Indian Specific Claims Commission

Final Report 1991–2009

A Unique Contribution to the Resolution of First Nations' Specific Claims in Canada

A UNIQUE CONTRIBUTION TO THE RESOLUTION OF FIRST NATIONS' SPECIFIC CLAIMS IN CANADA

© Minister of Public Works and Government Services Canada 2009
http://www.ainc-inac.gc.ca/

Cat. No. RC31-90/2009
ISBN 978-0-662-06645-3

Design: Accurate Design & Communication Inc.

COVER PAGE
The Indian Specific Claims Commission, known as the Indian Claims Commission, began in 1991 and wrapped up in March 2009. During this time the Commission issued 16 annual reports. The cover of this Final Report recalls the covers of those reports.

TO HER EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL

MAY IT PLEASE YOUR EXCELLENCY

This final report marks the end of the work of the Indian Specific Claims Commission, created in 1991 and wrapped up on March 31, 2009. Over its 18 years of operation, the Commission completed 88 inquiries with reports and 17 mediations with reports. This report summarizes our major achievements and makes 7 recommendations for the future of specific claims resolution in Canada.

Yours truly,

Renée Dupuis, C.M., *Ad.E.*
Chief Commissioner

LIST OF FIRST NATIONS INVOLVED IN INQUIRIES AND/OR MEDIATIONS

Inquiries | Mediations

ALBERTA

3	Alexander FN	11	Blood Tribe/Kainaiwa FN	89	Paul FN
4	Alexis Nakota Sioux N	21	Cold Lake FN	102	Siksika N
5	Athabasca Chipewyan FN	29	Duncan's FN	102	Siksika N
9	Bigstone Cree N	36	Fort McKay FN	121	Whitefish Lake
11	Blood Tribe/Kainaiwa FN	69	Mikisew Cree FN		

BRITISH COLUMBIA

1	Adams Lake FN	56	Leq'a: mel FN	103	Skowkale FN
2	Aitchelitz FN	57	Lheidli T'enneh Band	104	Skwah FN
12	Blueberry River FN	59	Little Shuswap Indian Band	105	Skway FN
27	Dene Tsaa Tse K'Nai (Prophet River) FN	61	Lower Similkameen Indian Band	106	Snuneymuxw FN
28	Doig River FN	64	Mamaleleqala Qwe'Qwa'Sot'Enox Band	107	Soowahlie FN
31	Esketemc FN	65	Matsqui FN	108	Squiala FN
37	Fort Nelson FN	80	Nadleh Whut'en FN	112	Sumas FN
41	Halfway River FN	81	Nak'azdli FN	116	Tsawwassen FN
43	Homalco Indian Band	82	Namgis FN	117	Tzeachten FN
49	Kitselas FN	84	Neskonlith FN	120	West Moberly FN
51	Kwantlen FN	97	Saulteau FN	122	Williams Lake Indian Band
52	Kwaw-Kwaw-Aplit FN	99	Scowlitz FN	124	Yakweakwioose FN
55	Lax-kw'alaams Indian Band	101	Shuswap Indian Band		

MANITOBA

15	Canupawakpa Dakota FN	60	Long Plain FN	94	Roseau River Anishinabe FN
32	Fisher River Cree N	87	Opaskwayak Cree N	96	Sandy Bay Ojibway FN
39	Gamblers FN	91	Peguis FN		
48	Keeseekoowenin FN	94	Roseau River Anishinabe FN		

NEW BRUNSWICK

30	Eel River Bar FN	66	Metepenagiag Mi'kmaq N		
63	Madawaska Maliseet FN				

ONTARIO

6	Beausoleil FN	20	Chippewas of the Thames FN	71	Mississaugas of the New Credit FN
6	Beausoleil FN	20	Chippewas of the Thames FN	73	Mohawks of Akwesasne FN
17	Chippewas of Georgina Island FN	38	Fort William FN	74	Mohawks of the Bay of Quinte FN
17	Chippewas of Georgina Island FN	54	Lac Seul FN	75	Moose Deer Point FN
18	Chippewas of Kettle and Stony Point FN	67	Michipicoten FN	110	Stanjikoming FN
19	Chippewas of Rama FN	70	Missanabie Cree FN	118	Walpole Island FN
19	Chippewas of Rama FN	71	Mississaugas of the New Credit FN		

QUEBEC

7	Betsiamites Band	68	Micmacs of Gesgapegiag FN		
22	Montagnais du Lac St.-Jean FN	123	Wolf Lake FN		

SASKATCHEWAN

8	Big Island Cree Nation	45	Kahkewistahaw FN	86	Ochapowace FN
10	Black Lake FN	45	Kahkewistahaw FN	88	Pasqua FN
13	Buffalo River Dene N	46	Kawacatoose FN	88	Pasqua FN
14	Canoe Lake Cree FN	46	Kawacatoose FN	90	Peepeekisis FN
16	Carry The Kettle FN	47	Keeseekoose FN	92	Piapot FN
23	Cote FN	53	Lac La Ronge Indian Band	93	Red Earth FN
24	Cowessess FN	58	Little Black Bear FN	95	Sakimay FN
24	Cowessess FN	62	Lucky Man Cree Nation	95	Sakimay FN
25	Cumberland House Cree N	72	Mistawasis FN	98	Saulteaux FN
26	Day Star FN	76	Moosomin FN	100	Shoal Lake Cree Nation
26	Day Star FN	76	Moosomin FN	109	Standing Buffalo Dakota FN
33	Fishing Lake FN	77	Muscowpetung FN	109	Standing Buffalo Dakota FN
33	Fishing Lake FN	77	Muscowpetung FN	111	Sturgeon Lake FN
34	Flying Dust FN	78	Muskoday FN	111	Sturgeon Lake FN
35	Fond du Lac FN	79	Muskowekwan FN	114	The Key FN
40	Gordon FN	79	Muskowekwan FN	114	The Key FN
40	Gordon FN	83	Nekaneet FN	115	Thunderchild FN
42	Hatchet Lake FN	83	Nekaneet FN	119	Waterhen Lake FN
44	James Smith Cree Nation	85	Ocean Man FN	125	Young Chipeewayan, SK

YUKON TERRITORY

50	Kluane FN	113	Taku River Tlingit FN


ALASKA
(USA)
YUKON TERRITORY
Whitehorse
NORTHWEST TERRITORIES
NUNAVUT
Treaty 11 (1921)
Yellowknife
Treaty 8 (1899)
ALBERTA
Treaty 5 (1908)
SASKATCHEWAN
MANITOBA
Treaty 10 (1906)
Treaty 6 (1889)
Edmonton
Treaty 6 (1876)
PACIFIC
OCEAN
BRITISH COLUMBIA
Victoria
Treaty 5 (1875)
Treaty 7 (1877)
Treaty 2
(1871)
Regina
Treaty 4 (1874)
Winnipeg
Treaty 1 (1871)
Treaty 3 (1873)
UNITED STATES OF AMERICA
Legend
First Nations involved in an Inquiry
First Nations involved in a Mediation
Indian Treaties Area


First Nations involved in an
ICC Inquiry and/or Mediation (1991-2009)
KALAALLIT NUNAAT
(DENMARK)
Davis Strait
Iqaluit
Labrador Sea
HUDSON BAY
NEWFOUNDLAND
St. John's
QUEBEC
Saint-Pierre et
Miquelon
(France)
Treaty 9 (1929/30)
ONTARIO
Treaty 9 (1905/06)
Robinson-
Superior (1850)
Robinson-Huron
(1850)
Williams
Treaties
(1923)
Manitoulin Island Treaty (1862)
Upper Canada Treaties
Upper Canada Treaties
Lake Superior
Lake
Huron
Lake Ontario
Lake Michigan
Lake Erie
Toronto
Ottawa
Québec
PEI
Charlottetown
NEW BRUNSWICK
Fredericton
Halifax
NOVA
SCOTIA
ATLANTIC OCEAN
Kilometers
0 50 100 200 300 400

Table of Contents

MESSAGE FROM THE CHIEF COMMISSIONER

This report marks the completion of the work that the Indian Specific Claims Commission, known as the Indian Claims Commission, began in 1991 and wrapped up in March 2009.

The final report is not an exhaustive account of all the Commission's activities during this period. The Commission issued 16 annual reports from 1991–94 to 2008–09 inclusive. It also produced reports for all the inquiries and mediations it carried out, and it compiled and issued these reports in a 24 volume collection called "Indian Claims Commission Proceedings." These documents contain a wealth of information about the First Nations that sought the Commission's services as well as the issues that were brought to us by the First Nations and the federal government. These documents may be consulted for further information about the Commission.

This final report is the result of the insight gained by the current Commissioners, drawing on their own experiences and the legacy of the 18 years of the Commission's existence.

In Chapter 1, we review the immediate context that led to the creation of the Commission, as well as the broader context surrounding the debate that began over 60 years ago in Canada over the merits of establishing a decision making body to settle unresolved specific claims disputes. This chapter also provides a brief overview of the mandate, core principles and processes that guided the Commission's work.

In Chapter 2, we want to bring to light some of the lessons learned from our experience, in terms of both inquiries and mediation. It also includes some recommendations to the government and to the new tribunal, which was created in 2008 and should be operational in 2009. Since First Nations have worked jointly with the federal government on these issues from at least 1990, we feel that the implementation of these recommendations concerns them as well.

Chapter 3 recalls the Commission's efforts to open a dialogue with the First Nations and various government bodies, as well as the actions undertaken with various audiences to enhance their knowledge about the Crown's outstanding legal obligations to the First Nations.

Chapter 4 highlights some of our accomplishments and recaps all our recommendations.

In keeping with our duty to act fairly, we wanted to build bridges between First Nations and the Government of Canada and to contribute to the settlement of some of these disputes, which have been ongoing for quite some time. It is in this spirit that the Commission made a point of collecting, in the communities themselves, evidence in the form of oral history. We are grateful to the First Nations for making us feel welcome.

Throughout its mandate, the Commission considered these pending legal issues to be among some of Canada's most pressing legal and human rights questions. We believe this is still the case today.

Considerable work remains to be done, and we are aware that only a part of it has been accomplished. We have built on what others began before us. A lot of energy and resources will have to be invested by the First Nations and the federal government to ensure that these disputes are no longer an obstacle to First Nations' social and economic development, and that their settlement fosters a productive relationship. We encourage both parties to continue giving this issue their utmost attention.

Chief Commissioner Renée Dupuis ▶

Commissioners ▶

▲ Daniel J. Bellegarde

▲ Sheila G. Purdy

▲ Alan C. Holman

▲ Jane Dickson-Gilmore

1 HISTORY OF SPECIFIC CLAIMS PROCESS IN CANADA

Section 1: Historical Background

The Indian Specific Claims Commission was created in 1991 as an interim response to a problem first acknowledged in 1946 when the federal government of the day struck a special joint committee of the House of Commons and Senate to investigate the administration of Indian Affairs in the Maritime Provinces and Eastern Quebec, including specifically the unlawful alienation of reserve land and Canada's failure to meet its treaty obligations.[1] In its 1948 final report, the Committee recommended the creation of an independent administrative tribunal to adjudicate upon Indian claims and grievances, similar to the United States Indian Specific Claims Commission that had been established two years earlier in 1946, and which would "inquire into the terms of all Indian treaties in order to discover and determine, definitely and finally, such rights and obligations as are therein involved and, further, to assess and settle finally and in a just and equitable manner all claims and grievances."[2] Despite the Committee's recognition of the need for a final, just, and equitable settlement of longstanding Indian claims, its recommendation went unheeded and the issue of treaties, rights and claims received no attention from the Canadian government for the next decade.

Notwithstanding the brief flurry of attention to claims in 1946–48, for the better part of the twentieth century, specific claims were dealt with in an ad hoc fashion by the Canadian government.[3] There was no national land claims policy, and there was no single procedure for receiving and addressing First Nations claims based on treaties or mismanagement of their lands and assets under the *Indian Act*. First Nations had to be persistent if they were to successfully advance a claim, but the absence of the political organization to support claims proposals, the money to hire lawyers and experts, and the capacity to undertake research rendered the formulation of claims unfeasible. Indeed, from 1927 until the 1951 revisions to the *Indian Act*, Indians were prevented from raising money to hire lawyers or to pursue claims through the courts.[4] During this same time period, and for years following, Canada's primary response to these claims was to litigate.

In 1959, Prime Minister John Diefenbaker struck a further Joint Committee of the House and Senate to inquire into many of the same issues that had been raised before, and acknowledged by the 1946–1948 Special Joint Committee.[5] Like this earlier body, the 1959 Joint Committee stressed the importance of the creation of an Indian Specific Claims Commission similar to that recommended in 1948, and prepared to follow through on this recommendation with legislation. Approved by Cabinet in March of 1962, Bill C-130, *An Act to Provide for the Disposition of Indian Claims*, contemplated a three-member Commission

[1] Order in Council P.C. 3797, October 11, 1946.
[2] Special Joint Committee of the Senate and the House of Commons Appointed to Continue and Complete the Examination and Consideration of the Indian Act: *Fourth Report*, June 22, 1948, p.187.
[3] Between Confederation, 1867 and the development of the first specific claims policy in 1973, more than 106 years had elapsed. Richard C. Daniel, *A History of Native Claims Processes in Canada 1867–1979*, prepared by Tyler, Wright & Daniel Limited for Research Branch, DIAND, February 1980. Ottawa: DIAND.
[4] Richard C. Daniel, *A History of Native Claims Processes in Canada. 1867–1979*, prepared by Tyler, Wright & Daniel Limited for Research Branch, DIAND, February 1980. Ottawa: DIAND.
[5] Joint Committee of the Senate and the House of Commons on the *Indian Act*, Minutes of Proceedings, No. 16, 30 May–7 July, 1961.

authorized to hear a wide range of issues and to make recommendations to Parliament for their resolution. However, an election was called soon afterwards, and the proposed legislation was never introduced in Parliament.

The 1962 Bill was amended by the new Pearson government, and federal legislation proposing the creation of an independent tribunal to adjudicate the resolution of Indian claims was first introduced in Parliament in 1963.[6] After first reading and consultation with aboriginal organizations, Band Councils, and other interested groups, the proposed legislation was modified and reintroduced in 1965 as an *Act to Provide for the Disposition of Indian Claims*.[7]

This Bill directed the establishment of a five-member Commission (of whom at least one was required to be an Indian within the meaning of the *Indian Act*), which would have jurisdiction to consider five broad categories of claims. The first category of claims concerned land in respect of which aboriginal title had not been extinguished, and which today is referred to as "Comprehensive Claims." Second, the Commission would have the power to adjudicate disputes concerning dispositions of reserve land made without compensation or for inadequate compensation. The third class of claim related to the Crown's mismanagement of Band trust funds, while the fourth category concerned the failure of the Crown to honour its obligations to Indians arising under a treaty, agreement, or undertaking. The final category, and arguably the broadest of five, concerned transactions in which the Crown failed to act "fairly or honourably" towards Indians, thereby causing them injury.[8]

The Bill provided that claimants could obtain adequate funding to investigate, document and present their claims before the Commission (or to pursue an appeal to the courts), and that the provision of this funding would not be within the control of the Department of Indian Affairs or the Department of Justice, but would be a responsibility of the Commission itself.[9] The Commission would be required to render a decision on each claim, with written reasons, and would have the power to award financial compensation. There was to be no limit to the amount of compensation that could be awarded.[10] The decisions of the Commission were to be final and binding, subject only to appeal to an "Indian Claims Appeal Court" constituted under the proposed Act, which would have the power to confirm or vary decisions, or to refer them back to the Commission for further hearing.[11] The judges of this court were to be drawn from the Exchequer (now Federal) Court.

The 1965 Bill also dealt with the then novel subject of oral history evidence. Speaking in the House at second reading of the Bill, the Minister responsible for Indian Affairs advised that the admission of oral history evidence was necessary in order for claimants to obtain redress for historical claims. As a result, the Bill provided that the Commission would not be bound by the legal rules of evidence. In order to ensure reliability, however, an award could only be made on the basis of oral evidence if that evidence were corroborated in a material way by some other

6 Bill C-130, *An Act to Provide for the Disposition of Indian Claims*, 1st Sess., 26th Parl., 1963.
7 Bill C-123, *An Act to Provide for the Disposition of Indian Claims*, 3rd Sess., 26th Parl., 1965.
8 Canada, House of Commons, *Debates*, June 22, 1965, 3rd Sess., 26th Parl., vol. 3, 1965, pp. 2750–51.
9 Bill C-123, s. 32.
10 Canada, House of Commons, *Debates*, June 22, 1965, 3rd Sess., 26th Parl., vol. 3, 1965, p. 2754.
11 Bill C-123, ss. 25, 26, 32.

evidence.[12] Nonetheless, the Minister stated that corroboration could consist of "an artefact, a marking or some other corroborative evidence,"[13] which would be assessed for weight by the Commission alone.

After second reading, the proposed legislation was referred to another joint Senate and House Committee for further study, and it subsequently died on the Order Paper.

In December 1969, in the wake of the introduction of the *White Paper* review of Indian Affairs policy, the federal government mandated a Commissioner on Indian Claims, Dr. Lloyd Barber, whose 1977 report described the depth and range of issues to be addressed:

> It is clear that most Indian claims are not simple issues of contractual dispute to be resolved through conventional methods of arbitration and adjudication. They are the most visible part of the much, much more complex question of the relationship between the original inhabitants of this land and the powerful cultures which moved in upon them. That the past relationship has been unsatisfactory both for [Aboriginal people] and for [Canadian society] cannot be in dispute. There are too many well-documented cases where [Canada] failed to live up to obligations [that were] presumably entered [into in] good faith, and which Indians accepted with equal or greater faith. Satisfactory settlement of these obligations can help provide the means for Indians to regain their independence and play their rightful role as a participating partner in the Canadian future. The claims business is not less than the task of redefining and redetermining the place of Indian people within Canadian society. They themselves are adamant that this shall be done, not unilaterally as in the past, but with them as the major partner in the enterprise.[14]

It is likely that the tone of Barber's report was influenced in no small measure by a rising tide of aboriginal activism and an increasing willingness on the part of First Nations to vindicate their rights in court. Aboriginal groups commenced litigation in Quebec and the Northwest Territories regarding the detrimental impact of proposed resource development projects upon their rights and their traditional lands, while in British Columbia First Nations sought legal clarification of their land rights and title. The latter led to the pivotal 1973 decision of the Supreme Court of Canada in *Calder v. British Columbia (Attorney General)*,[15] which for the first time recognized aboriginal title to land as a legal right in Canada. This decision in particular pressed the federal government to rethink its approach to claims, both comprehensive claims based on assertions of ongoing aboriginal title and those specific claims arising under treaty and the Indian Act. The new approach was to emphasize negotiation rather than litigation of claims.

[12] Bill C-123, s. 13.
[13] Canada, House of Commons, *Debates*, June 22, 1965, 3rd Sess., 26th Parl., vol. 3, 1965, pp. 2781–82.
[14] Commissioner On Indian Claims, A Report: statements and submission/ Lloyd Barber./Canada Indian Rights Commission.—Ottawa, ON: Supply and Services Canada, 1977.
[15] [1973] SCR 313.

Acting on this new direction, the federal government established the Office of Native Claims (ONC) in 1974. Housed within the Department of Indian Affairs, the ONC was tasked with the review of claims to determine whether lawful obligations had been met, and to formulate policies relating to the development of claims and conduct of negotiations. While the tasks of review and policy formulation were, on their surface, unproblematic, significant concerns were expressed that, while the ONC was empowered to make decisions on claim validation, it was not independent. Rather, the ONC was to represent the Minister and the Government of Canada in claims assessment and negotiation with First Nations. It was immediately clear that this dual role created an inherent conflict of interest on the part of Canada, which became an additional grievance of First Nations. They were not alone in this opinion. Five years later, in a report prepared for the Office of Native Claims, Gerard V. LaForest (who would become a Justice of the Supreme Court of Canada) stated:

> But the important thing is that if such a process is to be successful, it must be acceptable to the Indians. For if there is any purpose, apart from the demands of justice, in resolving specific claims, it is to remove the pin pricks that bedevil the government's relations with the Indians. Resolution of these claims on a basis that is fair and seen by the Indians to be fair is essential to establish among the Indians the belief in the good faith of the government …[16]

Whether or not the department acknowledged the inherent conflict of interest in its approach to claims, it is apparent that by 1982, the federal government was amply aware of the failings of its process: of the 250 specific claims presented to the ONC between 1970 and 1981, only 12 had been settled, for a total of $2.3 million. The existing scheme for the settlement of claims was clearly not working. As a result, the federal government reviewed and clarified its policy for the resolution of specific claims, which was detailed in the 1982 publication entitled *Outstanding Business*.[17]

Aware that First Nations were dissatisfied not only with the process but also with the laggardly pace at which claims were being resolved, the policy contemplated an increase in funding for claimants, as well as additional resources for the ONC.[18] Additionally, the bases upon which claims could be accepted were more clearly articulated, and included breaches of lawful obligations, as well as fraud, and failure to provide compensation for the taking of reserve land. Finally, the department indicated that it would not allow statutory limitation periods or the doctrine of laches (unreasonable delay) to interfere with the acceptance for negotiation of otherwise valid claims.

