INDIAN CLAIMS COMMISSION

Report on the Inquiry into the Claim of the

CHIPPEWAS OF THE THAMES

Muncey Land Claim

DECEMBER 1994

PREAMBLE TO CHIPPEWAS OF THE THAMES "MUNCEY" REPORT, APRIL 20, 1995

Since 1974, the Chippewas of the Thames First Nation has pursued a resolution of the "Muncey Claim." Owing to its persistent efforts, a Proposed Settlement Agreement was negotiated with Canada and ratified by the First Nation's membership on January 28, 1995, ending the dispute over the 192 acres wrongfully alienated in 1831.

Throughout the years of negotiation between the Chippewas and Canada, many attempts had been made to resolve the dispute. In an open letter to the membership of the Chippewas of the Thames before the ratification, Chief Del Riley explained that "the primary reason why the land claim was rejected was that the previous Land Claim settlement offer[s] contained an absolute surrender clause which would surrender Treaty, and Aboriginal rights within our reserve borders ..." Negotiations broke down in 1991 over a stalemate on the surrender issue. The First Nation turned to the Indian Claims Commission (ICC) in 1992 in an attempt to revive discussions on the Muncey Claim. The ICC would come to play a pivotal role in facilitating the eventual resolution of this historical grievance.

Initially, the ICC's requests to attempt to have the dispute resolved through mediation were met with some opposition by Canada. The Commission's former Chief Commissioner, Harry LaForme, announced in November 1993 that it would conduct an inquiry since mediation no longer appeared liable. The Commission's inquiry process begins with an informal meeting of the parties, or planning conference, at which the most relevant aspects of the claim are discussed. These planning conferences are chaired by former justice Robert F. Reid, the Commission's legal and mediation advisor.

Both the First Nation and Canada arrived at the first meeting not knowing what to expect. As discussions commenced, it became apparent that there was a mutual commitment to honesty and fairness. The relaxed atmosphere of the planning conference allowed for free-flowing discussion between the parties, and much was accomplished at this first meeting. By day's end, Canada had agreed to reconsider its position on the absolute surrender clause that had been the cause of so much frustration to the First Nation.

At a subsequent planning conference, the government announced that it would no longer require an absolute surrender as part of a negotiated

settlement. This set the stage for the commencement of formal negotiations for a new Proposed Settlement Agreement. Both parties chose to have the Commission remain involved during this next stage. Ron Maurice, associate legal counsel for the ICC, was asked to provide his services to facilitate the negotiations.

The renewed spirit of cooperation continued in the negotiation meetings. In addition to dropping its request for the absolute surrender, Canada agreed to provide additional compensation in recognition of the time that had passed since its last offer in 1987. The federal government raised its offer from $2.5 million to $5.4 million. The agreement also enabled the First Nation to re-acquire those lands that had previously been alienated. The agreement provides the First Nation with up to ten years to purchase lands wrongfully alienated in 1831 and now in the possession of third parties and to have those lands returned to reserve status.

In addition to the Proposed Settlement Agreement, an unprecedented Land Claim Trust Agreement was negotiated, ensuring that the First Nation would manage the settlement moneys through its own appointed land claim trustees. These moneys could be invested for the benefit of the First Nation to assist in future economic development and to provide the necessary financial resources to purchase alienated land.

In his thoughtful and precise open letter to the community, Chief Del Riley stated his case for the acceptance of both the Settlement Agreement and the Land Claim Trust Agreement. He wrote, "I would encourage every band member of voting age to consider the positive things we can make happen in our community, if the referendum should pass." The Chief and Council arranged for three information sessions to ensure that the membership was provided with all the facts needed to make an informed decision.

The Proposed Settlement Agreement and the Land Claim Trust Agreement were overwhelmingly ratified by the membership on January 28, 1995. The final results of the Settlement Agreement vote were 226 for and 47 against, and the results of the Land Claim Trust Agreement vote were 198 for and 74 against. The Chippewas of the Thames long quest for justice has finally been regarded and the Indian Claims Commission is pleased to have played a role in this success.

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THE COMMISSION MANDATE

THE MANDATE OF THE INDIAN CLAIMS COMMISSION

The Indian Claims Commission (ICC) was created as a joint initiative after years of discussion between First Nations and the Government of Canada about how the widely criticized process for dealing with Indian land claims in Canada might be improved. It was established by an Order in Council dated July 15, 1991, appointing Harry S. LaForme, former commissioner of the Indian Commission of Ontario, as Chief Commissioner, and became fully operative with the appointment of six Commissioners in July 1992.

Its mandate to conduct inquiries under the *Inquiries Act* is set out in a commission issued under the Great Seal of Canada, which states:

> ... that our Commissioners on the basis of Canada's Specific Claims Policy ... by considering only those matters at issue when the dispute was initially submitted to the Commission, inquire into and report upon:
>
> > (a) whether a claimant has a valid claim for negotiation under the Policy where that claim has already been rejected by the Minister; and
> >
> > (b) which compensation criteria apply in negotiation of a settlement, where a claimant disagrees with the Minister's determination of the applicable criteria.

Thus, at the request of a First Nation, the ICC can conduct an inquiry into a rejected specific claim. (The government differentiates between "comprehensive" and "specific" claims. The former are claims where no treaty exists between Indians and the federal government. The latter are claims for breach of treaty obligations, or where a lawful obligation of Canada's has been otherwise unfulfilled, such as breach of an agreement or the *Indian Act*, and includes claims of fraud. This artificial distinction, which, was apparently created for institutional convenience, has led to difficulties and has been modified to some extent.)

Although the Commission has no power to accept or force acceptance of a claim rejected by the government, it has the power to review the claim and the reasons for its rejection thoroughly, with the claimant and the government. The *Inquiries Act* gives the Commission wide powers to conduct such an inquiry,

to gather information, and even to subpoena evidence if necessary. If, at the end of an inquiry, the Commission sees fit to do so, it may recommend to the Minister of Indian Affairs and Northern Development that a claim be accepted.

The Commission's mandate is actually threefold. In addition to conducting inquiries into rejected claims and into disputes over the application of compensation criteria, the Commission is authorized to provide mediation services at the request of the parties to a specific claim to assist them in reaching an agreement. The proceeding reported on here began as an inquiry, but it was the Commission's mediation function that led to its disposition.

PLANNING CONFERENCES

The Commissioners' terms of reference give them broad authority to choose how they proceed. They may "adopt such methods ... as they may consider expedient for the conduct of the inquiry." In choosing procedures, they have adopted a policy of flexibility and informality, and have sought to have the parties involved as much as is practicable in planning the inquiries.

To this end, the planning conference was devised. It is a meeting convened by Commission staff as soon as possible after an inquiry begins. Representatives of the parties, who usually include legal counsel, meet informally with representatives of the Commission to review and discuss the claim, identify the issues it raises, and plan the inquiry on a cooperative basis.

