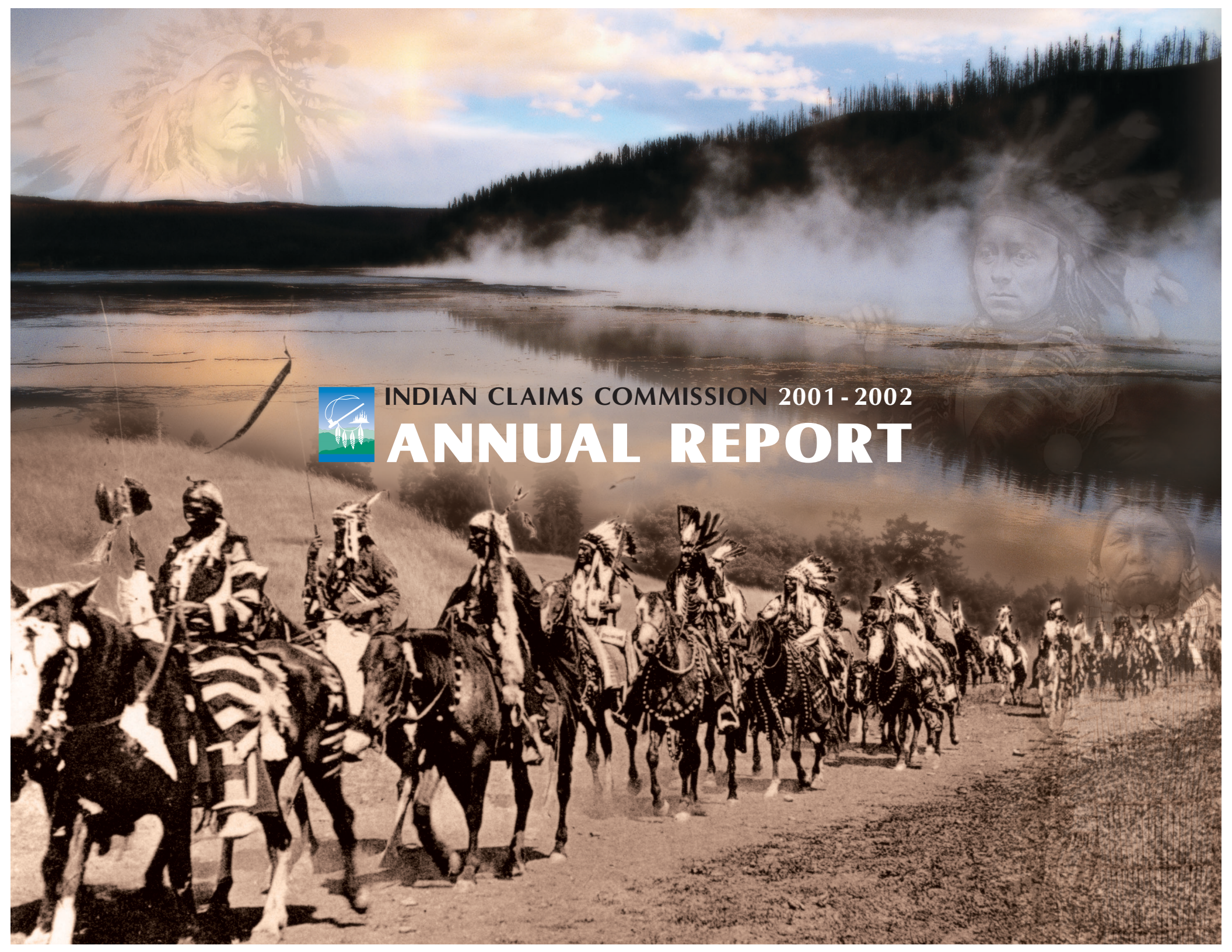




INDIAN CLAIMS COMMISSION 2001 - 2002

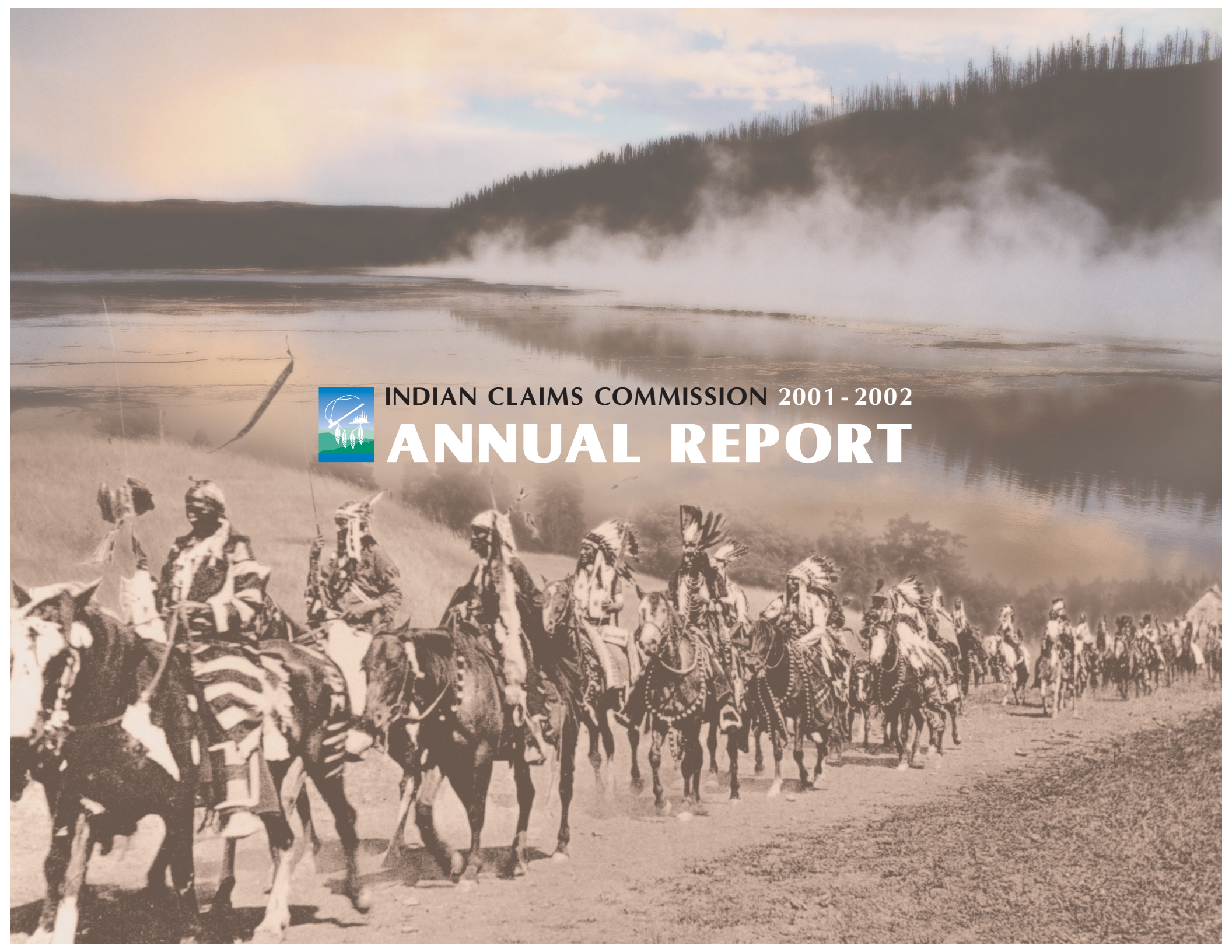
ANNUAL REPORT





INDIAN CLAIMS COMMISSION 2001 - 2002

ANNUAL REPORT



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Maun-gua-daus (George Henry), Chief of the Ojibwa Nation, ca. 1846-1848. National Archives of Canada, PA-125840.

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Wanduta (Red Arrow), a Dakota (Sioux) man from the Oak Lake area in Manitoba. National Archives of Canada, PA-030027.

Bottom right photograph:

Studio portrait of Dakota (Sioux) woman, Manitoba, 1909. Photographer: Winnipeg Photo Company. National Archives of Canada, PA-029555.

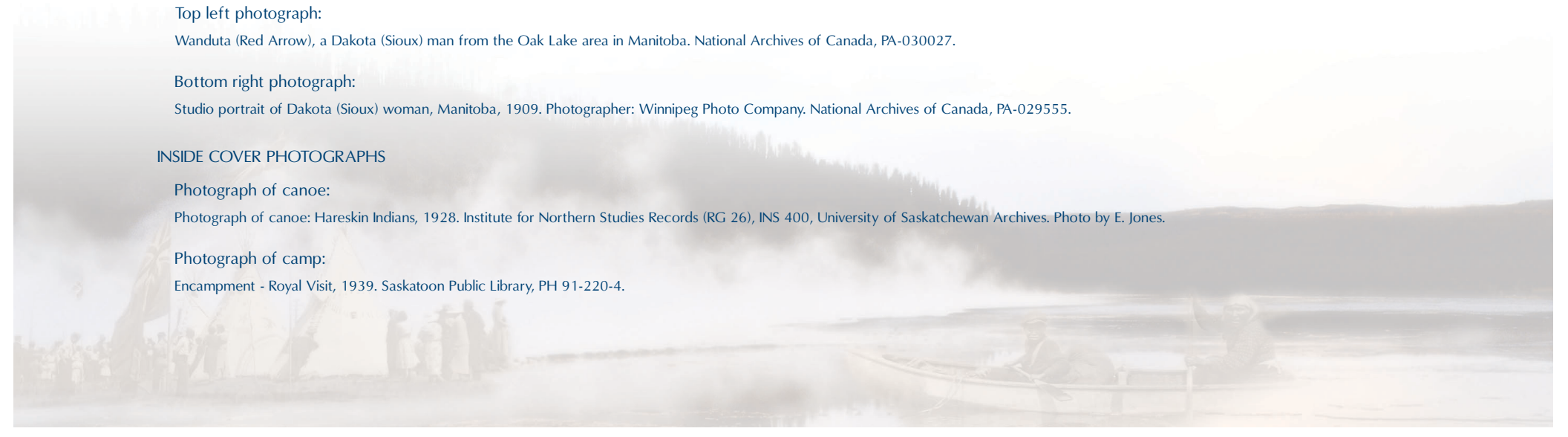
INSIDE COVER PHOTOGRAPHS

Photograph of canoe:

Photograph of canoe: Hareskin Indians, 1928. Institute for Northern Studies Records (RG 26), INS 400, University of Saskatchewan Archives. Photo by E. Jones.

