

INDIAN CLAIMS COMMISSION

JAMES SMITH CREE NATION IR 100A INQUIRY

PANEL

Chief Commissioner Renée Dupuis
Commissioner Alan C. Holman

COUNSEL

For the James Smith Cree Nation
William A. Selnes

For the Government of Canada
Robert Winogron/Uzma Ihsanullah

To the Indian Claims Commission
Kathleen N. Lickers

March 2005

CONTENTS

<u>SUMMARY</u>	vii
<u>KEY HISTORICAL NAMES CITED</u>	ix
<u>TERMINOLOGY</u>	xiii
<u>PREFACE</u>	xvii
PART I <u>INTRODUCTION</u>	1
MANDATE OF THE COMMISSION	3
PART II <u>HISTORICAL BACKGROUND</u>	7
CLAIMANTS' ADHESIONS TO TREATY 5 AND 6	7
Geography and Claimants	7
Cumberland Band Adhesion to Treaty 5, 1876	7
James Smith Band and the Signing of Treaty 6, 1876	9
Cumberland Band Requests Reserve at Fort à la Corne	10
Survey of IR 20 at Cumberland Lake in Treaty 5	16
CONDITIONS AT FORT À LA CORNE, 1883–92	20
Creation of the Pas Agency in Treaty 5, 1883	20
Department Permits Move to Fort à la Corne, 1883	20
Movement from Cumberland to Fort à la Corne, 1883–86	21
Setting Aside Land for IR 100A, 1883–85	25
The North-West Rebellion and the Cumberland Band	30
Scrip Offered at Cumberland	31
Paylist for Cumberland Band at Fort à la Corne, 1886	33
Other Treaty 5 Bands at Fort à la Corne	33
Survey of IR 100A, 1887	34
Department Support for Agriculture at Fort à la Corne	35
Cumberland Band Movement, 1887–91	37
Return to the Cumberland District, 1886–91	38
Leadership of Cumberland Band at Fort à la Corne, 1886–92	39
Request for Separate Leadership at IR 100A, 1888	40
BAND MEMBERSHIP	41
Department Practice for Transfers of Band Membership	41
Settlement of Chakastaypasin Band Members at Fort à la Corne, 1885–91	44
Transfers to Cumberland Band, 1891	48
Death of Peter Chapman, 1892	50
Paylists for Big Head and Cumberland Bands at IR 100A, 1892–96	50
Commutation of Annuity, 1892	50

Transfers into Big Head's Band, 1892–95	51
Farm Instructor Appointed, 1893	52
Surrender of 640 Acres at IR 20, 1894	53
Creation of Section 140 of the <i>Indian Act</i> , 1895	54
Requests for Transfer from Cumberland House, 1896	54
Transfer of Chakastaypasin Members to Cumberland Band 100A, 1896	55
Consents to Transfer Signed by Cumberland Band 100A	57
Applications for Admission to Cumberland Band 100A and James Smith Band	60
EVENTS AT FORT À LA CORNE, 1897–1902	65
Surrender and Exchange of 960 Acres at IR 100A, 1899	65
Petition for Councillor, 1900	68
Commutations of Annuity, 1900	69
Requests for Transfer from Cumberland House, 1900	70
ALLEGED SURRENDER AND AMALGAMATION, 1902	71
Events Preceding	71
Alleged Surrender and Amalgamation, July 24, 1902	74
Documentary Evidence	74
Testimony of Elder Angus Burns	77
Annuities Paid, 1902	79
Laird's Report on Alleged Surrender and Amalgamation	80
Acceptance of Surrender by Order in Council	81
Status of James Smith Band Leadership, Post–1902	81
Church Official Questions Surrender	82
Community Understanding of Events of 1902	86
Establishment of Trust Fund and Expenditure of Land Sale Proceeds	89
The IR 100A Strip	90
IR 100A LAND SALES	100
Requirements of the <i>Indian Act</i> and Land Sale Regulations	100
Advertisement of Sale	101
Tenders for Land	105
Menary Group	105
Prendergast Group	108
Mossom Boyd Group	114
Ferguson Commission	115
PART III <u>ISSUES</u>	117
IR 100A SURRENDER AND BAND AMALGAMATION	117
Validity of Surrender Issues	117
Validity of Amalgamation	117
Land Disposition Issues	117
IR 100A STRIP	118
Validity of Surrender Issues	118
Land Disposition Issues	119

PART IV	<u>ANALYSIS</u>	121
	CUMBERLAND HOUSE CREE NATION INQUIRY FINDINGS	121
	JAMES SMITH CREE NATION CHAKASTAYPASIN IR 98 FINDINGS	121
	INDIAN RESERVE 100A	122
	Issues 1–4: Validity of Surrender	122
	The Crown’s Obligations under Treaty 6	130
	The Crown’s Obligations under the <i>Indian Act</i>	132
	Authority of Surrender Signatories	133
	Compliance with the 1886 <i>Indian Act</i>	137
	Issue 5: Validity of Amalgamation	139
	Issues 8–10: Land Disposition	144
	Fraud	149
	IR 100A STRIP	149
	Conclusion to the IR 100A Strip Issues	154
PART V	<u>CONCLUSIONS AND RECOMMENDATION</u>	155
APPENDICES		
A	James Smith Cree Nation: Treaty Land Entitlement and Cumberland 100A Reserve Inquiries – Interim Ruling, May 2, 2000	157
B	Ruling on Application for Leave to Intervene, June 4, 2001	163
C	James Smith Cree Nation: Peter Chapman IR 100A Inquiry and Cumberland House Cree Nation: IR 100A Inquiry – Interim Ruling, January 24, 2002	167
D	James Smith Cree Nation: IR 100A Inquiry – Chronology	169
MAPS		
1	Claim Area Map	6
2	Cumberland IR 100A and James Smith IR 100	26
3	Cumberland IR 100A: Reserve Boundaries and Township Lines (1892), and IR 100A and Surrounding Townships, Creating the IR 100A Strip (1903)	91
4	Land “Surrendered” in 1902, Showing Land Sales	104
5	IR 100A, Surrounding Townships, Creating the IR 100A Strip (1903)	151

SUMMARY

JAMES SMITH CREE NATION IR 100A CLAIM Saskatchewan

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

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

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

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

THE SPECIFIC CLAIM

On January 24, 1991, the James Smith Cree Nation (JSCN) submitted a specific claim regarding the surrender and sale of the southern portion of Indian Reserve (IR) 100A totalling 22,080 acres. The First Nation claimed that Canada breached its statutory, treaty, trust, and fiduciary duties in taking the alleged surrender and further argued that Canada breached its statutory, treaty, trust, and fiduciary duties in its unlawful disposition of IR 100A. On March 13, 1998, Canada rejected the First Nation's claim regarding the validity of the surrender, while accepting for negotiation an outstanding lawful obligation with respect to the sale of the surrendered lands. The Indian Claims Commission (ICC) accepted the May 18, 1999 request of the JSCN to conduct an inquiry into the surrender and subsequent sale of IR 100A.

BACKGROUND

Chief James Smith and four councillors signed Treaty 6 in August 1876 on behalf of the James Smith Band. On May 17, 1889, IR 100 was confirmed for the James Smith Band by Order in Council 1151 and consisted of 27.8 square miles.

On July 24, 1902, Canada took a surrender of 22,080 acres from IR 100A and sought to amalgamate the "owners of the James Smith's Indian Reserve No. 100" and the "owners of Cumberland Reserve 100A." For both the surrender and amalgamation, Canada relied upon two signatories who had allegedly transferred to IR 100A in 1896 from the Chakastaypasin Band. With this amalgamation, IR 100A lands were joined with IR 100, and any outstanding treaty land entitlement owed to the James Smith Band at IR 100 was, in Canada's view, cured by the addition of IR 100A to IR 100 lands.

In 1903, Canada subdivided the surrendered land for sale. The majority of the quarter sections were purchased by government officials who were investigated in 1913 and found to be in breach of their duties. All quarter sections were sold for less than their appraised value.

ISSUES

What were Canada's obligations in taking the 1902 surrender at IR 100A? Is Canada in breach of any such obligations, and, if so, is the surrender valid and does Canada owe an outstanding obligation? Was there an amalgamation of the "Peter Chapman Band" and the James Smith Band? What were Canada's obligations in disposing of IR 100A? Was there a surrender of the IR 100A Strip, and, if so, what were Canada's obligations in disposing of it?

FINDINGS

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

Canada's failure to have sought the informed consent of the whole of the Cumberland Band to the transfer of people into IR 100A, to the surrender of the southern portion of IR 100A, and to the agreement to amalgamate its interest in IR 100A with the James Smith Band at IR 100 is breach of treaty, statute, and fiduciary duties.

Upon the surrender of reserve land, Canada has treaty, statutory, and fiduciary duties in disposing of this land by sale. Canada has admitted its breach of fiduciary duties in accepting prices below the appraised value and for failing to enforce the terms of sale. Canada has admitted it breached its statutory duty for its failure to have immediately dismissed its employee for his conduct involving the sale of IR 100A and for its failure to have cancelled the sales attributable to him. In the absence of clear and unequivocal evidence, the panel is unable to make a finding of fraud.

RECOMMENDATION

That the lawful obligations that arise from Canada dispositions of Indian Reserve 100A be accepted for negotiation with the Cumberland House Cree Nation.

REFERENCES

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

Cases Referred to

Blueberry River Indian Band v. Canada, [1996] 2 CNLR 25; *Guerin v. The Queen*, [1984] 2 SCR 335.

ICC Reports Referred to

ICC, *Canupawakpa Dakota First Nation: Turtle Mountain Surrender Inquiry* (Ottawa, July 2003), reported (2004) 17 ICCP 263; ICC, *Kahkewistahaw First Nation: 1907 Reserve Land Surrender Inquiry* (Ottawa, February 1997), reported (1998) 8 ICCP 3; ICC, *Moosomin First Nation: 1909 Reserve Land Surrender Inquiry* (Ottawa, March 1997), reported (1998) 8 ICCP 101; ICC, *Chippewas of Kettle and Stony Point First Nation: 1927 Surrender Inquiry* (Ottawa, March 1997), reported (1998) 8 ICCP 209; ICC, *Sumas Indian Band: 1919 Indian Reserve 7 Surrender Inquiry* (Ottawa, August 1997), reported (1998) 8 ICCP 281.

Treaties and Statutes Referred to

Treaty 5; Treaty 6; Indian Act, RSC 1886.

COUNSEL, PARTIES, INTERVENORS

William Selnes, for the James Smith Cree Nation; Uzma Ihsanullah and Robert Winogron for the Government of Canada; Kathleen N. Lickers to the Indian Claims Commission.

KEY HISTORICAL NAMES CITED

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

Big Head, *see* Kahtapiskowat.

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

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

Calvert, W.S., Member of Parliament and an associate of the Prendergast group.

Chekoosoo, *see* Ma-twa-ahs-tin-oo-we-gin.

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

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

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

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

Constant, John, member of the Treaty 5 Pas Band; was paid annuities on the Cumberland Band payroll at Fort à la Corne from 1886 to 1890.

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

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

Davis, Thomas O., Member of Parliament for Prince Albert and a member of the Prendergast group; also purchased lands in the sale of Chakastaypasin IR 98 in 1901.

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

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

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

Fraser, A.W., Ottawa lawyer and a member of the Prendergast group.

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

Head, James, received annuities with the Cumberland Band at IR100A until 1902; appointed Chief of the James Smith Band, 1903.

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

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

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

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

Lamont, J.H., Prince Albert attorney and a member of the Prendergast group; also purchased lands in the sale of Chakastaypasin IR 98 in 1901.

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

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

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

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

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

Ma-twa-ahs-tin-oo-we-gin, also known as Chekoosoo, signed Treaty 6 in 1876 as headman of the James Smith Band.

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

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

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

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

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

Menary, A.J., stenographer with a Toronto law firm, purchased a majority of the lands in the surrendered portion of IR 100A in 1903; it was later discovered that these tenders were submitted on behalf of Frank Pedley, Deputy Superintendent General of Indian Affairs (DSGIA); James A. Smart, the former DSGIA; and W.J. White, an Immigration Inspector, as represented by Toronto lawyer A.C. Bedford-Jones.

Mossom Boyd group: Mossom M. Boyd and William T.C. Boyd, Ontario speculators who purchased lands in the surrendered portion of IR 100A in 1903.

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

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

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

Prendergast, James E.P., a member of the Prendergast group; also Judge of the Supreme Court of the North-West Territories, 1902–5; Judge of the Supreme Court of Saskatchewan, 1906–10.

Prendergast group: James E.P. Prendergast, J.H. Lamont, P.D. Tyerman, T.O. Davis, and A.W. Fraser, five speculators who purchased lands in the surrendered portion of IR 100A in 1903. Fraser later assigned his interest to W.S. Calvert, a Member of Parliament.

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

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

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

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

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

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

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

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

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

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

Tyerman, P.D., a member of the Prendergast group; also a Prince Albert physician employed with the Department of Indian Affairs as a medical officer from 1899 to 1904 in the Duck Lake and Carlton Agencies.

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

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

TERMINOLOGY

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

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

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

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

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

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

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

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

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

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

Cumberland House Band – The Cumberland Band that signed Treaty 5 in 1876 and has its reserves in the vicinity of the old HBC trading post at Cumberland House became known as the

ⁱⁱ Four Arrows, “‘The Cumberland District’: Its Use and Meaning in the North West Territories,” revised January 17, 2003 (Indian Claims Commission (ICC) Exhibit 21a, pp. 11–14).

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

Cumberland House Band in 1930. The Band later renamed itself the Cumberland House Cree Nation.

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

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

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

PREFACE

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

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

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

PART I
INTRODUCTION

On May 17, 1889, the Government of Canada confirmed by Order in Council Indian Reserve (IR) 100A “[f]or the Indians of Cumberland District (of Treaty No. 5).” Within 13 years, the Government of Canada sought the surrender of 22,080 acres from the 65 square mile reserve. On July 24, 1902, the Government of Canada procured this surrender from only two signatories: Kahtapiskowat and George Sanderson – two former members of the Chakastaypasin Band IR 98.

On January 24, 1991, the James Smith Cree Nation (JSCN) submitted a claim under the Specific Claims Policy regarding the surrender and sale of the southern portion of IR 100A. The First Nation claimed that Canada breached its statutory, treaty, trust, and fiduciary duties and obligations to the James Smith Band in taking the alleged surrender, and that the transaction was therefore void. It was also argued that, after the surrender was taken, the Crown breached its statutory, treaty, trust, and fiduciary duties and obligations to the James Smith Band in its unlawful and illegal disposition of Indian lands. On February 4, 1992, a separate claim regarding the 100A Strip – land adjoining the reserve but not included in the survey – was submitted for consideration as well.¹

On March 13, 1998, Assistant Deputy Minister John Sinclair communicated Canada’s rejection of the First Nation’s claim regarding the invalidity of the 1902 surrender. Sinclair wrote:

As a result of our review of the historical evidence, it is our preliminary position that the surrender is valid. The only available historical documents support the conclusion that the Cumberland 100A Band intended to surrender the lands that are the subject of this claim and gave their free and informed consent to the surrender in accordance with the procedural requirements of the 1886 Indian Act.²

However, certain other aspects of the claim were accepted for negotiation. Canada acknowledged “an outstanding lawful obligation on the part of the Government of Canada to JSCN for having

¹ In 1902, when Surveyor J.L. Reid subdivided the allegedly surrendered portion of IR 100A, he found that the reserve boundaries did not coincide with surrounding township boundaries; IR 100A included a strip of land in township 46, range 19, west of the 2nd meridian (W2M), along the western boundary of that township. The 1902 surrender described lands within township 46, range 20, but not range 19. The strip measures 191.33 acres.

² John Sinclair, Assistant Deputy Minister, Department of Indian Affairs and Northern Development (DIAND), Claims and Indian Government, to Chief Eddie Head, James Smith Cree Nation, March 13, 1998, p. 4 (ICC Exhibit 16a, p. 4).

breached its fiduciary obligations with respect to the sale of the surrendered lands, including the remaining lake beds and No Man's Land."³ Specifically, these include the obligations to dispose of the lands for a reasonable price, to cancel sales when payments were not made in a timely fashion, and to cancel the 72 sales made to its employee Frank Pedley, who "acted improperly" by participating in the sales.⁴

On May 10, 1999, Pamela Keating, Research Manager for the Specific Claims Branch, confirmed Canada's position that "the procedural requirements for the 1902 surrender of the Cumberland 100A lands were met, and therefore, the surrender of 22,080 acres of the southern portion of the Cumberland 100A Reserve was valid." In the same letter, with respect to James Smith Cree Nation's TLE claim, it was stated that the amalgamation agreement of 1902 was also valid.⁵

On May 18, 1999, the James Smith Cree Nation requested that the Indian Claims Commission (ICC) conduct an inquiry into its claims with respect to the surrender and sale of the southern portion of IR 100A and the status of the 100A Strip. On February 1, 2000, the Cumberland House Cree Nation (CHCN) requested its own inquiry with respect to its interests in IR 100A.⁶ Following discussions between both First Nations, the ICC ruled, on June 4, 2001, that it would conduct a single fact-finding process with respect to the James Smith and Cumberland House Cree Nations' claims, while maintaining separate inquiries for each First Nation.⁷ The result of this single

³ John Sinclair, Assistant Deputy Minister, DIAND, Claims and Indian Government, to Chief Eddie Head, James Smith Cree Nation, March 13, 1998, p. 12 (ICC Exhibit 16a, p. 12).

⁴ John Sinclair, Assistant Deputy Minister, DIAND, Claims and Indian Government, to Chief Eddie Head, James Smith Cree Nation, March 13, 1998, pp. 8–10 (ICC Exhibit 16a, pp. 8–10).

⁵ Pamela Keating, Research Manager, DIAND, Specific Claims Branch, to Chief Eddie Head, James Smith Cree Nation, May 10, 1999, pp. 1–2 (ICC Exhibit 16b, pp. 1–2).

⁶ Canada challenged the mandate of the ICC to conduct an inquiry into aspects of the JSCN's claim, and on May 2, 2000, the panel ruled that the inquiry should continue by virtue of its remedial or supplementary mandate. See James Smith Cree Nation: Treaty Land Entitlement and Cumberland 100A Reserve Inquiries – Interim Ruling, May 2, 2000, reproduced as Appendix A to this report.

⁷ Kathleen N. Lickers, Commission Counsel, Indian Claims Commission (for Commissioners Prentice, Augustine, and Dupuis), to William Selnes, Kapoor, Selnes, Klimm & Brown; Tom J. Waller, Olive, Waller, Zinkhan & Waller; and Uzma Ihsanullah, Department of Justice, DIAND, June 4, 2001 (ICC file 2107-39-03). This Ruling on Application for Leave to Intervene is reproduced as Appendix B to this report.

fact-finding process is reflected in Part II of this report.⁸ We have worked to set out our understanding of the separate histories of each First Nation claimant, and our understanding of where their histories began to intersect.

There are numerous issues in this inquiry that overlap with the ultimate issues in the Cumberland House Cree Nation Inquiry into IR 100A and the James Smith Cree Nation – Chakastaypasin IR 98 Inquiry. For this reason, our findings in these other inquiries will necessarily be reflected in this report and will consequently have an impact on our findings in this inquiry. We have worked carefully and diligently to ensure that our findings in each case, and the reasons that support them, are cogent, coherent, and consistent.

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

MANDATE OF THE COMMISSION

The mandate of the Indian Claims Commission is set out in federal Orders in Council providing the Commissioners with the authority to conduct public inquiries into specific claims and to issue reports on “whether a claimant has a valid claim for negotiation under the [Specific Claims] Policy where the claim was already rejected by the Minister.”⁹ This Policy, outlined in the Department of Indian Affairs and Northern Development’s 1982 booklet entitled *Outstanding Business: A Native Claims Policy – Specific Claims*, states that Canada will accept claims for negotiation where they disclose an outstanding “lawful obligation” on the part of the federal government.¹⁰ The term “lawful obligation” is defined in *Outstanding Business* as follows:

⁸ On January 24, 2002, the panel also issued an interim ruling on the use of certain oral history evidence. See James Smith Cree Nation: Peter Chapman IR 100A Inquiry and Cumberland House Cree Nation: IR 100A Inquiry – Interim Ruling, which is reproduced as Appendix C to this report.

⁹ 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.

¹⁰ Department of Indian Affairs and Northern Development (DIAND), *Outstanding Business: A Native Claims Policy – Specific Claims* (Ottawa: Minister of Supply and Services, 1982), 20; reprinted in (1994) 1 *Indian Claims Commission Proceedings* (ICCP) 171–85 (hereafter *Outstanding Business*).

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.¹¹

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

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

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

If, in carrying out its review, the Commission concludes that the policy was implemented correctly but the outcome is nonetheless unfair, I would again welcome its recommendations on how to proceed.¹²

In an October 1993 letter to the Commission, the Minister of Indian Affairs, Pauline Browes, reiterated the position taken by her predecessor. Minister Browes's letter makes two key points in relation to the Commission's jurisdiction:

¹¹ *Outstanding Business*, 20; reprinted in (1994) 1 ICCP 179–80.

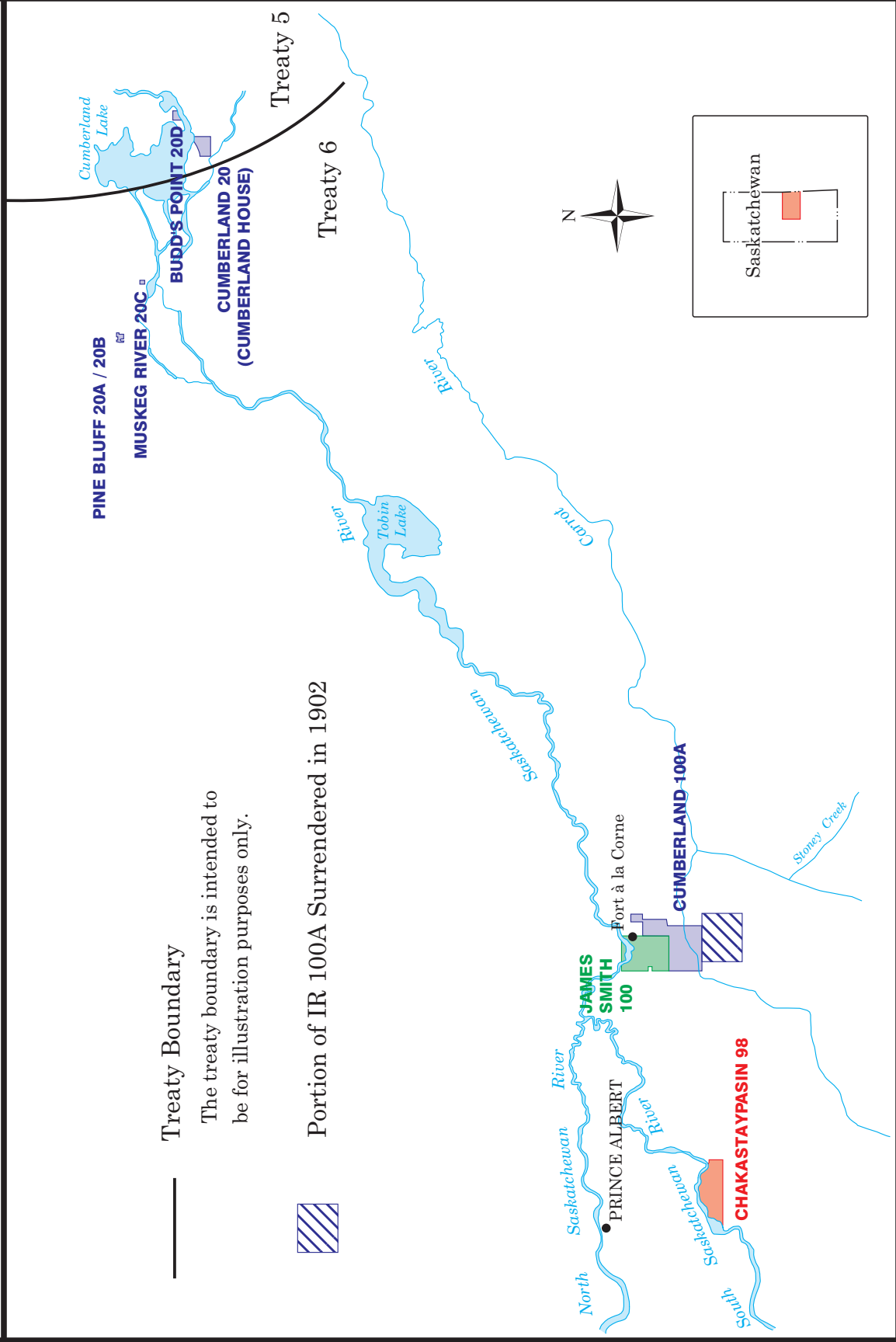
¹² Tom Siddon, Minister of Indian Affairs and Northern Development, to Ovide Mercredi, National Chief, Assembly of First Nations, November 22, 1991, reprinted in (1995) 3 ICCP 244–46. ICC, *Athabasca Denesuline (Fond du Lac, Black Lake, and Hatchet Lake First Nations): Treaty Harvesting Rights Inquiry* (Ottawa, December 1993), reported (1995) 3 ICCP 3 at 15.

(1) I expect to accept the Commission's recommendations where they fall within the Specific Claims Policy; (2) I would welcome the Commission's recommendations on how to proceed in cases where the Commission concluded that the policy had been implemented correctly but the outcome was nevertheless unfair ...¹³

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

Map 1

Claim Area Map



PART II

HISTORICAL BACKGROUND

CLAIMANTS' ADHESIONS TO TREATY 5 AND TREATY 6

Geography and Claimants

As they exist today, two separate communities are affected by claims concerning IR100A in this inquiry. The first is the James Smith Cree Nation, which includes descendants from three separate groups: the James Smith Band at IR 100, the descendants of the Chakastaypasin Band at IR 98, and the descendants of the Cumberland Band at IR 20. The James Smith reserves 100 and 100A are located near the forks of the Saskatchewan River at Fort à la Corne, approximately 60 kilometres east of Prince Albert and within Treaty 6 territory. The Cree name for the area is Neechawechickinis, meaning “where they grew their crops” or “good growing.”¹⁴

The second community is the Cumberland House Cree Nation, who were known as the Cumberland Band when they signed an adhesion to Treaty 5 in 1876. The CHCN's main reserve, IR 20, is located on Cumberland Island in eastern Saskatchewan, approximately 250 kilometres northeast of James Smith. CHCN members refer to themselves as Waskahikanihk ininiwak, meaning “the people of Cumberland House,” whose traditional territory includes an area of approximately 95 kilometres in all directions around Cumberland Island.¹⁵ IR 20 itself is located within Treaty 5 territory.

Cumberland Band Adhesion to Treaty 5, 1876

In September 1875, Treaty 5 was concluded at Beren's River and Norway House by Commissioner Alexander Morris, Lieutenant Governor of the Province of Manitoba and the North-West Territories, and “the Saulteaux and Swampy Cree tribes of Indians” inhabiting an area of 100,000 square miles surrounding Lake Winnipeg in Manitoba.¹⁶ Treaty 5 promised “reserves for farming lands” of

¹⁴ ICC Transcript, November 20, 2001 (ICC Exhibit 18b, p. 21, James Burns).

¹⁵ Affidavit of Joseph Laliberte, October 7, 2002 (ICC, Cumberland House Cree Nation IR 100A Inquiry, Exhibit 12c, p. 3). See also ICC Transcript, November 19, 2001 (ICC, Cumberland House Cree Nation IR 100A Inquiry, Exhibit 12a, p. 48, Marie Deschambault; p. 49, Joseph Laliberte).

¹⁶ *Treaty No. 5 between Her Majesty the Queen and the Saulteaux and Swampy Cree Tribes of Indians at Beren's River and Norway House with Adhesions* (Ottawa: Queen's Printer, 1969), 3–4 (ICC Exhibit 2a, pp. 3–4).

160 acres for each family of five (or 32 acres per person), “or in that proportion for larger or smaller families,” and that these “reserves of land or any interest therein may be sold or otherwise disposed of by Her Majesty’s Government for the use and benefit of the said Indians entitled thereto, with their consent first had and obtained.”¹⁷ Provisions were also made for yearly annuities, as well as farming implements, tools, oxen, and seed to be furnished “for the encouragement of the practice of agriculture among the Indians.”¹⁸

On September 7, 1876, “The Cumberland Band,” represented by Chief John Cochrane and headmen Peter Chapman and Albert Flett, signed an adhesion to Treaty 5 at The Pas.¹⁹ The adhesion defines the “Cumberland Band” as “the Band of Saulteaux and Swampy Cree Indians residing at ... Cumberland Island, Sturgeon River, Angling River, Pine Bluff, Beaver Lake and the Ratty Country.”²⁰ The treaty also provides for a reserve for the “Cumberland Band” at “Cumberland Island,” and, “as the land fit for cultivation there is also limited and insufficient to meet their requirements, that the balance of that reserve shall be at a point between the ‘Pine Bluff’ and ‘Lime Stone Rock,’ on ‘Cumberland Lake.’”²¹

The Hudson’s Bay Company (HBC) trading post known as Cumberland House was also located on Cumberland Island, to the south of Cumberland Lake, and the treaty excluded those lands claimed by the HBC and church missions from the future reserve.²²

¹⁷ *Treaty No. 5 between Her Majesty the Queen and the Saulteaux and Swampy Cree Tribes of Indians at Beren’s River and Norway House with Adhesions* (Ottawa: Queen’s Printer, 1969), 4–5 (ICC Exhibit 2a, pp. 4–5).

¹⁸ *Treaty No. 5 between Her Majesty the Queen and the Saulteaux and Swampy Cree Tribes of Indians at Beren’s River and Norway House with Adhesions* (Ottawa: Queen’s Printer, 1969), 6 (ICC Exhibit 2a, p. 6).

¹⁹ *Treaty No. 5 between Her Majesty the Queen and the Saulteaux and Swampy Cree Tribes of Indians at Beren’s River and Norway House with Adhesions* (Ottawa: Queen’s Printer, 1969), 10–11 (ICC Exhibit 2a, pp. 10–11).

²⁰ *Treaty No. 5 between Her Majesty the Queen and the Saulteaux and Swampy Cree Tribes of Indians at Beren’s River and Norway House with Adhesions* (Ottawa: Queen’s Printer, 1969), 10 (ICC Exhibit 2a, p. 10).

²¹ *Treaty No. 5 between Her Majesty the Queen and the Saulteaux and Swampy Cree Tribes of Indians at Beren’s River and Norway House with Adhesions* (Ottawa: Queen’s Printer, 1969), 10 (ICC Exhibit 2a, p. 10).

²² *Treaty No. 5 between Her Majesty the Queen and the Saulteaux and Swampy Cree Tribes of Indians at Beren’s River and Norway House with Adhesions* (Ottawa: Queen’s Printer, 1969), 10 (ICC Exhibit 2a, p. 10).

James Smith Band and the Signing of Treaty 6, 1876

On August 23 and 28, 1876, the Government of Canada, represented by Treaty Commissioner Alexander Morris, signed Treaty 6 with “the Plain and Wood Cree and the other Tribes of Indians” living in what are now the central portions of Saskatchewan and Alberta.²³ Chief James Smith and four councillors – Bernard Constant, Henry Smith, Ma-twa-ahs-tin-oo-we-gin (later known as Chekoosoo),²⁴ and Jacob McLean – signed the treaty on behalf of their Band.²⁵ All were appointed to these positions for “life or resignation.”²⁶

Treaty 6 provided for reserves of “one square mile [640 acres] for each family of five, or in that proportion for larger or smaller families.”²⁷ The treaty also promised yearly annuities, as well as farming implements, tools, oxen, and seed to be furnished “for the encouragement of the practice of agriculture among the Indians.” These are the same promises made in Treaty 5, although Treaty 6 provided for a greater range and quantity of these items.²⁸ In addition, Treaty 6 bands were promised a medicine chest, assistance during “pestilence” or “famine,” and provisions to help those making the transition to agriculture.²⁹

²³ *Treaty No. 6 between Her Majesty the Queen and the Plain and Wood Cree Indians and Other Tribes of Indians at Fort Carlton, Fort Pitt and Battle River with Adhesions* (Ottawa: Queen’s Printer, 1964), 1–2 (ICC Exhibit 2b, pp. 1–2).

²⁴ Treaty annuity payroll, James Smith Band, 1889, no file reference available (ICC, James Smith Cree Nation IR 100 TLE Inquiry, Exhibit 3b, p. 1113). See ticket no. 4.

²⁵ *Treaty No. 6 between Her Majesty the Queen and the Plain and Wood Cree Indians and Other Tribes of Indians at Fort Carlton, Fort Pitt and Battle River with Adhesions* (Ottawa: Queen’s Printer, 1964), 5, 7 (ICC Exhibit 2b, pp. 5, 7).

²⁶ R.S. McKenzie, Indian Agent, Duck Lake Agency, “Statement of Chiefs and Councillors of the Bands of Indians of the Duck Lake Agency,” July 28, 1897, Library and Archives Canada (LAC), RG 10, vol. 3940, file 121698-9 (ICC Exhibit 1, p. 489).

²⁷ *Treaty No. 6 between Her Majesty the Queen and the Plain and Wood Cree Indians and Other Tribes of Indians at Fort Carlton, Fort Pitt and Battle River with Adhesions* (Ottawa: Queen’s Printer, 1964), 3 (ICC Exhibit 2b, p. 3).

²⁸ *Treaty No. 6 between Her Majesty the Queen and the Plain and Wood Cree Indians and Other Tribes of Indians at Fort Carlton, Fort Pitt and Battle River with Adhesions* (Ottawa: Queen’s Printer, 1964), 3–4 (ICC Exhibit 2b, pp. 3–4). See also *Treaty No. 5 between Her Majesty the Queen and the Saulteaux and Swampy Cree Tribes of Indians at Beren’s River and Norway House with Adhesions* (Ottawa: Queen’s Printer, 1969), 6 (ICC Exhibit 2a, p. 6).

²⁹ *Treaty No. 6 between Her Majesty the Queen and the Plain and Wood Cree Indians and Other Tribes of Indians at Fort Carlton, Fort Pitt and Battle River with Adhesions* (Ottawa: Queen’s Printer, 1964), 4 (ICC Exhibit 2b, p. 4).

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

Cumberland Band Requests Reserve at Fort à la Corne

In 1878, two years after its adhesion to Treaty 5, E. McColl, the Inspector of Indian Agencies for the Manitoba Superintendency, reported that “the Cumberland Band request a part of their Reserve at an island 40 miles north where good land is available and where a portion of the Band lives.”³⁰ An 1881 letter from McColl suggests that “an additional reserve” was granted at Pine Island Lake in response to this request.³¹ However, IR 20 for the Cumberland Band at Cumberland Lake (also known as Pine Island Lake) was not surveyed until 1882.

During the winter of 1879–80, “head chief” John Cochrane died. In September 1880, former councillor Albert Flett was elected to be the new Chief for the Cumberland Band, and councillor Peter Chapman resigned his position.³²

Beginning in 1880, there were a number of requests from the Cumberland Band to be allowed to move up the Saskatchewan River to a point near Fort à la Corne. In September 1880, Angus MacKay, Indian Agent for Treaty 5, reported that “about one half of the band” requested permission “to be allowed a Reserve and move from the Cumberland Band to a point between Fort la Corne and the Forks of the South and North branches of the Saskatchewan.”³³ Their desire “to

³⁰ Extract from report of Inspector McColl, December 31, 1878, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 1).

³¹ E. McColl, Inspector of Indian Agencies, to the Superintendent General of Indian Affairs (SGIA), March 4, 1881, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 14).

³² A. MacKay, Indian Agent, Treaty 5, to J.F. Graham, Acting Indian Superintendent, November 26, 1880, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1880*, 321 (ICC Exhibit 1, p. 8).

³³ A. MacKay, Indian Agent, to James F. Graham, Acting Indian Superintendent, September 21, 1880, LAC, RG 10, vol. 3555, file 10 (ICC Exhibit 1, pp. 3–4).

move from Cumberland” seems to have been motivated by flooding and the failure of the fisheries and hunting grounds in the area, as well as the general unsuitability of the land for agriculture.³⁴

These conditions caused great hardship between 1879 and 1882 as widespread hunger, destitution, and sickness were reported in the entire Treaty 5 area.³⁵ Inspector McColl wrote that, during the winter of 1880, the Agent knew of extreme hunger and destitution prevailing at Cumberland, but failed to provide any relief for three months.³⁶ The Agent later reported that, due to the lack of food and proper medicines, “the hooping cough carried off a great number of children at The Pas and Cumberland.”³⁷

As the resources on which the people traditionally depended were rapidly failing, Agent MacKay reported in November 1880 that “some of the Indians living in the vicinity begin to feel somewhat anxious, and are more inclined than ever to farm; but they also find the work hard and unsatisfactory to make even a small garden in this part of the country. On this account some of them desire to move further up the river to a place more suited for agricultural purposes.”³⁸ The work was made more difficult by the lack of appropriate farming implements. Inspector McColl reported in December 1881 that the garden hoes provided by the department had been refused by the Cumberland Band, as they considered them “unsuitable for the cultivation of that rocky and wooded

³⁴ A. MacKay, Indian Agent, to James F. Graham, Acting Indian Superintendent, September 21, 1880, LAC, RG 10, vol. 3555, file 10 (ICC Exhibit 1, p. 4).

³⁵ A. MacKay, Indian Agent, Treaty No. 5, to James F. Graham, Acting Indian Superintendent, November 26, 1880, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1880*, 323 (ICC Exhibit 1, p. 10); A. MacKay, Indian Agent, Treaty No. 5, to SGIA, September 6, 1881, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1881*, 72 (ICC Exhibit 1, p. 20); E. McColl, Inspector of Indian Agencies, to SGIA, December 10, 1881, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1881*, 103–4 (ICC Exhibit 1a, pp. 2–3); James F. Graham, Indian Superintendent, to SGIA, December 31, 1881, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1881*, 59 (ICC Exhibit 1a, p. 5); E. McColl to SGIA, November 28, 1882, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1882*, 146–47 (ICC Exhibit 1, pp. 62–63).

³⁶ E. McColl, Inspector of Indian Agencies, to SGIA, December 10, 1881, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1881*, 104 (ICC Exhibit 1a, p. 3).

³⁷ A. MacKay, Indian Agent, Treaty No. 5, to SGIA, September 30, 1882, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1882*, 43 (ICC Exhibit 1, p. 53).

³⁸ A. MacKay, Indian Agent, Treaty No. 5, to SGIA, November 26, 1880, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1880*, 323 (ICC Exhibit 1, p. 10).

country.” Grub hoes were sent instead, as requested by the Band, but were not distributed by the Indian Agent that year.³⁹

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

a very small portion of this locality is fit for farming purposes ... Were a survey made here and the Indians of this Band allowed 160 acres to each family of five, it would be a difficult matter to find that quantity of land above water in that vicinity and the little there is above water is so very rocky as to render it almost unfit for growing anything on, without very hard work and expense.⁴⁰

Inspector McColl concurred, stating that “it is impossible to better their condition in that District, as no land there is well adapted for farming.”⁴¹

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

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

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

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

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

³⁹ E. McColl, Inspector of Indian Agencies, to SGIA, December 10, 1881, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1881*, 103–4 (ICC Exhibit 1a, pp. 2–3).

⁴⁰ A. MacKay, Indian Agent, to James F. Graham, Acting Indian Superintendent, September 21, 1880, LAC, RG 10, vol. 3555, file 10 (ICC Exhibit 1, p. 4).

⁴¹ E. McColl, Inspector of Indian Agencies, to SGIA, March 4, 1881, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 14).

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

At the first, when you came to buy my land, you said ‘Look for good land. I will give it to you.’ I have found it now.”⁴² [Translation]

Inspector McColl forwarded Chief Flett’s letter to the department in March, explaining in his covering letter that “[t]he Chief brought this matter to my notice last Summer, but as I had no personal knowledge of the section of country where he desired his reserve, I made no allusion to it in my report.”⁴³

In March 1881, an inquiry from the Department of Indian Affairs was made to the Department of the Interior, regarding “whether there is any objection to the change as applied for being made.” The same letter noted that no reserve had yet been surveyed for the Cumberland Band in Treaty 5 territory.⁴⁴ Surveyor General Lindsay Russell replied that he was “unaware of any objection” to the change, “so long as land is selected that is not specially valuable as Timber Land.”⁴⁵ This information was communicated to Superintendent James F. Graham in April 1881, but it appears that no further action was taken at this time.⁴⁶

Concurrent with the Cumberland Band’s requests for permission to move up the Saskatchewan River to Fort à la Corne, some members of The Pas Band were making similar requests. They apparently suffered from many of the same hardships and declining resources, and, in at least a few instances, their requests to move were reported together. Agent MacKay reported in September 1881:

⁴² Chief Albert Flett, to E. McColl, c. February 1881, LAC, RG10, vol. 3736, file 27580 (ICC Exhibit 1, pp.11–12). Letter with English translation.

⁴³ E. McColl, Inspector of Indian Agencies, to SGIA, March 4, 1881, LAC, RG10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 13–14).

⁴⁴ [Lawrence Vankoughnet, Deputy Superintendent General of Indian Affairs (DSGIA)], to J.S. Dennis, Deputy Minister of the Interior, March 29, 1881, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 15).

⁴⁵ Lindsay Russell, Surveyor General, Department of the Interior, to L. Vankoughnet, DSGIA, April 9, 1881, LAC, RG 15, vol. 311, file 68309 (ICC Exhibit 1, pp. 16–17).

⁴⁶ [Lawrence Vankoughnet, DSGIA], to James F. Graham, Indian Superintendent, April 19, 1881, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 18–19).

There are a number of the Cumberland and Pas Bands who are anxious to leave their reserves and be allowed to go up the Saskatchewan river, to some place in the vicinity of Fort a la Corne, where the land is better adapted for farming purposes than where they at present live. ... they assert that, unless the Department allows them to go to better farming lands, they will be obliged to look to the government for food in the future, as it is impossible to make a living by farming where they are at present, on account of the low, swampy and stony nature of the country.⁴⁷

He also reported that neither band wanted its reserve surveyed in the areas promised by the treaty, since many wanted to leave those places.⁴⁸

The same month, Agent MacKay reported that “Henry Ballandine together with about twenty other families from Cumberland” had requested permission to remove to “better farming lands” somewhere in the vicinity of Fort à la Corne, since it was impossible to make a living in farming “at Cumberland.” A similar request from John Constant “and a number of other families from the Pas” is noted in the same letter.⁴⁹

Lawrence Vankoughnet, the Deputy Superintendent General of Indian Affairs (DSGIA), responded with serious misgivings about the movement of Indians from one treaty area to another. He explained: “I fear that serious complications will result if the same is countenanced as the stipulations of the different Treaties vary considerably.” For this reason, he denied the requests of Henry Ballandine and John Constant to move to Fort à la Corne.⁵⁰

Despite Vankoughnet’s opposition, John Constant persisted in his request for farming land at Fort à la Corne. He wrote on September 6, 1882, that he had family already living in the area, and

⁴⁷ A. MacKay, Indian Agent, Treaty No. 5, to SGIA, September 6, 1881, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1881*, 73 (ICC Exhibit 1, p. 21).

⁴⁸ A. MacKay, Indian Agent, Treaty No. 5, to SGIA, September 6, 1881, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1881*, 74 (ICC Exhibit 1, p. 22).

⁴⁹ A. MacKay, Indian Agent, to J.F. Graham, Indian Superintendent, September 16, 1881, LAC, RG 10, vol. 3555, file 10 (ICC Exhibit 1, pp. 24–26).

⁵⁰ L. Vankoughnet, DSGIA, to James F. Graham, Indian Superintendent, April 15, 1882, LAC, RG 10, vol. 3555, file 10 (ICC Exhibit 1, pp. 35–37, 40).

explained that he wanted to move so “that I and my family may live by farming.”⁵¹ Agent MacKay reported the Cumberland Band’s renewed requests for permission to move that same month.⁵²

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

Their former resources of subsistence are becoming so exhausted that frequently they are famishing with hunger. They represent that it is impossible for them to obtain a livelihood there any longer, and consequently urgently petition the Department to grant them a suitable reserve elsewhere. They are desirous of going to Carrot River near Fort la Corne. If their request is not granted, they say the Government must supply them with food, as long as the sun courses around the world, for they cannot endure to listen to their children crying with hunger.⁵³

In November 1882, a department official in Winnipeg communicated Indian Commissioner Edgar Dewdney’s objection to a “proposed transfer” from one reserve to another within Treaty 5, saying that “it would be impossible to keep trace of these Indians and would complicate the Pay Sheets.” Furthermore, he was concerned that allowing the transfer of Indians from one reserve to another would set a precedent, and “applications would come from all quarters for similar changes if these were allowed.”⁵⁴

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

⁵¹ John Constant to unidentified recipient, September 6, 1882, LAC, RG 10, vol. 3555, file 10 (ICC Exhibit 1, p. 52).

⁵² A. MacKay, Indian Agent, Treaty No. 5, to SGIA, September 30, 1882, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1882*, 43 (ICC Exhibit 1, p. 53).

⁵³ E. McColl, Inspector of Indian Agencies, Manitoba Superintendency, to unidentified recipient, November 28, 1882, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1882*, 146–47 (ICC Exhibit 1, pp. 62–63).

⁵⁴ Indian Office to the Minister, November 24, 1882, LAC, RG 10, vol. 3555, file 10 (ICC Exhibit 1, p. 60).

land at Birch River within Treaty 5 for the Cumberland Band, and McColl was instructed to bring the matter before the band after examining the locality.⁵⁵

Survey of IR 20 at Cumberland Lake in Treaty 5

Concurrent with their requests to be allowed to move to Fort à la Corne, the Cumberland Band expressed its opposition to having a reserve surveyed at Cumberland Lake as promised by treaty. In September 1881, Agent MacKay reported that the Cumberland Band did not want its reserve surveyed in the locations promised by treaty, since many wanted to leave “that place.”⁵⁶ Superintendent James Graham made a similar report that year, stating that several reserves had not been surveyed in Treaty 5, “owing to a number of the Indians of the Pas, Cumberland and Che-ma-wah-win Bands being desirous to have their reserves in another locality.”⁵⁷

Although Superintendent Graham was apparently aware of the Cumberland Band’s wishes, he instructed Dominion Land Surveyor (DLS) W.A. Austin on July 6, 1882, to survey a reserve for the Cumberland Band at “Cumberland.”⁵⁸ On August 9, 1882, Austin arrived at Cumberland House and met with the Chief and two councillors the same day, where he was told that the Chief

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

... neither he or his people wanted to remain here, all trusted in the goodness of their Grand Mother (the Queen) to fulfill all her promises i.e. to procure good land for them so that they might be able to till it and not starve.⁵⁹

⁵⁵ [Lawrence Vankoughnet, DSGIA], to E. McColl, Inspector of Indian Agencies, May 15, 1883, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 90–91).

⁵⁶ A. MacKay, Indian Agent, Treaty No. 5, to SGIA, September 6, 1881, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1881*, 74 (ICC Exhibit 1, p. 22). MacKay’s reference to “these places” is ambiguous, since, in the same report, he refers to the “Cumberland district” and the “vicinity of Cumberland,” and to The Pas and Cumberland band members wanting to “leave their reserves.”

⁵⁷ James F. Graham, Indian Superintendent, to SGIA, December 31, 1881, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1881*, 60 (ICC Exhibit 1a, p. 6).

