



Landmark

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"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."

Ernest Benedict, Mohawk Elder
Akwesasne, Ontario
June 1992

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Cold Lake: ICC's First Inquiry Reaches Successful Conclusion



Ten years after the announcement of the establishment of the Primrose Lake Air Weapons Range, the Governor General's 1961 northern tour included a stop at the Cold Lake Reserve during payment of treaty. Seated, left to right: Indian Agent S.C. Knapp, Mrs Pauline Vanier, Governor General Georges P. Vanier. *National Archives of Canada PA155156*

In a news release issued on October 28, 1992, the Chief Commissioner of the day announced the Indian Claims Commission (ICC) would begin its work with inquiries into claims of the Cold Lake First Nations of Alberta and the Canoe Lake Cree Nation of Saskatchewan. Both claims related to the creation during the early 1950s of the Primrose Lake Air Weapons Range, a 4,500-square-mile area straddling both provinces.

"This will be our first round of inquiries [as a Commission]," Harry S. LaForme stated in the release, "and my fellow Commissioners and I are anxious to get to work."

Nearly a decade later, on July 12, 2002, one of the former Chief Commissioner's colleagues on that first panel of inquiry, Dan Bellegarde, represented the ICC at ceremonies to mark the formal signing of the





Sophie Minoose giving evidence through an interpreter at the Cold Lake Inquiry, 1992. The ICC pioneered community sessions as an integral part of the inquiry process, in which elders and other members of the First Nation present oral testimony. It is often the first time members of a First Nation and government meet face to face.

settlement agreement between Canada and the Cold Lake First Nations of Alberta. The other commissioner on the panel was Jim Prentice, who resigned from the Commission in December 2001.

The claims arose from the abrupt decision of the federal government in 1954 to take—without prior notice—traditional hunting lands belonging to the First Nations in order to create a vast bombing and gunnery range. About 470 aboriginal people were displaced by the range while another 530 people living in the area were affected.

The Cold Lake First Nations who are parties to Treaty 6 include the Chipewyan or Dene people who live near Primrose Lake, which they call "Hahtue." The Canoe Lake Cree Nation are parties to Treaty 10 and live to the east of Primrose Lake. For centuries, both Nations depended on hunting, trapping and fishing as part of their traditional lifestyles.

In 1975, the First Nations submitted a joint claim to Indian Affairs under the Specific Claims Policy. They maintained that the federal government failed to provide adequate compensation for their loss of livelihood and to provide sufficient retraining or economic rehabilitation. The claim was rejected. In 1993, the Cold Lake First Nations and Canoe Lake Cree Nation brought their claim to the newly-established Indian Claims Commission.

The question before the ICC was: did Canada breach any lawful obligation to these bands as set out in *Outstanding Business*, the federal government's specific claims policy? The Commission's report, issued in August 1993, concluded that Canada had breached its obligations under Treaties 6 and 10 and that it had consciously failed to provide adequate compensation to the First Nations. The Commission recommended that the government

accept the claims for negotiation.

In 1995, then-Indian Affairs Minister, Ron Irwin, announced the government would accept the claims for negotiation. The subsequent agreement was ratified by the First Nations in December 2001 and took effect in April 2002. The formal signing ceremony at the Cold Lake First Nations—which included Indian Affairs Minister Robert Nault as well as representatives of both Alberta and Saskatchewan—was hosted by Chief Joyce Metchewais and was held to coincide with the community's annual Treaty Day Celebration.

In his remarks, Commissioner Bellegarde said he was pleased to be a "witness to history" and to see that the Commission's report had finally borne fruit. "None of us knew then, when we recommended that your claims be accepted for negotiation, that the journey to this day would be so long and so arduous," he



Representing the ICC at the Cold Lake First Nations Inquiry, 1992, from left to right: Commission Counsel Bill Henderson, Commissioner Daniel J. Bellegarde, Chief Commissioner Harry S. LaForme and Commissioner P.E. James Prentice.





In the first report of the new Indian Claims Commission, the Commissioners, (including Dan Bellegarde, seen here speaking with an Elder of the Cold Lake First Nations in 1992), said their journey had been "a moving experience, deeply touching each of us as Canadians."

noted. "It is immeasurably satisfying to see that the Commission plays an important role in the settlement of specific land claims. Your success is our success."

