

INDIAN CLAIMS COMMISSION

CUMBERLAND HOUSE CREE NATION IR 100A INQUIRY

PANEL

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Commissioner Alan C. Holman**

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To the Indian Claims Commission
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SUMMARY

CUMBERLAND HOUSE CREE NATION IR 100A Saskatchewan

This report may be cited as Indian Claims Commission, *Cumberland House Cree Nation: IR 100A Inquiry* (Ottawa, March 2005).

*This summary is intended for research purposes only.
For a complete account of the inquiry, the reader should refer to the published report.*

Panel: Chief Commissioner R. Dupuis (Chair), Commissioner A. Holman

Treaties – Interpretation – Treaty 5 (1876) – Treaty 6 (1876) – Setting Aside Reserves under Treaty – Band Division – Evidence of Separateness – Surrender – Band Amalgamation – Royal Prerogative

THE SPECIFIC CLAIM

The Cumberland House Cree Nation (CHCN) submitted a specific claim regarding the unlawful taking of 22,080 acres of IR 100A by surrender. On December 10, 1997, Canada rejected the First Nation's claim on the basis argued by the First Nation but did admit a lawful obligation for Canada's failure to have ensured an equitable division of assets between, in its view, the separate Cumberland Band that had evolved at IR 100A and the original Cumberland Band.

In February 2000, knowing that the James Smith Cree Nation (JSCN) had submitted its own rejected claim to the Indian Claims Commission (ICC) for an inquiry and knowing that the JSCN was asserting a claim over the same IR 100A, the CHCN requested an inquiry. Accepting both claims for an inquiry and following discussions between both First Nations, the panel decided to conduct a single fact-finding process with respect to the history of IR 100A, while maintaining separate inquiries for each First Nation.

BACKGROUND

On September 7, 1876, the Cumberland Band adhered to Treaty 5 at The Pas. Beginning in 1882, a reserve was surveyed on "Cumberland Island" for the Cumberland Band. This reserve was designated as IR 20 for the Cumberland Band. Then, "owing to the utter uselessness for agricultural purposes of the land in the Reserve at Cumberland," Canada granted the Cumberland Band's repeated requests to be permitted a reserve at Fort à la Corne – a territory outside Treaty 5 and wholly within the territory of Treaty 6 – so long as this *Cumberland* Band was "always designated and known as the 'Fort a la Corne Band of Treaty No. 5.'" On May 17, 1889, IR 100A was confirmed "[f]or the Indians of Cumberland District (of Treaty No. 5)." On July 24, 1902, Canada took a surrender of 22,080 acres of IR 100A and sought to amalgamate the "owners of the James Smith's Indian Reserve No. 100" and the "owners of Cumberland Reserve No. 100A." It is the validity of this surrender that is at issue in this inquiry.

ISSUES

Did the "Peter Chapman Band" become a separate band from the CHCN at any time prior to 1902? Could the CHCN lawfully have been divided or split and deprived of its reserve without its knowledge or consent? If a separate band was not established, what is the effect of the 1902 surrender? If a separate band was established, does the band split bring an end to the interest of the CHCN in IR 100A?

FINDINGS

Today, Canada concedes that IR 100A was set aside for the Cumberland Band. We agree. Based upon the totality of the evidence, a separate Band was not created at any point in time at IR 100A. The Cumberland Band that adhered to Treaty 5 resided at two locations: IR 20 and IR 100A. The Cumberland Band continues to exist and continues its treaty relationship with the Crown. This relationship and the terms of Treaty 5 limit the exercise of the Crown's royal prerogative, especially where that prerogative is being exercised to deprive a band of its reserve land. Thus, a transfer of an interest (i.e., a reallocation) in reserve lands, set aside under treaty, to a group other than the band for whom it was originally set aside triggers the requirement, under treaty, that Canada seek and obtain the consent of the band to dispose of its interest in its reserve lands. On the evidence, no such consent was sought.

It was a breach of Canada's treaty obligation to the Cumberland Band to have assigned an interest in IR 100A without the knowledge and consent of the whole of the Cumberland Band. Canada is in breach of its fiduciary duty for its failure to have protected the Cumberland Band's interest in its reserve at IR 100A.

RECOMMENDATION

That the Cumberland House Cree Nation's claim regarding Indian Reserve 100A be accepted for negotiation under Canada's Specific Claims Policy.

REFERENCES

In addition to the various sources noted below, ICC inquiries depend on a base of oral and documentary research that is fully referenced in the report.

ICC Reports Referred to

ICC, *Young Chipeewayan: Stoney Knoll Indian Reserve 107 Inquiry* (Ottawa, December 1994), reported (1995) 3 ICCP 175.

Treaties Referred to

Treaty 5.

COUNSEL, PARTIES, INTERVENORS

Thomas Waller for the Cumberland House Cree Nation; Uzma Ihsanullah and Robert Winogron for the Government of Canada; Kathleen N. Lickers to the Indian Claims Commission.

KEY HISTORICAL NAMES CITED

Austin, W.A., Dominion Land Surveyor, surveyed IR 20 in Treaty 5 territory for the Cumberland Band in 1882.

Big Head, see Kahtapiskowat.

Bray, Samuel, Chief Surveyor for the Department of Indian Affairs, in 1899–1903.

Burgess, A.M., Deputy Minister of the Interior, in 1883–96.

Chief Chakastaypasin, signed Treaty 6 in 1876 as Chief of the Chakastaypasin Band; remained Chief until he was deposed by the Department of Indian Affairs in 1885, following the North-West Rebellion.

Chapman, Peter, signed Treaty 5 in 1876 as headman of the Cumberland Band; later moved to Fort à la Corne in Treaty 6 territory, along with some other Cumberland Band members; regarded by the Cumberland people living at Fort à la Corne as their leader until his death in 1892.

Cochrane, John, signed Treaty 5 in 1876 as Chief of the Cumberland Band; held the office of Chief from 1876 until his death in 1880.

Constant, Bernard, signed Treaty 6 in 1876 as headman of the James Smith Band.

Constant, John, member of the Treaty 5 Pas Band; paid annuities on the Cumberland band payroll at Fort à la Corne, 1886–90.

Courtney, Joseph, Indian Agent for the Pas Agency, 1898–1906.

Crane, Jeremiah, Chief of the Cumberland Band, 1892–95; acting headman of the Cumberland Band, in 1899; councillor for the Cumberland Band, in 1901.

Daly, Thomas M., Superintendent General of Indian Affairs and Minister of the Interior, October 1892–April 1896.

Davis, Thomas O., Member of Parliament for Prince Albert.

Dewdney, Edgar, Indian Commissioner, May 1879–August 1888; Superintendent General of Indian Affairs and Minister of the Interior, September 1888–October 1892.

Fischer, Fred, Indian Agent for the Pas Agency, 1906–12.

Flett, Albert, signed Treaty 5 in 1876 as headman of the Cumberland Band; Chief of the Cumberland Band in 1880–86 and 1889–92, and from 1895 until his death in 1902.

Forget, A.E., Assistant Indian Commissioner, August 1888–October 1895; Indian Commissioner, October 1895–October 1898.

Graham, James F., Indian Superintendent, Manitoba Superintendency, in 1880–83.

Greenleaf, Samuel, Chief of the Cumberland Band, 1886–89.

Head, James, received annuities with the Cumberland Band at IR 100A until 1902; appointed Chief of the James Smith Band in 1903.

Herchmer, L.W., Inspector of Indian Agencies, in 1886.

Jones, W.E., Indian Agent for the Duck Lake Agency, 1900–3.

Kahtapiskowat, also known as Big Head; signed Treaty 6 in 1876 as headman of the Chakastaypasin Band; signed the surrender of part of IR 100A and the amalgamation agreement between the Cumberland Band 100A and the James Smith Band in 1902.

Laird, David, Lieutenant Governor of the North-West Territories, 1876–81; Indian Superintendent for the North-West Superintendency in 1877–78; Indian Commissioner, 1879–88 and 1898–1914.

Macarthur, James, Indian Agent for the Duck Lake Agency, 1903–12.

Macdonald, John A., Prime Minister, October 1878–June 1891; Superintendent General of Indian Affairs, October 1878–October 1887; Minister of the Interior, October 1878–October 1883; Acting Superintendent General of Indian Affairs, May 1888–September 1888.

MacKay, Angus J., Indian Agent for Treaty 5, 1877–83.

MacKay, J.A., Archdeacon and Superintendent of Indian Missions in Saskatchewan in 1902–3.

Macrae, J. Ansdell, Indian Agent for the Carlton District in 1884.

Marlatt, S.R., Inspector of Indian Agencies, Lake Manitoba Inspectorate, in 1897–1903.

McCull, E., Inspector of Indian Agencies, Manitoba Superintendency, 1877–97.

McGibbon, Alexander, Inspector of Indian Agencies and Reserves, North-West Territories, in 1889–96.

McKenna, J.A.J., Assistant Indian Commissioner in 1904–6.

McKenzie, R.S., Indian Agent for the Duck Lake Agency, 1887–1900.

McLean, J.D., Secretary for the Department of Indian Affairs; later promoted Assistant Deputy and Secretary for the same department.

Nelson, John C., Dominion Land Surveyor, surveyed IR 100A near Fort à la Corne for the Cumberland Band in 1887.

Orr, W.A., official in the Lands and Timber Branch, Department of Indian Affairs.

Pedley, Frank, Deputy Superintendent General of Indian Affairs, November 1902–October 1913; previously held the positions of Superintendent of Immigration and Inspector of Immigration Offices within the Department of the Interior.

Rae, J.M., Indian Agent for the Carlton District, 1880–83, 1885 to early 1886, late 1886 to 1887.

Reader, Joseph, Indian Agent for the Pas Agency, 1884–98.

Reed, Hayter, Acting Assistant Indian Commissioner, 1883–84; Assistant Indian Commissioner, 1884–88; Indian Commissioner, 1888–93; Deputy Superintendent General of Indian Affairs, 1893–97.

Reid, J. Lestock, Dominion Land Surveyor, carried out the subdivision survey of the surrendered portion of IR 100A in 1902.

Rimmer, Reginald, Law clerk for the Department of Indian Affairs, in 1899.

Sanderson, George, Chakastaypasin band member; son of headman Kahtapiskowat (Big Head); signed the surrender of part of IR 100A and the amalgamation agreement between the Cumberland Band 100A and the James Smith Band in 1902.

Schmidt, Charles Pantaleon, Indian Agent for the Duck Lake Agency, 1912–36.

Sifton, Clifford, Superintendent General of Indian Affairs and Minister of the Interior, November 1896–February 1905.

Smart, James A., Deputy Superintendent General of Indian Affairs, July 1897–November 1902.

Smith, James, signed Treaty 6 in 1876 as Chief of the James Smith Band and held the office of Chief from 1876 until his death in 1902.

Vankoughnet, Lawrence, Deputy Superintendent General of Indian Affairs, 1874–93.

Wadsworth, T.P., Inspector of Indian Agencies, North-West Territories, in 1883–88.

TERMINOLOGY

The terms that follow relate to the James Smith Cree Nation (JSCN) and the Cumberland House Cree Nation (CHCN) claims to Indian Reserve (IR) 100A.

band / camp – As presented in community evidence, these terms refer to the social organization of the Swampy Cree people, including the Cumberland Band of Treaty 5. In general, “camp” appears to refer to the places in which smaller communities would live throughout most of the year. The camps would come together into one larger “band” to receive treaty payments or for other occasions during the year. The community evidence suggests that the camps would have a leader or a spokesman, although that person’s status in relation to the counterparts in other communities is unclear. It seems that there would be one person recognized by all the communities as “chief” of the larger “band,” but the evidence is not entirely consistent on this point.ⁱ This description reflects the community evidence regarding the understanding of these terms, rather than the legal and technical definitions.

Big Head and followers – The remnants of the Chakastaypasin Band who lived at IR 100A. They were paid on the Big Head band payroll from 1892 until 1896, at which time they were formally “transferred” to the Cumberland Band 100A. They were often referred to as “Big Head’s Band.”

Chakastaypasin Band – The people who signed Treaty 6 with Chief Chakastaypasin in 1876 and were the owners of IR 98 on the south branch of the Saskatchewan River, approximately 50 kilometres west of IR 100A. The band was scattered following the 1885 North-West Rebellion, its members dispersed to other reserves and the Chakastaypasin payroll discontinued in 1889. Most Chakastaypasin members moved to Cumberland IR 100A, where they were known as either the Chakastaypasin Band or Big Head’s Band until 1896.

ⁱ ICC Transcript, November 20, 2001 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 18b, pp. 22–23, 26–27, 31, 45, 48–49, 73–75, 81–82, James Burns); Affidavit of Pierre Settee, October 7, 2002 (ICC Exhibit 12b, pp. 1–2); Affidavit of Joseph Laliberte, October 7, 2002 (ICC Exhibit 12c, pp. 2–3).

Cumberland Band / Cumberland Band of Indians / Cumberland Indians – These terms are used interchangeably in departmental correspondence and reports. They may refer either to the Cumberland people living on or near IR 20 within Treaty 5 territory or to the Cumberland people living on IR 100A near Fort à la Corne within Treaty 6 territory.

Cumberland contingent – Another term for those members of the Cumberland Band in Treaty 5 who migrated to Fort à la Corne in the 1880s, where IR 100A was later surveyed.

Cumberland District – This term is used to refer either to the vicinity where the Cumberland Band of Treaty 5 reside or to the entire Pas Agency (encompassing all the Treaty 5 bands residing on the Saskatchewan River and west of Lake Winnipeg – the Cumberland, Pas, Red Earth, Shoal Lake, Moose Lake, Chemawawin, and Grand Rapids Bands, and others).ⁱⁱ

The Hudson’s Bay Company (HBC) and the Anglican Church used the term “Cumberland District” in a broader sense, to encompass the territory stretching east from the vicinity of Fort à la Corne in central Saskatchewan to Lake Winnipeg in central Manitoba.ⁱⁱⁱ

The historical record is very unclear in its use of terminology respecting the location where the Treaty 5 “Cumberland Band” lived. The terms “Cumberland District,” the “vicinity of Cumberland,” or simply “Cumberland” were used interchangeably by Department of Indian Affairs officials to refer either to the immediate area around Cumberland Island (the location of the Cumberland Band’s reserve IR 20) or to the larger territory encompassing the various communities that made up the Cumberland Band in Treaty 5.

ⁱⁱ Four Arrows, “‘The Cumberland District’: Its Use and Meaning in the North West Territories,” revised January 17, 2003 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 21a, pp. 11–14).

ⁱⁱⁱ Four Arrows, “‘The Cumberland District’: Its Use and Meaning in the North West Territories,” revised January 17, 2003 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 21a, pp. 4–5, 7–8); Four Arrows, “‘The Cumberland District’: Its Use and Meaning in the North West Territories, An Additional Report of Importance,” revised January 17, 2003 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 21b, pp. 2–5). ICC Transcript, November 20, 2001 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 18b, pp. 39, James Burns).

Cumberland House Band – The Cumberland Band that signed Treaty 5 in 1876 and has its reserves in the vicinity of the old HBC trading post at Cumberland House became known as the Cumberland House Band in 1930. The Band later renamed itself the Cumberland House Cree Nation.

James Smith Band – The pre-1902 James Smith Band are those people who signed Treaty 6 with Chief James Smith in August 1876. The present-day (post-1902) James Smith Band incorporates descendants of the original James Smith and Chakastaypasin Bands of Treaty 6, as well as the Cumberland Band of Treaty 5. The James Smith Band, now known as James Smith Cree Nation, resides on IR 100 and IR 100A on the Saskatchewan River.

La Corne Bands / La Corne Reserves – These terms are often used to refer to the reserves located at Fort à la Corne, near the forks of the Saskatchewan River (James Smith IR 100 and Cumberland IR 100A), and to the residents of those reserves. The area is also referred to as “La Corne.”

Peter Chapman Band – A term used by the Department of Indian Affairs from approximately 1886 to 1892 to refer to those members of the Cumberland Band of Treaty 5 residing on IR 100A. The present-day descendants of those people are attempting to re-establish themselves as an independent band, separate from the James Smith Band, and refer to themselves as the “Peter Chapman Band”.

PREFACE

As a panel, we have proceeded concurrently throughout the Indian Claims Commission Inquiries into the James Smith Cree Nation Indian Reserve (IR) 100A Claim, the Cumberland House Cree Nation IR 100A Claim, the James Smith Cree Nation IR 98 Claim, and the James Smith Cree Nation Treaty Land Entitlement (TLE) Claim. Although our decision in each inquiry reflects our consideration of the specific issues raised in each case, we have, from the first planning conference to our final deliberations, worked towards gaining the most complete understanding of all the events at issue. Thus, all historical documentation, expert reports, community evidence, and legal submissions have been thoroughly considered, not in isolation but as complementary elements.

The original inquiry panel was P.E. James Prentice, Commission Co-Chair; Elijah Harper, Commissioner; and Carole Corcoran, Commissioner. By 2001, the current panel took carriage of this inquiry.

It has taken this Commission, the First Nations, and Canada's representatives five years to conclude our process, and we are mindful of the dedication, commitment, and hard work that each has applied. We thank you.

PART I
INTRODUCTION

On September 7, 1876, the Cumberland Band, represented by Chief John Cochrane and headmen Peter Chapman and Albert Flett, signed an adhesion to Treaty 5 at The Pas.¹ This Band, originally located near the Hudson's Bay Company (HBC) trading post known as Cumberland House, just south of Cumberland Lake, Saskatchewan, would, within two years of its adhesion to treaty, begin to request reserve land farther south at Fort à la Corne, near the forks of the Saskatchewan River.²

The Band's desire "to move from Cumberland," while motivated, in part, by the general unsuitability of the land at Cumberland Lake for agriculture, was met with repeated resistance by the Department of Indian Affairs. Reluctant to permit the movement of Indians from one treaty area to another (Cumberland Lake was within the limits of Treaty 5, and Fort à la Corne within Treaty 6), the department surveyed and set aside a reserve of 2,172.53 acres for the Cumberland Band at Cumberland in 1882 – a reserve referred to as Indian Reserve (IR) 20.³ With a base population of 345, the Cumberland Band was entitled to 11,040 acres under the terms of Treaty 5, which allowed for 160 acres per family of five, or 32 acres per person.

Following the survey of IR 20, members of the Cumberland Band persisted in their requests for better farm land. In a sudden reversal of policy, the Department of Indian Affairs agreed to their migration from Cumberland to Fort à la Corne, so long as they "were always designated and known as the Fort à la Corne Band of Treaty No. 5."⁴ In 1886, the "Cumberland Band paid at Fort à la

¹ *Treaty No. 5 between Her Majesty the Queen and the Saulteaux and Swampy Cree Tribes of Indians at Beren's River and Norway House with Adhesions* (Ottawa: Queen's Printer, 1969), 10–11 (ICC Exhibit 13a, pp. 9–10).

² Extract from report of Inspector McColl, December 31, 1878, Library and Archives Canada (LAC), RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 1).

³ W.A. Austin, Dominion Land Surveyor (DLS), to SGIA, April 1883, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1883*, 167 (ICC Exhibit 1, p. 78); Natural Resources Canada, Field book Canadian Lands Surveys Reports (CLSR), W.A. Austin, "Field Notes of Indian Reserves at Cumberland, Birch River, The Pas, Bear Island Lake, Chimawawin," 1882 (ICC Exhibit 10c, p. 6).

⁴ L. Vankoughnet, DSGIA, to John A. Macdonald, SGIA, November 23, 1883, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 98–100).

Corne” received its own payroll, on which 17 families were initially listed. No reserve was surveyed or set aside at Fort à la Corne for these members until the following year.

In 1887, 65 square miles were surveyed and set aside “for the Cumberland Band of Indians on the Carrot River near Fort a la Corne,” and IR 100A was confirmed by Order in Council on May 17, 1889, “[f]or the Indians of Cumberland District (of Treaty No. 5).”⁵ The original intention of the Cumberland people who moved to Fort à la Corne was to settle and take up farming. Although the Department of Indian Affairs may have thought that the majority of the Cumberland Band would migrate to IR 100A, by 1891 no further migration beyond the 83 people who made the initial move had occurred.⁶

Within this same period (1876–91), some of the Chakastaypasin band members migrated from IR 98 to Fort à la Corne, both before the 1885 North-West Rebellion and after it. We think this influx of Chakastaypasin members into IR 100A following the rebellion began to cloud the department’s relationship with the members of IR 100A in such a way that, when the Department of Indian Affairs sought the surrender of 22,080 acres of IR 100A, it obtained the consent of only two members of the Band living there – Kahtapiskowat and George Sanderson – both former Chakastaypasin band members.

The Cumberland House Cree Nation submitted a specific claim regarding the unlawful taking of the remaining 19,250 acres of IR 100A as a result of the amalgamation between the James Smith

⁵ John C. Nelson, DLS, In Charge of Indian Reserve Surveys, to SGIA, December 30, 1887, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1887*, 275 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 17, p. 35); R. Sinclair, for DSGIA, to A.M. Burgess, Deputy Minister of the Interior, June 21, 1888, LAC, RG 15, vol. 311, file 68309 (ICC Exhibit 1, pp. 279–81); P.B. Douglas, Assistant Secretary, Department of the Interior, to L. Vankoughnet, DSGIA, July 9, 1888, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 284); Order in Council PC 1151, May 17, 1889, pp. 54–55 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 4a).

⁶ David Laird, Indian Commissioner, to SGIA, November 24, 1902, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 759–60).

Band and the Cumberland contingent living at Fort a la Corne.⁷ A revised statement of claim was submitted to the Specific Claims Branch on September 2, 1988.⁸

On December 10, 1997, Assistant Deputy Minister John Sinclair communicated Canada's rejection of the First Nation's claim. Sinclair wrote:

Based on a comprehensive review of the facts of the claim presented in the research, our preliminary position is that under the Specific Claims Policy no outstanding lawful obligation is owed by Canada to the Cumberland House Cree Nation either with regard to the surrender of 22,080 acres in the southern portion of IR # 100A or with regard to the transfer to the James Smith Band of 19,520 acres through the merger of the Cumberland 100A Band and the James Smith Band in 1902.⁹

Canada's position was based on the premise that the Cumberland House Band had split into two bands by 1891 – the Cumberland House Band and the Cumberland 100A Band. As a result, the Cumberland House Band lost its interest in IR 100A. Although the majority of the First Nation's claim was rejected, Canada admitted that “a lawful obligation is owed by Canada to the Cumberland House Cree Nation for Canada's failure to fulfill its duty to ensure an equitable division of assets between the two bands.”¹⁰

Following the James Smith Band's request in May 1999 for the Indian Claims Commission (ICC) to conduct an inquiry into the surrender and sale of the southern portion of IR 100A, the Cumberland House Cree Nation made its own request for an inquiry. The First Nation's counsel, Tom Waller, stated: “[O]ur client believes that, in order for the Indian Claims Commission to adequately consider issues relating to Cumberland Reserve No. 100A, it is necessary to place before

⁷ “Submission by the Cumberland House Indian Band to the Minister of Indian Affairs, re. the unlawful taking of 19,520 acres of Reserve 100A and its amalgamation with the James Smith Reserve by an invalid agreement of July 24, 1892 [sic],” March 1986 (ICC Exhibit 2).

⁸ R. Bartlett, “Revised Statement of Claim of the Cumberland House Band Re: Reserve 100A, Township 47,” September 2, 1988 (ICC Exhibit 4).

⁹ John Sinclair, Assistant Deputy Minister, Claims and Indian Government, DIAND, to Chief Pierre Settee, Cumberland House Cree Nation, December 10, 1997, p. 2 (ICC Exhibit 11, p. 2).

¹⁰ John Sinclair, Assistant Deputy Minister, Claims and Indian Government, DIAND, to Chief Pierre Settee, Cumberland House Cree Nation, December 10, 1997, p. 2 (ICC Exhibit 11, p. 2).

the Commission its claim.”¹¹ Following discussions between both First Nations, the ICC ruled on June 4, 2001, that it would conduct a single fact-finding process with respect to the James Smith and Cumberland House Cree Nation’s claims, while maintaining separate inquiries for each First Nation.¹² The result of this single fact-finding process is reflected in Part II of this report.¹³ We have worked to set out our understanding of the separate histories of each First Nation claimant and our understanding of where these histories intersect.

A chronology of the written submissions, documentary evidence, transcripts, and the balance of the record in this inquiry is set forth in Appendix C of this report.

MANDATE OF THE COMMISSION

The mandate of the Indian Claims Commission is set out in federal Orders in Council providing the Commissioners with the authority to conduct public inquiries into specific claims and to issue reports on “whether a claimant has a valid claim for negotiation under the [Specific Claims] Policy where the claim was already rejected by the Minister.”¹⁴ This Policy, outlined in the Department of Indian Affairs and Northern Development’s 1982 booklet entitled *Outstanding Business: A Native Claims Policy – Specific Claims*, states that Canada will accept claims for negotiation where they disclose

¹¹ T.J. Waller, Olive, Waller, Zinkhan & Waller, to Kathleen N. Lickers, Senior Legal Counsel, Indian Claims Commission, February 1, 2000, p. 1 (ICC file 2107-40-01).

¹² Kathleen N. Lickers, Commission Counsel, Indian Claims Commission (for Commissioners Prentice, Augustine, and Dupuis), to William Selnes, Kapoor, Selnes, Klimm & Brown; Tom J. Waller, Olive, Waller, Zinkhan & Waller; and Uzma Ihsanullah, Department of Justice, DIAND, June 4, 2001 (ICC file 2107-39-03). This Ruling on Application for Leave to Intervene is reproduced as Appendix A to this report.

¹³ On January 24, 2002, the panel also issued an interim ruling on the use of certain oral history evidence. See James Smith Cree Nation: Peter Chapman IR 100A Inquiry, and Cumberland House Cree Nation: IR 100A Inquiry – Interim Ruling, which is reproduced as Appendix B to this report.

¹⁴ 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.

an outstanding “lawful obligation” on the part of the federal government.¹⁵ The term “lawful obligation” is defined in *Outstanding Business* as follows:

The government’s policy on specific claims is that it will recognize claims by Indian bands which disclose an outstanding “lawful obligation,” i.e., an obligation derived from the law on the part of the federal government.

A lawful obligation may arise in any of the following circumstances:

- i) The non-fulfillment of a treaty or agreement between Indians and the Crown.
- ii) A breach of an obligation arising out of the *Indian Act* or other statutes pertaining to Indians and the regulations thereunder.
- iii) A breach of an obligation arising out of government administration of Indian funds or other assets.
- iv) An illegal disposition of Indian land.¹⁶

Furthermore, Canada is prepared to consider claims based on the following circumstances:

- i) Failure to provide compensation for reserve lands taken or damaged by the federal government or any of its agencies under authority.
- ii) Fraud in connection with the acquisition or disposition of Indian reserve land by employees or agents of the federal government, in cases where the fraud can be clearly demonstrated.

It should also be explained that, when the original mandate of the Commission was still under discussion, Tom Siddon, then Minister of Indian Affairs and Northern Development, wrote to then National Chief Ovide Mercredi of the Assembly of First Nations, setting out the basis for what the Commission first referred to as its “supplementary mandate” in the Athabasca Denesuline Inquiry Claim of the Fond du Lac, Black Lake, and Hatchet Lake First Nations:

¹⁵ Department of Indian Affairs and Northern Development (DIAND), *Outstanding Business: A Native Claims Policy – Specific Claims* (Ottawa: Minister of Supply and Services, 1982), 20; reprinted in (1994) 1 *Indian Claims Commission Proceedings* (ICCP) 171–85 (hereafter *Outstanding Business*).

¹⁶ *Outstanding Business*, 20; reprinted in (1994) 1 ICCP 179–80.

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.¹⁷

In an October 1993 letter to the Commission, the Minister of Indian Affairs, Pauline Browes, reiterated the position taken by her predecessor. Minister Browes's 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 ..."¹⁸

¹⁷ Tom Siddon, Minister of Indian Affairs and Northern Development, to Ovide Mercredi, National Chief, Assembly of First Nations, November 22, 1991, reprinted in (1995) 3 ICCP 244–46. ICC, *Athabasca Denesuline (Fond du Lac, Black Lake, and Hatchet Lake First Nations): Treaty Harvesting Rights Inquiry* (Ottawa, December 1993), reported (1995) 3 ICCP 3 at 15.

¹⁸ Pauline Browes, Minister of Indian Affairs and Northern Development, to Harry S. LaForme, Chief Commissioner, Indian Claims Commission, October 13, 1993, reprinted in (1995) 3 ICCP 242–43.

PART II

HISTORICAL BACKGROUND

CLAIMANTS' ADHESIONS TO TREATY 5 AND TREATY 6

Geography and Claimants

As they exist today, two separate communities are affected by claims concerning IR 100A in this inquiry. The first is the James Smith Cree Nation, which includes descendants from three separate groups: the James Smith Band at IR 100, the descendants of the Chakastaypasin Band at IR 98, and the descendants of the Cumberland Band at IR 20. The James Smith reserves 100 and 100A are located near the forks of the Saskatchewan River at Fort à la Corne, approximately 60 kilometres east of Prince Albert and within Treaty 6 territory. The Cree name for the area is Neechawechickinis, meaning “where they grew their crops” or “good growing.”¹⁹

The second community is the Cumberland House Cree Nation, who were known as the Cumberland Band when they signed an adhesion to Treaty 5 in 1876. The CHCN’s main reserve, IR 20, is located on Cumberland Island in eastern Saskatchewan, approximately 250 kilometres northeast of James Smith. CHCN members refer to themselves as Waskahikanihk ininiwak, meaning “the people of Cumberland House,” whose traditional territory includes an area of approximately 95 kilometres in all directions around Cumberland Island.²⁰ IR 20 itself is located within Treaty 5 territory.

Cumberland Band Adhesion to Treaty 5, 1876

In September 1875, Treaty 5 was concluded at Beren’s River and Norway House by Commissioner Alexander Morris, Lieutenant Governor of the Province of Manitoba and the North-West Territories, and “the Saulteaux and Swampy Cree tribes of Indians” inhabiting an area of 100,000 square miles surrounding Lake Winnipeg in Manitoba.²¹ Treaty 5 promised “reserves for farming lands” of

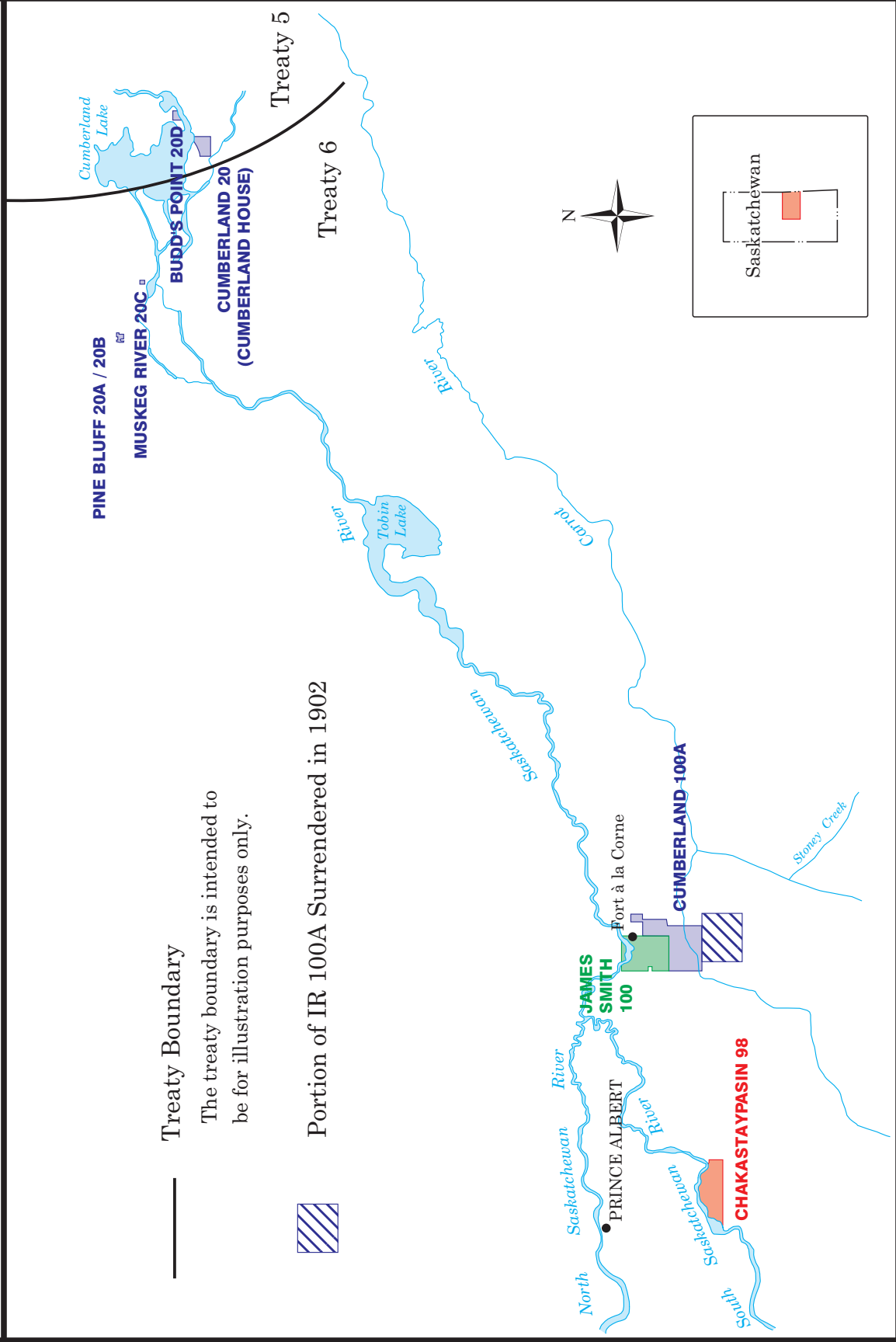
¹⁹ ICC Transcript, November 20, 2001 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 18b, p. 21, James Burns).

²⁰ Affidavit of Joseph Laliberte, October 7, 2002 (ICC Exhibit 12c, p. 3). See also ICC Transcript, November 19, 2001 (ICC Exhibit 12a, p. 48, Marie Deschambault; p. 49, Joseph Laliberte).

²¹ *Treaty No. 5 between Her Majesty the Queen and the Saulteaux and Swampy Cree Tribes of Indians at Beren's River and Norway House with Adhesions* (Ottawa: Queen’s Printer, 1969), 3–4 (ICC Exhibit 13a, pp. 2–3).

Map 1

Claim Area Map



160 acres for each family of five (or 32 acres per person), “or in that proportion for larger or smaller families,” and that these “reserves of land or any interest therein may be sold or otherwise disposed of by Her Majesty’s Government for the use and benefit of the said Indians entitled thereto, with their consent first had and obtained.”²² Provisions were also made for yearly annuities, as well as farming implements, tools, oxen, and seed to be furnished “for the encouragement of the practice of agriculture among the Indians.”²³

On September 7, 1876, “The Cumberland Band,” represented by Chief John Cochrane and headmen Peter Chapman and Albert Flett, signed an adhesion to Treaty 5 at The Pas.²⁴ The adhesion defines the “Cumberland Band” as “the Band of Saulteaux and Swampy Cree Indians residing at ... Cumberland Island, Sturgeon River, Angling River, Pine Bluff, Beaver Lake and the Ratty Country.”²⁵ The treaty also provides for a reserve for the “Cumberland Band” at “Cumberland Island,” and, “as the land fit for cultivation there is also limited and insufficient to meet their requirements, that the balance of that reserve shall be at a point between the ‘Pine Bluff’ and ‘Lime Stone Rock,’ on ‘Cumberland Lake.’”²⁶

The Hudson’s Bay Company (HBC) trading post known as Cumberland House was also located on Cumberland Island, to the south of Cumberland Lake, and the treaty excluded those lands claimed by the HBC and church missions from the future reserve.²⁷

²² *Treaty No. 5 between Her Majesty the Queen and the Saulteaux and Swampy Cree Tribes of Indians at Beren’s River and Norway House with Adhesions* (Ottawa: Queen’s Printer, 1969), 4–5 (ICC Exhibit 13a, pp. 3–4).

²³ *Treaty No. 5 between Her Majesty the Queen and the Saulteaux and Swampy Cree Tribes of Indians at Beren’s River and Norway House with Adhesions* (Ottawa: Queen’s Printer, 1969), 6 (ICC Exhibit 13a, p. 5).

²⁴ *Treaty No. 5 between Her Majesty the Queen and the Saulteaux and Swampy Cree Tribes of Indians at Beren’s River and Norway House with Adhesions* (Ottawa: Queen’s Printer, 1969), 10–11 (ICC Exhibit 13a, pp. 9–10).

²⁵ *Treaty No. 5 between Her Majesty the Queen and the Saulteaux and Swampy Cree Tribes of Indians at Beren’s River and Norway House with Adhesions* (Ottawa: Queen’s Printer, 1969), 10 (ICC Exhibit 13a, p. 9).

²⁶ *Treaty No. 5 between Her Majesty the Queen and the Saulteaux and Swampy Cree Tribes of Indians at Beren’s River and Norway House with Adhesions* (Ottawa: Queen’s Printer, 1969), 10 (ICC Exhibit 13a, p. 9).

²⁷ *Treaty No. 5 between Her Majesty the Queen and the Saulteaux and Swampy Cree Tribes of Indians at Beren’s River and Norway House with Adhesions* (Ottawa: Queen’s Printer, 1969), 10 (ICC Exhibit 13a, p. 9).

James Smith Band and the Signing of Treaty 6, 1876

On August 23 and 28, 1876, the Government of Canada, represented by Treaty Commissioner Alexander Morris, signed Treaty 6 with “the Plain and Wood Cree and the other Tribes of Indians” living in what are now the central portions of Saskatchewan and Alberta.²⁸ Chief James Smith and four councillors – Bernard Constant, Henry Smith, Ma-twa-ahs-tin-oo-we-gin (later known as Chekoosoo),²⁹ and Jacob McLean – signed the treaty on behalf of their Band.³⁰ All were appointed to these positions for “life or resignation.”³¹

Treaty 6 provided for reserves of “one square mile [640 acres] for each family of five, or in that proportion for larger or smaller families.”³² The treaty also promised yearly annuities, as well as farming implements, tools, oxen, and seed to be furnished “for the encouragement of the practice of agriculture among the Indians.” These are the same promises made in Treaty 5, although Treaty 6 provided for a greater range and quantity of these items.³³ In addition, Treaty 6 bands were promised

²⁸ *Treaty No. 6 between Her Majesty the Queen and the Plain and Wood Cree Indians and Other Tribes of Indians at Fort Carlton, Fort Pitt and Battle River with Adhesions* (Ottawa: Queen’s Printer, 1964), 1–2 (ICC Exhibit 13b, pp. 2–3).

²⁹ Treaty annuity payroll, James Smith Band, 1889, no file reference available (ICC, James Smith Cree Nation IR 100 TLE Inquiry, Exhibit 3b, p. 1113). See ticket no. 4.

³⁰ *Treaty No. 6 between Her Majesty the Queen and the Plain and Wood Cree Indians and Other Tribes of Indians at Fort Carlton, Fort Pitt and Battle River with Adhesions* (Ottawa: Queen’s Printer, 1964), 5, 7 (ICC Exhibit 13b, pp. 6, 8).

³¹ R.S. McKenzie, Indian Agent, Duck Lake Agency, “Statement of Chiefs and Councillors of the Bands of Indians of the Duck Lake Agency,” July 28, 1897, Library and Archives Canada (LAC), RG 10, vol. 3940, file 121698-9 (ICC Exhibit 1, p. 489).

³² *Treaty No. 6 between Her Majesty the Queen and the Plain and Wood Cree Indians and Other Tribes of Indians at Fort Carlton, Fort Pitt and Battle River with Adhesions* (Ottawa: Queen’s Printer, 1964), 3 (ICC Exhibit 13b, p. 4).

³³ *Treaty No. 6 between Her Majesty the Queen and the Plain and Wood Cree Indians and Other Tribes of Indians at Fort Carlton, Fort Pitt and Battle River with Adhesions* (Ottawa: Queen’s Printer, 1964), 3–4 (ICC Exhibit 13b, pp. 4–5). See also *Treaty No. 5 between Her Majesty the Queen and the Saulteaux and Swampy Cree Tribes of Indians at Beren’s River and Norway House with Adhesions* (Ottawa: Queen’s Printer, 1969), 6 (ICC Exhibit 13a, p. 5).

a medicine chest, assistance during “pestilence” or “famine,” and provisions to help those making the transition to agriculture.³⁴

It should be noted that a significant difference between Treaties 5 and 6, for the purposes of this inquiry, relates to the quantity of land entitlement: Treaty 5 provided for 32 acres of reserve land per person (or 160 acres per family of five), while Treaty 6 promised 128 acres per person (or 640 acres per family of five).

Cumberland Band Requests Reserve at Fort à la Corne

In 1878, two years after its adhesion to Treaty 5, E. McColl, the Inspector of Indian Agencies for the Manitoba Superintendency, reported that “the Cumberland Band request a part of their Reserve at an island 40 miles north where good land is available and where a portion of the Band lives.”³⁵ An 1881 letter from McColl suggests that “an additional reserve” was granted at Pine Island Lake in response to this request.³⁶ However, IR 20 for the Cumberland Band at Cumberland Lake (also known as Pine Island Lake) was not surveyed until 1882.

During the winter of 1879–80, “head chief” John Cochrane died. In September 1880, former councillor Albert Flett was elected to be the new Chief for the Cumberland Band, and councillor Peter Chapman resigned his position.³⁷

Beginning in 1880, there were a number of requests from the Cumberland Band to be allowed to move up the Saskatchewan River to a point near Fort à la Corne. In September 1880, Angus MacKay, Indian Agent for Treaty 5, reported that “about one half of the band” requested permission “to be allowed a Reserve and move from the Cumberland Band to a point between Fort la Corne and

³⁴ *Treaty No. 6 between Her Majesty the Queen and the Plain and Wood Cree Indians and Other Tribes of Indians at Fort Carlton, Fort Pitt and Battle River with Adhesions* (Ottawa: Queen’s Printer, 1964), 4 (ICC Exhibit 13b, p. 5).

³⁵ Extract from report of Inspector McColl, December 31, 1878, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 1).

³⁶ E. McColl, Inspector of Indian Agencies, to the Superintendent General of Indian Affairs (SGIA), March 4, 1881, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 14).

³⁷ A. MacKay, Indian Agent, Treaty 5, to J.F. Graham, Acting Indian Superintendent, November 26, 1880, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1880*, 321 (ICC Exhibit 1, p. 8).

the Forks of the South and North branches of the Saskatchewan.”³⁸ Their desire “to move from Cumberland” seems to have been motivated by flooding and the failure of the fisheries and hunting grounds in the area, as well as the general unsuitability of the land for agriculture.³⁹

These conditions caused great hardship between 1879 and 1882 as widespread hunger, destitution, and sickness were reported in the entire Treaty 5 area.⁴⁰ Inspector McColl wrote that, during the winter of 1880, the Agent knew of extreme hunger and destitution prevailing at Cumberland, but failed to provide any relief for three months.⁴¹ The Agent later reported that, owing to the lack of food and proper medicines, “the hooping cough carried off a great number of children at The Pas and Cumberland.”⁴²

As the resources on which the people traditionally depended were rapidly failing, Agent MacKay reported in November 1880 that “some of the Indians living in the vicinity begin to feel somewhat anxious, and are more inclined than ever to farm; but they also find the work hard and unsatisfactory to make even a small garden in this part of the country. On this account some of them desire to move further up the river to a place more suited for agricultural purposes.”⁴³ The work was made more difficult by the lack of appropriate farming implements. Inspector McColl reported in

³⁸ A. MacKay, Indian Agent, to James F. Graham, Acting Indian Superintendent, September 21, 1880, LAC, RG 10, vol. 3555, file 10 (ICC Exhibit 1, pp. 3–4).

