The table tracks the progress of each claim through the specific claims process once the ICC has completed its inquiry or mediation/facilitation services.

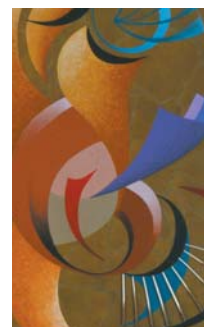
The first column lists the name of the First Nation and the type or title of the specific claim it brought to the ICC for inquiry or mediation/facilitation. This information is followed by the recommendation to government made by the Commission once its inquiry process or mediation activities were completed. The next column contains the date of the ICC's report, which is followed by a column containing the date of Canada's response to ICC's recommendation(s). The nature of that response and any settlement information available are found in the last column. Please note that, if Canada has not responded to the ICC's recommendations, the row describing the claim is shaded.

Concluded Claims as of March 31, 2004

NAME OF FIRST NATION, AND PROVINCE TYPE OR TITLE OF CLAIM <i>ICC's recommendation to Canada</i>	TYPE OF ICC REPORT AND DATE OF PUBLICATION	DATE OF CANADA'S RESPONSE <i>(Acceptance/ Settlement/ Other)</i>	NATURE OF RESPONSE FROM CANADA TO ICC'S RECOMMENDATION
1 Alexis, AB TransAlta Utilities rights of way <i>Recommended claim be accepted for negotiation</i>	Inquiry March 2003	NONE	NO RESPONSE FROM GOVERNMENT
2 Athabasca Chipewyan, AB W.A.C. Bennett Dam and damage to IR 201 <i>Recommended claim be accepted for negotiation</i>	Inquiry March 1998	Rejected April 2001	Government rejected recommendations made in March 1998: "Canada did not have a fiduciary duty to protect Reserve No. 201 against damage caused by construction and the operation of the Bennett Dam by a third party. Canada did not have the duty to invoke the provisions of the <i>Navigable Waters Protection Act</i> to stop the construction of the Bennett Dam or dispose of it once it was built. Furthermore, Canada did not have an obligation on the basis of Treaty No. 8 to ensure that the reserve would be protected from any damage resulting from the construction and operation of the Bennett Dam."



NAME OF FIRST NATION, AND PROVINCE TYPE OR TITLE OF CLAIM <i>ICC's recommendation to Canada</i>	TYPE OF ICC REPORT AND DATE OF PUBLICATION	DATE OF CANADA'S RESPONSE <i>(Acceptance/ Settlement/ Other)</i>	NATURE OF RESPONSE FROM CANADA TO ICC'S RECOMMENDATION
3 Athabasca Denesuline, SK Aboriginal and treaty harvesting rights north of 60th parallel <i>Recommended government acknowledge treaty rights</i>	Inquiry December 1993 Supplementary report November 1995	Rejected August 1994	Government rejected recommendations made in December 1993 report; no response to November 1995 supplementary report
4 Bigstone Cree Nation, AB Treaty land entitlement <i>Accepted with assistance of Commission</i>	Inquiry March 2000	Accepted October 1998	Government accepted claim for negotiation
5 Blood Tribe/Kainaiwa, AB Akers surrender <i>Accepted with assistance of Commission</i>	Inquiry June 1999	Accepted April 1998	Government accepted claim for negotiation
6 Buffalo River, SK Primrose Lake Air Weapons Range – loss of commercial and treaty harvesting rights <i>Part of claim recommended for negotiation</i>	Inquiry September 1995	Rejected March 2002	Government rejected recommendations made in September 1995 report, stating: “[C]ompensation for commercial harvesting rights was not based on either Indian status or membership in an Indian Band; rather, it was to be paid to anyone who held a licence on the land which became the Primrose Lake Air Weapons Range”
7 Canoe Lake, SK Primrose Lake Air Weapons Range – breach of treaty and fiduciary obligations <i>Recommended claim be accepted for negotiation</i>	Inquiry August 1993	Settled June 1997	Settled for \$13,412,333 in federal compensation and a requirement that the First Nation purchase between 2,786 hectares and 20,224 hectares of land
8 Carry the Kettle, SK Cypress Hills <i>Pursuant to supplementary mandate, recommended government recognize the Carry the Kettle First Nation's historical connection to the Cypress Hills and restore to the Assiniboine people their connection to the territory</i>	Inquiry July 2000	Rejected January 2001	Government agreed with the Commission's conclusion that the claim did not disclose a lawful obligation on the part of the government under the Specific Claims Policy. The government rejected the Commission's recommendation to restore to the Assiniboine people their connection to the territory.