This procedure is typical of mediation, and planning conferences are thus a form of mediation. They have been welcomed by both claimants and the government. The Commission's experience to date is that they can be very fruitful. Misunderstandings can be cleared up. Failures of communication - frequently the cause of misunderstandings - can be rectified. The parties are given an opportunity, often for the first time, to discuss the claim face to face. The parties themselves are able to review their position in the light of new or previously unrevealed facts and the constantly developing law.

The planning conference is sometimes an ongoing process. In some inquiries there have been as many as four or five meetings. Even if they do not lead to a resolution of the claim and a further, sometimes lengthy, inquiry process is necessary, the conferences clarify issues to make that process more

convenient, expeditious, and effective. Planning conferences have led to the acceptance of a previously rejected claim to the revelation that a claim thought to have been rejected had, in fact, been accepted; to the reopening of negotiations on a claim on which the government had closed its file; and to the reconsideration of a previously rejected claim.

In this particular Inquiry, after the planning conferences took place, negotiations that had been broken off were reopened, and shortly after the parties reached agreement in principle.

THE CLAIM

A BRIEF HISTORY OF THE CLAIM

The modern history of the "Muncey" land claim begins in November 1974, when the Chippewas of the Thames Indian Band, located on Caradoc Reserve, wrote to the federal government asserting its claim to two lots of land in Caradoc Township, amounting to 192 acres, on which the village of Muncey is located. The claim goes back to 1831, when these lots were patented, despite agreements between the Band and the Crown in 1819 and 1820 in which the land was part of what was set aside for the Band. The Band's claim was rejected late in 1975 but, in a letter dated June 15, 1983, the Honourable John Munro, Minister for Indian Affairs and Northern Development reversed the decision made eight years before and accepted the "Muncey" claim.

The long history of this claim is described in detail in the Historical Background, which was prepared by Kevin Thrasher, a member of the Commission's Research Group (see Appendix A).

Negotiations commenced shortly after Mr. Munro's letter was issued and continued until January 1987, when an Agreement in Principle was reached. That agreement did not, however, end the matter. As the Historical Background reveals, the proposed agreement was rejected in a referendum vote in January 1988. A second referendum was held in February; this time the ballot box was stolen. A third vote was held in April. Again, the agreement was rejected.

Then began a long struggle to have the negotiations reopened. In May 1988 Chief Ether Deleary, with the support of the Indian Commission of Ontario, proposed to William McKnight, then Minister of Indian Affairs, that negotiations be reopened, The Minister refused to reopen them on the ground that the government's offer had been "fair and reasonable."

The Band continued its efforts to have the negotiations reopened throughout 1988 with the support of the Indian Commission of Ontario and the Chiefs of Ontario. The Chief offered alternative proposals. All were rejected. The government closed the file.

The Band persisted. Ultimately, in early 1990, the government offered to reconsider its decision, but only if certain conditions, to be contained in a Band Council Resolution, were met. Negotiations on this proposal continued throughout 1990. A further Band Council Resolution was drawn up

recommending acceptance of the government's offer, notwithstanding that it was unfair, as "the best result that can be achieved in the circumstances." This proposed settlement was eventually put to a referendum vote in June 1991, but was rejected.

The Band turned to the Indian Claims Commission for help, and discussions began in the spring of 1992 between Chief Delbert Riley and Chief Commissioner Harry S. LaForme (now the Honourable Mr. Justice LaForme of the Ontario Court of Justice). Mr. LaForme suggested mediation as the most effective way in which the Commission might assist the parties. The Band agreed. In November, Mr. LaForme wrote to the Deputy Minister for Indian Affairs and Northern Development, Mr. Dan Goodleaf, to propose it. In rejecting the proposal the following month, Mr. Goodleaf wrote: "I am advised that, with respect to the mandate of the Indian Specific Claims Commission, the process of mediation does not apply to a situation where best efforts have been made by the parties, where a settlement agreement has been concluded, and where final ratification of the proposed settlement agreement resulted in a rejection of the agreement by the membership."

This view was contrary to the Commission's understanding of its mediation function, which is wholly unqualified in the Commission's terms of reference. Mediation, in the Commission's view, is never more appropriate than when the parties have reached an impasse. However, without the consent of both parties, the Commission is unable to perform its mediation function. Although the Band desired mediation, and the Commission was willing to furnish it, the government's refusal prevented it.

The Band thereupon requested the Commission to embark on an inquiry. On November 9, 1993, Mr. LaForme informed the government that the Inquiry had commenced.

THE COMMISSION'S INQUIRY INTO THE CLAIM

THE PLANNING CONFERENCES, JANUARY-JUNE 1994

The first step to be taken was a planning conference. It was held in Toronto on January 7, 1994. Representatives of the parties, with their legal counsel, met in the Commission's offices in Toronto. Under the Commission's direction, discussion soon focused on the reason for the Band's repeated rejection of the proposed settlement. It became clear that, while the Band had expressed several grounds of objection in its request for an inquiry, the principal ground remained the government's demand for an unqualified surrender of all Indian title to or interest in the wrongly alienated lands.

The government's offer had included provision for repurchasing lands in the illegally alienated territory and setting them aside as reserve land for the Band. Band members had difficulty in understanding why they must surrender and abandon all interest in what they regarded as their land, particularly when the government proposed that the same lands be repurchased and set aside as reserve.

In the course of the discussion, Band representatives mentioned that the present owners of the alienated lands were willing to sell and make it available for the Band. This information appeared to have been unknown to the government. Commission representatives suggested that, in the light of this development the demand for a surrender appeared unrealistic. Again they proposed mediation of the claim.

Government representatives agreed to consider the proposal, and the conference was adjourned for a month. A second planning conference, to explore the prospects for mediation, was held on February 18. At the outset, government counsel announced that the government had withdrawn its demand for an absolute surrender. Counsel went on to request that the Commission suspend the Inquiry to permit the parties to attempt to negotiate a settlement.

Chief Riley proposed that the Commission remain involved, given the difficulties of the past and the fact that, owing to the Commission's involvement, the major obstacle to acceptance of the claim had been removed. Other aspects of the government's compensation offer required discussion and resolution, which, in Chief Riley's opinion, could better be accomplished with the Commissions continued involvement. The Commission offered, as part of

its mediation function, to assist the parties in their compensation negotiations, but pointed out that the express consent of both parties was required. Government counsel undertook to seek instructions.

It was contemplated, however, that the parties would commence negotiations bilaterally and would call on the Commission only if they ran into difficulty. The parties therefore agreed to meet in late February or early March to begin negotiations. The possibility of the parties being unable to reach agreement led to the scheduling of a further planning conference for March 22.

The parties were not only unable to reach agreement, but were unable to agree on dates for the proposed meeting. The third planning conference therefore went ahead in Toronto as scheduled. The parties inability to arrange a meeting was addressed. The parties requested the Commission to remain involved. A further planning conference was scheduled for April 11.