Photograph of camp:

Encampment - Royal Visit, 1939. Saskatoon Public Library, PH 91-220-4.



**To Her Excellency
The Governor General in Council**

MAY IT PLEASE YOUR EXCELLENCY

In 2001 - 2002 the Indian Specific Claims Commission completed and released three reports. As of March 31, 2002, inquiries into 55 claims had been completed. This report summarizes our major achievements and activities in relation to specific claims last year.

Yours truly,



Phil Fontaine
Chief Commissioner

March 2003



2001 - 2002 Annual Report

Indian Claims Commission



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2001 - 2002 Annual Report

Indian Claims Commission



MESSAGE FROM THE CHIEF COMMISSIONER

On behalf of my colleagues, I am pleased to present the report of the Indian Claims Commission for the year 2001 - 2002.

At the dawn of the fiscal year, the Commission welcomed two new Commissioners: Renée Dupuis from Quebec City and Alan Holman from Charlottetown, P.E.I.

Although the resolution of specific land claims continues to be a lengthy and sometimes frustrating process from the perspective of the parties involved, by the end of this year my colleagues and I were somewhat encouraged by signs that change may be on the horizon. There are indications that the federal government is contemplating reform of the present land claims system, something which this Commission has been advocating in the most forceful terms almost since its inception.

We therefore renew our appeal to the federal government to take action. An independent claims body is urgently needed to bring justice and fairness to the specific land claims system. The creation of such a body would be in the best interest not

just of First Nations but of all Canadians. We look forward with much anticipation to progress in this field.

Over the past year, the Commission has made progress of its own. We issued three reports, two of which have had a positive outcome, and we are conducting a total of 20 inquiries. Since its creation in 1991, the Commission has completed 55 inquiries, 25 of which have either been settled or accepted for negotiation.

In June 2001, the Commission was pleased to learn that Canada had accepted for negotiation a claim by the Chippewas of the Thames First Nation in southwestern Ontario. This pre-Confederation claim (known as the Clench Defalcation) relates to the misappropriation of money, derived from the sale of land surrendered in 1834 by the First Nation, by the agent responsible for selling the land. The First Nation's unsuccessful attempts to settle this claim – which centres on the government's fiduciary obligation to the First Nation – date back well over a hundred years.

In September 2001, the Mistawasis First Nation in Saskatchewan and Canada arrived at a settlement in which the First Nation received \$16.3 million in compensation for damages and losses stemming from the illegal surrender of its land almost a century ago. The Commission signed off on its report regarding this inquiry on March 27, 2002.

In December 2001, the Commission released its report on the claim by the Esketemc First Nation of British Columbia that the federal government disallowed or reduced three reserves that had been set aside for the band. The Commission found that Canada had breached its fiduciary obligations to the ancestors of the present-day Esketemc First Nation. As of the date of this report, the federal government has not responded to the Commission's recommendations.

During the past year, the Commission has provided mediation services in 17 ongoing claims. Of these, 12 are in formal negotiations between the First Nations and the federal government while three claims are being pursued as pilot projects, and two are in the planning conference stage. The Commission's mediation unit has participated in a total of 76 meetings on the 17 ongoing claims. The Commission is encouraged by the increasing demand for its mediation and facilitation services.

As the Commission pointed out in a mediation report issued late in the fiscal year, we are particularly proud of the role played by the Commission in the successful negotiation of the Fishing Lake First Nation's 1907 surrender claim. The Commission's inquiry process afforded the First Nation the opportunity to submit new evidence and arguments that ultimately caused Canada to reconsider the claim and accept it for negotiation. Following Canada's acceptance, both parties agreed to have the Commission act as facilitator in the ensuing negotiations.

In conclusion, the Commission wishes to bid farewell to Commissioner P. E. James Prentice, who resigned in December 2001. Commissioner Prentice was appointed to the Commission in 1992 and named Co-Chair in 1994, a position he held until August 2001. Throughout his tenure, Commissioner Prentice participated in many key decisions in the area of specific land claims and made an outstanding contribution to the work of the Commission. The Commission thanks him for his hard work and his dedication. We also wish to acknowledge the excellent work done by Commissioner Daniel J. Bellegarde, who co-chaired the Commission with Mr Prentice. Mr Bellegarde continues to serve as a Commissioner.

*Phil Fontaine,
Chief Commissioner,
Indian Claims Commission*

COMMISSION'S RECOMMENDATION TO GOVERNMENT, 2001 - 2002

The Commission believes that a First Nation with a specific land claim must have reasonable access to the specific claims process in order to ensure that justice is done and is seen to be done. We view research funding as an access-to-justice issue.

Sound, thorough research is an essential component of land claims. Many First Nations do not have the financial resources required to do the research necessary to mount an effective claim. The Research Funding Division of the Department of Indian and Northern Affairs' Specific Claims Branch is responsible for allocating funds to First Nations to enable them to research their claims.

We believe that the Division lacks sufficient resources to fulfill its responsibilities to First Nations claimants. This view is supported by the fact that, more often than not, research funds run out well before the end of a given fiscal year.

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

Recent experience has given the Commission cause for concern about the Research Funding Division's exercise of discretion and lack of transparency in responding to requests for funding. The Commission is particularly troubled by instances in which the Commission has authoritatively interpreted its mandate to proceed with an inquiry under the *Inquiries Act*, only to have the Division refuse funding to a First Nation claimant. This refusal effectively prevents First Nations from participating in a process that Canada holds out to them, in its letters rejecting a specific claim, as an alternative to litigation.

We therefore recommend that Canada clarify the mandate of the Research Funding Division of the Department of Indian Affairs and Northern Development to ensure that:

- (i) clear and precise funding criteria are established and communicated to First Nations
- (ii) First Nations are fairly treated when applying for research funds
- (iii) where First Nations are denied funding, at whatever stage of the process, that the Research Funding Division provide written reasons which clearly explain the application of its funding criteria guidelines.



Appendices

A Status of Claims as of March 31, 2002

Summary of Claims as of March 31, 2002

Inquiry Reports, 2001 - 2002

Inquiries

Summary of Mediation and Facilitation as of
March 31, 2002

Mediation Reports, 2001 - 2002

Mediation and Facilitation

B Operational Overview

Organization Chart

C The Commissioners





Appendix **A**

Status of Claims as of March 31, 2002

Summary of Claims as of March 31, 2002

Inquiry Reports, 2001 - 2002

Inquiries

Summary of Mediation and Facilitation as of
March 31, 2002

Mediation Reports, 2001 - 2002

Mediation and Facilitation



STATUS OF CLAIMS AS OF MARCH 31, 2002

| ICC Report, Nature of Claim, and Recommendation | Date of Report | Date of Response | Nature of Response from Canada to Recommendation | Accepted/ Settled/Other |
|---|---|--------------------|--|--|
| <p>1 Athabasca Chipewyan W.A.C. Bennett Dam and damage to IR 201 Recommended claim be accepted for negotiation</p> | <p>March 1998</p> | <p>April 2001</p> | <p>Government rejected recommendations made in March 1998: "Canada did not have a fiduciary duty to protect Reserve No. 201 against damage caused by construction and the operation of the Bennett Dam by a third party. Canada did not have the duty to invoke the provisions of the <i>Navigable Waters Protection Act</i> to stop the construction of the Bennett Dam or dispose of it once it was built. Furthermore, Canada did not have an obligation on the basis of Treaty No. 8 to ensure that the reserve would be protected from any damage resulting from the construction and operation of the Bennett Dam"</p> | <p>Rejected April 2001</p> |
| <p>2 Athabasca Denesuline Aboriginal and treaty harvesting rights north of 60th parallel Recommended government acknowledge treaty rights</p> | <p>December 1993 Supplementary report November 1995</p> | <p>August 1994</p> | <p>Government rejected recommendations made in December 1993 report; no response to November 1995 Supplementary Report</p> | <p>Rejected August 1994</p> |

| ICC Report, Nature of Claim, and Recommendation | Date of Report | Date of Response | Nature of Response from Canada to Recommendation | Accepted/Settled/Other |
|--|----------------|------------------|--|---------------------------------|
| 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 Part of claim recommended for negotiation | September 1995 | March 2002 | Government rejected recommendations made in September 1995 report, stating: "compensation for commercial harvesting rights was not based on either Indian status or membership in an Indian Band; rather, it was to be paid to anyone who held a licence on the land which became the Primrose Lake Air Weapons Range" | Rejected March 2002 |
| 6 Carry the Kettle Cypress Hills Pursuant to supplementary mandate, recommended government recognize the Carry the Kettle First Nation's historical connection to the Cypress Hills and restore to the Assiniboine people their connection to the territory | 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 rejected the Commission's recommendation to restore to the Assiniboine people their connection to the territory. | Rejected January 2001 |

