

**INDIAN CLAIMS COMMISSION
ANNUAL REPORT 2000-2001**



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To Her Excellency The Governor General in Council

MAY IT PLEASE YOUR EXCELLENCY

In 2000/2001 the Indian Specific Claims Commission completed three inquiries and released five reports. As of March 31, 2001, inquiries into 55 claims had been completed. This report summarizes our major achievements and activities in relation to specific claims last year.

Yours truly,



Daniel J. Bellegarde
Commission Co-Chair



P.E. James Prentice, QC
Commission Co-Chair

December 2001



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MESSAGE FROM THE COMMISSIONERS

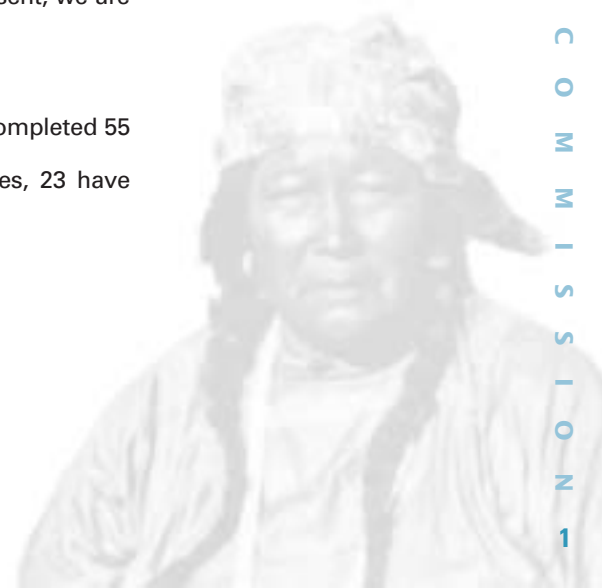
The Commission regrets to report that the settlement of specific claims continues to be a painfully slow process. As of the end of the fiscal year, the system remained in gridlock. Unfortunately, unless the federal government increases funding and resources to the Department of Justice and to the Specific Claims Branch of the Department of Indian Affairs and Northern Development, we have little reason to believe that this situation will improve.

Our work continues to suffer from a lack of awareness on the part of most Canadians about specific claims and the importance of the settlement of these to the Canadian economy. Clearly, the Commission and the federal government need to do more to educate and inform the public about the history of specific claims, the law governing these and their impact on Canadian society. The Commission is trying to ameliorate this situation by taking every opportunity to speak to public gatherings about our work.

The Commission is firm in its resolve to do all we can to persuade the federal government and the Canadian public of the pressing need to create an independent claims body. Such a body would remove the bottleneck created by the current policy and would go a long way toward settling the hundreds of existing and future First Nation land claims in a just and equitable manner. We urge the federal government, in the strongest possible terms, to move swiftly to remedy a situation that serves neither Canada nor First Nations well.

Despite the drawbacks of the system, the Commission completed three inquiries and issued five reports over the year. Another two reports are in progress; at present, we are conducting a total of 21 inquiries.

Since its creation in 1991, the Commission has completed 55 inquiries and reported on 52. Of the 55 inquiries, 23 have been settled or accepted for negotiation.



We were pleased to see the federal government accept for negotiation—midway through our inquiry—the claim of the Bigstone Cree Nation of Alberta, whose claim we reported on in April 2000. The Bigstone Cree Nation benefited directly from a change in policy on treaty land entitlement which had been recommended by the Commission. The reform, enacted by the federal government in 1998, meant that the Bigstone Cree Nation could include in its population count several members who were missed in the government’s original 1913 count, thus boosting its final treaty land entitlement calculation.

Another significant Commission report was on the claim by Manitoba’s Roseau River Anishinabe First Nation, issued in March 2001. It is the first time the Commission reviewed a claim of this nature, unique in that it questions whether Canada is lawfully obligated to compensate Roseau River for having deducted payments for medical aid from the band’s trust account between 1909 and 1934. As we said in our report, the subject of medical aid itself deserves a comprehensive review by both Canada and First Nations.

During the past year, the Commission’s mediation unit provided mediation services in 15 ongoing claims. Of these, 11 are being carried out in formal negotiations between the First Nations and the federal government; three claims are being pursued as pilot projects and two claims are in the planning conference stage, which occurs early on in the process. Our mediation unit has participated in some 77 meetings on these 15 claims. The Commission is greatly encouraged by the positive impact that pilot projects seem to have in helping to expedite claims settlements. We have produced a mediation brochure in order to better inform all parties about the benefits to be derived from our mediation and alternative dispute resolution services.

In closing, we express our sadness at the sudden loss of one of our colleagues. Commissioner Carole T. Corcoran, who served this Commission with excellence, integrity and dedication for more than eight years, died on February 15, 2001. Our condolences go to Commissioner Corcoran’s family.

COMMISSION'S RECOMMENDATIONS TO GOVERNMENT, 2000 - 2001

Recommendation 1

The Commission is pleased with the benefits derived from the pilot projects it has been chairing in an effort to help expedite settlement of claims. The Commission recommends that Canada review the pilot projects with a view to incorporating the positive aspects of these into the current claims process.

Recommendation 2

The Commission calls upon Canada to make greater use of the Commission's mediation services, where feasible, in order to reach claim settlements more quickly and efficiently.

Recommendation 3

In recognition of the need for skilled, experienced human resources that are commensurate with needs in the area of alternative dispute resolution, the Commission recommends that both Canada and First Nations initiate formal negotiations training for their negotiators.

Recommendation 4

The Commission is concerned about the amount of time and resources expended by Canada in its requirement that land appraisals and loss-of-use studies be repeated for each and every land claim. The Commission recommends that a database containing common information applicable to similar claims be created and that a template or formula that would determine the worth of a settlement be devised.

Recommendation 5

The Commission can only carry out its mandate to the fullest extent if both parties to a claim participate as actively as they should. The Commission is concerned about Canada's increasing failure to take part in claims inquiries and urges Canada to do more to become a committed and active party in the land claims settlement process.



APPENDIX

APPENDICES

A Status of Claims as of March 31, 2001

Summary of Claims as of March 31, 2001

Inquiry Reports, 2000-2001

Inquiries

Mediation and Facilitation

B Operational Overview

Organization Chart

C The Commissioners

A

STATUS OF CLAIMS AS OF MARCH 31, 2001

ICC Report, Nature of Claim, and Recommendation	Date of Report	Date of Response	Nature of Response from Canada to Recommendation	Accepted/ Settled/ Other
1 Athabasca Chipewyan W.A.C. Bennett Dam and Damage to IR 201 <i>Recommended claim be accepted for negotiation</i>	March 1998	NONE	NO RESPONSE FROM GOVERNMENT	
2 Athabasca Denesuline Aboriginal and treaty harvesting rights north of 60 th parallel <i>Recommended government acknowledge treaty rights</i>	December 1993 Supplementary Report November 1995	August 1994	Government rejected recommendations made in December 1993 report; no response to November 1995 Supplementary Report	Rejected August 1994
3 Bigstone Cree Nation Treaty land entitlement	March 2000	None required	Government accepted claim for negotiations	Accepted October 1998
4 Blood Tribe/Kainaiwa Akers surrender	June 1999	None required	Government accepted claim for negotiations	Accepted April 1998
5 Buffalo River Primrose Lake Air Weapons Range - loss of commercial and treaty harvesting rights <i>Part of claim recommended for negotiation</i>	September 1995	NONE	NO RESPONSE FROM GOVERNMENT	



ICC Report, Nature of Claim, and Recommendation	Date of Report	Date of Response	Nature of Response from Canada to Recommendation	Accepted/ Settled/ Other
<p>6 Carry the Kettle Cypress Hills <i>Pursuant to supplementary mandate, recommend government recognize the Carry the Kettle First Nation's historical connection to the Cypress Hills and restore to the Assiniboine people their connection to the territory</i></p>	July 2000	January 2001	Government agreed with the Commission's conclusion that the claim did not disclose a lawful obligation on the part of the government under the Specific Claims Policy. The government did reject the Commission's recommendation to restore to the Assiniboine people their connection to the territory.	Rejected January 2001
<p>7 Canoe Lake Primrose Lake Air Weapons Range - breach of treaty and fiduciary obligations <i>Recommended claim be accepted for negotiation</i></p>	August 1993	March 1995	Government accepted the claim on a qualified basis - no breach of treaty or fiduciary obligation but need to improve economic and social circumstances	Settled in June 1997 for \$13,412,333 in federal compensation and a requirement that the First Nation purchase between 2,786 hectares and 20,224 hectares of land
<p>8 Chippewas of Kettle and Stony Point 1927 Surrender <i>Recommended claim be accepted for negotiation</i></p>	March 1997	NONE	<p>NO RESPONSE FROM GOVERNMENT In 1998, the Supreme Court of Canada rendered its decision in the First Nation's appeal of the Ontario Court of Appeal's finding that the surrender was valid. The Supreme Court of Canada upheld the reasons of the lower court to find the surrender valid.</p>	

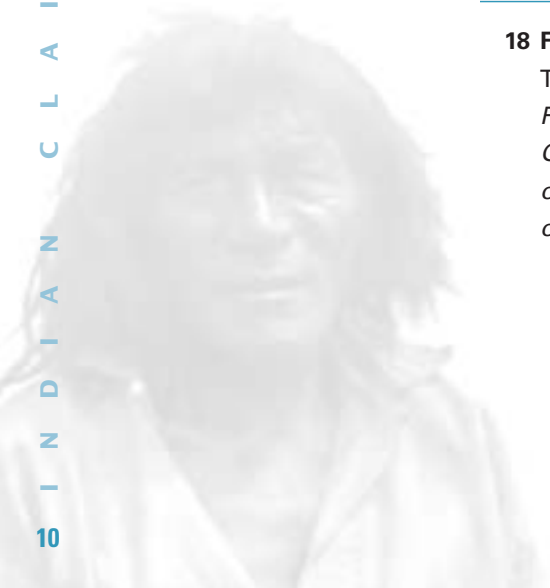


ICC Report, Nature of Claim, and Recommendation	Date of Report	Date of Response	Nature of Response from Canada to Recommendation	Accepted/ Settled/ Other
<p>9 Chippewa Tri-Council Collins Treaty <i>Accepted with assistance of Commission</i></p>	<p>March 1998</p>	<p>None required</p>	<p>Government accepted claim for negotiation</p>	<p>Settled December 1998 for \$565,000 in federal compensation</p>
<p>10 Chippewas of the Thames Muncey land claim <i>Settled with assistance of Commission</i></p>	<p>December 1994</p>	<p>None required</p>	<p>Government accepted claim for negotiation</p>	<p>Settled January 1995 for \$5,406,905 in federal compensation and the requirement that land purchased by the First Nation, including lands subject to the claim, be set apart by government as an addition to the Chippewas of the Thames reserve provided certain conditions are met</p>
<p>11 Cold Lake Primrose Lake Air Weapons Range — breach of treaty and fiduciary obligations <i>Recommended claim be accepted for negotiation</i></p>	<p>August 1993</p>	<p>March 1995</p>	<p>Government accepted claim for negotiation</p>	<p>Accepted March 1995</p>

