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# **INDIAN CLAIMS COMMISSION**

## **PEGUIS FIRST NATION INQUIRY TREATY LAND ENTITLEMENT CLAIM**

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# PART I

## INTRODUCTION

In November 1983, the Peguis First Nation<sup>1</sup> submitted a claim to the Department of Indian Affairs and Northern Development (DIAND) alleging that the lands set aside as St Peter's Indian Reserve (IR) 1 were not sufficient to fulfill the Band's land entitlement pursuant to Treaty 1. The claim, which was filed under the federal Specific Claims Policy, specifically contended that it had been agreed between the signatories to Treaty 1, on the one hand, and representatives of the Crown, on the other, that the Band would receive reserve lands in the amount of 160 acres per family of five *in addition* to lands already occupied by its members at the time of treaty. It was also alleged that the Band's entitlement at the date of first survey amounted to 60,000 acres, but that the St Peter's Reserve, which was set aside for the Band shortly after treaty, comprised only 37,915 acres outside of land already occupied at the time of treaty. The alleged shortfall, according to the First Nation, was 22,085 acres.

The claim was reviewed by the Department of Indian Affairs and Northern Development and the Department of Justice, in accordance with the Specific Claims process. By letter dated July 31, 1991, A.J. Gross, of Specific Claims West, informed the Chief and council of the Peguis First Nation of the federal government's position with regard to each allegation.<sup>2</sup> According to Mr Gross's letter, the Government of Canada was of the view that the new reserve, which had been set aside for the Band after the 1907 surrender of the St Peter's Reserve, was intended to satisfy, and did satisfy, the Band's entire treaty land entitlement (TLE).

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1 Alternatively referred to as "The Peguis Band," the "First Nation," or the "Band," depending on the historical context.

2 A.J. Gross, Specific Claims West, DIAND, to Chief and Council, Peguis Indian Band, July 31, 1991 (ICC file 2106-02-01).

The Peguis First Nation resubmitted its claim to the department in March 1992,<sup>3</sup> on the ground that the terms of the 1907 surrender did not intend to release Canada from its TLE obligations, but only from claims arising under the *Manitoba Act* and the *Indian Act*. In the First Nation's view, no satisfactory reply was received from Canada concerning the resubmitted claim, and, as a result, Chief Louis J. Stevenson wrote to Minister of Indian Affairs Ron Irwin on March 1, 1994, asking him to intervene in the matter.<sup>4</sup> On May 27 of that year, Mr Gross wrote to the Chief and council of the Peguis First Nation to advise that, after reconsideration, Canada had not altered its decision to reject the claim.<sup>5</sup> Shortly afterwards, the Peguis First Nation requested that the Indian Claims Commission (ICC) undertake a preliminary review of the claim to determine whether it fell within the Commission's mandate.<sup>6</sup> The Commissioners informed the First Nation and Canada of their decision to conduct an inquiry into Canada's rejection of the claim on September 2, 1994.<sup>7</sup>

As part of the Commission's inquiry into this claim, five planning conferences were held. At the first conference on January 12, 1995, the parties raised the issue of the interrelationship of this TLE claim with another claim of the First Nation concerning the alleged invalidity of the 1907 surrender of St Peter's Reserve. Canada took the position that both claims should be addressed simultaneously, and, as a result, the Peguis First Nation undertook to submit the surrender claim formally to the Specific Claims Branch. At a second planning conference held on May 18, 1995, the parties established certain deadlines for the formal submission of the surrender claim, the department's confirmation research, and Canada's decision to accept or reject the surrender claim. It was agreed that a community session regarding the TLE claim would be postponed, pending completion of the above phases. The Peguis First Nation submitted the surrender claim to Canada on June 14, 1995,<sup>8</sup> and the department's confirmation research was completed and forwarded to the Band on September 29 of that year.<sup>9</sup> Although Canada had undertaken to provide a decision concerning acceptance or rejection of the

3 Chief Louis J. Stevenson to A.J. Gross, Negotiator, Specific Claims West, March 10, 1992 (ICC file 2106-02-01).

4 Chief Louis J. Stevenson to the Hon. Ron Irwin, March 1, 1994 (ICC file 2106-02-01).

5 A.J. Gross, Director, Treaty Land Entitlement, to Chief and Council, Peguis First Nation, May 27, 1994 (ICC file 2106-02-21).

6 Chief Louis J. Stevenson, Peguis First Nation, to Dan Bellegarde and Jim Prentice, Co-Chairs, Indian Claims Commission, June 29, 1994 (ICC file 2106-02-01).

7 Dan Bellegarde and James Prentice, Co-Chairs, Indian Claims Commission, to Chief and Council, Peguis Indian Band, September 2, 1994 (ICC file 2106-02-01).

8 Chief Louis Stevenson to Heather Lawrence, Specific Claims West, June 14, 1995 (ICC file 2106-02-02).

9 Heather Lawrence, Specific Claims West, to Chief Louis Stevenson, September 29, 1995 (ICC file 2601-02-02).

surrender claim by January 15, 1996, Canada deferred this decision pending its study of the impact of the surrender claim on the TLE claim.<sup>10</sup> Dissatisfied with the delays, the Peguis First Nation requested a third planning conference, which was held on October 16, 1996. At that time, dates were tentatively set for a community session and oral submissions before the Commission. At a fourth planning conference held on November 28, 1996, the parties further clarified the issues and identified areas where additional research was required.

In February 1997, Canada informed the Peguis First Nation of its preliminary decision to accept the surrender claim for negotiation,<sup>11</sup> but advised that it had not yet finalized its position regarding the impact of the surrender on the TLE claim. Subsequently, counsel to the Commission proposed a further conference between the parties to discuss how the above matter could be expedited,<sup>12</sup> and, as a result, a fifth planning conference was held on April 9, 1997.

At that meeting, the parties agreed that Jim Gallo of DIAND, with the assistance of Ralph Abramson of the Treaty and Aboriginal Rights Research (TARR) Centre of Manitoba, would conduct further research concerning the effect of the surrender (in particular, the setting aside of the new 75,000-acre reserve) on the Band's outstanding treaty land entitlement. The Gallo report was provided to the First Nation and the Commission in December 1997.<sup>13</sup> On June 29, 1998, after a review of the report by the Specific Claims Branch and the Claims Advisory Committee, Canada advised the Peguis First Nation that its TLE claim had been accepted for negotiation within the Specific Claims Policy. For the purpose of negotiations, Canada accepted that it had an outstanding obligation within the meaning of the Policy on the basis that "there is an outstanding TLE shortfall arising from the fact that not all members of the Peguis First Nation appear to have been counted at the date of first survey (DOFS), and/or from the erroneous inclusion of the St Peter's Parish river lots in calculating the acreage of the St Peter's Reserve."<sup>14</sup>

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10 Bruce Becker, Department of Justice, to Isa Gros-Louis Ahenakew, Indian Claims Commission, April 15, 1996 (ICC file 2601-02-01).

11 Anne-Marie Robinson, Specific Claims Branch, to Chief Louis J. Stevenson, February 3, 1997 (ICC file 2106-02-02).

12 Ron S. Maurice, Indian Claims Commission, to Paul Forsyth, Taylor & McCaffrey, February 11, 1997 (ICC file 2106-02-01).

13 Jim Gallo, DIAND, to Honourable Robert Reid, Indian Claims Commission, December 8, 1997 (ICC file 2106-02-02).

14 John Sinclair, Assistant Deputy Minister, to Chief Louis J. Stevenson, Peguis First Nation, June 29, 1998 (ICC file 2106-01-2).

Although the surrender claim was not formally before the Commission, Canada's decision in 1997 to accept this claim for negotiation, followed by Canada's acceptance the following year of the TLE claim that was before the Commission, directly resulted from a cooperative process agreed to by the parties during the series of planning conferences chaired by Commission staff.

As a result of this process, the Commission suspended its inquiry into the claim and was not required to make any findings. This report is based on historical reports and documents submitted to the Commission by the Peguis First Nation and the Department of Indian Affairs and Northern Development. The balance of the record of this inquiry is appended as Appendix A.

### MANDATE OF THE INDIAN CLAIMS COMMISSION

The Commission was established in 1991 to assist First Nations and Canada in the negotiation and fair resolution of specific claims. The Commission's mandate to conduct inquiries pursuant to the *Inquiries Act* 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."<sup>15</sup>

This Policy, outlined in the department's 1982 booklet entitled *Outstanding Business: A Native Claims Policy – Specific Claims*, states that Canada will accept claims for negotiation where they disclose an outstanding "lawful obligation" on the part of the federal government.<sup>16</sup> 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.

15 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.

16 DIAND, *Outstanding Business: A Native Claims Policy – Specific Claims* (Ottawa: Minister of Supply and Services, 1982), reprinted in (1994) 1 ICCP 171–85 (hereafter *Outstanding Business*).

