
INDIAN CLAIMS COMMISSION

CHIPPEWA TRI-COUNCIL INQUIRY **BEAUSOLEIL FIRST NATION** **CHIPPEWAS OF GEORGINA ISLAND FIRST NATION** **CHIPPEWAS OF MNJIKANING (RAMA) FIRST NATION** **COLDWATER-NARROWS RESERVATION** **SURRENDER CLAIM**

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PART I

INTRODUCTION

The Chippewa Tri-Council is composed of the Beausoleil First Nation, the Chippewas of Georgina Island First Nation, and the Chippewas of Mnjikaning (Rama) First Nation. In November 1991, the Chippewa Tri-Council submitted a claim regarding the surrender of the Coldwater-Narrows Reservation to the Specific Claims Branch of the Department of Indian Affairs and Northern Development (DIAND).¹ The claim alleged that the reservation, a staggered 14-mile strip of land running from the Narrows at Lakes Couchiching and Simcoe west to Matchedash Bay, had never been properly surrendered to the Crown. It was alleged that the 1836 treaty purporting to surrender the land had not been understood by the Chippewas of Lakes Huron and Simcoe, who believed that the treaty would secure their title to the reserve. It was also alleged that the above transaction amounted to a breach of the fiduciary duty owed by the Crown to the Chippewa Tri-Council.

On April 2, 1996, Pamela Keating, Research Manager, Specific Claims Branch East, wrote to Dr Ian Johnson, chief negotiator for the Chippewa Tri-Council, advising him of the federal government's preliminary position on the claim. She advised that the claim did not disclose an outstanding lawful obligation on the part of the Government of Canada and, as a result, must be rejected.²

On August 16, 1996, Ian Johnson wrote to Ron Maurice, Legal Counsel of the Indian Claims Commission (ICC), requesting on behalf of the Chippewa Tri-Council that the Commission conduct an inquiry into the rejection of the Coldwater-Narrows Reservation claim and forwarding Band Council Resolutions (BCRs) to that effect from the First Nations.³ On August 28, Mr Maurice

1 Chippewa Tri-Council, "Coldwater-Narrows Reservation Claim – Summary of Claim," October 1991 (ICC Documents, pp. 1–5).

2 Pamela Keating, Research Manager, Specific Claims East, to Ian V.B. Johnson, Chief Negotiator, Chippewa Tri-Council, April 2, 1996 (ICC file 2105-18-02, vol. 1).

3 Ian V.B. Johnson, Negotiator, to Ron Maurice, Legal Counsel, Indian Claims Commission, August 16, 1996 (ICC file 2105-18-02, vol. 1).

informed Canada of the First Nations' request and of the ICC's decision to proceed.⁴

The first planning conference took place on November 4, 1996. At the second planning conference, on December 10, 1996, the parties explained their positions in an informal way and determined that further research was necessary. By March 31, 1997, counsel for the Tri-Council had prepared a draft summary of legal questions, which would form the basis of future discussions between the parties. In the meantime, DIAND arranged for additional research to be conducted; this research was deemed necessary for the Department of Justice to develop a position on the legal questions.

The third planning conference was held on December 15, 1997, at which time the parties dealt with questions concerning the additional research. During early 1998, Joan Holmes and Associates Inc. conducted phase I research concerning funding and expenditures on the Coldwater-Narrows Reservation. This work was completed by May. After review by the parties, another planning conference took place on August 7, 1998, to discuss the phase I research and to plan the review of the phase II report, which was to be completed by September of that year.⁵

After a review of the phase II research into the sale of Coldwater lands and the disposition of proceeds, the parties held another planning conference on November 12, 1998. At this meeting, Alan Pratt, counsel for the Tri-Council, undertook to submit any supplemental legal arguments by the end of November 1998, and Laurie Klee, counsel for Canada, agreed to formulate a position on the draft summary of legal questions in the same time frame. Ms Klee also agreed to attempt to have a new legal opinion completed by the end of May 1999.⁶

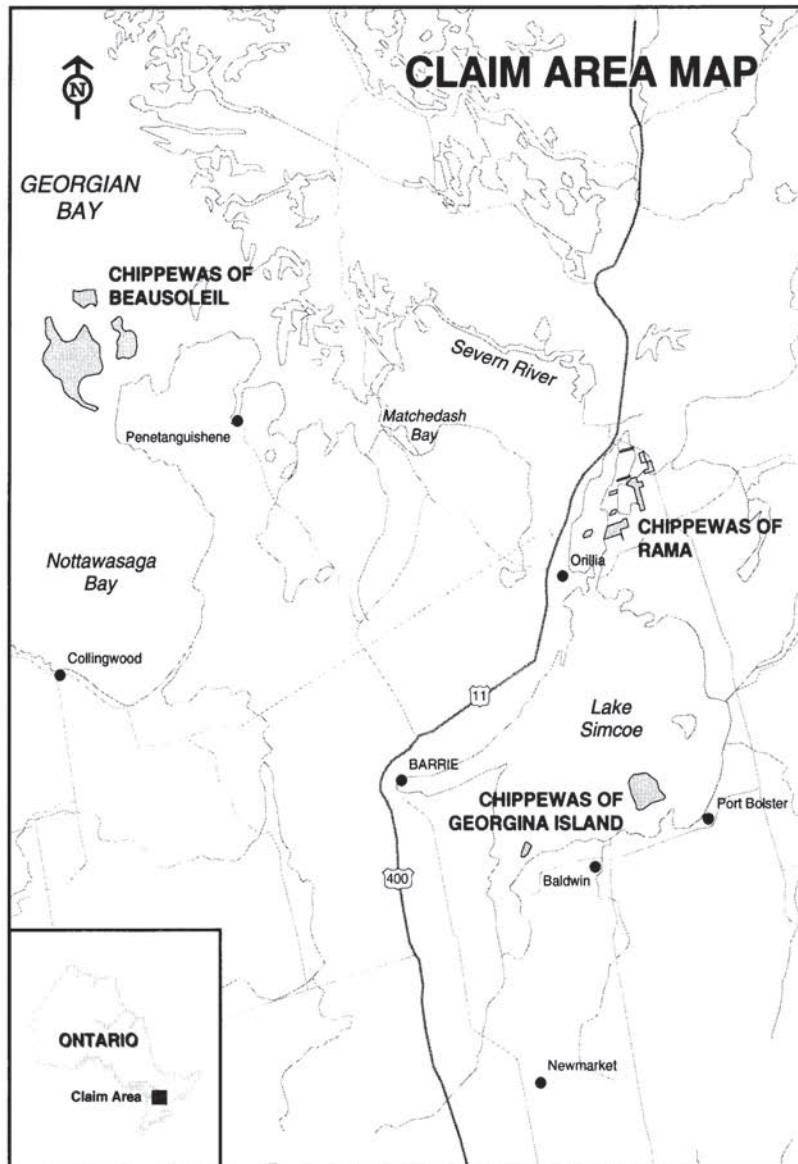
The legal opinion prepared by Ms Klee was circulated internally at DIAND and the Department of Justice during the summer of 1999; however, in a conference call between the parties on September 13, 1999, Ms Klee informed the parties that the legal opinion had been delivered to DIAND. Pamela Keating informed the parties that an analyst would be assigned to the claim, and that the claim would be placed before the Claims Advisory Committee and, possibly, the senior policy committee. She advised that it was not possible to commit to a deadline for completing this process.⁷

⁴ Ron Maurice, Legal Counsel, ICC, to Michel Roy, Director General, Specific Claims Branch, et al., August 28, 1996 (ICC file 2105-18-02, vol. 1).

⁵ "Planning Conference Summary," August 7, 1998 (ICC file 2105-18-02, vol. 2).

⁶ "Planning Conference Summary," November 12, 1998 (ICC file 2105-18-02, vol. 2).

⁷ "Planning Conference Summary," September 13, 1999 (ICC file 2105-18-02, vol. 2).



Another conference call was held on January 26, 2000, to update the status of the claim, at which time Jeff Ross, senior policy analyst, DIAND, undertook to secure a date for the review of the claim.⁸ Subsequently, the parties were informed that the committee would review the claim on February 24, 2000.⁹

Throughout 2000, the claim underwent additional internal review at DIAND, but no answer as to acceptance or rejection was received by the Chippewa Tri-Council. As a result, on July 13, 2000, Alan Pratt requested that the ICC convene a new planning conference to allow Canada an opportunity to provide an update, and the Tri-Council an opportunity to assess its options.¹⁰ A conference call was held on July 26, at which Canada advised that, as the claim was a pre-Confederation claim, it involved unique issues requiring internal review, thereby necessitating the additional time. In the end, the parties agreed that the next conference call would be scheduled for September 13, 2000.¹¹

On September 13, a conference call took place as scheduled, with Canada having nothing new to report. Chief Monague, representing the Chiefs of the Tri-Council First Nations, expressed disappointment and called for a face-to-face meeting with Canada. Resumption of the inquiry process was discussed, and a tentative meeting between the parties was scheduled for October 19 of that year;¹² a meeting did not take place. Throughout October and November, representatives of the Tri-Council wrote numerous letters to government officials asking for an explanation of the delay and requesting that the claim be expedited. On December 11, 2000, Laurie Klee wrote to Alan Pratt enclosing additional research conducted by Joan Holmes and Associates Inc. She advised that, as the material had now been received, the review process would resume.¹³

Over the following six months, no further information regarding the claim was forwarded by Canada. As a result, the ICC prepared to convene a final planning conference on October 5, 2001. In preparation, Alan Pratt forwarded a revised summary of legal questions to the parties. In his covering

⁸ "Conference Call Summary," January 26, 2000 (ICC file 2105-18-02, vol. 2).