⁵⁸ W.A. Austin, Dominion Land Surveyor (DLS), to SGIA, April 1883, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1883*, 159 (ICC Exhibit 1, p. 70).

⁵⁹ W.A. Austin, DLS, to SGIA, April 1883, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1883*, 160 (ICC Exhibit 1, p. 71).

Nevertheless, Austin inspected Cumberland Island and, finding “some unoccupied land that might be given to Indians,” began the survey of it the next day, based on his understanding that “there was a number of the Band who did not desire to leave the Cumberland Reserve.” He also visited an island nearby where the Chief and a number of band members lived and named it Chief’s Island.⁶⁰ Both islands were situated on what he called “Cumberland or Pine Island Lake.”⁶¹

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

they had had a meeting amongst themselves and that they had come to the conclusion that they would have no Reserve laid out in this section. He then asked me if he could have 50 miles square laid out for himself and Band. ... he ended his speech by saying that he and his people would have no survey of a Reserve in this section of the country, and he informed me that for three years they had a promise of a Reserve up the Saskatchewan River, near Fort a la Corne.⁶²

When Austin objected, saying that the government wished to give them “the best land in their own Treaty,” the Chief answered: “Will the Government support us here? The fish have gone and the fowl are scarce, we want some place where we can have land to till, where we may be able to feed our cattle.”⁶³

Austin completed his work on Cumberland Island, noting that 289.36 acres were available for a reserve there. He did not, however, set aside any reserve at that time, “considering the Indian’s opposition to the survey of their Reserve.”⁶⁴

⁶⁰ W. A. Austin, DLS, to SGIA, April 1883, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1883*, 160 (ICC Exhibit 1, p. 71).

⁶¹ Natural Resources Canada, Field book 132 CLSR, W.A. Austin, “Field Notes of Indian Reserves at Cumberland, Birch River, The Pas, Bear Island Lake, Chimawawin,” 1882 (ICC, Cumberland House Cree Nation IR 100A Inquiry, Exhibit 10c, p. 6).

⁶² W.A. Austin, DLS, to SGIA, April 1883, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1883*, 160–61 (ICC Exhibit 1, pp. 71–72).

⁶³ W.A. Austin, DLS, to SGIA, April 1883, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1883*, 161 (ICC Exhibit 1, p. 72).

⁶⁴ W.A. Austin, DLS, to SGIA, April 1883, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1883*, 161 (ICC Exhibit 1, p. 72).

Soon after leaving Cumberland House, Austin met with Indian Agent Angus MacKay, who informed him that “he would arrange matters with the Band, and that the survey would have to be made.”⁶⁵ In his annual report dated September 30, 1882, Agent MacKay reported that during his visit to Cumberland to make annuity payments, “I found out that the band had objected to the survey of their reserve by Mr. Austin, who had been sent to this place for that purpose. On my talking over the matter with them, they changed their mind and expressed a desire to have their reserves surveyed.”⁶⁶ Austin returned to Cumberland and began the survey of a reserve on Chief’s Island on October 9, 1882, setting aside 1,855.57 acres there, as well as 27.60 acres on two hay islands.⁶⁷ He described the soil as being “generally No. 2” class and hard to work, although there were small patches of “class No. 1” soil and some good gardens. The reserve contained good timber and was surrounded by marshes.⁶⁸ With an additional 289.36 acres surveyed on Cumberland Island, the total set aside for the Cumberland Band at that time was 2,172.53 acres.⁶⁹

In his report, Austin calculated that the Cumberland Band had an outstanding treaty land entitlement (TLE) of 8,867.47 acres, based on the Treaty 5 provisions of 160 acres per family of five (or 32 acres per person). With a population of 345, the Cumberland Band was entitled to 11,040.00 acres under this formula.⁷⁰

⁶⁵ W.A. Austin, DLS, to SGIA, April 1883, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1883*, 161 (ICC Exhibit 1, p. 72).

⁶⁶ A. MacKay, Indian Agent, Treaty No. 5, to SGIA, September 30, 1882, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1882*, 47 (ICC Exhibit 1, p. 54).

⁶⁷ W.A. Austin, DLS, to SGIA, April 1883, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1883*, 163 (ICC Exhibit 1, p. 74).

⁶⁸ W.A. Austin, DLS, to SGIA, April 1883, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1883*, 163–64 (ICC Exhibit 1, pp. 74–75).

⁶⁹ W.A. Austin, DLS, to SGIA, April 1883, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1883*, 167 (ICC Exhibit 1, p. 78); Natural Resources Canada, Field book 132 CLSR, W.A. Austin, “Field Notes of Indian Reserves at Cumberland, Birch River, The Pas, Bear Island Lake, Chimawawin,” 1882 (ICC, Cumberland House Cree Nation IR 100A Inquiry, Exhibit 10c, p. 6).

⁷⁰ W.A. Austin, DLS, to SGIA, April 1883, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1883*, 167 (ICC Exhibit 1, p. 78); Natural Resources Canada, Field book 132 CLSR, W.A. Austin, “Field Notes of Indian Reserves at Cumberland, Birch River, The Pas, Bear Island Lake, Chimawawin,” 1882 (ICC, Cumberland House Cree Nation IR 100A Inquiry, Exhibit 10c, p. 6).

Austin reported that the Cumberland Band also wished to have a survey of seven islands “where portions of the Band are already located,” about 25 miles from Cumberland House, as well as locations at “three different Sturgeon Rivers,” one of which was 50 miles away. All these locations were outside the Treaty 5 area.⁷¹ He commented:

I cannot see any other way of supplying them with land. The people are already located at these places, and there is not a sufficient quantity of land cultivatable near Cumberland for nearly one half of the band. Apart from Chief’s Island, already surveyed, one or two small islands and a piece of the shore is all that I know that can be used.⁷²

The “Plan of Part of Cumberland Indian Reserve Shewing Chief’s Island and part of Cumberland Island,” dated May 1883, calculates the area of IR 20 as 6.29 square miles, or 4,025.6 acres.⁷³ No additional lands were surveyed for the Cumberland Band at this time.⁷⁴

Following the survey of IR 20 at Cumberland Lake, there were repeated references to its poor quality of land. In reference to the recent survey, Agent MacKay commented that the reserve was “altogether a poor place for either farming, hunting or fishing.”⁷⁵ In the Department of Indian Affairs Annual Report for 1884, Prime Minister and Superintendent General of Indian Affairs John A. Macdonald referred to the reserve “at Cumberland” as a “miserable tract of sterile land.”⁷⁶

⁷¹ W.A. Austin, DLS, to SGIA, April 1883, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1883*, 167 (ICC Exhibit 1, p. 78).

⁷² W.A. Austin, DLS, to SGIA, April 1883, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1883*, 168 (ICC Exhibit 1, p. 79).

⁷³ Natural Resources Canada, Plan 237 CLSR, W.A. Austin, DLS, “Plan of Part of Cumberland Indian Reserve Shewing Chief’s Island and part of Cumberland Island,” March 1883 (ICC, Cumberland House Cree Nation IR 100A Inquiry, Exhibit 10d).

⁷⁴ While not an issue in this inquiry, Austin’s survey report and the final survey plan reflect a discrepancy in the area of IR 20. There is no record of Austin returning to survey additional land at IR 20.

⁷⁵ A. MacKay, Indian Agent, Beren’s River Agency, to SGIA, September 13, 1884, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1884*, 77 (ICC Exhibit 1a, p. 24).

⁷⁶ John A. Macdonald, SGIA, to the Governor General, January 1, 1885, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1884*, xli (ICC Exhibit 1a, p. 30).

CONDITIONS AT FORT À LA CORNE, 1883–92**Creation of the Pas Agency in Treaty 5, 1883**

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

In previous winters the Indians at distant points in the agency have suffered greatly from sickness and from actual starvation without the Agent having been aware of it; and owing to the distances, even if he had known of the distress, he could not have had supplies transported soon enough to meet many of the cases.⁷⁷

The division of the Agency was expected to solve this problem, since the Agent would be closer to the bands under his supervision.⁷⁸ Joseph Reader, a minister residing at The Pas, took up his duties as Agent for the newly created Pas Agency in February 1884.⁷⁹

Department Permits Move to Fort à la Corne, 1883

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

An objection existed with the change asked for from the fact that Carrot River is within the territory embraced in Treaty No. 6, in which the Indians of Cumberland are not interested and it was feared that complications might arise owing to Indians connected with one Treaty being located upon territory within another Treaty. Such strong representations were however made to the undersigned upon his recent visit

⁷⁷ John A. Macdonald, SGIA, to the Governor General, January 1, 1884, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1883*, xlvii (ICC Exhibit 1, p. 111).

⁷⁸ John A. Macdonald, SGIA, to the Governor General, January 1, 1884, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1883*, xlvii (ICC Exhibit 1, p. 111).

⁷⁹ Joseph Reader, Indian Agent, to SGIA, July 14, 1884, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1884*, 71 (ICC Exhibit 1a, p. 13).

to the North-West by the Cumberland Indians at the point referred to, and owing to statements made to him by other residents in that section of country as to the utter uselessness for agricultural purposes of the land in the Reserve at Cumberland, the undersigned was led to reconsider the application made by the Cumberland Indians, and in view of the strong desire expressed by them to settle in the locality of the Carrot River for the purpose of cultivating the land and supporting themselves and families, he considers that the point of objection referred to might be waived in this instance, and that the distinction between these Indians and those of Treaty 6 would be probably maintained sufficiently were this Band, if allowed to remove to Carrot River and take up land there, were always designated and known as the “Fort a la Corne Band of Treaty No. 5.”⁸⁰

A marginal notation on the letter instructed Vankoughnet to “communicate with Department of Interior as to the land sought for.”⁸¹

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

Against this background of repeated requests for a reserve at Fort à la Corne, a migration of some Cumberland and The Pas band members to that place had already begun. The first instance is recorded on the August 1882 payroll for the Cumberland Band at Cumberland House, which shows that Charles and Alexander Fiddler had “left reserve and gone to La Corne – Treaty No. 6.”⁸² In February 1883, Agent MacKay reported that, “last summer, I noticed that several Indians had left their Reserves, and on enquiring ascertained that they had left and were receiving payment in Treaties 4 and 6.”⁸³

In reference to MacKay’s report that Treaty 5 Indians were leaving their reserves, Superintendent Graham advised the SGIA that they “should not be paid in any other Treaty” because

⁸⁰ L. Vankoughnet, DSGIA, to John A. Macdonald, SGIA, November 23, 1883, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 99–100).

⁸¹ Marginal notation dated December 1, 1883, written by John A. Macdonald to Lawrence Vankoughnet on letter from L. Vankoughnet, DSGIA, to John A. Macdonald, SGIA, November 23, 1883, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 98).

⁸² Treaty annuity payroll, “Cumberland Band paid at Cumberland Reserve,” 1882, no file reference available (ICC, Cumberland House Cree Nation IR 100A Inquiry, Exhibit 8, p. 26).

⁸³ A. MacKay, Indian Agent, to James F. Graham, Indian Superintendent, February 6, 1883, LAC, RG 10, vol. 3634, file 6441 (ICC Exhibit 1, p. 67).

they had left their reserves without permission.⁸⁴ A draft letter to Indian Commissioner Edgar Dewdney requests that he “instruct the Agents of the Treaties to which these Indians have removed to inform the Indians that they must return to Treaty No. 5, and that until they do so they cannot be paid.”⁸⁵

The Cumberland Band’s payroll for 1883 shows nine families absent; they were later paid at Fort à la Corne in 1885 on the James Smith Band’s payroll, and included the Britains, Fiddlers, and Peter Chapman. None of the families absent from Treaty 5 in 1883 were paid on a Treaty 6 payroll that year, as advised by Graham, although three of the families received arrears for 1883 when they were first paid at James Smith in 1885.⁸⁶

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

the same privileges as any other British subject, to live on an arable land there and raise food out of the ground. ... [and] that your Government will pity them and allow them to join their brethren, Mr. John Smith and Mr. James Smith’s Reserves, where there is land fit for cultivation. And to grant them means to break up the land.⁸⁷

On November 30, 1883, Inspector McColl reported that the Chief of the Cumberland Band, “on behalf of thirty families,” asked for permission to move to Fort à la Corne, “where nine of their number had already settled.”⁸⁸ Chief Albert Flett repeated the request in a letter to Inspector McColl

⁸⁴ James F. Graham, Indian Superintendent, to SGIA, April 17, 1883, LAC, RG 10, vol. 3634, file 6441 (ICC Exhibit 1, p. 81).

⁸⁵ Unidentified author to Edgar Dewdney, Indian Commissioner, May 8, 1883, LAC, RG 10, vol. 3634, file 6441, (ICC Exhibit 1, p. 89).

⁸⁶ Treaty annuity payroll, “Cumberland Band paid at Cumberland,” 1883, no file reference available (ICC, Cumberland House Cree Nation IR 100A Inquiry, Exhibit 8, pp. 29–31). Treaty annuity payroll, James Smith Band, 1885, LAC, RG 10, vol. 9418 (ICC Exhibit 1, pp. 175–76).

⁸⁷ J. Settee, St James, to Inspector Wadsworth, July 17, 1883, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 95–96).

⁸⁸ E. McColl, Inspector of Indian Agencies, Manitoba Superintendency, to SGIA, November 30, 1883, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1883*, 141 (ICC Exhibit 1, p. 102).

in January 1884, following the department's decision to allow the "Cumberland Indians" to "remove to Carrot River and take up land there."⁸⁹ He wrote:

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

Not having seen the members of any band residing at distant points, I am unable to say what their intentions are, but I have reason to believe that they are satisfied with their present position.⁹⁰

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

Five months later, in June 1884, Indian Agent Reader reported the requests of some Cumberland band members for land at various points within the Pas Agency. Councillor Philip Canada and "about 10 families who for some time have farmed at Pine Island Bluff some twenty miles northwest of Cumberland House" asked for a reserve in that location.⁹¹ Henry Budd also asked that he be allowed "to settle on a piece of land good for farming between Cumberland and Birch

⁸⁹ L. Vankoughnet, DSGIA, to John A. Macdonald, SGIA, November 23, 1883, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 99–100).

⁹⁰ Chief Albert Flett, Cumberland Band, to E. McColl, Indian Superintendent, January 14, 1884, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 113).

⁹¹ J. Reader, Indian Agent, to E. McColl, Inspector of Indian Agencies, June 12, 1884, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 131). Treaty annuity payroll, "Cumberland Band paid at Cumberland," 1884, no file reference available (ICC, Cumberland House Cree Nation IR 100A Inquiry, Exhibit 8, p. 33).

River Reserves.”⁹² Reader specified that these requests were distinct from the 30 families who want to move to Fort à la Corne.⁹³

That same month, Indian Agent J.A. Macrae of the Carlton Agency reported that “several families from Treaty No. 5” had apparently already joined James Smith’s Band at Fort à la Corne. John Constant of The Pas Band had also moved to Fort à la Corne by this time, and Macrae communicated his request for a reserve there “for himself and about 30 families.”⁹⁴ A similar request from the Cumberland Band was reported in July 1884 by Agent Reader.⁹⁵ Agent Macrae commented: “Whilst Constant mentions 30 families as the numbers that he expects to leave Cumberland and the Pas this summer, many more would probably wish to follow in their footsteps.”⁹⁶ It was also around this time in 1884 that Dominion Land Surveyor A.W. Ponton completed the survey of IR 100 for the James Smith Band on the Saskatchewan River near Fort à la Corne.⁹⁷

In September 1884, Agent MacKay confirmed that “several families” had already moved to Fort à la Corne “during the last three years.”⁹⁸ The 1884 payroll for the Cumberland Band paid in Treaty 5 shows that five families who had been at Fort à la Corne the previous year returned to IR 20 to be paid, and received arrears for 1883. The other four families did not return.⁹⁹ In September 1885, Indian Agent J.M. Rae reported that 20 families “from Cumberland” were residing near James

⁹² J. Reader, Indian Agent, to E. McColl, Inspector of Indian Agencies, June 12, 1884, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 131).

⁹³ J. Reader, Indian Agent, to E. McColl, Inspector of Indian Agencies, June 12, 1884, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 131).

⁹⁴ J. Ansdell Macrae, Indian Agent, Carlton Agency, to unidentified recipient, June 11, 1884, LAC, RG 10, vol. 3576, file 353 (ICC Exhibit 1a, pp. 11–12).

⁹⁵ Joseph Reader, Indian Agent, to SGIA, July 14, 1884, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1884*, 72 (ICC Exhibit 1a, p. 14).

⁹⁶ J. Ansdell Macrae, Indian Agent, Carlton Agency, to unidentified recipient, June 11, 1884, LAC, RG 10, vol. 3576, file 353 (ICC Exhibit 1a, p. 12).

⁹⁷ Order in Council PC 1151, May 17, 1889, p. 52 (ICC Exhibit 4a).

⁹⁸ A. MacKay, Indian Agent, Beren’s River Agency, to SGIA, September 13, 1884, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1884*, 77 (ICC Exhibit 1a, p. 24).

⁹⁹ Treaty annuity payroll, “Cumberland Band paid at Cumberland,” 1884, no file reference available (ICC, Cumberland House Cree Nation IR100A Inquiry, Exhibit 8, pp. 33–36).

Smith and had “spent last year’s treaty money” breaking 60 acres and making improvements.¹⁰⁰ A sketch accompanying his report shows the settlement of Cumberland people east of the James Smith IR 100.¹⁰¹

In November 1885, 14 families from the Cumberland Band and one family from The Pas Band in Treaty 5 were paid on the James Smith Band’s Treaty 6 payroll. The families all appear grouped at the end, and 11 have the notation “Cumberland” entered beside their names. Most were paid under their original Treaty 5 ticket numbers, although a few are not designated with any ticket number.¹⁰²

During the fall of 1885, the Cumberland Band reportedly had a successful potato crop and “good fall fishing,” and therefore experienced fewer cases of destitution.¹⁰³ Only a few months later, however, Inspector L.W. Herchmer reported that 17 families from Cumberland were residing near James Smith, and he expected 30 additional families “next summer, as both fish & [musk]rats have completely failed below.”¹⁰⁴ The annual report for 1886 reports only 55.5 acres of cultivated land in the entire Pas Agency.¹⁰⁵

Setting Aside Land for IR 100A, 1883–85

The differences between Treaties 5 and 6 have already been noted, especially the significant disparity between the two regarding the amount of land entitlement. These differences seem to have been a large factor in the department’s resistance to allowing the Cumberland people to move to Fort

¹⁰⁰ J.M. Rae, Indian Agent, to the Indian Commissioner, September 8, 1885, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 168–69).

¹⁰¹ J.M. Rae, Indian Agent, to the Indian Commissioner, September 8, 1885, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 170).

¹⁰² Treaty annuity payroll, James Smith Band, 1885, LAC, RG 10, vol. 9418 (ICC Exhibit 1, pp. 173–78).

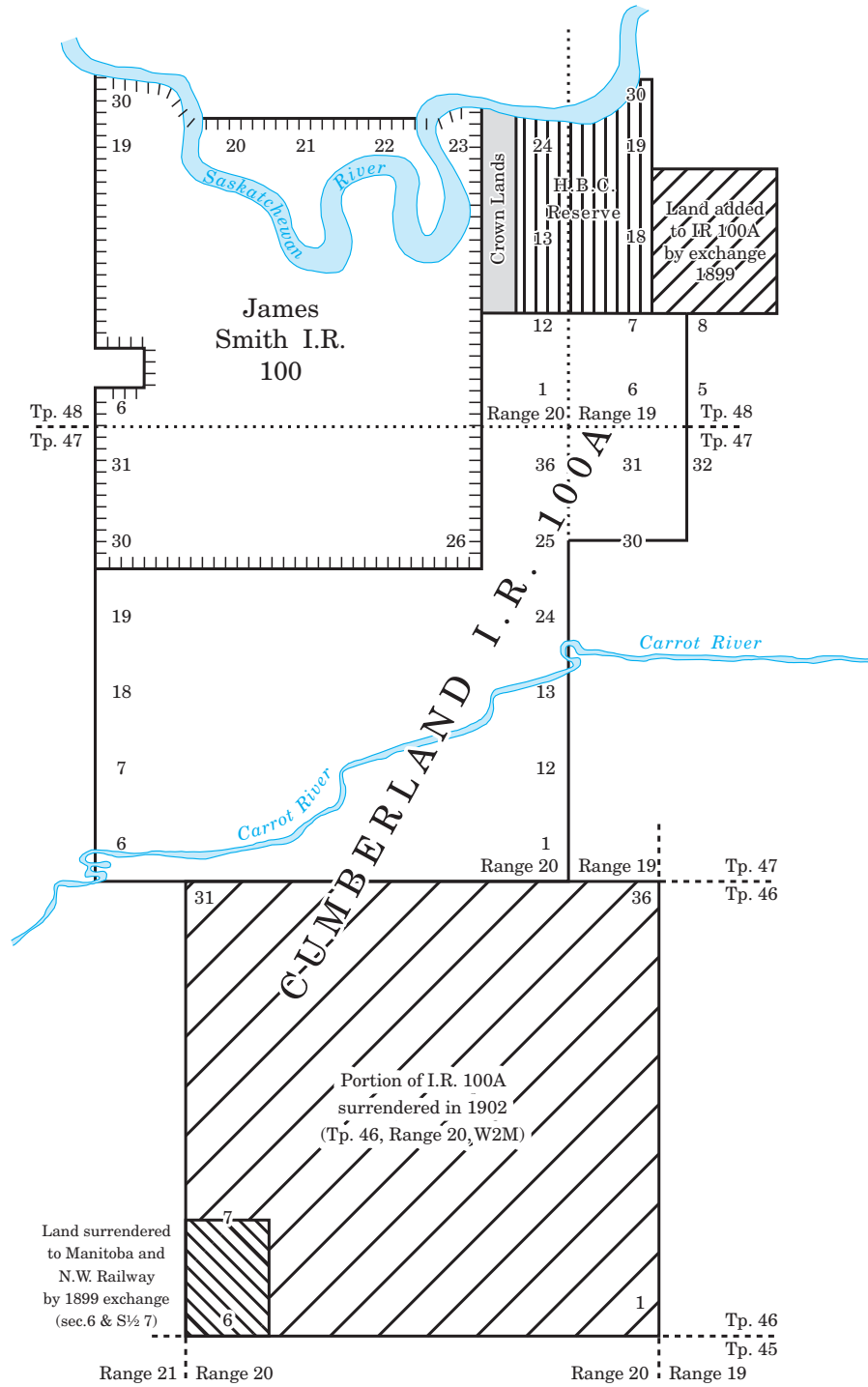
¹⁰³ E. McColl, Inspector and Superintendent of Indian Agencies, Manitoba Superintendency, to SGIA, December 1, 1885, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1885*, 133 (ICC Exhibit 1a, p. 35); J. Reader, Indian Agent, Pas Agency, to SGIA, July 2, 1886, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1886*, 74 (ICC Exhibit 17, p. 6).

¹⁰⁴ L.W. Herchmer, Inspector of Indian Agencies, to the Indian Commissioner, February 3, 1886, LAC, RG 10, vol. 3741, file 28985 (ICC Exhibit 1, p. 195).

¹⁰⁵ John A. Macdonald, SGIA, to the Governor General, January 1, 1887, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1886*, xlvii (ICC Exhibit 17, p. 3).

Map 2

Cumberland IR 100A and James Smith IR 100



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

à la Corne, since it was outside the area of their own treaty territory. The department's concern over this issue is demonstrated by its instructions not to pay treaty annuities to those outside Treaty 5 territory.¹⁰⁶

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

On December 6, 1883, DSGIA Lawrence Vankoughnet wrote to the Department of the Interior to inquire about "securing a reserve on the Carrot River near Fort à la Corne for the Cumberland Band of Indians in exchange for the Reserve or part thereof occupied by them at Cumberland." He went on to explain: "The population of the Cumberland Band is 345, and under the Treaty with them they are entitled to 160 acres for every five persons, consequently the quantity of land that would be required for the Reserve would be 44,160 acres."¹⁰⁷ It should be noted that according to the Treaty 5 formula of 160 acres per family of five, the correct entitlement would be 11,040 acres. However, marginal notations on a draft copy of Vankoughnet's letter use the Treaty 6 formula of 640 acres per family of five to calculate an entitlement of 44,160 acres. Another marginal notation points out that the figure "[s]hould be 11,040 not 44160." There is no indication as to who made either the calculations or the marginal notation.¹⁰⁸

Surveyor Austin used the same base population of 345 to calculate the Cumberland Band's treaty land entitlement in his 1883 survey report regarding IR 20 at Cumberland Lake.¹⁰⁹ This

¹⁰⁶ James F. Graham, Indian Superintendent, to SGIA, April 17, 1883, LAC, RG 10, vol. 3634, file 6441 (ICC Exhibit 1, p. 81).

¹⁰⁷ L. Vankoughnet, DSGIA, to A.M. Burgess, Deputy Minister of the Interior, December 6, 1883, LAC, RG 15, vol. 311, file 68309 (ICC Exhibit 1, pp. 105–6).

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

¹⁰⁹ W.A. Austin, DLS, to SGIA, April 1883, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1883*, 167 (ICC Exhibit 1, p. 78).

population corresponds to the number paid on the Treaty 5 payroll for the “Cumberland Band paid at Cumberland Reserve” in 1882.¹¹⁰ Department of Indian Affairs law clerk Reginald Rimmer later surmised that the reserve at Fort à la Corne was most likely set aside on the basis of 345 people and that the Treaty 6 formula for land entitlement was used, instead of the Treaty 5 formula.¹¹¹ This opinion is discussed later in more detail.

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

Inspector McColl initially requested one and a half townships for the reserve, located northwest of the future James Smith IR 100, although the land he specified was later discovered to be unavailable.¹¹² In April 1884, Inspector Wadsworth reported that he expected only about “30 families,” or “150 souls,” to make the move, rather than the entire Cumberland Band. On this basis, he calculated that 150 persons would be entitled to 4,800 acres under Treaty 5 (a correct calculation according to the Treaty 5 formula of 32 acres per person), and suggested a reserve of 10 sections south of Chakastaypasin’s reserve, totalling 6,400 acres.¹¹³ The department applied for this land,¹¹⁴ and accepted the Department of the Interior’s offer for only five sections (or 3,200 acres) as sufficient.¹¹⁵ In response to the offer, Agent Reader received a letter from Chief Flett explaining that

¹¹⁰ Treaty annuity payroll, “Cumberland Band paid at Cumberland Reserve,” 1882, no file reference available (ICC, Cumberland House Cree Nation IR100A Inquiry, Exhibit 8, p. 28).

¹¹¹ Memorandum, Reginald Rimmer, Law Clerk, Department of Indian Affairs, to unidentified recipient, May 18, 1899, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 541–42).

¹¹² John R. Hall, Secretary, Department of the Interior, to L. Vankoughnet, DSGIA, February 9, 1884, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 114–15).

¹¹³ T.P. Wadsworth to the Deputy Minister, April 22, 1884, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 122–23).

¹¹⁴ R. Sinclair for DSGIA, to A.M. Burgess, Deputy Minister of the Interior, April 29, 1884, LAC, RG 15, vol. 311, file 68309 (ICC Exhibit 1, pp. 125–26).

¹¹⁵ L. Vankoughnet, DSGIA, to A.M. Burgess, Deputy Minister of the Interior, July 23, 1884, LAC, RG 15, vol. 311, file 68309 (ICC Exhibit 1, pp. 137–38).

he had interviewed the Indians with respect to the offer made to them by the Government, but that there are none of them who wish to go. They say the reason is that they have spent so many pounds in getting the land at Fort a La Corne broken, and they do not wish to go to this other place.¹¹⁶

In addition, Chief Flett explained that the land at Fort à la Corne was better able to provide a means of subsistence while they were getting established in farming, since the area was rich in timber, fish, and game. Reader reported: “Those who were at La Corne are of the same opinion, having in addition improved and incurred expenses on the land they settled on.”¹¹⁷ An alternative offer of land at Pas Mountain within Treaty 5 territory was refused as well.¹¹⁸

In late 1884, Indian Commissioner Edgar Dewdney wrote to the Superintendent General to clarify that “the Indians from Cumberland” wanted the two townships immediately south of James Smith’s reserve, in townships 46 and 47, range 20, west of the 2nd meridian (W2M).¹¹⁹ This information was communicated to Inspector McColl in June 1885, at which time he was instructed “to ascertain definitely whether this is the locality in which the Cumberland Indians wish to have a Reserve made for them.”¹²⁰

In the interim, A.M. Burgess, the Deputy Minister of the Interior, reported to Vankoughnet on June 30, 1885, that the desired townships were available for Indian reserve purposes, later clarifying that the reserve was “for the Cumberland band of Indians.”¹²¹ Agent Reader confirmed

¹¹⁶ J. Reader, Indian Agent, to E. McColl, Inspector of Indian Agencies, March 25, 1885, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 154).

¹¹⁷ J. Reader, Indian Agent, to E. McColl, Inspector of Indian Agencies, March 25, 1885, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 155).

¹¹⁸ J. Reader, Indian Agent, to E. McColl, Inspector of Indian Agencies, June 12, 1884, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 130–31).

¹¹⁹ E. Dewdney, Indian Commissioner, to SGIA, November 14, 1884, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 152).

¹²⁰ [L.Vankoughnet, DSGIA], to E. McColl, Inspector of Indian Agencies, June 3, 1885, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 156–57).

¹²¹ A.M. Burgess, Deputy Minister of the Interior, to L. Vankoughnet, DSGIA, June 30, 1885, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 161–62); and A.M. Burgess, Deputy Minister of the Interior, to L. Vankoughnet, DSGIA, November 20, 1885, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 179–81).

on August 26, 1885, that this was indeed the land desired by the “Cumberland Band.”¹²² On October 2, 1885, Vankoughnet accepted the two townships offered by the Department of the Interior, stating that the land would be set aside “as a reserve for the Indians of Cumberland.”¹²³ The Indian Commissioner and Inspector McColl were informed the following month.¹²⁴

The North-West Rebellion and the Cumberland Band

The North-West Rebellion (or Riel Rebellion) broke out in March 1885. During and after the conflict, government officials took steps to institute greater controls over the movements and the activities of treaty Indians. One of these measures was the pass system, introduced as a temporary measure during the uprising.¹²⁵

Following the cessation of unrest, Assistant Indian Commissioner Hayter Reed suggested that the pass system be continued as a means of dealing with “rebel” Indians. His July 29, 1885, memorandum on the “future management of Indians” recommended that “no rebel Indians should be allowed off the reserves without a pass signed by an [Indian Department] official.”¹²⁶ By October 1885, DSGIA Vankoughnet had agreed to the wider application of the system to all treaty Indians. In response to Hayter Reed’s recommendations, Vankoughnet replied, instead, that the system “should be introduced as far as practicable in the loyal Bands as well,” but that it “should not be insisted upon as regards loyal Indians” if they resisted on the basis of their treaty rights.¹²⁷ The pass

¹²² J. Reader, Indian Agent, Pas Agency, to E. McColl, Inspector of Indian Agencies, August 26, 1885, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 163).

¹²³ L. Vankoughnet, DSGIA, to A.M. Burgess, Deputy Minister of the Interior, October 2, 1885, LAC, RG 15, vol. 311, file 68309 (ICC Exhibit 1, p. 172).

¹²⁴ [L. Vankoughnet, DSGIA], to E. Dewdney, Indian Commissioner, November 27, 1885, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 184–85); and [Lawrence Vankoughnet, DSGIA], to E. McColl, Inspector of Indian Agencies, November 27, 1885, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 186–87).

¹²⁵ Circular letter from E. Dewdney, Indian Commissioner, May 6, 1885, LAC, RG 10, vol. 3584, file 1130 (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 1, p. 163).

¹²⁶ Hayter Reed, Assistant Indian Commissioner, to the Indian Commissioner, July 29, 1885, Glenbow Archives, Edgar Dewdney Papers, document M320, box 4, file 66, p. 1416 (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 18a, p. 3).

¹²⁷ L. Vankoughnet, DSGIA, to Edgar Dewdney, Indian Commissioner, October 28, 1885, LAC, RG 10, vol. 3584, file 1130, part 1B (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 1, p. 202).

system was a means of reinstating and strengthening government control over Indian movements and whereabouts after the rebellion. Indian Agents received books of passes in 1886 and the system was strictly enforced, especially in the years immediately following the rebellion.¹²⁸

It is uncertain whether the pass system prevented a greater migration from the Cumberland district to Fort à la Corne, although a few people did make the move in the years immediately after the rebellion. Cumberland House Cree Nation elder Pierre Settee says that when land became available at Fort à la Corne, and some Cumberland band members moved there to begin farming, “it became more difficult for our people to come and go as time went on. This may have been due to the past [sic] system that was put in place by the government; for many years we needed permission to leave our reserve.”¹²⁹

Scrip Offered at Cumberland

In 1885–86, the government offered scrip (a set amount of cash or land) to those who wished to withdraw from treaty. Indian Agent Reader first reported on the matter when referring to a December 1885 visit to Cumberland, noting that only a few “availed themselves of the privilege to leave treaty.”¹³⁰ However, by March 1886, the situation had changed remarkably. Agent Reader remarked:

The idea of leaving the Treaty and receiving scrip in compensation for annuity, when once it fairly took possession of some of the half-breeds in this Agency, spread almost like an epidemic. ... It was with difficulty that I could leave Cumberland on the 12th, owing to the number of applicants.¹³¹

¹²⁸ Sarah A. Carter, *Lost Harvests: Prairie Indian Reserve Farmers and Government Policy* (Montreal: McGill-Queen’s University Press, 1990), 145–46, 149–56 (ICC, Cumberland House Cree Nation IR 100A Inquiry, Written Submissions on Behalf of the Cumberland House Cree Nation, August 28, 2003, tab 1).

¹²⁹ ICC Transcript, November 19, 2001 (ICC, Cumberland House Cree Nation IR 100A Inquiry, Exhibit 12a, p. 14, Pierre Settee).

¹³⁰ J. Reader, Indian Agent, Pas Agency, to SGIA, July 2, 1886, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1886*, 74 (ICC Exhibit 17, p. 6).

¹³¹ J. Reader, Indian Agent, Pas Agency, to SGIA, July 2, 1886, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1886*, 76 (ICC Exhibit 17, p. 8).

Later that same month, a number of additional Cumberland band members applied to the Agent for withdrawal from treaty.¹³² He reported that “[i]nasmuch as about one hundred families in this agency have withdrawn from treaty, [t]here has been a large exodus at Cumberland.”¹³³ Indeed, the 1886 Cumberland band payroll for Treaty 5 shows that the band population was reduced by almost half due to the large number of withdrawals from treaty that year. Chief Albert Flett and one of his councillors were among those who took scrip that year.¹³⁴ After Chief Flett’s withdrawal from treaty, the Cumberland Band elected Samuel Greenleaf in 1886 as the new Chief for a three-year term.¹³⁵ Albert Flett re-entered treaty in 1887 and was re-elected for another three-year term as Chief in 1889, after Samuel Greenleaf’s term expired.¹³⁶

In the annual report for 1886, the Superintendent General of Indian Affairs reported a population of 929 in the Pas Agency, a decrease of 514 since the last census owing to the numerous withdrawals from treaty.¹³⁷ A few Cumberland band members re-entered treaty over the next few years, but most chose not to do so. Of the Cumberland people living at Fort à la Corne, only three families chose to take scrip.¹³⁸

¹³² J. Reader, Indian Agent, Pas Agency, to SGIA, July 2, 1886, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1886*, 76 (ICC Exhibit 17, p. 8).

¹³³ J. Reader, Indian Agent, Pas Agency, to SGIA, July 2, 1886, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1886*, 78 (ICC Exhibit 17, p. 10).

¹³⁴ Treaty annuity payroll, “Cumberland Band Paid at Cumberland,” 1886, no file reference available (ICC, Cumberland House Cree Nation IR 100A Inquiry, Exhibit 8, pp. 42–46).

¹³⁵ Treaty annuity payroll, “Cumberland Band paid at Cumberland,” 1886, no file reference available (ICC, Cumberland House Cree Nation IR 100A Inquiry, Exhibit 8, p. 44).

¹³⁶ Treaty annuity payroll, “Cumberland Band Paid at Cumberland,” 1890–92, no file reference available (ICC, Cumberland House Cree Nation IR 100A Inquiry, Exhibit 8, pp. 57, 60, 63).

¹³⁷ John A. Macdonald, SGIA, to the Governor General, January 1, 1887, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1886*, xlvii (ICC Exhibit 17, p. 2).

¹³⁸ Treaty annuity payroll, “Cumberland Band Paid at Fort la Corne,” 1886, no file reference available (ICC Exhibit 9a, p. 1); Treaty annuity payroll, “Cumberland Band Paid at La Corne,” 1887, no file reference available (ICC Exhibit 9a, p. 3).

Paylist for Cumberland Band at Fort à la Corne, 1886

In September 1886, the “Cumberland Band Paid at Fort la Corne” received its own paylist, labelled “Treaty No. 6.” Seventeen families appeared on the list, although two were said to have withdrawn from treaty and were not paid. These 17 families include all 14 of those families originally from the Cumberland Band in Treaty 5 which were paid with James Smith’s Band in 1885, as well as John Constant from The Pas Band. In addition, two new families from the Cumberland Band in Treaty 5 arrived at Fort à la Corne in 1886 and were paid on this first paylist.¹³⁹

Other Treaty 5 Bands at Fort à la Corne

It is possible that there were, originally, more families from The Pas resident near Fort à la Corne. Some were eventually paid with the James Smith Band or others, and some apparently returned to their original reserves at The Pas because of the instability caused by the 1885 North-West Rebellion. Indian Agent Reader of the Pas Agency reported in 1885 that “some Pas Mountain Indians, who, I believe, had been living at or near Fort à la Corne, fled back to the mountain, not wishing to join the Rebellion.”¹⁴⁰ However, John Constant remained at Fort à la Corne, and his family was the only one from a different Treaty 5 band to be paid with the Cumberland Band on the new paylist. The family remained there from 1886 until 1890,¹⁴¹ before transferring to John Smith’s Band to join other relatives.¹⁴²

¹³⁹ Treaty annuity paylist, “Cumberland Band Paid at Fort la Corne,” 1886, no file reference available (ICC Exhibit 9a, p. 1); Treaty annuity paylist, James Smith Band, 1885, LAC, RG 10, vol. 9418 (ICC Exhibit 1, pp. 175–76).

¹⁴⁰ John A. Macdonald, SGIA, to the Governor General, January 1, 1886, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1885*, xxxvii (ICC Exhibit 1a, p. 39).

¹⁴¹ Treaty annuity paylist, “Cumberland Band Paid at Fort la Corne,” 1886, no file reference available (ICC Exhibit 9a, p. 1); Treaty annuity paylist, “Cumberland Band Paid at La Corne,” 1887, no file reference available (ICC Exhibit 9a, p. 3); Treaty annuity paylist, “Cumberland Band Paid at Peter Chapman’s Reserve,” 1888, no file reference available (ICC Exhibit 9a, p. 4); Treaty annuity paylist, “Cumberland Band Paid at Reserve,” 1889, no file reference available (ICC Exhibit 9a, p. 5); Treaty annuity paylist, “Cumberland Band No. 100A Paid at James Smith’s,” 1890, no file reference available (ICC Exhibit 9a, p. 9).

¹⁴² Treaty annuity paylist, “Cumberland Band Paid at Reserve,” 1891, no file reference available (ICC Exhibit 9a, p. 16); Consent of Band to Transfer, June 4, 1890, LAC, RG 10, vol. 3807, file 52583-2 (ICC Exhibit 1a, p. 110); Consent of Band to Transfer, August 8, 1890, LAC, RG 10, vol. 3807, file 52583-2 (ICC Exhibit 1a, p. 111).

Survey of IR 100A, 1887

Dominion Land Surveyor John C. Nelson went to Fort à la Corne in July 1887 “to lay out a reserve for the contingent of the Cumberland Band and such other Indians as may be assigned locations therein.”¹⁴³ On his arrival, he discovered that the “Cumberland band” had a settlement outside of townships 46 and 47, along the east side of James Smith’s IR 100 and extending north to the HBC reserve in township 48. Surveyor Nelson explained to Peter Chapman that he had no authority to mark off this settlement because it was outside townships 46 and 47. However, he laid out a temporary reserve in the area, saying that “possibly the Department might secure it for them.” He then proceeded to mark out the reserve in townships 46 and 47, noting the rich soil, “luxuriant herbage,” stands of poplar for timber, many lakes and swamps, and “small prairies of rich soil.” The survey report concludes by stating: “The reserve is well watered by Carrot River and Goose Hunting Creek and contains an area of about 65 square miles.”¹⁴⁴ Nelson’s field notes refer to IR 100A as being “for Indians of the Cumberland District.”¹⁴⁵

On June 21, 1888, the Department of Indian Affairs forwarded a tracing of the IR100A plan of survey “for the Cumberland Band of Indians on the Carrot River near Fort à la Corne” to the Department of the Interior. The accompanying letter explained that the temporary reserve surveyed by Nelson was occupied by five “heads of families of the Cumberland contingent under Chapman, and if available for Indian Reserve purposes should form part of the Reserve.”¹⁴⁶ The Department of the Interior approved the request on July 9, 1888.¹⁴⁷ IR 100A was confirmed by Order in Council

¹⁴³ John C. Nelson, DLS, In Charge of Indian Reserve Surveys, to SGIA, December 30, 1887, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1887*, 274 (ICC Exhibit 17, p. 34).

¹⁴⁴ John C. Nelson, DLS, In Charge of Indian Reserve Surveys, to SGIA, December 30, 1887, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1887*, 275 (ICC Exhibit 17, p. 35).

¹⁴⁵ Natural Resources Canada, Field book 151 CLSR, John C. Nelson, DLS, “Treaty No. 6, North West Territories, Field Notes of the survey of the Boundaries of Indian Res. No. 100a (for Indians of the Cumberland District) at Carrot River,” July–August 1887 (ICC Exhibit 4b, p. 2).

¹⁴⁶ R. Sinclair, for DSGIA, to A.M. Burgess, Deputy Minister of the Interior, June 21, 1888, LAC, RG 15, vol. 311, file 68309 (ICC Exhibit 1, pp. 279–81); see also W.A. Austin, for Deputy Minister of Indian Affairs, to Mr McNeill, June 15, 1888, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 277–78).

¹⁴⁷ P.B. Douglas, Assistant Secretary, Department of the Interior, to L. Vankoughnet, DSGIA, July 9, 1888, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 284).

on May 17, 1889, “[f]or the Indians of Cumberland District (of Treaty No. 5),” including the extra 2.4 square miles adjacent to the east side of the James Smith reserve.¹⁴⁸

Department Support for Agriculture at Fort à la Corne

The original intention of the Cumberland band members who moved to Fort à la Corne was to settle and take up farming as a new way of life, and it appears that the department granted the reserve at IR 100A in order to facilitate their wishes in this regard. DSGIA Vankoughnet wrote in 1884: “This Department is most anxious to accommodate the Cumberland Indians with a Reserve, as they are, for Indians, progressive and industrious, and it is important to encourage them as much as possible.”¹⁴⁹

The Cumberland members at Fort à la Corne took up the challenge of breaking land and attempting to farm with enthusiasm, but there was little support to encourage them. Indian Agent Rae reported in September 1885 that the Cumberland people were hard working and had already broken 60 acres of land and put up 30 tons of hay, and that they hoped to receive a few oxen and a farming instructor from the department to assist them.¹⁵⁰ Six months later, Inspector Herchmer reported that 50 acres of the broken land had grown over, and again communicated the Cumberland contingent’s request for assistance, “as they understand very little about Farming.”¹⁵¹ He recommended that an instructor be provided for the James Smith Band and the Cumberland contingent at Fort à la Corne, because they could not live entirely by hunting.¹⁵² Instructor Goodfellow was hired in April 1886 for a term of six months,¹⁵³ and the department issued six oxen

¹⁴⁸ Order in Council PC 1151, May 17, 1889, pp. 54–55 (ICC Exhibit 4a).

¹⁴⁹ R. Sinclair, for DSGIA, to A.M. Burgess, Deputy Minister of the Interior, April 29, 1884, LAC, RG 15, vol. 311, file 68309 (ICC Exhibit 1, pp. 126–27).

¹⁵⁰ J.M. Rae, Indian Agent, Carlton Agency, to the Indian Commissioner, September 8, 1885, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 168–69).

¹⁵¹ L.W. Herchmer, Inspector of Indian Agencies, to the Indian Commissioner, February 3, 1886, LAC, RG 10, vol. 3741, file 28985 (ICC Exhibit 1, pp. 191–92).

¹⁵² L.W. Herchmer, Inspector of Indian Agencies, to the Indian Commissioner, February 3, 1886, LAC, RG 10, vol. 3741, file 28985 (ICC Exhibit 1, p. 196).

¹⁵³ Hayter Reed, Assistant Indian Commissioner, to the Acting Indian Agent, March 29, 1886, LAC, RG 10, vol. 1591 (ICC Exhibit 1, p. 201).

and seven cows to “Peter Chapman” of the “Cumberland Band” that summer, more than the amount provided for by either Treaties 5 or 6.¹⁵⁴

At the end of the year, however, Inspector Wadsworth felt that the result of the season’s work at Fort à la Corne did not warrant the expense of a farming instructor and recommended against having the Bands there devote all their time to agriculture to the exclusion of the hunt. He recommended instead that Goodfellow be appointed as “sub-agent” for the Fort à la Corne Bands.¹⁵⁵ This proposal was rejected, and Goodfellow was never reappointed as farm instructor. In a marginal note to Wadsworth’s letter, Assistant Indian Commissioner Hayter Reed wrote that “it would be injudicious to endeavour to make those Indians who can obtain not a little fur and thus a fairly good living ... to turn their attention to agriculture to the same extent as others differently situated.”¹⁵⁶

From 1887 until 1893, local agents and inspectors repeatedly emphasized the need for a farming instructor for the bands at Fort à la Corne. In September 1889, Indian Agent R.S. McKenzie reported that “a farmer is very much required for Bands No. 100 & 100A in fact there is no two reserves in the Agency that requires an instructor worse than these two bands.”¹⁵⁷ Again, in 1890, the agent reported that the Fort à la Corne bands were taking a greater interest in farming and needed an instructor. Assistant Indian Commissioner A.E. Forget refused, stating that there would be no use in such an expenditure since he did not really believe that the bands intended to settle down and give up the hunt.¹⁵⁸ Hayter Reed’s instructions to the agent in October 1890 may reflect some of the reasons for the reluctance to provide an instructor for the Fort à la Corne bands. He wrote:

¹⁵⁴ Charles Adams, Acting Indian Agent, “Statement of Cattle Received & Issued at Prince Albert Agency, Summer 1886,” August 17, 1886, LAC, RG 10, vol. 9098, book 2, p. 121 (ICC Exhibit 1, p. 205).

¹⁵⁵ T.P. Wadsworth, Inspector of Indian Agencies, to Edgar Dewdney, Indian Commissioner, December 3, 1886, LAC, RG 10, vol. 3773, file 35764 (ICC Exhibit 1, pp. 228–29).

¹⁵⁶ Marginal notation written by Assistant Indian Commissioner Hayter Reed on letter from T.P. Wadsworth, Inspector of Indian Agencies, to Edgar Dewdney, Indian Commissioner, December 3, 1886, LAC, RG 10, vol. 3773, file 35764 (ICC Exhibit 1, p. 228).

¹⁵⁷ R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, September 1889, LAC, RG 10, vol. 3793, file 46008 (ICC Exhibit 1, p. 331); R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, April 1890, LAC, RG 10, vol. 3793, file 46008 (ICC Exhibit 1, p. 345).