Again, the parties were unable to meet, and the fourth planning conference therefore was held as scheduled. The Band had been concerned about the basis on which the government was prepared to negotiate settlement. At this conference, government counsel produced a letter, dated April 8, written to Chief Riley by Mr. John Sinclair, Assistant Deputy Minister, Claims and Indian Government, DIAND, confirming that "Government has reviewed the claim" and stating that "I am prepared to reopen the claim for settlement based on the following ..." Mr. Sinclair's proposal for settlement was then set out in detail. It reflected the earlier agreement, proposed that it be updated in light of the passage of time, and concluded with the statement: "Canada has determined that a surrender will not be required for the settlement of this claim.

At the conclusion of the planning conference, the claimants counsel asked Mr. Sinclair for some clarification of aspects of the proposal. Subject to this clarification, the claimants agreed the proposal formed a satisfactory basis for negotiations. It thus appeared that the parties were well on their way to settlement. Nevertheless, Chief Riley requested again that the Commission continue to participate in the settlement negotiations. The Commission agreed to monitor the negotiating sessions, which would now be necessary between the parties, and to perform a mediation function if a further impasse arose. After seeking specific instruction, government counsel shortly afterwards informed the Commission of its willingness to have the Commission continue

as proposed. Mr. Ron Maurice, the Commission's associate counsel assigned to this Inquiry, was designated, with the parties consent, to perform this function.

THE RESULT

Mr. Maurice acted as chair of the two intense negotiating sessions that followed. The parties met first at the Band offices in Muncey, Ontario, on June 7. The second session, held at the Commission's Toronto office on June 27, concluded with the signing of an Agreement in Principle.

The role of the Commission had been to bring the parties together in an informal setting and to discuss the claim and its history in the Specific Claims Process. The aim was to get to the crux of the problem and settle it without the need for a full and formal inquiry. With the cooperation of the parties and their legal counsel, this objective was realized in a period of six months (from the rejection of the Commission's proposal for mediation in December 1993 to June 1994).

The Commission is pleased that it has been able, in a few months, to assist the parties to reach agreement on a claim that had been actively pursued for almost 20 years.

FOR THE INDIAN CLAIMS COMMISSION

Daniel Bellegarde
Commissioner

James Prentice, QC
Commissioner

December 1994

APPENDIX A

CHIPPEWAS OF THE THAMES
MUNCEY LAND CLAIM: HISTORICAL BACKGROUND

INTRODUCTION*

The Chippewas of the Thames Indian Band submitted a claim to the Office of Native Claims at the Department of Indian and Northern Affairs on February 7, 1980. The Band alleged that "192 acres of land, on which the Village of Muncey is situated, were unsurrendered reserve land illegally patented in 1831. ..." Specifically, the area in question was composed of "Broken Lots 12 and 13, Range V South of Longwoods Road Caradoc Township, Middlesex County, Ontario...."[1] Eventually, the Chippewas of the Thames would seek damages for their unsurrendered interest in these lands. Their claim would become known as the "Muncey Land Claim."

This essay is devoted to a brief review of the historical facts that formed the basis of the claim that was submitted by the Chippewas of the Thames Band. The federal government accepted that claim for negotiation on June 15, 1983. Since that time, there has been no real dispute between the parties as to the facts that were derived from the various historical reviews completed during the submission process. Some of this research was used in drafting this Historical Background and was augmented by our own research and analysis into the matter. The events that led to the eventual collapse of the negotiation process with the federal government are also visited. It was the final rejection of the government's offer on June 1, 1991, that resulted in the Chippewas of the Thames turning to the Indian Claims Commission.

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* This Historical Background is based on the documents submitted to the Indian Claims Commission by the parties as part of their documentary submission, as well as parties' correspondence with the Commission. The documents sometimes provided complete archival or file references, and where available these are included here. All documents can be referenced from the Commission's records by date.

1 Indian Affairs, Memorandum concerning the Muncey Claim, Claim Summary Sheet, February 7, 1980.

THE MUNCEY LAND CLAIM

BEFORE THE PROVISIONAL AND FORMAL AGREEMENTS

Although it is impossible to determine the exact date at which time the Chippewa people first inhabited southern Ontario, it is generally accepted that they began to settle there at the beginning of the 18th century.[2] "Settled" is a relative term in the case of the Chippewas as they were a hunter/gatherer-based culture and, consequently, they tended to move often, following local environmental changes (i.e., seasonal changes, game population fluctuations, etc.).

During the Seven Years War in the 18th century, the Chippewas of the Thames had, with other Ojibwa nations, formed a loose alliance with the French against the British. In 1760, after the defeat of the French in Canada, the *Articles of Capitulation* were signed, and certain guarantees were made by the British to the Indian allies of the French. Article 40 provided: "The Savages or Indian Allies of His Most Christian Majesty shall be maintained in the lands they inhabit, if they choose to remain there ...[3] Despite these reassurances, the Ojibwa's peaceful relationship with the British remained tenuous for some time after the French defeat. The Ojibwa did not see the French defeat as their own loss. They certainly did not accept the British Crown's assertion that it had achieved the right to govern them by the British conquest of the French.

The period after the Seven Years' War was marked by several conflicts between the Ojibwa and the British. Chippewa warriors from the Thames participated as part of an Ojibwa confederacy in many of the confrontations with the British. These battles are often collectively referred to as "Pontiac's War" and effectively drew to a close in July 1764 when peace talks were held

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2 Peter S. Schmaltz, *The Ojibwa of Southern Ontario* (Toronto: University of Toronto Press, 1991), 5.

3 *Articles of Capitulation*, Article XL, as translated by Adam Shortt and A.G. Dougherty, in *Documents Relating to the Constitution History of Canada* ... (Ottawa, 1907), and reprinted in *Documents of the Canadian Constitution, 1759-1915* (Toronto: Oxford University, Press, 1918), 12.

at Fort Niagara.[4] The British produced a Wampum Belt at this meeting which symbolized the "commencement of peaceful trade and the treaty ending the half century of war between the English and France's Indian allies."[5] The commitments made by the British Crown at Niagara reiterated the terms of the 1763 *Royal Proclamation* which formally protected Indian territories from unlawful encroachments:

> it is just and reasonable, and essential to our interest, and the security of our Colonies, that the several Nations or Tribes of Indians with whom we are connected, or who live under our protection, should not be molested or disturbed in the possession of such parts of our dominions and territories as not having been ceded to, or purchased by us, are reserved to them, or any of them, as their hunting grounds. ...[6]

British officials saw the enactment of this proclamation as a means by which they could deal with the increasing pressure on land and hopefully correct some of the "frauds and abuses" committed against the aboriginal peoples of Canada.[7] It was important for the British to maintain peace with the Indians as they were at the time a most valued military ally. In order to assure regulation of Indian land sales, the Crown also mandated in the 1763 *Royal Proclamation* that all purchases of said lands would occur through its offices:

> In order, therefore, to prevent such irregularities for the future, and to the end, that the Indians may be convinced of our justice and determined resolution to remove all reasonable cause of discontent; We do with the advice of our Privy Council, strictly enjoin and require that no private person do presume to make any purchase from the said Indians, of any lands reserved to the said Indians within those parts of our Colonies where we thought proper to allow settlement; but that, if at any future time, any of the said lands, the same shall be purchased only for us, in our name, at the same public meeting or assembly of the said Indians to be held for that purpose, by the Governor or Commander in Chief of our Colonies, respectively: within the limits of any proprietary

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4 Olive P. Dickason, *Canada's First Nations* (Toronto: McClelland and Stewart, 1992), 184.