- iii) A breach of an obligation arising out of government administration of Indian funds or other assets.
- iv) An illegal disposition of Indian land.

The Policy also addresses the following types of claims, characterized as “Beyond Lawful Obligation”:

- 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.<sup>17</sup>

The Commission has the authority to review thoroughly the historical and legal bases for the claim and the reasons for its rejection with both the claimant and the government. The *Inquiries Act* gives the Commission wide powers to conduct such an inquiry, to gather information, and even to subpoena evidence if necessary. If, at the end of an inquiry, the Commission concludes that the facts and law support a finding that Canada owes an outstanding lawful obligation to the claimant First Nation, it may recommend to the Minister of Indian Affairs and Northern Development that the claim be accepted for negotiation.

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<sup>17</sup> *Outstanding Business*, 20; reprinted in (1994) 1 ICCP 171–85.

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## PART II

### HISTORICAL BACKGROUND

#### BACKGROUND TO THE FIRST NATION'S CLAIM

Chief Peguis and his followers, a group of Ojibwa (or Saulteaux) Indians originating from the Great Lakes area, are believed to have migrated westward to the Red River valley sometime after 1790 in search of greater supplies of game for food.<sup>18</sup> They settled along the banks of the Red River, upstream from its mouth at Lake Winnipeg, in the vicinity of Netley Creek. Unlike the nomadic Cree and Assiniboine Indians who also inhabited what is today the province of Manitoba, the Peguis Band had a permanent settlement at their new location. Since the early part of the 19th century they had cultivated land at Netley Creek, although not to the exclusion of hunting and fishing.

In 1810, the Earl of Selkirk conceived a philanthropic plan to resettle dispossessed Scottish tenant farmers in Rupert's Land – the vast expanse of North American territory that had been granted by the British Crown to the Hudson's Bay Company (HBC) in 1670. As a major shareholder in the company, Selkirk was in a position to exert influence to bring these plans to fruition. In 1811, the first Selkirk settlers arrived at the Red River Settlement,<sup>19</sup> a few miles upstream from Peguis's settlement. Although the company had transferred all its rights in a large tract of land to Selkirk for the establishment of this agricultural colony, the settlers faced violent opposition from fur traders associated with the rival North West Company. These traders interpreted the arrival of the settlers as a further attempt by the HBC to displace its competition from the inland fur trade. As a result, the first decade of the colony's existence was marked by turmoil and bloodshed.

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18 *Chief Peguis* ([Winnipeg]: Manitoba, Department of Culture, Heritage, and Recreation, 1984) (ICC Documents, p. 1379).

19 This settlement, the centre of which was the confluence of the Red and Assiniboine Rivers, was located at the present site of the city of Winnipeg.



Chief Peguis had exchanged gifts of peace and friendship with the colony's governor in 1813–14 and had offered aid to the settlers during their frequent expulsions from Red River by the “Nor’Westers.”<sup>20</sup> In order to secure greater stability for his colony and its inhabitants, however, the Earl of Selkirk entered into an agreement with Chief Peguis and several other local chiefs in 1817, by which some 300,000 square kilometres of land along the Red and Assiniboine Rivers were granted to George III for the use of the colony.<sup>21</sup>

The ceded territory included land occupied by Peguis and his followers on both sides of the Red River, from “Sugar Point” north to the river’s mouth at Lake Winnipeg. Shortly after the treaty was signed, however, Peguis approached Selkirk to express his Band’s concern over its loss of access to the river. As a result, Peguis and Lord Selkirk agreed that the Band would be granted back the land on both sides of the Red River north of Sugar Point to Lake Winnipeg.<sup>22</sup>

After the union of the Hudson’s Bay Company and the North West Company in 1821, peace was restored to the colony. Thereafter, it became a haven for retired company officers and servants and their mixed-blood families. As well, the colony eventually became a centre for the distinct and emerging community of French-speaking, mixed-blood descendants of former Nor’Westers and other French traders and explorers. Many of the latter had also settled in the Red River valley, which provided a home base from which to pursue the annual buffalo hunt or other activities such as provisioning or carting. The newly arrived Catholic and Protestant missionaries encouraged the local Métis<sup>23</sup> inhabitants, who formed the majority of the population, to adopt a settled lifestyle, and, by the middle of the 19th century, several thousand resided in a number of ecclesiastical parishes that had been carved out of the settlement.<sup>24</sup>

The most northerly of these parishes was St Peter’s, the location of which corresponded roughly to the lands occupied by Chief Peguis and his followers. Anglican missionaries had first become actively involved with the com-

20 *Chief Peguis* ([Winnipeg]: Manitoba, Department of Culture, Heritage, and Recreation, 1984) (ICC Documents, p. 1380).

21 Reprinted in Alexander Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories* (Toronto: Belfords, Clarke & Co, 1880; reprinted Saskatoon: Fifth House Publishers, 1991), 299.

22 *Chief Peguis* ([Winnipeg]: Manitoba, Department of Culture, Heritage, and Recreation, 1984) (ICC Documents, p. 1383); Molyneux St John to the Hon. Adams George Archibald, January 17, 1871 (ICC Documents, pp. 6–7).

23 This term will be used to describe both French- and English-speaking mixed-blood descendants of Europeans and Canadians associated with the fur trade or with exploration.

24 Gerhard J. Ens, *Homeland to Hinterland: The Changing Worlds of the Red River Metis in the Nineteenth Century* (Toronto: University of Toronto Press, 1996), 82.

munity, which was sometimes known as the “Indian Settlement,” in the early 1830s, and they eventually constructed a church and a schoolhouse three or four miles downstream from Sugar Point.<sup>25</sup> The church was named “St Peter’s” in 1853, but the parish, unlike the others in the colony, does not appear with delineated boundaries in a map drawn in 1856,<sup>26</sup> although the location is referred to as “St Peter’s Parish” on this map. One source states that the parish was not formally established until the early 1860s, when settlement along the Red River had moved far enough north to warrant its creation.<sup>27</sup>

The Red River parishes, including St Peter’s, comprised narrow river lots, two miles deep, following the traditional Quebec system on which the survey was based. Typical land use, however, followed the Scottish system of cultivating an “infield” adjacent to the river, and leaving the “outfield” portion of each lot for pasture. As a result, if not by design, land tenure at Red River reflected the blended heritage of the colony.<sup>28</sup>

Before the entry of Manitoba into Confederation in 1870, legal title to land was only occasionally a matter of concern to most of the settlement’s inhabitants. The heirs of the Earl of Selkirk had reconveyed the settlement to the Hudson’s Bay Company in 1836, subject to any individual titles granted by the Earl.<sup>29</sup> Thereafter, the HBC conveyed title to individual lots in the form of 999-year leases, although it experienced great difficulty in convincing the Métis inhabitants of the settlement that a purchase from the company was necessary to secure ownership rights. When the HBC proposed that all occupants of land in the colony be required to pay for the land they occupied, failing which the land would be sold to the first interested purchaser, protest meetings took place in several parishes. At these meetings, “the Metis decided that no monies should be paid, that the Hudson’s Bay Company had no right to the land ... and that the Metis had a right to it, being ‘the descendants of the original lords of the soil.’”<sup>30</sup> As a result, the company backed down, the mere occupation of land was, for practical purposes, placed on an

25 T.C.B. Boon, “St. Peter’s Dynevor: The Original Indian Settlement of Western Canada,” *Transactions of the Historical and Scientific Society of Manitoba*, series 3, 9 (1954): 18.

26 John Warkentin et al., *Historical Atlas of Manitoba* (Winnipeg: Manitoba Historical Society, 1970), 213.

27 *Chief Peguis* ([Winnipeg]: Manitoba, Department of Culture, Heritage, and Recreation, 1984) (ICC Documents, p. 1389).

28 W.L. Morton: *Manitoba: A History*, 2nd ed. (Toronto: University of Toronto Press, 1967), 48.

29 George F. G. Stanley, *The Birth of Western Canada* (Toronto: University of Toronto Press, 1961), 14.

30 Gerhard J. Ens, *Homeland to Hinterland: The Changing Worlds of the Red River Metis in the Nineteenth Century* (Toronto: University of Toronto Press, 1996), 33.

equal footing with formal ownership, and squatters were generally left undisturbed.