| ICC Report, Nature of Claim, and Recommendation | Date of Report | Date of Response | Nature of Response from Canada to Recommendation | Accepted/ Settled/Other |
|---|----------------|------------------|---|--|
| <p>7 Canoe Lake Primrose Lake Air Weapons Range – breach of treaty and fiduciary obligations Recommended claim be accepted for negotiation</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 | <p>Settled 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> |
| <p>8 Chippewas of Kettle and Stony Point 1927 surrender Recommended claim be accepted for negotiation</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> | |
| <p>9 Chippewa Tri-Council Collins Treaty Accepted with assistance of Commission</p> | March 1998 | None required | Government accepted claim for negotiation | <p>Settled December 1998 for \$565,000 in federal compensation</p> |
| <p>10 Chippewas of the Thames Clench Defalcation claim Accepted with assistance of Commission</p> | March 2002 | None required | Government accepted claim for negotiation | <p>Accepted June 2001</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>11 Chippewas of the Thames Muncey land claim Settled with assistance of Commission</p> | December 1994 | None required | Government accepted claim for negotiation | <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>12 Cold Lake Primrose Lake Air Weapons Range – breach of treaty and fiduciary obligations Recommended claim be accepted for negotiation</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 | <p>Settled March 2002 for \$25,500,000 in federal compensation and creation of an additional reserve of 5000 acres</p> |
| <p>13 Cowessess QVIDA flooding claim Recommended claim be accepted for negotiation</p> | February 1998 | December 1998 | Government accepted claim for negotiation | <p>Accepted December 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>14 Cowessess 1907 surrender Recommended the portion of IR 73 surrendered in 1907 be accepted for negotiation</p> | March 2001 | March 2002 | Government rejected recommendations of March 2001 report, but will proceed to Phase II of this inquiry as previously agreed upon by the parties | Rejected March 2002 |
| <p>15 Duncan's 1928 surrender Recommended that the surrender of IR 151E be accepted for negotiation</p> | September 1999 | June 2001 | Government rejected recommendation made in September 1999 report, stating: "the Commission did not examine the terms of the proposed lease and, as a result, made no finding that the 1923 lease proposal was either more or less advantageous to the First Nation than a surrender" | Rejected June 2001 |
| <p>16 Eel River Bar Eel River Dam Recommended claim not be accepted for negotiation</p> | December 1997 | None required | No substantive response from government required | |
| <p>17 Esketemc Indian Reserves 15, 17, and 18 Recommended that the disallowance or reduction of IR 15, 17, and 18 be accepted for negotiation</p> | November 2001 | 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>18 Fishing Lake 1907 surrender Government accepted claim for negotiation after considering evidence revealed during ICC community session</p> | March 1997 | None required | Government accepted claim for negotiation, August 1996 | <p>Settled August 2001 for financial compensation package totalling \$34.5 million</p> |
| <p>19 Flying Dust Primrose Lake Air Weapons Range – loss of commercial and treaty harvesting rights Part of claim recommended for negotiation</p> | September 1995 | March 2002 | Government rejected recommendations made in September 1995 report, stating: "compensation for commercial harvesting rights was not based on either Indian status or membership in an Indian Band; rather, it was to be paid to anyone who held a licence on the land which became the Primrose Lake Air Weapons Range" | <p>Rejected March 2002</p> |
| <p>20 Fort McKay Treaty land entitlement Recommended that Government owed outstanding entitlement of 3,815 acres to Band</p> | December 1995 | April 1998 | Government accepted claim for negotiation | <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>21 Friends of the Michel Society 1958 enfranchisement No lawful obligation found, but recommended that government grant special standing to submit specific claims</p> | <p>March 1998</p> | <p>None required</p> | <p>No substantive response from government required</p> | |
| <p>22 Gamblers Treaty land entitlement Outstanding treaty land entitlement, if any, should be calculated based on an 1877 date of first survey</p> | <p>October 1998</p> | <p>November 1998</p> | <p>Government accepted claim for negotiation</p> | <p>Accepted November 1998</p> |
| <p>23 Homalco Aupe IR 6 and 6A - statutory or fiduciary obligation to obtain 80 acres of land from province of BC Part of claim recommended for negotiation re: 10 acres</p> | <p>December 1995</p> | <p>December 1997</p> | <p>Government rejected recommendations made in December 1995 report</p> | <p>Rejected December 1997</p> |
| <p>24 Joseph Bighead Primrose Lake Air Weapons Range - loss of commercial and treaty harvesting rights Recommended claim not be accepted for negotiation</p> | <p>September 1995</p> | <p>None required</p> | <p>No substantive response from government required</p> | |

| ICC Report, Nature of Claim, and Recommendation | Date of Report | Date of Response | Nature of Response from Canada to Recommendation | Accepted/ Settled/Other |
|---|----------------|------------------|--|---|
| 25 Kahkewistahaw Treaty land entitlement Recommended claim not be accepted for negotiation | November 1996 | None required | No substantive response from government required | |
| 26 Kahkewistahaw 1907 surrender Recommended claim be accepted for negotiation | February 1997 | December 1997 | Government accepted claim for negotiation | Accepted December 1997 |
| 27 Kawacatoose Treaty land entitlement Recommended that government owed a shortfall of 8,576 acres to Band, subject to confirming research | March 1996 | April 1998 | Government accepted claim for negotiation | Settled October 2000 for \$23 million in federal compensation |
| 28 Key 1909 surrender Recommended claim not be accepted for negotiation | March 2000 | 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>29 Lac La Ronge Treaty land entitlement Recommended claim not be accepted for negotiation</p> | March 1996 | None required | No substantive response from government required | |
| <p>30 Lax Kw'alaams Demand for absolute surrender as pre-condition to settlement Recommended that government exclude aboriginal rights from scope of surrender clause</p> | June 1994 | NONE | NO RESPONSE FROM GOVERNMENT | |
| <p>31 Long Plain Loss of use of treaty entitlement land Recommended claim be accepted for negotiation</p> | 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 |
| <p>32 Lucky Man Cree Treaty land entitlement Recommended further research to establish the proper treaty land entitlement population</p> | March 1997 | May 1997 | Government accepted recommendation: government research indicated no TLE shortfall; First Nation is reviewing and conducting its own research | Accepted May 1997 |

| ICC Report, Nature of Claim, and Recommendation | Date of Report | Date of Response | Nature of Response from Canada to Recommendation | Accepted/Settled/Other |
|---|----------------|------------------|--|---|
| 33 Mamaleleqala Qwe'Qwa'Sot'Enox McKenna-McBride applications Recommended claim be accepted for negotiation | March 1997 | December 1999 | Government rejected recommendations made in March 1997 report | Rejected December 1999 |
| 34 Micmacs of Gesgapegiag Pre-Confederation claim to 500-acre island No substantive recommendations made because government agreed to reconsider merits of claim | December 1994 | None required | In March 1995, government acknowledged receipt of report and advised claim was in abeyance pending outcome of related court case | |
| 35 Mikisew Cree Economic entitlements under Treaty 8 Government accepted claim for negotiation after planning conference | March 1997 | None required | Government accepted claim for negotiation | Accepted December 1996 |
| 36 Mistawasis 1911, 1917, and 1919 surrenders Government accepted claim for negotiation mid-inquiry | March 2002 | None required | Government accepted claim for negotiation | Settled September 2001 for \$16.3 million in compensation |

| ICC Report, Nature of Claim, and Recommendation | Date of Report | Date of Response | Nature of Response from Canada to Recommendation | Accepted/ Settled/Other |
|--|----------------------|----------------------|--|--|
| <p>37 Moose Deer Point Pottawatomi rights Recommended additional research</p> | <p>March 1999</p> | <p>March 2001</p> | <p>Government rejected recommendations made in March 1999 report</p> | <p>Rejected March 2001</p> |
| <p>38 Moosomin 1909 surrender Recommended claim be accepted for negotiation</p> | <p>March 1997</p> | <p>December 1997</p> | <p>Government accepted claim for negotiation</p> | <p>Accepted December 1997</p> |
| <p>39 Muscowpetung QVIDA flooding claim Recommended claim be accepted for negotiation</p> | <p>February 1998</p> | <p>December 1998</p> | <p>Government accepted claim for negotiation</p> | <p>Accepted December 1998</p> |
| <p>40 Nak'azdli Aht-Len-Jees IR 5 and Ditchburn-Clark Commission Government accepted claim for negotiation after considering evidence revealed during ICC community session</p> | <p>March 1996</p> | <p>None required</p> | <p>Government accepted claim for negotiation</p> | <p>Accepted January 1996</p> |