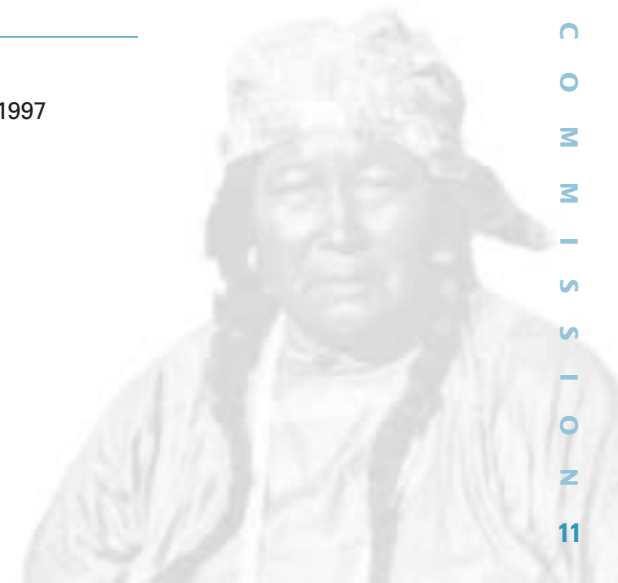
ICC Report, Nature of Claim, and Recommendation	Date of Report	Date of Response	Nature of Response from Canada to Recommendation	Accepted/ Settled/ Other
12 Cowessess QVIDA flooding claim <i>Recommended claim be accepted for negotiation</i>	February 1998	December 1998	Government accepted claim for negotiation	Accepted December 1998
13 Cowessess 1907 Surrender <i>Recommended the portion of IR 73 surrendered in 1907 be accepted for negotiation</i>	March 2001	NONE	NO RESPONSE FROM GOVERNMENT	
14 Duncan's 1928 Surrender <i>Recommended that the surrender of IR 151E be accepted for negotiation</i>	September 1999	NONE	NO RESPONSE FROM GOVERNMENT	
15 Eel River Bar Eel River Dam <i>Recommended claim not be accepted for negotiation</i>	December 1997	None required	No substantive response from government required	



ICC Report, Nature of Claim, and Recommendation	Date of Report	Date of Response	Nature of Response from Canada to Recommendation	Accepted/ Settled/ Other
<p>16 Fishing Lake 1907 surrender <i>Government accepted claim for negotiation after considering evidence revealed during ICC community session</i></p>	<p>March 1997</p>	<p>None required</p>	<p>Government accepted claim for negotiation</p>	<p>Accepted August 1996</p>
<p>17 Flying Dust Primrose Lake Air Weapons Range - loss of commercial and treaty harvesting rights <i>Part of claim recommended for negotiation</i></p>	<p>September 1995</p>	<p>NONE</p>	<p>NO RESPONSE FROM GOVERNMENT</p>	
<p>18 Fort McKay Treaty land entitlement <i>Recommended that Government owed outstanding entitlement of 3,815 acres to Band</i></p>	<p>December 1995</p>	<p>April 1998</p>	<p>Government accepted claim for negotiation</p>	<p>Accepted April 1998</p>



ICC Report, Nature of Claim, and Recommendation	Date of Report	Date of Response	Nature of Response from Canada to Recommendation	Accepted/ Settled/ Other
<p>19 Friends of the Michel Society 1958 enfranchisement <i>No lawful obligation found, but recommended that government grant special standing to submit specific claims</i></p>	March 1998	None required	No substantive response from government required	
<p>20 Gamblers Treaty land entitlement <i>Outstanding treaty land entitlement, if any, should be calculated based on an 1877 date of first survey</i></p>	October 1998	November 1998	Government accepted claim for negotiation	Accepted November 1998
<p>21 Homalco Aupe IR 6 and 6A - Statutory or fiduciary obligation to obtain 80 acres of land from province of BC <i>Part of claim recommended for negotiation re: 10 acres</i></p>	December 1995	December 1997	Government rejected recommendations made in December 1995 report	Rejected December 1997



ICC Report, Nature of Claim, and Recommendation	Date of Report	Date of Response	Nature of Response from Canada to Recommendation	Accepted/ Settled/ Other
<p>22 Joseph Bighead Primrose Lake Air Weapons Range - loss of commercial and treaty harvesting rights <i>Recommended claim not be accepted for negotiation</i></p>	September 1995	None required	No substantive response from government required	
<p>23 Kahkewistahaw Treaty land entitlement <i>Recommended claim not be accepted for negotiation</i></p>	November 1996	None required	No substantive response from government required	
<p>24 Kahkewistahaw 1907 Surrender <i>Recommended claim be accepted for negotiation</i></p>	February 1997	December 1997	Government accepted claim for negotiation	Accepted December 1997
<p>25 Kawacatoose Treaty land entitlement <i>Recommended that government owed a shortfall of 8,576 acres to Band, subject to confirming research</i></p>	March 1996	April 1998	Government accepted claim for negotiation	Settled October 2000 for \$23 million in federal compensation and approximately \$15 million in improvements to the reserve, including replacement of the on-reserve school and upgrading the water and sewer systems

ICC Report, Nature of Claim, and Recommendation	Date of Report	Date of Response	Nature of Response from Canada to Recommendation	Accepted/ Settled/ Other
26 Key 1909 Surrender <i>Recommended claim not be accepted for negotiation</i>	March 2000	None required	No substantive response from government required	
27 Lac La Ronge Treaty land entitlement <i>Recommended claim not be accepted for negotiation</i>	March 1996	None required	No substantive response from government required	
28 Lax Kw'alaams Demand for absolute surrender as pre-condition to settlement <i>Recommended that government exclude aboriginal rights from scope of surrender clause</i>	June 1994	NONE	NO RESPONSE FROM GOVERNMENT	
29 Long Plain Loss of use of treaty entitlement land <i>Recommended claim be accepted for negotiation</i>	March 2000	August 2000	Government rejected recommendations made in March 2000 report; on basis that the Commission did not address the implications of <i>Venne</i>	Rejected August 2000



ICC Report, Nature of Claim, and Recommendation	Date of Report	Date of Response	Nature of Response from Canada to Recommendation	Accepted/ Settled/ Other
<p>30 Lucky Man Cree Treaty land entitlement <i>Recommended further research to establish the proper treaty land entitlement population</i></p>	<p>March 1997</p>	<p>May 1997</p>	<p>Government accepted recommendation: government research indicated no TLE shortfall; First Nation is reviewing and conducting its own research</p>	<p>Accepted May 1997</p>
<p>31 Mamaleleqala Qwe'Qwa'Sot'Enox McKenna-McBride Applications <i>Recommended claim be accepted for negotiation</i></p>	<p>March 1997</p>	<p>December 1999</p>	<p>Government rejected recommendations made in March 1997 report</p>	<p>Rejected December 1999</p>
<p>32 Micmacs of Gesgapegiag Pre-Confederation claim to 500-acre island <i>No substantive recommendations made because government agreed to reconsider merits of claim</i></p>	<p>December 1994</p>	<p>None required</p>	<p>In March 1995, government acknowledged receipt of report and advised claim was in abeyance pending outcome of related court case</p>	



ICC Report, Nature of Claim, and Recommendation	Date of Report	Date of Response	Nature of Response from Canada to Recommendation	Accepted/ Settled/ Other
33 Mikisew Cree Economic entitlements under Treaty 8 <i>Government accepted claim for negotiation after planning conference</i>	March 1997	None required	Government accepted claim for negotiation	Accepted December 1996
34 Moose Deer Point Pottawatomie Rights <i>Recommended additional research</i>	March 1999	March 2001	Government rejected recommendations made in March 1999 report	Rejected March 2001
35 Moosomin 1909 Surrender <i>Recommended claim be accepted for negotiation</i>	March 1997	December 1997	Government accepted claim for negotiation	Accepted December 1997
36 Muscowpetung QVIDA flooding claim <i>Recommended claim be accepted for negotiation</i>	February 1998	December 1998	Government accepted claim for negotiation	Accepted December 1998



ICC Report, Nature of Claim, and Recommendation	Date of Report	Date of Response	Nature of Response from Canada to Recommendation	Accepted/ Settled/ Other
37 Nak'azdli Aht-Len-Jees IR 5 and Ditchburn-Clark Commission <i>Government accepted claim for negotiation after considering evidence revealed during ICC community session</i>	March 1996	None required	Government accepted claim for negotiation	Accepted January 1996
38 'Namgis Cormorant Island <i>Recommended claim be accepted for negotiation</i>	March 1996	NONE	NO RESPONSE FROM GOVERNMENT	
39 'Namgis McKenna-McBride Applications <i>Recommended part of claim be accepted for negotiation</i>	February 1997	December 1999	Government rejected recommendations made in February 1997 report	Rejected December 1999
40 Nekaneet Entitlement to treaty benefits claim <i>Government accepted claim for negotiation mid-inquiry</i>	March 1999	None required	Government accepted claim for negotiation	Accepted October 1998

ICC Report, Nature of Claim, and Recommendation	Date of Report	Date of Response	Nature of Response from Canada to Recommendation	Accepted/ Settled/ Other
41 Ochapowace QVIDA flooding claim <i>Recommended claim be accepted for negotiation</i>	February 1998	December 1998	Government accepted claim for negotiation	Accepted December 1998
42 Pasqua QVIDA flooding claim <i>Recommended claim be accepted for negotiation</i>	February 1998	December 1998	Government accepted claim for negotiation	Accepted December 1998
43 Peguis Treaty land entitlement <i>Government accepted claim for negotiation after a number of planning conferences</i>	March 2001	None required	Government accepted claim for negotiation	Accepted June 1998
44 Roseau River Anishinabe Medical aid <i>Recommended claim be accepted for negotiation</i>	February 2001	NONE	NO RESPONSE FROM GOVERNMENT	
45 Sakimay QVIDA flooding claim <i>Recommended claim be accepted for negotiation</i>	February 1998	December 1998	Government accepted claim for negotiation	Accepted December 1998