Some of the above unrest had been precipitated by Chief Peguis, who, in 1860, appeared to repudiate the 1817 treaty concluded between him and Lord Selkirk. He (and subsequently his son Henry Prince) had asserted the right to sell river lots within the Indian Settlement, and there is some evidence that he had authority from the Hudson's Bay Company to do so. A St Peter's settler, James Monkman, related many years later:

In the year 1846 the Hudson [sic] Bay Company, being then the Government of the land, sent land surveyors down to ... the Indian Settlement or Chief Peguis settlement, with instructions [to] run two lines from the Red River two miles into the interior, one to be run at the southern boundary of the Peguis settlement, and the other to be run as a side line for the Chief's property. Base lines were started from these lines, in selling to the purchasers years afterwards, and the said side line is recognised today as the side line of the said property. The Hudson Bay Company authorized Chief Peguis to sell the lands north of the line run at the southern boundary of his settlement at a price set down by the H. B. Co. ... And one Judge T[h]om of the Hudson [sic] Bay Company gave to Chief Peguis a document in the form of a deed of sale, of which he gave a copy to all purchasers shewing the amount of land sold to each purchaser.... This privilege was given to Chief Peguis by the Hudson's Bay Company in the form of a pension for the active part he took with his Indians in defence of the Hudson's Bay Company and the Selkirk settlers at the fight of the Seven Oaks when Governor Semple met his death.<sup>31</sup>

As a result, by the time of the Red River Colony's entry into Confederation in 1870, St Peter's Parish was occupied in part by white and Métis settlers who had received title to their river lots from Chief Peguis. In addition, some of the followers of Chief Peguis had acquired land for their own use from the Chief and were farming alongside their non-Indian neighbours. This patchwork of ownership within the Indian Settlement would create havoc in the ensuing decades, and would ultimately culminate in the surrender of the St Peter's lands and the removal of the Peguis Band from the Red River valley.

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<sup>31</sup> James Monkman to the Minister of the Interior, January 8, 1895, National Archives of Canada (NA), RG 10, vol. 3620, file 4646-7.

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## THE ENTRY OF MANITOBA INTO CONFEDERATION

A convergence of several important events surrounding the creation of the province of Manitoba would have enormous consequences for the Peguis Band. The 1860s were a decade of great social change in Red River. The old chief had died in 1864 and had been succeeded by his son Henry Prince. The primacy of the Hudson's Bay Company was coming to an end, owing to political considerations in England and Canada. There was increasing pressure within Canada to secure the annexation of Rupert's Land, in the face of corresponding aspirations from certain interests in the United States. Canadian agricultural settlers and entrepreneurs, primarily from Ontario, began arriving in the colony in greater numbers, commenced staking out property, and promptly took up the cause of Canadian annexation. These actions were perceived as a threat by some of the long-time inhabitants of the colony, especially by many of the Métis, who held their lands by occupancy only and feared the loss of their homes.

Tensions were aggravated by the attitude of superiority some of the newly arrived Canadians adopted towards the French-speaking Métis.<sup>32</sup> The Métis, long accustomed to forming the majority of the population as well as its social elite, faced the prospect of eventually losing their supremacy in the lands they had occupied for several generations.

Further unrest ensued when annexation negotiations took place in 1869 between the Hudson's Bay Company and the Government of Canada without the participation of the majority of the settlement's inhabitants. The arrival of Canadian surveyors, who trespassed on Métis land holdings and attempted to resurvey them without the permission of the occupants, was the final straw. These actions galvanized Louis Riel and his followers into taking the first steps towards the establishment of a provisional government and precipitated the events known as the Riel Rebellion of 1869–70.<sup>33</sup>

Although the resistance was eventually quashed by the Canadian government, it gave the Métis the clout to negotiate better terms for the entry of Manitoba into Confederation, particularly in the area of land rights. Sections 30 to 33 of the *Manitoba Act*,<sup>34</sup> enacted in 1870, not only provided land scrip for the families of Métis residents of the new province but also validated

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32 Gerhard J. Ens, *Homeland to Hinterland: The Changing Worlds of the Red River Metis in the Nineteenth Century* (Toronto: University of Toronto Press, 1996), 126–27.

33 W.L. Morton, *Manitoba: A History*, 2nd ed. (Toronto: University of Toronto Press, 1967), 116–18.

34 SC 1870, c. 3.

titles to land that had been granted by the Hudson's Bay Company or acquired by occupancy. Section 32 of the Act stated:

32. For the quieting of titles, and assuring to the settlers in the Province the peaceable possession of the lands now held by them, it is enacted as follows:-

1. All grants of land in freehold made by the Hudson's Bay Company up to the eighth day of March, 1869, shall, if required by the owner, be confirmed by grant from the Crown.
2. All grants of estates less than freehold in land made by the Hudson's Bay Company up to the eighth day of March aforesaid, shall, if required by the owner, be converted into an estate in freehold by grant from the Crown.
3. All titles by occupancy with the sanction and under the license and authority of the Hudson's Bay Company up to the eighth day of March aforesaid, of land in that part of the Province in which Indian Title has been extinguished, shall if required by the owner, be converted into an estate in freehold by grant from the Crown.
4. All persons in peaceable possession of land at the time of the transfer to Canada, in those parts of the Province in which the Indian Title has not been extinguished, shall have the right of pre-emption of the same, on such terms and conditions as may be determined by the Governor in Council.

This legislation, which acquired constitutional force by virtue of its confirmation by the *British North America Act* of 1871,<sup>35</sup> arguably applied to the landowners holding "Peguis titles" within St Peter's Parish. The fact that many of the lot owners were band members, however, caused much confusion over the applicability of the Act to Indians. In the years to come, government officials would hold divergent and changing views concerning the rights of band members to sell their lots to outsiders. This state of uncertainty would lead to conflict within the Peguis Band, several investigations by the department, and, ultimately, the surrender of the Band's lands.

### **TREATY 1 AND THE CREATION OF ST PETER'S RESERVE**

Shortly after the entry of Manitoba into Confederation, the dominion government made plans to extinguish the Indian title in anticipation of the expected influx of agricultural settlers into the province. The government's negotiator, Wemyss Simpson, arrived in the province on July 16, 1871, and immediately issued proclamations to the Indian leaders of the territory to come to Lower

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35 *An Act Respecting the Establishment of Provinces in the Dominion of Canada*, 34-35 Vict., c. 28.

Fort Garry to negotiate the terms of a treaty.<sup>36</sup> The first to arrive was Henry Prince, who had become chief of the Peguis Band on the death of his father, Chief Peguis, in 1864. Negotiations took place on July 26, 27, and 29, 1879, but agreement was not reached until August 3 of that year. In exchange for the Indians' agreement to cede their aboriginal title to all land in the new province of Manitoba, the government agreed to set aside reserves for each signatory band. The treaty stated:

For the use of the Indians belonging to the band of which Henry Prince, otherwise called Mis-koo-ke-new, is the Chief, so much land on both sides of the Red River, beginning at the south line of St. Peter's Parish, as will furnish one hundred and sixty acres for each family of five, or in that proportion for larger or smaller families; ... it being understood, however, that if, at the date of the execution of this treaty, there are any settlers within the bounds of any lands reserved by any band, Her Majesty reserves the right to deal with such settlers as She shall deem just, so as not to diminish the extent of land allotted to the Indians.<sup>37</sup>

Although it was not reflected in the written terms of the treaty, it is clear that certain "outside promises" had been made to the representatives of the Peguis Band with regard to the river lots held by their members and others in St Peter's Parish. Four years after the conclusion of the treaty, Simpson recalled:

In reply I beg to state that the Indians of Henry Princes Band, residing at the Indian Settlement below the Stone Fort on the Red River, were known to be in possession of Houses and small plots of ground fenced in at the time of the signing of Treaty No. 1, and that it was agreed that such plots should be considered as their own property and the Reserve to be laid out should comprise enough land to give one hundred and sixty acres to each family of five exclusive of any land held as settlers at the time of signing.<sup>38</sup>

Molyneux St John, later an Indian agent, who was also present at the negotiations, wrote:

36 Alexander Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories* (Toronto: Belfords, Clarke & Co., 1880; reprinted Saskatoon: Fifth House Publishers, 1991), 35.

37 Treaty 1, reprinted in Alexander Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories* (Toronto: Belfords, Clarke & Co., 1880; reprinted Saskatoon: Fifth House Publishers, 1991), 313-16.

