

ANNUAL REPORT 1999-2000



Indian Claims  
Commission



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*Kyaiyi-stamik (Bear Bull) ca.1900*: Photo by Edward S. Curtis

Portrait of Bear Bull when he was living on the Peigan Reserve in the soon-to-be established province of Alberta.


He was a Blackfoot spiritual leader (signified by the top knot) and a cultural historian.

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

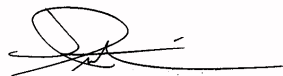
**MAY IT PLEASE YOUR EXCELLENCY**

In 1999/2000 the Indian Specific Claims Commission completed and released five reports. As of March 31, 2000, inquiries into 52 claims had been completed and reported on, and another five reports were in progress. 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

January 2001

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## MESSAGE FROM THE COMMISSIONERS

The Commission began the last fiscal year by welcoming the appointment of a new Commissioner, Sheila G. Purdy, and by continuing to work as usual at the request of the federal government and the Assembly of First Nations. They, in turn, continued negotiations toward a new independent claims body but despite our high hopes for reform, no concrete progress had been made by the end of the fiscal year. As a result, the specific claims system remains in gridlock.

Thus, this year, instead of offering new formulations of the same ideas, we reiterate the recommendations we have offered since our inception. They are as valid now as they were when they were first crafted and, for the most part, have yet to be implemented. The government remains in a conflict of interest as a validator of specific claims against itself. Enabling the Commission to validate claims in the first instance remains in our opinion the best interim solution while work towards a permanent independent claims body continues. Although we were pleased to see that the federal government, in its latest budget, increased funding to the Specific Claims Branch by \$44 million, there are at present approximately 480 outstanding claims in the system. The assessment, negotiation, and settlement of claims will remain in gridlock until there are enough resources to move them through the system. To date, little has been done by the federal government to make Canadians aware that there

is an enormous backlog of specific claims across the country. Canadians in general do not know that these claims exist nor that they are based on allegations of outstanding lawful obligations. The reaction to validation of such claims as the Caldwell claim of southern Ontario demonstrates the public's slim grasp of the history and law behind specific claims.

Within this constraining environment, the Commission released reports on five inquiries over the year. In particular, in March 2000, we released our report into the Long Plain First Nation's claim. In it, the Commission found that general common law principles regarding compensation for loss of use should apply to treaty land entitlement claims. We found that a First Nation had a right to pursue compensation for a good or service that was promised but not delivered within a reasonable time. This finding could change federal claims policy.

To date, we have inquired into 52 claims and this year we began six new inquiries. We have had some important successes. We were pleased to see several advances as a result of Commission-chaired pilot projects: the Fort William First Nation celebrated the return of 1,100 acres of waterfront from Canadian Pacific Railway; the Michipicoten First Nation negotiated two claims; the Kahkewistahaw First Nation and the Blood Tribe began joint land-use studies,

facilitated by the Commission, to aid their settlement negotiations. Requests for our mediation and facilitation services continue to grow, as First Nations come to see the value of working together to establish a common understanding of the facts behind a claim or to resolve grievances face-to-face.

These successes, while important, are simply not enough. Approximately 480 specific claims await action; they cannot be ignored or delayed – not simply because every day of delay adds to the cost of settlement, but because specific claims are fundamentally a justice and human rights issue. Canadian society will be judged at the end of the day by how we have dealt with these historical grievances. It is with this truth in mind that we present this year's annual report.

**COMMISSION'S RECOMMENDATIONS  
TO GOVERNMENT, 1991 - 1999**

**ANNUAL REPORT 1991-1993/1994**

**GOVERNMENT RESPONSE**

**Recommendation 1.** That the parties to an inquiry by the Indian Claims Commission shall respond formally in writing to the Findings and Recommendations Report issued by the Commission within sixty days of the date of transmittal.

*There have been some timely responses, but on the whole, government has been slow or, in some cases, non-responsive.*

**Recommendation 2.** That government departments recognize that refusal to mediate early in the inquiry process necessitates a costly and time-consuming full inquiry, often resulting in mediation in any event.

*Government has shown a willingness to use the Commission's mediation and facilitation services in a number of cases, including pilot projects, but these services remain under-utilized.*

**Recommendation 3.** That government ensure full representation at Commission Planning Conferences, and that it more fully address the potential for mediation.

*Representatives of the Departments of Justice and Indian Affairs attend all planning conferences.*

**Recommendation 4.** That government departments more fully recognize the mandate of the Commission.

*Canada challenged the ICC's mandate only once in its early years; however, there have been seven such challenges, including four in the past fiscal year.*

**Recommendation 5.** That the relevant departments of government expedite the delivery of documents requested by the Commission.

*The government now does so in a timely fashion in most cases, but it lacks resources to comply with follow-up research and opinions in a timely way.*

**Recommendation 6.** That Government move with all due speed to appoint a Commissioner from Quebec.

*Commissioner Aurélien Gill was appointed in December 1994. He resigned in August 1998, upon his appointment to the Senate, and has not been replaced.*



**ANNUAL REPORT 1994/1995**

**GOVERNMENT RESPONSE**

**Recommendation 1.** Canada and First Nations should develop and implement a new claims Policy and process that does not involve the present circumstances wherein Canada judges claims against itself.

*It appeared that the government was going to address this recommendation; it, together with the Assembly of First Nations, prepared draft legislation in 1998. However, no legislation has been introduced and the creation of an independent claims body remains an unfulfilled government promise.*

**Recommendation 2.** The current specific claims policy and process must be administered by Canada in a manner that is fair and equitable towards the First Nation claimants. This practice should include: involvement of First Nation communities in the claim assessment process; disclosure of the substance of the legal opinions relied upon by the Minister to determine whether to accept or reject a claim; and, a detailed account of Canada's interpretation of its "lawful obligation" in any given claim.

*No response.*

**Recommendation 3.** An Inquiry will be officially closed when the parties to an Inquiry by the Commission respond formally, at a meeting in the First Nation community, to the Report issued by the Commission. The Commission will arrange for this response meeting to be held within ninety days of the date of transmittal of the Report. The government response should contain detailed reasons for the acceptance or rejection of the Commission's recommendations and include a precis of any fresh legal opinion received from the Department of Justice.

*No response.*

**Recommendation 4.** That Canada and First Nations make greater use of the Commission's mediation services and alternative dispute resolution mechanisms in the interests of reaching claim settlements in a timely and efficient manner. In order for mediation to be a viable alternative to courts and Inquiries, Canada must abandon inhibiting attitudes and policies in favour of a case by case analysis of whether mediation is appropriate in light of the facts and matters in issue. In particular, government counsel engaged on matters before the Commission should be given the same broad mandate to consider, recommend, and negotiate settlement that they would have if acting for the government in litigation over the same claim.

*See above (1991-94, #2).*

**Recommendation 5.** Canada needs to identify and review all claims that were rejected based on the ban of pre-Confederation claims and notify all affected First Nations. This bar was lifted in 1991 and at least some First Nations claims have not been reviewed in light of this change.