¹⁵⁸ Marginal note written by Assistant Indian Commissioner A.E. Forget on letter from R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, April 1890, LAC, RG 10, vol. 3793, file 46008 (ICC Exhibit 1, p. 349).

The time has arrived when the result of the large expenditure upon Indians for years past, must be shown by throwing in a large measure the burden of their maintenance upon themselves, and so considerably decreasing expenditure. ... I hear from all sides of a very plentiful supply of game, so that you should be able to take a number off the ration list altogether for a time, especially among the Indians at James Smith's and at La Corne.¹⁵⁹

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

Cumberland Band Movement, 1887–91

During the period from 1887 to 1891, there was still movement between the reserves at Cumberland House and at Fort à la Corne. The 1887 payroll for the “Cumberland Band Paid at La Corne” shows that two more families moved to IR 100A that year and were added to the payroll there.¹⁶⁰ At least two additional families went to Fort à la Corne in 1887, but never received annuities on the IR 100A payroll. One of those families returned to Cumberland House in 1888 and was paid annuities for 1888 and arrears for 1887. The other family disappeared and did not return to Cumberland House.¹⁶¹

In 1888, Agent Reader wrote to inquire whether those who still wished to leave “the Reserve at Cumberland” and settle at 100A could do so, as he believed that “the desire to leave this district, and settle on the new Reserve is on the increase.”¹⁶² In January of the following year, on a letter

¹⁵⁹ Hayter Reed, Indian Commissioner, to R.S. McKenzie, Indian Agent, Duck Lake Agency, October 28, 1890, LAC, RG 10, vol. 1596 (ICC Exhibit 1, p. 351).

¹⁶⁰ Treaty annuity payroll, “Cumberland Band Paid at La Corne,” 1887, no file reference available (ICC Exhibit 9a, p. 3).

¹⁶¹ Treaty annuity payroll, “Cumberland Band Paid at Cumberland,” 1887–88, no file reference available (ICC, Cumberland House Cree Nation IR 100A Inquiry, Exhibit 8, pp. 49–50, 53). See ticket no. 49 and no. 105.

¹⁶² J. Reader, Indian Agent, Pas Agency, to E. McColl, Inspector of Indian Agencies, October 4, 1888, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 303).

from Inspector McColl to the Superintendent General of Indian Affairs, a marginal note states that “any members of the Cumberland Band may remove to the reserve referred to.”¹⁶³

Later that year, however, local officials seemed to be expressing a different sentiment. In a letter regarding the transfer of four families from Cumberland to Fort à la Corne, Assistant Indian Commissioner A.E. Forget instructed Agent McKenzie “that in [the] future, you will try to discourage these changes, especially those from another Agency.”¹⁶⁴

According to the Treaty 5 Cumberland band paylists, at least three families moved to Fort à la Corne between 1888 and 1890. In 1888 and 1889, Nancy Friday and her son Jeremiah Friday were recorded on the Treaty 5 Cumberland band payroll as being “absent” at Fort à la Corne, and they subsequently “transferred to La Corne” in 1890. However, they were both paid at Cumberland House in 1891, along with arrears for the previous three years, and never appeared on the Cumberland 100A payroll. Jacob Flett Sr is also marked on the same 1890 payroll as being “transferred to La Corne”; he similarly returned to Cumberland House to be paid in 1891, along with arrears for 1890. The notation by his name states that he had returned, “not being allowed in the La Corne Band (Reserve).”¹⁶⁵ One other person was absent at Fort à la Corne in 1890 and 1894, but she was paid with the Cumberland Band in Treaty 5 in other years.¹⁶⁶

Return to the Cumberland District, 1886–91

The oral history of Cumberland House Cree Nation elders suggests that many of those who initially moved to Fort à la Corne later returned.¹⁶⁷ Cumberland House elder Thomas Laliberte says that

¹⁶³ Marginal notation signed “L.V.” on letter from E. McColl, Inspector of Indian Agencies, Manitoba Superintendency, to SGIA, January 4, 1889, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 304).

¹⁶⁴ A.E. Forget, Assistant Indian Commissioner, to the Indian Agent, Duck Lake Agency, July 9, 1889, LAC, RG 10, vol. 1592 (ICC Exhibit 1, p. 322).

¹⁶⁵ Treaty annuity paylists, “Cumberland Band Paid at Cumberland,” 1888–91, no file reference available (ICC, Cumberland House Cree Nation IR 100A Inquiry, Exhibit 8, pp. 53, 57, and 60). See ticket nos. 39, 91, and 102.

¹⁶⁶ Treaty annuity payroll, “Cumberland Band Paid at Cumberland,” 1890–95, no file reference available (ICC, Cumberland House Cree Nation IR 100A Inquiry, Exhibit 8, pp. 57, 60, 63, 68, 73, 79). See ticket no. 115, Emily Ballendine.

¹⁶⁷ ICC Transcript, November 19, 2001 (ICC, Cumberland House Cree Nation IR 100A Inquiry, Exhibit 12a, p. 44, Thomas Laliberte; p. 54, Marcel McGillivary; p. 91, Lena Sarah Stewart; pp. 105, 107, 112, Rodney Settee); ICC Transcript, June 27–28, 2001 (ICC Exhibit 18a, p. 30, Robert Constant); ICC Transcript, June 26, 2002

people from the Cumberland Band originally moved to take up farming and gardening, “but it didn’t work out and they came back, many of them.”¹⁶⁸ Cumberland House elder Marcel McGillivary explained that those who moved to take up farming did not receive the “materials ... for farming” that they needed in order to be successful.¹⁶⁹ Other families returned to Cumberland House, or chose not to leave at all, “because they didn’t want to become farmers.”¹⁷⁰

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

There is some evidence that Peter Chapman, originally a headman of the Cumberland Band in Treaty 5, was informally acknowledged as the leader of the Cumberland contingent at Fort à la Corne by the Department of Indian Affairs. However, this practical recognition was never formalized. Beginning in 1886, Assistant Indian Commissioner Hayter Reed and the local Indian Agent (in addition to a few other officials) consistently referred to IR100A as “Peter Chapman’s” reserve and to the Cumberland band members living at IR100A as “Peter Chapman’s Band.” They continued to do so until around the time of Peter Chapman’s death in 1892.

Although the designation of the group as such was not entirely consistent or without confusion, it is clear that local department employees and officials most commonly referred to the group in this way. In 1887, Surveyor John C. Nelson reported that Peter Chapman was “looked upon as chief of the band” by the Cumberland people living at Fort à la Corne, although the Department of Indian Affairs report for that year stated that the “100a Cumberland Indians” had “no regular

(ICC Exhibit 18c, p. 20, Delbert Brittain).

¹⁶⁸ ICC Transcript, November 19, 2001 (ICC, Cumberland House Cree Nation IR 100A Inquiry, Exhibit 12a, p. 44, Thomas Laliberte).

¹⁶⁹ ICC Transcript, November 19, 2001 (ICC, Cumberland House Cree Nation IR 100A Inquiry, Exhibit 12a, p. 54, Marcel McGillivary); see also ICC Transcript, November 19, 2001 (ICC, Cumberland House Cree Nation IR 100A Inquiry, Exhibit 12a, p. 44, Thomas Laliberte; p. 80, Pierre Settee; p. 91, Lena Sarah Stewart; pp. 105, 107, 112, Rodney Settee); ICC Transcript, June 27–28, 2001 (ICC Exhibit 18a, p. 30, Robert Constant); ICC Transcript, June 26, 2002 (ICC Exhibit 18c, p. 20, Delbert Brittain).

¹⁷⁰ ICC Transcript, November 19, 2001 (ICC, Cumberland House Cree Nation IR 100A Inquiry, Exhibit 12a, p. 80, Pierre Settee); ICC Transcript, June 27–28, 2001 (ICC Exhibit 18a, p. 30, Robert Constant); ICC Transcript, June 26, 2002 (ICC Exhibit 18c, p. 20, Delbert Brittain).

chief.”¹⁷¹ When Agent McKenzie referred to the Cumberland contingent as “Peter Chapman’s Band” in one of his 1888 monthly reports, there was some confusion in Ottawa. The department wrote to the Assistant Indian Commissioner to clarify the matter, saying that, “[a]s respecting the Band designated by Mr. McKenzie as ‘Peter Chapman’s,’ the Department has no knowledge of them under that designation.”¹⁷² Reed replied that the group referred to was the “section of the Cumberland Band, whose Reserve is adjoining that of James Smith.”¹⁷³

Request for Separate Leadership at IR 100A, 1888

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

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

It would therefore be only possible to allow of the appointment of a Chief and Councillors, who would be composed of appointees, willing to act without the annuities and privileges given the Chief and Councillors of the Cumberland Band; but one serious objection to the adoption of such an arrangement is that they would not for long remain contented with it, and would soon come to regard the withholding of payment and privileges from their office-bearers, in the light of a standing grievance.¹⁷⁴

It should be noted that Peter Chapman was never paid as either Chief or headman on the Cumberland 100A paylists. However, the Cumberland people living at IR 100A viewed him as their

¹⁷¹ John C. Nelson, DLS, In Charge of Indian Reserve Surveys, to SGIA, December 30, 1887, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1887*, 275 (ICC Exhibit 17, p. 35); Tabular statement, “Situation and Area of Indian Reserves in Treaties 4, 6 and 7,” Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1887*, 281 (ICC Exhibit 17, p. 38).

¹⁷² Unidentified author to Hayter Reed, Assistant Indian Commissioner, February 23, 1888, LAC, RG 10, vol. 3793, file 46008 (ICC Exhibit 1, p. 254).

¹⁷³ Hayter Reed, Assistant Indian Commissioner, to SGIA, April 16, 1888, LAC, RG 10, vol. 3793, file 46008 (ICC Exhibit 1, p. 270).

¹⁷⁴ Indian Commissioner to the Indian Agent, Duck Lake Agency, July 5, 1888, LAC, RG 10, vol. 1592 (ICC Exhibit 1, pp. 282–83).

leader, as Surveyor Nelson observed when he surveyed the reserve there in 1887. James Smith elder James Burns said that “the old people regarded him as being, when he got to ... Prairie Cree country, as a chief, a leader of his people.”¹⁷⁵ Other stories suggest that he may have been a trader or an Anglican missionary or church leader.¹⁷⁶ The Cumberland House Cree Nation stories say Peter Chapman was never Chief, although he may have been a member of the Cumberland Band. They also maintain that there was never a separate leadership for the Cumberland people at Fort à la Corne, apart from the Chief and council already present at Cumberland House.¹⁷⁷

BAND MEMBERSHIP

Department Practice for Transfers of Band Membership

In late 1888 and early 1889, ongoing correspondence between Indian Commissioner Hayter Reed and department officials led to the establishment of a procedure for the transfer of membership between bands. On November 12, 1888, a discussion began within the department regarding band amalgamations and membership transfers. In a letter to the SGIA on that date, DSGIA Lawrence Vankoughnet expressed his general opposition to amalgamations, on the basis of his feeling that “the more Indian Bands are kept separate from one another the better, and more especially is this the case where the Bands are divided in religious sentiment.”¹⁷⁸ He did, however, make an exception in cases where at least one party was “small and unprogressive and might be benefitted.”¹⁷⁹ He explained that his general reservations were based on experience in “the older Provinces,” where the practice

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

¹⁷⁵ ICC Transcript, November 20, 2001 (ICC Exhibit 18b, p. 25, James Burns); ICC Transcript, June 27–28, 2001 (ICC Exhibit 18a, p. 56, Robert Constant).

¹⁷⁶ ICC Transcript, June 26, 2002 (ICC Exhibit 18c, pp. 15–16, Delbert Brittain).

¹⁷⁷ ICC Transcript, November 19, 2001 (ICC, Cumberland House Cree Nation IR 100A Inquiry, Exhibit 12a, pp. 15, 59, 63, Pierre Settee; p. 96, Lena Sarah Stewart; p. 112, Rodney Settee).

¹⁷⁸ L. Vankoughnet, DSGIA, to E. Dewdney, SGIA, November 12, 1888, LAC, RG 10, vol. 3806, file 52332 (ICC Exhibit 1a, p. 90).

¹⁷⁹ L. Vankoughnet, DSGIA, to E. Dewdney, SGIA, November 12, 1888, LAC, RG 10, vol. 3806, file 52332 (ICC Exhibit 1a, p. 91).

a Band has been allotted a Reserve, it should be kept strictly to that Reserve, and ... no other Indians than the members of the Band should be allowed to locate thereon.¹⁸⁰

Two weeks later, on November 23, 1888, Vankoughnet informed Indian Commissioner Hayter Reed that “it is contrary to the law” to “transfer” anyone to another band, except in cases where a woman marries into it.¹⁸¹ Reed disagreed with the department’s thinking on this point. He argued that the *Indian Act* should be amended to allow “transfers” of membership when necessary, noting that “it has been our endeavour, in the past, to prevent, as much as possible, the removal either permanent or temporary of Indians from one reserve to another; but there were occasionally cases where a judicious discretion had to be exercised.”¹⁸² In support of this proposal, he noted as an example “the breaking up of some of the reserves in the north after the late rebellion, and the consequent scattering of the Indians among other reserves” – a situation that “necessarily” created a large number of applications for transfer.¹⁸³

In response, the department argued that, if transfers of membership were allowed, there would likely be much confusion regarding land and treaty rights, especially for those joining a band within a different treaty area.¹⁸⁴ Furthermore, it was stated that the *Indian Act* was designed to protect the rights of Indians owning particular reserves, and, based on experience,

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

¹⁸⁰ L. Vankoughnet, DSGIA, to E. Dewdney, SGIA, November 12, 1888, LAC, RG 10, vol. 3806, file 52332 (ICC Exhibit 1a, pp. 92–93).

¹⁸¹ [L. Vankoughnet, DSGIA], to Hayter Reed, Indian Commissioner, November 23, 1888, LAC, RG 10, vol. 3807, file 52583-2 (ICC Exhibit 1a, p. 96).

¹⁸² Hayter Reed, Indian Commissioner, to SGIA, January 21, 1889, LAC, RG 10, vol. 3807, file 52583-2 (ICC Exhibit 1a, p. 97).

¹⁸³ Hayter Reed, Indian Commissioner, to SGIA, January 21, 1889, LAC, RG 10, vol. 3807, file 52583-2 (ICC Exhibit 1a, p. 98).

¹⁸⁴ [L. Vankoughnet, DSGIA], to the Indian Commissioner, January 29, 1889, LAC, RG 10, vol. 3807, file 52583-2 (ICC Exhibit 1a, pp. 100–1).

been members and whose rights and those of their descendants to membership and ownership were subsequently disputed by the original members of the Band.¹⁸⁵

Reed persisted in his attempt to have the department reconsider its position, bringing attention to cases that would benefit from a change in policy. He suggested, as a possible mechanism for such transfers, that a written statement of the person desiring transfer, as well as the consent of the Chief and council of the receiving band, should be required.¹⁸⁶

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

the circumstances connected with any case of transfer should be of the most exceptional nature to justify the same, and it should be done in the most formal manner, viz. the person whom it is proposed to transfer should be allowed to do so by a vote of the majority of the ~~Indians~~ voting members of the Band to whom this Indian to be transferred belonged, and a paper expressing their consent to his or her being transferred should be signed by the Chief & Headmen [illegible] also the ~~party to be~~ "transferree" should in like manner be admitted only upon a vote of the majority of the voting members of the Band to which he or she is to be transferred consenting to the same and after full explanation [having] been given to the Band that the Indian who it is proposed shall join that Band shall be entitled to share in all land and other privileges of said Band and a document signifying that such consent has been given should be signed by the Chief & Headmen of the Band to which the applicant has been admitted and should be certified by the Agent.¹⁸⁷

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

¹⁸⁵ [L. Vankoughnet, DSGIA], to the Indian Commissioner, January 29, 1889, [in LAC, RG 10, vol. 3807, file 52583-2] (ICC Exhibit 1a, pp. 102–3).

¹⁸⁶ Hayter Reed, Indian Commissioner, to DSGIA, March 14, 1889, LAC, RG 10, vol. 3807, file 52583-2 (ICC Exhibit 1a, p. 106).

¹⁸⁷ [L. Vankoughnet, DSGIA], to the Indian Commissioner, March 18, 1889, LAC, RG 10, vol. 3807, file 52583-2 (ICC Exhibit 1, pp. 310–11). Text is as it appears on the document, with "Indians" and "party to be" struck out.

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

Chief Chakastaypasin and four headmen, including Kahtapiskowat (also known as Big Head), signed Treaty 6 in August 1876 near Fort Carlton, at the same time as the James Smith Band.¹⁸⁸ IR 98 was first surveyed in 1878 for the Chakastaypasin Band on the south branch of the Saskatchewan River, near John Smith's reserve and the settlement of Prince Albert.¹⁸⁹

Following the outbreak of the North-West Rebellion in 1885, the Chakastaypasin Band scattered. A number of Chakastaypasin band members initially fled to the Stoney Creek and Carrot River valley areas, one of their traditional territories.¹⁹⁰ The Carrot River runs through the northern portion of what would later become IR 100A, and Stoney Creek was located farther south. James Smith band elders say that Chief James Smith invited the Chakastaypasin people to camp on IR 100 until the fighting was over.¹⁹¹ At the end of 1885, six Chakastaypasin families, including Kahtapiskowat and his extended family, received their annuities on the James Smith band payroll.¹⁹²

One of the important outcomes of the North-West Rebellion for the Chakastaypasin Band was the department's characterization of the entire band in 1885 as "rebels." This generalization led to the department's efforts to "break up" the band and depose Chief Chakastaypasin.¹⁹³ Shortly thereafter, in 1886, a distinction was made: a portion of the band, led by Chief Chakastaypasin, continued to be viewed as "rebels," while the remaining portion of the band, led by Kahtapiskowat,

¹⁸⁸ *Treaty No. 6 between Her Majesty the Queen and the Plain and Wood Cree Indians and Other Tribes of Indians at Fort Carlton, Fort Pitt and Battle River with Adhesions* (Ottawa: Queen's Printer, 1964), 5–6 (ICC Exhibit 2b, pp. 5–6).

¹⁸⁹ Order in Council PC 1151, May 17, 1889, p. 50 (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 6b).

¹⁹⁰ ICC Transcript, June 27–28, 2001 (ICC Exhibit 18a, p. 28, Robert Constant); ICC Transcript, January 28–29, 2003 (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 16b, pp. 15–16, 43, Sol Sanderson; p.110, Raymond Sanderson); ICC Transcript, May 27–29, 2003 (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 17b, p. 87, Louise Smokeyday, Kinistin First Nation).

¹⁹¹ ICC Transcript, June 27–28, 2001 (ICC Exhibit 18a, p. 32, Robert Constant; p. 117, Violet Sanderson); ICC Transcript, June 26, 2002 (ICC Exhibit 18c, pp. 43, 49–50, Delbert Brittain); ICC Transcript, January 28–29, 2003 (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 16b, pp. 84–85, 88, Terry Sanderson; p. 111, Raymond Sanderson; p. 217, Jake Sanderson).

¹⁹² Treaty annuity payroll, James Smith Band, 1885, LAC, RG 10, vol. 9418 (ICC Exhibit 1, pp. 175–76).

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

came to be viewed as “loyal.”¹⁹⁴ As early as 1886, the department ordered that the Chakastaypasin band members living near Fort à la Corne be “amalgamated” with the James Smith Band.¹⁹⁵ Assistant Indian Commissioner Hayter Reed later commented that the Chakastaypasin Band had consented “to join Peter Chapman’s Band,” but there is no record of this agreement.¹⁹⁶

It is difficult to determine exactly where Chakastaypasin band members were living during the years 1885–87. However, it is known that some stayed in the vicinity of Fort à la Corne, some returned to IR 98, and others either disappeared or joined other bands. Some Chakastaypasin members may have planted gardens in 1887 at or near IR 100A (surveyed that year), but returned to IR 98 for the winter.¹⁹⁷ However, the surveyor made no mention of Chakastaypasin band members located at IR 100A within his survey report that year.¹⁹⁸

At the beginning of 1888, a portion of the Chakastaypasin Band (including Kahtapiskowat and his family) were living at IR 98, and at least some of the other members were living at Fort à la Corne.¹⁹⁹ In January 1888, Indian Agent R.S. McKenzie reported that some of those living at Fort à la Corne had requested the department to “take back the Reserve on the South Branch, and give them a Reserve near James Smith’s at La Corne.”²⁰⁰ The department agreed in February 1888 that

¹⁹⁴ E. Dewdney, Indian Commissioner, to Acting Indian Agent, May 25, 1886, LAC, RG 10, vol. 1591 (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 1, p. 234); Statement of “Chiefs and Head Men of Chekastaypasin’s and John Smith’s Bands,” c. February 1889, no file reference available (ICC Exhibit 1a, pp. 104–5).

¹⁹⁵ Acting Indian Agent, to George Goodfellow, Farm Instructor, June 17, 1886 [LAC, RG 10, vol. 9098, book 1, p. 82] (ICC Exhibit 1a, p. 53).

¹⁹⁶ Hayter Reed, Assistant Indian Commissioner, to SGIA, April 14, 1888, LAC, RG 10, vol. 3793, file 46008 (ICC Exhibit 1, p. 268).

¹⁹⁷ Hayter Reed, Assistant Indian Commissioner, to SGIA, April 14, 1888, LAC, RG 10, vol. 3793, file 46008 (ICC Exhibit 1, p. 268).

¹⁹⁸ John C. Nelson, DLS, In Charge of Indian Reserve Surveys, to SGIA, December 30, 1887, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1887*, 275 (ICC Exhibit 17, p. 35).

¹⁹⁹ R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, January 31, 1888, LAC, RG 10, vol. 3793, file 46008 (ICC Exhibit 1, pp. 239–41).

²⁰⁰ R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, January 31, 1888, LAC, RG 10, vol. 3793, file 46008 (ICC Exhibit 1, pp. 239–40).

this exchange should be done.²⁰¹ Agent McKenzie subsequently met with Kahtapiskowat at IR 98 in March 1888 and reported that “Big Head and his men” were prepared to relinquish the reserve at any time and join Peter Chapman’s Band, but that they expected something for so doing no matter how small.”²⁰² On May 23, 1888, McKenzie reported that “Big Head and his band” had left IR 98 earlier that month and moved to Fort à la Corne to “join Chapman’s Band.”²⁰³

The October 1888 Cumberland 100A payroll shows six Chakastaypasin families grouped at the end according to their Chakastaypasin ticket numbers and marked with an “A.” The notations beside these names on the payroll state that they were “now transf[erre]d” or “transf[erre]d from Chakastaypasin.”²⁰⁴ A seventh family, “transferred” that year from the James Smith Band to the Cumberland 100A payroll, was likely a former Chakastaypasin family, paid under Chakastaypasin ticket no. 13 from 1876 to 1880.²⁰⁵ The corresponding Chakastaypasin band payroll for October 1888 states that six families had “transferred to the Cumberland Band.”²⁰⁶ As noted above, the department mechanism for such “transfers” was not formalized until 1889. Furthermore, section 140 of the *Indian Act*, which provided the statutory basis for such membership transfers, did not come into force until 1895.

²⁰¹ Unidentified author to Hayter Reed, Assistant Indian Commissioner, February 23, 1888, LAC, RG 10, vol. 3793, file 46008 (ICC Exhibit 1, p. 253); marginal note written by Edgar Dewdney on letter from R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, January 31, 1888, LAC, RG 10, vol. 3793, file 46008 (ICC Exhibit 1, p. 240).

²⁰² R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, March 31, 1888, LAC, RG 10, vol. 3793, file 46008 (ICC Exhibit 1, p. 263).

²⁰³ R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, May 23, 1888, LAC, RG 10, vol. 9098, book 4, p. 95 (ICC Exhibit 1, p. 274).

²⁰⁴ Treaty annuity payroll, “Cumberland Band Paid at Peter Chapman’s Reserve,” 1888, no file reference available (ICC Exhibit 9a, p. 4).

²⁰⁵ Treaty annuity payroll, “Cumberland Band Paid at Peter Chapman’s Reserve,” 1888, no file reference available (ICC Exhibit 9a, p. 4); Sturgeon Lake First Nation, “Families of the Chakastapaysin Band: Remarks on Homik’s Tracing Study from the Perspective of the Sturgeon Lake First Nation,” revised May 1997 (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 17c, pp. 65, 82, 85).

²⁰⁶ Treaty annuity payroll, Chakastaypasin Band, 1888, no file reference available (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 12a, p. 219).

In 1889, the Chakastaypasin band payroll was discontinued.²⁰⁷ The annuities of Chief Chakastaypasin and his grandson, Neesoopahtawein, were reinstated that year (after having been withheld since 1885 from those identified by the department as “rebels”). Both men received their annuities on the Cumberland 100A payroll that year under new ticket numbers (rather than their old Chakastaypasin band ticket numbers).²⁰⁸ Chief Chakastaypasin was no longer recognized as chief and did not receive the extra annuity associated with that position, while Kahtapiskowat continued to be recognized as a headman and received the associated extra annuity.²⁰⁹ On October 23, 1889, Agent McKenzie reported that the Chakastaypasin Band “is now thoroughly broken up” and its members settled with the One Arrow, James Smith, and Cumberland Bands.²¹⁰

Although Chakastaypasin members appeared on the Cumberland 100A payroll in October 1888, it is not certain when they settled at IR 100A. However, the historical record suggests that at least some Chakastaypasin band members were settled on the southwest corner of IR 100A by 1889.²¹¹ Even then, former Chief Chakastaypasin and some followers continued to winter south of IR 100A near Stoney Creek.²¹² In August 1890, Indian Agent McKenzie and Inspector of Indian

²⁰⁷ Treaty annuity payroll, Chakastaypasin Band, 1889, no file reference available (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 12a, p. 221).

²⁰⁸ Treaty annuity payroll, “Cumberland Band Paid at Reserve,” 1889, no file reference available (ICC Exhibit 9a, p. 7). See ticket nos. 86 and 88.

²⁰⁹ Treaty annuity payroll, “Cumberland Band Paid at Reserve,” 1889, no file reference available (ICC Exhibit 9a, pp. 5, 7). See ticket nos. 2A and 86; see also Statement of “Chiefs and Head Men of Chekastaypasin’s and John Smith’s Bands,” c. February 1889, no file reference available (ICC Exhibit 1a, pp. 104–5).

²¹⁰ R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, October 23, 1889, LAC, RG 10, vol. 3831, file 62987 (ICC Exhibit 1, p. 334).

²¹¹ See, for example, R.S. McKenzie, Indian Agent, Duck Lake Agency, to Hayter Reed, Indian Commissioner, April 30, 1889, LAC, RG 10, vol. 3793, file 46008 (ICC Exhibit 1, p. 316); R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, August 31, 1890, LAC, RG 10, vol. 3793, file 46008 (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 1, p. 571).

²¹² R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, March 1890, LAC, RG 10, vol. 3793, file 46008 (ICC Exhibit 1, p. 342).

Agencies Alexander McGibbon reported that Kahtapiskowat and Chakastaypasin were settled at the “extreme South West corner” of IR 100A, engaged in farming and putting up houses.²¹³

In May 1891, Indian Commissioner Hayter Reed reported that 26 Chakastaypasin band members had been “amalgamated” with the “Cumberland Band.”²¹⁴ In October 1891, the Chakastaypasin members were given new ticket numbers on the Cumberland 100A paylists.²¹⁵

Transfers to Cumberland Band, 1891

By 1889, it appears that most of the Cumberland band members were settled on the northern portion of IR 100A, while most of the Chakastaypasin band members chose to settle separately on the southern portion.²¹⁶ For their own convenience and administrative purposes, however, local department officials reported jointly on the activities and agricultural progress of both groups at IR 100A.²¹⁷

²¹³ Alexander McGibbon, Inspector of Indian Agencies and Reserves, to the Indian Commissioner, September 1, 1890, LAC, RG 10, vol. 3843, file 72695-1 (ICC Exhibit 1a, p. 124); R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, August 31, 1890, LAC, RG 10, vol. 3793, file 46008 (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 1, p. 571).

²¹⁴ Hayter Reed, Indian Commissioner, to DSGIA, May 20, 1891, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1a, p. 136).

²¹⁵ Treaty annuity payroll, “Cumberland Band Paid at Reserve,” 1891, no file reference available (ICC Exhibit 9a, pp. 15–16).

²¹⁶ John C. Nelson, DLS, In Charge of Indian Reserve Surveys, to SGIA, December 30, 1887, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1887*, 275 (ICC Exhibit 17, p. 35); Alexander McGibbon, Inspector of Indian Agencies and Reserves, to the Indian Commissioner, September 1, 1890, LAC, RG 10, vol. 3843, file 72695-1 (ICC Exhibit 1a, p. 124); see also Justus Wilson, Farmer, John Smith Reserve, to R.S. McKenzie, Indian Agent, Duck Lake Agency, February 24, 1891, LAC, RG 10, vol. 1596 (ICC Exhibit 1, p. 352); Diary of Justus Wilson, John Smith’s Reserve, July 1891, LAC, RG 10, vol. 1596 (ICC Exhibit 1, p. 355).

²¹⁷ R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, June 1889, LAC, RG 10, vol. 3793, file 46008 (ICC Exhibit 1, pp. 320–21); R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, September 1889, LAC, RG 10, vol. 3793, file 46008 (ICC Exhibit 1, pp. 330–31); Return showing crops sown and harvested by Individual Indians in Duck Lake Agency, 1890, in Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1890*, 284 (ICC Exhibit 17, p. 94); Alexander McGibbon, Inspector of Indian Agencies and Reserves, to the Indian Commissioner, September 1, 1890, LAC, RG 10, vol. 3843, file 72695-1 (ICC Exhibit 1a, pp. 123–25); Return showing crops sown and harvested by Individual Indians in Duck Lake Agency, 1891, in Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1891*, 314 (ICC Exhibit 17, p. 105); Alexander McGibbon, Inspector of Indian Agencies and Reserves, to SGIA, September 9, 1892, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1892*, 89 (ICC Exhibit 17, pp. 108–9).

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

We the undersigned Councillors and members of the Band of Indians owning the Reserve situated in treaty No. 6 and known as the Cumberland Reserve No. 100A do by these presents certify that the said Band has by vote of the majority of its voting members present at a meeting summoned for the purpose according to the Rules of the Band, and held in the presence of the Indian Agent for the locality on the 4th day of September 1891, granted leave to “Nanequaneum” No. 35 of Beardy’s Band No. 97 to be transferred from said band to this our Band of Indians owning the Reserve as situated at Fort a la Corne in Treaty No. 6 and known as Cumberland Reserve to which transfer, we the undersigned hereby give our consent.²¹⁸

The consent contains the signatures of five Cumberland band members and two Chakastaypasin band members, George Sanderson and “Big Head per G. Sanderson.”²¹⁹ The department approved the transfer of Nanequaneum to “Peter Chapman’s Band” on October 20, 1891,²²⁰ and Nanequaneum appeared the next year as ticket no. 105 on the 1892 payroll for “Big Head’s Band 100A.”²²¹

The October 13, 1891, Cumberland 100A payroll shows that a grandson of Kahtapiskowat moved from the James Smith Band to the Cumberland Band 100A that year and received his own ticket number, following his marriage into one of the Chakastaypasin families.²²² No Consent of Band to Transfer form was signed for his admission to the Band.

²¹⁸ Consent of Band to Transfer, September 4, 1891, LAC, RG 10, vol. 3862, file 83104 (ICC Exhibit 1, p. 356).

²¹⁹ Consent of Band to Transfer, September 4, 1891, LAC, RG 10, vol. 3862, file 83104 (ICC Exhibit 1, p. 356).

²²⁰ Unidentified author and recipient, October 20, 1891, LAC, RG 10, vol. 3862, file 83104 (ICC Exhibit 1a, p. 150).

²²¹ Treaty annuity payroll, Big Head Band, 1892, no file reference available (ICC Exhibit 9b, p. 2). See ticket no. 105.

²²² Treaty annuity payroll, “Cumberland Band Paid at Reserve,” 1891, no file reference available (ICC Exhibit 9a, p. 2). See ticket no. 100, “Qwatwaywayweein, or James.”

Death of Peter Chapman, 1892

Peter Chapman died on April 29, 1892.²²³ Around this same time, there was a shift in terminology, as the Cumberland contingent began to be more commonly referred to as the Cumberland Band or some variation of Cumberland Band No. 100A. This usage was fairly consistent until 1902.

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

An important departmental effort to distinguish between the Cumberland and Chakastaypasin band members living at IR100A began in 1892, but lasted for only four years. In May 1892, on the instructions of DSGIA Vankoughnet, who was concerned with maintaining the distinction of the Cumberland Band's Treaty 5 status,²²⁴ Commissioner Hayter Reed instructed the Indian Agent to keep the Cumberland people separate from all others on the paylists and returns. He conceded that this distinction might be difficult, since "a portion of the Chekastaypaysin's Band, and possibly some other Indians of Treaty Six are merged with them."²²⁵ That year, a new payroll was created for "Big Head's Band," and the Agent's tabular statements list the "100A Big Head's" and the "100A Cumberland" Bands separately.²²⁶

Commutation of Annuity, 1892

On March 11, 1892, a "Consent of Band to Commutation of Annuity" for Mrs Albert Ballendine was signed by "Chiefs and Councillors of the Cumberland (No. 100a) Band of Indians owning the

²²³ "Register of Indian Deaths for Band 100A," entry for April 29, 1892, LAC, RG 10, vol. 9995 (ICC Exhibit 25e, p. 33).

²²⁴ [L. Vankoughnet, DSGIA], to Hayter Reed, Indian Commissioner, April 22, 1892, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 359–60).

²²⁵ Hayter Reed, Indian Commissioner, to the Indian Agent, Duck Lake Agency, May 7, 1892, no file reference available (ICC Exhibit 1a, p. 151).

²²⁶ Treaty annuity payroll, Big Head Band, 1892, no file reference available (ICC Exhibit 9b, pp. 1–2); see, for example, Statement of Farming Agencies and Indian Reservations: Approximate return of grain and roots sown and harvested, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1892*, 332–33 (ICC Exhibit 17, pp. 120–21); Statement of Farming Agencies and Indian Reservations: Approximate return of grain and roots sown and harvested, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1893*, 387 (ICC Exhibit 17, p. 136); Number and whereabouts of Indians in the North-West Territories, 1893, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1893*, 399 (ICC Exhibit 17, p. 138); Number and whereabouts of Indians in the North-West Territories, 1895, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1895*, 400–3 (ICC Exhibit 17, pp. 186–89).

reserve situated at Fort à la Corne.”²²⁷ This form was signed entirely by Cumberland band members: Peter Chapman, William Head, James Head, Fredrick Okeekoop, Samuel Brittain, Patrick Brittain, and Edwin Brittain.²²⁸

Transfers into Big Head’s Band, 1892–95

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

In September 1891, Chief Chakastaypasin’s daughter (“Paskoostequan’s widow”) and two of her children entered treaty with Big Head’s Band, although they did not appear on the payroll until the following year.²²⁹ In 1894, her son moved from the One Arrow payroll to her ticket on the Big Head band payroll.²³⁰ No Consent to Transfer forms were signed for his admission to the Band.

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

We the undersigned Chiefs and Councillors of the Band of Indians owning the Reserve situated in Treaty No. 6 and known as Big Head’s Cumberland Reserve No. 100A, do by these presents certify that the said Band has by vote of the majority of its voting members present at a meeting summoned for the purpose according to the rules of the Band, and held in the presence of the Indian Agent for the locality on the twenty-sixth day of March, 1894, granted leave to Mah-sah-kee-ask No. 84 of Yellow Quill’s Band to join our said Band as a member thereof to share in all land and other privileges of the Band, to which admission we the undersigned also give full consent.²³¹

²²⁷ Consent of Band to Commutation of Annuity, March 11, 1892, LAC, RG 10, vol. 3871, file 88885 (ICC Exhibit 1, p. 358).

²²⁸ Consent of Band to Commutation of Annuity, March 11, 1892, LAC, RG 10, vol. 3871, file 88885 (ICC Exhibit 1, p. 358).

²²⁹ Treaty annuity payroll, Big Head Band, 1892, no file reference available (ICC Exhibit 9b, p. 2). See ticket no. 107. See also Sturgeon Lake First Nation, “Families of the Chakastapaysin Band: Remarks on Homik’s Tracing Study from the Perspective of the Sturgeon Lake First Nation,” revised May 1997 (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 17c, pp. 44, 46).

²³⁰ Treaty annuity payroll, Big Head Band, 1894, no file reference available (ICC Exhibit 9b, p. 6). See ticket no. 107.

²³¹ Consent of Band to Transfer, March 26, 1894, LAC, RG 10, vol. 3936, file 119149 (ICC Exhibit 1a, p. 153).

Three Big Head band members signed the consent – George Sanderson, John Sanderson, and Big Head – along with two members of the Cumberland Band 100A.²³² The Yellow Quill Band signed the corresponding consent for the transfer on July 16, 1894.²³³ The DSGIA subsequently approved the “transfer” on October 1, 1894.²³⁴

The final transfer into Big Head’s Band executed during this period was for the admission of Muskohepaketimit of Yellow Quill’s Band into “Big Head’s Band 100A” residing at “Cumberland 100A Indian Reserve.” The wording on the Consent form is the same as that on the Consent for the transfer for Mah-sah-kee-ask, except for the identification of signatories. This form states that the transfer is approved by the “Chiefs and Councillors of the Band of Indians owning the Reserve situated in Treaty No. 6 and known as Cumberland 100A Reserve.” It was signed entirely by members of Big Head’s band, including Kahtapiskowat, who signed as headman.²³⁵ The department approved the “transfer” in October, 1894.²³⁶

Farm Instructor Appointed, 1893

In 1893, an instructor was finally appointed for the James Smith, Big Head, and Cumberland Bands at Fort à la Corne.²³⁷ However, there does not appear to have been any significant change at this time in how the Fort à la Corne Bands earned a livelihood. In 1895, Agent McKenzie commented that “the Indians of these Bands cannot be looked upon as being farmers ... Hunting is the main source

²³² Consent of Band to Transfer, March 26, 1894, LAC, RG 10, vol. 3936, file 119149 (ICC Exhibit 1a, p. 153).

²³³ Consent of Band to Transfer, July 16, 1894, LAC, RG 10, vol. 3936, file 119149 (ICC Exhibit 1a, p. 155).

²³⁴ Acting DSGIA to Assistant Indian Commissioner, October 1, 1894, LAC, RG 10, vol. 3936, file 119149 (ICC Exhibit 1a, p. 160).

²³⁵ Consent of Band to Transfer, September 25, 1894, LAC, RG 10, vol. 3936, file 119588 (ICC Exhibit 1a, p. 159).

²³⁶ Acting DSGIA to Assistant Indian Commissioner, October [15], 1894, LAC, RG 10, vol. 3936, file 119588 (ICC Exhibit 1a, p. 161).

²³⁷ Alexander McGibbon, Inspector of Indian Agencies and Reserves, to SGIA, June 28, 1894, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1894*, 93 (ICC Exhibit 17, p. 145).

of earnings of these bands.”²³⁸ This comment does not present the whole picture, as some progress had been made. Cattle raising became the focus of agricultural efforts on the James Smith and Cumberland 100A reserves, as the land there was suited to it, and some crops were grown as well. In 1895, Big Head’s Band and the Cumberland Band 100A each had 20 acres cultivated – one quarter more than the amount of the previous year.²³⁹

Surrender of 640 acres at IR 20, 1894

In 1892, a petition from 21 “Half-breeds of Cumberland” living near the HBC settlement at Cumberland House asked that the portion of IR 20 occupied by them be withdrawn from the reserve.²⁴⁰ On December 6, 1892, Surveyor T.D. Green wrote a memorandum to the Deputy Minister of Indian Affairs regarding this proposal. He recommended that the surrender be taken “in view of the fact that the Indians of Cumberland District have 65 sq. miles of good farming lands reserved for them on the Carrot River near Fort à la Corne.”²⁴¹ In 1894, a surrender of 640 acres at IR 20 was accepted by Order in Council 3147.²⁴² On a 1902 “List of surveys pending in Manitoba and the N.W.T.,” it can be seen that an addition of 640 acres to the “Cumberland House Indian Reserve” in the Pas Agency was planned for that year. The addition, approved by Order in Council of January 25, 1902, was “in lieu of 640 acres surrendered in 1894.”²⁴³ There is no available evidence

²³⁸ R.S. McKenzie, Indian Agent, to SGIA, July 15, 1895, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1895*, 81 (ICC Exhibit 17, p. 165).

²³⁹ Statement of Farming Agencies and Indian Reservations: Approximate return of grain and roots sown and harvested, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1895*, 400–1 (ICC Exhibit 17, pp. 186–87).

²⁴⁰ H.T. Vergette, Head of Land Titles Section, DIAND, to Acting District Supervisor, Prince Albert Indian District, February 4, 1970, no file reference available (ICC, Cumberland House Cree Nation IR 100A Inquiry, Exhibit 4).

²⁴¹ T.D. Green, Department of Indian Affairs, to Deputy Minister, Department of Indian Affairs, December 6, 1892, no file reference available (ICC Exhibit 1, p. 363).

²⁴² Letter from H.T. Vergette, Head of Land Titles Section, DIAND, to Acting District Supervisor, Prince Albert Indian District, February 4, 1970, no file reference available (ICC, Cumberland House Cree Nation IR 100A Inquiry, Exhibit 4).

²⁴³ A.W. Ponton, “List of surveys pending in Manitoba and N.W.T., 1902,” LAC, RG 10, vol. 3960, file 141977-7 (ICC Exhibit 1, p. 770).

regarding whether the Cumberland band members at IR 100A were informed of this surrender or whether they participated in any vote.

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

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

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

When by a majority vote of a band, or the council of a band, an Indian of one band is admitted into membership in another band, and his admission thereinto is assented to by the superintendent general, such Indian shall cease to have any interest in the lands or moneys of the band of which he was formerly a member, and shall be entitled to share in the lands and moneys of the band to which he is so admitted; but the superintendent general may cause to be deducted from the capital of the band of which such Indian was formerly a member his per capita share of such capital and place the same to the credit of the capital of the band into membership in which he had been admitted in the manner aforesaid.²⁴⁴

Requests for Transfer from Cumberland House, 1896

By 1896, the large expected migration of Cumberland band members from Treaty 5 had not materialized. On May 6, 1896, Inspector McColl inquired "if any of the Cumberland Band who desire to remove to Fort la Corne may still be allowed to do so."²⁴⁵ He reported that Albert Greenleaf and his family wished to make the move and "that there are others also who will shortly make the

²⁴⁴ *Indian Act*, RSC 1886, c. 43, s. 140, as amended by SC 1895, c. 35, s. 8 (ICC Exhibit 24a, p. 59).

²⁴⁵ E. McColl, Inspector of Indian Agencies, Manitoba Superintendency, to the Indian Commissioner, May 6, 1896, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 441).

same request.”²⁴⁶ In response, Hayter Reed, Deputy Superintendent General of Indian Affairs, instructed Indian Commissioner A.E. Forget that “the Department will allow a few who can and will work, to transfer” to Fort à la Corne “in order to better their condition.”²⁴⁷

On May 27, 1896, F.H. Paget, writing for the Indian Commissioner, informed the Indian Agent at Duck Lake of Albert Greenleaf’s application “for transfer to the Cumberland Reserve at a la Corne” and enclosed blank Consent forms “for his admission thereto.” The letter also states that applications of others from Cumberland House would be permitted “if the Bands concerned make no opposition thereto.”²⁴⁸ On June 10, 1896, six “members of the Band of Indians owning the Reserve situated in Treaty No. Six and known as the Cumberland (No. 100A) Reserve” signed the transfer form granting Albert Greenleaf “leave to ... join our said band.”²⁴⁹ However, he never appeared on the payroll at IR 100A, and no others from the Cumberland Band in Treaty 5 applied for transfer or appear on the paylists at IR 100A at this time.

Transfer of Chakastaypasin Members to Cumberland Band 100A, 1896

Sometime before the fall of 1895, Thomas M. Daly, the SGIA and Minister of the Interior, visited the North-West Territories and took notice of the “very fine tracts of land” within the “unoccupied and unused” Chakastaypasin and Young Chipeewayan reserves.²⁵⁰ On October 18, 1895, he instructed his Deputy Minister, A.M. Burgess, to “open a correspondence with Mr. Reed as to these

²⁴⁶ E. McColl, Inspector of Indian Agencies, Manitoba Superintendency, to the Indian Commissioner, May 6, 1896, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 441).

²⁴⁷ Hayter Reed, DSGIA, to A.E. Forget, Indian Commissioner, May 23, 1896, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 466).

²⁴⁸ F.H. Paget, for the Indian Commissioner, to the Indian Agent, Duck Lake Agency, May 27, 1896, LAC, RG 10, vol. 1594 (ICC Exhibit 1, p. 467).

²⁴⁹ Consent of Band to Transfer, June 10, 1896, LAC, RG 10, vol. 1594 (ICC Exhibit 1, p. 468).

²⁵⁰ J. McTaggart, Dominion Lands Agent, to T. Mayne Daly, Minister of the Interior, October 12, 1895, LAC, RG 15, Series D-II-1, vol. 724, file 390906 (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 1, p. 717).

reserves being surrendered.”²⁵¹ Soon after, on November 9, 1895, DSGIA Hayter Reed wrote to Indian Commissioner A.E. Forget and inquired

whether the members of Chacastapasin Band were formally transferred to the other Bands with which they become amalgamated, and if not to request that the formal application for such transfer and consent of the Bands concerned to receive applicants may be obtained without delay – and transmitted to the Dept.²⁵²

Reed wrote again to Forget in January 1896, asking him whether “action has been completed relative to the formal transfer” of the Chakastaypasin members to other bands. He explained that the Department of Indian Affairs intended to hand control of the Chakastaypasin reserve over to the Department of the Interior, “but desires assurance in the direction indicated before proceeding.”²⁵³

On February 3, 1896, Commissioner Forget instructed the Indian Agent at Duck Lake to immediately “obtain the consent of the councils of the several Bands into which these Indians have gone, to their formal admission thereinto,” since it appeared that “no formal transfer of these Indians to the Bands with which they subsequently amalgamated has apparently ever been obtained.”²⁵⁴

In a letter to Forget dated February 8, 1896, Hayter Reed confirmed that the department intended to use the provisions of section 140 to obtain control of the Chakastaypasin reserve. He wrote that “the Department does not propose to take any surrender of the Chakastaypasin Reserve ... and it is largely on that account that it desires to have the transfer to other Bands, by which the original owners have forfeited all rights in the Reserve set apart for them, formally completed.”²⁵⁵ In subsequent communications with the Agent, Forget instructed that all Chakastaypasin members

²⁵¹ Marginal note written on letter from J. McTaggart, Dominion Lands Agent, to T. Mayne Daly, Minister of the Interior, October 12, 1895, LAC, RG 15, Series D-II-1, vol. 724, file 390906 (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 1, p. 717).

²⁵² DSGIA to A.E. Forget, Indian Commissioner, November 9, 1895, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1a, p. 164).

²⁵³ Hayter Reed, DSGIA, to A.E. Forget, Indian Commissioner, January 23, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1a, p. 166).

²⁵⁴ A.E. Forget, Indian Commissioner, to the Indian Agent, Duck Lake Agency, February 3, 1896, LAC, RG 10, vol. 1594 (ICC Exhibit 1a, p. 167).