³⁹ A. MacKay, Indian Agent, to James F. Graham, Acting Indian Superintendent, September 21, 1880, LAC, RG 10, vol. 3555, file 10 (ICC Exhibit 1, p. 4).

⁴⁰ A. MacKay, Indian Agent, Treaty 5, to James F. Graham, Acting Indian Superintendent, November 26, 1880, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1880*, 323 (ICC Exhibit 1, p. 10); A. MacKay, Indian Agent, Treaty No. 5, to SGIA, September 6, 1881, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1881*, 72 (ICC Exhibit 1, p. 20); E. McColl, Inspector of Indian Agencies, to SGIA, December 10, 1881, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1881*, 103–4 (ICC Exhibit 1a, pp. 2–3); James F. Graham, Indian Superintendent, to SGIA, December 31, 1881, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1881*, 59 (ICC Exhibit 1a, p. 5); E. McColl to SGIA, November 28, 1882, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1882*, 146–47 (ICC Exhibit 1, pp. 62–63).

⁴¹ E. McColl, Inspector of Indian Agencies, to SGIA, December 10, 1881, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1881*, 104 (ICC Exhibit 1a, p. 3).

⁴² A. MacKay, Indian Agent, Treaty 5, to SGIA, September 30, 1882, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1882*, 43 (ICC Exhibit 1, p. 53).

⁴³ A. MacKay, Indian Agent, Treaty 5, to SGIA, November 26, 1880, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1880*, 323 (ICC Exhibit 1, p. 10).

December 1881 that the garden hoes provided by the department had been refused by the Cumberland Band, as they considered them “unsuitable for the cultivation of that rocky and wooded country.” Grub hoes were sent instead, as requested by the Band, but were not distributed by the Indian Agent that year.⁴⁴

Indian Agent MacKay corroborated the Cumberland Band’s complaints regarding the quality of land at “Cumberland,” when he reported in 1880 that the land was indeed unfit for agriculture. He explained that

a very small portion of this locality is fit for farming purposes ... Were a survey made here and the Indians of this Band allowed 160 acres to each family of five, it would be a difficult matter to find that quantity of land above water in that vicinity and the little there is above water is so very rocky as to render it almost unfit for growing anything on, without very hard work and expense.⁴⁵

Inspector McColl concurred, stating that “it is impossible to better their condition in that District, as no land there is well adapted for farming.”⁴⁶

Around the beginning of 1881, Chief Albert Flett petitioned Inspector McColl, asking him “to place me in that good land up-country, there to have my reserve.” He explained:

I could never keep my people alive in this place as it is almost all water, land not good & altogether too stony.

Besides, it is too small, therefore I must beg for a larger place where you can give me a reserve in good earnest. Also that you would regard or treat [illegible] just as you do the Indian of the Upper Country. And moreover, that you would without delay give me the means of cultivating the land, that I may be the sooner able to do for myself. I shall endeavour to my utmost to do as our Great Mother desires of us, as regards the tilling of the soil.

⁴⁴ E. McColl, Inspector of Indian Agencies, to SGIA, December 10, 1881, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1881*, 103–4 (ICC Exhibit 1a, pp. 2–3).

⁴⁵ A. MacKay, Indian Agent, to James F. Graham, Acting Indian Superintendent, September 21, 1880, LAC, RG 10, vol. 3555, file 10 (ICC Exhibit 1, p. 4).

⁴⁶ E. McColl, Inspector of Indian Agencies, to SGIA, March 4, 1881, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 14).

Already I have heard many expressing a desire to go there, so speedily send us word about this during this winter. I shall be very glad indeed if you will place me on good land before the White man takes it all up.

[Page torn] very clearly I cannot live from the cultivation of the soil here & for that reason desire to leave [page torn]eatly apprehensive (as to the future).

It is only now that I see how to obtain my livelihood: by looking for good land

At the first, when you came to buy my land, you said ‘Look for good land. I will give it to you.’ I have found it now.”⁴⁷ [Translation]

Inspector McColl forwarded Chief Flett’s letter to the department in March, explaining in his covering letter that “[t]he Chief brought this matter to my notice last Summer, but as I had no personal knowledge of the section of country where he desired his reserve, I made no allusion to it in my report.”⁴⁸

In March 1881, an inquiry from the Department of Indian Affairs was made to the Department of the Interior, regarding “whether there is any objection to the change as applied for being made.” The same letter noted that no reserve had yet been surveyed for the Cumberland Band in Treaty 5 territory.⁴⁹ Surveyor General Lindsay Russell replied that he was “unaware of any objection” to the change, “so long as land is selected that is not specially valuable as Timber Land.”⁵⁰ This information was communicated to Superintendent James F. Graham in April 1881, but it appears that no further action was taken at this time.⁵¹

Concurrent with the Cumberland Band’s requests for permission to move up the Saskatchewan River to Fort à la Corne, some members of The Pas Band were making similar

⁴⁷ Chief Albert Flett, to E. McColl, c. February 1881, LAC, RG10, vol. 3736, file 27580 (ICC Exhibit 1, pp.11–12). Letter with English translation.

⁴⁸ E. McColl, Inspector of Indian Agencies, to SGIA, March 4, 1881, LAC, RG10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 13–14).

⁴⁹ [L. Vankoughnet, Deputy Superintendent General of Indian Affairs (DSGIA)], to J.S. Dennis, Deputy Minister of the Interior, March 29, 1881, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 15).

⁵⁰ Lindsay Russell, Surveyor General, Department of the Interior, to L. Vankoughnet, DSGIA, April 9, 1881, LAC, RG 15, vol. 311, file 68309 (ICC Exhibit 1, pp. 16–17).

⁵¹ [L. Vankoughnet, DSGIA], to James F. Graham, Indian Superintendent, April 19, 1881, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 18–19).

requests. They apparently suffered from many of the same hardships and declining resources, and, in at least a few instances, their requests to move were reported together. Agent MacKay reported in September 1881:

There are a number of the Cumberland and Pas Bands who are anxious to leave their reserves and be allowed to go up the Saskatchewan river, to some place in the vicinity of Fort a la Corne, where the land is better adapted for farming purposes than where they at present live. ... they assert that, unless the Department allows them to go to better farming lands, they will be obliged to look to the government for food in the future, as it is impossible to make a living by farming where they are at present, on account of the low, swampy and stony nature of the country.⁵²

He also reported that neither band wanted its reserve surveyed in the areas promised by the treaty, since many wanted to leave those places.⁵³

The same month, Agent MacKay reported that “Henry Ballandine together with about twenty other families from Cumberland” had requested permission to remove to “better farming lands” somewhere in the vicinity of Fort à la Corne, since it was impossible to make a living in farming “at Cumberland.” A similar request from John Constant “and a number of other families from the Pas” is noted in the same letter.⁵⁴

Lawrence Vankoughnet, the Deputy Superintendent General of Indian Affairs (DSGIA), responded with serious misgivings about the movement of Indians from one treaty area to another. He explained: “I fear that serious complications will result if the same is countenanced as the stipulations of the different Treaties vary considerably.” For this reason, he denied the requests of Henry Ballandine and John Constant to move to Fort à la Corne.⁵⁵

⁵² A. MacKay, Indian Agent, Treaty 5, to SGIA, September 6, 1881, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1881*, 73 (ICC Exhibit 1, p. 21).

⁵³ A. MacKay, Indian Agent, Treaty 5, to SGIA, September 6, 1881, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1881*, 74 (ICC Exhibit 1, p. 22).

⁵⁴ A. MacKay, Indian Agent, to J.F. Graham, Indian Superintendent, September 16, 1881, LAC, RG 10, vol. 3555, file 10 (ICC Exhibit 1, pp. 24–26).

⁵⁵ L. Vankoughnet, DSGIA, to James F. Graham, Indian Superintendent, April 15, 1882, LAC, RG 10, vol. 3555, file 10 (ICC Exhibit 1, pp. 35–37, 40).

Despite Vankoughnet's opposition, John Constant persisted in his request for farming land at Fort à la Corne. He wrote on September 6, 1882, that he had family already living in the area, and explained that he wanted to move so "that I and my family may live by farming."⁵⁶ Agent MacKay reported the Cumberland Band's renewed requests for permission to move that same month.⁵⁷

Inspector McColl echoed these requests yet again in his annual report that year and reported on the continued scarcity of resources and dire circumstances in the "district":

Their former resources of subsistence are becoming so exhausted that frequently they are famishing with hunger. They represent that it is impossible for them to obtain a livelihood there any longer, and consequently urgently petition the Department to grant them a suitable reserve elsewhere. They are desirous of going to Carrot River near Fort la Corne. If their request is not granted, they say the Government must supply them with food, as long as the sun courses around the world, for they cannot endure to listen to their children crying with hunger.⁵⁸

In November 1882, a department official in Winnipeg communicated Indian Commissioner Edgar Dewdney's objection to a "proposed transfer" from one reserve to another within Treaty 5, saying that "it would be impossible to keep trace of these Indians and would complicate the Pay Sheets." Furthermore, he was concerned that allowing the transfer of Indians from one reserve to another would set a precedent, and "applications would come from all quarters for similar changes if these were allowed."⁵⁹

The department informed Inspector McColl in May 1883 that it was "undesirable that Indians connected with one treaty should be allotted land within the precincts of another Treaty," although suitable agricultural land should be provided whenever possible. It was proposed to offer

⁵⁶ John Constant to unidentified recipient, September 6, 1882, LAC, RG 10, vol. 3555, file 10 (ICC Exhibit 1, p. 52).

⁵⁷ A. MacKay, Indian Agent, Treaty 5, to SGIA, September 30, 1882, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1882*, 43 (ICC Exhibit 1, p. 53).

⁵⁸ E. McColl, Inspector of Indian Agencies, Manitoba Superintendency, to unidentified recipient, November 28, 1882, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1882*, 146–47 (ICC Exhibit 1, pp. 62–63).

⁵⁹ Indian Office to the Minister, November 24, 1882, LAC, RG 10, vol. 3555, file 10 (ICC Exhibit 1, p. 60).

land at Birch River within Treaty 5 for the Cumberland Band, and McColl was instructed to bring the matter before the band after examining the locality.⁶⁰

Survey of IR 20 at Cumberland Lake in Treaty 5

Concurrent with their requests to be allowed to move to Fort à la Corne, the Cumberland Band expressed its opposition to having a reserve surveyed at Cumberland Lake as promised by treaty. In September 1881, Agent MacKay reported that the Cumberland Band did not want its reserve surveyed in the locations promised by treaty, since many wanted to leave “that place.”⁶¹ Superintendent James Graham made a similar report that year, stating that several reserves had not been surveyed in Treaty 5, “owing to a number of the Indians of the Pas, Cumberland and Che-ma-wah-win Bands being desirous to have their reserves in another locality.”⁶²

Although Superintendent Graham was apparently aware of the Cumberland Band’s wishes, he instructed Dominion Land Surveyor (DLS) W.A. Austin on July 6, 1882, to survey a reserve for the Cumberland Band at “Cumberland.”⁶³ On August 9, 1882, Austin arrived at Cumberland House and met with the Chief and two councillors the same day, where he was told that the Chief

has often presented the petition of his people to get land suitable, and had never yet obtained it his people were poor, very poor, often starving ...

... neither he or his people wanted to remain here, all trusted in the goodness of their Grand Mother (the Queen) to fulfill all her promises i.e. to procure good land for them so that they might be able to till it and not starve.⁶⁴

⁶⁰ [L. Vankoughnet, DSGIA], to E. McColl, Inspector of Indian Agencies, May 15, 1883, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 90–91).

⁶¹ A. MacKay, Indian Agent, Treaty 5, to SGIA, September 6, 1881, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1881*, 74 (ICC Exhibit 1, p. 22). MacKay’s reference to “these places” is ambiguous, since, in the same report, he refers to the “Cumberland district” and the “vicinity of Cumberland,” and to The Pas and Cumberland band members wanting to “leave their reserves.”

⁶² James F. Graham, Indian Superintendent, to SGIA, December 31, 1881, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1881*, 60 (ICC Exhibit 1a, p. 6).

⁶³ W.A. Austin, Dominion Land Surveyor (DLS), to SGIA, April 1883, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1883*, 159 (ICC Exhibit 1, p. 70).

⁶⁴ W.A. Austin, DLS, to SGIA, April 1883, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1883*, 160 (ICC Exhibit 1, p. 71).

Nevertheless, Austin inspected Cumberland Island and, finding “some unoccupied land that might be given to Indians,” began the survey of it the next day, based on his understanding that “there was a number of the Band who did not desire to leave the Cumberland Reserve.” He also visited an island nearby where the Chief and a number of band members lived and named it Chief’s Island.⁶⁵ Both islands were situated on what he called “Cumberland or Pine Island Lake.”⁶⁶

Soon after Austin began this work, the Chief called him to a council with a number of the band members. They informed him that

they had had a meeting amongst themselves and that they had come to the conclusion that they would have no Reserve laid out in this section. He then asked me if he could have 50 miles square laid out for himself and Band. ... he ended his speech by saying that he and his people would have no survey of a Reserve in this section of the country, and he informed me that for three years they had a promise of a Reserve up the Saskatchewan River, near Fort a la Corne.⁶⁷

When Austin objected, saying that the government wished to give them “the best land in their own Treaty,” the Chief answered: “Will the Government support us here? The fish have gone and the fowl are scarce, we want some place where we can have land to till, where we may be able to feed our cattle.”⁶⁸

Austin completed his work on Cumberland Island, noting that 289.36 acres were available for a reserve there. He did not, however, set aside any reserve at that time, “considering the Indian’s opposition to the survey of their Reserve.”⁶⁹

⁶⁵ W. A. Austin, DLS, to SGIA, April 1883, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1883*, 160 (ICC Exhibit 1, p. 71).

⁶⁶ Natural Resources Canada, Field book 132 CLSR, W.A. Austin, “Field Notes of Indian Reserves at Cumberland, Birch River, The Pas, Bear Island Lake, Chimawawin,” 1882 (ICC Exhibit 10c, p. 6).

⁶⁷ W.A. Austin, DLS, to SGIA, April 1883, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1883*, 160–61 (ICC Exhibit 1, pp. 71–72).

⁶⁸ W.A. Austin, DLS, to SGIA, April 1883, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1883*, 161 (ICC Exhibit 1, p. 72).

⁶⁹ W.A. Austin, DLS, to SGIA, April 1883, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1883*, 161 (ICC Exhibit 1, p. 72).

Soon after leaving Cumberland House, Austin met with Indian Agent Angus MacKay, who informed him that “he would arrange matters with the Band, and that the survey would have to be made.”⁷⁰ In his annual report dated September 30, 1882, Agent MacKay reported that, during his visit to Cumberland to make annuity payments, “I found out that the band had objected to the survey of their reserve by Mr. Austin, who had been sent to this place for that purpose. On my talking over the matter with them, they changed their mind and expressed a desire to have their reserves surveyed.”⁷¹ Austin returned to Cumberland and began the survey of a reserve on Chief’s Island on October 9, 1882, setting aside 1,855.57 acres there, as well as 27.60 acres on two hay islands.⁷² He described the soil as being “generally No. 2” class and hard to work, although there were small patches of “class No. 1” soil and some good gardens. The reserve contained good timber and was surrounded by marshes.⁷³ With an additional 289.36 acres surveyed on Cumberland Island, the total set aside for the Cumberland Band at that time was 2,172.53 acres.⁷⁴

In his report, Austin calculated that the Cumberland Band had an outstanding treaty land entitlement (TLE) of 8,867.47 acres, based on the Treaty 5 provisions of 160 acres per family of five (or 32 acres per person). With a population of 345, the Cumberland Band was entitled to 11,040.00 acres under this formula.⁷⁵

⁷⁰ W.A. Austin, DLS, to SGIA, April 1883, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1883*, 161 (ICC Exhibit 1, p. 72).

⁷¹ A. MacKay, Indian Agent, Treaty 5, to SGIA, September 30, 1882, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1882*, 47 (ICC Exhibit 1, p. 54).

⁷² W.A. Austin, DLS, to SGIA, April 1883, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1883*, 163 (ICC Exhibit 1, p. 74).

⁷³ W.A. Austin, DLS, to SGIA, April 1883, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1883*, 163–64 (ICC Exhibit 1, pp. 74–75).

⁷⁴ W.A. Austin, DLS, to SGIA, April 1883, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1883*, 167 (ICC Exhibit 1, p. 78); Natural Resources Canada, Field book 132 CLSR, W.A. Austin, “Field Notes of Indian Reserves at Cumberland, Birch River, The Pas, Bear Island Lake, Chimawawin,” 1882 (ICC Exhibit 10c, p. 6).

⁷⁵ W.A. Austin, DLS, to SGIA, April 1883, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1883*, 167 (ICC Exhibit 1, p. 78); Natural Resources Canada, Field book 132 CLSR, W.A. Austin, “Field Notes of Indian Reserves at Cumberland, Birch River, The Pas, Bear Island Lake, Chimawawin,” 1882 (ICC Exhibit 10c, p. 6).

Austin reported that the Cumberland Band also wished to have a survey of seven islands “where portions of the Band are already located,” about 25 miles from Cumberland House, as well as locations at “three different Sturgeon Rivers,” one of which was 50 miles away. All these locations were outside the Treaty 5 area.⁷⁶ He commented:

I cannot see any other way of supplying them with land. The people are already located at these places, and there is not a sufficient quantity of land cultivatable near Cumberland for nearly one half of the band. Apart from Chief’s Island, already surveyed, one or two small islands and a piece of the shore is all that I know that can be used.⁷⁷

The “Plan of Part of Cumberland Indian Reserve Shewing Chief’s Island and part of Cumberland Island,” dated May 1883, calculates the area of IR 20 as 6.29 square miles, or 4,025.6 acres.⁷⁸ No additional lands were surveyed for the Cumberland Band at this time.⁷⁹

Following the survey of IR 20 at Cumberland Lake, there were repeated references to its poor quality of land. In reference to the recent survey, Agent MacKay commented that the reserve was “altogether a poor place for either farming, hunting or fishing.”⁸⁰ In the Department of Indian Affairs’ annual report for 1884, Prime Minister and Superintendent General of Indian Affairs John A. Macdonald referred to the reserve “at Cumberland” as a “miserable tract of sterile land.”⁸¹

⁷⁶ W.A. Austin, DLS, to SGIA, April 1883, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1883*, 167 (ICC Exhibit 1, p. 78).

⁷⁷ W.A. Austin, DLS, to SGIA, April 1883, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1883*, 168 (ICC Exhibit 1, p. 79).

⁷⁸ Natural Resources Canada, Plan 237 CLSR, W.A. Austin, DLS, “Plan of Part of Cumberland Indian Reserve Shewing Chief’s Island and part of Cumberland Island,” March 1883 (ICC Exhibit 10d).

⁷⁹ While not an issue in this inquiry, Austin’s survey report and the final survey plan reflect a discrepancy in the area of IR 20. There is no record of Austin returning to survey additional land at IR 20.

⁸⁰ A. MacKay, Indian Agent, Beren’s River Agency, to SGIA, September 13, 1884, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1884*, 77 (ICC Exhibit 1a, p. 24).

⁸¹ John A. Macdonald, SGIA, to the Governor General, January 1, 1885, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1884*, xli (ICC Exhibit 1a, p. 30).

CONDITIONS AT FORT À LA CORNE, 1883–92

Creation of the Pas Agency in Treaty 5, 1883

In the report of the Department of Indian Affairs for 1883, Superintendent General of Indian Affairs (SGIA) John A. Macdonald reported that the Treaty 5 Agency had been divided into two new agencies: the Pas Agency, for the bands on the Saskatchewan River, including the Cumberland Band; and the Beren's River Agency, for the other Treaty 5 bands. He noted:

In previous winters the Indians at distant points in the agency have suffered greatly from sickness and from actual starvation without the Agent having been aware of it; and owing to the distances, even if he had known of the distress, he could not have had supplies transported soon enough to meet many of the cases.⁸²

The division of the Agency was expected to solve this problem, since the Agent would be closer to the bands under his supervision.⁸³ Joseph Reader, a minister residing at The Pas, took up his duties as Agent for the newly created Pas Agency in February 1884.⁸⁴

Department Permits Move to Fort à la Corne, 1883

In late 1883, the department reversed its view and decided to grant permission for the Cumberland Band to move to Fort à la Corne. The survey of IR 20 for the Cumberland Band, at Cumberland Lake in Treaty 5, had been completed only a year earlier. This change came about after Lawrence Vankoughnet, the DSGIA, met with the Cumberland Band during his visit to the North-West Territories earlier that year. On his return, he reported to the Superintendent General:

An objection existed with the change asked for from the fact that Carrot River is within the territory embraced in Treaty No. 6, in which the Indians of Cumberland are not interested and it was feared that complications might arise owing to Indians

⁸² John A. Macdonald, SGIA, to the Governor General, January 1, 1884, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1883*, xlvii (ICC Exhibit 1, p. 111).

⁸³ John A. Macdonald, SGIA, to the Governor General, January 1, 1884, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1883*, xlvii (ICC Exhibit 1, p. 111).

⁸⁴ Joseph Reader, Indian Agent, to SGIA, July 14, 1884, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1884*, 71 (ICC Exhibit 1a, p. 13).

connected with one Treaty being located upon territory within another Treaty. Such strong representations were however made to the undersigned upon his recent visit to the North-West by the Cumberland Indians at the point referred to, and owing to statements made to him by other residents in that section of country as to the utter uselessness for agricultural purposes of the land in the Reserve at Cumberland, the undersigned was led to reconsider the application made by the Cumberland Indians, and in view of the strong desire expressed by them to settle in the locality of the Carrot River for the purpose of cultivating the land and supporting themselves and families, he considers that the point of objection referred to might be waived in this instance, and that the distinction between these Indians and those of Treaty 6 would be probably maintained sufficiently were this Band, if allowed to remove to Carrot River and take up land there, were always designated and known as the “Fort a la Corne Band of Treaty No. 5.”⁸⁵

A marginal notation on the letter instructed Vankoughnet to “communicate with Department of Interior as to the land sought for.”⁸⁶

Movement from Cumberland to Fort à la Corne, 1883–86

Against this background of repeated requests for a reserve at Fort à la Corne, a migration of some Cumberland and The Pas band members to that place had already begun. The first instance is recorded on the August 1882 payroll for the Cumberland Band at Cumberland House, which shows that Charles and Alexander Fiddler had “left reserve and gone to La Corne – Treaty No. 6.”⁸⁷ In February 1883, Agent MacKay reported that, “last summer, I noticed that several Indians had left their Reserves, and on enquiring ascertained that they had left and were receiving payment in Treaties 4 and 6.”⁸⁸

⁸⁵ L. Vankoughnet, DSGIA, to John A. Macdonald, SGIA, November 23, 1883, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 99–100).

⁸⁶ Marginal notation dated December 1, 1883, written by John A. Macdonald to Lawrence Vankoughnet on letter from Vankoughnet, DSGIA, to Macdonald, SGIA, November 23, 1883, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 98).

⁸⁷ Treaty annuity payroll, “Cumberland Band paid at Cumberland Reserve,” 1882, no file reference available (ICC Exhibit 8, p. 26).

⁸⁸ A. MacKay, Indian Agent, to James F. Graham, Indian Superintendent, February 6, 1883, LAC, RG 10, vol. 3634, file 6441 (ICC Exhibit 1, p. 67).

In reference to MacKay's report that Treaty 5 Indians were leaving their reserves, Superintendent Graham advised the SGIA that they "should not be paid in any other Treaty" because they had left their reserves without permission.⁸⁹ A draft letter to Indian Commissioner Edgar Dewdney requests that he "instruct the Agents of the Treaties to which these Indians have removed to inform the Indians that they must return to Treaty No. 5, and that until they do so they cannot be paid."⁹⁰

The Cumberland Band's payroll for 1883 shows nine families absent; they were later paid at Fort à la Corne in 1885 on the James Smith Band's payroll, and included the Britains, Fiddlers, and Peter Chapman. None of the families absent from Treaty 5 in 1883 were paid on a Treaty 6 payroll that year, as advised by Graham, although three of the families received arrears for 1883 when they were first paid at James Smith in 1885.⁹¹

On July 17, 1883, an individual living near the south branch of the Saskatchewan River wrote to Inspector of Indian Agencies T.P. Wadsworth regarding a recent meeting with "the Cumberland Indians" at Fort à la Corne. His letter communicated their requests for

the same privileges as any other British subject, to live on an arable land there and raise food out of the ground. ... [and] that your Government will pity them and allow them to join their brethren, Mr. John Smith and Mr. James Smith's Reserves, where there is land fit for cultivation. And to grant them means to break up the land.⁹²

On November 30, 1883, Inspector McColl reported that the Chief of the Cumberland Band, "on behalf of thirty families," asked for permission to move to Fort à la Corne, "where nine of their

⁸⁹ James F. Graham, Indian Superintendent, to SGIA, April 17, 1883, LAC, RG 10, vol. 3634, file 6441 (ICC Exhibit 1, p. 81).

⁹⁰ Unidentified author to Edgar Dewdney, Indian Commissioner, May 8, 1883, LAC, RG 10, vol. 3634, file 6441, (ICC Exhibit 1, p. 89).

⁹¹ Treaty annuity payroll, "Cumberland Band paid at Cumberland," 1883, no file reference available (ICC Exhibit 8, pp. 29–31). Treaty annuity payroll, James Smith Band, 1885, LAC, RG 10, vol. 9418 (ICC Exhibit 1, pp. 175–76).

⁹² J. Settee, St James, to Inspector Wadsworth, July 17, 1883, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 95–96).

number had already settled.”⁹³ Chief Albert Flett repeated the request in a letter to Inspector McColl in January 1884, following the department’s decision to allow the “Cumberland Indians” to “remove to Carrot River and take up land there.”⁹⁴ He wrote:

Having talked the matter over with some of my mind ... I beg that you will extend to me and the whole of the Indians on Pine Island and in the immediate vicinity of Cumberland Fort, the privilege Mr. Vankoughnet [has] already given to twenty families of moving to Fort La Corne.

Not having seen the members of any band residing at distant points, I am unable to say what their intentions are, but I have reason to believe that they are satisfied with their present position.⁹⁵

This letter seems to indicate the wishes of those residing immediately in the area of IR 20 to join those who had already moved to Fort à la Corne. Chief Flett does not appear to be speaking on behalf of those members of the Cumberland Band “residing at distant points” outside the immediate Cumberland House area. However, his comment is somewhat unclear, since he refers to these people as “members of any band.” It is not certain if he is referring to other sections of the Cumberland Band living outside the immediate “Cumberland Fort,” or Cumberland House area, or to other bands in the Pas Agency.

Five months later, in June 1884, Indian Agent Reader reported the requests of some Cumberland band members for land at various points within the Pas Agency. Councillor Philip Canada and “about 10 families who for some time have farmed at Pine Island Bluff some twenty miles northwest of Cumberland House” asked for a reserve in that location.⁹⁶ Henry Budd also asked

⁹³ E. McColl, Inspector of Indian Agencies, Manitoba Superintendency, to SGIA, November 30, 1883, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1883*, 141 (ICC Exhibit 1, p. 102).

⁹⁴ L. Vankoughnet, DSGIA, to John A. Macdonald, SGIA, November 23, 1883, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 99–100).

⁹⁵ Chief Albert Flett, Cumberland Band, to E. McColl, Indian Superintendent, January 14, 1884, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 113).

⁹⁶ J. Reader, Indian Agent, to E. McColl, Inspector of Indian Agencies, June 12, 1884, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 131). Treaty annuity payroll, “Cumberland Band paid at Cumberland,” 1884, no file reference available (ICC Exhibit 8, p. 33).

that he be allowed “to settle on a piece of land good for farming between Cumberland and Birch River Reserves.”⁹⁷ Reader specified that these requests were distinct from the 30 families who want to move to Fort à la Corne.⁹⁸

That same month, Indian Agent J.A. Macrae of the Carlton Agency reported that “several families from Treaty No. 5” had apparently already joined James Smith’s Band at Fort à la Corne. John Constant of The Pas Band had also moved to Fort à la Corne by this time, and Macrae communicated his request for a reserve there “for himself and about 30 families.”⁹⁹ A similar request from the Cumberland Band was reported in July 1884 by Agent Reader.¹⁰⁰ Agent Macrae commented: “Whilst Constant mentions 30 families as the numbers that he expects to leave Cumberland and the Pas this summer, many more would probably wish to follow in their footsteps.”¹⁰¹ It was also around this time in 1884 that Dominion Land Surveyor A.W. Ponton completed the survey of IR 100 for the James Smith Band on the Saskatchewan River near Fort à la Corne.¹⁰²

In September 1884, Agent MacKay confirmed that “several families” had already moved to Fort à la Corne “during the last three years.”¹⁰³ The 1884 payroll for the Cumberland Band paid in Treaty 5 shows that five families who had been at Fort à la Corne the previous year returned to IR 20

⁹⁷ J. Reader, Indian Agent, to E. McColl, Inspector of Indian Agencies, June 12, 1884, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 131).

⁹⁸ J. Reader, Indian Agent, to E. McColl, Inspector of Indian Agencies, June 12, 1884, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 131).

⁹⁹ J. Ansdell Macrae, Indian Agent, Carlton Agency, to unidentified recipient, June 11, 1884, LAC, RG 10, vol. 3576, file 353 (ICC Exhibit 1a, pp. 11–12).

¹⁰⁰ Joseph Reader, Indian Agent, to SGIA, July 14, 1884, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1884*, 72 (ICC Exhibit 1a, p. 14).

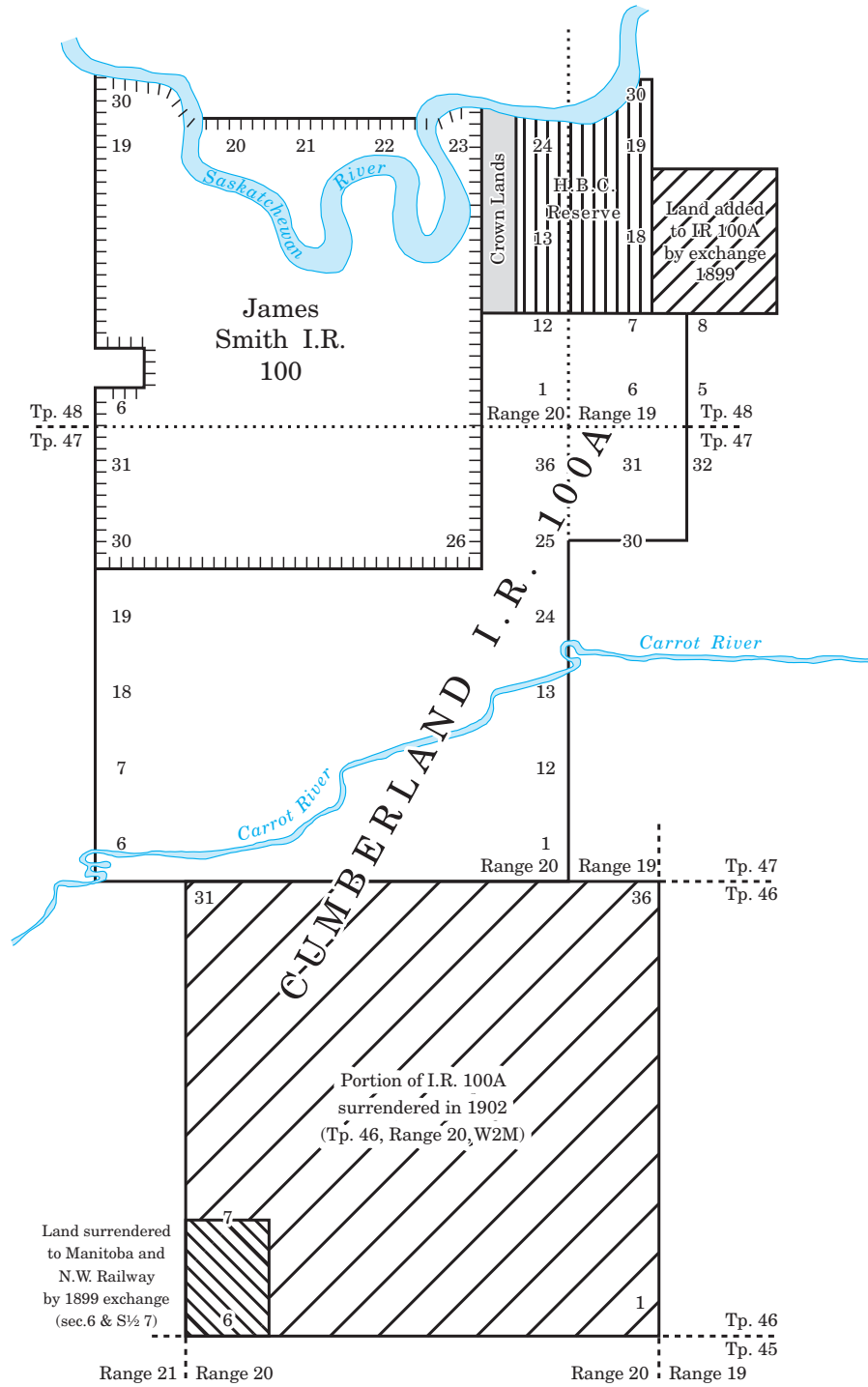
¹⁰¹ J. Ansdell Macrae, Indian Agent, Carlton Agency, to unidentified recipient, June 11, 1884, LAC, RG 10, vol. 3576, file 353 (ICC Exhibit 1a, p. 12).

¹⁰² Order in Council PC 1151, May 17, 1889, p. 52 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 4a).

¹⁰³ A. MacKay, Indian Agent, Beren’s River Agency, to SGIA, September 13, 1884, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1884*, 77 (ICC Exhibit 1a, p. 24).

Map 2

Cumberland IR 100A and James Smith IR 100



Based on Sketch found in Bennett McCardle, "Cumberland Indian Reserve 100A: Report on the Land Surrender of 1902 and Related Land Sales and Trust Fund Management Issues," December 1984, with Additions by Roland Wright, August 1985 (James Smith Cree Nation: IR 100A Inquiry. Exhibit 6, p.4)

to be paid, and received arrears for 1883. The other four families did not return.¹⁰⁴ In September 1885, Indian Agent J.M. Rae reported that 20 families “from Cumberland” were residing near James Smith and had “spent last year’s treaty money” breaking 60 acres and making improvements.¹⁰⁵ A sketch accompanying his report shows the settlement of Cumberland people east of the James Smith IR 100.¹⁰⁶

In November 1885, 14 families from the Cumberland Band and one family from The Pas Band in Treaty 5 were paid on the James Smith Band’s Treaty 6 payroll. The families all appear grouped at the end, and 11 have the notation “Cumberland” entered beside their names. Most were paid under their original Treaty 5 ticket numbers, although a few are not designated with any ticket number.¹⁰⁷

During the fall of 1885, the Cumberland Band reportedly had a successful potato crop and “good fall fishing,” and therefore experienced fewer cases of destitution.”¹⁰⁸ Only a few months later, however, Inspector L.W. Herchmer reported that 17 families from Cumberland were residing near James Smith, and he expected 30 additional families “next summer, as both fish & [musk]rats have

¹⁰⁴ Treaty annuity payroll, “Cumberland Band paid at Cumberland,” 1884, no file reference available (ICC Exhibit 8, pp. 33–36).

¹⁰⁵ J.M. Rae, Indian Agent, to the Indian Commissioner, September 8, 1885, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 168–69).

¹⁰⁶ J.M. Rae, Indian Agent, to the Indian Commissioner, September 8, 1885, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 170).

¹⁰⁷ Treaty annuity payroll, James Smith Band, 1885, LAC, RG 10, vol. 9418 (ICC Exhibit 1, pp. 173–78).

¹⁰⁸ E. McColl, Inspector and Superintendent of Indian Agencies, Manitoba Superintendency, to SGIA, December 1, 1885, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1885*, 133 (ICC Exhibit 1a, p. 35); J. Reader, Indian Agent, Pas Agency, to SGIA, July 2, 1886, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1886*, 74 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 17, p. 6).

completely failed below.”¹⁰⁹ The annual report for 1886 reports only 55.5 acres of cultivated land in the entire Pas Agency.¹¹⁰

Setting Aside Land for IR 100A, 1883–85

The differences between Treaties 5 and 6 have already been noted, especially the significant disparity between the two regarding the amount of land entitlement. These differences seem to have been a large factor in the department’s resistance to allowing the Cumberland people to move to Fort à la Corne, since it was outside the area of their own treaty territory. The department’s concern over this issue is demonstrated by its instructions not to pay treaty annuities to those outside Treaty 5 territory.¹¹¹

Regarding the reserve eventually set aside at Fort à la Corne, it is not entirely clear what basis the department relied upon to calculate the amount of land. The surveyor, John C. Nelson, did not make any reference to how the amount of land to be set aside was calculated. However, it appears that the 1882 population of the Cumberland Band at “Cumberland” in Treaty 5 was used to calculate how much land to allocate at Fort à la Corne; it also appears that the Treaty 6 land entitlement formula may have been used to approximate the amount of land required, based on that population.

On December 6, 1883, DSGIA Lawrence Vankoughnet wrote to the Department of the Interior to inquire about “securing a reserve on the Carrot River near Fort à la Corne for the Cumberland Band of Indians in exchange for the Reserve or part thereof occupied by them at Cumberland.” He went on to explain: “The population of the Cumberland Band is 345, and under the Treaty with them they are entitled to 160 acres for every five persons, consequently the quantity

¹⁰⁹ L.W. Herchmer, Inspector of Indian Agencies, to the Indian Commissioner, February 3, 1886, LAC, RG 10, vol. 3741, file 28985 (ICC Exhibit 1, p. 195).

¹¹⁰ John A. Macdonald, SGIA, to the Governor General, January 1, 1887, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1886*, xlvii (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 17, p. 3).

¹¹¹ James F. Graham, Indian Superintendent, to SGIA, April 17, 1883, LAC, RG 10, vol. 3634, file 6441 (ICC Exhibit 1, p. 81).

of land that would be required for the Reserve would be 44,160 acres.”¹¹² It should be noted that according to the Treaty 5 formula of 160 acres per family of five, the correct entitlement would be 11,040 acres. However, marginal notations on a draft copy of Vankoughnet’s letter use the Treaty 6 formula of 640 acres per family of five to calculate an entitlement of 44,160 acres. Another marginal notation points out that the figure “[s]hould be 11,040 not 44160.” There is no indication as to who made either the calculations or the marginal notation.¹¹³

Surveyor Austin used the same base population of 345 to calculate the Cumberland Band’s treaty land entitlement (TLE) in his 1883 survey report regarding IR 20 at Cumberland Lake.¹¹⁴ This population corresponds to the number paid on the Treaty 5 payroll for the “Cumberland Band paid at Cumberland Reserve” in 1882.¹¹⁵ Department of Indian Affairs law clerk Reginald Rimmer later surmised that the reserve at Fort à la Corne was most likely set aside on the basis of 345 people and that the Treaty 6 formula for land entitlement was used, instead of the Treaty 5 formula.¹¹⁶ This opinion is discussed later in more detail.

From the time of Vankoughnet’s first inquiry in 1883 regarding a possible reserve location, it took almost two years to secure the land desired by the Cumberland people for a reserve near Fort à la Corne. There was a great deal of confusion among department officials regarding exactly which land was desired, and a number of options were considered.

Inspector McColl initially requested one and a half townships for the reserve, located northwest of the future James Smith IR 100, although the land he specified was later discovered to

¹¹² L. Vankoughnet, DSGIA, to A.M. Burgess, Deputy Minister of the Interior, December 6, 1883, LAC, RG 15, vol. 311, file 68309 (ICC Exhibit 1, pp. 105–6).

¹¹³ Marginal notations written on draft letter from L. Vankoughnet, DSGIA, to A.M. Burgess, Deputy Minister of the Interior, December 6, 1883, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 108).

¹¹⁴ W.A. Austin, DLS, to SGIA, April 1883, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1883*, 167 (ICC Exhibit 1, p. 78).

¹¹⁵ Treaty annuity payroll, “Cumberland Band paid at Cumberland Reserve,” 1882, no file reference available (ICC Exhibit 8, p. 28).

¹¹⁶ Memorandum, Reginald Rimmer, Law Clerk, Department of Indian Affairs, to unidentified recipient, May 18, 1899, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 541–42).

be unavailable.¹¹⁷ In April 1884, Inspector Wadsworth reported that he expected only about “30 families,” or “150 souls,” to make the move, rather than the entire Cumberland Band. On this basis, he calculated that 150 persons would be entitled to 4,800 acres under Treaty 5 (a correct calculation according to the Treaty 5 formula of 32 acres per person), and suggested a reserve of 10 sections south of Chakastaypasin’s reserve, totalling 6,400 acres.¹¹⁸ The department applied for this land,¹¹⁹ and accepted the Department of the Interior’s offer for only five sections (or 3,200 acres) as sufficient.¹²⁰ In response to the offer, Agent Reader received a letter from Chief Flett explaining that

he had interviewed the Indians with respect to the offer made to them by the Government, but that there are none of them who wish to go. They say the reason is that they have spent so many pounds in getting the land at Fort a La Corne broken, and they do not wish to go to this other place.¹²¹

In addition, Chief Flett explained that the land at Fort à la Corne was better able to provide a means of subsistence while they were getting established in farming, since the area was rich in timber, fish, and game. Reader reported: “Those who were at La Corne are of the same opinion, having in addition improved and incurred expenses on the land they settled on.”¹²² An alternative offer of land at Pas Mountain within Treaty 5 territory was refused as well.¹²³

¹¹⁷ John R. Hall, Secretary, Department of the Interior, to L. Vankoughnet, DSGIA, February 9, 1884, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 114–15).

¹¹⁸ T.P. Wadsworth to the Deputy Minister, April 22, 1884, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 122–23).

¹¹⁹ R. Sinclair for DSGIA, to A.M. Burgess, Deputy Minister of the Interior, April 29, 1884, LAC, RG 15, vol. 311, file 68309 (ICC Exhibit 1, pp. 125–26).

¹²⁰ L. Vankoughnet, DSGIA, to A.M. Burgess, Deputy Minister of the Interior, July 23, 1884, LAC, RG 15, vol. 311, file 68309 (ICC Exhibit 1, pp. 137–38).

¹²¹ J. Reader, Indian Agent, to E. McColl, Inspector of Indian Agencies, March 25, 1885, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 154).

¹²² J. Reader, Indian Agent, to E. McColl, Inspector of Indian Agencies, March 25, 1885, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 155).

¹²³ J. Reader, Indian Agent, to E. McColl, Inspector of Indian Agencies, June 12, 1884, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 130–31).

In late 1884, Indian Commissioner Edgar Dewdney wrote to the Superintendent General to clarify that “the Indians from Cumberland” wanted the two townships immediately south of James Smith’s reserve, in townships 46 and 47, range 20, west of the 2nd meridian (W2M).¹²⁴ This information was communicated to Inspector McColl in June 1885, at which time he was instructed “to ascertain definitely whether this is the locality in which the Cumberland Indians wish to have a Reserve made for them.”¹²⁵

In the interim, A.M. Burgess, the Deputy Minister of the Interior, reported to Vankoughnet on June 30, 1885, that the desired townships were available for Indian reserve purposes, later clarifying that the reserve was “for the Cumberland band of Indians.”¹²⁶ Agent Reader confirmed on August 26, 1885, that this was indeed the land desired by the “Cumberland Band.”¹²⁷ On October 2, 1885, Vankoughnet accepted the two townships offered by the Department of the Interior, stating that the land would be set aside “as a reserve for the Indians of Cumberland.”¹²⁸ The Indian Commissioner and Inspector McColl were informed the following month.¹²⁹

The North-West Rebellion and the Cumberland Band

The North-West Rebellion (or Riel Rebellion) broke out in March 1885. During and after the conflict, government officials took steps to institute greater controls over the movements and the

¹²⁴ E. Dewdney, Indian Commissioner, to SGIA, November 14, 1884, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 152).