⁹ Chris E. Angecone, Associate Legal Counsel, ICC, to Alan Pratt, Barrister & Solicitor, and to Laurie Klee, DIAND, Department of Justice, January 27, 2000 (ICC file 2105-18-02, vol. 2).

¹⁰ Alan Pratt, Barrister & Solicitor, to the Honourable Robert F. Reid, Mediation Advisor, ICC, July 13, 2000 (ICC file 2105-18-02, vol. 2).

¹¹ "Conference Call Summary," July 26, 2000 (ICC file 2105-18-02, vol. 2).

¹² "Conference Call Summary," September 18, 2000 (ICC file 2105-18-02, vol. 2).

¹³ Laurie Klee, DIAND Legal Services, Department of Justice (DOJ), to Alan Pratt, Barrister & Solicitor, December 11, 2000 (ICC file 2105-18-02, vol. 2).

letter, he advised that, in the event that no answer on acceptance or rejection of the claim was forthcoming from Canada, he would add an additional legal question regarding Canada's duty to negotiate in good faith under the Specific Claims Policy.¹⁴ At the planning conference on October 5, 2001, Canada was not able to provide a response on the claim. As a result, the Chippewa Tri-Council asked the Commission to initiate a full inquiry into the claim, but to delay active preparation until January 2002. Ralph Brant of the Commission, who was chairing the meeting, agreed to proceed with the inquiry.¹⁵ A pre-hearing conference was scheduled for January 15, 2002.

By agreement of the parties, that pre-hearing conference was postponed until February 25, 2002. At this meeting, Canada's representative advised that the claim was still under consideration by the Minister. Commission staff then explained the next steps in the hearing process, and a staff visit to the community was scheduled for April 15, 2002.¹⁶

On March 18, 2002, an eighth planning conference was convened, at which the parties reviewed Canada's position on the claim. Canada agreed to accept the claim for negotiation.¹⁷

On July 23, 2002, Minister Robert Nault of Indian Affairs and Northern Development wrote to the Chiefs of the Chippewa Tri-Council to officially advise of Canada's offer to accept the claim. As a result, the Commission suspended its inquiry into the claim. This report is based upon historical reports and documents submitted to the Commission by the Chippewa Tri-Council and by DIAND. The balance of the record in this inquiry is referenced as Appendix A to this report.

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

14 Alan Pratt, Barrister & Solicitor, to Ralph Brant, Director of Mediation, ICC, Felipe Morales, Associate Legal Counsel, ICC, and Laurie Klee, DIAND Legal Services, DOJ, October 1, 2001 (ICC file 2105-18-02, vol. 3).

15 "Planning Conference Summary," October 30, 2001 (ICC file 2105-18-02, vol. 3).

16 "Planning Conference Summary," February 25, 2002 (ICC file 2105-18-02, vol. 3).

17 "8th Planning Conference Summary," March 18, 2002 (ICC file 2105-18-02, vol. 3).

“whether a claimant has a valid claim for negotiation under the [Specific Claims] Policy where the claim was already rejected by the Minister.”¹⁸

This Policy, outlined in DIAND’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.¹⁹ The term “lawful obligation” is defined in *Outstanding Business* as follows:

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

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

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

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.²⁰

The Commission has the authority to review thoroughly the historical and legal bases for the claim and the reasons for its rejection with 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

18 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.

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

20 *Outstanding Business*, 20; reprinted in (1994) 1 ICPP 171–85.

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.

PART II

HISTORICAL BACKGROUND

BACKGROUND TO THE FIRST NATION'S CLAIM

In the late 18th and early 19th centuries, the three bands that today comprise the Chippewa Tri-Council occupied lands on the shores of Lakes Simcoe and Huron, lands that they and other Chippewas, or Ojibwas, had traditionally occupied for many years. As we noted in our report on the Chippewa Tri-Council's Collins Treaty claim,

“Ojibwa,” “Chippewa,” “Saulteaux,” and “Mississauga” all refer to peoples speaking similar and in some cases the same dialects of the Algonquian language. Although the names were often used interchangeably, as a general rule early settlers used the term “Chippewa” for the people residing around Lake Simcoe, the Bruce Peninsula, Matchedash Bay, and much of the Thames Valley, whereas they generally applied the term “Mississauga” to those living along the north shore of Lake Ontario and in the Trent River Valley.²¹

The Band of Chief Yellowhead, or Musquakie, lived mainly near the Narrows between Lakes Simcoe and Couchiching; the followers of Chief Snake resided mainly at Holland Landing and on Snake Island; and Chief Aisance's people were settled at Coldwater, near Penetanguishene.²² The three Bands lived apart and acted independently, but met seasonally for tribal councils.

The Ojibwas had been military allies of the French prior to the fall of New France to the British in 1763; thereafter, their allegiance was sought by the British for strategic as well as commercial reasons. Over the next decades, the British gave annual presents to the Ojibwas and other tribes, in order to cement both their friendship and their military alliance against the United

21 ICC, *Chippewa Tri-Council Inquiry (Chippewas of Beausoleil First Nation, Chippewas of Georgina Island First Nation, Chippewas of Rama First Nation)*, *Collins Treaty Claim* (Ottawa, March 1998), 10, citing Edward S. Rogers and D.B. Smith, eds., *Aboriginal Ontario: Historical Perspectives on the First Nations* (Toronto: Dundurn Press, 1994), xxi, 94–96; reported (1998) 10 ICCP 43.

22 Cynthia C. Wesley-Esquimaux, “The Coldwater Narrows Reservation,” 1991 (ICC Documents, p. 27).

States. As well, the British Crown entered into treaties with the Ojibwas, by which the latter ceded territory to the Crown in exchange for annuities or one-time payments. Some of these land cessions were for strategic purposes, but others were to accommodate the burgeoning numbers of white settlers pouring into Upper Canada (Ontario) in the years following the American revolution.

By a treaty made with the Ojibwas at Penetanguishene in 1795, the British had acquired the traditional portage route known as the Coldwater Road for their military needs.²³ Extending from the Narrows at Lake Simcoe to Matchedash Bay on Lake Huron, this route was utilized to transport goods and troops to Georgian Bay between 1795 and 1812. After the end of the War of 1812, however, the military need for the road diminished, and it became an access route for settlers granted lots along its course. The British authorities made efforts to maintain the road, at least for a while, and settlement continued to increase.

The making of peace with the Americans also lessened the British government's need for the military power of the Indians of Upper Canada. As a result, the presents given to ensure the Indians' allegiance began to be reduced. The increasingly dependent situation of Upper Canada's Indians, including the Chippewas, was made worse by the negative influence of some of the more unscrupulous white settlers and traders who had arrived in the region. This state of decline induced British colonial officials to develop a new policy governing their relationship with the Ojibwas and other First Nations, a policy that would have a great impact upon the three Bands of the Chippewa Tri-Council.

Plans designed to reduce the dependency of Indian nations on the government were first proposed in 1820 by the Lieutenant Governor of Upper Canada, Sir Peregrine Maitland. As its central feature, Maitland's plan contemplated the establishment of Indian settlements designed to encourage the inhabitants to become church-going farmers.²⁴ It was also intended that schools be established, to teach basic literacy as well as skills useful in agriculture and industry. All these benefits were to be provided in a religious and moral context, with the active assistance of missionaries, who were considered a necessary part of the process by which the Indians were to be "civilized."

²³ Cynthia C. Wesley-Esquimaux, "The Coldwater Narrows Reservation," 1991 (ICC Documents, p. 47).

²⁴ Joan Holmes and Associates, "The Coldwater Treaty: Draft Historical Report," 1993 (ICC Documents, p. 258, para. 11).

The earliest example of this scheme involved the Mississaugas of the New Credit, who were located to the south of the three Chippewa Bands, and who had been selected by Maitland as the vanguard of the new experiment in Indian civilization. Methodist missionaries were enlisted to assist, and their success with the Mississaugas at New Credit provided impetus for the project to continue.

In 1828, Maitland was replaced as Lieutenant Governor by Sir John Colborne, who sought to continue Maitland's ideas in the form of a new settlement policy. Colborne, convinced that the policy made fiscal sense, was able to persuade his superiors in London not only that it should be maintained, but that it should be expanded to other Indian nations.²⁵ As a result, the attention of the authorities turned to the Chippewas residing near Lakes Huron and Simcoe, many of whom had already been converted to Christianity by the Methodists. According to the then Deputy Superintendent General of Indian Affairs, H.C. Darling, the followers of Chief Yellowhead had already expressed a desire to "adopt the habits of civilized life," and he recommended that the government pay for a schoolmaster and provide aid in building schoolhouses.²⁶ The Secretary of State for the Colonies, George Murray, supported the plan, especially since he saw it as a means by which the expense of giving presents could eventually be replaced by the provision of livestock and agricultural implements.²⁷

In 1829, after discussion among various colonial officials concerning the proposed Indian communities, Lieutenant Governor Colborne authorized the establishment of a number of Indian settlements. He envisioned the appointment of Indian agents or superintendents with a mandate to collect the Indians into villages, and then to encourage them to divide their lands into lots, begin cultivating them, and send their children to school.²⁸ One of the planned settlements was intended for the Chippewas of Lake Huron and Lake Simcoe. This community, which was to be located in the vicinity of the Coldwater Road, would become the new home of the three Bands of the Chippewa Tri-Council.