*No official response, but Canada has not objected to the Commission's inquiry into several pre-Confederation cases.*

**Recommendation 6.** Canada should stop insisting on the express extinguishment of aboriginal rights and title as part of the settlement of specific claims.

*No response.*

**ANNUAL REPORT 1995/1996**

**Recommendation 1.** Canada and First Nations should establish an Independent Claims Body empowered to settle the legitimate historical grievances of First Nations with regard to land and other issues.

**Recommendation 2.** Canada should respond in a timely and appropriate fashion to ICC inquiry reports, past, present, and future.

**Recommendation 3.** Canada should use the existing mediation mandate of the Commission to facilitate the resolution of claims.

**GOVERNMENT RESPONSE**

*See above (1994/95, #1).*

*See above (1991-94, #1).*

*See above (1991-94, #2).*

**ANNUAL REPORT 1996/1997**

**Recommendation 1.** The Specific Claims Policy, which provides that Canada will recognize claims disclosing an outstanding “lawful obligation” owed by the federal government to Indian bands, should be amended to provide expressly that claims based on a breach of fiduciary duty fall within the ambit of an outstanding lawful obligation.

**Recommendation 2.** Canada and First Nations should create an independent claims body with legislative authority to make binding decisions with respect to the Crown’s lawful obligations towards First Nations and with respect to fair compensation when those obligations have been breached.

**GOVERNMENT RESPONSE**

*The government has failed to confirm this recommendation. In fact, it has made a retrogressive step. In its response to the ICC reports in the ‘Namgis and Mamaleleqala First Nations’ claims relating to the McKenna-McBride Applications, the government responded by stating, among other things, that “fiduciary obligations are not ‘lawful obligations’ within the meaning of the Specific Claims Policy” unless they fall within the “lawful obligations” defined in the Policy.*

*See above (1994-95, #1).*

**Recommendation 3.** Amend and clarify the mandate of the ICC and the Specific Claims Policy in order to allow the Commission to recommend alternatives to monetary compensation for breach of lawful obligations.

*No response.*

**Recommendation 4.** The Specific Claims Branch and Department of Justice require more resources that can be devoted to ICC inquiries.

*The government has increased expenditures in the area of specific claims, but the resources remain insufficient for the tasks to be performed.*

**Recommendation 5.** The Department of Indian Affairs should amend the policy directive which states that any specific claim will only be reviewed when it has been outstanding for 15 years.

*No response.*

**ANNUAL REPORT 1997/1998**

**Recommendation 1.** In each of the Commission's last three Annual Reports, we have recommended that Canada and the First Nations create an independent claims body with legislative authority to make binding decisions with regard to both the Crown's lawful obligations towards First Nations and the fair compensation when those obligations have been breached. We continue to believe that this initiative is one of the most important to be undertaken by Canada and First Nations.

**GOVERNMENT RESPONSE**

*See above (1994/95, #1).*

**Recommendation 2.** Although the Commission cannot be more vigorous in its recommendation that Canada and First Nations should move more expeditiously towards the creation of a new independent claims body, it is equally important that the Reports, recommendations, and accumulated experience and expertise of the existing Indian Claims Commission - the product of some seven years' work - should not be lost. This conveyance can be accomplished in two ways:

- First, where the Commission has issued a Report and recommendations that have not yet received a substantive response from Canada, we recommend that Canada should move as quickly as possible to issue a formal response. In this way, the new independent claims body can commence with a fresh mandate and without the need to sort out a backlog of unfinished business.
- Second, should Reports and recommendations still remain without a response when the new independent claims body begins operation, the claims body should, on the application of a First Nation, and where the claims body considers it appropriate to do so, be able to adopt the Commission's earlier recommendations. Similarly, where the Commission's Report and recommendations have been rejected by Canada, the new independent claims body should have the authority, on resubmission of the claim by the First Nation, and subject to the submission of additional evidence, to adopt the Commission's Report and recommendations or to permit the First Nation to commence a new claim.

*No response.*

**Recommendation 3.** We note that one of the pillars on which the new independent claims body is intended to stand is a continuation of the Commission's mediation function. In support of this proposal, we recommend that the mandate of the new claims body be extended to include the "validation" or acceptance of claims for negotiation.

*See above (1991/94, #2).*

**Recommendation 4.** In our view, Canada should devote sufficient manpower and funds:

- to eliminate the current backlog of specific claims and permit future inquiries to proceed in a timely and effective manner;
- to participate effectively in the Commission's mediation efforts, to enable the Commission to work proactively with government departments to resolve claims issues, and, most important, to settle claims; and
- to respond to the Commission's outstanding Reports and recommendations, to which no substantive responses have yet been forthcoming.

*See above (1996-97, #4).*

**Recommendation 5.** The challenge that lies ahead for Canada, First Nations, the Commission, and any new independent claims body is to establish a process for defining, receiving, assessing, and weighing oral history in a manner that respects the culture and traditions of First Nations while concurrently satisfying Canada that the evidence has been reliably and authoritatively delivered and properly tested. The Commission recognizes that, although its process of receiving oral history in community sessions satisfies the spirit of *Delgamuukw*, there may be opportunities to work cooperatively with Canada and First Nations to further refine that process and thereby lend even greater weight to the testimony of elders and other key members of aboriginal communities. This refinement should be one of the priorities in developing the mandate of any new claims body that might be struck to succeed the Commission.

*No response.*

**Recommendation 6.** To facilitate the Commission's efforts, and to allow any new independent claims body to begin its work immediately and effectively, the Commission recommends that First Nations and Canada should work together to establish an inventory of all existing claims, classified by category of claim.

*No response.*

**ANNUAL REPORT 1998/1999****GOVERNMENT RESPONSE**

**Recommendation 1.** The Commission recommends that Canada take such steps as are necessary to provide the Indian Claims Commission with the mandate (a) to accept or reject claims in the first instance, without the current requirement that they first be rejected by Canada; and (b) to make decisions respecting acceptance or rejection of claims which are binding on the parties.

*No response.*

**Recommendation 2.** The Commission recommends that Canada immediately increase the level of funding available to the Department of Indian Affairs' Specific Claims Branch and the Department of Justice's Legal Services to a level commensurate with the number of outstanding claims awaiting negotiation.

*No response.*

**Recommendation 3.** The Commission recommends that Canada compile and make public an inventory of all outstanding claims in the Specific Claims system, as well as all potential claims.