¹²⁵ [L.Vankoughnet, DSGIA], to E. McColl, Inspector of Indian Agencies, June 3, 1885, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 156–57).

¹²⁶ A.M. Burgess, Deputy Minister of the Interior, to L. Vankoughnet, DSGIA, June 30, 1885, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 161–62); and A.M. Burgess, Deputy Minister of the Interior, to L. Vankoughnet, DSGIA, November 20, 1885, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 179–81).

¹²⁷ J. Reader, Indian Agent, Pas Agency, to E. McColl, Inspector of Indian Agencies, August 26, 1885, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 163).

¹²⁸ L. Vankoughnet, DSGIA, to A.M. Burgess, Deputy Minister of the Interior, October 2, 1885, LAC, RG 15, vol. 311, file 68309 (ICC Exhibit 1, p. 172).

¹²⁹ [L. Vankoughnet, DSGIA], to E. Dewdney, Indian Commissioner, November 27, 1885, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 184–85); and [L.Vankoughnet, DSGIA], to E. McColl, Inspector of Indian Agencies, November 27, 1885, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 186–87).

activities of treaty Indians. One of these measures was the pass system, introduced as a temporary measure during the uprising.¹³⁰

Following the cessation of unrest, Assistant Indian Commissioner Hayter Reed suggested that the pass system be continued as a means of dealing with “rebel” Indians. His July 29, 1885, memorandum on the “future management of Indians” recommended that “no rebel Indians should be allowed off the reserves without a pass signed by an [Indian Department] official.”¹³¹ By October 1885, DSGIA Vankoughnet had agreed to the wider application of the system to all treaty Indians. In response to Hayter Reed’s recommendations, Vankoughnet replied, instead, that the system “should be introduced as far as practicable in the loyal Bands as well,” but that it “should not be insisted upon as regards loyal Indians” if they resisted on the basis of their treaty rights.¹³² The pass system was a means of reinstating and strengthening government control over Indian movements and whereabouts after the rebellion. Indian Agents received books of passes in 1886 and the system was strictly enforced, especially in the years immediately following the rebellion.¹³³

It is uncertain whether the pass system prevented a greater migration from the Cumberland district to Fort à la Corne, although a few people did make the move in the years immediately after the rebellion. Cumberland House Cree Nation elder Pierre Settee says that when land became available at Fort à la Corne, and some Cumberland band members moved there to begin farming, “it became more difficult for our people to come and go as time went on. This may have been due to the past [sic] system that was put in place by the government; for many years we needed permission to leave our reserve.”¹³⁴

¹³⁰ Circular letter from E. Dewdney, Indian Commissioner, May 6, 1885, LAC, RG 10, vol. 3584, file 1130 (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 1, p. 163).

¹³¹ Hayter Reed, Assistant Indian Commissioner, to the Indian Commissioner, July 29, 1885, Glenbow Archives, Edgar Dewdney Papers, document M320, box 4, file 66, p. 1416 (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 18a, p. 3).

¹³² L. Vankoughnet, DSGIA, to Edgar Dewdney, Indian Commissioner, October 28, 1885, LAC, RG 10, vol. 3584, file 1130, part 1B (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 1, p. 202).

¹³³ Sarah A. Carter, *Lost Harvests: Prairie Indian Reserve Farmers and Government Policy* (Montreal: McGill-Queen’s University Press, 1990), 145–46, 149–56 (ICC, Written Submissions on Behalf of the Cumberland House Cree Nation, August 28, 2003, tab 1).

¹³⁴ ICC Transcript, November 19, 2001 (ICC Exhibit 12a, p. 14, Pierre Settee).

Scrip Offered at Cumberland

In 1885–86, the government offered scrip (a set amount of cash or land) to those who wished to withdraw from treaty. Indian Agent Reader first reported on the matter when referring to a December 1885 visit to Cumberland, noting that only a few “availed themselves of the privilege to leave treaty.”¹³⁵ However, by March 1886, the situation had changed remarkably. Agent Reader remarked:

The idea of leaving the Treaty and receiving scrip in compensation for annuity, when once it fairly took possession of some of the half-breeds in this Agency, spread almost like an epidemic. ... It was with difficulty that I could leave Cumberland on the 12th, owing to the number of applicants.¹³⁶

Later that same month, a number of additional Cumberland band members applied to the Agent for withdrawal from treaty.¹³⁷ He reported that “[i]nasmuch as about one hundred families in this agency have withdrawn from treaty, [t]here has been a large exodus at Cumberland.”¹³⁸ Indeed, the 1886 Cumberland band payroll for Treaty 5 shows that the band population was reduced by almost half due to the large number of withdrawals from treaty that year. Chief Albert Flett and one of his councillors were among those who took scrip that year.¹³⁹ After Chief Flett’s withdrawal from treaty, the Cumberland Band elected Samuel Greenleaf in 1886 as the new Chief for a three-year term.¹⁴⁰

¹³⁵ J. Reader, Indian Agent, Pas Agency, to SGIA, July 2, 1886, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1886*, 74 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 17, p. 6).

¹³⁶ J. Reader, Indian Agent, Pas Agency, to SGIA, July 2, 1886, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1886*, 76 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 17, p. 8).

¹³⁷ J. Reader, Indian Agent, Pas Agency, to SGIA, July 2, 1886, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1886*, 76 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 17, p. 8).

¹³⁸ J. Reader, Indian Agent, Pas Agency, to SGIA, July 2, 1886, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1886*, 78 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 17, p. 10).

¹³⁹ Treaty annuity payroll, “Cumberland Band Paid at Cumberland,” 1886, no file reference available (ICC Exhibit 8, pp. 42–46).

¹⁴⁰ Treaty annuity payroll, “Cumberland Band paid at Cumberland,” 1886, no file reference available (ICC Exhibit 8, p. 44).

Albert Flett re-entered treaty in 1887 and was re-elected for another three-year term as Chief in 1889, after Samuel Greenleaf's term expired.¹⁴¹

In the annual report for 1886, the Superintendent General of Indian Affairs reported a population of 929 in the Pas Agency, a decrease of 514 since the last census owing to the numerous withdrawals from treaty.¹⁴² A few Cumberland band members re-entered treaty over the next few years, but most chose not to do so. Of the Cumberland people living at Fort à la Corne, only three families chose to take scrip.¹⁴³

Paylist for Cumberland Band at Fort à la Corne, 1886

In September 1886, the "Cumberland Band Paid at Fort la Corne" received its own paylist, labelled "Treaty No. 6." Seventeen families appeared on the list, although two were said to have withdrawn from treaty and were not paid. These 17 families include all 14 of those families originally from the Cumberland Band in Treaty 5 which were paid with James Smith's Band in 1885, as well as John Constant from The Pas Band. In addition, two new families from the Cumberland Band in Treaty 5 arrived at Fort à la Corne in 1886 and were paid on this first paylist.¹⁴⁴

Other Treaty 5 Bands at Fort à la Corne

It is possible that there were, originally, more families from The Pas resident near Fort à la Corne. Some were eventually paid with the James Smith Band or others, and some apparently returned to their original reserves at The Pas because of the instability caused by the 1885 North-West

¹⁴¹ Treaty annuity paylist, "Cumberland Band Paid at Cumberland," 1890–92, no file reference available (ICC Exhibit 8, pp. 57, 60, 63).

¹⁴² John A. Macdonald, SGIA, to the Governor General, January 1, 1887, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1886*, xlvi (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 17, p. 2).

¹⁴³ Treaty annuity paylist, "Cumberland Band Paid at Fort la Corne," 1886, no file reference available (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 9a, p. 1); Treaty annuity paylist, "Cumberland Band Paid at La Corne," 1887, no file reference available (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 9a, p. 3).

¹⁴⁴ Treaty annuity paylist, "Cumberland Band Paid at Fort la Corne," 1886, no file reference available (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 9a, p. 1); Treaty annuity paylist, James Smith Band, 1885, LAC, RG 10, vol. 9418 (ICC Exhibit 1, pp. 175–76).

Rebellion. Indian Agent Reader of the Pas Agency reported in 1885 that “some Pas Mountain Indians, who, I believe, had been living at or near Fort à la Corne, fled back to the mountain, not wishing to join the Rebellion.”¹⁴⁵ However, John Constant remained at Fort à la Corne, and his family was the only one from a different Treaty 5 band to be paid with the Cumberland Band on the new payroll. The family remained there from 1886 until 1890,¹⁴⁶ before transferring to John Smith’s Band to join other relatives.¹⁴⁷

Survey of IR 100A, 1887

Dominion Land Surveyor John C. Nelson went to Fort à la Corne in July 1887 “to lay out a reserve for the contingent of the Cumberland Band and such other Indians as may be assigned locations therein.”¹⁴⁸ On his arrival, he discovered that the “Cumberland band” had a settlement outside of townships 46 and 47, along the east side of James Smith’s IR 100 and extending north to the HBC reserve in township 48. Surveyor Nelson explained to Peter Chapman that he had no authority to mark off this settlement because it was outside townships 46 and 47. However, he laid out a temporary reserve in the area, saying that “possibly the Department might secure it for them.” He then proceeded to mark out the reserve in townships 46 and 47, noting the rich soil, “luxuriant herbage,” stands of poplar for timber, many lakes and swamps, and “small prairies of rich soil.” The

¹⁴⁵ John A. Macdonald, SGIA, to the Governor General, January 1, 1886, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1885*, xxxvii (ICC Exhibit 1a, p. 39).

¹⁴⁶ Treaty annuity payroll, “Cumberland Band Paid at Fort la Corne,” 1886, no file reference available (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 9a, p. 1); Treaty annuity payroll, “Cumberland Band Paid at La Corne,” 1887, no file reference available (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 9a, p. 3); Treaty annuity payroll, “Cumberland Band Paid at Peter Chapman’s Reserve,” 1888, no file reference available (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 9a, p. 4); Treaty annuity payroll, “Cumberland Band Paid at Reserve,” 1889, no file reference available (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 9a, p. 5); Treaty annuity payroll, “Cumberland Band No. 100A Paid at James Smith’s,” 1890, no file reference available (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 9a, p. 9).

¹⁴⁷ Treaty annuity payroll, “Cumberland Band Paid at Reserve,” 1891, no file reference available (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 9a, p. 16); Consent of Band to Transfer, June 4, 1890, LAC, RG 10, vol. 3807, file 52583-2 (ICC Exhibit 1a, p. 110); Consent of Band to Transfer, August 8, 1890, LAC, RG 10, vol. 3807, file 52583-2 (ICC Exhibit 1a, p. 111).

¹⁴⁸ John C. Nelson, DLS, In Charge of Indian Reserve Surveys, to SGIA, December 30, 1887, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1887*, 274 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 17, p. 34).

survey report concludes by stating: “The reserve is well watered by Carrot River and Goose Hunting Creek and contains an area of about 65 square miles.”¹⁴⁹ Nelson’s field notes refer to IR 100A as being “for Indians of the Cumberland District.”¹⁵⁰

On June 21, 1888, the Department of Indian Affairs forwarded a tracing of the IR 100A plan of survey “for the Cumberland Band of Indians on the Carrot River near Fort à la Corne” to the Department of the Interior. The accompanying letter explained that the temporary reserve surveyed by Nelson was occupied by five “heads of families of the Cumberland contingent under Chapman, and if available for Indian Reserve purposes should form part of the Reserve.”¹⁵¹ The Department of the Interior approved the request on July 9, 1888.¹⁵² IR 100A was confirmed by Order in Council on May 17, 1889, “[f]or the Indians of Cumberland District (of Treaty No. 5),” including the extra 2.4 square miles adjacent to the east side of the James Smith reserve.¹⁵³

Department Support for Agriculture at Fort à la Corne

The original intention of the Cumberland band members who moved to Fort à la Corne was to settle and take up farming as a new way of life, and it appears that the department granted the reserve at IR 100A in order to facilitate their wishes in this regard. DSGIA Vankoughnet wrote in 1884: “This Department is most anxious to accommodate the Cumberland Indians with a Reserve, as they are,

¹⁴⁹ John C. Nelson, DLS, In Charge of Indian Reserve Surveys, to SGIA, December 30, 1887, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1887*, 275 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 17, p. 35).

¹⁵⁰ Natural Resources Canada, Field book 151 CLSR, John C. Nelson, DLS, “Treaty No. 6, North West Territories, Field Notes of the survey of the Boundaries of Indian Res. No. 100a (for Indians of the Cumberland District) at Carrot River,” July–August 1887 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 4b, p. 2).

¹⁵¹ R. Sinclair, for DSGIA, to A.M. Burgess, Deputy Minister of the Interior, June 21, 1888, LAC, RG 15, vol. 311, file 68309 (ICC Exhibit 1, pp. 279–81); see also W.A. Austin, for Deputy Minister of Indian Affairs, to Mr McNeill, June 15, 1888, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 277–78).

¹⁵² P.B. Douglas, Assistant Secretary, Department of the Interior, to L. Vankoughnet, DSGIA, July 9, 1888, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 284).

¹⁵³ Order in Council PC 1151, May 17, 1889, pp. 54–55 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 4a).

for Indians, progressive and industrious, and it is important to encourage them as much as possible.”¹⁵⁴

The Cumberland members at Fort à la Corne took up the challenge of breaking land and attempting to farm with enthusiasm, but there was little support to encourage them. Indian Agent Rae reported in September 1885 that the Cumberland people were hard working and had already broken 60 acres of land and put up 30 tons of hay, and that they hoped to receive a few oxen and a farming instructor from the department to assist them.¹⁵⁵ Six months later, Inspector Herchmer reported that 50 acres of the broken land had grown over, and again communicated the Cumberland contingent’s request for assistance, “as they understand very little about Farming.”¹⁵⁶ He recommended that an instructor be provided for the James Smith Band and the Cumberland contingent at Fort à la Corne, because they could not live entirely by hunting.¹⁵⁷ Instructor Goodfellow was hired in April 1886 for a term of six months,¹⁵⁸ and the department issued six oxen and seven cows to “Peter Chapman” of the “Cumberland Band” that summer, more than the amount provided for by either Treaties 5 or 6.¹⁵⁹

At the end of the year, however, Inspector Wadsworth felt that the result of the season’s work at Fort à la Corne did not warrant the expense of a farming instructor and recommended against having the Bands there devote all their time to agriculture to the exclusion of the hunt. He recommended instead that Goodfellow be appointed as “sub-agent” for the Fort à la Corne Bands.¹⁶⁰

¹⁵⁴ R. Sinclair, for DSGIA, to A.M. Burgess, Deputy Minister of the Interior, April 29, 1884, LAC, RG 15, vol. 311, file 68309 (ICC Exhibit 1, pp. 126–27).

¹⁵⁵ J.M. Rae, Indian Agent, Carlton Agency, to the Indian Commissioner, September 8, 1885, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 168–69).

¹⁵⁶ L.W. Herchmer, Inspector of Indian Agencies, to the Indian Commissioner, February 3, 1886, LAC, RG 10, vol. 3741, file 28985 (ICC Exhibit 1, pp. 191–92).

¹⁵⁷ L.W. Herchmer, Inspector of Indian Agencies, to the Indian Commissioner, February 3, 1886, LAC, RG 10, vol. 3741, file 28985 (ICC Exhibit 1, p. 196).

¹⁵⁸ Hayter Reed, Assistant Indian Commissioner, to the Acting Indian Agent, March 29, 1886, LAC, RG 10, vol. 1591 (ICC Exhibit 1, p. 201).

¹⁵⁹ Charles Adams, Acting Indian Agent, “Statement of Cattle Received & Issued at Prince Albert Agency, Summer 1886,” August 17, 1886, LAC, RG 10, vol. 9098, book 2, p. 121 (ICC Exhibit 1, p. 205).

¹⁶⁰ T.P. Wadsworth, Inspector of Indian Agencies, to Edgar Dewdney, Indian Commissioner, December 3, 1886, LAC, RG 10, vol. 3773, file 35764 (ICC Exhibit 1, pp. 228–29).

This proposal was rejected, and Goodfellow was never reappointed as farm instructor. In a marginal note to Wadsworth's letter, Assistant Indian Commissioner Hayter Reed wrote that "it would be injudicious to endeavour to make those Indians who can obtain not a little fur and thus a fairly good living ... to turn their attention to agriculture to the same extent as others differently situated."¹⁶¹

From 1887 until 1893, local agents and inspectors repeatedly emphasized the need for a farming instructor for the bands at Fort à la Corne. In September 1889, Indian Agent R.S. McKenzie reported that "a farmer is very much required for Bands No. 100 & 100A in fact there is no two reserves in the Agency that requires an instructor worse than these two bands."¹⁶² Again, in 1890, the agent reported that the Fort à la Corne bands were taking a greater interest in farming and needed an instructor. Assistant Indian Commissioner A.E. Forget refused, stating that there would be no use in such an expenditure since he did not really believe that the bands intended to settle down and give up the hunt.¹⁶³ Hayter Reed's instructions to the agent in October 1890 may reflect some of the reasons for the reluctance to provide an instructor for the Fort à la Corne bands. He wrote:

The time has arrived when the result of the large expenditure upon Indians for years past, must be shown by throwing in a large measure the burden of their maintenance upon themselves, and so considerably decreasing expenditure. ... I hear from all sides of a very plentiful supply of game, so that you should be able to take a number off the ration list altogether for a time, especially among the Indians at James Smith's and at La Corne.¹⁶⁴

¹⁶¹ Marginal notation written by Assistant Indian Commissioner Hayter Reed on letter from T.P. Wadsworth, Inspector of Indian Agencies, to Edgar Dewdney, Indian Commissioner, December 3, 1886, LAC, RG 10, vol. 3773, file 35764 (ICC Exhibit 1, p. 228).

¹⁶² R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, September 1889, LAC, RG 10, vol. 3793, file 46008 (ICC Exhibit 1, p. 331); R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, April 1890, LAC, RG 10, vol. 3793, file 46008 (ICC Exhibit 1, p. 345).

¹⁶³ Marginal note written by Assistant Indian Commissioner A.E. Forget on letter from R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, April 1890, LAC, RG 10, vol. 3793, file 46008 (ICC Exhibit 1, p. 349).

¹⁶⁴ Hayter Reed, Indian Commissioner, to R.S. McKenzie, Indian Agent, Duck Lake Agency, October 28, 1890, LAC, RG 10, vol. 1596 (ICC Exhibit 1, p. 351).

Thus, while the department originally granted the reserve at Fort à la Corne for the Cumberland Band to take up farming, the lack of support from local department officials made it extremely difficult for the people to have any success in this new way of life. Without instruction, their endeavours in agriculture were not very successful, and many therefore relied on hunting for their main source of support.

Cumberland Band Movement, 1887–91

During the period from 1887 to 1891, there was still movement between the reserves at Cumberland House and at Fort à la Corne. The 1887 payroll for the “Cumberland Band Paid at La Corne” shows that two more families moved to IR 100A that year and were added to the payroll there.¹⁶⁵ At least two additional families went to Fort à la Corne in 1887, but never received annuities on the IR 100A payroll. One of those families returned to Cumberland House in 1888 and was paid annuities for 1888 and arrears for 1887. The other family disappeared and did not return to Cumberland House.¹⁶⁶

In 1888, Agent Reader wrote to inquire whether those who still wished to leave “the Reserve at Cumberland” and settle at 100A could do so, as he believed that “the desire to leave this district, and settle on the new Reserve is on the increase.”¹⁶⁷ In January of the following year, on a letter from Inspector McColl to the Superintendent General of Indian Affairs, a marginal note states that “any members of the Cumberland Band may remove to the reserve referred to.”¹⁶⁸

Later that year, however, local officials seemed to be expressing a different sentiment. In a letter regarding the transfer of four families from Cumberland to Fort à la Corne, Assistant Indian

¹⁶⁵ Treaty annuity payroll, “Cumberland Band Paid at La Corne,” 1887, no file reference available (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 9a, p. 3).

¹⁶⁶ Treaty annuity payroll, “Cumberland Band Paid at Cumberland,” 1887–88, no file reference available (ICC Exhibit 8, pp. 49–50, 53). See ticket nos. 49 and 105.

¹⁶⁷ J. Reader, Indian Agent, Pas Agency, to E. McColl, Inspector of Indian Agencies, October 4, 1888, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 303).

¹⁶⁸ Marginal notation signed “L.V.” on letter from E. McColl, Inspector of Indian Agencies, Manitoba Superintendency, to SGIA, January 4, 1889, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 304).

Commissioner A.E. Forget instructed Agent McKenzie “that in [the] future, you will try to discourage these changes, especially those from another Agency.”¹⁶⁹

According to the Treaty 5 Cumberland band paylists, at least three families moved to Fort à la Corne between 1888 and 1890. In 1888 and 1889, Nancy Friday and her son Jeremiah Friday were recorded on the Treaty 5 Cumberland band payroll as being “absent” at Fort à la Corne, and they subsequently “transferred to La Corne” in 1890. However, they were both paid at Cumberland House in 1891, along with arrears for the previous three years, and never appeared on the Cumberland 100A payroll. Jacob Flett Sr is also marked on the same 1890 payroll as being “transferred to La Corne”; he similarly returned to Cumberland House to be paid in 1891, along with arrears for 1890. The notation by his name states that he had returned, “not being allowed in the La Corne Band (Reserve).”¹⁷⁰ One other person was absent at Fort à la Corne in 1890 and 1894, but she was paid with the Cumberland Band in Treaty 5 in other years.¹⁷¹

Return to the Cumberland District, 1886–91

The oral history of Cumberland House Cree Nation elders suggests that many of those who initially moved to Fort à la Corne later returned.¹⁷² Cumberland House elder Thomas Laliberte says that people from the Cumberland Band originally moved to take up farming and gardening, “but it didn’t work out and they came back, many of them.”¹⁷³ Cumberland House elder Marcel McGillivary explained that those who moved to take up farming did not receive the “materials ... for farming”

¹⁶⁹ A.E. Forget, Assistant Indian Commissioner, to the Indian Agent, Duck Lake Agency, July 9, 1889, LAC, RG 10, vol. 1592 (ICC Exhibit 1, p. 322).

¹⁷⁰ Treaty annuity paylists, “Cumberland Band Paid at Cumberland,” 1888–91, no file reference available (ICC Exhibit 8, pp. 53, 57, and 60). See ticket nos. 39, 91, and 102.

¹⁷¹ Treaty annuity payroll, “Cumberland Band Paid at Cumberland,” 1890–95, no file reference available (ICC Exhibit 8, pp. 57, 60, 63, 68, 73, 79). See ticket no. 115, Emily Ballendine.

¹⁷² ICC Transcript, November 19, 2001 (ICC Exhibit 12a, p. 44, Thomas Laliberte; p. 54, Marcel McGillivary; p. 91, Lena Sarah Stewart; pp. 105, 107, 112, Rodney Settee); ICC Transcript, June 27–28, 2001 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 18a, p. 30, Robert Constant); ICC Transcript, June 26, 2002 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 18c, p. 20, Delbert Brittain).

¹⁷³ ICC Transcript, November 19, 2001 (ICC Exhibit 12a, p. 44, Thomas Laliberte).

that they needed in order to be successful.¹⁷⁴ Other families returned to Cumberland House, or chose not to leave at all, “because they didn’t want to become farmers.”¹⁷⁵

Leadership of Cumberland Band at Fort à la Corne, 1886–92

There is some evidence that Peter Chapman, originally a headman of the Cumberland Band in Treaty 5, was informally acknowledged as the leader of the Cumberland contingent at Fort à la Corne by the Department of Indian Affairs. However, this practical recognition was never formalized. Beginning in 1886, Assistant Indian Commissioner Hayter Reed and the local Indian Agent (in addition to a few other officials) consistently referred to IR 100A as “Peter Chapman’s” reserve and to the Cumberland band members living at IR 100A as “Peter Chapman’s Band.” They continued to do so until around the time of Peter Chapman’s death in 1892.

Although the designation of the group as such was not entirely consistent or without confusion, it is clear that local department employees and officials most commonly referred to the group in this way. In 1887, Surveyor John C. Nelson reported that Peter Chapman was “looked upon as chief of the band” by the Cumberland people living at Fort à la Corne, although the Department of Indian Affairs report for that year stated that the “100a Cumberland Indians” had “no regular chief.”¹⁷⁶ When Agent McKenzie referred to the Cumberland contingent as “Peter Chapman’s Band” in one of his 1888 monthly reports, there was some confusion in Ottawa. The department wrote to the Assistant Indian Commissioner to clarify the matter, saying that, “[a]s respecting the Band designated by Mr. McKenzie as ‘Peter Chapman’s,’ the Department has no knowledge of them under

¹⁷⁴ ICC Transcript, November 19, 2001 (ICC Exhibit 12a, p. 54, Marcel McGillivray); see also ICC Transcript, November 19, 2001 (ICC Exhibit 12a, p. 44, Thomas Laliberte; p. 80, Pierre Settee; p. 91, Lena Sarah Stewart; pp. 105, 107, 112, Rodney Settee); ICC Transcript, June 27–28, 2001 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 18a, p. 30, Robert Constant); ICC Transcript, June 26, 2002 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 18c, p. 20, Delbert Brittain).

¹⁷⁵ ICC Transcript, November 19, 2001 (ICC Exhibit 12a, p. 80, Pierre Settee); ICC Transcript, June 27–28, 2001 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 18a, p. 30, Robert Constant); ICC Transcript, June 26, 2002 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 18c, p. 20, Delbert Brittain).

¹⁷⁶ John C. Nelson, DLS, In Charge of Indian Reserve Surveys, to SGIA, December 30, 1887, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1887*, 275 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 17, p. 35); Tabular statement, “Situation and Area of Indian Reserves in Treaties 4, 6 and 7,” Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1887*, 281 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 17, p. 38).

that designation.”¹⁷⁷ Reed replied that the group referred to was the “section of the Cumberland Band, whose Reserve is adjoining that of James Smith.”¹⁷⁸

Request for Separate Leadership at IR 100A, 1888

In 1888, the Cumberland contingent at Fort à la Corne requested department permission to appoint their own Chief and councillors, separate from those of the Cumberland Band at Cumberland House. The Indian Commissioner denied their request, with this reasoning:

This Band is a fragment of the Cumberland Band of Treaty No. 5, which has already the number of Chiefs and Councillors allowed a Band, to whom, under the provisions of the Treaty, the annuities and other privileges enjoyed by such office bearers can be accorded.

It would therefore be only possible to allow of the appointment of a Chief and Councillors, who would be composed of appointees, willing to act without the annuities and privileges given the Chief and Councillors of the Cumberland Band; but one serious objection to the adoption of such an arrangement is that they would not for long remain contented with it, and would soon come to regard the withholding of payment and privileges from their office-bearers, in the light of a standing grievance.¹⁷⁹

It should be noted that Peter Chapman was never paid as either Chief or headman on the Cumberland 100A paylists. However, the Cumberland people living at IR 100A viewed him as their leader, as Surveyor Nelson observed when he surveyed the reserve there in 1887. James Smith elder James Burns said that “the old people regarded him as being, when he got to ... Prairie Cree country, as a chief, a leader of his people.”¹⁸⁰ Other stories suggest that he may have been a trader or an

¹⁷⁷ Unidentified author to Hayter Reed, Assistant Indian Commissioner, February 23, 1888, LAC, RG 10, vol. 3793, file 46008 (ICC Exhibit 1, p. 254).

¹⁷⁸ Hayter Reed, Assistant Indian Commissioner, to SGIA, April 16, 1888, LAC, RG 10, vol. 3793, file 46008 (ICC Exhibit 1, p. 270).

¹⁷⁹ Indian Commissioner to the Indian Agent, Duck Lake Agency, July 5, 1888, LAC, RG 10, vol. 1592 (ICC Exhibit 1, pp. 282–83).

¹⁸⁰ ICC Transcript, November 20, 2001 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 18b, p. 25, James Burns); ICC Transcript, June 27–28, 2001 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 18a, p. 56, Robert Constant).

Anglican missionary or church leader.¹⁸¹ The Cumberland House Cree Nation stories say Peter Chapman was never Chief, although he may have been a member of the Cumberland Band. They also maintain that there was never a separate leadership for the Cumberland people at Fort à la Corne, apart from the Chief and council already present at Cumberland House.¹⁸²

BAND MEMBERSHIP

Department Practice for Transfers of Band Membership

In late 1888 and early 1889, ongoing correspondence between Indian Commissioner Hayter Reed and department officials led to the establishment of a procedure for the transfer of membership between bands. On November 12, 1888, a discussion began within the department regarding band amalgamations and membership transfers. In a letter to the SGIA on that date, DSGIA Lawrence Vankoughnet expressed his general opposition to amalgamations, on the basis of his feeling that “the more Indian Bands are kept separate from one another the better, and more especially is this the case where the Bands are divided in religious sentiment.”¹⁸³ He did, however, make an exception in cases where at least one party was “small and unprogressive and might be benefitted.”¹⁸⁴ He explained that his general reservations were based on experience in “the older Provinces,” where the practice

has almost invariably been productive of very serious complications ... causing bitterness of feeling among the members of the respective Bands in regard to their rights upon the Reserve on which they had been jointly located. ... As a rule, when a Band has been allotted a Reserve, it should be kept strictly to that Reserve, and ...

¹⁸¹ ICC Transcript, June 26, 2002 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 18c, pp. 15–16, Delbert Brittain).

¹⁸² ICC Transcript, November 19, 2001 (ICC Exhibit 12a, pp. 15, 59, 63, Pierre Settee; p. 96, Lena Sarah Stewart; p. 112, Rodney Settee).

¹⁸³ L. Vankoughnet, DSGIA, to E. Dewdney, SGIA, November 12, 1888, LAC, RG 10, vol. 3806, file 52332 (ICC Exhibit 1a, p. 90).

¹⁸⁴ L. Vankoughnet, DSGIA, to E. Dewdney, SGIA, November 12, 1888, LAC, RG 10, vol. 3806, file 52332 (ICC Exhibit 1a, p. 91).

no other Indians than the members of the Band should be allowed to locate thereon.¹⁸⁵

Two weeks later, on November 23, 1888, Vankoughnet informed Indian Commissioner Hayter Reed that “it is contrary to the law” to “transfer” anyone to another band, except in cases where a woman marries into it.¹⁸⁶ Reed disagreed with the department’s thinking on this point. He argued that the *Indian Act* should be amended to allow “transfers” of membership when necessary, noting that “it has been our endeavour, in the past, to prevent, as much as possible, the removal either permanent or temporary of Indians from one reserve to another; but there were occasionally cases where a judicious discretion had to be exercised.”¹⁸⁷ In support of this proposal, he noted as an example “the breaking up of some of the reserves in the north after the late rebellion, and the consequent scattering of the Indians among other reserves” – a situation that “necessarily” created a large number of applications for transfer.¹⁸⁸

In response, the department argued that, if transfers of membership were allowed, there would likely be much confusion regarding land and treaty rights, especially for those joining a band within a different treaty area.¹⁸⁹ Furthermore, it was stated that the *Indian Act* was designed to protect the rights of Indians owning particular reserves, and, based on experience,

[n]o end of complicat[ed] questions have arisen in connection with the ownership of land and the treaty rights of Indians who were in years gone by irregularly admitted to the membership of Bands in the older Provinces of which they had not originally

¹⁸⁵ L. Vankoughnet, DSGIA, to E. Dewdney, SGIA, November 12, 1888, LAC, RG 10, vol. 3806, file 52332 (ICC Exhibit 1a, pp. 92–93).

¹⁸⁶ [L. Vankoughnet, DSGIA], to Hayter Reed, Indian Commissioner, November 23, 1888, LAC, RG 10, vol. 3807, file 52583-2 (ICC Exhibit 1a, p. 96).

¹⁸⁷ Hayter Reed, Indian Commissioner, to SGIA, January 21, 1889, LAC, RG 10, vol. 3807, file 52583-2 (ICC Exhibit 1a, p. 97).

¹⁸⁸ Hayter Reed, Indian Commissioner, to SGIA, January 21, 1889, LAC, RG 10, vol. 3807, file 52583-2 (ICC Exhibit 1a, p. 98).

¹⁸⁹ [L. Vankoughnet, DSGIA], to the Indian Commissioner, January 29, 1889, LAC, RG 10, vol. 3807, file 52583-2 (ICC Exhibit 1a, pp. 100–1).

been members and whose rights and those of their descendants to membership and ownership were subsequently disputed by the original members of the Band.¹⁹⁰

Reed persisted in his attempt to have the department reconsider its position, bringing attention to cases that would benefit from a change in policy. He suggested, as a possible mechanism for such transfers, that a written statement of the person desiring transfer, as well as the consent of the Chief and council of the receiving band, should be required.¹⁹¹

The department seems to have acquiesced to Reed's suggestions. In a letter dated March 18, 1889, it was conceded that, in exceptional cases, transfers should be allowed. However,

the circumstances connected with any case of transfer should be of the most exceptional nature to justify the same, and it should be done in the most formal manner, viz. the person whom it is proposed to transfer should be allowed to do so by a vote of the majority of the ~~Indians~~ voting members of the Band to whom this Indian to be transferred belonged, and a paper expressing their consent to his or her being transferred should be signed by the Chief & Headmen [illegible] also the ~~party to be~~ "transferree" should in like manner be admitted only upon a vote of the majority of the voting members of the Band to which he or she is to be transferred consenting to the same and after full explanation [having] been given to the Band that the Indian who it is proposed shall join that Band shall be entitled to share in all land and other privileges of said Band and a document signifying that such consent has been given should be signed by the Chief & Headmen of the Band to which the applicant has been admitted and should be certified by the Agent.¹⁹²

The procedure for handling such transfers – requiring the written consent of a majority of the voting members of both the originating and the receiving bands – appears to be what was to become department practice.

¹⁹⁰ [L. Vankoughnet, DSGIA], to the Indian Commissioner, January 29, 1889, [in LAC, RG 10, vol. 3807, file 52583-2] (ICC Exhibit 1a, pp. 102–3).

¹⁹¹ Hayter Reed, Indian Commissioner, to DSGIA, March 14, 1889, LAC, RG 10, vol. 3807, file 52583-2 (ICC Exhibit 1a, p. 106).

¹⁹² [L. Vankoughnet, DSGIA], to the Indian Commissioner, March 18, 1889, LAC, RG 10, vol. 3807, file 52583-2 (ICC Exhibit 1, pp. 310–11). Text is as it appears on the document, with "Indians" and "party to be" struck out.

Settlement of Chakastaypasin Band Members at Fort à la Corne, 1885–91

Chief Chakastaypasin and four headmen, including Kahtapiskowat (also known as Big Head), signed Treaty 6 in August 1876 near Fort Carlton, at the same time as the James Smith Band.¹⁹³ IR 98 was first surveyed in 1878 for the Chakastaypasin Band on the south branch of the Saskatchewan River, near John Smith's reserve and the settlement of Prince Albert.¹⁹⁴

Following the outbreak of the North-West Rebellion in 1885, the Chakastaypasin Band scattered. A number of Chakastaypasin band members initially fled to the Stoney Creek and Carrot River valley areas, one of their traditional territories.¹⁹⁵ The Carrot River runs through the northern portion of what would later become IR 100A, and Stoney Creek was located farther south. James Smith band elders say that Chief James Smith invited the Chakastaypasin people to camp on IR 100 until the fighting was over.¹⁹⁶ At the end of 1885, six Chakastaypasin families, including Kahtapiskowat and his extended family, received their annuities on the James Smith band payroll.¹⁹⁷

One of the important outcomes of the North-West Rebellion for the Chakastaypasin Band was the department's characterization of the entire band in 1885 as "rebels." This generalization led to the department's efforts to "break up" the band and depose Chief Chakastaypasin.¹⁹⁸ Shortly

¹⁹³ *Treaty No. 6 between Her Majesty the Queen and the Plain and Wood Cree Indians and Other Tribes of Indians at Fort Carlton, Fort Pitt and Battle River with Adhesions* (Ottawa: Queen's Printer, 1964), 5–6 (ICC Exhibit 13b, pp. 6–7).

¹⁹⁴ Order in Council PC 1151, May 17, 1889, p. 50 (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 6b).

¹⁹⁵ ICC Transcript, June 27–28, 2001 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 18a, p. 28, Robert Constant); ICC Transcript, January 28–29, 2003 (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 16b, pp. 15–16, 43, Sol Sanderson; p. 110, Raymond Sanderson); ICC Transcript, May 27–29, 2003 (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 17b, p. 87, Louise Smokeyday, Kinistin First Nation).

¹⁹⁶ ICC Transcript, June 27–28, 2001 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 18a, p. 32, Robert Constant; p. 117, Violet Sanderson); ICC Transcript, June 26, 2002 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 18c, pp. 43, 49–50, Delbert Brittain); ICC Transcript, January 28–29, 2003 (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 16b, pp. 84–85, 88, Terry Sanderson; p. 111, Raymond Sanderson; p. 217, Jake Sanderson).

¹⁹⁷ Treaty annuity payroll, James Smith Band, 1885, LAC, RG 10, vol. 9418 (ICC Exhibit 1, pp. 175–76).

¹⁹⁸ Edgar Dewdney, Indian Commissioner, to SGIA, June 19, 1885, LAC, RG 10, vol. 3714, file 21088-2 (see also copy of letter in LAC, RG 10, vol. 3584, file 1130) (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 1, pp. 188, 193).

thereafter, in 1886, a distinction was made: a portion of the band, led by Chief Chakastaypasin, continued to be viewed as “rebels,” while the remaining portion of the band, led by Kahtapiskowat, came to be viewed as “loyal.”¹⁹⁹ As early as 1886, the department ordered that the Chakastaypasin band members living near Fort à la Corne be “amalgamated” with the James Smith Band.²⁰⁰ Assistant Indian Commissioner Hayter Reed later commented that the Chakastaypasin Band had consented “to join Peter Chapman’s Band,” but there is no record of this agreement.²⁰¹

It is difficult to determine exactly where Chakastaypasin band members were living during the years 1885–87. However, it is known that some stayed in the vicinity of Fort à la Corne, some returned to IR 98, and others either disappeared or joined other bands. Some Chakastaypasin members may have planted gardens in 1887 at or near IR 100A (surveyed that year), but returned to IR 98 for the winter.²⁰² However, the surveyor made no mention of Chakastaypasin band members located at IR 100A in his survey report that year.²⁰³

At the beginning of 1888, a portion of the Chakastaypasin Band (including Kahtapiskowat and his family) were living at IR 98, and at least some of the other members were living at Fort à la Corne.²⁰⁴ In January 1888, Indian Agent R.S. McKenzie reported that some of those living at Fort à la Corne had requested the department to “take back the Reserve on the South Branch, and give

¹⁹⁹ E. Dewdney, Indian Commissioner, to Acting Indian Agent, May 25, 1886, LAC, RG 10, vol. 1591 (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 1, p. 234); Statement of “Chiefs and Head Men of Chakastaypasin’s and John Smith’s Bands,” c. February 1889, no file reference available (ICC Exhibit 1a, pp. 104–5).

²⁰⁰ Acting Indian Agent, to George Goodfellow, Farm Instructor, June 17, 1886 [LAC, RG 10, vol. 9098, book 1, p. 82] (ICC Exhibit 1a, p. 53).

²⁰¹ Hayter Reed, Assistant Indian Commissioner, to SGIA, April 14, 1888, LAC, RG 10, vol. 3793, file 46008 (ICC Exhibit 1, p. 268).

²⁰² Hayter Reed, Assistant Indian Commissioner, to SGIA, April 14, 1888, LAC, RG 10, vol. 3793, file 46008 (ICC Exhibit 1, p. 268).

²⁰³ John C. Nelson, DLS, In Charge of Indian Reserve Surveys, to SGIA, December 30, 1887, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1887*, 275 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 17, p. 35).

²⁰⁴ R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, January 31, 1888, LAC, RG 10, vol. 3793, file 46008 (ICC Exhibit 1, pp. 239–41).

them a Reserve near James Smith's at La Corne."²⁰⁵ The department agreed in February 1888 that this exchange should be done.²⁰⁶ Agent McKenzie subsequently met with Kahtapiskowat at IR 98 in March 1888 and reported that "Big Head and his men" were prepared to relinquish the reserve at any time and join Peter Chapman's Band, but that they expected something for so doing no matter how small."²⁰⁷ On May 23, 1888, McKenzie reported that "Big Head and his band" had left IR 98 earlier that month and moved to Fort à la Corne to "join Chapman's Band."²⁰⁸

The October 1888 Cumberland 100A payroll shows six Chakastaypasin families grouped at the end according to their Chakastaypasin ticket numbers and marked with an "A." The notations beside these names on the payroll state that they were "now transf[erre]d" or "transf[erre]d from Chakastaypasin."²⁰⁹ A seventh family, "transferred" that year from the James Smith Band to the Cumberland 100A payroll, was likely a former Chakastaypasin family, paid under Chakastaypasin ticket no. 13 from 1876 to 1880.²¹⁰ The corresponding Chakastaypasin band payroll for October 1888 states that six families had "transferred to the Cumberland Band."²¹¹ As noted above, the department mechanism for such "transfers" was not formalized until 1889. Furthermore, section 140 of the

²⁰⁵ R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, January 31, 1888, LAC, RG 10, vol. 3793, file 46008 (ICC Exhibit 1, pp. 239–40).

²⁰⁶ Unidentified author to Hayter Reed, Assistant Indian Commissioner, February 23, 1888, LAC, RG 10, vol. 3793, file 46008 (ICC Exhibit 1, p. 253); marginal note written by Edgar Dewdney on letter from R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, January 31, 1888, LAC, RG 10, vol. 3793, file 46008 (ICC Exhibit 1, p. 240).

²⁰⁷ R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, March 31, 1888, LAC, RG 10, vol. 3793, file 46008 (ICC Exhibit 1, p. 263).

²⁰⁸ R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, May 23, 1888, LAC, RG 10, vol. 9098, book 4, p. 95 (ICC Exhibit 1, p. 274).

²⁰⁹ Treaty annuity payroll, "Cumberland Band Paid at Peter Chapman's Reserve," 1888, no file reference available (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 9a, p. 4).

²¹⁰ Treaty annuity payroll, "Cumberland Band Paid at Peter Chapman's Reserve," 1888, no file reference available (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 9a, p. 4); Sturgeon Lake First Nation, "Families of the Chakastapaysin Band: Remarks on Homik's Tracing Study from the Perspective of the Sturgeon Lake First Nation," revised May 1997 (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 17c, pp. 65, 82, 85).

²¹¹ Treaty annuity payroll, Chakastaypasin Band, 1888, no file reference available (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 12a, p. 219).

Indian Act, which provided the statutory basis for such membership transfers, did not come into force until 1895.

In 1889, the Chakastaypasin band payroll was discontinued.²¹² The annuities of Chief Chakastaypasin and his grandson, Neesoopahtawein, were reinstated that year (after having been withheld since 1885 from those identified by the department as “rebels”). Both men received their annuities on the Cumberland 100A payroll that year under new ticket numbers (rather than their old Chakastaypasin band ticket numbers).²¹³ Chief Chakastaypasin was no longer recognized as Chief and did not receive the extra annuity associated with that position, while Kahtapiskowat continued to be recognized as a headman and received the associated extra annuity.²¹⁴ On October 23, 1889, Agent McKenzie reported that the Chakastaypasin Band “is now thoroughly broken up” and its members settled with the One Arrow, James Smith, and Cumberland Bands.²¹⁵

Although Chakastaypasin members appeared on the Cumberland 100A payroll in October 1888, it is not certain when they settled at IR 100A. However, the historical record suggests that at least some Chakastaypasin band members were settled on the southwest corner of IR 100A by 1889.²¹⁶ Even then, former Chief Chakastaypasin and some followers continued to winter south of IR 100A near Stoney Creek.²¹⁷ In August 1890, Indian Agent McKenzie and Inspector of Indian

²¹² Treaty annuity payroll, Chakastaypasin Band, 1889, no file reference available (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 12a, p. 221).