ICC Report, Nature of Claim, and Recommendation	Date of Report	Date of Response	Nature of Response from Canada to Recommendation	Accepted/ Settled/ Other
46 Standing Buffalo QVIDA Flooding claim <i>Recommended claim be accepted for negotiation</i>	February 1998	December 1998	Government accepted claim for negotiation	Accepted December 1998
47 Sturgeon Lake Agricultural lease <i>Accepted for negotiation with assistance of Commission</i>	March 1998	None required	Government accepted claim for negotiation	Settled October 1998
48 Sumas IR 6 railway right-of-way <i>Recommended claim be accepted for negotiation</i>	February 1995	December 1995	Government rejected recommendations made in February 1995 report on grounds that claim involved issues which are before the courts in other cases	Rejected December 1995
49 Sumas 1919 Surrender of IR 7 <i>Recommended joint research to assess fair market value of surrendered land</i>	August 1997	January 1998	Government willing to explore possibility of joint research to determine if evidence exists for a claim	

ICC Report, Nature of Claim, and Recommendation	Date of Report	Date of Response	Nature of Response from Canada to Recommendation	Accepted/ Settled/ Other
<p>50 Walpole Island Boblo Island <i>Recommended First Nation re-submit its claim under the Comprehensive Claims Policy</i></p>	<p>May 2000</p>	<p>None required</p>	<p>No substantive response required from government</p>	
<p>51 Waterhen Lake Primrose Lake Air Weapons Range - loss of commercial and treaty harvesting rights <i>Recommended part of claim be accepted for negotiation</i></p>	<p>September 1995</p>	<p>NONE</p>	<p>NO RESPONSE FROM GOVERNMENT</p>	
<p>52 Young Chipeewayan Unlawful surrender claim <i>Recommended that claim not be accepted for negotiation but that further research be undertaken regarding the surrender proceeds</i></p>	<p>December 1994</p>	<p>February 1995</p>	<p>Funding proposal submitted by Band for research and consultation under consideration by Indian Affairs</p>	



SUMMARY OF CLAIMS AS OF MARCH 31, 2001

In 2000/2001, the Commission released five reports. A summary of the findings and recommendations made by the Commission in each inquiry is set out below.

INQUIRY REPORTS, 2000/2001

Carry the Kettle First Nation *Cypress Hills, Saskatchewan*

The Commission released its report on the Cypress Hills claim in August 2000. The Carry the Kettle Band, whose ancestors are mostly Assiniboine, asserted it had a right under Treaty No. 4 to land its ancestors selected in the western regions of the Cypress Hills in 1879. This site is near the place where, six years earlier, a number of Assiniboine Indians were slaughtered by drunken wolf hunters from Montana in a dispute over stolen horses – an event which came to be known as “The Cypress Hills Massacre.” Every June, members of the Carry the Kettle Band travel from their reserve at Maple Creek to the Cypress Hills, 350 kilometres away, to remember their dead ancestors.

Written and oral evidence presented in the course of the Inquiry clearly shows that the federal government recognized the Cypress Hills as the traditional territory of the Assiniboine, but that it did not accept the site selected by the Assiniboine as a reserve. By 1880, the federal government had decided to relocate the Assiniboine and other neighbouring First Nations away from the Cypress Hills to the Maple Creek region, in part to preserve law and order near the international border with the United States. The native people did not want to move, and remained adamant, until officials refused to provide them with rations at the old location.

The Commission’s review of the facts and the law found that the Carry the Kettle Band does not have a reserve in the Cypress Hills. Under Canadian law, a reserve is not a reserve unless both the First Nation and the government recognize it as such and, the government, having decided to relocate the Assiniboine, clearly did not accept the Band’s reserve selection. The Commissioners added, however, that although the transaction was technically legal, it was unfair. The panel made recommendations to allow the government to recognize the Carry the Kettle Band’s historic grievances and its connection to the Cypress Hills.

The Minister of Indian Affairs responded to the Commission report in January 2001. He agreed with the Commission’s conclusion that the claim did not disclose a lawful obligation on the part of the government under the Specific Claims Policy, and outlined actions undertaken to recognize the Band’s connection to the Cypress Hills.

Cowessess First Nation

1907 surrender, Saskatchewan

In March 2001, the Commission completed its report on the surrender of land from the Cowessess Reserve in Saskatchewan and recommended that the federal government accept the claim for negotiation. At issue in this claim was a provision of the *Indian Act* involving the voting procedures at surrender meetings and the factual evidence about how many eligible voters attended the meeting. The records show that at the meeting to surrender land from the Cowessess Reserve on January 29, 1907, 15 voted in favour of the surrender while 14 voted against. There was, however, confusing evidence about how many eligible voters actually attended that meeting.

The Commissioners concluded that the *Indian Act* required that a majority of eligible voters attending the meeting must agree to the surrender (not merely a majority of those in attendance who voted). Only in this way could a band be protected from exploitative or ill-considered transactions concerning its land base. Upon careful examination of the evidence, the Commissioners also concluded that, at least one eligible voter (Francis Delorme) attended the surrender meeting but abstained from voting. Therefore, on the balance of probabilities, there were at least 30 eligible voters in attendance at the surrender meeting, requiring at least 16 votes in favour to comply with the provisions of the *Indian Act*.

The government has acknowledged receipt of the Commission's report but has not responded to the recommendations.

Peguis First Nation

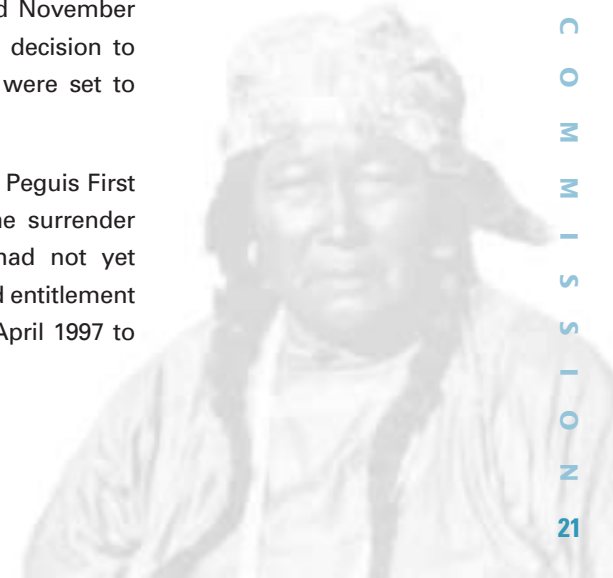
Treaty land entitlement, Manitoba

In March 2001, the Commission released its report on the Peguis treaty land entitlement claim. The report made no recommendations because the government agreed to accept the claim for negotiation before the inquiry process was completed.

The First Nation asked the Commission to conduct an inquiry into the government's rejection of its claim that the promises made in Treaty 1 regarding the amount of reserve land to be allotted to its band had not been fulfilled. In this case, the facts surrounding the 1907 surrender of the original reserve and the subsequent survey of an alternate reserve had a bearing on the treaty land entitlement discussions. At planning conferences in January and May 1995, the parties agreed that the government should have the opportunity to review the First Nation's separate claim regarding the 1907 surrender before the Commission proceeded with its inquiry into the treaty land entitlement issue. In June 1995, the First Nation submitted its surrender claim to the government; confirming research was completed in September 1995.

Planning conferences were held in October and November 1996 to discuss the delay in the government's decision to accept or reject the claim and tentative dates were set to proceed with the Commission's inquiry.

In February 1997, the government informed the Peguis First Nation of its preliminary decision to accept the surrender claim for negotiation, but stipulated that it had not yet finalized its position with regard to the treaty land entitlement claim. A fifth planning conference was held in April 1997 to



discuss this issue. At this meeting the parties agreed that additional research was required. This work was completed by DIAND's regional office and TARR Manitoba and a report submitted to the parties in December 1997. In June 1998, the government advised the Peguis First Nation that the treaty land entitlement claim was accepted for negotiation under the Specific Claims Policy.

Roseau River Anishinabe First Nation

Medical aid, Manitoba

In March 2001, the Commission released its report, recommending that the government accept for negotiation Roseau River Anishinabe's claim arising from the federal government's deduction of expenses for medical aid from its trust account between 1909 and 1934, without its knowledge or consent. At issue was whether medical aid was one of a number of verbal "outside promises" conceded by the government's representatives at the negotiations of Treaty 1 when, after ten days of negotiations, it looked as if the Chippewa and Cree Indians gathered at Lower Fort Garry in 1871 would not sign the treaty.

Although the two Commissioners hearing this claim agreed substantially in their recommendation that the claim should be accepted for negotiation, each offered different reasons for their recommendation. Commissioner Bellegarde agreed with the First Nation that the historical record and oral testimony demonstrated that medical aid was a treaty right and that the trust fund deductions represented a breach of treaty and should be repaid.

Commissioner Corcoran, for her part, found the evidence too equivocal to conclude that medical aid was included in any of the promises at the Treaty 1 negotiations, nor did she find that the deductions contravened the *Indian Act* or the terms of the 1903 surrender. She concluded, nevertheless, that the claim should be accepted for negotiation on the basis that, although the government's policy may have been correctly implemented, the outcome for the Roseau River Anishinabe was unfair.

The government acknowledged receipt of the Commission's report but has not responded to its recommendations.

Walpole Island First Nation

Boblo Island, Ontario

The Commission released its report on the Boblo Island claim in May 2000, recommending that the Walpole Island First Nation submit a claim through the federal Comprehensive Claims Policy to clarify title to the island.

Boblo Island is a small island (about 200 acres) in the Detroit River near the town of Amherstberg, Ontario. The Walpole claim hinges on two transactions: a 1786 agreement signed by some Ottawa and Chippewa Chiefs who lived in the vicinity purporting to transfer the island and a seven-square-mile block of land on the mainland to the deputy Indian Agent, Alexander McKee, and a 1790 treaty between the colonial government and 35 Chiefs, including the ancestors of the Walpole Island First Nation.