*No response.*



## INDIAN CLAIMS COMMISSION REPORTS NOT RESPONDED TO

### **LAX KW'ALAAMS FIRST NATION**

*Demand for absolute surrender as  
pre-condition to settlement*

**REPORT ISSUED:** June 1994

### **BUFFALO RIVER FIRST NATION**

*Primrose Lake Air Weapons Range - loss of commercial and treaty  
harvesting rights*

**REPORT ISSUED:** September 1995

### **FLYING DUST FIRST NATION**

*Primrose Lake Air Weapons Range - loss of commercial and treaty  
harvesting rights*

**REPORT ISSUED:** September 1995

### **WATERHEN LAKE FIRST NATION**

*Primrose Lake Air Weapons Range - loss of commercial and treaty  
harvesting rights*

**REPORT ISSUED:** September 1995

### **'NAMGIS FIRST NATION**

*Cormorant Island*

**REPORT ISSUED:** March 1996

### **CHIPPEWAS OF KETTLE AND STONY POINT FIRST NATION**

*1927 Surrender*

**REPORT ISSUED:** March 1997

### **ATHABASCA CHIPEWYAN FIRST NATION**

*W.A.C. Bennett Dam and Damage  
to IR 201*

**REPORT ISSUED:** March 1998

### **MOOSE DEER POINT FIRST NATION**

*Pottawatomi Rights*

**REPORT ISSUED:** March 1999

### **DUNCAN'S FIRST NATION**

*1928 Surrender*

**REPORT ISSUED:** September 1999

### **LONG PLAIN FIRST NATION**

*Loss of Use*

**REPORT ISSUED:** March 2000

## ICC ACTIVITIES FOR 1999/2000 – CARRYING OUT THE MANDATE

### OVERVIEW

- 52** Completed inquiries – 47 reports
  - 1** Mediation report
  - 5** Reports in progress
- 14** Inquiries in process
- 10** Claims in mediation/facilitation
- 26** Claims settled or accepted for negotiation

### INQUIRIES AND REPORTS, SPECIAL PROJECTS AND INITIATIVES

In 1999/2000, we issued reports on the Blood Tribe/Kainaiwa Akers surrender claim, the Duncan's First Nation wrongful surrender claim, the Long Plain First Nation's claim regarding the loss of use of treaty entitlement land, the Bigstone Cree treaty land entitlement claim, and The Key First Nation 1909 surrender claim. Both the Blood Tribe and the Bigstone Cree claims had been accepted for negotiation of a settlement before the Commission's inquiries could be completed – demonstrating again the advantages of bringing First Nation and federal government representatives together to clarify issues.

The Long Plain report was of particular significance. Through our inquiry, we found that government does indeed have an obligation to compensate First Nations for the loss of use of treaty entitlement land owed to the First Nation that government took an unreasonable amount of time to provide. We expect that this finding, if accepted, will require government to adjust its Specific Claims Policy. At present, government only compensates a First Nation for the loss of use of inappropriately surrendered land. The report has generated a great deal of interest and, as a result, has been reprinted twice.

As planned last year, the Commission launched a public information campaign, *The Facts on Claims*, with the publication of a series of fact sheets explaining the basic elements of specific claims in plain language. The fact sheets have been well received. They are now on our Web site and within the first two weeks of their posting, well over 2000 people reviewed or downloaded them.

As part of our public information efforts, Commissioners have begun to accept more speaking engagements through the Commission's Speaker's Bureau. In total, Commissioners spoke at nine events across Canada, including Commissioner Harper's keynote address at Laurentian University's native awareness week in October 1999,

Co-Chair Prentice's appearance before the board of directors of the Canadian Community Newspaper Association in Ottawa, and Co-Chair Bellegarde's participation in the annual general meeting of the Saskatchewan Urban Municipalities Association. As well, in March 2000, Commission staff and Commissioner Harper contributed their knowledge of alternative dispute resolution techniques to the Aboriginal Law Moot, hosted by the University of Windsor.

## **MEDIATION AND FACILITATION**

Since its inception, the Indian Claims Commission has seen 26 specific claims settled or accepted for negotiation. These successes are a result, in part, of the Commission's unique inquiry process and its ability to provide mediation assistance at any stage in the claims process.

This year, the Commission hired a Study Coordinator to keep track of independent research contracts and joint research on the Blood, Cote, Fishing Lake, and Kahkewistahaw First Nations' claims, as well as to assist in facilitating the multiple claims under preparation for the Michipicoten and the Fort William First Nation Pilot Projects.

## PLANS FOR 2000 / 2001

Until the federal proposal for a new independent claims body is accepted and implemented, the Commission will continue business as usual, working to clarify the facts and the law behind claims before us in inquiry or mediation. Commissioners have been asked by the federal government and the Assembly of First Nations to assist the Joint Task Force on Specific Claims Reform to plan for a smooth transition to a permanent claims body, should such a body be created.

In the coming year, we plan to improve access to our reports, making them easily available to the legal community through Quick Law databases. We plan to continue our public information campaign by accepting more speaking events and developing additional fact sheets to complement *The Facts on Claims* series released in 1999. Canadians are more interested than ever in specific claims, and we hope this modest contribution will help those we reach to a better understanding of what claims are and why we must deal with them now.

We will continue to support the pilot projects currently before the Commission and to share what we have learned from helping First Nations and government work together on joint research before claims are submitted to government.

## **A P P E N D I C E S**

### **A Status of Claims as of March 31, 2000**

#### **Summary of Claims as of March 31, 2000**

Inquiry Reports, 1999/2000

Inquiries

Mediation and Facilitation

### **B Operational Overview**

### **C The Commissioners**

## APPENDIX A STATUS OF CLAIMS AS OF MARCH 31, 2000

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

# INDIAN CLAIMS COMMISSION

ICC Report, Nature of Claim, and Recommendation	Date of Report	Date of Response	Nature of Response to Recommendation	Accepted/Settled
<b>6 Carry the Kettle</b> Cypress Hills	Report in progress			
<b>7 Canoe Lake</b> Primrose Lake Air Weapons Range – breach of treaty and fiduciary obligations <i>Recommended claim be accepted for negotiation</i>	August 1993	March 1995	Government accepted the claim on a qualified basis – no breach of treaty or fiduciary obligation, but a need to improve social and economic 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
<b>8 Chippewas of Kettle and Stony Point</b> 1927 surrender <i>Recommended claim be accepted for negotiation</i>	March 1997	NONE	<b>NO RESPONSE FROM GOVERNMENT</b> In 1998, the Supreme Court of Canada rendered its decision in the First Nation's appeal from 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	
<b>9 Chippewa Tri-Council</b> Collins Treaty <i>Accepted with assistance of Commission</i>	March 1998	None required	Government accepted claim for negotiation	Settled in December 1998 for \$565,000 in federal compensation

ICC Report, Nature of Claim, and Recommendation	Date of Report	Date of Response	Nature of Response to Recommendation	Accepted/Settled
<b>10 Chippewas of the Thames</b> Unlawful surrender of reserve <i>Settled with assistance of Commission</i>	December 1994	None required	Government accepted claim for negotiation	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
<b>11 Cold Lake</b> Primrose Lake Air Weapons Range – breach of treaty and fiduciary obligations <i>Recommended claim be accepted for negotiation</i>	August 1993	March 1995	Government accepted the claim on a qualified basis — no breach of treaty or fiduciary obligation, but a need to improve social and economic circumstances	Accepted March 1995
<b>12 Cowessess</b> QVIDA flooding claim <i>Recommended claim be accepted for negotiation</i>	February 1998	December 1998	Government accepted claim for negotiation	Accepted December 1998