5 Schmitz, *Ojibwa of Southern Ontario*, 77.

6 *Royal Proclamation* of October 7, 1763, RSC 1970, App. 2.

7 Ibid

> government, they shall be purchased only for the use and in the name of such proprietaries, comfortable to such directions and instructions as we or they shall think proper to give for that purpose. ...[8]

As long as competition for land remained light in southern Ontario, the Crown was content to leave unmolested the Indian Bands who were living there. At the time of the *Royal Proclamation*, this competition was indeed light but, as time passed, more white settlers moved into the area.

By the early 19th century, it was apparent that the government would finally have to deal with the question of Indian land in southern Ontario. During a brief period following the 1763 *Royal Proclamation*, large land tracts were obtained from the Indians, usually in exchange for a single distribution of goods paid at the time of sale, the amount of which was determined by band population or acreage.[9] The distribution of the goods that were exchanged in payment for the land was usually facilitated through the chiefs of the particular bands involved in the transaction.[10] However, by the end of the War of 1812, the method of payment had become somewhat more refined and complex.

Annuity payments became the accepted norm for acquiring Indian land. An annuity, in this context, constituted a payment of goods made to the appropriate band based on its population at the time the transaction was completed. Subsequent to the initial transaction, annual payments, or "annuities," would be made in goods based on the amount originally specified. The amount was usually fixed at the time of the initial transaction and would not increase if the band population grew in following years. A primary consideration in the adoption of this policy was the fact that the Crown was interested in alleviating pressure on the British Imperial Treasury. They favoured an extended method of paying for Indian land through annuities of

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8 Ibid.

9 Treaty No. 2, with "Chiefs of the Ottawa, Chippewa, Pottowatomy and Huron Indians Nations of Detroit," May 19, 1790. *Canada, Indian Treaties and Surrenders* .... 2 vols. (Ottawa: Queen's Printer, 1891; repr. Saskatoon: Fifth House Publishers, 1992-93), vol. 1: *Treaties 1 to 138*, 1-3.

10 Ibid

goods as opposed to the abrupt outlay of funds that were required in a lump-sum payment.

By 1818 there was sufficient interest in the southwestern part of Ontario to warrant the governments approaching the local indigenous people to discuss the sale of their land. The Indians came to be viewed as an obstacle to the impending European settlement of the area. One of the bands that was approached was the ancestor of today's Chippewas of the Thames. On October 16, 1818 (according to some evidence), the Chippewas of the Thames, the St. Clair, and the Chenail Escarte Bands met in council with the local Indian Superintendent, John Askin, to discuss the surrender of a large tract of land running from the Thames River along Lake Huron to a point to the north of Sable River and extending back as far as the Grand River Tract near Brantford.[11] The Indians decided that they would sell their land, but stipulated that the Crown would first have to meet certain conditions. One of these conditions was that several areas described by the Indians would be reserved for their exclusive use.[12]

The actual purchase of the land did not take place at the above-mentioned meeting, and became a somewhat protracted affair. While the surrender of the large tract of land was discussed in generalities at the first meeting, the details had yet to be formalized. There are no clear indications as to the reason for the government's decision to purchase the area described in the 1818 meeting in two separate transactions. Nevertheless, Askin met first with the Chippewas of the Thames and later with the Chippewas of Chenail Escarte and the other groups in a subsequent meeting.

A provisional agreement was first drawn up with the Chippewas of the Thames in March 1819 for the formal surrender of a section of land that was referred to as the "Long Woods Tract," but shortly afterwards there were complications.[13] (See Provisional Agreement No. 21 for a description of the

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11 Minutes of a Council at Amhertsberg, October 16, 1818, National Archives of Canada (hereinafter NA), MG 19, F1 (Claus Papers), pp. 95-96.

12 Ibid

13 Chippewas of the Thames Indian Band, Provisional Agreement No. 21, March 9, 1819, *Canadian Indian Treaties and Surrenders,* vol. 1, 48.

territory intended for surrender.) In return for the sale of its land, the Thames Band agreed to annuity payments based on its population at the time of the sale, and the reservation of the land it had previously selected. However, the Crown later objected to that portion of the agreement specifying payment of the annuities in money. The Crown ordered a renegotiation of the agreement so that the provision regarding payment in money could be replaced with a provision for "payment in goods."[14] This resulted in Provisional Agreement No. 280 1/2, negotiated on May 9, 1820.[15] The provisional agreements contained much of the same wording, including the Band's reservation of two sections of land: one on the north shore of the River Thames as stated in the agreements; the other located near the source of the Big Bear Creek "where the Indians have their improvements."[16] These provisional agreements were formalized by Confirmatory Agreement No. 25, signed on July 8, 1822.[17] It is important to note that the confirmatory agreement did not provide for the reservation of lands as stated in the two provisional agreements, and instead asked that the Chippewas of the Thames should "surrender to His said late Majesty and His successors, without limitation, or reservation, all that parcel or tract of land lying on the northerly side of the River Thames...[18] It is clear, on the other hand, that the confirmatory agreement meant to quote the terms of the provisional agreement: "... Whereas by a certain provisional agreement entered into on the ninth day of May, in the year of Our Lord one thousand eight hundred and twenty ... it was agreed," and hereafter the surrender reiterates the terms of the provisional agreements but leaves out those parts that contained

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14 William Claus, Indian Superintendent, Indian Affairs, to - Hillier, October 7, 1820, NA, RG 8, vol. 263, pp. 104-05.

15 Chippewas of the Thames Indian Band, Provisional Agreement No. 280 1/2, May 9, 1820, Canada, *Indian Treaties and Surrenders*, vol 2: *Treaties 140-280*, 281-82.

16 Ibid.

17 Chippewas of the Thames Indian Band, Confirmatory Agreement No. 25. July 8, 1822, Canada, *Indian Treaties and Surrenders,* vol. 1, p. 58.

18 Ibid

allowances for the two reservations.[19] (See agreements for a full description of the lands in question.)

JOHN CAREY SETTLES AT THE MUNCEY SITE

In the 1820s, the circumstances that directly gave rise to the Chippewas of the Thames Muncey Land Claim began to unfold. John Carey was teaching school in Westminster before he moved to the banks of the Thames River.[20] Carey was first introduced to the Band known as the Munceys when they set up camp near his school in Westminster sometime in the early 1820s.[21] On May 27, 1825, the Reverend Peter Jones, Brother Alvin Torrey, and John Carey, along with another brother named Kilburn (who acted as their guide), set out for Muncey Town.[22] Muncey Town was actually two places at that time, Upper Muncey and Lower Muncey, which were separated by some three to seven miles. Carey had made some previous visits to Muncey Town in order to inquire as to whether the Band might permit him to establish a school where it was settled. He hoped he might administer English religion and education to Band members, but was unable to obtain the permission of the Chiefs and council on those occasions.[23] However, on his May 27th visit, two Band Chiefs, George Turkey and Wesbrook, agreed to Carey's proposals, and, within the year, he had commenced construction of his school.[24] These Chiefs were situated at Upper Muncey.[25] The Munceys at this time were settled at least partly within the territories denoted in the provisional and confirmatory agreements made with the Chippewas of the Thames some years earlier.