NAME OF FIRST NATION, AND PROVINCE TYPE OR TITLE OF CLAIM <i>ICC's recommendation to Canada</i>	TYPE OF ICC REPORT AND DATE OF PUBLICATION	DATE OF CANADA'S RESPONSE <i>(Acceptance/ Settlement/ Other)</i>	NATURE OF RESPONSE FROM CANADA TO ICC'S RECOMMENDATION
9 Canupawakpa Dakota, MB Turtle Mountain Surrender <i>Recommended Canada and the First Nation work together to acquire and properly designate the burial sites</i>	Inquiry July 2003	NONE	NO RESPONSE FROM GOVERNMENT
10 Chippewas of Kettle and Stony Point, ON 1927 surrender <i>Recommended claim be accepted for negotiation</i>	Inquiry March 1997	NONE	NO RESPONSE FROM GOVERNMENT In 1998, the Supreme Court of Canada rendered its decision in the First Nation's appeal of the Ontario Court of Appeal's finding that the surrender was valid. The Supreme Court of Canada upheld the reasons of the lower court to find the surrender valid.
11 Chippewa Tri-Council, ON Coldwater-Narrows reservation surrender <i>Accepted with assistance of Commission</i>	Inquiry March 2003	Accepted July 2002	Government accepted claim for negotiation
12 Chippewa Tri-Council, ON Collins Treaty <i>Accepted with assistance of Commission</i>	Inquiry March 1998	Settled December 1998	Settled for \$565,000 in federal compensation
13 Chippewas of the Thames, ON Clench defalcation claim <i>Accepted with assistance of Commission</i>	Inquiry March 2002	Accepted June 2001	Government accepted claim for negotiation
14 Chippewas of the Thames, ON Muncey land claim <i>Settled with assistance of Commission</i>	Inquiry December 1994	Settled January 1995	Settled for \$5,406,905 in federal compensation

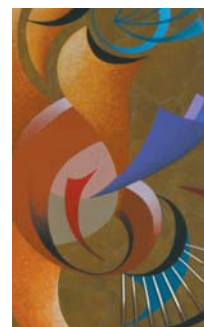
NAME OF FIRST NATION, AND PROVINCE TYPE OR TITLE OF CLAIM <i>ICC's recommendation to Canada</i>	TYPE OF ICC REPORT AND DATE OF PUBLI- CATION	DATE OF CANADA'S RESPONSE <i>(Acceptance/ Settlement/ Other)</i>	NATURE OF RESPONSE FROM CANADA TO ICC'S RECOMMENDATION
15 Cold Lake, AB Primrose Lake Air Weapons Range – breach of treaty and fiduciary obligations <i>Recommended claim be accepted for negotiation</i>	Inquiry August 1993	Settled March 2002	Settled for \$25.5 million in federal compensation
16 Cowessess, SK QVIDA flooding claim <i>Recommended claim be accepted for negotiation</i>	Inquiry February 1998	Accepted December 1998	Government accepted claim for negotiation
17 Cowessess, SK 1907 surrender <i>Recommended the portion of IR 73 surrendered in 1907 be accepted for negotiation</i>	Inquiry March 2001	Rejected March 2002	Government rejected recommendations of March 2001 report, but will proceed to phase II of this inquiry as previously agreed upon by the parties
18 Duncan's, AB 1928 surrender <i>Recommended that the surrender of IR 151E be accepted for negotiation</i>	Inquiry September 1999	Rejected June 2001	Government rejected recommendation made in September 1999 report, stating: “[T]he Commission did not examine the terms of the proposed lease and, as a result, made no finding that the 1923 lease proposal was either more or less advantageous to the First Nation than a surrender”
19 Eel River Bar, NB Eel River Dam <i>Recommended claim not be accepted for negotiation</i>	Inquiry December 1997	None required	No substantive response from government required
20 Esketemc, BC IR 15, 17 and 18 <i>Recommended that the disallowance or reduction of IR 15, 17 and 18 be accepted for negotiation</i>	Inquiry November 2001	NONE	NO RESPONSE FROM GOVERNMENT