| ICC Report, Nature of Claim, and Recommendation | Date of Report | Date of Response | Nature of Response from Canada to Recommendation | Accepted/Settled/Other |
|---|----------------|------------------|--|----------------------------------|
| 41 'Namgis Cormorant Island Recommended claim be accepted for negotiation | March 1996 | May 2001 | Government rejected recommendations made in March 1996 report | Rejected May 2001 |
| 42 'Namgis McKenna-McBride applications Recommended part of claim be accepted for negotiation | February 1997 | December 1999 | Government rejected recommendations made in February 1997 report | Rejected December 1999 |
| 43 Nekaneet Entitlement to treaty benefits claim Government accepted claim for negotiation mid-inquiry | March 1999 | None required | Government accepted claim for negotiation | Accepted October 1998 |
| 44 Ochapowace QVIDA flooding claim Recommended claim be accepted for negotiation | 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 |
|--|----------------|------------------|--|---|
| <p>45 Pasqua QVIDA flooding claim Recommended claim be accepted for negotiation</p> | February 1998 | December 1998 | Government accepted claim for negotiation | <p>Accepted December 1998</p> |
| <p>46 Peguis Treaty land entitlement Government accepted claim for negotiation after a number of planning conferences</p> | March 2001 | None required | Government accepted claim for negotiation | <p>Accepted June 1998</p> |
| <p>47 Roseau River Anishinabe Medical aid Recommended claim be accepted for negotiation</p> | February 2001 | NONE | NO RESPONSE FROM GOVERNMENT | |
| <p>48 Sakimay QVIDA flooding claim Recommended claim be accepted for negotiation</p> | February 1998 | December 1998 | Government accepted claim for negotiation | <p>Accepted December 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 |
|---|----------------|------------------|---|----------------------------------|
| 49 Standing Buffalo QVIDA flooding claim Recommended claim be accepted for negotiation | February 1998 | December 1998 | Government accepted claim for negotiation | Accepted December 1998 |
| 50 Sturgeon Lake Agricultural lease Accepted for negotiation with assistance of Commission | March 1998 | None required | Government accepted claim for negotiation | Settled October 1998 |
| 51 Sumas IR 6 railway right of way Recommended claim be accepted for negotiation | February 1995 | December 1995 | Government rejected recommendations made in February 1995 report on grounds that claim involved issues before the courts in other cases | Rejected December 1995 |
| 52 Sumas 1919 surrender of IR 7 Recommended joint research to assess fair market value of surrendered land | 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>53 Walpole Island Boblo Island Recommended First Nation re-submit its claim under the Comprehensive Claims Policy</p> | <p>May 2000</p> | <p>None required</p> | <p>No substantive response required from government</p> | |
| <p>54 Waterhen Lake Primrose Lake Air Weapons Range - loss of commercial and treaty harvesting rights Recommended part of claim be accepted for negotiation</p> | <p>September 1995</p> | <p>March 2002</p> | <p>Government rejected recommendations made in September 1995 report, stating: "compensation for commercial harvesting rights was not based on either Indian status or membership in an Indian Band; rather, it was to be paid to anyone who held a licence on the land which became the Primrose Lake Air Weapons Range"</p> | <p>Rejected March 2002</p> |
| <p>55 Young Chipeewayan Unlawful surrender claim Recommended that claim not be accepted for negotiation but that further research be undertaken regarding the surrender proceeds</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, 2002

In 2001 - 2002, the Commission released three reports. A summary of the findings and recommendations made by the Commission in each inquiry is set out below.

INQUIRY REPORTS, 2001 - 2002

Chippewas of the Thames

Clench Defalcation claim, Ontario

In this pre-Confederation claim, the Chippewas of the Thames held that moneys owed to the First Nation from the sale of land surrendered in 1834 were misappropriated by Superintendent Joseph Brant Clench of the Indian Department. After the First Nation's unsuccessful attempts to address this grievance in the 19th century, a settlement was reached with the federal government in 1906.

In 1975 the federal government rejected the claim brought to it by the Union of Ontario Indians the previous year, on the basis of the 1906 settlement.

In August 1998, the First Nation requested that the Commission conduct 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. Several conference calls were held to receive status reports on the progress of the claim from the government.

On June 18, 2001, a planning conference was held at the ICC's office in Ottawa, to discuss the claim, and on the same date the claim was accepted for negotiation by Canada. On March 27, 2002, the Commission produced its report regarding this inquiry.

Esketemc First Nation

Indian Reserves 15, 17, and 18, British Columbia

In December 2001, the Commission released its report on the claim by the Esketemc First Nation that the federal government, through the work of federal representative W.E. Ditchburn and his provincial counterpart, J.W. Clark, unlawfully disallowed or reduced three reserves – Indian Reserves (IR) 15, 17, and 18 – that had, in the First Nation’s view, been previously set apart for the Alkali Lake Band by the McKenna-McBride Commission in 1916.

Although the Commission concluded that the McKenna-McBride Commission lacked the authority to set apart IR 15, 17, and 18 as reserves or *de facto* reserves, it found that the federal government nevertheless owed an outstanding lawful obligation to the First Nation based on fiduciary principles. By the terms of its own legislation and the McKenna-McBride agreement, Canada unilaterally assumed the responsibility for representing the interests of the Alkali Lake Band, and it was reasonable for the Band to expect Canada to act in its best interests. The Band was vulnerable to the manner in which Canada exercised its discretion or power, first in the creation of the McKenna-McBride Commission, and later in the appointment of Ditchburn to review the McKenna-McBride Commission’s report, created with input from local ranchers and provincial representatives but

not from the Band itself. Ultimately, Ditchburn recommended acceptance of Clark’s proposal, based on suspect information, to reduce or disallow IR 15, 17, and 18, and the federal government accepted that recommendation.

The Indian Claims Commission found that Canada had a duty: (a) to scrutinize and assess, from the Band’s point of view, the merits of Clark’s proposal; (b) to inform the Band of the proposal with information about the alternatives and their possible consequences; (c) to seek instructions as to how to proceed, if the proposal was not acceptable to the Band; and (d) to withhold consent if the proposal was improvident. If so instructed, Canada should have referred the matter to the Secretary of State for the Colonies to determine whether the Band was entitled to the lands. Alternatively, if Canada was unable to secure IR 15, 17, and 18 for the Band, it should have acquired and provided other reserve lands to the Band or compensated the Band for the loss of IR 15, 17, and 18 so that it could acquire lands on its own account. Since Canada failed to do any of these things, the Commission concluded that it had breached its fiduciary obligations to the ancestors of the present-day Esketemc First Nation.

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

Mistawasis First Nation

1911, 1917, and 1919 surrenders, 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.

The claim was accepted for negotiation and a settlement was reached in September 2001, providing the First Nation \$16.3 million in compensation for damages and losses suffered as a result of the surrender. On March 27, 2002, the Commission signed off on its report regarding this inquiry.

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.

In February 2001, the First Nation agreed to hold the litigation in abeyance. On December 5, 2001, a community session was held in Edmonton, Alberta. Several conference calls were held during the year instead of planning conferences; this alternative proved cost effective and efficient.

Canupawakpa Dakota First Nation

Turtle Mountain surrender, Manitoba

In May 2000, the Canupawakpa Dakota First Nation requested 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.

A planning conference was held in July 2001 to discuss the issues. In December 2001 and January 2002, community sessions were conducted at Sioux Valley and Canupawakpa. Written and oral submissions are scheduled.

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.

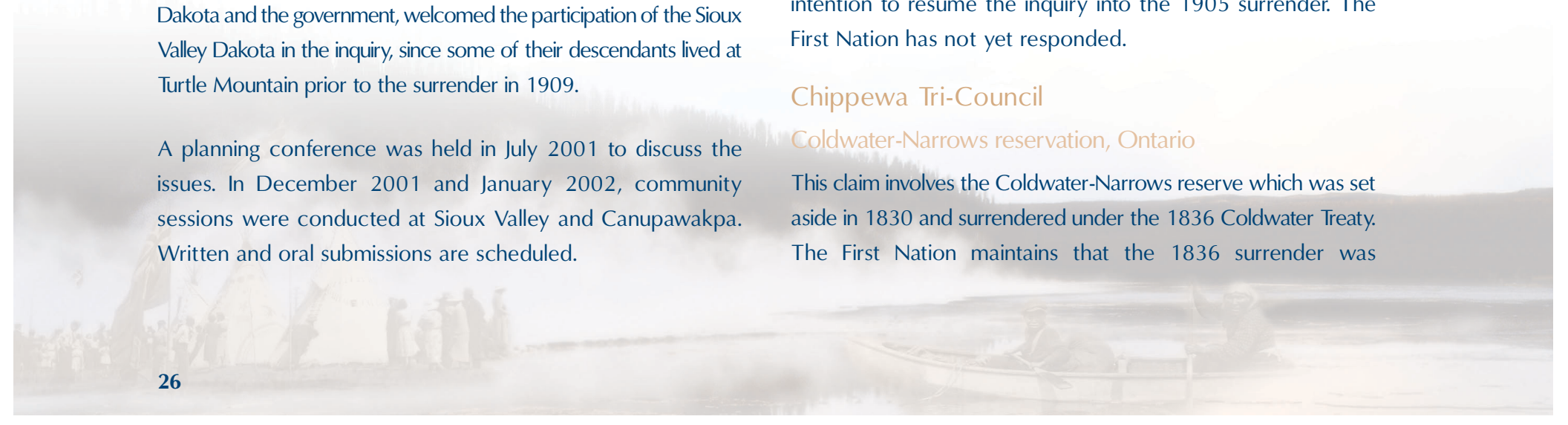
The First Nation requested that oral arguments be postponed to await completion of a research study it commissioned. In August 1998, the First Nation requested that the claim be put in abeyance until completion of the Cypress Hills inquiry.

The ICC report into the Carry the Kettle - Cypress Hills claim was released in July 2000. In April 2001, the Commission wrote to the First Nation requesting confirmation of its intention to resume the inquiry into the 1905 surrender. The First Nation has not yet responded.

Chippewa 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. In the year 2000, the government made several promises to complete the review of this claim, promises that as of March 31, 2002 remain outstanding.

