



Landmark

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"I have heard the elders say that when the terms of the treaties were deliberated the smoke from the pipe carried that agreement to the Creator binding it forever. An agreement can be written in stone, stone can be chipped away, but the smoke from the sacred pipe signified to the First Nation peoples that the treaties could not be undone."

Ernest Benedict, Mohawk Elder
Akwasasne, Ontario June 1992

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Landmark is published by the Indian Claims Commission to inform readers of Commission activities and developments in specific claims. Landmark and other ICC publications are also available on our web site at: www.indianclaims.ca

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Phil Fontaine Heads ICC

The Indian Claims Commission has a new Chief Commissioner. The Governor in Council appointed Phil Fontaine, who has worked for many years both as a senior public servant and on behalf of First Nations, to the position on August 29, 2001.

Mr. Fontaine will chair the Commission, whose membership stands at six.

In announcing the appointment, Prime Minister Jean Chretien said that Mr. Fontaine's "extensive experience with, and long-time devotion to, First Nations issues will serve him well in leading the Commission."

Mr. Fontaine, who was born at the Fort Alexander Reserve (Sagkeeng Anishinabe First Nation) 150 kilometres northeast of Winnipeg and whose first language is Ojibway,

served three terms as Grand Chief of the Assembly of Manitoba Chiefs, an organization representing 90,000 people from 60 First Nations communities. He was elected National Chief of the Assembly of First Nations in 1997 and served in that post until 2000.

Mr. Fontaine served as Director General of the Yukon region of the Department of Indian and Northern Affairs and deputy co-ordinator of the federal government's native economic development program, Aboriginal Politics, during the 1960s and early 1970s.

Mr. Fontaine was one of the first aboriginal leaders to draw public attention to the issue of residential schools, a cause still dear to his heart. While Chief of



...
Chief Commissioner
Phil Fontaine



the Sakeeng First Nation, he was instrumental in establishing local control of education and a treatment centre for alcoholism in his home community. He is a strong proponent of self-determination, community healing and individual wellness.

More recently, Mr. Fontaine helped bring about an historic agreement between First Nations of Manitoba and the federal government that provided for a formal, binding process to dismantle DIAND in Manitoba and to develop and recognize legally-empowered First Nation governments. In 1996, he was awarded a National Aboriginal Achievement Award for community service.

The Chief Commissioner says he hopes to make the ICC more effective. The Commission does not have the power to make recommendations that are binding on parties in a land claims dispute; it has been urging the federal government for several years to establish an independent claims body with that power.

“Absolutely, I hold to the view that we need a strong body with the ability to make decisions,” he says, pointing to the need to clear up the backlog of claims currently in the system and speed up a process that can take up to 20 years to settle a claim.

The person who last occupied the post of Chief Commissioner was the Hon. Mr. Justice Harry S. LaForme, who served from 1991 (the year the ICC was established) to 1994. From 1994 to the time of Mr. Fontaine’s appointment, Commissioners Daniel Bellegarde and James Prentice acted as Commission Co-Chairs. Mr. Prentice resigned from the Commission in December 2001.

“...we need a strong body with the ability to make decisions...”

CLAIMS IN INQUIRY

Alexis First Nation (Alberta) - Trans-Alta Utilities right of way
Canupawakpa Dakota First Nation (Manitoba) - Turtle Mountain surrender
Chippewa Tri-Council (Ontario) - Coldwater Narrows Reserve
Conseil de bande de Betsiamites (Quebec) - Highway 138 and Betsiamites Reserve
Conseil de bande de Betsiamites (Quebec) - Betsiamites River bridge
Cumberland House Cree Nation (Saskatchewan) - claim to Indian Reserve 100A
James Smith Cree Nation (Saskatchewan) - Chakastaypasin land claim

James Smith Cree Nation (Saskatchewan) - treaty land entitlement
James Smith Cree Nation (Saskatchewan) - Peter Chapman Band and claim to Cumberland House Indian Reserve 100A
Kluane First Nation (Yukon) - Kluane National Park Reserve and Kluane Games Sanctuary
Mississaugas of the New Credit First Nation (Ontario) - Toronto Purchase
Ocean Man First Nation (Saskatchewan) - treaty land entitlement