From the perspective of the First Nations, however, the revised policy did little to redress old grievances. The Department of Justice continued to narrowly define "lawful obligations," which precluded the acceptance of claims on moral or equitable grounds. The burden upon First Nations to prove their allegations was heavy, especially in light of the evidentiary difficulties

[16] Gerard V. LaForest, Q.C. "Report on Administrative Processes for the Resolution of Specific Indian Claims," (Ottawa: DIAND, 1979), pp. 17–18 [unpublished].
[17] DIAND, *Outstanding Business: A Native Claims Policy* (Ottawa, Ministry of Supply and Services, 1982).
[18] The ONC was renamed the Specific Claims Branch.

associated with proving facts that may have occurred a century ago. Exacerbating these issues was the policy taken by the Department of Indian Affairs to deny disclosure of the Department of Justice's legal opinion rejecting a claim, which left First Nations with only limited information as to the reasons why their claim had failed. These factors, combined with the low priority assigned to specific claims evident in the inadequate funding and staffing allocated to the process by the department, were made worse by a growing backlog and extraordinary delays in the processing of claims. The First Nations' greatest objections, however, concerned Canada's inherent conflict of interest in the claims process, a process in which it was both a party and a judge – a serious flaw in the system that did not go unnoticed by other commentators. For example, in its 1988 report on aboriginal issues, the Canadian Bar Association's Committee on Aboriginal Rights observed:

> First, DIAND, which has been indicted as the cause of many of the claims filed, is asked to assess their "validity." Second, this same department controls access to the process and the funding. Third, the department acts to defend the federal government in reaching a compensation agreement with the Indian claimants; yet the department also has fiduciary or trust responsibilities to the Indian people to protect "Indians, and Lands reserved for the Indians" under section 91(24) of the *Constitution Act, 1867*.[19]

The Canadian Bar Association was not the only independent body to see the flaws inherent in the existing specific claims process. A Special Committee of the House of Commons on Indian Self-Government in Canada, chaired by the Honourable Keith Penner, tabled its report in December 1982, which documented the strong criticism of the government's policy and process for settling claims. The Penner Report called for "a new policy to promote the fair and just resolution of outstanding claims" and a new claims process established by legislation "so that it cannot be readily changed."[20] The House of Commons Standing Committee on Aboriginal Affairs, in its March 1990 report, acknowledged the existence of "fundamental problems in [claims] policy and process," and noted that "one recurring suggestion is that the land claims process, including the funding aspect, should be managed or monitored by a body or bodies independent of the Department of Indian Affairs and the Department of Justice."[21]

As well, in August 1990, the Assembly of First Nations (AFN), in its *Critique of Federal Government Land Claims Policies*, stated:

> The strict legal criteria applied to specific claims have rendered the policy useless for resolving a large number of claims …[22]

[19] Canadian Bar Association, *Report of the Canadian Bar Association Committee on Aboriginal Rights in Canada: An Agenda for Action* (Ottawa: the Canadian Bar Association, 1988), p. 55.
[20] Keith Penner, Chairman, *Indian Self-Government in Canada: Report of the Special Committee* (Ottawa: Ministry of Supply and Services, 1983), p. 115.
[21] Standing Committee on Aboriginal Affairs, *Unfinished Business: An Agenda for All Canadians in the 1990's* (Ottawa, Queen's Printer, March 1990), p. 3.
[22] Assembly of First Nations: *AFN's Critique of Federal Government Land Claims Policies* (Ottawa, AFN, August 21 1990) [unpublished].

Section 2: The Indian Specific Claims Commission: An Interim Response

The Oka/Kahnesatake crisis of 1990 galvanized the federal government to begin a new round of specific claims reform. Oka arose four years after the Kahnesatake First Nation's specific claim had been rejected by the federal government in 1986. On September 25, 1990, in an address to the House of Commons, Prime Minister Brian Mulroney acknowledged that no issue or action was more urgent than land claims. He then announced three parallel initiatives, of which two were related to specific claims. The first initiative was to accelerate the settlement of specific claims, namely "those claims that result from past government non-performance or malfeasance with respect to existing treaties and the Indian Act." The second initiative was to ensure that the legal undertakings regarding land transfers to treaty Indians, given in some cases as much as a century ago, "finally be honoured."[23]

In the fall of 1990, an independent Committee of Chiefs was struck, and following forty days of cross-Canada consultations with Aboriginal leaders, legal counsel, and First Nations' advisors, the Committee released its report. The Committee stressed the view of First Nations that the Specific Claims Policy was flawed and required extensive revision to ensure it respected standards of equity and fairness in its processes and outcomes:

> The current process provides for no independent review of decisions as to the validity of claims or the amount of compensation to be paid for claims. The justification for the rejection of claims is rarely given. Thus, the Government of Canada acts as defendant, trustee charged with protecting First Nations' interests, as well as judge and jury on all claims made against it.[24]

The process they envisaged was to be characterized by a wide-ranging, independent authority to make determinations on issues, and to refer matters to mediation for the purpose of resolving issues arising in the course of the validation and negotiation of claims. An important part of the new approach was to be an independent "Specific Claims Commission," which would exist at arm's length from the parties to claims, and provide for the possibility of review absent in the former specific claims process.

Stressing the importance of the independence of a Specific Claims Commission, the Committee directed that the Commission should have the power to review the process of settlement of claims, most notably with regard to claims' validation and compensation, and that it should

[23] House of Commons Debates, September 25, 1990, p. 13320.
[24] Chiefs Committee on Claims: *First Nations Submission on Claims*, (Ottawa, December 14, 1990) [unpublished]; reprinted (1994) 1 ICCP 187.

have "teeth"; that is, the Commission should be equipped with the power to facilitate negotiation of claims and to break any impasse that might arise in that process. The Order in Council (OIC) striking the Commission should underscore that the claims' appeal and review process comprising the Commission's primary purpose should be without prejudice to the right of claimants to proceed to court and without prejudice to any treaty and aboriginal rights or any other rights they may possess in law. Finally, the Committee urged that the detailed mandate of the Commission and the mechanism for appointing Commissioners should be finalized only after consultation with First Nations leaders.

The Minister of Indian Affairs responded to the recommendations of the Chiefs Committee in January 1991 by outlining five initiatives for the reform of the claims' process. One of these initiatives concerned the creation of a claims' commission of inquiry under the *Inquiries Act*. After the Chiefs Committee's response in March to the Minister's five proposed initiatives, the Prime Minister announced in April 1991 some modifications to the Specific Claims Policy and the establishment of the Indian Specific Claims Commission (ISCC). This commission would become known as the Indian Claims Commission, empowered as a commission of inquiry under the *Inquiries Act* and mandated in July 1991 by Order in Council.[25]

Among the recommendations accepted by the Minister was that advising the formation of a Specific Claims Commission, albeit in a form distinct from that proposed by the Committee. Rather than implementing an ongoing review body such as that anticipated by the Chiefs Committee, the ISCC was devised as an interim solution for specific claims only and to provide input into a joint working group to review the policy and process, through the power of inquiry provided by the *Inquiries Act*.

The House Standing Committee on Aboriginal Affairs had also been instructed to hear and consider evidence regarding the Oka crisis, and to report its findings and recommendations. In May 1991, it echoed the recommendations of the Chiefs Committee when it advised the government to establish an independent body to review the validity of claims, make recommendations to the government on the acceptance of claims for negotiation, and monitor the implementation of the claims' policy and resulting agreements to ensure fairness. Mediation was to be a prominent aspect of this body's work, as was an independent judicial tribunal, which was to focus on the validity of specific claims and the compensation required to meet valid claims.[26]

The passage of the July 1991 Order in Council was met with considerable concern on behalf of First Nations. Aboriginal leaders expressed their dismay that the government, while agreeing on the concept of a commission, had failed to consult with First Nations on the nature and structure of such a body as defined within the OIC. As well, there was considerable concern that the

[25] Order in Council P.C. 1991–1329, July 15, 1991.
[26] *Fifth Report of the Standing Committee on Aboriginal Affairs*, May 1991, p. 32.

commission anticipated by the OIC was too closely tied to the flawed existing specific claims process, and would thus lack the necessary independence and freedom to provide the manner of review process sought by the Chiefs Committee. First Nations also debated whether the inclusion of only a limited number of criteria contained within the current Specific Claims Policy in the Order in Council elevated those criteria to the status of legal entities. There was talk of seeking clarification of this issue through a court challenge.

In November 1991, the Minister of Indian Affairs wrote to the Assembly of First Nations (AFN) regarding the creation of a joint working group and the Chiefs' proposal to undertake a thorough review of the current Specific Claims Policy. In December 1991, the AFN's Chiefs Committee on Claims decided to refer the ISCC's mandate and the appointment of new commissioners to the joint working group. In February 1992, a protocol was endorsed establishing a joint working group to review the Specific Claims Policy and process, and to make recommendations to the Minister and the Assembly of First Nations, for reform.

The revised Order in Council established the jurisdiction and powers of the Indian Specific Claims Commission; although subject to future amendments over time, it assumed two primary functions: the conduct of public inquiries and mediation services to the parties. The Order defined a jurisdiction consistent with Canada's Specific Claims Policy as published in 1982, subject to any formal amendments or additions. The mandate empowered the ISCC to consider only those matters at issue when a dispute was initially submitted to the Commission, and to inquire into and report on:

> a) whether a claimant has a valid claim for negotiation under the Policy where that claim has already been rejected by the Minister; and
>
> b) which compensation criteria apply in negotiation of a settlement, where a claimant disagrees with the Minister's determination of the applicable criteria.[27]

[27] Commission issued September 1, 1992, pursuant to Order in Council PC 1992–1730, July 27, 1992, amending the Commission issued to Chief Commissioner Harry S. LaForme on August 12, 1991, pursuant to Order in Council PC 1991–1329, July 15, 1991. A complete list of Orders in Council can be found in Appendix B.

Section 3: New Developments: Legislation

In 1996, the Royal Commission on Aboriginal Peoples recommended the replacement of the ISCC by an Aboriginal Lands and Treaties Tribunal, with jurisdiction to deal with specific claims and treaty making, implementation, and renewal. The Commission also recommended the creation of treaty commissions to provide mediation services to the parties as jointly requested.[28]

A second Joint First Nations/Canada Task Force was formed in 1996 to consider and make recommendations regarding the structure and mandate of an independent claims body, as well as to make recommendations regarding claims policy reform. The recommendations of the Joint Task Force (JTF), outlining the mandate and structure of an independent tribunal, were presented to the Minister in November 1998. In June 2000, the Minister of Indian Affairs presented a new model for an independent claims body to the Chiefs of the Assembly of First Nations.[29] While the model incorporated some aspects of the Joint Task Force's proposed structure, there were important distinctions between the two approaches. For example, there was disagreement over the proposed $5-million cap on individual awards. Similarly, the JTF model had proposed consultation on appointments of key personnel to the new claims body, which was a subject that was not addressed in the Minister's proposal.

The June 2000 model, as amended, was ultimately articulated in Bill C-6, *The Specific Claims Resolution Act*, and introduced into the House of Commons in the fall of 2002. This Bill attempted to modify the current specific claims process by creating a new administrative body that would include a commission to facilitate claims negotiations through ADR and mediation processes, and a tribunal with the capacity to make binding decisions on the validity of claims and compensation awards, to a prescribed maximum per claim. Following the committee processes in the House of Commons and Senate, this Bill received Royal Assent on November 7, 2003.

First Nations were virtually unanimous in their rejection of the changes to the Specific Claims Policy contained within Bill C-6. Witnesses who participated in the parliamentary hearings on the Bill expressed concerns about the spirit and intent of the proposed legislation, claiming it failed to address some of the most clear and pressing weaknesses of previous policy approaches. For example, notwithstanding abundant commentary from a range of sources calling attention to the ongoing conflict of interest inherent in a process whereby one of the parties was also the decision-maker, the Bill contained no provisions directed to correcting this deficiency. As well, issues concerning the financial cap that was to be applied to claims' settlements had not been addressed or resolved, and the Bill failed to ensure transparency in the processes for appointing Commissioners and tribunal members to the new specific claims resolution body. Given the lack of support of First Nations for the legislative changes contained within Bill C-6, it was not proclaimed into force by the government.[30]

---

[28] See *Report of the Royal Commission on Aboriginal Peoples*, Volume 2, Restructuring the Relationship, Part Two, chapter 4 (Minister of Supply and Services Canada, 1996).

[29] This model would later be introduced in the 1st session of the 37th Parliament as Bill C-60, *An Act to establish the Canadian Centre for the Independent Resolution of First Nations Specific Claims*. Bill C-60 died on the Order Paper when Parliament was prorogued in September 2002.

[30] S.C. 2003, c. 23. *Bill C -30, Legislative Summary*, Library of Parliament, January 14, 2008, p. 8.

During the course of parliamentary reviews of the specific claims process, the Commission appeared before the Standing Committees of both the House of Commons and Senate, where it reiterated the Commission's position on the need for a permanent adjudicative body. From the Commission's inception, it repeatedly drew the government's attention to the need to create a permanent and independent organization to review all specific claims.[31]

The most recent review was conducted by the Senate Committee, which released its Final Report of its Special Study on the Federal Specific Claims Process in December 2006.[32] While the federal government was contemplating changes to the legislation in regard to specific claims, the ISCC continued to execute its mandate to conduct public inquiries into rejected claims and to facilitate the negotiation of claims through its Mediation Unit.

Historically, the Prime Minister was responsible for the ISCC under the *Financial Administration Act*, and it was to this office that the ISCC submitted its annual reports and similar documents. However, in July 2004, the authority for the Commission was transferred to the Minister of Indian Affairs and Northern Development. Order in Council P.C. 2004-858 ended the important and historic relationship between the Commission and the Prime Minister.

Concerned that this administrative change would call into question the ISCC's independence, the Commission was careful to communicate to its primary stakeholders that this change would in no way compromise that independence: the parties were advised that the Commission's codes of conduct for both Commissioners and staff stressed impartiality and neutrality,[33] and that funding for the Commission's work would not come from the Department of Indian Affairs and Northern Development. The ISCC immediately reinforced its arms-length relationship with the department by arranging for its corporate services to be administered via the Canadian Human Rights Commission.

In June 2007, the Harper government released its plan for the revision of the Specific Claims Policy in a document entitled *Specific Claims: Justice at Last*. Key elements of this plan included the creation of an independent tribunal, dedicated funding for claims settlement and provisions to expedite processing and facilitate access to mediation.[34] Following the announcement of the new plan, the Assembly of First Nations jointly with the Government of Canada prepared legislation that would embody the plan and discussed the process by which it would be implemented. The outcome of this cooperation was a bill to create the Specific Claims Tribunal, which was accompanied by a political agreement between the Government of Canada and the Assembly of First Nations to work together on issues related to specific claims that fall outside the scope of the legislation. Intended as a companion to the legislation, the political agreement, among other things, addresses the establishment of a joint approach to historic treaty issues and a process for resolving claims over $150 million, both of which are outside the legislation.[35]

[31] November 15, 2005, Chief Commissioner R. Dupuis to the House of Commons Standing Committee on Aboriginal Affairs and Northern Development; October 18, 2006, Chief Commissioner R. Dupuis to the Standing Senate Committee on Aboriginal Peoples.

[32] *Negotiation or Confrontation: It's Canada's Choice*, Final Report of the Standing Senate Committee on Aboriginal Peoples' Special Study on the Federal Specific Claims Process, The Honourable Gerry St. Germain, P.C. (Chair), and The Honourable Nick Sibbeston (Deputy Chair), Ottawa, December 2006.

[33] See "Code of Conduct for Commissioners: Indian Claims Commission," December 11, 2003; and "Code of Conduct for Employees of the Indian Claims Commission," September 15, 2006.

[34] *Specific Claims: Justice at Last*, Indian and Northern Affairs Canada, Ottawa, June 2007.

[35] Indian and Northern Affairs Canada press release (Ottawa, November 28, 2007).

The proposed *Act to establish the Specific Claims Tribunal Act and to make consequential amendments to other Acts* was introduced into Parliament on November 27, 2007. The Bill proposed to modify the current specific claims process by establishing an upper limit of $250 million per year on all negotiated claim settlements or claims resolved by the Specific Claims Tribunal. The Tribunal is empowered to make binding decisions on the validity of claims and compensation awards, to a prescribed maximum of $150 million per claim; it is to be staffed with Superior Court Judges from across Canada.

The *Specific Claims Tribunal Act*[36] received Royal Assent in June 2008, and came into effect on October 16, 2008; with the coming into force of this legislation, Canada's interim response – the Indian Specific Claims Commission created in 1991 – has been replaced with a permanent, independent adjudicative body.

Seven months before the enactment, an Order in Council was issued directing that the Indian Specific Claims Commission no longer accept new claims and cease or complete all remaining inquiries by December 31, 2008. All remaining activities of the Commission were to cease by March 31, 2009.[37]

Recommendation 1.0: That the government initiate, with the Assembly of First Nations, a thorough review by an independent panel, of a) the 1973 Specific Claims Policy, and b) the Department of Indian and Northern Affairs' application of that policy, to make them consistent with:

- **section 35 of the *Constitution Act, 1982*;**
- **the Crown's fiduciary obligation as established by the 1984 Supreme Court of Canada decision in *Guerin*, and subsequent decisions;**
- **the expansion of the application of the Crown's fiduciary obligation in the constitutional context, as established by the 1990 *Sparrow* decision of the Supreme Court of Canada;**
- **the *Specific Claims Tribunal Act*;**
- **the need to address claims over $150 million, which are outside the jurisdiction of the Specific Claims Tribunal.**

This review should be completed within the same five year review period called for in the *Specific Claims Tribunal Act*.

Recommendation 2.0: That the Superior Court Judges appointed to the Specific Claims Tribunal be versed in First Nations' land claims' issues, and that, if such is not the case, training be provided by, among others, representatives of First Nations.

[36] S.C. 2008, c. 22, *Bill C -30, An Act to establish the Specific Claims Tribunal and to make consequential amendments to other Acts*, October 16, 2008.
[37] Order in Council P.C. 2007–1789, November 22, 2007.

Section 4: The Commission's Mandate

The ISCC's mandate, as spelled out by its empowering Order in Council, is twofold: first, upon the request of a First Nation, it holds a public inquiry to review the Minister's decision when either the Minister has rejected its claim or the Minister has accepted the claim but there is a dispute over how to establish compensation; second, upon mutual agreement of a First Nation and the Department of Indian Affairs, the ISCC provides mediation support at any stage of the claims process, to assist the parties to reach a settlement.[38]

In the months following the originating Order in Council, then Minister of Indian Affairs Tom Siddon clarified how the Department of Indian Affairs would respond to the Commission's recommendations regarding outstanding lawful obligations. He said:

> I expect to accept the Commission's recommendations where they fall within the Specific Claims Policy. If, in carrying out its review, the Commission concludes that the policy was implemented correctly but the outcome is nonetheless unfair, I would again welcome its recommendations on how to proceed.[39]

During its inaugural year, the ISCC commissioned two artists, Kirk Brant and David Beyer to design the logo which would symbolize the work of the Commission. They drew inspiration from the words of Ernest Benedict, Mohawk Elder:

"I have heard the elders say that when the terms of the treaties were deliberated the smoke from the pipe carried that agreement to the Creator binding it forever. An agreement can be written in stone, stone can be chipped away, but the smoke from the sacred pipe signified to the First Nation peoples that the treaties could not be undone."

"Traditionally, the pipe was smoked to bring a spiritual dimension to human affairs, to seal an agreement, to bind the smokers to a common task or to signal a willingness to discuss an issue. It is still being used today for the same reasons. For this reason, the pipe was chosen as the centre of the Indian Specific Claims Commission logo. The wisps of smoke rising upward to the Creator lead to a tree-covered island representing Canada, where claims are being negotiated. The four eagle feathers, symbolizing the races of the earth, represent all parties involved in the claims process. Elements of water, land and sky etched in blue and green indicate a period of growth and healing."

[38] The consolidated terms of reference can be found in Appendix A.
[39] Tom Siddon, Minister of Indian Affairs and Northern Development, to Ovide Mercredi, National Chief, Assembly of First Nations, November 22, 1991.

The Commission interpreted Minister Siddon's letter as providing a "supplementary mandate" to draw the government's attention to those circumstances where the Commission considered the outcome of historical events to be unfair, even though those circumstances did not give rise to an outstanding lawful obligation according to the Specific Claims Policy. In a 1993 letter to the Commission, then Minister of Indian Affairs Pauline Browes reiterated the position taken by her predecessor. Minister Browes' letter makes two key points in relation to the Commission's jurisdiction:

> (1) I expect to accept the Commission's recommendations where they fall within the Specific Claims Policy;
>
> (2) I would welcome the commission's recommendations on how to proceed in cases where the commission concluded that the policy had been implemented correctly but the outcome was nevertheless unfair …[40]

Over the course of its history, the Commission has exercised this "supplementary" authority sparingly and only in circumstances which, in its view, give rise to a demonstrable inequity or unfairness.[41] The *Carry the Kettle First Nation: Cypress Hills Inquiry* was one such case. This inquiry considered the alleged creation and then surrender of a reserve for the Assiniboine in the Cypress Hills. In the final analysis, the Commission panel found that although a reserve had not been created for the Assiniboine at Cypress Hills, the First Nation maintains a deep spiritual connection to this territory, which was the site of the Cypress Hills Massacre of 1873. Given this connection and the historical significance of the Cypress Hills, the Commission recommended that the area be acquired by the Government of Canada and designated a historical site.[42]

In the *Canupawakpa Dakota First Nation: Turtle Mountain Surrender Inquiry*, the Commission was asked to consider whether a reserve had been created and whether this reserve, if created, was lawfully surrendered. During the course of the inquiry, the parties agreed that Turtle Mountain had become a *de facto* reserve because of its clear demarcation, its treatment by the Crown as a reserve and its continued use by the Turtle Mountain Band. On the issue of surrender, the Commission panel found that the lands had been lawfully surrendered, but invoked the Commission's supplementary mandate to urge the Crown to acquire those parts of the surrendered lands that had contained burial grounds.