On October 5, 2001, a planning conference was held to update Canada's progress in its review. The First Nation gave Canada a deadline of January 15, 2002, to finalize their response. A meeting scheduled on that date was postponed to February 25, 2002, to give Canada more time to formulate its decision. That meeting was also rescheduled and the planning conference was finally held on March 18, 2002, in Toronto.

Conseil de Bande de Betsiamites

Highway 138 and the Betsiamites reserve, Quebec

This claim alleges that neither the federal nor the provincial government obtained a right of way for the construction of a road (Highway 138) through the Betsiamites reserve, and that band funds were illegitimately used for the construction and maintenance of this 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 research documents regarding this claim, and a planning conference was held in March 2001 to define the issues to be considered. On June 14-15, 2001, the Commission held a community session in Betsiamites, where it heard evidence from elders. In spring 2002, the Commission will hear from at least one additional witness before the record of evidence is closed and written and oral submissions are made.

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 alleges that no right of way was obtained for the construction of a bridge on the Betsiamites reserve. Both the government and the First Nation submitted the research documents regarding this claim, and a planning conference was held in March 2001 to define the issues to be considered. On June 14-15, 2001, the Commission held a community session in Betsiamites, where it heard evidence from elders. In spring 2002, the Commission will hear from at least one additional witness before the record of evidence is closed and written and oral submissions are made.

Cumberland House Cree Nation

Claim to IR 100A, 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.

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

Documents and exhibits were exchanged in June, a planning conference was held in August and a community session took place on November 19, 2001. The parties will proceed to the next step in the inquiry after the community session for the James Smith Cree Nation is concluded.

James Smith Cree Nation

Chakastaypasin IR 98, Saskatchewan

The First Nation alleges that the federal government unlawfully surrendered and disposed of the Chakastaypasin reserve. In December 1998, the government rejected the claim, stating that by 1898, all Chakastaypasin Band members had moved off IR 98, their names had been added to other Bands' paylists, and as a result, the Chakastaypasin Band had ceased to exist. The government argues that, under these circumstances, no surrender under the *Indian Act* was required and the government had the authority to dispose of the abandoned reserve through the Crown's prerogative power, without compensation to the former Chakastaypasin Band members. Nevertheless, the Crown argued that the government did try to comply with the *Indian Act* surrender provisions by gathering together the former band members eligible to vote, and 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 six planning conferences have been held to define issues and deal with research questions. As well, the Commission went to the community in June 2001 to videotape the evidence of elders to ensure that evidence has been

collected. A full community session scheduled for November 2001 was postponed, and will be rescheduled in the new year.

There have been a number of meetings and conference calls to try to determine whether the various First Nations who accepted membership transfers from Chakastaypasin people in 1898 (the Host Bands) will participate in the inquiry, and if so, to what degree. No decision has yet been reached. Also, Canada continues to review one small aspect of the claim; the pre-surrender and post-surrender obligations regarding Sugar Island, a part of Chakastaypasin reserve which was not sold until nearly 50 years after the surrender.

James Smith Cree Nation

Cumberland reserve 100A, Saskatchewan

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

A total of six planning conferences have been held to define the issues and discuss research requirements. As well, the Commission went to the community in June 2001 to videotape the evidence of elders, to ensure that all evidence has been collected. A full community session was convened on November 20, 2001, but since the panel was not able to hear from all witnesses, a continuance will be scheduled in the new year.

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 payroll research, according to specific claims guidelines, revised in October 1998. In February, Canada submitted a report on the first part of the research, intended to establish the date of first survey. Paylist analysis from Canada and the First Nation is pending.

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 was put into abeyance while the parties pursued this path.

In August 2001, the First Nation asked the ICC to reactivate the inquiry. However, on October 5, 2001, Canada advised the Commission that it was withdrawing from the inquiry

process because the claim did not fall within its Specific Claims Policy. A planning conference was held in October 2001 and a community session was conducted in January 2002. Canada did not attend or participate in either.

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

The Commission held a planning conference in July 1998. In September 1998, the First Nation requested that the claim be put in abeyance 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 explain adequately the circumstances around the purchase of traditional land in 1787 (known as the Toronto Purchase) and failed to inform the First Nation that the 1787 surrender was invalid. The First Nation also 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.

As of March 31, 2002, the First Nation was continuing to await the response of the Minister of Indian Affairs and Northern Development to this claim.

Mistawasis First Nation

Compensation criteria, Saskatchewan

In 1992, the First Nation submitted a claim to the Department of Indian Affairs and Northern Development 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. As a result of the acceptance and successful negotiation of the Mistawasis First Nation's claim with respect to the 1911, 1917, and 1919 surrenders, the inquiry into the compensation criteria has been closed.

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 treaty land entitlement (TLE) policy resulting from the Commission's Fort McKay and Kawacatoose findings, new research was conducted to determine if there was an outstanding TLE obligation. In October 1999, the government provided a paylist analysis indicating a shortfall of treaty land under the existing TLE policy. However, in May 2000, before Canada could complete its review process, the First Nation filed a claim in the courts against the federal government relating to issues not within the scope of the Commission's inquiry which may or may not have an impact on the current TLE

claim. Canada took the position that the issues in the litigation were incompatible with those of the TLE claim and refused to complete its review until the litigation was resolved.

In March 2002, the First Nation advised the Commission of a change in its legal counsel.

Paul Indian Band

Kapasawin Townsite, Alberta

The First Nation submitted a claim to the Specific Claims Branch in June 1996, regarding the mismanagement of the sale of IR 133B. The claim was reviewed and accepted for negotiation in July 1998. The First Nation did not agree with the basis for negotiation and on October 12, 2001, requested that the Commission hold an inquiry regarding the criteria used by the government for determining compensation.

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 in the early 1900s 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.

The Commission considered a mandate challenge by Canada regarding their authority to conduct an inquiry on a claim that has not been rejected under the Specific Claims Policy. The Commission ruled on September 14, 2001, that the inordinate time it took Canada to respond to the First Nation’s claim constituted a rejection of the claim. On October 10, 2001, a planning conference was held but Canada attended only as an observer to the proceedings, maintaining that the claim was still under review and had not been rejected.

On December 20, 2001, Canada informed the First Nation that its claim was rejected. Documents and exhibits have been compiled as a first step in the inquiry and a planning conference is scheduled for April 2002.

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 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 its 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. In October 2001, the Commission distributed to the parties for their consideration the results of this study, a report entitled "Quality of Land References for Indian Reserves in Treaties One, Two and Four." The parties have, to date, not submitted their comments on this research.

In March 2002, the First Nation advised the Commission of a change in its legal counsel.

Siksika First Nation

1910 surrender, Alberta

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

By November 2001, Canada had failed to produce an opinion and the First Nation requested that the Commission conduct an inquiry. In March 2002, a planning conference was held in which the parties agreed to begin the initial stages of the inquiry process (document compilation) while Canada finalizes its legal review.

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. Research conducted by Canada determined that the date of first survey was February 21, 1908, and the base payroll was the one dated June 29, 1908; the First Nation agreed that these were the appropriate dates. Canada is currently conducting a payroll analysis based on these dates. The Commission continues to monitor the progress of this claim; during the year, seven conference calls were held to discuss the progress of the claim.

Stó:lō Nation

Douglas reserves, British Columbia

Fourteen separate Bands within the Stó:lō Nation are bringing this claim forward. They are the Aitchelitz, Kwantlen,

Kwaw-Kwaw-Apilt, Lakahahmen, Matsqui, Scowlitz, Skowkale, Skwah, Skway, Soowahlie, Squiala, Sumas, Tzeachten, and Yakwekwioose Bands.

This claim alleges that, in 1864, James Douglas, Governor of the Colony of British Columbia, established reserves for the various bands of the Stó:lō Nation, reserves that were subsequently illegally reduced, and that when British Columbia entered Confederation in 1871, Canada inherited the duty to rectify this. In July 2000, the Stó:lō Nation made an initial request, confirmed a year later, for an ICC inquiry. Scheduling of the first planning conference has been postponed until the conditions and nature of the parties' participation in this inquiry are determined. In the meantime, the documentary evidence is being gathered and compiled by the Commission.

Sturgeon Lake First Nation

1913 surrender, Saskatchewan

In August 1996, the First Nation requested that the Commission conduct an inquiry into this claim on the grounds of irregularities regarding the surrender vote of 1913. At issue is whether a majority of eligible voters participated in a surrender vote in 1913 and whether they