38 Wemyss Simpson to E.A. Meredith, February 15, 1875, NA, RG 10, vol. 3614, file 4311.

I remember the Indians asking the question whether the amount of land set apart for each family; that is 160 acres for every family of five; was meant to include the land already occupied by them. The answer was that the allotment now provided for was irrespective of and in addition to their holdings on the river. These holdings run back two miles in the same way as all the other properties on the river and the Indians were told that the Reserve would be laid out round this line of settlement taking for the southernmost commencement the southern boundary of the *Parish* of St. Peters, in which most of the Indians lived, and which by reason of an old agreement with Lord Selkirk's legal successors was sometimes called the Indian Reserve.<sup>39</sup>

Before any survey of the reserve set apart by Treaty 1, it was considered necessary to survey the river lots as well as the boundary of St Peter's Parish. It appears that the parish survey was conducted in the winter of 1872,<sup>40</sup> coincident with the resurvey of the Parish of St Andrew's and the creation of the new Parish of St Clement's. In the course of these surveys, the southern boundary of St Peter's Parish was altered by moving it north of Sugar Point, perhaps as a result of the difficulties associated with determining the boundaries of the old lots surveyed by the Hudson's Bay Company.<sup>41</sup> As the Indian reserve set aside by treaty had not yet been surveyed, however, the effect of this alteration was to change the future southern boundary of the reserve from the one that had been contemplated in the treaty.<sup>42</sup>

Indian Affairs officials had requested in March 1873 that the reserve be surveyed,<sup>43</sup> but it appears that this work did not begin until the fall. At that time, surveyor A.H. Vaughan, assisted by J.W. Harris, began the survey of the reserve's eastern, western, and northern boundaries,<sup>44</sup> completing the work in the winter of 1874. The outer boundaries of the reserve completely enclosed the parish river lots. The aggregate of land within those boundaries equalled 55,246 acres, of which the surveyed parish river lots represented 17,331 acres, leaving 37,915 acres of "reserve" land set aside pursuant to Treaty 1.<sup>45</sup> According to an analysis of the 1873 payroll, the population of the

39 Molyneux St John, "Memorandum in Reference to understanding with Indians under Treaties Nos 1 & 2 as to the Proprietary Rights of Indians in Property Held by them prior to the Negotiation of the Stone Fort or No. 1 Treaty," NA, RG 10, vol. 3614, file 4311. Emphasis in original.

40 Barry Potyondi, *Selkirk: The First Hundred Years* (Winnipeg: Jostens, 1981), 13.

41 Thomas Flanagan, *Metis Lands in Manitoba* (Calgary: University of Calgary Press, 1991), 158.

42 H.M. Howell, "Report of Commission re St. Peter's Indian Reserve," December 3, 1907, NA, RG 10, vol. 3617, file 4646, pt 12 (ICC Documents, p. 114).

43 William Spragge, Deputy Superintendent General of Indian Affairs (DSGIA), to J.A.N. Provencher, July 18, 1873 (ICC Documents, pp. 17-20).

44 Tyler, Wright and Daniel Limited, "The Illegal Surrender of St. Peter's Reserve," prepared for TARR Centre of Manitoba, 1979 and 1983, p. 4 (ICC Documents, pp. 1119-82).

45 H.M. Howell, "Report of Commission re St. Peter's Indian Reserve," December 3, 1907, NA, RG 10, vol. 3617, file 4646, pt 1 (ICC Documents, p. 119).

Peguis Band at the date of first survey was 1,875 persons.<sup>46</sup> This number would require a reserve of 60,000 acres under the terms of Treaty 1.

Given the quantity of land within the boundaries of the reserve relative to the entitlement, it appears likely that the surveyors believed that the river lots were to be included within the treaty allotment. It is clear, however, that many of the Indians thought otherwise, as they continued to sell their lots, even after the reserve had been surveyed. Complicating the issue was a growing discontent among some factions of the Peguis Band with the fact that outsiders were occupying land within the boundaries of their reserve. Complaints of damage to Indian property were made to Indian Superintendent J.A.N. Provencher,<sup>47</sup> and there was pressure on the department to deal with what was clearly an anomalous situation.

### DEPARTMENTAL INVESTIGATIONS, 1876–96

The existence of the privately held river lots within the boundaries of the St Peter's Reserve, and the conflicts that arose as a result, would plague the Department of Indian Affairs for decades. One source of conflict concerned the right of treaty Indians to sell property owned by them prior to treaty. There was a divergence of opinion among high-ranking officials of the department on this point. Wemyss Simpson believed that the St Peter's Indians could not be prevented from selling their holdings, given that it had been agreed at the treaty negotiations that the river lots would remain their own property,<sup>48</sup> whereas the Minister of the Interior had made public statements to the contrary.<sup>49</sup>

The latter view subsequently became the official position of the department, particularly after the passage of legislation extending the surrender provisions of the *Indian Act*<sup>50</sup> to Manitoba. In theory, all private land rights held by an individual became rights held in common by the band once that individual adhered to treaty. Consequently, the land could not afterwards be sold by the individual, because the surrender provisions did not permit the

46 Roger Townshend, "Paylist Analysis of the St. Peter's Indian Band for the Year 1873," October 1, 1983 (ICC Documents, pp. 1187–1349).

47 J.A.N. Provencher to the Minister of the Interior, January 10, 1875, NA, RG 10, vol. 3614, file 4311.

48 Wemyss Simpson to E.A. Meredith, February 15, 1875, NA, RG 10, vol. 3614, file 4311.

49 Tyler, Wright and Daniel Limited, "The Illegal Surrender of St. Peter's Reserve," prepared for TARR Centre of Manitoba, 1979 and 1983, p. 9 (ICC Documents, pp. 1119–82).

50 SC 1868, c. 42; extended to Manitoba on May 26, 1874, by *An Act to Amend Certain Laws Respecting Indians, and to Extend Certain Laws Relating to Matters Connected to Indians to the Provinces of Manitoba and British Columbia*, SC 1874, c. 21.



sale of Indian land without a surrender.<sup>51</sup> The main proponent of this position was the powerful Deputy Superintendent General, Lawrence Vankoughnet, who would hold this view until his retirement from the department in 1893.

In the meantime, the rights of non-Indian claimants who inhabited river lots within the boundaries of the reserve also occupied the attention of government officials. In 1876, department officials directed Provencher to investigate and determine which of the river lot occupants were legally entitled to inhabit their holdings, pursuant to the *Manitoba Act*, for the purpose of taking legal action to eject those who were trespassing. After conducting his investigation, Provencher divided the river lot claimants he considered “objectionable” into three categories: treaty Indians, persons who had purchased from treaty Indians subsequent to Treaty 1 but prior to the legislation extending the provisions of the *Indian Act* to Manitoba, and persons purchasing from Indians after the passage of the above legislation. Provencher anticipated that several test cases could be selected for prosecution, and that the decisions would then determine the rights of all other claimants in each category.<sup>52</sup> It appears, however, that no action was taken as a result of the above investigation.

In the fall of 1877, a meeting took place between the Interior Minister and the Chief of the Peguis Band during which the latter disputed the validity of any titles acquired by purchase after the date of the conclusion of Treaty 1. As a result, a second investigation was conducted by Inspector E. McColl in the spring of 1878. McColl concluded that Chief Henry Prince had little cause to complain about lot sales, since he had participated in many of them, but that the claims of persons who purchased from treaty Indians were without merit. “I am of opinion that those who purchased lots from treaty Indians,” he wrote, “have no legal right whatever to them, although they might have been misled in doing so, for inasmuch as treaty Indians are wards of the government, they have no more power to convey lands than minors have.”<sup>53</sup>

Despite continuing pressure from the Peguis Band, no action was taken as a result of McColl’s report until the spring of 1879. At that time, Vankoughnet recommended to the Superintendent General that all non-Indians who had acquired lots from Indians after the date of Treaty 1 should be ejected by notice, pursuant to the provisions in the *Indian Act*. When steps were taken

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51 Tyler, Wright and Daniel Limited, “The Illegal Surrender of St. Peter’s Reserve,” prepared for TARR Centre of Manitoba, 1979 and 1983, pp. 8–10 (ICC Documents, pp. 1119–82).

52 J.A.N. Provencher to the Minister of the Interior, September 19, 1876, NA, RG 10, vol. 3617, file 4646.

53 E. McColl to the Superintendent General of Indian Affairs, May 17, 1878, NA, RG 10, vol. 3617, file 4646.

to effect this plan, however, the residents refused to leave, and departmental officials began to consider the introduction of special legislation to resolve the problem.<sup>54</sup> As a result, in the spring of 1880 the department devised legislation creating a two-year time limit within which all claims under the *Manitoba Act* were required to be submitted, and a further six-month time limit for the proving of such claims, failing which they would be considered forfeited.<sup>55</sup>

The deadline by which the claims were required to be proven expired in November 1882. However, officials of the Department of the Interior had not yet completed the work required of them in the investigation of claims filed pursuant to the relevant legislation, with the result that resolution of the river lot question was again delayed.<sup>56</sup>

In the fall of 1883, Vankoughnet asked for yet another investigation, which was to be carried out by Indian Agent A.M. Muckle. The results of this latest effort were superseded by the strong recommendation of Inspector McColl, as well as by the views of the Minister of the Interior, that a bilateral commission be established by the Departments of the Interior and Indian Affairs to resolve the issue.