The Commission found that the 1786 transaction was not a valid surrender because it did not follow the guidelines for taking Indian lands as set out in the *Royal Proclamation of 1763*. In particular, there was no public meeting, no record of payment and the Potawatomi and Huron Nations who used the territory and may have had an interest in the island, were not involved in the transaction.

The treaty signed in 1790 with the Ottawa, Chippewa, Potawatomi and Huron Nations involved a large area on the mainland, including the seven-square-mile block mentioned in the 1786 agreement. Boblo Island, however, is not included in the description of land included in the 1790 treaty. Co-Chair Bellegarde summed up the findings by stating: “Our inquiry found that whatever aboriginal title to Boblo Island existed in 1786, still exists today.”

The government has acknowledged receipt of the Commission’s report, but has not responded to its recommendations.

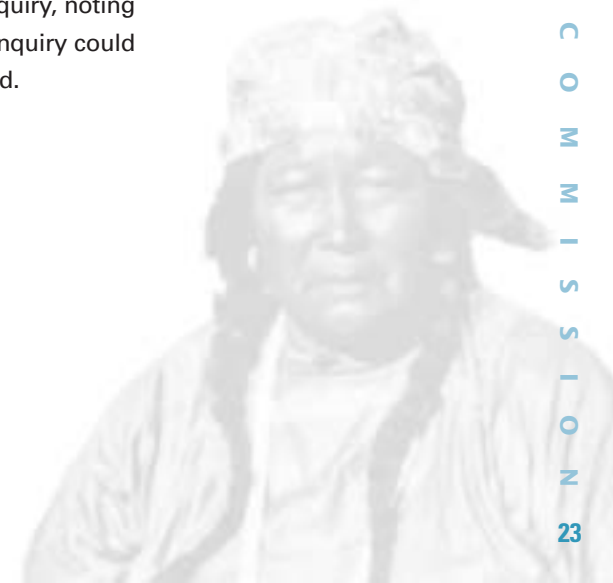
INQUIRIES

Alexis First Nation

Transalta Utilities rights of way, Alberta

In October 1999, the First Nation requested an inquiry into its claim regarding rights of way granted to Calgary Power (now Transalta Utilities) in 1959, 1967 and 1969. The First Nation argued that the government’s inactivity on its claim amounted to a rejection. The federal government challenged the Commission’s authority to conduct an inquiry into the claim, arguing that it had not yet considered it. In April 2000, the Commission ruled that the claim was deemed rejected and the inquiry could proceed. A planning conference was held in July and documents were received from the parties in October 2000.

In January 2001, the government completed its review and informed the First Nation that the claim was rejected. The government then declared that it would only participate in the inquiry as an observer so long as the First Nation continued to actively pursue litigation of this claim in Federal Court. In February, the Commission reviewed the parties’ submissions on this issue and decided to proceed with the inquiry, noting that the litigation is in its initial stages, and the inquiry could be completed before a final judgment is rendered.



Canupawakpa Dakota First Nation

Turtle Mountain surrender, Manitoba

In May 2000, the Canupawakpa Dakota First Nation requested that the Commission conduct an inquiry, asserting that the 1909 surrender of the Turtle Mountain Indian Reserve was invalid because of undue coercion, influence by governmental officials and non-compliance with provisions of the 1906 *Indian Act* in respect to the surrender and disposition of reserve land. Planning conferences were held in October 2000 and February 2001 to define the issues and discuss research questions. In March 2001, the Commission, with the agreement of Canupawakpa Dakota and the government, welcomed the participation of the Sioux Valley Dakota in the inquiry, since some of their descendants lived at Turtle Mountain prior to the surrender in 1909.

Carry the Kettle First Nation

1905 surrender, Saskatchewan

The First Nation claims that a surrender of 5,760 acres of the Assiniboine reserve taken in 1905 is invalid. The First Nation maintains that the Department of Indian Affairs took no record of a band membership vote and that there is insufficient evidence of the outcome of the surrender meeting.

The First Nation requested that oral argument be postponed to await completion of a research study it commissioned. In August 1998, the First Nation requested that the claim be put in abeyance until completion of the Cypress Hills inquiry.

Chippewas of the Thames

Clench defalcation claim, Ontario

This pre-Confederation claim relates to the misappropriation of money derived from the sale of land surrendered in 1834 by the Chippewas of the Thames by their Indian agent, Superintendent Joseph Brant Clench. After the First Nation's unsuccessful attempts to address this grievance in 1890 and 1900, a settlement was reached with the federal government in 1906. At this time, the First Nation passed a Band Council Resolution accepting the offer and an Order in Council was passed, confirming the offer and the acceptance.

The First Nation maintains, however, that the government's primary obligation was to secure for the Chippewas of the Thames fair value for the land surrendered in trust for sale. It is irrelevant that some of the money owed by Clench was recovered; the nature of the government's fiduciary obligation upon the surrender of the lands requires the government to make restitution of the loss to the Chippewas of the Thames. The federal government rejected the claim in 1975.

In August 1998, the First Nation requested an inquiry into the rejection of its claim. Planning conferences were held in December 1998 and February 1999. At the parties' request, additional research was undertaken by an independent researcher under the management of the Commission. The joint-research final report was received in February 2000, and a planning conference was held to discuss the results. Additional research was conducted in March 2000 to account for the land sales money. Based on the research findings, the First Nation filed a new legal submission with the Department of Indian Affairs, and the federal government is now considering these materials. Several conference calls were held to receive status reports on the progress of the claim from the government. The government is expected to complete its review early in the new fiscal year.

Chippewas Tri-Council

Coldwater-Narrows Reservation, Ontario

This claim involves the Coldwater-Narrows Reserve which was set aside in 1830 and surrendered under the 1836 Coldwater Treaty. The First Nation maintains that the 1836 surrender was inconsistent with the instructions set out in the *Royal Proclamation of 1763*, and that proper compensation was never received for the loss of the reserve. Research was undertaken throughout 1998 and Canada agreed to provide a fresh legal opinion at the end of May 1999. The federal government is now considering the claim. In the year 2000, the government made several promises to complete the review of this claim, promises that are still outstanding.

Conseil de Bande de Betsiamites

Highway 138 and the Betsiamites Reserve, Quebec

This claim deals with the forms of agreement (Band, federal and provincial) surrounding the construction of a road right of way (Highway 138) through the Betsiamites reserve, and the use of band funds for the construction and maintenance of the road. In June 2000, the First Nation asked the Commission to conduct an inquiry into the rejection of this claim. Both the government and the First Nation submitted the research documents collected regarding this claim and a planning conference was held in March 2001 to define the issues to be considered.

Conseil de Bande de Betsiamites

Bridge over the Betsiamites River, Quebec

In June 2000, the Conseil de Bande de Betsiamites asked the Commission to conduct an inquiry into the rejection of this claim, which involves the site of the bridge on the Betsiamites Reserve. Both the government and the First Nation submitted the research documents collected regarding this claim and a planning conference was held in March 2001 to define the issues to be considered.

Cumberland House Cree Nation

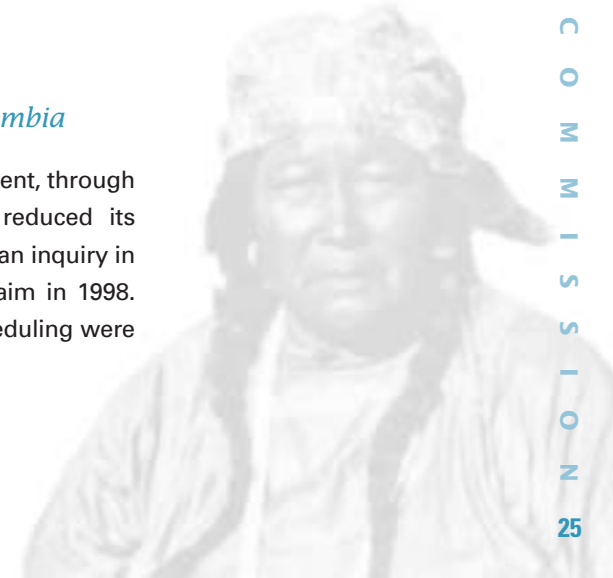
Claim to IR 100 A, Saskatchewan

In February 2000, the First Nation requested an inquiry to protect its interests in Cumberland IR 100A, which is also the subject of a claim before the Commission by the James Smith Cree Nation. Planning conferences were held in May 2000 and March 2001 and much of the year was spent in discussions with James Smith Cree Nation representatives to discuss the mutual sharing of documents. No decision has been reached and the Cumberland House Cree are considering applying for intervenor status in the James Smith Cree inquiry into its IR 100A claim.

Esketemc First Nation

Alkali Lake IR 15, 17 and 18, British Columbia

The First Nation argues that the federal government, through the Ditchburn-Clark Commission, unlawfully reduced its reserve land in 1920. The First Nation requested an inquiry in June 1999 after the government rejected its claim in 1998. Planning conferences to discuss issues and scheduling were



held in September 1999 and February 2000. Elders' testimony was taken at a community session in May 2000 and legal counsel for both the government and the First Nation made oral presentations to the Commission panel in September 2000. Some new documents were included with the government's written submissions and the First Nation is currently conducting additional research based on these documents. The final report is pending.

James Smith Cree Nation *Chakastaypasin IR 98, Saskatchewan*

The First Nation alleges that the federal government unlawfully surrendered and disposed of the Chakastapaysin reserve. In December 1998, the government rejected the claim, stating that by 1898, all Chakastaypasin Band members had moved off IR 98, their names had been added to other Bands' paylists, and as a result, the Chakastapaysin Band had ceased to exist. The government argues that, under these circumstances, no surrender under the *Indian Act* was required and the government had the authority to dispose of the abandoned reserve through the Crown's prerogative power, without compensation to the former Chakastaypasin Band members. Nevertheless, it argued that the government did try to comply with the *Indian Act* surrender provisions by gathering together the former Band members eligible to vote, and placed the sale proceeds to the credit of the bands to which Chakastaypasin Band members had transferred.

The First Nation asked the Commission to conduct an inquiry into the rejection of this claim in May 1999. Since that time, a total of five planning conferences have been held to define issues and deal with research questions.