NAME OF FIRST NATION, AND PROVINCE TYPE OR TITLE OF CLAIM <i>ICC's recommendation to Canada</i>	TYPE OF ICC REPORT AND DATE OF PUBLICATION	DATE OF CANADA'S RESPONSE <i>(Acceptance/ Settlement/ Other)</i>	NATURE OF RESPONSE FROM CANADA TO ICC'S RECOMMENDATION
21 Fishing Lake, SK 1907 surrender <i>Settled with assistance of Commission</i>	Inquiry March 1997 Mediation March 2002	Settled August 2001	Settled for \$34.5 million in federal compensation
22 Flying Dust, SK Primrose Lake Air Weapons Range – loss of commercial and treaty harvesting rights <i>Part of claim recommended for negotiation</i>	Inquiry September 1995	Rejected March 2002	Government rejected recommendations made in September 1995 report, stating: “[C]ompensation for commercial harvesting rights was not based on either Indian status or membership in an Indian Band; rather, it was to be paid to anyone who held a licence on the land which became the Primrose Lake Air Weapons Range”
23 Fort McKay, AB Treaty land entitlement <i>Recommended that Government owed outstanding entitlement of 3,815 acres to First Nation</i>	Inquiry December 1995	Accepted April 1998	Government accepted claim for negotiation
24 Friends of the Michel Society, AB 1958 enfranchisement <i>No lawful obligation found, but recommended that government grant special standing to submit specific claims</i>	Inquiry March 1998	Rejected October 2002	Government rejected recommendation made in March 1998 report, stating: “Canada has declined to accept the ISCC's recommendation to grant the Friends of the Michel Society special standing to advance specific claims”
25 Gamblers, MB Treaty land entitlement <i>Outstanding treaty land entitlement, if any, should be calculated based on an 1877 date of first survey</i>	Inquiry October 1998	Accepted November 1998	Government accepted claim for negotiation
26 Homalco, BC Aupe IR 6 and 6A – statutory or fiduciary obligation to obtain 80 acres of land from province of BC <i>Part of claim recommended for negotiation re: 10 acres</i>	Inquiry December 1995	Rejected December 1997	Government rejected recommendations made in December 1995 report

NAME OF FIRST NATION, AND PROVINCE TYPE OR TITLE OF CLAIM <i>ICC's recommendation to Canada</i>	TYPE OF ICC REPORT AND DATE OF PUBLI- CATION	DATE OF CANADA'S RESPONSE <i>(Acceptance/ Settlement/ Other)</i>	NATURE OF RESPONSE FROM CANADA TO ICC'S RECOMMENDATION
27 Joseph Bighead, SK Primrose Lake Air Weapons Range – loss of commercial and treaty harvesting rights <i>Recommended claim not be accepted for negotiation</i>	Inquiry September 1995	None required	No substantive response from government required
28 Kahkewistahaw, SK Treaty land entitlement <i>Recommended claim not be accepted for negotiation</i>	Inquiry November 1996	None required	No substantive response from government required
29 Kahkewistahaw, SK 1907 surrender <i>Settled with assistance of Commission</i>	Inquiry February 1997 Mediation February 2003	Settled November 2002	Settled for \$94.65 million in federal compensation
30 Kawacatoose, SK Treaty land entitlement <i>Recommended that government owed a shortfall of 8,576 acres to Band, subject to confirming research</i>	Inquiry March 1996	Settled October 2000	Settled for \$23 million in federal compensation
31 Key, SK 1909 surrender <i>Recommended claim not be accepted for negotiation</i>	Inquiry March 2000	None required	No substantive response from government required
32 Lac La Ronge, SK Treaty land entitlement <i>Recommended claim not be accepted for negotiation</i>	Inquiry March 1996	None required	No substantive response from government required