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19 Ibid

20 Alvin Torrey. "Diary," May 25, 1825, p. 106.

21 Ibid

22 Peter Jones, "The Journal of Reverend Peter Jones," May 17, 1825, NA, RG 10, vol. 43, reel C-11013, pp. 25-26,

23 Ibid., p. 30.

24 Ibid.

25 Ibid., 30 May 1825, NA, RG 10, vol. 43, reel C-11013, pp. 26-27.

The Muncey Band members were not Chippewas. They were descended from a branch of the Lenin Lenape or Delaware people, and in the 18th and 19th century were referred to by the Ojibwa as the "Grandfathers." The Ojibwa believed that the Delaware peoples had inhabited an area where they themselves had once lived, centuries earlier. They were not traditional inhabitants of the Thames River but, nevertheless, had moved there for whatever reasons in the period preceding John Carey's interest in the area.

The Munceys and the Chippewas of the Thames had a long association together. The Chippewas cultural history was based on hunting and fishing, while the Munceys had a farming tradition. It was only natural that they should develop a mutually beneficial economic relationship with each other. Chippewas were able to trade fish and animal products for Muncey agrarian products and vice versa. Despite this relationship, the Chippewas of the Thames would later conflict with the Munceys over land. The nature of the Chippewas of the Thames claim against the Munceys was described in a Petition of Right submitted on May 21, 1894, to the Exchequer Court of Canada on behalf of the Chiefs and councillors of the Thames Band:

> 18. Said Muncey Indians after being granted the said land by said Chippewas Indians of the Thames entered into possession of the same and settled thereon, and received many accessions to their Band from relatives coming over from the United States and from Indian members of other Bands received into membership by said Muncey Band; till, in the course of years, and long after the grant aforesaid by your suppliants, said Muncey Indians not regarding the limits of the land given them by said Chippewas Band of the Thames, [?] boundaries of their said Reserve, so given [?] aforesaid by your Suppliants, squatted on land outside their said boundary and belonging to the said Chippewas of the Thames ...[26]

The reserve that the Chippewas refer to in this petition as being the land that they had granted to the Munceys for their use was bounded by the Dolson and Bear (now Hogg's) Creeks. It extended back from the edge of the River Thames approximately one mile and was approximately one square mile in area. The Muncey "grant" was some three miles removed from the village of Upper Muncey.

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[26] Chippewas of the Thames Indian Band, Petition of Right Submitted to the Exchequer Court of Canada, May 21, 1894 NA, RG 10, vol. 8010, file 471/3-11-1.

SURVEY OF THE CARADOC RESERVE AND CAREY'S SCHOOL SITE

On March 2, 1827, the Surveyor General, Thomas Ridout, wrote to the Attorney General, John B. Robinson, and notified him of the discrepancies he had discovered between the descriptions of land set out in the provisional and confirmatory agreements, and an actual survey of the land made by the Chippewas that had been recently submitted to him. He writes:

> ... you will perceive, Sir, that the present description differs materially from that, upon which the Provisional Agreement was made as to the number of acres in the Tract, which I can only account for by supposing that the contents of the whole tract first projected to be purchased were inadvertently included, instead of that part only which forms the subject of the present purchase ....[27]

However, the lands that were described in the two provisional and one confirmatory agreements were not surveyed by the Crown until 1829. In the time between the signing of the confirmatory agreement and the Crown survey, John Carey had already established a school at the Muncey site and had commenced teaching. He had done so before obtaining any patent on the land.

In January of 1829, the petition of John Carey for a patent on the Muncey Village site was placed before the Executive Council of Upper Canada at York for its consideration. While the minutes of that meeting reflect the fact that Carey's proposition was considered favourably, no patent was issued at that time.

Mahlon Burwell, the Deputy Provincial Surveyor, began the Crown survey of the Chippewas Reserves, as laid out in the three agreements, in 1829. He journeyed to Muncey in October of that year and met with Carey. Burwell's survey notes described Carey's school area and the amount of improvements that had been carried out on the lands:

> [Tuesday October 27, 1829] - Travelled by the Lower Munsee village and went to the house of Mr. John Carey, Missionary teacher to get some information as he could give respecting the object of my mission. He is not now teaching but ready to resume his duties when required. Has a improvement say 30 acres on his

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[27] Thomas Ridout, Surveyor General, John B. Robinson, Attorney General, March 2, 1827, Archives of Ontario (hereinafter AO).

> lot ... [Wednesday, October 28, 1829] Went accompanied by Mr. John Carey. Visited the school and house and clearing at the School House. Went around the Point to see if there were improvements - travelled back at their middle a path to the School House in order that I might see every vestige of clearing and tarried again Mr. Carey's. ...[28]

Complications relating to competing land interests within the previously selected reserve tracts became apparent during the execution of the Burwell survey.

Thomas Ridout passed away in 1829, and William Chewett became the new Surveyor General. In a letter of January 14, 1829, to Zachariah Mudge, secretary for the Governor General, Chewett raised the issue of potential conflicts arising out of competition for plots of land within the surveyed boundaries of Chippewas Reserves.[29] As was the practice at the time, the surveyor would often receive a portion of the completed survey in consideration for his efforts. Four and a half per cent of the total amount of acreage that Burwell surveyed for the government was relegated to pay for his services.[30] The late Mr. Ridout, together with Burwell, had located several tracts within the Caradoc Reserve as parcels that would pass to the ownership of Burwell for his completion of the survey.[31] This represented some 981 acres.[32] Chewett relayed these facts to Mudge in the hopes that the Governor General instead might persuade Surveyor Burwell to accept land that lay to the east of the reserve as his payment, in order to avoid possible confrontations. Burwell's selections were not the only lots that were located within reserve tracts.

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28 Mahlon Burwell, Deputy Provincial Surveyor, Survey notes recorded on site, October 27, 1829, AO.

29 W. Chewett, Surveyor General, to Zachariah Mudge, Secretary to the Governor General, January 14, 1829, Ontario, Ministry of Natural Resources Archives (Hereinafter MNR Archives) Letterbooks.