25 Joan Holmes and Associates, "The Coldwater Treaty: Draft Historical Report," 1993 (ICC Documents, p. 259, para. 11).

26 Joan Holmes and Associates, "The Coldwater Treaty: Draft Historical Report," 1993 (ICC Documents, pp. 272-73, para. 5).

27 Joan Holmes and Associates, "The Coldwater Treaty: Draft Historical Report," 1993 (ICC Documents, p. 273, para. 6).

28 Joan Holmes and Associates, "The Coldwater Treaty: Draft Historical Report," 1993 (ICC Documents, pp. 278-79, para. 10).

ESTABLISHMENT OF THE COLDWATER RESERVE

In February 1830, T.G. Anderson, who had been a clerk and interpreter at the British outpost of Drummond Island until its transfer to the United States, was appointed superintendent of the new reserve to be established at Coldwater. On February 17 of that year, James Givens, the Chief Superintendent of Indian Affairs, instructed him to lead the three Chippewa Chiefs, Aisance, Yellowhead, and Snake (plus the Potaganasee Chief from Drummond Island) to the Coldwater area to begin establishing the reserve.²⁹ The land comprising the reserve was near lands already occupied by some members of the three Bands and totalled some 9,800 acres. It stretched for 14 miles from the Narrows of Lake Simcoe in the east, to Coldwater near Matchedash Bay in the west, following the course of the traditional portage route. Two villages were planned: Coldwater at the western or Matchedash end of the reserve, and the Narrows at its eastern end. Chiefs Yellowhead and Snake agreed to settle with their followers in the vicinity of the Narrows, while Aisance and his Band, together with the Potaganasees, were to relocate near Coldwater.³⁰ The settlement was not only intended to benefit the three Bands and the Potaganasees, however. It was also hoped that the reserve would attract other Indian bands loyal to the British, which were located further west in Ohio, Wisconsin, and Indiana, but which were being pushed out of their traditional territory by the spread of American agricultural settlement.³¹

At the outset, the British authorities intended to survey the reserve into single family farms for the members of the Bands. Before this could be undertaken, however, it was necessary to enlarge and improve the Coldwater Road, which apparently was essentially a path. When tools, oxen, and provisions were provided in April 1830, able-bodied men from all the Bands were engaged to clear and widen the route.³² Superintendent Anderson had intended to construct a schoolhouse immediately, but when provisions with which to pay the Indian labour required for the job did not arrive on time,

29 Joan Holmes and Associates, "The Coldwater Treaty: Draft Historical Report," 1993 (ICC Documents, p. 285, para. 1).

30 Cynthia C. Wesley-Esquimaux, "The Coldwater Narrows Reservation," 1991 (ICC Documents, pp. 63–64).

31 Cynthia C. Wesley-Esquimaux, "The Coldwater Narrows Reservation," 1991 (ICC Documents, p. 57).

32 Joan Holmes and Associates, "The Coldwater Treaty: Draft Historical Report," 1993 (ICC Documents, p. 287, paras. 4, 5).

the project was delayed.³³ Nonetheless, Anderson made plans to construct a sawmill at Matchedash and to hire a blacksmith at the Narrows.³⁴

In October 1830, Lieutenant Governor Colborne wrote to his superior:

I beg leave to state to you the measures that have been this year adopted to carry into effect the system recommended to be pursued, with a view of introducing amongst the Indians of Upper Canada, the industrious habits of civilized life. The three tribes residing on the shores of Lake Simcoe, and near the Matchadash, and the Potaganasees from Drummond Island, have been placed under charge of a superintendent of the Indian department, and urged to clear a tract of land between the Lakes Huron and Simcoe.

I have directed houses to be built for them on detached lots, and they are now clearing ground sufficient to establish farms at each station for their immediate support, from which they will be supplied while they are bringing into cultivation their individual lots marked out for their residence. Agricultural implements have been procured for them, experienced farmers have been engaged to instruct them, and school masters appointed to educate their children.³⁵

Although Colborne's report suggested that rapid and unimpeded progress was being made, a few problems had begun to surface on the Coldwater-Narrows Reserve. In July 1830, Chief Yellowhead made a speech (which had been transcribed and forwarded to the Chief Superintendent of Indian Affairs), outlining certain objections to the planned settlement arrangements. The Chief took issue with the authorities' desire to have most of his followers settled in a string along the Coldwater Road, preferring instead a larger planned townsite like that at York (Toronto) for the Indians' houses, with the farmland alone located along the road. As well, he vehemently protested the quality of the workmen engaged by the government to build the houses in question. According to the Chief, most of these men were frequently intoxicated and provided an unpleasant reminder (not to mention a bad example) of the social ills that had plagued his Band in the past.³⁶

Superintendent Anderson supported the Chief with respect to the settlement pattern to be established on the reserve, as the original plan would

33 Joan Holmes and Associates, "The Coldwater Treaty: Draft Historical Report," 1993 (ICC Documents, p. 285, para. 2).

34 Joan Holmes and Associates, "The Coldwater Treaty: Draft Historical Report," 1993 (ICC Documents, p. 287, para. 4).

35 Joan Holmes and Associates, "The Coldwater Treaty: Draft Historical Report," 1993 (ICC Documents, p. 282, para. 14).

36 Joan Holmes and Associates, "The Coldwater Treaty: Draft Historical Report," 1993 (ICC Documents, p. 293, para. 19).

have made it inconvenient for the children to attend school.³⁷ In addition, he shared the Chief's fears regarding the proximity of liquor in the settler population and those who abused it, and recommended that no more land grants be made to white settlers in the immediate vicinity of the reserve.³⁸

Notwithstanding these steps, settlers continued to flood into the area, due mainly to the fact that the Coldwater Road was a primary access route from the eastern settlements into the northwestern regions of Upper Canada. Stopping places sprang up near the two Indian villages at either end of the reserve, and alcohol was readily available from the white proprietors. Fur traders took up residence, and band members began to go into debt to them to acquire alcohol and consumer goods. In addition, the settlers themselves traded alcohol with the Chippewas, trespassed on reserve land, and misappropriated crops belonging to the Indians.³⁹

Superintendent Anderson was also clearly dissatisfied with the slow progress of house construction. In addition to the issue of the inebriated workmen, Anderson's reports to the Chief Superintendent implied that the main contractor, a Mr Lewis, had misrepresented his ability to carry out the job and was not sufficiently reliable to justify retaining his services.⁴⁰

As well, the focus on religious conversion and instruction as key features of the settlement policy created new problems among the Chippewas. Divisions arose among the Bands as a result of the escalating competition between representatives of the various Christian denominations for the religious allegiance of the Indians of the reserve. This rivalry contributed to unrest among the Chippewa Bands and presented an additional obstacle to the successful development of the community.

Since the early 1820s, the Methodists had achieved great success evangelizing among the Chippewas, beginning with their work among the Mississaugas, largely through the efforts of Peter Jones, a Methodist missionary of mixed white and Mississauga ancestry. By the late 1820s, he had made many converts around Lake Simcoe. As a result, the British could not ignore the Methodists in implementing their Indian settlement policy,

37 Joan Holmes and Associates, "The Coldwater Treaty: Draft Historical Report," 1993 (ICC Documents, p. 294, para. 21).

38 Joan Holmes and Associates, "The Coldwater Treaty: Draft Historical Report," 1993 (ICC Documents, p. 293, para. 20); see also Cynthia C. Wesley-Esquimaux, "The Coldwater Narrows Reservation," 1991 (ICC Documents, p. 70).

39 Cynthia C. Wesley-Esquimaux, "The Coldwater Narrows Reservation," 1991 (ICC Documents, pp. 69–71, 88–90).

40 Joan Holmes and Associates, "The Coldwater Treaty: Draft Historical Report," 1993 (ICC Documents, pp. 306–8, para. 42).

despite the fact that many in the colony felt that the Church of England should be the only denomination to receive state support.⁴¹ However, the Methodists fell out of favour with colonial officials as a result of their involvement in opposition politics in Upper Canada. As well, their erstwhile alliance with the American Methodist Church created a perception that they were republican sympathizers. Therefore, despite the colonial government's initial need of the Methodists' assistance, these missionaries were not completely trusted by some officials in power, and, consequently, the Anglican Church was encouraged to gain a foothold among the Chippewas.⁴² The first Anglican missionary, the Reverend G. Archibald (or Archbold) arrived at the reserve in 1830; however, it appears that Indian Agent T.G. Anderson, a devout Anglican, "saw his own role as that of chief missionary."⁴³

To further complicate the situation, the Potaganasees had already been converted to Roman Catholicism. Although they were served by clergy only sporadically, they were encouraged to follow their faith by the proximity of the Ojibwa-Métis community near Penetanguishene and by a group of Catholic Ottawa Indians under the leadership of Jean-Baptiste Assiginack, who had settled in the area. The Potaganasees were not supported in their beliefs by others on the reserve, however. In September 1830, Superintendent Anderson commented upon the fear of the Potaganasees that they might be forced to abandon their religion, due to the fact that the Reverend Mr Archibald had "frequently expressed his detestation of the Catholic[sic] in the severest terms."⁴⁴

The religious conflict was often played out in the field of education. In September 1830, Superintendent Anderson informed the Lieutenant Governor that

Mr. Archbold was originally decidedly opposed to even a school being at the Narrows ... but the moment it was known that Your Excellency had permitted the Methodists to make use of the School House, plans were devised to prevent their occupying it.⁴⁵

41 John Webster Grant, *Moon of Wintertime: Missionaries and the Indians of Canada in Encounter since 1534* (Toronto: University of Toronto Press, 1984), 83.