NAME OF FIRST NATION, AND PROVINCE TYPE OR TITLE OF CLAIM <i>ICC's recommendation to Canada</i>	TYPE OF ICC REPORT AND DATE OF PUBLICATION	DATE OF CANADA'S RESPONSE <i>(Acceptance/ Settlement/ Other)</i>	NATURE OF RESPONSE FROM CANADA TO ICC'S RECOMMENDATION
33 Lax Kw'alaams, BC Demand for absolute surrender as precondition to settlement <i>Recommended that government exclude aboriginal rights from scope of surrender clause</i>	Inquiry June 1994	Rejected December 2001	Government rejected recommendations made in June 1994 report: "Aboriginal interests were never excluded from any of the appraisals considered during the negotiations ... they cannot be considered to have been excluded from the discussions. ... It is legally impossible to exempt Aboriginal interests from the scope of a section 38 surrender without jeopardizing the legal effect of the surrender ..."
34 Long Plain, MB Loss of use of treaty entitlement land <i>Recommended claim be accepted for negotiation</i>	Inquiry March 2000	Rejected August 2000	Government rejected recommendations made in March 2000 report, on basis that the Commission did not address the implications of <i>Venne</i>
35 Lucky Man, SK Treaty land entitlement <i>Recommended further research to establish the proper TLE population</i>	Inquiry March 1997	Accepted May 1997	Government accepted recommendation: government research indicated no TLE shortfall; First Nation is reviewing and conducting its own research
36 Mamaleqala Qwe'Qwa'Sot'Enox, BC McKenna-McBride applications <i>Recommended claim be accepted for negotiation</i>	Inquiry March 1997	Rejected December 1999	Government rejected recommendations made in March 1997 report
37 Micmacs of Gesgapegiag, QC Pre-Confederation claim to 500-acre island <i>No substantive recommendations made because government agreed to reconsider merits of claim</i>	Inquiry December 1994	None required	In March 1995, government acknowledged receipt of report and advised claim was in abeyance pending outcome of related court case
38 Mikisew Cree, AB Economic entitlements under Treaty 8 <i>Accepted with assistance of Commission</i>	Inquiry March 1997	Accepted December 1996	Government accepted claim for negotiation

NAME OF FIRST NATION, AND PROVINCE TYPE OR TITLE OF CLAIM <i>ICC's recommendation to Canada</i>	TYPE OF ICC REPORT AND DATE OF PUBLI- CATION	DATE OF CANADA'S RESPONSE <i>(Acceptance/ Settlement/ Other)</i>	NATURE OF RESPONSE FROM CANADA TO ICC'S RECOMMENDATION
39 Mississaugas of the New Credit, ON Toronto Purchase <i>Accepted with assistance of Commission</i>	Inquiry June 2003	Accepted July 2002	Government accepted claim for negotiation
40 Mistawasis, SK 1911, 1917 and 1919 surrenders <i>Accepted with assistance of Commission</i>	Inquiry March 2002	Settled September 2001	Settled for \$16.3 million in federal compensation
41 Moose Deer Point, ON Pottawatomi rights <i>Recommended additional research</i>	Inquiry March 1999	Rejected March 2001	Government rejected recommendations made in March 1999 report
42 Moosomin, SK 1909 surrender <i>Settled with assistance of Commission</i>	Inquiry March 1997 Mediation March 2004	Settled September 2003	Settled for \$41 million in federal compensation
43 Muscowpetung, SK QVIDA flooding claim <i>Recommended claim be accepted for negotiation</i>	Inquiry February 1998	Accepted December 1998	Government accepted claim for negotiation
44 Nak'azdli, BC Aht-Len-Jees IR 5 and Ditchburn-Clark Commission <i>Accepted with assistance of Commission</i>	Inquiry March 1996	Accepted January 1996	Government accepted claim for negotiation
45 'Namgis, BC Cormorant Island <i>Recommended claim be accepted for negotiation</i>	Inquiry March 1996	Rejected May 2001	Government rejected recommendations made in March 1996 report
46 'Namgis, BC McKenna-McBride applications <i>Recommended part of claim be accepted for negotiation</i>	Inquiry February 1997	Rejected December 1999	Government rejected recommendations made in February 1997 report