²⁵⁵ Hayter Reed, DSGIA, to A.E. Forget, Indian Commissioner, February 8, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1a, p. 172).

should be transferred to the “Cumberland Band No. 100a”, and Big Head’s Band should be “done away with.”²⁵⁶ In addition, Forget instructed that all the former Chakastaypasin members being paid with the James Smith Band should be transferred to Cumberland Band 100A as well, since they had “never formally transferred” to James Smith.²⁵⁷ However, the Indian Commissioner later agreed that “in the event of the Cumberland Band refusing to sanction the admission,” the Agent could try to obtain the approval of the James Smith Band if the transferees were willing to become members of that Band and live on that reserve.²⁵⁸

While the Indian Agent and the Indian Commissioner were attempting to organize the formal transfers of Chakastaypasin members, the Department of the Interior continued to press Hayter Reed for “early action” in transferring control of the Chakastaypasin and Young Chipeewayan reserves.²⁵⁹ Immediately following this communication from the Department of the Interior, Reed wrote to Forget asking him to instruct the Agent “not to allow any evitable delay” in completing the formal transfers.²⁶⁰

Consents to Transfer Signed by Cumberland Band 100A

On May 18, 1896, Indian Agent McKenzie wrote to the Indian Commissioner, enclosing “the consents of the members of the Cumberland Band No. 100A to accept into their Band the remnant of Chakastapasins Band No. 98.” McKenzie forwarded 22 Consent forms admitting 16 Big Head band families (on 15 forms) and seven James Smith families into the Cumberland Band 100A.²⁶¹ He

²⁵⁶ A.E. Forget, Indian Commissioner, to the Indian Agent, Duck Lake Agency, February 17, 1896, no file reference available (ICC Exhibit 1a, p. 173).

²⁵⁷ F.H. Paget, for the Indian Commissioner, to the Indian Agent, Duck Lake Agency, April 27, 1896, LAC, RG 10, vol. 1594 (ICC Exhibit 1a, p. 175).

²⁵⁸ F.H. Paget, for the Indian Commissioner, to the Indian Agent, Duck Lake Agency, May 2, 1896, LAC, RG 10, vol. 1594 (ICC Exhibit 1a, p. 176).

²⁵⁹ J. Hall, Secretary, Department of the Interior, to Hayter Reed, DSGIA, April 22, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 1, p. 755).

²⁶⁰ Hayter Reed, DSGIA, to A.E. Forget, Indian Commissioner, April 23, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1a, p. 174).

²⁶¹ R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, May 18, 1896, enclosing 22 Consent of Band to Transfer forms dated May 10, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, pp. 442–65).

explained that a number of the names on the Consent forms had never appeared on the Chakastaypasin paylists, but that “these people are descendants or have become members since 1888 and have never been legally transferred to any band, even although some of them have been paid Treaty with James Smith’s Band.”²⁶² Some of those referred to by McKenzie were Chakastaypasin members who had moved to the James Smith band paylists before the Rebellion in 1885. Others were not former Chakastaypasin band members, but they had family connections to members of the band. A notation on the Consent forms for these individuals states that they wished “to be transferred to Cumberland Band with the remnant of Chakastaypasin 98.”²⁶³ An additional Consent to Transfer form admitting one former Chakastaypasin member into the James Smith Band was also forwarded at this time, making 23 Consent forms in total.²⁶⁴

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

We the undersigned Chief and Councillors of the Band of Indians owning the reserve situated in Treaty No. Six and known as “Cumberland Reserve,” do, by these presents certify that the said Band has by vote of the majority of its voting members present at a meeting summoned for the purpose, according to the rules of the band, and held in the presence of the Indian Agent for the locality on the tenth day of May 1896, granted leave to ... join our said band, and as a member thereof to share in all land and other privileges of the Band, to which admission we the undersigned also give full consent.²⁶⁵

²⁶² R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, May 18, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 443).

²⁶³ Consents of Band to Transfer, May 10, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, pp. 456–61, 465); see also Sturgeon Lake First Nation, “Families of the Chakastapaysin Band: Remarks on Homik’s Tracing Study from the Perspective of the Sturgeon Lake First Nation,” revised May 1997 (ICC, James Smith Cree Nation Chakastaypasin IR98 Inquiry, Exhibit 17c, pp. 46–7, 107–10). The members referred to were Paskoostequan’s widow (Baldhead), Alexander Baldhead, Oopeepeequankahkisseewaywake (Hard Sounding Flute), Quaytwaywayweein, William Hard Sounding Flute, Mahsakask, and Maskochepatemit.

²⁶⁴ Consents of Band to Transfer, May 10, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, pp. 444–65); Consent of Band to Transfer, March 17, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC, James Smith Cree Nation Chakastaypasin IR98 Inquiry, Exhibit 1, p. 779).

²⁶⁵ Consents of Band to Transfer, May 10, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, pp. 444–65).

Sixteen of the forms have the words “Chief and Councillors” struck out and replaced with the word “members.” All the forms are certified by Agent R.S. McKenzie, witnessed by John S. Gordon and Angus McKay, and signed by seven Cumberland band members with an X mark.²⁶⁶ Although the Consent to Transfer forms were evidently signed by Cumberland members, Delbert Brittain says that the elders do not remember having a meeting to accept the Chakastaypasin members into their band.²⁶⁷

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

the reason the Cumberland Band did not give their consent sooner was because they wished to know if by so doing they would be allowed to appoint a Chief and Councillors. However, after I explained to them that I did not expect this privilege would be extended to them but that I would submit their desire to the Department, I got them to sign the papers without any difficulty.²⁶⁸

A marginal note signed by “F.H.P.” for the Indian Commissioner states that “[t]he Agent will be asked to inform the band that their request cannot be granted.”²⁶⁹ McKenzie reported, however, that the Chakastaypasin members had not yet consented to join the Cumberland Band because “they do not wish to give up their claim to their Reserve.”²⁷⁰

In his covering letter to the DSGIA, forwarding these Consent to Transfer forms and McKenzie’s letter, Commissioner Forget commented that “it will be seen that these Indians either do not comprehend the full effect of their transferring themselves to another Band or have only accepted the same conditionally.”²⁷¹ Reed replied:

²⁶⁶ Consents of Band to Transfer, May 10, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, pp. 444–65).

²⁶⁷ ICC Transcript, June 26, 2002 (ICC Exhibit 18c, p. 46, Delbert Brittain).

²⁶⁸ R.S. McKenzie, Indian Agent, to the Indian Commissioner, May 18, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 442).

²⁶⁹ Marginal note written by F.H. Paget for the Indian Commissioner on letter from R.S. McKenzie, Indian Agent, to the Indian Commissioner, May 18, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 442).

²⁷⁰ R.S. McKenzie, Indian Agent, to the Indian Commissioner, May 18, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, p. 442).

²⁷¹ F.H. Paget, for the Indian Commissioner, to DSGIA, May 23, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1a, p. 177).

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

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

The Agent should be further instructed to act promptly in this matter, as the longer time the Indians have to think about and talk it over, and to be influenced by others, the more unreasonable they are likely to become.²⁷²

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

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

On June 5, 1896, Commissioner Forget instructed Agent McKenzie to obtain an application from each Chakastaypasin head of family for admission “into membership in the Band which has consented to receive them,” even though consent for their admission to IR 100A had already been obtained on May 10, 1896. Forget noted that this procedure was “necessary” “in the absence of the customary consent of band to release members applying for transfer, which cannot in this case be procured as the whole band or remnant thereof, is being transferred.”²⁷³ He wrote: “No time should be lost in having the work completed and the papers forwarded, for the longer the matter is allowed to stand open the more chance there is of the present tendency to opposition developing into a

²⁷² Hayter Reed, DSGIA, to A.E. Forget, Indian Commissioner, June 2, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC, James Smith Cree Nation Chakastaypasin IR98 Inquiry, Exhibit 1, pp. 811–12).

²⁷³ F. Paget, for the Indian Commissioner, to the Indian Agent, Duck Lake Agency, June 5, 1896, no file reference available (ICC Exhibit 1a, p. 178).

pronounced refusal, and this it is desired to avoid.”²⁷⁴ He also instructed the Agent to tell the Chakastaypasin Band that admission into other bands entailed

all the privileges including the right to lands, which they enjoyed as members of a separate band, and for this reason they cannot expect compensation where no loss is sustained. ... In any case they have practically relinquished all claim to their old reserve by abandoning it and taking up their abode on others and after years of practical membership in such other bands, which was not opposed by the Department, it is now somewhat late to set up any claims to lands ... They might also be informed that in order to definitely assure themselves of the privileges now offered them in connection with other bands, they had better, in their own interests, make no unnecessary delay in accepting the offer while it remains open.²⁷⁵

On receipt of these instructions, Agent McKenzie called a meeting “of the members who were not absent” on June 12 and made an unsuccessful attempt to get their signatures on an application for transfer. He reported that “they flatly refuse unless they are allowed something for the Checastapasins Reserve” and that, in any case, only a few members were present.²⁷⁶ He suggested that “the only time it will be possible to get the Band together will be at Treaty payments and I am in hopes by that time to induce them to sign the document but I cannot say positively that I shall be able.”²⁷⁷ DSGIA Reed reluctantly agreed to this plan of action, commenting to Commissioner Forget that “apparently nothing can be done in the matter pending the fresh effort to be made by the Agent later on, but you will see that it is not lost sight of.”²⁷⁸ However, he instructed that, “should the Agent find it less difficult to get the Indians to make individual applications,” he should pursue that

²⁷⁴ F. Paget, for the Indian Commissioner, to the Indian Agent, Duck Lake Agency, June 5, 1896, no file reference available (ICC Exhibit 1a, p. 178).

²⁷⁵ F. Paget, for the Indian Commissioner, to the Indian Agent, Duck Lake Agency, June 5, 1896, no file reference available (ICC Exhibit 1a, p. 179).

²⁷⁶ R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, June 20, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 1, p. 815).

²⁷⁷ R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, June 20, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 1, p. 815).

²⁷⁸ Hayter Reed, DSGIA, to A.E. Forget, Indian Commissioner, July 2, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 1, p. 816).

course rather than trying to get all the signatures on a single application.²⁷⁹ Forget communicated these instructions to the Agent, informing him that since it was “useless” to approach the Chakastaypasin members as a whole, “except in making the trial you suggest at the approaching treaty payments,” the Agent should “take the members individually and endeavour to win them over one by one, obtaining their signatures as occasion offers.”²⁸⁰

On October 15, 1896, at the time of the treaty payments, 27 former Chakastaypasin families applied for admission to the Cumberland Band at IR100A, and another family applied for admission to the James Smith Band.²⁸¹ No information is available regarding the circumstances surrounding the signing of these applications or any meetings that may have taken place to discuss the transfers. Chakastaypasin and James Smith elders do not recall stories of a meeting or a vote to transfer to another band or any talk of “becoming one band.”²⁸² It is unclear from their statements whether the elders were referring to the 1896 transfer to the Cumberland Band or the 1902 amalgamation with the James Smith Band.

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

We, the undersigned, members of the Band of Treaty Indians known as Chacastapasin’s Band No. 98, formerly occupying the Reserve of that name situated in the Duck Lake Agency, but now resident on the Reserve of the Cumberland Band

²⁷⁹ Hayter Reed, DSGIA, to A.E. Forget, Indian Commissioner, July 2, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 1, p. 816).

²⁸⁰ A.E. Forget, Indian Commissioner, to the Indian Agent, Duck Lake Agency, July 6, 1896, no file reference available (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 1, p. 817).

²⁸¹ Application for admission to “Cumberland Band No. 100A,” October 15, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1a, p. 180); also Application for admission to the James Smith Band, October 15, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1a, p. 181).

²⁸² ICC Transcript, June 27–28, 2001 (ICC Exhibit 18a, p. 45, Robert Constant; pp. 122–23, Violet Sanderson); ICC Transcript, January 28–29, 2003 (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 16b, pp. 35, 38–39, Sol Sanderson; pp. 77, 85, Terry Sanderson; pp. 164–65, Raymond Sanderson, Martha Opoonechaw-Stonestand, Albert Sanderson, and Patrick Stonestand; p. 218, Jake Sanderson).

No. 100A, in the same Agency, do hereby make application to be admitted into membership in the said Cumberland Band No. 100A.²⁸³

The applications are witnessed by Indian Agent R.S. McKenzie and Sandy Thomas, the Agency interpreter. Included among the applicants are all nine men who later signed the surrender of the Chakastaypasin IR 98 on June 23, 1897.²⁸⁴

No annuity payments are recorded on the payroll for “Big Head’s Band Paid at Fort à la Corne,” dated October 14 and 15, 1896. Each name has a note beside it stating that the ticket had been “transferred to Cumberland Band No. 100A,” and referencing the Indian Commissioner’s letter dated June 5, 1896, as the authority for the transfer.²⁸⁵ As mentioned previously, this letter contained instructions from Forget to Agent McKenzie, instructing him to “obtain the signatures of each head of family or adult member thereof, to an application to be transferred to and admitted into membership in the Band which had consented to receive them.”²⁸⁶ The payroll shows that 17 families containing 48 people were transferred from Big Head’s Band to the Cumberland Band 100A at that time.²⁸⁷

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

²⁸³ Application for admission to “Cumberland Band No. 100A,” October 15, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1a, p. 180).

²⁸⁴ Surrender for sale of Chakastaypasin IR 98, June 23, 1897, no file reference available (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 1, p. 899).

²⁸⁵ Treaty annuity payroll, Big Head Band, October 14–15, 1896, no file reference available (ICC Exhibit 9b, pp. 10–11).

²⁸⁶ F. Paget, for Indian Commissioner, to the Indian Agent, Duck Lake Agency, June 5, 1896, no file reference available (ICC Exhibit 1a, p. 178).

²⁸⁷ Treaty annuity payroll, Big Head Band, October 14–15, 1896, no file reference available (ICC Exhibit 9b, pp. 10–11).

Cumberland Band 100A at that time.²⁸⁸ The James Smith band payroll also notes the transfer of one person from Big Head's Band to the James Smith Band on the same date, citing the same Commissioner's letter as the authority for the transfer.²⁸⁹

Although all 27 Chakastaypasin families who applied for admission to the Cumberland Band on October 15, 1896, were added to the Cumberland 100A payroll and said to be "transferred," it was noted that Consent forms had been obtained for the transfer of only 24 of these families. Some confusion was caused by variant spellings of names on the Consent forms and the application for admission, but it was finally determined that four additional Consents to Transfer and one application for admission were required to complete the formal transfers. The Indian Commissioner instructed the Agent on December 10, 1896, to obtain them "with as little delay as possible."²⁹⁰ By March 27, 1897, all the necessary Consents to Transfer and applications for admission had been obtained, and the formal transfer of 27 Chakastaypasin families to the Cumberland Band 100A and one family to the James Smith Band under section 140 of the *Indian Act* was complete.²⁹¹

In the end, the department opted to obtain a formal surrender of Chakastaypasin IR 98, one that was allegedly carried out on June 23, 1897.²⁹²

²⁸⁸ Treaty annuity payroll, "Cumberland Band No. 100A paid at Reserve," October 14–15, 1896, no file reference available (ICC Exhibit 9a, pp. 25–28).

²⁸⁹ Treaty annuity payroll, James Smith Band, October 14–15, 1896, no file reference available (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 12a, p. 349).

²⁹⁰ F. Paget, for the Indian Commissioner, to the Indian Agent, Duck Lake Agency, December 10, 1896, LAC, RG 10, vol. 1594 (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 1, p. 841).

²⁹¹ Consents of Band to Transfer, May 10, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1, pp. 444–65); Application for admission to "Cumberland Band No. 100A," October 15, 1896, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1a, p. 180); Application for admission to the "Cumberland Band," February 2, 1897, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1a, p. 190); Consent of Band to Transfer, February 2, 1897, LAC, RG 10, vol. 6663, file 109A-3-1, part 1 (ICC Exhibit 1a, p. 192); Consent of Band to Transfer, March 12, 1897, LAC, RG 10, vol. 1594 (ICC Exhibit 1a, p. 194).

²⁹² Surrender for sale of Chakastaypasin IR 98, June 23, 1897, no file reference available (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 1, pp. 897–99).

EVENTS AT FORT À LA CORNE, 1897–1902

In 1896, Agent McKenzie began reporting jointly on the “James Smith and Cumberland Reserves, Nos. 100 and 100A,” noting that “these reserves adjoin one another and are dealt with together.”²⁹³ He continued with this practice in all his subsequent annual reports until 1902.

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

On an 1897 “Statement of Chiefs and Councillors” for the Duck Lake Agency, the entry for the Cumberland Band 100A lists Kahtapiskowat, with his position unspecified.²⁹⁴ On a similar statement dated 1899, Kahtapiskowat is designated as “councillor” for the Cumberland Band 100A, appointed in September 1876 “for Life or Resignation.”²⁹⁵ According to the oral history passed on to Delbert Brittain by elders, Kahtapiskowat was never accepted by the membership as either a chief or a headman. Instead, it was felt that his leadership was imposed by the department.²⁹⁶

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

In July 1898, Agent McKenzie requested that the department exchange a portion of land at the southern part of IR 100A for another area at the northern end.²⁹⁷ He reported that the south end of the reserve was of little use because it was so dry, and that during the previous two or three years, an area just outside the northern part of the reserve had been used for wintering cattle because “there

²⁹³ R.S. McKenzie, Indian Agent, Duck Lake Agency, to SGIA, July 22, 1896, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1896*, 171 (ICC Exhibit 17, p. 194).

²⁹⁴ R.S. McKenzie, Indian Agent, “Statement of Chiefs and Councillors of the Bands of Indians of the Duck Lake Agency,” July 28, 1897, LAC, RG 10, vol. 3940, file 121698-9 (ICC Exhibit 1, p. 489).

²⁹⁵ List of Indian Chiefs and Councillors, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1899*, 581 (ICC Exhibit 17, p. 259).

²⁹⁶ ICC Transcript, June 26, 2002 (ICC Exhibit 18c, pp. 40, 52–53, Delbert Brittain).

²⁹⁷ R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Secretary, Department of Indian Affairs, July 22, 1898, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 503).

is no good water on the reserve.”²⁹⁸ Elder James Burns describes this area as a “petawikan” – a place for wintering cattle where the creek flowed year round.²⁹⁹

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

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

Although the size of the reserve is out of all proportion to the requirements of the persons residing thereon and although this disproportion may have arisen from a grave error in calculation shown on file, it is also shown on file that the Department of the Interior in consenting to the appropriation of lands for the reserve was advised of the number of Indians for whom the reserve was required and of the quantity of land required by Treaty 5 to be allotted in proportion. There is therefore some reason to surmise that the Government of the day considered it proper to rectify to some extent the disproportionate terms of Treaties No. 5 and No. 6 [and] to some extent the correspondence on file supports this view.³⁰¹

Rimmer observed that a reserve size of 65 square miles is sufficient for 325 persons under Treaty 6. Furthermore, given that the population of the Cumberland Band in 1883 was 345 persons, the combined area of IR 20 and IR 100A (amounting to 71.69 square miles) is “very little in excess of the proportion of land required” for a population of 345 under Treaty 6.³⁰² He went on to state:

²⁹⁸ R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Secretary, Department of Indian Affairs, July 22, 1898, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 503).

²⁹⁹ ICC Transcript, November 20, 2001 (ICC Exhibit 18b, p. 52, James Burns).

³⁰⁰ S. Bray to the Secretary, March 15, 1899, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 537–38).

³⁰¹ Reginald Rimmer, Law Clerk, Department of Indian Affairs, to unidentified recipient, May 18, 1899, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 541).

³⁰² Reginald Rimmer, Law Clerk, Department of Indian Affairs, to unidentified recipient, May 18, 1899, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 541–42).

It is not to be assumed unless it can be clearly shown that the reserve was set apart upon such terms that Reserve 100A is held only for the 120 Indians resident thereon. The Order in Council of 17th May, 1889, and the schedule thereto, p. 54, supports the conclusion that Reserve 100A is held for the Indians of Cumberland District, which would at least include those of Reserve 20 of Treaty 5.³⁰³

In light of Rimmer's opinion, Samuel Bray recommended to the Secretary that a surrender be taken "from the Indians residing on the Reserve" – presumably IR 100A.³⁰⁴

On June 5, 1899, Agent McKenzie was instructed to take a surrender "in accordance with the Indian Act" and to have the affidavit signed by a chief or a headman.³⁰⁵ The surrender, dated June 17, 1899, was made by the "Chief and Principal men of the Cumberland Band of Indians resident on our Reserve No. 100A" for the exchange of 960 acres at the southwest corner of IR100A for "a portion of land of equal area situated at the North end of our said Reserve."³⁰⁶ Three out of nine signatories to the surrender were former Chakastaypasin members, including Kahtapiskowat, who by this time had been transferred by the department to the Cumberland Band 100A under section 140 of the *Indian Act*. Kahtapiskowat signed the surrender document as "Headman."³⁰⁷ The affidavit of execution was signed by Kahtapiskowat and Indian Agent McKenzie on June 21, 1899,³⁰⁸ and Order in Council PC 1683 accepted the surrender on August 12, 1899.³⁰⁹ There is no evidence that the Cumberland Band in the Pas Agency was informed of this surrender or participated in the vote.

³⁰³ Reginald Rimmer, Law Clerk, Department of Indian Affairs, to unidentified recipient, May 18, 1899, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 542).

³⁰⁴ S. Bray to the Secretary, Department of Indian Affairs, May 19, 1899, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 543).

³⁰⁵ DSGIA to R.S. McKenzie, Indian Agent, Duck Lake Agency, June 5, 1899, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 545).

³⁰⁶ "Cumberland Band of Indians," Surrender for exchange, June 17, 1899, LAC, RG 2, vol. 532 (ICC Exhibit 1, pp. 549–51).

³⁰⁷ "Cumberland Band of Indians," Surrender for exchange, June 17, 1899, LAC, RG 2, vol. 532 (ICC Exhibit 1, p. 551).

³⁰⁸ Affidavit of Robert Sutherland McKenzie, Indian Agent, and "Kah ta pis co wat," Headman, June 21, 1899, LAC, RG 2, vol. 532 (ICC Exhibit 1, p. 552).

³⁰⁹ Order in Council PC 1683, August 12, 1899, no file reference available (ICC Exhibit 1, p. 561).

Almost two years after the surrender, Agent Jones reported that the addition to the reserve had not yet been surveyed and warned: “This section of country I expect will be very soon thickly populated, as the Canadian Northern [Railway] is coming close to it[,] it is well to guard against encroachment by outsiders.”³¹⁰

Petition for Councillor, 1900

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

we have been without one councilor although there was an election for the vacancy but the successful candidate was not put in office. We humbly beg that the money due our reserve for this office be given ... and hereafter we shall have a councilor to fill the office which is at present vacant.³¹¹

Interestingly, the petition is signed by members of all three groups at Fort à la Corne: the James Smith Band, former Chakastaypasin band members (now transferred by the department to the Cumberland Band 100A), and original Cumberland band members. For the James Smith Band, Chief James Smith and his three councillors – Bernard Constant, Jacob McLean, and Chekoosoo – signed. Samuel Brittain and Michael Okeekoop, as well as former Chakastaypasin band members George Sanderson and Neesooptahtawein, signed for the Cumberland Band 100A.³¹²

In response to the petition, Agent McKenzie reported in May that an election had been held to replace the councillor, Henry Smith, “but the Department did not approve of the man so elected and ordered me not to countenance any such meeting as it was not the intention of allowing any more Councillors to be elected, as there were already four Councillors at La Corne.” Furthermore, McKenzie concluded that “the Indians do much better, and are much more thrifty and less difficult

³¹⁰ W.E. Jones, Indian Agent, Duck Lake Agency, to the Secretary, Department of Indian Affairs, February 4, 1901, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 605).

³¹¹ Chief James Smith and others to Clifford Sifton, Minister of the Interior, March 28, 1900, LAC, RG 10, vol. 3940, file 121698-9 (ICC Exhibit 1, pp. 596–97).

³¹² Chief James Smith and others to Clifford Sifton, Minister of the Interior, March 28, 1900, LAC, RG 10, vol. 3940, file 121698-9 (ICC Exhibit 1, pp. 596–97).

to handle” without chiefs and councillors, since they are the ones to “put mischief into the Indians heads.”³¹³

With respect to Agent McKenzie’s statement that “there were already four Councillors at La Corne,” it might be noted that the James Smith Band had three recognized councillors, and the Cumberland Band 100A had one councillor (Kahtapiskowat) recognized by the department at this time.³¹⁴

Commutations of Annuity, 1900

Two commutations of annuity were signed by the Cumberland Band in 1900. On July 10, 1900, a “Consent of Band to Commutation of Annuity” for Eliza MacKay (née Fox) was signed by the “members and Councillors of the Cumberland Band No. 100A ... composing a majority of the members and Councillors of the said Band.” The consent was signed by three band members, all original Chakastaypasins, who by this time had been formally transferred to the Cumberland Band 100A under section 140 of the *Indian Act*: Kahtapiskowat, George Sanderson, and Neesoopahtawein. Each signed on the lines entitled “Councillors,” while the line for “Chief” was blank and crossed out.³¹⁵ This is the first official Cumberland band document signed only by former Chakastaypasin band members.

The following month, on August 30, 1900, a commutation of annuity for Lydia Cook (née Brittain) was signed by the “Chief and Councillors of the Cumberland Band of Indians.” The Consent was signed by four band members: Michael Okeekoop, an original Cumberland Band member, and “Big Head Kah ta pis kowat,” George Sanderson, and Neesoopahtawein. All designations for “Chief” and “Councillor” are crossed out, except next to the name of Big Head, who is designated as a councillor.³¹⁶

³¹³ R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, May 11, 1900, LAC, RG 10, vol. 3940, file 121698-9 (ICC Exhibit 1, p. 598).

³¹⁴ List of Indian Chiefs and Councillors, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1899*, 581 (ICC Exhibit 17, p. 259).

³¹⁵ Consent of Band to Commutation of Annuity, July 10, 1900, LAC, RG 10, vol. 3953, file 135540-9 (ICC Exhibit 1, p. 599).

³¹⁶ Consent of Band to Commutation of Annuity, August 30, 1900, LAC, RG 10, vol. 3953, file 135540-9 (ICC Exhibit 1, p. 601).

Requests for Transfer from Cumberland House, 1900

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

Mr. Peter Turner, of Fort a la Corne, has applied to the Department through Mr. T.O. Davis, M.P., for the transfer of Jeremiah Friday, David Tea Boy and Andrew Tatispask from the Cumberland Band, in the Pas Agency, to the Fort a la Corne Band. ... if the Fort a la Corne Band is willing to receive them in their Reserve, obtain its consent on the forms herewith enclosed. In the meantime I will ascertain from Mr. Agent Courtney whether these men desire to be transferred and if so obtain the consent of the Cumberland Band.³¹⁷

The only available evidence regarding the identity of Peter Turner is an application made in 1898 for a licence to trade on “the Indian Reserve at Fort a la Corne” during the annuity payments that year, a request that was approved by the Agent.³¹⁸

The Cumberland Band 100A signed Consent to Transfer forms for David Tea Boy, Andrew Tatispask, and Jeremiah Friday on August 30, 1900. The forms were signed by three original Cumberland members (Joseph Head, James Head, and Michael Okeekeep) and three former Chakastaypasin members (Kahtapiskowat, George Sanderson, and Neesoopahtawein), all of whom were by this time formally transferred by the department to the Cumberland Band 100A under section 140 of the *Indian Act*. Kahtapiskowat signed as “Councillor.”³¹⁹

Apparently, none of these families actually moved to IR 100A. Both Jeremiah Friday and David Tea Boy continued to receive annuities with the Cumberland Band at IR 20, and never appeared on the IR 100A paylists.³²⁰ David Laird explained later:

³¹⁷ David Laird, Indian Commissioner, to the Indian Agent, Duck Lake Agency, July 12, 1900, LAC, RG 10, vol. 1599 (ICC Exhibit 1, p. 600).

³¹⁸ Peter Turner to R.S. McKenzie, Indian Agent, September 27, 1898, LAC, RG 10, vol. 9994 (ICC Exhibit 25a, p. 43).

³¹⁹ Consents of Band to Transfer, August 30, 1900, LAC, RG 10, vol. 1596 (ICC Exhibit 1, pp. 602–4).

³²⁰ Treaty annuity payroll, “Cumberland Band Paid at Cumberland,” 1900–3, no file reference available (ICC, Cumberland House Cree Nation IR 100A Inquiry, Exhibit 8, pp. 106, 108, 110, 112, 114, 116, 118, 120).

In 1900, application was made by a Mr. Peter Turner at Fort a la Corne writing to Mr. T.O. Davis, M.P. asking leave for three families to remove from Cumberland House band to the La Corne reserve. ... Both bands were asked to consent to the removal. The Band of reserve 100A gave their consent in 1900, but when the Band at Cumberland House were asked for their consent to the transfer in 1901 by Mr. Agent Courtney, the reply was that there was no such man as one of those named, and Mr. Courtney reported that “the Councillor replied on behalf of David Teaboy and Jeremiah Friday, saying that they did not wish to be transferred. In the event of their desire to be transferred a vote was taken which was unanimous in refusing to give their consent.”³²¹

ALLEGED SURRENDER AND AMALGAMATION, 1902

Events Preceding

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

When in Prince Albert last I intended speaking to you ... about trying to get the Southern Township of the Indian Reserve lying between here and Melfort opened up for settlement, this is a great eyesore having the reserve running so far South and the Indians all on the North part. ...

If this could be done it would be a great benefit to both this settlement and also to the Indians.³²²

This is the only document on the record demonstrating public pressure for a surrender of township 46 of IR 100A. It is not known if there were other such letters, but there is evidence that Davis himself was involved in bringing pressure to bear on the department for a surrender. A note on a departmental memorandum regarding the reserve states that “Mr. Davis has called attention two or three times to the desirability of throwing a portion of the Reserve 100A into the market.”³²³ Davis was a strong promoter of the Liberal government’s efforts to promote settlement through

³²¹ David Laird, Indian Commissioner, to SGIA, November 24, 1902, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 759–60).

³²² C.S. Lowrie to T.O. Davis, Member of Parliament, January 30, 1902, LAC, RG 10, vol. 3562, file 82, part 9 (ICC Exhibit 1, p. 628).

³²³ Marginal note written by Secretary J.D. McLean to the Deputy Minister on a memorandum from W.A. Orr to the Secretary, June 25, 1902, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 672).

immigration, and he spoke favourably of the change brought about by the settlement of a former Indian reserve near Prince Albert.³²⁴ Davis also purchased lands in the sale of IR 98 in 1901 and the sale of IR 100A in 1903.³²⁵

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

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

I think it would be well to have the matter looked into ... with the view of ascertaining if the Indians will surrender the southern portion to be sold for their benefit.³²⁶

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

I have looked into this matter and so far as I am able to ascertain at present there is very little prospect of further emigration of Indians from the vicinity of Cumberland House to settle on this reserve. The population of the reserve at the last payments was only 122 souls, and as the area of the reserve is 65 square miles it is much larger than required for the number of Indians settled thereon. Before taking action to consult the Indians about the surrender ... it will be necessary to be in a position to state the terms the Department is prepared to offer as an inducement for them to give up the land.³²⁷

³²⁴ "Mr. T.O. Davis' Speech in the House of Commons on the New Settlers of the West," *Prince Albert Advocate*, April 29, 1901, 5 (ICC Exhibit 15f, document 5).

³²⁵ "Research on 'Davis Group' and 'Prendergast Group': Final Historical Report," prepared by Public History Inc., November 2000 (ICC Exhibit 15f); see also Federation of Saskatchewan Indian Nations (FSIN), Transcript of an interview with Angus Burns, April 14, 1972 (ICC Exhibit 23, pp. 1, 7).

³²⁶ J.D. McLean, Secretary, to David Laird, Indian Commissioner, March 6, 1902, LAC, RG 10, vol. 3562, file 82, part 9 (ICC Exhibit 1, p. 635).

³²⁷ David Laird, Indian Commissioner, to the Secretary, Department of Indian Affairs, June 19, 1902, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 668).

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

I think it would be well to consider the question of amalgamating the bands of James Smith and Cumberland No. 100A. The latter have no Chief and the united bands would make a total population of 231 souls. ... I think it would be a great gain to the Indians of James Smith’s band as well as to those of Cumberland band, both of which are in a backward state.³²⁸

In response to Laird’s letter, W.A. Orr, an official in the Lands and Timber Branch of the Department of Indian Affairs, recommended that the surrender and amalgamation should be carried out as proposed, “in view of the representations made by the Commissioner.” Interestingly, he notes that James Smith IR 100 and Cumberland IR 100A were both “set aside under Treaty No. 6.”³²⁹ A marginal note on Orr’s memorandum, signed “JAS DM” and presumably from Deputy Minister James A. Smart, inquired whether it was intended to sell the surrendered land and if there had yet been a survey.³³⁰

On July 4, 1902, James A. Smart, DSGIA, wrote to David Laird, enclosing forms of surrender and granting approval to Laird’s proposals. He said: “Your suggestion as to the offering of a bonus of 10 per cent of proceeds of sale to be expended in implements &c., as well as suggestion as to amalgamation of James Smith and Cumberland Bands, meets with approval.”³³¹

Laird wrote to Indian Agent W.E. Jones shortly thereafter with his plans for carrying out his proposals. He informed him: “It is my intention to meet you and the Indians of James Smith and Cumberland Reserves at the payments on the 24th instant.” He went on to say, “I have been instructed by the Deputy Minister to endeavor to obtain a surrender of the southern township of the

³²⁸ David Laird, Indian Commissioner, to the Secretary, Department of Indian Affairs, June 19, 1902, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 668).

³²⁹ W.A. Orr to the Secretary, June 25, 1902, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 672).

³³⁰ Marginal note written by DSGIA James A. Smart on memorandum from W.A. Orr to the Secretary, June 25, 1902, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 672).

³³¹ James A. Smart, DSGIA, to David Laird, Indian Commissioner, July 4, 1902, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 675).

Cumberland Reserve, and I think it would be better that I should discuss the question with them before you begin payments.”³³²

Alleged Surrender and Amalgamation, July 24, 1902

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

Documentary Evidence

The surrender document itself reads as follows:

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

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

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

And We, the said Chief and Principal men of said Cumberland Band of Indians do on behalf of our people and for ourselves, hereby ratify and confirm, and promise to ratify and confirm, whatever the said Government may do, or cause to be

³³² David Laird, Indian Commissioner, to W.E. Jones, Indian Agent, Duck Lake Agency, July 15, 1902, LAC, RG 10, vol. 3562, file 82, part 9 (ICC Exhibit 1, p. 676).

lawfully done, in connection with the sale of the said land and the disposal of the moneys derived from such sale.

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

In witness whereof, we have hereunto set our hands and affixed our seals this Twenty fourth day of July in the year of Our Lord one thousand nine hundred and two.³³³

Two men signed the surrender on behalf of the Cumberland Band 100A: “Headman” Kahtapiskowat and the “Headman’s son,” George Sanderson. The document is witnessed by Donald Macdonald as interpreter, Angus McLean, and A.J. McKay. David Laird appears to have initialled various changes to the original document, but did not sign it himself.³³⁴

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

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

And the said Hon. David Laird for himself saith:

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

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

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

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

³³³ “Cumberland Band of Indians,” Surrender for sale, July 24, 1902, DIAND Indian Land Registry, Instrument no. X10691 (ICC Exhibit 1, pp. 677–79). Text is as it appears on the surrender document, with “Chief and” struck out.

³³⁴ “Cumberland Band of Indians,” Surrender for sale, July 24, 1902, DIAND Indian Land Registry, Instrument X10691 (ICC Exhibit 1, pp. 677–79).

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

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

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

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

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

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

Sworn before me by the Deponents Hon. David Laird & Kh tapiskowat at Fort à la Corne District of Saskatchewan this twenty fourth day of July, A.D. 1902.³³⁵

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

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

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

³³⁵ Affidavit of Kh-ta-pis-kowat, Headman, and David Laird, Indian Commissioner, July 24, 1902, DIAND Indian Land Registry, Instrument no. X10691 (ICC Exhibit 1, p. 687). Text is as it appears on the document, with "Chief" struck out.

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

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

IN WITNESS WHEREOF we James Smith, Chief, and Bernard Constant, Che-koo-soo & Jacob McLean, Headmen of Reserve 100 and Kh-ta-pis-kowat, Headman of Reserve 100A & Geo. Sanderson his son have hereunto set our hands and affixed our seals on the day and year first above written.³³⁶

Agent W.E. Jones, Angus McLean, interpreter Donald Macdonald, and another whose identity is uncertain acted as witnesses. David Laird did not sign. It might be noted that Bernard Constant, one of the James Smith Band councillors, signed his own name, while the others signed with an X.³³⁷ This is consistent with oral evidence suggesting that Bernard Constant could read and write in English and always signed his own name, rather than using an X.³³⁸

Testimony of Elder Angus Burns

In 1972, James Smith Band elder Angus Burns was interviewed regarding his recollection of the events that took place at IR 100 and IR 100A on July 24, 1902. The transcript of this interview is included in our record of inquiry. Angus Burns was 20 years old at the time of these events and a

³³⁶ Amalgamation Agreement between the owners of IR 100 and the owners of IR 100A, July 24, 1902, LAC, RG 10, vol. 3562, file 82, part 9 (ICC Exhibit 1, pp. 690–91).

³³⁷ Amalgamation Agreement between the owners of IR 100 and the owners of IR 100A, July 24, 1902, LAC, RG 10, vol. 3562, file 82, part 9 (ICC Exhibit 1, pp. 690–91).

³³⁸ ICC Transcript, June 27–28, 2001 (ICC Exhibit 18a, p. 47, Robert Constant); Federation of Saskatchewan Indians, Transcript of an interview with Angus Burns, April 14, 1972 (ICC Exhibit 23, p. 3); ICC Transcript, October 29–30, 2002 (ICC, James Smith Cree Nation IR 100 TLE Inquiry, Exhibit 5a, p. 44, Mervin Burns; p. 59, Isaac Daniels); see also Bernard Constant, La Corne Reserve, to Mr. Parker, June 14, 1893, LAC, RG 10, vol. 1593 (ICC Exhibit 25a, p. 13).

member of the James Smith Band.³³⁹ He recalls that, on the day of surrender, David Laird, farm instructor Andrew MacKay, Angus McKay (from the HBC), an interpreter named Macdonald, and a teacher named D. Parker were at the reserve. He also recalls that Chief James Smith and his three headmen – Bernard Constant, Jacob McLean, and Chekoosoo – were present.³⁴⁰ Burns recalls that they had meetings “a lot of times” before the surrender was taken because “the Indians didn’t want to sell this land, nobody was eager to sell.”³⁴¹ According to his description, there was a final meeting of the “old men,” apparently including the councillors and Chief. When the agreement was made, the Chief called everyone into the old school house, where the meeting was being held, to witness the signing of the surrender document. The following excerpt gives Burns’s account of what happened:

... they had a few meetings, no they didn’t, the Indians didn’t want to sell this land, nobody was eager to sell. Well all of a sudden, later on, I was all ready a mature young man, this was in Nineteen O Two, what I’m telling about. ... A big meeting, these were the men that were sitting there. Now they were going to sell now, this school, the old school that used to stand here, this was where the meeting was held. ... Yeah, Oh it was a big meeting, everybody went there, to go and see what was going to happen, Sale or no Sale. Well the old men were having a meeting, at this time there were a lot of old men. The Chief came and stood outside. My people, he called, come here and listen to what I have come out to tell you, he said, inside this building they had a meeting all day. They want to sell our land. O.K. the time has come now, we are going to sell our land, this was how the meeting came out. So if you want to watch us, sign away this land, all of [you] that can fit inside, come in inside here. We are giving up this land. That all, when I go inside here the papers will be signed to sell this land, so I ran over there but the school was already filled up. Then I saw that there was a window opened there so I went and leaned in there, so I was inside the building now from where I was leaning in. They were sitting at a table right close to me, these councillors and chief. I saw him sitting there, also David Laird. And he started talking, now we have finished our meeting, your land here, the one that is South here, six miles square, this is the land we are going to sign away, somebody else will own it now. It will be sold, you are selling it. He was

³³⁹ Treaty annuity payroll, James Smith Band, 1902, LAC, RG 10, vol. 9119, book 36 (ICC Exhibit 1, pp. 706–7); Treaty annuity payroll, James Smith Band, 1950, no file reference available (ICC, James Smith Cree Nation IR 100 TLE Inquiry, Exhibit 3b, p. 1603). Angus Burns was given his own number, no. 175, in 1901; in 1903, when the payroll was reorganized, he was assigned no. 29.

³⁴⁰ FSIN, Transcript of an interview with Angus Burns, April 14, 1972 (ICC Exhibit 23, p. 1).

³⁴¹ FSIN, Transcript of an interview with Angus Burns, April 14, 1972 (ICC Exhibit 23, pp. 1–2).

standing inside here, I was watching him from close, and he did this, look at these, they were white in color. ... There were a lot of interpreters, you know Angus MacKay, and a Andrew MacKay, Macdonald, they were chosen for this purpose for them to talk so they could be understood when they talked. ... The way I understand it you people are giving me that land, like for me to own it, just like for me to sell it. I don't know how much I'll get for it. It is known [sic] how much we'll get for it. But as I understand it today, five dollars an acre the land is worth today. Young girl land, he said. What is it called now, Virgin Land. ... Yes, virgin land that is what it is worth this is what I will promise you, but I will try to sell even for ten dollars an acre then I will sell it for a good price. If I can't do that, I will have to take that five dollars. This is what I promise you. So then the chief spoke Now you have heard the government officials, These high government officials, this is true what he has said. Now we are giving him this land, this is what we decided. We just gave him, just like it is his land to sell. When he sells money will be given to us like they will be paying us. So then they called all the councillors right there, oh I was watching them from close.³⁴²

Angus Burns recalled that only Councillor Bernard Constant could sign his name, and the others “were held to the pen.”³⁴³ Aside from Angus Burns’s recollections, as related by himself and Delbert Brittain, there is very little oral history regarding the surrender. The only other stories regarding these events come from elder Violet Sanderson. She recalls that her grandfather William Head, and her husband’s father and grandfather, were “in council” and involved in discussions about the sale of part of IR100A.³⁴⁴

Annuities Paid, 1902

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

The two Bands were paid separately that year under their normal ticket numbers. The annuity payroll for the Cumberland Band 100A notes that 115 people, including 29 men, were paid annuities

³⁴² FSIN, Transcript of an interview with Angus Burns, April 14, 1972 (ICC Exhibit 23, pp. 2–3).

³⁴³ FSIN, Transcript of an interview with Angus Burns, April 14, 1972 (ICC Exhibit 23, p. 3).

³⁴⁴ ICC Transcript, June 27–28, 2001 (ICC Exhibit 18a, pp. 121–22, Violet Sanderson).

“at James Smith’s reserve.”³⁴⁵ The James Smith band payroll indicates that 107 people were paid annuities that day, including 28 adult men.³⁴⁶ Agent Jones’s annual report for that year notes 25 men in the James Smith Band and 27 in the Cumberland Band 100A.³⁴⁷

The Cumberland 100A annuity paylists were discontinued after the 1902 payments. All the band members appeared the following year on the reorganized James Smith band paylists with new ticket numbers.³⁴⁸

Laird’s Report on the Alleged Surrender and Amalgamation

On August 1, 1902, David Laird reported to James Smart, the Deputy Superintendent General of Indian Affairs,

that pursuant to instructions contained in your letter of the 4th July ultimo ... I proceeded to Indian Reserve No. 100A last week, and on the 24th of the said month obtained a surrender of Township 46 ... and also effected an amalgamation of James Smith’s Band of Reserve 100 with the Cumberland Band of Reserve 100A.³⁴⁹

In his later annual report for the year, Laird gave another, very similar account.³⁵⁰ Indian Agent W.E. Jones’s annual report, dated August 15, 1902, does not refer to either the surrender or the amalgamation and speaks of “two bands” living at IR 100 and IR 100A.³⁵¹ However, Agent Jones’s

³⁴⁵ Treaty annuity payroll, “No. 100A Cumberland Band paid at James Smiths Reserve,” 1902, no file reference available (ICC Exhibit 9a, pp. 54–58). See also copy of payroll, LAC, RG 10, vol. 9119, book 36 (ICC Exhibit 1, pp. 692–701).

³⁴⁶ Treaty annuity payroll, James Smith Band, 1902, LAC, RG 10, vol. 9119, book 36 (ICC Exhibit 1, pp. 702–9).

³⁴⁷ W.E. Jones, Indian Agent, Duck Lake Agency, to SGIA, August 15, 1902, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1902*, 143 (ICC Exhibit 1, p. 712).

³⁴⁸ Treaty annuity payroll, James Smith Band, 1903, LAC, RG 10, vol. 9119, book 37 (ICC Exhibit 1, pp. 889–902).

³⁴⁹ David Laird, Indian Commissioner, to James A. Smart, DSGIA, August 1, 1902, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 710).

³⁵⁰ David Laird, Indian Commissioner, to SGIA, October 15, 1902, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1902*, 191–92 (ICC Exhibit 1a, pp. 197–98).

³⁵¹ W.E. Jones, Indian Agent, Duck Lake Agency, to SGIA, August 15, 1902, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1902*, 143 (ICC Exhibit 1, p. 712).

1903 annual report for “James Smith Band No. 100” states: “This reserve includes part of the reserve formerly held by the Cumberland band, 100A; the latter band surrendered part of its reserve and then joined with James Smith’s band, making one band with one reserve now known as the ‘James Smith Band, No. 100.’”³⁵² No other report was made by Agent Jones regarding the events of July 24, 1902, with regard to the surrender or the amalgamation.

Acceptance of Surrender by Order in Council

On August 19, 1902, Clifford Sifton, the Superintendent General of Indian Affairs, submitted the surrender to the Governor General in Council for approval.³⁵³ The accepting Order in Council reads as follows:

On a Memorandum dated 19th August, 1902, from the Superintendent General of Indian Affairs, submitting herewith, a surrender in duplicate made by the Cumberland Band of Indians in the North West Territories, of 22,080 acres, being composed of Township 46 of the said Reserve, Range 20 West 2nd Initial Meridian, excepting thereout Section 6 and South ½ of Section 7, in order that the land may be disposed of for their benefit on such terms as the Superintendent General may consider necessary in their interests.

The Minister recommends, the surrender having been authorized, executed and attested in the manner required by the 39th Section of the *Indian Act* that the same be accepted by the Governor General in Council, and that the original thereof be returned to the Department of Indian Affairs and the duplicate kept of record in the Privy Council Office.

The Committee submit the same for approval.³⁵⁴

The Order in Council, PC 1510, is dated October 14, 1902.

Status of James Smith Band Leadership, Post-1902

Some of the oral history evidence casts doubt on the presence of leadership in the James Smith Band at the time of these agreements. Angus Burns spoke of James Smith dying “before this was

³⁵² W.E. Jones, Indian Agent, Duck Lake Agency, to SGIA, August 25, 1903, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1903*, 162 (ICC Exhibit 1, p. 906).

³⁵³ Clifford Sifton, SGIA, to the Governor General in Council, August 19, 1902, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 714).