# INDIAN CLAIMS COMMISSION

ICC Report, Nature of Claim, and Recommendation	Date of Report	Date of Response	Nature of Response to Recommendation	Accepted/Settled
<b>13 Cowessess</b> 1907 surrender	Report in progress			
<b>14 Duncan's</b> 1928 surrender <i>Recommended that the surrender of IR 151E be accepted for negotiation</i>	September 1999	NONE	<b>NO RESPONSE FROM GOVERNMENT</b>	
<b>15 Eel River Bar</b> Eel River Dam <i>Recommended claim not be accepted for negotiation</i>	December 1997	None required	No substantive response from government required	
<b>16 Fishing Lake</b> 1907 surrender <i>Government accepted claim for negotiation after considering evidence revealed during ICC community session</i>	March 1997	None required	Government accepted claim for negotiation	Accepted August 1996
<b>17 Flying Dust</b> Primrose Lake Air Weapons Range – loss of commercial and treaty harvesting rights <i>Part of claim recommended for negotiation</i>	September 1995	NONE	<b>NO RESPONSE FROM GOVERNMENT</b>	
<b>18 Fort McKay</b> Treaty land entitlement <i>Recommended that government owed outstanding entitlement of 3,815 acres to Band</i>	December 1995	April 1998	Government adopted recommendation after a review of its TLE policy	Accepted April 1998

<b>ICC Report, Nature of Claim, and Recommendation</b>	<b>Date of Report</b>	<b>Date of Response</b>	<b>Nature of Response to Recommendation</b>	<b>Accepted/Settled</b>
<b>19 Friends of the Michel Society</b> 1958 enfranchisement <i>No lawful obligation found, but recommended that government grant special standing to submit specific claims</i>	March 1998	None required	No substantive response from government required	
<b>20 Gamblers</b> Treaty land entitlement <i>Outstanding treaty land entitlement, if any, should be calculated based on an 1877 date of first survey</i>	October 1998	November 1998	Government accepted ICC finding	Accepted November 1998
<b>21 Homalco</b> 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>	December 1995	December 1997	Government rejected ICC's recommendation as being outside the scope of Specific Claims Policy	Rejected December 1997
<b>22 Joseph Bighead</b> Primrose Lake Air Weapons Range – loss of commercial and treaty harvesting rights <i>Recommended claim not be accepted for negotiation</i>	September 1995	None required	No substantive response from government required	
<b>23 Kahkewistahaw</b> Treaty land entitlement <i>Recommended claim not be accepted for negotiation</i>	November 1996	None required	No substantive response from government required	

# INDIAN CLAIMS COMMISSION

ICC Report, Nature of Claim, and Recommendation	Date of Report	Date of Response	Nature of Response to Recommendation	Accepted/Settled
<b>24 Kahkewistahaw</b> 1907 surrender <i>Recommended claim be accepted for negotiation</i>	February 1997	December 1997	Government accepted claim for negotiation	Accepted December 1997
<b>25 Kawacatoose</b> Treaty land entitlement <i>Recommended that government owed a shortfall of 8,576 acres to Band, subject to confirming research</i>	March 1996	April 1998	Government adopted recommendation after review of TLE policy	Accepted April 1998
<b>26 The Key</b> 1909 surrender <i>Recommended claim not be accepted for negotiation</i>	March 2000	None required	No substantive response required from government	
<b>27 Lac La Ronge</b> Treaty land entitlement <i>Recommended claim not be accepted for negotiation</i>	March 1996	None required	No substantive response required from government	
<b>28 Lax Kw'alaams</b> 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	<b>NO SUBSTANTIVE RESPONSE FROM GOVERNMENT</b> – Parties continue to meet in attempt to reach a settlement agreement	
<b>29 Long Plain</b> Loss of use of treaty entitlement land <i>Recommended claim be accepted for negotiation</i>	March 2000	NONE	<b>NO RESPONSE FROM GOVERNMENT</b>	

ICC Report, Nature of Claim, and Recommendation	Date of Report	Date of Response	Nature of Response to Recommendation	Accepted/Settled
<b>30 Lucky Man Cree</b> Treaty land entitlement <i>Recommended further research to establish the proper treaty land entitlement population</i>	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
<b>31 Mamaleleqala Qwe'Qwa'Sot'Enox</b> McKenna-McBride Applications <i>Recommended claim be accepted for negotiation</i>	March 1997	December 1999	Government rejected recommendations stating that (1) only fiduciary obligations arising within a lawful obligation as defined in the Specific Claims Policy will be considered subject to a claim; (2) there is no fiduciary duty in regard to non-reserve land; and (3) there is no general fiduciary obligation to protect traditional Indian settlement lands from the actions of other individuals or governments	Rejected December 1999
<b>32 Micmacs of Gesgapegiag</b> Pre-Confederation claim to 500-acre island <i>No substantive recommendations made because government agreed to reconsider merits of claim</i>	December 1994	None required	In March 1995, government acknowledged receipt of the report and advised that the claim was in abeyance pending outcome of related court case	

# INDIAN CLAIMS COMMISSION

<b>ICC Report, Nature of Claim, and Recommendation</b>	<b>Date of Report</b>	<b>Date of Response</b>	<b>Nature of Response to Recommendation</b>	<b>Accepted/Settled</b>
<b>33 Mikisew Cree</b> 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
<b>34 Moose Deer Point</b> Pottawatomi rights <i>Recommended additional research into government's obligations arising from promises made in a 1837 speech and whether they were fulfilled</i>	March 1999	<b>NONE</b>	<b>NO RESPONSE FROM GOVERNMENT</b>	
<b>35 Moosomin</b> 1909 surrender <i>Recommended claim be accepted for negotiation</i>	March 1997	December 1997	Government accepted claim for negotiation	Accepted December 1997
<b>36 Muscowpetung</b> QVIDA flooding claim <i>Recommended claim be accepted for negotiation</i>	February 1998	December 1998	Government accepted claim for negotiation	Accepted December 1998
<b>37 Nak'azdli</b> 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

ICC Report, Nature of Claim, and Recommendation	Date of Report	Date of Response	Nature of Response to Recommendation	Accepted/Settled
<b>38 'Namgis</b> Cormorant Island <i>Recommended claim be accepted for negotiation based on breach of fiduciary and order in council obligations</i>	March 1996	NONE	<b>NO RESPONSE FROM GOVERNMENT</b>	
<b>39 'Namgis</b> McKenna-McBride Applications <i>Recommended that part of claim be accepted for negotiation</i>	February 1997	December 1999	Government rejected recommendations stating that (1) only fiduciary obligations arising within a lawful obligation as defined in the Specific Claims Policy will be considered subject to a claim; (2) there is no fiduciary duty in regard to non-reserve land; and (3) there is no general fiduciary obligation to protect traditional Indian settlement lands from the actions of other individuals or governments	Rejected December 1999
<b>40 Nekaneet</b> Entitlement to treaty benefits <i>Claim accepted mid-inquiry</i>	March 1999	None required	Government accepted claim for negotiation	Accepted October 1998