30 Ibid.

31 Ibid

32 Ibid

Twenty-two hundred acres had been set aside for a government-controlled land speculation company, the Canada Company, and an additional 3200 acres had been designated as Clergy Reserves. Chewett was in favour of restoring these lands to their intended state, commenting in a letter of May 21, 1830:

> ... Also 150 Acres located to John Carey under an OC of the 29th Jan 1829 which has not been described.
>
> (...) of the said Crown reserves, 2200 Acres were delivered over to the Canada Commissions on the 23rd April 1823 by the late Surv.r General and also sixteen Clergy reserves being 3200 Acres making altogether 7731 Acres the greater part of which will have to give place to the aforesaid Provisional agreement of the 9th May 1820 wherein the Chippewas have reserved to themselves 17,860 Acres in two separate tracts....[33]

On February 19, 1831, Carey put forth another petition for patent to the Lieutenant Governor and Council of Upper Canada. At that time he had still not received the patent that he had applied for in 1829. Unlike Carey's previous application, this one addressed the issue of the location of his settlement in relation to the Chippewas Reserve.[34] The petition reads in part:

> That on application for a Patent, your petitioner is informed by the Acting Surveyor General that his location cannot be described without further order from Your Excellency the same being within a reservation by the Indians and a recent survey of the said reservation being lately submitted to, and now before Your Excellency. ...[35]

Despite this fact, the Executive Council took the view that Carey had established the school house and cultivated the land around the school site before any reservation was made:

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33 W. Chewett, Acting Surveyor General, to Zachariah Mudge, Secretary to the Governor General, May 21. 1830, MNR Archives.

34 John Carey, Petition to Sir John Colborne, Lieutenant Governor of the Province of Upper Canada, February 19, 1831, NA, RG 10, vol. 2021, file 84292.

35 Ibid.

> The Council met from adjournment and took up the following Petition of John Carey setting forth that by an order in Council dated 23rd January 1829, he was granted the Broken Lots No. 12 and 13 in the 5th range, south of the Long Wood Road in the Township of Caradoc and has performed the settlement duty thereon, that on application for a patent he is informed by the Acting Surveyor General that his location cannot be described without further order the same being within a reservation by the Indians, and a recent survey of the said Reservation being lately submitted to and now before His Excellency, and pray in that the Acting Surveyor General may be authorized to issue his description to him for said lands.
>
> The Petitioner having been located before any Reservation was made, and having made large improvements on his land it is recommended that he receive the King's Patent for the same.[36]

Shortly thereafter, John Carey finally received the patent he had applied for. The letters patent for 161 acres in Lot No. 12 were issued on April 26, 1831, and the letters patent for 32 acres in Lot No. 13 were issued on June 24, 1831.[37]

AFTER THE PATENTS

John Carey's patents on Lots 12 and 13 represent somewhat of an anomaly in the history of the Caradoc Reserve. The cases referred to by Mr. Chewett in the previously mentioned correspondence, where locations for land were offered to various parties within the reserved tracts, were all eventually restored to the Chippewas of the Thames Band and the trespassing parties offered sites outside the Caradoc Reserve. Nothing was ever done about the Carey land holdings, despite the fact that the government was made aware that the Chippewas of the Thames were not satisfied that the issue had been resolved. This fact was clearly evident in the 1894 Petition of Right filed on behalf of the Chippewas of the Thames.

This document along with identifying the dispute over land that was occupied by the Munceys (see previous reference to the petition), also singled

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[36] Executive Council Committee, Minutes of meeting in which application from John Carey for a patent was considered, February 19, 1830, NA, RG 10, vol. 2021, file 84292.

[37] Letters patent issued to John Carey for Lots 12 and 13, April 26, 1831, and June 24, 1831, respectively, AO, RG 1.

out the issue of the Carey patents as a matter of contention. In reference to Carey's school site, the petition stated in part:

> Your Suppliants or their predecessors or ancestors never surrendered said lands belonging to them and granted by His said Majesty out of said lands so held in trust by him for your Suppliants to said Carey, nor have they ever approved of the sale, nor consented to said patent being issued to said Carey, and by virtue of the illegal and wrongful issue of said Patent, Your Suppliants have since the date of the issue of the said patent been deprived of the use of said lands, without any recompense being made therefor. ...[38]

The final chapter of the early history of the Muncey claim drew to a close in 1896 when a Board of Arbitrators made a determination on a claim tabled by the Chippewas of the Thames. The Board had been established to provide a "final and conclusive determination of certain questions that had arisen or might arise in the settlement of accounts between the Dominion of Canada and the Provinces of Ontario and Quebec ..."[39] Although not specifically mentioning the facts of the claim it was referring to, the Board of Arbitrators recommended that, in regards to the claim made by the Dominion of Canada on behalf of the Chippewas of the Thames et al. against the provinces of Ontario and Quebec, "we do award, order, and adjudge that the claim be dismissed ..."[40] Almost one year later, another report concurred with the findings of the arbitrators. The document entitled, "Claim on Behalf of the Chippewas of the Thames in respect of Carey Farm," reviewed the arbitrators findings:

> ... though the matter is not very clear it would seem to have been decided by the Board of Arbitrators on their dismissal of that case.
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> It does not appear to us that the Dominion had any case, for the Carey Farm was a free grant under regulations of 6th July

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38 Chippewas of the Thames Indian Band, Petition of Right Submitted to the Exchequer Court of Canada, May 21, 1894, NA, RG 10, vol. 8010, file 471/3-11-1.

39 Board of Arbitrators, Findings of a Board of Arbitrators set up to resolve outstanding disputes between the Dominion of Canada and the Governments of Ontario and Quebec, June 20, 1896, NA, RG 10, vol. 2546, file 111,834-1.

40 Ibid.

> 1804, made on the authority of the Lieutenant Governor in Council on the ground of "the petitioner having been before any reservation was made and having made large improvements on his land;" and in view of the fact that the setting aside of the reserve was then before the Lieutenant Governor...[41]

Nevertheless, the Chippewas of the Thames remained committed to seeing the question of the Carey lots dealt with to their satisfaction.

RESURGENCE OF THE MUNCEY CLAIM

On November 26, 1974, the Chippewas of the Thames Indian Band wrote to the federal government to assert its claim to the two lots where the village of Muncey is now located and where John Carey originally was issued patents. The Band informed the government of Canada that, from that day forward, "the village of Muncey would be treated as Reserve land. ...[42] On December 8, 1975, Judd Buchanan, who was Minister of Indian and Northern Affairs at the time, responded to the Chippewas of the Thames rejecting their claim to Muncey Village:

> It would appear that the land was legally patented to John Carey under authority of an Order in Council dated February 19, 1831, as a Free Grant following the regulations of July 6, 1804; that no surrender was required from the Band since the land granted to John Carey in 1831 never formed part of the Reserve. ...[43]

Thus began the modern history of the Muncey Claim.

The Band also consulted with provincial authorities as to the status of the Village of Muncey. The province consequently wrote to Minister Buchanan to inform him of its desire to see the standing issues resolved. It took the position that since the federal government has the responsibility for Indians and lands

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41 Rimmer and McKenna, Report to Indian Affairs, March 20, 1899, NA, RG 10, vol. 2545, file 111,834, part 1.

42 Vaughan Albert, Chief, Chippewas of the Thames Indian Band, to Judd Buchanan, Minister of Indian Affairs, November 26, 1974.