²¹³ Treaty annuity payroll, “Cumberland Band Paid at Reserve,” 1889, no file reference available (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 9a, p. 7). See ticket nos. 86 and 88.

²¹⁴ Treaty annuity payroll, “Cumberland Band Paid at Reserve,” 1889, no file reference available (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 9a, pp. 5, 7). See ticket nos. 2A and 86; see also Statement of “Chiefs and Head Men of Chekastaypasin’s and John Smith’s Bands,” c. February 1889, no file reference available (ICC Exhibit 1a, pp. 104–5).

²¹⁵ R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, October 23, 1889, LAC, RG 10, vol. 3831, file 62987 (ICC Exhibit 1, p. 334).

²¹⁶ See, for example, R.S. McKenzie, Indian Agent, Duck Lake Agency, to Hayter Reed, Indian Commissioner, April 30, 1889, LAC, RG 10, vol. 3793, file 46008 (ICC Exhibit 1, p. 316); R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, August 31, 1890, LAC, RG 10, vol. 3793, file 46008 (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 1, p. 571).

²¹⁷ R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, March 1890, LAC, RG 10, vol. 3793, file 46008 (ICC Exhibit 1, p. 342).

Agencies Alexander McGibbon reported that Kahtapiskowat and Chakastaypasin were settled at the “extreme South West corner” of IR 100A, engaged in farming and putting up houses.²¹⁸

In May 1891, Indian Commissioner Hayter Reed reported that 26 Chakastaypasin band members had been “amalgamated” with the “Cumberland Band.”²¹⁹ In October 1891, the Chakastaypasin members were given new ticket numbers on the Cumberland 100A paylists.²²⁰

Transfers to Cumberland Band, 1891

By 1889, it appears that most of the Cumberland band members were settled on the northern portion of IR 100A, while most of the Chakastaypasin band members chose to settle separately on the southern portion.²²¹ For their own convenience and administrative purposes, however, local department officials reported jointly on the activities and agricultural progress of both groups at IR 100A.²²²

²¹⁸ Alexander McGibbon, Inspector of Indian Agencies and Reserves, to the Indian Commissioner, September 1, 1890, LAC, RG 10, vol. 3843, file 72695-1 (ICC Exhibit 1a, p. 124); R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, August 31, 1890, LAC, RG 10, vol. 3793, file 46008 (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 1, p. 571).

²¹⁹ Hayter Reed, Indian Commissioner, to DSGIA, May 20, 1891, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1a, p. 136).

²²⁰ Treaty annuity payroll, “Cumberland Band Paid at Reserve,” 1891, no file reference available (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 9a, pp. 15–16).

²²¹ John C. Nelson, DLS, In Charge of Indian Reserve Surveys, to SGIA, December 30, 1887, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1887*, 275 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 17, p. 35); Alexander McGibbon, Inspector of Indian Agencies and Reserves, to the Indian Commissioner, September 1, 1890, LAC, RG 10, vol. 3843, file 72695-1 (ICC Exhibit 1a, p. 124); see also Justus Wilson, Farmer, John Smith Reserve, to R.S. McKenzie, Indian Agent, Duck Lake Agency, February 24, 1891, LAC, RG 10, vol. 1596 (ICC Exhibit 1, p. 352); Diary of Justus Wilson, John Smith’s Reserve, July 1891, LAC, RG 10, vol. 1596 (ICC Exhibit 1, p. 355).

²²² R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, June 1889, LAC, RG 10, vol. 3793, file 46008 (ICC Exhibit 1, pp. 320–21); R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, September 1889, LAC, RG 10, vol. 3793, file 46008 (ICC Exhibit 1, pp. 330–31); Return showing crops sown and harvested by Individual Indians in Duck Lake Agency, 1890, in Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1890*, 284 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 17, p. 94); Alexander McGibbon, Inspector of Indian Agencies and Reserves, to the Indian Commissioner, September 1, 1890, LAC, RG 10, vol. 3843, file 72695-1 (ICC Exhibit 1a, pp. 123–25); Return showing crops sown and harvested by Individual Indians in Duck Lake Agency, 1891, in Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1891*, 314 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 17, p. 105); Alexander McGibbon, Inspector of Indian Agencies and Reserves, to SGIA, September 9, 1892, Canada, *Annual Report*

On September 4, 1891, Chakastaypasin and Cumberland band members, described as “members of the Band owning the Reserve ... known as Cumberland Reserve No. 100A,” signed a Consent to Transfer for Nanequaneum from Beardy’s Band, which stated:

We the undersigned Councillors and members of the Band of Indians owning the Reserve situated in treaty No. 6 and known as the Cumberland Reserve No. 100A do by these presents certify that the said Band has by vote of the majority of its voting members present at a meeting summoned for the purpose according to the Rules of the Band, and held in the presence of the Indian Agent for the locality on the 4th day of September 1891, granted leave to “Nanequaneum” No. 35 of Beardy’s Band No. 97 to be transferred from said band to this our Band of Indians owning the Reserve as situated at Fort a la Corne in Treaty No. 6 and known as Cumberland Reserve to which transfer, we the undersigned hereby give our consent.²²³

The consent contains the signatures of five Cumberland band members and two Chakastaypasin band members, George Sanderson and “Big Head per G. Sanderson.”²²⁴ The department approved the transfer of Nanequaneum to “Peter Chapman’s Band” on October 20, 1891,²²⁵ and he appeared the next year as ticket no. 105 on the 1892 payroll for “Big Head’s Band 100A.”²²⁶

The October 13, 1891, Cumberland 100A payroll shows that a grandson of Kahtapiskowat moved from the James Smith Band to the Cumberland Band 100A that year and received his own ticket number, following his marriage into one of the Chakastaypasin families.²²⁷ No Consent of Band to Transfer form was signed for his admission to the Band.

of the Department of Indian Affairs for the Year Ended December 31, 1892, 89 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 17, pp. 108–9).

²²³ Consent of Band to Transfer, September 4, 1891, LAC, RG 10, vol. 3862, file 83104 (ICC Exhibit 1, p. 356).

²²⁴ Consent of Band to Transfer, September 4, 1891, LAC, RG 10, vol. 3862, file 83104 (ICC Exhibit 1, p. 356).

²²⁵ Unidentified author and recipient, October 20, 1891, LAC, RG 10, vol. 3862, file 83104 (ICC Exhibit 1a, p. 150).

²²⁶ Treaty annuity payroll, Big Head Band, 1892, no file reference available (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 9b, p. 2). See ticket no. 105.

²²⁷ Treaty annuity payroll, “Cumberland Band Paid at Reserve,” 1891, no file reference available (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 9a, p. 2). See ticket no. 100, “Qwatwaywayweein, or James.”

Death of Peter Chapman, 1892

Peter Chapman died on April 29, 1892.²²⁸ Around this same time, there was a shift in terminology, as the Cumberland contingent began to be more commonly referred to as the Cumberland Band or some variation of Cumberland Band 100A. This usage was fairly consistent until 1902.

Paylists for Big Head and Cumberland Bands at IR 100A, 1892–96

An important departmental effort to distinguish between the Cumberland and Chakastaypasin band members living at IR 100A began in 1892, but lasted for only four years. In May 1892, on the instructions of DSGIA Vankoughnet, who was concerned with maintaining the distinction of the Cumberland Band's Treaty 5 status,²²⁹ Commissioner Hayter Reed instructed the Indian Agent to keep the Cumberland people separate from all others on the paylists and returns. He conceded that this distinction might be difficult, since "a portion of the Chekastaypaysin's Band, and possibly some other Indians of Treaty Six are merged with them."²³⁰ That year, a new payroll was created for "Big Head's Band," and the Agent's tabular statements list the "100A Big Head's" and the "100A Cumberland" Bands separately.²³¹

²²⁸ "Register of Indian Deaths for Band 100A," entry for April 29, 1892, LAC, RG 10, vol. 9995 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 25e, p. 33).

²²⁹ [L. Vankoughnet, DSGIA], to Hayter Reed, Indian Commissioner, April 22, 1892, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 359–60).

²³⁰ Hayter Reed, Indian Commissioner, to the Indian Agent, Duck Lake Agency, May 7, 1892, no file reference available (ICC Exhibit 1a, p. 151).

²³¹ Treaty annuity payroll, Big Head Band, 1892, no file reference available (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 9b, pp. 1–2); see, for example, Statement of Farming Agencies and Indian Reservations: Approximate return of grain and roots sown and harvested, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1892*, 332–33 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 17, pp. 120–21); Statement of Farming Agencies and Indian Reservations: Approximate return of grain and roots sown and harvested, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1893*, 387 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 17, p. 136); Number and whereabouts of Indians in the North-West Territories, 1893, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1893*, 399 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 17, p. 138); Number and whereabouts of Indians in the North-West Territories, 1895, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1895*, 400–3 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 17, pp. 186–89).

Commutation of Annuity, 1892

On March 11, 1892, a “Consent of Band to Commutation of Annuity” for Mrs Albert Ballendine was signed by “Chiefs and Councillors of the Cumberland (No. 100a) Band of Indians owning the reserve situated at Fort à la Corne.”²³² This form was signed entirely by Cumberland band members: Peter Chapman, William Head, James Head, Fredrick Okeekoop, Samuel Brittain, Patrick Brittain, and Edwin Brittain.²³³

Transfers into Big Head’s Band, 1892–95

During the existence of the Big Head band payroll at IR 100A from 1892 to 1896, there were a number of transfers into Big Head’s Band by various methods.

In September 1891, Chief Chakastaypasin’s daughter (“Paskoostequan’s widow”) and two of her children entered treaty with Big Head’s Band, although they did not appear on the payroll until the following year.²³⁴ In 1894, her son moved from the One Arrow payroll to her ticket on the Big Head band payroll.²³⁵ No Consent to Transfer forms were signed for his admission to the Band.

On March 26, 1894, a Consent to Transfer form was signed for the admission of Yellow Quill member Mah-sah-kee-ask to “Big Head’s Band No. 100A.” The consent states:

We the undersigned Chiefs and Councillors of the Band of Indians owning the Reserve situated in Treaty No. 6 and known as Big Head’s Cumberland Reserve No. 100A, do by these presents certify that the said Band has by vote of the majority of its voting members present at a meeting summoned for the purpose according to the rules of the Band, and held in the presence of the Indian Agent for the locality on the twenty-sixth day of March, 1894, granted leave to Mah-sah-kee-ask No. 84 of Yellow

²³² Consent of Band to Commutation of Annuity, March 11, 1892, LAC, RG 10, vol. 3871, file 88885 (ICC Exhibit 1, p. 358).

²³³ Consent of Band to Commutation of Annuity, March 11, 1892, LAC, RG 10, vol. 3871, file 88885 (ICC Exhibit 1, p. 358).

²³⁴ Treaty annuity payroll, Big Head Band, 1892, no file reference available (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 9b, p. 2). See ticket no. 107. See also Sturgeon Lake First Nation, “Families of the Chakastapaysin Band: Remarks on Homik’s Tracing Study from the Perspective of the Sturgeon Lake First Nation,” revised May 1997 (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 17c, pp. 44, 46).

²³⁵ Treaty annuity payroll, Big Head Band, 1894, no file reference available (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 9b, p. 6). See ticket no. 107.

Quill's Band to join our said Band as a member thereof to share in all land and other privileges of the Band, to which admission we the undersigned also give full consent.²³⁶

Three Big Head band members signed the consent – George Sanderson, John Sanderson, and Big Head – along with two members of the Cumberland Band 100A.²³⁷ The Yellow Quill Band signed the corresponding Consent for the transfer on July 16, 1894.²³⁸ The DSGIA subsequently approved the “transfer” on October 1, 1894.²³⁹

The final transfer into Big Head's Band executed during this period was for the admission of Muskohepakemit of Yellow Quill's Band into “Big Head's Band 100A” residing at “Cumberland 100A Indian Reserve.” The wording on the Consent form is the same as that on the Consent for the transfer for Mah-sah-kee-ask, except for the identification of signatories. This form states that the transfer is approved by the “Chiefs and Councillors of the Band of Indians owning the Reserve situated in Treaty No. 6 and known as Cumberland 100A Reserve.” It was signed entirely by members of Big Head's band, including Kahtapiskowat, who signed as headman.²⁴⁰ The department approved the “transfer” in October, 1894.²⁴¹

²³⁶ Consent of Band to Transfer, March 26, 1894, LAC, RG 10, vol. 3936, file 119149 (ICC Exhibit 1a, p. 153).

²³⁷ Consent of Band to Transfer, March 26, 1894, LAC, RG 10, vol. 3936, file 119149 (ICC Exhibit 1a, p. 153).

²³⁸ Consent of Band to Transfer, July 16, 1894, LAC, RG 10, vol. 3936, file 119149 (ICC Exhibit 1a, p. 155).

²³⁹ Acting DSGIA to Assistant Indian Commissioner, October 1, 1894, LAC, RG 10, vol. 3936, file 119149 (ICC Exhibit 1a, p. 160).

²⁴⁰ Consent of Band to Transfer, September 25, 1894, LAC, RG 10, vol. 3936, file 119588 (ICC Exhibit 1a, p. 159).

²⁴¹ Acting DSGIA to Assistant Indian Commissioner, October [15], 1894, LAC, RG 10, vol. 3936, file 119588 (ICC Exhibit 1a, p. 161).

Farm Instructor Appointed, 1893

In 1893, an instructor was finally appointed for the James Smith, Big Head, and Cumberland Bands at Fort à la Corne.²⁴² However, there does not appear to have been any significant change at this time in how the Fort à la Corne Bands earned a livelihood. In 1895, Agent McKenzie commented that “the Indians of these Bands cannot be looked upon as being farmers ... Hunting is the main source of earnings of these bands.”²⁴³ This comment does not present the whole picture, as some progress had been made. Cattle raising became the focus of agricultural efforts on the James Smith and Cumberland 100A reserves, as the land there was suited to it, and some crops were grown as well. In 1895, Big Head’s Band and the Cumberland Band 100A each had 20 acres cultivated – one quarter more than the amount of the previous year.²⁴⁴

Surrender of 640 Acres at IR 20, 1894

In 1892, a petition from 21 “Half-breeds of Cumberland” living near the HBC settlement at Cumberland House asked that the portion of IR 20 occupied by them be withdrawn from the reserve.²⁴⁵ On December 6, 1892, Surveyor T.D. Green wrote a memorandum to the Deputy Minister of Indian Affairs regarding this proposal. He recommended that the surrender be taken “in view of the fact that the Indians of Cumberland District have 65 sq. miles of good farming lands reserved for them on the Carrot River near Fort à la Corne.”²⁴⁶ In 1894, a surrender of 640 acres at IR 20 was

²⁴² Alexander McGibbon, Inspector of Indian Agencies and Reserves, to SGIA, June 28, 1894, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1894*, 93 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 17, p. 145).

²⁴³ R.S. McKenzie, Indian Agent, to SGIA, July 15, 1895, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1895*, 81 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 17, p. 165).

²⁴⁴ Statement of Farming Agencies and Indian Reservations: Approximate return of grain and roots sown and harvested, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1895*, 400–1 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 17, pp. 186–87).

²⁴⁵ H.T. Vergette, Head of Land Titles Section, DIAND, to Acting District Supervisor, Prince Albert Indian District, February 4, 1970, no file reference available (ICC Exhibit 4).

²⁴⁶ T.D. Green, Department of Indian Affairs, to Deputy Minister, Department of Indian Affairs, December 6, 1892, no file reference available (ICC Exhibit 1, p. 363).

accepted by Order in Council 3147.²⁴⁷ On a 1902 “List of surveys pending in Manitoba and the N.W.T.,” it can be seen that an addition of 640 acres to the “Cumberland House Indian Reserve” in the Pas Agency was planned for that year. The addition, approved by Order in Council of January 25, 1902, was “in lieu of 640 acres surrendered in 1894.”²⁴⁸ There is no available evidence regarding whether the Cumberland band members at IR 100A were informed of this surrender or whether they participated in any vote.

Change of Leadership for the Cumberland Band at IR 20, 1895

Chief Albert Flett served three separate terms as Chief between 1880 and 1892.²⁴⁹ In July 1895, department policy was against the election of band leaders, and officials hoped to do away with the offices altogether. That month, Agent Reader wrote that “[t]he system of doing away with councillors has been adopted where the term of office had expired,” except for those bands where the “practice of denouncing the Government to obtain votes” was not practised.²⁵⁰ On this subject, Inspector McColl commented: “I am thoroughly convinced that all the councillors are generally worse than useless ... at all events the bands to which they belong could be prevailed upon to dispense with their positions altogether, but in the case of the Chiefs, it would be more difficult to do away with.”²⁵¹

²⁴⁷ Letter from H.T. Vergette, Head of Land Titles Section, DIAND, to Acting District Supervisor, Prince Albert Indian District, February 4, 1970, no file reference available (ICC Exhibit 4).

²⁴⁸ A.W. Ponton, “List of surveys pending in Manitoba and N.W.T., 1902,” LAC, RG 10, vol. 3960, file 141977-7 (ICC Exhibit 1, p. 770).

²⁴⁹ Treaty annuity payroll, “Cumberland Band,” 1880, no file reference available (ICC Exhibit 8, p. 16); Treaty annuity paylists, “Cumberland Band paid at Cumberland,” 1883, 1890, no file reference available (ICC Exhibit 8, pp. 30, 57); A. MacKay, Indian Agent, Treaty 5, to J.F. Graham, Acting Indian Superintendent, November 26, 1880, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1880*, 321 (ICC Exhibit 1, p. 8).

²⁵⁰ Extract from journal of J. Reader, Indian Agent, Pas Agency, July 1895, LAC, RG 10, vol. 3943, file 121698-28 (ICC Exhibit 1, p. 424).

²⁵¹ E. McColl, Inspector of Indian Agencies, Manitoba Superintendency, to DSGIA, October 23, 1895, LAC, RG 10, vol. 3943, file 121698-28 (ICC Exhibit 1, p. 433).

In August 1895, when Chief Jeremiah Crane's term expired, Agent Reader wrote in his journal that the Cumberland Band refused to approve the nomination of a new Chief "as directed by the Department." He speculated that, if they had been allowed to select their own chief,

it is probable a number, if not the majority, would have retained the former one, who however is incompetent for the post. A bad feeling has sprung up, and work generally has ceased on the Reserve ... The opposition feeling at present evinced by many will probably die out, and the Indians it is hoped will wisely recognize that Albert Flett is the man to be at the head of Cumberland Band.²⁵²

The annuity paylists for 1895 state that Albert Flett was "nominated as Chief," and he received the extra Chief's annuity.²⁵³ Hayter Reed apparently disagreed with Reader's actions, as he felt that

where it is found after sounding the Indians, that they are adverse to giving up the privilege of electing Chiefs and Councillors, the abolition should not be insisted upon. At the same time the Agent should exert himself as much as possible to meet the views of the Department on the subject.²⁵⁴

Reed wrote to Inspector McColl in October 1895, stating that Albert Flett had not been confirmed as Chief, and inquiring whether an election for a Chief and councillors for the Cumberland Band in the Pas Agency had yet been held. He observed that Agent Reader "seems to have made the appointment though the Indians generally do not approve of the same, and as a result a bad feeling has sprung up."²⁵⁵

McColl disagreed with Reed's assessment, stating that Albert Flett was "a very good man and perhaps the very best man" in the Band to become Chief, although he was appointed against the

²⁵² Extract from journal of J. Reader, Indian Agent, Pas Agency, August 1895, LAC, RG 10, vol. 3943, file 121698-28 (ICC Exhibit 1, p. 425).

²⁵³ Treaty annuity payroll, "Cumberland Band paid at Cumberland," 1895, no file reference available (ICC Exhibit 8, p. 79).

²⁵⁴ Hayter Reed, DSGIA, to unidentified recipient, September 27, 1895, LAC, RG 10, vol. 3943, file 121698-28 (ICC Exhibit 1, p. 428).

²⁵⁵ [Hayter Reed], DSGIA, to E. McColl, Inspector of Indian Agencies, October 2, 1895, LAC, RG 10, vol. 3943, file 121698-28 (ICC Exhibit 1, p. 429).

wishes of the Band, who instead wanted an election to be held. McColl recommended that, “under the circumstances,” Albert Flett be confirmed as Chief, at least until the next annuity payments.²⁵⁶ The department confirmed Albert Flett’s appointment on November 7, 1895, and he was paid as Chief in 1895 and 1896.²⁵⁷

Creation of Section 140 of the *Indian Act*, 1895

Lawrence Vankoughnet retired from his position as Deputy Superintendent General of Indian Affairs in 1893 and was succeeded by Hayter Reed. As a department official, Vankoughnet had been instrumental in having land set aside for the Cumberland band members at Fort à la Corne. He also pushed to maintain the distinction of separate treaty status for the Cumberland band members living at IR 100A, as evidenced by the 1892 separation of the Big Head Band and the Cumberland Band 100A paylists. In contrast, while he was an official in the Indian Commissioner’s office, Hayter Reed generally treated the Cumberland people at IR 100A as their own band. He also pushed for the establishment of a procedure for band membership transfers, as noted previously.

In 1895, the *Indian Act* was amended to formalize the procedures for transfer of membership between bands. Section 140 provided:

When by a majority vote of a band, or the council of a band, an Indian of one band is admitted into membership in another band, and his admission thereinto is assented to by the superintendent general, such Indian shall cease to have any interest in the lands or moneys of the band of which he was formerly a member, and shall be entitled to share in the lands and moneys of the band to which he is so admitted; but the superintendent general may cause to be deducted from the capital of the band of which such Indian was formerly a member his per capita share of such capital and place the same to the credit of the capital of the band into membership in which he had been admitted in the manner aforesaid.²⁵⁸

²⁵⁶ E. McColl, Inspector of Indian Agencies, Manitoba Superintendency, to DSGIA, October 23, 1895, LAC, RG 10, vol. 3943, file 121698-28 (ICC Exhibit 1, pp. 431–32).

²⁵⁷ Treaty annuity paylists, “Cumberland Band paid at Cumberland,” 1895–96, no file reference available (ICC Exhibit 8, pp. 79, 84); marginal note written on letter from E. McColl, Inspector of Indian Agencies, Manitoba Superintendency, to DSGIA, May 26, 1897, LAC, RG 10, vol. 3943, file 121698-28 (ICC Exhibit 1, p. 487).

²⁵⁸ *Indian Act*, RSC 1886, c. 43, s. 140, as amended by SC 1895, c. 35, s. 8 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 24a, p. 59).

Requests for Transfer from Cumberland House, 1896

By 1896, the large expected migration of Cumberland band members from Treaty 5 had not materialized. On May 6, 1896, Inspector McColl inquired “if any of the Cumberland Band who desire to remove to Fort la Corne may still be allowed to do so.”²⁵⁹ He reported that Albert Greenleaf and his family wished to make the move and “that there are others also who will shortly make the same request.”²⁶⁰ In response, Hayter Reed, Deputy Superintendent General of Indian Affairs, instructed Indian Commissioner A.E. Forget that “the Department will allow a few who can and will work, to transfer” to Fort à la Corne “in order to better their condition.”²⁶¹

On May 27, 1896, F.H. Paget, writing for the Indian Commissioner, informed the Indian Agent at Duck Lake of Albert Greenleaf’s application “for transfer to the Cumberland Reserve at a la Corne” and enclosed blank Consent forms “for his admission thereto.” The letter also states that applications of others from Cumberland House would be permitted “if the Bands concerned make no opposition thereto.”²⁶² On June 10, 1896, six “members of the Band of Indians owning the Reserve situated in Treaty No. Six and known as the Cumberland (No. 100A) Reserve” signed the transfer form granting Albert Greenleaf “leave to ... join our said band.”²⁶³ However, he never appeared on the payroll at IR 100A, and no others from the Cumberland Band in Treaty 5 applied for transfer or appear on the paylists at IR 100A at this time.

²⁵⁹ E. McColl, Inspector of Indian Agencies, Manitoba Superintendency, to the Indian Commissioner, May 6, 1896, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 441).

²⁶⁰ E. McColl, Inspector of Indian Agencies, Manitoba Superintendency, to the Indian Commissioner, May 6, 1896, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 441).

²⁶¹ Hayter Reed, DSGIA, to A.E. Forget, Indian Commissioner, May 23, 1896, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 466).

²⁶² F.H. Paget, for the Indian Commissioner, to the Indian Agent, Duck Lake Agency, May 27, 1896, LAC, RG 10, vol. 1594 (ICC Exhibit 1, p. 467).

²⁶³ Consent of Band to Transfer, June 10, 1896, LAC, RG 10, vol. 1594 (ICC Exhibit 1, p. 468).

Transfer of Chakastaypasin Members to Cumberland Band 100A, 1896

Sometime before the fall of 1895, Thomas M. Daly, the SGIA and Minister of the Interior, visited the North-West Territories and took notice of the “very fine tracts of land” within the “unoccupied and unused” Chakastaypasin and Young Chipeewayan reserves.²⁶⁴ On October 18, 1895, he instructed his Deputy Minister, A.M. Burgess, to “open a correspondence with Mr. Reed as to these reserves being surrendered.”²⁶⁵ Soon after, on November 9, 1895, DSGIA Hayter Reed wrote to Indian Commissioner A.E. Forget and inquired

whether the members of Chacastapasin Band were formally transferred to the other Bands with which they become amalgamated, and if not to request that the formal application for such transfer and consent of the Bands concerned to receive applicants may be obtained without delay – and transmitted to the Dept.²⁶⁶

Reed wrote again to Forget in January 1896, asking him whether “action has been completed relative to the formal transfer” of the Chakastaypasin members to other bands. He explained that the Department of Indian Affairs intended to hand control of the Chakastaypasin reserve over to the Department of the Interior, “but desires assurance in the direction indicated before proceeding.”²⁶⁷

On February 3, 1896, Commissioner Forget instructed the Indian Agent at Duck Lake to immediately “obtain the consent of the councils of the several Bands into which these Indians have gone, to their formal admission thereinto,” since it appeared that “no formal transfer of these Indians to the Bands with which they subsequently amalgamated has apparently ever been obtained.”²⁶⁸

²⁶⁴ J. McTaggart, Dominion Lands Agent, to T. Mayne Daly, Minister of the Interior, October 12, 1895, LAC, RG 15, Series D-II-1, vol. 724, file 390906 (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 1, p. 717).

²⁶⁵ Marginal note written on letter from J. McTaggart, Dominion Lands Agent, to T. Mayne Daly, Minister of the Interior, October 12, 1895, LAC, RG 15, Series D-II-1, vol. 724, file 390906 (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 1, p. 717).

²⁶⁶ DSGIA to A.E. Forget, Indian Commissioner, November 9, 1895, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1a, p. 164).

²⁶⁷ Hayter Reed, DSGIA, to A.E. Forget, Indian Commissioner, January 23, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1a, p. 166).

²⁶⁸ A.E. Forget, Indian Commissioner, to the Indian Agent, Duck Lake Agency, February 3, 1896, LAC, RG 10, vol. 1594 (ICC Exhibit 1a, p. 167).

In a letter to Forget dated February 8, 1896, Hayter Reed confirmed that the department intended to use the provisions of section 140 to obtain control of the Chakastaypasin reserve. He wrote that “the Department does not propose to take any surrender of the Chakastaypasin Reserve ... and it is largely on that account that it desires to have the transfer to other Bands, by which the original owners have forfeited all rights in the Reserve set apart for them, formally completed.”²⁶⁹ In subsequent communications with the Agent, Forget instructed that all Chakastaypasin members should be transferred to the “Cumberland Band No. 100a”, and Big Head’s Band should be “done away with.”²⁷⁰ In addition, Forget instructed that all the former Chakastaypasin members being paid with the James Smith Band should be transferred to Cumberland Band 100A as well, since they had “never formally transferred” to James Smith.²⁷¹ However, the Indian Commissioner later agreed that “in the event of the Cumberland Band refusing to sanction the admission,” the Agent could try to obtain the approval of the James Smith Band if the transferees were willing to become members of that Band and live on that reserve.²⁷²

While the Indian Agent and the Indian Commissioner were attempting to organize the formal transfers of Chakastaypasin members, the Department of the Interior continued to press Hayter Reed for “early action” in transferring control of the Chakastaypasin and Young Chipeewayan reserves.²⁷³ Immediately following this communication from the Department of the Interior, Reed wrote to

²⁶⁹ Hayter Reed, DSGIA, to A.E. Forget, Indian Commissioner, February 8, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1a, p. 172).

²⁷⁰ A.E. Forget, Indian Commissioner, to the Indian Agent, Duck Lake Agency, February 17, 1896, no file reference available (ICC Exhibit 1a, p. 173).

²⁷¹ F.H. Paget, for the Indian Commissioner, to the Indian Agent, Duck Lake Agency, April 27, 1896, LAC, RG 10, vol. 1594 (ICC Exhibit 1a, p. 175).

²⁷² F.H. Paget, for the Indian Commissioner, to the Indian Agent, Duck Lake Agency, May 2, 1896, LAC, RG 10, vol. 1594 (ICC Exhibit 1a, p. 176).

²⁷³ J. Hall, Secretary, Department of the Interior, to Hayter Reed, DSGIA, April 22, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 1, p. 755).

Forget asking him to instruct the Agent “not to allow any evitable delay” in completing the formal transfers.²⁷⁴

Consents to Transfer Signed by Cumberland Band 100A

On May 18, 1896, Indian Agent McKenzie wrote to the Indian Commissioner, enclosing “the consents of the members of the Cumberland Band No. 100A to accept into their Band the remnant of Chakastapasins Band No. 98.” McKenzie forwarded 22 Consent forms admitting 16 Big Head families (on 15 forms) and seven James Smith families into the Cumberland Band 100A.²⁷⁵ He explained that a number of the names on the Consent forms had never appeared on the Chakastaypasin paylists, but that “these people are descendants or have become members since 1888 and have never been legally transferred to any band, even although some of them have been paid Treaty with James Smith’s Band.”²⁷⁶ Some of those referred to by McKenzie were Chakastaypasin members who had moved to the James Smith band paylists before the Rebellion in 1885. Others were not former Chakastaypasin band members, but they had family connections to members of the band. A notation on the Consent forms for these individuals states that they wished “to be transferred to Cumberland Band with the remnant of Chakastaypasin 98.”²⁷⁷ An additional Consent to Transfer

²⁷⁴ Hayter Reed, DSGIA, to A.E. Forget, Indian Commissioner, April 23, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1a, p. 174).

²⁷⁵ R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, May 18, 1896, enclosing 22 Consent of Band to Transfer forms dated May 10, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, pp. 442–65).

²⁷⁶ R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, May 18, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 443).

²⁷⁷ Consents of Band to Transfer, May 10, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, pp. 456–61, 465); see also Sturgeon Lake First Nation, “Families of the Chakastapaysin Band: Remarks on Homik’s Tracing Study from the Perspective of the Sturgeon Lake First Nation,” revised May 1997 (ICC, James Smith Cree Nation Chakastaypasin IR98 Inquiry, Exhibit 17c, pp. 46–7, 107–10). The members referred to were Paskoostequan’s widow (Baldhead), Alexander Baldhead, Oopeepoquankahkisseewaywake (Hard Sounding Flute), Quaywaywayweein, William Hard Sounding Flute, Mahsakask, and Maskochepatemit.

form admitting one former Chakastaypasin member into the James Smith Band was also forwarded at this time, making 23 Consent forms in total.²⁷⁸

The Consent to Transfer forms admitting the Chakastaypasin band members into “Cumberland Indian Reserve No. 100A La Corne” are dated May 10, 1896, and read as follows:

We the undersigned Chief and Councillors of the Band of Indians owning the reserve situated in Treaty No. Six and known as “Cumberland Reserve,” do, by these presents certify that the said Band has by vote of the majority of its voting members present at a meeting summoned for the purpose, according to the rules of the band, and held in the presence of the Indian Agent for the locality on the tenth day of May 1896, granted leave to ... join our said band, and as a member thereof to share in all land and other privileges of the Band, to which admission we the undersigned also give full consent.²⁷⁹

Sixteen of the forms have the words “Chief and Councillors” struck out and replaced with the word “members.” All the forms are certified by Agent R.S. McKenzie, witnessed by John S. Gordon and Angus McKay, and signed by seven Cumberland band members with an X mark.²⁸⁰ Although the Consent to Transfer forms were evidently signed by Cumberland members, Delbert Brittain says that the elders do not remember having a meeting to accept the Chakastaypasin members into their band.²⁸¹

In his covering letter forwarding the Consent forms, McKenzie explained that

the reason the Cumberland Band did not give their consent sooner was because they wished to know if by so doing they would be allowed to appoint a Chief and Councillors. However, after I explained to them that I did not expect this privilege

²⁷⁸ Consents of Band to Transfer, May 10, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, pp. 444–65); Consent of Band to Transfer, March 17, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 1, p. 779).

²⁷⁹ Consents of Band to Transfer, May 10, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, pp. 444–65).

²⁸⁰ Consents of Band to Transfer, May 10, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, pp. 444–65).

²⁸¹ ICC Transcript, June 26, 2002 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 18c, p. 46, Delbert Brittain).

would be extended to them but that I would submit their desire to the Department, I got them to sign the papers without any difficulty.²⁸²

A marginal note signed by “F.H.P.” for the Indian Commissioner states that “[t]he Agent will be asked to inform the band that their request cannot be granted.”²⁸³ McKenzie reported, however, that the Chakastaypasin members had not yet consented to join the Cumberland Band because “they do not wish to give up their claim to their Reserve.”²⁸⁴

In his covering letter to the DSGIA forwarding these Consent to Transfer forms and McKenzie’s letter, Commissioner Forget commented that “it will be seen that these Indians either do not comprehend the full effect of their transferring themselves to another Band or have only accepted the same conditionally.”²⁸⁵ Reed replied:

With regard to the unwillingness of the members of the Chakastaypasin Band to surrender their title to the Reserve which they have left ... the Agent should be instructed to tell them that since by admission to other Bands they share all privileges with the Bands concerned, including the right to the Reserves, they can not, in the opinion of the Department, expect any compensation for relinquishing their own Reserve, and have in fact already done so by leaving it and taking up permanent abode upon others.

They should be reminded that it is somewhat late for them to set up such a claim after they have been virtually members of other Bands for years, which they joined entirely of their own accord, the Department refraining from making any objection; and they should be told, moreover, that in order to complete the transfers and make the privileges accorded them by the other Bands secure they should make no delay with regard to formal application for admission.

²⁸² R.S. McKenzie, Indian Agent, to the Indian Commissioner, May 18, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 442).

²⁸³ Marginal note written by F.H. Paget for the Indian Commissioner on letter from R.S. McKenzie, Indian Agent, to the Indian Commissioner, May 18, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 442).

²⁸⁴ R.S. McKenzie, Indian Agent, to the Indian Commissioner, May 18, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 442).

²⁸⁵ F.H. Paget, for the Indian Commissioner, to DSGIA, May 23, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1a, p. 177).

The Agent should be further instructed to act promptly in this matter, as the longer time the Indians have to think about and talk it over, and to be influenced by others, the more unreasonable they are likely to become.²⁸⁶

By May 10, 1896, the department had obtained the consent of the Cumberland Band 100A to the admission of the Chakastaypasin members into their Band, but it did not yet have the consent of the Chakastaypasin members themselves for the transfers.

Applications for Admission to Cumberland Band 100A and James Smith Band

On June 5, 1896, Commissioner Forget instructed Agent McKenzie to obtain an application from each Chakastaypasin head of family for admission “into membership in the Band which has consented to receive them,” even though consent for their admission to IR 100A had already been obtained on May 10, 1896. Forget noted that this procedure was “necessary” “in the absence of the customary consent of band to release members applying for transfer, which cannot in this case be procured as the whole band or remnant thereof, is being transferred.”²⁸⁷ He wrote: “No time should be lost in having the work completed and the papers forwarded, for the longer the matter is allowed to stand open the more chance there is of the present tendency to opposition developing into a pronounced refusal, and this it is desired to avoid.”²⁸⁸ He also instructed the Agent to tell the Chakastaypasin Band that admission into other bands entailed

all the privileges including the right to lands, which they enjoyed as members of a separate band, and for this reason they cannot expect compensation where no loss is sustained. ... In any case they have practically relinquished all claim to their old reserve by abandoning it and taking up their abode on others and after years of practical membership in such other bands, which was not opposed by the Department, it is now somewhat late to set up any claims to lands ... They might also

²⁸⁶ Hayter Reed, DSGIA, to A.E. Forget, Indian Commissioner, June 2, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC, James Smith Cree Nation Chakastaypasin IR98 Inquiry, Exhibit 1, pp. 811–12).

²⁸⁷ F. Paget, for the Indian Commissioner, to the Indian Agent, Duck Lake Agency, June 5, 1896, no file reference available (ICC Exhibit 1a, p. 178).

²⁸⁸ F. Paget, for the Indian Commissioner, to the Indian Agent, Duck Lake Agency, June 5, 1896, no file reference available (ICC Exhibit 1a, p. 178).

be informed that in order to definitely assure themselves of the privileges now offered them in connection with other bands, they had better, in their own interests, make no unnecessary delay in accepting the offer while it remains open.²⁸⁹

On receipt of these instructions, Agent McKenzie called a meeting “of the members who were not absent” on June 12 and made an unsuccessful attempt to get their signatures on an application for transfer. He reported that “they flatly refuse unless they are allowed something for the Checastapasins Reserve” and that, in any case, only a few members were present.²⁹⁰ He suggested that “the only time it will be possible to get the Band together will be at Treaty payments and I am in hopes by that time to induce them to sign the document but I cannot say positively that I shall be able.”²⁹¹ DSGIA Reed reluctantly agreed to this plan of action, commenting to Commissioner Forget that “apparently nothing can be done in the matter pending the fresh effort to be made by the Agent later on, but you will see that it is not lost sight of.”²⁹² However, he instructed that, “should the Agent find it less difficult to get the Indians to make individual applications,” he should pursue that course rather than trying to get all the signatures on a single application.²⁹³ Forget communicated these instructions to the Agent, informing him that since it was “useless” to approach the Chakastaypasin members as a whole, “except in making the trial you suggest at the approaching treaty payments,” the Agent should “take the members individually and endeavour to win them over one by one, obtaining their signatures as occasion offers.”²⁹⁴

²⁸⁹ F. Paget, for the Indian Commissioner, to the Indian Agent, Duck Lake Agency, June 5, 1896, no file reference available (ICC Exhibit 1a, p. 179).

²⁹⁰ R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, June 20, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 1, p. 815).

²⁹¹ R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, June 20, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 1, p. 815).

²⁹² Hayter Reed, DSGIA, to A.E. Forget, Indian Commissioner, July 2, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 1, p. 816).

²⁹³ Hayter Reed, DSGIA, to A.E. Forget, Indian Commissioner, July 2, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 1, p. 816).

²⁹⁴ A.E. Forget, Indian Commissioner, to the Indian Agent, Duck Lake Agency, July 6, 1896, no file reference available (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 1, p. 817).

On October 15, 1896, at the time of the treaty payments, 27 former Chakastaypasin families applied for admission to the Cumberland Band at IR100A, and another family applied for admission to the James Smith Band.²⁹⁵ No information is available regarding the circumstances surrounding the signing of these applications or any meetings that may have taken place to discuss the transfers. Chakastaypasin and James Smith elders do not recall stories of a meeting or a vote to transfer to another band or any talk of “becoming one band.”²⁹⁶ It is unclear from their statements whether the elders were referring to the 1896 transfer to the Cumberland Band or the 1902 amalgamation with the James Smith Band.

The application for admission to the “Cumberland Band No. 100A” is a single sheet signed by 27 Chakastaypasin members and dated October 15, 1896 (although June is crossed out). It reads as follows:

We, the undersigned, members of the Band of Treaty Indians known as Chacastapasin’s Band No. 98, formerly occupying the Reserve of that name situated in the Duck Lake Agency, but now resident on the Reserve of the Cumberland Band No. 100A, in the same Agency, do hereby make application to be admitted into membership in the said Cumberland Band No. 100A.²⁹⁷

The applications are witnessed by Agent R.S. McKenzie and Sandy Thomas, the Agency interpreter. Included among the applicants are all nine men who later signed the surrender of the Chakastaypasin IR 98 on June 23, 1897.²⁹⁸

²⁹⁵ Application for admission to “Cumberland Band No. 100A,” October 15, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1a, p. 180); also Application for admission to the James Smith Band, October 15, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1a, p. 181).

²⁹⁶ ICC Transcript, June 27–28, 2001 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 18a, p. 45, Robert Constant; pp. 122–23, Violet Sanderson); ICC Transcript, January 28–29, 2003 (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 16b, pp. 35, 38–39, Sol Sanderson; pp. 77, 85, Terry Sanderson; pp. 164–65, Raymond Sanderson, Martha Opoonechaw-Stoneland, Albert Sanderson, and Patrick Stoneland; p. 218, Jake Sanderson).

²⁹⁷ Application for admission to “Cumberland Band No. 100A,” October 15, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1a, p. 180).

²⁹⁸ Surrender for sale of Chakastaypasin IR 98, June 23, 1897, no file reference available (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 1, p. 899).

No annuity payments are recorded on the payroll for “Big Head’s Band Paid at Fort à la Corne,” dated October 14 and 15, 1896. Each name has a note beside it stating that the ticket had been “transferred to Cumberland Band No. 100A,” and referencing the Indian Commissioner’s letter dated June 5, 1896, as the authority for the transfer.²⁹⁹ As mentioned previously, this letter contained instructions from Forget to Agent McKenzie, instructing him to “obtain the signatures of each head of family or adult member thereof, to an application to be transferred to and admitted into membership in the Band which had consented to receive them.”³⁰⁰ The payroll shows that 17 families containing 48 people were transferred from Big Head’s Band to the Cumberland Band 100A at that time.³⁰¹

The payroll for the “Cumberland No. 100A Band, Paid at Reserve Fort à la Corne” on October 14 and 15, 1896, reflects the transfers of the 17 families transferred from the Big Head band payroll. In addition, 10 families (28 people) from the James Smith Band also appear on this payroll, with a note stating that they were now “transferred” to the Cumberland Band and a reference to the Commissioner’s letter dated June 5, 1896. In all, 27 families (with 76 people) transferred to the Cumberland Band 100A at that time.³⁰² The James Smith band payroll also notes the transfer of one person from Big Head’s Band to the James Smith Band on the same date, citing the same Commissioner’s letter as the authority for the transfer.³⁰³

Although all 27 Chakastaypasin families who applied for admission to the Cumberland Band on October 15, 1896, were added to the Cumberland 100A payroll and said to be “transferred,” it was noted that Consent forms had been obtained for the transfer of only 24 of these families. Some

²⁹⁹ Treaty annuity payroll, Big Head Band, October 14–15, 1896, no file reference available (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 9b, pp. 10–11).

³⁰⁰ F. Paget, for the Indian Commissioner, to the Indian Agent, Duck Lake Agency, June 5, 1896, no file reference available (ICC Exhibit 1a, p. 178).

³⁰¹ Treaty annuity payroll, Big Head Band, October 14–15, 1896, no file reference available (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 9b, pp. 10–11).

³⁰² Treaty annuity payroll, “Cumberland Band No. 100A paid at Reserve,” October 14–15, 1896, no file reference available (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 9a, pp. 25–28).