# INDIAN CLAIMS COMMISSION

<b>ICC Report, Nature of Claim, and Recommendation</b>	<b>Date of Report</b>	<b>Date of Response</b>	<b>Nature of Response to Recommendation</b>	<b>Accepted/Settled</b>
<b>41 Ochapowace</b> QVIDA flooding claim <i>Recommended claim be accepted for negotiation</i>	February 1998	December 1998	Government accepted claim for negotiation	Accepted December 1998
<b>42 Pasqua</b> QVIDA flooding claim <i>Recommended claim be accepted for negotiation</i>	February 1998	December 1998	Government accepted claim for negotiation	Accepted December 1998
<b>43 Peguis</b> Treaty land entitlement	Report in progress	None required	Government accepted claim for negotiation	Accepted June 1998
<b>44 Roseau River</b> Medical aid	Report in progress			
<b>45 Sakimay</b> QVIDA flooding claim <i>Recommended claim be accepted for negotiation</i>	February 1998	December 1998	Government accepted claim for negotiation	Accepted December 1998
<b>46 Standing Buffalo</b> QVIDA flooding claim <i>Recommended claim be accepted for negotiation</i>	February 1998	December 1998	Government accepted claim for negotiation	Accepted December 1998
<b>47 Sturgeon Lake</b> Agricultural lease <i>Accepted for negotiation with assistance of Commission</i>	March 1998	None required	Government accepted claim for negotiation	Accepted August 1997

<b>ICC Report, Nature of Claim, and Recommendation</b>	<b>Date of Report</b>	<b>Date of Response</b>	<b>Nature of Response to Recommendation</b>	<b>Accepted/Settled</b>
<b>48 Sumas</b> IR 6 railway right of way and reversionary rights of Band <i>Recommended claim be accepted for negotiation</i>	February 1995	December 1995	Government rejected the claim on grounds that it involved issues that are before the courts in other cases	Rejected December 1995
<b>49 Sumas</b> 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	
<b>50 Walpole Island</b> Boblo Island	Report in progress			
<b>51 Waterhen Lake</b> Primrose Lake Air Weapons Range – loss of commercial and treaty harvesting rights <i>Recommended part of claim be accepted for negotiation</i>	September 1995	<b>NONE</b>	<b>NO RESPONSE FROM GOVERNMENT</b> First Nation has requested meeting to discuss ICC's findings	
<b>52 Young Chipeewyan</b> Unlawful surrender claim <i>Recommended that claim not be accepted for negotiation but that further research be undertaken by parties regarding the surrender proceeds</i>	December 1994	February 1995	Funding proposal submitted by Band for research and consultation is under consideration by DIAND	



## SUMMARY OF CLAIMS AS OF MARCH 31, 2000

In 1999/2000, the Commission released five reports. The Government of Canada accepted two claims for negotiation before inquiries were complete. A summary of the findings and recommendations made by the Commission in each inquiry is set out below.

### INQUIRY REPORTS, 1999/2000

#### **Blood Tribe/Kainaiwa Akers surrender 1889, Alberta**

The Commission released its report into the Akers surrender claim in June 1999. The report details the facts and law behind the claim but makes no recommendations because in April 1998, after 110 years, the federal government agreed, mid-inquiry, to negotiate a resolution of the claim. The claim involves a clerical error that led to a surrender in 1889 of 440 acres of land from the Blood reserve in southern Alberta.

The First Nation alleged that the government had broken its fiduciary obligation to protect the First Nation's interests and that it breached *Indian Act* regulations regarding the surrender of reserve

land by not holding a vote of all eligible male band members. After two community sessions in October and December 1997, DIAND agreed to review the claim in light of new case law and evidence gathered at the community sessions. The Commission is now facilitating settlement negotiations.

*"The chieftains of the time knowingly would never sell or would never sign any document that proposed to sell or give away land. If in fact they did sign or place their mark, there must have been much by way of deceit. That was the time when none of our leaders neither understood nor could write nor read the English language. They had to rely on interpreters who in many cases were also unqualified to properly interpret what was being discussed... Now, if in fact Red Crow and the other leaders were made to sign a document, I can only suspect that it was another act of deceit on somebody's part."*

Blood Tribe/Kainaiwa Elder  
Louise Crop Eared Wolf  
(2000) 12 ICCP 3 at 28.

**Bigstone Cree Nation  
Treaty land entitlement, Alberta**

The Commission released its report on the Bigstone Cree Nation claim in March 2000 outlining the information gathered in inquiry. The report made no recommendations because in October 1998 the government agreed that the First Nation had a valid claim to more land under Treaty 8. The acceptance came mid-inquiry as a result of the Commission's work on TLE and the resulting 1998 changes in federal policy.

The claim relates to whether federal representatives, in their surveys, included the total population of all Bigstone Cree settlements as required by Treaty 8. Many band members lived in isolated settlements, some adhered to Treaty 8 at later dates, and many community members were still leading a semi-nomadic life at that time. The TLE claim was rejected by DIAND in 1989 and again in 1996, after which the First Nation brought it to the Commission. The parties are now negotiating a settlement.

**Duncan's First Nation  
1928 surrender, Alberta**

In September 1999, the Commission released its report recommending that the federal government negotiate the Duncan's First Nation claim regarding one of seven parcels of reserve land in Alberta's Peace River district surrendered in 1928.

The First Nation argued that the surrenders of Indian Reserves (IR) 151 and 151B to 151G in 1928 are null and void because they were taken by the government in violation of the 1927 *Indian Act*. After the government rejected the claim in August 1994, the First Nation brought it before the Commission. (The First Nation's original submission included IR 151H, but this claim was accepted by the federal government in May 1997.)

The Commission concluded that the government failed to act in the First Nation's best interests in the surrender of IR 151E, but that there was no evidence it had breached either its fiduciary obligations to the First Nation or the land surrender provisions of the *Indian Act* regarding the remaining six parcels of land. Commissioners concluded that the six parcels of land had been surrendered and put up for sale for a valid public purpose. At the time, government representatives believed the land sales were in the First Nation's best interests. Commissioners found, however, that in the surrender of IR 151E, the government breached its fiduciary obligation to the First

Nation because it did not inform the Band of a proposal by a local farmer, J.B. Early, to lease the reserve land. At the time, IR 151E was unused and the lease could have provided band members with steady revenue and allowed them to retain their interest in the 118-acre reserve. To date, there has been no response to the report from the government.

**The Key First Nation  
1909 surrender, Saskatchewan**

In March 2000, the Commission released its findings in The Key Band Inquiry. After a careful review of all evidence presented, including handwriting analyses and elders' oral history gathered at three community sessions, the Commission found that the government does not have an outstanding lawful obligation to the eastern Saskatchewan Band regarding the surrender of approximately 11,500 acres of treaty reserve land in 1909.

The First Nation argued that the surrender of 11,500 acres of IR 65 in 1909 is invalid because it was taken in violation of the *Indian Act* and in breach of the government's pre-surrender fiduciary obligation. In particular, the First Nation argued that Treaty 4 requires a higher level of consent in taking a land surrender than does the *Indian Act*. It also argued that a group known as the Shoal River Indians were actually members of The Key Band at the time and were not consulted on the surrender.