42 John Webster Grant, *Moon of Wintertime: Missionaries and the Indians of Canada in Encounter since 1534* (Toronto: University of Toronto Press, 1984), 84.

43 John Webster Grant, *Moon of Wintertime: Missionaries and the Indians of Canada in Encounter since 1534* (Toronto: University of Toronto Press, 1984), 84.

44 Joan Holmes and Associates, "The Coldwater Treaty: Draft Historical Report," 1993 (ICC Documents, p. 299, para. 30).

45 Joan Holmes and Associates, "The Coldwater Treaty: Draft Historical Report," 1993 (ICC Documents, p. 299, para. 30).

Archibald's plan was to undermine the influence of other Christian denominations in the area by competing directly with them and criticizing their methods and sincerity. Unfortunately, neither Archibald nor his assistant could speak the Chippewa language, a deficiency that greatly limited the quality of instruction in their school, and ultimately the Anglican school was closed down.⁴⁶

However, Superintendent Anderson still promoted the Anglican cause over that of the other Christian denominations, on one occasion denying a request from the Methodists for a parcel of land on which to build a mission house.⁴⁷ In addition, Chief Aisance subsequently complained to the Lieutenant Governor's representative that Anderson had refused to allow a Roman Catholic priest access to the approximately 100 Catholic Indians on the reserve.⁴⁸ As a result, the stage was set for conflict and divisiveness. As one historian commented:

This bringing together of divergent interests brought to a head a growing religious ferment among the northern Indians. Annual distributions of presents at Penetanguishene became occasions for religious debate, often followed by decisions for a particular form of Christianity. Leading speakers included Anderson, Assiginack, Jones, and later Adam Elliot, agent for the Home District of the Society for Converting and Civilizing the Indians. Assiginack's major prize was John Aisance, Methodist Chief of the Coldwater band, while the Methodists rejoiced over chiefs who suddenly turned in their medicine bundles. Although the debates were conducted with customary Indian politeness, Anderson's obvious support of Anglican claims provoked discord.⁴⁹

Despite the background of religious strife, by the end of 1830, the followers of Chief Aisance had cleared approximately 150 acres of underbrush at Coldwater and had indicated their willingness to settle there.⁵⁰ Eventually, Chiefs Yellowhead and Snake agreed to direct several of their young men to settle on farm lots along the Coldwater Road, while they and others with school-age children would remain in the village at the Narrows⁵¹ – a compromise that was evidently satisfactory to both sides.

⁴⁶ Cynthia C. Wesley-Esquimaux, "The Coldwater Narrows Reservation," 1991 (ICC Documents, p. 75).

⁴⁷ Cynthia C. Wesley-Esquimaux, "The Coldwater Narrows Reservation," 1991 (ICC Documents, p. 77).

⁴⁸ Joan Holmes and Associates, "The Coldwater Treaty: Draft Historical Report," 1993 (ICC Documents, p. 334, para. 89).

⁴⁹ John Webster Grant, *Moon of Wintertime: Missionaries and the Indians of Canada in Encounter since 1534* (Toronto: University of Toronto Press, 1984), 84–85.

⁵⁰ Joan Holmes and Associates, "The Coldwater Treaty: Draft Historical Report," 1993 (ICC Documents, p. 307, para. 41).

⁵¹ Joan Holmes and Associates, "The Coldwater Treaty: Draft Historical Report," 1993 (ICC Documents, p. 297, para. 26).

Throughout 1831, efforts to develop the reserve continued, as land was cleared by the Indians and by departmental employees. A new contractor was engaged that March in the hope that the construction of houses would proceed.⁵² Oxen had been purchased, crops were planted, and firm plans were made to construct a sawmill and a gristmill. The department employed three labourers, a blacksmith, a surgeon, a farming instructor, and two schoolteachers to serve the reserve.⁵³ By early 1831, the government had spent some £3,000 on the implementation of the settlement policy as a whole,⁵⁴ and it would not be long before government officials would begin to consider the experiment an expensive one. As a result, officials not only began to cut costs, but also began to devise various means to make the reserve support itself, as a necessary counterpart to the planned reduction of the government's financial investment in the entire enterprise.

In May 1831, Superintendent Anderson suggested that the Indians no longer be paid for making repairs to the road and for clearing land for their houses.⁵⁵ Later that year, he proposed reducing the number of staff employed by the government to provide services on the reserve.⁵⁶ As well, the government proposed to foster self-sufficiency by involving the Indians on the reserve in a profit-making enterprise to transport settlers along the Coldwater Road. The Chippewas were not interested, however, and this plan never materialized.⁵⁷ Another measure intended to foster independence contemplated the use of the Indians' own annuity funds to finance the construction of permanent structures such as the sawmill and the gristmill.⁵⁸ The latter was intended to operate at a profit for the benefit of the Bands by grinding grain for settlers in the area.

Over the next few years, growth on the reserve continued, and its development came to be largely financed by the Bands themselves. Progress did not come without problems, however. It had been determined that Mr Lewis, the original contractor hired to construct houses and other buildings on the

52 Joan Holmes and Associates, "The Coldwater Treaty: Draft Historical Report," 1993 (ICC Documents, p. 311, para. 48).

53 Joan Holmes and Associates, "The Coldwater Treaty: Draft Historical Report," 1993 (ICC Documents, p. 284, para. 16).

54 Joan Holmes and Associates, "The Coldwater Treaty: Draft Historical Report," 1993 (ICC Documents, p. 317, para. 64).

55 Joan Holmes and Associates, "The Coldwater Treaty: Draft Historical Report," 1993 (ICC Documents, p. 313, para. 53).

56 Joan Holmes and Associates, "The Coldwater Treaty: Draft Historical Report," 1993 (ICC Documents, p. 320, para. 69).

57 Cynthia C. Wesley-Esquimaux, "The Coldwater Narrows Reservation," 1991 (ICC Documents, pp. 87-88).

58 Joan Holmes and Associates, "The Coldwater Treaty: Draft Historical Report," 1993 (ICC Documents, p. 319, para. 67).

reserve, had drawn two-thirds of his contractual remuneration from the government while completing only one-quarter of the work.⁵⁹ As a result, the contractor hired to complete construction refused to work for the amount remaining in Lewis's original contract and relinquished his position in August 1831.⁶⁰ The houses were eventually completed, according to a surveyor's report of March 1833,⁶¹ but Indian annuity funds were utilized to complete the job in place of government funding.⁶²

In addition, the increasing encroachment of settlers, particularly near the villages, prompted the Chiefs to consider briefly the relocation of their people to a more remote location. In July 1832, they made a formal request to that effect to Lieutenant Governor Colborne,⁶³ however, the colonial officials declined to consider it, stating that, no matter where the Indians went, they would be unlikely to escape being surrounded by white settlement forever.⁶⁴ Although a number of families from Aisance's Band continued to press for relocation into 1833, it appears that the idea was soon dropped by Chiefs Aisance and Yellowhead, as well as by the Potaganasees.⁶⁵

The renewed commitment of the Bands to the Coldwater-Narrows Reserve may be demonstrated by the consent of Chief Aisance, in 1832, to the requisition of £200 from his Band's share of annuity payments in order to complete the sawmill.⁶⁶ In addition, the Chiefs of the Chippewa Bands consented to two requisitions of annuity funds during 1833 to complete the gristmill;⁶⁷ however, construction progressed slowly, bringing complaints from the Bands about this and other issues. The blacksmith resident at the reserve had been discharged from government employment, with the result that the Indians were required to pay for his services, but, as the annuity funds were being utilized for construction, the Indians had no means of doing so. Further, the

59 Joan Holmes and Associates, "The Coldwater Treaty: Draft Historical Report," 1993 (ICC Documents, p. 323, para. 72).

60 Joan Holmes and Associates, "The Coldwater Treaty: Draft Historical Report," 1993 (ICC Documents, p. 323, para. 72).

61 Joan Holmes and Associates, "The Coldwater Treaty: Draft Historical Report," 1993 (ICC Documents, p. 328, para. 85).

62 Joan Holmes and Associates, "The Coldwater Treaty: Draft Historical Report," 1993 (ICC Documents, p. 324, para. 74).

63 Joan Holmes and Associates, "The Coldwater Treaty: Draft Historical Report," 1993 (ICC Documents, p. 352, para. 8).

64 Joan Holmes and Associates, "The Coldwater Treaty: Draft Historical Report," 1993 (ICC Documents, p. 353, para. 10).

65 Joan Holmes and Associates, "The Coldwater Treaty: Draft Historical Report," 1993 (ICC Documents, p. 356, para. 15).

66 Joan Holmes and Associates, "The Coldwater Treaty: Draft Historical Report," 1993 (ICC Documents, p. 425, para. 23).

67 Joan Holmes and Associates, "The Coldwater Treaty: Draft Historical Report," 1993 (ICC Documents, p. 327, para. 82).

Chiefs complained to the Lieutenant Governor's representative that settlers continued to encroach on lands near the reserve, and that, other than what was provided to children at school, band members were denied any produce from the community farms at the two villages.⁶⁸ Anderson disputed many of these complaints,⁶⁹ and it appears that no significant changes were made. On the positive side, however, the gristmill was finally completed in 1834, at a cost of £1,591.13, all of which had been drawn from Indian annuity funds.⁷⁰

The government initiated another project at the reserve in 1834 – namely, the construction of an inn to house travellers at the Narrows. Built on reserve land, the buildings were to be owned by the farming instructor, Gerald Alley, until the Indians could afford to purchase them.⁷¹ It is not known whether this project ever came to fruition; however, plans went forward to build a second sawmill, to be located at the Narrows.