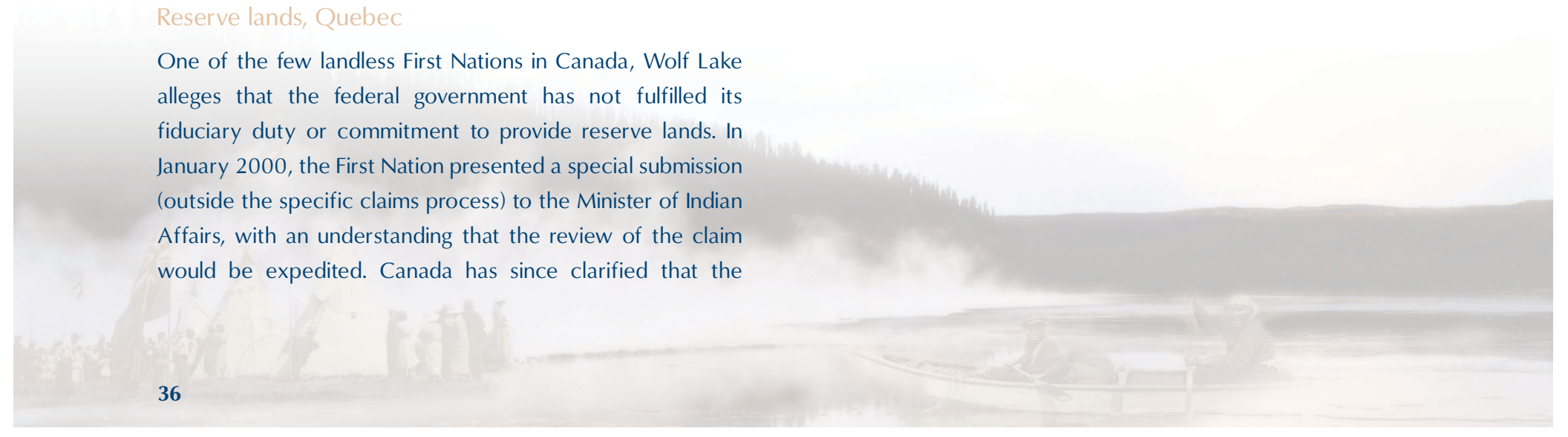
“habitually resided” on the reserve at the time of the vote. In September 1996, the First Nation submitted additional research to the Commission in support of its claim. In December 1996, the government began supplementary confirming research and the inquiry was placed in abeyance. In May 1998, the government advised the First Nation that no lawful obligation arises out of the 1913 surrender. In June 1998, the First Nation asked the Commission to resume the inquiry, 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.

Wolf Lake First Nation

Reserve lands, Quebec

One of the few landless First Nations in Canada, Wolf Lake alleges that the federal government has not fulfilled its fiduciary duty or commitment to provide reserve lands. In January 2000, the First Nation presented a special submission (outside the specific claims process) to the Minister of Indian Affairs, with an understanding that the review of the claim would be expedited. Canada has since clarified that the

documentary package provided by the First Nation was not sufficient and it must review all the relevant evidence before it can reach a decision. Concerned that the review would be unduly delayed, the First Nation requested in January 2002 that the Commission conduct an inquiry. At the request of the parties, this inquiry has been placed in abeyance, but the Commission will facilitate and monitor Canada’s review of the claim.



SUMMARY OF MEDIATION AND FACILITATION AS OF MARCH 31, 2002

Under its mediation mandate, the Indian Claims Commission works hard to help the parties in a dispute arrive at a settlement that is agreeable to both. In 2001 - 2002, the Commission issued one mediation report.

MEDIATION REPORTS, 2001 - 2002

Fishing Lake First Nation

1907 surrender, Saskatchewan

In March 2002, the Commission released its mediation report on the outcome of the negotiations on the Fishing Lake First Nation's land claim. This claim had been outstanding for more than 90 years; pursued actively under the federal government's specific claims process for seven years; and twice rejected by Canada.

The Commission, through its inquiry process, provided the opportunity for the First Nation to submit new evidence and arguments which caused Canada to reconsider the claim and accept it for negotiation. The First Nation asked the Commission to maintain an ongoing role in the negotiation of a settlement. The Commission's mediation helped to maintain momentum and to keep the parties focussed; more importantly it assisted the parties in arriving at mutually acceptable resolutions of various issues throughout the negotiation process.

MEDIATION AND FACILITATION

Blood Tribe/Kainaiwa

1889 Akers surrender, 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.

In mid-2000 Canada made an offer of settlement to the Blood Tribe; however this was not accepted because the Tribe felt that more work should be undertaken relating to the existence of oil and gas on the claim lands. Negotiations were suspended in April 2001 when the federal negotiator left the claim, and they were resumed in February 2002 when both a federal negotiator and legal counsel were appointed for Canada. The additional research on oil and gas began soon thereafter.

Chippewas of the Thames

Clench Defalcation, Ontario

This claim, brought to the Commission in August 1998, was accepted for negotiation in June 2001. It is based on the misappropriation of money owed to the Chippewas of the Thames from the sale of lands surrendered by the First Nation to the Crown in 1834. The funds were misappropriated about 1854 by Joseph Brant Clench, who had been appointed agent for the sale of Indian lands in southern Ontario in 1845.

Negotiations got underway in November 2001 following Canada's appointment of a federal negotiator and legal counsel. Early meetings focussed on the negotiation process including the negotiation protocol, a mediation/facilitation agreement, legal representation, a workplan, timelines, and budget issues. By early January 2002, the negotiation protocol and mediation-facilitation agreement had both been finalized. The negotiation meetings that followed identified issues to be negotiated, including the amount of the defalcation, the date of the defalcation, and how to "bring forward" the amount misappropriated into today's dollars.

Cote First Nation

Pilot project, Saskatchewan

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

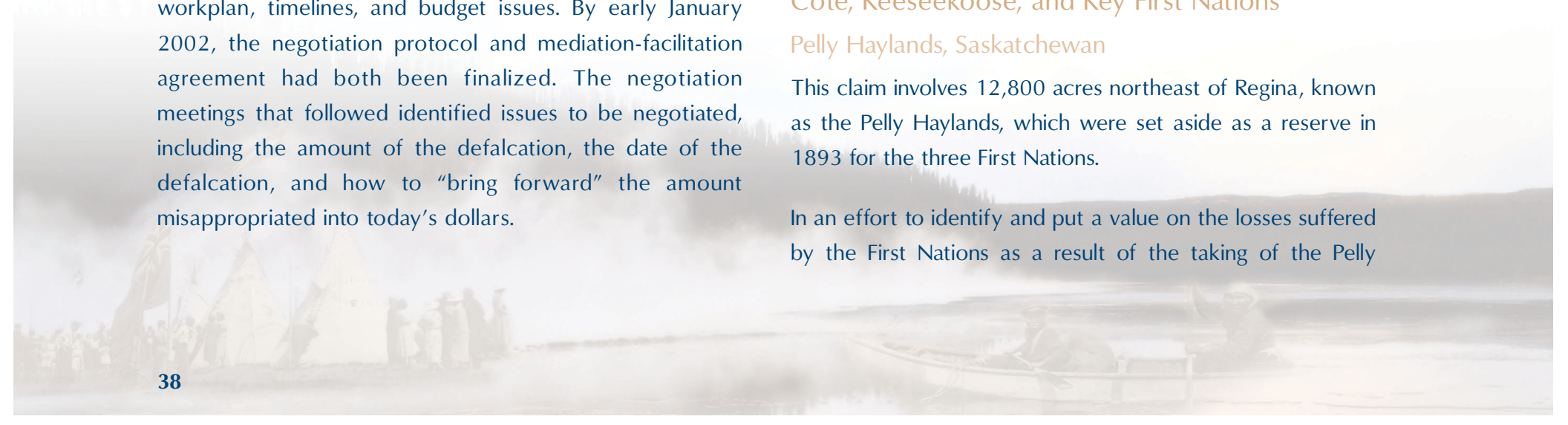
Considerable joint research culminated in the identification of potential claims and related legal issues. Because of the complexity and interrelatedness of the claims, the table felt that it would be most effective to deal with them in bundles. By the end of March 2001, the First Nation had prepared a draft negotiating position and Canada's legal counsel were planning work on the first legal opinion.

Cote, Keeseekoose, and Key First Nations

Pelly Haylands, Saskatchewan

This claim involves 12,800 acres northeast of Regina, known as the Pelly Haylands, which were set aside as a reserve in 1893 for the three First Nations.

In an effort to identify and put a value on the losses suffered by the First Nations as a result of the taking of the Pelly



Haylands, a number of land appraisals, loss-of-use studies and research studies were commissioned. The negotiating teams worked together on the terms of reference for five studies, which were jointly commissioned, including two land appraisals and three loss-of-use studies: agriculture, forestry and mineral. The First Nations independently undertook three additional projects including a traditional activities loss-of-use study, a water scoping research study and a special economic advantage and injurious affection study. An integral part of this work involved getting input from community elders.

Most of this past year was spent on study-related pursuits. By the end of March, the consultants had submitted their draft preliminary reports for the table's review, and in some cases had started working on the draft final reports. At the negotiation table, in addition to study-related discussions, preliminary talk had also begun on a number of settlement issues including communications, release and indemnity, and ratification.

Fort William First Nation

Pilot project, Ontario

Since 1998, the Commission has been participating in a pilot project to facilitate the resolution of a number of specific claims identified through independent research. The claims

involve surrenders and expropriations of reserve land for settlement, railway right-of-way, mining, and military purposes.

This was the first claim to be jointly submitted to the Department of Justice and it was accepted by Canada for negotiation in July 2000. Known as the Rifle Range Claim, it involved 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. After more than 18 months of negotiation, agreement on compensation was reached and the formalities of settlement begun.

The Grand Trunk Pacific Railway claim 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. Approximately 1,100 acres of railway lands were subsequently returned to the First Nation. By the end of this fiscal year, Canada had accepted the claim for negotiation.

Remaining claims include a mining claim, hydro right-of-way claim, timber claim, Chippewa Park and Neebing surrender claims and a water pipeline claim. Joint research has been completed on the majority of these claims and the First Nation is either considering its next steps or working on legal opinions.

Kahkewistahaw First Nation

1907 surrender, Saskatchewan

This claim resulted from the surrender of 33,281 acres – nearly three-quarters – of the Kahkewistahaw First Nation’s reserve. In negotiation since late 1998, a considerable amount of time was spent completing seven loss-of-use studies. In addition to acting as facilitator-mediator for the negotiations, the Commission took on the role of study coordinator. The loss-of-use studies formed the basis for a negotiated settlement agreement. By the end of the year, Canada had received its mandate, a formal offer was made to, and accepted by, the First Nation. Work was ready to begin on the formal settlement documents with a view to holding the ratification vote in the fall of 2002.