The Commission found no evidence of a higher consent requirement under Treaty 4 or that the Shoal River Indians were members of The Key Band. In addition, using the test established by the Supreme Court in the *Apsassin* decision, the Commission found no evidence that the federal government breached its fiduciary obligation to ensure that the Band's interests were protected.

**Long Plain First Nation  
Loss of Use, Manitoba**

In March 2000, the Indian Claims Commission found that the federal government is lawfully obliged to compensate the Long Plain First Nation of southern Manitoba for the loss of use of reserve land that was not provided until 118 years after it was promised. The report, the result of the ICC's longest running inquiry, was released at a media event in Winnipeg.

*"A band such as Long Plain is indeed entitled to advance a compensation claim for its loss of use of a treaty land entitlement shortfall acreage. In our view, loss of use is compensable as part of Canada's outstanding lawful obligation."*

Long Plain First Nation Inquiry Report on Loss of Use  
(2000) 12 ICCP 269 at 274.

The Commission concluded that, by taking 118 years to settle the outstanding treaty land entitlement, the government, regardless of its knowledge or motives at the time, had breached its lawful obligation to ensure that the terms of Treaty 1 were met. The Commission found that general common law principles regarding compensation should apply to treaty land entitlement claims. These general principles seek to provide a substitute both for the loss of the value of the property and for the loss of the opportunity to use it. With the Long Plain First Nation, the federal government negotiated a substitute for value of the property only. This finding is significant because, to date, the government has not considered lost opportunity costs as subject to compensation in treaty land entitlement claim negotiations where First Nations have waited many years to settle claims to outstanding land.

The claim dates back to 1876, when the Long Plain Band split from the former Portage Band and a reserve was set aside for the new group on the west bank of the Assiniboine River in southern Manitoba. Treaty 1 promised 160 acres for each family of five and, using that formula, the government surveyor set aside enough land for 165 people.

Yet federal documents tabled with the Commission suggest that the surveyor planned to set aside enough land for 197 people and the treaty payroll from 1876 shows that he should have known that at least 205 people were receiving treaty payments. This created a

shortfall of treaty land, one that lasted until Canada compensated the First Nation for the outstanding land in a 1994 agreement.

Although Treaty 1 does not specify when that land must be provided, and although the government's initial provision of some treaty land was timely, the Commission found that the 118-year delay in providing the full measure of treaty land amounts to a breach of treaty. The Commission further concluded that, regardless of the government's motives or knowledge, it also breached its fiduciary obligations to the First Nation when it failed to set aside sufficient land in accordance with the treaty.

In 1994, when the First Nation and the government agreed to settle a treaty land entitlement claim for the outstanding land, they also undertook that, if they could not agree on compensation for loss of use, they could refer two questions to the Commission for inquiry. First, is the federal government lawfully obliged to compensate the First Nation for the loss of use of the shortfall acreage? Second, if it is, how much compensation for its loss of use is outstanding? The report deals with the first question. The federal government has not yet responded to the ICC's 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 argues that the government's inactivity on its claim amounted to a rejection. The federal government has challenged the Commission's authority to conduct an inquiry into the claim, arguing that it has not yet considered it. The inquiry is suspended until the Commission rules on the mandate challenge.

### **Carry the Kettle First Nation Cypress Hills, Saskatchewan**

The First Nation claims that a 340-square-mile block of land north of the Cypress Hills was established as a reserve and that the land was subsequently taken by the federal government in violation of the *Indian Act*.

Both parties supplied research in 1998 and their written arguments in February 1999. Oral hearings were held May 1999 so that the parties could resolve issues around new documents included with the written submissions. A report is in progress.

### **Chippewas of the Thames Clench defalcation claim, Ontario**

This pre-Confederation claim relates to the misappropriation of \$30,000 derived from the sale of land surrendered in 1834 by the Chippewas of the Thames to Indian Superintendent Joseph Brant Clench. After the First Nation made several unsuccessful attempts to address this grievance in 1890 and 1900, a settlement was reached with the federal government in 1906. The First Nation passed a Band Council Resolution accepting the offer and an Order in Council was passed to confirm 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' instigation, additional research was undertaken by an independent researcher under the management of the Commission. New legal submissions have been

filed in light of the research and the federal government is now considering these materials.

**Chippewa Tri-Council  
Coldwater-Narrows Reservation, Ontario**

This claim involves the Coldwater-Narrows Reservation 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 the federal government provided a fresh legal opinion at the end of May 1999. The federal government is now considering the claim.

**Cowessess First Nation  
1907 surrender, Saskatchewan**

The First Nation alleges that the surrender of 20,704 acres of reserve land in 1907 is invalid because it was taken by the federal government in violation of the *Indian Act*. The First Nation argues that the surrender was an unconscionable bargain and that the government breached its pre-surrender fiduciary duty to the First Nation. The Commission held a community session in March 1998, and research was undertaken throughout that year. The parties made their final submissions to the Commission in late 1999 and a report is now being prepared.

**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. The Commission has informed the federal government and continues to gather documents from the parties.

**Esketemc First Nation  
Claim to 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. The inquiry is in progress and a community session is scheduled.

**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 as a result of the reserve's abandonment, the Chakastaypasin Band had ceased to exist and that the government had the authority to dispose of the land without compensating the former Chakastaypasin Band members. Documents were gathered and planning conferences were held in September and November 1999. The inquiry is in progress.

**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. Planning conferences were held in September and November 1999. Between the two conferences, the government challenged the Commission's authority to consider certain issues raised in this and the First Nation's treaty land entitlement claim. The inquiry continues while Commissioners consider the mandate challenge.

**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 an additional 640 acres under the terms of the treaty. In 1984, the government acknowledged that the First Nation was owed reserve land, but argued that the land gained in 1902 when the Cumberland Band amalgamated with the James Smith Cree Nation resolved the issue. Planning conferences were held in September and November 1999. Between the two conferences, the government challenged the Commission's authority to consider

certain issues raised in this and the IR 100A claim. The inquiry continues while Commissioners consider the mandate challenge.

**Kluane First Nation  
Kluane Game Sanctuary and Kluane National Park Reserve  
Creation, Yukon**

In October 1999, the First Nation requested an inquiry with the Commission. In January 2000, however, the federal government argued that the claim falls under the federal Comprehensive Claims Policy and it challenged the Commission's authority to hold an inquiry. A planning conference was held in February 2000 to discuss the issue. The Commission will rule on the challenge.

**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 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 it believed were explicitly excluded from the 1787 surrender. The First Nation never accepted the boundaries laid out under the 1805 surrender.

Eleven planning conferences have been held to date. Independent research was prepared in 1999. The Commission is awaiting a new legal opinion from the government.

**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 may have been taken without a surrender meeting, in violation of the *Indian Act*, that the Band may not have fully understood 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 January 2000, the parties requested an abeyance.

**Mistawasis First Nation  
Compensation criteria, Saskatchewan**

The First Nation and the federal government had agreed to negotiate a settlement compensation for mineral rights and prime agricultural land alleged to have been lost in the 1911, 1917, and 1919 surrenders when talks broke down. At issue is the appropriate compensation and whether compound interest should apply.

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 until the surrender claim inquiry has been completed or considerably advanced.