By September 1835, sufficient progress had been made to prompt Superintendent Anderson to report favourably on the state of the reserve to his superiors. Notwithstanding the religious conflict, Anderson reported that a total of about 500 acres had been cleared and that each Indian family had a small farm under cultivation on which potatoes, corn, wheat, and oats were grown. In addition to subsistence farming, members of the Bands fished in the fall “as a source of profit, and not merely for their own food.”⁷² He stated that the Indians lived in log or frame houses, were well dressed, and as a general rule were law-abiding and did not abuse alcohol. Schools operated at both villages, and the younger members of the Bands were literate and understood basic arithmetic. He reported that a sawmill and a gristmill were in operation at Coldwater, and that another sawmill was under construction at the Narrows. He was optimistic about the future of the reserve and its residents, and stated that the settlement experiment, on the whole, had been a successful one.

68 Joan Holmes and Associates, “The Coldwater Treaty: Draft Historical Report,” 1993 (ICC Documents, p. 333, para. 89).

69 Joan Holmes and Associates, “The Coldwater Treaty: Draft Historical Report,” 1993 (ICC Documents, pp. 334–37, para. 90).

70 Joan Holmes and Associates, “The Coldwater Treaty: Draft Historical Report,” 1993 (ICC Documents, p. 341, para. 107). In all, a study of the extant financial records reveals that the reserve was financed both by Crown funds and by annuities belonging to the Chippewas of Lakes Huron and Simcoe, with slightly more than half of the total cost of development attributable to Crown funds. See Joan Holmes and Associates, “Sale of Coldwater Tract Lands and Disposition of Land Sales Proceeds,” 1998, 12.

71 Joan Holmes and Associates, “The Coldwater Treaty: Draft Historical Report,” 1993 (ICC Documents, p. 340, para. 102).

72 Joan Holmes and Associates, “The Coldwater Treaty: Draft Historical Report,” 1993 (ICC Documents, pp. 343–44, para. 111).

Despite this optimism, however, events were under way that would ultimately precipitate the demise of the settlement. The British authorities would soon make changes at the highest level of the colonial bureaucracy that would profoundly affect the Chippewas. As a result of the change in personnel, the official Indian policy would change. Little more than a year later, the reserve would be surrendered, making irrelevant all the progress that had been achieved there.

THE BANDS' REQUEST FOR SELF-GOVERNMENT AND SECURE TITLE TO THE RESERVE

Despite the fact that the Chiefs of the Coldwater-Narrows Reserve had briefly considered the relocation of their people to a more remote locale in Upper Canada, it appears that their commitment to the reserve ultimately overcame their doubts about its suitability.

As early as 1831, the Reverend Peter Jones, who was himself a Chief of the Mississaugas of the River Credit, had written to the British Secretary of State for the Colonies on behalf of the Indians of Upper Canada, including the tribes of Lake Simcoe and Matchedash. He wrote:

I wish also to say something about our lands. My Indian brethren feel much in their hearts on this subject. We see that the country is getting full of white people, and that the hunting will soon be destroyed ... It is our desire that whatever lands may be marked out for us, to keep the right and title ourselves, and not be permitted to sell them, not to let any white man live on them unless he is recommended by our council, and gets a license from our father the governor.⁷³

The letter was forwarded by the British authorities to Lieutenant Governor Colborne for comment. Although Colborne felt that the tribes of Upper Canada were not yet sufficiently advanced in British colonial ways to be granted individual deeds for their lands, he affirmed in the strongest terms that the lands set apart for them should be safeguarded by the government “for the benefit of the Indians and their posterity.”⁷⁴

A little more than a year later, in response to the desire of a few members of Aisance's Band to relocate, the Superintendent General of Indian Affairs instructed Anderson to advise the discontented members that documents

73 Joan Holmes and Associates, “The Coldwater Treaty: Draft Historical Report,” 1993 (ICC Documents, p. 366, para. 1).

74 Joan Holmes and Associates, “The Coldwater Treaty: Draft Historical Report,” 1993 (ICC Documents, p. 367, para. 3).

could be issued “[s]ecure[ing] the Lots assigned by Government, for them in their Own possession,”⁷⁵ as a means of encouraging them to stay at Coldwater. It is not clear whether this plan was ever carried out, but it appears that the Chiefs were made aware of the offer and wished to have it extended to the entire community. In September 1833, Chiefs Yellowhead, Aisance, and Taugaiwinene (of the Potaganasees) met in council with the Lieutenant Governor’s representative, Major Winniett. At this meeting, Chief Yellowhead stated:

Our Father [Lieutenant Governor] likewise promised on your return from Coldwater to have two Deeds made out for our Lands one to made out [sic] on Parchment and the other on Common paper to be lodged in our hands before the Cold weather begins.⁷⁶

At the same meeting, Chief Aisance reaffirmed the commitment of his people to the Coldwater-Narrows Reserve:

Father, you saw on the road our houses and our Lands I do not wish to abandon them I wish to improve them. Father if you give us what you have promised us our young Men will be very glad and will work hard.⁷⁷

As development on the reserve continued, the Bands petitioned the government for greater control over their lands. In November 1834, Superintendent Anderson wrote to the Superintendent General of Indian Affairs, advising him that the Indians wished to have their land laid out into 50-acre lots, at their own expense.⁷⁸ A few months later, in January 1835, four Chippewa Chiefs of the reserve petitioned the government to allow the Bands to manage all operations on the Coldwater-Narrows Reserve, including the schools, gristmill, sawmills, and agricultural enterprises.⁷⁹ It is not known whether they received any response to this request.

In the meantime, however, because of the encroachment of settlement and the consequent loss of game and fish, many of the Chippewa Chiefs from the

75 Joan Holmes and Associates, “The Coldwater Treaty: Draft Historical Report,” 1993 (ICC Documents, p. 369, para. 7).

76 Joan Holmes and Associates, “The Coldwater Treaty: Draft Historical Report,” 1993 (ICC Documents, p. 370, para. 8).

77 Joan Holmes and Associates, “The Coldwater Treaty: Draft Historical Report,” 1993 (ICC Documents, p. 371, para. 8).

78 Joan Holmes and Associates, “The Coldwater Treaty: Draft Historical Report,” 1993 (ICC Documents, p. 374, para. 10).

79 Joan Holmes and Associates, “The Coldwater Treaty: Draft Historical Report,” 1993 (ICC Documents, p. 374, para. 11).

surrounding region decided to explore the feasibility of having all of their nations move to one large settlement. In January 1836, Chief Yellowhead convened a council at the Narrows to consider this idea, as well as “to devise measures to prevent the ruin and degradation of our descendants.”⁸⁰ At this meeting, which was attended by the Chiefs of Coldwater-Narrows, the River Credit, Rice Lake, Grape Island, Balsam Lake, Saugeen, and French River, it was apparently asserted by the Chiefs that, should a removal to one settlement be recommended by the government, the only acceptable tract was the Indian territory at Saugeen. Whether this can be interpreted as evincing an intention to give up existing settlements is in doubt, however, as the Council also formally petitioned the Lieutenant Governor at the end of the meeting requesting that title to their lands be secured “in such a way as to secure the property to ourselves and to our Children forever.”⁸¹

In any event, on August 19, 1836, another petition requesting self-management and greater security of tenure was forwarded by the Chippewas of Coldwater and the Narrows to the new Lieutenant Governor, Francis Bond Head. In the latter document, the Chiefs specified their wishes:

[T]hat the Lands along each side of the Coldwater road from the extremity of the Mill and Establishment reservation to halfway to the Narrows should be granted to them by 50 acre Lots one to each Individual, heads of family, or young men of our tribes, reserving however for the benefit of our community the Lands now belonging to the Mills and Establishment reserve ...⁸²

On behalf of the Lieutenant Governor, the Superintendent General of Indian Affairs informed Anderson on October 6 that, although the request for the subdivision of land was denied, the government was inclined to grant the request for self-management:

With respect to the first subject of the Petition H[is] E[xcellency] being of opinion that as the Petitioners express themselves dissatisfied with the present managment. of their Mills, Schoolhouse, Farmhouses and Cattle, and imagine they can place the Establishment under a more advantageous arrangement, they ought in principle to be permitted to manage their own affairs in their own way, and you will be pleased,

80 Joan Holmes and Associates, “Coldwater-Narrows Surrender of 1836: Report about Additional Research Findings,” October 2000 (p. 3, doc. 3).