³⁰³ Treaty annuity payroll, James Smith Band, October 14–15, 1896, no file reference available (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 12a, p. 349).

confusion was caused by variant spellings of names on the Consent forms and the application for admission, but it was finally determined that four additional Consents to Transfer and one application for admission were required to complete the formal transfers. The Indian Commissioner instructed the Agent on December 10, 1896, to obtain them “with as little delay as possible.”³⁰⁴ By March 27, 1897, all the necessary Consents to Transfer and applications for admission had been obtained, and the formal transfer of 27 Chakastaypasin families to the Cumberland Band 100A and one family to the James Smith Band under section 140 of the *Indian Act* was complete.³⁰⁵

In the end, the department opted to obtain a formal surrender of Chakastaypasin IR 98, one that was allegedly carried out on June 23, 1897.³⁰⁶

Leadership of Cumberland Band at IR 20 in Treaty 5, 1895–1910

Chief Albert Flett was confirmed as Chief of the Cumberland Band in 1895, but it turned out that he was active in the post for only about a year. The payroll for 1896 shows that he was paid as Chief that year, but it noted that he was “very sick.”³⁰⁷ On May 26, 1897, Inspector McColl informed the department that Chief Flett had been in an asylum at West Selkirk since the previous fall “in consequence of insanity,” and the Agent therefore recommended that Chief Flett be dismissed and another Chief elected.³⁰⁸ A marginal note on McColl’s letter recommended that the Chief “be

³⁰⁴ F. Paget, for the Indian Commissioner, to the Indian Agent, Duck Lake Agency, December 10, 1896, LAC, RG 10, vol. 1594 (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 1, p. 841).

³⁰⁵ Consents of Band to Transfer, May 10, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, pp. 444–65); Application for admission to “Cumberland Band No. 100A,” October 15, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1a, p. 180); Application for admission to the “Cumberland Band,” February 2, 1897, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1a, p. 190); Consent of Band to Transfer, February 2, 1897, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1a, p. 192); Consent of Band to Transfer, March 12, 1897, LAC, RG 10, vol. 1594 (ICC Exhibit 1a, p. 194).

³⁰⁶ Surrender for sale of Chakastaypasin IR 98, June 23, 1897, no file reference available (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 1, pp. 897–99).

³⁰⁷ Treaty annuity payroll, “Cumberland Band paid at Cumberland,” 1896, no file reference available (ICC Exhibit 8, p. 84).

³⁰⁸ E. McColl, Inspector of Indian Agencies, Manitoba Superintendency, to DSGIA, May 26, 1897, LAC, RG 10, vol. 3943, file 121698-28 (ICC Exhibit 1, p. 487).

deposed for incompetency.”³⁰⁹ It appears that no further action was taken, since the Secretary wrote to the Agent in 1899, asking, “If he is in the Asylum should not another Indian be appointed Chief in his place?”³¹⁰ The Agent replied that “for some years past this Band has been scattered over the country and they have been told that no Chief or Headman would be appointed until they settled on their Reserve.”³¹¹ The 1899 Department of Indian Affairs annual report lists Jeremiah Crane as the acting headman for the Cumberland Band in the Pas Agency, with the accompanying note, “Chief in Asylum.”³¹² Chief Flett died in 1902, but authorization to elect a new Chief for the Cumberland Band was not obtained until 1910.³¹³

The treaty annuity paylists show that, during the period 1895–1901, the Cumberland Band had no recognized councillors. As noted above, Jeremiah Crane was appointed as “acting headman” in 1899,³¹⁴ but he did not begin receiving the extra annuity for that position until 1901.³¹⁵ It is uncertain how long he held office or whether other councillors were appointed between 1901 and 1910.

³⁰⁹ Marginal note on letter from E. McColl, Inspector, to DSGIA, May 26, 1897, LAC, RG 10, vol. 3943, file 121698-28 (ICC Exhibit 1, p. 487).

³¹⁰ Secretary to Joseph Courtney, Indian Agent, December 9, 1899, LAC, RG 10, vol. 3979, file 156710-28 (ICC Exhibit 1, p. 583).

³¹¹ Joseph Courtney, Indian Agent, to the Secretary, Department of Indian Affairs, January 8, 1900, LAC, RG 10, vol. 3979, file 156710-28 (ICC Exhibit 1, p. 586).

³¹² List of Indian Chiefs and Councillors, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1899*, 577 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 17, p. 257).

³¹³ Treaty annuity payroll, “Cumberland Band Paid at Cumberland,” 1902, no file reference available (ICC Exhibit 8, p. 114); Fred Fischer, Indian Agent, The Pas Agency, to the Secretary, Department of Indian Affairs, September 24, 1910, LAC, RG 10, vol. 3943, file 121698-28 (ICC Exhibit 1, p. 1111); J.D. McLean, Secretary, to Fred Fischer, Indian Agent, November 16, 1910, LAC, RG 10, vol. 3943, file 121698-28 (ICC Exhibit 1, p. 1119).

³¹⁴ List of Indian Chiefs and Councillors, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1899*, 577 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 17, p. 257).

³¹⁵ Treaty annuity payroll, “Cumberland Band Paid at Cumberland,” 1901, no file reference available (ICC Exhibit 8, p. 109).

Conditions in the Cumberland District, 1890s

It appears that the Cumberland Band in the Cumberland District spent little time at IR 20 in the years following its survey, since conditions required that its members travel long distances to find better hunting and fishing grounds. In his annual report for 1893, Agent Reader reported that most Cumberland band members lived in other locations near IR 20 or farther north.³¹⁶ In 1899, Agent Joseph Courtney reported that, owing to difficult conditions and the loss of employment opportunities with the HBC, the Cumberland Band had in previous years “broken up into small bands” that were “scattered all over the country.”³¹⁷ He reported, however, that there seemed to be a move by the Band to change this fragmentation. He explained: “They are now getting anxious to be united and settled together again, and a strong effort is being made to re-organize the band, with the hope that good results will follow.”³¹⁸

In the immediate years following, however, little seemed to change, despite this desire to reunite the Band. Agent Courtney explained in 1902 that all the bands in the Pas Agency “are not confined to their reserves, but range all over in quest of a living ... They only live four or five months out of the year on their reserves.”³¹⁹ Inspector S.R. Marlatt confirmed this observation in 1900, when he commented of the Cumberland House reserve that it was “used more as a meeting place once a year for the annuity payments than for actual residence.”³²⁰

³¹⁶ J. Reader, Indian Agent, Pas Agency, to SGIA, June 29, 1893, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1893*, 70 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 17, p. 131).

³¹⁷ Joseph Courtney, Indian Agent, to SGIA, September 30, 1899, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1899*, 91 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 17, p. 240).

³¹⁸ Joseph Courtney, Indian Agent, to SGIA, September 30, 1899, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1899*, 91 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 17, p. 240).

³¹⁹ Joseph Courtney, Indian Agent, to SGIA, July 26, 1902, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1902*, 34 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 17, p. 306).

³²⁰ S.R. Marlatt, Inspector of Indian Agencies, Manitoba Superintendency, to SGIA, October 1, 1900, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1900*, 106 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 17, p. 265).

Around the turn of the century, conditions in the Cumberland District improved dramatically. In July 1901, Agent Courtney reported that the muskrats had become very numerous and that, “since the seasons of high water have set in, fish and game can be procured much closer to the reserve and the Indians are staying more at home. The school will be opened this summer.”³²¹ This situation is a dramatic change from previous years, where few lived on the reserve because the scarcity of fish and game forced them to travel long distances for subsistence. The fact that the school was being reopened further testifies to the change, since it had previously been closed because so few lived on the reserve.³²² In September 1902, Inspector Marlatt reported that fur and fish had been “exceptionally plentiful” during the previous winter and spring, and that, “[f]or Indians following the Indian mode of life, this agency is unsurpassed.”³²³ However, Agent Courtney reported in 1902 that, although conditions had improved, “the Indians of this Agency are not confined to their reserves, but range all over in quest of a living, the district being very different from most localities where Indian Reserves are situated: there is practically speaking no farming land nor any settled community within hundreds of miles.”³²⁴ Much later, additional reserves at Pine Bluff (IR 20A and IR 20B), Budd’s Point (IR 20D), and Muskeg River (IR 20C) were surveyed for band members living at those places. As well, a portion of the Band shared the reserve at Birch River with The Pas Band, until it was surrendered in 1918.³²⁵

³²¹ Joseph Courtney, Indian Agent, Pas Agency, to SGIA, July 10, 1901, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1901*, 92, 94 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 17, pp. 290, 292).

³²² For example, Joseph Courtney, Indian Agent, Pas Agency, to SGIA, July 31, 1900, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1900*, 93 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 17, p. 262).

³²³ S.R. Marlatt, Inspector of Indian Agencies, Manitoba Superintendency, to SGIA, September 15, 1902, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1902*, 97 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 17, p. 311).

³²⁴ Joseph Courtney, Indian Agent, Pas Agency, to SGIA, July 26, 1902, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1902*, 34 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 17, p. 306).

³²⁵ H.T. Vergette, Head of Land Titles Section, DIAND, to Acting District Supervisor, Prince Albert Indian District, February 4, 1970, no file reference available (ICC Exhibit 4); ICC Transcript, November 19, 2001 (Exhibit 12a, pp. 23–24, Joseph Laliberte).

EVENTS AT FORT À LA CORNE, 1897–1902

In 1896, Agent McKenzie began reporting jointly on the “James Smith and Cumberland Reserves, Nos. 100 and 100A,” noting that “these reserves adjoin one another and are dealt with together.”³²⁶ He continued with this practice in all his subsequent annual reports until 1902.

After his transfer from the Chakastaypasin to the Cumberland 100A paylists, Kahtapiskowat retained his position as headman, given to him at the time of treaty. Accordingly, he received the increased headman’s annuity on the IR 100A paylists, both in the period 1888–91 before the creation of separate Big Head band paylists, and from 1896 to 1902, following his formal transfer to the Cumberland Band 100A under section 140 of the *Indian Act*. No other individual was ever paid as headman or chief on the Cumberland 100A paylists.

On an 1897 “Statement of Chiefs and Councillors” for the Duck Lake Agency, the entry for the Cumberland Band 100A lists Kahtapiskowat, with his position unspecified.³²⁷ On a similar statement dated 1899, Kahtapiskowat is designated as “councillor” for the Cumberland Band 100A, appointed in September 1876 “for Life or Resignation.”³²⁸ According to the oral history passed on to Delbert Brittain by elders, Kahtapiskowat was never accepted by the membership as either a chief or a headman. Instead, it was felt that his leadership was imposed by the department.³²⁹

Surrender and Exchange of 960 Acres at IR 100A, 1899

In July 1898, Agent McKenzie requested that the department exchange a portion of land at the southern part of IR 100A for another area at the northern end.³³⁰ He reported that the south end of

³²⁶ R.S. McKenzie, Indian Agent, Duck Lake Agency, to SGIA, July 22, 1896, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1896*, 171 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 17, p. 194).

³²⁷ R.S. McKenzie, Indian Agent, “Statement of Chiefs and Councillors of the Bands of Indians of the Duck Lake Agency,” July 28, 1897, LAC, RG 10, vol. 3940, file 121698-9 (ICC Exhibit 1, p. 489).

³²⁸ List of Indian Chiefs and Councillors, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1899*, 581 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 17, p. 259).

³²⁹ ICC Transcript, June 26, 2002 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 18c, pp. 40, 52–53, Delbert Brittain).

³³⁰ R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Secretary, Department of Indian Affairs, July 22, 1898, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 503).

the reserve was of little use because it was so dry, and that during the previous two or three years, an area just outside the northern part of the reserve had been used for wintering cattle because “there is no good water on the reserve.”³³¹ Elder James Burns describes this area as a “petawikan” – a place for wintering cattle where the creek flowed year round.³³²

In a memorandum to the Secretary, Chief Surveyor Samuel Bray suggested that the exchange be done by an order in council rather than by a surrender. He also pointed out that the reserve was originally set aside under Treaty 5 “for the Indians of the Cumberland District,” and thus the current area of 65 square miles was enough for 1,300 people.³³³

It was decided to obtain a legal opinion on the matter from law clerk Reginald Rimmer, and his report was delivered on May 18, 1899. He recommended that a surrender be carried out for the proposed exchange. In response to Bray’s observation regarding the size of the reserve, he noted:

Although the size of the reserve is out of all proportion to the requirements of the persons residing thereon and although this disproportion may have arisen from a grave error in calculation shown on file, it is also shown on file that the Department of the Interior in consenting to the appropriation of lands for the reserve was advised of the number of Indians for whom the reserve was required and of the quantity of land required by Treaty 5 to be allotted in proportion. There is therefore some reason to surmise that the Government of the day considered it proper to rectify to some extent the disproportionate terms of Treaties No. 5 and No. 6 [and] to some extent the correspondence on file supports this view.³³⁴

Rimmer observed that a reserve size of 65 square miles is sufficient for 325 persons under Treaty 6. Furthermore, given that the population of the Cumberland Band in 1883 was 345 persons, the

³³¹ R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Secretary, Department of Indian Affairs, July 22, 1898, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 503).

³³² ICC Transcript, November 20, 2001 (ICC Exhibit 18b, p. 52, James Burns).

³³³ S. Bray to the Secretary, March 15, 1899, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 537–38).

³³⁴ Reginald Rimmer, Law Clerk, Department of Indian Affairs, to unidentified recipient, May 18, 1899, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 541).

combined area of IR 20 and IR 100A (amounting to 71.69 square miles) is “very little in excess of the proportion of land required” for a population of 345 under Treaty 6.³³⁵ He went on to state:

It is not to be assumed unless it can be clearly shown that the reserve was set apart upon such terms that Reserve 100A is held only for the 120 Indians resident thereon. The Order in Council of 17th May, 1889, and the schedule thereto, p. 54, supports the conclusion that Reserve 100A is held for the Indians of Cumberland District, which would at least include those of Reserve 20 of Treaty 5.³³⁶

In light of Rimmer’s opinion, Samuel Bray recommended to the Secretary that a surrender be taken “from the Indians residing on the Reserve” – presumably IR 100A.³³⁷

On June 5, 1899, Agent McKenzie was instructed to take a surrender “in accordance with the Indian Act” and to have the affidavit signed by a chief or a headman.³³⁸ The surrender, dated June 17, 1899, was made by the “Chief and Principal men of the Cumberland Band of Indians resident on our Reserve No. 100A” for the exchange of 960 acres at the southwest corner of IR100A for “a portion of land of equal area situated at the North end of our said Reserve.”³³⁹ Three out of nine signatories to the surrender were former Chakastaypasin members, including Kahtapiskowat, who by this time had been transferred by the department to the Cumberland Band 100A under section 140 of the *Indian Act*. Kahtapiskowat signed the surrender document as “Headman.”³⁴⁰ The affidavit of

³³⁵ Reginald Rimmer, Law Clerk, Department of Indian Affairs, to unidentified recipient, May 18, 1899, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 541–42).

³³⁶ Reginald Rimmer, Law Clerk, Department of Indian Affairs, to unidentified recipient, May 18, 1899, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 542).

³³⁷ S. Bray to the Secretary, Department of Indian Affairs, May 19, 1899, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 543).

³³⁸ DSGIA to R.S. McKenzie, Indian Agent, Duck Lake Agency, June 5, 1899, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 545).

³³⁹ “Cumberland Band of Indians,” Surrender for exchange, June 17, 1899, LAC, RG 2, vol. 532 (ICC Exhibit 1, pp. 549–51).

³⁴⁰ “Cumberland Band of Indians,” Surrender for exchange, June 17, 1899, LAC, RG 2, vol. 532 (ICC Exhibit 1, p. 551).

execution was signed by Kahtapiskowat and Indian Agent McKenzie on June 21, 1899,³⁴¹ and Order in Council PC 1683 accepted the surrender on August 12, 1899.³⁴² There is no evidence that the Cumberland Band in the Pas Agency was informed of this surrender or participated in the vote.

Almost two years after the surrender, Agent Jones reported that the addition to the reserve had not yet been surveyed and warned: “This section of country I expect will be very soon thickly populated, as the Canadian Northern [Railway] is coming close to it[,] it is well to guard against encroachment by outsiders.”³⁴³

Petition for Councillor, 1900

In March 1900, a petition from “the Chief and Councillors on James Smith’s Reserve Fort-a-la-Corne” was submitted to the Superintendent General, Clifford Sifton. They wrote that, since the resignation of their headman Henry Smith in 1893,

we have been without one councilor although there was an election for the vacancy but the successful candidate was not put in office. We humbly beg that the money due our reserve for this office be given . . . and hereafter we shall have a councilor to fill the office which is at present vacant.³⁴⁴

Interestingly, the petition is signed by members of all three groups at Fort à la Corne: the James Smith Band, former Chakastaypasin band members (now transferred by the department to the Cumberland Band 100A), and original Cumberland band members. For the James Smith Band, Chief James Smith and his three councillors – Bernard Constant, Jacob McLean, and Chekoosoo – signed.

³⁴¹ Affidavit of Robert Sutherland McKenzie, Indian Agent, and “Kah ta pis co wat,” Headman, June 21, 1899, LAC, RG 2, vol. 532 (ICC Exhibit 1, p. 552).

³⁴² Order in Council PC 1683, August 12, 1899, no file reference available (ICC Exhibit 1, p. 561).

³⁴³ W.E. Jones, Indian Agent, Duck Lake Agency, to the Secretary, Department of Indian Affairs, February 4, 1901, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 605).

³⁴⁴ Chief James Smith and others to Clifford Sifton, Minister of the Interior, March 28, 1900, LAC, RG 10, vol. 3940, file 121698-9 (ICC Exhibit 1, pp. 596–97).

Samuel Brittain and Michael Okeekoop, as well as former Chakastaypasin band members George Sanderson and Neesoopahtawein, signed for the Cumberland Band 100A.³⁴⁵

In response to the petition, Agent McKenzie reported in May that an election had been held to replace the councillor, Henry Smith, “but the Department did not approve of the man so elected and ordered me not to countenance any such meeting as it was not the intention of allowing any more Councillors to be elected, as there were already four Councillors at La Corne.” Furthermore, McKenzie concluded that “the Indians do much better, and are much more thrifty and less difficult to handle” without chiefs and councillors, since they are the ones to “put mischief into the Indians heads.”³⁴⁶

With respect to Agent McKenzie’s statement that “there were already four Councillors at La Corne,” it might be noted that the James Smith Band had three recognized councillors, and the Cumberland Band 100A had one councillor (Kahtapiskowat) recognized by the department at this time.³⁴⁷

Commutations of Annuity, 1900

Two commutations of annuity were signed by the Cumberland Band 100A in 1900. On July 10, 1900, a “Consent of Band to Commutation of Annuity” for Eliza MacKay (née Fox) was signed by the “members and Councillors of the Cumberland Band No. 100A ... composing a majority of the members and Councillors of the said Band.” The Consent was signed by three band members, all original Chakastaypasins, who by this time had been formally transferred to the Cumberland Band 100A under section 140 of the *Indian Act*: Kahtapiskowat, George Sanderson, and Neesoopahtawein. Each signed on the lines entitled “Councillors,” while the line for “Chief” was

³⁴⁵ Chief James Smith and others to Clifford Sifton, Minister of the Interior, March 28, 1900, LAC, RG 10, vol. 3940, file 121698-9 (ICC Exhibit 1, pp. 596–97).

³⁴⁶ R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, May 11, 1900, LAC, RG 10, vol. 3940, file 121698-9 (ICC Exhibit 1, p. 598).

³⁴⁷ List of Indian Chiefs and Councillors, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1899*, 581 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 17, p. 259).

blank and crossed out.³⁴⁸ This is the first official Cumberland band document signed only by former Chakastaypasin band members.

The following month, on August 30, 1900, a commutation of annuity for Lydia Cook (née Brittain) was signed by the “Chief and Councillors of the Cumberland Band of Indians.” The Consent was signed by four band members: Michael Okeekoop, an original Cumberland band member, and “Big Head Kah ta pis kowat,” George Sanderson, and Neesoopahtawein. All designations for “Chief” and “Councillor” are crossed out, except next to the name of Big Head, who is designated as a councillor.³⁴⁹

Requests for Transfer from Cumberland House, 1900

On July 12, 1900, Indian Commissioner David Laird informed Agent McKenzie of a recently received request for the transfer of three individuals from “the Cumberland Band, in the Pas Agency” to the “Fort a la Corne Band.” He wrote:

Mr. Peter Turner, of Fort a la Corne, has applied to the Department through Mr. T.O. Davis, M.P., for the transfer of Jeremiah Friday, David Tea Boy and Andrew Tatispask from the Cumberland Band, in the Pas Agency, to the Fort a la Corne Band. ... if the Fort a la Corne Band is willing to receive them in their Reserve, obtain its consent on the forms herewith enclosed. In the meantime I will ascertain from Mr. Agent Courtney whether these men desire to be transferred and if so obtain the consent of the Cumberland Band.³⁵⁰

The only available evidence regarding the identity of Peter Turner is an application made in 1898 for a licence to trade on “the Indian Reserve at Fort a la Corne” during the annuity payments that year, a request that was approved by the Indian Agent.³⁵¹

³⁴⁸ Consent of Band to Commutation of Annuity, July 10, 1900, LAC, RG 10, vol. 3953, file 135540-9 (ICC Exhibit 1, p. 599).

³⁴⁹ Consent of Band to Commutation of Annuity, August 30, 1900, LAC, RG 10, vol. 3953, file 135540-9 (ICC Exhibit 1, p. 601).

³⁵⁰ David Laird, Indian Commissioner, to the Indian Agent, Duck Lake Agency, July 12, 1900, LAC, RG 10, vol. 1599 (ICC Exhibit 1, p. 600).

³⁵¹ Peter Turner to R.S. McKenzie, Indian Agent, September 27, 1898, LAC, RG 10, vol. 9994 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 25a, p. 43).

The Cumberland Band 100A signed Consent to Transfer forms for David Tea Boy, Andrew Tatispask, and Jeremiah Friday on August 30, 1900. The forms were signed by three original Cumberland members (Joseph Head, James Head, and Michael Okeekkeep) and three former Chakastaypasin members (Kahtapiskowat, George Sanderson, and Neesoopahtawein), all of whom were by this time formally transferred by the department to the Cumberland Band 100A under section 140 of the *Indian Act*. Kahtapiskowat signed as “Councillor.”³⁵²

Apparently, none of these families actually moved to IR 100A. Both Jeremiah Friday and David Tea Boy continued to receive annuities with the Cumberland Band at IR 20, and never appeared on the IR 100A paylists.³⁵³ David Laird explained later:

In 1900, application was made by a Mr. Peter Turner at Fort a la Corne writing to Mr. T.O. Davis, M.P. asking leave for three families to remove from Cumberland House band to the La Corne reserve. ... Both bands were asked to consent to the removal. The Band of reserve 100A gave their consent in 1900, but when the Band at Cumberland House were asked for their consent to the transfer in 1901 by Mr. Agent Courtney, the reply was that there was no such man as one of those named, and Mr. Courtney reported that “the Councillor replied on behalf of David Teaboy and Jeremiah Friday, saying that they did not wish to be transferred. In the event of their desire to be transferred a vote was taken which was unanimous in refusing to give their consent.”³⁵⁴

ALLEGED SURRENDER AND AMALGAMATION, 1902

Events Preceding

On January 30, 1902, C.S. Lowrie, a resident of Kinistino, a town about 5 kilometres to the west of the southern township of IR 100A, sent a letter to T.O. Davis, a local Member of Parliament. Regarding IR 100A, he wrote:

When in Prince Albert last I intended speaking to you ... about trying to get the Southern Township of the Indian Reserve lying between here and Melfort opened up

³⁵² Consents of Band to Transfer, August 30, 1900, LAC, RG 10, vol. 1596 (ICC Exhibit 1, pp. 602–4).

³⁵³ Treaty annuity payroll, “Cumberland Band Paid at Cumberland,” 1900–3, no file reference available (ICC Exhibit 8, pp. 106, 108, 110, 112, 114, 116, 118, 120).

³⁵⁴ David Laird, Indian Commissioner, to SGIA, November 24, 1902, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 759–60).

for settlement, this is a great eyesore having the reserve running so far South and the Indians all on the North part. ...

If this could be done it would be a great benefit to both this settlement and also to the Indians.³⁵⁵

This is the only document on the record demonstrating public pressure for a surrender of township 46 of IR 100A. It is not known if there were other such letters, but there is evidence that Davis himself was involved in bringing pressure to bear on the department for a surrender. A note on a departmental memorandum regarding the reserve states that “Mr. Davis has called attention two or three times to the desirability of throwing a portion of the Reserve 100A into the market.”³⁵⁶ Davis was a strong promoter of the Liberal government’s efforts to promote settlement through immigration, and he spoke favourably of the change brought about by the settlement of a former Indian reserve near Prince Albert.³⁵⁷ Davis also purchased lands in the sale of IR 98 in 1901 and the sale of IR 100A in 1903.³⁵⁸

Secretary McLean forwarded Lowrie’s letter to Indian Commissioner Laird on March 6, 1902, noting that T.O. Davis delivered the letter to the department. McLean explained:

The reserve to which Mr. Davis refers is the Cumberland Indian Reserve No. 100A. It was set apart for the Indians of Cumberland House and District. Only a small number of these Indians removed from the vicinity of Cumberland House to occupy the new reserve, and consequently it is much larger than necessary for the requirements of the present occupants.

³⁵⁵ C.S. Lowrie to T.O. Davis, Member of Parliament, January 30, 1902, LAC, RG 10, vol. 3562, file 82, part 9 (ICC Exhibit 1, p. 628).

³⁵⁶ Marginal note written by Secretary J.D. McLean to the Deputy Minister on a memorandum from W.A. Orr to the Secretary, June 25, 1902, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 672).

³⁵⁷ “Mr. T.O. Davis’ Speech in the House of Commons on the New Settlers of the West,” *Prince Albert Advocate*, April 29, 1901, 5 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 15f, document 5).

³⁵⁸ “Research on ‘Davis Group’ and ‘Prendergast Group’: Final Historical Report,” prepared by Public History Inc., November 2000 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 15f); see also Federation of Saskatchewan Indian Nations (FSIN), Transcript of an interview with Angus Burns, April 14, 1972 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 23, pp. 1, 7).

I think it would be well to have the matter looked into ... with the view of ascertaining if the Indians will surrender the southern portion to be sold for their benefit.³⁵⁹

Laird replied on June 19, 1902, with a proposal regarding the matter. He reported:

I have looked into this matter and so far as I am able to ascertain at present there is very little prospect of further emigration of Indians from the vicinity of Cumberland House to settle on this reserve. The population of the reserve at the last payments was only 122 souls, and as the area of the reserve is 65 square miles it is much larger than required for the number of Indians settled thereon. Before taking action to consult the Indians about the surrender ... it will be necessary to be in a position to state the terms the Department is prepared to offer as an inducement for them to give up the land.³⁶⁰

He suggested that a small cash payment and expenditure of 10 per cent of the expected sale proceeds on implements, provisions, and such would be an appropriate “inducement.” He went on to make a further proposal:

I think it would be well to consider the question of amalgamating the bands of James Smith and Cumberland No. 100A. The latter have no Chief and the united bands would make a total population of 231 souls. ... I think it would be a great gain to the Indians of James Smith’s band as well as to those of Cumberland band, both of which are in a backward state.³⁶¹

In response to Laird’s letter, W.A. Orr, an official in the Lands and Timber Branch of the Department of Indian Affairs, recommended that the surrender and amalgamation should be carried out as proposed, “in view of the representations made by the Commissioner.” Interestingly, he notes that James Smith IR 100 and Cumberland IR 100A were both “set aside under Treaty No. 6.”³⁶² A marginal note on Orr’s memorandum, signed “JAS DM” and presumably from Deputy Minister

³⁵⁹ J.D. McLean, Secretary, to David Laird, Indian Commissioner, March 6, 1902, LAC, RG 10, vol. 3562, file 82, part 9 (ICC Exhibit 1, p. 635).

³⁶⁰ David Laird, Indian Commissioner, to the Secretary, Department of Indian Affairs, June 19, 1902, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 668).

³⁶¹ David Laird, Indian Commissioner, to the Secretary, Department of Indian Affairs, June 19, 1902, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 668).

³⁶² W.A. Orr to the Secretary, June 25, 1902, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 672).

James A. Smart, inquired whether it was intended to sell the surrendered land and if there had yet been a survey.³⁶³

On July 4, 1902, James A. Smart, DSGIA, wrote to David Laird, enclosing forms of surrender and granting approval to Laird's proposals. He said: "Your suggestion as to the offering of a bonus of 10 per cent of proceeds of sale to be expended in implements &c., as well as suggestion as to amalgamation of James Smith and Cumberland Bands, meets with approval."³⁶⁴

Laird wrote to Indian Agent W.E. Jones shortly thereafter with his plans for carrying out his proposals. He informed him: "It is my intention to meet you and the Indians of James Smith and Cumberland Reserves at the payments on the 24th instant." He went on to say, "I have been instructed by the Deputy Minister to endeavor to obtain a surrender of the southern township of the Cumberland Reserve, and I think it would be better that I should discuss the question with them before you begin payments."³⁶⁵

Alleged Surrender and Amalgamation, July 24, 1902

On July 24, 1902, Kahtapiskowat and George Sanderson signed a surrender of the southern township of IR 100A. On the same date, the James Smith Band and Cumberland Band 100A signed an amalgamation agreement, merging the membership, lands, and assets of the two Bands. The surrender, affidavit, and amalgamation agreement, as well as two very brief reports by David Laird, are the only contemporaneous documents in the evidentiary record that deal directly with the day's events.

³⁶³ Marginal note written by DSGIA James A. Smart on memorandum from W.A. Orr to the Secretary, June 25, 1902, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 672).

³⁶⁴ James A. Smart, DSGIA, to David Laird, Indian Commissioner, July 4, 1902, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 675).

³⁶⁵ David Laird, Indian Commissioner, to W.E. Jones, Indian Agent, Duck Lake Agency, July 15, 1902, LAC, RG 10, vol. 3562, file 82, part 9 (ICC Exhibit 1, p. 676).

Documentary Evidence

The surrender document itself reads as follows:

KNOW ALL MEN by these Presents That We, the undersigned ~~Chief and~~ Principal men of The Cumberland Band of Indians resident on our Reserve No. 100A in the Province of Saskatchewan and Dominion of Canada, for and acting on behalf of the whole people of our said Band in Council assembled, Do hereby release, remise, surrender, quit claim and yield up unto our Sovereign Lord the King, his Heirs and Successors forever, All and Singular, that certain parcel or tract of land and premises, situate, lying and being in the said Reserve 100A, Province of Saskatchewan containing by admeasurement Twenty-Two Thousand and eighty acres be the same more or less and being composed of this southern township of the said Reserve, Township 46, Range 20, W.2 [I.]M. excepting thereout Sec. 6 and S ½ Sec. 7.

To Have and to Hold the same unto His said Majesty The King, his Heirs and Successors forever, in trust to sell the same to such person or persons, and upon such terms as the Governor of the Dominion of Canada may deem most conducive to our welfare and that of our people.

And upon the further condition that all moneys received from the sale thereof, shall, after deducting the usual proportion for expenses of management, be placed to the credit of the amalgamated Bands James Smith and Cumberland.

And We, the said Chief and Principal men of said Cumberland Band of Indians do on behalf of our people and for ourselves, hereby ratify and confirm, and promise to ratify and confirm, whatever the said Government may do, or cause to be lawfully done, in connection with the sale of the said land and the disposal of the moneys derived from such sale.

Stipulating, however that as soon as convenient after the money is received from the sale of the land, ten per cent thereof shall be paid to the amalgamated Band in implements, waggons, harness and other useful articles.

In witness whereof, we have hereunto set our hands and affixed our seals this Twenty fourth day of July in the year of Our Lord one thousand nine hundred and two.³⁶⁶

Two men signed the surrender on behalf of the Cumberland Band 100A: “Headman” Kahtapiskowat and the “Headman’s son,” George Sanderson. The document is witnessed by Donald

³⁶⁶ “Cumberland Band of Indians,” Surrender for sale, July 24, 1902, DIAND Indian Land Registry, Instrument no. X10691 (ICC Exhibit 1, pp. 677–79). Text is as it appears on the surrender document, with “Chief and” struck out.

Macdonald as interpreter, Angus McLean, and A.J. McKay. David Laird appears to have initialled various changes to the original document, but did not sign it himself.³⁶⁷

The affidavit attesting to the validity of the surrender document was made before Indian Agent W.E. Jones as Justice of the Peace “in and for the North West Territories” on the same day at Fort à la Corne. The document reads as follows:

Personally appeared before me, Hon. David Laird of Winnipeg, Indian Commissioner & Kh-ta-pis-kowat, Headman of the Cumberland A [sic] Band of Indians at Fort à la Corne in the District of Saskatchewan, N.W. Territories.

And the said Hon. David Laird for himself saith:

That the annexed Release or Surrender was assented to by a majority of the male members of the said Band of Indians of the Cumberland Reserve 100A of the full age of twenty-one years then present.

That such assent was given at a meeting or council of the said Band summoned for that purpose and according to its Rules.

That he was present at such meeting or council and heard such assent given.

That he was duly authorized to attend such council and heard such assent given.

That no Indian was present or voted at said council or meeting who was not a member of the Band or interested in the land mentioned in said Release or Surrender.

And the said Kh-ta-pis-kowat says:

That the annexed Release or Surrender was assented to by him and a majority of the male members of the said Band of Indians of the Cumberland Reserve 100A of the full age of twenty-one years then present.

That such assent was given at a meeting or council of the said Band summoned for that purpose and according to its Rules, and held in the presence of the said.

³⁶⁷ “Cumberland Band of Indians,” Surrender for sale, July 24, 1902, DIAND Indian Land Registry, Instrument X10691 (ICC Exhibit 1, pp. 677–79).

That no Indian was present or voted at said council or meeting who was not a member of the Band or interested in the land mentioned in said Release or Surrender.

That he is a Chief Headman of the said Band of Indians and entitled to vote at the said meeting or council.

Sworn before me by the Deponents Hon. David Laird & Kh tapiskowat at Fort à la Corne District of Saskatchewan this twenty fourth day of July, A.D. 1902.³⁶⁸

This affidavit is the only documentary evidence indicating that the statutory requirements of surrender were fulfilled.

As noted above, an agreement to amalgamate the James Smith Band and Cumberland Band 100A was also signed on July 24, 1902. The agreement reads:

THIS AGREEMENT made in duplicate and entered into this Twenty fourth day of July in the year of our Lord one thousand nine hundred and two, between the owners of James Smith's Indian Reserve No. 100, in the Provisional District of Saskatchewan, in the North West Territories and Dominion of Canada, as represented by their Chief and Headmen, hereinafter called the Parties of the First Part; and the owners of Cumberland Reserve No. 100A, also in the said Provisional District, as represented by their Headmen, hereinafter called the parties of the Second Part:

WITNESSETH that the Parties of the First Part, for themselves and their descendants, agree to admit the Parties of the Second Part, and their descendants, into their Band, and allow them as members thereof, to have, hold and possess forever, an undivided interest in all land, moneys, and other privileges now possessed and enjoyed by the said Band.

In return for the above interest, rights and other privileges, granted to them by the Parties of the First Part, the Parties of the Second Part agree for themselves and their descendants, to give to the Parties of the First Part, a joint and undivided interest in all land, moneys and other privileges now possessed and enjoyed or which may at any time hereafter be possessed or enjoyed by the said Parties of the Second Part.

IN WITNESS WHEREOF we James Smith, Chief, and Bernard Constant, Che-koo-soo & Jacob McLean, Headmen of Reserve 100 and Kh-ta-pis-kowat, Headman of

³⁶⁸ Affidavit of Kh-ta-pis-kowat, Headman, and David Laird, Indian Commissioner, July 24, 1902, DIAND Indian Land Registry, Instrument X10691 (ICC Exhibit 1, p. 687). Text is as it appears on the document, with "Chief" struck out.

Reserve 100A & Geo. Sanderson his son have hereunto set our hands and affixed our seals on the day and year first above written.³⁶⁹

Agent W.E. Jones, Angus McLean, interpreter Donald Macdonald, and another whose identity is uncertain acted as witnesses. David Laird did not sign. It might be noted that Bernard Constant, one of the James Smith Band councillors, signed his own name, while the others signed with an X.³⁷⁰ This is consistent with oral evidence suggesting that Bernard Constant could read and write in English and always signed his own name, rather than using an X.³⁷¹

Testimony of Elder Angus Burns

In 1972, James Smith band elder Angus Burns was interviewed regarding his recollection of the events that took place at IR 100 and IR 100A on July 24, 1902. The transcript of this interview is included in our record of inquiry. Angus Burns was 20 years old at the time of these events and a member of the James Smith Band.³⁷² He recalls that, on the day of surrender, David Laird, farm instructor Andrew MacKay, Angus MacKay (from the HBC), an interpreter named MacDonald, and a teacher named D. Parker were at the reserve. He also recalls that Chief James Smith and his three headmen – Bernard Constant, Jacob McLean, and Chekoosoo – were present.³⁷³ Burns recalls that they had meetings “a lot of times” before the surrender was taken because “the Indians didn’t want

³⁶⁹ Amalgamation Agreement between the owners of IR 100 and the owners of IR 100A, July 24, 1902, LAC, RG 10, vol. 3562, file 82, part 9 (ICC Exhibit 1, pp. 690–91).

³⁷⁰ Amalgamation Agreement between the owners of IR 100 and the owners of IR 100A, July 24, 1902, LAC, RG 10, vol. 3562, file 82, part 9 (ICC Exhibit 1, pp. 690–91).

³⁷¹ ICC Transcript, June 27–28, 2001 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 18a, p. 47, Robert Constant); FSIN, Transcript of an interview with Angus Burns, April 14, 1972 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 23, p. 3); ICC Transcript, October 29–30, 2002 (ICC, James Smith Cree Nation IR 100 TLE Inquiry, Exhibit 5a, p. 44, Mervin Burns; p. 59, Isaac Daniels); see also Bernard Constant, La Corne Reserve, to Mr. Parker, June 14, 1893, LAC, RG 10, vol. 1593 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 25a, p. 13).

³⁷² Treaty annuity payroll, James Smith Band, 1902, LAC, RG 10, vol. 9119, book 36 (ICC Exhibit 1, pp. 706–7); Treaty annuity payroll, James Smith Band, 1950, no file reference available (ICC, James Smith Cree Nation IR 100 TLE Inquiry, Exhibit 3b, p. 1603). Angus Burns was given his own number, no. 175, in 1901; in 1903, when the payroll was reorganized, he was assigned no. 29.

³⁷³ FSIN, Transcript of an interview with Angus Burns, April 14, 1972 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 23, p. 1).

to sell this land, nobody was eager to sell.”³⁷⁴ According to his description, there was a final meeting of the “old men,” apparently including the councillors and Chief. When the agreement was made, the Chief called everyone into the old schoolhouse, where the meeting was being held, to witness the signing of the surrender document. The following excerpt gives Burns’s account of what happened:

[T]hey had a few meetings, no they didn’t, the Indians didn’t want to sell this land, nobody was eager to sell. Well all of a sudden, later on, I was all ready a mature young man, this was in Nineteen O Two, what I’m telling about. ... A big meeting, these were the men that were sitting there. Now they were going to sell now, this school, the old school that used to stand here, this was where the meeting was held. ... Yeah, Oh it was a big meeting, everybody went there, to go and see what was going to happen, Sale or no Sale. Well the old men were having a meeting, at this time there were a lot of old men. The Chief came and stood outside. My people, he called, come here and listen to what I have come out to tell you, he said, inside this building they had a meeting all day. They want to sell our land. O.K. the time has come now, we are going to sell our land, this was how the meeting came out. So if you want to watch us, sign away this land, all of [you] that can fit inside, come in inside here. We are giving up this land. That all, when I go inside here the papers will be signed to sell this land, so I ran over there but the school was already filled up. Then I saw that there was a window opened there so I went and leaned in there, so I was inside the building now from where I was leaning in. They were sitting at a table right close to me, these councillors and chief. I saw him sitting there, also David Laird. And he started talking, now we have finished our meeting, your land here, the one that is South here, six miles square, this is the land we are going to sign away, somebody else will own it now. It will be sold, you are selling it. He was standing inside here, I was watching him from close, and he did this, look at these, they were white in color. ... There were a lot of interpreters, you know Angus MacKay, and a Andrew MacKay, Macdonald, they were chosen for this purpose for them to talk so they could be understood when they talked. ... The way I understand it you people are giving me that land, like for me to own it, just like for me to sell it. I don’t know how much I’ll get for it. It is known [sic] how much we’ll get for it. But as I understand it today, five dollars an acre the land is worth today. Young girl land, he said. What is it called now, Virgin Land. ... Yes, virgin land that is what it is worth this is what I will promise you, but I will try to sell even for ten dollars an acre then I will sell it for a good price. If I can’t do that, I will have to take that five dollars. This is what I promise you. So then the chief spoke Now you have heard the government officials, These high government officials, this is true what he has said.

³⁷⁴ FSIN, Transcript of an interview with Angus Burns, April 14, 1972 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 23, pp. 1–2).

Now we are giving him this land, this is what we decided. We just gave him, just like it is his land to sell. When he sells money will be given to us like they will be paying us. So then they called all the councillors right there, oh I was watching them from close.³⁷⁵

Angus Burns recalled that only Councillor Bernard Constant could sign his name, and the others “were held to the pen.”³⁷⁶ Aside from Angus Burns’s recollections, as related by himself and Delbert Brittain, there is very little oral history regarding the surrender. The only other stories regarding these events come from elder Violet Sanderson. She recalls that her grandfather William Head, and her husband’s father and grandfather, were “in council” and involved in discussions about the sale of part of IR 100A.³⁷⁷

Annuities Paid, 1902

The 1902 paylists for the James Smith Band and Cumberland Band 100A are dated July 25, 1902 – one day after the alleged surrender and amalgamation took place. They are important documents because no voters list was made, and there are no minutes or other records of any meeting.

The two Bands were paid separately that year under their normal ticket numbers. The annuity paylist for the Cumberland Band 100A notes that 115 people, including 29 men, were paid annuities “at James Smith’s reserve.”³⁷⁸ The James Smith band paylist indicates that 107 people were paid

³⁷⁵ FSIN, Transcript of an interview with Angus Burns, April 14, 1972 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 23, pp. 2–3).

³⁷⁶ FSIN, Transcript of an interview with Angus Burns, April 14, 1972 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 23, p. 3).

³⁷⁷ ICC Transcript, June 27–28, 2001 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 18a, pp. 121–22, Violet Sanderson).

³⁷⁸ Treaty annuity paylist, “No. 100A Cumberland Band paid at James Smiths Reserve,” 1902, no file reference available (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 9a, pp. 54–58). See also copy of paylist, LAC, RG 10, vol. 9119, book 36 (ICC Exhibit 1, pp. 692–701).

annuities that day, including 28 adult men.³⁷⁹ Agent Jones's annual report for that year notes 25 men in the James Smith Band and 27 in the Cumberland Band 100A.³⁸⁰

The Cumberland 100A annuity paylists were discontinued after the 1902 payments. All the band members appeared the following year on the reorganized James Smith band paylists with new ticket numbers.³⁸¹

Laird's Report on Alleged Surrender and Amalgamation

On August 1, 1902, David Laird reported to James Smart, the DSGIA,

that pursuant to instructions contained in your letter of the 4th July ultimo ... I proceeded to Indian Reserve No. 100A last week, and on the 24th of the said month obtained a surrender of Township 46 ... and also effected an amalgamation of James Smith's Band of Reserve 100 with the Cumberland Band of Reserve 100A.³⁸²

In his later annual report for the year, Laird gave another, very similar account.³⁸³ Indian Agent W.E. Jones's annual report, dated August 15, 1902, does not refer to either the surrender or the amalgamation, and speaks of "two bands" living at IR 100 and IR 100A.³⁸⁴ However, Agent Jones's 1903 annual report for "James Smith Band No. 100" states: "This reserve includes part of the reserve formerly held by the Cumberland band, 100A; the latter band surrendered part of its reserve and then joined with James Smith's band, making one band with one reserve now known as the 'James Smith

³⁷⁹ Treaty annuity payroll, James Smith Band, 1902, LAC, RG 10, vol. 9119, book 36 (ICC Exhibit 1, pp. 702–9).

³⁸⁰ W.E. Jones, Indian Agent, Duck Lake Agency, to SGIA, August 15, 1902, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1902*, 143 (ICC Exhibit 1, p. 712).

