
INDIAN CLAIMS COMMISSION PROCEEDINGS

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THE INDIAN CLAIMS COMMISSION



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RESPONSES

Re: Long Plain First Nation Loss of Use Inquiry
Robert D. Nault, Minister of Indian Affairs and
Northern Development, to Daniel J. Bellegarde, James Prentice,
and Carole T. Corcoran, Indian Claims Commission,

August 21, 2000

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FROM THE CO-CHAIRS

This is the 13th 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 three reports of the Commission and a letter from the Minister of Indian Affairs and Northern Development responding to the Commission's recommendations in the Long Plain First Nation inquiry.

The first report is the Commission's inquiry into The Key Band claim regarding the surrender of approximately 11,500 acres of land in eastern Saskatchewan in 1909. At issue was the legality of the surrender of half the Band's reserve. The Band argued that, under Treaty 4, a higher level of consent was necessary and that another group, the Shoal River Indians, were actually members of The Key Band and had not been consulted on the surrender. After careful review, the Commission found that the surrender had been lawful. It found that there is no higher level of consent required under Treaty 4 and that the Shoal River Indians were not members of The Key Band. The Commission therefore recommended against negotiation of a settlement.

The second report concerns the Commission's inquiry into the alleged surrender of Boblo Island in the Detroit River in southern Ontario by the Walpole Island First Nation. The Commission found that an agreement in 1786 between Deputy Indian Agent Alexander McKee and some Ottawa and Chippewa Chiefs did not properly comply with the surrender requirements as laid out in the *Royal Proclamation of 1763*. It further found that a 1790 treaty with the colonial government which was intended to clarify land title in the area did not include Boblo Island in its description of the land surrendered. The Commission concluded that the island may still remain under aboriginal title and recommended that the First Nation submit a claim under the federal Comprehensive Claims Policy to resolve the status of the land.

The third report is the Commission's inquiry into the Carry the Kettle First Nation's claim to a reserve in the Cypress Hills in southern Saskatchewan. The First Nation asserted that, under Treaty 4, it had a reserve in the western section of the Hills that should be recognized by the federal government. The Hills were the First Nation's traditional territory and, in 1879, after adhering to Treaty 4, the First Nation selected a reserve site. In 1880, however, the federal government relocated several First Nations living in the Hills to Maple Creek because it was concerned that there might be more unrest along the border with the United States after the Cypress Hills Massacre of June 1873.

FROM THE CO-CHAIRS

The Commission found that, under Canadian law, the First Nation does not have a reserve in the Cypress Hills. The Commission found that a reserve is not a reserve unless both the First Nation and the government recognize it as such and, the government having decided to relocate the Assiniboine, clearly did not accept the Band's reserve selection. While the circumstances of this case do not, strictly speaking, give rise to an outstanding lawful obligation, the Commission relies upon its supplemental mandate to recommend the government recognize, rather than deny, the Assiniboine historical occupation and spiritual connection to their traditional territory.

Finally, also contained in this volume of the *Proceedings* is a copy of a letter from the Minister of Indian Affairs and Northern Development regarding the Long Plain First Nation's claim to compensation for the loss of use of treaty entitlement land that was promised but not delivered. In the letter, the Minister writes that the Government of Canada is unable to respond to the Commission's recommendation to negotiate a settlement for the loss of use of the land because the Commission's report does not take into consideration the *Venne* decision of the Court Queen's Bench of Saskatchewan concerning the calculation of treaty land entitlement claims. This decision was released after the completion of the inquiry.

Daniel J. Bellegarde
Co-Chair

P.E. James Prentice, QC
Co-Chair

ABBREVIATIONS

AC	Appeal Cases
BCR	Band Council Resolution
CA	Court of Appeal
CCC	Canadian Criminal Cases
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
HL	House of Lords
ICC	Indian Claims Commission
ICCP	Indian Claims Commission Proceedings
IR	Indian Reserve
NA	National Archives of Canada
NWMP	North-West Mounted Police
OJ	Ontario Judgments
OR	Ontario Reports
PC	Privy Council
QB	Court of Queen's Bench
RSC	Revised Statutes of Canada
SC	Statutes of Canada

ABBREVIATIONS

SC	Supreme Court (provincial)
SCC	Supreme Court of Canada
SCJ	Canada Supreme Court Judgments
SCR	Canada Supreme Court Reports
SCW	Specific Claims West
SGIA	Superintendent General of Indian Affairs
TD	Trial Division
TLE	treaty land entitlement
UFA	United Farmers of Alberta
YCA	Yukon Court of Appeal
YSC	Yukon Superior Court

REPORTS



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