More recently, in the *Red Earth and Shoal Lake Cree Nations: Quality of Reserve Lands Inquiry*, the Commission panel found that the terms of Treaty 5 had been fulfilled by the Crown with respect to farming lands and thus no outstanding lawful obligation persisted; however, the gradual degradation of those lands by increasing water levels greatly undermined the quality of life and prosperity of the Bands. The supplementary mandate was enlisted to recommend that the Department of Indian Affairs initiate discussions with the Bands to find a long-term solution to the problems resulting from the condition of their reserve lands.[43]

---

[40] Pauline Browes, Minister of Indian Affairs and Northern Development, to Harry S. LaForme, Chief Commissioner, Indian Claims Commission, October 13, 1993.

[41] The six inquiries that have dealt with the supplementary mandate are ICC, *Carry the Kettle First Nation: Cypress Hills Inquiry* (Ottawa, July 2000), reported (2000) 13 ICCP 209; ICC, *Canupawakpa Dakota First Nation: Turtle Mountain Surrender Inquiry* (Ottawa, July 2003), reported (2004) 17 ICCP 263; ICC, *Friends of Michel Society 1958 Enfranchisement Inquiry* (Ottawa, March 1998) reported, (1998) 10 ICCP 69; ICC, *Roseau River Anishinabe First Nation: Medical Aid Inquiry* (Ottawa, February 2001), reported (2001) 14 ICCP 3; ICC, *Young Chipeewayan: Stoney Knoll Indian Reserve 107 Inquiry* (Ottawa, December 1994), reported (1995) 3 ICCP 175; and ICC, *Red Earth and Shoal Lake Cree Nations: Quality of Reserved Lands Inquiry* (Ottawa, December 2008), reported 24 ICCP.

[42] ICC, *Carry the Kettle First Nation: Cypress Hills Inquiry* (Ottawa, July 2000), reported (2000) 13 ICCP 209.

[43] ICC, *Red Earth and Shoal Lake Cree Nations: Quality of Reserve Lands Inquiry* (Ottawa, December 2008), reported 24 ICCP.

Section 5: Principles and Processes: How the Commission Works

As an administrative body, the ISCC is guided by both the fundamental principles of natural justice and fairness. The Commission has defined processes of inquiry and mediation that are both independent and impartial; Commissioners and the processes by which they gather evidence, take testimony, deliberate and decide issues must be characterized by neutrality and equity. The parties must feel confident that they have been heard by the Commission, and that their evidence and arguments have been received without bias or preconception, leading to a fair outcome. This is equally important in both inquiry and mediation contexts. In many cases, the Commission's inquiry process constitutes the first opportunity for the parties to come together, face-to-face, to talk about the claim; within mediation and facilitation, the mediator must be perceived to be impartial in order to be successful in facilitating discussions or negotiations between the parties.

As a body conducting public inquiries, it is important that the Commission's processes are open and transparent. In the realm of inquiry, an important part of the process is the community session, discussed below, wherein the Commission travels to the community to receive testimony and collect oral history relevant to the issues of the inquiry, from Elders and other witnesses. These hearings are open to the community, and frequently community sessions are attended by interested observers from the locale, as well as students and teachers from the community's schools. While mediation and facilitation are confidential processes, transparency in this context is facilitated by public reports that are produced at the conclusion of each mediation. Inquiries are also concluded with reports that are public, and which contain detailed analyses of the issues in the claim, the Commission's reasons and recommendations, as well as appendices containing extensive histories of the claims that are invaluable to communities and those interested in aboriginal issues generally.

The process of inquiry is initiated when a First Nation contacts the Commission to request a public inquiry into the rejection of its claim by the Department of Indian Affairs and Northern Development, or, in the case of an accepted claim, when the First Nation desires an impartial reconsideration of the criteria that the department has decided will guide compensation negotiations. Upon receiving the request, the Commission will consider whether the matter is one that falls within the Commission's mandate. If the decision is made to conduct an inquiry, the Commission strikes a panel of three Commissioners to conduct the inquiry and informs the parties that it is proceeding. As a first step in the inquiry process, the ISCC's Liaison Unit arranges to bring the parties together at a 'planning conference'. This conference, which also involves the Commission's and parties' legal counsel, will agree on the legal issues that will guide the inquiry and set a timetable for the gathering of evidence, the community session, and for the hearing at which legal arguments of the parties are heard by the Commission panel. Where the parties are unable to reach an agreement on the issues, the panel will make the decision. Subsequent to the hearing and gathering of all available and relevant

evidence, the record is closed and the panel enters a process of deliberation. Once the panel reaches a determination on the issues and recommendations, an inquiry report is produced and released to the parties and the public.

The strength of the Commission's findings is reinforced by the manner in which the panels conduct the inquiry. Central to this is the gathering of oral history evidence and testimony in the community. The importance of bringing the Commissioners to the community to hear the stories and recollections of Elders and other witnesses cannot be underestimated. Because the ISCC is not bound by traditional rules of evidence and has defined its own procedures,[44] the community session and oral hearing are structured in a manner conducive to obtaining as full an understanding of the claim and its impacts as possible. For example, respect for the Elders dictates that their oral histories not be subjected to cross-examination by the parties' legal counsel; however, witnesses other than Elders are likely to experience direct examination and cross-examination at the community session.

For the Commission, the community session provides an invaluable opportunity to hear directly from those impacted by the claim and to see the location of the historical events relevant to the inquiry; site visits which take the panel to the lands directly affected by, for example, a surrender, can offer invaluable insights into the claim and the issues. As a party to the claim, officials from the Department of Indian Affairs and Northern Development and the Department of Justice also attend the community session and site visits, thereby obtaining awareness and understanding of the issues that may not be apparent in a written submission. For the First Nation, the community session offers an opportunity to communicate their understanding of the claim and its issues in the location most affected by them – a vitally important matter when historical evidence is retained by Elders, some of whom are too frail to travel outside their communities to offer evidence to the Commission.

The Mediation Unit of the ISCC exists separate and apart from the inquiry function. Mediation can take place at any point during the specific claims process, with the consent of both parties. From the perspective of the Commission, mediation is intended to facilitate negotiations in the manner the parties deem appropriate, and while the practice of mediation is relatively standardized, the process is one shaped and defined by the parties with the assistance of the mediator. In this manner, the Commission supports a mediation function that responds to the local conditions of a specific negotiation, and which is bicultural, informal, non-threatening, and flexible.

[44] See ICC, "Inquiry Process: Guidelines for Parties," June 1, 2004.

2 | 18 YEARS: THE PATTERNS, THEMES, AND LESSONS LEARNED

For nearly two decades the Indian Specific Claims Commission has sat as an independent, impartial body facilitating the fair and just resolution of specific claims through inquiries and mediation.

Section 1 – Inquiries

The Importance of a Unified Documentary Record and an Annotated Index of Documents on Claims

The documentation of a claim's history is an integral component of both the DIAND claims and ISCC's inquiry processes; it draws upon a wide range of records, including those oral histories held by First Nations Elders and other witnesses, records held by Library and Archives Canada, and records retained by the Department of Indian Affairs and Northern Development. The parties may also draw upon secondary and scholarly sources that can provide a larger context and background to the letters, journals and annual reports maintained in the archives and at the department. Prior to the advent of the ISCC, parties to a claim would research their claims separately. This often led to delays in the process, as Canada would receive the First Nation's history and then conduct its own confirming research; as well, given the limited resources for, and access to, the documents, the First Nation's history was often characterized by gaps, whilst Canada's would often lead to replication of many aspects of the First Nation's documentary record. This approach to the history of specific land claims was both wasteful of time and resources, and did little to streamline the process.

Recognizing the inefficiencies of the extant approach to research, the ISCC took steps in its first inquiry, *Cold Lake and Canoe Lake First Nations: Primrose Lake Air Weapons Range Inquiries*,[45] to develop an approach focusing on the creation of a single documentary record that would be shared equally with the parties and the Commission. Over time, the Commission retained a full complement of historical researchers who gathered not only as comprehensive a history of each claim as possible, but also produced an annotated version of the historical documents. The Commission adopted a method of annotation that required its research staff to excerpt the relevant portions of each historical document and compile these into chronological order. The annotation would be retyped for ease of the reader and was employed in every claim for inquiry. The process of creating a single evidentiary record should not be underestimated, as it not only made identifying duplicate historical documents or gaps in the record easier, it introduced an efficiency into a process that relied extensively on old letters and reports, many of which were handwritten. Furthermore, it made available to the general public, researchers, academics and First Nations themselves a compilation of collective history that is now accessible through Library and Archives Canada. The creation of a single evidentiary record became standard operating procedure for the inquiry process.

[45] ICC, *Cold Lake and Canoe Lake First Nations: Primrose Lake Air Weapons Range Inquiries* (Ottawa, August 1993), reported (1994) 1 ICCP 3.

Once the Commission accepts a claim for inquiry, both parties are asked to provide copies of all documents, maps and other materials relevant to the claim. The Commission's historians then compile the documentary record into chronological order and digitize this record into CD-ROM format, complete with an annotated index. Copies of this record are provided to the parties and their legal counsel for use during the inquiry and relied on by the inquiry panel throughout the inquiry.

The adoption of a single record approach has value beyond that of convenience for the parties. For example, in one of the few Pre-Confederation claims before the Commission, the *Chippewas of the Thames First Nation: Clench Defalcation Inquiry*, the compilation and review of a single evidentiary record led the parties to conclude that additional research was required. In the process, the First Nation and the Department of Indian Affairs agreed to a joint research project that expedited the process considerably and, more importantly, expanded the record such that Canada reconsidered its initial rejection of the claim and offered to negotiate a settlement.[46]

Similarly, in a few treaty land entitlement claims, the creation of a single annotated record for pay list analysis resulted in a supplementary examination of documents and, in a few instances, led to the reversal of the department's previous rejection of the claim. In the *Peguis First Nation: Treaty Land Entitlement Inquiry*, this Manitoba First Nation requested an inquiry into the Minister of Indian Affairs' decision to reject its TLE claim. After several planning conferences and further research, Canada advised the First Nation of its decision to accept the claim for negotiation, obviating the need for a full inquiry.[47]

Recommendation 3.0: That the Department of Indian Affairs and Northern Development direct its research staff to create a single documentary record to introduce efficiencies into the process. This organizing step will also help ensure that First Nations are given access to all documentary evidence in the possession of the Government of Canada.

Recommendation 4.0: That the Department of Indian Affairs and Northern Development make public the criteria and the reasons for accepting or rejecting claims, so that the parties know the case to be met and the general public have a better understanding of the issues, the process and DIAND's decisions.

The Power of Inquiry to Influence Policy Review

The Commission's inquiry mandate requires it to review the Minister of Indian Affairs' decision to reject a specific claim for negotiation, and make findings on the question of whether a legal obligation is owed to a First Nation. By its very nature, the Commission's mandate necessitates a review and consideration of the Specific Claims Policy, *Outstanding Business*, and in certain cases, departmental policies developed to address a specific type of claim, such as treaty land entitlement (TLE) claims.

[46] ICC, *Chippewas of the Thames First Nation: Clench Defalcation Inquiry* (Ottawa, March 2002), reported (2002) 15 ICCP 307.
[47] ICC, *Peguis First Nation: Treaty Land Entitlement Inquiry* (Ottawa, March 2001), reported (2001) 14 ICCP 183.

Canada's treaty land entitlement policy is certainly one area where the Commission has been instrumental in bringing change. In 1995, the Commission published its final report on the Fort McKay First Nation TLE claim.[48] This inquiry was the first comprehensive review and analysis of Canada's TLE policy and resulted in the Commission panel's recommendation that the claim be accepted for negotiation, and that Canada's policy be substantively amended to change the way the population of a band was counted. The previous policy did not take into account the migration of people that once marked the nomadic way of life of Aboriginal people. As a result, some treaty Indians had never had land set aside for them in the treaty land entitlement calculated for a band – as was their treaty right. The Commission recommended that the population count include not just the population as of the date of first survey[49] but also people who transferred from other bands, people who married into the band, or people who were absent. The ISCC's analysis of Canada's policy on TLE calculation led to a significant change in the policy, as the Department of Indian Affairs and Northern Development expanded its approach to include a number of new categories of individuals in TLE calculation; this policy change would impact on all TLE claims that followed the ISCC's findings in the Fort McKay First Nation Inquiry.

The Commission had a further opportunity to examine Canada's TLE policy in the Lac La Ronge Inquiry. In this claim, the First Nation was advancing an interpretation of the policy that required Canada to take into consideration the population of the band at the time Canada was deemed to have fulfilled its TLE obligation to a First Nation; an approach to TLE that has been referred to as the "current population" formula. Adopting the same principles and reasoning it did in the Fort McKay inquiry report, the Commission panel rejected this analysis and relied upon the date of first survey as the point in time when the treaty land entitlement of the band crystallized.[50]

The Use of Oral History Evidence

As noted in our discussion of the ISCC's guiding principles and processes, the community session – the mechanism through which the Commission gathers and documents oral history evidence – is perhaps the single most important feature of the inquiry process. The Commission believes that a First Nation's oral tradition and oral history provide important sources of information to supplement the written record of a claim. The community session was designed to ensure the perspective of the First Nation was included; a perspective that was not always apparent or understood within the documentary record alone. These sessions, convened within the First Nation community to enable as many community members as possible to participate and observe, are carried out in a manner respectful of the First Nation's language, culture and tradition. The testimony of the Elders is recorded, transcribed, and becomes part of the official record of the inquiry and of the community's written history, thereby making it more accessible to the community itself and ensuring its preservation.

In a few cases, the use of oral history evidence has led Canada to reconsider its previous refusal to accept a claim for negotiation. In the case of the *Kawacatoose First Nation: Treaty Land Entitlement*

[48] ICC, *Fort McKay First Nation: Treaty Land Entitlement Inquiry* (Ottawa, December 1995), reported (1996) 5 ICCP 3.

[49] The date of first survey, known as DOFS, of the proposed reserve lands by a Crown surveyor becomes the basis upon which allocations of lands owed to First Nations under Treaty are determined.

[50] ICC, *Lac La Ronge Indian Band: Treaty Land Entitlement Inquiry* (Ottawa, March 1996), reported (1996) 5 ICCP 235. The First Nation subsequently took its claim to the Federal Court of Canada where, on appeal, the FCA adopted the same reasoning as the Commission in its interpretation of Canada's TLE policy.

Inquiry,[51] the identity of two families appearing on the Band's pay list could not be determined from the written historical record alone. The oral history of the First Nation, however, was able to place these two families with the Kawacatoose Band; this testimony was given much weight by the Commission panel and relied upon to determine the issue.

In the *Betsiamites Band: Highway 138 and Rivière Betsiamites Bridge Inquiries*,[52] the oral testimony revealed that in the 1970s, the band members learned that title to the right of way for Highway 138 had never been transferred to Quebec. The First Nation's oral history combined with the Department of Indian Affairs' own witness led to the acceptance of the previously rejected claim by the Minister of Indian Affairs prior to completion of the inquiry.

In the *Nak'azdli First Nation: Aht-Len-Jees Indian Reserve 5 Inquiry*, the First Nation alleged that Canada had failed to protect its interest in Indian Reserve No. 5 at the time of the McKenna-McBride Commission, which had been struck by the province in 1912 to hear requests from bands for additional reserve lands. When the Commission visited the Nak'azdli Band in 1913, the Chief requested additional cultivatable lands; however, when the Ditchburn-Clark review was launched in 1920 for the purpose of confirming the alterations to reserves proposed by McKenna-McBride, the request of the Nak'azdli people was not confirmed, and their reserve was disallowed in favour of other lands. When the Band later submitted a specific claim to address the loss of their original reserve lands, Canada rejected the claim. However, at the community session held for this inquiry, the Band presented oral history evidence that challenged Canada's understanding of the events of 1913 and 1920, and the Nak'azdli First Nation's claim was accepted for negotiation.[53]

Recommendation 5.0: That the Specific Claims Tribunal exercise its authority to receive oral history evidence. The Tribunal should gather evidence from community members in a public session convened in the community to ensure the greatest access. While the Tribunal is in the community, it should take the opportunity to visit the lands in question.

The Relationship Between Facts, Findings, and the Inquiry Process

The root of a panel's recommendations rests on their findings of fact, following a full presentation of historical documentation, oral testimony and expert evidence, if available. For example, a question that is often before a Commission's panel concerns whether a reserve was in fact created pursuant to Canada's obligation in the numbered treaties. To render a decision on this type of claim means that the panel needs to consider, among other things, the evidence of the parties' understanding at the time of the events leading to the creation of a reserve. While the law can provide some direction on the relevant factors to look for in that history, only the documentary and/or oral testimony can provide the factual foundation on which the panel can rely. Thus, for example, when a numbered treaty directs that there be consultation with the band regarding the selection of reserve lands, followed by a survey, acceptance by Canada and the First Nation and recognition of the lands as reserve lands, it is the facts that

[51] ICC, *Kawacatoose First Nation: Treaty Land Entitlement Inquiry* (Ottawa, March 1996), reported (1996) 5 ICCP 73.
[52] ICC, *Betsiamites Band: Highway 138 and Rivière Betsiamites Bridge Inquiries* (Ottawa, March 2005), reported (2007) 18 ICCP 277
[53] ICC, *Nak'azdli First Nation: Aht-Len-Jees Indian Reserve 5 Inquiry* (Ottawa, March 1996), reported (1998) 7 ICCP 81.

inform of the actual incidents of consultation, selection, survey, acceptance, and recognition of the reserve in each situation of reserve creation.

In the *Carry the Kettle First Nation: Cypress Hills Inquiry*,[54] the Commission panel determined that the terms of Treaty 4 required the elements of consultation, selection, survey and acceptance to be present, and more specifically, that the acceptance of the reserve's survey could be effected in a formal manner or could be found in the conduct of either party. Based on an examination of the facts, the Commission panel found that, although the Carry the Kettle First Nation had been consulted and had selected lands that were subsequently surveyed and accepted by the Band as their reserve, there was no evidence that Canada had accepted the survey. The absence of evidence on this issue led the panel to conclude that no reserve had been created, as not all the legal requirements for reserve creation had been met.

In a different context, the question of whether a certain portion of land can be characterized as "Indian settlement lands" – a uniquely separate category of claim within British Columbia – has often rested on a finding of fact by the panel. Such was the case with the *Mamaleleqala Qwe'Qwa'Sot'Enox Band: McKenna-McBride Applications Inquiry*.[55] This inquiry concerned the BC *Land Act*, which, although it did not define "Indian settlement lands," nonetheless prohibited the granting of licenses, leases and pre-emptions of "Indian Reserve or Settlement" lands. When the Mamaleleqala Qwe'Qwa'Sot'Enox Band met with the McKenna-McBride Commission in 1914, it requested that a number of parcels of land, including some containing traditional villages, be set aside as reserves. As many of the lands applied for had already been alienated through provincial grants of timber licenses and leases, the question that arose concerned whether the alienated lands constituted "Indian settlement lands," which, by virtue of this designation, could not be leased or licensed by the province. The Commission panel determined that, although "Indian settlement" is not defined in the BC *Land Act*, the legislature likely intended to protect at least those lands for which there was some investment of labour on the part of the Indians. They could include village sites, fishing stations, fur-trading posts, clearings, burial grounds and cultivated fields – regardless of whether they were immediately adjacent to or in the proximity of other dwellings. Furthermore, it is not strictly necessary for there to be a permanent structure on the land for it to constitute an 'Indian settlement' providing there is evidence of collective use and occupation by the Band.

The question of whether a particular treaty band member was counted at the date of first survey (for the purposes of determining a First Nation's treaty land entitlement claim) requires a meticulous examination of a band's pay lists and factual findings by the Commission panel. The *Bigstone Cree Nation: Treaty Land Entitlement Inquiry*[56] is yet another example where an analysis of the Band's pay lists as a question of fact led to Canada reconsidering its previous position and deciding to accept this claim for negotiation.

The surrender of reserve land has been the subject of many inquiries before the Commission. Whether a particular parcel of reserve land was lawfully surrendered requires a careful review of correspondence and other documentation prepared at the time, in addition to gathering and considering the merits of any oral history evidence the First Nation might have available. Three

[54] ICC, *Carry the Kettle First Nation: Cypress Hills Inquiry* (Ottawa, July 2000), reported (2000) 13 ICCP 209
[55] ICC, *Mamaleleqala Qwe'Qwa'SotEnox Band: McKenna-McBride Applications Inquiry* (Ottawa, March 1997), reported (1998) 7 ICCP 199.
[56] ICC, *Bigstone Cree Nation: Treaty Land Entitlement Inquiry* (Ottawa, March 2000), reported (2000) 12 ICCP 343.

separate Saskatchewan inquiries – *Kahkewistahaw First Nation: 1907 Reserve Land Surrender Inquiry, Fishing Lake First Nation: 1907 Surrender Inquiry*, and *Moosomin First Nation: 1909 Reserve Land Surrender Inquiry* – were the first cases to be heard by the Commission following the landmark decision of the Supreme Court of Canada in *Apsassin*.[57] All three claims challenged the validity of alleged surrenders taken of their respective reserve lands pursuant to the *Indian Act* and under the terms of Treaty 4. In the Fishing Lake Inquiry,[58] new evidence had come to light that one or more individuals who had signed the alleged surrender document in 1907 were not 21 years of age, contrary to the *Indian Act* requirement for taking a valid surrender. When Canada became aware of this new evidence prior to the conclusion of the inquiry, it accepted the claim for negotiation. Both the Kahkewistahaw First Nation[59] and Moosomin First Nation[60] inquiries, however, proceeded to conclusion. Based on the review of the facts in each case and the law in *Apsassin*, the Commission panels in these inquiries found the alleged surrenders to be invalid. In each case the Minister of Indian Affairs accepted the claim for negotiation following the Commission's reports and recommendations.