James Smith Cree Nation *Cumberland IR 100A, Saskatchewan*

The First Nation asserts that the 1902 surrender of Cumberland IR 100A was invalid and that the subsequent sale of the land was in breach of the federal government's fiduciary duty to the First Nation. The government rejected the claim in March 1998, asserting that the Cumberland Band consented to the surrender. The First Nation asked the Commission to conduct an inquiry into the rejection of this claim in May 1999, and since that time, five planning conferences have been held to define the issues and discuss research requirements. In November 1999, the government challenged the Commission's mandate to consider some aspects of this claim but after receiving submissions from both parties, the panel rejected this challenge in May 2000.

James Smith Cree Nation *Treaty land entitlement, Saskatchewan*

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

were held in October 2000, December 2000 and January 2001 to discuss issues, research questions and general scheduling matters. Both the government and the First Nation have undertaken to conduct their own playlist research, according to specific claims guidelines, revised in October 1998.

Kluane First Nation

Kluane Game Sanctuary and Kluane National Park Reserve Creation, Yukon

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

Mississaugas of the New Credit First Nation

Crawford Purchase, Ontario

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

A planning conference was held in July 1998. In September 1998, the First Nation requested that the claim be put in abeyance until further notice.

Mississaugas of the New Credit First Nation

Gunshot Treaty, Ontario

The First Nation claims damages for loss of certain lands and rights to fish, hunt, and trap in the area east of Toronto. It argues that these damages are a result of the non-binding nature of the 1788 Gunshot Treaty, under which the land was surrendered and the government's breach of its fiduciary duty to protect the First Nation in its possession of these lands.

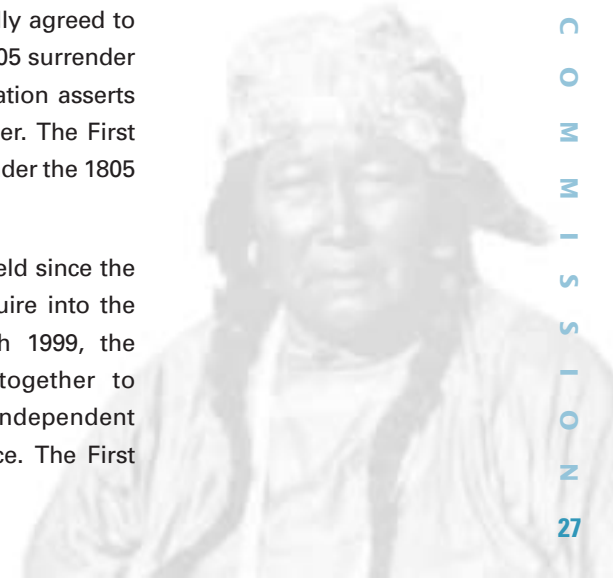
The Commission held a planning conference in July 1998. In September 1998 the First Nation requested that the claim be put in abeyance until further notice.

Mississaugas of the New Credit First Nation

Toronto Purchase, Ontario

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

A total of 11 planning conferences have been held since the First Nation first asked the Commission to inquire into the rejection of this claim in July 1998. Through 1999, the government and the First Nation worked together to complete the research required, hiring independent researchers and agreeing on terms of reference. The First



Nation's legal counsel completed a revised legal submission in the year 2000 and steps were taken for the claim to proceed through the specific claims system. The government has not yet completed its review of this claim.

Mistawasis First Nation

1911, 1917 and 1919 surrender, Saskatchewan

This claim relates to issues concerning surrenders in 1911, 1917 and 1919. The First Nation claims that the surrenders were taken without a surrender meeting, in violation of the *Indian Act*; that the Band did not fully understand the reasons for the surrender; and that the federal government breached its pre-surrender fiduciary obligations and the terms of Treaty 6.

The First Nation requested an inquiry in May 1998 and the Commission held a planning conference in January 1999. A community session was held in June 1999 and research was conducted. In June 2000, the First Nation's legal counsel informed the Commission that the First Nation and the government were engaged in discussions on a proposed settlement and asked that the inquiry be put in abeyance until further notice.

Mistawasis First Nation

Compensation criteria, Saskatchewan

In 1992 the First Nation submitted a claim to the Department of Indian Affairs challenging the validity of surrenders of reserve land taken in 1911, 1917 and 1919. In 1994, the government accepted the part of the claim relating to the administration and collection of the proceeds from the 1911 land sale. Subsequent negotiations broke down over the issue of compensation, the most significant aspect of which is the question of whether compound interest should be applied from the date of loss to the date of resolution. The

First Nation requested an inquiry in May 1998 and the Commission held a planning conference in July 1998. In June 1999, the parties decided to suspend the inquiry into the compensation issue until the surrender claim inquiry was completed or considerably advanced.

Ocean Man First Nation

Treaty land entitlement, Saskatchewan

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

Peepeekisis First Nation

File Hills Colony, Saskatchewan

This claim involved the actions of William Morris Graham, an agent of the Department of Indian Affairs, in opening up the Peepeekisis reserve to non-band members who were graduates of the industrial schools and the subsequent transfer of these graduates by the department into the Peepeekisis Band. The First Nation first approached the Commission in November 1997 but did not request an inquiry at that time because the government promised to complete its review of this claim "in three to four months."

This review was delayed as the government undertook additional research and attempted to deal with “the complexity of the facts.” In March 2001, the First Nation asked the Commission to consider the Minister’s failure to respond to their claim as a rejection, and so proceed to inquiry.

Roseau River Anishinabe First Nation

1903 surrender, Manitoba

This claim involves the validity of the 1903 surrender of the Roseau River reserve and the management of the subsequent land sales. The First Nation first asked the Commission to conduct an inquiry in May 1993. At the planning conference held in December 1993, both the government and the First Nation agreed that additional research was required and jointly engaged an independent contractor, under the management of the Commission. On the basis of this research, counsel for the First Nation submitted a legal analysis. In February 2001, the government provided the First Nation with “an unofficial statement of the government’s position” rejecting the claim. As soon as a convenient date can be arranged, a planning conference will be scheduled to discuss how the inquiry will proceed.

Sandy Bay Ojibway First Nation

Treaty land entitlement, Manitoba

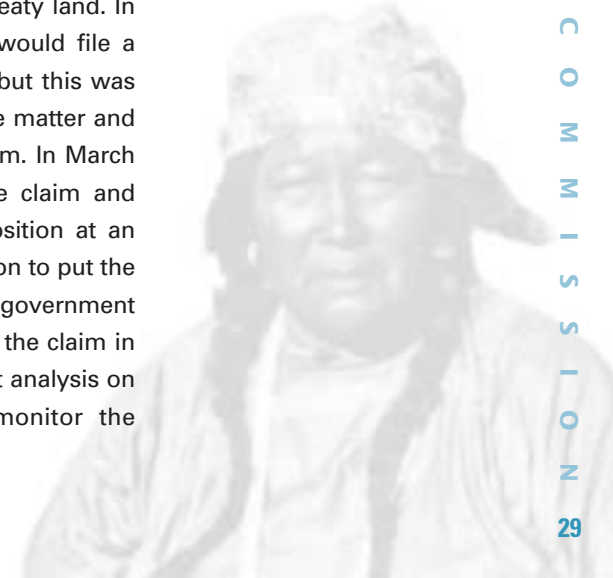
In April 1998, the First Nation requested an inquiry into this claim alleging that the First Nation did not receive sufficient land under the terms of Treaty 1 (1876). Shortly after submitting its rejected claim to the Commission, the First Nation restated its legal arguments because the original claim was filed in November 1982 without the benefit of legal counsel. In November 1998, the government challenged the Commission’s mandate to inquire into this claim, on the basis that the restatement represented essentially a new claim. In

June 1999, the Commission panel ruled that the inquiry would proceed. The First Nation contends that at the date of first survey, the government allotted a certain amount of land for a particular population, including a portion of non-arable land that should not have been counted in its treaty land entitlement. The First Nation maintains that subsequent additions of land in 1930 and 1970 were not given by the government in fulfilment of their treaty land entitlement obligation towards the First Nation and should therefore not be counted in the TLE calculation. In March 2001, the Commission undertook to conduct a cooperative research study to look at the practice of the government in fulfilling its treaty obligations concerning reserve creation and the quantity and quality of land in the fertile belt of western Canada. This research is ongoing and will be completed early in the next fiscal year.

Stanjikoming First Nation

Treaty land entitlement, Ontario

In July 1999, the First Nation requested an inquiry, arguing that the federal government’s lack of response to its TLE claim amounted to a “constructive rejection.” The claim involves an alleged shortfall of 1,408 acres of treaty land. In February 2000, the government stated that it would file a mandate challenge to the Commission inquiry but this was set aside when the parties agreed to discuss the matter and come up with alternatives in furthering this claim. In March 2000, the government proposed to review the claim and provide the First Nation with a preliminary position at an early date. The First Nation asked the Commission to put the inquiry in abeyance until further notice. The government conducted research into the flooding aspects of the claim in January 2001 and is currently conducting payroll analysis on this claim. The Commission continues to monitor the progress of this claim.



Sturgeon Lake First Nation*1913 surrender, Saskatchewan*

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

MEDIATION AND FACILITATION**Blood Tribe/Kainaiwa***Akers surrender 1889, Alberta*

This claim, involving 440 acres surrendered in 1889, was brought before the Commission in 1996. In 1998 the Government of Canada accepted the claim for negotiation of a settlement. Since 1999, the Commission has been monitoring land-use studies and providing mediation to the parties.

Cote First Nation No. 366*1905 surrender pilot project, Saskatchewan*

This claim, brought to the Commission in July 1996, was limited to the sale of lands surrendered by the Cote First Nation in 1905.

In April 1997, a newly elected Chief and Council requested that the inquiry be put in abeyance and that the Commission participate in a joint research project with the federal government to compile what had already been done and complete the information required on all transactions relating to the First Nation. Work continued on this project. Research focussed on 13 transactions, beginning with taking land for the railway in 1903 and ending in reconstitution of reserve lands in 1963. It is anticipated that research will be completed early in the next fiscal year.



Cote, Keeseekoose and Key First Nations

Pelly Haylands, Saskatchewan

This claim involves 12,800 acres northeast of Regina, known as the Pelly Haylands, which were set aside as a reserve in 1893 for the Cote, Keeseekoose and Key First Nations. Accepted for negotiation in July 2000 on the basis of an outstanding lawful obligation, the claim was submitted to the Commission for mediation.