**Ocean Man Band  
Treaty land entitlement, Saskatchewan**

The First Nation alleges that the federal government owes the Ocean Man Band an additional 7,680 acres of reserve land under Treaty 4. At issue are the appropriate date for calculating the TLE, the categories of individuals entitled to be counted, and the implications of an amalgamation of the Ocean Man Band with White Bear and Pheasant's Rump Bands in 1901.

Six planning conferences have been held since the First Nation requested an inquiry in 1994. In July 1998, in light of changes in the federal TLE policy resulting from the Commission's Fort McKay and



Kawacatoose findings, the ICC agreed to facilitate treaty payroll research to determine how many people should be counted in the TLE calculation. The government continues to consider the claim.

**Peguis First Nation  
Treaty land entitlement, Manitoba**

In June 1998, after five Commission planning conferences, the federal government accepted the First Nation's TLE claim, as well as an additional reserve surrender claim, for negotiation of a settlement.

The Commission was asked to review only the TLE claim. The government and the First Nation were at an impasse. The government maintained that the 75,000 acres given in 1908 more than met the First Nation's TLE; the First Nation did not agree. The First Nation maintained that it was owed over 22,000 additional acres under Treaty 1. The parties then undertook additional research on the TLE, which was completed in December 1997. In light of the new research, the government accepted both claims for negotiation. A report is in progress.

**Roseau River Anishinabe First Nation  
Medical aid, Manitoba**

This claim involves the alleged misappropriation of band funds to pay for medical care between 1909 and 1934. The First Nation argues that medical aid is a treaty right, as laid out in the negotiation of Treaty 1.

In November 1997, the First Nation tabled a settlement offer, which the federal government rejected. In March 1998, the government conducted additional research to investigate whether the government was authorized to deduct medical expenses from the Band's trust accounts, which contained moneys generated from a 1903 surrender of reserve lands. The parties differ in their interpretations of the additional research. The Commission held a community session in July 1998. Written and oral submissions were received in February and March 1999. The Commission is now preparing an inquiry report.

**Sandy Bay Ojibway Nation  
Treaty land entitlement, Manitoba**

The original claim argued that the First Nation was still owed land under Treaty 1. The First Nation maintained that the addition of extra land to the reserve in 1930 and 1970 did not fulfil the Band's treaty land entitlement because of disagreement over the date to use for an accurate population count to calculate the entitlement. The First

Nation also argued that lands occupied and improved by band members prior to taking Treaty 1 should not be included in the TLE calculations. The government rejected this claim in January 1985.

The First Nation requested an inquiry in April 1998. Shortly after submitting its rejected claim to the Commission, the First Nation restated its legal arguments. The government argued that the claim was so altered that it should be considered a new claim under the Specific Claims Policy, and that the ICC therefore had no mandate to conduct an inquiry. In June 1999, Commissioners ruled that the inquiry would proceed. An independent researcher provided historical information and the ICC held a second planning conference in October 1999.

**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 challenged the Commission's authority to consider the claim and in March 2000, it proposed to review the claim and provide the First Nation with a preliminary position. The inquiry has been postponed until then at the request of the parties.

**Sturgeon Lake First Nation  
1913 surrender, Saskatchewan**

At issue is whether a majority of eligible voters participated in a surrender vote in 1913 and whether they were resident on reserve at the time.

After the claim was brought to the Commission in August 1996, the First Nation delivered supplementary research. After reviewing the material, the federal government informed the First Nation in May 1998 that its claim had been rejected. The First Nation asked the ICC to proceed with an inquiry. The Commission held a planning conference in September 1998. In December 1999, the First Nation requested an abeyance while they completed interviews of elders.

**Walpole Island First Nation  
Boblo Island, Ontario**

This claim concerns the alleged surrender of Boblo Island in 1786. In February 1998, the federal government challenged the Commission's mandate to inquire into this matter; in September, after reviewing the legal submissions presented, the Commission ruled that the issues were within its jurisdiction. Joint research was undertaken and a report submitted in February 1999. A pre-hearing conference took place in Toronto in January 1999 and the parties' written submissions were delivered in March 1999. An oral hearing was held in April 1999. The Commission is preparing a final report.

## MEDIATION AND FACILITATION

### **Blood Tribe/Kainaiwa Akers surrender 1889, Alberta**

Proceedings for this claim involving 440 acres surrendered in 1889 were 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, is 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 information required on all transactions relating to the First Nation. Work continued through 1999, with the parties agreeing to focus on the 1903 expropriation of land for railway purposes and a subsequent 1904 surrender of land for station grounds and town site.

### **Fishing Lake First Nation 1907 surrender, Saskatchewan**

In December 1996, the First Nation declared invalid the 1907 surrender of approximately 13,700 acres of reserve land and asked the Commission to facilitate negotiations towards fair compensation. With the help of the Commission, the parties agreed to hire one set of consultants to conduct land appraisals and loss-of-use studies to develop a consistent and agreed-to set of facts to ground the claim. Throughout 1997, consultants' meetings and public and band information sessions were held, and all parties reviewed the consultants' reports. All land appraisal and loss-of-use studies have been completed.

### **Fort William First Nation Pilot project, Ontario**

On February 23, 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, rights-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 the parties'

decision to settle the historical and legal issues cooperatively at the table. 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 was submitted to the Department of Justice in February 1999, and its review is ongoing.

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. In September 1999, following the completion of a consultant's land appraisal in April, the railway claim was jointly submitted to the federal government for review.

Also in 1999, the ICC released a report prepared by outside consultants which reviewed the pilot project to date and outlined recommended pragmatic ways to resolve specific land claims. 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 effectively ceded its decision-making power to the government regarding the surrender, but the government 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. In June 1999, the parties completed the terms of reference of seven loss-of-use studies. Elders were interviewed in September and October 1999 in the community and the ICC continues to coordinate the studies.

**Michipicoten First Nation  
Pilot project, Ontario**

In October 1996, the First Nation proposed to then-Minister of Indian Affairs and Northern Development Ronald Irwin 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 been researching new claims (especially the boundary claim) and negotiating two claims relating to surrenders of reserve land in 1899 and 1900 and the subsequent sale of the land to the Algoma Central Railway; these two claims were accepted in December 1998. The report and documents to support the claim relating to an 1855 surrender and sale of Gros Cap Peninsula were submitted to the Department of Justice in July 1998 for review, which is ongoing.

Research and discussion of possible claims relating to the relocation of the First Nation's village from its original location have resulted in a proposal for an innovative approach to resolve the grievance. The First Nation would like the federal government to apologize for the devastation to the community by the relocations. The Roman

Catholic diocese has returned the original church bell and the First Nation is seeking assistance in building a suitable structure to house the bell. The government continues to try to find a means of supporting this effort.

**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 persistent 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 at the Commission, the First Nation also advanced as an issue the validity of the surrender. In November 1996, the parties agreed to conduct tripartite (the 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.