Community visits, a standard part of the ICC's inquiry process, were pioneered at Cold Lake and Canoe Lake. In their report, the Commission's panel of inquiry described the evidence they heard during their visit to the communities affected as "sincere and compelling."

It was the first time that such a process involving land claims had ever taken place, Commissioner Bellegarde observed. "We had the privilege of visiting these communities and listening to the narratives and disclosures of three generations who have experienced the devastation of exclusion from the air weapons range lands. This was the first chance these people had to express their feelings directly to anybody concerned about their claims. The people expressed their deep appreciation that an Indian Commission such as ours had been struck, after all these years, to travel to their community and listen."



Commissioner Dan Bellegarde congratulating Chief Joyce Metchewais of the Cold Lake First Nations, July 2002. Photo by Julie Machatis

Government Introduces Legislation To Create Independent Claims Body

On June 13, 2002, Robert Nault, Minister of Indian and Northern Affairs Canada, tabled Bill C-60, the *Specific Claims Resolution Act*, in the House of Commons. The bill would establish the Canadian Centre for the Independent Resolution of First Nations Specific Claims, an independent body that would eventually replace the ICC. The Centre would include a Commission to facilitate land claims negotiations, and a Tribunal to resolve disputes and deliver binding decisions on specific land claims rejected by the federal government.

Chief Commissioner Phil Fontaine welcomed the proposed legislation and pointed out that the Commission has urged the government to set up such a body for the past several years. "The tabling of legislation to move forward with this important initiative is greatly encouraging to us," he said in a statement issued after the tabling of the bill. "We believe it is the first step towards creating a fairer and more effective specific land claims process that will benefit both aboriginal and non-aboriginal Canadians. We look forward to working together with both government and First Nations to help create the best possible process for settling land claims in a fair and expeditious manner." Committee hearings and third reading are likely to begin in the fall. Royal Assent is expected sometime in 2003. The new body would begin its work the following year.



Is It A Valid Treaty Land Entitlement Claim?

RESEARCH GUIDELINES USED BY THE ICC

As late 19th century settlement expanded west and north throughout Canada, the need to secure land for future development became a priority for the government. At the same time, with grazing animals such as bison, deer and antelope nearing extinction, the subsistence way of life of nomadic First Nations rapidly became unstable, and their future threatened. As a result, the government and many First Nations agreed to enter into treaties. The government wanted the First

Nations to surrender vast tracts of land; in exchange, it promised to set aside reserves and to provide other forms of assistance and training to help in the transition to an agriculture-based economy.

Between 1871 and 1921, 11 numbered treaties were signed in which two different formulas for determining the amount of land owed were applied. As a result of the treaties, the government received millions of

acres from the surrender of First Nation lands, while a mere 0.32 per cent of Canada's land mass was set aside for reserves. In most cases, the signatories were to select the reserve location and have it surveyed within a year or two of signing. Unfortunately, the treaties do not specify when the band's population should be counted to determine the amount of land to be set aside. Some First Nations did not receive the correct



Paying treaty money, Western Canada, 1870. Nomadic lifestyle, diseases, dwindling and migrating food sources, among other reasons, often made determining a band's population for survey purposes complex and confusing. *National Archives of Canada PA41377*



TLE claims are specific claims in which a First Nation asserts that the Crown failed to provide it with sufficient reserve lands under the terms of treaty.

amount of land promised; some did not receive any of the reserve land they were promised. In either case, a treaty land entitlement (TLE) could be claimed. TLE claims are specific claims in which a First Nation asserts that the Crown failed to provide it with sufficient reserve lands under the terms of treaty. Many factors can complicate or confuse the fulfillment of treaty and aboriginal rights; nevertheless, they are legal obligations, recognized and affirmed in the Constitution of Canada.

Some of the recurring challenges to calculating TLE are:

fluctuating band populations during the late 19th century due to a nomadic way of life; diseases; pursuit of dwindling food sources; incomplete or inaccurate census figures for bands; new bands and individuals adhering to treaty many years after the original treaties had been signed; and varying methods of calculating entitlement. In addition, after 1930 in the Prairie provinces, provincial consent was required for the federal government to transfer Crown lands to Indian

FIVE STEPS IN DETERMINING A TLE SHORTFALL

- 1 Identify the band and its applicable treaty land rights.
- 2 Determine the date of first survey. (The actual date is determined by the circumstances of each case and the treaty.)
- 3 Determine the total lands received by the band. Generally, lands not included in fulfillment of TLE are:
 - lands set aside to exchange for lands surrendered for sale
 - lands set aside as compensation for lands taken for public purposes
 - lands purchased with band funds.
- 4 Determine the population base.
- 5 Calculate overall entitlement.