The first meeting of the negotiating teams took place in December 2000. Two protocol agreements were signed shortly thereafter: a Negotiation Protocol between Canada and the First Nations, and the ICC Mediation-Facilitation Agreement between Canada, the First Nations and the Commission.

In addition to arranging and facilitating negotiating meetings, the Commission has assisted the parties by providing additional research, maps, identifying heads of damage, preparing terms of reference and identifying potential contractors for the land appraisals and loss-of-use studies. Eight studies are currently underway (five joint and three by the First Nations alone), all coordinated by the Commission.

Fishing Lake First Nation

1907 surrender, Saskatchewan

As is the case with most specific land claims, the Fishing Lake First Nation's claim took about 10 years to resolve. The outcome of negotiations on the claim showed how valuable a player the Commission can be in advancing claims settlements. For about seven years, the First Nation's efforts to have its claim validated and settled had been unsuccessful. Encouraged by how the Commission's inquiry process was helping to advance their claim, the First Nation asked the Commission to maintain an ongoing role in negotiations.

Such added value is critical in a process that continues to be plagued by the parties' inability to maintain consistency at the negotiations table, a fact illustrated by high turnover rates among negotiators and legal counsel. The Commission's mediation service not only helps to maintain momentum and keep the parties focused, it also can serve as an essential corporate memory.

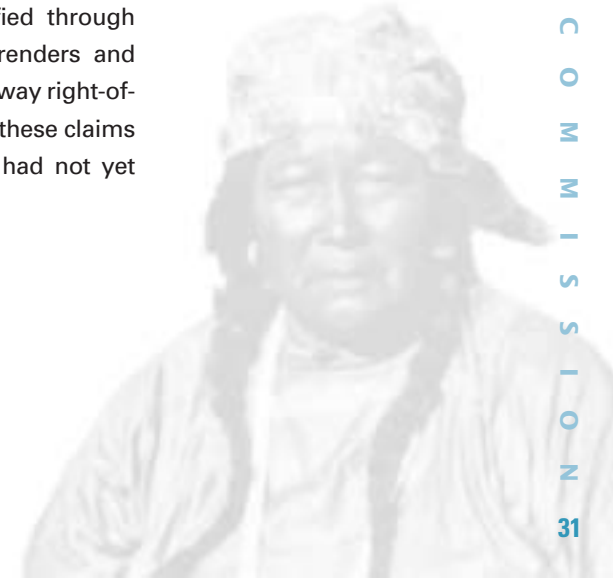
In the case of Fishing Lake, the Commission was able to help resolve stalemates on interpretation of legal principles and case law – issues that often lead to delays or breakdowns in negotiations. This further shows how the Commission is able to go over and above its role as a mediator by extending discussions beyond the negotiating teams at levels necessary to bring about progress.

The Fishing Lake settlement agreement was ratified by the community in March 2001.

Fort William First Nation

Pilot project, Ontario

In February 1998, the Fort William First Nation proposed that the Commission participate in a pilot project to facilitate the resolution of six specific claims it had identified through independent research. The claims involve surrenders and expropriations of reserve land for settlement, railway right-of-way, mining and military purposes. Only one of these claims was in the specific claims process; the others had not yet been submitted.



After meetings at the ICC in early 1998, the federal government and the First Nation signed a protocol agreement outlining their decision to settle the historical and legal issues cooperatively. They agreed to begin with a claim involving a parcel of land surrendered in 1907 for a rifle range. In 1914, at the local militia's request, land initially surrendered was exchanged to ensure that targets fronted on Mount McKay. The jointly-produced rifle range claim, submitted to the Department of Justice in February 1999, has now been accepted for negotiation.

Through 1998 and 1999, the parties worked jointly on the Grand Trunk Pacific Railway claim. This relates to the expropriation of approximately 1,600 acres of the reserve's best land along the river and the subsequent relocation of the Indian village. In July 1999, the First Nation celebrated the return of approximately 1,100 acres of railway lands at a signing ceremony on Mount McKay. Work continues on five other claims.

Also in 1999, the ICC released a report prepared by outside consultants which reviewed the pilot project to date and outlined recommended ways to resolve specific land claims more pragmatically. The parties submitted the Ontario Hydro right-of-way claim and continue to work on the Chippewa Park and Neebing surrender claims.

Kahkewistahaw First Nation

1907 surrender, Saskatchewan

In February 1997, the Commission released its report on the inquiry into the surrender in 1907 of 33,281 acres – nearly three-quarters – of the Kahkewistahaw First Nation's reserve. The Commission concluded that, although the surrender was valid and unconditional, the federal government had breached its pre-surrender fiduciary obligation to the First Nation. The Commission concluded that the Crown's agents had engaged in "tainted dealings" by taking advantage of the First Nation's weakness and lack of leadership to induce its members to consent to the surrender. Moreover, the First Nation had effectively ceded its decision-making power to the government regarding the surrender, but the government had failed to exercise that power conscientiously and without influencing the outcome of the surrender vote. Finally, the Governor in Council did not exercise the opportunity to prevent a surrender that was clearly foolish, improvident and exploitative. In December 1997, the federal government accepted the ICC recommendation to negotiate a settlement with the Kahkewistahaw First Nation. In November 1998, the First Nation and the federal government asked the Commission to facilitate negotiations, and in January 1999 a protocol agreement was signed by the parties. Seven loss-of-use studies, including interviews with Elders, were coordinated by the Commission and have now been completed. These loss-of-use studies formed the basis for a negotiated settlement agreement expected to be finalized early in the new fiscal year.

Michipicoten First Nation

Pilot project, Ontario

In October 1996, the First Nation proposed to the Minister of Indian Affairs and Northern Development that the federal government and the First Nation work together to develop a process for the timely and just resolution of a number of outstanding specific claims. The First Nation suggested a unique process based on joint historical research, joint identification of issues, coordinated legal research and if required, joint presentation of submissions to the Department of Justice.

The pilot project has completed joint research on 13 claims. Of these, the two survey claims have been accepted, negotiated and settled. Three surrender claims have been accepted and are awaiting negotiation. Three other claims have been settled through administrative referral. In four situations, the research has revealed that there is no claim. The one remaining claim which relates to the original boundary of the reserve has been researched and now awaits a legal opinion from the Department of Justice.

Research and discussions of possible claims relating to the relocation of the First Nation's village from its original site have resulted in an agreement that no legal basis exists upon which to submit a claim; however, the First Nation would like the federal government to apologize for the devastation caused to the community by the relocation. The Roman Catholic diocese has returned the original church bell and the First Nation is seeking assistance in building a suitable structure to house it. The government continues to try to find a means of supporting this effort.

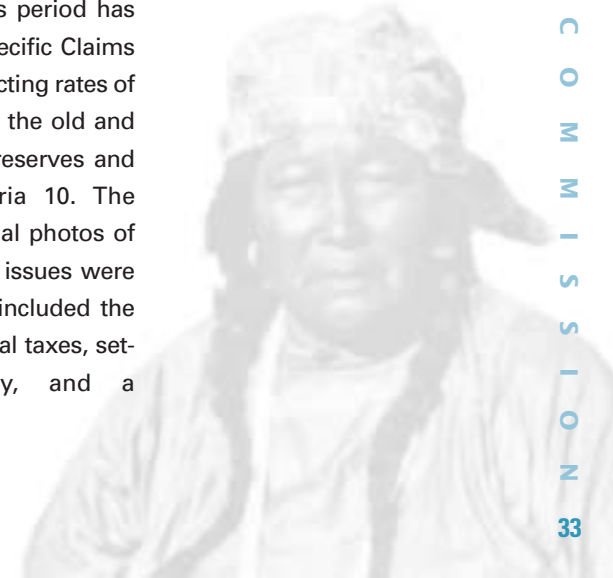
Moosomin First Nation

1909 surrender, Saskatchewan

This claim, dealing with the 1909 surrender of Moosomin Indian Reserves 112 and 112A (25 square miles of fertile agricultural land), was the subject of an inquiry concluded by the Commission in May 1997. Pursuant to the Commission's recommendation, the claim was accepted by Canada for negotiation on the basis of an outstanding lawful obligation. Negotiations commenced and some general research and a nominal loss-of-use report was prepared.

Negotiations became contentious, mainly as a result of the approach taken by the consultant who prepared the loss-of-use report. The First Nation felt that the report was biased in Canada's favour. In mid-2000, sensing that negotiations were stalling on this and other issues, the First Nation requested, and Canada agreed, to bring the claim to the Commission for mediation.

Since that time, and pursuant to Mediation-Facilitation Protocol between the ICC, Canada and the First Nation, the Commission has assisted the table by arranging and facilitating all meetings, including numerous conference calls. The focus of negotiation discussions during this period has been on certain compensation criteria of the Specific Claims Policy relating to loss-of-use. These include conflicting rates of development, leasing rates, differences between the old and new reserves, comparisons with neighbouring reserves and municipalities and the applicability of Criteria 10. The Commission coordinated the preparation of aerial photos of the claim lands and land appraisals. Settlement issues were also discussed in a preliminary fashion. These included the cost of reserve creation and payment of municipal taxes, set-offs, ratification, releases and indemnity, and a communications plan.



The main challenges to progress in these negotiations have been Department of Indian Affairs workloads, illnesses, unexplained non-participation in meetings and staff turnovers. Where responsibility for the file has changed, there have been significant delays in the re-assignment of departmental resources within both the Specific Claims Branch and Department of Justice Legal Services.

Qu'Appelle Valley Indian Development Association (QVIDA)

Flooding negotiations, Saskatchewan

The Qu'Appelle Valley Indian Development Association is a group of Saskatchewan First Nations pursuing claims against Canada for flooding of reserve lands caused by construction of water control structures in the Qu'Appelle River Valley in the early 1940s. Presently involved are the Muscowpetung, Pasqua, Cowessess, Sakimay and Ochapowace First Nations. In addition, the Piapot and Kahkewistahaw First Nations are pursuing almost identical claims with the goal of joining in the QVIDA negotiations.

The Mediation Unit of the Commission became involved in these negotiations in early 2000 following Canada's acceptance of the claims the previous year. No stranger to these claims, the Commission had concluded its inquiry in February 1998. The Mediation Unit's approach to date has been to hold meetings involving all the First Nations together in order to identify, discuss and negotiate their common issues. Ultimately, the work of this larger table will end and each First Nation will begin negotiating with Canada on their own specific issues.