Paul Indian Band (Alberta) - Kapasawin Townsite
Peepeekisis First Nation (Saskatchewan) - File Hills Colony claim
Roseau River Anishinabe First Nation (Manitoba) - 1903 surrender
Sandy Bay Ojibway Nation (Manitoba) - treaty land entitlement
Siksika First Nation (Alberta) - 1909 surrender
Stanjikoming First Nation (Ontario) - treaty land entitlement
Sto:Lo Nation (British Columbia) - Douglas Reserve claim



Commissioner Dupuis Receives Award

The Chief Commissioner, fellow Commissioners and staff wish to congratulate Commissioner Renée Dupuis for recently receiving the 2001 Governor General's Literary Award, French Nonfiction, for her recent book *Quel Canada pour les Autochtones? La fin de l'exclusion*.*

Throughout her career Mme. Dupuis has authored numerous books and articles and lectured extensively on human rights and specifically on the rights of Canada's Aboriginal Peoples.

* **Translates as:** *The End of Exclusion. . . Redefining the Place of Aboriginal Peoples in Canada.*

Commissioner Dupuis Receiving Award
from the Governor General of Canada
The Right Honourable Adrienne Clarkson



CLAIMS IN FACILITATION OR MEDIATION

Blood Tribe/Kainaiwa (Alberta) - Akers surrender
Cote First Nation (Saskatchewan) - pilot project - 1905 surrender
Fort Pelly Agency (Saskatchewan) - "Pelly Hay lands
Fort William First Nation (Ontario) - pilot project
Kahkewistahaw First Nation (Saskatchewan) - 1907 surrender
Michipicoten First Nation (Ontario) - pilot project

Moosomin First Nation (Saskatchewan) - 1909 surrender
Qu'Appelle Valley Indian Development Authority (Saskatchewan) - flooding
Standing Buffalo First Nation (Saskatchewan) - flooding
Thunderchild First Nation (Saskatchewan) - 1908 surrender, loss of use
Touchwood Agency (Saskatchewan) - 1920-1924 - mismanagement

CLAIMS WITH REPORTS PENDING

Chippewas of the Thames (Ontario) - Clench defalcation
Fishing Lake First Nation (Saskatchewan) - 1907 surrender
Mistawasis First Nation (Saskatchewan) - 1911, 1917, 1919 surrenders
Mistawasis First Nation (Saskatchewan) - compensation criteria



Fishing Lake: Righting The Wrong

In 1994, the ICC began its inquiry into the Fishing Lake First Nation's reserve land surrender claim of 1907, a claim that had been rejected by the federal government. The southeastern Saskatchewan band's specific claim is a story of great hardships, tainted

dealings, manipulation and grievous deprivation. It also results in the righting of past wrongs and demonstrates the very important contributions the Commission can make to the land claims process. What are some of these contributions?

First, Fishing Lake—like so many other claims brought to the Commission—exposes our history. During an inquiry, through ICC's unique community sessions, the oral history and tradition of a First Nation are brought forward and made public. This serves to balance



the weight of historic government documents that are used to analyze the validity of a claim. In the case of Fishing Lake, the ICC was asked to consider the impact that such factors as malnutrition, disease, crop failures, inferior government-supplied farming materials, animosity from the surrounding white communities and restricted access to markets may have had on the First Nation.

Second, such claims bring forward long-standing grievances. The Fishing Lake claim—a breach of lawful obligation in the surrender of 13,170 acres — was first made against the

government in the spring of 1989. It was rejected twice over the next six years. It should be noted that resolution of an average claim takes about 15 years.

In March, 1995, the ICC agreed to conduct an inquiry. By July, the Specific Claims Branch agreed to recommend acceptance of the claim to the

“...We are very pleased that our nation can now begin the process of restoring its land base...”