Michipicoten First Nation

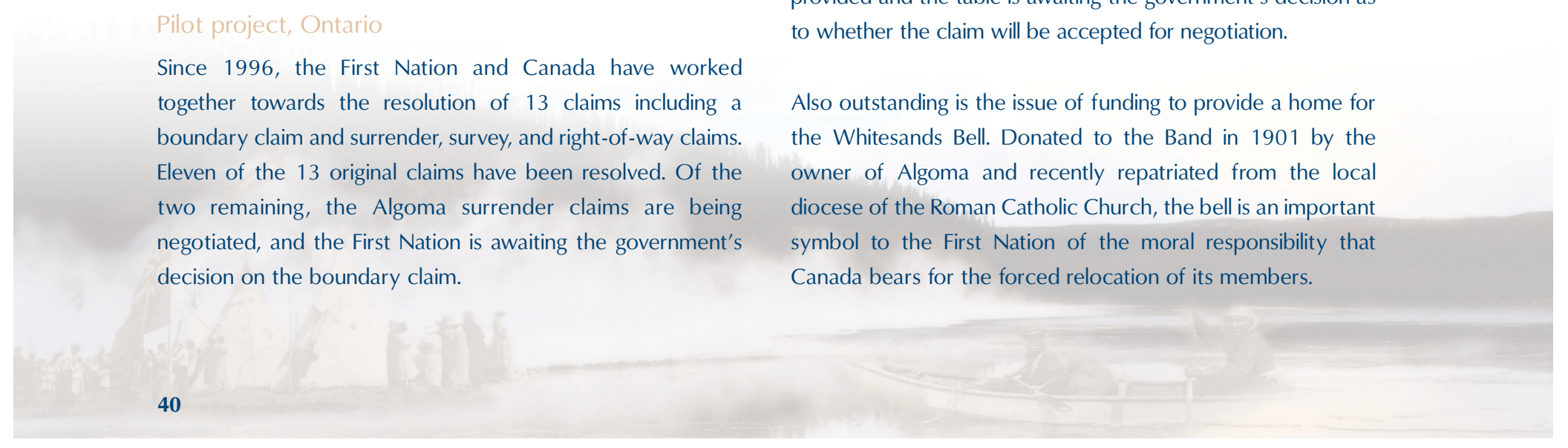
Pilot project, Ontario

Since 1996, the First Nation and Canada have worked together towards the resolution of 13 claims including a boundary claim and surrender, survey, and right-of-way claims. Eleven of the 13 original claims have been resolved. Of the two remaining, the Algoma surrender claims are being negotiated, and the First Nation is awaiting the government’s decision on the boundary claim.

The Algoma claims pertain to surrenders taken in 1855, 1899, and 1900, for a total of 2121.5 acres. Negotiations in the past year have focussed on determining values for the lands involved and the loss of its use since the surrenders occurred. Two land appraisals, a loss-of-rent study and a forestry loss-of-use study were undertaken, and by the end of the fiscal year, were at the draft final report stage. These studies will assist the negotiating teams in arriving at a settlement compensating the First Nation for its losses.

At issue in the boundary claim is an 1853 agreement regarding the boundaries of the Gros Cap IR #49 between the Crown, the Hudson’s Bay Company, and Chief Totoomenai that was never honoured and remains an outstanding legal obligation to this day. All necessary documents and representations have been provided and the table is awaiting the government’s decision as to whether the claim will be accepted for negotiation.

Also outstanding is the issue of funding to provide a home for the Whitesands Bell. Donated to the Band in 1901 by the owner of Algoma and recently repatriated from the local diocese of the Roman Catholic Church, the bell is an important symbol to the First Nation of the moral responsibility that Canada bears for the forced relocation of its members.



Moosomin First Nation

1909 surrender, Saskatchewan

This claim deals with the 1909 surrender of Moosomin IR 112 and 112A, approximately 25 square miles of fertile agricultural land. The early part of the year was spent in continued discussions on compensation criteria and the results of completed loss-of-use studies. A change in federal negotiators caused delays over the summer. The new federal negotiator, reflecting a different approach to claims negotiation, asked for and received an offer to settle from the First Nation. Canada's response is expected early in the new fiscal year. In the meantime, and in the hope of a favourable outcome, the table began discussing various settlement issues.

Qu'Appelle Valley Indian Development Authority (QVIDA)

Flooding, Saskatchewan

The Qu'Appelle Valley Indian Development Authority 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. Involved at present 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 claim was accepted for negotiation in 1999, and the Commission became involved as mediator-facilitator for the negotiation process in early 2000. In the past year, work has continued to identify heads-of-damage and loss-of-use studies to be undertaken. Of prime importance is the need to identify accurately the reserve boundaries, as they border the changing route of the Qu'Appelle River. Other outstanding issues include Canada's requirement for a surrender and other options for finality and release, previous cash settlements, future management of the Qu'Appelle system, and the availability of technical expertise for the First Nations. By the end of the fiscal year, the issue of continued authority to flood reserve lands, including demands for interim compensation, had emerged as the most important issue and threatened to derail negotiations.

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, Saskatchewan

While part of the QVIDA inquiry into the flooding claims concluded by the Commission in February 1998, Standing Buffalo Dakota Nation chose to pursue its flooding claim negotiations with Canada outside the larger organization. At

issue is approximately 58 acres of land around water control structures erected in the 1940s. Also at issue is an area of land known as IR 80B, in which both Standing Buffalo Dakota Nation and Muscowpetung First Nation (part of QVIDA) claim an interest.

Over the course of the year, negotiations moved slowly for various reasons, including the passing of Chief Mel Isnana, a change in Canada's legal counsel, and several months leave taken by the federal negotiator. Despite this, discussions continued on various issues including quantifying the lands flooded, the interest in 80B, options to surrender, heads of damage, past compensation received by the band, as well as additional research and valuation studies yet to be undertaken.

Thunderchild First Nation

1908 surrender, Saskatchewan

This claim deals with the 1908 surrender of Thunderchild IR 115, 115A, and half of 112A, in total approximately 10,572 acres of fertile agriculture land. The original treaty lands were ideally situated and suited for mixed farming and contained some of the best farm lands in the region. Following the surrender, the Band was forced to relocate on new reserve lands composed of rugged terrain with largely non-arable soils.

Intense discussions on compensation criteria and the results of the loss-of-use studies marked the year's early negotiation sessions. Delays occurred over the summer as a result of a turnover in federal negotiators. In the fall, the new federal negotiator, reflecting a different approach to claims negotiation, asked for and received an offer to settle from the First Nation. Canada's response is expected early in the new fiscal year. In the meantime, and in the hope of a favourable outcome, the table began discussing various settlement issues.

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 Star, Fishing Lake, Gordon, Kawacatoose and Muskowekwan First Nations.

Negotiations had been ongoing between the First Nations and Canada and the negotiating parties had worked together to commission a report from an independent forensic and investigative accounting firm. Severe disagreements had arisen between the negotiating parties over the report's

recommendations. Just prior to leaving the file, the federal negotiator made an offer to settle the claim which was rejected by the First Nations as not being representative of the true losses suffered by them.

Following the appointment of Canada's new negotiator several months later, the negotiating parties re-assessed their positions. Neither side seemed willing to bend. Faced with a breakdown in the negotiations, the mediator suggested an independent opinion on the value of the claim. Although not willing to take this route, Canada was encouraged to explain in detail its reasons for including or excluding the individual transactions making up the larger mismanagement claim. The First Nations urged Canada to take a fresh look at each transaction.

Canada came back to the table with another offer, which again was not acceptable to the First Nations. Negotiation funding was discontinued shortly thereafter, and negotiations ceased in March 2002.