The Importance of Examining Statutory Obligations

The majority of inquiries before the ISCC have required an examination of the *Indian Act*, but in two cases the Commission has examined Canada's conduct in meeting its obligations under other statutes. In the flooding inquiry concerning the Qu'Appelle Valley Indian Development Authority (QVIDA),[61] eight First Nations submitted claims for compensation arising from the alleged illegal alienation and flooding of their respective reserves along the Qu'Appelle Valley, following the construction of two dams by the provincial *Prairie Farm Rehabilitation Administration* (PFRA). Following the rejection of their claims, six of the eight First Nations came forward to the Commission to request an inquiry. At issue was whether the Crown could authorize the PFRA under the *Indian Act* to use and occupy reserve lands for flooding purposes. Canada acknowledged during the inquiry that it had not acquired the right to use and occupy the reserve lands by way of expropriation or surrender, a breach of the law which led the Commission panel to conclude that the PFRA was trespassing on the reserves of the six First Nations.

In the *Lower Similkameen Indian Band: Vancouver, Victoria, and Eastern Railway Right of Way Inquiry*,[62] the Band alleged inadequate compensation for the 1905 taking of a right of way through what are now its reserve lands for the use of the Vancouver, Victoria, and Eastern Railway and Navigation Company (VV&E). At issue in this inquiry was the matter of compensation for the lands taken, and whether that compensation was adequate. Over the course of the inquiry, Canada acknowledged that it owed a fiduciary duty to the Band to obtain adequate compensation. The Commission panel found a statutory duty arising from the *Railway Act, 1903* to ensure compensation to the Band, as was the case for non-reserve lands.

---

[57] *Blueberry River Indian Band v. Canada (Department of Indian Affairs and Northern Development)*, [1995], 4 SCR 344 (sub nom. Apsassin).
[58] ICC, *Fishing Lake First Nation :1907 Surrender Inquiry* (Ottawa, March 1997), reported (1998) 6 ICCP 219.
[59] ICC, *Kahkewistahaw First Nation: 1907 Reserve Land Surrender Inquiry* (Ottawa, February 1997), reported (1998) 8 ICCP 3.
[60] ICC, *Moosomin First Nation: 1909 Reserve Land Surrender Inquiry* (Ottawa, March 1997), reported (1998) 8 ICCP 101.
[61] ICC, *Qu'Appelle Valley Indian Development Authority Qu'Appelle Valley Indian Development Authority Muscowpetung, Pasqua, Standing Buffalo, Sakimay, Cowessess, and Ochapowace First Nations: Flooding Inquiry* (Ottawa, February 1998), reported (1998) 9 ICCP 159.
[62] ICC, *Lower Similkameen Indian Band: Vancouver, Victoria, and Eastern Railway Right of Way Inquiry* (Ottawa, February 2008), reported (2009) 23 ICCP 143.

The Importance of Recognizing Pre-Confederation Claims

When the Specific Claims Policy was originally introduced in 1973, it expressly barred claims based on events arising before Confederation in 1867, unless the federal government specifically assumed responsibility for them. In April 1991, Canada removed the pre-Confederation exclusion from its policy. For many First Nations this meant that claims that had never been submitted or that had been submitted but rejected could be reviewed. Without exception, every pre-Confederation claim that was inquired into by the Commission resulted in either an acceptance to negotiate by Canada during the course of inquiry or a recommendation and agreement to conduct further research before a final position would be taken. This result clearly demonstrates the value of the Commission's role to review and inquire into claims that, until recently, were entirely excluded from the process.

The Commission's Examination of Treaty Obligations

In its 18-year history, the Commission has examined nearly all of the post-Confederation numbered treaties between First Nations and the federal Crown in order to assess Canada's fulfillment of its treaty obligations. At the same time, the courts in Canada were embarking upon their own examination and development of principles of treaty interpretation, resulting in the creation of a body of law that can assist in the interpretation of the language of the treaties and the obligations arising therein. Guided by, and, in some cases, building upon the legal principles established by the courts, the ISCC has conducted inquiries into such obligations as treaty land entitlement, reserve creation and surrender, the provision of agricultural benefits, and the provision of medical benefits.

In the *Roseau River Anishinabe First Nation: Medical Aid Inquiry*, the Commission was asked to examine whether the act of deducting medical aid payments from the First Nation's trust accounts between 1909 and 1934 was a breach of Canada's obligations under Treaty 1. At issue was whether the 1871 Treaty included a promise to provide 'medical aid', and if so, did this promise survive the 1875 amendment to the Treaty? This inquiry contains a comprehensive review of oral history and extrinsic evidence relating to the historical record of the period, the specific circumstances associated with the negotiation and execution of Treaty 1, and the subsequent conduct of the parties.[63] Oral history evidence presented by the First Nation was illuminating, as it disclosed the recollections of Roseau River's "promise keeper" at the time of treaty and an understanding, passed on through generations, that Canada was obliged to provide medical aid under treaty. The Commission panel recommended that the claim be accepted, a recommendation that was subsequently rejected by Canada. This inquiry represents one of three inquiries in which the Commission was asked to examine the impact of the larger context of a treaty, which includes utterances or oral undertakings outside the written treaty document.[64]

In other inquiries, claims were advanced because the conduct of the Crown was viewed as being in breach of the treaty relationship. Where, for example, the Department of Indian Affairs amalgamated bands, First Nations argued that the conduct of the Crown should be

[63] ICC, *Roseau River Anishinabe First Nation: Medical Aid Inquiry* (Ottawa, February 2001), reported (2001) 14 ICCP 3.

[64] The other inquiries are ICC, *Athabasca Denesuline Fond du Lac, Black Lake, and Hatchet Lake First Nations: Treaty Harvesting Rights Special Report* (Ottawa, November 1995), reported (1996) 4 ICCP 177; and ICC, *Moose Deer Point First Nation: Pottawatomi Rights Inquiry* (Ottawa, March 1999), reported (1999) 11 ICCP 135.

viewed, amongst other issues, as a breach of its treaty obligations. This was the argument in the *Cumberland House Cree Nation: Indian Reserve 100A Inquiry* and the *James Smith Cree Nation: Indian Reserve 100A Inquiry*.[65] In the case of the *James Smith Cree Nation: Chakastaypasin Indian Reserve 98 Inquiry*,[66] the conduct of the Crown following the Northwest Rebellion of 1995 resulted in the loss of the Chakastaypasin Band's entire reserve. The 1885 Rebellion also had a direct impact on the Lucky Man Cree Nation's treaty rights and treaty land entitlement, which were the subject of two inquiries.[67]

In 1998, Canada agreed to negotiate the first agricultural benefits' claim under Treaty 4. The facts of the Nekaneet First Nation claim were intricately tied to the history of those bands living within the Cypress Hills, such as the Carry the Kettle First Nation. During the course of the Nekaneet First Nation inquiry, Canada offered to negotiate the claim for agricultural benefits, resulting in the suspension of the inquiry. [68]

In addition to shortfalls in the provision of land under treaty land entitlement, the ISCC has recently inquired into a related topic that is very significant: the quality of the land provided under a treaty, as a treaty right.[69] This issue is one of the many issues that have emerged and that will come before the Tribunal in the future.

Interpreting the Commission's Mandate: Deemed Rejection

As stated previously, the Commission's mandate is triggered when a First Nation requests an inquiry into its rejected claim. In a certain number of cases, however, First Nations request an inquiry into a claim that has not yet been rejected formally by the Minister. Requests for inquiries into claims that have been 'constructively rejected' have been tested against the ISCC's policy on 'Deemed Rejections'. The latter policy provides for the acceptance of claims that have not been formally rejected where: (1) an unreasonable period of time has elapsed since the claim was submitted to the Department of Indian Affairs and Northern Development, and the First Nation remains without any indication from the Crown regarding its claim; (2) there have been lapsed undertakings by the Crown regarding the claim, for example, statements regarding when the First Nation should expect a determination on their claim; and/or (3) where the complexity of the claim does not justify the time taken by the Crown to make a determination. An example of a deemed rejection is the situation illustrated by the *Mikisew Cree First Nation: Treaty 8 Economic Benefits Inquiry*, where lengthy delays and indecision were deemed to be "tantamount to a rejection," thereby giving the Commission its authority to conduct the inquiry.[70]

Similarly, the Peepeekisis First Nation submitted a claim to the Department of Indian Affairs and Northern Development in 1986, concerning the establishment of the File Hills farming colony on its reserve. When the First Nation asked the ISCC to conduct an inquiry into this

[65] ICC, *Cumberland House Cree Nation: Indian Reserve 100A Inquiry* (Ottawa, March 2005), reported (2008) 20 ICCP 183, and ICC, *James Smith Cree Nation: Indian Reserve 100A Inquiry* (Ottawa, March 2005), reported (2008) 20 ICCP 3.

[66] ICC, *James Smith Cree Nation: Chakastaypasin Indian Reserve 98 Inquiry* (Ottawa, March 2005), reported (2008) 20 ICCP 335.

[67] ICC, *Lucky Man Cree Nation: Treaty Land Entitlement Inquiry* (Ottawa, March 1997), reported (1998) 6 ICCP 109; and ICC, *Lucky Man Cree Nation: Treaty Land Entitlement Phase II Inquiry* (Ottawa, February 2008), reported (2009) 23 ICCP 301.

[68] ICC, *Nekaneet First Nation: Agricultural and Other Benefits under Treaty 4 Inquiry* (Ottawa, March 1999), reported (1999) 11 ICCP at 91.

[69] ICC, *James Smith Cree Nation: Indian Reserve 100A Inquiry* (Ottawa, March 2005), reported (2008) 20 ICCP 3; ICC,*Cumberland House Cree Nation: Indian Reserve 100A Inquiry* (Ottawa, March 2005), reported (2008) 20 ICCP 183; ICC, *Sandy Bay Ojibway First Nation: Treaty Land Entitlement Inquiry* (Ottawa, June 2007), reported (2009) 22 ICCP 389; ICC, *Red Earth and Shoal Lake Cree Nations-Quality of reserve lands Inquiry* (Ottawa, December 2008), reported (2009)24 ICCP.

[70] ICC, *Mikisew Cree First Nation: Treaty 8 Economic Benefits Inquiry* (Ottawa, March 1997), reported (1998) 6 ICCP 183.

claim, 15 years had passed and the First Nation had received no determination, notwithstanding undertakings by the Crown that there would be a speedy resolution of the claim. It was not until December 2001, once the inquiry had started, that the claim was finally rejected.[71]

More recently, in 2005, subsequent to the acceptance of the Red Earth and Shoal Lake Bands' request that the ISCC proceed with an inquiry on the basis of a 'deemed rejection', the department indicated it would challenge the ISCC's decision to hold such inquiries. At an ISCC hearing to determine whether to proceed with the inquiry on a 'deemed rejection' basis, Canada filed an affidavit outlining the process used in the Bands' claim. It outlines how the department processes the specific claims it receives and provides a chronology of the Red Earth-Shoal Lake claim, first submitted by the Bands on May 3, 1996. The chronology of the claim is shown on the below:

- May 3, 1996: The Red Earth and Shoal Lake Bands submitted a joint claim.
- 16 weeks later: The department acknowledged its receipt of the claim and indicated it would begin a preliminary analysis of the claim.
- May 1997: The department told the Bands that the preliminary analysis was completed and it would proceed to 'historical research stage'.
- September, 1997: the department wrote the Bands telling them a researcher had been identified and the research would proceed in November.
- October 1997: The department informed the Bands an extension had been granted and the research should be completed by the end of the year.
- March 1999: The department wrote the Bands saying the research report didn't meet their standards and the work would have to be "re-researched and re-written'. A subsequent letter indicated the work would be completed by Aug 9, 1999.
- October 1999: The Bands were advised the research had to be revised and the contract had been extended.
- February 2000: The department sent a copy of the research report to the Bands asking for their comments and "any additional allegations or legal arguments." The Bands were also told, once they were satisfied with the research, the claim would proceed to the legal review stage.
- December 2000: the government was advised the Bands had reviewed the research and the claim could go for legal review.
- March 16, 2001: The department informed the Bands the claim had been sent to the Department of Justice, but given the large number of claims and limited resources, it wasn't possible to estimate when the legal advice would be completed.
- Summer of 2002: The Bands wrote the minister about their claim.
- September 2002: The Minister of Indian Affairs, Robert Nault, wrote back indicating the situation had been brought to his attention.

[71] ICC, *Peepeekisis First Nation: File Hills Colony Inquiry* (Ottawa, March 2004), reported (2007) 18 ICCP 19.

- April 2003: The Bands were informed a lawyer had been assigned to their claim.
- November 2003: The department informed the Bands that because certain documents needed to be transcribed, this would delay the processing of their claim.
- November 19, 2003: The Bands wrote the Minister informing him they were asking the ISCC to conduct an inquiry into their claim on the basis it had not been dealt with in an expedient manner. A letter on the same date was sent to the ISCC asking for the inquiry.
- February 3, 2004: The department wrote the Bands indicating the Department of Justice had identified their claim as a priority. A week later the new Minister, Andrew Mitchell, wrote the Bands cautioning them that although a lawyer had been assigned "the review process takes considerable time."
- June 2004: The ISCC wrote the Minister of Justice and the Indian Affairs' Minister informing them the Commission had agreed to conduct an inquiry.
- February 15, 2005: The Minister, now Andy Scott, wrote the Bands advising them that their claim had not yet been accepted or rejected.
- March 24, 2005: The department wrote the ISCC indicating it intended to challenge the ISCC's decision to hold an inquiry on the basis that the claim was deemed to be constructively rejected through delays and the passage of time
- February 2006: ISCC held a hearing to determine if it had the jurisdiction to hold an inquiry when the Minister had not formally rejected the claim.
- September 2006: The ISCC panel ruled that it could hold such a hearing.
- October 2006: An application for judicial review of the ISCC's decision to take jurisdiction in this claim was filed by the federal government.
- December 20, 2006: A formal rejection of the claim by the Minister came 10 years after the claim submission. Subsequently, the government withdrew the application for judicial review. In 2007, the ISCC resumed its inquiry and released its report in February 2009.

The Specific Claims Policy and the Bar to Technical Defences

Outstanding Business states that Canada will not rely on the technical defences of laches and limitation periods to reject a specific claim. Nevertheless, the Commission did witness the Crown's reliance on another technical defence to reject a claim—the defence of *res judicata*. In the *Peepeekisis First Nation: File Hills Colony Inquiry*, the Commission was asked to examine Canada's actions in creating and implementing the 'File Hills Scheme'. This policy directed that graduates of the Indian residential (industrial) schools, who were members of other bands, were to be brought to the Peepeekisis reserve to live and farm on the reserve, and become members of the First Nation. Often referred to as 'the File Hills Colony' by the Department of Indian Affairs, the original Peepeekisis Band members complained to officials and protested the validity of the transferees' memberships in the Band. In response to the Band's concerns, four investigations into Peepeekisis Band membership took place during the 1940s and 1950s; in1955 a federal commission found that the department had breached Treaty 4 and the *Indian Act* and recommended compensation to the original Band members. The settlement negotiations failed, however, and the department's registrar ruled in favour of the validity of transferees' membership. In 1956 the original members requested a review of this decision, whereupon Judge McFadden held a hearing and confirmed the validity of all the disputed memberships under the *Indian Act*.

Following the finding of the Commission panel that the Crown had an outstanding legal obligation to the Peepeekisis First Nation arising from its actions in creating the File Hills Colony, Canada relied upon the 1956 review and the defence of *res judicata* to reject the Commission panel's recommendation. The Commission panel had concluded that the defence of *res judicata* has no application to the other issues of breach of treaty, *Indian Act* and the Crown's fiduciary obligation in creating the File Hills Scheme, none of which were before Judge McFadden, who was concerned solely with the question of band membership. In the Commission panel's view, this defence should be applied narrowly in a land claims process created by the government to resolve specific claims in a fair and equitable manner.[72]

[72] ICC, *Peepeekisis First Nation: File Hills Colony Inquiry* (Ottawa, March 2004), reported (2007) 18 ICCP 19.

Fiduciary Duties Give Rise to Lawful Obligations

Beyond the many issues related to Treaty obligations, no other legal issue has dominated the work of the ISCC more than the subject of Canada's fiduciary relationship with First Nations. At various times in its 18-year history, the Commission has grappled with breach of treaty as a breach of fiduciary duty;[73] pre-surrender fiduciary obligations;[74] the fiduciary duty in the creation of a reserve;[75] fiduciary duties to protect reserve land from encroachment or alienation;[76] fiduciary duties to prevent trespass;[77] and post-surrender fiduciary duties.[78]

The Specific Claims Policy continues to be silent on fiduciary duties giving rise to a claim of outstanding lawful obligation, notwithstanding the Supreme Court of Canada's 1984 decision in *Guerin*,[79] which established breach of fiduciary obligation in the context of reserve surrender as a cause of action against the Crown. Subsequent decisions, including the 1995 decision in *Apsassin*, confirmed *Guerin*.[80] Further, in 1990, the Supreme Court in *Sparrow*[81] expanded the scope of the Crown's fiduciary obligation in the constitutional context. This evolution in the law, however, did not prompt a formal amendment to Canada's Specific Claims Policy. Nevertheless, Canada dealt fully with the law of fiduciary duty in several recent inquiries, and in 2007, Canada accepted the Commission panel's recommendation to accept the surrender claim of the Roseau River First Nation[82] on the basis of a breach of the Crown's fiduciary duty.

The Commission has consistently interpreted the scope of the term "lawful obligation" to include obligations arising as a result of breaches of fiduciary duties. For example, the report of the Commission in the *'Namgis First Nation: McKenna-McBride Applications Inquiry* reviewed the Commission's interpretation of "lawful obligation" under the policy. In this report, the Commission panel confirmed that "a claim falls within the Specific Claims Policy if (1) it is based on a cause of action recognized by the courts; (2) it is not based on unextinguished aboriginal rights or title; and (3) it alleges a breach of a legal or equitable obligation which gives rise to a claim for compensation or other relief within the contemplation of the Policy. If these conditions are met, Canada should consider the claim under the Policy in the interests of avoiding protracted, costly, and adversarial court actions."[83]

---

[73] ICC, *Cold Lake and Canoe Lake First Nations: Primrose Lake Air Weapons Range Inquiries* (Ottawa, August 1993), reported (1994) 1 ICCP 3; and ICC, *Joseph Bighead, Buffalo River, Waterhen Lake and Flying Dust First Nations: Primrose Lake Air Weapons Range II Inquiries* (Ottawa, September 1995), reported (1996) 4 ICCP 47.

[74] ICC, *Kahkewistahaw First Nation: 1907 Surrender Inquiry* (Ottawa, February 1997), reported (1998) 8 ICCP 3; ICC, *Sumas Band: Indian Reserve 6 Railway Right of Way Inquiry* (Ottawa, February 1995), reported (1996) 4 ICCP 3; and ICC, *Lower Similkameen Indian Band: Vancouver, Victoria, and Eastern Railway Right of Way Inquiry* (Ottawa, February 2008), reported (2009) 23 ICCP 143.

[75] ICC, *Taku River Tlinglit First Nation: Wenah Specific Claim Inquiry* (Ottawa, March 2006), reported (2008) 21 ICCP 97.

[76] ICC, *Athabasca Chipewyan First Nation: W.A.C. Bennet Dam and Damage to Indian Reserve 201 Inquiry* (Ottawa, March 1998), reported (1998) 10 ICCP 117; ICC, *Esketemc First Nation: Indian Reserves 15, 17, and 18 Inquiry* (Ottawa, December 2001), reported (2002) 15 ICCP 3; ICC, and *Muskowekwan First Nation: 1910 and 1920 Surrenders Inquiry* (Ottawa, February 2009), reported (2009) 24 ICCP.

[77] ICC, *Mamaleleqala Qwe'Qwa'Sot Enox Band: McKenna-McBride Applications Inquiry* (Ottawa, March 1997), reported (1998) 7 ICCP 199; and ICC, *Williams Lake Indian Band: Village Site Inquiry* (Ottawa, March 2006), reported (2008) 21 ICCP 225.

[78] ICC, *Blood Tribe/Kainaiwa: 1889 Akers Surrender Inquiry* (Ottawa, June 1999), reported (2000) 12 ICCP 3; and ICC, *James Smith Cree Nation: Chakastaypasin Indian Reserve 98 Inquiry* (Ottawa, March 2005), reported (2008) 20 ICCP 335.

[79] *Guerin v. The Queen*, [1984] 2 SCR 335.

[80] *Blueberry River Indian Band v. Canada (Department of Indian Affairs and Northern Development)*, [1995], 4 SCR 344 (sub nom. *Apsassin*).

[81] *R. v. Sparrow* [1990], 1 SCR 1075.

[82] ICC, *Roseau River Anishinabe First Nation: 1903 Surrender Inquiry*, (Ottawa, September 2007), reported (2009) 23 ICCP 3.