³⁵⁴ Order in Council PC 1510, October 14, 1902, LAC, RG 2, vol. 593 (ICC Exhibit 1, pp. 745–46).

finished.”³⁵⁵ At the same time, records kept in the Agency record the death of Chief James Smith on November 20, 1902, after the time of the events in question.³⁵⁶

Following the death of Chief James Smith, Assistant Indian Commissioner J.A.J. McKenna recommended in June 1903 that Agent Jones select a new Chief for the amalgamated Band.³⁵⁷ James Head, formerly of the Cumberland Band 100A, was appointed as the new Chief of the James Smith Band on July 24, 1903.³⁵⁸ Notably, the 1903 James Smith band payroll indicates that Kahtapiskowat continued to be paid as a headman after his transfer to that Band. He received the additional headman’s annuity until his death, sometime between 1906 and 1907.³⁵⁹

Church Official Questions Surrender

On November 12, 1902, a series of correspondence commenced between department officials and J.A. MacKay, the Archdeacon and Superintendent of Indian Missions in Saskatchewan. MacKay wrote on that day that he had discovered the surrender of part of IR 100A on a recent visit to Fort à la Corne, although he did not indicate the source of his information. He pointed out to the Superintendent General that “the transaction is certainly not to the advantage of the Indians.”³⁶⁰ He explained:

The land which has been surrendered belongs to the Cumberland Indians. Now it is quite clear that the Indians at present occupying this Reserve are not entitled by the terms of the Treaty to the amount of land which it comprises, but the land was reserved for any of the Indians of Cumberland district who might wish to settle on

³⁵⁵ FSIN, Transcript of an interview with Angus Burns, April 14, 1972 (ICC Exhibit 23, pp. 4–5).

³⁵⁶ Register of deaths, James Smith Band No. 100, entry for November 20, 1902, LAC, RG 10, vol. 9995 (ICC Exhibit 25e, p. 27). See also ICC Transcript, October 29–30, 2002 (ICC Exhibit 5a, p. 162, Oliver Constant).

³⁵⁷ J.A. McKenna, Assistant Indian Commissioner, to the Secretary, Department of Indian Affairs, June 17, 1903, LAC, RG 10, vol. 3940, file 121698-9 (ICC Exhibit 1, p. 885).

³⁵⁸ Treaty annuity payroll, James Smith Band, 1903, LAC, RG 10, vol. 9119, book 37 (ICC Exhibit 1, pp. 889–90); Declaration of office, July 25, 1903, LAC, RG 10, vol. 9119, book 37 (ICC Exhibit 1, p. 903).

³⁵⁹ Treaty annuity payroll, James Smith Band, 1903, LAC, RG 10, vol. 9119, book 37 (ICC Exhibit 1, pp. 889–90); Treaty annuity paylists, James Smith Band, 1904–7, no file reference available (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 12a, pp. 377, 385, 393, 401). See ticket no. 5.

³⁶⁰ J.A. MacKay, Archdeacon and Superintendent of Indian Missions in Saskatchewan, to SGIA, November 12, 1902, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 753).

it. There is a large number of Indians in Cumberland district and there is scarcely any land for agricultural purposes. The Indians live by fishing and hunting, but the population is too large for the resources of the district, and how they are to subsist will be a very serious question in the near future. ... although only a comparatively small number had arrived so far, the land will be required by immigrants from Cumberland district in the future. At the present time there is no movement of the Cumberland Indians in this direction, but this is simply due to an exceptional state of things in the district. The number of muskrats, which afford the Indians abundant food during the hunting season as well as a profitable article of barter. This source of subsistence cannot last long, and, when it fails, the Indians will be reduced to greater straits than before.

I beg therefore to implore the Department to reconsider its actions in this matter, because the land will be required by the Cumberland Indians in the future, and supposing it is not required by the Indians for their own actual use, it surely is in their interest that the land should not be sold until it commands a higher price than is likely to be obtained for it at present.³⁶¹

On November 24, 1902, David Laird wrote to the Superintendent General of Indian Affairs to defend the department's actions. Regarding the justification given for the surrender – that little further emigration from Cumberland House was expected – he reported that the 1891 paysheets showed 28 families, or 83 people, present at IR 100A who had removed from Cumberland House.³⁶² Since that time, he was not aware of any who had actually made the move. To illustrate this point, he reviewed the various applications from Cumberland House members at IR 20 to move to IR 100A during the years 1896 to 1900 and the outcomes of each.³⁶³ Recalling the opposition of those at Cumberland House to the transfers requested in 1900, he argued:

If all the band only last year were unanimous against transfers, it is not very probable that in the near future any of them will consent to be transferred to Reserve 100A at Fort a la Corne, consequently it appears to me that the Department would not be

³⁶¹ J.A. MacKay, Archdeacon and Superintendent of Indian Missions in Saskatchewan, to SGIA, November 12, 1902, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 754–55).

³⁶² David Laird, Indian Commissioner, to SGIA, November 24, 1902, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 759).

³⁶³ David Laird, Indian Commissioner, to SGIA, November 24, 1902, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 759–60).

justified in keeping land locked up an indefinite number of years for a migration of Indians which they may never be willing to make.³⁶⁴

In reply to MacKay's assertion that the present prosperity in the "Cumberland District" would not last, Laird replied:

I ask why should muskrats become less abundant? For the last few years the floods have been so destructive in the Cumberland region that scarcely any hay could be saved for the Indians cattle. To all appearance, therefore, for the next half century it will be more of a rat country than one for white settlers, in which case the Indians will probably be undisturbed in a hunt which yields them a means of subsistence which they highly appreciate.³⁶⁵

There is nothing to indicate that Laird consulted the Cumberland Band at Cumberland House to ascertain its wishes or intentions in the matter.

Archdeacon MacKay wrote to the department again at the end of the year, noting that "in Cumberland district itself, that is in the Pas Agency," only 60 square miles of practically valueless land was set apart for nearly 1,200 treaty Indians. He explained the situation of the Treaty 6 Lac La Ronge and Montreal Lake Bands, who were given a large reserve at Little Red River because little good land could be found for them in their original location, and compared it to that of the Cumberland Band. MacKay noted that the Little Red River reserve had only three or four families living on it, while IR 100A had 125 residents. He argued that "any reason that may be advanced against depriving the Lac La Ronge Indians of their reserve on the Little Red River, applies much more strongly to the case of the Cumberland Indians and their reserve at Fort a la Corne."³⁶⁶

On January 29, 1903, Samuel Bray prepared a memorandum for the DSGIA, attaching Archdeacon MacKay's letters dated November 12 and December 29, 1902, and David Laird's letter dated November 24, 1902. In his covering memorandum, Mr Bray wrote: "The Department made

³⁶⁴ David Laird, Indian Commissioner, to SGIA, November 24, 1902, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 760).

³⁶⁵ David Laird, Indian Commissioner, to SGIA, November 24, 1902, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 759-60).

³⁶⁶ J.A. MacKay, Archdeacon and Superintendent of Indian Missions in Saskatchewan, to SGIA, December 29, 1902, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 765-66).

full enquiry and was advised to the effect that there was no prospect of any more of the Cumberland Indians removing to the Reserve 100A, and consequently the surrender was asked for and [obtained] from the Indians residing on the Reserve.”³⁶⁷ A marginal note on this memorandum, initialled by DSGIA Frank Pedley, stated: “I see no reason why the intention of Dept should not be carried out by sale of Reserve as surrendered.”³⁶⁸ On February 2, 1903, Pedley reiterated his conclusions in a short letter to Archdeacon MacKay.³⁶⁹

Archdeacon MacKay responded to Pedley’s letter on March 3, 1903. He commented that the advice received by the department stating that no further immigration was expected “must have been based solely on a view of the conditions that exist at the present time in the Cumberland district, and not on any long experience of the state of things in the past.” He argued that the current conditions in the Cumberland district were “exceptional,” but that “the time must come when there will be more need than ever” for the lands at IR 100A.³⁷⁰ The annual reports for the Pas Agency during this period uphold Archdeacon MacKay’s observations regarding conditions in that agency.³⁷¹

MacKay went on to inquire whether the matter had been placed before “the Indians of the Cumberland District” and submitted that this should be done “in order to make the surrender equitable.”³⁷² Finally, he brought it to the attention of the department that if it was determined to go ahead with the sale, “it is not in the interest of the [Indians] that the land should be placed on the [market] at the present time or in the near future, as it must rise in value with settlement of the

³⁶⁷ Samuel Bray to DSGIA, January 29, 1903, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 788).

³⁶⁸ Marginal notation written by DSGIA Frank Pedley on a memorandum from Samuel Bray to DSGIA, January 29, 1903, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 788).

³⁶⁹ Frank Pedley, DSGIA, to Reverend J.A. MacKay, February 2, 1903, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 789).

³⁷⁰ J.A. MacKay, Archdeacon and Superintendent of Indian Missions in Saskatchewan, to SGIA, March 3, 1903, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 806–7).

³⁷¹ See, for example, Joseph Courtney, Indian Agent, Pas Agency, to SGIA, July 10, 1901, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1901*, 94 (ICC Exhibit 17, p. 292).

³⁷² J.A. MacKay, Archdeacon and Superintendent of Indian Missions in Saskatchewan, to SGIA, March 3, 1903, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 806–7).

country, and there is still abundance of land in Saskatchewan” open for “homesteading and purchase.”³⁷³

Pedley replied to Archdeacon MacKay’s concerns in a final letter, dated March 19, 1903, stating: “As the eighty-three individuals now on the reserve are only entitled to 10664 acres there is a balance of 8896 acres, which would be sufficient for sixty-nine individuals. There is, therefore, a wide margin for any other Indians of the Cumberland district who might wish to remove to the reserve.”³⁷⁴ It is interesting to note that Pedley’s calculations are based on the Treaty 6 land entitlement formula, rather than that for Treaty 5. In addition, the number paid on the IR 100A paylists in 1902 was 115, rather than 83 people (the number paid in 1891).³⁷⁵ Both figures include a number of former Chakastaypasin band members, in addition to the Cumberland band emigrants.

Community Understanding of Events of 1902

It is unclear what information those at Cumberland House had with respect to the events occurring at Fort à la Corne. Indian Agent Joseph Courtney’s 1902 annual report for the Pas Agency, written two days after the surrender, makes no mention of the surrender at IR 100A.³⁷⁶ And, although Archdeacon MacKay advocated on behalf of Cumberland band members living in the Cumberland district, it is unclear from whom he learned of the surrender, and whether he communicated with the Cumberland Band at IR 20 on the matter.

There is no evidence on the record to suggest that the Cumberland Band at Cumberland House had any knowledge of the alleged surrender and amalgamation, or that it participated in any meeting or vote. The oral history shared by Cumberland House Cree Nation elders is emphatic that

³⁷³ J.A. MacKay, Archdeacon and Superintendent of Indian Missions in Saskatchewan, to SGIA, March 3, 1903, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 807).

³⁷⁴ F. Pedley, DSGIA, to Reverend J.A. MacKay, Archdeacon and Superintendent of Indian Missions in Saskatchewan, March 19, 1903, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 824–25).

³⁷⁵ Treaty annuity payroll, “Cumberland Band Paid at Reserve,” 1891, no file reference available (ICC Exhibit 9a, pp. 13–16); Treaty annuity payroll, “No. 100A Cumberland Band Paid at James Smith’s Reserve,” 1902, no file reference available (ICC Exhibit 9a, pp. 54–58).

³⁷⁶ Joseph Courtney, Indian Agent, Pas Agency, to SGIA, July 26, 1902, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1902*, 85 (ICC Exhibit 17, p. 307).

“nobody ever sold that land from here.”³⁷⁷ Those who remember the reserve at Fort à la Corne understand that the reserve there is still their land.³⁷⁸ Joseph Laliberte says that they still refer to the former Cumberland band members living with the James Smith Band as “Cumberland people,” or “Waskiganihk,” the same name they use to refer to themselves.³⁷⁹

James Smith Cree Nation elders seem to agree that there was no real understanding of what the surrender meant, and no one recalls a vote being held to sell the land at IR 100A. James Burns speaks of the people being surprised to discover white settlers breaking the land on the southern township of the reserve and then being told by Indian Agent “Pond Smith” that they had sold the land, although no one could remember the meeting happening.³⁸⁰ There is no record of an Indian Agent by the name of Pond Smith in the Duck Lake Agency in the years following the surrender. However, an Indian Agent named Charles Pantaleon Schmidt was assigned to the Duck Lake Agency from October 1912 until December 1936.³⁸¹

The oral history of the James Smith Cree Nation does not reflect any memory of the amalgamation agreement signed on July 24, 1902, or how such an arrangement came about. Most of the elders say that there has always been a distinction among the communities within the James Smith Cree Nation and a common understanding of which lands belong to each Band.³⁸² Violet

³⁷⁷ ICC Transcript, November 19, 2001 (ICC, Cumberland House Cree Nation IR 100A Inquiry, Exhibit 12a, p. 94, Lena Sarah Stewart).

³⁷⁸ ICC Transcript, November 19, 2001 (ICC, Cumberland House Cree Nation IR 100A Inquiry, Exhibit 12a, p. 12, Pierre Settee; p. 45, Thomas Laliberte; pp. 51, 56, Horace Greenleaf; p. 54, Marcel McGillivray; p. 57, interpreter for unidentified elders; pp. 108, 111, Rodney Settee; p. 94, Lena Stewart).

³⁷⁹ ICC Transcript, November 19, 2001 (ICC, Cumberland House Cree Nation IR 100A Inquiry, Exhibit 12a, p. 14, Pierre Settee; p. 49, Joseph Laliberte).

³⁸⁰ ICC Transcript, November 20, 2001 (ICC Exhibit 18b, pp. 33, 55–56, 58, 62, 68, James Burns).

³⁸¹ Department of Indian Affairs Establishment Books, Outside Service, c. 1870–1920, LAC, RG 10, vol. 9180; Department of Indian Affairs Establishment Books, Outside Service, LAC, RG 10, vol. 9184; see also C.P. Schmidt, Indian Agent, Duck Lake Agency, to the Secretary, Department of Indian Affairs, March 28, 1917, LAC, RG 10, vol. 6664, file 109A-9-1A (ICC Exhibit 1, p. 1278); A.D. Wymbs, Assistant Representative of the Treasury, to C.P. Schmidt, Indian Agent, Duck Lake Agency, August 11, 1936, LAC, RG 10, vol. 6664, file 109A-9-1A (ICC Exhibit 1, p. 1326).

³⁸² ICC Transcript, June 27–28, 2001 (ICC Exhibit 18a, pp. 13–14, Charlotte Brittain; pp. 44–45, Robert Constant; p. 106, Walter Constant; pp. 122–23, Violet Sanderson); ICC Transcript, November 20, 2001 (ICC Exhibit 18b, pp. 35–36, 38, James Burns); ICC Transcript, June 26, 2002 (ICC Exhibit 18c, pp. 25–26, Delbert Brittain; pp. 78, 82–84, Mervin Burns).

Sanderson testified that “there’s never been a time that they considered themselves as one band ... they were three separate bands.”³⁸³ None of the oral history makes reference to a meeting, a vote, or any type of consent being given to amalgamate, or bring together into one Band, the separate communities living at IR 100 and IR 100A.³⁸⁴

On February 3, 1905, Indian Agent J. Macarthur reported that Chief James Head requested “a statement showing how much of the Band’s money has been expended and what was the balance on hand.”³⁸⁵ The following year, on March 8, 1906, David Laird reported that

at a meeting of the Indians of James Smith’s Band held on the 19th ultimo it was resolved to ask the Department to inform them as to how much of the money realized from the sale of that portion of Indian Reserve No. 100A, which was disposed of in 1903, had so far been spent for their benefit, and what balance remains on hand. They also desire to know whether they are not entitled to draw the interest yearly.

... They also ask for a copy of the surrender and agreement of amalgamation

...³⁸⁶

This is the only piece of evidence suggesting that the James Smith Band had any knowledge of the amalgamation agreement. In response, the Secretary furnished David Laird with an itemized statement of the James Smith Band’s capital and interest accounts, covering the period from July 1, 1904, until March 13, 1906.³⁸⁷

³⁸³ ICC Transcript, June 27–28, 2001 (ICC Exhibit 18a, p. 123, Violet Sanderson).

³⁸⁴ FSIN, Transcript of an interview with Angus Burns, April 14, 1972 (ICC Exhibit 23); ICC Transcript, June 27–28, 2001 (ICC Exhibit 18a, pp. 37, 44, Robert Constant; p. 105, Walter Sanderson; pp. 122–23, Violet Sanderson); ICC Transcript, June 26, 2002 (ICC Exhibit 18c, pp. 47–48, 67–68, Delbert Brittain); and ICC Transcript, January 28–29, 2003 (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 16b, pp. 38–39, Sol Sanderson; p. 77, Terry Sanderson; pp. 127–28, Raymond Sanderson; pp. 164–65, Martha Opoonechaw-Stoneland, Albert Sanderson, Patrick Stoneland, and Raymond Sanderson; p. 175, Violet Sanderson; p. 218, Jake Sanderson).

³⁸⁵ J. Macarthur, Indian Agent, Duck Lake Agency, to David Laird, Indian Commissioner, February 3, 1905, LAC, RG 10, vol. 3562, file 82, part 9 (ICC Exhibit 1, p. 977).

³⁸⁶ David Laird, Indian Commissioner, to the Secretary, Department of Indian Affairs, March 8, 1906, LAC, RG 10, vol. 6664, file 109A-9-1A (ICC Exhibit 1, p. 1048).

³⁸⁷ Secretary to David Laird, Indian Commissioner, March 17, 1906, enclosing statement of the James Smith Band’s capital and interest account A/C 293 for the period July 1, 1904, to March 13, 1906, LAC, RG 10, vol. 6664, file 109A-9-1A (ICC Exhibit 1, pp. 1050–54).

Establishment of Trust Fund and Expenditure of Land Sale Proceeds

Trust account no. 293 for the “Cumberland Reserve, N.W.T.” was established in the fiscal year 1902/3. It seems clear that the account was established for the “Cumberland Reserve” at Fort à la Corne, since revenue from both the Chakastaypasin IR 98 and the Cumberland IR 100A land sales was deposited in the capital account that year, and management fund and survey fees relating to the sale of IR 100A were disbursed.³⁸⁸ An Order in Council dated March 7, 1903, authorized that the costs for the subdivision survey of township 46 be charged to the capital account of the “Cumberland Indians.”³⁸⁹ Following the alleged amalgamation of the James Smith Band and the Cumberland Band 100A, David Laird recommended that their trust accounts be combined as well.³⁹⁰ He was notified on July 2, 1903, that the separate accounts had been combined into account 293, the number originally belonging to the Cumberland Band 100A.³⁹¹ It was known as the “Cumberland (James Smith) Band” account until 1918, when the name was changed to the “James Smith Band” account 293.³⁹²

Most of the 10 per cent share of the proceeds from sale, promised in the surrender document to be used for “implements, waggons, harness and other useful articles,” became available in 1904 and was spent on agricultural implements, oxen, a threshing machine, and miscellaneous other items.³⁹³

³⁸⁸ Auditor General’s Report, 1902/1903, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1903*, part J, 168 (ICC Exhibit 17, p. 333). A cursory search of the trust accounts from this period did not reveal a trust account for the Cumberland Band residing at IR 20.

³⁸⁹ Order in Council, March 7, 1903, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 815).

³⁹⁰ David Laird, Indian Commissioner, to the Secretary, Department of Indian Affairs, May 30, 1903, no file reference available (ICC Exhibit 1, p. 860).

³⁹¹ Secretary, Department of Indian Affairs, to David Laird, Indian Commissioner, July 2, 1903, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 886).

³⁹² See the Auditor General’s Reports, 1903–18, Canada, *Annual Report of the Department of Indian Affairs* (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 23a). See Trust Account no. 293.

³⁹³ “Statement of James Smith Band A/C 293,” July 1, 1904–March 13, 1906, LAC, RG 10, vol. 6664, file 109A-9-1A (ICC Exhibit 1, pp. 1051–54).

It is also important to note that Kahtapiskowat received a pension from January 1904 to January 1906, which totalled \$183.³⁹⁴ These payments are reflected in the statement provided to David Laird in response to the James Smith Band's request for an accounting of the proceeds and expenditures from the sale of the surrendered portion of IR 100A. Big Head died sometime between 1906 and 1907.³⁹⁵ The last-known pension payment to Kahtapiskowat was made on January 10, 1906.³⁹⁶ He was the only person to receive this type of payment from the trust account.

The IR 100A Strip³⁹⁷

When the lands in townships 46 and 47, range 20, W2M, were originally offered for reserve purposes in 1885, the Department of Indian Affairs was informed that township 46 had not yet been surveyed.³⁹⁸ In 1892, some years after the initial survey of IR 100A, the townships surrounding the reserve were surveyed according to the Dominion Lands system.

The first plan of township 46, range 19, W2M, located directly to the east of the reserve, is dated June 24, 1893. It shows a slight encroachment of IR 100A on the western boundary of the township, as well as road allowances at the southern and eastern boundaries of the reserve.³⁹⁹ The 1894 plan of township 46, range 20, W2M shows the Indian reserve lying slightly north and east of

³⁹⁴ "Statement of James Smith Band A/C 293," July 1, 1904– March 13, 1906, LAC, RG 10, vol. 6664, file 109A-9-1A (ICC Exhibit 1, pp. 1051–54); Auditor General's Report, 1903/4, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1904*, part J, 168 (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 23a, p. 37); Auditor General's Report, 1904/5, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1905*, part J, 138 (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 23a, p. 44); Auditor General's Report, 1905/6, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1906*, part J, 128 (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 23a, p. 52).

³⁹⁵ Treaty annuity payroll, James Smith Band, 1906–7, no file reference available (ICC, James Smith Cree Nation Chakastaypasin IR 98 Inquiry, Exhibit 12a, pp. 393, 401). See ticket no. 5.

³⁹⁶ "Statement of James Smith Band A/C 293," July 1, 1904–March 13, 1906, LAC, RG 10, vol. 6664, file 109A-9-1A (ICC Exhibit 1, p. 1054).

³⁹⁷ The IR 100A Strip is also referred to in some reports as "No Man's Land."

³⁹⁸ A.M. Burgess, Deputy Minister of the Interior, to L. Vankoughnet, DSGIA, November 20, 1885, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 180).

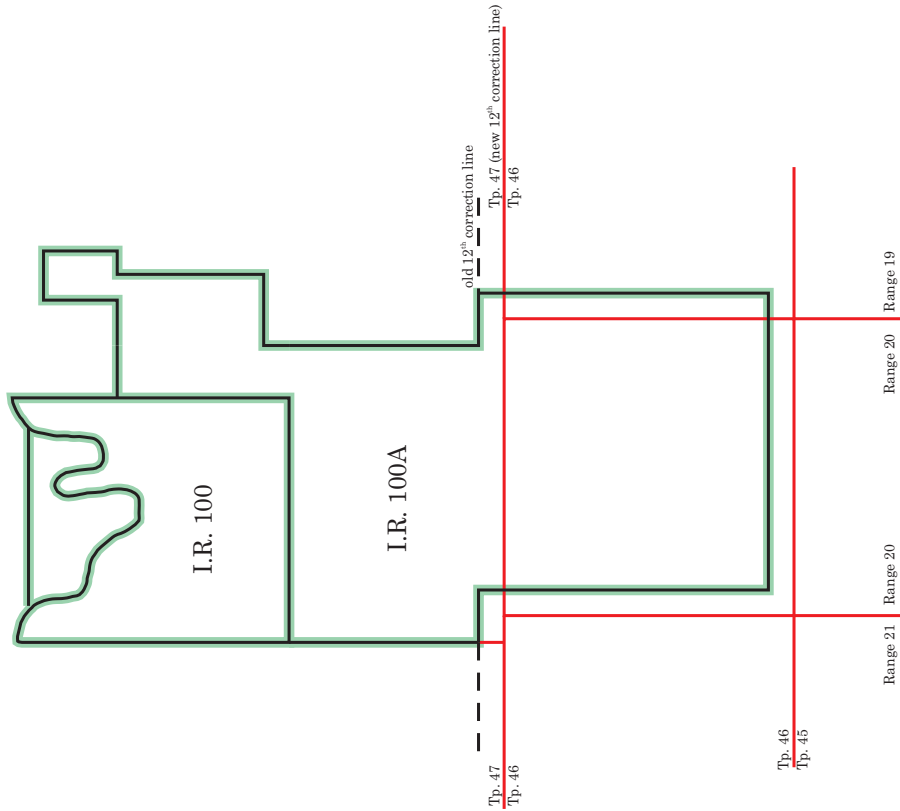
³⁹⁹ Department of the Interior, Topographical Surveys Branch, Survey Plan of Township No. 46, Range 19, West of Second Meridian (first edition), approved June 24, 1893, attached as Appendix F to John Hay, "James Smith Band 'No Man's Land' Claim: Residual Lands of the Cumberland I.R. 100A," February 4, 1992 (ICC Exhibit 14c).

Map 3

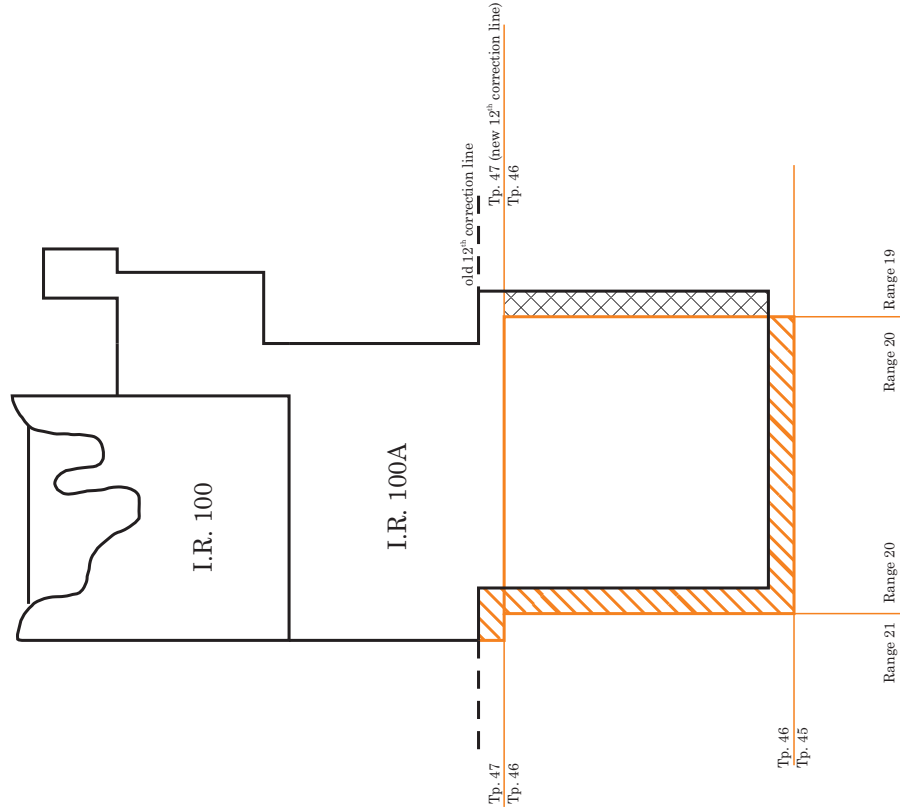
Cumberland IR 100A

Reserve Boundaries and Township lines (1892)

IR 100A and Surrounding Townships, creating the IR 100A Strip (1903)



Township Lines
I.R. Boundaries



Township Lines
Land added to Reserve
I.R. Boundaries
IR 100A Strip

the township boundaries.⁴⁰⁰ That is confirmed by the field book for the survey of township 45, range 20, W2M, located directly south of township 46. The field notes show that the Indian reserve boundary lies slightly north of the line separating townships 45 and 46, and slightly east of the western boundary line separating ranges 20 and 21.⁴⁰¹

Following the surrender, DLS J. Lestock Reid was instructed, on September 13, 1902, to subdivide the surrendered township for sale.⁴⁰² He was already engaged in resurveying the boundaries of IR 100 and IR 100A at that time.⁴⁰³ On September 19, Reid reported that he was encountering a problem with the survey. He explained that he had started running boundaries, on the assumption that the township and Indian reserve boundaries were the same, but he soon discovered Indian reserve markers located out of line with the township boundaries.⁴⁰⁴

After studying current township plans, he noted that small portions of township 46 at the south and west were not included in the reserve. He also found that a small strip of the reserve extended over into township 46, range 19. He concluded that alterations to the Dominion Land Surveys must have taken place since IR 100A was originally laid out in 1887.⁴⁰⁵ In order to deal with this unforeseen complication, Reid proposed

to exchange with the Dominion Lands the strip along the east boundary of the Reserve for that on the west and south[.] [T]his would make the boundaries of the

⁴⁰⁰ Department of the Interior, Topographical Surveys Branch, Survey Plan of Township No. 46, Range 20, West of Second Meridian, approved June 26, 1894 (ICC Exhibit 14b).

⁴⁰¹ Field Notes for the Survey of Township No. 45, Range 20, West of the Second Meridian, surveyed by P.R.A. Belanger, DLS, August 2–September 24, 1892, pp. 19–24 (ICC Exhibit 14h, pp. 5–8).

⁴⁰² J.D. McLean, Secretary, to J. Lestock Reid, DLS, September 13, 1902, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 721).

⁴⁰³ J. Lestock Reid to the Secretary, Department of Indian Affairs, September 2, 1902, LAC, RG 10, vol. 3960, file 141977-7 (ICC Exhibit 1, p. 716).

⁴⁰⁴ J. Lestock Reid to the Secretary, Department of Indian Affairs, September 19, 1902, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 726–27).

⁴⁰⁵ J. Lestock Reid to the Secretary, Department of Indian Affairs, September 19, 1902, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 726–27).

Reserve conform to the township [outlines] and include the whole of Township 46 Range 20 W2M in the Indian Reserve.⁴⁰⁶

On September 22, Reid reported that, in addition to those irregularities already reported, a small strip of township 47 north of the 12th correction line was not included in the reserve.⁴⁰⁷ He revised his previous proposal to suggest that the strip of reserve lying in township 46, range 19, should be exchanged for the three small strips not included in the reserve at the north, west, and south, noting: “This would make the surrendered portion agree with the township outlines and save innumerable complications.”⁴⁰⁸ In summary, Reid discovered the following irregularities with the original survey of IR 100A:

- a strip of land along the southern boundary of township 46, range 20, W2M, was excluded from the reserve;
- a strip of land along the western boundary of township 46, range 20, W2M, was excluded from the reserve;
- a strip of land immediately north of the 12th correction line (the boundary between townships 46 and 47, W2M) was excluded from the reserve; and
- a strip of land along the western boundary of township 46, range 19, W2M, was included in the reserve.

Secretary McLean wrote to the Secretary of the Department of the Interior on September 25, 1902, regarding the matter. He noted that the Indian reserve “was surveyed with the intention of making its boundaries coincide with the boundaries of the said Township 46-20” and that

it would simplify matters very much ... if your Department could see its way to accept the narrow strip on the East, in exchange for the narrow strips ... on the West

⁴⁰⁶ J. Lestock Reid to the Secretary, Department of Indian Affairs, September 19, 1902, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 727).

⁴⁰⁷ J. Lestock Reid to the Secretary, Department of Indian Affairs, September 22, 1902, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 729).

⁴⁰⁸ J. Lestock Reid to the Secretary, Department of Indian Affairs, September 22, 1902, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 730).

and South of the Reserve. In other words, to make the boundaries of the Indian Reserve the boundaries of T.46-20-W.2M.⁴⁰⁹

He wrote again on October 1, 1902, to ask that the small strip between the correction line and township 46 be added to the reserve as well.⁴¹⁰ He instructed Surveyor Reid on the same day that “no harm” would be done if he proceeded with the survey “as if the said strips of land had been dealt with in the manner you suggest.”⁴¹¹ The Surveyor General informed the Assistant Secretary for the Department of the Interior on October 18, 1902, that he had “no objection” to the proposal.⁴¹²

After much correspondence between the Department of the Interior and both the North-West Territories government and the Manitoba and North Western Railway Company, the lands in question were obtained and the exchange made.⁴¹³ There is nothing to indicate that the James Smith Band was consulted regarding the adjustment of the reserve boundaries by the department.

Reid completed the subdivision of the surrendered portion in November and December 1902 and submitted his report in January 1903, along with subdivision plan 271 of township 46, field notes, and valuations of the different sections.⁴¹⁴ This plan clearly shows the encroachment of the reserve into range 19, as well as the strips of land along the west and south that are not included in

⁴⁰⁹ J.D. McLean, Secretary, to P.G. Keyes, Secretary, Department of the Interior, September 25, 1902, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 734–35).

⁴¹⁰ J.D. McLean, Secretary, to P.G. Keyes, Secretary, Department of the Interior, October 1, 1902, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 737).

⁴¹¹ J.D. McLean, Secretary, to J. Lestock Reid, DLS, October 1, 1902, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 738).

⁴¹² Surveyor General to the Assistant Secretary, Department of the Interior, October 18, 1902, no file reference available (ICC Exhibit 1, p. 744).

⁴¹³ See, for example, Assistant Secretary, Department of the Interior, to William Whyte, Commissioner, Manitoba and North Western Railway Company, October 27, 1902, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 749); Assistant Secretary, Department of the Interior, to Deputy Commissioner of Public Works [Government of the North-West Territories], October 27, 1902, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 750); J.S. Dennis, Deputy Commissioner, November 6, 1902, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 751); W. Whyte, Agent, Manitoba and North Western Railway Company of Canada, November 8, 1902, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 752); P.G. Keyes, Secretary, Department of the Interior, to J.D. McLean, Secretary, Department of Indian Affairs, November 20, 1902, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 758).

⁴¹⁴ J. Lestock Reid, Department of Indian Affairs, to DSGIA, January 1903, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 778–79); J. Lestock Reid to the DSGIA, January 15, 1903, LAC, RG 10, vol. 3960, file 141977-7 (ICC Exhibit 1, pp. 784–85).

the reserve.⁴¹⁵ Plan 273, dated October 1902, shows the retraced boundaries of IR 100 and 100A and includes a notation in township 46 that “[s]ubsequent to the making of this plan, it has been arranged with the Department of the Interior that the east, south and west boundaries of this surrendered portion of Reserve 100A are to conform with the township boundaries.” The small strip along the western portion of township 46, range 19, is visible on this plan.⁴¹⁶

Reid’s subdivision plan was subsequently revised to show the surrendered portion of the reserve as corresponding to the township boundaries. All references to the reserve’s encroachment into range 19 and misalignment with the township lines in range 20 have been removed, and the plan shows the quarter sections around the periphery as containing the full 160 acres.⁴¹⁷ The notice of sale prepared in early 1903 indicated that all the available lands were within township 46, range 20, and it did not make reference to any fractional parcels.⁴¹⁸ Successful purchasers were charged for the full 160 acres for most quarter sections on the periphery, except in cases of lands covered by water.⁴¹⁹

Events in later years suggest that, although the Departments of the Interior and of Indian Affairs undertook to shift the boundaries of the Indian reserve, this commitment was not at all clear to residents in the area. Uncertainty regarding the ownership of strips of land on all four sides of township 46 in range 20 persisted. In 1911, Reverend G.R. Turk applied to the Department of Indian Affairs to purchase a strip of land adjacent to lands already owned by his wife in the south half of

⁴¹⁵ Natural Resources Canada, Plan 271 CLSR, “Plan showing sub-division of Portion of Indian Reserve No. 100A, Township 46 Range 20 W 2nd. M, Treaty No. 6, N.W.T.,” signed by J. Lestock Reid, DLS, February 1903 (ICC Exhibit 14e, p. 45).

⁴¹⁶ Natural Resources Canada, Plan 273 CLSR, “Plan showing the La Corne Indian Reserves No. 100 & 100A, Tps. 46, 47 & 48, R. 19, 20 & 21, W. 2nd. M., Treaty No. 6, N.W.T.,” surveyed by J. Lestock Reid, DLS, September–October 1902 (ICC Exhibit 14e, p. 44).

⁴¹⁷ Natural Resources Canada, Plan T481 CLSR, “Plan showing sub-division of Portion of Indian Reserve No. 100A, Tps. 46, 47 & 48, R. 19, 20 & 21, W. 2nd. M., Treaty No. 6, N.W.T.,” surveyed by J. Lestock Reid, DLS, September–October 1902 (ICC Exhibit 4e, p. 2).

⁴¹⁸ Draft sale notice signed by J.D. McLean, Secretary, Department of Indian Affairs, February 21, 1903, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 793); Revised sale notice, J.D. McLean, Secretary, Department of Indian Affairs, March 20, 1903, LAC, RG 10, vol. 3562, file 82, part 9 (ICC Exhibit 1, p. 828).

⁴¹⁹ Natural Resources Canada, Plan T481 CLSR, “Plan showing sub-division of Portion of Indian Reserve No. 100A, Tps. 46, 47 & 48, R. 19, 20 & 21, W. 2nd. M., Treaty No. 6, N.W.T.,” surveyed by J. Lestock Reid, DLS, September–October 1902 (ICC Exhibit 4e, p. 2); see also copy of plan attached to letter from J.D. McLean, Secretary, to David Laird, Indian Commissioner, February 28, 1903, LAC, RG 10, vol. 3562, file 82, part 9 (ICC Exhibit 1, pp. 797–98).

section 4 and the northwest quarter of section 18, within township 46, range 20.⁴²⁰ These strips of land would have been at the south and west boundaries of the township, so it is possible that Reverend Turk was looking to purchase the lands at the south and west side in township 46 which were not originally part of the reserve. J.D. McLean, the Assistant Deputy and Secretary, replied that, “as the reserve land goes to the boundary line on both the south and west sides[,] there is no land available by this Department outside of said lines.”⁴²¹

Around the same time period, in 1911, the Department of the Interior resurveyed township 46, range 19, directly east of the surrendered portion of IR 100A. The survey plan shows the encroachment of IR 100A on the western boundary of the township; in addition, the east halves of sections 6, 7, 18, 19, 30, and 31 in range 19 are noted as containing less than the full 160 acres for each quarter section.⁴²²

On January 8, 1912, the Department of the Interior wrote to the Department of Indian Affairs inquiring what action had been taken to make the boundaries of the reserve and township coincide.⁴²³ The Secretary replied that since there was a “small discrepancy” between the reserve and township surveys, “the matter was simply rectified by adopting your survey” and “[n]o further action was taken by this Department.”⁴²⁴ He later reiterated that changing the limits of the reserve simply required “adopting the townships lines as originally surveyed, thus eliminating some small strips of land.”⁴²⁵

⁴²⁰ Assistant Deputy and Secretary to Reverend G.R. Turk, February 28, 1911, LAC, RG 10, vol. 6665, file 109A-9-13 (ICC Exhibit 1, p. 1128).

⁴²¹ Assistant Deputy and Secretary to Reverend G.R. Turk, February 28, 1911, LAC, RG 10, vol. 6665, file 109A-9-13 (ICC Exhibit 1, p. 1128).

⁴²² Department of the Interior, Surveys Branch, Survey Plan of Township 46, Range 19, West of Second Meridian (second edition), approved May 4, 1911 (ICC Exhibit 14e, p. 47).

⁴²³ F. Nelson, for Assistant Secretary, Department of the Interior, to J.D. McLean, Assistant Deputy Minister and Secretary, Department of Indian Affairs, January 8, 1912, no file reference available (ICC Exhibit 14h, p. 16).

⁴²⁴ J.D. McLean, Assistant Deputy and Secretary, to the Secretary, Department of the Interior, January 20, 1912, no file reference available (ICC Exhibit 14h, p. 20).

⁴²⁵ J.D. McLean, Assistant Deputy and Secretary, to P.G. Keyes, Secretary, Department of the Interior, April 2, 1912, no file reference available (ICC Exhibit 14h, p. 19).

Between 1912 and 1927, actions were taken by the Departments of the Interior and Indian Affairs, as well as by the Saskatchewan government, to close various road allowances within the 100A Strip.⁴²⁶

In July 1912, R.C. Purser, DLS, resurveyed township 46, range 19, W2M. His instructions state that since the reserve boundaries were changed in 1902, “there is now a strip along the west of township 46, range 19 which is Dominion lands and has not been surveyed,” and he was to establish the western boundary of the township.⁴²⁷ During his survey, he located the iron bars marking the eastern boundary of IR 100A approximately four chains (264 feet) east of the western boundary of township 46, range 19.⁴²⁸ The third edition of the plan of township 46, range 19, published in 1913 following Purser’s survey, shows fractional sections 6A, 7A, 18A, 19A, 30A, and 31A for the first time.⁴²⁹

In February 1917, Walter H. Meyers, an agent for one of the landholders in the surrendered township, complained to the farm instructor at Fort à la Corne that squatters were living on a narrow strip of land immediately south of “your reserve” (presumably the unsurrendered portion of IR 100A). The strip, referred to as “No man’s land,” was described as being about 5 or 6 chains wide and 6 miles long. Meyers requested that the department have this narrow strip added to the reserve

⁴²⁶ Notice of Transfer by the Government of the Province of Saskatchewan, Department of Public Works, November 7, 1912, no file reference available (ICC Exhibit 1, p. 1152); Order in Council, August 15, [1916], no file reference available (ICC Exhibit 1, pp. 1260–61); Acting SGIA to the Governor General in Council, August 3, 1916, no file reference available (ICC Exhibit 14h, p. 25); E. Deville, Surveyor General, Department of the Interior, Topographical Surveys Branch, to the Assistant Deputy and Secretary, Department of Indian Affairs, July 12, 1916, no file reference available (ICC Exhibit 14h, p. 23); Saskatchewan Provincial Order in Council 574/18, April 12, 1918, no file reference available (ICC Exhibit 1, pp. 1284–85); Minister of Highways, Province of Saskatchewan, to the Lieutenant Governor in Council, March 8, 1918, no file reference available (ICC Exhibit 14h, pp. 28–29); H.S. Carpenter for Acting Chairman, Board of Highway Commissioners, Province of Saskatchewan, to the Secretary, Department of the Interior, October 18, 1916, no file reference available (ICC Exhibit 14h, p. 26); Order in Council PC 317, February 8, 1918, no file reference available (ICC Exhibit 1, p. 1283); Department of the Interior, Survey Plan of Township 46, Range 19, West of Second Meridian (fourth edition), approved October 2, 1918 (ICC Exhibit 14e, p. 53).

⁴²⁷ Surveyor General to R.C. Purser, DLS, June 27, 1912, no file reference available (ICC Exhibit 1, p. 1146).

⁴²⁸ John Hay, “James Smith Band, No Man’s Land Claim: Residual Lands of the Cumberland I.R. 100A,” February 4, 1992 (ICC Exhibit 14h, p. 14).

⁴²⁹ Department of the Interior, Survey Plan of Township 46, Range 19, West of Second Meridian (third edition), approved November 20, 1913 (ICC Exhibit 14e, p. 52).

and a fence erected to keep out the squatters.⁴³⁰ Indian Agent Charles P. Schmidt forwarded the letter to the department and inquired about the ownership of the strip in question.⁴³¹ The Secretary, mistaking the location of the land in question, replied that the land had all been sold owing to the adjustment made by the department.⁴³²

The matter arose again in 1923, when the Agent was again asked to bring the matter to the department's attention by the same landholder. Meyers confirmed that the strip of land lying south of the James Smith reserve and north of township 46, range 20, W2M, did not belong to him.⁴³³ Agent Schmidt commented that the strip in question was known in the neighbourhood as "No Man's Land," and was presently occupied by squatters.⁴³⁴ J.D. McLean replied on March 21, 1923, that the narrow strip between the northern boundary of township 46 and the southern boundary of "Reserve No. 100" had been added to the reserve. He commented that "all the land which is there which is not sold is Indian land," and, therefore, the squatters were residing on the reserve. He also noted that a very small strip north of section 36 in township 46, range 20, had been designated as fractional section 36A and was under the jurisdiction of the Department of the Interior.⁴³⁵

In 1958, the owner of sections 7 and 18 in township 46, range 19, inquired whether he could acquire ownership of a 3-chain-wide strip lying between his land and the lands in range 20, and known as fractional sections 7A and 18A. He mentioned that a title search indicated that the lands were still held by the Crown as an Indian reserve. W.C. Bethune, Chief of the Reserves and Trusts

⁴³⁰ Walter H. Meyers, Real Estate Agent, to Mr. Rothwell, Farm Instructor, Fort à la Corne, February 28, 1917, LAC, RG 10, vol. 6664, file 109A-9-1A (ICC Exhibit 1, p. 1277).

⁴³¹ C.P. Schmidt, Indian Agent, Duck Lake Agency, to the Secretary, Department of Indian Affairs, March 28, 1917, LAC, RG 10, vol. 6664, file 109A-9-1A (ICC Exhibit 1, p. 1278).

⁴³² J.D. McLean, Assistant Deputy and Secretary, to C.P. Schmidt, Indian Agent, Duck Lake Agency, April 5, 1917, LAC, RG 10, vol. 6664, file 109A-9-1A (ICC Exhibit 1, p. 1279).

⁴³³ C.P. Schmidt, Indian Agent, Duck Lake Agency, to the Secretary, Department of Indian Affairs, February 24, 1923, LAC, RG 10, vol. 6664, file 109A-9-1A (ICC Exhibit 1, p. 1301).

⁴³⁴ C.P. Schmidt, Indian Agent, Duck Lake Agency, to the Secretary, Department of Indian Affairs, March 12, 1923, LAC, RG 10, vol. 6664, file 109A-9-1A (ICC Exhibit 1, p. 1303).

⁴³⁵ J.D. McLean, Assistant Deputy and Secretary, to C.P. Schmidt, Indian Agent, March 21, 1923, LAC, RG 10, vol. 6664, file 109A-9-1A (ICC Exhibit 1, p. 1305).

branch, replied that his department had been unable to determine the status of the land.⁴³⁶ Bethune referred the matter to the Chief Surveyor, commenting that “we are inclined to assume that the land was never part of the reserve and by some error was never brought under the provisions of the Land Titles Act of Saskatchewan.”⁴³⁷

After considering the matter, Surveyor General R. Thistlewaite replied that a search of the available records “does not enable us to answer conclusively.”⁴³⁸ He explained, however, that

we do recognize the possibility of an interest in these parcels on behalf of the Crown Canada by virtue of their having been included in I.R. 100A as set apart by P.C. 1151 of May 18, 1889, and not having been subsequently surrendered by the Indians, or sold by your Branch.⁴³⁹

Furthermore, the eastern boundary of the reserve

is described by metes and bounds from a post and mound to a post and mound. It is apparent that the monuments referred to clearly define the east boundary, and while it was discovered later that this boundary did not coincide with the westerly boundary of Tp. 46-19-W2M, evidence of its position was recognized and recorded by subsequent surveys of that township.⁴⁴⁰

He also noted that the fractional sections in range 19 had been surveyed as separate parcels rather than as part of the regular sections, with their eastern boundary being the boundary of the Indian reserve as surveyed by Nelson in 1887. Thistlewaite felt that legal advice was required to determine

⁴³⁶ W.C. Bethune, Chief, Reserves and Trusts, to Cairns, Gale and Eisner, Barristers and Solicitors, July 28, 1958, no file reference available (ICC Exhibit 1, p. 1365).

⁴³⁷ W.C. Bethune, Chief, Reserves and Trusts, Indian Affairs Branch, Department of Citizenship and Immigration, to R. Thistlewaite, Surveyor General, Department of Mines and Technical Surveys, July 30, 1958, no file reference available (ICC Exhibit 1, p. 1366).

⁴³⁸ R. Thistlewaite, Surveyor General, to W.C. Bethune, Chief, Reserves and Trusts, Indian Affairs Branch, Department of Citizenship and Immigration, September 2, 1958, no file reference available (ICC Exhibit 1, p. 1367).

⁴³⁹ R. Thistlewaite, Surveyor General, to W.C. Bethune, Chief, Reserves and Trusts, Indian Affairs Branch, Department of Citizenship and Immigration, September 2, 1958, no file reference available (ICC Exhibit 1, p. 1367).