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47 Nekanect, SK Entitlement to treaty benefits claim <i>Accepted with assistance of Commission</i>	Inquiry March 1999	Accepted October 1998	Government accepted claim for negotiation
48 Ochapowace, SK QVIDA flooding claim <i>Recommended claim be accepted for negotiation</i>	Inquiry February 1998	Accepted December 1998	Government accepted claim for negotiation
49 Pasqua, SK QVIDA flooding claim <i>Recommended claim be accepted for negotiation</i>	Inquiry February 1998	Accepted December 1998	Government accepted claim for negotiation
50 Peepeekisis, SK File Hills Colony <i>Recommended claim be accepted for negotiation</i>	Inquiry March 2004	NONE	NO RESPONSE FROM GOVERNMENT
51 Peguis, MB Treaty land entitlement <i>Accepted with assistance of Commission</i>	Inquiry March 2001	Accepted June 1998	Government accepted claim for negotiation
52 Roseau River Anishinabe, MB Medical aid <i>Recommended claim be accepted for negotiation</i>	Inquiry February 2001	Rejected September 2003	Government rejected recommendation made in February 2001 report
53 Roseau River Anishinabe, MB Treaty land entitlement <i>Settled with assistance of Commission</i>	Mediation March 1996	Settled March 1996	Settled for \$14 million in federal compensation
54 Sakimay, SK QVIDA flooding claim <i>Recommended claim be accepted for negotiation</i>	Inquiry February 1998	Accepted December 1998	Government accepted claim for negotiation

NAME OF FIRST NATION, AND PROVINCE TYPE OR TITLE OF CLAIM <i>ICC's recommendation to Canada</i>	TYPE OF ICC REPORT AND DATE OF PUBLICATION	DATE OF CANADA'S RESPONSE <i>(Acceptance/ Settlement/ Other)</i>	NATURE OF RESPONSE FROM CANADA TO ICC'S RECOMMENDATION
55 Standing Buffalo, SK QVIDA flooding claim <i>Settled with assistance of Commission</i>	Inquiry February 1998 Mediation March 2004	Settled March 2003	Settled for \$3.6 million in compensation and the ability to acquire up to 640 acres of agricultural land to be set apart as reserve land
56 Sturgeon Lake, SK Agricultural lease <i>Accepted with assistance of Commission</i>	Inquiry March 1998	Settled October 1998	Settled for \$190,000 in federal compensation
57 Sumas, BC IR 6 railway right of way <i>Recommended claim be accepted for negotiation</i>	Inquiry February 1995	Rejected December 1995	Government rejected recommendations made in February 1995 report on grounds that claim involved issues before the courts in other cases
58 Sumas, BC 1919 surrender of IR 7 <i>Recommended joint research to assess fair market value of surrendered land</i>	Inquiry August 1997	January 1998	Government willing to explore possibility of joint research to determine if evidence exists for a claim
59 Thunderchild, SK 1908 reserve land surrender <i>Settled with assistance of Commission</i>	Mediation March 2004	Settled September 2003	Settled for \$53 million in compensation and ability to acquire up to 5,000 acres of land within 15 years to be set apart as a reserve
60 Walpole Island, ON Boblo Island <i>Recommended First Nation resubmit its claim under the Comprehensive Claims Policy</i>	Inquiry May 2000	None required	No substantive response required from government
61 Waterhen Lake, SK Primrose Lake Air Weapons Range – loss of commercial and treaty harvesting rights <i>Recommended part of claim be accepted for negotiation</i>	Inquiry September 1995	Rejected March 2002	Government rejected recommendations made in September 1995 report, stating: “[C]ompensation for commercial harvesting rights was not based on either Indian status or membership in an Indian Band; rather, it was to be paid to anyone who held a licence on the land which became the Primrose Lake Air Weapons Range”



NAME OF FIRST NATION, AND PROVINCE TYPE OR TITLE OF CLAIM <i>ICC's recommendation to Canada</i>	TYPE OF ICC REPORT AND DATE OF PUBLI- CATION	DATE OF CANADA'S RESPONSE <i>(Acceptance/ Settlement/ Other)</i>	NATURE OF RESPONSE FROM CANADA TO ICC'S RECOMMENDATION
62 Young Chipeewayan, SK Unlawful surrender claim <i>Recommended that claim not be accepted for negotiation but that further research be undertaken regarding the surrender proceeds</i>	Inquiry December 1994	February 1995	Funding proposal submitted by Band for research and consultation under consideration by Department of Indian Affairs and Northern Development



Impact Of Claims Settlement

What you'll find in this section:

- 78 Settlement of Land Claims Benefits Everyone**
Short introduction describing the advantages to be gained by settling land claims
- 79 The Fishing Lake Settlement: A Case Study**
Case study of the Fishing Lake First Nation - 1907 Surrender Claim



IMPACT OF CLAIMS SETTLEMENT

Settlement of Land Claims Benefits Everyone

The Commission is committed to doing all it can to assist in the speedy settlement of specific land claims and to exercise its mandate as an alternative to the courts, where lengthy litigation can result in enormous costs both to the First Nation and to Canada.