TLE LANGUAGE

Treaty Land Entitlement (TLE): The term used to describe First Nation rights to reserve lands which flow from Treaties 1 to 11. A TLE claim, a specific land claim, can be INITIAL OR SHORTFALL.

Initial TLE: Sometimes called "Late Entitlements," initial entitlement can be claimed when a First Nation did not receive the land promised under treaty.

TLE Shortfall: A shortfall claim exists when a calculation for the amount of land to be set aside did not include all the eligible population.

Date of First Survey (DOFS): The date at which the exterior boundaries of the reserve are so clearly identified that they could have been found on the ground. (This definition covers the situation where reserve lands were not actually surveyed but were selected from contemporary detailed township surveys.)

bands. This consent was often not forthcoming due to philosophical opposition to reserves or because of conflicting priorities over the use of provincial Crown lands. Moreover, resolution of TLE claims remains elusive because First Nations and provincial and federal governments have taken radically different positions on the interpretation of treaty obligations and the principles and approaches used to determine



the nature and extent of those treaty obligations. In the course of conducting about a dozen TLE inquiries, the ICC has thoroughly examined this host of complications associated with entitlement claims. As a result, the Commission has been able to help clarify the federal guidelines used to calculate TLE. However, the Commissioners believe strongly that ongoing dialogue among all parties is necessary to develop consistent principles that can be applied equitably to outstanding claims.

For a more detailed understanding of the complex issues surrounding TLE and current research guidelines, interested parties should study volume 5 of the *Commission's Indian Claims Commission Proceedings, Special Issue on Treaty Land Entitlement*. This volume is devoted to TLE and includes three Commission reports, a background paper on TLE prepared by the Commission's Head of Research, Donna Gordon, her select bibliography, and a response from Ronald A. Irwin, then Minister of Indian Affairs and Northern Development, to the *Fort McKay First Nation Report on: Treaty Land Entitlement Inquiry*. Copies can be obtained free of charge by writing to:

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THE IMPACT OF ICC FINDINGS ON TREATY LAND ENTITLEMENT

Fort McKay TLE (1995): examined and clarified the nature and extent of the right to reserve land (who should be included in the final count) and of Canada's obligation to provide reserve land under Treaty 8. In 1998, government accepted the claim for negotiation, as recommended by the ICC.

Kawacatoose TLE (1996): built upon the lessons learned in Fort McKay; also examined the Saskatchewan Framework Agreement, as it applied to Treaty 4. The ICC determined a shortfall existed and recommended that the government accept the claim for negotiation. In 2000, the claim was settled for \$23 million in federal compensation and \$15 million in improvements to the reserve.

Lac La Ronge TLE (1996): examined about 15,000 pages of historical documentation and the oral history of Cree elders in this claim relating to Treaty 6. The Commission made specific findings with respect to the formula to be used to calculate initial TLE for bands.



Commissioner Roger Augustine is greeted by Kawacatoose Elder Pat Machiskinic during the Kawacatoose First Nation TLE Inquiry, 1994.



CLAIMS IN INQUIRY

- Alexis First Nation (Alberta) - TransAlta Utilities Rights of Way
- Canupawakpa Dakota First Nation (Manitoba) - Turtle Mountain Surrender
- Chippewa Tri-Council (Ontario) - Coldwater-Narrows Reservation
- Conseil de bande de Betsiamites (Quebec) - Highway 138 and Betsiamites Reserve
- Conseil de bande de Betsiamites (Quebec) - Betsiamites River bridge
- Cumberland House Cree Nation (Saskatchewan) - Claim to IR 100A
- James Smith Cree Nation (Saskatchewan) - Chakastaypasin IR 98
- James Smith Cree Nation (Saskatchewan) - Peter Chapman IR 100A
- James Smith Cree Nation (Saskatchewan) - Treaty Land Entitlement
- * Kluane First Nation (Yukon) - Kluane Games Sanctuary and Kluane National Park Reserve Creation
- Mississaugas of the New Credit First Nation (Ontario) - Toronto Purchase
- Ocean Man First Nation (Saskatchewan) - Treaty Land Entitlement
- Paul Indian Band (Alberta) - Kapasawin Townsite
- Peepeekisis First Nation (Saskatchewan) - File Hills Colony
- Roseau River Anishinabe First Nation (Manitoba) - 1903 Surrender
- Sandy Bay Ojibway First Nation (Manitoba) - Treaty Land Entitlement
- Siksika First Nation (Alberta) - 1910 Surrender
- * Stanjikoming First Nation (Ontario) - Treaty Land Entitlement
- Sto:lo Nation (British Columbia) - Douglas Reserve
- U'mista Cultural Society (British Columbia) - The Prohibition of the Potlatch
- Wolf Lake First Nation (Quebec) - Reserve Lands