³⁸¹ Treaty annuity payroll, James Smith Band, 1903, LAC, RG 10, vol. 9119, book 37 (ICC Exhibit 1, pp. 889–902).

³⁸² David Laird, Indian Commissioner, to James A. Smart, DSGIA, August 1, 1902, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 710).

³⁸³ David Laird, Indian Commissioner, to SGIA, October 15, 1902, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1902*, 191–92 (ICC Exhibit 1a, pp. 197–98).

³⁸⁴ W.E. Jones, Indian Agent, Duck Lake Agency, to SGIA, August 15, 1902, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1902*, 143 (ICC Exhibit 1, p. 712).

Band, No. 100.”³⁸⁵ No other report was made by Agent Jones regarding the events of July 24, 1902, with regard to the surrender or the amalgamation.

Acceptance of Surrender by Order in Council

On August 19, 1902, Clifford Sifton, the Superintendent General of Indian Affairs, submitted the surrender to the Governor General in Council for approval.³⁸⁶ The accepting Order in Council reads as follows:

On a Memorandum dated 19th August, 1902, from the Superintendent General of Indian Affairs, submitting herewith, a surrender in duplicate made by the Cumberland Band of Indians in the North West Territories, of 22,080 acres, being composed of Township 46 of the said Reserve, Range 20 West 2nd Initial Meridian, excepting thereout Section 6 and South ½ of Section 7, in order that the land may be disposed of for their benefit on such terms as the Superintendent General may consider necessary in their interests.

The Minister recommends, the surrender having been authorized, executed and attested in the manner required by the 39th Section of the *Indian Act* that the same be accepted by the Governor General in Council, and that the original thereof be returned to the Department of Indian Affairs and the duplicate kept of record in the Privy Council Office.

The Committee submit the same for approval.³⁸⁷

The Order in Council, PC 1510, is dated October 14, 1902.

Status of James Smith Band Leadership, Post–1902

Some of the oral history evidence casts doubt on the presence of leadership in the James Smith Band at the time of these agreements. Angus Burns spoke of James Smith dying “before this was

³⁸⁵ W.E. Jones, Indian Agent, Duck Lake Agency, to SGIA, August 25, 1903, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1903*, 162 (ICC Exhibit 1, p. 906).

³⁸⁶ Clifford Sifton, SGIA, to the Governor General in Council, August 19, 1902, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 714).

³⁸⁷ Order in Council PC 1510, October 14, 1902, LAC, RG 2, vol. 593 (ICC Exhibit 1, pp. 745–46).

finished.”³⁸⁸ At the same time, records kept in the Agency record the death of Chief James Smith on November 20, 1902, after the time of the events in question.³⁸⁹

Following the death of Chief James Smith, Assistant Indian Commissioner J.A.J. McKenna recommended in June 1903 that Agent Jones select a new Chief for the amalgamated Band.³⁹⁰ James Head, formerly of the Cumberland Band 100A, was appointed as the new Chief of the James Smith Band on July 24, 1903.³⁹¹ Notably, the 1903 James Smith band payroll indicates that Kahtapiskowat continued to be paid as a headman after his transfer to that Band. He received the additional headman’s annuity until his death, sometime between 1906 and 1907.³⁹²

Church Official Questions Surrender

On November 12, 1902, a series of correspondence commenced between department officials and J.A. MacKay, the Archdeacon and Superintendent of Indian Missions in Saskatchewan. MacKay wrote on that day that he had discovered the surrender of part of IR 100A on a recent visit to Fort à la Corne, although he did not indicate the source of his information. He pointed out to the Superintendent General that “the transaction is certainly not to the advantage of the Indians.”³⁹³ He explained:

³⁸⁸ FSIN, Transcript of an interview with Angus Burns, April 14, 1972 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 23, pp. 4–5).

³⁸⁹ Register of deaths, James Smith Band No. 100, entry for November 20, 1902, LAC, RG 10, vol. 9995 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 25e, p. 27). See also ICC Transcript, October 29–30, 2002 (ICC, James Smith Cree Nation TLE Inquiry, Exhibit 5a, p. 162, Oliver Constant).

³⁹⁰ J.A.J. McKenna, Assistant Indian Commissioner, to the Secretary, Department of Indian Affairs, June 17, 1903, LAC, RG 10, vol. 3940, file 121698-9 (ICC Exhibit 1, p. 885).

³⁹¹ Treaty annuity payroll, James Smith Band, 1903, LAC, RG 10, vol. 9119, book 37 (ICC Exhibit 1, pp. 889–90); Declaration of office, July 25, 1903, LAC, RG 10, vol. 9119, book 37 (ICC Exhibit 1, p. 903).

³⁹² Treaty annuity payroll, James Smith Band, 1903, LAC, RG 10, vol. 9119, book 37 (ICC Exhibit 1, pp. 889–90); Treaty annuity paylists, James Smith Band, 1904–7, no file reference available (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 12a, pp. 377, 385, 393, 401). See ticket no. 5.

³⁹³ J.A. MacKay, Archdeacon and Superintendent of Indian Missions in Saskatchewan, to SGIA, November 12, 1902, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 753).

The land which has been surrendered belongs to the Cumberland Indians. Now it is quite clear that the Indians at present occupying this Reserve are not entitled by the terms of the Treaty to the amount of land which it comprises, but the land was reserved for any of the Indians of Cumberland district who might wish to settle on it. There is a large number of Indians in Cumberland district and there is scarcely any land for agricultural purposes. The Indians live by fishing and hunting, but the population is too large for the resources of the district, and how they are to subsist will be a very serious question in the near future. ... although only a comparatively small number had arrived so far, the land will be required by immigrants from Cumberland district in the future. At the present time there is no movement of the Cumberland Indians in this direction, but this is simply due to an exceptional state of things in the district. The number of muskrats, which afford the Indians abundant food during the hunting season as well as a profitable article of barter. This source of subsistence cannot last long, and, when it fails, the Indians will be reduced to greater straits than before.

I beg therefore to implore the Department to reconsider its actions in this matter, because the land will be required by the Cumberland Indians in the future, and supposing it is not required by the Indians for their own actual use, it surely is in their interest that the land should not be sold until it commands a higher price than is likely to be obtained for it at present.³⁹⁴

On November 24, David Laird wrote to the Superintendent General of Indian Affairs to defend the department's actions. Regarding the justification given for the surrender – that little further emigration from Cumberland House was expected – he reported that the 1891 paysheets showed 28 families, or 83 people, present at IR 100A who had removed from Cumberland House.³⁹⁵ Since that time, he was not aware of any who had actually made the move. To illustrate this point, he reviewed the various applications from Cumberland House members at IR 20 to move to IR 100A during the years 1896 to 1900 and the outcomes of each.³⁹⁶ Recalling the opposition of those at Cumberland House to the transfers requested in 1900, he argued:

³⁹⁴ J.A. MacKay, Archdeacon and Superintendent of Indian Missions in Saskatchewan, to SGIA, November 12, 1902, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 754–55).

³⁹⁵ David Laird, Indian Commissioner, to SGIA, November 24, 1902, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 759).

³⁹⁶ David Laird, Indian Commissioner, to SGIA, November 24, 1902, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 759–60).

If all the band only last year were unanimous against transfers, it is not very probable that in the near future any of them will consent to be transferred to Reserve 100A at Fort a la Corne, consequently it appears to me that the Department would not be justified in keeping land locked up an indefinite number of years for a migration of Indians which they may never be willing to make.³⁹⁷

In reply to MacKay's assertion that the present prosperity in the "Cumberland District" would not last, Laird replied:

I ask why should muskrats become less abundant? For the last few years the floods have been so destructive in the Cumberland region that scarcely any hay could be saved for the Indians cattle. To all appearance, therefore, for the next half century it will be more of a rat country than one for white settlers, in which case the Indians will probably be undisturbed in a hunt which yields them a means of subsistence which they highly appreciate.³⁹⁸

There is nothing to indicate that Laird consulted the Cumberland Band at Cumberland House to ascertain its wishes or intentions in the matter.

Archdeacon MacKay wrote to the department again at the end of the year, noting that "in Cumberland district itself, that is in the Pas Agency," only 60 square miles of practically valueless land was set apart for nearly 1,200 treaty Indians. He explained the situation of the Treaty 6 Lac La Ronge and Montreal Lake Bands, who were given a large reserve at Little Red River because little good land could be found for them in their original location, and compared it to that of the Cumberland Band. MacKay noted that the Little Red River reserve had only three or four families living on it, while IR 100A had 125 residents. He argued that "any reason that may be advanced against depriving the Lac La Ronge Indians of their reserve on the Little Red River, applies much more strongly to the case of the Cumberland Indians and their reserve at Fort a la Corne."³⁹⁹

³⁹⁷ David Laird, Indian Commissioner, to SGIA, November 24, 1902, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 760).

³⁹⁸ David Laird, Indian Commissioner, to SGIA, November 24, 1902, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 759–60).

³⁹⁹ J.A. MacKay, Archdeacon and Superintendent of Indian Missions in Saskatchewan, to SGIA, December 29, 1902, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 765–66).

On January 29, 1903, Samuel Bray prepared a memorandum for the DSGIA, attaching Archdeacon MacKay's letters dated November 12 and December 29, 1902, and David Laird's letter dated November 24, 1902. In his covering memorandum, Mr Bray wrote: "The Department made full enquiry and was advised to the effect that there was no prospect of any more of the Cumberland Indians removing to the Reserve 100A, and consequently the surrender was asked for and [obtained] from the Indians residing on the Reserve."⁴⁰⁰ A marginal note on this memorandum, initialled by DSGIA Frank Pedley, stated: "I see no reason why the intention of Dept should not be carried out by sale of Reserve as surrendered."⁴⁰¹ On February 2, 1903, Pedley reiterated his conclusions in a short letter to Archdeacon MacKay.⁴⁰²

Archdeacon MacKay responded to Pedley's letter on March 3, 1903. He commented that the advice received by the department stating that no further immigration was expected "must have been based solely on a view of the conditions that exist at the present time in the Cumberland district, and not on any long experience of the state of things in the past." He argued that the current conditions in the Cumberland district were "exceptional," but that "the time must come when there will be more need than ever" for the lands at IR 100A.⁴⁰³ The annual reports for the Pas Agency during this period uphold Archdeacon MacKay's observations regarding conditions in that agency.⁴⁰⁴

MacKay went on to inquire whether the matter had been placed before "the Indians of the Cumberland District" and submitted that this should be done "in order to make the surrender equitable."⁴⁰⁵ Finally, he brought it to the attention of the department that if it was determined to go

⁴⁰⁰ Samuel Bray to DSGIA, January 29, 1903, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 788).

⁴⁰¹ Marginal notation written by DSGIA Frank Pedley on a memorandum from Samuel Bray to DSGIA, January 29, 1903, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 788).

⁴⁰² Frank Pedley, DSGIA, to Reverend J.A. MacKay, February 2, 1903, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 789).

⁴⁰³ J.A. MacKay, Archdeacon and Superintendent of Indian Missions in Saskatchewan, to SGIA, March 3, 1903, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 806–7).

⁴⁰⁴ See, for example, Joseph Courtney, Indian Agent, Pas Agency, to SGIA, July 10, 1901, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1901*, 94 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 17, p. 292).

⁴⁰⁵ J.A. MacKay, Archdeacon and Superintendent of Indian Missions in Saskatchewan, to SGIA, March 3, 1903, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 806–7).

ahead with the sale, “it is not in the interest of the [Indians] that the land should be placed on the [market] at the present time or in the near future, as it must rise in value with settlement of the country, and there is still abundance of land in Saskatchewan” open for “homesteading and purchase.”⁴⁰⁶

Pedley replied to Archdeacon MacKay’s concerns in a final letter, dated March 19, 1903, stating: “As the eighty-three individuals now on the reserve are only entitled to 10664 acres there is a balance of 8896 acres, which would be sufficient for sixty-nine individuals. There is, therefore, a wide margin for any other Indians of the Cumberland district who might wish to remove to the reserve.”⁴⁰⁷ It is interesting to note that Pedley’s calculations are based on the Treaty 6 land entitlement formula, rather than that for Treaty 5. In addition, the number paid on the IR 100A paylists in 1902 was 115, rather than 83 people (the number paid in 1891).⁴⁰⁸ Both figures include a number of former Chakastaypasin band members, in addition to the Cumberland band emigrants.

Community Understanding of Events of 1902

It is unclear what information those at Cumberland House had with respect to the events occurring at Fort à la Corne. Indian Agent Joseph Courtney’s 1902 annual report for the Pas Agency, written two days after the surrender, makes no mention of the surrender at IR 100A.⁴⁰⁹ And, although Archdeacon MacKay advocated on behalf of Cumberland band members living in the Cumberland district, it is unclear from whom he learned of the surrender, and whether he communicated with the Cumberland Band at IR 20 on the matter.

⁴⁰⁶ J.A. MacKay, Archdeacon and Superintendent of Indian Missions in Saskatchewan, to SGIA, March 3, 1903, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 807).

⁴⁰⁷ F. Pedley, DSGIA, to Reverend J.A. MacKay, Archdeacon and Superintendent of Indian Missions in Saskatchewan, March 19, 1903, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 824–25).

⁴⁰⁸ Treaty annuity payroll, “Cumberland Band Paid at Reserve,” 1891, no file reference available (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 9a, pp. 13–16); Treaty annuity payroll, “No. 100A Cumberland Band Paid at James Smith’s Reserve,” 1902, no file reference available (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 9a, pp. 54–58).

⁴⁰⁹ Joseph Courtney, Indian Agent, Pas Agency, to SGIA, July 26, 1902, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1902*, 85 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 17, p. 307).

There is no evidence on the record to suggest that the Cumberland Band at Cumberland House had any knowledge of the alleged surrender and amalgamation, or that it participated in any meeting or vote. The oral history shared by Cumberland House Cree Nation elders is emphatic that “nobody ever sold that land from here.”⁴¹⁰ Those who remember the reserve at Fort à la Corne understand that the reserve there is still their land.⁴¹¹ Joseph Laliberte says that they still refer to the former Cumberland band members living with the James Smith Band as “Cumberland people,” or “Waskiganihk,” the same name they use to refer to themselves.⁴¹²

James Smith Cree Nation elders seem to agree that there was no real understanding of what the surrender meant, and no one recalls a vote being held to sell the land at IR 100A. James Burns speaks of the people being surprised to discover white settlers breaking the land on the southern township of the reserve and then being told by Indian Agent “Pond Smith” that they had sold the land, although no one could remember the meeting happening.⁴¹³ There is no record of an Indian Agent by the name of Pond Smith in the Duck Lake Agency in the years following the surrender. However, an Indian Agent named Charles Pantaleon Schmidt was assigned to the Duck Lake Agency from October 1912 until December 1936.⁴¹⁴

The oral history of the James Smith Cree Nation does not reflect any memory of the amalgamation agreement signed on July 24, 1902, or how such an arrangement came about. Most of the elders say that there has always been a distinction among the communities within the James

⁴¹⁰ ICC Transcript, November 19, 2001 (ICC Exhibit 12a, p. 94, Lena Sarah Stewart).

⁴¹¹ ICC Transcript, November 19, 2001 (ICC Exhibit 12a, p. 12, Pierre Settee; p. 45, Thomas Laliberte; pp. 51, 56, Horace Greenleaf; p. 54, Marcel McGillivray; p. 57, interpreter for unidentified elders; pp. 108, 111, Rodney Settee; p. 94, Lena Stewart).

⁴¹² ICC Transcript, November 19, 2001 (ICC Exhibit 12a, p. 14, Pierre Settee; p. 49, Joseph Laliberte).

⁴¹³ ICC Transcript, November 20, 2001 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 18b, pp. 33, 55–56, 58, 62, 68, James Burns).

⁴¹⁴ Department of Indian Affairs Establishment Books, Outside Service, c. 1870–1920, LAC, RG 10, vol. 9180; Department of Indian Affairs Establishment Books, Outside Service, LAC, RG 10, vol. 9184; see also C.P. Schmidt, Indian Agent, Duck Lake Agency, to the Secretary, Department of Indian Affairs, March 28, 1917, LAC, RG 10, vol. 6664, file 109A-9-1A (ICC Exhibit 1, p. 1278); A.D. Wymbs, Assistant Representative of the Treasury, to C.P. Schmidt, Indian Agent, Duck Lake Agency, August 11, 1936, LAC, RG 10, vol. 6664, file 109A-9-1A (ICC Exhibit 1, p. 1326).

Smith Cree Nation and a common understanding of which lands belong to each Band.⁴¹⁵ Violet Sanderson testified that “there’s never been a time that they considered themselves as one band ... they were three separate bands.”⁴¹⁶ None of the oral history makes reference to a meeting, a vote, or any type of consent being given to amalgamate, or bring together into one Band, the separate communities living at IR 100 and IR 100A.⁴¹⁷

On February 3, 1905, Indian Agent J. Macarthur reported that Chief James Head requested “a statement showing how much of the Band’s money has been expended and what was the balance on hand.”⁴¹⁸ The following year, on March 8, 1906, David Laird reported that

at a meeting of the Indians of James Smith’s Band held on the 19th ultimo it was resolved to ask the Department to inform them as to how much of the money realized from the sale of that portion of Indian Reserve No. 100A, which was disposed of in 1903, had so far been spent for their benefit, and what balance remains on hand. They also desire to know whether they are not entitled to draw the interest yearly.

... They also ask for a copy of the surrender and agreement of amalgamation

...⁴¹⁹

⁴¹⁵ ICC Transcript, June 27–28, 2001 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 18a, pp. 13–14, Charlotte Brittain; pp. 44–45, Robert Constant; p. 106, Walter Constant; pp. 122–23, Violet Sanderson); ICC Transcript, November 20, 2001 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 18b, pp. 35–36, 38, James Burns); ICC Transcript, June 26, 2002 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 18c, pp. 25–26, Delbert Brittain; pp. 78, 82–84, Mervin Burns).

⁴¹⁶ ICC Transcript, June 27–28, 2001 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 18a, p. 123, Violet Sanderson).

⁴¹⁷ FSIN, Transcript of an interview with Angus Burns, April 14, 1972 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 23); ICC Transcript, June 27–28, 2001 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 18a, pp. 37, 44, Robert Constant; p. 105, Walter Sanderson; pp. 122–23, Violet Sanderson); ICC Transcript, June 26, 2002 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 18c, pp. 47–48, 67–68, Delbert Brittain); and ICC Transcript, January 28–29, 2003 (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 16b, pp. 38–39, Sol Sanderson; p. 77, Terry Sanderson; pp. 127–28, Raymond Sanderson; pp. 164–65, Martha Opoonechaw-Stoneland, Albert Sanderson, Patrick Stoneland, and Raymond Sanderson; p. 175, Violet Sanderson; p. 218, Jake Sanderson).

⁴¹⁸ J. Macarthur, Indian Agent, Duck Lake Agency, to David Laird, Indian Commissioner, February 3, 1905, LAC, RG 10, vol. 3562, file 82, part 9 (ICC Exhibit 1, p. 977).

⁴¹⁹ David Laird, Indian Commissioner, to the Secretary, Department of Indian Affairs, March 8, 1906, LAC, RG 10, vol. 6664, file 109A-9-1A (ICC Exhibit 1, p. 1048).

This is the only piece of evidence suggesting that the James Smith Band had any knowledge of the amalgamation agreement. In response, the Secretary furnished David Laird with an itemized statement of the James Smith Band's capital and interest accounts, covering the period from July 1, 1904, until March 13, 1906.⁴²⁰

Establishment of Trust Fund and Expenditure of Land Sale Proceeds

Trust account no. 293 for the "Cumberland Reserve, N.W.T." was established in the fiscal year 1902/3. It seems clear that the account was established for the "Cumberland Reserve" at Fort à la Corne, since revenue from both the Chakastaypasin IR 98 and the Cumberland IR 100A land sales was deposited in the capital account that year, and management fund and survey fees relating to the sale of IR 100A were disbursed.⁴²¹ An Order in Council dated March 7, 1903, authorized that the costs for the subdivision survey of township 46 be charged to the capital account of the "Cumberland Indians."⁴²² Following the alleged amalgamation of the James Smith Band and the Cumberland Band 100A, David Laird recommended that their trust accounts be combined as well.⁴²³ He was notified on July 2, 1903, that the separate accounts had been combined into account 293, the number originally belonging to the Cumberland Band 100A.⁴²⁴ It was known as the "Cumberland (James Smith) Band" account until 1918, when the name was changed to the "James Smith Band" account 293.⁴²⁵

⁴²⁰ Secretary to David Laird, Indian Commissioner, March 17, 1906, enclosing statement of the James Smith Band's capital and interest account A/C 293 for the period July 1, 1904, to March 13, 1906, LAC, RG 10, vol. 6664, file 109A-9-1A (ICC Exhibit 1, pp. 1050-54).

⁴²¹ Auditor General's Report, 1902/1903, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1903*, part J, 168 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 17, p. 333). A cursory search of the trust accounts from this period did not reveal a trust account for the Cumberland Band residing at IR 20.

⁴²² Order in Council, March 7, 1903, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 815).

⁴²³ David Laird, Indian Commissioner, to the Secretary, Department of Indian Affairs, May 30, 1903, no file reference available (ICC Exhibit 1, p. 860).

⁴²⁴ Secretary, Department of Indian Affairs, to David Laird, Indian Commissioner, July 2, 1903, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 886).

⁴²⁵ See the Auditor General's Reports, 1903-18, Canada, *Annual Report of the Department of Indian Affairs* (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 23a). See Trust Account no. 293.

Most of the 10 per cent share of the proceeds from sale, promised in the surrender document to be used for “implements, waggons, harness and other useful articles,” became available in 1904 and was spent on agricultural implements, oxen, a threshing machine, and miscellaneous other items.⁴²⁶

It is also important to note that Kahtapiskowat received a pension from January 1904 to January 1906, which totalled \$183.⁴²⁷ These payments are reflected in the statement provided to David Laird in response to the James Smith Band’s request for an accounting of the proceeds and expenditures from the sale of the surrendered portion of IR 100A. Big Head died sometime between 1906 and 1907.⁴²⁸ The last-known pension payment to Kahtapiskowat was made on January 10, 1906.⁴²⁹ He was the only person to receive this type of payment from the trust account.

The IR 100A Strip⁴³⁰

When the lands in townships 46 and 47, range 20, W2M, were originally offered for reserve purposes in 1885, the Department of Indian Affairs was informed that township 46 had not yet been surveyed.⁴³¹ In 1892, some years after the initial survey of IR 100A, the townships surrounding the reserve were surveyed according to the Dominion Lands system.

⁴²⁶ “Statement of James Smith Band A/C 293,” July 1, 1904–March 13, 1906, LAC, RG 10, vol. 6664, file 109A-9-1A (ICC Exhibit 1, pp. 1051–54).

⁴²⁷ “Statement of James Smith Band A/C 293,” July 1, 1904– March 13, 1906, LAC, RG 10, vol. 6664, file 109A-9-1A (ICC Exhibit 1, pp. 1051–54); Auditor General’s Report, 1903/4, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1904*, part J, 168 (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 23a, p. 37); Auditor General’s Report, 1904/5, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1905*, part J, 138 (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 23a, p. 44); Auditor General’s Report, 1905/6, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1906*, part J, 128 (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 23a, p. 52).

⁴²⁸ Treaty annuity payroll, James Smith Band, 1906–7, no file reference available (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 12a, pp. 393, 401). See ticket no. 5.

⁴²⁹ “Statement of James Smith Band A/C 293,” July 1, 1904–March 13, 1906, LAC, RG 10, vol. 6664, file 109A-9-1A (ICC Exhibit 1, p. 1054).

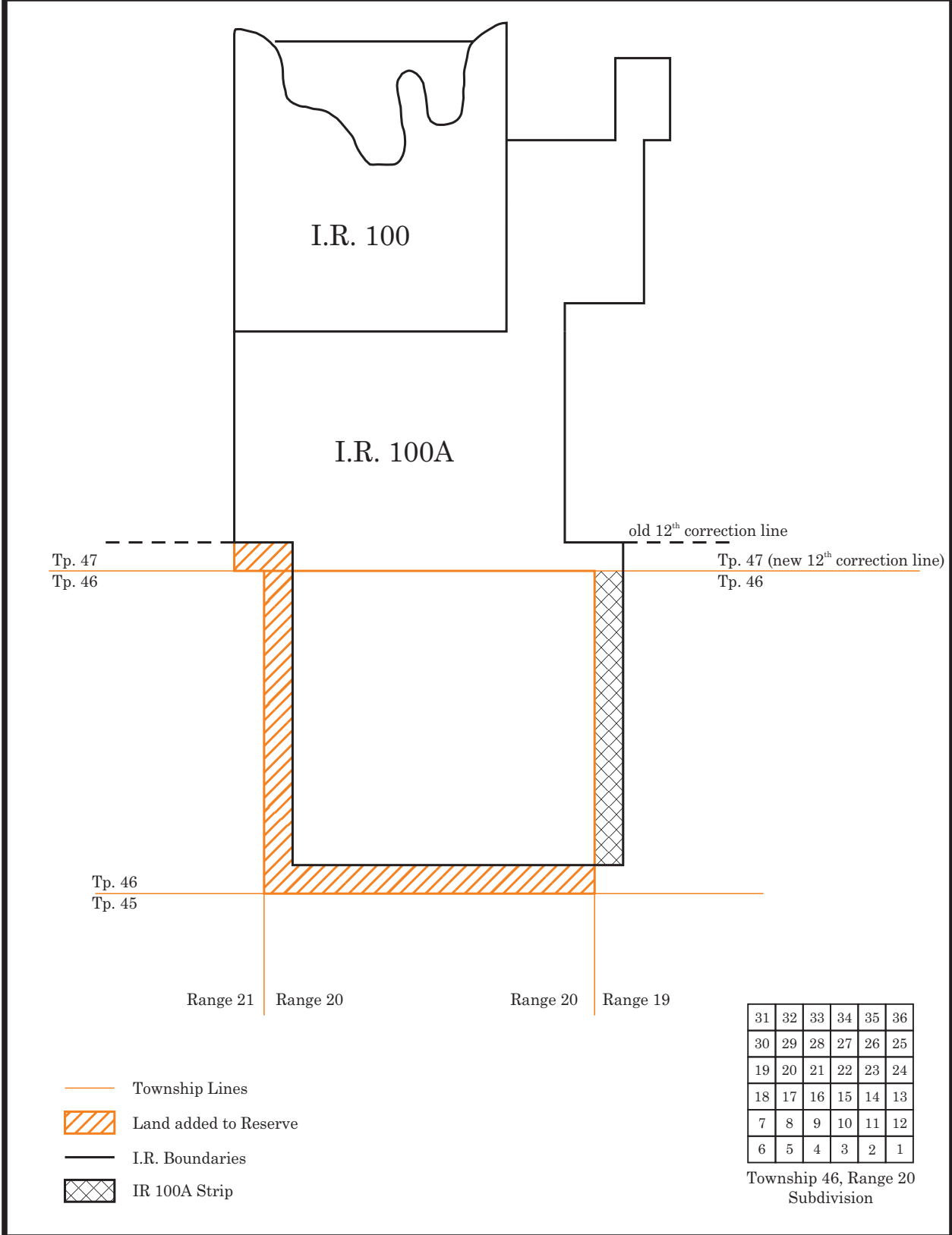
⁴³⁰ The IR 100A Strip is also referred to in some reports as “No Man’s Land.”

⁴³¹ A.M. Burgess, Deputy Minister of the Interior, to L. Vankoughnet, DSGIA, November 20, 1885, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 180).

Map 3

Cumberland IR 100A

IR 100A and Surrounding Townships, including the IR 100A Strip



The first plan of township 46, range 19, W2M, located directly to the east of the reserve, is dated June 24, 1893. It shows a slight encroachment of IR 100A on the western boundary of the township, as well as road allowances at the southern and eastern boundaries of the reserve.⁴³² The 1894 plan of township 46, range 20, W2M shows the Indian reserve lying slightly north and east of the township boundaries.⁴³³ That is confirmed by the field book for the survey of township 45, range 20, W2M, located directly south of township 46. The field notes show that the Indian reserve boundary lies slightly north of the line separating townships 45 and 46, and slightly east of the western boundary line separating ranges 20 and 21.⁴³⁴

Following the surrender, DLS J. Lestock Reid was instructed, on September 13, 1902, to subdivide the surrendered township for sale.⁴³⁵ He was already engaged in resurveying the boundaries of IR 100 and IR 100A at that time.⁴³⁶ On September 19, Reid reported that he was encountering a problem with the survey. He explained that he had started running boundaries, on the assumption that the township and Indian reserve boundaries were the same, but he soon discovered Indian reserve markers located out of line with the township boundaries.⁴³⁷

After studying current township plans, he noted that small portions of township 46 at the south and west were not included in the reserve. He also found that a small strip of the reserve extended over into township 46, range 19. He concluded that alterations to the Dominion Land

⁴³² Department of the Interior, Topographical Surveys Branch, Survey Plan of Township No. 46, Range 19, West of Second Meridian (first edition), approved June 24, 1893, attached as Appendix F to John Hay, "James Smith Band 'No Man's Land' Claim: Residual Lands of the Cumberland I.R. 100A," February 4, 1992 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 14c).

⁴³³ Department of the Interior, Topographical Surveys Branch, Survey Plan of Township No. 46, Range 20, West of Second Meridian, approved June 26, 1894 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 14b).

⁴³⁴ Field Notes for the Survey of Township No. 45, Range 20, West of the Second Meridian, surveyed by P.R.A. Belanger, DLS, August 2–September 24, 1892, pp. 19–24 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 14h, pp. 5–8).

⁴³⁵ J.D. McLean, Secretary, to J. Lestock Reid, DLS, September 13, 1902, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 721).

⁴³⁶ J. Lestock Reid to the Secretary, Department of Indian Affairs, September 2, 1902, LAC, RG 10, vol. 3960, file 141977-7 (ICC Exhibit 1, p. 716).

⁴³⁷ J. Lestock Reid to the Secretary, Department of Indian Affairs, September 19, 1902, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 726–27).

Surveys must have taken place since IR 100A was originally laid out in 1887.⁴³⁸ In order to deal with this unforeseen complication, Reid proposed

to exchange with the Dominion Lands the strip along the east boundary of the Reserve for that on the west and south[.] [T]his would make the boundaries of the Reserve conform to the township [outlines] and include the whole of Township 46 Range 20 W2M in the Indian Reserve.⁴³⁹

On September 22, Reid reported that, in addition to those irregularities already reported, a small strip of township 47 north of the 12th correction line was not included in the reserve.⁴⁴⁰ He revised his previous proposal to suggest that the strip of reserve lying in township 46, range 19, should be exchanged for the three small strips not included in the reserve at the north, west, and south, noting: “This would make the surrendered portion agree with the township outlines and save innumerable complications.”⁴⁴¹ In summary, Reid discovered the following irregularities with the original survey of IR 100A:

- a strip of land along the southern boundary of township 46, range 20, W2M, was excluded from the reserve;
- a strip of land along the western boundary of township 46, range 20, W2M, was excluded from the reserve;
- a strip of land immediately north of the 12th correction line (the boundary between townships 46 and 47, W2M) was excluded from the reserve; and
- a strip of land along the western boundary of township 46, range 19, W2M, was included in the reserve.

⁴³⁸ J. Lestock Reid to the Secretary, Department of Indian Affairs, September 19, 1902, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 726–27).

⁴³⁹ J. Lestock Reid to the Secretary, Department of Indian Affairs, September 19, 1902, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 727).

⁴⁴⁰ J. Lestock Reid to the Secretary, Department of Indian Affairs, September 22, 1902, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 729).

⁴⁴¹ J. Lestock Reid to the Secretary, Department of Indian Affairs, September 22, 1902, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 730).

Secretary McLean wrote to the Secretary of the Department of the Interior on September 25, 1902, regarding the matter. He noted that the Indian reserve “was surveyed with the intention of making its boundaries coincide with the boundaries of the said Township 46-20” and that

it would simplify matters very much ... if your Department could see its way to accept the narrow strip on the East, in exchange for the narrow strips ... on the West and South of the Reserve. In other words, to make the boundaries of the Indian Reserve the boundaries of T.46-20-W.2M.⁴⁴²

He wrote again on October 1, 1902, to ask that the small strip between the correction line and township 46 be added to the reserve as well.⁴⁴³ He instructed Surveyor Reid on the same day that “no harm” would be done if he proceeded with the survey “as if the said strips of land had been dealt with in the manner you suggest.”⁴⁴⁴ The Surveyor General informed the Assistant Secretary for the Department of the Interior on October 18, 1902, that he had “no objection” to the proposal.⁴⁴⁵

After much correspondence between the Department of the Interior and both the North-West Territories government and the Manitoba and North Western Railway Company, the lands in question were obtained and the exchange made.⁴⁴⁶ There is nothing to indicate that the James Smith Band was consulted regarding the adjustment of the reserve boundaries by the department.

⁴⁴² J.D. McLean, Secretary, to P.G. Keyes, Secretary, Department of the Interior, September 25, 1902, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 734–35).

⁴⁴³ J.D. McLean, Secretary, to P.G. Keyes, Secretary, Department of the Interior, October 1, 1902, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 737).

⁴⁴⁴ J.D. McLean, Secretary, to J. Lestock Reid, DLS, October 1, 1902, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 738).

⁴⁴⁵ Surveyor General to the Assistant Secretary, Department of the Interior, October 18, 1902, no file reference available (ICC Exhibit 1, p. 744).

⁴⁴⁶ See, for example, Assistant Secretary, Department of the Interior, to William Whyte, Commissioner, Manitoba and North Western Railway Company, October 27, 1902, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 749); Assistant Secretary, Department of the Interior, to Deputy Commissioner of Public Works [Government of the North-West Territories], October 27, 1902, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 750); J.S. Dennis, Deputy Commissioner, November 6, 1902, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 751); W. Whyte, Agent, Manitoba and North Western Railway Company of Canada, November 8, 1902, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 752); P.G. Keyes, Secretary, Department of the Interior, to J.D. McLean, Secretary, Department of Indian Affairs, November 20, 1902, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 758).

Reid completed the subdivision of the surrendered portion in November and December 1902 and submitted his report in January 1903, along with subdivision plan 271 of township 46, field notes, and valuations of the different sections.⁴⁴⁷ This plan clearly shows the encroachment of the reserve into range 19, as well as the strips of land along the west and south that are not included in the reserve.⁴⁴⁸ Plan 273, dated October 1902, shows the retraced boundaries of IR 100 and 100A and include a notation in township 46 that “[s]ubsequent to the making of this plan, it has been arranged with the Department of the Interior that the east, south and west boundaries of this surrendered portion of Reserve 100A are to conform with the township boundaries.” The small strip along the western portion of township 46, range 19, is visible on this plan.⁴⁴⁹

Reid’s subdivision plan was subsequently revised to show the surrendered portion of the reserve as corresponding to the township boundaries. All references to the reserve’s encroachment into range 19 and misalignment with the township in range 20 have been removed, and the plan shows the quarter sections around the periphery as containing the full 160 acres.⁴⁵⁰ The notice of sale prepared in early 1903 indicated that all the available lands were within township 46, range 20, and

⁴⁴⁷ J. Lestock Reid, Department of Indian Affairs, to DSGIA, January 1903, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 778–79); J. Lestock Reid to the DSGIA, January 15, 1903, LAC, RG 10, vol. 3960, file 141977-7 (ICC Exhibit 1, pp. 784–85).

⁴⁴⁸ Natural Resources Canada, Plan 271 CLSR, “Plan showing sub-division of Portion of Indian Reserve No. 100A, Township 46 Range 20 W 2nd. M, Treaty No. 6, N.W.T.,” signed by J. Lestock Reid, DLS, February 1903 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 14e, p. 45).

⁴⁴⁹ Natural Resources Canada, Plan 273 CLSR, “Plan showing the La Corne Indian Reserves No. 100 & 100A, Tps. 46, 47 & 48, R. 19, 20 & 21, W. 2nd. M., Treaty No. 6, N.W.T.,” surveyed by J. Lestock Reid, DLS, September–October 1902 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 14e, p. 44).

⁴⁵⁰ Natural Resources Canada, Plan T481 CLSR, “Plan showing sub-division of Portion of Indian Reserve No. 100A, Tps. 46, 47 & 48, R. 19, 20 & 21, W. 2nd. M., Treaty No. 6, N.W.T.,” surveyed by J. Lestock Reid, DLS, September–October 1902 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 4e, p. 2).

it did not make reference to any fractional parcels.⁴⁵¹ Successful purchasers were charged for the full 160 acres for most quarter sections on the periphery, except in cases of lands covered by water.⁴⁵²

Events in later years suggest that, although the Departments of the Interior and of Indian Affairs undertook to shift the boundaries of the Indian reserve, this commitment was not at all clear to residents in the area. Uncertainty regarding the ownership of strips of land on all four sides of township 46 in range 20 persisted. In 1911, Reverend G.R. Turk applied to the Department of Indian Affairs to purchase a strip of land adjacent to lands already owned by his wife in the south half of section 4 and the northwest quarter of section 18, within township 46, range 20.⁴⁵³ These strips of land would have been at the south and west boundaries of the township, so it is possible that Reverend Turk was looking to purchase the lands at the south and west side in township 46 that were not originally part of the reserve. J.D. McLean, the Assistant Deputy and Secretary, replied that, “as the reserve land goes to the boundary line on both the south and west sides[,] there is no land available by this Department outside of said lines.”⁴⁵⁴

Around the same time period, in 1911, the Department of the Interior resurveyed township 46, range 19, directly east of the surrendered portion of IR 100A. The survey plan shows the encroachment of IR 100A on the western boundary of the township; in addition, the east halves of sections 6, 7, 18, 19, 30, and 31 in range 19 are noted as containing less than the full 160 acres for each quarter section.⁴⁵⁵

⁴⁵¹ Draft sale notice signed by J.D. McLean, Secretary, Department of Indian Affairs, February 21, 1903, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 793); Revised sale notice, J.D. McLean, Secretary, Department of Indian Affairs, March 20, 1903, LAC, RG 10, vol. 3562, file 82, part 9 (ICC Exhibit 1, p. 828).

⁴⁵² Natural Resources Canada, Plan T481 CLSR, “Plan showing sub-division of Portion of Indian Reserve No. 100A, Tps. 46, 47 & 48, R. 19, 20 & 21, W. 2nd. M., Treaty No. 6, N.W.T.,” surveyed by J. Lestock Reid, DLS, September–October 1902 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 4e, p. 2); see also copy of plan attached to letter from J.D. McLean, Secretary, to David Laird, Indian Commissioner, February 28, 1903, LAC, RG 10, vol. 3562, file 82, part 9 (ICC Exhibit 1, pp. 797–98).

⁴⁵³ Assistant Deputy and Secretary to Reverend G.R. Turk, February 28, 1911, LAC, RG 10, vol. 6665, file 109A-9-13 (ICC Exhibit 1, p. 1128).

⁴⁵⁴ Assistant Deputy and Secretary to Reverend G.R. Turk, February 28, 1911, LAC, RG 10, vol. 6665, file 109A-9-13 (ICC Exhibit 1, p. 1128).

⁴⁵⁵ Department of the Interior, Surveys Branch, Survey Plan of Township 46, Range 19, West of Second Meridian (second edition), approved May 4, 1911 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 14e, p. 47).

On January 8, 1912, the Department of the Interior wrote to the Department of Indian Affairs inquiring what action had been taken to make the boundaries of the reserve and township coincide.⁴⁵⁶ The Secretary replied that since there was a “small discrepancy” between the reserve and township surveys, “the matter was simply rectified by adopting your survey” and “[n]o further action was taken by this Department.”⁴⁵⁷ He later reiterated that changing the limits of the reserve simply required “adopting the townships lines as originally surveyed, thus eliminating some small strips of land.”⁴⁵⁸

Between 1912 and 1927, actions were taken by the Departments of the Interior and Indian Affairs, as well as by the Saskatchewan government, to close various road allowances within the 100A Strip.⁴⁵⁹

In July 1912, R.C. Purser, DLS, resurveyed township 46, range 19, W2M. His instructions state that, since the reserve boundaries were changed in 1902, “there is now a strip along the west of township 46, range 19 which is Dominion lands and has not been surveyed,” and he was to

⁴⁵⁶ F. Nelson, for Assistant Secretary, Department of the Interior, to J.D. McLean, Assistant Deputy Minister and Secretary, Department of Indian Affairs, January 8, 1912, no file reference available (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 14h, p. 16).

⁴⁵⁷ J.D. McLean, Assistant Deputy and Secretary, to the Secretary, Department of the Interior, January 20, 1912, no file reference available (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 14h, p. 20).

⁴⁵⁸ J.D. McLean, Assistant Deputy and Secretary, to P.G. Keyes, Secretary, Department of the Interior, April 2, 1912, no file reference available (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 14h, p. 19).

⁴⁵⁹ Notice of Transfer by the Government of the Province of Saskatchewan, Department of Public Works, November 7, 1912, no file reference available (ICC Exhibit 1, p. 1152); Order in Council, August 15, [1916], no file reference available (ICC Exhibit 1, pp. 1260–61); Acting SGIA to the Governor General in Council, August 3, 1916, no file reference available (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 14h, p. 25); E. Deville, Surveyor General, Department of the Interior, Topographical Surveys Branch, to the Assistant Deputy and Secretary, Department of Indian Affairs, July 12, 1916, no file reference available (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 14h, p. 23); Saskatchewan Provincial Order in Council 574/18, April 12, 1918, no file reference available (ICC Exhibit 1, pp. 1284–85); Minister of Highways, Province of Saskatchewan, to the Lieutenant Governor in Council, March 8, 1918, no file reference available (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 14h, pp. 28–29); H.S. Carpenter for Acting Chairman, Board of Highway Commissioners, Province of Saskatchewan, to the Secretary, Department of the Interior, October 18, 1916, no file reference available (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 14h, p. 26); Order in Council PC 317, February 8, 1918, no file reference available (ICC Exhibit 1, p. 1283); Department of the Interior, Survey Plan of Township 46, Range 19, West of Second Meridian (fourth edition), approved October 2, 1918 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 14e, p. 53).

establish the western boundary of the township.⁴⁶⁰ During his survey, he located the iron bars marking the eastern boundary of IR 100A approximately four chains (264 feet) east of the western boundary of township 46, range 19.⁴⁶¹ The third edition of the plan of township 46, range 19, published in 1913 following Purser's survey, shows fractional sections 6A, 7A, 18A, 19A, 30A, and 31A for the first time.⁴⁶²

In February 1917, Walter H. Meyers, an agent for one of the landholders in the surrendered township, complained to the farm instructor at Fort à la Corne that squatters were living on a narrow strip of land immediately south of "your reserve" (presumably the unsurrendered portion of IR 100A). The strip, referred to as "No man's land," was described as being about 5 or 6 chains wide and 6 miles long. Meyers requested that the department have this narrow strip added to the reserve and a fence erected to keep out the squatters.⁴⁶³ Indian Agent Charles P. Schmidt forwarded the letter to the department and inquired about the ownership of the strip in question.⁴⁶⁴ The Secretary, mistaking the location of the land in question, replied that the land had all been sold owing to the adjustment made by the department.⁴⁶⁵

The matter arose again in 1923, when the Agent was again asked to bring the matter to the department's attention by the same landholder. Meyers confirmed that the strip of land lying south of the James Smith reserve and north of township 46, range 20, W2M, did not belong to him.⁴⁶⁶

⁴⁶⁰ Surveyor General to R.C. Purser, DLS, June 27, 1912, no file reference available (ICC Exhibit 1, p. 1146).

⁴⁶¹ John Hay, "James Smith Band, No Man's Land Claim: Residual Lands of the Cumberland I.R. 100A," February 4, 1992 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 14h, p. 14).

⁴⁶² Department of the Interior, Survey Plan of Township 46, Range 19, West of Second Meridian (third edition), approved November 20, 1913 (ICC Exhibit 14e, p. 52).