The terms of reference for the commission were the subject of some disagreement. Interior officials proposed that patents to river lots be issued to certain categories of non-Indian occupant. These categories included all *bona fide* residents in occupation as of the date of the transfer of Manitoba to Canada, or as of the date of the conclusion of Treaty 1, or, in the discretion of the commissioners, those whose occupation postdated the signing of Treaty 1. Interior officials also proposed that persons who purchased lots from Métis who had subsequently adhered to treaty be granted patents, on the basis that the Métis landholder had rights under the *Manitoba Act* at the time of the sale.<sup>57</sup> Although Vankoughnet saw the value of such a commission in the resolution of the river lot problem, he took the view that no one who was, or had become, a treaty Indian could pass title to private property unless the sale was completed before the vendor's adherence to Treaty 1. Ultimately, the terms of reference governing the bilateral investigation were narrowed in accordance with Vankoughnet's views, and McColl, on behalf of

54 Tyler, Wright and Daniel Limited, "The Illegal Surrender of St. Peter's Reserve," prepared for TARR Centre of Manitoba, 1979 and 1983, pp. 17-18 (IGC Documents, pp. 1119-82).

55 *An Act for the Final Settlement of Claims to lands in Manitoba by Occupancy, under the Act thirty-third Victoria, Chapter Three, SC 1880, c. 7.*

56 L. Russell to L. Vankoughnet, December 20, 1882, NA, RG 10, vol. 3617, file 4646.

57 A.M. Burgess to L. Vankoughnet, March 17, 1884, NA, RG 10, vol. 3615, file 4466.

Indian Affairs, and A.H. Whitcher, for the Department of the Interior, began their work in late 1884.<sup>58</sup>

McColl and Whitcher submitted their report in June 1885. They had divided 130 claimants into four schedules:

- A. For claimants other than Indians where the claims were established by actual occupancy at the date of the Treaty, the issuance of patents was recommended.
- B. For claimants who were Indian, or were Metis and admitted to treaty, or persons claiming through them; or claims for land that was unoccupied and unimproved at the time of treaty, the issuance of patents was *not* recommended.
- C. For claimants who acquired lots from Indians (or Metis admitted to treaty) subsequent to the date of Treaty 1, but who continuously occupied and improved their holdings since the treaty, compensation was recommended although the issuance of patents was not.
- D. For claimants who were actual residents and occupants of farm lots at the date of Treaty, and who used wood lots located within the boundaries of the Reserve in order to carry on their homestead operations, the issuance of patents was recommended.<sup>59</sup>

For reasons that are not apparent, but which may be connected to the disruption caused by the 1885 Riel Rebellion, the McColl/Whitcher report sat in abeyance for 18 months. Finally, in January 1887, the Minister of the Interior recommended to the Privy Council that the recommendations of the report be accepted.<sup>60</sup> Vankoughnet, however, felt that the commissioners had exceeded their mandate by recommending the acceptance of some claims in which the claimants were not in actual possession of the land at the time Treaty 1 was concluded. In Vankoughnet's view, the reserve was created by the terms of the treaty, and, as a result, reserve land could only be sold by surrender to the Crown. Consequently, anyone purchasing after that date did so at his own risk.<sup>61</sup> Vankoughnet also disagreed with the proposed disposition of the "wood lot" claims. He pointed out that the quantity of any lands patented to outsiders would have to be made up to the Band, as its entitlement had crystallized at the time the reserve was created.

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58 Tyler, Wright and Daniel Limited, "The Illegal Surrender of St. Peter's Reserve," prepared for TARR Centre of Manitoba, 1979 and 1983, pp. 21–23 (ICC Documents, pp. 1119–82).

59 E. McColl and A.H. Whitcher to Sir John A. Macdonald, June 2, 1885, NA, RG 10, vol. 3618, file 4646-1A. Emphasis in original.

60 Minister of the Interior to the Honourable the Privy Council, January 24, 1887, NA, RG 10, vol. 3618, file 4646-1A.

61 L. Vankoughnet to Superintendent General of Indian Affairs, March 8, 1887, NA, RG 10, vol. 3618, file 4646-1A. Vankoughnet apparently did not appreciate the fact that the surrender provisions of the *Indian Act* did not come into force in Manitoba until 1874.

Because of the inability of the Departments of Indian Affairs and the Interior to agree on which claimants (with the exception of the Schedule A claimants) should receive patents, the entire problem was again put in abeyance, to the continued frustration of band members and lot holders. The situation was further exacerbated by the fact that some band members had withdrawn from treaty and taken Métis scrip in order to establish their claims under the *Manitoba Act*, only to discover that the department took the position that, as non-Indians, they would be required to leave the reserve. When they refused to leave, “it was not long before they became just another group of claimants ... demanding title to the land they occupied.”<sup>62</sup> The Peguis Band, under Henry Prince, continued to agitate against the presence of outsiders, and, as a result, the department resolved to eject the group of recent scrip takers. The services of a sheriff were required to accomplish this task, and all eventually left the reserve.

The department was in the midst of plans to eject all the other lot holders whose claims McColl and Whitcher had rejected when the Exchequer Court of Canada rendered its decision in *The Queen v. Thomas*.<sup>63</sup> This case concerned a Métis who had taken treaty with the Peguis Band, but withdrew a few years later to protect his property rights in a river lot occupied by him. The matter was before the Exchequer Court as a result of the department’s attempt to cancel a patent to the lot in question, which had been granted to him before it was realized that he had at one time taken treaty. The case turned on whether Thomas was an “Indian” within the meaning of the *Indian Act* on April 12, 1876, which was the date of passage of section 10 of the Act:

Any Indian or non-treaty Indian in the Province of British Columbia, the Province of Manitoba, in the North-West Territories, or in the Territory of Keewatin, who has, or shall have, previously to the selection of a reserve, possession of and made permanent improvements on a plot of land which has been or shall be included in or surrounded by a reserve, shall have the same privileges, neither more nor less, in respect of such plot, as an Indian enjoys who holds under a location title.<sup>64</sup>

The effect of the above was to cancel the private property rights of any Indian who occupied and cultivated land surrounded by a reserve. As a result, if it

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62 Tyler, Wright and Daniel Limited, “The Illegal Surrender of St. Peter’s Reserve,” prepared for TARR Centre of Manitoba, 1979 and 1983, pp. 30–31 (ICC Documents, pp. 1119–82).

63 (1891) 2 Ex. CR 246.

64 *An Act to Amend and Consolidate the laws Respecting Indians*, SC 1876, c. 18, s. 10.

were determined that the above provision applied to Thomas at the time he was granted his patent, the transaction was void.

The decision of the court in Thomas's favour was rendered on January 19, 1891. Justice Burbidge stated:

The first question to be decided is: Did the defendant by participating in the gratuity and annuities mentioned make an election and renounce the status and personal condition of a half-breed, and acquire that of an Indian? ... But take it that the defendant's status, from the day he received his first payment under the Treaty until he returned the last [in 1874], must be deemed to be that of an Indian, the further question presents itself: *By virtue of what law did he forfeit his interest in the homestead that he had purchased, and on which, with his wife and family, he was residing.* The only answer suggested in reply to that enquiry is that such is the effect of the 19<sup>th</sup> section of the *Indian Act* (R.S.C. c. 43), whereby it is, amongst other things, provided that every Indian in the Province of Manitoba who has, previously to the selection of Reserve, possession of a plot of land, included in or surrounded by a Reserve, upon which he has made permanent improvements, shall have in respect thereof the same privileges as are enjoyed by an Indian who holds under a location title. *But that provision was first enacted in 1876 by 39 Vic. C. 18 s. 10, and cannot, I think, be construed to deprive the defendant of any rights of property theretofore acquired, seeing that there is no pretence that he was at that time an Indian or liable to be considered or treated as an Indian within the meaning of the statute.*<sup>65</sup>

The broader effect of the above decision was to determine that persons who took treaty in 1871 were not, by virtue of that fact, deprived of their personal property rights acquired prior to treaty. Only the passage of section 10 of the *Indian Act* on April 12, 1876, had that effect. Arguably, therefore, any members of the Peguis Band occupying river lots on the date of the transfer of Manitoba to Canada had the legal right to transfer those lots to third parties up to April 12, 1876.

Vankoughnet asked the Department of Justice for an opinion concerning the chance of a successful appeal. He was informed by the Deputy Minister of Justice that Justice Burbidge's reasoning was correct and was "fatal to the case of the Crown."<sup>66</sup> Despite the clear implications of the *Thomas* case, however, the department continued to take the position that sales by treaty Indians between the date of Treaty 1 and April 12, 1876, were invalid.<sup>67</sup>

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<sup>65</sup> *The Queen v. Thomas* (1891), 2 Ex. CR 246 at 249–51. Emphasis added.

<sup>66</sup> R.W. Sedgwick to the Deputy Minister of Indian Affairs, February 25, 1891, NA, RG 10, vol. 3619, file 4646-5 (ICC Documents, p. 82).

<sup>67</sup> Tyler, Wright and Daniel Limited, "The Illegal Surrender of St. Peter's Reserve," prepared for TARR Centre of Manitoba, 1979 and 1983, pp. 43–44 (ICC Documents, pp. 1119–82).