The Commission has assisted the table by reviewing and preparing executive summaries of all research forming part of the record of the inquiry, as well as some research outside of the inquiry – more than 50 documents and just under 4,000 pages. The table has also finalized negotiation and mediation-facilitation protocols; discussed legal representation on common and specific issues; worked toward identifying the land base/boundaries of each First Nation; prepared maps for use in the negotiations; involved the Prairie Farm Rehabilitation Administration and the Saskatchewan Water Corporation in discussions; worked toward identifying what land appraisals and loss-of-use studies still need to be done; discussed various settlement issues and worked on a draft settlement agreement; investigated various options to surrender; and worked on how the First Nations might be involved in future planning and potential co-management of the Qu'Appelle River.

Roseau River Anishinabe First Nation

1903 surrender, Manitoba

The First Nation alleges that the Crown is in breach of both its fiduciary obligations and its obligations under Treaty 1 in connection with its initiation of the surrender of 12 square miles of reserve land, as well as its questionable handling of the auctioning of individual lots.

When the claim was first presented to the federal government in 1982, it dealt only with the compensation arising from the government management of land sales following a 1903 surrender. In a December 1993 planning conference, the First Nation also advanced the validity of the surrender as an issue. In November 1996, the parties agreed

to conduct tripartite (federal government, First Nation, ICC) research on the validity issue and then to resubmit the claim to the Specific Claims Branch. The terms of reference for the joint project were finalized in February 1997. The Commission monitored the work of the contractor throughout the research. The report was completed in September 1997 and the parties met at the ICC office in October 1997 to discuss the findings. In December 1999, after a two-year wait for a legal opinion from the First Nation, work resumed on this claim.

Standing Buffalo Dakota Nation *Flooding negotiations, Saskatchewan*

The Standing Buffalo Dakota Nation was part of the QVIDA inquiry concluded by the Commission in February 1998. It chose, however, to pursue its flooding claim negotiations with Canada outside of the larger organization.

The Mediation Unit of the Commission became involved in these negotiations in late November 2000. At issue is approximately 57.8 acres of land near the control structures erected in the 1940s. Also at issue is an area of land known as IR 80B, in which both the Standing Buffalo Dakota Nation and Muscowpetung First Nation (part of QVIDA) claim an interest.

Over the past few months, the table has finalized negotiation and facilitation-mediation protocol agreements. As well, legal representation has been secured by both parties. It has been determined that all information held by QVIDA will be shared with the Standing Buffalo table. The parties have begun to identify the heads of damage applicable to this claim.

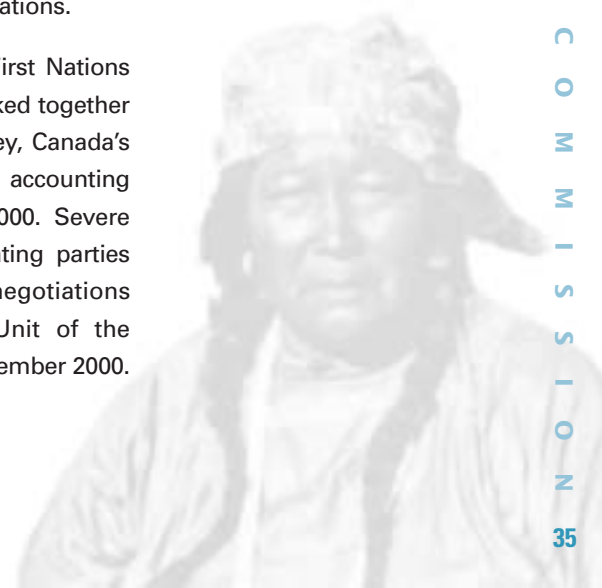
Thunderchild First Nation *1908 surrender, Saskatchewan*

In November 1996, the parties agreed to continue negotiations with assistance from the ICC. The claim is being mediated by the Commission and deals with certain compensation criteria of the Specific Claims Policy relating to loss of use. Initial meetings took place in January 1997 and sessions have continued throughout this fiscal year. In March 2000, the parties decided to conduct two independent loss-of-use studies, one by the First Nation, the other by the government. These loss-of-use studies are now complete and negotiations facilitated by the Commission and aimed at reaching a settlement agreement are underway.

Touchwood Agency *Mismanagement claim, Saskatchewan*

This is a claim by a number of communities for compensation for moneys diverted from their accounts over many years by their Indian Agents, in particular J.B. Hardinge, but also J.B. Blair and others. The claim was submitted collectively by the five Touchwood Agency First Nations: Day Stay, Fishing Lake, Gordon, Kawacatoose and Muskowekwan First Nations.

Negotiations had been going on between the First Nations and Canada and the negotiating parties had worked together to commission a report from Kroll Lindquist Avey, Canada's largest independent forensic and investigative accounting firm. The final report was received in early 2000. Severe disagreements had arisen between the negotiating parties over the report's recommendations and negotiations appeared to be in trouble. The Mediation Unit of the Commission was asked to assist the table in September 2000.



Over the course of the next few months, the negotiating parties dealt with identifying the losses to be compensated. The First Nations want to include all losses identified by the Kroll Lindquist Avey report plus consideration for the suffering caused to them over the years. Canada's approach has been to exclude or discount losses according to their type - for example, actual, potential, probable or speculative.

The table has discussed how the amounts will eventually be brought forward; whether the settlement will be via a global approach; ratification; and the need for a social impact study. In late December, Canada put an offer on the table, which was rejected by the First Nations as not being representative of the true losses suffered by them.

By early 2001, negotiations had stalled primarily because of a change of federal negotiator and the department's delay in assigning a new negotiator to the file.