[83] ICC, *'Namgis First Nation: McKenna-McBride Applications Inquiry*, (Ottawa, February 1997), reported (1998) 7 ICCP 109, at 188.

Examination of Compensation Criteria in *Outstanding Business*

While the predominant focus of the Commission's inquiry mandate rests on Canada's rejection of a First Nation's claim, in one landmark inquiry the Commission examined, at the First Nation's request, the compensation criteria on which Canada accepted its claim. In the *Long Plain First Nation: Loss of Use Inquiry*,[84] the Commission panel's findings and recommendation introduced 'loss of use' as a compensable aspect of treaty land entitlement claims. At issue here was whether a band with an admitted shortfall in its treaty land entitlement was entitled to be compensated for its loss of use of that land based upon the Minister's decision on the applicable compensation criteria. In the panel's view, payment for the loss of use of these treaty lands was in keeping with the Specific Claims Policy's compensation criteria, which provide that compensation "will be based on legal principles."[85] This was the first inquiry in which the ISCC considered and accepted loss of use as an aspect of TLE compensation. Loss of use has subsequently been adopted as a head of damage in other TLE negotiations.

Canada's Responses to the Commission's Inquiry Reports

In its 2008/2009 Annual Report, the Commission summarized Canada's responses to the 80 inquiry reports as of March 31, 2009. Out of the 80 inquiry reports, the Commission has recommended that 41 claims be accepted for negotiation and 18 claims not be accepted.

Overall, Canada has:

1. Accepted 19 recommendations;
2. Rejected the Commission's recommendations in 19 inquiries;
3. Accepted 19 claims while an inquiry was underway;
4. Not responded in 24 claims where recommendations have been offered. This number must be mitigated by the fact that a high number of inquiry reports have been issued by the ISCC since it was directed, in November 2007, to cease its activities.

[84] ICC, *Long Plain First Nation: Loss of Use Inquiry* (Ottawa, February 2000), reported (2000) 12 ICCP 269.
[85] ICC, *Long Plain First Nation: Loss of Use Inquiry* (Ottawa, February 2000), reported (2000) 12 ICCP 269, at 284.

Section 2: Mediation

The Mediation Mandate of the ISCC

The originating Order in Council empowered the Commission to "provide or arrange, at the request of the parties, such mediation services as may in their opinion assist the Government of Canada and an Indian Band to reach an agreement in respect of any matter relating to an Indian specific claim."

When asked by one or both parties, and with the consent of both parties, the Commission acts as a neutral third party and mediates negotiations in order to create an atmosphere conducive to the resolution of the claim. In this administrative capacity, the ISCC acts as record keeper for the negotiations. Where the parties solicit expert opinions and studies, the ISCC might also be asked to coordinate this work on behalf of the negotiating table. In limited cases, the ISCC also provides its mediation services to resolve an impasse on specific issues.

In the Commission's experience, the speed with which a negotiation proceeds is influenced by many factors; primary among these is the type of claim being negotiated. The framework for the negotiation of specific claims is a unique context, unlike, for example, labour law or family law negotiations. A First Nation's attempt to negotiate resolution is therefore guided not only by laws of general application but also by the Specific Claims Policy – the substance of which has not changed since it was developed in 1973. In addition to the narrow policy context of negotiations, the complexity of the issues and the number of interested or affected parties influences the timeliness of negotiations. The pace of negotiations can also be influenced by the turnover of leadership and staff on all sides. And in some cases, further complexity is created when the federal government invites a province to the table, as in pre-Confederation claims.

The Commission exercises its mediation mandate on a case-by-case basis. Its services are available at no cost to the parties, and its ability to bring to the parties' attention the need for consistency in the interpretation and application of the policy underscore the importance of an independent third party. Similarly, while each negotiation proceeds in its own right, the Commission's expertise in claims in different parts of the country enables it to assist the parties with what might appear to be a divergent application of the policy in different regions. Similarly, given the high turnover of representatives on all sides, the Commission ensures there is corporate memory at the table and works to maintain the flow of open communication between the parties, particularly during difficult negotiation periods.

Recommendation 6.0: **That the Department of Indian Affairs and Northern Development incorporate independent alternative dispute resolution (ADR) services at the outset of its process.**

That this neutral facilitator assist the parties to narrow the issues in dispute and help them find agreement where they can. If needed, the third party should seek advice independent of the parties on a particular issue or coordinate the advice that is sought by the table.

That this neutral facilitator chair sessions where all relevant aspects of the Specific Claims Policy are explained and where expectations and possible outcomes are clearly expressed by all sides. In addition, the First Nations should have the opportunity to share with Canada's officials elements of their own governance and culture. This type of precursor to formal negotiations would help to create an atmosphere conducive to a positive and timely settlement agreement.

Facilitating and Mediating Specific Claims Negotiations

Over the history of the Commission, it has interpreted its mediation mandate broadly and has sought to advance its services as an alternative to the courts, helping First Nations and Canada negotiate agreements that reconcile their competing interests in a fair, expeditious and efficient manner.

While fairness, expeditiousness and efficiency may be viewed as standard principles underlying negotiations generally, the context and unique circumstances in which specific claims are negotiated often mean greater diligence must be applied to see that these negotiating principles are upheld. The parties are dealing with matters that are by their very nature historical and involve events that can and often did extend back a century or more. Negotiations also address issues related to how the land was used at the time of appropriation, how its use evolved over time, and the benefits it brought as an asset to various title holders compared to the ways in which a First Nation would have developed and used the land throughout the years and the losses this represents for the First Nation.

It is fundamental to any successful mediation that a climate of trust be created at the outset. To do this, the Commission works with the parties to address the imbalance of power and resources between the parties as well as uncover the interests underlying their positions at the table; it uses the negotiations as an opportunity to brainstorm and encourage agreement on options for going forward; develops objective criteria to assess those options; views communication as a critical part of the negotiating process; and seeks the commitment of all parties to work towards achieving settlement.

Supporting Parties' Negotiations through Coordination and Collaboration

The Commission's mediation mandate is engaged only upon the mutual and voluntary agreement of the parties; both the First Nation(s) and Canada have to agree to seek the assistance of the Commission and the ISCC's involvement may be sought at any stage of the specific claims process, even before the Minister of Indian Affairs has made a decision to accept or reject a claim.

Once engaged, the Commission's first task is to assess what kind of assistance the parties require to reach a successful settlement agreement. Each claim negotiation is different and does not always require the same degree of involvement from the Commission. The services required from the Commission are agreed to by the parties and documented by the Commission in the form of a *Mediation/Facilitation Agreement*. The purpose of this agreement is to clearly express to all sides the agreed upon roles and responsibilities of the Commission.

The Commission's role in negotiations is most often one of facilitation and support. In this capacity, its representatives chair negotiation sessions, provide a detailed record of discussions, follow up on undertakings, and consult with the parties to establish mutually acceptable agendas, venues, and meeting times. When requested, the Commission also has the responsibility for mediating disputes and acting as a coordinator for the various studies undertaken by the parties to support negotiations.[86]

Assisting Joint Initiatives: Pilot Projects

The ISCC has become involved in the facilitation of pilot projects wherein the First Nation is brought together with Canada to discuss at a single table all their outstanding specific claims, whether formally accepted for negotiation or not.

The first such project commenced in 1996, when then Chief Sam Stone of the Michipicoten First Nation wrote then Minister of Indian Affairs Ron Irwin to invite the Department of Indian Affairs and Northern Development (DIAND) to consider a different approach to resolving the First Nation's specific claims. The idea was simple: have the First Nation and DIAND work together to research, identify, and resolve all of the First Nation's specific claims in a "coherent, cooperative and timely fashion."[87] Following their initial meeting to discuss how the idea of a joint specific claims process could be developed, the parties invited the Commission to act as a neutral facilitator during the pilot project. In January 1997, the Commission began working with the Michipicoten First Nation and DIAND to establish a Protocol Agreement setting the ground rules for the project.

[86] See, for example, ICC, *Fishing Lake First Nation: 1907 Surrender Mediation* (Ottawa, March 2002), reported (2002) 15 ICCP 291. This was the first mediation where the Commission actively took on the role of study coordinator.

[87] ICC, *Michipicoten First Nation: Pilot Project Mediation* (Ottawa, October 2008), reported (2009) 24 ICCP.

This pilot project was the first time that a First Nation and DIAND worked cooperatively on multiple claims submissions. The dedication of human and financial resources by DIAND and the commitment of both parties contributed to the success of this coordinated approach.

Under the project, DIAND and the First Nation agreed to conduct joint research and gather the oral history of the First Nation *before* Canada took a position to accept or reject the various claims for negotiation. In this way, the project demonstrated how willingness, flexibility, and commitment can lead to effective resolution without recourse to an adversarial process.

In 1997, the Cote First Nation in Saskatchewan sought DIAND's cooperation in a joint project involving 12 separate reserve land transactions that began in 1905. In 2006, four specific claims were accepted for negotiation and the parties agreed to address another six as part of this negotiation.

The cooperative design of these pilot projects was then repeated with the Fort William First Nation in 1998, when multiple complex and interrelated surrender and expropriation specific claims were researched and reviewed jointly by both parties. During the Commission's involvement, two claims were settled.

Coordinating Joint Parties' Claim Valuation and Assessment Studies

At an early stage of negotiations when the Commission is involved, the parties are invited to discuss whether the claim valuation and assessment studies needed to valuate compensation will be undertaken jointly for the two parties by independent consultants. In most cases, the parties agree to a land appraisal and what has been termed "loss of use" studies to be carried out jointly and coordinated by the Commission. The loss of use studies might include assessment of agricultural land or other land development; mines and minerals; forestry; and loss of rent (including commercial/industrial rent and tourism/ recreational rent). It is not uncommon for the First Nation to also undertake additional studies, which might include traditional activities and social impacts, special economic advantage, disturbance and injurious affection, and water loss of use.[88]

The Commission's role as coordinator is to monitor the completion of the studies, coordinate meetings, help eliminate duplication and inconsistencies between studies, and where possible, to provide a summary of all the studies. These efforts help to facilitate communication between the consultants and the negotiation teams. The Commission created the full-time position of "Study Coordinator" within the Mediation Unit to fulfill these duties and report directly to the parties.

[88] Indian Specific Claims Commission, Study-Coordination – *Draft* Process Manual, p. 1.

This aspect of the Commission's mediation services – coordination of loss of use studies and land appraisals – has met with much success, and it has become a regularized role in all mediation files. The ISCC's work in providing study coordination services and support ensures that the study contractors have what they need to complete their work in a timely manner and the negotiating parties are kept informed about the progress of the reports and any problems that need to be addressed along the way.

There have been 115 studies done by consultants at the request of First Nations and Canada since the beginning of mediation services at the ISCC. Terms of Reference are agreed to by the First Nation and Canada on an entirely 'without prejudice' basis and accordingly, nothing in the Terms of Reference can be interpreted as an admission of fact or liability by the First Nation or Canada. A list of all completed joint studies appears in Appendix G.

Initially, studies were completed independently at the request of a First Nation, and Canada would subsequently conduct its own studies. Today, for the sake of efficiency and cost-effectiveness, joint studies are undertaken with the terms of reference jointly developed by Canada and the First Nation and provided to the consultants.

Recommendation 7.0: That joint research be undertaken by the parties whenever possible to limit costs and expedite the process.

Supporting the Negotiations of Claims Involving Multiple First Nations

The unique nature of each claim requires that the Commission be open to the range of services that are required by the parties. This is especially so where multiple First Nations are negotiating with Canada on the settlement of a single specific claim. For example, the Commission enabled the three First Nations involved in the Pelly Hay Lands claim – The Key, Keeseekoose, and Cote First Nations – to reach agreement on an issue they were unable to resolve among themselves.

The three First Nations and representatives of DIAND worked to establish negotiating principles and a guiding protocol agreement, which helped them to arrive at a mutually acceptable resolution of the Pelly Hay Lands claim.[89] Elements of the negotiation included agreement by the parties on a negotiation protocol; agreement on the Commission's role in the negotiations; agreement on hay lands acreage; identification of damages and compensation criteria; land appraisals and loss-of-use-studies; compensation to bring forward historical losses; consideration of reserve creation and land acquisition costs; negotiation and ratification expenses; and, finally, settlement issues and agreements, division of the settlement money among the three First Nations, communications, and ratification plans.

[89] ICC, *Fort Pelly Agency: Pelly Haylands Claim Mediation*, (Ottawa March 2008), reported (2009) 23 ICCP 279.

In order to properly assess the First Nations' losses arising from the illegal taking of the claim lands, the negotiating teams decided that Canada and the First Nations would jointly commission two land appraisals, as well as loss-of-use studies relating to agriculture, minerals, and forestry. The First Nations also decided that they would unilaterally contract for loss-of-use studies relating to traditional activities, social impact, special economic advantage, and water. The Commission was asked to coordinate these studies, monitor their progress, schedule meetings, arrange for a series of consultant interviews with community Elders, and facilitate communications among the parties – in other words, take on extensive duties and the responsibility for ensuring the completion of these studies that the parties would otherwise have had to assume over and above the challenge of negotiating a claim of this size and importance. All of these studies were completed by the end of 2003 and there followed several months of offers and counter-offers, culminating in an agreement in principle in October 2004 for a total compensation package of $73.5 million plus negotiation and ratification costs.

Canada did not make any recommendations to the First Nations as to how they should divide the compensation, leaving the First Nations to come to an agreement among themselves. With the assistance of the Commission, the three First Nations were ultimately able to agree to an equal split among them with respect to the land component and the debt to be repaid; however, for several months, the three First Nations tried to agree on an equitable division of the settlement moneys, without success. They wanted some combination of a per capita distribution to band members, with an equal division of part of the remainder and a per capita division of the rest, but could not agree on certain elements of these choices. In April 2005, they asked the Indian Specific Claims Commission to mediate this matter, and meetings were convened quickly, at which time the matter was successfully resolved.

In another case, the ISCC became involved in mediating the negotiations that followed the Minister of Indian Affairs' acceptance of the ISCC's recommendation regarding the flooding claims of the six QVIDA First Nations. The ISCC was invited to chair the negotiation sessions, provide an accurate record of the discussions, follow up on undertakings and consult with the parties to establish acceptable agendas, venues and times for meetings. Unfortunately, four years of negotiations as a collective proved unsuccessful and Canada gave QVIDA notice, as permitted by the terms of their negotiated memorandum of understanding, of its decision to cease negotiations, explaining that it was prepared to enter into negotiations with individual First Nations whose claims were accepted by Canada.[90] Four First Nations accepted Canada's offer to negotiate; Cowessess First Nation and Sakimay First Nation joined each other at one table with Canada, and Muscowpetung First Nation and Pasqua First Nation joined each other at a separate negotiation table with Canada.

[90] ICC, *Qu'Appelle Valley Indian Development Authority (QVIDA): Flooding Mediation*, (Ottawa, December 2005), reported (2008) 21 ICCP 77

Inclusion of Provinces in the Negotiation of Specific Claims

The Commission recently completed a mediation in which – in addition to the First Nation and Canada – one of the parties was the Province of Saskatchewan. The challenges at this table were significant, and required that parallel, bilateral negotiations be conducted between Canada and Saskatchewan (without ISCC's involvement) while the Commission worked with the First Nation and Canada during their negotiation at a different table. Because the Commission has publicly reported on the matter, we think it is important to highlight the lessons learned from the experience.

In our view, the mediation of the Sturgeon Lake First Nation Treaty Land Entitlement (TLE) demonstrates the importance of a flexible and broad mediation mandate in providing support to the parties. Given that this was a TLE claim, the Province of Saskatchewan was involved because of its legal obligation under the 1930 *Natural Resources Transfer Act* to provide "unoccupied Crown lands" for the creation of Indian reserves. In addition to agreement on the terms of the negotiation protocol, other elements of the negotiation included agreement by the parties on the nature of the Commission's role in the negotiations; the final population figures for determining shortfall acres for settlement purposes; the effect of Article 17 of the 1992 Saskatchewan Framework Agreement on the settlement criteria; the applicability of an honour payment to the Sturgeon Lake TLE claim; the variation of the payment schedule stipulated in the Framework Agreement; the impact of the parallel, bilateral (Canada and Saskatchewan) discussions relating to the cost-sharing provisions in the Framework Agreement; compensation for land as well as negotiation and ratification expenses; and finally, settlement issues and agreements, communications, and ratification of the final settlement.[91]

Once again, the broad and flexible nature of the Commission's mediation mandate made the creation of a parallel, bilateral process with the Province of Saskatchewan – which in itself was a critical component to the successful negotiation of the claim – not only possible but necessary to support the needs of the parties.

[91] ICC, *Sturgeon Lake First Nation: Treaty Land Entitlement Negotiations Mediation*, (Ottawa, May 2008), reported (2009) 23 ICCP 463.

3 | REACHING OUT

Section 1: The Authority to Publish

The Commission was given the authority, by Order in Council, to publish its findings and recommendations to the parties involved in an inquiry, and report on its mediation mandate. In addition, the Commission was given the authority to publish "any other reports from time to time that the Commissioners consider required in respect of the Commission's activities and the activities of the Government of Canada and the Indian Bands relating to specific claims."[92] The Commission has exercised this authority throughout its 18-year history and in so doing, contributed to the public's education about specific claims with each publication. A compilation of all annual, inquiry and mediation reports, along with the Commission's proceedings, are now available at Library and Archives Canada. A complete list of all its publications appears in Appendix F.

Section 2: Liaison with First Nations Communities

As the architect of its own process, the ISCC formulated its inquiry procedures from one critical principle: it would engage directly with claimant communities to bring its inquiry hearings into the affected First Nation community. It was therefore vital that the Commission establish effective linkages with First Nation communities in order to gain insight into their cultural, ceremonial and logistical requirements. The Commission's objective is to bring its process into a First Nation community with the utmost respect and integrity. To carry this out, the Commission established a Liaison Unit to create a community profile and provide key information to the Commissioners on every First Nation requesting the Commission's services. In advance of every community session, staff of the Liaison Unit visit the community with the ISCC's legal counsel, to introduce the Commission's inquiry process to the First Nation community and make the necessary cultural and ceremonial arrangements for the taking of oral history evidence. Following consultation with the community, the Liaison Unit sometimes prepares sweet grass and tobacco offerings for the First Nation witnesses that are presented by the Commission panel at the community session. Occasionally, the panel, ISCC staff, and Canada's representatives are invited to participate in pipe and prayer ceremonies.

92 Order in Council P.C. 1993 – 1444, June 24, 1993.

Section 3: Public Education

Throughout its history, many efforts have been made by the ISCC to raise awareness about its mandate and to create a better understanding of the issues surrounding specific claims and the legal obligations giving rise to these claims within Canada. The ISCC's efforts have not been confined to the general public. In its role as a bridge between often conflicting perspectives on claims by the Government of Canada and First Nations, the ISCC has often discussed its work and inquiry reports with national and regional/local media, in addition to speaking publicly to specialized and academic audiences.

The ISCC has made efforts to fill gaps in the knowledge of central agencies of the federal government regarding specific claims and the Commission. The ISCC has also developed formal ties with other Treaty Commissions within Canada.

Over the years, Commissioners have appeared before parliamentary committees, held sessions on the ISCC for Members of Parliament, and information sessions for foreign delegations, including South Africa and New Zealand.

In addition, the ISCC has created numerous information tools to supplement the public reporting of its mediation services, inquiry findings, and recommendations. Given the body of work created by the Commission over its 18-year history, the Commission believed it important to create an index of key words and summaries of inquiries and mediation reports, as a research tool for canvassing these legal issues. This index was tabled with the Standing Senate Committee on Aboriginal Peoples following an appearance by the ISCC in 2006.

4 | IN CONCLUSION: OUR ACCOMPLISHMENTS

The ISCC has had a positive impact in bringing First Nations and the federal government together and has worked diligently to bridge often divergent perspectives through the inquiry and mediation processes.

- The ISCC has helped settle a number of claims over its 18-year existence, through its inquiry and mediation processes.
- The ISCC has been a pioneer in the legal recognition of First Nations' oral history evidence, prior to the courts granting it equal status with documentary evidence.
- The ISCC has provided First Nations with an opportunity to have their witnesses heard. The inquiry process has been the only independent examination of government decisions on issues related to land claims, and as such, has constituted an important alternative to litigation.
- The ISCC established an impartial forum where, often for the first time, First Nations and their witnesses have the opportunity to meet with Canada's representatives regarding their claims.
- The ISCC has helped the federal government and a number of provincial governments better understand that specific claims constitute important legal and human rights issues in our country.
- The ISCC has been active in public discussions promoting the establishment of an independent claims body with binding authority to address specific claims.
- The ISCC's actions over the years have facilitated the development of a more positive working relationship between the First Nations and the federal government.
- The ISCC's actions have helped to foster a shared understanding of claims and the specific claims process by the federal government and the First Nations.

The decision to convene its hearings within a First Nation community and in a location in closest proximity to the First Nation community not only ensures maximum accessibility to the Commission's process, but also provides important knowledge to the federal representatives.

Based upon our experience, we can say that the claims already tabled on land issues related to treaties, primarily, the quantity of land provided as treaty land entitlement, are only the tip of the iceberg with regard to treaty rights. Given our experience, one can anticipate many more claims in the future addressing other treaty-related matters: quality of land, agricultural benefits, medical aid, and natural resources. Furthermore, the relatively few claims that the ISCC has been asked to consider from Quebec and the Atlantic provinces should not be considered as an indication that more claims will not be forthcoming.