Appendix **B**

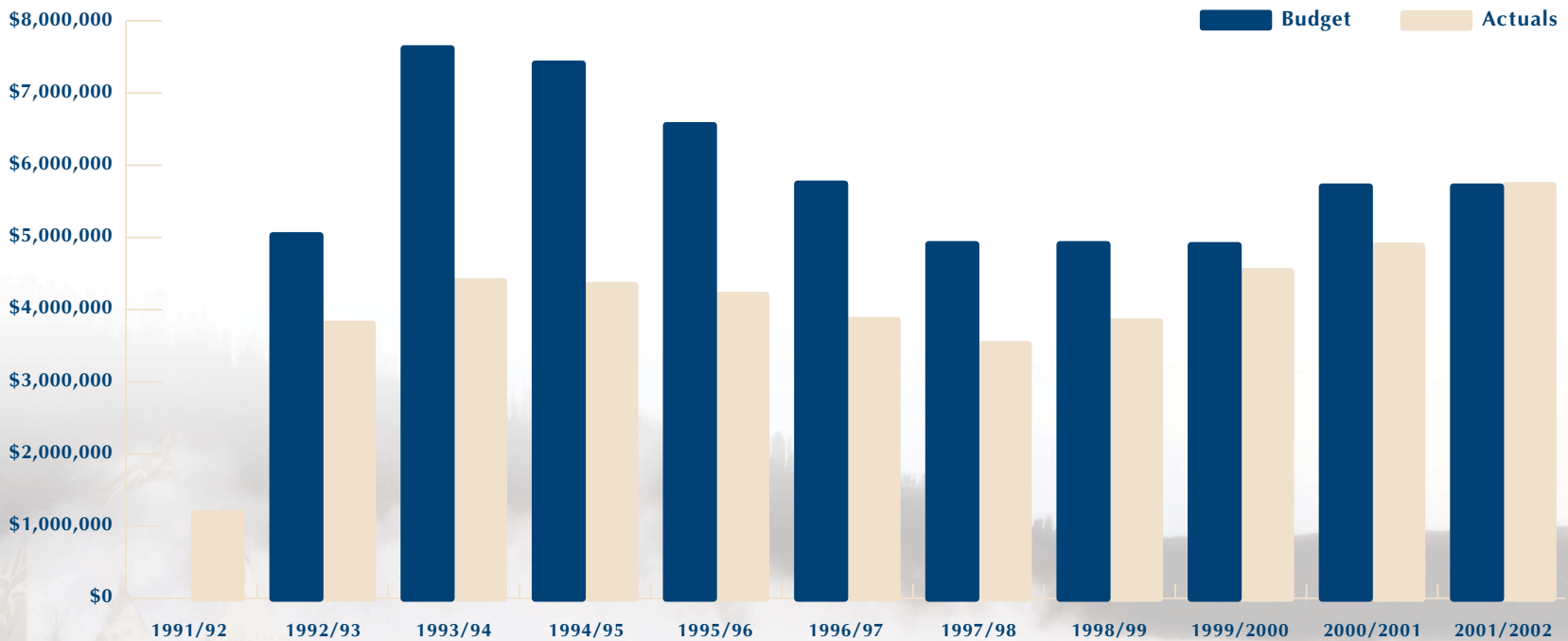
Operational Overview

Organization Chart

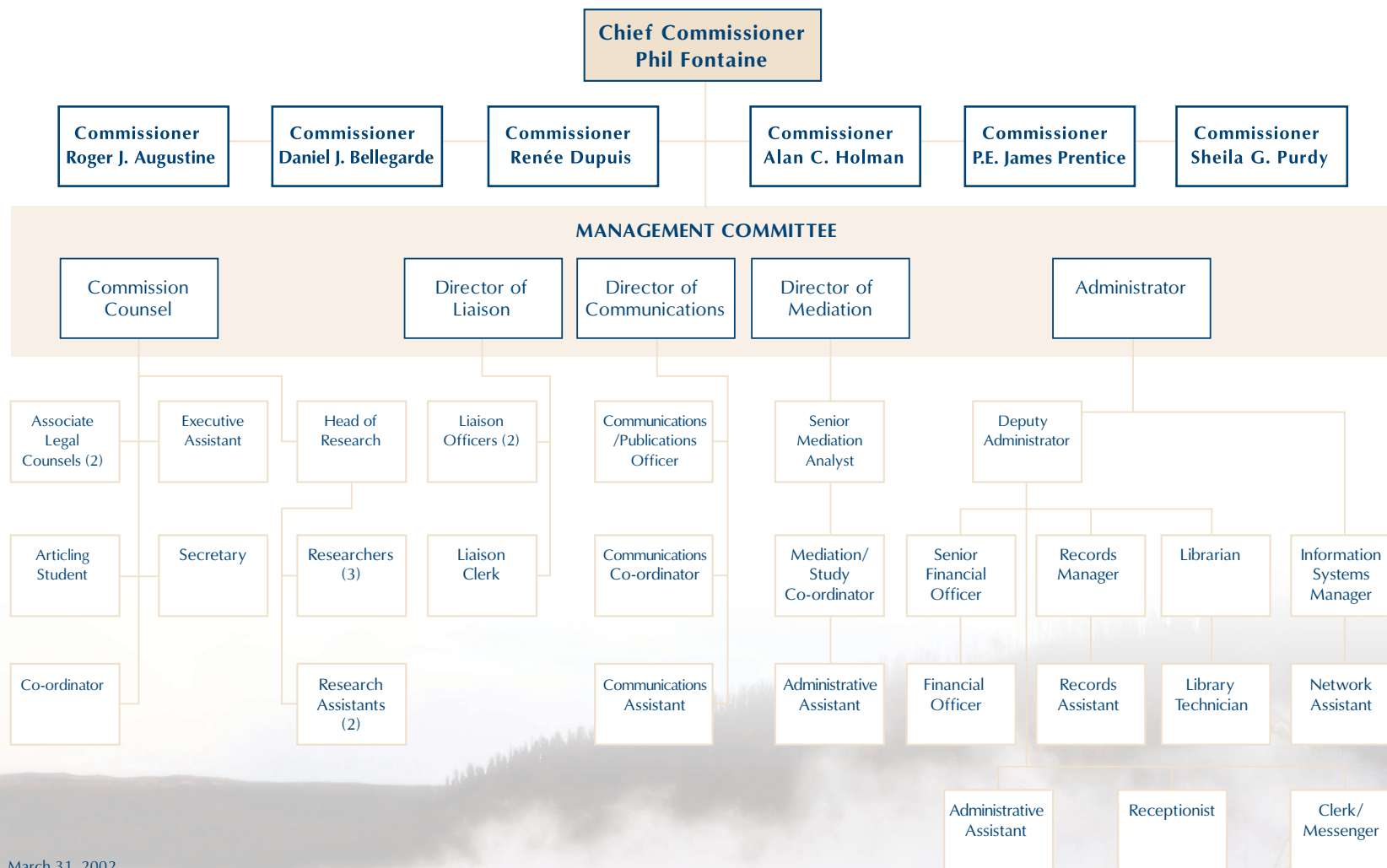


OPERATIONAL OVERVIEW

The Commission continues to focus on prudent fiscal management practices. The figure below represents the amounts budgeted and the actual amounts expended by the Commission since its inception. In 2001 - 2002, the Commission expended \$5.72 million against an approved budget of \$5.7 million, resulting in a deficit of \$21,000.



ORGANIZATION CHART



March 31, 2002

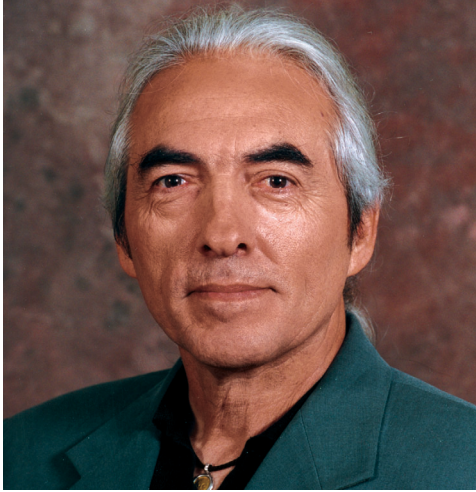


Appendix **C**

The Commissioners



THE COMMISSIONERS



Chief Commissioner Phil Fontaine

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



Roger J. Augustine

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



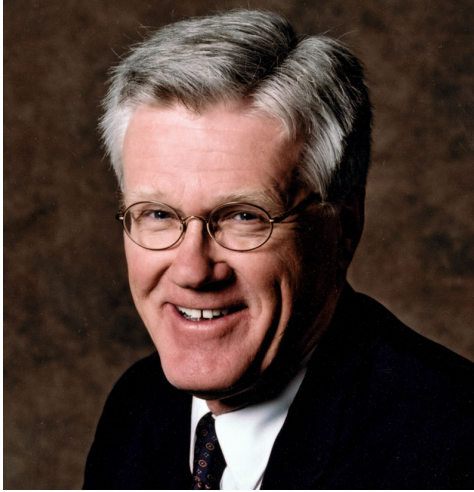
Daniel J. Bellegarde

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



Renée Dupuis

Renée Dupuis has had a private law practice in Quebec City since 1973. From the outset, she focussed largely on human rights and specifically on the rights of Canada's aboriginal peoples. From 1972 to 1975, she served as lawyer for the Association of Indians of Quebec and beginning in 1978, acted as legal advisor to the three Attikamek and nine Montagnais bands in her home province, representing the bands in their land claims negotiations with the federal, Quebec, and Newfoundland governments, as well as in the constitutional negotiations. From 1989 to 1995, Mme Dupuis served two terms as Commissioner of the Canadian Human Rights Commission. She has served as consultant to various federal and provincial government agencies, authored numerous books and articles, and lectured extensively on human rights, administrative law, and aboriginal rights. Mme Dupuis is a graduate in law from the Université Laval and holds a master's degree in public administration from the École nationale d'administration publique. She was appointed Commissioner of the Indian Claims Commission on March 28, 2001.



Alan C. Holman

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



P.E. James Prentice

P.E. James Prentice, Q.C., 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 Indian Claims 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 Facility Leader at the Banff Centre for Management's annual program on specific claims since 1994. He was appointed Commissioner of the Indian Claims Commission on July 27, 1992 and served as Co-Chair from April 19, 1994, until the appointment of Phil Fontaine as Chief Commissioner. Mr Prentice resigned as Commissioner in December 2001.



Sheila G. Purdy

Sheila G. Purdy has been an advisor to the government of the Northwest Territories on justice and other matters relating to 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 acted as policy analyst on the constitution, justice, aboriginal affairs, women, human rights, and also for the Solicitor General. In 1992 and 1993, she was a special advisor on aboriginal affairs to the Office of the Leader of the Opposition and from 1989 to 1991, she was legal consultant on environmental issues. She has been active in advocating against abuse of the elderly, and in 1988, she received the Award of Merit from Concerned Friends for her work in this area. She worked as a lawyer in private practice from 1982 to 1985 after graduating with a law degree from the University of Ottawa in 1980. She was appointed Commissioner of the Indian Claims Commission on May 4, 1999.