Minister, who concurred with the recommendation in August, 1996. If the ICC had not existed, Fishing Lake First Nation would have had only two choices: either to accept the government's rejection of their claim, or appeal to the courts—an uncertain, lengthy and costly process.

Third, the constructive dialogue and cooperation that take place benefits both parties. The neutrality of the Commission's inquiry process encourages open discussion of issues and exchange of documents and helps to set common goals. Both the Fishing Lake First Nation and Canada saved resources, time and money and reduced potential conflict by using the facilitation and mediation services of

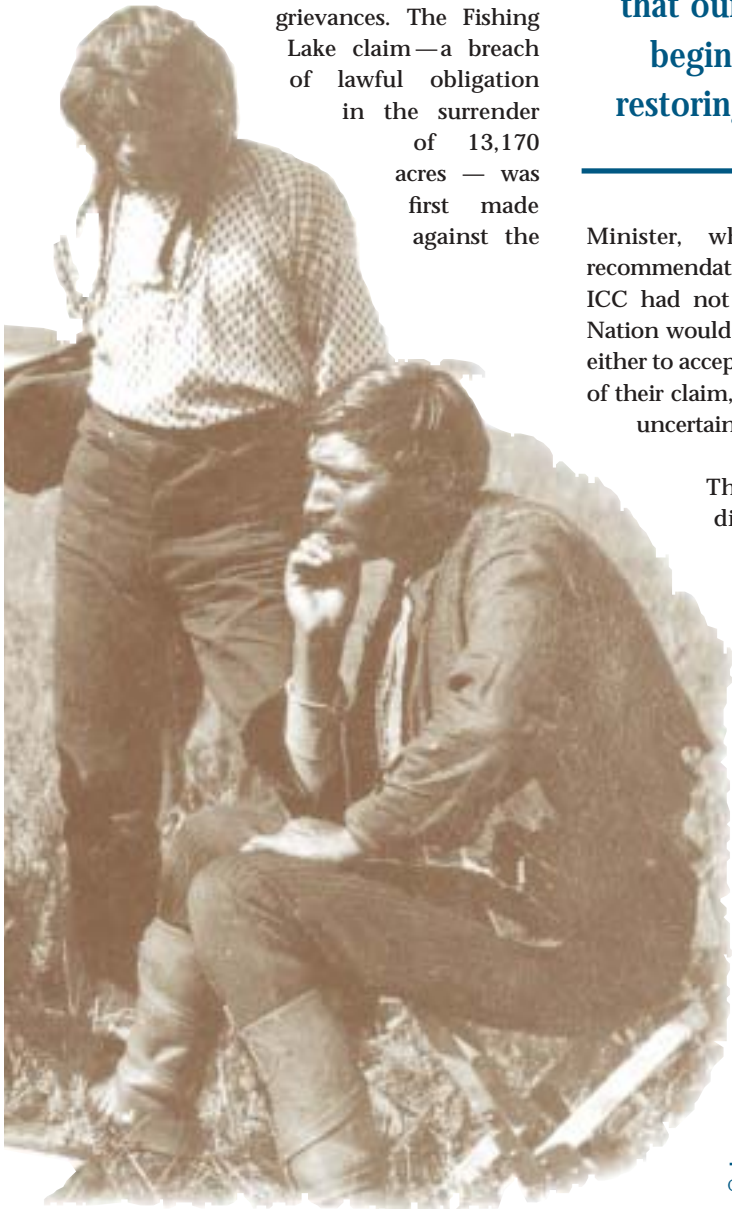
the ICC. For example, by agreeing on the terms of reference for loss-of-use of the surrendered land, both parties were able to use the same consultant's analysis, rather than each commissioning their own study. Such collaboration speeds up the claims process and eliminates the conflict that often arises when each party operates independently.

Finally, through the flexible nature of the inquiry process and the resulting recommendations, the Commission provides a formal opening for the government to rectify previous breaches of its fiduciary obligations. In the case of Fishing Lake, evidence presented by elders and other community members during the community session persuaded the government's lawyers to reconsider Canada's position.