Recommendations

Recommendation 1.0: That the government initiate, with the Assembly of First Nations, a thorough review by an independent panel, of a) the 1973 Specific Claims Policy, and b) the Department of Indian and Northern Affairs' application of that policy, to make them consistent with:

- section 35 of the *Constitution Act, 1982*;
- the Crown's fiduciary obligation as established by the 1984 Supreme Court of Canada decision in *Guerin*, and subsequent decisions;
- the expansion of the application of the Crown's fiduciary obligation in the constitutional context, as established by the 1990 Sparrow decision of the Supreme Court of Canada;
- the Specific Claims Tribunal Act;
- the need to address claims over $150 million, which are outside the jurisdiction of the *Specific Claims Tribunal*.

This review should be completed within the same five year review period called for in the *Specific Claims Tribunal Act*.

Recommendation 2.0: That the Superior Court Judges appointed to the Specific Claims Tribunal be versed in First Nations' land claims' issues, and that, if such is not the case, training be provided by, among others, representatives of First Nations.

Recommendation 3.0: That the Department of Indian Affairs and Northern Development direct its research staff to create a single documentary record to introduce efficiencies into the process. This organizing step will also help ensure that First Nations are given access to all documentary evidence in the possession of the Government of Canada.

Recommendation 4.0: That the Department of Indian Affairs and Northern Development make public the criteria and the reasons for accepting or rejecting claims, so that the parties know the case to be met and the general public have a better understanding of the issues, the process and DIAND's decisions.

Recommendation 5.0: That the Specific Claims Tribunal exercise its authority to receive oral history evidence. The Tribunal should gather evidence from community members in a public session convened in the community to ensure the greatest access. While the Tribunal is in the community, it should take the opportunity to visit the lands in question.

Recommendation 6.0: That the Department of Indian Affairs and Northern Development incorporate independent alternative dispute resolution (ADR) services at the outset of its process.

That this neutral facilitator assist the parties to narrow the issues in dispute and help them find agreement where they can. If needed, the third party should seek advice independent of the parties on a particular issue or coordinate the advice that is sought by the table.

That this neutral facilitator chair sessions where all relevant aspects of the Specific Claims Policy are explained and where expectations and possible outcomes are clearly expressed by all sides. In addition, the First Nations should have the opportunity to share with Canada's officials elements of their own governance and culture. This type of precursor to formal negotiations may create an atmosphere conducive to a positive and timely settlement agreement.

Recommendation 7.0: That joint research be undertaken by the parties whenever possible to limit costs and expedite the process.

Appendix A: Consolidated Terms of Reference

Pursuant to Order in Council P.C. 1991-1329, a Commission was issued to the first Chief Commissioner under Part I of the Inquiries Act. That Commission was subsequently amended by P.C. 1992–1730, and further Commissions were authorized to additional named Commissioners. The recitals to the amending Order-in-Council are as follows:

> WHEREAS a Joint First Nations/Government Working Group will review and recommend changes to the Government of Canada's Specific Claims Policy and process to the Minister of Indian Affairs and Northern Development and to the Assembly of First Nations; and
>
> WHEREAS the Government of Canada and the First Nations agree that an interim process to review the application by the Government of Canada of the Specific Claims Policy to individual claims is desirable;

The operative provisions of the new Commissions are the following:

> AND WE DO HEREBY advise that our Commissioners on the basis of Canada's Specific Claims Policy published in 1982 and subsequent formal amendments or additions as announced by the Minister of Indian Affairs and Northern Development (hereinafter "the Minister"), by considering only those matters at issue when the dispute was initially submitted to the Commission, inquire into and report on:
>
> a) whether a claimant has a valid claim for negotiation under the Policy where that claim has already been rejected by the Minister; and
>
> b) which compensation criteria apply in negotiation of a settlement, where a claimant disagrees with the Minister's determination of the applicable criteria.

AND WE DO HEREBY

a) authorize our Commissioners

> (i) to adopt such methods, subject to subparagraph (iii), as they may consider expedient for the conduct of the inquiry and to sit at such times and in such places as they may decide,
>
> (ii) that they may provide such advice and information as may be requested from time to time by the Joint First Nations/Government Working Group,
>
> (iii) to provide or arrange, at the request of the parties, such mediation services as may in their opinion assist the Government of Canada and an Indian band to reach an agreement in respect of any matter relating to an Indian specific claim,

(iv) to rent such space and facilities as may be required for the purposes of the inquiry, in accordance with Treasury Board policies,

(v) to engage the services of such experts and other persons as are referred to in section 11 of the Inquiries Act at such rates of remuneration and reimbursement as may be approved by the Treasury Board; and

b) direct our Commissioners

(i) to submit their findings and recommendations to the parties involved in a specific claim where the Commissioners have conducted an inquiry and to submit to the Governor in Council in both official languages an annual report and any other reports from time to time that the Commissioners consider required in respect of the Commission's activities and the activities of the Government of Canada and the Indian bands relating to specific claims, and

(ii) to file their papers and records with the Clerk of the Privy Council as soon as reasonably may be after the conclusion of the inquiry.

On November 22, 2007, Order in Council P.C. 2007-1789 added to the Commission issued in 1991, as amended, paragraphs directing the Indian Specific Claims Commission to cease all its activities by March 31, 2009. The recitals to this Order in Council are as follows:

(iii) to not accept or undertake new inquiries into specific claims as of the day on which the Bill entitled the Specific Claims Tribunal Act is tabled in the House of Commons,

(iv) as of the day on which the Bill entitled the Specific Claims Tribunal Act is tabled in the House of Commons, to cease all activities on inquiries that are currently before the Commission, except for those inquiries for which dates for the community sessions have already been scheduled or the community sessions have been completed or final legal submissions, either written or oral, have been completed, to notify in writing the affected First Nations of the cessation of their inquiries and to return all documents filed for the inquiries by the affected First Nations,

(v) subject to paragraph (vi), to complete, by December 31, 2008, all inquiries, including the reports related to such inquiries, that are currently before the Commission, and in respect of which dates for the community sessions have already been scheduled or community sessions have been completed or final legal submissions, either written or oral, have been completed,

(vi) to immediately cease an inquiry and not issue a report, on written request to the Commission by the claimant First Nation,

(vii) to cease, by March 31, 2009, all activities and all activities of the Commission, including those related to mediation, and

(viii) to submit a final annual report to the Governor in Council by March 31, 2009.

Appendix B: Orders in Council

Tab	P.C. No.	Date	Subject
1	1991-1329	15 July 1991	Appointing the Commission (effective 5 Aug 1991)
2	1991-1328	15 July 1991	Remuneration for George R. Post (Secretary)
3	1991-1521	14 Aug. 1991	Remuneration for Harry S. LaForme (Chairman)
4	1991-1754	19 Sep. 1991	Naming the Commission
5	1991-1755	19 Sep. 1991	Designated "department" for the purposes of the Financial Administration Act; Prime Minister designated as the "appropriate Minister"
6	1992-432	12 Mar. 1992	Remuneration for Harry LaForme (per diem)
7	1992-1730	27 July 1992	Appointing six Commissioners
8	1992-1936	27 Aug. 1992	Remuneration for Commissioners
9	1993-1444	24 June 1993	Authority to publish the Indian Specific Claims Commission Proceedings
10	1994-186	27 Jan. 1994	Harry LaForme appointed a Judge of the Ontario Court of Justice
11	1994-467	17 Mar. 1994	Naming Interim Co-Chairpersons James D. Bellegarde and James E. Prentice
12	1994-1227	19 July 1994	Submitting Annual Report 1991-1994 to the Governor General
13	1994-1961	29 Nov. 1994	Appointing new Commissioner Aurélien Gill
14	1994-1962	29 Nov. 1994	Remuneration for Aurelien Gill
15	1995-1406	16 Aug. 1995	Submitting Annual Report 1994–1995 to the Governor General
16	1997-65	07 Jan. 1997	Submitting Annual Report 1995–1996 to the Governor General
17	1998-235	19 Feb. 1998	Submitting Annual Report 1996–1997 to the Governor General
18	1999-8	08 Jan. 1999	Appointing Elijah Harper as Commissioner
19	1999-203	11 Feb. 1999	Remuneration for Elijah Harper
20	1999-275	18 Feb. 1999	Submitting Annual Report 1997–1998 to the Governor General
21	1999-814	04 May 1999	Appointing Sheila G. Purdy as Commissioner
22	1999-815	04 May 1999	Remuneration for Sheila Purdy
23	1999-1861	21 Oct. 1999	Remuneration for James D. Bellegarde

Tab	P.C. No.	Date	Subject
24	1999-1862	21 Oct. 1999	Remuneration for James E. Prentice
25	2001-0474	28 Mar. 2001	Appointing Renée Dupuis and Alan Holman as Commissioners
26	2001-744	26 Apr. 2001	Submitting Annual Report 1999–2000 to the Governor General
27	2001-977	31 May 2001	Remuneration range for Interim Co-Chairpersons
28	2001-978	31 May 2001	Remuneration range for Interim Co-Chairpersons
29	2001-1597	29 Aug. 2001	Appointing Phil Fontaine as Chief Commissioner
30	2001-1823	04 Oct. 2001	Non-accountable living allowance for Chief Commissioner and change title in French Orders in Council
31	2002-393	20 Mar. 2002	Submitting the Annual Report 2000–2001 to the Governor General
32	2002-1853	20 Oct. 2002	Appointing Jane Dickson-Gilmore as Commissioner
33	2003-886	10 June 2003	Appointing Renée Dupuis as Chief Commissioner
34	2003-1150	24 July 2003	Non-accountable living allowance and actual transportation expenses for Chief Commissioner Dupuis
35	2003-1639	23 Oct. 2003	Travel and living expenses for Chief Commissioner Dupuis
36	2003-1640	23 Oct. 2003	Changes to wording for expenses for OIC 2001-977
37	2004-858	20 July 2004	Designating Minister of Indian Affairs as the “appropriate Minister”
38	2005-639	19 Apr. 2005	Submitting Annual Report 2003–2004 to the Governor General
39	2006-464	1 June 2006	Submitting Annual Report 2004–2005 to the Governor General
40	2006-1094	5 Oct. 2006	Submitting Annual Report 2005–2006 to the Governor General
41	2007-1651	25 Oct. 2007	Submitting Annual Report 2006–2007 to the Governor General
42	2007-1789	22 Nov. 2007	Mandate Change Regarding Closure

Appendix C: Biographies of Current Commissioners

Chief Commissioner Renée Dupuis is a member of the Barreau du Québec. She has had a private law practice in Quebec City since 1973 where she specializes in the areas of Aboriginal peoples, human rights, and administrative law. Since 1972, she has served as legal advisor to a number of First Nations and Aboriginal groups in her home province, including the Indians of Quebec Association, the Assembly of First Nations for Quebec and Labrador, and the Attikamek and the Innu-Montagnais First Nations, representing them in their land claims negotiations with the federal, Quebec, and Newfoundland governments and in constitutional negotiations. From 1989 to 1995, Madame Dupuis served two terms as commissioner of the Canadian Human Rights Commission and she is chair of the Barreau du Québec's committee on law relating to Aboriginal peoples. She has served as consultant to various federal and provincial government agencies, authored numerous books and articles, and lectured extensively on administrative law, human rights, and Aboriginal rights. She is the recipient of the 2001 Award of the Fondation du Barreau du Québec for her book Le statut juridique des peuples autochtones en droit canadien (Carswell), the 2001 Governor General's Literary Award for Non-fiction for her book Quel Canada pour les Autochtones? (published in English by James Lorimer & Company Publishers under the title Justice for Canada's Aboriginal Peoples), and the YWCA's Women of Excellence Award 2002 for her contribution to the advancement of women's issues. In June 2004, the Barreau du Québec bestowed on her the Christine Tourigny Merit Award for her contribution to the promotion of legal knowledge, particularly in the field of Aboriginal rights. She was appointed as a Member of the Order of Canada in 2005. She was one of the first recipients of the Advocatus emeritus award, created by the Quebec Bar in 2007. Madame Dupuis has received her accreditation in civil and commercial mediation from the Barreau du Québec in 2003. She 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, and Chief Commissioner on June 10, 2003.

Daniel J. Bellegarde is a citizen of Little Black Bear's Band of the Assiniboine-Cree in Treaty 4 Territory, southern Saskatchewan. He attended the Qu'Appelle Indian Residential School and the University of Regina in the Faculty of Administration and has had specialty training at various universities and professional development institutions. He has held senior positions with First Nations organizations, including Socio-Economic Planner with the Meadow Lake Tribal Council, President of the Saskatchewan Indian Institute of Technologies, and First Vice-Chief of the Federation of Saskatchewan Indian Nations. As Vice-Chief, he held the portfolios of Treaty Land Entitlement and Specific Claims, Gaming, Justice, International Affairs and Self-Government. He is currently the Senior Governance Coordinator at the Treaty 4 Governance Institute in Fort Qu'Appelle. He has served on a number of community boards and committees, as well as the national Board of CESO. He has been a Commissioner of the Indian Specific Claims Commission since 1992 and has served as Co-Chair of the Commission from 1994 to 2000. He is President of Dan Bellegarde and Associates, specializing in training, organizational development and self-government.

Sheila G. Purdy was born and raised in Ottawa. Between 1996 and 1999, she worked as an advisor to the government of the Northwest Territories on the creation of the Nunavut territory. Between 1993 and 1996, she was senior policy advisor to the Minister of Justice and the Attorney General of Canada on matters related to the Criminal Code and Aboriginal affairs. In the early 1990s, Ms Purdy was also special advisor on Aboriginal affairs to the Leader of the Opposition. Previously, she provided legal services on environmental matters and worked as a legal aid lawyer representing victims of elder abuse. After graduating with a law degree from the University of Ottawa in 1980, Ms Purdy worked as a litigation lawyer in private practice until 1985. Her undergraduate degree is from Carleton University, Ottawa. Ms Purdy has been a board member of various community and national organizations, including the Canadian Biodiversity Institute. She was appointed Commissioner of the Indian Claims Commission on May 4, 1999.

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.

Jane Dickson-Gilmore is an associate professor in the Law Department at Carleton University, where she teaches such subjects as Aboriginal community and restorative justice, as well as conflict resolution. Active in First Nations communities, she has served as an advisor for the Oujé-Bougoumou Cree First Nation Community Justice Project and makes presentations to schools on Aboriginal culture, history, and politics. In the past, she provided expert advice to the Smithsonian Institution – National Museum of the American Indian on Kahnawake Mohawks. Ms Dickson-Gilmore has also been called upon to present before the Standing Committee of Justice and Human Rights and has been an expert witness in proceedings before the Federal Court and the Canadian Human Rights Commission. A published author and winner of numerous academic awards, she graduated from the London School of Economics with a PhD in Law and holds a BA and MA in Criminology from Simon Fraser University. Ms Dickson-Gilmore was appointed Commissioner of the Indian Claims Commission on October 31, 2002.

Appendix D: Commissioners and Terms Served

Current Commissioners

Title and name	Service date beginning:	Service date ending:
Chief Commissioner Renée Dupuis Commissioner Renée Dupuis	June 10, 2003 March 28, 2001	March 31, 2009 June 10, 2003
Commissioner Daniel J. Bellegarde Interim Co-Chair Daniel J. Bellegarde Commissioner Daniel J. Bellegarde	August 29, 2001 March 17, 1994 July 27, 1992	March 31, 2009 August 29, 2001 March 17, 1994
Commissioner Sheila Purdy	May 4, 1999	March 31, 2009
Commissioner Alan Holman	March 28, 2001	March 31, 2009
Commissioner Jane Dickson-Gilmore	October 29, 2002	March 31, 2009

Past Commissioners

Title and name	Service date beginning:	Service date ending:
Commissioner & Chairman Harry S. LaForme	July 15, 1991	February 17, 1994
Commissioner Charles-André Hamelin	July 27, 1992	July 27, 1993
Commissioner Carol A. Dutcheshen	July 27, 1992	May, 1994
Commissioner Carole T. Corcoran	July 27, 1992	February 15, 2001
Commissioner Roger Augustine	July 27, 1992	September 18, 2003
Commissioner James E. Prentice Interim Co-Chair James E. Prentice Commissioner James E. Prentice	August 29, 2001 March 17, 1994 July 27, 1992	December 3, 2001 August 29 , 2001 March 17, 1994
Commissioner Aurélien Gill	March 17, 1994	September 17, 1998
Commissioner Elijah Harper	January 8, 1999	October 8, 2000
Chief Commissioner Phil Fontaine	August 29, 2001	June 3, 2003

Appendix E: Recommendations from Annual Reports

Annual Report 1991–1992 to 1993–1994

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.

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.

Recommendation 3

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

Recommendation 4

That government departments more fully recognize the mandate of the Commission.

Recommendation 5

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

Recommendation 6

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

Annual Report 1994–1995

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.

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.

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 précis of any fresh legal opinion received from the Department of Justice.

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.

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.

Recommendation 6

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

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.

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.

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.

Recommendation 4

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

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.

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.

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.

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.

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.

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.

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.

Annual Report 1998–1999

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.

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.

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.

Annual Report 1999–2000

Annual Report 1999–2000 reprinted the recommendations from the 1991 to 1999 annual reports. It did not add any new recommendations.

Annual Report 2000–2001

Recommendation 1

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

Recommendation 2

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

Recommendation 3

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

Recommendation 4

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

Recommendation 5

The Commission can only carry out its mandate to the fullest extent if both parties to a claim participate as actively as they should. The Commission is concerned about Canada's

increasing failure to take part in claims inquiries and urges Canada to do more to become a committed and active party in the land claims settlement process.

Annual Report 2001–2002

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.

Annual Report 2002–2003

The Commission (therefore) recommends that the government of Canada apply the following eight principles in the creation of a new, independent claims body:

- The new body must be independent. True independence resides in a body that is self-governing and not dependent on an outside body, such as the Department of Indian Affairs and Northern Development or the Minister, for its validity. This independence can be enhanced through consultation in making appointments to the new body.
- The new body must have the authority to make binding decisions. This is necessary to a fair and just claims process. It is imperative that this authority apply not only to the validity of claims, but also to the participation of the parties to the process.
- The new body must constitute a viable alternative to litigation for the parties involved. It must be seen by all parties as cost-efficient, expeditious and final.
- The new body must recognize and uphold the right of First Nations to provide oral testimony of their history as a valid and important source of evidence and information about a claim.
- The new body must provide mechanisms for alternative dispute resolution.
- The new body must ensure access to justice. A First Nation must have reasonable access to the claims process to ensure justice is both done and seen to be done. Resource limitations in the proposed legislation – the cap on settlements, for example – as well as the "prescribed limits" to research funding may impede access to justice.
- The new body must ensure access to information. Full and fair participation in the claims process presumes parties will have equal access to evidence, including that which may be found in government files.
- The new body must ensure the primacy of the fiduciary relationship between First Nations and the federal Crown. We are concerned that this constitutional principle is in danger of being compromised by transferring responsibility for some elements of claims to provincial governments, an act that would diminish the federal responsibility.

Annual Report 2003–2004

The Commission (therefore) recommends that Canada challenge the Commission's exercise of jurisdiction before the Commission, following which Canada should bring an application for judicial review in the Federal Court, if it disagrees with the Commission's assumption of jurisdiction. The Commission further recommends that Canada not deny fair process to a claimant First Nation in these circumstances simply by refusing to fund the First Nation's claim.

Annual Report 2004–2005

Recommendation 1

> The Commission (therefore) recommends that Canada ensure that sufficient human resources be assigned to the Specific Claims Branch of Indian and Northern Affairs Canada and to the Department of Justice to eliminate the backlog of specific claims and permit future inquiries to proceed in a timely and effective manner.

Recommendation 2

> The Commission also recommends that, in the interest of lessening uncertainty among First Nations claimants and potential claimants and creating an environment of stability for the resolution of specific claims, the ongoing discussions be given priority by all parties involved in order that a decision can be made in a timely manner regarding proclamation of the Specific Claims Resolution Act, and to ensure a smooth transition from the Indian Claims Commission to the new centre.

Annual Report 2005–2006

Recommendation 1

> The Commission recommends that the federal government give priority to the creation of an independent tribunal for specific claim resolution, in consultation with First Nations. The federal government should take whatever legislative action is required to do so.

Recommendation 2

> The Commission recommends that the Minister encourage the Department of Indian and Northern Affairs to utilize the ICC's mediation and facilitation services at any stage of the specific claims process.

Annual Report 2006–2007

Recommendation 1

> The Commission recommends a grouping of claims in order to apply the precedents and principles that have been generated through 30 years of settling cases.

Recommendation 2

> The Commission recommends an increased use of its mediation services, not only for claims that have been accepted and are in the negotiation process, but also for claims at any stage of the process.

Recommendation 3

The Commission recommends the allocation of additional resources - for First Nations to conduct research, prepare their claims, and negotiate accepted claims; for officials at Indian and Northern Affairs and the Department of Justice to process claims that are submitted more quickly; and for the Commission to carry out our mandate for inquiries and mediations.

Recommendation 4

The Commission recommends that the government appoint two additional Commissioners to ensure that the ICC has its full complement of Commissioners.

Annual Report 2007–2008

Recommendation 1

The Commission has recommended in the past an increased use of its mediation services, not only for claims that have been accepted and are in the negotiation process, but also for claims at any stage of the process.

Recommendation 2

The Commission has recommended in the past grouping of like claims for negotiation or review.

Recommendation 3

The Commission repeats its recommendation for adequate funding for research. It further recommends that funding levels linked to results be reviewed on an annual basis.

Recommendation 4

The Commission recommends access to relevant files early in the process of establishing a claim or of preparing arguments for presentation to the new Tribunal.