⁴⁴⁰ R. Thistlewaite, Surveyor General, to W.C. Bethune, Chief, Reserves and Trusts, Indian Affairs Branch, Department of Citizenship and Immigration, September 2, 1958, no file reference available (ICC Exhibit 1, pp. 1367–68).

whether the adjustment made by the Department of Indian Affairs had the effect of changing the original and confirmed reserve boundaries. He also noted in his letter that, according to Department of Indian Affairs files, the land gained by the change had already been sold for the benefit of the Band.⁴⁴¹

In 1985, a survey of the 100A Strip was completed by Saskatchewan Land Surveyor Peter Wivcharuk. Plan 71582 of the “resurvey of the boundaries of the Cumberland Indian Reserve No. 100A in Township 46, Range 19, West of the 2nd Meridian” shows road allowances along the eastern and southern boundaries of the strip, although these were closed by Order in Council in 1918. Land within the strip is labelled “Cumberland Indian Reserve No. 100A.” No other significant roads or encroachments appear on this plan.⁴⁴²

As of 1992, according to the James Smith Cree Nation, there were 92.11 acres of encroachments on the 100A Strip, out of a total area of 191.33 acres.⁴⁴³ In response to an inquiry from the James Smith Band, the administrator for the Rural Municipality of Kinistino clarified on June 15, 1989, that the lands within the 100A Strip “have never been assessed or taxed but as you are aware the adjacent farmers have been farming the property.”⁴⁴⁴

IR 100A LAND SALES

Requirements of the *Indian Act* and Land Sale Regulations

Section 41 of the 1886 *Indian Act* states that all sales of surrendered Indian lands shall be “managed, leased and sold as the Governor in Council directs,” subject to the provisions of the surrender and the *Indian Act*.⁴⁴⁵ In 1887, “Regulations for the Disposal of Surrendered Indian Lands” were created

⁴⁴¹ R. Thistlewaite, Surveyor General, to W.C. Bethune, Chief, Reserves and Trusts, Indian Affairs Branch, Department of Citizenship and Immigration, September 2, 1958, no file reference available (ICC Exhibit 1, pp. 1367–68).

⁴⁴² Natural Resources Canada, Plan 71582 CLSR, “Plan and Field Notes of re-survey of the boundaries of the Cumberland Indian Reserve No. 100A in Township 46, Range 19, West of the Second Meridian,” surveyed by P. Wivcharuk, Saskatchewan Land Surveyor, October 1985 (ICC Exhibit 14e, pp. 71a–87).

⁴⁴³ John Hay, “James Smith Band, ‘No Man’s Land’ Claim: Residual Lands of the Cumberland I.R. 100A,” February 4, 1992 (ICC Exhibit 14c, pp. 20–21).

⁴⁴⁴ Larry W. Edeen, Administrator, Rural Municipality of Kinistino No. 459, to Delbert Brittain, James Smith Band, June 15, 1989, no file reference available (ICC Exhibit 14a).

⁴⁴⁵ *Indian Act*, RSC 1886, c. 43, s. 41 (ICC Exhibit 24a, p. 21).

pursuant to section 41 to govern the sale of these lands.⁴⁴⁶ These regulations, consolidated on September 15, 1888, set out the following guidelines for sale: buyers are limited to 640 acres of land each; at least one-fifth of the purchase price must be paid at the time of sale, and the balance paid in four equal annual instalments; 6 per cent interest is to be charged on instalments; settlement duties are required; and any violation of the terms of sale render land and moneys paid “forfeitable.”⁴⁴⁷

As noted previously, the terms of surrender provide that “all moneys received from the sale ... shall, after deducting the usual proportion for expenses of management, be placed to the credit of the amalgamated Bands James Smith and Cumberland.” They also stipulate that “as soon as convenient after the money is received from the sale of the land,” 10 per cent of proceeds will be paid “to the amalgamated Band in implements, waggons, harness and other useful articles.”⁴⁴⁸

Advertisement of Sale

Frank Pedley was appointed to be the new DSGIA on November 21, 1902, to replace James A. Smart, and he took the oath of office on November 26, 1902.⁴⁴⁹ The previous day, November 25, he asked Secretary McLean about the status of the surrendered 100A lands “sub-divided last year ... and how the matter now stands.”⁴⁵⁰ On February 2, 1903, he ordered the department to go ahead with the sale of the surrendered lands, despite the objections that had been raised by Archdeacon MacKay.

On February 17, 1903, W.A. Orr recommended that the lands should be sold by tender and that the sale be advertised, with notices in the *Manitoba Free Press* (Winnipeg), the Prince Albert

⁴⁴⁶ Order in Council, October 26, 1887, LAC, RG 10, vol. 2389, file 79921 (ICC Exhibit 24b, p. 1).

⁴⁴⁷ Order in Council PC 1787, September 15, 1888, LAC, RG 2, vol. 400 (ICC Exhibit 15f, Document S1).

⁴⁴⁸ Cumberland Band of Indians, Surrender for sale, July 24, 1902, DIAND Indian Land Registry, Instrument no. X10691 (ICC Exhibit 1, pp. 677–79).

⁴⁴⁹ Department of Indian Affairs Establishment Book, Inside Service, c. 1860–1935, LAC, RG 10, vol. 9179.

⁴⁵⁰ Frank Pedley, DSGIA, to Mr. McLean, November 25, 1902, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 761).

Advocate, and the *Toronto Globe*. Posters were also sent to postmasters in the district.⁴⁵¹ Pedley approved the plan on February 21.⁴⁵² The notice of sale, dated February 21, 1903, stated that tenders would be accepted until March 25, 1903, and that “[e]ach tender shall contain an offer at a rate per acre for not more than one quarter Section of land and shall be accompanied by a cash deposit or an accepted Cheque.” The terms for payment were one-fifth cash deposit, with the balance to be paid in four equal annual instalments with 5 per cent interest. The description provided in the notice of sale lists each section available for tender, namely “Sections 1, 2, 3, 4, 5, North Half 7, 8, 9, 10 ... Township 46 ...”⁴⁵³ No minimum bid, or upset price, was set for the parcels of land.

Following publication of the sale notice, a number of newspapers requested insertion of the same notice in their own papers, some noting that they normally received these types of advertising contracts from the department.⁴⁵⁴ McLean sent letters to these newspapers stating that “it is not considered advisable to extend the publication of the advertisement ... beyond the papers already authorized to insert the same.”⁴⁵⁵

Confusion was evident almost immediately. John Campbell of St Thomas, Ontario, wrote to the department to clarify the process for submitting a tender: “Do I understand from the advertisement that you will sell only [illegible] quarter section to one purchaser or will you sell the

⁴⁵¹ W.A. Orr to the Deputy Minister, February 17, 1903, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 792).

⁴⁵² Marginal notation initially by DSGIA Frank Pedley on memorandum from W.A. Orr to the Deputy Minister, February 17, 1903, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 792).

⁴⁵³ Sale advertisement, February 21, 1903, no file reference available (ICC Exhibit 1, p. 795); see also Draft sale notice signed by J.D. McLean, Secretary, Department of Indian Affairs, February 21, 1903, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 793).

⁴⁵⁴ *Daily News*, Chatham, ON, to J.D. McLean, Secretary, Department of Indian Affairs, February 28, 1903, LAC, RG 10, vol. 6664, file 109A-9-3 (ICC Exhibit 1, p. 800); *Herald*, Hamilton, ON, to J.D. McLean, Secretary, Department of Indian Affairs, March 4, 1903, LAC, RG 10, vol. 6664, file 109A-9-3 (ICC Exhibit 1, p. 809); *Eganville Leader*, Eganville, ON, to J.D. McLean, Secretary, Department of Indian Affairs, March 4, 1903, LAC, RG 10, vol. 6664, file 109A-9-3 (ICC Exhibit 1, p. 810); The Echo Printing Co. Limited, Amherstburg, ON, to J.D. McLean, Secretary, Department of Indian Affairs, March 6, 1903, LAC, RG 10, vol. 6664, file 109A-9-3 (ICC Exhibit 1, p. 812); *Galt Reformer*, Galt, ON, to J.D. McLean, Secretary, Department of Indian Affairs, March 9, 1903, LAC, RG 10, vol. 6664, file 109A-9-3 (ICC Exhibit 1, p. 816); *Haldimand Advocate*, Cayuga, ON, to J.D. McLean, Secretary, Department of Indian Affairs, March 13, 1903, LAC, RG 10, vol. 6664, file 109A-9-3 (ICC Exhibit 1, p. 820); *London News*, London, ON, to J.D. McLean, Secretary, Department of Indian Affairs, March 13, 1903, LAC, RG 10, vol. 6664, file 109A-9-3 (ICC Exhibit 1, p. 821).

⁴⁵⁵ See, for example, J.D. McLean, Secretary, to A.C. Woodward, *Daily News*, March 7, 1903, LAC, RG 10, vol. 6664, file 109A-9-3 (ICC Exhibit 1, p. 814).

whole or any [illegible] over a quarter section to one purchaser?”⁴⁵⁶ J.D. McLean replied that “[e]ach tender must be for not more than one quarter section but a tenderer may submit tenders for as many quarter sections as he desires.”⁴⁵⁷ On March 10, David Laird wrote to the department to say that the description of lands for sale was misleading, explaining that “[i]ntending tenderers have asked here if only north half of all sections after 7 is for sale.”⁴⁵⁸ McLean replied the same day stating that the advertisement contained the correct description of lands, “all sections being full except seven which is described as north half.”⁴⁵⁹

On March 20, a memorandum written to the Lands Branch indicated that the Minister desired changes to the terms of sale.⁴⁶⁰ New advertisements were run in the same three newspapers as the original notice, with the wording clarified slightly. The revised notice shows that the deadline for tenders was extended to May 6, 1903, and the terms of payment changed to one-tenth cash deposit, with the balance to be paid in nine annual instalments at 5 per cent interest.⁴⁶¹ These terms are similar to those in the sale of Roseau River lands taking place around the same time.⁴⁶² There is no evidence that the James Smith Band was consulted regarding these changes.

⁴⁵⁶ John Campbell to the Indian Commissioner, February 28, 1903, LAC, RG 10, vol. 3562, file 82, part 9 (ICC Exhibit 1, p. 799).

⁴⁵⁷ J.D. McLean, Secretary, to John Campbell, March 3, 1903, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 804).

⁴⁵⁸ David Laird to the Secretary, Department of Indian Affairs, March 10, 1903, LAC, RG 10, vol. 3562, file 82, part 9 (ICC Exhibit 1, p. 817).

⁴⁵⁹ J.D. McLean to David Laird, Indian Commissioner, March 10, 1903, LAC, RG 10, vol. 3562, file 82, part 9 (ICC Exhibit 1, p. 818).

⁴⁶⁰ J.D. McLean, Department of Indian Affairs, to Lands Office, March 20, 1903, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 827).

⁴⁶¹ Undated marginal notations written on draft sale notice signed by J.D. McLean, Secretary, Department of Indian Affairs, February 21, 1903, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 793); Revised sale notice, J.D. McLean, Secretary, Department of Indian Affairs, March 20, 1903, LAC, RG 10, vol. 3562, file 82, part 9 (ICC Exhibit 1, p. 828).

⁴⁶² David Laird, Indian Commissioner, to J.D. McLean, March 21, 1903, LAC, RG 10, vol. 3562, file 82, part 9 (ICC Exhibit 1, p. 830).

Map 4

Land "Surrendered" in 1902 Showing Land Sales

- Prendergast Sales: 1-49
- Menary Sales: 54-125
- Mossom Boyd Sales: 50-53 and 126-138

109 108 31 111 110	113 112 32 45 44	115 114 33 47 46	117 116 34 49 48	119 118 35 121 120	123 122 36 125 124
105 104 30 107 106	43 42 29 103 102	39 38 28 41 40	35 34 27 37 36	99 98 26 101 100	95 94 25 97 96
73 31 19 75 74	77 76 20 79 78	81 80 21 33 32	83 82 22 85 84	87 86 23 89 88	91 90 24 93 92
28 27 18 30 29	24 23 17 26 25	20 19 16 22 21	70 69 15 72 71	68 67 14 138 137	64 63 13 66 65
55 54 7 MANITOBA AND NORTHERN RAILWAY EXCHANGE LAND 6 960 ac.	12 11 8 14 13	16 15 9 18 17	57 56 10 59 58	60 135 11 129 130	136 61 12 62 128
	8 7 5 10 9	4 3 4 6 5	1 127 3 2 126	133 134 2 131 132	52 53 1 50 51

LAND SURRENDERED IN 1902
 (Township 46, Range 20, W2M)
 Excepting sec.6 and S-1/2 sec.7, exchanged in 1899/1902

Tenders for Land⁴⁶³

The tenders were opened at the department between May 6 and 9, 1903, and notices were sent to successful purchasers on May 11, 12, and 13, 1903. All the surrendered IR 100A lands were purchased by three groups, or syndicates, commonly referred to as the Menary group, the Prendergast group, and the Mossom Boyd group. Aside from the three syndicates, only four other individuals tendered for the surrendered IR 100A lands, and two of these, T.O. Davis and H. Beliveau, were associated with the Prendergast group. Furthermore, the lands as a whole were sold for a sum significantly below their assessed value of \$102,831.45 for all 138 parcels, an average of approximately \$4.75 per acre. The amount actually bid by successful purchasers amounted to \$58,147.49, or an average of \$2.68 per acre.⁴⁶⁴

It should be noted that many of the department files relating to the sale of IR 100A have disappeared. The files containing unsuccessful tenders, as well as the files relating to the Menary group sales for the period 1903–10, are among the missing items. The 1915 report of the Ferguson Commission, which investigated improper dealings of government officials – including DSGIA Frank Pedley and James A. Smart – in the sale of Indian and Dominion Lands and resources, was lost in a fire in 1916. The available information about this report comes from newspaper articles of the day, as well as the transcript of debates in the House of Commons on the day the report was tabled.

Menary Group

A.J. Menary, a stenographer with the Toronto law firm Marsh & Marsh, submitted tenders on May 4, 1903, for each of the quarter sections in the surrendered portion of IR 100A.⁴⁶⁵ She was ultimately

⁴⁶³ Given the numerous gaps in the historical record, the summary of the evidence relating to the tenders and sales draws heavily on the analysis in the report written by Bennett McCardle, “Cumberland Indian Reserve 100A: Report on the Land Surrender of 1902 and Related Land Sales and Trust Fund Management Issues,” prepared for the FSIN, December 1984, with additions by Roland Wright, August 1985 (ICC Exhibit 6).

⁴⁶⁴ Bennett McCardle, “Cumberland Indian Reserve 100A: Report on the Land Surrender of 1902 and Related Land Sales and Trust Fund Management Issues,” prepared for the Federation of Saskatchewan Indian Nations, December 1984, with additions by Roland Wright, August 1985 (ICC Exhibit 6, pp. 60–61). Note that these figures have been adjusted to account for actual acreage sold rather than the original estimates.

⁴⁶⁵ Bennett McCardle, “Cumberland Indian Reserve 100A: Report on the Land Surrender of 1902 and Related Land Sales and Trust Fund Management Issues,” prepared for the Federation of Saskatchewan Indian Nations, December 1984, with additions by Roland Wright, August 1985 (ICC Exhibit 6, p. 74).

successful in the purchase of 72 quarter sections (11,113.07 acres, or 51 per cent of the total land sold) for a total of \$28,644.44. The lands had been assessed earlier by Reid at a value of \$55,631.45.⁴⁶⁶ These purchases represent sales 54–125 in the land sale book.⁴⁶⁷

Since the files containing all the unsuccessful tenders have disappeared, we have information relating only to those sales in which Menary was successful. According to Bennett McCardle's research, Menary assigned her interests to A.C. Bedford-Jones of Toronto soon after the sale, although the date on which she did so is uncertain. On October 9, 1905, the Winnipeg firm Nares, Robinson and Black requested a statement of the lands purchased in 1903 and owned by A.C. Bedford-Jones, the representative of "an Eastern Syndicate."⁴⁶⁸ In response, DSGIA Frank Pedley sent a statement of those lands belonging to "Mr. A.J. Menary" [sic] on October 17, 1905,⁴⁶⁹ although Secretary McLean had written to the firm only a few days earlier to say that "the Department has no record of Mr. Jones owning Land on this Reserve."⁴⁷⁰

On December 22, 1905, Pedley wrote to the Winnipeg firm Macdonald, Haggart and Whitla to acknowledge receipt of an assignment from A.C. Bedford-Jones to A.H. McLeod, and another from A.H. McLeod to Medley G. Siddall.⁴⁷¹ The lands were later transferred to the Canada Land

⁴⁶⁶ Bennett McCardle, "Cumberland Indian Reserve 100A: Report on the Land Surrender of 1902 and Related Land Sales and Trust Fund Management Issues," prepared for the Federation of Saskatchewan Indian Nations, December 1984, with additions by Roland Wright, August 1985 (ICC Exhibit 6, p. 67). Note that these figures represent the adjusted acreage rather than the figure estimated at the time of sale.

⁴⁶⁷ Department of Indian Affairs, Land Sale Book, Cumberland IR 100A Land Sales, sales 54-125 (ICC Exhibit 15c).

⁴⁶⁸ Nares, Robinson and Black, Real Estate, Loan & Insurance Agency, to W.W. Cory, Deputy Minister of the Interior, October 9, 1905, LAC, RG 10, vol. 6664, file 109A-9-11, part 1 (ICC Exhibit 1, pp. 1019–20).

⁴⁶⁹ Frank Pedley, DSGIA, to Nares, Robinson and Black, October 17, 1905, LAC, RG 10, vol. 6665, file 109A-9-11, part 1 (ICC Exhibit 1, pp. 1025–26).

⁴⁷⁰ J.D. McLean, Secretary, to Nares, Robinson and Black, October 11, 1905, LAC, RG 10, vol. 6665, file 109A-9-11, part 1 (ICC Exhibit 1, p. 1021).

⁴⁷¹ Frank Pedley, DSGIA, to Macdonald, Haggart & Whitla, Barristers, December 22, 1905, LAC, RG 10, volume 5115 (ICC Exhibit 1, p. 1043).

Company, although the date of assignment is not known.⁴⁷² The available documents indicate the company's involvement by October 26, 1910.⁴⁷³

When the final instalment on the sales came due in May 1913, \$11,032.93, or about 40 per cent of the purchase price, was still owed in principal.⁴⁷⁴ In 1919, the department imposed a repayment schedule on the company, requiring a completion of the sale in three annual instalments at 7 per cent interest.⁴⁷⁵ The lands were finally patented by the company on October 14, 1924.⁴⁷⁶

In 1915, it was revealed by the Ferguson Commission that the Menary tenders were actually submitted by DSGIA Frank Pedley, Deputy Minister of the Interior James A. Smart, and Department of the Interior Immigration Inspector W.J. White, represented by Toronto lawyer A.C. Bedford-Jones. This same lawyer represented these three men in the sales of the Moose Mountain and Chakastaypasin reserves in 1901. In those sales, forged tenders were submitted, and the lands purchased were soon assigned to Bedford-Jones and quickly resold for large profits.⁴⁷⁷ Since most of the records relating to these sales have disappeared, it is impossible to show that the pattern followed in the 100A sales exactly followed that of the other sales. However, the circumstances are strikingly similar. A Montreal *Gazette* article dated April 14, 1915, reporting on the findings of the Ferguson Commission, relates the involvement of Smart, Pedley, and White in the Moose Mountain and Chakastaypasin sales, as well as one other. The article describes how Bedford-Jones and A.S. [sic] Menary were involved in the sale of this other reserve, on which profits of approximately

⁴⁷² Department of Indian Affairs, Land Sale Book, Cumberland IR 100A Land Sales, sales 54-125 (ICC Exhibit 15c).

⁴⁷³ J.D. McLean, Secretary, to J.R. Graham, Barrister, October 26, 1910, LAC, RG 10, vol. 6664, file 109A-9-1A (ICC Exhibit 1, p. 1117).

⁴⁷⁴ J.D. McLean, Assistant Deputy and Secretary, to C.W. Fawcett, May 6, 1913, LAC, RG 10, vol. 6664, file 109A-9-5, part 1 (ICC Exhibit 1, p. 1155).

⁴⁷⁵ Repayment agreement between the Canada Land Company and the Department of Indian Affairs, April 30, 1919, LAC, RG 10, vol. 6664, file 109A-9-5 (ICC Exhibit 1, pp. 1289–90).

⁴⁷⁶ DIAND, Indian Land Sales System – Posted Sales Abstract Report – Cumberland 100A, February 1995 (ICC Exhibit 15a).

⁴⁷⁷ Tyler and Wright Research Consultants, “The Alienation of Indian Reserve Lands during the Administration of Sir Wilfrid Laurier, 1896–1911; Addendum: The Royal Commission of Thomas Roberts Ferguson,” May 1977 (ICC Exhibit 5, pp. 4–5).

\$18,000 were realized, and how Menary made out the tenders for “reserve 100.”⁴⁷⁸ This report is obviously incorrect, since there was never a surrender or sale of IR 100. However, the circumstances point to the “other” reserve being IR 100A. Bennett McCardle summarizes the evidence to this conclusion as follows:

- “The fact that A.J. Menary assigns her interest in the Cumberland 100A lands to A.C. Bedford-Jones, just as the other front men did” in the Moose Mountain and Chakastaypasin sales.
- “The fact that A.J. Menary worked for the law firm of Marsh & Marsh, one of the partners of which was G.W. Marsh, one of the front men utilized by Bedford-Jones in the Moose Mountain sale.”
- “The fact that Bedford-Jones, in selling the lands assigned to him by Menary, is said to represent an ‘Eastern Syndicate.’”
- “The fact that the law firms which handle the sale of Bedford-Jones’ Moose Mountain land (Robinson & Hull, and Macdonald, Taggart & Whitla) also handle the sale of his Cumberland 100A land.”
- “The fact that on October 17, 1905, Frank Pedley, at the request of the Winnipeg real estate firm Nares, Robinson & Black, sent to the firm a statement of the lands which A.C. Bedford-Jones of Toronto was interested in, which lands were purchased by A.J. Menary. Yet, when this statement was sent[,] the Department of Indian Affairs had not yet received any notice that Bedford-Jones was interested in these lands.”⁴⁷⁹

Prendergast Group

This group of five men successfully acquired 49 quarter sections (7,840 acres, or 36 per cent of the total lands sold) for \$23,322.25, although the assessed value of the land was \$39,840.00. Members of the group included James E.P. Prendergast, J.H. Lamont, P.D. Tyerman, T.O. Davis, and A.W. Fraser. One of the men, T.O. Davis, was a Member of Parliament, as was W.S. Calvert, who obtained Fraser’s interest soon after the sale. Lamont was a Prince Albert attorney, and Prendergast

⁴⁷⁸ “Gov’t Officials Made a ‘Clean-up,’” *Montreal Gazette*, April 14, 1915, quoted in Tyler and Wright, “The Alienation of Indian Reserve Lands during the Administration of Sir Wilfrid Laurier, 1896–1911; Addendum: The Royal Commission of Thomas Roberts Ferguson,” May 1977 (ICC Exhibit 5, pp. Z5–Z7).

⁴⁷⁹ Bennett McCardle, “Cumberland Indian Reserve 100A: Report on the Land Surrender of 1902 and Related Land Sales and Trust Fund Management Issues,” prepared for the FSIN, December 1984, with additions by Roland Wright, August 1985 (ICC Exhibit 6, pp. 78–79).

was a judge in the North-West Territories.⁴⁸⁰ P.D. Tyerman was a Prince Albert physician, employed as a medical officer with the Department of Indian Affairs in the Carlton and Duck Lake Agencies from 1899 to 1901, and later in the Carlton Agency alone from 1902 to 1904.⁴⁸¹ Two of these individuals, Davis and Lamont, had purchased lands in the Chakastaypasin reserve the previous year.

Again, since departmental files are missing with regard to the IR 100A sales, not everything is clear with regard to what happened. However, it appears that at least two, and possibly four or more, tenders were submitted by this syndicate for IR 100A lands. Bennett McCardle has reconstructed a fairly detailed picture of what might have taken place, based on a complex analysis of available departmental letter registries and other records, as well as the limited documents that are still available.⁴⁸² This evidence reveals the following points:

- On April 23, Secretary McLean wrote to James Prendergast, acknowledging

the receipt of your letters of the 16th instant, relative to Tenders forwarded by you for lands on Indian Reserve No. 100A, and in reply to say that your request in latter letter to disregard your former communication has been noted.

The money transmitted in letter submitting Tenders may, as proposed, be used as deposit as far as it will go, in connection with a subsequent Tender by you.⁴⁸³

⁴⁸⁰ “Research on ‘Davis Group’ and ‘Prendergast Group’: Final Historical Report,” prepared by Public History Inc. for the Specific Claims Branch, November 2000 (ICC Exhibit 15f, pp. 5–14).

⁴⁸¹ “Research on ‘Davis Group’ and ‘Prendergast Group’: Final Historical Report,” prepared by Public History Inc. for the Specific Claims Branch, November 2000 (ICC Exhibit 15f, pp. 11–13); List of Officers and Employees, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1901*, part 2, 241 (ICC Exhibit 15f, document 45); List of Officers and Employees, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1902*, part 2, 165 (ICC Exhibit 15f, document 52); List of Officers and Employees, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1903*, part 2, 173 (ICC Exhibit 15f, document 54); List of Officers and Employees, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30, 1904*, part 2, 166 (ICC Exhibit 15f, document 58); *Henderson’s Manitoba and Northwest Gazetteer and Directory for 1905* (Winnipeg: Henderson’s Directories Limited, 1905), 875 (ICC Exhibit 15f, document 62).

⁴⁸² Bennett McCardle, “Cumberland Indian Reserve 100A: Report on the Land Surrender of 1902 and Related Land Sales and Trust Fund Management Issues,” prepared for the FSIN, December 1984, with additions by Roland Wright, August 1985 (ICC Exhibit 6, pp. 79-85, 99–105).

⁴⁸³ J.D. McLean, Secretary, to James E.P. Prendergast, April 23, 1903, LAC, RG 10, vol. 5025 (ICC Exhibit 1, p. 840).

Bennett McCardle has deduced from departmental letter registries that this deposit cheque was in the amount of \$187.31, from Prendergast, Lamont and Tyerman.⁴⁸⁴

- The group submitted a bulk tender dated April 23, 1903, rather than single tenders, for each quarter section in the surrendered township, although the bids for six parcels are crossed out. The prices tendered range from \$1.05 to \$3.55 per acre.⁴⁸⁵
- Frank Pedley wrote to T.O. Davis on May 2, 1903:

Referring to communication of the 23rd ultimo from Messrs. James E.P. Prendergast, J.H. Lamont and P.D. Tyerman, left by you at the Department yesterday, withdrawing Tender submitted for Indian lands on Reserve No. 100A, I beg to say that as the Tenders have not been opened, the deposit therewith cannot be returned, but it may be substituted by Tenderers as [illegible] another tender to take the place of the one [submitted].⁴⁸⁶
- T.O. Davis later submitted his own bid for the six parcels crossed off the April 23 tender, all of which were rejected.⁴⁸⁷
- An undated fragment of another tender for 46 parcels from James E.P. Prendergast, and possibly others, accompanied by a deposit in the amount of \$561.92, was received by the department.⁴⁸⁸ This tender contains lower bids for each parcel than the April 23 tender.
- Another tender from Prendergast, Lamont, and Tyerman was received on May 6, 1903, the deadline for receipt of tenders.⁴⁸⁹

⁴⁸⁴ Bennett McCardle, "Cumberland Indian Reserve 100A: Report on the Land Surrender of 1902 and Related Land Sales and Trust Fund Management Issues," prepared for the FSIN, December 1984, with additions by Roland Wright, August 1985 (ICC Exhibit 6, p. 74).

⁴⁸⁵ Tender signed by James E.P. Prendergast, J.H. Lamont, P.D. Tyerman, Thomas O. Davis, and A.W. Fraser, April 23, 1903, LAC, RG 10, vol. 6665, file 109A-9-11, part 1 (ICC Exhibit 1, pp. 837-39).

⁴⁸⁶ Frank Pedley, DSGIA, to T.O. Davis, MP, May 2, 1903, LAC, RG 10, vol. 5025 (ICC Exhibit 1, p. 843).

⁴⁸⁷ Bennett McCardle, "Cumberland Indian Reserve 100A: Report on the Land Surrender of 1902 and Related Land Sales and Trust Fund Management Issues," prepared for the FSIN, December 1984, with additions by Roland Wright, August 1985 (ICC Exhibit 6, p. 76).

⁴⁸⁸ Tender, undated, LAC, RG 10, vol. 6665, file 109A-9-11, part 1 (ICC Exhibit 1, p. 842).

⁴⁸⁹ Bennett McCardle, "Cumberland Indian Reserve 100A: Report on the Land Surrender of 1902 and Related Land Sales and Trust Fund Management Issues," prepared for the FSIN, December 1984, with additions by Roland Wright, August 1985 (ICC Exhibit 6, p. 75).

- At some point before the tenders were opened, H. Beliveau withdrew his tender, and his cheque for \$83.20 was therefore returned. His address was care of “Richard Co.,” the same firm that handled the sales for the Prendergast group.⁴⁹⁰ A cheque from Richard Co. was also counted towards the deposit for the accepted Prendergast tenders.⁴⁹¹
- McCardle notes that the department letter registry shows the accepted tender from Prendergast and others as being undated. If this is true, it would seem that neither of the available documents is the accepted tender for this group.⁴⁹²
- On May 11, 1903, Secretary McLean sent a memorandum to the accountant with a list of the cheques to be credited on account of Prendergast, Lamont, Tyerman, Davis, and Fraser for the lands awarded to them. A total of nine cheques and one bank draft are listed, in the amount of \$4,604.13, over twice the required 5 per cent deposit of \$2,239.20. The cheques come from Fraser, Lamont, Tyerman, Prendergast, and Richard Co. It is uncertain who deposited the draft from the Bank of Ottawa.⁴⁹³

In sum, Bennett McCardle notes that the presence of at least two tenders from this group could indicate that it expected officials to exert influence in its favour, possibly choosing the lower tender if it was higher than others. This happened in the case of at least one quarter section sold to the Mossom Boyd group.⁴⁹⁴ It should be noted, however, that the notice of sale states that “the highest or any Tender will not necessarily be accepted.”⁴⁹⁵

It is interesting that, although tenders for 49 quarter sections were accepted from the Prendergast group on a bulk tender, the department refused the bulk tender of another prospective purchaser. In a letter to C.E. Hall of Winnipeg, the department explained that “the conditions of

⁴⁹⁰ J.D. McLean, Secretary, to H. Beliveau, May 11, 1903, LAC, RG 10, vol. 6665, file 109A-9-11, part 1 (ICC Exhibit 1, p. 846).

⁴⁹¹ J.D. McLean, Secretary, to the Accountant, May 11, 1903, LAC, RG 10, vol. 6665, file 109A-9-11, part 1 (ICC Exhibit 1, p. 844).

⁴⁹² Bennett McCardle, “Cumberland Indian Reserve 100A: Report on the Land Surrender of 1902 and Related Land Sales and Trust Fund Management Issues,” prepared for the FSIN, December 1984, with additions by Roland Wright, August 1985 (ICC Exhibit 6, pp. 99–102).

⁴⁹³ J.D. McLean, Secretary, to the Accountant, May 11, 1903, LAC, RG 10, vol. 6665, file 109A-9-11, part 1 (ICC Exhibit 1, p. 844).

⁴⁹⁴ Tender book, May 1903, no file reference available (ICC Exhibit 1, pp. 863, 870).

⁴⁹⁵ Draft sale notice signed by J.D. McLean, Secretary, Department of Indian Affairs, February 21, 1903, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 793).

notice calling for Tenders required a separate Tender for each individual quarter section, which was not complied with by you, and your Tenders have not been accepted.” McLean also informed him that, in any case, his tenders were “not the highest.”⁴⁹⁶ Another tenderer, James J. Reilly, was rejected on the grounds that his deposit cheque was not marked “accepted” as required by the sale notice, although it was also noted that his tender was “not the highest.”⁴⁹⁷ Because the rejected tenders for this sale are no longer available, it is impossible to confirm whether the bids of successful purchasers were actually the highest.

On May 12, 1903, the department notified A.W. Fraser that tenders had been accepted for 49 parcels of land. It specified that the accepted tenders were submitted by Prendergast, Lamont, Tyerman, Davis, and Fraser, and a statement of the parcels and purchase prices was enclosed.⁴⁹⁸ A cheque refunding the overpayment was prepared and forwarded to T.O. Davis, on instructions of DSGIA Frank Pedley.⁴⁹⁹ In later years a dispute arose between Davis and Tyerman, in which it was claimed that Prendergast, Lamont, and Tyerman were the “original purchasers,” and that Davis and Fraser “became subsequently interested in it.”⁵⁰⁰ No information is available on the outcome of this dispute.

The payments on these sales went into arrears immediately, beginning with the second instalment. On December 7, 1904, nearly seven months after the second instalment became due, the Secretary wrote to A.W. Fraser, saying that “unless payment is made at once the Department will have to consider cancellation of the sale and forfeiture of the money paid.”⁵⁰¹ Ten days later, Pedley wrote to Secretary McLean in reference to the letter sent to Fraser: “I wish that when any such letters

⁴⁹⁶ J.D. McLean, Secretary, to C.E. Hall, Winnipeg, May 11, 1903, LAC, RG 10, vol. 5027 (ICC Exhibit 1, p. 845).

⁴⁹⁷ Secretary to James J. Reilly, May 11, 1903, LAC, RG 10, vol. 5027 (ICC Exhibit 1, p. 847).

⁴⁹⁸ DSGIA to A.W. Fraser, May 12, 1903, LAC, RG 10, vol. 6665, file 109A-9-11, part 1 (ICC Exhibit 1, pp. 848–50).

⁴⁹⁹ Frank Pedley, DSGIA, to the Accountant, May 13, 1903, LAC, RG 10, vol. 6665, file 109A-9-11, part 1 (ICC Exhibit 1, p. 858).

⁵⁰⁰ McKay and Adam, Barristers, Solicitors, Notaries, to the Secretary, Department of Indian Affairs, February 15, 1911, LAC, RG 10, vol. 6665, file 109A-9-11, part 1 (ICC Exhibit 1, pp. 1125–26).

⁵⁰¹ Secretary to A.W. Fraser, December 7, 1904, LAC, RG 10, vol. 6665, file 109A-9-11, part 1 (ICC Exhibit 1, p. 965).

are thought of being written they may be submitted to me before being sent out. In the meantime no further action to be taken on the subject matter of this letter for the present.”⁵⁰²

On October 30, 1905, Prendergast notified the department that the syndicate’s lands had been sold to Edward M. Robinson of Winnipeg.⁵⁰³ On November 27, 1905, the firm Robinson & Hull of Winnipeg forwarded assignments from A.W. Fraser to William S. Calvert, and from Calvert to E.M. Robinson. A Quit Claim deed from Prendergast, Lamont, Davis, and Tyerman to E.M. Robinson was also enclosed.⁵⁰⁴ The assignments were accepted by the department on December 19, 1906.⁵⁰⁵

Robinson apparently disposed of his interest quickly, because A.J. McPherson of Stratford, Ontario, wrote to MP George McIntyre on June 1, 1906, that, “while in Manitoba last month, a few of us purchased 7840 acres of land” in the former IR 100A. However, the assignment from Robinson to Alfred J. McPherson was not accepted at first because the department refused to make the change until the balance of the money due was paid.⁵⁰⁶

By June 1907, out of 49 sales, 32 parcels had only one instalment of payment recorded, 16 sales had four instalments paid, and one sale had been paid in full. W.A. Orr observed that, “[a]s this land has quadrupled in value since the sale I am sure there ought to be no difficulty, if the holder of the property would wish to pay the balance due,” and recommended cancellation of the sales if payment was not received within 30 days.⁵⁰⁷ Robinson was notified on June 17, 1907, that the sales would be cancelled if payment was not received.⁵⁰⁸ The assignment from Robinson to A.J.

⁵⁰² Frank Pedley, DSGIA, to Mr McLean, December 17, 1904, LAC, RG 10, vol. 6665, file 109A-9-11, part 1 (ICC Exhibit 1, p. 966).

⁵⁰³ James E.P. Prendergast to DSGIA, October 30, 1905, LAC, RG 10, vol. 6665, file 109A-9-11, part 1 (ICC Exhibit 1, p. 1032).

⁵⁰⁴ Robinson & Hull, Barristers, Solicitors, Notaries, to SGIA, November 27, 1905, LAC, RG 10, vol. 6665, file 109A-9-11, part 1 (ICC Exhibit 1, p. 1037).

⁵⁰⁵ J.D. McLean, Secretary, to Robinson & Hull, Barristers, December 19, 1906, LAC, RG 10, vol. 6665, file 109A-9-11, part 1 (ICC Exhibit 1, p. 1067).

⁵⁰⁶ Frank Pedley, DSGIA, to E.M. Robinson, March 21, 1907, LAC, RG 10, vol. 6665, file 109A-9-11, part 1 (ICC Exhibit 1, p. 1076).

⁵⁰⁷ W.A. Orr, In Charge, Lands and Timber Branch, to the Deputy Minister, June 12, 1907, LAC, RG 10, vol. 6665, file 109A-9-11, part 1 (ICC Exhibit 1, pp. 1081–82).

⁵⁰⁸ J.D. McLean, Secretary, to E.M. Robinson, June 17, 1907, LAC, RG 10, vol. 6665, file 109A-9-11, part 1 (ICC Exhibit 1, p. 1083).

McPherson was accepted the following month without further mention of payment, and it was noted that the southeast quarter of section 5 had already been patented by Daniel G. Steinmann of Borden, Ontario.⁵⁰⁹ When the assignment was finally made, the balance had not yet been paid.

MacPherson in turn divided his interest into 10 portions and sold each part to minor Ontario speculators. A number of disagreements within MacPherson's syndicate, lobbying by purchasers to get a change in payment terms and a reduction in price from the department because of the large amount of water covering the lands, and other delays led to the last patent not being issued for this block of lands until 1944.⁵¹⁰ Only three sales were cancelled and new sales made, all between 1927 and 1933.⁵¹¹

Mossom Boyd Group

Mossom M. Boyd and William T.C. Boyd successfully purchased 17 quarter sections (consisting of 2,720 acres, or 12 per cent of the total lands sold) for \$6,180.80, slightly below the assessed value of \$7,360.00.⁵¹² The Boyds were minor speculators from Peterborough, Ontario, who tendered under six other names, rather than under their own. Their tender book from May 1903 shows that, in some cases, the group submitted two tenders at different rates for the same parcels of land.⁵¹³ In one case, the sale of the northwest quarter of section 12, the lower of two tenders was accepted by the

⁵⁰⁹ J.D. McLean, Secretary, to McGiverin and Haydon, Barristers, July 23, 1907, LAC, RG 10, vol. 6665, file 109A-9-11, part 1 (ICC Exhibit 1, p. 1084); Nares, Robinson & Black, Real Estate, Loan and Insurance Company, to the Secretary, Department of Indian Affairs, September 27, 1906, LAC, RG 10, vol. 6665, file 109A-9-11, part 1 (ICC Exhibit 1, p. 1065).

⁵¹⁰ DIAND, Indian Land Sales System – Posted Sales Abstract Report – Cumberland 100A, February 1995, sales 141–42 (ICC Exhibit 15a); Department of Indian Affairs, Land Sale Book, Cumberland IR 100A Land Sales, sales 141–42 (ICC Exhibit 15c).

⁵¹¹ Sales 2, 8, 43, and 139 were cancelled, sales 43 and 139 being for the same parcel; they were resold as sales 140–42. See DIAND, Indian Land Sales System – Posted Sales Abstract Report – Cumberland 100A, February 1995, sales 2, 8, 43, 139, 141–42 (ICC Exhibit 15a); Department of Indian Affairs, Land Sale Book, Cumberland IR 100A Land Sales, sales 2, 8, 43, 139, 141–42 (ICC Exhibit 15c).

⁵¹² Bennett McCardle, “Cumberland Indian Reserve 100A: Report on the Land Surrender of 1902 and Related Land Sales and Trust Fund Management Issues,” prepared for the FSIN, December 1984, with additions by Roland Wright, August 1985 (ICC Exhibit 6, p. 67).

⁵¹³ Tender book, May 1903, no file reference available (ICC Exhibit 1, pp. 861–71).

department.⁵¹⁴ Other notes from the tender book indicate that they owned other lands in the vicinity. All these sales were paid off by 1913, as required by the terms of sale.⁵¹⁵

Ferguson Commission

The T.R. Ferguson Commission, established in 1913 to investigate issues relating to Dominion and Indian lands, tabled a report in the House of Commons on April 14, 1915.⁵¹⁶ Before that date, however, numerous newspaper articles had been published in which it was reported that “well known government officials” in the Department of the Interior would likely be charged with “graft” in connection with the disposal of “valuable lands and resources.”⁵¹⁷ Frank Pedley tendered his resignation on October 11, 1913, soon after the first newspaper report was published, and his resignation was accepted by order in council “without prejudice to any action which the Crown may be advised to take against him.”⁵¹⁸

The transcript of the debates in the House of Commons refers to the involvement of James A. Smart, Frank Pedley, and William J. White in the sale of three Indian reserves, and it notes that the three “formed a company of some kind to acquire Indian lands”⁵¹⁹ and employed A.C. Bedford-Jones to represent them.⁵²⁰ The report states that the men would have had access to data on the value of the lands and the tenders received, and that they then sent partially filled-in tenders to Bedford-Jones in Toronto to complete. According to the transcript, “three or four hundred tenders” were submitted, “and all their tenders were accepted but eight or ten.”⁵²¹ The group made a total profit of

⁵¹⁴ Tender book, May 1903, no file reference available (ICC Exhibit 1, pp. 863, 870).

⁵¹⁵ Department of Indian Affairs, Land Sale Book, Cumberland IR 100A Land Sales, sales 50–53, 126–38 (ICC Exhibit 15c).

⁵¹⁶ Canada, House of Commons, *Debates* (April 14, 1915), 2539–601 (ICC Exhibit 1, pp. 1180–1243).

⁵¹⁷ Tyler and Wright Research Consultants, “The Alienation of Indian Reserve Lands during the Administration of Sir Wilfrid Laurier, 1896–1911; Addendum: The Royal Commission of Thomas Roberts Ferguson,” May 1977 (ICC Exhibit 5, pp. 1–2, G1).

⁵¹⁸ Order in Council, October 11, 1913, LAC, RG 10, vol. 3059, file 253792 (ICC Exhibit 1, p. 1158).

⁵¹⁹ Canada, House of Commons, *Debates* (April 14, 1915), 2549, 2580 (ICC Exhibit 1, pp. 1191, 1222).

⁵²⁰ Canada, House of Commons, *Debates* (April 14, 1915), 2580 (ICC Exhibit 1, p. 1222).

⁵²¹ Canada, House of Commons, *Debates* (April 14, 1915), 2580 (ICC Exhibit 1, p. 1222).

\$84,000 on the sales of the three reserves.⁵²² Moose Mountain is the only reserve mentioned by name in the debates, but reference to Chakastaypasin and “IR 100” is made in newspaper articles discussing the findings of the Ferguson Commission. As noted previously, the evidence suggests that IR 100A was the third reserve in which this syndicate purchased lands.

⁵²² Canada, House of Commons, *Debates*(April 14, 1915), 2560, 2580 (ICC Exhibit 1, pp. 1202, 1222).

PART III
ISSUES

IR 100A SURRENDER AND BAND AMALGAMATION

Validity of Surrender Issues

- 1 What were Canada's obligations in taking the 1902 surrender of IR 100A according to
 - (a) Treaty 6;
 - (b) Treaty 5;
 - (c) the *Indian Act*; and
 - (d) Canada's fiduciary obligations? [a discussion of this issue will involve the matter of Canada's pre-surrender fiduciary duties]

The consideration of this issue may include the following related contested facts:

- (e) to whom were the obligations owed;
 - (f) the alleged absence of Peter Chapman Band leadership at the time of surrender;
 - (g) the alleged absence of appropriate parties to the surrender;
 - (h) the 1902 amalgamation of the Peter Chapman Band and the James Smith Cree Band; and
 - (i) the transfers to and from other bands.
- 2 Did Canada breach any obligation(s) which may arise under Issue 1?
- 3 Is the effect of any breach(es) such that it (they) invalidate(s) the surrender of IR 100A?
- 4 Is the effect of any breach(es) such that Canada owes outstanding lawful obligations?

Validity of Amalgamation

- 5 Was there an amalgamation of the Peter Chapman Band and the James Smith Band?
- 6 If yes, what obligations, if any, did Canada owe in carrying out the amalgamation? To whom were any such obligations owed?
- 7 If yes, did Canada breach any obligation owed in carrying out the amalgamation?

Land Disposition Issues

- 8 What were Canada's obligations in disposing of IR 100A lands according to
 - (a) Treaty 6;
 - (b) the *Indian Act* and its Regulations;
 - (c) Canada's fiduciary obligations?

- 9 Did Canada, having accepted that it breached its lawful obligation to dispose of the surrendered lands for a reasonable price, to cancel sales of 72 quarters to its employee Pedley, and to cancel sales when payments were not made in a timely fashion, breach any further obligation which may arise under Issue 8 concerning the sale of the surrendered township? In considering this issue, the parties agree to address the following points:
- (a) the application of Indian Land Regulations;
 - (b) allegations regarding the manipulation of the land-tendering process as regards the Prendergast and Menary group lands;
 - (c) allegations of manipulation of the land-tendering process and fraud as regards the remaining quarters of the surrendered township that Canada asserts were properly sold and for which Canada has not accepted a breach of lawful obligation; and
 - (d) the actions of Canada in the administration of the sales of the land.
- 10 Is the effect of any breach(es) such that it(they) invalidate(s) the surrender of IR 100A or otherwise gives rise to a claim for damages?

IR 100A STRIP

Validity of Surrender Issues

- 1
- (a) Was there a surrender of the IR 100A Strip to Canada?
 - (b) If no, what obligations did Canada owe to the Peter Chapman Band on the use of the IR 100A Strip?
 - (c) If there was a surrender, then what were Canada's obligations in taking the surrender of the IR 100A Strip according to
 - i) Treaty 6;
 - ii) the *Indian Act*; and
 - iii) Canada's fiduciary obligations? [a discussion of this issue will involve the matter of Canada's pre-surrender fiduciary duties]

The consideration of this issue may include the following related issues:

- i) to whom were the obligations owed;
 - ii) the alleged absence of Peter Chapman Band leadership at the time of surrender;
 - iii) the alleged absence of appropriate parties to the surrender;
 - iv) the 1902 amalgamation of the Peter Chapman Band and the James Smith Cree Band; and
 - v) the transfer to and from other bands.
- 2 Did Canada breach any obligation(s) that may arise under Issue 1?
- 3 Is the effect of any breach(es) such that it(they) invalidate(s) the surrender of the IR 100A Strip?

- 4 Is the effect of any breach(es) such that Canada owes outstanding lawful obligations?

Land Disposition Issues

- 5 If there was a surrender, what are Canada's obligations in disposing of the IR 100A Strip according to
- (a) Treaty 6;
 - (b) the *Indian Act* and its Regulations;
 - (c) Canada's fiduciary obligations?
- 6 Did Canada breach any obligation(s) which may arise under Issue 5?
- 7 Did Canada breach its obligations to the Peter Chapman Band by failing to sell the IR 100A Strip after surrender?
- 8 Is the effect of any breach(es) such that it(they) invalidate(s) the surrender of the IR 100A Strip or otherwise give(s) rise to a claim for damages?