*placed into abeyance at the request of the First Nation

CLAIMS IN FACILITATION OR MEDIATION

- Blood Tribe/Kainaiwa (Alberta) - Akers Surrender
- Chippewas of the Thames (Ontario) - Clench Defalcation
- Cote First Nation No.366 (Saskatchewan) - Pilot Project
- Cote, Keeseekoose and Key First Nations (Saskatchewan) - Pelly Haylands
- Fort William First Nation (Ontario) - Pilot Project
- Kahkewistahaw First Nation (Saskatchewan) - 1907 Surrender
- Michipicoten First Nation (Ontario) - Pilot Project
- Moosomin First Nation (Saskatchewan) -1909 Surrender
- Nekaneet First Nation (Saskatchewan)- Treaty Benefits
- Qu'Appelle Valley Indian Development Authority (Saskatchewan) - Flooding
- Standing Buffalo First Nation (Saskatchewan) - Flooding
- Thunderchild First Nation (Saskatchewan) - 1908 Surrender
- Touchwood Agency (Saskatchewan) - Mismanagement



What's New

COMMISSIONER DUPUIS WINS LAW AWARD

In May 2002, Commissioner Renée Dupuis received the 2001 law competition award, monograph category, from the Quebec Bar Foundation for her book entitled *Le statut juridique des peuples autochtones en droit canadien*.*

A lawyer with a private practice in Quebec City, Renée Dupuis has specialized in human rights as well as the rights of Canada's aboriginal peoples. She is an author, lecturer and essayist and has received the 2001 Governor General's Literary Award, French Nonfiction, for her book *Quel Canada pour les Autochtones? La fin de l'exclusion*.** Mme Dupuis was appointed Commissioner in March 2001.

* Translates as: *The Legal Status of Aboriginal Peoples in Canadian Law*

** To be published in English under the title: *Justice for Canada's Aboriginal People* (James Lorimer & Co. Publishers, Toronto.)



Commissioner Renée Dupuis being congratulated by the Honourable Louis Lebel, Supreme Court Justice, May 2002.
Photo by Réjean Meloche. Ref: 220522B-13

Speakers Bureau

QUEBEC AND PRINCE EDWARD ISLAND GET THE ICC MESSAGE



Le Soleil interview, left to right: Commissioner Renée Dupuis, interpreter, Chief Commissioner Phil Fontaine, and *Le Soleil* journalist, Monique Giguère.

The Commission continues to take its message to editorial boards and service clubs across Canada. Chief Commissioner Phil Fontaine took advantage of the Commission's meeting in Quebec City recently to sit down with reporters and editors from the Quebec capital's daily newspaper, *Le Soleil*. He was accompanied by Commissioner Renée Dupuis.

The Commissioners pointed out that few treaties have been signed in Quebec, where there tend to be fewer specific land claims than in the rest of Canada. The Commission is currently inquiring into claims by the Conseil de bande de Betsiamites, located near Baie-Comeau.

In June, the Chief Commissioner spoke with the Charlottetown *Guardian* during the Commission's meeting in Prince Edward Island. Mr Fontaine emphasized the fact that land claims are part of Canada's debt to First Nations and should not be viewed as "just real estate transactions." He said that, when the Commissioners decided to rotate their meetings around the country, one of the thoughts that guided them was the idea that, in addition to their mandated role, Commissioners should take part in public information sessions: "We think it's an important responsibility and we take every opportunity to try to educate Canadians on important parts of our history."

During the Charlottetown meeting, Commissioner Dan Bellegarde addressed members of the local Rotary Club on the subject of specific land claims and the role of the ICC.

