
INDIAN CLAIMS COMMISSION PROCEEDINGS

A PUBLICATION OF
THE INDIAN CLAIMS COMMISSION



(2000) 12 ICCP

Co-CHAIRS

Daniel J. Bellegarde
P.E. James Prentice, QC

COMMISSIONERS

Roger J. Augustine
Carole T. Corcoran
Elijah Harper
Sheila G. Purdy

© Minister of Public Works and Government Services Canada 2000

Available in Canada through

your local bookseller

or by mail from

Canada Communication Group — Publishing

Ottawa, Canada K1A 0S9

Catalogue No. RC12-1-2000-12E

ISSN 1195-3586

ISBN 0-662-29456-4

The Indian Claims Commission Proceedings is a continuing series of official reports, background documents, articles, and comment published by the Indian Claims Commission (Canada).

For information about subscriptions and extra copies or to request the French edition, *Actes de la Commission des Revendications des Indiens*, please contact

Indian Claims Commission

427 Laurier Avenue West, Suite 400

Ottawa, Canada K1P 1A2

(613) 943-2737

Fax (613) 943-0157

Web site: www.indianclaims.ca

CONTENTS

Letter from the Co-Chairs

v

Abbreviations

vii

REPORTS

Blood Tribe / Kainaiwa Inquiry
1889 Akers Surrender

3

Duncan's First Nation Inquiry
1928 Surrender

53

Long Plain First Nation Inquiry
Loss of Use

269

Bigstone Cree Nation Inquiry
Treaty Land Entitlement

343

RESPONSES

Re: Mamaleqala Qwe'Qwa'Sot'Enox Band McKenna-McBride
Applications Robert D. Nault, Minister of Indian Affairs and
Northern Development, to Chief Robert Sewid
December 8, 1999

393

Re: 'Namgis First Nation McKenna-McBride Applications
Robert D. Nault, Minister of Indian Affairs and
Northern Development,
to Chief Councillor William Cranmer,
December 8, 1999
395

THE COMMISSIONERS

397

FROM THE CO-CHAIRS

This is the 12th volume of the *Indian Claims Commission Proceedings*. We are pleased to present it on behalf of the Commissioners of the Indian Claims Commission. The volume includes four reports of the Commission and two letters from the Minister of Indian Affairs and Northern Development responding to the Commission's recommendations in other completed inquiries.

The first report is on the Commission's inquiry into the Blood Tribe/Kainaiwa claim regarding the 1889 Akers surrender. At issue was whether the surrender of 440 acres of reserve land in southern Alberta had been lawful. The Commission began its inquiry and, after an extensive review of the historical facts, including elders' testimony, the federal government agreed to accept the claim for negotiation. The report sets forth the evidence presented to the Commission, but makes no recommendations. The claim is now in mediation with the Commission.

The second report is on the Commission's inquiry into the surrender of seven parcels of reserve land from the Duncan's First Nation of Alberta in 1928. The First Nation asserted that the federal government breached its fiduciary obligations and the surrender provisions of the Indian Act in taking the land. The Commission's inquiry found that the government failed to act in the First Nation's best interest in one of the seven surrenders and recommended that that claim be accepted for negotiation of a settlement.

The third report enclosed is the Commission's ground-breaking inquiry into the Long Plain First Nation's claim to compensation for the loss of use of outstanding treaty entitlement land. In 1994, the Manitoba First Nation and the federal government reached an agreement to pay for outstanding entitlement land that was promised under Treaty 1 in 1876 but never provided. Negotiations broke down, however, over compensation. To try to resolve the issue, the parties turned to the Commission. The parties agreed to have the Commission consider this question: is the federal government lawfully obliged to compensate the First Nation for the loss of use of the treaty land entitlement (TLE) shortfall acreage?

After a thorough review of the facts and the law, the Commission found that the government is lawfully obliged to compensate the First Nation for the loss of use of reserve land, land that was not provided until 118 years after it was promised. The Commission found that, regardless of the government's

knowledge or motives at the time, general common law principles regarding compensation for loss of use should apply to TLE claims.

The final report involves a claim put forward by the Bigstone Cree Nation of Alberta that was accepted for negotiation mid-inquiry. At issue was whether members of the First Nation who adhered to Treaty 8 after the first government population count in 1913 were included in the TLE calculations. The claim was rejected in 1989 and 1996 but, following the government's acceptance of the Commission's recommendation to change the federal TLE policy, the government finally accepted the claim.

Also contained in this volume of the Proceedings are copies of two letters from the Minister of Indian Affairs and Northern Development with respect to the claims of the Mamaleqala Qwe'Qwa'Sot'Enox Band and the 'Namgis First Nation. In the letters the Minister writes that the Government of Canada rejects the Commission's recommendations regarding these claims.

Daniel J. Bellegarde
Co-Chair

P.E. James Prentice, QC
Co-Chair

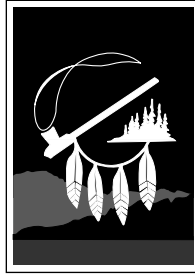
ABBREVIATIONS

AC	Appeal Cases
BCCA	British Columbia Court of Appeal
BCR	Band Council Resolution
CA	Court of Appeal
CNLR	Canadian Native Law Reporter
CPR	Canadian Patent Reporter
DIAND	Department of Indian Affairs and Northern Development
DLR	Dominion Law Reports
DLS	Dominion Land Surveyor
DOFS	date of first survey
DSGIA	Deputy Superintendent General of Indian Affairs
FC	Canada Federal Court Reports
FCA	Federal Court Appeal Division
FCTD	Federal Court Trial Division
FTR	Federal Trial Reports
HL	House of Lords
IAB	Indian Affairs Branch
ICC	Indian Claims Commission
ICCP	Indian Claims Commission Proceedings
IR	Indian Reserve
NA	National Archives of Canada
NR	National Reporter
NSR	Nova Scotia Reports
NWMP	North-West Mounted Police
OR	Ontario Reports
OWN	Ontario Weekly Notes

ABBREVIATIONS

PAA	Provincial Archives of Alberta
PC	Privy Council
QB	Court of Queen's Bench
RSA	Revised Statutes of Alberta
RSC	Revised Statutes of Canada
SC	Statutes of Canada
SCC	Supreme Court of Canada
SCR	Canada Supreme Court Reports
SCW	Specific Claims West
SGIA	Superintendent General of Indian Affairs
TD	Trial Division
TLE	treaty land entitlement
WWR	Western Weekly Reports
UFA	United Farmers of Alberta

REPORTS



Blood Tribe / Kainaiwa Inquiry
1889 Akers Surrender
3

Duncan's First Nation Inquiry
1928 Surrender
53

Long Plain First Nation Inquiry
Loss of Use
269

Bigstone Cree Nation Inquiry
Treaty Land Entitlement
343