Rapid settlement of specific land claims contributes to Canada's economic health and to the prosperity of both First Nations and Canadians. The money to pay for claims settlement comes from taxpayers, so it is essential that taxpayers see this legitimate transfer of resources as a fair bargain for everyone involved. Settlement of land claims brings economic stability and fosters the growth of new business ventures that benefit the entire community, both aboriginal and non-aboriginal.

Through the settlements, First Nations receive what is rightfully theirs as defined by law. They can put the settlement money they receive to work, investing in the infrastructure, training, and businesses that will ensure self-sufficiency. This way, they will be better able to contribute to the health of the country. In the course of the inquiry into the treaty land entitlement claim of Saskatchewan's Lucky Man Cree Nation in 1996, Chief Rod King expressed this thought succinctly:

“We are part of this province; we have taken something from society and we want to be given a chance to give something back. That's what this is all about. This is why we're here. It's for the benefit of our grandchildren and their grandchildren, that somehow we can be contributing citizens and say, 'yes,' we contribute to the economy of this province. We manufacture certain things, we contribute some jobs, we give back something to society.”

The Commission's experience has been that early settlement of claims costs a lot less than allowing them to drag on. No one benefits when a claim is held up for years, pending a decision. One of the most harmful effects of such delay is the climate of uncertainty and instability it creates among potential developers and investors.



IMPACT OF CLAIMS SETTLEMENT

The Fishing Lake Settlement: A Case Study

The Fishing Lake First Nation land claim settlement provides a good example of the way a settlement can change a community for the better.

Located near Wadena, Saskatchewan, 215 kilometres east of Saskatoon, the community numbers over 1,200 members, a quarter of whom live on reserve. The Band is signatory to Treaty 4.

The First Nation's claim, submitted to the Minister of Indian and Northern Affairs in March 1989, concerned the surrender of 13,170 acres of reserve land in 1907 and their subsequent sale. The First Nation maintained that the surrender was invalid, and thus not binding on the Band, because it did not comply with the requirements of the *Indian Act*. It also claimed that the federal government had breached its fiduciary obligations to the First Nation in obtaining the surrender. The federal government originally rejected the claim. The First Nation then asked the Commission to conduct an inquiry into the rejected claim.

The Commission's inquiry process afforded the Fishing Lake First Nation the opportunity to submit new evidence and arguments, and these additions ultimately caused Canada to reconsider the claim and accept it for negotiation in August 1996. The ICC released its inquiry report on the Fishing Lake First Nation's surrender claim in March 1997. Following Canada's acceptance, both parties agreed to have the Commission act as facilitator in the ensuing negotiations.

The settlement agreement, ratified by the Band in 2001, provided \$34.5 million in compensation for damages and losses the Fishing Lake First Nation had suffered as a result of the 1907 surrender.

In 2004, three years after the agreement, a large portion of the settlement money continues to be held in trust for future generations; however, the First Nation is using some of the funds to develop both the economy and the infrastructure of the community. "We are putting up the Anishinabe Healing Centre, along with band members from Hobbema," Fishing Lake's Chief Joseph Desjarlais says. The Anishinabe Healing Centre, a clinic funded by a number of local First Nations, will specialize in diabetes treatment. Chief Desjarlais points out that a noted American physician is already involved with the project. The clinic will be a boon to the area, as diabetes occurs with high frequency in aboriginal populations.

And that's not all. "We used \$240,000 from our land claim settlement to improve our roads," adds Chief Desjarlais. The paving of roads is an infrastructure improvement that has economic benefits for community members. Since many on-reserve families do not own the homes they live in (they are owned by the federal government and administered by the band council), a family's vehicle can be its most expensive investment. Paved roads mean that investment will last longer. They also contribute to community safety.



Chief Desjarlais says the community is also using the settlement money to help families purchase homes in urban areas and start small businesses: “It’s called micro-business. If individuals want to start a small business, they get a grant of a \$1000 to do that. A lot of people are using it for fencing; if they have cattle, it helps for wire and stuff.”

The community had asked that up to 13,190 acres of land be set apart as reserve lands. The settlement has allowed Fishing Lake First Nation to use some of the proceeds of the settlement to purchase land on a willing-seller–willing-buyer basis.