81 Joan Holmes and Associates, “Coldwater-Narrows Surrender of 1836: Report about Additional Research Findings,” October 2000 (p. 4, doc. 4).

82 Joan Holmes and Associates, “The Coldwater Treaty: Draft Historical Report,” 1993 (ICC Documents, p. 376, para. 13).

therefore, to acquaint the Petitioners that the L[ieutenant] G[overnor] accedes to this part of the prayer of their petition.⁸³

From all of the above, it appears that the Chippewas were taking steps to secure their ownership of the reserve, likely in response to the increasing pressure exerted by the flow of settlers into the region. Steam transportation had operated on Lake Simcoe since 1833 and, together with the steamer service operating daily between Coldwater and Penetanguishene, it facilitated the constant migration into the northwestern regions of Upper Canada. In addition, the sawmills and gristmill served as another inducement to settlers.⁸⁴ The Coldwater-Narrows Reserve lay at the heart of this activity, likely prompting some settlers to hope that they would eventually be able to acquire its cultivated and productive farmland.⁸⁵

The pressure exerted by settlers would not be the most significant circumstance determining the future of the reserve, however. The event that would prove to be the most critical in that respect was the appointment, in early 1836, of Sir Francis Bond Head as Lieutenant Governor of Upper Canada.

SURRENDER OF THE COLDWATER-NARROWS RESERVE

The retirement of Lieutenant Governor Colborne in 1836, and his replacement by Sir Francis Bond Head, would have profound effects upon the Indian population of Upper Canada, including the Chippewas of the Coldwater-Narrows Reserve. Unlike Colborne, who had continued and expanded an Indian settlement policy that had led to the creation of the Coldwater Reserve, the new Lieutenant Governor did not believe that Indians should reside near white settlers. His motives may be gleaned from comments made in a letter he forwarded to Lord Glenelg, Secretary of State for the Colonies, soon after his arrival in Upper Canada:

[I]t was evident to me that we should reap a very great Benefit, if we could persuade those Indians, who are now impeding the Progress of Civilization in Upper Canada, to resort to a place possessing the double Advantage of being admirably adapted to *them* (inasmuch as it affords Fishing, Hunting, Bird-Shooting, and Fruit), and yet in no Way adapted to the White population.

83 Joan Holmes and Associates, "The Coldwater Treaty: Draft Historical Report," 1993 (ICC Documents, p. 377, para. 14).

84 Cynthia C. Wesley-Esquiaux, "The Coldwater Narrows Reservation," 1991 (ICC Documents, pp. 114–15).

85 Cynthia C. Wesley-Esquiaux, "The Coldwater Narrows Reservation," 1991 (ICC Documents, p. 114).

I feel confident that the Indians, when settled by us in the Manner I have detailed, will be better off than they were; that the Position they will occupy can bona fide be fortified against the Encroachments of the Whites; while, on the other hand, there can be no doubt that the Acquisition of their vast and fertile Territory will be hailed with Joy by the whole Province.⁸⁶

The lands to which the Lieutenant Governor proposed to relocate the Indians included the Manitoulin Islands and the Saugeen tract (on the Bruce Peninsula), which had been surrendered during the summer of 1836 at a meeting over which he had presided. On his journey to Manitoulin Island to obtain the above surrenders, Bond Head had passed through the Coldwater-Narrows Reserve and had met Chief Yellowhead at the Narrows. There exists no contemporary account of what was discussed at this meeting, nor any indication who else was present. As noted above, however, the Bands had petitioned Bond Head on August 19 of that year for the right of self-management and the subdivision of their reserve into lots, “reserving however for the benefit of our community the Lands now belonging to the Mills and Establishment reserve.”⁸⁷ The latter appears to be the only existing document dealing in a substantive way with the future of the reserve made during the specific time frame of the above meeting.

In October 1836, the Chief Superintendent of Indian Affairs, James Givens, wrote to Yellowhead, informing the Chief that the Lieutenant Governor wanted to know “whether you are ready to give him an answer to the matter he spoke to you about when at the Narrows.”⁸⁸ The “matter” in question was not described, nor was it specifically referred to in a letter Givens sent to Superintendent Anderson later that month, informing him that the Bands at Coldwater-Narrows Reserve would be granted the right to manage their affairs effective March 31, 1837.⁸⁹ Chief Yellowhead replied to Givens’s letter on November 6, 1836, stating that “as soon as I get an answer from the other Indians I have been consulting on the subject I will immediately proceed to Toronto accompanied by three of my Indians and give an answer on the subject.”⁹⁰ Givens advised the Chief to wait until the Lieutenant Governor

86 Joan Holmes and Associates, “The Coldwater Treaty: Draft Historical Report,” 1993 (ICC Documents, pp. 380–81, para. 1).

87 Joan Holmes and Associates, “The Coldwater Treaty: Draft Historical Report,” 1993 (ICC Documents, p. 376, para. 13).

88 Joan Holmes and Associates, “The Coldwater Treaty: Draft Historical Report,” 1993 (ICC Documents, p. 382, para. 3).

89 Joan Holmes and Associates, “The Coldwater Treaty: Draft Historical Report,” 1993 (ICC Documents, p. 382, para. 5).

90 Joan Holmes and Associates, “The Coldwater Treaty: Draft Historical Report,” 1993 (ICC Documents, p. 382, para. 6).

requested him to make the trip, “as it will be necessary for him at the same time he sees you to have an interview with the other Chiefs.”⁹¹

On November 26, 1836, Chiefs Yellowhead and Aisance, together with 10 principal men of their Bands and representatives of the Snake Band, signed the Coldwater Treaty in Toronto. It was witnessed by Chief Superintendent Givens, among others, but Superintendent Anderson, the agent resident on the reserve itself, does not appear to have been present. The document stated that the Indians of the Coldwater-Narrows Reserve agreed to surrender the reserve for sale, in exchange for the annual interest on one-third of the proceeds of sale. The remaining two-thirds of the proceeds was to be applied to other purposes unrelated to the Chippewas of Coldwater and the Narrows. One-third was to be applied for the “general use of the Indian Tribes of the said Province,” and the remainder was to be applied “to any purpose (but not for the benefit of the said Indians) as the Lieutenant Governor may think proper to direct.”⁹²

A year later, in response to a petition from religious leaders expressing the dissatisfaction felt by the Indians of Upper Canada as a result of recent land surrenders, Bond Head provided a brief description of what had occurred at his meeting with the Bands at the Coldwater-Narrows Reserve the previous summer:

In the course of the inspectional Tour which I last Year made of the Province, I assembled, in the Months of August and September, the Indians, at each of these Places, and after explaining to them how much better, in my Opinion, it would be for them to receive Money for their Hunting Ground than to continue on it, surrounded as it was by the White Population, and consequently deprived as it was of its Game, I left them to reflect by themselves on what I had stated.

The Chiefs of the Narrows and of Coldwater, after a long debate, became unanimously of Opinion, that the Offer I had made to their Tribes was advantageous. They accordingly, on the 26th of November, came down in a Body to Toronto to beg me to carry it into effect.⁹³

The only other account of what occurred at the August 1836 meeting is found in a letter written by Chief Yellowhead to Chief Superintendent Jarvis in November 1840. In contrast to Bond Head’s recollections, Yellowhead wrote:

91 Joan Holmes and Associates, “The Coldwater Treaty: Draft Historical Report,” 1993 (ICC Documents, p. 383, para. 7).

92 Joan Holmes and Associates, “The Coldwater Treaty: Draft Historical Report,” 1993 (ICC Documents, p. 384, para. 9).

93 Joan Holmes and Associates, “The Coldwater Treaty: Draft Historical Report,” 1993 (ICC Documents, p. 398, para. 39).

“Sir francis [sic] Bond Head came when we lived on Orillia drove us out of it to go and live on some of the island [sic] and so we did.”⁹⁴ As for the signing of the surrender document, Yellowhead’s letter indicated that the Indians who travelled to Toronto in November 1836 had deliberated for two days before making a decision:

And it was tow [sic] days before we could give him answer at last we gave up the land so he gave us writing for it we to get pay for our land and now we wish you to consider about this.⁹⁵

Further, the actions of the Indians subsequent to the signing of the surrender indicated confusion concerning the effect of the document that they had executed. On the one hand, Superintendent Anderson wrote in December 1836 that, after the Indians informed him of what had transpired in Toronto, they proceeded to sell their personal property, but were “in a quandary quite undecided where to take up their future residence.”⁹⁶ On the other hand, in February 1837, Chief Aisance and his Band unilaterally took possession of the Coldwater gristmill, to the chagrin of departmental officials, who threatened to cancel the Indians’ previously granted right of self-management set to take effect at the end of March.⁹⁷ According to Anderson, Chief Aisance not only refused to comply with Givens’s order to desist, but fully expected that

the establishment at this place and the Narrows will be given up to them on the 31st March inst. This, they desire me to say, has been promised to them by His Excellency and as I have no specific orders on the subject I will thank You for instructions.⁹⁸

On March 31, 1837, Givens sent a message to the Chiefs advising them that Anderson would be instructed to give them all of the property belonging to the Bands, for them to manage as they saw fit.⁹⁹ To that end, Anderson was

94 Joan Holmes and Associates, “Coldwater-Narrows Surrender of 1836: Report about Additional Research Findings,” October 2000 (p. 5, doc. 16).