43 Judd Buchanan, Minister for Indian and Northern Affairs, to Vaughan Albert, Chief, Chippewas of the Thames Indian Band, December 8, 1975.

reserved for the Indians ..." it would be looking for the federal government to take the initiative in settling the matter.[44] The Ministry of Indian and Northern Affairs restated its opinion on the rejection of the claim on several occasions after its original reply; similarly, the Band continued to insist that it would treat the village of Muncey as reserve land.

In 1979, the Union of Ontario Indians prepared research for the Chippewas of the Thames on the Muncey Claim. In April of 1980, the Indian Commission of Ontario (ICO) announced to the federal government that it had been requested by the Union of Ontario Indians, on the behalf of the Chippewas of the Thames Band, to become involved in the review of the Muncey Claim. At that time, the ICO asked the government to state its position regarding the Muncey Claim and its acceptance into the ICO claims resolution process.[45] Indian and Northern Affairs agreed to have the Muncey Claim submitted to the ICO resolution process. Eventually, the ICO produced a Consolidated Statement of Facts on March 17, 1981.

Early in 1982, the Office of Native Claims requested a legal opinion from the Department of Justice concerning the "Chippewas of the Thames Band *Claim to Lots 12 and 13, range 5, Caradoc Township....*[46] Specifically noted in that request was that:

> The claim was filed in 1979 and is being reviewed with the assistance of the Indian Commission of Ontario. The historical research on the claim has been completed to the satisfaction of all concerned and we are now in a position to secure legal advice. ...[47]

On March 1, 1983, the Office of Native Claims received an opinion from the Department of Justice, admitting that there was a lawful obligation on the Crown for breach of the surrender agreements completed between 1819 and

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44 D. McKeough, Minister for Treasury, Economics, and Intergovernmental Affairs, to Judd Buchanan, Minister for Indian and Northern Affairs, March 25, 1976.

45 Gary L. Carsen, Claims Advisor, Indian Commission of Ontario, to Murray Inch, Director, Indian Affairs, April 21, 1980.

46 Author not identified, Memo to Maria Bryant, Legal Services, Office of Native Claims, July 9, 1982.

47 Ibid.

1822 with the Chippewas of the Thames Band.[48] The Band was informed that the Office of Native Claims was prepared to recommend to the Minister of Indian and Northern Affairs, John Munro, that the claim should be accepted for the purpose of negotiating a settlement. The Honourable John Munro then wrote to Chief Ether Deleary of the Chippewas of the Thames Indian Band:

> while I cannot agree with your proposition that these lots are unsurrendered Indian land under the *Royal Proclamation* of 1763, I can agree that a lawful obligation has been demonstrated for breach of an agreement which the Crown concluded with your band between 1819 and 1820. On this basis, I am very pleased, on behalf of the Government of Canada, to accept your claim as eligible for negotiation in accordance with the provisions of the federal government's specific claims policy. ...[49]

The Muncey Claim had moved into the negotiation stage.

NEGOTIATIONS, OFFERS, AND REFERENDUMS

In October of 1983, negotiations for a proposed settlement of the Muncey Claim began between the federal government and the Chippewas of the Thames Band. At a preliminary meeting held on October 27, 1983, the parties agreed to have Mr. George Carsen of the Indian Commission of Ontario appointed as the chairman of all future negotiation meetings.[50] It was also agreed that the ICO would record the minutes of all future meetings.[51] By September of 1984, the Chippewas of the Thames Band provided its initial proposal for settlement to the Government of Canada in the form of a working

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48 George Da Pont, Senior Claims Analyst, Specific Claims Branch, to Monique Plante-Boyd, Negotiator, Specific Claims Branch, March 14, 1983.

49 John Munro, Minister of Indian and Northern Affairs, to E.E. Deleary, Chief, Chippewas of the Thames Indian Band, June 15, 1983.

50 Indian Commission of Ontario, Minutes of negotiation meeting between the Chippewas of the Thames Indian Band and the federal government's negotiators, October 27, 1983.

51 Ibid.

paper rather than a formal proposals it summarized the bases of the settlement proposal in the following terms:

> Stated simply, the elements of compensation in either case consist of:
>
> 1] Delivery of the land itself (specific performance): or of the present value of the land, plus whatever it would cost today to acquire that land;
>
> plus
>
> 2] Compensation for any damage that has been done to the land since 1825;
>
> plus
>
> 3] Compensation for the fact that the Chippewas of the Thames did not have use of the land since 1825. ...[52]

The Chippewas of the Thames also suggested that the federal government could settle the claim through a series of one-time payments based on the relative value of the various component factors of the claim. These included: $29,928,422 for the loss of agricultural use of the land; $3,398,126 for the loss of use of the land used to grow and harvest black walnut trees; $80,000 for the loss of the use of the land and adjacent waters used for the purpose of hunting and fishing; $300,000 for damages caused by the construction of railway trestles, power lines, etc.; $47,000 for the removal of gravel from the land.[53] In addition, the Chippewas of the Thames wished to have the land returned to the Band's possession.

The federal government reviewed the Band's position and responded with its own evaluation of the claim in a letter on November 23, 1984. The government based its valuation of the claim on five factors summarized in the following extracts:

> 1. The Land: As explained, we do not perceive that specific performance, that is return of the actual land is a viable option. Therefore, for the land the Government is proposed to offer $486,000.00 ...
> 2. The Gravel: ... the Government will offer $47,000.00 ...

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[52] Chippewas of the Thames Indian Band, Proposal for the settlement to the Government of Canada, September 1, 1984.

[53] Ibid., p. 20.

> 3. For Agricultural Loss of Use: The Government is prepared to offer $500.000.00 ...
> 4. For Walnut Trees and Walnuts ... value will be added subsequently for these items pending receipt of expert advice ...
> 5. For Hunting, Fishing, and Trapping ... these losses are individual losses as opposed to Band losses and are therefore not compensable under Specific Claims Policy. ...[54]

Negotiations between the federal government and the Chippewas of the Thames continued for several years after these first proposed settlements. In all, there were 13 negotiation meetings held between October 27, 1983, and January 29, 1987, when an agreement in principle was finally reached.[55]

The settlement proposal was put to a vote before the Chippewas of the Thames Band membership in the form of a referendum on January 23, 1988. The draft settlement contained a provision for the Band to surrender:

> absolutely to Canada all of its rights and interests in Broken Lots 12 and 13, Range V, south of the Longwoods Road, Caradoc Township, County of Middlesex, province of Ontario and releases and forever discharges Canada, its Servants, agents and successors and all other persons from claims past, present and future in connection with the original Treaty promise made by the Crown that those lands be reserved for the Band and in connection with the patenting of these lands in 1831 and any dealings with those lands up to the effective date of this Agreement. ...[56]

The Statement of Results of Vote records that, of 390 eligible voters, 168 cast their votes and, of this number, 124 voted in favour of the settlement and 44 voted against it, with no spoiled ballots.[57] Because of the low voter turnout at the first vote, the Chippewas of the Thames Band requested in a Band

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54 Derek Dawson, Negotiator, Specific Claims Branch, to E.E. Deleary, Chief Chippewas of the Thames Indian Band, November 23, 1984.