Chief Desjarlais will not hesitate to ask for the Commission’s assistance in the future, noting that the settlement has enabled the community to better the daily lives of its members as well as to provide for future generations through the acquisition of additional reserve land: “I think they did a good job for us,” he says.



Financial Information

What you'll find in this section:

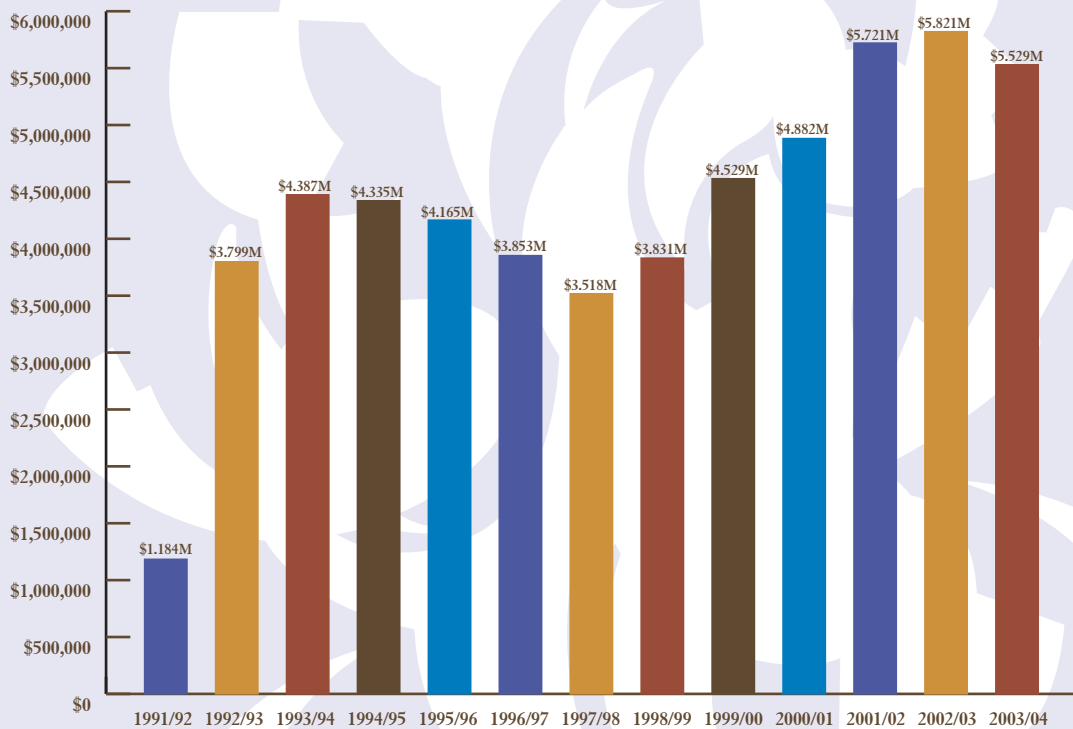
- 82 Financial Information**
Budget, expenditures of the ICC



YEARLY EXPENDITURES SYNOPSIS – 1991-2004

The Commission strives to ensure that adequate mechanisms and processes are in place to enable it to maintain the high quality and impartiality of its services.

In 2003-2004, the Commission's activities increased in both inquiries and mediation. These activities resulted in expenditures of \$5.529 million. Of this amount, \$2.910 million was for salaries and benefits and \$2.619 million was for other operating costs.



In Fact...

What you'll find in this section:

- 84 **In Fact...**
Facts on specific claims at the ICC



IN FACT...

Some little known facts about the Indian Claims Commission from the 2003-2004 reporting period:

18 First Nation communities were visited, with a total population of 36,881 members in five provinces

5,333 kilometres is the greatest distance travelled by the ICC to reach a First Nation community

174 days were spent in mediation/facilitation/negotiation meetings

24 new requests for inquiry were received

5 new requests for mediation/facilitation were received

86 requests for information were received

539 requests for publications were received

4 inquiries were completed in 2003–2004, affecting a total of 7,735 First Nations people

3 mediation reports were completed in 2003-2004, affecting 4,569 First Nations people

71,727 website hits were counted

524 information kits were distributed

6,405 copies of *Landmark*, the ICC's newsletter, were distributed

1,830 copies of the ICC's annual reports were distributed



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