**Thunderchild First Nation  
1908 surrender, Saskatchewan**

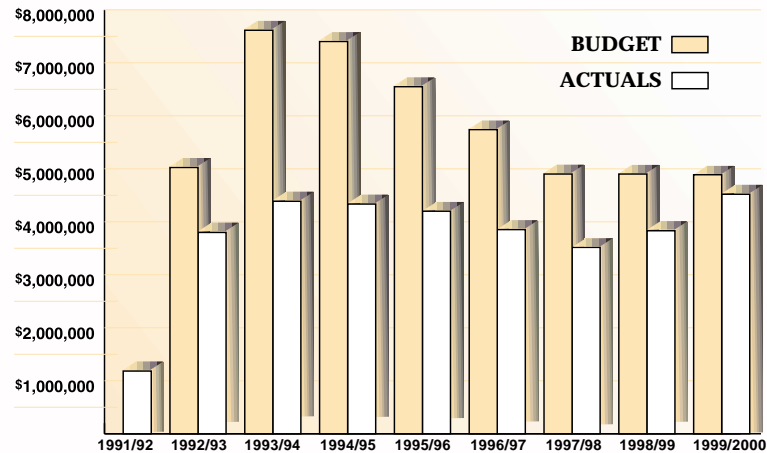
In November 1996, the parties agreed to continue negotiations with assistance from the ICC. The claim is currently being actively mediated by the Commission and deals with certain compensation criteria of the Specific Claims Policy relating to loss of use. Initial meetings took place in January 1997, 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.

## APPENDIX B OPERATIONAL OVERVIEW

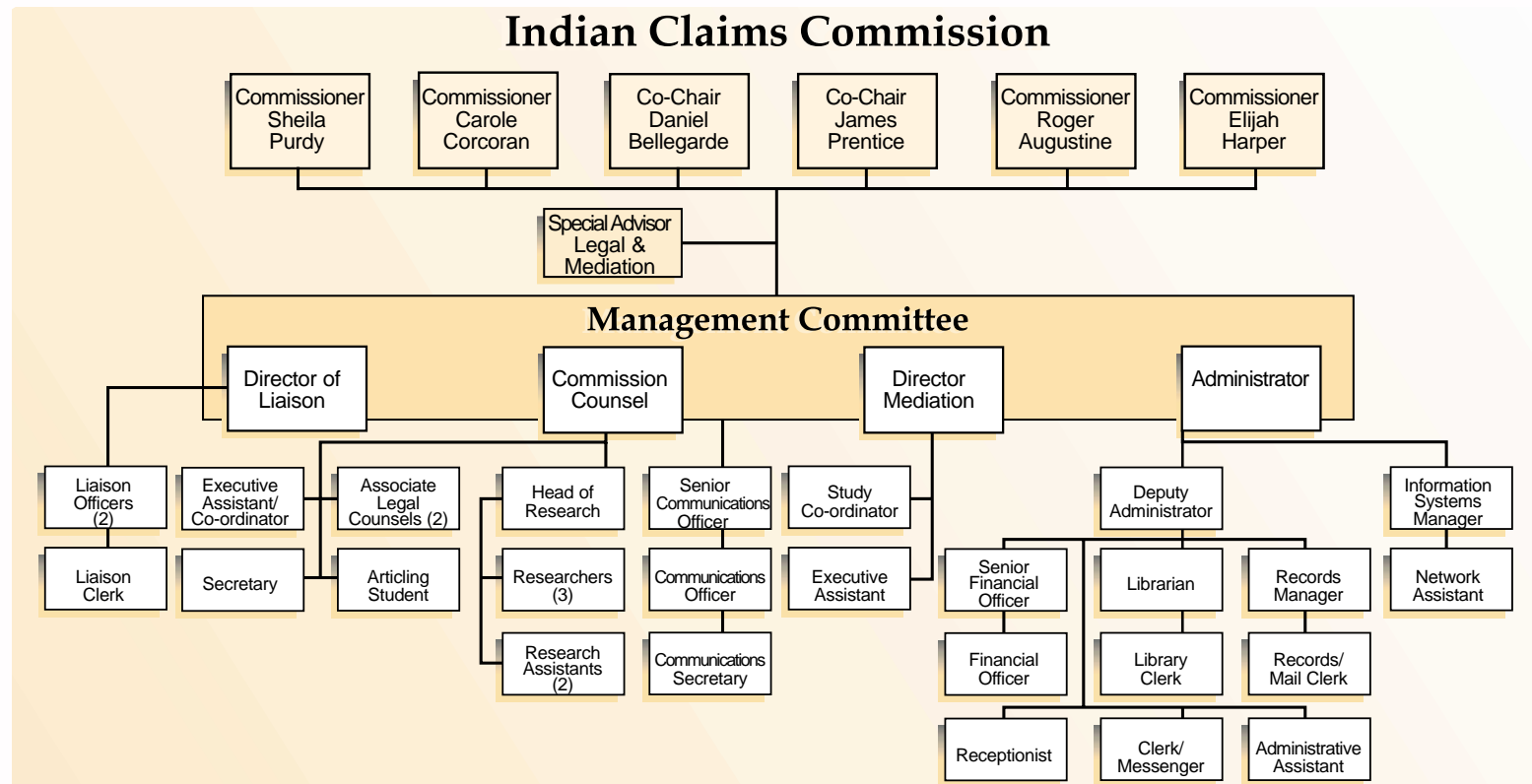
The Indian Claims Commission maintains a staff of approximately 40 people, 50 per cent of whom are aboriginal. The Commission has a Management Committee, consisting of its Administrator, Commission Counsel, Director of Mediation, and Director of Liaison. The Management Committee oversees the operations of the Commission. This committee reports to the Co-Chairs and, with their strategic direction, provides day-to-day management of the organization.

### FINANCE

The Commission continues to focus on prudent fiscal management practices. The figure represents the amounts budgeted and the actual amounts expended by the Commission since its inception. In 1999/2000, the Commission expended \$4.53 million against an approved budget of \$4.89 million, for an additional saving of approximately \$360,000. The total accumulated savings since the beginning of the Commission now represent some \$14.6 million.



**ORGANIZATION CHART**





## APPENDIX C 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

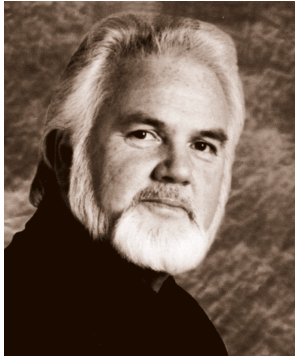
Nations, a position he held until 1997. He is currently president of Dan Bellegarde & Associates, a consulting firm specializing in strategic planning, management and leadership development, self governance, and human resource development in general. Mr Bellegarde was appointed Commissioner, then Co-Chair, 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 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 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**

Carole T. Corcoran is a lawyer with the Vancouver law firm of Fast & Corcoran. She is Dene from Fort Nelson, British Columbia and has extensive experience in aboriginal government and politics at the local, regional, and provincial levels. She has 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 Rhodes University (1997-00), Co-Chair, First Nations Summit B.C. (1998-00) and the Insurance Corporation of British Columbia (1998-00). She was appointed Commissioner in July 1992.

### 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 Rupertsland 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.

### 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. 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 in May 1999.