⁴⁶³ Walter H. Meyers, Real Estate Agent, to Mr. Rothwell, Farm Instructor, Fort à la Corne, February 28, 1917, LAC, RG 10, vol. 6664, file 109A-9-1A (ICC Exhibit 1, p. 1277).

⁴⁶⁴ C.P. Schmidt, Indian Agent, Duck Lake Agency, to the Secretary, Department of Indian Affairs, March 28, 1917, LAC, RG 10, vol. 6664, file 109A-9-1A (ICC Exhibit 1, p. 1278).

⁴⁶⁵ J.D. McLean, Assistant Deputy and Secretary, to C.P. Schmidt, Indian Agent, Duck Lake Agency, April 5, 1917, LAC, RG 10, vol. 6664, file 109A-9-1A (ICC Exhibit 1, p. 1279).

⁴⁶⁶ C.P. Schmidt, Indian Agent, Duck Lake Agency, to the Secretary, Department of Indian Affairs, February 24, 1923, LAC, RG 10, vol. 6664, file 109A-9-1A (ICC Exhibit 1, p. 1301).

Agent Schmidt commented that the strip in question was known in the neighbourhood as “No Man’s Land,” and was presently occupied by squatters.⁴⁶⁷ J.D. McLean replied on March 21, 1923, that the narrow strip between the northern boundary of township 46 and the southern boundary of “Reserve No. 100 ” had been added to the reserve. He commented that “all the land which is there which is not sold is Indian land,” and, therefore, the squatters were residing on the reserve. He also noted that a very small strip north of section 36 in township 46, range 20, had been designated as fractional section 36A and was under the jurisdiction of the Department of the Interior.⁴⁶⁸

In 1958, the owner of sections 7 and 18 in township 46, range 19, inquired whether he could acquire ownership of a 3-chain-wide strip lying between his land and the lands in range 20, and known as fractional sections 7A and 18A. He mentioned that a title search indicated that the lands were still held by the Crown as an Indian reserve. W.C. Bethune, Chief of the Reserves and Trusts branch, replied that his department had been unable to determine the status of the land.⁴⁶⁹ Bethune referred the matter to the Chief Surveyor, commenting that “we are inclined to assume that the land was never part of the reserve and by some error was never brought under the provisions of the Land Titles Act of Saskatchewan.”⁴⁷⁰

After considering the matter, Surveyor General R. Thistlewaite replied that a search of the available records “does not enable us to answer conclusively.”⁴⁷¹ He explained, however, that

we do recognize the possibility of an interest in these parcels on behalf of the Crown Canada by virtue of their having been included in I.R. 100A as set apart by P.C. 1151

⁴⁶⁷ C.P. Schmidt, Indian Agent, Duck Lake Agency, to the Secretary, Department of Indian Affairs, March 12, 1923, LAC, RG 10, vol. 6664, file 109A-9-1A (ICC Exhibit 1, p. 1303).

⁴⁶⁸ J.D. McLean, Assistant Deputy and Secretary, to C.P. Schmidt, Indian Agent, March 21, 1923, LAC, RG 10, vol. 6664, file 109A-9-1A (ICC Exhibit 1, p. 1305).

⁴⁶⁹ W.C. Bethune, Chief, Reserves and Trusts, to Cairns, Gale and Eisner, Barristers and Solicitors, July 28, 1958, no file reference available (ICC Exhibit 1, p. 1365).

⁴⁷⁰ W.C. Bethune, Chief, Reserves and Trusts, Indian Affairs Branch, Department of Citizenship and Immigration, to R. Thistlewaite, Surveyor General, Department of Mines and Technical Surveys, July 30, 1958, no file reference available (ICC Exhibit 1, p. 1366).

⁴⁷¹ R. Thistlewaite, Surveyor General, to W.C. Bethune, Chief, Reserves and Trusts, Indian Affairs Branch, Department of Citizenship and Immigration, September 2, 1958, no file reference available (ICC Exhibit 1, p. 1367).

of May 18, 1889, and not having been subsequently surrendered by the Indians, or sold by your Branch.⁴⁷²

Furthermore, the eastern boundary of the reserve

is described by metes and bounds from a post and mound to a post and mound. It is apparent that the monuments referred to clearly define the east boundary, and while it was discovered later that this boundary did not coincide with the westerly boundary of Tp. 46-19-W2M, evidence of its position was recognized and recorded by subsequent surveys of that township.⁴⁷³

He also noted that the fractional sections in range 19 had been surveyed as separate parcels rather than as part of the regular sections, with their eastern boundary being the boundary of the Indian reserve as surveyed by John C. Nelson in 1887. Thistlewaite felt that legal advice was required to determine whether the adjustment made by the Department of Indian Affairs had the effect of changing the original and confirmed reserve boundaries. He also noted in his letter that, according to Department of Indian Affairs files, the land gained by the change had already been sold for the benefit of the Band.⁴⁷⁴

In 1985, a survey of the 100A Strip was completed by Saskatchewan Land Surveyor Peter Wivcharuk. Plan 71582 of the “resurvey of the boundaries of the Cumberland Indian Reserve No. 100A in Township 46, Range 19, West of the 2nd Meridian” shows road allowances along the eastern and southern boundaries of the strip, although these were closed by Order in Council in 1918.

⁴⁷² R. Thistlewaite, Surveyor General, to W.C. Bethune, Chief, Reserves and Trusts, Indian Affairs Branch, Department of Citizenship and Immigration, September 2, 1958, no file reference available (ICC Exhibit 1, p. 1367).

⁴⁷³ R. Thistlewaite, Surveyor General, to W.C. Bethune, Chief, Reserves and Trusts, Indian Affairs Branch, Department of Citizenship and Immigration, September 2, 1958, no file reference available (ICC Exhibit 1, pp. 1367–68).

⁴⁷⁴ R. Thistlewaite, Surveyor General, to W.C. Bethune, Chief, Reserves and Trusts, Indian Affairs Branch, Department of Citizenship and Immigration, September 2, 1958, no file reference available (ICC Exhibit 1, pp. 1367–68).

Land within the strip is labelled “Cumberland Indian Reserve No. 100A.” No other significant roads or encroachments appear on this plan.⁴⁷⁵

As of 1992, according to the James Smith Cree Nation, there were 92.11 acres of encroachments on the 100A Strip, out of a total area of 191.33 acres.⁴⁷⁶ In response to an inquiry from the James Smith Band, the administrator for the Rural Municipality of Kinistino clarified, on June 15, 1989, that the lands within the 100A Strip “have never been assessed or taxed but as you are aware the adjacent farmers have been farming the property.”⁴⁷⁷

⁴⁷⁵ Natural Resources Canada, Plan 71582 CLSR, “Plan and Field Notes of re-survey of the boundaries of the Cumberland Indian Reserve No. 100A in Township 46, Range 19, West of the Second Meridian,” surveyed by P. Wivcharuk, Saskatchewan Land Surveyor, October 1985 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 14e, pp. 71a–87).

⁴⁷⁶ John Hay, “James Smith Band, ‘No Man’s Land’ Claim: Residual Lands of the Cumberland I.R. 100A,” February 4, 1992 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 14c, pp. 20–21).

⁴⁷⁷ Larry W. Edeen, Administrator, Rural Municipality of Kinistino No. 459, to Delbert Brittain, James Smith Band, June 15, 1989, no file reference available (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 14a).

PART III
ISSUES

The Indian Claims Commission is inquiring into the following five issues:

- 1 Did the “Peter Chapman Band” become a separate band from the Cumberland House Cree Nation at any time prior to *1902*?
 - (a) What was required by law to separate these Bands; and
 - (b) Were these requirements met?
- 2 Whether the Cumberland House Cree Nation could lawfully have been divided or split without its knowledge and consent?
- 3 Whether the Cumberland House Cree Nation could be deprived of its reserve without its knowledge and consent?
- 4 If the answer to question 1 is that a separate band was not established, then what is the effect on the events of 1902 and, assuming that the Cumberland House Cree Nation is entitled to compensation, what is the appropriate criteria to apply to such compensation?
- 5 If the answer to question 1 is that a separate band was established, then does the Band split bring an end to the interest of the Cumberland House Cree Nation in IR 100A? (i.e. What Band is the beneficial owner of IR 100A after 1902?) If so, what is the appropriate criteria to apply to compensation for the Cumberland House Cree Nation?

PART IV
ANALYSIS

We begin our analysis by considering Issues 1 to 3:

- 1 Did the “Peter Chapman Band” become a separate band from the Cumberland House Cree Nation (CHCN) at any time prior to 1902?**
 - (a) What was required by law to separate these two bands; and**
 - (b) Were these requirements met?**
- 2 Whether the Cumberland House Cree Nation could lawfully have been divided or split without its knowledge and consent?**
- 3 Whether the Cumberland House Cree Nation could be deprived of its reserve without its knowledge and consent?**

ISSUES 1 TO 3: THE PARTIES’ POSITIONS

The Cumberland House Cree Nation (CHCN) takes the position that its claim arises from the loss of its interest in a portion of its reserve located near Fort à la Corne, Saskatchewan – also identified as the Cumberland Reserve 100A (IR 100A). The CHCN submitted its claim in respect to Cumberland IR 100A in 1986, with a revised submission in September 1988. By letter dated December 10, 1997, signed by John Sinclair, then the Assistant Deputy Minister, Claims and Indian Government, Indian and Northern Affairs Canada, CHCN’s claim was validated, “but not on the basis set forth in the original claim submission filed on behalf of CHCN.”⁴⁷⁸

On December 10, 1997, the Assistant Deputy Minister stated:

These materials have also been reviewed by the Department of Justice. Based on a comprehensive review of the facts of the claim presented in the research, our preliminary position is that under the Specific Claims Policy no outstanding lawful obligation is owed by Canada to the Cumberland House Cree Nation either with regard to the surrender of 22,080 acres in the southern portion of IR #100A or with regard to the transfer to the James Smith Band of 19,520 acres through the merger of the Cumberland 100A Band and the James Smith Band in 1902.

However, it is our preliminary position that by 1891, the Cumberland House Band had split into two bands, the Cumberland House Band and the Cumberland

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Written Submission on Behalf of the Cumberland House Cree Nation, August 28, 2003, p. 4.

100A Band. One of the consequences of this band split was that the Cumberland House Band lost its interest in Reserve 100A. It is our preliminary position that a lawful obligation is owed by Canada to the Cumberland House Cree Nation for Canada's failure to fulfill its duty to ensure an equitable division of assets between the two bands.⁴⁷⁹

In CHCN's view, the purpose of the Indian Claims Commission's inquiry "is not to determine whether CHCN has a claim. The fact that CHCN has a valid claim has been recognized by Canada ... The inquiry is to determine the appropriate basis of the claim and the appropriate compensation which flows out of Canada's breach of its lawful obligation to CHCN."⁴⁸⁰ We will therefore begin our analysis of the basis of the claim with a review of the parties' respective legal positions.

Although Canada and the First Nation agreed on the issues put before this Commission, Canada chose, on delivering its written legal submissions, to depart from a strict analysis of each issue and, in fact, framed other issues. These issues, which Canada says arise in considering Issues 2 and 3, are as follows:

- A for which group of Indians was I.R. 100A set apart?
- B could Canada reallocate I.R. 100A to the Cumberland 100A Band without amending Order-in-Council 1151 setting that reserve aside for the "Indians of the Cumberland District"?
- C was a surrender necessary?⁴⁸¹

In Canada's view, the evidence is clear that IR 100A was set aside for the entire group of Indians known at that time, variously, as the "Cumberland House Band," the "Cumberland Band," and "the Indians of the Cumberland District of Treaty No. 5."⁴⁸² When Treaty 5 was signed in 1875, a group of Indians lived in the general area of the Hudson's Bay Company (HBC) post at Cumberland House.

⁴⁷⁹ John Sinclair, Assistant Deputy Minister, Claims and Indian Government, to Chief Pierre Settee, Cumberland House Cree Nation, December 10, 1997 (ICC Exhibit 11, p. 2).

⁴⁸⁰ Written Submissions on Behalf of the Cumberland House Cree Nation, August 28, 2003, p. 5, para. 6.

⁴⁸¹ Written Submissions on Behalf of the Government of Canada, November 24, 2003, p. 51, para. 87.

⁴⁸² Written Submissions on Behalf of the Government of Canada, November 24, 2003, p. 52, para. 93.

This group was “sufficiently cohesive” to constitute the larger unified entity known, variously, as the “Cumberland Indians,” the “Cumberland House Band,” the “Indians of the Cumberland District of Treaty No. 5,” and the “Cumberland Band.”⁴⁸³ At the time of their adhesion to Treaty 5 in 1876, Treaty Commissioner Alexander Morris referred to the entire group as the “Cumberland House Band,” but the signatories to that treaty are referred to as the “Cumberland Band.” At the time of survey of IR 100A, Dominion Land Surveyor (DLS) John C. Nelson indicated he was surveying for “the Indians of the Cumberland District of Treaty No. 5.” In Canada’s view, “it is logical that all of these appellations refer to the larger group of Indians.”⁴⁸⁴

Canada takes the position that “the group of Indians resident at IR 100A did become a separate band; the Cumberland 100A Band was created from the predecessor Cumberland House Band, and the successor Cumberland House Band continued to exist.”⁴⁸⁵ The groups of Indians resident at IR 100A formed a new band from an existing band. The original Cumberland House Band continued to exist, although it was composed only of the remnant of its members. The separation of these two bands did not occur as the result of any one act, but became a reality over the period from 1886 to 1891.⁴⁸⁶

Canada argues that band division and creation are a mixed question of fact and law. It directed the panel to consider the following factors in examining the issue of “separateness”:

- (1) Whether or not the two groups were co-located or were resident at different places;
- (2) Whether the two Bands had separate leadership;
- (3) Whether the two groups had separate treaty annuity paylists; and
- (4) Whether any other official documentation exists that would indicate the two groups are separate Bands.⁴⁸⁷

⁴⁸³ Written Submissions on Behalf of the Government of Canada, November 24, 2003, p. 52, para. 92.

⁴⁸⁴ Written Submissions on Behalf of the Government of Canada, November 24, 2003, p. 53, para. 93.

⁴⁸⁵ Written Submissions on Behalf of the Government of Canada, November 24, 2003, p. 44, para. 73.

⁴⁸⁶ Written Submissions on Behalf of the Government of Canada, November 24, 2003, p. 45, para. 76.

⁴⁸⁷ Written Submissions on Behalf of the Government of Canada, November 24, 2003, p. 46, para. 77.

In its review of the evidence, Canada points first to the geographical distance between the two groups – the Cumberland House Band being some 200 kilometres from Cumberland IR 100A. The Bands functioned, at least de facto, under separate leadership, with Albert Flett acting as Chief of the Cumberland House Band and Peter Chapman as the de facto leader of Cumberland IR 100A, once he had resigned from the Cumberland House Band. Also in evidence are the separate paylists for every year from 1886 forward: in Canada’s view, this separation operates as an important indicator of the federal government’s position that the groups were separate enough to warrant separate paylists.⁴⁸⁸

In support of its conclusion that no one act resulted in the separation of these two bands, Canada points, in evidence, to the various historical documents that indicate the evolution in thinking among both the officials in the Department of Indian Affairs and members of the Cumberland Band located at IR 100A. The culmination of that process resulted in the separation of these two Cumberland Bands by September 1891. Specifically, Canada points to the memorandum from Lawrence Vankoughnet, the Deputy Superintendent General of Indian Affairs (DSGIA), to Sir John A. Macdonald on November 23, 1883, in which he indicates that the group at Fort à la Corne should be designated as the “Fort a la Corne Band of Treaty No. 5,” and to the “Consent to Transfer” membership of Nanequaneum from Beardy’s Band to the Cumberland 100A Band in 1891. This second document was signed only by those who were considered by the Crown to be members of and the councillors of the Cumberland 100A Band.⁴⁸⁹

Still, Canada admits that there does appear to be confusion in some of the departmental correspondence at the time as to the separateness of these bands. Department officials sometimes used the term “Cumberland Band” as the “shorthand reference” for each group, but, on closer inspection of the context, Canada concludes that two separate groups existed.⁴⁹⁰ In its submission to the Commission, Canada argues that is reasonable to conclude that “a *de facto* band split had occurred. The bands had divided themselves in accordance with where they wanted to live. The

⁴⁸⁸ Written Submissions on Behalf of the Government of Canada, November 24, 2003, pp. 46–47, paras. 80–81.

⁴⁸⁹ Written Submissions on Behalf of the Government of Canada, November 24, 2003, p. 48, para. 83.

⁴⁹⁰ Written Submissions on Behalf of the Government of Canada, November 24, 2003, p. 49, para. 84.

government of the day recognized this reality. The group of Indians residing at IR 100A did become a separate band in fact and in law within the definition of ‘band’ under the *Indian Act*.⁴⁹¹ Given this situation, Canada asks: “[C]ould Canada reallocate I.R. 100A to the Cumberland 100A Band without amending Order-in-Council 1151 setting that reserve aside for the ‘Indians of the Cumberland District?’” Canada answers its own question by stating that Canada has, by way of royal prerogative, the ability to create Indian reserves. A corollary right to the Crown’s prerogative power to establish an Indian reserve is the Crown’s prerogative power to reallocate an Indian reserve.⁴⁹² In this case, Canada concludes: “Steps were clearly taken by the Department to reallocate the reserve lands. Moreover, there was an intention to reallocate the lands by the Department in a manner that recognized the factual reality of the time. Namely, that the Cumberland House Band had formed into two separate groups.”⁴⁹³

In contrast, the Cumberland House Cree Nation takes the position that a separate band, referred to as the “Peter Chapman Band,” was not established either in fact or in law. It points to the fact that at no time were members of the CHCN consulted about the division of the band:⁴⁹⁴ “There is no evidence that a vote to approve this development either among the band members or by the Chief and Council of CHCN took place.”⁴⁹⁵ It draws the attention of the panel to the point that, by 1902, Canada did not recognize any leadership at CHCN.⁴⁹⁶ In addition, “[t]he majority of actions which Canada may point to when examining the question of the establishment of a separate band

⁴⁹¹ Written Submissions on Behalf of the Government of Canada, November 24, 2003, p. 50, para. 86.

⁴⁹² Written Submissions on Behalf of the Government of Canada, November 24, 2003, pp. 54–55, paras. 99–101.

⁴⁹³ Written Submissions on Behalf of the Government of Canada, November 24, 2003, p. 58, para. 105.

⁴⁹⁴ Written Submissions on Behalf of the Cumberland House Cree Nation, August 28, 2003, p. 43, para. 98(a).

⁴⁹⁵ Written Submissions on Behalf of the Cumberland House Cree Nation, August 28, 2003, p. 43, para. 98(a).

⁴⁹⁶ Written Submissions on Behalf of the Cumberland House Cree Nation, August 28, 2003, p. 43, para. 98(a).

appear to stem from the actions of local Indian agents.”⁴⁹⁷ Based on the totality of the evidence, “these agents did not appreciate the unusual situation involving the total membership of CHCN,”⁴⁹⁸ and, more important perhaps, “[t]he actions of these officials do not however provide a legal basis for the separation of the two bands.”⁴⁹⁹

CHCN argues that “the creation of Cumberland [IR] 100A represented the fulfilment by Canada of a promise made to CHCN when Canada and CHCN entered into treaty.”⁵⁰⁰ The actions of Canada at the time IR 100A was created “make it clear that this reserve was being set apart for CHCN as its agricultural land”⁵⁰¹ because quality agricultural land was simply not available close to the more northerly IR 20.

Further, CHCN argues that there was nothing in the *Indian Act* before 1902 which deals with the subject of band split or the creation of a new band. The only statutory authority appears to be found in section 140. However, this section does not address the issue of a band split but, rather, the transfer of members from one band to another.⁵⁰² In the First Nation’s view, “if a decision of a band or its council was required to admit a single member or, at times, was necessary before a member could be transferred from a band, then a decision of the band was required in order for it to be split. To hold otherwise would produce an absurd result.”⁵⁰³

⁴⁹⁷ Written Submissions on Behalf of the Cumberland House Cree Nation, August 28, 2003, p. 43, para. 98(a).

⁴⁹⁸ Written Submissions on Behalf of the Cumberland House Cree Nation, August 28, 2003, p. 43, para 98(b).

⁴⁹⁹ Written Submissions on Behalf of the Cumberland House Cree Nation, August 28, 2003, p. 50, para. 117.

⁵⁰⁰ Written Submissions on Behalf of the Cumberland House Cree Nation, August 28, 2003, pp. 43–44, para. 99.

⁵⁰¹ Written Submissions on Behalf of the Cumberland House Cree Nation, August 28, 2003, p. 49, para. 113.

⁵⁰² Written Submissions on Behalf of the Cumberland House Cree Nation, August 28, 2003, p. 48, para. 111.

⁵⁰³ Written Submissions on Behalf of the Cumberland House Cree Nation, August 28, 2003, p. 53, para. 127.

In the absence of some statutory authority, then, “a split of a band would,” in CHCN’s view, “have been an internal matter for determination by the Band itself. There is, however, no evidence to suggest that CHCN, as a collective, ever agreed to such a split.”⁵⁰⁴ In fact, there is no evidence to indicate that such a proposition was ever put to CHCN as a whole.⁵⁰⁵ Finally, the Order in Council that confirmed the establishment of the Cumberland 100A reserve “[f]or the Indians of Cumberland District (of Treaty No. 5)” occurred in 1889.⁵⁰⁶ “If the band for whose benefit the reserve had been set aside was to be a different band than was described in the original Order in Council, then it would have been reasonable that the Order in Council confirming the establishment of the reserve would have been amended.”⁵⁰⁷ It was not.

DID “PETER CHAPMAN BAND” BECOME SEPARATE FROM CHCN BEFORE 1902?

We begin our analysis on the basis that three specific and different dates have been argued by the parties in answer to this first issue.

The James Smith Cree Nation (JSCN) will necessarily be affected by the analysis and findings of the panel in this inquiry. For this reason, therefore, its arguments will be considered here. The JSCN relies on the year 1883 as the date by which an entity known as the “Peter Chapman Band” was created and became a separate band from the Cumberland House Cree Nation.

Canada likewise argues that a separate band evolved from the Cumberland House Cree Nation and came to be known as the Cumberland 100A Band. For Canada, the creation of this new band did not result from any one act, but resulted from a series of acts that culminated in the year 1891.

⁵⁰⁴ Written Submissions on Behalf of the Cumberland House Cree Nation, August 28, 2003, p. 49, para. 112.

⁵⁰⁵ Written Submissions on Behalf of the Cumberland House Cree Nation, August 28, 2003, p. 49, para. 113.

⁵⁰⁶ Order in Council PC 1151, May 17, 1889, pp. 54–55 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 4a).

⁵⁰⁷ Written Submissions on Behalf of the Cumberland House Cree Nation, August 28, 2003, pp. 50–51, para. 119.

Finally, the Cumberland House Cree Nation argues that a separate band, referred to as either the “Peter Chapman Band” or the “Cumberland 100 A Band,” has at no time been created, but it asks the panel to consider the issue up to July 24, 1902 – the date on which this alleged new band amalgamated with the James Smith Cree Band. We will frame our analysis of Issue 1 on the basis of each respective date.

In 1883

A review of the documentary record reveals that the “Cumberland Band” adhered to Treaty 5 in 1876. The historical record is unclear, however, in its use of terminology respecting the location where the Treaty 5 Cumberland Band lived. The terms “Cumberland District,” the “vicinity of Cumberland,” or simply “Cumberland” were used interchangeably by Department of Indian Affairs officials to refer either to the immediate area around Cumberland Island (the location of CHCN’s IR 20) or to the larger territory encompassing the various communities that constitute the Cumberland Band in Treaty 5.

We know from a review of the treaty adhesion document of September 7, 1876, that the “Cumberland Band” was represented by Chief John Cochrane and headmen Peter Chapman and Albert Flett.⁵⁰⁸ The adhesion defines the Cumberland Band as “the Band of Saulteaux and Swampy Cree Indians residing at ... Cumberland Island, Sturgeon River, Angling River, Pine Bluff, Beaver Lake and the Ratty Country.”⁵⁰⁹ The treaty promised a reserve for the Cumberland Band at “Cumberland Island”; and, “as the land fit for cultivation there is also limited and insufficient to meet their requirements, that the balance of that reserve shall be at a point between the ‘Pine Bluff’ and ‘Lime Stone Rock,’ on ‘Cumberland Lake.’”⁵¹⁰

⁵⁰⁸ *Treaty No. 5 between Her Majesty the Queen and the Saulteaux and Swampy Cree Tribes of Indians at Beren’s River and Norway House with Adhesions* (Ottawa: Queen’s Printer, 1969), 11 (ICC Exhibit 13a, p. 10).

⁵⁰⁹ *Treaty No. 5 between Her Majesty the Queen and the Saulteaux and Swampy Cree Tribes of Indians at Beren’s River and Norway House with Adhesions* (Ottawa: Queen’s Printer, 1969), 10 (ICC Exhibit 13a, p. 9).

⁵¹⁰ *Treaty No. 5 between Her Majesty the Queen and the Saulteaux and Swampy Cree Tribes of Indians at Beren’s River and Norway House with Adhesions* (Ottawa: Queen’s Printer, 1969), 10 (ICC Exhibit 13a, p. 9).

In our view, it is significant that the Crown acknowledged the shortage of land fit for cultivation at Cumberland Lake at the time it entered into Treaty 5 with the Cumberland Band. We find this acknowledgment significant because it implies that Canada understood and accepted the need to find suitable agricultural land elsewhere for the Cumberland Band – a point we will return to later in this report.

While the James Smith Cree Nation has argued that John Cochrane, Albert Flett, and Peter Chapman were “spokesmen for different camps who became Chief and Councillors because it suited the needs of Canada to fit them into the band structure it wanted to follow in dealing with the Indians of the Cumberland District,”⁵¹¹ the panel does not intend to go behind either Treaty 5 or its adhesion documents to inquire into how the numerous bands who signed treaty came to be organized. The history of treaty making is, in our view, beyond the scope of this inquiry and not necessary for us to make a determination regarding the events at issue in this case. We therefore proceed on the basis that the Cumberland Band, as represented by the three above-named signatories, signed an adhesion to Treaty 5 in September 1876 and thus entered into a treaty relationship with the Crown on this date.

We see from the evidence that headman Peter Chapman resigned as a councillor of the Cumberland Band by 1880 and moved to Fort à la Corne in 1883. We also see from the evidence that while the designation of headman was a lifetime appointment, Peter Chapman is not referred to in department records as a “headman.”

By the time Peter Chapman migrated to Fort à la Corne in 1883, other families had already begun to move and settle on lands near the James Smith Band at that location. Concurrent with this movement of Cumberland band members, including Peter Chapman, to Fort à la Corne, we see in the evidence Chief Flett’s repeated requests for reserve land at Fort à la Corne – within four years of adhering to Treaty 5 and before a reserve had been surveyed anywhere for the Band. It is clear from the evidence that Chief Flett’s requests were motivated by the lack of quality agricultural lands at Cumberland Lake and by the Band’s desire for better farm land – a fact acknowledged in the treaty itself.

⁵¹¹ Written Submissions on Behalf of the Peter Chapman Cree Nation, regarding IR 100A, August 30, 2003, p. 52, para. 133.

There is no doubt, based on the evidence, that the Cumberland Band requesting reserve land near Fort à la Corne was the same “band” that adhered to Treaty 5 in September 1876. In September 1880, Indian Agent Angus MacKay reported that “a portion of the Cumberland Indian[s] also request permission [sic] to be allowed a Reserve and move from the Cumberland Band to a point between Fort La Corn [sic] and the Forks of the South and North branches of the Saskatchewan [River]. About one half of the Band expressed a desire to move from Cumberland as it is unfit for farming purposes and their fisheries and hunting grounds [are] failing.”⁵¹² The documentary record confirms that Chief Flett made at least three separate requests on behalf of the Cumberland Band for a reserve at Fort à la Corne, and the local Indian Agent confirmed Chief Flett’s desires to move to Fort à la Corne on no fewer than five occasions during the period 1880 to 1884. There is nothing in the record, either in the documents or in the community’s evidence, to lead the panel to believe that the repeated requests for a reserve near Fort à la Corne were being made by Peter Chapman or that the selection of land at Fort à la Corne made by Chief Flett was for anyone other than the Cumberland Band as a whole. We find that Chief Flett was making these requests in his capacity as Chief for the whole of the Cumberland Band in Treaty 5.

Despite Chief Flett’s repeated requests, the department was consistent in its refusal to grant such requests, explaining that “it would be impossible to keep trace of these Indians and would complicate the Pay sheets.”⁵¹³ Further, the department emphasized its concern that it was “undesirable that Indians connected with one treaty should be allotted land within the precincts of another Treaty.”⁵¹⁴ Moreover, at the time of these repeated requests, the department still had not surveyed a reserve for the Cumberland Band. Concurrent with the Band’s requests that it be allowed

⁵¹² A. MacKay, Indian Agent, Grand Rapids, to James F. Graham, Acting Indian Superintendent, Winnipeg, September 21, 1880, NA, RG 10, vol. 3555, file 10 (Exhibit 1, pp. 3–4).

⁵¹³ Draft letter, [James F. Graham, Indian Superintendent], Indian Office, Winnipeg, to [L. Vankoughnet, DSGIA], November 24, 1882 (ICC Exhibit 1, p. 60).

⁵¹⁴ L. Vankoughnet, DSGIA, to E. McColl, Inspector of Indian Agencies, May 15, 1883 (ICC Exhibit 1, pp. 90–91).

to move to Fort à la Corne, the Band expressed its opposition to having a reserve set out at Cumberland Lake because many wanted “to leave that place.”⁵¹⁵

Nonetheless, by 1882 Dominion Land Surveyor W.A. Austin was instructed to survey a reserve for the Cumberland Band at Cumberland, and he arrived to carry out his work on August 9, 1882. Although members of the Cumberland Band initially met Austin with reluctance, they eventually changed their mind and agreed to a reserve at Cumberland Lake. By October 9, 1882, Austin began to survey land at Chief’s Island, Cumberland Island, and on two hay islands. The total land set aside for the Cumberland Band at this time was 6.29 square miles. This land would later be confirmed as IR 20 by Order in Council.⁵¹⁶ In his report, Austin calculated that the Cumberland Band had an outstanding treaty land entitlement of 8,867.74 acres.⁵¹⁷ It is important to note that Austin’s calculations were based on the Treaty 5 provisions of 160 acres per family of five (or 32 acres per person). With a population of 345, the Cumberland Band was entitled to 11,040.00 acres under this treaty formula.⁵¹⁸ The poor quality of land at IR 20, however, did not go unnoticed by the department. In the Department of Indian Affairs annual report for 1884, Superintendent General John A. Macdonald referred to IR 20 “at Cumberland” as a “miserable tract of sterile land.”⁵¹⁹

Following the selection and survey of IR 20 for the Cumberland Band at Cumberland Lake in Treaty 5, DSGIA Vankoughnet reversed his position and decided to grant permission for the Cumberland Band to move to Fort à la Corne. He stated:

⁵¹⁵ L. Vankoughnet, DSGIA, to E. McColl, Inspector of Indian Agencies, May 15, 1883 (ICC Exhibit 1, pp. 90–91).

⁵¹⁶ Natural Resources Canada, Plan 237 CLSR, W.A. Austin, DLS, “Plan of part of Cumberland Indian Reserve Showing Chief’s Island and part of Cumberland Island,” March 1883 (ICC Exhibit 10d).

⁵¹⁷ W.A. Austin, DLS, to SGIA, April 1883, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1883*, 163–64 (ICC Exhibit 1, pp. 74–75).

⁵¹⁸ W.A. Austin, DLS, to SGIA, April 1883, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1883*, 167 (ICC Exhibit 1, p. 78).

⁵¹⁹ John A. Macdonald, SGIA, to the Governor General, January 1, 1885, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1884*, xli (ICC Exhibit 1a, p. 30). During this same period when the Hon. John A. Macdonald is reporting as the SGIA, he also held the office of Prime Minister.

[O]wing to ... the *utter uselessness for agricultural purposes of the land in the Reserve at Cumberland*, the undersigned was led to reconsider the application made by the Cumberland Indians, and in view of the *strong desire expressed by them to settle in the locality of the Carrot River for the purpose of cultivating the land and supporting themselves and families*, he [Vankoughnet] considers that the point of objection referred to might be waived in this instance, and that the distinction between these Indians and those of Treaty 6 would be probably maintained sufficiently were this Band, *if allowed to remove to Carrot River and take up land there, were always designated and known as the “Fort a la Corne Band of Treaty No. 5.”*⁵²⁰

We note that the first recorded migration of some of the Cumberland band members had begun before the department reversed its position; Charles and Alexander Fiddler were recorded on the August 1882 payroll for the Cumberland Band at Cumberland House as having “left reserve and gone to La Corne – Treaty No. 6.” In 1883, 30 families asked for permission to move, where “nine of their number had already settled”; in 1885, 14 families from the Cumberland Band were paid on the James Smith Band’s Treaty 6 payroll. By December 1885, 17 families were residing near James Smith, and Inspector Herchmer expected “30 additional families next summer.”

The James Smith Cree Nation takes the position that the families from the Cumberland Band (and elsewhere in the Cumberland District) which took up residence at Fort à la Corne between 1880 and 1883 did so with the intention of becoming a separate band at Fort à la Corne.⁵²¹ Further, it was their inherent right to define their own status as a band. As well, at both common law and within the meaning of the *Indian Act*, the Band at Fort à la Corne met the definition of a “band” by 1883 – they became “a body of individuals who exist as a collective, cohesive and identifiable community.”⁵²² The James Smith Cree Nation points to the following factors in demonstrating such a community:

- a) Was resident in the same area ...;
- b) Was composed of Swampy Cree people;

⁵²⁰ L. Vankoughnet, DSGIA, to John A. Macdonald, SGIA, November 23, 1883, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 98–100). Emphasis added.

⁵²¹ Submissions on Behalf of the Peter Chapman Cree Nation, IR 100A Inquiry, p. 57, para. 154.

⁵²² Submissions on Behalf of the Peter Chapman Cree Nation, IR 100A Inquiry, p. 57, paras. 156–57.

- c) Was composed of Indians who had connections by kinship or personal relations with each other;
- d) Was composed of Anglicans;
- e) Had an influential leader in Peter Chapman;
- f) Was identifiable as a group which was distinct from the James Smith Band which also resided at Fort a la Corne.⁵²³

In our view, while these listed factors are possible indicators for defining a “cohesive and identifiable community,” the act of a number of families migrating to a single location in 1883 does not, in and of itself, create a band separate from the band in which the majority of members originated from – in this case, the Cumberland Band at IR 20. By 1883, what we see in the evidence are the beginnings of what would become the gradual migration of some of the members of the Cumberland Band to Fort à la Corne.

In the *Young Chipeewayan Inquiry*, the Indian Claims Commission considered whether the Young Chipeewayan Band continued to exist following the migration of its members to other bands. In that case, the Commission said:

We would observe that it is not possible to prescribe rigid *indicia* which need always be present for a group of individuals to constitute a “band,” as the factors relevant to this question may vary from case to case.⁵²⁴

Without rigid *indicia*, the panel questioned whether the common law meaning of a “band” assisted the claimants. As noted then by the Young Chipeewayan panel, and equally noted here, there is no Canadian authority to assist us in understanding whether a “band” can have a common law existence, separate and distinct from the licensure of the *Indian Act*. Furthermore, although bands are regulated by the *Indian Act* regime, they do not necessarily owe their existence to that legislation. In *Young Chipeewayan*, the panel took note of Jack Woodward, in *Native Law*, who explained that “the question of whether a body of Indians is a ‘band’ is a question of fact that must be determined

⁵²³ Submissions on Behalf of the Peter Chapman Cree Nation, IR 100A Inquiry, p. 58, para. 159.

⁵²⁴ ICC, *Young Chipeewayan: Stoney Knoll Indian Reserve 107 Inquiry* (Ottawa, December 1994), reported (1995) 3 ICCP 175 at 198.

prior to the determination of other substantive issues in a lawsuit.”⁵²⁵ In this case, it is a question of fact that must be resolved with respect to the particular history of the Indians of the Cumberland District.

The James Smith Cree Nation asserts that when Peter Chapman, his friends and family, and other Indians from the Cumberland District emigrated to the Fort à la Corne area, at least by 1883, they became a self-generated band given official recognition by the Department of Indian Affairs in 1883. With the greatest of respect, we do not believe that the evidence can support such a conclusion. Rather, based on the evidence, we see the first recorded migration of Cumberland band members to Fort à la Corne on the August 1882 payroll for the Cumberland Band at Cumberland House – where notations show that Charles and Alexander Fiddler had “left reserve and gone to La Corne – Treaty No. 6.”⁵²⁶ In February 1883, Agent McKay reported that “last summer, I noticed that several Indians had left their Reserves, and on enquiring ascertained that they had left and were receiving payments in Treaties 4 and 6.”⁵²⁷ The Cumberland Band’s payroll for 1883 shows nine families absent, including Peter Chapman, who were later paid at Fort à la Corne in 1885 on the James Smith Band’s payroll. On November 30, 1883, Inspector McColl reported that the Chief of the Cumberland Band, “on behalf of thirty families,” asked for permission to move to La Corne, “where nine of their number had already settled.”⁵²⁸ We interpret this evidence to indicate that, by the end of 1883, nine families originally from the Cumberland Band were living at Fort à la Corne and were later paid on the James Smith payroll. There is no evidence that would lead us to conclude that the requests for a reserve were being initiated by a group of Indians seeking to assert themselves as a separate band in 1883. Rather, we see the requests for a reserve being communicated by Chief Flett and variously described as “the Cumberland Band request,” “about one half of the band,” “my people,” and “a

⁵²⁵ ICC, *Young Chipeewayan: Stoney Knoll Indian Reserve 107 Inquiry* (Ottawa, December 1994), reported (1995) 3 ICCP 175 at 200.

⁵²⁶ Treaty annuity payroll, Cumberland Band paid at Cumberland, 1882, no file reference available (ICC Exhibit 8, p. 26).

⁵²⁷ James F. Graham, Indian Superintendent, to SGIA, April 17, 1883, LAC, RG 10, vol. 3634, file 6441 (ICC Exhibit 1, p. 81).

⁵²⁸ E. McColl, Inspector of Indian Agencies, to John A. Macdonald, SGIA, November 30, 1883, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1883*, 141 (ICC Exhibit 1, p. 102).

number of the Cumberland Band.” It is apparent that each request is motivated by the “utter uselessness for agricultural purposes of the land in the Reserve at Cumberland.”⁵²⁹ By 1883, IR 20 at Cumberland Lake had been, albeit reluctantly, surveyed and set aside for the Cumberland Band, whose population in 1882 had been 345. The total land set aside for the Cumberland Band at that time was 6.29 square miles (or 4,025.6 acres), and, as noted by Surveyor Austin, the Cumberland Band still had an outstanding treaty land entitlement of 8,867.74 acres.⁵³⁰

Based on the totality of evidence leading up to and including 1883, there is nothing to indicate that the intention of the families relocating to Fort à la Corne from the Cumberland District was for the purpose of establishing their own band. Rather, they were motivated by the lack of quality farm land to support themselves at Cumberland Lake. Although we do not believe that the evidence supports a finding that a separate band was established by 1883, Canada has asserted that the year 1891 marks the date on which a separate band was established. We will now turn to our analysis of this period.

In 1891

Canada submits that while IR 100A was set aside for the whole of the Cumberland Band that adhered to Treaty 5, the group of Indians resident at IR 100A formed a new Band (the Cumberland 100A Band), created from an existing Band (the original Cumberland House Band). At the same time, the original Band continued to exist, although it was now composed only of the remnant of its members.⁵³¹ Furthermore, the separation of the Cumberland 100A Band from the Cumberland House Band did not occur as the result of any one act, but became a reality over the period from 1886 to

⁵²⁹ L. Vankoughnet, DSGIA, to John A. Macdonald, SGIA, November 23, 1883, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 98–100).

⁵³⁰ W.A. Austin, Dominion Land Surveyor, to SGIA, April 1883, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1883*, 167 (ICC Exhibit 1, p. 78); Natural Resources Canada, Field book 132 CLSR, W.A. Austin, “Field Notes of Indian Reserves at Cumberland, Birch River, The Pas, Bear Island Lake, Chimawawin,” 1882 (ICC Exhibit 10c, p. 6). The total reserve acreage reported by Austin in his survey report and field book do not reconcile with the final reserve acreage appearing on the survey plan for IR 20.

⁵³¹ Written Submissions on Behalf of the Government of Canada, November 24, 2003, pp. 44–45, paras. 73–76.

1891. In considering the “separateness” of the two groups, Canada refers to certain factors that should be taken into account:

- a) Whether or not the two groups were co-located or were resident at different places;
- b) Whether the two Bands had separate leadership;
- c) Whether the two groups had separate treaty annuity pay lists; and
- d) Whether any other official documentation exists that would indicate the two groups are separate Bands.⁵³²

We are assisted by these factors, just as we found the indicia of the James Smith Cree Nation informative for considering a group to be a “cohesive and identifiable community.” We would also add another important consideration: whether reserve lands had been surveyed and set aside, and for whom. We will now review the evidence in addressing these indicia.

Distance between the Two Groups

There is little doubt that the Cumberland Band at IR 20 and those members settling at Fort à la Corne were separated by a great distance, particularly for the late 19th century. In the 1880s, a distance of 200 kilometres was significant, even though each group settled along the Saskatchewan River and, in all probability, enjoyed easier transportation along this waterway. Nonetheless, neither group was in close proximity to the other, and each was administered by a different Indian agency: the Pas Agency for the Cumberland Band, and the Duck Lake Agency for the Fort à la Corne residents. In spite of the 200 kilometres, there is no indication in the evidence that this distance was considered a serious impediment by the First Nation. In fact, the land at Fort à la Corne was chosen by the Cumberland Band and accepted by Canada as land fit for cultivation. In its submission, Canada makes no further argument as to the significance of the distance between these two groups. Without further assistance from the parties, we assign little, if any, weight to the simple fact that these groups settled at least 200 kilometres apart. Likewise, we do not believe that, had these groups settled at a closer distance, we would be compelled to find that this fact tips the balance of “separateness.”

⁵³²

Written Submissions on Behalf of the Government of Canada, November 24, 2003, p. 46, para. 77.

Leadership

We agree with Canada's inclusion of the matter of leadership as one factor in determining separateness. A review of the evidence, however, does not indicate that the department was prepared to acknowledge a Chief and council at IR 100A separate from the leadership of the Cumberland Band at IR 20. On the contrary, what we see in the evidence is the department's total denial of separate leadership at IR 100A, on the basis that this group's need for leadership was satisfied by the appointment of the Chief and council for the Cumberland Band at IR 20. Peter Chapman, originally a headman of the Cumberland Band in Treaty 5, resigned his position in 1880. While all parties may speculate as to the reasons behind his resignation, there is no evidence that would assist us in understanding his motivation for doing so. We are left with the simple fact that, in 1880, he resigned his position. Further, after his move to Fort à la Corne in 1883, there is some evidence to suggest that he was informally acknowledged by at least Indian Agent McKenzie and Surveyor Nelson as Chief, yet this practical recognition was never formalized. Indeed, it was contradicted by the department in Ottawa. When Agent McKenzie referred to the Cumberland IR 100A residents as "Peter Chapman's Band" in one of his 1888 monthly reports, the department wrote to the Assistant Indian Commissioner, Hayter Reed, to clarify the matter, saying, "As respecting the Band designated by Mr. McKenzie as 'Peter Chapman's,' the Department has no knowledge of them under that designation."⁵³³ Reed replied that the group referred to was the "section of the Cumberland Band, whose reserve is adjoining that of James Smith."⁵³⁴ Further, while Surveyor Nelson reported that he "explained to [Peter] Chapman, who is looked upon as chief of the band" by the Cumberland contingent at La Corne, we see in the evidence that the residents at Fort à la Corne were denied their request for a Chief and councillors separate from the Cumberland Band at Cumberland Lake. In the department's view, "[t]his Band is a fragment of the Cumberland Band of Treaty No. 5 which has

⁵³³ L. Vankoughnet, DSGIA, to Hayter Reed, Assistant Indian Commissioner, February 23, 1888, LAC, RG 10, vol. 3793, file 46008 (ICC Exhibit 1, pp. 252–56).