95 Joan Holmes and Associates, “Coldwater-Narrows Surrender of 1836: Report about Additional Research Findings,” October 2000 (p. 9, doc. 16).

96 Joan Holmes and Associates, “The Coldwater Treaty: Draft Historical Report,” 1993 (ICC Documents, p. 385, para. 12).

97 Joan Holmes and Associates, “The Coldwater Treaty: Draft Historical Report,” 1993 (ICC Documents, p. 377, para. 15).

98 Joan Holmes and Associates, “The Coldwater Treaty: Draft Historical Report,” 1993 (ICC Documents, p. 1485, para. 19).

99 Joan Holmes and Associates, “The Coldwater Treaty: Draft Historical Report,” 1993 (ICC Documents, p. 391, para. 28).

instructed on the same day to deliver to the Chiefs “all the property real and personal of every description belonging to the Tribe.”¹⁰⁰ On April 8, Anderson reported that the transfer of property had taken place.¹⁰¹

The Indians were not the only ones expressing dissatisfaction with their situation. Beginning in April 1837, other parties began to petition government officials to register their concerns over the actions of Sir Francis Bond Head. The first of these petitions, dated April 10, 1837, was made by a group of Methodist missionaries. They protested the displacement of an unnamed group of Methodist Indians who had cultivated and built homes and barns on their land, only to be required to move as the result of a surrender. The missionaries wrote that “justice and humanity unequivocally demand[ed]” that the Indians be allowed to stay.¹⁰² A few months later, another petition was sent to Sir Francis Bond Head by the “Resident and Ministers of the Wesleyan Methodist Church in Canada,” stating that the Indians were extremely dissatisfied as a result of being asked to surrender lands on which they had made improvements. The petition stated that the improvements had been made in the belief that those lands would belong to them and their children forever.¹⁰³ As well, the Aborigines Protection Society, a humanitarian organization based in England, petitioned the Governor General of Canada, protesting Lieutenant Governor Bond Head’s policy of obtaining wholesale surrenders of fertile and developed reserves. According to the petitioners, the policy caused the Indians “to be banished to the 23,000 rocks of granite, dignified by the name of Manitoulin Island,” which were “perfectly useless as Sir Francis admits, for every purpose of civilized life.”¹⁰⁴

Sir Francis Bond Head was replaced in 1838, but the surrender of the Coldwater-Narrows Reserve was allowed to stand, and the Chippewas began to leave their homes. In June 1838, the recently appointed Chief Superintendent of Indian Affairs, S.P. Jarvis, wrote to the new Lieutenant Governor, George Arthur, to discuss the removal of the Bands from Coldwater-Narrows Reserve. Jarvis reported that the majority of the Indians did not want to go to Manitoulin Island, but instead wished to settle as near as possible to the old

100 Joan Holmes and Associates, “The Coldwater Treaty: Draft Historical Report,” 1993 (ICC Documents, p. 392, para. 29).

101 Joan Holmes and Associates, “The Coldwater Treaty: Draft Historical Report,” 1993 (ICC Documents, p. 392, para. 31).

102 Joan Holmes and Associates, “The Coldwater Treaty: Draft Historical Report,” 1993 (ICC Documents, p. 393, para. 32).

103 Joan Holmes and Associates, “The Coldwater Treaty: Draft Historical Report,” 1993 (ICC Documents, pp. 393–94, para. 35).

104 Joan Holmes and Associates, “The Coldwater Treaty: Draft Historical Report,” 1993 (ICC Documents, pp. 400–4, para. 43).

villages of Coldwater and the Narrows.¹⁰⁵ As a result, Chief Yellowhead and his followers proposed that approximately 1,000 acres of land on the east side of Lake Simcoe in the Township of Rama be purchased for them. The purchase was authorized by Order in Council in August 1838,¹⁰⁶ and the necessary funds were taken from the annuity account of the Chippewa Tri-Council.¹⁰⁷

Some members of Chief Aisance's Band moved to Beausoleil Island in Georgian Bay,¹⁰⁸ but Aisance himself apparently wished to settle at the mouth of the Severn.¹⁰⁹ Chief Snake's Band moved back to Snake Island in Lake Simcoe, to the farms they had established before moving to the Narrows; a few others moved to the Saugeen tract and to Manitoulin Island.¹¹⁰

On May 26, 1842, a petition concerning the terms of the surrender of the reserve was signed by the Chiefs of the Rama, Snake Island, and Coldwater Indians and forwarded to the Governor General of Canada. The petition stated:

We wish to state to your Excellency that when Sir F. Bond Head insisted on our selling this Land and the bargain he had previously drawn out for us to sign, we were not made sensible of the full purport, so that we knew not the nature of the bargain. It may be proper for us to state to your Excellency ... that up to the present period we have not received any money from the sale of the said Land ... We are not fully satisfied that other people should participate in the money arising [sic] from this sale – We conceive it to be our right to reap the benefit and not others. Also, the article of agreement is not satisfactory as it does not specify what the principal of the money comes to.... In writing to your Excellency we wish to state particularly that the Grist Mill at Coldwater, and the Saw Mill near the Coldwater Road are not included in the Agreement and hence we shall continue to consider them as Indian property.¹¹¹

In the following year, Chief Superintendent Jarvis was directed by the Governor General to make a payment out of funds designated for the general benefit of the Indians. Jarvis replied that, although Bond Head intended to

105 Joan Holmes and Associates, "The Coldwater Treaty: Draft Historical Report," 1993 (ICC Documents, p. 405, para. 44).

106 Joan Holmes and Associates, "The Coldwater Treaty: Draft Historical Report," 1993 (ICC Documents, p. 405, para. 45).

107 Joan Holmes and Associates, "The Coldwater Treaty: Draft Historical Report," 1993 (ICC Documents, p. 406, para. 47).

108 Cynthia C. Wesley-Esquimaux, "The Coldwater Narrows Reservation," 1991 (ICC Documents, p. 185).

109 Joan Holmes and Associates, "The Coldwater Treaty: Draft Historical Report," 1993 (ICC Documents, p. 405, para. 45).

110 Cynthia C. Wesley-Esquimaux, "The Coldwater Narrows Reservation," 1991 (ICC Documents, p. 185).

111 Joan Holmes and Associates, "The Coldwater Treaty: Draft Historical Report," 1993 (ICC Documents, p. 411, para. 55).

create such an account out of funds derived from the Coldwater-Narrows surrender, no such account existed. Further, Jarvis informed his superior that the Chippewas had not understood what they had signed in this respect:

When the Wyandotts, of Amherstburg and the Chippewas of Lakes Huron and Simcoe, surrendered a portion of their reserves to the Crown to be sold for their benefit at the suggestion of Sir Francis B. Head, they consented that a portion of these Reserves should be appropriated for the general benefit of the Indian Tribes, but when they fully understood what they had consented to, both Tribes sent remonstrances to Sir George Arthur and requested that the whole proceeds of the sales might be appropriated for the benefit of the respective Tribes who had executed the surrenders and Sir George Arthur verbally in my presence informed the Indians that he thought their request reasonable and should be complied with.¹¹²

SALE OF THE COLDWATER-NARROWS RESERVE

On June 18, 1840, an Order in Council was passed approving the sale of the Coldwater-Narrows Reserve to settlers at the rate of eight shillings per acre.¹¹³ However, on September 23, 1844, an "Inspection and Valuation of the Town Plot of Orillia [The Narrows] and the Indian Reserve between Coldwater and Orillia" was completed. This valuation set an average price of £7 12s, or approximately \$30.47, for the lots in the town of Orillia, and an average per acre price for the land on the road between Orillia and Coldwater of 10s 6d, or about \$2.10.¹¹⁴ This valuation was approved by Order in Council dated December 30, 1844.¹¹⁵

The town plot contained 310 regular shaped lots, each comprising one-half acre, for a total of 155 acres. In addition, there were a number of irregular waterfront lots estimated to contain about 31 acres, for an approximate total of 186 acres. Most of the farm lots were sold as regular 200-acre lots, although some had been subdivided and sold as 100-acre lots. The total acreage of the farm lots was estimated to comprise some 8,505 acres. The road allowances were not sold or patented.¹¹⁶

112 Joan Holmes and Associates, "Coldwater-Narrows Surrender of 1836: Report about Additional Research Findings," October 2000 (p. 12, doc. 17).

113 Joan Holmes and Associates, "The Coldwater Treaty: Draft Historical Report," 1993 (ICC Documents, p. 408, para. 52).

114 Joan Holmes and Associates, "The Coldwater Treaty: Draft Historical Report," 1993 (ICC Documents, p. 411, para. 57).

115 Joan Holmes and Associates, "The Coldwater Treaty: Draft Historical Report," 1993 (ICC Documents, p. 412, para. 58).

116 Joan Holmes and Associates, "Sale of Coldwater Tract Lands and Disposition of Land Sales Proceeds," 1998, p. 6.

Although overall data is incomplete, from a study of the land sales, it appears that all but 14 per cent of the town lots and all of the farm lots were sold at or above their appraised value.¹¹⁷ The exception to this was the Market Square of Orillia, which was sold to the municipality for a price below the average price for lots in that area.