After Vankoughnet's retirement in 1893, the new Deputy Superintendent General, Hayter Reed, addressed the status of the claims that remained unresolved. Although he agreed with the McColl/Whitcher recommendations to reject the Schedule B and Schedule C claims, he disagreed with his predecessor's position regarding the "wood lot" claimants and recommended to the Superintendent General that they be accepted. The Superintendent General recommended that this be carried out, but the plan was scuttled owing to unexpected opposition from officials of the Department of the Interior, leaving the situation immersed in the same conflicts and frustrations as before. Although the new Superintendent General, Hugh John Macdonald, ordered another investigation to be carried out in 1896, the change in government in that year caused matters to grind to a halt once more. As a result, it would be another decade before the land issue at St Peter's Reserve would be resolved, although the manner in which it would be resolved was far from what the Indians of the Peguis Band had long anticipated.

### **THE HOWELL COMMISSION AND THE SURRENDER OF ST PETER'S RESERVE**

Following the election in 1896, the problem of the St Peter's land claims was assigned to T.G. Rothwell, the law clerk of the Department of the Interior, with the idea that the matter be resolved quickly and permanently. Despite this intention, it was 1900 before Rothwell's report was submitted to the Superintendent General and Minister of the Interior, Clifford Sifton. What was significant about this report, however, was its recommendation that the tangle of claims be resolved by a surrender of the reserve, the first mention of such a course of action in the department's 25-year history of dealing with the St Peter's land question.<sup>68</sup>

Meanwhile, and independent of the Interior Department's report, a movement in favour of the surrender of the reserve had gained support among local politicians in Manitoba, including the Selkirk Member of Parliament, W.F. McCreary. Many of the proponents of this plan were allied with river lot claimants, a fact that caused great consternation among members of the Peguis Band.<sup>69</sup>

<sup>68</sup> Tyler, Wright and Daniel Limited, "The Illegal Surrender of St. Peter's Reserve," prepared for TARR Centre of Manitoba, 1979 and 1983, pp. 93-97 (ICC Documents, pp. 1119-82).

<sup>69</sup> Tyler, Wright and Daniel Limited, "The Illegal Surrender of St. Peter's Reserve," prepared for TARR Centre of Manitoba, 1979 and 1983, pp. 115-20 (ICC Documents, pp. 1119-82).

McCreary died in 1904 and his replacement, Samuel Jackson, did not immediately immerse himself in the promotion of the reserve's surrender. In the spring of 1906, however, the Chief and councillors of the Peguis Band petitioned Jackson to help in the removal of the non-Indian owners of river lots from the reserve. Jackson, who had at one time been an inspector of Indian agencies in the province, was familiar with the controversy, and he asked Frank Pedley, the Deputy Superintendent General of Indian Affairs, to take steps to settle the matter once and for all.<sup>70</sup> Pedley forwarded the matter to the Department of the Interior, which caused interest to be revived in Rothwell's earlier surrender recommendation, and the latter's report was forwarded to the new minister, Frank Oliver.

Oliver, who was well known as a proponent of reserve land surrenders, had recently introduced legislation in the House of Commons raising the percentage of sale proceeds that could be advanced to members of a band on surrender of their land, thereby providing an increased incentive for a band to surrender. As a result, Rothwell's recommendation likely received favourable consideration in that quarter. In any event, Oliver sent Rothwell's report to Pedley for his comments, with the direction that the St Peter's land question be disposed of in a way satisfactory to all interested parties.<sup>71</sup>

Pedley passed the matter on to other officials in the department, and, subsequently, several of the band councillors were interviewed about the issue. Just at this time, the price of real estate in the town of Selkirk, adjoining the reserve, began to rise, thereby generating interest in the reserve among local speculators. Shortly thereafter, in November 1906, Oliver conceived the idea of appointing a commission to investigate all claims to lands within the St Peter's Reserve, for the purpose of advising the Privy Council on the means by which these claims could best be resolved. The letter announcing the plan to officials of the Department of Indian Affairs stated that it was "understood" that the Peguis Band would "willingly execute the necessary surrender."<sup>72</sup>

The commission was appointed by Order in Council dated November 22, 1906.<sup>73</sup> The Order appointed the Chief Justice of the Manitoba Court of Appeal, Hector Howell, as Commissioner to investigate certain questions with regard to the extent of reserve land which should have been set aside for the

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70 Tyler, Wright and Daniel Limited, "The Illegal Surrender of St. Peter's Reserve," prepared for TARR Centre of Manitoba, 1979 and 1983, pp. 208-12 (ICC Documents, pp. 1119-82).

71 Tyler, Wright and Daniel Limited, "The Illegal Surrender of St. Peter's Reserve," prepared for TARR Centre of Manitoba, 1979 and 1983, pp. 214-15 (ICC Documents, pp. 1119-82).

72 Secretary, Department of the Interior, to J.D. McLean, November 5, 1906, NA, RG 15, vol. 498, file 139441-1 (ICC Documents, pp. 83-84).

73 OCP 2320, November 22, 1906 (ICC Documents, pp. 85-92).

Band, as well as to determine the compensation to be given to the Band for the patented lands located within the boundaries of the reserve. The Order stated:

[I]t is certain from papers on file in the Department of the Interior that but for ... the necessity of first settling the area this band is entitled to under the terms of the Treaty of the 3<sup>rd</sup> August, 1871, and then settling what compensation should be made to its members for lands granted from it after the date of the Treaty, Letters Patent would have issued long ago for many of the parcels of land for which claim has for years been made and is yet being made.

The Minister further submits that, not only, therefore, is it now necessary to consider such unsettled claims to lands, but it is necessary to finally settle the total area of the Reserve, and the total area of all portions thereof which have been granted out of it or which may yet have to be granted out of it to satisfy the claims to lands therein of others than Indians, and for which compensation should be made to them, and also what the nature and extent or amount of such compensation should be. It may also become necessary to consider the advisability and necessity of obtaining from the members of the band a surrender of all ungranted lands in the Reserve and of setting aside other lands as a Reserve.<sup>74</sup>

Howell began his work in December 1906, after the appointment of counsel for the Band<sup>75</sup> and for the non-Indian claimants. Before the public hearings, however, informal meetings to discuss the possibility of a surrender were held between the Commissioner, the two lawyers, and Chief William Prince of the Peguis Band. At one of these meetings, which was also attended by the band councillors and the Indian Commissioner, David Laird, it appears that Laird and the Band were strongly opposed to the idea of a surrender. Howell continued to meet informally with the Band after the start of hearings in February 1907, although it appears that Laird was not present. Nonetheless, the Chief and three of the councillors did not wish to discuss a surrender in February 1907, but instead put forward their longstanding complaints about the river lots and compensation for the loss to the Band of the land that had been patented.<sup>76</sup>

The formal hearings were primarily concerned with the rights of the river lot claimants. Howell ruled that the reasoning of Justice Burbidge in the *Thomas* case was applicable and that, as a result, sales of private lots by

74 OCPC 2320, November 22, 1906 (ICC Documents, pp. 85–92).

75 J.D. McLean to Orange H. Clarke, December 6, 1906, NA, RG 10, vol. 3617, file 4646, pt 1 (ICC Documents, p. 94).

76 Tyler, Wright and Daniel Limited, "The Illegal Surrender of St. Peter's Reserve," prepared for TARR Centre of Manitoba, 1979 and 1983, pp. 238–44 (ICC Documents, pp. 119–82).



treaty Indians before April 12, 1876, were valid. Consequently, any claims for land that had been sold by treaty Indians after the above date were disallowed.

Howell's informal meetings with the Band continued in the spring, concurrent with the formal hearings. A surrender proposal presented by Howell to the Band in April 1907 was opposed by all present at the meeting with the exception of one councillor. At a subsequent meeting on the reserve in May of that year, Howell's proposal to the Band was again rejected. In late May, Howell had occasion to meet with Oliver during the minister's stop in Winnipeg following a tour of western Canada. After this meeting, a new and more generous surrender proposal was presented to the Band, but it was again rejected by a majority at a meeting of the Chief and council. At a subsequent meeting between Howell and the entire Band to discuss the new proposal, discussions broke down when Howell mistakenly thought he was being accused of dishonesty by one band member, and the majority of the Band refused to meet with him further.<sup>77</sup>

Howell then enlisted the support of the Department of Indian Affairs to induce the Band to attend another meeting on July 15, 1907. Only one band member attended – Councillor W.H. Prince, who had previously supported the surrender – and he was questioned extensively by the lawyer appointed to represent the Band concerning the desirability of the Band's relocation from the Selkirk area. Prince advised the commission that perhaps 20 families, representing something less than 10 per cent of the Band's population, would be willing to relocate to a new location.<sup>78</sup>

In late August 1907, Howell renewed his attempts to secure a surrender from the Band. On August 28, Howell, along with several prominent citizens of the town of Selkirk, met with Chief William Prince and two councillors to discuss the proposed surrender on terms that were significantly better than had been previously offered. Howell reported that the Band had refused to consider a surrender until certain terms had been offered by him: the granting of individual patents to Indian heads of families totalling half the reserve's acreage (with the Chief and councillors to receive significantly more land than ordinary band members); the retention of approximately 3,000 acres within the reserve for hay land for the Band; the balance of the land to be sold, with half the principal to be paid over and the other half to be invested,

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77 Tyler, Wright and Daniel Limited, "The Illegal Surrender of St. Peter's Reserve," prepared for TARR Centre of Manitoba, 1979 and 1983, pp. 246–60 (ICC Documents, pp. 1119–82).