APPENDIX



APPENDICES

A Status of Claims as of March 31, 2001

Summary of Claims as of March 31, 2001

Inquiry Reports, 2000-2001

Inquiries

Mediation and Facilitation

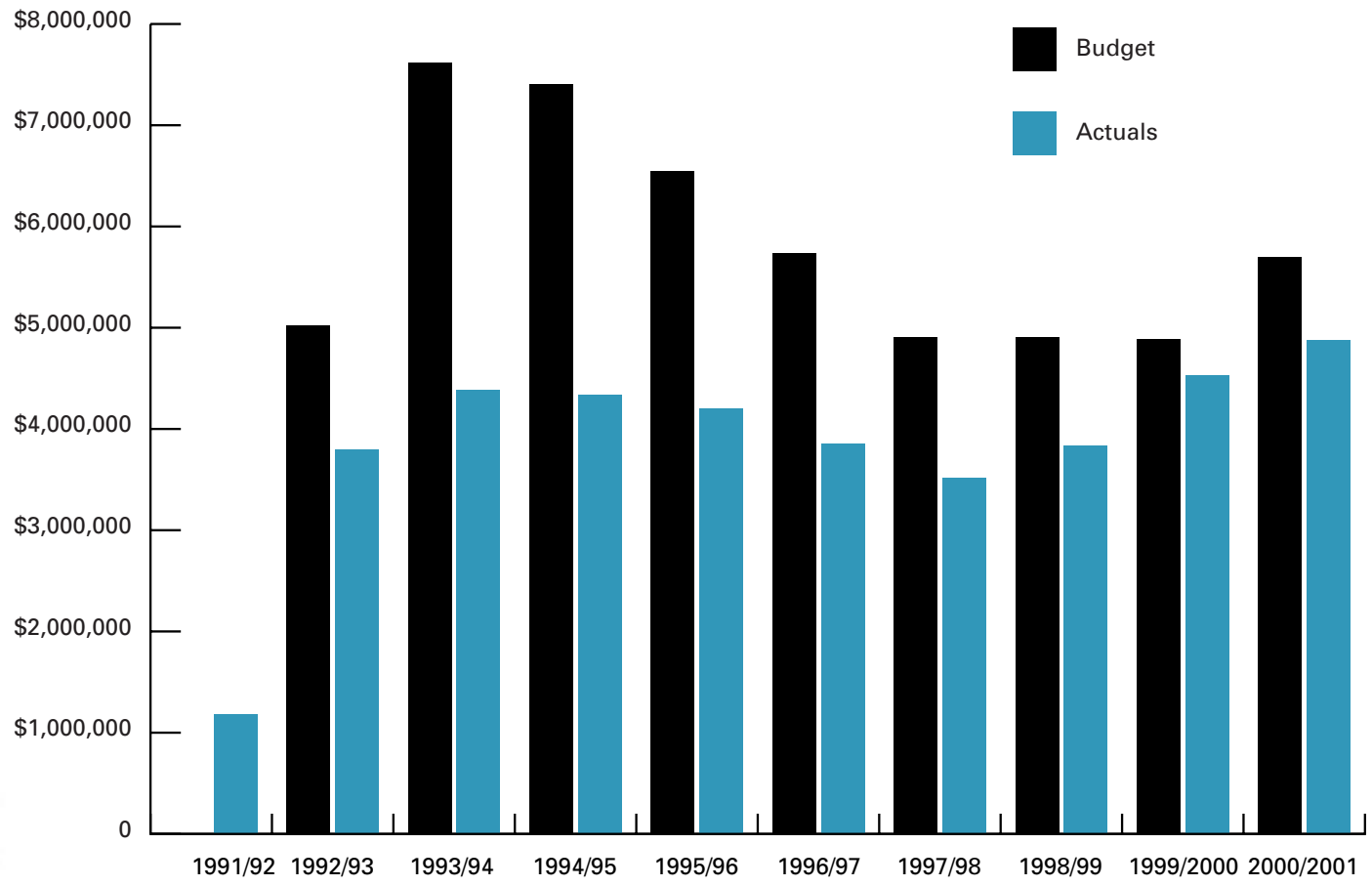
B Operational Overview

Organization Chart

C The Commissioners

B

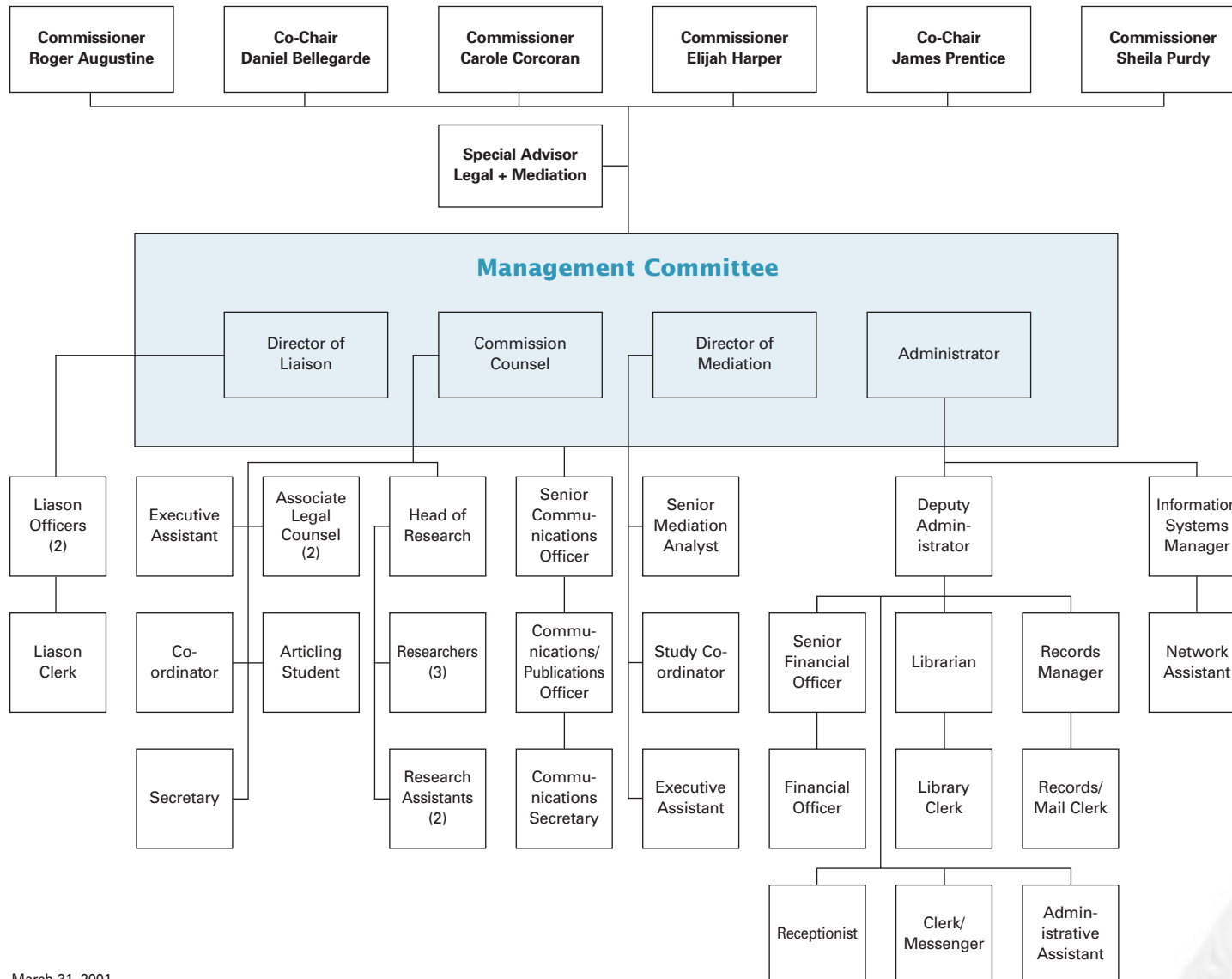
OPERATIONAL OVERVIEW



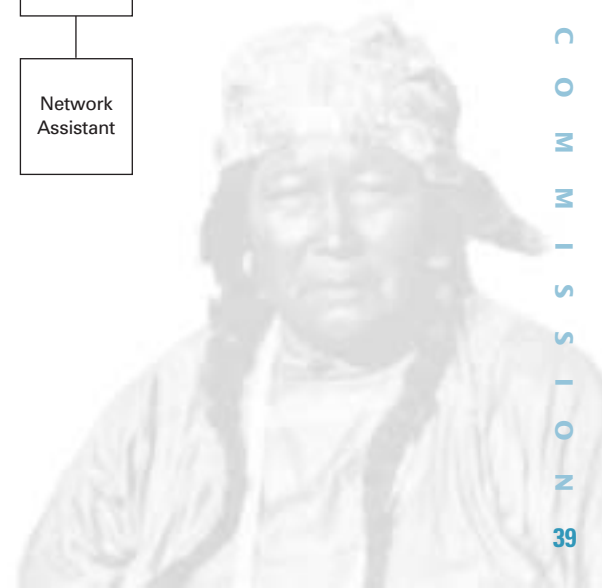
The Commission continues to focus on prudent fiscal management practices. The figure above represents the amounts budgeted and the actual amounts expended by the

Commission since its inception. In 2000/2001, the Commission expended \$4.88 million against an approved budget of \$5.7 million, for a lapse of approximately \$818,000.

ORGANIZATION CHART



March 31, 2001



APPENDIX

A P P E N D I C E S

A Status of Claims as of March 31, 2001

Summary of Claims as of March 31, 2001

Inquiry Reports, 2000-2001

Inquiries

Mediation and Facilitation

B Operational Overview

Organization Chart

C The Commissioners



THE COMMISSIONERS



Daniel J. Bellegarde

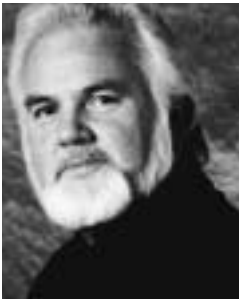
Co-Chair Daniel J. Bellegarde is an Assiniboine/Cree from the Little Black Bear First Nation in southern Saskatchewan. From 1981 to 1984, Mr Bellegarde worked with the Meadow Lake District Chiefs Joint Venture as a socioeconomic planner. He was president of the Saskatchewan Indian Institute of Technologies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



P.E. James Prentice, QC

Co-Chair P.E. James Prentice, QC, is a lawyer with the Calgary law firm of Rooney Prentice. He has an extensive background in native land claims, commencing with his work as legal counsel and negotiator for the Province of Alberta in the tripartite negotiations that brought about the Sturgeon Lake claim settlement of 1989. Since that time, Mr Prentice has participated in the inquiry or mediation of some 70 treaty land entitlement and surrender claims across Canada. Mr Prentice was appointed Queen's Counsel in 1992. He has also been the faculty leader at the Banff Centre for Management's annual program on specific claims since 1994. He was appointed Commissioner, then Co-Chair, of the Indian Claims Commission in July 1992 and April 1994, respectively.





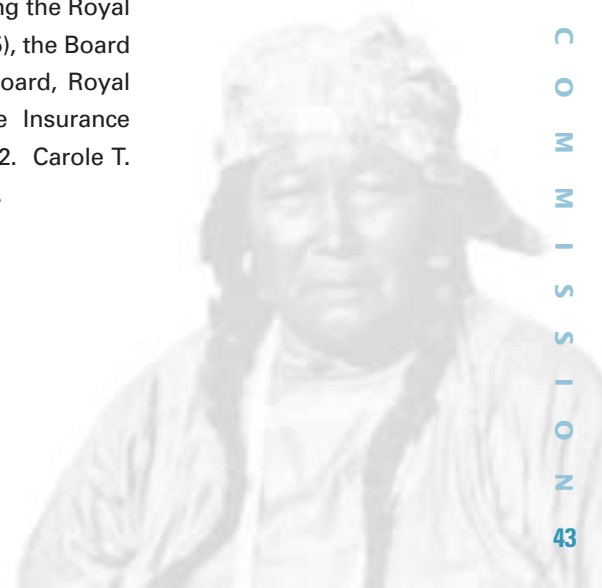
Roger J. Augustine

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



Carole T. Corcoran - deceased

Carole T. Corcoran was a lawyer with the Vancouver law firm of Fast & Corcoran. She was Dene from Fort Nelson, British Columbia and had extensive experience in aboriginal government and politics at the local, regional, and provincial levels. She had served on several boards and commissions, including the Royal Commission on Canada's Future (1990-91), the British Columbia Treaty Commission (1993-95), the Board of Governors, University of Northern British Columbia (1993-95), Conflict Management Board, Royal Roads University (1997-2000), Co-Chair, First Nations Summit BC (1998-2000) and the Insurance Corporation of British Columbia (1998-2000). She was appointed Commissioner in July 1992. Carole T. Corcoran died suddenly on February 15, 2001. She is greatly missed by colleagues and staff.





Elijah Harper

Elijah Harper is an Ojibwa-Cree born in Red Sucker Lake, Manitoba, where he was Chief from 1978 to 1981. Mr Harper is best known for his role in the debate surrounding the Meech Lake Accord, during which, as an opposition member for Rupert Island in the Manitoba Legislative Assembly (1981-92), he stood silent, holding a sacred Eagle's feather in a symbolic stand against the Accord, to protest the lack of adequate participation and recognition of aboriginal people in the constitutional amendment process. In 1986, Mr Harper was appointed Minister without Portfolio Responsible for Native Affairs and, in 1987, Minister of Northern Affairs. He was instrumental in setting up the Manitoba Aboriginal Justice Inquiry. Between 1993 and 1997, he sat as a Liberal Member of Parliament for Churchill, Manitoba. In 1995, Mr Harper launched a sacred assembly to promote spiritual reconciliation and healing between aboriginal and non-aboriginal Canadians, which brought together people of all faiths from across Canada. In 1996, Mr Harper received a National Aboriginal Achievement Award for public service. He was appointed Commissioner in January 1999 and resigned in October 2000 to run in the 2000 federal election.



Sheila G. Purdy

Sheila G. Purdy has been an advisor to the government of the Northwest Territories on justice and other matters relating to the territorial division and the creation of Nunavut. From 1993 to 1996, she was senior policy advisor to the Minister of Justice and the Attorney General of Canada on a number of justice issues, including aboriginal justice, the *Canadian Human Rights Act* and violence against women. From 1991 to 1993, she was policy analyst to the National Liberal Caucus Research Bureau for the constitution, justice, aboriginal affairs, women, human rights, and the Solicitor General. In 1992 and 1993, she was special advisor on aboriginal affairs to the Office of the Leader of the Opposition and from 1989 to 1991, she was a legal consultant on environmental issues. She has been active in advocating against abuse of the elderly and is a co-author of *Elder Abuse: The Hidden Crime*. In 1988, she received the Award of Merit from Concerned Friends for her work in this area. After graduating with a law degree from the University of Ottawa in 1980, she worked as a lawyer in private practice from 1982 to 1985. She was appointed Commissioner in May 1999.