Robert Nault, Minister of Indian Affairs and Northern Development, noted that the settlement of this claim not only honours an outstanding lawful obligation to the First Nation, but will create viable economic opportunities within First Nation lands and surrounding communities. “The successful outcome of these negotiations demonstrates that by working together through trust and open dialogue to settle past grievances, we can build a more promising future for First Nations people.”

Chief Allan Paquachan of the Fishing Lake First Nation agreed: “As First Nations people, we have always had a special relationship with the land—it's an integral part of our culture and identity. We are very pleased that our nation can now begin the process of restoring its land base. By addressing this historic injustice, we can now look toward the future for generations to come.”

Cree examining map with surveyor, Fishing Lake, Saskatchewan. (Photo courtesy of Glenbow Archives NA-3454-30)



Former ICC Co-Chair Steps Down

In early December, 2001, P. E. James Prentice, former Co-Chair of the Indian Claims Commission (ICC), announced his resignation as Commissioner, in order to devote more time to his Calgary law practice. Mr. Prentice was appointed a Commissioner in 1992 and named Co-Chair in 1994. He held that position until the appointment of Phil Fontaine as Chief Commissioner this past August.

"I have greatly enjoyed my time with the ICC and will always treasure the memories of what has been, for me, a fascinating journey," he said. "During the past nine years, I have had the privilege of working with many distinguished commissioners, all of whom have been deeply committed to the work of the Commission." Mr. Prentice had announced his intention to resign in 2000 but stayed on in order to complete work on a number of claim inquiries.

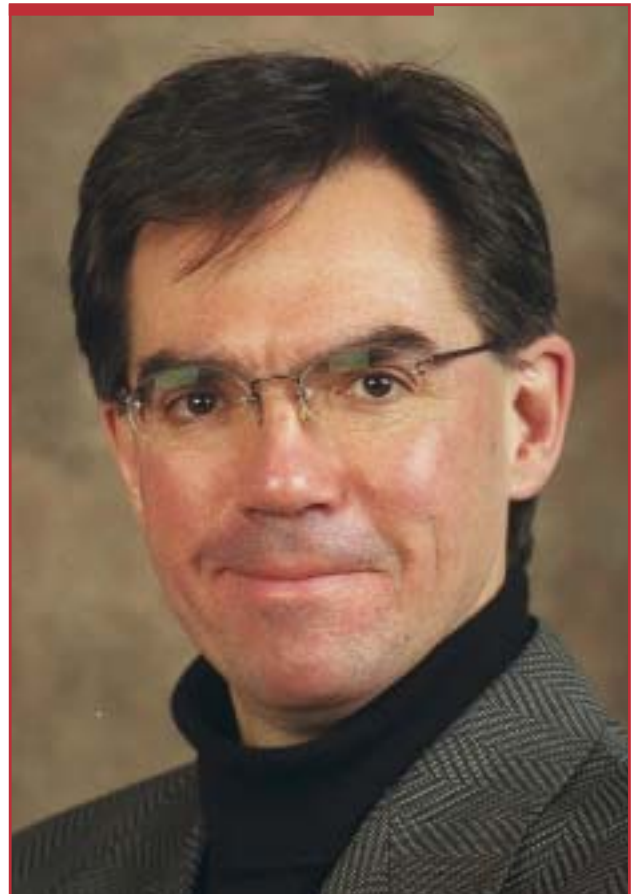
A partner with the firm of Rooney Prentice, Mr. Prentice has an extensive

background in land claims, dating back to his work as legal counsel and negotiator for the Province of Alberta in the tripartite negotiations that brought about the Sturgeon Lake Indian claim settlement in 1989. Since that time, he has taken part in the inquiry or mediation of some 70 treaty land entitlement and surrender claims across Canada.

Throughout his tenure, Mr. Prentice participated in such key decisions as the 1996 Fort McKay case which resulted in the reversal of the federal government's policy position with respect to treaty land entitlement. The current policy in this important area is based entirely upon the ICC's report. He was also active in the ICC's work in the field of Prairie

Land Surrenders, a study that led to the release of a landmark report dealing with the Kahkewistahaw Surrender of 1907.