PART IV

ANALYSIS

CUMBERLAND HOUSE CREE NATION INQUIRY FINDINGS

As stated in our introduction, there are issues in this inquiry that overlap with the ultimate issues in the Cumberland House Cree Nation Inquiry into IR 100A. For this reason and following discussions between both the Cumberland House Cree Nation (CHCN) and the James Smith Cree Nation (JSCN), the Commission conducted a single fact-finding process for the two inquiries. The result of this process is reflected in Part II of this report (and Part II of the *Cumberland House Cree Nation: IR 100A Inquiry*). Further, our findings on the facts in the Cumberland House Cree Nation Inquiry necessarily have an impact on our findings in this case. For this reason, we feel it is necessary to summarize briefly our findings in the Cumberland House Cree Nation before we set out our analysis of the issues in this case.

Based on the totality of evidence presented in both inquiries, we find that IR 100A was surveyed and set aside for the Cumberland House Cree Nation. At the time of its survey and throughout its administration of IR 100A, we find that Canada intended the Cumberland Band to be the lawful owners of IR 100A. Its residents included Cumberland Band members who chose to migrate from the Cumberland District to Fort à la Corne. At all relevant times, Canada administered IR 100A for the whole of the Cumberland Band, including those members resident at IR 20. At no time did a band, separate from the original Treaty 5 signatory Cumberland Band, evolve at IR 100A.

JAMES SMITH CREE NATION CHAKASTAYPASIN IR 98 INQUIRY FINDINGS

In our view, there were no valid transfers of Chakastaypasin members into IR 100A at any relevant point in time. Before the introduction of section 140 of the *Indian Act* in 1895, something more than the administrative documents used by the Department of Indian Affairs to distribute treaty annuity payments is required as proof of transfer. After the introduction of section 140, a valid transfer required the consent of the receiving band. In this case, the 27 Chakastaypasin individuals and families, including Big Head, required the consent of the whole of the Cumberland Band, including those resident at IR 20, as the receiving band at IR 100A. This consent of the Cumberland Band was neither sought nor obtained by Canada.

Given these findings, we will now turn to the issues in this inquiry. We begin with considering Issues 1 to 4, regarding the validity of the July 24, 1902, surrender of IR 100A.

INDIAN RESERVE 100A

Issues 1–4 Validity of Surrender

- 1 **What were Canada’s obligations in taking the 1902 surrender of IR 100A according to:**
 - (a) Treaty 6;
 - (b) Treaty 5;
 - (c) the *Indian Act*; and
 - (d) Canada’s fiduciary obligations?
- 2 **Did Canada breach any obligation(s) which may arise under Issue 1?**
- 3 **Is the effect of any breach(es) such that it (they) invalidate(s) the surrender of IR 100A?**
- 4 **Is the effect of any breach(es) such that Canada owes outstanding lawful obligations?**

We will begin our analysis by first setting out the relevant surrender provisions of Treaty 5 and Treaty 6, as well as the relevant surrender provisions of the *Indian Act* operating in 1902. We will then briefly summarize the events leading up to July 24, 1902 – the date of the alleged surrender of 22,080 acres at IR 100A.

Treaty 5 states:

Provided, however, that Her Majesty reserves the right to deal with any settlers within the bounds of any lands reserved for any band as she shall deem fit, and also that the aforesaid reserves of land, or any interest therein, may be sold or otherwise disposed of by Her Majesty’s Government for the use and benefit of the said Indians entitled thereto, with their consent first had and obtained.⁵²³

Treaty 6 adopts similar language and states:

Provided, however, that Her Majesty reserves the right to deal with any settlers within the bounds of any lands reserved for any band as she shall deem fit, and also that the aforesaid reserves of land or any interest therein may be sold or otherwise

⁵²³ *Treaty No. 5 between Her Majesty the Queen and the Saulteaux and Swampy Cree Tribes of Indians at Beren’s River and Norway House with Adhesions* (Ottawa: Queen’s Printer, 1969), 5 (ICC Exhibit 2a, p. 5).

disposed of by Her Majesty's Government for the use and benefit of the said Indians entitled thereto, with their consent first had and obtained.⁵²⁴

Section 39 of the *Indian Act*, RSC 1886, c. 43 states:

39. No release or surrender of a reserve, or portion of a reserve, held for the use of the Indians of any band, or of any individual Indian, shall be valid or binding, except on the following conditions:
- (a) The release or surrender shall be assented to by a majority of male members of the band, of the full age of twenty-one years, at a meeting or council thereof summoned for that purpose, according to the rules of the band, and held in the presence of the Superintendent General, or of any officer duly authorized to attend such council, by the Governor in Council or by the Superintendent General; but no Indian shall be entitled to vote or be present at such council unless he habitually resides on or near and is interested in the reserve in question.
 - (b) The fact that such release or surrender has been assented to by the band at such council or meeting shall be certified on oath by the Superintendent General, or by the officer authorized by him to attend such council or meeting, and by some of the chiefs or principal men present thereat and entitled to vote, before some judge of a superior, county or district court, stipendiary magistrate or justice of the peace, or, in the case of reserves in Manitoba or the North-West Territories, and in the case of reserves in British Columbia, before the visiting Indian Superintendent for British Columbia, or in either case, before some other person or officer specially thereunto authorized by the Governor in Council for acceptance or refusal.⁵²⁵

We will now briefly review the events leading up to July 24, 1902 – the date of the alleged surrender of 22,080 acres, constituting the southern portion of IR 100A and representing more than half of the total acreage of IR 100A.

On January 30, 1902, C.S. Lowrie, a resident of Kinistino (a town about 5 kilometres west of IR 100A), sent a letter to his local Member of Parliament, T.O. Davis, requesting that the southern

⁵²⁴ *Treaty No. 6 between Her Majesty the Queen and the Plain and Wood Cree Indians and other Tribes of Indians at Fort Carlton, Fort Pitt and Battle River with Adhesions* (Ottawa: Queen's Printer, 1964) 3 (ICC Exhibit 2b, p. 3).

⁵²⁵ *Indian Act*, RSC 1886, c. 43, ss. 39(a) and (b).

township of IR 100A be opened up for settlement.⁵²⁶ Lowrie's letter was forwarded to Indian Commissioner David Laird on March 6, 1902, by Secretary J.D. McLean who noted:

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

I think it would be well to have the matter looked into ... with a view of ascertaining if the Indians will surrender the southern portion to be sold for their benefit.⁵²⁷

Laird replied on June 19, 1902, with a proposal:

I have looked into this matter and so far as I am able to ascertain at present there is very little prospect of further emigration of Indians from the vicinity of Cumberland House to settle on this reserve. The population of the reserve at the last payments was only 122 souls, and as the area of the reserve is 65 square miles it is much larger than required for the number of Indians settled thereon. Before taking action to consult the Indians about the surrender ... it will be necessary to be in a position to state the terms the Department is prepared to offer as an inducement for them to give up the land.⁵²⁸

In this same letter Laird first proposed the question of "amalgamating" the Cumberland Band 100A and the James Smith Band. The matter of amalgamation will be addressed later in this report when we will again return to Laird's June 19, 1902, correspondence.

On July 4, 1902, DSGIA James A. Smart wrote to David Laird approving Laird's surrender proposal and enclosing the surrender forms. Smart stated: "Your suggestion as to the offering of a

⁵²⁶ C.S. Lowrie to T.O. Davis, MP, January 30, 1902, LAC, RG 10, vol. 3562, file 82, part 9 (ICC Exhibit 1, p. 628).

⁵²⁷ J.D. McLean, Secretary, to David Laird, Indian Commissioner, March 6, 1902, LAC, RG 10, vol. 3562, file 82, part 9 (ICC Exhibit 1, p. 635).

⁵²⁸ David Laird, Indian Commissioner, to the Secretary, Department of Indian Affairs, June 19, 1902, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 668-69).

bonus of 10 per cent of proceeds to sale to be expended in implements &c., as well as suggestion as to amalgamation of James Smith and Cumberland Bands, meets with approval.”⁵²⁹

With the department’s approval of surrender proposal, Laird then sent instructions to Indian Agent Jones on how to proceed. He informed Agent Jones that

[i]t is my intention to meet you and the Indians of James Smith and Cumberland Reserves at the payments on the 24th instant ... I have been instructed by the Deputy Minister to endeavor to obtain a surrender of the southern township of the Cumberland Reserve, and I think it would be better that I should discuss the question with them before you begin payments.⁵³⁰

The panel has been struck by the complete absence of documentation in the historical record relating to the events of July 24, 1902, beyond the surrender, affidavit, and amalgamation agreement and the two brief reports of David Laird. We are left, then, to consider the historical records available and to try to reach a conclusion based on the totality of this material, along with the community’s oral history evidence. The Commission did obtain a transcript of a 1972 interview with Angus Burns, a member of the James Smith Band in 1902, in which he recollects the events of July 24, 1902. As well, the panel heard the oral history evidence of many members of the James Smith Band, and we will refer to the transcript of this evidence later in this report.

The July 24, 1902, surrender document reads as follows:

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

⁵²⁹ James A. Smart, DSGIA, to David Laird, Indian Commissioner, July 4, 1902, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 675).

⁵³⁰ David Laird, Indian Commissioner, to W.E. Jones, Indian Agent, Duck Lake Agency, July 15, 1902, LAC, RG 10, vol. 3562, file 82, part 9 (ICC Exhibit 1, p. 676).

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

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

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

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

In witness whereof, we have hereunto set our hands and affixed our seals this Twenty fourth day of July in the year of Our Lord one thousand nine hundred and two.⁵³¹

The surrender document was witnessed by Donald Macdonald as interpreter, Angus McLean, and A.J. McKay. On behalf of the Cumberland 100A Band, “K[a]h-ta-pis-kowat,” designated as a “Headman,” and “Geo. Sanderson,” designated “Headman’s son,” signed the surrender. David Laird did not sign the document himself.

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

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

And the said Hon. David Laird for himself saith:

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

⁵³¹ “Cumberland Band of Indians,” Surrender for sale, July 24, 1902, DIAND Indian Land Registry, Instrument no. X10691 (ICC Exhibit 1, pp. 677–79).

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

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

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

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

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

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

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

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

Sworn before me [David Laird] by the Deponents Hon. David Laird & Kh tapiskowat at Fort a la Corne District of Saskatchewan this twenty fourth day of July A.D. 1902.⁵³²

The surrender and affidavit are the only documents available giving evidence of the events of July 24, 1902. Unlike numerous other Prairie land surrenders inquired into by this Commission, there are no contemporaneous minutes of the July 24, 1902, proceedings, and there is no voters list or record of a vote, other than what is attested to in the affidavit. There are, however, other historical documents in the evidentiary record that are of assistance for the relevant period.

First, there are the annuity paylists of the James Smith Band and Cumberland Band 100A dated July 25, 1902, one day after the alleged surrender took place. The payment of annuities to these Bands was known to Indian Commissioner Laird prior to his visit to these reserves and was

⁵³² Surrender Affidavit, July 24, 1902, DIAND Indian Land Registry, Instrument X10691 (ICC Exhibit 1, pp. 686, 688–89).

contemplated in his letter of July 15, 1902, to Agent Jones.⁵³³ On July 25, 1902, the two Bands were paid separately under their normal ticket numbers. The payroll for “No. 100A Cumberland Band Paid at James Smith’s Reserve” notes that 115 persons were paid in total, including 29 adult men.⁵³⁴ The James Smith payroll indicates that 28 adult men were paid that day, of a total of 107 people.⁵³⁵

The second document is David Laird’s report to DSGIA James Smart. On August 1, 1902, Laird wrote

that pursuant to instructions contained in your letter of the 4th July ultimo ... I proceeded to Indian Reserve No. 100A last week, and on the 24th of the said month obtained a surrender of Township 46 ... and also effected an amalgamation of James Smith’s Band of Reserve 100 with the Cumberland Band of Reserve 100A.⁵³⁶

Then, on August 19, 1902, Clifford Sifton, the Superintendent General of Indian Affairs, submitted the surrender to the Governor General in Council for approval.⁵³⁷ The accepting Order in Council, PC 1510, dated October 14, 1902, reads:

On a Memorandum dated 19th August, 1902, from the Superintendent General of Indian Affairs, submitting herewith, a surrender in duplicate made by the Cumberland Band of Indians in the North West Territories, of 22,080 acres, being composed of Township 46 of the said Reserve, Range 20 West 2nd Initial Meridian, excepting thereout Section 6 and South ½ of Section 7, in order that the land may be disposed of for their benefit on such terms as the Superintendent General may consider necessary in their interests.

The Minister recommends, the surrender having been authorized, executed and attested in the manner required by the 39th section of the Indian Act that the same be accepted by the Governor in Council, and that the original thereof be

⁵³³ David Laird, Indian Commissioner, to W.E. Jones, Indian Agent, Duck Lake Agency, July 15, 1902, LAC, RG 10, vol. 3562, file 82, part 9 (ICC Exhibit 1, p. 676).

⁵³⁴ Treaty annuity payroll, “No. 100A Cumberland Band paid at James Smiths Reserve,” 1902, no file reference available (ICC Exhibit 9a, pp. 54–58). See also copy of payroll, LAC, RG 10, vol. 9119, book 36 (ICC Exhibit 1, pp. 692–701).

⁵³⁵ Treaty annuity payroll, James Smith Band, 1902, LAC, RG 10, vol. 9119, book 36 (ICC Exhibit 1, pp. 702–9).

⁵³⁶ David Laird, Indian Commissioner, to James A. Smart, DSGIA, August 1, 1902, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 710).

⁵³⁷ Clifford Sifton, SGIA, to the Governor General in Council, August 19, 1902, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 714).

returned to the Department of Indian Affairs and the duplicate kept of record in the Privy Council Office.

The Committee submit the same for approval.⁵³⁸

The only other direct evidence regarding July 24, 1902, is the 1972 transcript of an interview with James Smith band member Angus Burns. The James Smith payroll for 1902 indicates that Angus Burns was paid as a man that year and signed his own name to receive his annuity.⁵³⁹ He recounts that on the day of the surrender, David Laird, farm instructor Andrew MacKay, Angus McKay (from the HBC), an interpreter named Macdonald, and a teacher named D. Parker were at the reserve. He also recounts that Chief James Smith and his three headmen, Bernard Constant, Jacob McLean, and Chekoosoo, were present. He further recalls that there were meetings “a lot of times” before the surrender was taken, because “the Indians didn’t want to sell this land, nobody was eager to sell.” According to Mr Burns, there was a meeting of the “old men,” including James Smith’s Chief and councillors. When the agreement was made, the Chief called everyone into the old schoolhouse, where the meeting was being held, to witness the signing of the document. He recalls that only Councillor Bernard Constant could sign his name, and the others “were held to the pen.”⁵⁴⁰

The only other oral history evidence related to the July 24, 1902, events is the evidence of JSCN elder Violet Sanderson. When she presented her evidence to this Commission on June 28, 2001, Mrs Sanderson spoke of her grandfather, William Head, and her husband’s father, Lazareth, as being involved in discussions about the sale of part of IR 100A. She did not speak of the details of these discussions or of her relatives’ involvement in or opinions on the matter. She did state, however, that she “never heard of a meeting or any kind of vote or anything in relation to ... people coming together.”⁵⁴¹

We will now turn to the parties’ respective arguments.

⁵³⁸ Order in Council PC 1510, October 14, 1902, LAC, RG 2, vol. 593 (ICC Exhibit 1, pp. 745–46).

⁵³⁹ Treaty annuity payroll, James Smith Band, 1902, LAC, RG 10, vol. 9119, book 36 (ICC Exhibit 1, pp. 706–7).

⁵⁴⁰ FSIN, Transcript of an interview with Angus Burns, April 14, 1972 (ICC Exhibit 23, pp.1–3).

⁵⁴¹ ICC Transcript, June 27–28, 2001 (ICC Exhibit 18a, pp. 121–22, Violet Sanderson).

The Crown's Obligations under Treaty 6

Let us say at the outset that, although the parties have presented the question of the Crown's obligation in terms of both Treaty 5 and Treaty 6, the JSCN clarified for the panel, during the course of oral argument on January 14, 2004, that there is no distinguishing difference in the JSCN's position regarding either treaty. The JSCN does, however, take the position that, because the "Peter Chapman Band" settled within the boundary of Treaty 6 and IR 100A was set aside and administered by the Indian Department within this treaty territory, Treaty 6 should frame this part of the panel's analysis.⁵⁴²

In our view, the question of which treaty – Treaty 5 or Treaty 6 – should frame our analysis is clouded by the historical events surrounding the establishment of IR 100A. As reported in our analysis in the Cumberland House Cree Nation: IR 100 A Inquiry, we concluded that IR 100A was surveyed and set aside for the whole of the Cumberland Band of Indians who had adhered to Treaty 5 in September 1876. Upon a careful review of the language of these two treaties, however, we can find no significant difference between them in the Crown's obligation to seek the consent of the Indians when disposing of reserve land set apart under treaty. In our analysis and in the context of their treaty relationship, it is necessary only to answer the simple question of whether the Crown sought and obtained the consent of the Indians. In addition to inquiring into the matter of "consent" under treaty, what is equally significant is the Crown's obligation to seek the consent "of the said Indians entitled thereto." In this case, the panel must ask, regarding IR 100A, who were the "said Indians entitled thereto" sufficient for Canada to have properly disposed of any portion of IR 100A. In our view, this is the ultimate issue in this inquiry.

In the JSCN's view, Canada breached its Treaty 6 obligations to the Peter Chapman Band because the surrender and sale were not for the use and benefit of the members of this Band and the consent of the Peter Chapman Band was not obtained.⁵⁴³

For Canada, however, neither Treaty 5 nor Treaty 6 creates obligations on the part of the Crown that are different from the obligations that existed under the *Indian Act* at the time of the 1902 surrender. In his written legal submissions to the panel, Canada's counsel states: "The

⁵⁴² ICC Transcript, January 14, 2004, Cumberland House Cree Nation: IR 100A Inquiry, pp. 112, and 113 (William Selnes).

⁵⁴³ Written Submissions on Behalf of the Peter Chapman Cree Nation, August 30, 2003, p. 84, para. 245.

language in the *Act* is modeled on the language of the treaties and there are no obligations in the treaties which are separate or different than what was contained under the *Act*. As such, Canada limited its analysis of its obligations to the *Indian Act* arguing that an answer to its statutory obligations will, as a consequence, address any obligations arising under treaty pertaining to surrender.”⁵⁴⁴

In our view, a treaty right gives rise to a separate lawful obligation of the Crown. A treaty right does not owe its existence to the *Indian Act*. On the question of surrender, Treaties 5 and 6 expressly state:

[T]he aforesaid reserves of land, or any interest therein, may be sold or otherwise disposed of by Her Majesty’s Government for the use and benefit of the said Indians entitled thereto, with their consent first had and obtained.”⁵⁴⁵

Thus, the treaty signatories, and their descendants, have today the right to consent prior to the disposition of their interest in their reserve under treaty. This right is today a constitutional right, protected by section 35 of the *Constitution Act, 1982*. Although the surrender provisions of the *Indian Act* give expression to the procedural rights of an Indian band to be consulted by the Crown, this statutory expression of consent may be subject to change over time. In contrast, the treaty categorically requires “with their consent first had and obtained.” Thus, we cannot accept Canada’s argument that fulfilling its statutory obligation defined by the *Indian Act* on the question of validity of surrender will, as a consequence, address its obligations arising under treaty. Canada cannot limit its analysis of surrender to the *Indian Act*, and not to the treaty, simply because they are different obligations.

We will now turn to our analysis of the Crown’s statutory obligations under the *Indian Act*.

⁵⁴⁴ Written Submissions on Behalf of the Government of Canada, November 24, 2003, p. 69, para. 126.

⁵⁴⁵ *Treaty No. 5 between Her Majesty the Queen and the Saulteaux and Swampy Cree Tribes of Indians at Beren’s River and Norway House with Adhesions* (Ottawa: Queen’s Printer, 1969) (ICC Exhibit 2a); *Treaty No. 6 between Her Majesty the Queen and the Plain and Wood Cree Indians and other Tribes of Indians at Fort Carlton, Fort Pitt and Battle River with Adhesions* (Ottawa: Queen’s Printer, 1964) (ICC Exhibit 2b).

The Crown's Obligations under the Indian Act

The parties agree that the only contemporaneous evidence that has been produced regarding the alleged July 24, 1902, surrender is the surrender document and the surrender affidavit. For the First Nation, the deficiency of documents cannot be relied upon by Canada as a “virtue of proof.” In its view, “Canada has a duty as a fiduciary to document proceedings involving its fiduciary obligations and to maintain those records. It breaches its fiduciary, legal and public duties when it fails to document proceedings.”⁵⁴⁶

For Canada, the surrender document and surrender affidavit are *prima facie* evidence that a surrender was taken in accordance with section 39 of the *Indian Act*.⁵⁴⁷ Canada admits that no voters list or other evidence to indicate who was present and voted at the surrender meeting has been located. Further, Canada argues, there is no evidence that the meeting was not called in accordance with the rules of the Band.⁵⁴⁸

As we stated previously, Canada’s obligations in taking the 1902 surrender are governed by the relevant *Indian Act* at the time. In this case it was the 1886 Act, section 39. This section required the following:

- a) assent “by a majority of male members of the band”;
- b) “of the full age of 21 years”;
- c) “at a meeting or council ... summoned for that purpose”;
- d) “according to the rules of the band”;
- e) “held in the presence of the Superintendent General” (or other “duly authorized” officer); and
- f) only those Indians who “habitually [reside] on or near and [are] interested in the reserve in question” shall be entitled to vote or be present at such council.⁵⁴⁹

In addition to the surrender, section 39 also required the following as regards the surrender affidavit:

⁵⁴⁶ Written Submissions on Behalf of the Peter Chapman Cree Nation, August 30, 2003, p. 86, para. 253.

⁵⁴⁷ Written Submissions on Behalf of the Government of Canada, November 24, 2003, p. 72, para. 132.

⁵⁴⁸ Written Submissions on Behalf of the Government of Canada, November 24, 2003, p. 73, paras. 133–34.

⁵⁴⁹ *Indian Act*, RSC 1886, c. 43, s. 39 (a).

- a) “[t]he fact that such release or surrender has been assented to by the band shall be certified on oath by the Superintendent General,” or duly authorized officer;
- b) “and by some of the chiefs or principal men present thereat and entitled to vote”;
- c) “before some judge of a superior, county or district court, stipendiary magistrate or justice of the peace.”⁵⁵⁰

The JSCN has argued that, for a valid surrender to have taken place in 1902, there would have to have been compliance with the following requirements: proper notice of meeting and place of meeting; conduct of the meeting in accordance with the rules of the band, both in form and in participation; sufficient information to allow for informed consent; and a vote of a majority of eligible voters. In the First Nation’s view, none of these elements was complied with.

As previously stated, the surrender document was signed by two people: Kahtapiskowat (Big Head) and George Sanderson. The authority of these individuals to dispose of IR 100A lands has been directly challenged by the James Smith Cree Nation, and we will first begin with an analysis of this issue.

Authority of Surrender Signatories

According to Canada, Kahtapiskowat (Big Head) was formally transferred from the Chakastaypasin Band to the Cumberland Band (ticket no. 90) in 1896. He was paid with the Cumberland Band until 1902, and was then paid with the James Smith Band (ticket no. 5) from 1902 to 1906, when he died. Further, it is Canada’s position that Big Head was a headman of the Cumberland Band at the time of the 1902 surrender and, therefore, entitled to sign the surrender document and the affidavit of surrender. In the alternative, Canada argues that, even if he were not a headman, he would qualify as a principal man.⁵⁵¹ In its written argument, Canada submits that

the term “principal man” should not be given any more restrictive a meaning than that of one of the male members of the Band of the full age of twenty-one years who was present at the surrender meeting and therefore qualified to swear under oath as to what transpired at that meeting.⁵⁵²

⁵⁵⁰ *Indian Act*, RSC 1886, c. 43, s. 39(b).

⁵⁵¹ Written Submissions on Behalf of the Government of Canada, November 24, 2003, p. 78, para. 143, 146.

⁵⁵² Written Submissions on Behalf of the Government of Canada, November 24, 2003, p. 78, para. 146.

The Commission had an opportunity to consider the meaning of “principal men” within the context of section 49(3) of the *Indian Act*, 1906,⁵⁵³ in the *Canupawakpa Dakota First Nation: Turtle Mountain Surrender Inquiry*. In that report, the Commission stated:

The term “principal men” in section 49(3) of the *Indian Act* has not, to our knowledge, been defined in the jurisprudence, nor have the parties sought to make submissions on its meaning ... Without more guidance, we are able to infer that, at least for the purpose of a surrender vote, a male band member over 21 was considered a principal man.⁵⁵⁴

For the purposes of this inquiry, we will adopt the interpretation given to “principal men” in the *Canupawakpa Dakota First Nation Inquiry* as meaning, for the purpose of a surrender vote, a male band member over 21 years of age.

In any event, Canada takes the position that “whether Big Head was or was not a principal man is immaterial to the fact that he certified on oath that the assent to the surrender was proper, given that this requirement was directory only.”⁵⁵⁵ Canada makes no further submissions on the issue of the directory nature of section 39 requirements. We are left to infer that Canada relies upon the decision of McLachlin J in *Apsassin* where she considered whether subsections 51(3) and (4) of the 1927 *Indian Act* are mandatory or merely directory. Subsection 51(3) of the 1927 *Indian Act* is equivalent to subsection 39(b) of the 1886 *Indian Act*. In *Apsassin*, McLachlin J said:

The true object of ss. 51(3) and 51(4) of the *Indian Act* was to ensure that the surrender was validly assented to by the Band. The evidence, including the voter’s list, in the possession of the DIA amply established valid consent. Moreover, to read the provisions as mandatory would work serious inconvenience, not only where the surrender is later challenged, but in any case where the provision was not fulfilled, as the Band would have to go through the process again of holding a meeting, assenting to the surrender, and certifying the assent. I therefore agree with the courts

⁵⁵³ The language of section 39(b) of the *Indian Act*, 1886, and section 49(3) of the *Indian Act*, 1906, is identical.

⁵⁵⁴ ICC, *Canupawakpa Dakota First Nation: Turtle Mountain Surrender Inquiry* (Ottawa, July 2003), reported (2004) 17 ICCP 263 at 325.

⁵⁵⁵ Written Submissions on Behalf of the Government of Canada, November 24, 2003, p. 78, para. 148.

below that the “shall” in the provisions should not be considered mandatory. Failure to comply with s. 51 of the Indian Act therefore does not defeat the surrender.⁵⁵⁶

In the report *Kahkewistahaw First Nation: 1907 Surrender Inquiry*, the Commission considered the same issue of the directory or mandatory nature of subsection 49(3) of the 1906 *Indian Act*, a subsection equivalent to subsection 39(b) of the 1886 *Indian Act*. In that case, after reviewing the relevant jurisprudence and the judgment of McLachlin J quoted above, the Commission concluded that “the failure to comply with section 49 of the 1906 *Indian Act* does not ‘defeat the surrender’ in this case ... The purpose of subsection 49(3) is merely to confirm satisfaction of the requirements of subsection 49(1) and (2), and in particular that majority assent of the Band members was given at an open meeting called for the purpose of discussing the surrender.”⁵⁵⁷

How then are we to view the May 10, 1896, “transfers” of Kahtapiskowat and George Sanderson to “the Band of Indians owning ... Cumberland 100A Reserve”? In our view, the Consents to Transfer 22 Chakastaypasin members to IR 100A on May 10, 1896, are unlawful transfers because they did not involve the consent of the whole of the Cumberland Band. Further, in our view, these Consents to Transfer cannot stand as valid documents for the creation or evolution of a separate band at IR 100A. As we have said, IR 100A was created for the whole of the Cumberland Band⁵⁵⁸. This fact has been conceded by Canada. As such, the Cumberland Band’s treaty rights to its reserves at IR 20 and IR 100A survive until extinguished by consent of the Band – the whole Band. There is no evidence of the expression of the Cumberland Band’s agreement to those transfers. Further, the decision to expand the membership of the Cumberland Band at IR 100A was a decision that rested with the whole of the Band, and not just those resident at IR 100A. The acceptance of a new member by transfer into a band resulted in the sharing of the band’s collective interest in its reserve with the new member. Absent the consent of the whole band to the transfer of an individual into its membership and land base, the transfer cannot stand as valid. Viewed from this

⁵⁵⁶ *Blueberry River Indian Band v. Canada*, [1995] 4 SCR 344 at 374–75 (SCC) McLachlin J.

⁵⁵⁷ ICC, *Kahkewistahaw First Nation: 1907 Reserve Land Surrender Inquiry* (Ottawa, February 1997), reported (1998) 8 ICCP 3 at 70.

⁵⁵⁸ Written Submissions on Behalf of the Government of Canada, Cumberland House Cree Nation IR 100A Inquiry, November 24, 2003, p. 52, para. 93.

perspective, the transfers of Chakastaypasin people into the Cumberland Band are not valid. Rather than show the creation or evolution of a new band, we find the Consents to Transfer are evidence of Canada's continuing breach of obligations owed to the whole of the Cumberland Band under treaty and the *Indian Act*.

Prior to 1895, when section 140 was added to the *Indian Act*, Canada's informal practice regarding the transfers of people between bands, characterized in all cases to be "exceptional," nevertheless required the consent of the originating band and the receiving band to the transfer. Even using this informal practice as the standard, we can find no evidence of the whole of the Cumberland Band's consent to new members transferring into IR 100A. As we have said, the members of the Cumberland Band resident at IR 100A, in providing their consent to the transfer of individuals into IR 100A, cannot be considered to be an expression of the whole Band's consent. Canada's failure to seek the whole of the Band's consent was also a failure of the government to respect its own practice of requiring the written consent of both bands. Canada's failure was also a breach of the *Indian Act* since section 140, added to the act in 1895, required the consent of the receiving band:

When by a majority vote of a band, or council of a band, an Indian of one band is admitted into membership in another band, and his admission thereinto is assented to by the superintendent general, such Indian shall cease to have any interest in the lands and moneys of the band of which he was formerly a member, and shall be entitled to share in the lands and moneys of the band to which he is so admitted.⁵⁵⁹

We can find no evidence of the consent of the whole of the Cumberland Band (those resident at IR 20 and IR 100A) to any of the transfers into IR 100A, as required by section 140. In the absence of the whole of the Cumberland Band's consent to the transfer of the Chakastaypasin band members into IR 100A, we find Kahtapiskowat and George Sanderson to be without any legal authority to have signed the July 24, 1902, surrender document as "Principal men of the Cumberland Band of Indians."

Based upon this finding, the next question to be determined is whether subsection 39(a) of the 1886 *Indian Act* was complied with.

⁵⁵⁹ *Indian Act*, RSC 1886, c. 43, s. 140, as amended by SC 1895, c. 35, s. 8.

Compliance with the 1886 Indian Act

Section 39 of the *Indian Act*, RSC 1886, c. 43, states:

39. No release or surrender of a reserve, or portion of a reserve, held for the use of the Indians of any band, or of any individual Indian, shall be valid or binding, except on the following conditions:
 - (a) The release or surrender shall be assented to by a majority of male members of the band, of the full age of twenty-one years, at a meeting or council thereof summoned for that purpose, according to the rules of the band, and held in the presence of the Superintendent General, or of any officer duly authorized to attend such council, by the Governor in Council or by the Superintendent General; but no Indian shall be entitled to vote or be present at such council unless he habitually resides on or near and is interested in the reserve in question.⁵⁶⁰

Before embarking upon an analysis of the specific conditions required by section 39 of the *Indian Act*, we believe it is necessary to step back and ask who is “the Band” to whom the statutory duties of section 39 are owed? It is fundamental to our understanding of events that we begin with this key question. Both the James Smith Cree Nation and Canada have argued their positions based upon their conclusion that a separate band – the Peter Chapman Band (as argued by James Smith) or the Cumberland 100A Band (as argued by Canada) – had evolved from the Cumberland Band at IR 20. For the reasons we found in the *Cumberland House Cree Nation: IR 100A Inquiry*, we disagree. A band separate from the Cumberland Band that adhered to Treaty 5 and originally settled at IR 20 was not created in fact or in law at any point in time prior to the surrender of land at IR 100A in 1902.

Our review of the evidence leads us to conclude that Canada surveyed and set aside IR 100A in fulfillment of its outstanding Treaty 5 obligations to the Cumberland Band. That some of the members of this Band began to migrate to Fort à la Corne before, during, and after IR 100A was set aside; that leadership separate from the Chief and council of the Cumberland Band at IR 20 was continually denied to the residents at IR 100A on the basis that their leadership existed at IR 20; that the decision to settle at a location acceptable to the Cumberland Band *and* Canada in 1887 (when IR 100A was finally surveyed) was approved by order in council in 1889; and, finally, that the

⁵⁶⁰ *Indian Act*, RSC 1886, c. 43, s. 39(a).

evidence indicates that Canada was at all times under the belief that the whole of the Cumberland Band living at Cumberland Lake would eventually move to IR 100A, owing to the “utter uselessness” of the land at IR 20, all lead us to our conclusion: IR 100A was set aside as a reserve for the whole of the Cumberland Band and not just those members resident at the time of its survey. This is a fact that Canada has conceded in this inquiry.

From this vantage point, any analysis of the statutory compliance with section 39 must begin from here: the whole of the Cumberland Band, those resident at IR 20 and at IR 100A, constitute “the Band” to whom section 39 duties are owed. Based upon the evidence, the whole of the Cumberland Band were never notified of Canada’s intention to seek a surrender of IR 100A lands, nor were they notified of or included in any decision to surrender this land in 1902. Consequently, there is no evidence that even the minimum requirements of section 39 were complied with.

In addition, when viewed from the perspective of Canada’s continuing treaty obligations to the Cumberland Band, the evidence that Canada refers to as *prima facie* proof of compliance – the July 24, 1902, surrender document and affidavit of surrender – cannot be offered as proof of Canada’s fulfillment of its treaty obligations when disposing of the Cumberland Band’s interest in IR 100A. On the contrary, these documents serve as *prima facie* proof of Canada’s breach of its treaty obligations to the Cumberland Band. The surrender document is signed by two men, both of whom were Chakastaypasin members until their alleged transfer to IR 100 A on May 10, 1896, a transfer that we have found to be invalid.

It was the whole of the Cumberland Band (at IR 20 and IR 100A) who had authority to dispose of the southern portion of IR 100A and who should have voted in 1902 according to the Act. Canada has conceded that it gave no notice to the Cumberland House Cree Nation or sought its consent.⁵⁶¹

Thus, Canada breached its statutory and treaty obligations through its failure to give notice of the intention to surrender the southern portion of IR 100A lands and through its failure to have sought the whole of the Cumberland Band’s consent. The two signatories to the July 24, 1902, surrender document cannot stand to represent the whole of the Cumberland Band, including those

⁵⁶¹ Written Submissions on Behalf of the Government of Canada, November 24, 2003 (into the Cumberland House Cree Nation: IR 100A Inquiry, p. 59, para. 106).

resident at IR 20. Canada's failure to meet its statutory and treaty obligations renders the 1902 surrender invalid, and therefore the surrender cannot stand.

It is well established in law that transactions related to the surrender of reserve land – and particularly the surrender requirements of the *Indian Act* – will trigger a fiduciary duty of the Crown.⁵⁶² On the facts of this case, this duty was triggered and not met. Through the Crown's failure to seek the whole of the Cumberland Band's informed consent to the surrender of the southern portion of IR 100A in 1902 and through its failure to protect its interest in this reserve land, Canada has breached its fiduciary duty to the whole of the Cumberland Band.

By its failure to have sought the consent of the whole of the Cumberland Band, including those resident at IR 20, Canada breached its statutory, treaty, and fiduciary obligations to the Cumberland Band. The effect of these breaches is to render the surrender of IR 100A lands on July 24, 1902, invalid. Consequently, Canada owes an outstanding lawful obligation to the Cumberland House Cree Nation for its breaches of obligations.

Issue 5 Validity of Amalgamation

Was there an amalgamation of the Peter Chapman Band and the James Smith Band?

The James Smith Cree Nation took issue with what event – surrender or amalgamation – may have occurred first on July 24, 1902. Based upon our findings regarding the validity of the July 24, 1902, surrender, we do not feel it necessary to decide what the sequence of these events was.

The parties agree that the first documentary mention of “amalgamation” of the “Peter Chapman” and James Smith Bands came in a letter from Indian Commissioner David Laird to the Secretary of Indian Affairs in regard to the proposed surrender of the southern portion of IR 100A. On June 19, 1902, Commissioner Laird said:

In connection with the surrender, I think it would be well to consider the question of amalgamating the bands of James Smith and Cumberland No. 100A. The latter have no Chief and the united bands would make a total population of 231 souls.

If this suggestion meets with your approval, and the consent of both bands to the amalgamation can be obtained, I think it would be a great gain to the Indians

⁵⁶² *Blueberry River Indian Band v. Canada*, [1995] 4 SCR 344.

of James Smith's Band as well as those of Cumberland band, both of which are in a backward state.⁵⁶³

Within one week of this correspondence, W.A. Orr in the Lands Branch of Indian Affairs wrote to the Secretary of Indian Affairs and reconfirmed that the reserve would be surrendered by the Cumberland Band 100A, which would receive 10 per cent of the proceeds to buy agricultural implements, and "the two bands [would be] amalgamated as proposed."⁵⁶⁴

We know from the historical documents that Indian Commissioner Laird wrote Indian Agent Jones on July 15, 1902, to inform the Agent that he, Commissioner Laird, intended to meet "the Indians of James Smith and Cumberland Reserves" at the treaty annuity payday to be held nine days later, on July 24, 1902, "to obtain a surrender of the southern township of the Cumberland Reserve, and I think it would be better that I should discuss the question with them before you begin the payments."⁵⁶⁵

The only evidence available is the surrender, affidavit, and amalgamation documents dated July 24, 1902. We have no evidence of any notice being given prior to July 24, 1902. There are no contemporaneous minutes of the proceedings which may have indicated the time and location of a vote, the number of persons present, and the vote taken. Further, none of the witnesses who appeared before us could recall any oral history with regard to the issue of amalgamation.

For the JSCN, there is no provision in Treaty 6 for the amalgamation of Indian bands, just as there is no provision for the transfer of Indians from band to band; such decisions were left to the bands of Treaty 6. The language of Treaty 6 entitles its signatory bands to select their reserve lands, and any decision to join bands together would have been for the bands themselves to decide. In the JSCN's view, the "Crown would neither have participated nor been expected to participate in the

⁵⁶³ David Laird, Indian Commissioner, to the Secretary, Department of Indian Affairs, June 19, 1902, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 668–71).

⁵⁶⁴ W.A. Orr to the Secretary, June 25, 1902, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, pp. 672–73).

⁵⁶⁵ David Laird, Indian Commissioner, to W.E. Jones, Indian Agent, Duck Lake Agency, July 15, 1902, LAC, RG 10, vol. 3562, file 82, pt. 9 (ICC Exhibit 1, p. 676).

joining together.”⁵⁶⁶ For JSCN, “Canada sought to exert greater and greater control of membership of bands through the creation of informal, and then formal, statutory methods of transferring Indians. Equally, Canada sought to control band memberships through the amalgamation process.”⁵⁶⁷ Finally, the JSCN maintains, Canada “casually” decided in 1902 to put James Smith and Peter Chapman together and gave directions for an amalgamation document to be prepared. In the words of counsel, “there is not even the pretence of consultation on the part of Canada.”⁵⁶⁸

If the treaty is silent on the matter of amalgamation, then what, if anything, was required by the *Indian Act*? To this the parties agree that there was no provision in the *Indian Act* for the amalgamation of bands. For Canada, this fact leads to the conclusion that absent a statutory limitation on its royal prerogative, it exercised its prerogative power to bring about the amalgamation.⁵⁶⁹ The JSCN argues that, in the absence of statutory authority, the Crown had no authority to amalgamate and cannot rely upon its prerogative power to create or amalgamate bands.⁵⁷⁰ Without guidance from either the treaty or the *Indian Act*, we must ask whether principles of fiduciary law provide any assistance in determining the lawfulness of Canada’s actions in this case. We will not review the general principles concerning fiduciary law here. We believe we have thoroughly reviewed these principles in many other inquiries. We will, therefore, rely upon our synopsis of the case law in these other reports and categorically state here that the courts have clearly stated that the relationship between aboriginal people and the Crown is a fiduciary one, although not every aspect of this relationship will give rise to a fiduciary duty.⁵⁷¹ To determine

⁵⁶⁶ Written Submissions on Behalf of the James Smith Cree Nation, Treaty Land Entitlement Inquiry, July 28, 2003, p. 66, para. 202.

⁵⁶⁷ ICC Transcript, June 15, 2004, Oral Submissions into the James Smith Cree Nation: Treaty Land Entitlement Inquiry – Amalgamation, p. 25, lines 14–19 (William Selnes).

⁵⁶⁸ ICC Transcript, June 15, 2004, Oral Submissions into the James Smith Cree Nation: Treaty Land Entitlement Inquiry – Amalgamation, p. 26, lines 4–5 (William Selnes).

⁵⁶⁹ Written Submissions on Behalf of the Government of Canada, November 24, 2003, into the James Smith Cree Nation, IR 100A Inquiry, p. 91, para. 186.

⁵⁷⁰ Written Submissions on Behalf of the Peter Chapman Cree Nation, August 30, 2003, p. 121, para.355.

⁵⁷¹ ICC, *Kahkewistahaw First Nation: 1907 Reserve Land Surrender Inquiry* (Ottawa, February 1997), reported (1998) 8 ICCP 3; ICC, *Moosomin First Nation: 1909 Reserve Land Surrender Inquiry* (Ottawa, March 1997), reported (1998) 8 ICCP 101; ICC, *Chippewas of Kettle and Stony Point First Nation: 1927 Surrender Inquiry* (Ottawa, March 1997), reported (1998) 8 ICCP 209; ICC, *Sumas Indian Band: 1919 Indian Reserve 7 Surrender Inquiry* (Ottawa,

whether a specific fiduciary duty arises on the circumstances of this case requires a meticulous examination of the facts.

For the JSCN, the amalgamation of the Peter Chapman and James Smith Bands is most analogous to the surrender of lands where Canada seeks to rely upon the quantity of land reserved for Peter Chapman IR 100A, once amalgamated with James Smith, as satisfying the outstanding treaty land entitlement of James Smith IR 100. In the JSCN's view, Canada cannot simply take land from an Indian Band; a valid surrender process must be completed. Similarly, JSCN argues, once Canada decided to proceed with an amalgamation of these two Bands, it owed a duty to obtain the consent and approval of the two Bands. In JSCN's view, whether such consent was obtained must be analyzed in the same way that the Supreme Court of Canada analyzed the validity of consent to surrender land in *Apsassin*. When viewed from this perspective, in JSCN's view, Canada did not obtain this consent.⁵⁷²

According to Canada's position, there is an abundance of "clear, unchallenged, unequivocal evidence of informed consent to the amalgamation and aside from the agreement itself, it's primarily in the post-amalgamation facts."⁵⁷³ In Canada's view, it is this post-amalgamation conduct "which is completely consistent with informed consent."⁵⁷⁴ Further, Canada argues that JSCN's

attempt to equate an amalgamation with a surrender is not a proper question. Amalgamation[s] aren't surrenders. There were detailed provisions for surrenders; there are no provisions for amalgamations ... A surrender is fundamentally different. On amalgamation the bands don't surrender their land to third parties or at all, there's no need for a surrender and that's not what it's about. On this amalgamation each band obtained an undivided interest in all land, monies and other privileges of the other band.⁵⁷⁵

August 1997), reported (1998) 8 ICCP 281.

⁵⁷² Written Submissions on Behalf of the Peter Chapman Cree Nation, August 30, 2003, pp. 124–28, paras. 372–88.

⁵⁷³ ICC Transcript, June 15, 2004, Oral Submissions into the James Smith Cree Nation: Treaty Land Entitlement Inquiry – Amalgamation, p. 110 (Robert Winogron).

⁵⁷⁴ ICC Transcript, June 15, 2004, Oral Submissions into the James Smith Cree Nation: Treaty Land Entitlement Inquiry – Amalgamation, p. 131 (Robert Winogron).

⁵⁷⁵ ICC Transcript, June 15, 2004, Oral Submissions into the James Smith Cree Nation: Treaty Land Entitlement Inquiry – Amalgamation, pp. 127–28 (Robert Winogron).

We agree with the parties in characterizing the fundamental question to be answered as, Was there informed consent to this amalgamation? To begin, we believe it is important to recite the first paragraph of the 1902 “amalgamation agreement,” which states:

THIS AGREEMENT made in duplicate and entered into this Twenty fourth day of July in the year of our Lord one thousand nine hundred and two, between the *owners of James Smith’s Indian Reserve No. 100*, in the Provisional District of Saskatchewan, in the North West Territories and Dominion of Canada, as represented by their Chief and Headmen, hereinafter called the Parties of the First Part; and the *owners of Cumberland Reserve No. 100A*, also in the said Provisional District, as represented by their Headman, hereinafter called the parties of the Second Part.⁵⁷⁶

The authority of “the owners of the James Smith’s Reserve No. 100” to have entered into this agreement has not been disputed by the parties. From JSCN’s perspective, the issue is whether, in the absence of other evidence, Canada can rely upon this document as *prima facie* evidence of JSCN’s consent. We believe the document is impugned by a more fundamental question: With respect to the “owners of Cumberland Reserve No. 100A,” upon whom has Canada sought to rely as having the authority to amalgamate with the James Smith Band? Based upon the totality of the evidence, reviewed and reported in the *Cumberland House Cree Nation: IR 100A Inquiry* and summarized previously, we believe the “owners of Cumberland Reserve No. 100A” were the whole of the Cumberland Band, including those resident at IR 20 and IR 100A, and not just those members resident at IR 100A. The Cumberland Band included members at IR 100A and at IR 20; yet, based on the evidence, Canada relied upon only those resident at IR 100A (including non-members of the Chakastaypasin Band who allegedly had transferred into the Cumberland Band) to amalgamate with the James Smith Cree Nation. There is no evidence to indicate that those members who were also “owners” of IR 100A and were living at IR 20 voted to amalgamate.

The act, by certain residents at IR 100A, to amalgamate with the James Smith Band sought to transfer the right “to have, hold and possess forever, an undivided interest in all land, moneys and other privileges now possessed and enjoyed” by the “owners of Cumberland Reserve No. 100A.” We find the amalgamation agreement invalid because the signatories, Kahtapiskowat and George

⁵⁷⁶ Amalgamation Agreement between the owners of IR 100 and the owners of IR 100A, July 24, 1902, LAC, RG 10, vol. 3562, file 82, part 9 (ICC Exhibit 1, p. 690). Emphasis added.

Sanderson, could not have given a joint and undivided interest as they were not the “owners of Cumberland 100A.” They were two members of Chakastaypasin IR 98, who allegedly transferred to IR 100A in 1896 without the consent of the Cumberland Band, including those resident at IR 20. In our view, the transfer of this right is a disposition of IR 100A under the terms of Treaty 5 and therefore required the consent of the whole of the Cumberland Band to be valid. Canada’s failure to have sought the informed consent of the whole of the Cumberland Band (including those resident at IR 20) is a breach of its treaty and fiduciary duties.

As a result of the July 24, 1902, surrender and amalgamation, the Cumberland House Cree Nation was deprived of its interest in IR 100A – not only the acreage invalidly surrendered, but also the remainder of the reserve, which was invalidly amalgamated with that of the James Smith Cree Band and then relied upon by Canada to satisfy improperly the James Smith Band’s outstanding treaty land entitlement.