The land sales took place between 1838 and 1872, with the bulk of activity occurring in the 1840s and 1850s. The total land purchase proceeds collected amounted to \$28,855.06, representing principal and interest on instalments.¹¹⁸ A small amount (approximately \$156) was collected for improvements.

Because of the lack of complete records, it is not possible to determine whether all the money collected on account of land sales was deposited to the credit of the Chippewas of Lakes Huron and Simcoe. Money was held in several accounts that have records spanning different periods of time. These accounts were established for the “Chippewas of Lakes Huron and Simcoe” in common, as the three Bands did not have separate trust accounts until the 1860s. A 5 per cent commission was credited to the above accounts.¹¹⁹

117 Joan Holmes and Associates, “Sale of Coldwater Tract Lands and Disposition of Land Sales Proceeds,” 1998, p. 7. These percentages are based on sales for which complete data exist.

118 Joan Holmes and Associates, “Sale of Coldwater Tract Lands and Disposition of Land Sales Proceeds,” 1998, p. 8.

119 Joan Holmes and Associates, “Sale of Coldwater Tract Lands and Disposition of Land Sales Proceeds,” 1998, p. 13.

PART III

ISSUES

This claim concerned the surrender, by treaty dated November 26, 1836, of a 14-mile tract of land between the Narrows at Lakes Couchiching and Simcoe in the east and Matchedash Bay in the west. The following is a more detailed summary of the issues as they were developed by the parties throughout the planning conferences:

- 1 Was there a surrender of the Coldwater-Narrows Reservation on November 26, 1836?
 - a) Was there a public meeting of the Chippewa Tri-Council consistent with the instructions in the Royal Proclamation of 1763?
 - b) Did the Chippewa Tri-Council otherwise express its consent to a surrender of the Reservation?
 - c) Did the Chippewa Tri-Council Chiefs have the authority to surrender the Reservation in the absence of such a public meeting or consent?

- 2 Did the Coldwater Treaty of November 26, 1836, reflect the intentions of the Chippewa Tri-Council?
 - a) If not, is the surrender invalid?
 - b) If not, did the Crown breach a fiduciary duty or commit an equitable fraud in accepting the surrender?

- 3 Did the Coldwater Treaty of November 26, 1836, represent a surrender that was improvident or exploitative?
 - a) Was the provision for payment of interest on sale proceeds improvident or exploitative?
 - b) Was the lack of explicit provisions for relocation of the Chippewa Tri-Council improvident or exploitative?
 - c) If so, did the Crown have a duty to refuse the surrender?

- d) If so, did the Crown breach a fiduciary duty or commit an equitable fraud in accepting the surrender?
- 4 Did the Coldwater Treaty of November 26, 1836, require the relocation of the Chippewa Tri-Council to lands of their choosing within a reasonable time?
- a) If so, was this obligation fulfilled?
 - b) If not, did the Crown have a fiduciary duty in any event to ensure the satisfactory relocation of the Chippewa Tri-Council?
- 5 Did the Coldwater Treaty of November 26, 1836, require the Crown to sell the land and improvements in a timely fashion and for fair value?
- a) If so, was this obligation fulfilled?
 - b) Were lands sold in a timely fashion?
 - c) Were the lands sold for fair market value?
 - d) Were the improvements sold for fair market value, having regard to the investment of Chippewa annuities in the improvements?
 - e) Were the expenses charged against the sale proceeds reasonably and properly related to the sales?
- 6 Whether or not there was a surrender of the Coldwater-Narrows Reservation on November 26, 1836, did the Crown breach its fiduciary duties to the Chippewa Tri-Council while taking or purporting to take the surrender?

PART IV

CONCLUSION


On July 23, 2002, Robert D. Nault, Minister of the Department of Indian Affairs and Northern Development, informed all the Chiefs of the Chippewa Tri-Council that Canada was willing to accept for negotiation the specific claim known as the Coldwater-Narrows Reservation surrender. The letters to the Chiefs of the Chippewa Tri-Council form Appendix B to this report.

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.

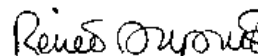
FOR THE INDIAN CLAIMS COMMISSION



Roger J. Augustine
Commissioner



Daniel J. Bellegarde
Commissioner



Renée Dupuis
Commissioner

Dated this 12th day of March, 2003.

APPENDIX A

CHIPPEWA TRI-COUNCIL INQUIRY COLDWATER-NARROWS RESERVATION SURRENDER CLAIM

1 Planning conferences

The Commission held eight planning conferences:

- November 4, 1996
- December 10, 1996
- December 15, 1997
- August 7, 1998
- November 12, 1998
- October 5, 2001
- February 25, 2002
- March 18, 2002

2 Content of formal record

The following record for the Chippewa Tri-Council Inquiry – Coldwater-Narrows Reservation Surrender Claim consists of the following materials:

- the documentary record (9 volumes of documents)
- Draft report on Coldwater Expenditures, prepared by Joan Holmes and Associates, May 1998
- Draft report, “Sale of Coldwater Tract Lands and Disposition of Land Sales Proceeds,” prepared by Joan Holmes and Associates for Specific Claims, DIAND, ICC, and Chippewa Tri-Council, October 1998
- Report, “Coldwater-Narrows Surrender of 1836: Report about Additional Research Findings,” prepared by Joan Holmes and Associates, October 2000

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

Minister of Indian Affairs
and Northern Development



Ministre des Affaires
indiennes et du Nord canadien

Ottawa, Canada K1A 0H4

WITHOUT PREJUDICE

JUL 23 2002

Chief Paul Sandy
Beausoleil First Nation
Cedar Point Post Office
via PENETANGUISHENE ON L0K 1C0

Dear Chief Sandy:

On behalf of the Government of Canada and pursuant to the Specific Claims Policy, I offer to accept for negotiation the Chippewa Tri-Council claim respecting the surrender and sale of the Coldwater-Narrows Reserve.

For the purpose of negotiation under the Specific Claims Policy, Canada has concluded that this specific claim gives rise to breaches of lawful obligation arising out of the surrender of the Coldwater-Narrows Reserve in 1836, an improvident sale, and the lands not being sold in a timely fashion or for full value.

Details of this acceptance will be contained in a letter from Mr. Michel Roy, Assistant Deputy Minister, Claims and Indian Government, Indian and Northern Affairs Canada.

I wish you success with these negotiations and with the future endeavours of your First Nation.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Robert D. Nault".

Robert D. Nault, PC, MP

c.c.: Chief Sharon Stinson-Henry
Chief William McCue

Canada

Minister of Indian Affairs
and Northern Development



Ministre des Affaires
indiennes et du Nord canadien

Ottawa, Canada K1A 0H4

WITHOUT PREJUDICE

JUL 23 2002

Chief William McCue
Chippewas of Georgina Island First Nation
RR 2, PO Box 13
SUTTON WEST ON L0E 1R0

Dear Chief McCue:

On behalf of the Government of Canada and pursuant to the Specific Claims Policy, I offer to accept for negotiation the Chippewa Tri-Council claim respecting the surrender and sale of the Coldwater-Narrows Reserve.

For the purpose of negotiation under the Specific Claims Policy, Canada has concluded that this specific claim gives rise to breaches of lawful obligation arising out of the surrender of the Coldwater-Narrows Reserve in 1836, an improvident sale, and the lands not being sold in a timely fashion or for full value.

Details of this acceptance will be contained in a letter from Mr. Michel Roy, Assistant Deputy Minister, Claims and Indian Government, Indian and Northern Affairs Canada.

I wish you success with these negotiations and with the future endeavours of your First Nation.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Robert D. Nault".

Robert D. Nault, PC, MP

c.c.: Chief Sharon Stinson-Henry
Chief Paul Sandy

Canada

Minister of Indian Affairs
and Northern Development



Ministre des Affaires
indiennes et du Nord canadien

Ottawa, Canada K1A 0H4

WITHOUT PREJUDICE

JUL 23 2002

Chief Sharon Stinson-Henry
Chippewas of Mnjikaning First Nation
5884 Rama Road, Suite 200
RAMA ON L0K 1T0

Dear Chief Henry:

On behalf of the Government of Canada and pursuant to the Specific Claims Policy, I offer to accept for negotiation the Chippewa Tri-Council claim respecting the surrender and sale of the Coldwater-Narrows Reserve.

For the purpose of negotiation under the Specific Claims Policy, Canada has concluded that this specific claim gives rise to breaches of lawful obligation arising out of the surrender of the Coldwater-Narrows Reserve in 1836, an improvident sale, and the lands not being sold in a timely fashion or for full value.

Details of this acceptance will be contained in a letter from Mr. Michel Roy, Assistant Deputy Minister, Claims and Indian Government, Indian and Northern Affairs Canada.

I wish you success with these negotiations and with the future endeavours of your First Nation.

Yours sincerely,

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Robert D. Nault, PC, MP

c.c.: Chief William McCue
Chief Paul Sandy

Canada