78 Tyler, Wright and Daniel Limited, "The Illegal Surrender of St. Peter's Reserve," prepared for TARR Centre of Manitoba, 1979 and 1983, pp. 262–65 (ICC Documents, pp. 1119–82).

with the interest paid annually; and the provision of a new reserve of 75,000 acres to be located elsewhere. In addition, Howell stated that the Band had proposed that its members be allowed to receive the proceeds of sale of a small parcel of land (called the "Mile Square") that had been surrendered decades earlier.<sup>79</sup> The Indians had recently petitioned the department to release these funds, believed to amount to \$5,000, but the department had not acceded to the Band's request. Howell informed Oliver that the last-mentioned term would likely cause the Chief and council to agree to a surrender, and he asked the Minister's permission to promise it to the Band.<sup>80</sup>

At the next meeting between Howell and the Chief and councillors on September 5, 1907, the Indians were "insistent" that the Mile Square proceeds be paid to them, and, as a result, Howell pressed the department for its concurrence in the above term.<sup>81</sup> Pedley responded that it would be "impossible" to use the money for that purpose, owing to the terms of the original surrender, but that it would not be illegal to expend the funds in question on permanent improvements to a new reserve.<sup>82</sup>

Soon afterwards, Pedley was dispatched to Manitoba to assist with the conclusion of the surrender. Pedley, Howell, and other officials met with the Chief and councillors of the Peguis Band on September 20, 1907. At this meeting, many of the proposed surrender terms were discussed, and, by its end, the Chief and councillors of the Peguis Band had apparently agreed to the surrender.

Pedley then arranged for a meeting of the entire Band to be held three days later on Monday, September 23, to discuss and vote on the surrender. To that end, notices were posted at several churches located on the reserve the day before the proposed meeting.<sup>83</sup> It later became clear that many band members did not see the notices, as they were absent from the reserve or did not attend church services on that day. Nonetheless, on the day of the meeting, more than 200 band members arrived at the old schoolhouse on the reserve, the designated location for the meeting. As the building could hold at

79 H.M. Howell to Frank Oliver, August 30, 1907, NA, RG 10, vol. 4031, file 301808-6½ (ICC Documents, pp. 97-103).

80 Tyler, Wright and Daniel Limited, "The Illegal Surrender of St. Peter's Reserve," prepared for TARR Centre of Manitoba, 1979 and 1983, pp. 292-99 (ICC Documents, pp. 1119-82).

81 H.M. Howell to Frank Oliver, September 6, 1907, NA, RG 10, vol. 4031, file 301808-6½ (ICC Documents, pp. 104-6).

82 Frank Pedley to H.M. Howell, September 7, 1907, NA, RG 10, vol. 4031, file 301808-6½.

83 Tyler, Wright and Daniel Limited, "The Illegal Surrender of the St. Peter's Reserve," prepared for TARR Centre of Manitoba, 1979 and 1983, pp. 304-6 (ICC Documents, pp. 1119-82).

most 100 people, the rest remained outdoors and could not hear the proceedings.

The surrender meeting was chaired by Pedley and took place over two separate days. On the first day, Pedley, through two interpreters, explained the terms of the surrender document. Howell spoke as well, advising the band members in attendance to accept the terms of the surrender.<sup>84</sup> Pedley let the Band know that he had brought \$5,000 in cash with him for distribution on the execution of a surrender. Several years later, he stated that he had advised all in attendance that the funds did not originate in the Mile Square, but, instead, represented an advance of anticipated sale proceeds from the proposed surrender. Pedley also advised the meeting that the reserve land could be sold at \$10 per acre and that each band member would receive \$90 from that sale.<sup>85</sup>

Opposition to the surrender was voiced by William Asham, an ex-Chief of the Band. He was later to state that the entire surrender document was never read to the band members assembled at the meeting.<sup>86</sup> Some band members, including Asham, sensed that there was significant opposition to the surrender and requested that the surrender vote be held at the end of the first day. At the insistence of Pedley, supported by the Chief and council, however, the meeting was adjourned until the next day. When the meeting resumed on the second day, Asham discovered that the tide had turned and that much of the previous day's support for his position had evaporated. Discussion resumed on many of the same issues that had been heard the day before, until Pedley suggested that a vote be held after the lunch hour. Asham later related that attempts were made during the noon break to enlist his support for the surrender by means of the suggestion that he receive the same quantity of patented land as a councillor would receive, which was significantly greater than what an ordinary band member would get. Asham refused the offer.<sup>87</sup>

The vote was held on the afternoon of September 24, 1907, after a speech by Chief William Prince in favour of the surrender. The vote, which was held out of doors, was to take place by a division of the voters into two groups, representing those in favour of the surrender and those opposed. Immedi-

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84 Tyler, Wright and Daniel Limited, "The Illegal Surrender of the St. Peter's Reserve," prepared for TARR Centre of Manitoba, 1979 and 1983, pp. 310–11 (ICC Documents, pp. 1119–82).

85 Manitoba, "Royal Commission Re: St. Peter's Reserve" (testimony of Frank Pedley, p. 588), NA, RG 10, vol. 4033, file 301808-SP.

86 Manitoba, "Royal Commission Re: St. Peter's Reserve" (testimony of William Asham, p. 89), NA, RG 10, vol. 4033, file 301808-SP.

87 Tyler, Wright and Daniel Limited, "The Illegal Surrender of St. Peter's Reserve," prepared for TARR Centre of Manitoba, 1979 and 1983, pp. 316– 21 (ICC Documents, 1119–82).

ately before the vote, John Semmens, the Inspector of Indian Agencies, was heard to call out in Cree that all those wanting to receive the \$90 should go over to the side where the Chief and council were standing. After the vote was tabulated, it was announced that the surrender had passed by a vote of 107 to 98. Some band members then assembled in the schoolhouse with Pedley and the other officials, at which time the surrender was read out loud, in English, to those present. At some point during the proceedings, handwritten amendments were made to the terms of the surrender, apparently at the instigation of the Band. One amendment involved the striking of a clause specifying that any sales by band members of their individual allotments would have to be approved by the department. In addition, at the suggestion of Chief William Prince, a clause was added giving the ex-Chief, William Asham, 120 acres of land as his personal allotment, thereby placing him in the same position as a band councillor.<sup>88</sup>

The surrender agreement was signed by Chief William Prince, the four councillors, and ex-Chief William Asham. It was witnessed by Pedley, Semmens, and two other observers. In exchange for the Band's surrender of its reserve, the agreement set out the following terms:

To Have and to Hold ... in trust to dispose of the same ... upon such terms as the Government of Canada may deem most conducive to our welfare ... and upon the further condition that all moneys received from the sale thereof shall ... be paid as follows, namely one half of said sum ... to be paid to us the year following the receipt of same by the Government after sale of said lands, the balance of said proceeds of sale to be funded for our benefit and the interest paid to us annually. At each payment as aforesaid the sum so paid shall be divided so that the Chief shall receive each year the sum of \$10.00 and each Councillor the sum of \$6.00 more than that to which the other individual members of the Band shall be entitled.

And upon the further conditions that ... there shall be granted an area not exceeding 21,000 acres to the members of the Band as follows: - To the Chief 180 acres, to the ex Chief and each Councillor 120 acres, and to the other members of the Band in the proportion of about 80 acres to each head of a family of five... [The allotment] shall be the final settlement of the land to be patented, and of the parties to receive the same.

In addition to the said 21,000 acres above mentioned there shall be set aside 3000 acres of hay land for the members of the Band having land in the present reserve or entitled to receive land under this agreement...

A new Reserve for this Band shall be selected on Lake Winnipeg to the extent of 75,000 acres....

<sup>88</sup> Tyler, Wright and Daniel Limited, "The Illegal Surrender of St. Peter's Reserve," prepared for TARR Centre of Manitoba, 1979 and 1983, pp. 321-29 (ICC Documents, pp. 1119-82).

The Department shall advance at the time of the surrender the sum of \$5000.00, to be repaid out of the first moneys received from the sale of the lands. A reasonable supply of agricultural implements and tools for use on the new Reserve shall be supplied and distributed at the discretion of the Department.