Recommendation 5

The Commission recommends that the new Tribunal adopt disclosure or discovery procedures.

Recommendation 6

The Commission recommends that special efforts be made to collect and use oral evidence from First Nations whose tradition is based on story telling and the oral transmission of history.

Annual Report 2008–2009

As this is the year of closure for the Commission, we have provided our recommendations in this Final Report (see page 41) rather than in the 2008–2009 Annual Report.

Appendix F: ISCC Publications

1. General Information

- Indian Claims Commission Information Guide, April 2005

2. The Facts on Claims

- "What is the Indian Claims Commission?," 2005
- "What are Indian Land Claims?," 2005
- "What is Oral History?," 2005
- "What is Surrender Claim?," 2005
- "What is a Treaty Land Entitlement Claim?," 2005
- "What are Treaties?," 2005

3. Indian Specific Claims Commission Newsletters

- Landmark, Message from the Chief Commissioner on the 15th Anniversary of the ICC," Vol. 11 no. 2, June 2007
- Landmark, "Ottawa Should Negotiate with Two Saskatchewan Indian Bands" - Vol.11, no. 1, July 2005
- Landmark, "Charting the Claim Inquiry Process, How the ICC's system works," Vol. 10, no. 4, February 2005
- Landmark, "The ICC 13 Years On," Vol 10, no. 3, November 2004
- Landmark, "ICC Reports on Thunderchild Mediation," Vol, 10, no. 2, July 2004
- Landmark, "File Hills Colony: A Breach of Treaty, Indian Act, and Canada Fiduciary Responsibility," Vol. 10, no.1, May 2004
- Landmark, "ICC Mediation Services: Achieving Success in Specific Claims Resolution," Vol 9, no. 4, Winter 2004
- Landmark, "Parliament Passes Bill C-6," Vol. 9, no. 3, Fall 2003
- Landmark, "Toronto Purchase Claim Accepted for Negotiation," Vol. 9, no. 2, Summer 2003
- Landmark, "Annual Report Calls for Improvements to Research Funding System," Vol. 9, no.1, Spring 2003
- Landmark, "Kahkewistahaw First Nation Settles 1907 Specific Claim," Vol. 8, no.4, Winter 2003
- Landmark, "ICC urges MPs to Follow Basic Principles in Creating New Claims Body," Vol. 8, no. 3, Fall 2002

- Landmark, "Cold Lake: ICC's First Inquiry Reaches Successful Conclusion," Vol. 8, no. 2, Summer 2002
- Landmark, "Indian Claims Commission Releases its 2000–2001 Annual Report," Vol. 8, no. 1, Spring 2002
- Landmark, "Oral History - ICC a Pioneer," Vol. 7, no. 4, Winter 2002
- Landmark, "Phil Fontaine Heads ICC," Vol. 7, no. 3, Fall 2001
- Landmark, "Message from the Commissioners On the 10th Anniversary Special Edition," Vol. 7, no. 2, Summer 2001
- Landmark, "Claims System still in Gridlock Says Annual Report," Vol. 7, no. 1, Spring 2001
- Landmark, "End the Claims Gridlock – ICC Annual Report," Spring 2000
- Landmark, "Commission Tells Government to Reconnect the Carry the Kettle Band to the Cypress Hills," Fall 2000
- Landmark, "Listening to the Elders: The Impact of Oral History and Tradition on Commission Inquiries," Winter 2000
- Landmark, "Sheila G. Purdy Appointed to the Commission," Spring 1999
- Landmark, "The Fort William First Nation Pilot Project: Building a Band Wagon," Fall 1999
- Landmark, "Indian Claims Commission Releases Annual Report," Spring 1998
- Landmark, "Building a Better Claims Process: Open Dialog Key to Success in Resolving Claims," Summer 1998
- "Special Newsletter on the Michipicoten Pilot Project – Face-to-Face Research," Fall 1998
- "Special Newsletter on the Michipicoten Pilot Project – Moving Forward Together on a New Approach to Specific Land Claims," Summer 1997
- Landmark, "A Landmark Year for the Indian Claims Commission New Steps Taken on the Road to Progress and Reform on the Land Claims System," Summer 1997
- "Special Newsletter on the Michipicoten Pilot Project – Community History: Sharing our Stories The Michipicoten Pilot Project Community Session," Autumn 1997
- Landmark, "Special Issue on Primrose Lake Air Weapons Range Inquiry," Special Issue 1995
- Landmark, Summer 1995
- Indian Claims Review. "It's Spring! Time for re-birth and renewal," Spring 1995
- Indian Claims Review, "Co-Chairs Continue ICC's Tradition of Fairness," Summer 1994

4. ISCC Inquiry and Mediation Reports

1. Alexis First Nation Inquiry – (TransAlta Utilities) [Rights of Way] (March 2003)
2. Athabasca Chipewyan First Nation Inquiry – [WAC Bennett Dam and Damage to IR 201] (March 1998)
3. Athabasca Denesuline Inquiry – (Into the Claim of Fond du Lac, Black Lake, and Hatchet Lake First Nations) [Treaty Harvesting Rights] (December 21, 1993)
4. Athabasca Denesuline Inquiry – (Into the Claim of Fond du Lac, Black Lake, and Hatchet Lake First Nations) [Treaty Harvesting Rights] Special Report (November 1995)
5. Betsiamites Band – [Highway 138 and Rivière Betsiamites Bridge Inquiries] (March 2005)
6. Bigstone Cree Nation Inquiry – [Treaty Land Entitlement Claim] (March 2000)
7. Blood Tribe/Kainaiwa Inquiry – [1889 Akers Surrender] (June 1999)
8. Blood Tribe/Kainaiwa – Mediation Report – [Akers Surrender Negotiations] (August 2005)
9. Blood Tribe/Kainaiwa – [Big Claim Inquiry] (March 2007)
10. Blueberry River First Nation and Doig River First Nation – [Highway Right of Way – IR 172 Inquiry] (March 2006)
11. Canupawakpa Dakota First Nation Inquiry – [Turtle Mountain Surrender Claim] (July 2003)
12. Carry the Kettle First Nation Inquiry – [Cypress Hills Claim] (July 2000)
13. Carry the Kettle First Nation – [1905 Surrender Inquiry] (December 2008)
14. Chippewa Tri-Council Inquiry – [Collins Treaty Claim] (March 1998)
15. Chippewa Tri-Council – [Coldwater-Narrows Reservation Surrender Claim] (March 2003)
16. Chippewas of Kettle and Stony Point First Nation – [1927 Surrender Claim] (March 1997)
17. Chippewas of the Thames First Nation – [Muncey Land Claim] (December 1994)
18. Chippewas of the Thames First Nation – [Clench Defalcation Claim] (March 2002)
19. Chippewas of the Thames First Nation – Mediation Report – [Clench Defalcation Negotiations] (August 2005)
20. Cowessess First Nation Inquiry – [1907 Surrender Claim] (March 2001)
21. Cowessess First Nation Inquiry – [1907 Surrender – Phase II Inquiry] (July 2006)
22. Cumberland House Cree Nation – [IR 100A Inquiry] (March 2005)

23. Duncan's First Nation Inquiry – [1928 Surrender Claim] (September 1999)
24. Eel River Bar First Nation Inquiry – [Eel River Dam Claim] (December 1997)
25. Esketemc First Nation Inquiry – [IR 15, 17 and 18 Claim] (November 2001)
26. Esketemc First Nation – [Wright's Meadow Pre-Emption Inquiry] (June 2008)
27. Fishing Lake First Nation Inquiry – [1907 Surrender Claim] (March 1997)
28. Fishing Lake First Nation – Mediation Report – [1907 Surrender Claim] (March 2002)
29. Fort McKay First Nation – [Treaty Land Entitlement Claim] (December 1995)
30. Friends of the Michel Society Inquiry – [1958 Enfranchisement Claim] (March 1998)
31. Fort Pelly Agency Pelly Haylands Claim Negotiations – [Mediation Report] (March 2008)
32. Gamblers First Nation Inquiry – [Treaty Land Entitlement Claim] (October 1998)
33. George Gordon First Nation – Mediation Report [Treaty Land Entitlement Negotiations] (May 2008)
34. Homalco Indian Band Claim – [Aupe Indian Reserves 6 & 6A Inquiry] (December 1995)
35. James Smith Cree Nation – [Chakastaypasin IR 98 Inquiry] (March 2005)
36. James Smith Cree Nation – [IR 100A Inquiry] (March 2005)
37. James Smith Cree Nation –[Treaty Land Entitlement Inquiry] (February 2007)
38. James Smith Cree Nation – [Treaty Land Entitlement Inquiry Report on Issue 9: Amalgamation] (March 2005)
39. Kahkewistahaw First Nation Inquiry – [Treaty Land Entitlement Claim] (November 1996)
40. Kahkewistahaw First Nation Inquiry – [1907 Reserve Land Surrender Claim] (February 1997)
41. Kahkewistahaw First Nation – Mediation Report – [1907 Surrender Claim] (January 2003)
42. Kawacatoose First Nation – [Treaty Land Entitlement Claim] (March 1996)
43. Keeseekoowenin First Nation – Mediation Report – [1906 Lands Claim Negotiation] (August 2005)
44. The Key First Nation Inquiry – [1909 Surrender Claim] (March 2000)
45. Kluane First Nation – [Kluane National Park and Kluane Games Sanctuary Inquiry] (February 2007)
46. Lac La Ronge Indian Band – [Treaty Land Entitlement Claim] (March 1996)
47. Lax Kw'alaams Indian Band – [Tsimpsean IR 2 Inquiry] (June 29, 1994)

48. Long Plain First Nation Inquiry – [Loss of Use Claim] (March 2000)
49. Lower Similkameen Indian Band – [Vancouver, Victoria and Eastern Railway Right of Way Inquiry] (February 2008)
50. Lucky Man Cree Nation – [Treaty Land Entitlement Claim] (March 1997)
51. Lucky Man Cree Nation – [Treaty Land Entitlement– Phase II Inquiry] (February 2008)
52. Mamaleleqala Qwe'Qwa'Sot' Enox Band Inquiry– [McKenna–McBride Applications Claim] (March 1997)
53. Metepenagiag Mi'kmaq Nation – Mediation Report [Hosford Lot and Red Bank Indian Reserve 7 Negotiations] (May 2008)
54. Michipicoten First Nation – [Pilot Project] (October 2008)
55. Micmacs of Gesgapegiag First Nation Inquiry – [Claim to Horse Island] (December 1994)
56. Mikisew Cree First Nation Inquiry – [Treaty Land Entitlement to Economic Benefits] (March 1997)
57. Mississaugas of the New Credit First Nation Inquiry – [Toronto Purchase Claim] (June 2003)
58. Mistawasis First Nation Inquiry – [1911, 1917 and 1919 Surrenders] (March 2002)
59. Moose Deer Point First Nation Inquiry – [Pottawatomi Rights] (March 1999)
60. Moosomin First Nation Inquiry – [1909 Reserve Land Surrender Claim] (March 1997)
61. Moosomin First Nation– Mediation Report – [1909 Reserve Land Surrender] (March 2004)
62. Muskoday First Nation – Mediation Report [Treaty Land Entitlement Negotiations] (April 2008)
63. Muskowekwan First Nation – [1910 and 1920 Surrender Inquiry] (November 2008)
64. Nadleh Whut'en First Nation – [Lejac School Inquiry] (December 2008)
65. Nak'azdli First Nation Inquiry – [Aht-len-jees Indian Reserve 5] (March 1996)
66. 'Namgis First Nation Inquiry – [Cormorant Island Claim] (March 1996)
67. 'Namgis First Nation Inquiry – [McKenna-McBride Applications Claim] (February 1997)
68. Nekaneet First Nation Inquiry – [Entitlement to Treaty Benefits] (March 1999)
69. Neskonlith, Adams Lake, and Little Shuswap Indian Bands – [Neskonlith Douglas Reserve Inquiry] (June 2008)
70. Opaskwayak Cree Nation – [Streets and Lanes Inquiry] (February 2007)
71. Paul First Nation –[Kapasiwin Townsite Inquiry] (February 2007)

72. Peepeekisis First Nation Inquiry – [File Hills Colony Claim] (March 2004)
73. Peguis First Nation Inquiry – [Treaty Land Entitlement Claim] (March 2001)
74. Primrose Lake Air Weapons Range Report – [Cold Lake First Nation Rejected Claim Inquiry and Canoe Lake Cree Nation Rejected Claim Inquiry] (August 17, 1993)
75. Primrose Lake Air Weapons Range Report II – [Joseph Bighead First Nation Inquiry, Buffalo River First Nation Inquiry, Waterhen Lake First Nation Inquiry and Flying Dust First Nation Inquiry] (September 1995)
76. Qu'Appelle Valley Indian Development Authority Inquiry – (Muscowpetung First Nation, Pasqua First Nation, Standing Buffalo First Nation, Sakimay First Nation, Cowessess First Nation, Ochapowace First Nation) [Flooding Claim] (February 1998)
77. Qu'Appelle Valley Indian Development Authority (QVIDA) – Mediation Report – [Flooding Negotiations] (December 2005)
78. Red Earth and Shoal Lake Cree Nations – [Quality of Reserve Lands Inquiry] (December 2008)
79. Roseau River Anishinabe First Nation– [1903 Surrender Inquiry] (September 2007)
80. Roseau River Anishinabe First Nation– Mediation Report [Treaty Land Entitlement Claim] (March 1996)
81. Roseau River Anishinabe First Nation Inquiry – [Medical Aid Claim] (February 2001)
82. Sakimay First Nation – [Treaty Land Entitlement Inquiry] (February 2007)
83. Sandy Bay Ojibway First Nation – [Treaty Land Entitlement Inquiry] (June 2007)
84. Saulteau First Nation – [Treaty Land Entitlement and Lands in Severalty Inquiry] (April 2007)
85. Standing Buffalo Dakota Nation – Mediation Report [Flooding Negotiations] (March 2004)
86. Sturgeon Lake First Nation Inquiry – [Red Deer Holdings Agricultural Lease] (March 1998)
87. Sturgeon Lake First Nation – Mediation Report [Treaty Land Entitlement Negotiations] (May 2008)
88. Sturgeon Lake First Nation – [1913 Surrender Inquiry] (December 2008)
89. Sumas Indian Band Inquiry – [1919 Surrender of Indian Reserve No.7] (August 1997)
90. Sumas Band Inquiry – [IR 6 Railway Right of Way] (February 1995)
91. Taku River Tlingit First Nation – [Wenah Specific Claim Inquiry] (March 2006)
92. Thunderchild First Nation – Mediation Report – [1908 Surrender Claim] (March 2004)

93. Touchwood Agency – Mediation Report – [Mismanagement 1920–1924 Claim Negotiations] (August 2005)
94. Walpole Island First Nation Inquiry – [Boblo Island Claim] (May 2000)
95. Williams Lake Indian Band – [Village Site Inquiry] (March 2006)
96. Young Chipeewayan Inquiry – [Inquiry into the Claim of the Stoney Knoll Indian Reserve No. 107] (December 1994)

5. Annual Reports

1. Annual Report 2008/2009
2. Annual Report 2007/2008
3. Annual Report 2006/2007
4. Annual Report 2005/2006
5. Annual Report 2004/2005
6. Annual Report 2003/2004
7. Annual Report 2002/2003
8. Annual Report 2001/2002
9. Annual Report 2000/2001
10. Annual Report 1999/2000
11. Annual Report 1998/1999
12. Annual Report 1997/1998
13. Annual Report 1996/1997
14. Annual Report 1995/1996
15. Annual Report 1994/1995
16. Annual Report 1991–1992 to 1993–1994

6. ICC Proceedings: Inquiry and Mediation Reports

ICCP 1 [1994]

- Cold Lake and Canoe Lake (Primrose Lake Air Weapons Range) Inquiries (August 17, 1993)
- Interim Ruling: Athabaska Denesuline Treaty Harvesting Rights Inquiry (December 21, 1993)
- Related Materials on Specific Claims
- Indian and Northern Affairs Canada/Outstanding Business: A Native Claims Policy – Specific Claims
- Chiefs Committee on Claims/First Nations Submission on Claims, December 14, 1990
- Response of National Chiefs Committee on Claims to Initiatives outlined by Minister T. Siddon on January 31, 1991 (March 21, 1991)

ICCP 2 [1995] (Special issue on Land Claim Reform)

- Indian Claims Commission, A Fair and Equitable Process: A Discussion Paper on Land Claims Reform
- Arthur Durocher, Land Claims Reform
- MaryEllen Turpel, A Fair, Expeditious, and Fully Accountable Land Claims Process
- Neutral Draft of Recommendations/Joint Working Group of the Federal Government and the Assembly of First Nations, June 25, 1993
- Indian Commission of Ontario/Discussion Paper Regarding First Nation Land Claims, September 24, 1990

ICCP 3 [1995]

- Athabaska Denesuline Inquiry, Claim of the Fond du Lac, Black Lake, and Hatchet Lake First Nations (December 21, 1993)
- Lax Kw'alaams Indian Band Inquiry, Claim of the Lax Kw'alaams Indian Band (June 29, 1994)
- Young Chipeewayan Inquiry, Claim Regarding Stoney Knoll Indian Reserve No. 107 (December 1994)
- Micmacs of Gesgapegiag Inquiry, Claim to Horse Island (December 1994)
- Chippewas of the Thames Inquiry, Muncey Land Claim (December 1994)
- Response of the Minister of Indian Affairs and Northern Development to the : Cold Lake and Canoe Lake (Primrose Lake Air Weapons Range) Inquiry (March 2, 1995), Young Chipeewayan Inquiry (February 23, 1995), Micmacs of Gesgapeigag Inquiry (March 1, 1995), and Chippewas of the Thames Inquiry (March 1, 1995).

ICCP 4 [1996]

- Sumas Inquiry, Indian Reserve No. 6 Railway Right of Way Claim (February 1995)
- Primrose Lake Air Weapons Range II, Joseph Bighead Inquiry/Buffalo River Inquiry, Waterhen Lake Inquiry/Flying Dust Inquiry (September 1995)
- Homalco Indian Band, Aupe Indian Reseves No. 6 & 6A Inquiry (December 1995)
- Athabasca Denesuline Special Report on the Treaty Harvesting Rights of the Fond du Lac, Black Lake and Hatchet Lake First Nations (November 30, 1995)
- Responses of the Minister of Indian Affairs and Northern Development to the Athabasca Denesuline Special Report (January 17, 1996) and Sumas Inquiry (December 20, 1995).

ICCP 5 [1996] (Special Issue on Treaty Land Entitlement)

- Fort McKay First Nation, Treaty Land Entitlement Inquiry (December 1995)
- Kawacatoose First Nation, Treaty Land Entitlement Inquiry (March 1996)
- Lac La Ronge Indian Band, Treaty Land Entitlement Inquiry (March 1996)

- Donna Gordon, Treaty Land Entitlement: A History (December 1995)
- Canada's Response to the Fort McKay First Nation Treaty Land Entitlement Inquiry (December 1995)

ICCP 6 [1998]

- Roseau River Anishinabe First Nation, Treaty Land Entitlement Inquiry (Mediation) (March 1996)
- Kahkewistahaw First Nation, Treaty Land Entitlement Inquiry (November 2006)
- Lucky Man Cree Nation, Treaty Land Entitlement Inquiry (March 1997)
- Mikisew Cree First Nation Inquiry (March 1997)
- Fishing Lake First Nation, 1907 Surrender Inquiry (March 1997)

ICCP 7 [1998]

- 'Namgis First Nation, Cormorant Island Claim Inquiry (March 1996)
- Nak'azdli First Nation, Aht-Len-Jees Indian Reserve No. 5 Inquiry (March 1996)
- 'Namgis First Nation, McKenna-McBride Applications Claim Inquiry (February 1997)
- Mamaleleqala Qwe'Qwa'Sot'Enox Band, McKenna-McBride Applications Inquiry (March 1997)

ICCP 8 [1998]

- Kahkewistahaw First Nation, 1907 Reserve Land Surrender Inquiry (February 1997)
- Moosomin First Nation, 1909 Land Surrender Inquiry (March 1997)
- Chippewas of Kettle & Stoney Point First Nation 1927 Surrender Inquiry (March 1997)
- Sumas Indian Band, 1919 Surrender of Sumas Indian Reserve No. 7 Inquiry (August 1997)
- Responses of the Minister of Indian Affairs and Northern Development to: Lucky Man Cree Nation Treaty Land Entitlement Inquiry (May 22, 1997), Kahkewistahaw 1907 Reserve Land Surrender Inquiry (December 18, 1997), Moosomin 1909 Reserve Land Surrender Inquiry (December 18, 1997), Homalco Indian Band Inquiry (December 18, 1997), Sumas Indian Band 1919 Surrender of Indian Reserve 7 Inquiry (January 21, 1998)

ICCP 9 [I998]

- Eel River Bar First Nation Inquiry, Eel River Dam Claim (December 1997)
- Qu'Appelle Valley Indian Development Authority Inquiry, Flooding Claim (Muscowpetung First Nation, Pasqua First Nation, Standing Buffalo First Nation, Sakimay First Nation, Cowessess First Nation, Ochapowace First Nation) (February 1998)

ICCP 10 [1998]

- Sturgeon Lake First Nation Inquiry, Red Deer Holdings Agriculture Lease Claim (March 1998)
- Chippewa Tri-Council Inquiry, Collins Treaty Claim [Chippewas of Beausoleil First Nation, Chippewas of Georgina Island First Nation, Chippewas of Rama First Nation] (March 1998)
- Friends of the Michel Society Inquiry, 1958 Enfranchisement Claim (March 1998)
- Athabasca Chipewyan First Nation Inquiry, W.A.C. Bennet Dam and Damage to Indian Reserve 201 Claim (March 1998)
- Responses of the Minister of Indian Affairs and Northern Development to the Fort McKay First Nation Treaty Land Entitlement Inquiry (April 28, 1998) and Kawacatoose First Nation Treaty Land Entitlement Inquiry (April 28, 1998).