55 Gail Hinge, Senior Claims Analyst, Indian and Northern Affairs, to Derek Dawson, Negotiator, Department of Indian and Northern Affairs, April 27, 1987.

56 Indian Affairs and Northern Development, Copy of the Draft Settlement Agreement to be voted on in referendum, December 16, 1987.

57 Lynn Ashkewe, Electoral Officer, Lands, Revenues and Trusts, Statement of Results of Vote, January 23, 1988.

Council Resolution (BCR) on February 1, 1988, that a second referendum be held.[58] This second referendum was scheduled for March 12, 1988, at the Thames Band Office.

The Department of Indian Affairs wrote to Chief Ether Deleary of the Chippewas of the Thames Band on March 15, 1988, to report that "it is our Headquarters' view that the second Referendum vote was incomplete due to the theft of the Ballot box. ..."[59] As a consequence of this unfortunate circumstance, the government asked that the Band submit another BCR setting the date for a third referendum to be held on April 30, 1988. On the occasion of this referendum, there were 400 eligible voters, 208 of whom voted, with 51 voting in favour of the draft settlement and 156 voting against the draft.[60] There was 1 spoiled ballot.[61]

Chief Ether Deleary cited the following reasons as being the likely cause for the Chippewas of the Thames rejection of the draft settlement:

> ... why the offer was rejected by the membership:
> A. Concern over the surrender of title and rights
> B. A process to return the original land to Chippewas of the Thames First Nation
> C. Compensation for loss, use and benefit were inadequate
> D. Some conditions were too vague or restrictive within the agreement ...[62]

Chief Deleary recommended to William McKnight, Minister for Indian and Northern Affairs, that, in view of his membership's rejection of the proposal, negotiations should resume with a view to resolving the above-mentioned issues. Chief Deleary also contacted the ICO in order that it might also write to the federal government to discuss the possibility of reopening negotiations.

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58 Chippewas of the Thames Indian Band, Band Council Resolution, February 1, 1988.

59 Lynn Ashkewe, Superintendent, Lands, Revenues and Trusts, to Ether Deleary, Chief Chippewas of the Thames Indian Band, March 15, 1988.

60 Lynn Ashkewe, Electoral Officer, Lands, Revenues and Trusts, Statement of Results of Vote, April 30, 1988.

61 Ibid.

62 Ether Deleary, Chief, Chippewas of the Thames Indian Band, to William McKnight, Minister for Indian and Northern Affairs, May 1, 1988.

Commissioner Roberta Jameison of the ICO then wrote to William McKnight to ascertain his position on the Muncey Claim. The Minister, however, refused to re-enter negotiations, commenting in a letter to Chief Deleary:

> The department understands you wish to re-open negotiations to obtain higher compensation from Canada and less stringent conditions upon the band for final settlement. However, the claim was examined in depth at the highest levels within the department and the final settlement offer of two million six hundred and ninety-three thousand three hundred and fifty dollars ($2,693,350) is deemed to have been reasonable and fair. The conditions required of the band with respect to reserve creation and surrender of land subject to the claim are quite usual under the specific claims policy. ...
>
> In conclusion, the department regrets to inform you that under the specific claims policy of the federal government, your claim will not be considered for re-negotiation. ...[63]

The Chippewas of the Thames, with the support of the Chiefs of Ontario and the ICO, continued to press for a negotiated settlement throughout 1988. The federal government responded on various occasions by reiterating its intention to keep the Muncey file closed. On August 23, 1988, Chief Deleary wrote to the Minister of Indian and Northern Affairs proposing that the terms of the previously negotiated settlement would be acceptable to the Band if the governments demand for an outright surrender was dropped. Instead, a surrender would not be required until five years after a new referendum.[64] This five-year period would allow the Chippewas Band to reacquire as many of the non-Indian interests in Lots 12 and 13 as possible, and, at the end of the five years, these land acquisitions would be considered "unsurrendered" and confirmed as Indian Reserve by the Government of Canada.[65] This proposal too was rejected by the government.

During informal discussions with the federal government in early 1990, the Chippewas of the Thames Band together with the ICO again requested that

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63 Bill McKnight, Minister of Indian and Northern Affairs, to Ether Deleary, Chief, Chippewas of the Thames Indian Band, May 24, 1988.

64 Ether Deleary, Chief, Chippewas of the Thames Indian Band, to Bill McKnight, Minister of Indian and Northern Affairs, August 23, 1988.

65 Ibid.

the Specific Claims Branch reopen negotiations with the hope of having the absolute surrender requisite dropped in favour of a provision for a "delayed surrender." Some peripheral changes in the previously negotiated settlement were also tabled. After these discussions, Specific Claims Branch informed Commissioner Harry LaForme of the ICO that they would pass the Band's recommendations to a higher level if the Band would in turn meet certain demands. The Band was asked to commit in the form of a BCR to the following stipulations:

> 1. An undertaking by the band that these are the last changes to be put forward to the settlement agreement.
>
> 2. An undertaking by the band that it will not put forward substantive changes to the settlement agreement.
>
> 3. A clear statement from the band that should substantive changes be put forward by the band it clearly understands that the federal government will abandon all further discussions on this claim. ...[66]

The ICO transmitted the revised draft settlement together with Specific Claim's demands to the Chippewas of the Thames. On July 3, 1990, the Band drafted a BCR request to have the Minister of Indian Affairs and Northern Development call a referendum on the proposed settlement agreement concerning Broken Lots 12 and 13 in Range 5, Caradoc Township. As to the waiver request from Specific Claims, the Band Council drafted a second BCR, conditionally recommending the acceptance of the proposed settlement to the Band but on these terms:

> The Council of the Chippewas of the Thames First Nation hereby resolves:
>
> 1. That this Council, while recognizing the fundamental unfairness of the existing claims policies and practices of the Government of Canada as well as the insufficiency and unfairness of the proposed settlement agreement, is nevertheless willing to recommend its acceptance to the People of the Chippewas of the Thames First Nation, since

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[66] Derek Dawson, Negotiator, Specific Claims, to Harry LaForme, Commissioner, Indian Commission of Ontario, March 14, 1990.

> it represents the best result that can be achieved in the circumstances. ...[67]

On September 4, 1990, the Band was informed by the Minister that it would be contacted on when a future referendum could be held.[68] A referendum was eventually scheduled for June 1, 1991. In this the final referendum that was held on the settlement of the Muncey Claim, there where 460 eligible voters, with 100 turning out to vote, 27 in favour, 69 against, and 4 spoiled votes.[69] The Chippewas of the Thames had refused to accept the proposed settlement.

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67 Chippewas of the Thames Indian Band, Band Council Resolution, July 3, 1990.

68 Tom Siddon, Minister of Indian and Northern Affairs, to Del Riley, Chief, Chippewas of the Thames Indian Band, September 4, 1990.

69 Ron French, Indian Affairs and Northern Development, Memorandum on vote results June 11, 1991.