⁵³⁴ Hayter Reed, Assistant Indian Commissioner, to John A. Macdonald, SGIA, April 16, 1888, LAC, RG 10, vol. 3793, file 40008 (ICC Exhibit 1, pp. 269–70).

already the number of Chiefs and Councillors allowed a Band.”⁵³⁵ Finally, we know that Peter Chapman was never paid as either a Chief or a headman on the IR 100A paylists. Thus we find that leadership at Fort à la Corne, separate and apart from the Chief and council at IR 20, was not recognized by the department at any point during the relevant period.

We now turn to the matter of separate paylists.

Separate Paylists

We know from the documentary evidence that the families that first migrated to Fort à la Corne were recorded as being absent on the 1882 Cumberland Band IR 20 payroll. These first families were paid with the James Smith Band in 1885. In September 1886, the “Cumberland Band paid at Fort la Corne” received its own payroll entitled “Treaty No. 6.” In 1886, 17 families appeared on this list – 16 of these families were from the Cumberland Band in Treaty 5, and one, John Constant, was from The Pas Band. Further, while the residents at IR 100A and IR 20 had separate paylists between the years 1886 and 1902, we do not place great weight on these paylists as evidence of “separateness.” As we have seen in many other cases, treaty annuity paylists are but one indicator of the department’s administration of the members residing on a reserve. Rather than evidence the Crown’s position that the groups were separate enough to warrant separate paylists, we believe that separate lists were created out of the administrative reality that these reserves were being administered by different agencies – Duck Lake and the Pas – within two different treaty areas. In addition, we believe that the separation of paylists, rather than providing evidence of the separation of bands, was the administrative instrument through which the department, in permitting members of the Cumberland Band of Treaty 5 to move to Fort à la Corne within Treaty 6, could be assured that “the distinction between these Indians and those of Treaty 6”⁵³⁶ could be maintained.

⁵³⁵ Indian Commissioner, to the Indian Agent, Duck Lake Agency, July 5, 1888, LAC, RG 10, vol. 1592 (ICC Exhibit 1, pp. 282–83).

⁵³⁶ L. Vankoughnet, DSGIA, to John A. Macdonald, SGIA, November 23, 1883, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 98–100).

Creation of a Reserve at Fort à la Corne

As noted previously, we believe that, in addition to the four factors listed by Canada, it is also necessary to consider the establishment of IR 100A in deciding on the separateness of these two groups. From at least 1880, Chief Flett made repeated requests for a reserve at Fort à la Corne. In response, the Department of Indian Affairs continued to correspond with the Department of the Interior for available lands for a reserve at a location agreeable to the “Cumberland Band.” Nowhere in the historical record is there evidence of department officials consulting with the residents of Fort à la Corne on the location of a reserve.

In *Carry the Kettle First Nation*, this Commission considered the elements necessary to create a reserve under treaty to include:

- consultation and selection;
- survey; and
- acceptance.⁵³⁷

Based on the evidence in this inquiry, we find that, at all times, it was the Cumberland Band at IR 20 that requested, selected, and finally accepted the land as a reserve at Fort à la Corne. As previously stated, between 1880 and 1884, the Indian Agent expressed the Cumberland Band’s desire to move to Fort à la Corne on no fewer than five occasions. Beginning in December 1883, DSGIA Vankoughnet informed the Department of the Interior of the wish to secure a reserve near Fort à la Corne “for the Cumberland Band of Indians in exchange for the Reserve or part thereof occupied by them at Cumberland.”⁵³⁸ On the suggestion that a reserve could be set aside south of Chakastaypasin’s IR 98 reserve, the Department of the Interior offered five sections of land, or 3,200 acres, to the Department of Indian Affairs for a reserve. DSGIA Vankoughnet was prepared to accept this land as sufficient until Chief Flett, in 1885, rejected this offer and again expressed the

⁵³⁷ ICC, *Carry the Kettle First Nation: Cypress Hills Inquiry* (Ottawa, July 2000), reported (2000) 13 ICCP 209 at 303.

⁵³⁸ L. Vankoughnet, DSGIA, to A.M. Burgess, Deputy Minister of the Interior, December 6, 1883, LAC, RG 15, vol. 311, file 68309 (ICC Exhibit 1, pp. 105–6).

Cumberland Band's desire to settle at Fort à la Corne.⁵³⁹ In the face of Chief Flett's refusal, DSGIA Vankoughnet wrote to Inspector McColl in June 1885 to ascertain whether townships 46 and 47, range 20, immediately south of James Smith's reserve, was the "locality in which the Cumberland Indians wish to have a Reserve made for them."⁵⁴⁰ On August 26, 1885, Agent Reader confirmed this location as the land desired by the "Cumberland Band," and Vankoughnet accepted the offer of this land from the Department of the Interior on October 2, 1885.⁵⁴¹ Yet it would be another year and a half before Surveyor Nelson proceeded to Fort à la Corne, on July 25, 1887, "to lay out a reserve for the contingent of the Cumberland Band and such other Indians as may be assigned locations therein." Nelson's field notes refer to IR 100A as being "for Indians of the Cumberland District."⁵⁴² By June 21, 1888, the department forwarded Nelson's tracing of the IR 100A plan of survey "for the Cumberland Band of Indians on the Carrot River near Fort a la Corne" to the Department of the Interior and explained that the temporary reserve surveyed by Nelson was settled on by five "heads of families of the Cumberland contingent under Chapman, and if available for Indian Reserve purposes should form part of the Reserve."⁵⁴³

We also believe it is significant to consider the size of IR 100A. On being instructed to "lay out a reserve for the *contingent of the Cumberland Band*," we believe Surveyor Nelson relied on the Cumberland Band's base population of 345 people, for a total area of 65 square miles, as being "for

⁵³⁹ L. Vankoughnet, DSGIA, to A.M. Burgess, Deputy Minister of the Interior, July 23, 1884; J. Reader, Indian Agent, Pas Agency, The Pas, Cumberland, to E. McColl, Inspector of Indian Agencies, Winnipeg, March 25, 1885, LAC, RG 15, vol. 311, file 68309 (ICC Exhibit 1, pp. 137–38, 154).

⁵⁴⁰ Draft letter, L. Vankoughnet, DSGIA, to E. McColl, Inspector of Indian Agencies, Winnipeg, June 3, 1885, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 156–57).

⁵⁴¹ J. Reader, Indian Agent, to E. McColl, Inspector of Indian Agencies, August 26, 1885, LAC, RG 10, vol. 3736, file 27580; L. Vankoughnet, DSGIA, to A.M. Burgess, Deputy Minister of Interior, October 2, 1885, LAC, RG 15, vol. 311, file 68309 (ICC Exhibit 1, p. 172).

⁵⁴² Natural Resources Canada, Field book 151 CLSR, John C. Nelson, DLS, "Treaty No. 6, North West Territories, Field Notes of the survey of the Boundaries of Indian Res. No. 100A (for Indians of the Cumberland District) at Carrot River," July–August 1887 (ICC Exhibit 4b, p. 2).

⁵⁴³ W.A. Austin, for the Deputy Minister of Indian Affairs, to Mr McNeill, June 15, 1888, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 277–78).

the Indians of the Cumberland District.”⁵⁴⁴ If the department intended, in agreeing to set aside a reserve at Fort à la Corne, the creation of a reserve for only those people resident at that location at the time of survey, Canada had the authority to limit the size of the reserve finally confirmed. It did not. Further, at the time of its creation, IR 100A was clearly intended for the whole of the Cumberland Band, which the department expected would migrate over time. In 1882, when Surveyor Austin surveyed 2,172.53 acres for a reserve for the Cumberland Band in the vicinity of Cumberland House, he noted that 8,867 additional acres were “to be surveyed for the Cumberland Band to bring the acreage to 11,040” (sufficient under Treaty 5 for 345 people – the population of the Cumberland Band in that year). In 1887, Surveyor Nelson surveyed a reserve of 41,600 acres at Fort à la Corne.

In 1889, when the department was considering a surrender or an exchange of land at IR 100A, it had occasion to revisit the size of IR 100A. The department noted that the area taken up by IR 100A was 65 square miles, or 41,600 acres. According to the terms of Treaty 6, which entitled Treaty 6 Indians to 1 square mile for every family of five, or 128 acres per person, 41,600 acres was equivalent to 325 persons. During the 1880s, approximately 75 people were settled at Fort à la Corne. The size of the survey raises the question of why the department would set aside a reserve of 65 square miles for 75 people. We can interpret the record today to see that, clearly, the department and the Dominion Land Surveyor were in error in relying on the provisions of Treaty 6 to survey and set aside land for a Treaty 5 band, albeit in an area covered by Treaty 6. Nonetheless, IR 100A was confirmed by Order in Council on May 17, 1889, “[f]or the Indians of Cumberland District (of Treaty No. 5).”⁵⁴⁵

The James Smith Cree Nation argues that the reserve that came to be established at Fort à la Corne and known as IR 100A was set aside for those Indians of the Cumberland District who chose to move to Fort à la Corne and reside on IR 100A; it was never intended to be the reserve set aside for those Indians who chose to remain in the area of Cumberland House. Further, all Indians who remained in the Cumberland House area retained their right to have land set aside for them according

⁵⁴⁴ John C. Nelson, DLS, In Charge of Indian Reserve Surveys, to SGIA, December 30, 1887, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1887*, 275 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 17, p. 35). Emphasis added.

⁵⁴⁵ Order in Council PC 1151, May 17, 1889, p. 52 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 4a).

to the terms of Treaty 5, and, today, they have an outstanding treaty land entitlement. With respect, we do not believe this argument can be substantiated from the evidence.

As we noted earlier in this report, many terms were applied by the Department of Indian Affairs when referring to the Cumberland Band, and these terms appear to have been used interchangeably. Based on the totality of evidence, we find that IR 100A was created by Canada to fulfill its obligation to the Cumberland Band as a whole, in spite of the use of the phrase “Indians of the Cumberland District” found in the Order in Council. That IR 100A was created for the whole of the Cumberland Band has been conceded by Canada in its 1987 preliminary legal opinion and in this inquiry.⁵⁴⁶

Official Documentation

Finally, Canada has included in its indicia of “separateness” whether any other official documentation exists that would indicate that the two groups are separate bands. We believe it is important to include in our review of the official documentation the continued movement between the reserves at IR 20 and IR 100A after 1891, as well as the surrender of 640 acres at IR 20 in 1894.

In 1888, the year after Nelson’s survey, Indian Agent Reader asked the department whether those who still wished to leave IR 20 and settle at IR 100A could do so. We note that he believed that “the desire to leave this district, and settle on the new Reserve[,] is on the increase.” The department responded that “any members of the Cumberland Band may remove to the reserve referred to.”⁵⁴⁷ By January 1889, the department informed the Inspector of Indian Agencies “that any members of the Cumberland Band may remove to the Reserve referred to [at Fort à la Corne].”

The department was anything but consistent in its interpretation of the free movement of members from IR 20 to IR 100A. In regard to the “transfer of four families from Cumberland to La Corne” in July 1889, Indian Commissioner Forget instructed Agent McKenzie “that in [the] future,

⁵⁴⁶ Written Submissions on Behalf of the Government of Canada, November 24, 2003, pp. 53–54, para. 95.

⁵⁴⁷ J. Reader, Indian Agent, Pas Agency, to E. McColl, Inspector of Indian Agencies, October 4, 1888, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 303).

you will try to discourage these changes, especially those from another Agency.”⁵⁴⁸ Thus, in a span of six months, the department shifted its view from one of free movement to one of discouraging migration from IR 20 to IR 100A.

In deciding on the issue of whether the “Peter Chapman Band” became a separate band from CHCN, we believe it is significant to determine whether the department considered the movement of people from Cumberland IR 20 to Cumberland IR 100A to be “transfers” (i.e., the movement of members from one band to another) or simply the movement of members within the same band. There is nothing in the evidence that would lead us to believe that the department considered the movement of members from the Cumberland IR 20 at Cumberland Lake to IR 100A at Fort à la Corne to be anything other than the migration of members within a band. During the course of legal argument, Canada acknowledged that, during the relevant period (1886–91), there was no statutory provision regarding the transfer of Indians from one band to another. In fact, it was this lack of express authority which precipitated the introduction of section 140 into the *Indian Act* in 1895 (the amendment to the *Indian Act* which formalized the procedure for transfer of membership *between* bands). We note that although section 140 was not introduced until 1895, the department did express in 1889 an informal practice regarding the transfer of Indians between bands. Viewing the transfer of Indians between bands to be permissible “in exceptional cases,” DSGIA Vankoughnet stated the department’s practice for handling such transfers to “require the written consent of a majority of the voting members of both the originating and receiving bands” after a “full explanation that the transferee would be entitled to a share in all lands and privileges of the receiving Band.”⁵⁴⁹ This informal practice, requiring the consent of both the originating band and the receiving band, would, in this case, have required the consent of the whole of the Cumberland Band, as the lawful owners of IR 100A, to any transfers into IR 100A. No such consents were sought or obtained.

Today, Canada relies on the September 4, 1891, Consent to Transfer form admitting Nanequaneum from Beardy’s Band into “the Band of Indians ... owning Cumberland Reserve 100A”

⁵⁴⁸ A.E. Forget, Assistant Indian Commissioner, to the Indian Agent, Duck Lake Agency, July 9, 1889, LAC, RG 10, vol. 1592 (ICC Exhibit 1, p. 322).

⁵⁴⁹ L. Vankoughnet, DSGIA, to Hayter Reed, Indian Commissioner, March 18, 1889, LAC, RG 10, vol. 3807, file 52583-2 (ICC Exhibit 1, pp. 310–12).

as evidence of an action of a new band, separate from its predecessor. On its face, this document appears to represent the consent of five members of the Cumberland Band residing at IR 100A, and two non-members also residing at Fort à la Corne, to admit a new member into a band. With respect, we reject Canada's reliance on this single document as proof of the separateness of two bands. We have said, and Canada has conceded, that IR 100A was created for the whole of the Cumberland Band. According to Canada's practice, before 1895, the receiving band would have been the Cumberland Band as a whole. We can find no evidence of the Cumberland Band being informed of, consulted with, or having provided its consent to the transfer of Nanequaneum from Beardy's Band. The panel cannot accept Canada's argument that a group of members of the Cumberland Band and other non-members are entitled to make decisions with respect to IR 100A (such as the decision to admit a person into the Band who, by their admission, is entitled to take an interest in IR 100A) without including the entire Band, including those at IR 20. Treaty 5 requires the whole band's consent, and not individuals chosen by Canada. For Canada to initiate and rely on the decision of some of the members as evidence of a separate band, without obtaining the express consent of the whole band, is a breach of treaty. Further, the panel cannot accept Canada's reliance today on what amounts to an administrative act (the Consent to Transfer) as justification for the creation of a band or as extinguishing the whole of the Cumberland Band's interest (including those at IR 20) in IR 100A, without their knowledge and consent (to the alleged Consent to Transfer).

In 1891–1902

The parties have framed the issue of whether the "Peter Chapman Band" became a separate band at any time before 1902, and we have addressed the dates argued by the James Smith Cree Nation (1883) and by Canada (1891). We will next consider whether there are any circumstances before 1902 which lead us to conclude that a separate "Peter Chapman Band" evolved at IR 100A.

With regard to transfers, what we see during this period is the department's effort to make a distinction – not between the Cumberland Band at IR 20 and the Cumberland Band at IR 100A, but between the whole of the Cumberland Band and the Chakastaypasin members moving to Fort à la Corne. In 1886, a separate payroll was created for the Cumberland band members resident at Fort à la Corne. As we have stated previously, rather than express an intention to separate IR 20 residents

from IR 100A residents into two bands, we view the creation of a separate payroll as a matter of administering these groups from two different agencies and two different treaty areas. Our view is supported by the fact that, in 1892, Indian Commissioner Hayter Reed received instructions from DSGIA Vankoughnet to keep the Cumberland Band separate on the paylists, since “[t]hese Indians are still adherents to Treaty No. 5 no matter where they reside.”⁵⁵⁰ These instructions referred to separateness not as between the whole of the Cumberland Band at IR 20 and those at IR 100A, but rather as between those Cumberland Band residents at IR 100A and other Indians moving into the area, primarily from Chakastaypasin IR 98. Further, we view all transfers between 1891 and 1902 into IR 100A to be as equally invalid as the 1891 transfer of Nanequaneum.

We also believe it is significant to consider the actions of the department in deciding to take a surrender of 640 acres at IR 20 in 1894, as revealing its contemporaneous thinking about IR 100A and its ownership. In 1892, a petition from 21 “Half-breeds of Cumberland” living near the HBC settlement at Cumberland House asked that the portion of IR 20 occupied by them be withdrawn from the reserve. On December 6, 1892, Surveyor T.D. Green wrote a memorandum to the Deputy Minister of Indian Affairs regarding this proposal. He recommended that the surrender be taken “in view of the fact that the Indians of Cumberland District have 65 square miles of good farming lands reserved for them on the Carrot River near Fort a la Corne.” In 1894, a surrender of 640 acres at IR 20 was accepted by Order in Council 3147.⁵⁵¹

Based on the totality of the evidence, we see nothing in this period that alters our view that a separate band was neither created nor evolved at IR 100A from the original Cumberland Band that adhered to Treaty 5 on September 7, 1876.

⁵⁵⁰ L. Vankoughnet, DSGIA, to Hayter Reed, Indian Commissioner, April 22, 1892, LAC, RG 10, vol 3736, file 27580 (ICC Exhibit 1, pp. 359–60).

⁵⁵¹ H.T. Vergette, Head of Land Titles Section, DIAND, to Acting District Supervisor, Prince Albert Indian District, February 4, 1970 (ICC Exhibit 4).

Conclusion to Issues 1 to 3

- 1 Did the “Peter Chapman Band” become a separate band from the Cumberland House Cree Nation at any time prior to 1902?**
- 2 Whether the Cumberland House Cree Nation could lawfully have been divided or split without its knowledge and consent?**
- 3 Whether the Cumberland House Cree Nation could be deprived of its reserve without its knowledge and consent?**

As previously referred to, Canada takes the position that “the Department of Indian Affairs originally contemplated that IR 100A was intended to be set apart for more than just the group of 17 families, almost all from Cumberland House, who already had relocated and become resident on IR 100A before 1889 when that reserve was set apart.”⁵⁵² Further, Canada states, “[t]he evidence is clear that Departmental officials originally expected that it was entirely possible that the whole group of Indians located in 1875 in the area around Cumberland House would eventually relocate to IR 100A.” The totality of the evidence indicates that IR 100A was set aside for the entire group of Indians known at that time as the “Cumberland House Band” or the “Cumberland Band” or “the Indians of the Cumberland District of Treaty No. 5” who adhered to Treaty 5 in 1876.⁵⁵³

As previously described, Canada takes the position that a separate band had evolved at IR 100A by 1891. Thus, Canada argues that it is “unnecessary for an amending Order in Council to be passed which directly addresses the issue of reallocation or division of a reserve or reserves among successor Bands.”⁵⁵⁴ In argument, Canada relies on the Crown’s royal prerogative for its ability to create Indian reserves. A corollary right to the Crown’s prerogative power to establish an Indian reserve is, in Canada’s argument, the Crown’s prerogative power to reallocate an Indian reserve. Further, the Crown’s royal prerogative can be limited only by express statutory authority. All parties agree that the *Indian Act* is silent on reserve creation and “reallocation.” For Canada, then,

⁵⁵² Written Submissions on Behalf of the Government of Canada, November 24, 2003, p 53, para. 95.

⁵⁵³ Written Submissions on Behalf of the Government of Canada, November 24, 2003, p. 54, para. 95.

⁵⁵⁴ Written Submissions on Behalf of the Government of Canada, November 24, 2003, p. 55, para. 98.

the prerogative power of the Crown provided the authority to reallocate IR 100A among successor bands.

In response, the Cumberland House Cree Nation refutes Canada's reliance on those historical documents, prepared primarily by the Indian Agents, as evidence of a de facto separation within the Band. In addition, CHCN argues that Indian Agents could not exercise the type of authority necessary to give rise to a claim that involves the exercise of a prerogative of the Crown.⁵⁵⁵ The CHCN argues that there is not a single historical document that might be construed as discussing or approving a split of the Cumberland Band. In any event, CHCN argues that even if the Band were to be split, the members of CHCN could still not be deprived of their interest in the reserve. In CHCN's view, "[i]t does not necessarily follow that[,] because Canada can create an Indian reserve[,] it retains the prerogative to reallocate reserve land. Part of the process of reserve creation involves obtaining the agreement of a band to accept the reserve set apart for it. Once the reserve is set apart, the band acquires rights to that reserve, both under treaty and, it is submitted[,] under the Indian Act. Once the band's interest in the reserve has been created, the band can only be deprived of that interest if it agrees. It is no longer simply an exercise of royal prerogative."⁵⁵⁶

With the greatest of respect, we disagree with Canada's analysis of the evidence and, therefore, with the conclusions that result. We do not agree that the Cumberland House Band had formed two separate groups: that the Cumberland 100A Band was created from the predecessor Cumberland House Band, and that the successor Cumberland House Band continued to exist. Based on the totality of evidence, we find that IR 100A was surveyed and set aside for the whole of the Cumberland Band and that it was settled on by the contingent of Cumberland House Cree Nation (IR 20) members who chose to migrate from the Cumberland District to Fort à la Corne. At all relevant times, Canada administered these reserve lands for the Cumberland band members of Treaty 5. Although the distance of 200 kilometres between these two reserves (IR 20 and IR 100A) is

⁵⁵⁵ Reply Submission on Behalf of the Cumberland House Cree Nation, December 12, 2003, p. 16, para. 51.

⁵⁵⁶ Reply Submission on Behalf of the Cumberland House Cree Nation, December 12, 2003, p. 17, para. 55.

substantial, there is ample evidence to lead us to conclude that members continued to move back and forth, during the relevant period, as members of the same band.

In addition, we look to the leadership at both locations. Peter Chapman may have been looked upon as the de facto leader while he was alive, but, on his death in 1892, there is no evidence that the department sought to replace him. Rather, what we see is the department's shift in terminology – from sporadic references to the “Peter Chapman Band” between 1886 and 1895 to the exclusive use of the terms the “Cumberland Band” or the “Cumberland 100A Band.” As well, on Peter Chapman's death, there is no evidence of the department's attempt to re-establish the leadership at IR 100A as separate and apart from that at the Cumberland House Cree Nation at IR 20. In fact, no leadership was formally recognized for the Indians residing at IR 100A, on the basis that their leadership existed at IR 20. Furthermore, we see from the evidence that, at IR 20, once Chief Albert Flett was admitted to an asylum in the fall of 1896, the Department of Indian Affairs gave no authorization until 1910 to elect a new Chief. Further, with the exception of Jeremiah Crane's appointment as “acting headman” in 1899, the evidence available indicates that no other councillors were appointed between 1901 and 1910.⁵⁵⁷

Having found that a separate Band was not created at any time, it must be concluded that the Crown continued its treaty relationship with the Cumberland Band created by the negotiated adhesion between the Cumberland Band and the Crown to Treaty 5. In our view, the terms of this treaty limit the exercise of the Crown's royal prerogative, especially where that prerogative is being exercised to deprive a band of its interest in or use of its reserve land. As regards the surrender of land, Treaty 5 clearly states, “reserves of land or any interest therein may be sold or otherwise disposed of by Her

⁵⁵⁷ E. McColl, Inspector of Indian Agencies, to Hayter Reed, Deputy Superintendent General, May 26, 1897 (ICC Exhibit 1, p. 487); J. Reader, Indian Agent, Pas Agency, to SGIA, July 2, 1886, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1886*, 74 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 17, p. 257); Indian Agent to J.D. McLean, Secretary, September 24, 1910, LAC, RG 10, vol. 3943, file 121698-28 (ICC Exhibit 1, p. 1111); J.D. McLean, Secretary, to Fred Fischer, Indian Agent, November 16, 1910, LAC, RG 10, vol. 3943, file 121698-28 (ICC Exhibit 1, p. 1119); Treaty Annuity Paylist, “Cumberland Band Paid at Cumberland Reserve,” 1882, no file reference available (ICC Exhibit 8, p. 114).

Majesty's Government for the use and benefit of the said Indians entitled thereto, with their consent first had and obtained."⁵⁵⁸

Thus, the treaty expressly requires the consent of the Cumberland Band before Canada can lawfully dispose of its interest. In our view, the express language of the treaty must prevail over the exercise of the Crown's prerogative, particularly where the exercise of prerogative operates to deprive the Band of its interest in its treaty reserve land without its knowledge or consent. We further accept and acknowledge that, in an exchange between Commissioner Holman and counsel for Canada during oral submissions into the James Smith Cree Nation IR 98 Inquiry (which involved Treaty 6), Canada admitted that a treaty such as Treaty 5 is a limit on the exercise of the royal prerogative:

Commissioner Holman: You make the argument that the Crown used its prerogative right to create the reserves and it has a corollary right to take away the reserve – if I'm reading that right – and that the only limitation on the Crown's prerogative is statute. But when the Crown commits itself, as it does in a treaty, and it's spelled out in a treaty what is required for the disposition or to take away a reserve, is that not also a limitation on the Crown's prerogative?

Mr. Winogron: Absolutely.⁵⁵⁹

Finally, Canada asks whether a surrender was necessary. Canada takes the position that the reallocation of the reserve (IR 100A) between two successor bands, which were formerly one band, is not an "alienation" as defined in section 39 (the surrender provision of the *Indian Act*). Accordingly, Canada holds the view that "the surrender provisions did not apply to the reallocation by the Crown of the reserves of the predecessor Cumberland House Band as between the successor Cumberland House Band and the successor Cumberland 100A Band."⁵⁶⁰

⁵⁵⁸ *Treaty No. 5 between Her Majesty the Queen and the Saulteaux and Swampy Cree Tribes of Indians at Beren's River and Norway House with Adhesions* (Ottawa: Queen's Printer, 1969), 5 (ICC Exhibit 13a, p. 4).

⁵⁵⁹ See James Smith Cree Nation Chakastaypasin Inquiry, ICC Transcript, May 4, 2004, pp. 242–43 (Commissioner Holman); p. 243 (Robert Winogron).

⁵⁶⁰ Written Submissions on Behalf of the Government of Canada, November 24, 2003, p. 60, para. 108.

For CHCN, IR 100A was set apart for the use of CHCN. A transfer of an interest (a reallocation) to some other group, even if it was a subgroup of CHCN, would trigger the requirements of a vote under the *Indian Act*. No such vote was held. Under sections 25 and 26 of the *Indian Act*, 1876, no portion of a reserve could be “sold, alienated or leased until it has been released or surrendered to the Crown.” CHCN argues that “the concept underlying the giving of a surrender or release involves the party having an interest in the reserve that is to be given up[,] or affected to be entitled[,] to agree or disagree through the process of meeting and voting.”⁵⁶¹

We agree with the submissions of the Cumberland House Cree Nation where they state: “The clear intent of the Treaty was to set aside land for a band. The band could not be deprived of that land without its consent.” Further, we agree that “the removal of the band’s interest in its reserve must be construed as a ‘disposal.’”⁵⁶²

As regards the “disposal” of reserves established pursuant to Treaty 5, the treaty states:

Provided, however, that Her Majesty reserves the right to deal with any settlers within the bounds of any lands reserved for any band as She shall deem fit, and also that the aforesaid reserves of land or any interest therein may be sold or otherwise disposed of by Her Majesty’s Government of the use and benefit of the said Indians entitled thereto, with their consent first had and obtained.⁵⁶³

Thus, where the Cumberland Band is disposing of its reserve lands to any third party, whether this party is another First Nation or not, the consent of both the Band and the Crown is required. We agree with the Cumberland House Cree Nation submission that, “[o]nce the band’s interest in the reserve has been created, the band can only be deprived of that interest if it agrees. It is no longer simply an exercise of royal prerogative.”⁵⁶⁴ Canada therefore had an obligation to inform the

⁵⁶¹ Written Submission on Behalf of the Cumberland House Cree Nation, August 28, 2003, p. 59, para. 146.

⁵⁶² Written Submission on Behalf of the Cumberland House Cree Nation, August 28, 2003, p. 15, para. 45–46.

⁵⁶³ *Treaty No. 5 between Her Majesty the Queen and the Saulteaux and Swampy Cree Tribes of Indians at Beren’s River and Norway House with Adhesions* (Ottawa: Queen’s Printer, 1969), 5 (ICC Exhibit 13a, p. 4).

⁵⁶⁴ Reply Submission on Behalf of the Cumberland House Cree Nation, December 12, 2003, p. 17, para. 55.

Cumberland Band of its intention to create a separate band that would take an interest in IR 100A and to seek its consent to any disposition of this interest in IR 100A. The evidence is unequivocal that Canada did not seek the consent of the whole of the Cumberland Band. This fact has, in recent submissions, been conceded by the Crown.⁵⁶⁵ Whatever its prerogative may be, Canada cannot disregard its treaty obligations to an existing band with a Chief and a council.

ISSUES 4 AND 5: ANALYSIS

4 If the answer to question 1 is that a separate band was not established, then what is the effect on the events of 1902 and, assuming that the Cumberland House Cree Nation is entitled to compensation, what is the appropriate criteria to apply to such compensation?

In our view it would be premature for this panel to make any findings or recommendation on the applicable compensation criteria at this time.

5 If the answer to question 1 is that a separate band was established, then does the Band split bring an end to the interest of the Cumberland House Cree Nation in IR 100A? (i.e. What Band is the beneficial owner of the IR 100A after 1902?) If so, what is the appropriate criteria to apply to compensation for the Cumberland House Cree Nation?

Based upon our findings to Issues 1 through 3, it is not necessary to address this issue.

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Written Submissions on Behalf of the Government of Canada, November 24, 2003, p. 59, para. 106.

PART V
CONCLUSIONS AND RECOMMENDATION

We find that no separate band was created or evolved, in fact or in law, from the original Cumberland Band that was a signatory to Treaty 5. Further, we find that IR 100A was selected, surveyed, and accepted as a reserve for the whole of the Cumberland Band by both the Band and Canada. It was a breach of Canada's treaty obligation to have assigned an interest in IR 100A to a group of people whom it was prepared to accept as separate from the original treaty owners of IR 100A without the knowledge and consent of the whole of the Cumberland Band. Finally, Canada is in breach of its fiduciary duty for its failure to have protected the Cumberland Band's interest in its reserve at IR 100A.

Consequently, we find that Canada owes an outstanding lawful obligation to the Cumberland House Cree Nation for the loss of its interest in and the use of IR 100A from 1891 forward. We are mindful that, since at least 1891, IR 100A has been occupied by members and non-members of the Cumberland Band. We do not suggest that we are recommending the displacement of the current residents of IR 100A. Canada is, however, obliged to put the Cumberland House Cree Nation in the same position in which it would have been had the breach of treaty and of fiduciary responsibility not occurred.

We therefore recommend to the parties:

That the Cumberland House Cree Nation's claim regarding Indian Reserve 100A be accepted for negotiation under Canada's Specific Claims Policy.

FOR THE INDIAN CLAIMS COMMISSION



Renée Dupuis
Chief Commissioner



Alan C. Holman
Commissioner

Dated this 17th day of March, 2005.

APPENDIX A

RULING ON APPLICATION FOR LEAVE TO INTERVENE

Via facsimile

June 4, 2001

Mr. William Selnes
Kapoor, Selnes, Klimm & Brown
417 Main Street
Melfort, SK S0E 1A0

- AND -

Mr. Tom J. Waller
Olive Waller Zinkhan & Waller
2255 Thirteenth Avenue
Regina, SK S4P 0V6

- AND -

Ms. Uzma Ihsanullah
DIAND - Department of Justice
10 Wellington Street - 10th Floor
Hull, QC, K1A 0H4

Dear Sirs and Madame:

**Re: In the Matter of the Cumberland House Cree Nation Inquiry into IR 100
A Lands and the James Smith Cree Nation - Peter Chapman IR 100 A Lands
Inquiry**

The Commission Panel, consisting of Commissioners Prentice, Augustine and Dupuis have carefully considered the application of the Cumberland House Cree Nation seeking leave to intervene in the Commission's proceedings into the claim of the James Smith Cree Nation regarding certain lands described as the "IR 100 A Lands".

The Commissioners have concluded that the inquiry claim advanced by the James Smith Cree Nation and the claim advanced by the Cumberland House Cree Nation (which is also before this Commission and which also relates to the IR 100 A Lands) are based upon a common evidentiary and factual background. It also seems clear to

the Commissioners that the findings of fact which the Commission may make in one of these inquiries, will have a direct bearing upon the factual and legal arguments available in the other. As such, the Commissioners are concerned that unless the Commission proceeds with considerable caution, there is risk of prejudice to both of the First Nations, and perhaps to Canada as well.

The Commissioners have therefore decided to convene a single fact finding process and to include both the James Smith Cree Nation and the Cumberland House Cree Nation as full participants in that process. Obviously, Canada would also be a full participant. The facts, to be found by the Commission, will be based upon that fact finding process and will subsequently apply to the inquiry claims of both the James Smith Cree Nation and the Cumberland House Cree Nation. The Commissioners wish to emphasize, however, that they are not merging or “joining” these two inquiries, but are merely engaging a single, common fact finding process which will provide an evidentiary basis for the two separate claims.

The Commission has the requisite authority to proceed in this manner. As a Commission constituted under the *Inquiries Act*, the Commission is not bound by the strict rules of evidence and procedure and the Commissioners are authorized to “adopt such methods as we (the Commissioners) consider expedient for the conduct of the inquiry and to sit at such times and in such places as they may decide”. In discharging its mandate to inquire and report on whether a claimant has a valid claim for negotiation under the Specific Claims policy, the Commission is mindful that the procedures adopted must be appropriate to the circumstances and respect the fundamental principle of fairness.

The Commission’s procedural flexibility allow for, and in this case requires, that the Commission undertake this common fact finding session. These two claims are so interrelated in their factual history that the Commission would run the risk of prejudicing the Cumberland House Cree Nation if it were to consider evidence heard in the James Smith Cree inquiry, without also permitting the participation of the Cumberland House Cree Nation in that context. The same obviously applies in respect of the inquiry claim of the Cumberland House Cree Nation, which would require the participation of the James Smith Cree Nation, so as to avoid prejudice to them. It is therefore important that the Commission proceed with care and in a manner which ensures fairness, consistency and which respects the right of everyone to be heard.

We have therefore instructed our legal counsel to meet with representatives of both the Cumberland House and James Smith Cree Nations to discuss the logistical arrangements for this process. Generally speaking, we anticipate traveling to each First Nation to convene a “Community Session” to hear from the community elders. In that context, each First Nation would be afforded the right to make submissions to the Commission and each First Nation would be afforded the right, within reason and with due regard to the direction of the Commissioners at that time, to participate in the questioning of the community participants, through Commission Counsel. Canada will obviously be a full participant during this entire process.

The separate inquiries of the James Smith Cree Nation and the Cumberland House Cree Nation will, however, retain their separate status and identity thereafter. We do not intend to transform these two separate inquiries into a single exercise.

Once the fact finding process has been completed the Commission will proceed with full consideration of the James Smith Cree Nation’s claim and the Cumberland House Cree Nation’s claim. In that context, the Commission will convene separate “Oral Sessions” to receive written and oral argument from each First Nation relative to the issues which are pertinent to their claim. Obviously, at that time, we would expect that First Nation and Canada to address the information and evidence collected by the Commission during the fact finding process. Once again, Canada would obviously participate in both inquiries at that time. It may be, that at that time, it will be in the best interests of all participants that the James Smith Cree Nation and the Cumberland House Cree Nation both be afforded certain limited rights to participate as an “intervenor” in the Oral Session relating to the other’s claim. If that were to happen, we would expect the limited participation of that other First Nation to be directed towards assisting the Commission - as opposed to an adversarial intervention directed towards the claimant First Nation. While we are not deciding that matter at this time, this would seem to us to be a fair and consistent approach. We would, however, ask our counsel to discuss this matter with the representatives of each First Nation at the close of the fact finding process. The Commissioners will, at that time, address the issue if the parties cannot agree.

The Commission’s decision to proceed with a common fact finding exercise followed by legal argument will require the careful planning and the cooperation of all participants to ensure that each aspect of these inquiries proceeds concurrently and without prejudice to the other. The Commission is prepared to convene, where necessary, a planning conference of the James Smith Cree Nation, the Cumberland House Cree Nation and Canada to arrange for the most equitable and systematic

manner of carrying out its decision. The Commission's Counsel will be in contact with each First Nation and Canada to arrange for this planning conference at a time convenient to all.

Yours truly,



Kathleen N. Lickers on behalf of
Commissioners Prentice, Augustine & Dupuis

cc: Chief Delbert Brittain, Peter Chapman Band
Chief Pierre Settee, Cumberland House Cree Nation
Commissioner James Prentice
Commissioner Roger Augustine
Commissioner Sheila Purdy
Commissioner Renee Dupuis

APPENDIX B

INDIAN CLAIMS COMMISSION

Interim Ruling

James Smith Cree Nation – Peter Chapman IR 100 A Cumberland House Cree Nation – IR 100 A

The Commission panel has met and considered the December 20, 2001 objections of Mr. Waller to certain parts of the testimony of Mr. James Burns and the matter of questions to Sol Sanderson raised by Canada's counsel in her objections of December 5, 2001 and by Mr. Selnes on December 20, 2001. The answer of the panel follows.

The Commission accepts that Mr. James Burns appeared before the Commission as a witness to give evidence of his knowledge and experience regarding the matters at issue in this inquiry. Mr. Burns was not appearing as an expert but as an Elder of the James Smith Cree Nation. His testimony has been accepted as evidence.

Generally speaking, the Commission is not bound by the strict rules of evidence used in the courts. The practice adopted by this Commission is to allow hearsay evidence and to hear opinion evidence from a broad range of witnesses, some of who would be considered experts and others not. The reason is simple. The Commission, in conducting its investigation into the facts and matters in issue, is willing to listen to a range of experience in expectation that in doing so, we will come to a greater understanding of the case. In so saying, it is the responsibility of the Commissioners in each case, to weight the evidence presented.

In this case, the Commission is cognizant that we have undertaken a single fact finding process in an effort to create a common evidentiary basis for these two claims.

On June 4, 2001, we explained our view that these two claims are so interrelated in their factual history that the Commission would run the risk of prejudicing each First Nation if it were to consider evidence heard in the other's inquiry without also permitting the participation of the alternate First Nation in that context. Obviously what the Commission determines as evidence has a direct bearing to this single fact finding process.

As we said in June 2001, the Commission must proceed in a manner which ensures fairness, consistency and which respects the right of everyone to be heard. In this regard, we accept all of the testimony of Mr. James Burns as evidence including the two areas objected to by Mr. Waller but we will allow the Cumberland House Cree Nation to introduce further evidence if they believe such evidence is needed.

The Commission therefore directs that upon completion of the James Smith Cree Nation Community Sessions, and all witnesses brought forward by James Smith Cree Nation have testified, further evidence may be brought forward by the Cumberland House Cree Nation in a separate session, with James Smith Cree Nation present and participating.

The Commission further directs that in advance of this additional session, Cumberland House Cree Nation must indicate to the Commission the manner and form such evidence will be brought forward. As stated, James Smith Cree Nation will be present at this additional session and will be afforded the opportunity to raise questions, as was the case at Cumberland House Cree Nation and is now the case with Cumberland House Cree Nation participation at James Smith Cree Nation.

As for the matter of questions for Chief Sol Sanderson, the Commission has no questions on any aspect of his November 20, 2001 presentation.

FOR THE INDIAN CLAIMS COMMISSION



Renée Dupuis



Alan Holman

[January 24, 2002]

cc: Chief Delbert Brittain, Peter Chapman Band
Chief Walter Constant, James Smith Cree Nation
Chief Sol Sanderson, Chakastaypasin Band
Chief Pierre Settee, Cumberland House Cree Nation
James Burns, James Smith Cree Nation
Tamantha Bedard, DIAND, Specific Claims Branch

APPENDIX C

CHRONOLOGY

CUMBERLAND HOUSE CREE NATION: IR 100A INQUIRY

- 1 **Planning conferences**
 - Saskatoon, May 16, 2000
 - Saskatoon, March 20, 2001
 - Prince Albert, August 30, 2001
 - Prince Albert, November 21, 2001
 - Ottawa, May 16–17, 2002
 - Prince Albert, August 27, 2002

- 2 **Community session** Cumberland House Cree Nation, November 19, 2001

The Commission heard from Chief Pierre Settee, Joseph Laliberte, Angus Seewap, Thomas Laliberte, Horace Greenleaf, Marcel McGillivray, Rose Dussion, Lena Sarah Stewart, and Rodney Settee.

- 3 **Interim rulings**

Ruling In the matter of an Application to the Indian Claims Commission for Leave to Intervene in the Inquiry of James Smith Cree Nation – IR 100A, June 4, 2001

Interim Ruling concerning the testimony of Mr. James Burns and the matter of questions to Chief Sol Sanderson, January 24, 2002

- 4 **Written legal submissions**

Application for leave to intervene

 - Letter, Kathleen Lickers, ICC Commission Counsel, to Chief Walter Sewap, Cumberland House Cree Nation, and Tom Waller, Counsel for the First Nation, inviting CHCN make application for leave in the JSCN, Peter Chapman IR 100A Inquiry, December 13, 2001
 - Cumberland House Cree Nation’s Application to Intervene, April 23, 2001
 - Responding Submission on Behalf of the Government of Canada, May 11, 2000
 - Responding Submissions on Behalf of the James Smith Cree Nation, May 14, 2001
 - Reply on Behalf of the Cumberland House Cree Nation, May 22, 2001
 - Reply on Behalf of the James Smith Cree Nation, May 22, 2001
 - ICC, Summary of the Briefs Submitted by the CHCN, JSCN, Canada, May 27, 2001

Submissions with respect to testimony of Mr James Burns and the matter of questions to Chief Sol Sanderson

- Letter, Tom J. Waller, Olive, Waller, Zinkhan & Waller, Counsel for Cumberland House Cree Nation, December 20, 2001
- Letter, Uzma Ihsanullah, Department of Justice, DIAND, December 5, 2001
- Letter, William Selnes, Kapoor, Selnes, Klimm & Brown, Counsel for the James Smith Cree Nation, December 20, 2001

Submissions to oral session

- Written Submissions on Behalf of the Cumberland House Cree Nation, August 29, 2003
- Written Submissions on Behalf of the James Smith Cree Nation, September 2, 2003
- Reply Submissions on Behalf of the Government of Canada, November 25, 2003
- Reply Submissions on Behalf of the Cumberland House Cree Nation (to DOJ and JSCN), December 15, 2003
- Reply Submissions on Behalf of the James Smith Cree Nation (to DOJ and CHCN), December 15, 2003
- Further Written Submissions on Behalf of the Cumberland House Cree Nation, February 2, 2004

5 Oral legal submissions

Saskatoon, January 14, 2004

6 Content of formal record

Note: The formal record for this inquiry is supported by the record as it also appears in the James Smith Cree Nation – IR 100A Inquiry. It includes the following materials:

- the document collection (7 volumes of documents, with annotated indices) (Exhibits 1 and 1a) (These are identical to Exhibits 1 and 1a in the James Smith Cree Nation: IR 100A Inquiry.)
- Exhibits 2–14 tendered during the inquiry
- transcript of community session (1 volume) (Exhibit 12a)
- transcript of oral session (1 volume)

The report of the Commission and letter of transmittal to the parties will complete the formal record of this inquiry.