The Department is to render reasonable assistance in removing to the new Reserve in summer time in any year within five years of the date of this surrender ... This surrender shall release lands in the present Reserve from all claims of the Band and of each individual member thereof from all or any claims under the Manitoba Act or the Indian Act, and each member of the Band shall sign a release to this effect, when he receives his patent.<sup>89</sup>

The affidavit certifying the Band's assent to the surrender was sworn by Agent Lewis and Chief William Prince before D.S. Daly, Police Magistrate. The surrender was accepted by Order in Council dated October 14, 1907.<sup>90</sup> The same month, the Band and representatives of the department selected the site of the new reserve, near Fisher River, Manitoba.

Howell submitted his report to the Governor General in Council on December 2, 1907. The report dealt with several claims made by the Band concerning the correct location of the south boundary of the reserve; the right of band members to receive a patent for river lots occupied by them prior to treaty; and compensation for the loss to the reserve of river lots patented to outsiders. After recounting the history of the St Peter's land issue and discussing the surrender, Howell reported: "The new Reserve is accepted by the Band in full satisfaction of all damages claimed and of all rights, individual or tribal, asserted as above set forth."<sup>91</sup>

Subsequent events, in particular a 1911 Manitoba Royal Commission investigating the titles to the river lots and the surrendered land, were to vindicate those who had opposed the surrender's validity. In the meantime, however, a significant proportion of the Band had relocated to Fisher River, patented lots had been sold, a sale of the remaining surrendered reserve land had taken place, and proceeds had been distributed to band members. The dominion government was unwilling to turn back the clock and reopen the St Peter's land question. It was perhaps inevitable that the surrender would ultimately be validated by special legislation: the *St. Peter's Reserve Act*.<sup>92</sup> Under its provisions, purchasers would be required to pay an extra \$1 per

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89 Surrender: Chippewa, Cree and Saulteaux Indians of St. Peter's Reserve to His Majesty the King in Right of Canada, September 24, 1907 (ICC Documents, pp. 107–11).

90 OCPC 2235/1907, October 14, 1907.

91 H.M. Howell to Governor General in Council, December 2, 1907, NA, RG 10, vol. 3617, file 4646-1 (ICC Documents, pp. 113–22).

92 *St. Peter's Reserve Act*, SC 1916, c. 24.

acre (to be added to the St Peter's Band fund) to obtain a secure title to their land. The legislation had the effect of increasing the balance in the Band's trust account by \$40,000, but the St Peter's Reserve was gone forever.

## PART III

### ISSUES

This claim concerned an alleged treaty land entitlement shortfall, and whether that shortfall was satisfied by the setting aside of a new reserve for the Peguis Band after the 1907 surrender of the St Peter's Reserve. The following points are a more detailed summary of the issues as they were developed by the parties throughout the planning conferences:

- (1) What was the date of first survey, and what is the appropriate population base for the purpose of determining the treaty land entitlement of the Peguis First Nation?
- (2) What lands were set aside as "reserve lands" for the Peguis Band pursuant to Treaty 1, and, in particular:
  - a) Were the St Peter's Parish river lots intended to be included within the reserve?
  - b) Do the provisions of the *Manitoba Act, 1870*, have any legal impact on the inclusion of the river lots within the reserve?
  - c) What effect does Treaty Commissioner Simpson's "outside promise" regarding the river lots have on this issue?
- (3) Did the river lots become part of the reserve by operation of law, and, in particular:
  - a) What is the effect of the 1874 legislation extending the provisions of the *Indian Act* to Manitoba?
  - b) What is the effect of section 10 of the 1876 amendments to the *Indian Act*?
- (4) Did the setting aside of a new reserve comprising 75,000 acres have an impact on the treaty land entitlement of the Peguis First Nation, and, in particular:

- a) Was the new reserve provided purely in exchange for the surrendered lands?
- b) Was the new reserve intended to represent additional lands under treaty?



## PART IV

### CONCLUSION

On June 29, 1998, Assistant Deputy Minister John Sinclair, of the Department of Indian Affairs and Northern Development, informed Chief Louis J. Stevenson of the Peguis First Nation that Canada had accepted the Peguis treaty land entitlement claim for negotiation, on the basis that there existed an outstanding TLE shortfall. For the purpose of negotiation, Canada accepted that a shortfall had arisen from the fact that not all members of the Peguis First Nation appear to have been counted at the date of first survey. In the alternative, such a shortfall may have arisen from the erroneous inclusion of the St Peter's Parish river lots in the calculation of the total acreage comprising St Peter's Reserve.

In light of Canada's offer to accept the claim for negotiation under the Specific Claims Policy, the Commission has suspended its inquiry and wishes the parties well in their negotiations towards a settlement.

FOR THE INDIAN CLAIMS COMMISSION



Daniel J. Bellegarde  
Commission Co-Chair



P.E. James Prentice, QC  
Commission Co-Chair

Dated this 9th day of March, 2001.

# APPENDIX A

## PEGUIS FIRST NATION TREATY LAND ENTITLEMENT INQUIRY

### **1 Planning conferences**

The Commission held five planning conferences:

	January 12, 1995
	May 18, 1995
	October 16, 1996
	November 28, 1996
	April 9, 1997

### **2 Content of formal record**

The formal record for Peguis First Nation Treaty Land Entitlement Claim consists of the following materials:

- the documentary record (7 volumes of documents)
- an annotated index.

The report of the Commission and letters of transmittal to the parties will complete the formal record of this inquiry.

# APPENDIX B

## GOVERNMENT OF CANADA'S OFFER TO ACCEPT CLAIM



Indian and Northern  
Affairs Canada

Affaires indiennes  
et du Nord Canada

Assistant Deputy Minister

Sous-ministre adjoint

Ottawa, Canada  
K1A 0H4

June 29, 1998

Chief Louis J. Stevenson  
Peguis First Nation  
Peguis Reserve  
P.O. Box 219  
HODGSON MB R0C 1N0

Dear Chief Stevenson:

On behalf of the Government of Canada and in accordance with the Specific Claims Policy, I offer to accept for negotiation of a settlement the Peguis First Nation's specific claims concerning the 1907 surrender of St. Peter's Indian Reserve and outstanding Treaty Land Entitlement (TLE). It is proposed that these claims be negotiated jointly, as two interrelated components of a single claim.

For the purpose of negotiations, Canada accepts that the Peguis First Nation has sufficiently established that Canada has an outstanding lawful obligation within the meaning of the Specific Claims Policy, with respect to the First Nation's allegations that: (a) Canada failed to comply with certain obligations under the surrender provisions of the 1906 *Indian Act*, rendering the 1907 surrender of St. Peter's Reserve invalid; and (b) there is an outstanding TLE shortfall arising from the fact that not all members of the Peguis First Nation appear to have been counted at the date of first survey (DOFS), and/or from the erroneous inclusion of the St. Peter's Parish river lots in calculating the acreage of the St. Peter's Reserve.

The settlement will be in accordance with Canada's Specific Claims Policy, as explained in the booklet "Outstanding Business". Compensation will be based on Criteria 1, 3, 4, 6, 7, 8 and 9, which are outlined in the booklet. The value of the compensation will take into account all the relevant criteria. No individual criterion will be viewed in isolation.

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The steps of the specific claims process to be followed include: agreement on a joint negotiating protocol; development of a settlement agreement; conclusion of the agreement; ratification of the agreement; and finally, implementation of the agreement. Throughout the process all government files, including all documents submitted to the Government of Canada concerning the claim, are subject to the Access to Information and the Privacy Legislation in force.

All negotiations are conducted on a "without prejudice" basis. Canada and the First Nation acknowledge that all communications, oral, written, formal or informal are made with the intention of encouraging settlement of the dispute between the parties only, and are not intended to constitute admissions of fact or liability by any party.

The acceptance of these claims for negotiation of a settlement is not to be interpreted as an admission of fact or liability by the Government of Canada. In the event no settlement is reached and litigation ensues, the Government of Canada reserves the right to lead all defences available to it, including limitation periods, laches, and lack of admissible evidence.

With respect to the Indian Claims Commission (ICC) inquiry initiated by the Peguis First Nation concerning the TLE claim, Canada will not negotiate a specific claim concurrently with a continuation of the ICC process. Accordingly, I would ask that, as a condition of acceptance and before negotiations proceed, you provide confirmation that this matter will be held in abeyance by the ICC.

In the event that a final settlement agreement is reached, Canada will require from the First Nation a final and formal release on every aspect of these claims, ensuring that the claims cannot be reopened. In obtaining a full and final release, Canada will require a re-surrender of the lands which are the subject of your First Nation's 1907 surrender claim. As part of the settlement, the Government of Canada will also require an indemnity from your First Nation.

Mr. Ian Gray of the Specific Claims Branch has been designated as a preliminary contact with respect to these negotiations. Mr. Gray can be reached at (819) 953-0031.

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I would like to convey my best wishes, and my sincere hope that a fair settlement can be reached on the Peguis First Nation's specific claims.

Yours truly,



John Sinclair  
Assistant Deputy Minister  
Claims and Indian Government