ICCP 11 [1999]

- Gamblers First Nation, Treaty Land Entitlement Inquiry (October 1998)
- Nekaneet First Nation, Agriculture and Other Benefits under Treaty 4 Inquiry (March 1999)
- Moose Deer Point First Nation, Pottawatomi Rights Inquiry (March 1999)
- Responses of the Minister of Indian Affairs and Northern Development to the Gamblers First Nation Treaty Land Entitlement Inquiry (November 26, 1998) and to the Muscowpetung First Nation, Pasqua First Nation, Standing Buffalo First Nation, Sakimay First Nation, Cowessess First Nation, and Ochapowace First Nation re the Qu'Appelle Valley Indian Development Authority (QVIDA) Flooding Claim Inquiry (December 3, 1998)

ICCP 12 [2000]

- Blood Tribe/Kainaiwa Inquiry, 1889 Akers Surrender (June 1999)
- Duncan's First Nation Inquiry, 1928 Surrender (September 1999)
- Long Plain First Nation Inquiry, Loss of Use (February 2000)
- Bigstone Cree First Nation Inquiry, Treaty Land Entitlement (March 2000)
- Responses of the Minister of Indian Affairs and Northern Development to the Mamaleleqala Qwe'Qwa'Sot'Enox Band, McKenna-McBride Applications Inquiry (December 8, 1999) and to the 'Namgis First Nation McKenna-McBride Applications Inquiry (December 8, 1999)

ICCP 13 [2000]

- The Key First Nation Inquiry, 1909 Surrender Claim (March 2000)
- Walpole Island First Nation Inquiry, Boblo Island Claim (March 2000)

- Carry the Kettle First Nation Inquiry, Cypress Hills Claim (July 2000)
- Response of the Minister of Indian Affairs and Northern Development to the Long Plain First Nation Inquiry, Loss of Use Claim (August 21, 2000)

ICCP 14 [2001]

- Roseau River Anishinabe First Nation Inquiry, Medical Aid Claim (February 2001)
- Peguis First Nation Inquiry, Treaty Land Entitlement Claim (March 2001)
- Cowessess First Nation Inquiry, 1907 Surrender Claim (March 2001)
- Response of the Minister of Indian Affairs and Northern Development to the Moose Deer Point First Nation Pottawatomi Rights Inquiry (March 29, 2001), to the Athabasca Chipewayan First Nation Inquiry - W.A.C. Bennet Dam and Damage to Indian Reserve No. 201 Claim (April 2, 2001), to the "Namgis First Nation Cormorant Island Inquiry (May 11, 2001), and to the Duncan's First Nation 1928 Surrender Inquiry (June 13, 2001).

ICCP 15 [2002]

- Esketemc First Nation Inquiry, Indian Reserve 15, 17 and 18 Claim (December 2001)
- Fishing Lake First Nation, 1907 Surrender Claim (Mediation) (March 2002)
- Chippewas of the Thames First Nation Inquiry Clench Defalcation Claim (March 2002)
- Mistawasis First Nation Inquiry, 1911, 1917 and 1919 Surrenders (March 2002)
- Responses of the Minister of Indian Affairs and Northern Development to the Carry the Kettle First Nation Cypress Hills Inquiry (January 5, 2001), to the Cowessess First Nation 1907 Surrender Claim Inquiry (March 27, 2002), and to the Flying Dust First Nation, Waterhen Lake First Nation, Buffalo River Dene Nation, Big Island Lake (Joseph Bighead) Cree Nation re the Primrose Lake Air Weapons Range (PLAWR) II Inquiries (March 27, 2002)

ICCP 16 [2003] (Special Issues on Interim Rulings)

- Rulings on Government of Canada Objections:
  - Athabasca Denesuline Inquiry, Treaty Harvesting Rights Claim (May 7, 1993)
  - Lac La Ronge Indian Band Inquiries, Candle Lake and School Lands Claims (May 9, 1995)
  - Mikisew Cree Nation Inquiry, Treaty Entitlement to Economic Benefits Claim (November 18, 1996)
  - Walpole Island First Nation Inquiry, Boblo Island Claim (September 21, 1998)
  - Sandy Bay First Nation Inquiry, Treaty Land Entitlement Claim (June 28, 1999)
  - Alexis First Nation Inquiry, TransAlta Utilities Rights of Way Claim (April 27, 2000)
  - James Smith Cree Nation Inquiries, Treaty Land Entitlement and Cumberland 100A Reserve Claims (May 2, 2000)

  - Kluane First Nation Inquiry, Kluane Game Sanctuary and Kluane National Park Reserve Creation Claim (December 2000)
  - Peepeekisis First Nation Inquiry, File Hills Claim (November 2001)
- Rulings on First Nation Objections:
  - Canupawakpa Dakota First Nation Inquiry, Turtle Mountain Surrender Claim (November 2001)
  - James Smith Cree Nation Inquiry, Chakastaypasin IR 98 Surrender Claim Other Host Bands' Participation (November 2002)

ICCP 17 [2004]

- Kahkewistahaw First Nation, 1907 Surrender Claim (Mediation) (January 2003)
- Alexis First Nation Inquiry, TransAlta Utilities Rights of Way Claim (March 2003)
- Chippewa Tri-Council Inquiry, Beausoleil First Nation, Chippewas of Georgina Island First Nation, Chippewas of Mnjikaning (Rama) First Nation, Coldwater-Narrows Reservation Surrender Claim (March 2003)
- Mississaugas of the New Credit First Nation Inquiry, Toronto Purchase Claim (June 2003)
- Canupawakpa Dakota First Nation Inquiry, Turtle Mountain Surrender Claim (July 2003)
- Responses of the Minister of Indian Affairs and Northern Development to the Lax Kw'alaams Indian Band Inquiry (December 31, 2001), to the Friends of the Michel Society 1958 Enfranchisement Inquiry (October 2, 2002), and to the Roseau River Anishinabe First Nation Medical Aid Inquiry (September 17, 2003).

ICCP 18 [2007]

- Standing Buffalo Dakota Nation, Flooding Negotiations (Mediation) (March 2004)
- Peepeekisis First Nation Inquiry, File Hills Colony Claim (March 2004)
- Moosomin First Nation, 1909 Reserve Land Surrender (Mediation) (March 2004)
- Thunderchild First Nation, 1908 Surrender Claim (Mediation) (March 2004)
- Betsiamites Band, Highway 138 and Rivière Betsiamites Bridge Inquiries (March 2005)
- Responses of the Minister of Indian Affairs and Northern Development to the Friends of the Michel Society 1958 Enfranchisement Inquiry (October 2, 2002), to the Roseau River Anishinabe First Nation Medical Aid Inquiry (September 17, 2003), the Esketemc First Nation IR 15, 17 and 18 Inquiry (June2, 1005), to the Sumas Band Indian Reserve No 6 Railway Right of Way Inquiry (June 16, 2005), to the Long Plain First Nation First Nation Loss of Use Inquiry (November 23, 2005), to the Peepeekisis First Nation File Hills Colony Inquiry (June 13, 2006), and to the Canupawakpa Dakota First Nation Turtle Mountain Surrender Inquiry (June 7, 2007).

ICCP 19 [2008] (Special Issue on Report Summaries)

- Key Words Index
- Report Summaries

ICCP 20 [2008]

- James Smith Cree Nation, IR 100A Inquiry (March 2005)
- Cumberland House Cree Nation, IR 100A Inquiry (March 2005)
- James Smith Cree Nation, Chacastaypasin IR 98 Inquiry (March 2005)
- James Smith Cree Nation, Treaty Land Entitlement Inquiry, Report on Issue 9 - Amalgamation (March 2005)
- James Smith Cree Nation, Treaty Land Entitlement Inquiry (February 2007)

ICCP 21 [2008]

- Blood Tribe, Akers Surrender (Mediation) (August 2005)
- Chippewas of the Thames First Nation, Clench Defalcation (Mediation) (August 2005)
- Keeseekoowenin First Nation, 1906 Land Claim (Mediation) (August 2005)
- Touchwood Agency, Mismanagement (1920 – 24) Claim (Mediation) (August 2005)
- Qu'Appelle Valley Indian Development Authority – Flooding Claim (Mediation) (December 2005)
- Taku River Tlingit First Nation – Wenah Specific Claim Inquiry (March 2006)
- Blueberry River First Nation and Doig River First Nation, Highway Right of Way IR 172 Inquiry (March 2006)
- Williams Lake Indian Band – Village Site Inquiry (March 2006)
- Cowessess First Nation – 1907 Surrender Phase II Inquiry (July 2006)
- Kluane First Nation – Kluane National Park and Kluane Game Sanctuary Inquiry (February 2007)
- Responses of Minister of Indian Affairs and Northern Development to the Cowessess First Nation 1907 Surrender Phase II Inquiry report (December 12, 2007), and to the Williams Lake First Nation Village Site Inquiry report (October 4, 2007).

ICCP 22 [2009]

- Sakimay First Nation – Treaty Land Entitlement Inquiry (February 2007)
- Opaskwayak Cree Nation – Streets and Lanes Inquiry (February 2007)
- Paul First Nation – Kapasiwin Townsite Inquiry (February 2007)
- Blood Tribe/Kainaiwa – Big Claim Inquiry (March 2007)

- Saulteau First Nation, Treaty Land Entitlement and Lands in Severalty Inquiry (April 2007)
- Sandy Bay Ojibway First Nation, Treaty Land Entitlement Inquiry (June 2007)
- Response of the Minister of Indian Affairs and Northern Development to the Sandy Bay Ojibway First Nation Treaty Land Entitlement Inquiry Report (June 6, 2008).

ICCP 23 [2009]

- Roseau River Anishinabe First Nation – 1903 Surrender Inquiry (September 2007)
- Lower Similkameen Indian Band – Vancouver, Victoria, and Eastern Railway Right of Way Inquiry (April 2008)
- Fort Pelly Agency – Pelly Haylands Claim (Mediation) (April 2008)
- Lucky Man Cree Nation – Treaty Land Entitlement – Phase II Inquiry (February 2008)
- Muskoday First Nation – Treaty Land Entitlement (Mediation) (May 2008)
- Metepenagaig Mi'Kmaq Nation – Hosford Lot and Indian Reserve 7 (Mediation) (June 2008)
- George Gordon First Nation – Treaty Land Entitlement (Mediation) (June 2008)
- Sturgeon Lake First Nation – Treaty Land Entitlement (Mediation) (June 2008)
- Esketemc First Nation – Wright's Meadow Pre-Emption Inquiry (June 2008)
- Response of the Minister of Indian Affairs and Northern Development to the Roseau River Anishinabe First Nation 1903 Surrender Inquiry Report.

ICCP 24 [2009]

- Carry the Kettle First Nation – 1905 Surrender Inquiry (December 2008)
- Nadleh Whut'en Indian Band – Lejac School Inquiry (December 2008)
- Neskonlith, Adams Lake and Little Shuswap Indian Bands – Neskonlith Douglas Reserve Inquiry (June 2008)
- Sturgeon Lake First Nation – 1913 Surrender Inquiry (December 2008)
- Red Earth and Shoal Lake Cree Nations – Quality of Reserve Lands Inquiry (December 2008)
- Michipicoten First Nation – Pilot Project Boundary (Mediation) (October 2008)
- Muskowekwan First Nation – 1910 and 1920 Surrender Inquiry (November 2008)
- Response of the Minister of Indian Affairs and Northern Development on the Paul First Nation Kapasiwin Townsite Inquiry Report

7. Departmental Performance Reports

- 2008–2009 Departmental Performance Report
- 2007–2008 Departmental Performance Report

8. Reports on Plans and Priorities

- Indian Specific Claims Commission, 2008–2009 Estimates
- Indian Specific Claims Commission, 2007–2008 Estimates

9. Special Presentations to the House of Commons and Senate

- Proceedings of the Standing Senate Committee on Aboriginal Peoples, October 31, 2006 – November 1, 2006
- Standing Committee on Aboriginal Affairs and Northern Development, Renée Dupuis, Chief Commissioner, November 15, 2005
- Proceedings of the Standing Senate Committee on Aboriginal Peoples, June 10, 2003 – June 11, 2003, Issue No. 18
- Standing Committee on Aboriginal Affairs and Northern Development, Phil Fontaine, Chief Commissioner, Renée Dupuis, Commissioner, Kathleen Lickers, Commission Counsel, November 26, 2002
- Standing Committee on Aboriginal Affairs and Northern Development, James Prentice and Daniel Bellegarde Co-Chairs , May 29, 2001
- Standing Committee on Aboriginal Affairs and Northern Development, Harry S. LaForme, Commissioner and Chairman, December 10, 1991

10. Studies

- First Nation Land Surrenders on the Prairies 1896–1911, Peggy Martin-McGuire
- Indian Land Surrenders in the Fertile Belt Southern Prairie Provinces, 1896–1911, Beth H. Johnson, September 1995 (DRAFT)
- Using Oral History and Tradition to Resolve Outstanding Land Claims, Frank Cassidy, Leslie Brown, Herb George, Deidre Duquette, December 4, 1998

Appendix G: Joint Studies Completed for First Nations and Canada

There have been 115 studies done by consultants at the request of First Nations and Canada since the beginning of Mediation Services at the Indian Specific Claims Commission.

1. Lac Seul First Nation: Flooding/Compensation – Ontario

- Phase 1 Final Report of Land Quantum Study
- Historical Studies
- Forestry Loss of Use Study
- Valuation Study

2. Michipicoten First Nation – Ontario

- Report on the Land Sales on the Gross Cap Indian Reserve
- Survey of Housing Conditions
- Missinabie & Chapleau Bigheads Report
- Evaluation of Historical Hydraulic Generation and Development & Operations on the Magpie River
- Due Diligence Study on Economic Activities in the Claim Lands Area

3. Fort William First Nation – Ontario

- Research Report
- Forestry Loss of Use Studies
- Mines and Minerals Loss of Use Studies
- Appraisal Report
- The Mining Locations Claims
- The Mining Locations Claims Addendum
- Report for the ICC Fort William Pilot Project
- Agricultural loss of Use Study
- Other Land Development Loss of use Study
- DND Rifle Range Property
- Report on the Neebing Surrender
- Report on the Grand Trunk Pacific Railway Expropriation
- Rifle Range

4. Missanabie Cree First Nation – Ontario

- Natural Mineral Study/Minerals
- Natural Resource Loss of Use Study – Tourism/Recreation and Agriculture Report
- Natural Resource Use Study on Forestry and Water
- Natural Resource Use Study: Traditional Use and Resources
- Report on the Status of Historical Natural Resource Use Study

5. Mississaugas of the New Credit First Nation – Ontario

- Land Cession Report

6. Mohawks of Akwesasne – Dundee – Ontario

- Title Search on the 500 acres
- Report on the Division Line
- Land Appraisal – September 2007 (Preliminary)
- Rent Collection Study
- Due Diligence Overview Study
- Land Transactions Study

7. Mohawks of Akwesasne: Kawehno:Ke Claim – Ontario

- Land Appraisal

8. Mohawks of The Bay Of Quinte – Culbertson Tract – Ontario

- Land Appraisal
- Minerals Study

9. Fishing Lake First Nation – Saskatchewan

- Land Appraisals
- Traditional Activities Loss of Use
- Mineral Loss of Use
- Agricultural Forestry

10. Pelly Haylands – Saskatchewan

- Agriculture Loss of Use Study
- Land Appraisal
- Mineral Loss of Use Study
- Special Economic Advantage Study, Disturbance and Injurious Affection Study

11. Kahkewistahaw First Nation – Saskatchewan

- Mineral Loss of Use Studies
- Forestry Loss of Use Study
- Agricultural Loss of Use Study
- Land Appraisal Study
- Transaction Study
- Traditional Activities Research Study

12. Athabasca Denesuline – Saskatchewan

- Economic Benefits Claims
- Financial Accounting Forensic Audit and Research Study

13. Keeseekoose First Nation – Saskatchewan

- Land Appraisals and Loss of Use Studies
- Special Economic Advantage Disturbance and Injurious Affection Study
- Water Impact Study by North Rim
- Traditional Activities Study by Golder Associates
- Forestry Loss of Use Studies
- Traditional Activities and Social Impacts Study

14. Pasqua First Nation – Saskatchewan

- Boundary Analysis
- Development Plan, Market Assessment Business Plan
- Land Rent Consulting Report
- Report on the Qu'Appelle River & Pasqua Lake as the Natural Boundary of Pasqua Indian Reserve No. 79
- Pasqua T.L.E Report

15. Siksika Nation – Alberta

- Mines and Minerals Loss of Use Studies
- Land Appraisals and Loss of Use Studies
- Current and Unimproved Fair Market Value Appraisal Study
- Resource Harvesting Loss of Use Study
- Forestry Loss of Use Studies
- Consolidation Land Use Study and Mapping

- Current Market Value Land Appraisal
- Resource Harvesting Loss of Use Study

16. Kainaiwa – Alberta

- Appraisals and Loss of Use Studies
- Mineral Loss of Use Studies
- Agricultural Loss of Use Studies
- Studies Integration
- Traditional Activities Research Study

17. Qu'Appelle Valley Indian Development Authority: Flooding – Saskatchewan

- Flood Claim Reports and Studies
- QVIDA Flooding Claim Studies
- QVIDA Combined Loss of Use and Impact Study
- The Future Economic Impact Assessment Study

18. Moosomin First Nation – Saskatchewan

- Forestry Loss of Use Study

19. Cote First Nation – Saskatchewan

- Report on 1903 Railway Right of Way and 1904 Station and Town Site Surrender
- Historical Report
- Mineral Loss of Use Study – August 2008
- Traditional Loss of Use Study – June 2008
- Land Titles and Road Research
- Forestry Loss of Use Study
- Joint Land Appraisal – May 2008
- Loss of Use Mapping Studies
- Traditional Gathering Report – June 2008

20. Skway First Nation – British Columbia

- Loss of Use and Damage Assessment Study

21. Blood Tribe – Kainaiwa – Alberta

- Mineral Loss of Use Study
- Loss of Use Study Petroleum and Natural Gas
- Forestry Loss of Use Study

- Traditional Activities Loss of Use Report
- Land Appraisal Report
- Overview Study

22. Thunderchild First Nation – Saskatchewan

- Forestry Loss of Use Study

23. Nekaneet First Nation – Saskatchewan

- Loss of Farm Making Monies Study
- Loss of Agriculture Benefits Report and Data Base

24. Sakimay First Nation – Saskatchewan

- Land Appraisal
- Current Unimproved Market Value Land Appraisal and Market Rent Estimate
- Land Rent Consulting Report

25. Muscowpetung First Nation – Saskatchewan

- Land Survey

26. Chippewa Tri-Council (Coldwater Narrows Claim) – Ontario

  - Georgina Island First Nation
  - Beausoleil First Nation
  - Mnjikaning First Nation
  - Nawash First Nation

- Report and Description of the Indian Reserve between Lake Simcoe and Coldwater
- Land Appraisal Study – April 2006
- Update on Land Appraisal – September 2008
- Agriculture and Loss of Use Study
- Forestry Loss of Use Study – September 2005
- Mining Loss of Use Study – September 2005
- Feasibility Study by John Clarke
- Economic History Overview Study – February 2007
- Mapping – September 2005
- Early Land Sales & Market Analysis Study – May 2007

Commissioners and Communities

▲ **Cold Lake First Nation Community Session - December 1992**

Panel: Commissioner Daniel J. Bellegarde (left), Justice Harry LaForme (Chair - then Chief Commissioner), Commissioner P.E. James Prentice

▲ **Blood Tribe/Kainaiwa Akers Claim Community Session - December 1997**

Elder Witnesses: Rosie Redcrow (left), Rosie Dayrider, Marie Louise Oka

▲ **Cumberland House Cree Nation Community Session - November 2001**

Panel: Chief Commissioner Renée Dupuis (Chair) and Commissioner Alan Holman

▲ **Kluane First Nation Community Session - February 2002**

Panel: Commissioner Sheila Purdy, Chief Commissioner Phil Fontaine (Chair), Commissioner Alan Holman

▲ **Blood Tribe/Kainaiwa - Big Claim Community Session - June 2004**

Commissioner Alan Holman (left), Chief Commissioner Renée Dupuis (Chair), Commissioner Daniel J. Bellegarde

▲ **Blood Tribe/Kainaiwa - Big Claim Community Session - August 2004**

Interpreter: Narcisse Blood (left), Elder Rosie Dayrider

▲ **Paul Band Community Session - October 2004**

Panel: Commissioner Alan Holman (left), Commissioner Daniel J. Bellegarde (Chair), Commissioner Sheila Purdy

▲ **Sturgeon Lake First Nation Community Session - December 2006**

Panel Site Tour - Commissioner Jane Dickson-Gilmore, Commissioner Sheila Purdy, Commissioner Alan Holman (not visible), members of the Community

▲ **Red Earth/Shoal Lake Cree Nations Community Session - October 2007**

Panel: Commissioner Jane Dickson-Gilmore (left), Commissioner Sheila Purdy (Chair), Commissioner Alan Holman