"The settlement of specific land claims is fundamentally a human rights issue," he declared in announcing his decision to resign, adding that Canadian society will ultimately be judged by how it handles settlement of such claims. "I am proud of the evolutionary role which the ICC has played in the area of claims settlements."



Commissioner P. E. James Prentice

"I have greatly enjoyed my time with the ICC and will always treasure the memories of what has been, for me, a fascinating journey..."



“Is the Indian Claims Commission an independent body? How do you define ‘independent’?”

- Marie White, Quebec City

We have found that many of your questions have common threads. In this new feature to Landmark, we will provide answers to some of the questions we receive. To ask a question, e-mail us at mgarrett@indianclaims.ca or call (613) 947-3939. Our thanks to Marie White who graciously allowed one of her questions to be used.

“Is the Indian Claims Commission an independent body? How do you define ‘independent’?”

- **Marie White, Quebec City**

The Commission is established as a Royal Commission of Inquiry under the Inquiries Act which gives it autonomy and independence to carry out its inquiries. It is totally independent of both the government and First Nations and acts as a neutral arbiter between these two parties in specific land claims disputes. The Commission is required to submit an annual report of its activities to Parliament. Commissioners, who are both aboriginal and non-aboriginal,

draw upon their cross-cultural training to seek a broader understanding of the issues and determine whether a dispute can be resolved through some form of alternative dispute resolution.

The staff who administer the Commission operate under the same checks and balances that federal public servants do, although they are not part of the federal public service. The Commission obtains its funding and undertakes expenditures in accordance with the policies of Treasury Board.

Since the Commission is not a court, it is not bound by strict rules of evidence, limitation periods and other technical defences that might present obstacles in litigation of grievances against the Crown. This flexibility gives the Commission the freedom to conduct objective, neutral and expeditious inquiries. The inquiry process emphasizes principles of fairness, equity and justice to promote reconciliation and healing between aboriginal and non-aboriginal Canadians.



New Staff



Diane Brisebois, Communications Assistant

DIANE BRISEBOIS - COMMUNICATIONS ASSISTANT

Diane Brisebois joined ICC Communications staff in October, 2001. She has had a long career as a library technician, archivist and research technician, working at the federal, provincial and municipal levels of government as well as the private sector. Since graduating in 1979 from CÉGEP de l'Outaouais in Hull, she has been employed at the National Library of Canada, the libraries of Health and Welfare Canada and the Canadian Council of Hospital Accreditation. Just prior to joining the ICC, Diane worked as an archivist at the Université de Québec (Hull), and was a reference technician at the University of Ottawa's health library.

Diane's duties as Communications Assistant will be to maintain the communications filing system, publications inventory and photo archives, as well as a variety of administrative services.

CECIL CHABOT - RESEARCH OFFICER

Cecil Chabot joined ICC Legal-Research staff in September, 2001. Born in Moose Factory, Ontario, Cecil left his beloved home by canoe in 1993 to pursue post-secondary studies in Quebec City, Ottawa and Montreal. He received a B.A. in English from the University of Ottawa, took courses at McGill and the University of Montreal, and is now finishing his M.A. thesis on "Merging Cree and non-Cree understandings of the 1832 Washaw Conflict." He has completed a variety of research contracts over the last three years and presented seminars on Cree history. For a long time, he has been involved in many leadership and educational programs for youth. He hopes to contribute to bettering aboriginal and non-aboriginal relations in Canada.



Cecil Chabot, Research Officer



Manon Garrett - Communications Coordinator

MANON GARRETT - COMMUNICATIONS COORDINATOR

Manon Garrett stepped into the newly-created position of Communications Coordinator in August, 2001. She joined the ICC in the fall of 1999 as a Library Assistant. In her new position, Manon will be responsible for media monitoring and analysis, organizing and maintaining the Communications records system, coordinating Web site overhaul, and dealing with requests from the public. Manon's training as an archivist and her organizational skills and efficiency are sure to be an asset to the Communications unit.

