

INDIAN CLAIMS COMMISSION PROCEEDINGS



(1996) 5 ICCP

Special Issue on Treaty Land Entitlement

Reports

Fort McKay First Nation
Treaty Land Entitlement Inquiry

Kawacatoose First Nation
Treaty Land Entitlement Inquiry

Lac La Ronge Indian Band
Treaty Land Entitlement Inquiry

Related Material

Donna Gordon
Treaty Land Entitlement: A History

Responses

Canada's Response to the Fort McKay First Nation
Treaty Land Entitlement Inquiry

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**SPECIAL ISSUE ON
TREATY LAND ENTITLEMENT**

A PUBLICATION OF
THE INDIAN CLAIMS COMMISSION



(1996) 5 ICCP

Co-CHAIRS

Daniel J. Bellegarde
P.E. James Prentice, QC

COMMISSIONERS

Roger J. Augustine
Carole T. Corcoran
Aurélien Gill

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Indian Claims Commission
427 Laurier Avenue West, Suite 400
Ottawa, Canada K1P 1A2
(613) 943-2737
Fax (613) 943-0157

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FROM THE CO-CHAIRS

On behalf of the Commissioners and staff of the Indian Claims Commission, we are pleased to present this fifth volume of the *Indian Claims Commission Proceedings*. The volume is devoted to treaty land entitlement and the complex issues that arise in claims of this type. Included in this volume are three reports of the Commission into treaty land entitlement claims, a background paper on treaty land entitlement prepared by Donna Gordon for the Commission, and a response from the Hon. Ronald A. Irwin, Minister of Indian Affairs and Northern Development, to one of the treaty land entitlement reports.

Treaty land entitlement claims, or TLE claims as they are commonly known, are a particular type of specific claim involving an assertion by a First Nation that the Crown has failed to provide it with sufficient reserve lands under the terms of treaty. For instance, the numbered treaties signed in western Canada during the 1870s provided for the surrender of large tracts of Indian land in exchange for a promise from Canada to set aside reserves and to provide other forms of assistance and training to help Indians in their transition from a subsistence-based economy to one based on agriculture.

Rather than identifying the tract of land to be set aside for the band within the treaty itself, the numbered treaties used an acreage formula, usually one square mile, or 640 acres, of reserve land for every family of five (for Treaties 1, 2, and 5, the formula provided for 160 acres). In most cases the treaty signatories intended to survey these reserves within a year or two of signing, after consulting the Indians about the location of their reserves. However, the treaties are completely silent on the date on which the band's population should be counted to determine the amount of land to be set aside as reserve.

Furthermore, there are a host of complications associated with entitlement claims as a result of fluctuating band populations during the late nineteenth century, incomplete or inaccurate census figures for bands, new bands and individuals adhering to treaty many years after the original treaties were signed, and the various methods put forward by Indians and governments to calculate treaty land entitlement when a band did not receive the full amount of land it was entitled to. To further complicate matters, after 1930 the federal government required the consent of the provinces to transfer Crown lands to Indian bands to fulfil outstanding treaty entitlements. This consent was often not forthcoming because of philosophical opposition to the crea-

tion of reserves or because of conflicting priorities over the use of provincial Crown lands.

The practical result is that these treaty obligations have not been completely fulfilled. Moreover, the resolution of these longstanding issues is elusive because First Nations and the provincial and federal governments have taken radically different positions on the interpretation of treaty obligations and the principles and approaches used to determine the nature and extent of these treaty obligations. While recent settlement approaches demonstrate that common ground can be found, there is a need for ongoing discussion among the parties to develop consistent principles that can be applied in a fair and equitable manner to outstanding claims. The Indian Claims Commission presents this special volume on treaty land entitlement as a timely and independent contribution to assist in these discussions.

Contained in this volume are three final reports on the treaty land entitlement claims of the Fort McKay, Kawacatoose, and Lac La Ronge First Nations. The Fort McKay First Nation Inquiry Report was issued in December 1995. It examines whether this northern Alberta First Nation should be considered to have an outstanding entitlement to land under Treaty 8. In the course of our inquiry, we examined the nature and extent of the right to reserve land and of Canada's obligation to provide reserve land under the treaty. In addition to specific findings on the validity of this claim, the report summarizes a number of general findings with respect to the interpretation of treaty land entitlement.

Since the publication of volume 4 of the ICCP, we have received a preliminary response from the Minister of Indian Affairs and Northern Development to the report on the Fort McKay inquiry. A summary of that response is provided here.

The Kawacatoose First Nation Inquiry Report was issued in March 1996; it dealt similarly with whether there was any outstanding treaty land entitlement for this Saskatchewan First Nation under the terms of Treaty 4. In addition to specific findings in relation to that claim, we built upon and clarified the general findings with respect to the nature and extent of treaty land entitlement made in the Fort McKay Report.

The third report included in this volume is the Lac La Ronge Indian Band Inquiry Report, also issued in March 1996. The issues in this inquiry centred on the interpretation of Treaty 6 and whether the Lac La Ronge Indian Band had an outstanding entitlement to land in Saskatchewan. In particular, the Commission made specific findings with respect to the formula to be used to

calculate treaty entitlement for Indian bands that do not receive their full entitlement to land on the initial survey.

The final item in the *Proceedings* is a paper prepared by Donna Gordon for the Commission, entitled *Treaty Land Entitlement: A History*, which was released in December 1995. Ms Gordon, a research analyst with the Commission, was asked to provide an overview of the historical background to treaty land entitlement to assist Canada and First Nations in the resolution of those claims. The paper includes a glossary of terms and a bibliography, and it appends a number of the historical documents related to the issues of treaty land entitlement.

It is the hope of the Indian Claims Commission that the Government of Canada and First Nations will proceed with negotiations in good faith and reconcile their competing interests. It is of vital importance that the unfinished business of previous administrations be completed by fulfilling the terms of the solemn agreements signed with First Nations in the last century. The resolution of these outstanding issues is necessary before aboriginal and non-aboriginal Canadians can put the past behind them and move forward into a new era of harmony and coexistence.

Daniel J. Bellegarde
Co-Chair

P.E. James Prentice, QC
Co-Chair

ABBREVIATIONS

ADOFS	adjusted date of first survey
AFN	Assembly of First Nations
BCCA	British Columbia Court of Appeal
BCR	Band Council Resolution
BCSC	British Columbia Supreme Court
CA	Court of Appeal
CNLC	Canadian Native Law Cases
CNLR	Canadian Native Law Reporter
DIAND	Department of Indian Affairs and Northern Development
DINA	Department of Indian and Northern Affairs
DLR	Dominion Law Report
DOFS	date of first survey
FCA	Federal Court Appeal Division
FCTD	Federal Court Trial Division
FSI	Federation of Saskatchewan Indians
FSIN	Federation of Saskatchewan Indian Nations
IAA	Indian Association of Alberta
ICC	Indian Claims Commission
ICCP	Indian Claims Commission Proceedings
IR	Indian Reserve
MIB	Manitoba Indian Brotherhood
NA	National Archives of Canada
NRTA	National Resources Transfer Agreements
ONC	Office of Native Claims
OR	Ontario Reports
OTC	Office of the Treaty Commissioner

ABBREVIATIONS

PAM	Public Archives of Manitoba
QB	Court of Queen's Bench
RSC	Revised Statutes of Canada
SCB	Specific Claims Branch
SCC	Supreme Court of Canada
SCR	Canada Supreme Court Reports
TARR	Treaty and Aboriginal Rights Research Centre
TLE	treaty land entitlement
WWR	Western Weekly Reports

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