Based upon our findings, it is not necessary to consider Issues 6 and 7.

Issues 8–10 Land Disposition

8 What were Canada’s obligations in disposing of IR 100A lands according to

- (a) Treaty 6;**
- (b) the *Indian Act* and its Regulations;**
- (c) Canada’s fiduciary obligations?**

9 Did Canada, having accepted that it breached its lawful obligation to dispose of the surrendered lands for a reasonable price, to cancel sales of 72 quarters to its employee Pedley, and to cancel sales when payments were not made in a timely fashion, breach any further obligation which may arise under issue 8 concerning the sale of the surrendered township? In considering this issue, the parties agree to address the following points:

- (a) the application of the Indian Land Regulations;**
- (b) allegations regarding the manipulation of the land-tendering process as regards the Prendergast and Menary group lands;**
- (c) allegations of manipulation of the land-tendering process and fraud as regards the remaining quarters of the surrendered township that Canada asserts were properly sold and for which Canada has not accepted a breach of lawful obligation; and**
- (d) the actions of Canada in the administration of the sales of the land.**

10 Is the effect of any breach(es) such that it (they) invalidate(s) the surrender of IR 100A or otherwise give(s) rise to a claim for damages?

In this part of our analysis we are asked to consider, first, what were the obligations of Canada in disposing of IR 100A lands, and second, did Canada breach any obligation which may arise. We will address these issues together.

As we have said, based on the totality of evidence, we find that the true owners of IR 100A are the Cumberland House Cree Nation. Thus, it is the CHCN membership that are “the Indians entitled” under the terms of Treaty 5 to the reserve at IR 100A. Consequently, Canada’s failure to have sought and obtained their consent to the surrender and subsequent sale of IR 100A is a breach of Canada’s lawful obligation to the Cumberland House Cree Nation. Canada owed the CHCN treaty, statutory, and fiduciary obligations to have sought and obtained its consent to the surrender and subsequent sale of the southern portion of IR 100A, amounting to 20,080 acres or nearly half of its reserve.

Under treaty, Canada had an obligation to seek and obtain the CHCN’s consent to the surrender of these lands. Once given, Canada has a general treaty obligation to sell the land for the Band’s “use and benefit.” We interpret “use and benefit” to mean an obligation, as fiduciary, to act as a prudent fiduciary when disposing of the land by sale and to maximize the Band’s benefit.

Under statute, Canada had an obligation, pursuant to section 41 of the *Indian Act*, to exercise its discretion as a prudent fiduciary. Section 41 of the *Indian Act* states:

41. All Indian lands, which are reserves or portions of reserves, surrendered or to be surrendered to Her Majesty, shall be deemed to be held for the same purposes as before the passing of this Act and shall be managed, leased and sold as the Governor in Council directs, subject to the conditions of surrender and the provisions of this Act.⁵⁷⁷

Under fiduciary principles, Canada has an obligation, in disposing of IR 100A lands by sale, to initiate and manage the sales as a prudent fiduciary. We acknowledge and agree with Canada that it has breached its obligations on the transactions that actually occurred. As a fiduciary, Canada has an obligation to sell reserve lands, once surrendered, for a reasonable price on the facts of each case.

⁵⁷⁷ *Indian Act*, RSC 1886, c. 43, s. 41 (ICC Exhibit 24a).

On the basis of *Guerin*,⁵⁷⁸ the Crown has a positive duty to consult with a band when contemplating the sale of reserve land at a price other than what may have been agreed to or understood by the band. Further, Canada has an obligation, in administering the sale of reserve land, to ensure compliance with section 110 of the *Indian Act*. Section 110 states:

110. No agent for the sale of Indian lands shall, within his division, directly or indirectly, except under an order of the Governor in Council, purchase any land which he is appointed to sell, or become proprietor of or interested in any such land, during the time of his agency; and every such purchase or interest shall be void.⁵⁷⁹

Finally, Canada has an obligation, as a prudent fiduciary, to fully enforce the terms of sale. On the facts of this case, we acknowledge that Canada has accepted to negotiate its outstanding lawful obligation on the transactions that occurred.

On March 13, 1998, the Government of Canada offered to negotiate certain elements of the James Smith Cree Nation's IR 100A specific claim. It is important, in our view, to set out in detail the basis on which Canada partially accepted this claim for negotiation.

Having determined that the July 24, 1902, surrender of IR 100A lands was valid in its view for the reasons previously reviewed and considered in this report, the Government of Canada next considered whether the Crown breached its fiduciary obligations in relation to the subsequent sale of the surrendered lands. In his letter of March 13, 1998, partially accepting the JSCN IR 100A claim for negotiation on behalf of the Government of Canada, Mr John Sinclair, then Assistant Deputy Minister, Claims and Indian Government, stated:

[As regards the allegations to the adherence to the terms of sale] The JSCN alleges that the department breached its fiduciary obligation by failing to apply the 1888 Indian Land Regulations that purported to set mandatory conditions on the sale of surrendered lands. It is also alleged that a breach of fiduciary obligation occurred when the department accepted tenders for more than one quarter section of land, tenders without the required 5 percent cash deposit, tenders containing different bids and tenders directed to the Deputy Superintendent General instead of to the Department Secretary.

⁵⁷⁸ *Guerin v. The Queen*, [1984] 2 SCR 335.

⁵⁷⁹ *Indian Act*, RSC 1886, c. 43, s. 110 (ICC Exhibit 24a).

Upon review of the 1886 *Indian Act* and subsequent amendments, it is our conclusion that the 1888 Indian Land Regulations did not apply to this sale ... Canada's conduct [regarding the form and content of tenders in the case of reserve land sales] must therefore be judged according to fiduciary standards. In this case, the standard would appear to be that of a prudent businessman in the conduct of his own affairs. It is our preliminary position that a prudent businessman would have accepted the highest bid for the land even if they were submitted in bulk to the wrong official.

...

[As regards the administration of the sales] The JSCN also alleges that Canada breached its fiduciary obligation by failing to cancel purchases fraudulently made by agents of the Crown who used privileged information available only to them to purchase the lands at low prices. It is also alleged that another breach occurred when Canada failed either to enforce the terms of sale regarding payment conditions or to cancel those sales that did not comply with them.

... [As regards fraud] It is our preliminary position that there is insufficient evidence to support the allegation of fraud in connection with the sale of surrendered land ... However, the lack of clear evidence of fraud does not mean that the administration of the sales was appropriate. The historical record is clear that no upset price was set and that all 138 sales were at prices well below the appraised values of the lands. A 1902 appraisal by Departmental Surveyor J. Lestock Reid found that the Cumberland 100A lands in question were worth anywhere from \$2.50 to \$6.00 *per acre*, with most of the land being in the \$5.00 *per acre* range. Analysis of the purchase price for the lands shows that the average price paid by A.J. Menary, the Prendergast group and the Mossom Boyd group was \$2.62 *per acre*. In our view a prudent fiduciary would not have accepted prices so far below the appraised value of the lands. By accepting them, the department did not act in the best interests of the Cumberland 100A Band. Canada therefore owes a lawful obligation to the JSCN for the difference between the appraised value and actual amounts paid for the land. However, compensation for this breach is captured by Canada's lawful obligation arising from the administration of sale discussed below.

In addition, the lack of clear evidence of fraud does not mean that there was no wrongdoing on the part of Canada's officials, for there is evidence that Frank Pedley, Deputy Superintendent General of Indian Affairs at the time of the tendering process, acted improperly by participating in the sales. As agent for the sale of lands in question, Pedley contravened section 110 of the 1886 *Indian Act*. Although their actions may equally be characterized as morally blameworthy, Smart and White were not employees of the department or agents for the sale of lands in 1903 and are not caught by the language of section 110.

Pedley's actions, however, should have led to his immediate dismissal from office and the cancellation of that portion of the overall land purchases attributable to him followed by the resale of the lands in question to *bona fide* purchasers. This was not

done and it is our preliminary position that Canada owes a lawful obligation to the JSCN for its failure to have followed the requirements of the *Indian Act* in this respect and particularly for its failure to cancel the portion of the sales attributable to Pedley when his involvement became known sometime after 1912.

It is Canada's preliminary position that Pedley's involvement was moot, given that Canada should have enforced the terms of sale as a prudent fiduciary prior to 1912. The historical record is clear that by 1912 the sale conditions had been met for only 54 of the 138 quarter sections purchased in 1903 ... The sales attributable to Pedley were among those that ought to have been the object of Canada's attention well before his illegal involvement was discovered in 1912. In short, the department did not administer the sales in the manner of a prudent fiduciary, and it is our preliminary position that Canada therefore owes an outstanding lawful obligation to the JSCN in this regard.

In summary, it is our preliminary position that Canada owes an outstanding lawful obligation to the JSCN for its actions at the point of sale of the lands and subsequently. First, the lands should not have been sold so far below their appraised value. Second, Pedley should not have participated in their purchase. Third, the terms of sale ought to have been enforced more diligently than they were, including the reasonable cancellation of purchases in default of the terms of sale and the resale of those lands.⁵⁸⁰

The First Nation rejected Canada's offer to negotiate on the basis outlined in its March 13, 1998, letter. It has asked the panel to inquire into Canada's obligations in disposing of IR 100A lands and to offer a recommendation based upon its findings.

Canada has admitted its breach of fiduciary duty in accepting prices far below the appraised value of IR 100A lands. Further, Canada has admitted its breach of fiduciary duty for failing to enforce the terms of sale regarding payment conditions, including the reasonable cancellation of purchases in default of the terms of sale and the resale of those lands. Finally, Canada has admitted that Frank Pedley, in his position as Deputy Superintendent General of Indian Affairs, should not have participated in the purchase of IR 100A lands put up for sale. By his actions, as agent for the sale of the lands in question, Pedley contravened section 110 of the *Indian Act*, and Canada admits an outstanding lawful obligation for its failure to have immediately dismissed its employee Pedley from office and for its failure to cancel the sales attributable to him. We agree.

⁵⁸⁰ John Sinclair, Assistant Deputy Minister, DIAND, Claims and Indian Government, to Chief Eddie Head, James Smith Cree Nation, March 13, 1998, pp. 5-10 (ICC Exhibit 16a).

Although Canada has framed its acceptance to negotiate these breaches of obligation in terms of the James Smith Cree Nation, Canada's lawful obligation is owed, in our view, to the Cumberland House Cree Nation. Therefore compensation for these breaches of obligation is owed to the Cumberland House Cree Nation.

Fraud

In the absence of clear and unequivocal evidence, we are unable to render a finding of fraud based upon the record in this inquiry. Nevertheless, the lack of clear evidence of fraud does not mean that the administration of the sales was appropriate, and Canada is prepared to negotiate on the basis that all 138 parcels were sold for less than appraised values and that it was in breach of section 110 of the *Indian Act* with respect to Pedley's actions.

IR 100A Strip

Validity of Surrender Issues

- 1 (a) Was there a surrender of the IR 100A Strip to Canada?
- (b) If no, what obligations did Canada owe to the Peter Chapman Band on the use of the IR 100A Strip?
- (c) If there was a surrender, then what were Canada's obligations in taking the surrender of IR 100A Strip according to:
 - i) Treaty 6;
 - ii) the *Indian Act*; and
 - iii) Canada's fiduciary obligations? [a discussion of this issue will involve the matter of Canada's pre-surrender fiduciary duties]

The consideration of this issue may include the following related issues:

- i) to whom were the obligations owed;
 - ii) the alleged absence of Peter Chapman Band leadership at the time of surrender;
 - iii) the alleged absence of appropriate parties to the surrender;
 - iv) the 1902 amalgamation of the Peter Chapman Band and James Smith Cree Band; and
 - v) the transfer to and from other bands.
- 2 Did Canada breach any obligation(s) that may arise under Issue 1?
 - 3 Is the effect of any breach(es) such that it (they) invalidate(s) the surrender of IR 100A Strip?

4 Is the effect of any breach(es) such that Canada owes outstanding lawful obligations?**Land Disposition Issues****5 If there was a surrender, what are Canada's obligations in disposing of IR 100A Strip according to:**

- (a) Treaty 6;**
- (b) the *Indian Act* and its Regulations;**
- (c) Canada's fiduciary obligations?**

6 Did Canada breach any obligation(s) which may arise under Issue 5?**7 Did Canada breach its obligations to the Peter Chapman Band by failing to sell the IR 100A Strip after surrender?****8 Is the effect of any breach(es) such that it (they) invalidate(s) the surrender of IR 100A Strip or otherwise give(s) rise to a claim for damages?**

In our view, to fully understand the status of the IR 100A Strip, it is necessary to return to the evidence regarding the selection and survey of IR 100A. Subsequent to the Department of Indian Affairs' decision to permit the Cumberland Band to move to Fort à la Corne in 1883, the Department of Indian Affairs applied to the Department of the Interior for suitable land. In 1885, the two townships immediately south of James Smith's reserve (IR 100) in townships 46 and 47, range 20, W2M, were identified by the Department of Indian Affairs for a reserve; however, this department was informed that township 46 had not yet been surveyed. Nevertheless, this land was accepted by both the Department of Indian Affairs and the Cumberland Band for a reserve. In July 1887, DLS John C. Nelson was dispatched to survey IR 100A. Nelson surveyed an area of about 65 square miles, and his plan of survey was confirmed by Order in Council on May 17, 1889.⁵⁸¹ In 1892, some years after the survey and confirmation of IR 100A as a reserve, township 46 was surveyed.

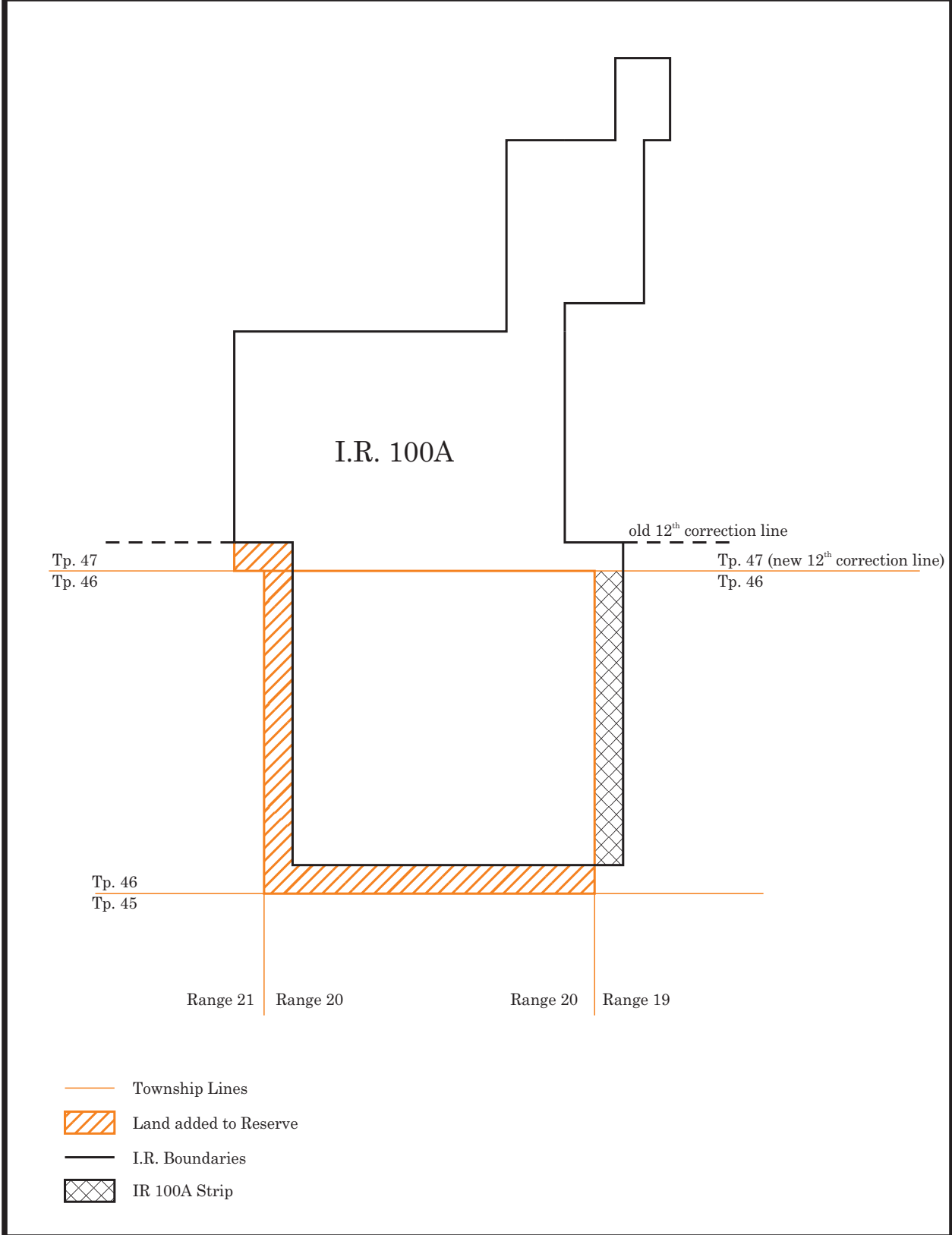
A review of the plan of survey of IR 100A reveals that the boundaries of the reserve do not coincide with the township boundaries – a fact not discovered until 1902, when DLS Lestock Reid was dispatched to subdivide the surrendered portion of IR 100A. At that time, Reid noted that small

⁵⁸¹ John C. Nelson, DLS, In Charge of Indian Reserve Surveys, to SGIA, December 30, 1887, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31, 1887*, 275 (ICC Exhibit 17, p. 35); Order in Council PC 1151, May 17, 1889, pp. 54–55 (ICC Exhibit 4a).

Map 5

Cumberland IR 100A

IR 100A and Surrounding Townships, creating the IR 100A Strip (1903)



portions of township 46, range 20, at the south and west were not included in the reserve, while another small portion extended into township 46, range 19.

To address the boundary issues, Reid proposed that the department exchange a strip along the east boundary of the reserve (that portion within range 19) for that on the west and south; “this would make the boundaries of the Reserve conform to the township [outlines] and include the whole of Township 46 Range 20 W2M in the Indian Reserve.”⁵⁸² Secretary McLean consulted with the Department of the Interior and then instructed Reid to proceed with the survey and subdivision “as if the strips of land had been dealt with in the manner you suggest.”⁵⁸³ By November 1902, the exchange was made, and the western and southern portions were put up for sale. Today, it is the eastern boundary encroachment into range 19 that is the subject of controversy. There is, however, no evidence that either the James Smith or the Cumberland Band was consulted regarding the adjustment of the reserve boundaries by the Department of Indian Affairs.

In the July 24, 1902, surrender document, the lands to be surrendered are described as “being composed of this southern township of the said Reserve, Township 46, Range 20, W.2 M, excepting thereout Sec. 6 and S ½ Sec. 7.”⁵⁸⁴ In the First Nation’s view, the land described as the IR 100A strip was never surrendered. The July 24, 1902, surrender document refers to township 46 as being the surrendered lands. The IR 100A Strip is located outside of township 46 but has always been a part of the reserve. As such, the IR 100A Strip is unsurrendered and unsold reserve land to which Canada owes an outstanding lawful obligation.

In contrast, Canada argues that the IR100A Strip was included in the July 24, 1902, surrender. Although Canada did accept in 1990 to negotiate an outstanding lawful obligation, Canada today argues that it was not then aware of the legal status of the lands in question. In fact, Canada submits, all parties believed that the strip had not been included in the 1902 surrender at IR 100A. Viewing the IR 100A Strip as reserve land, Canada did issue section 28(2) permits for

⁵⁸² J. Lestock Reid to the Secretary, Department of Indian Affairs, September 19, 1902, LAC, RG 10, vol. 3736, file 27580 (ICC Exhibit 1, p. 727).

⁵⁸³ J.D. McLean, Secretary, Department of Indian Affairs, to J. Lestock Reid, Surveyor, Dominion Lands Branch, Department of Indian Affairs, NA, RG 10, Vol. 3736, file 27580 (ICC Exhibit 1, p. 738).

⁵⁸⁴ “Cumberland Band of Indians,” Surrender for sale, July 24, 1902, DIAND Indian Land Registry, Instrument no. X10691 (ICC Exhibit 1, p. 677).

what it believed to be encroachments on reserve land. Upon discovery of the legal status of these lands after 1990, Canada reversed its view of the IR 100A Strip and abandoned negotiations. Today, Canada describes these lands as surrendered but unsold lands. Consequently, Canada has accepted an outstanding lawful obligation for its failure to have fulfilled the terms of the 1902 surrender by selling the IR 100A strip lands for the benefit of the James Smith Band.

It is our view that Canada owed a duty to the Cumberland Band to have surveyed the land that was mutually agreed upon. On the facts of this case, the land identified and accepted by both Canada and the Band as suitable for a reserve was townships 46 and 47, range 20, W2M, but only a portion of these lands was surveyed and confirmed as IR 100A. There were, on the evidence, portions excluded by Canada's survey of range 20, and portions included in range 19 (an area not mutually agreed upon by the Band and Canada). On this basis, we find that Canada is in breach of its fiduciary obligation derived from treaty when it failed to have surveyed township 46 and 47, range 20, W2M, which the Cumberland Band and Canada mutually understood in 1885 to be the extent of its reserve.

Further, when Canada realized its mistake in 1902, it owed the Cumberland Band a treaty and fiduciary obligation to inform the Band of the mistake and to seek its consent to the adjustment of the reserve boundaries. Based upon the evidence, the department made no attempt to consult with the Cumberland Band.

The extent of the lands at issue is approximately 191.33 acres. Although this acreage may appear modest, this matter is complicated by the Crown's taking of a surrender in 1902 of the southern portion of IR 100A. The primary issue for this panel is, "Was there a surrender of the IR 100A Strip to Canada"?

Based upon our review of the evidence, there was no surrender of the IR 100A Strip. This finding has two foundations. First, the IR 100A Strip, lying wholly in township 46, range 19, was never intended to be part of IR 100A. The intention in selecting IR 100A lands, in our view, is evidenced in 1885 – when the Department of Indian Affairs applied for this exact location to the Department of the Interior, and when the Department of Indian Affairs confirmed this location with the Cumberland Band. That DLS Nelson did not comply strictly with the selection of this land when surveying the boundaries of IR 100A in 1887 is, in our view, as stated above, the source of its own

breach of obligation. In our view, the status of the IR 100A Strip has remained the same as it was prior to the survey of IR 100A.

The second foundation for our finding rests with the July 24, 1902, surrender document itself. As we have said throughout our analysis, there was no valid surrender on July 24, 1902, at IR 100A since the surrender signatories had no authority to surrender IR 100A lands. This authority rested exclusively with the Cumberland Band. Canada has taken the position in this inquiry that the IR 100A Strip was included in the July 24, 1902, surrender. In our view, even if Canada were correct, a strict reading of the surrender document itself shows that the subject lands of the surrender are described as comprised of “Township 46, Range 20.” As such, the extent of the surrendered lands at IR 100A lie wholly within range 20. The lands taken up by the IR 100A Strip, lying wholly within range 19, are therefore excluded from surrender upon a strict reading of the surrender document.

Conclusion to the IR 100A Strip Issues

1 (a) Was there a surrender of IR 100A Strip to Canada?

No. First, as we have stated, the July 24, 1902, surrender is invalid. Secondly, even if the surrender document were valid, the lands to be surrendered were comprised of “Township 46, Range 20.” The IR 100A Strip is located wholly within township 46, range 19. Upon a strict reading of the surrender document, the IR 100A strip lands lie wholly outside of the surrendered land.

1 (b) If no, what obligations did Canada owe to the Peter Chapman Band on the use of the IR 100A Strip?

None. In our view, the lands that comprise the strip were never intended to be part of IR 100A by mutual agreement of the Cumberland Band and Canada in 1885. The status of this land has remained the same as it was prior to the survey of IR 100A.

On the basis of our above-stated conclusions, it is not necessary to address the remaining issues regarding the validity of the surrender or land disposition of the IR 100A Strip.

PART V
CONCLUSIONS AND RECOMMENDATION

As regards IR 100A, we conclude that there are no outstanding lawful obligations owed to the James Smith Cree Nation in the matter of the 1902 surrender, amalgamation, or land disposition issues. Our conclusion is based upon the following findings.

We find that no separate band was created or evolved at IR 100A from the original Cumberland Band that was a signatory to Treaty 5. Further, as acknowledged by Canada, we find that IR 100A was selected, surveyed, and accepted as a reserve by both the Band and Canada for the whole of the Cumberland Band.

Consequently, the decision to expand the membership of the Cumberland Band at IR 100A was a decision that rested with the whole of the Band and not just those resident at IR 100A. The “Consents to Transfer” 27 Chakastapaysin members to IR 100A are, therefore, unlawful because these consents did not involve the consent of the whole of the Cumberland Band.

We find the July 24, 1902, surrender document and the July 24, 1902, amalgamation agreement invalid, because the signatories, Kahtapiskowat and George Sanderson, could not have disposed of IR 100A as they were not the “owners of Cumberland IR 100A.” Nor could they have given a joint and undivided interest in IR 100A so as to amalgamate the Cumberland and the James Smith Bands, simply because they lacked authority as they were not the “owners of Cumberland IR 100A.” They were two members of Chakastaypasin IR 98 who allegedly transferred to IR 100A in 1896 without the consent of the whole of the Cumberland Band.

Canada’s complete failure to have sought and obtained the consent of the Cumberland Band to the surrender and subsequent sale of IR 100A is a breach of Canada’s lawful obligation to the Cumberland House Cree Nation, and not to the James Smith Cree Nation. Moreover, Canada has admitted its breach of fiduciary duty in accepting prices far below the appraised value of IR 100A lands. Further, Canada has admitted its breach of fiduciary duty for failing to enforce the terms of sale regarding payment conditions, including the reasonable cancellation of purchases in default of the terms of sale and the resale of those lands. Finally, Canada has admitted that Frank Pedley, in his position as Deputy Superintendent General of Indian Affairs, should not have participated in the purchase of IR 100A lands put up for sale. By his actions, as agent for the sale of the lands in question, Pedley contravened section 110 of the *Indian Act*, and Canada admits an outstanding

lawful obligation for its failure to have immediately dismissed its employee Pedley from office and for its failure to cancel the sales attributable to him. We agree.

Finally, as regards the IR 100A Strip, we conclude that no outstanding lawful obligation is owed to the James Smith Cree Nation. IR 100A was selected, surveyed, and accepted by both the Cumberland Band and Canada to encompass the whole of township 46, range 20. The IR 100A Strip, lying wholly in township 46, range 19, was never intended to be part of IR 100A. As such, the status of this land has remained the same as it was prior to the survey of IR 100A.

In conclusion, we find that there are no outstanding lawful obligations owed to the James Smith Cree Nation as regards IR 100A for the surrender, amalgamation, and subsequent disposition of these reserve lands.

We therefore recommend to the parties:

That the lawful obligations that arise from Canada disposition's of Indian Reserve 100A be accepted for negotiation with the Cumberland House Cree Nation.

FOR THE INDIAN CLAIMS COMMISSION



Renée Dupuis
Chief Commissioner



Alan C. Holman
Commissioner

Dated this 17th day of March, 2005.

APPENDIX A

INDIAN CLAIMS COMMISSION

**Interim Ruling
James Smith Cree Nation Inquiries
Treaty Land Entitlement and Cumberland 100A Reserve Claims
Ruling on Government of Canada Objections**

PANEL

Commission Co-Chair P.E. James Prentice, QC
Commissioner Carole T. Corcoran
Commissioner Elijah Harper

COUNSEL

For the James Smith Cree Nation
Sylvie Molgat

For the Government of Canada
Jeffrey A. Hutchinson

To the Indian Claims Commission
David E. Osborn, QC / Kathleen N. Lickers

May 2, 2000

BACKGROUND

The Commissioners have considered Canada's challenge to the mandate of the Commission to conduct an inquiry into aspects of the James Smith Cree Nation (JSCN) treaty land entitlement (TLE) claim and aspects of the JSCN claim concerning Peter Chapman Indian Reserve (IR) 100A.

The submissions of Mr Jeffrey Hutchinson of January 7, 2000, and March 10, 2000, and Ms Sylvie Molgat of February 25, 2000, were considered and discussed at length; the Commissioners are grateful to counsel for their cogent and exhaustive review of the matter. After due consideration, the Commissioners have decided to proceed with the inquiry, in all aspects, as requested by the JSCN. The principle of fairness was (and is) the governing factor in deciding to proceed with this inquiry. Our reasons follow.

The JSCN originally submitted three (3) claims to the Specific Claims Branch, Department of Indian Affairs. These claims relate to the validity of the surrenders of Chacastapasin IR 98 and Peter Chapman IR 100A, respectively, and the JSCN's outstanding treaty land entitlement. It is the Commission's mandate to conduct an inquiry into aspects of the Peter Chapman IR 100A and JSCN's TLE claim that are today at issue. Canada has raised no challenge to the Commission's mandate to inquire into the surrender of Chacastapasin IR 98.

THE TREATY LAND ENTITLEMENT

A claim for TLE was submitted on behalf of the JSCN in the early 1980s by the Federation of Saskatchewan Indians. Under cover of May 22, 1984, then Minister of Indian Affairs John Munro rejected JSCN's TLE, stating that the shortfall of land at the time of first survey was fulfilled as a result of the amalgamation of the James Smith and Peter Chapman Bands in 1902. Unfortunately, neither the original nor a copy of the TLE submission can today be found.

By a Band Council Resolution dated May 10, 1999, the JSCN requested that the Indian Claims Commission conduct an inquiry into the rejected TLE claim. In advance of the Commission's first planning conference, the First Nation prepared a summary document, entitled "James Smith Cree Treaty Land Entitlement: Legal Submissions." In this submission, Canada argues, the First Nation raised claims pertaining to land quality and land occupied prior to treaty, claims which Canada argues were not raised in the original submission. As such these claims are "new claims" not previously rejected by the Minister and therefore are not properly before the

Commission. Canada maintains that “there is a distinction between a Band simply presenting new legal argument or relying on different evidence to prove the claim originally submitted and ... a Band submitting entirely new grounds for a claim.” The TLE claims based upon land occupied prior to treaty and land quality are, Canada submits, entirely new grounds for a TLE claim.

The First Nation argues that, as a result of the original submission now being lost, neither party is in a position to show conclusively what comprised the original treaty land entitlement submission. In addition, the First Nation submits that “a First Nation’s claim to TLE cannot be considered in a vacuum and it would be grossly unfair to the First Nation to employ simple arithmetic to calculate TLE while ignoring Canada’s broader or other obligations under Treaty.”

PETER CHAPMAN IR 100A

The First Nation also submitted a claim to the Specific Claims Branch alleging breaches by the Crown of its statutory, treaty, trust, and fiduciary obligations to the Peter Chapman Band in relation to the taking of a surrender in 1902 and the subsequent sale of those lands. This claim was partially rejected in a letter of March 13, 1998, from then Assistant Deputy Minister John Sinclair to then Chief Eddie Head, JSCN.

By a Band Council Resolution dated May 10, 1999, the First Nation requested that the Indian Claims Commission conduct an inquiry into the validity of the 1902 surrender and the propriety of the subsequent land sales.

In advance of the Commission’s first planning conference, the First Nation also prepared a summary document entitled “Peter Chapman/Cumberland 100 A: Legal Submissions” which, Canada argues, raised for the first time a claim regarding unalienated mineral rights (hereinafter referred to as the “minerals issue”) thereby raising a “new claim” not previously reviewed or rejected by the Minister and therefore not properly before the Commission.

The First Nation argues that, in its original submission, it made arguments that the Crown “breached its statutory, treaty, trust and fiduciary duties in the taking of a surrender and for Canada to now distinguish various sub-issues which may or may not have been considered in the rejection and characterize them as “substantively new claims” is engaging in legalistic and specious argument based on a narrow and restrictive interpretation of the Commission’s mandate.”

ISSUE

The Order in Council establishing this Commission provides:

AND WE DO HEREBY advise that our Commissioners on the basis of Canada's Specific Claims Policy, ... by considering only those matters at issue when the dispute was initially submitted to the Commission, inquire into and report on:

- (a) whether a claimant has a valid claim for negotiation under the Policy where that claim has already been rejected by the Minister.¹

The issue to be decided by the Commission is whether or not, by introducing issues of minerals, lands occupied prior to treaty, and land quality, the First Nation has raised "substantially new claims," and if so, whether the Commission has jurisdiction to continue its inquiry into these claims.

RULING

To begin, we note counsel for Canada's reference to the Supreme Court of Canada's decision in *U.E.S., Local 298 v. Bibeault*² and agree that the Commission has the authority to interpret its mandate and therefore determine its jurisdiction. The Commission views its mandate, as it has in previous rulings and most recently in the Sandy Bay First Nation Inquiry, in a broad and remedial manner and we see no reason to restrict this interpretation on the facts of this case. As we stated in the *Lax Kw'alaams* report, "this Commission was created to assist parties in the negotiation of specific claims."³ We have also recently stated that "to restrict the mandate of the Commission to a narrow and literal reading of the Specific Claims Policy would prevent First Nations in certain circumstances from having their claims dealt with fairly and efficiently."⁴

By interpreting our mandate in this remedial manner we are mindful that each claim must be viewed in its own unique circumstances. In the case of the JSCN TLE claim, owing to the fact

¹ 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 (Consolidated Terms of Reference).

² *U.E.S., Local 298 v. Bibeault*, [1988] 2 SCR 1048.

³ ICC, *Lax Kw'alaams Indian Band Inquiry* (Ottawa, June 1994); reported [1995] 3 ICCP 99 at 158.

⁴ ICC, "Interim Ruling: Alexis First Nation Inquiry, Transalta Utilities Rights of Way Claim," p. 8; see (2003) 16 ICCP 47 at 59.

that the original submission cannot now be found, neither party is in a position to show conclusively what the original submission was comprised of and what it did, or did not, contain. Canada cannot confirm with certainty what issues were reviewed by it, save and except that which is specifically mentioned in Minister John Munro's letter of May 22, 1984. Moreover, the consequences of adopting Canada's reasoning would, we believe, result in a multiplicity of proceedings in a claim that is already very complex and could result in prolonging the final resolution while the First Nation awaits a response from Specific Claims on the questions of land quality and lands occupied prior to treaty.

In the result, we cannot accept Canada's argument that the issues surrounding lands occupied prior to treaty and the quality of those lands are "new claims." They are more properly aspects of the claim that may give rise to new legal issues, but they do not constitute new claims. In any event, we would not be able to conclude that these claims are "new" without first knowing what was originally submitted and reviewed. In the absence of knowing this, the Commission accepts the JSCN's request for a full inquiry into all aspects of what the First Nation has consistently argued to be an outstanding treaty land entitlement.

As regards the minerals issue, the First Nation admits that in its original submission and in the partial rejection of this claim "the matter of mineral rights was not specifically addressed." We also accept Canada's argument that "the Band alone has the responsibility to bring forward its own case" and that Canada is obliged to consider that case. We do not accept however, the consequence of Canada's argument on the facts of this case. That consequence, we believe, would result in further unfairness to the First Nation.

Simply put, the First Nation requested that the Commission inquire into the validity of the 1902 surrender of Peter Chapman IR 100A and the propriety of the sale of those surrendered lands. The First Nation has framed the issues surrounding the surrender and sale of IR 100A as a breach of the Crown's statute, treaty, trust, and fiduciary duties and the First Nation presents the issue of unalienated mineral rights as further evidence of the Crown's breach of duty. In the interests of fairness, we are prepared to proceed into the inquiry of the surrender and sale of the Peter Chapman IR 100A lands, including consideration of the mineral rights. To do otherwise, we believe, would result, not in a thorough inquiry into all matters at issue, but in a piecemeal inquiry, with some aspects of the claim before the Commission and others at various stages of review within the

Specific Claims Process. This, we believe, runs counter to our remedial mandate and would result in unfairness to the First Nation.

In agreeing to inquire into all aspects of JSCN's TLE, including lands occupied prior to treaty and the quality of those lands, and the issue of mineral rights in the Peter Chapman IR 100A claim, we are mindful of the effect our decision may have on the course of this inquiry in so far as Canada may not have had an adequate opportunity to consider the issues or may need more time to prepare, or because additional research is needed (a fact already admitted by Canada as regards the population analysis of JSCN's TLE). The Commissioners are, as previously stated, "firmly of the view that they must strive to be fair to both parties, not only the claimants, and will attempt to avoid any unfairness the government feels their decision to proceed with the inquiry causes."⁵ We therefore invite the parties at the next planning conference to discuss a timetable that will accommodate any needs for additional research or preparation time.

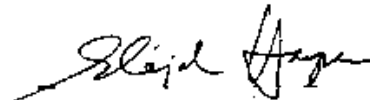
FOR THE INDIAN CLAIMS COMMISSION



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



Carole T. Corcoran
Commissioner



Elijah Harper
Commissioner

Dated this 2nd day of May, 2000.

⁵ ICC, "Interim Ruling: Lac La Ronge Indian Band Inquiries, Candle Lake and School Lands Claims," see (2003) 16 ICCP 13 at 19.

APPENDIX B

RULING ON APPLICATION FOR LEAVE TO INTERVENE

Via facsimile

June 4, 2001

Mr. William Selnes
Kapoor, Selnes, Klimm & Brown
417 Main Street
Melfort, SK S0E 1A0

- AND -

Mr. Tom J. Waller
Olive Waller Zinkhan & Waller
2255 Thirteenth Avenue
Regina, SK S4P 0V6

- AND -

Ms. Uzma Ihsanullah
DIAND - Department of Justice
10 Wellington Street - 10th Floor
Hull, QC, K1A 0H4

Dear Sirs and Madame:

**Re: In the Matter of the Cumberland House Cree Nation Inquiry into IR 100A
Lands and the James Smith Cree Nation - Peter Chapman IR 100 A Lands
Inquiry**

The Commission Panel, consisting of Commissioners Prentice, Augustine and Dupuis have carefully considered the application of the Cumberland House Cree Nation seeking leave to intervene in the Commission's proceedings into the claim of the James Smith Cree Nation regarding certain lands described as the "IR 100 A Lands".

The Commissioners have concluded that the inquiry claim advanced by the James Smith Cree Nation and the claim advanced by the Cumberland House Cree Nation (which is also before this Commission and which also relates to the IR 100 A Lands) are based upon a common evidentiary and factual background. It also seems clear to

the Commissioners that the findings of fact which the Commission may make in one of these inquiries, will have a direct bearing upon the factual and legal arguments available in the other. As such, the Commissioners are concerned that unless the Commission proceeds with considerable caution, there is risk of prejudice to both of the First Nations, and perhaps to Canada as well.

The Commissioners have therefore decided to convene a single fact finding process and to include both the James Smith Cree Nation and the Cumberland House Cree Nation as full participants in that process. Obviously, Canada would also be a full participant. The facts, to be found by the Commission, will be based upon that fact finding process and will subsequently apply to the inquiry claims of both the James Smith Cree Nation and the Cumberland House Cree Nation. The Commissioners wish to emphasize, however, that they are not merging or "joining" these two inquiries, but are merely engaging a single, common fact finding process which will provide an evidentiary basis for the two separate claims.

The Commission has the requisite authority to proceed in this manner. As a Commission constituted under the *Inquiries Act*, the Commission is not bound by the strict rules of evidence and procedure and the Commissioners are authorized to "adopt such methods as we (the Commissioners) consider expedient for the conduct of the inquiry and to sit at such times and in such places as they may decide". In discharging its mandate to inquire and report on whether a claimant has a valid claim for negotiation under the Specific Claims policy, the Commission is mindful that the procedures adopted must be appropriate to the circumstances and respect the fundamental principle of fairness.

The Commission's procedural flexibility allow for, and in this case requires, that the Commission undertake this common fact finding session. These two claims are so interrelated in their factual history that the Commission would run the risk of prejudicing the Cumberland House Cree Nation if it were to consider evidence heard in the James Smith Cree inquiry, without also permitting the participation of the Cumberland House Cree Nation in that context. The same obviously applies in respect of the inquiry claim of the Cumberland House Cree Nation, which would require the participation of the James Smith Cree Nation, so as to avoid prejudice to them. It is therefore important that the Commission proceed with care and in a manner which ensures fairness, consistency and which respects the right of everyone to be heard.

We have therefore instructed our legal counsel to meet with representatives of both the Cumberland House and James Smith Cree Nations to discuss the logistical arrangements for this process. Generally speaking, we anticipate traveling to each First Nation to convene a “Community Session” to hear from the community elders. In that context, each First Nation would be afforded the right to make submissions to the Commission and each First Nation would be afforded the right, within reason and with due regard to the direction of the Commissioners at that time, to participate in the questioning of the community participants, through Commission Counsel. Canada will obviously be a full participant during this entire process.

The separate inquiries of the James Smith Cree Nation and the Cumberland House Cree Nation will, however, retain their separate status and identity thereafter. We do not intend to transform these two separate inquiries into a single exercise.

Once the fact finding process has been completed the Commission will proceed with full consideration of the James Smith Cree Nation’s claim and the Cumberland House Cree Nation’s claim. In that context, the Commission will convene separate “Oral Sessions” to receive written and oral argument from each First Nation relative to the issues which are pertinent to their claim. Obviously, at that time, we would expect that First Nation and Canada to address the information and evidence collected by the Commission during the fact finding process. Once again, Canada would obviously participate in both inquiries at that time. It may be, that at that time, it will be in the best interests of all participants that the James Smith Cree Nation and the Cumberland House Cree Nation both be afforded certain limited rights to participate as an “intervenor” in the Oral Session relating to the other’s claim. If that were to happen, we would expect the limited participation of that other First Nation to be directed towards assisting the Commission - as opposed to an adversarial intervention directed towards the claimant First Nation. While we are not deciding that matter at this time, this would seem to us to be a fair and consistent approach. We would, however, ask our counsel to discuss this matter with the representatives of each First Nation at the close of the fact finding process. The Commissioners will, at that time, address the issue if the parties cannot agree.

The Commission's decision to proceed with a common fact finding exercise followed by legal argument will require the careful planning and the cooperation of all participants to ensure that each aspect of these inquiries proceeds concurrently and without prejudice to the other. The Commission is prepared to convene, where necessary, a planning conference of the James Smith Cree Nation, the Cumberland House Cree Nation and Canada to arrange for the most equitable and systematic

manner of carrying out its decision. The Commission's Counsel will be in contact with each First Nation and Canada to arrange for this planning conference at a time convenient to all.

Yours truly,



Kathleen N. Lickers on behalf of
Commissioners Prentice, Augustine & Dupuis

cc: Chief Delbert Brittain, Peter Chapman Band
Chief Pierre Settee, Cumberland House Cree Nation
Commissioner James Prentice
Commissioner Roger Augustine
Commissioner Sheila Purdy
Commissioner Renee Dupuis

APPENDIX C

INDIAN CLAIMS COMMISSION

Interim Ruling

James Smith Cree Nation – Peter Chapman IR 100 A Cumberland House Cree Nation – IR 100 A

The Commission panel has met and considered the December 20, 2001 objections of Mr. Waller to certain parts of the testimony of Mr. James Burns and the matter of questions to Sol Sanderson raised by Canada's counsel in her objections of December 5, 2001 and by Mr. Selnes on December 20, 2001. The answer of the panel follows.

The Commission accepts that Mr. James Burns appeared before the Commission as a witness to give evidence of his knowledge and experience regarding the matters at issue in this inquiry. Mr. Burns was not appearing as an expert but as an Elder of the James Smith Cree Nation. His testimony has been accepted as evidence.

Generally speaking, the Commission is not bound by the strict rules of evidence used in the courts. The practice adopted by this Commission is to allow hearsay evidence and to hear opinion evidence from a broad range of witnesses, some of who would be considered experts and others not. The reason is simple. The Commission, in conducting its investigation into the facts and matters in issue, is willing to listen to a range of experience in expectation that in doing so, we will come to a greater understanding of the case. In so saying, it is the responsibility of the Commissioners in each case, to weight the evidence presented.

In this case, the Commission is cognizant that we have undertaken a single fact finding process in an effort to create a common evidentiary basis for these two claims.

On June 4, 2001, we explained our view that these two claims are so interrelated in their factual history that the Commission would run the risk of prejudicing each First Nation if it were to consider evidence heard in the other's inquiry without also permitting the participation of the alternate First Nation in that context. Obviously what the Commission determines as evidence has a direct bearing to this single fact finding process.

As we said in June 2001, the Commission must proceed in a manner which ensures fairness, consistency and which respects the right of everyone to be heard. In this regard, we accept all of the testimony of Mr. James Burns as evidence including the two areas objected to by Mr. Waller but we will allow the Cumberland House Cree Nation to introduce further evidence if they believe such evidence is needed.

The Commission therefore directs that upon completion of the James Smith Cree Nation Community Sessions, and all witnesses brought forward by James Smith Cree Nation have testified, further evidence maybe brought forward by the Cumberland House Cree Nation in a separate session, with James Smith Cree Nation present and participating.

The Commission further directs that in advance of this additional session, Cumberland House Cree Nation must indicate to the Commission the manner and form such evidence will be brought forward. As stated, James Smith Cree Nation will be present at this additional session and will be afforded the opportunity to raise questions, as was the case at Cumberland House Cree Nation and is now the case with Cumberland House Cree Nation participation at James Smith Cree Nation.

As for the matter of questions for Chief Sol Sanderson, the Commission has no questions on any aspect of his November 20, 2001 presentation.

FOR THE INDIAN CLAIMS COMMISSION



Renée Dupuis
Commissioner



Alan Holman
Commissioner

[January 24, 2002]

cc: Chief Delbert Brittain, Peter Chapman Band
Chief Walter Constant, James Smith Cree Nation
Chief Sol Sanderson, Chakastaypasin Band
Chief Pierre Settee, Cumberland House Cree Nation
James Burns, James Smith Cree Nation
Tamantha Bedard, DIAND, Specific Claims Branch

APPENDIX D

CHRONOLOGY

JAMES SMITH CREE NATION: IR 100A INQUIRY

- 1** Planning conferences

Saskatoon, September 20–21, 1999
Ottawa, November 9–10, 1999
Ottawa, October 24–25, 2000
Saskatoon, December 5–6, 2000
Ottawa, January 10–11, 2001
Melfort, June 5–6, 2001
Prince Albert, November 21, 2001
Ottawa, May 16–17, 2002
Prince Albert, August 27, 2002
- 2** Community sessions

James Smith Cree Nation, June 27–28, 2001

The Commission heard from Jim Brittain, Charlotte Brittain, Robert Constant, George Whitehead, Walter Sanderson, and Violet Sanderson.

James Smith Cree Nation, November 20, 2001

The Commission heard from James Burns and Sol Sanderson.

Melfort, Saskatchewan, June 26, 2002

The Commission heard from Chief Delbert Brittain, Mervin Burns, John Dorion, and Sol Sanderson.
- 3** Interim rulings

James Smith Cree Nation: Treaty Land Entitlement and Cumberland 100A Reserve Inquiries – Interim Ruling, May 2, 2000

Ruling In the matter of an Application to the Indian Claims Commission for Leave to Intervene in the Inquiry of James Smith Cree Nation – IR 100A, June 4, 2001

Interim Ruling concerning the testimony of Mr. James Burns and the matter of questions to Chief Sol Sanderson, January 24, 2002
- 4** Written legal submissions

Mandate challenge

 - Submissions on Behalf of the Government of Canada, January 7, 2000
 - Submissions on Behalf of the James Smith Cree Nation, February 25, 2000
 - Reply Submissions on Behalf of the Government of Canada, March 10, 2000

- written submissions relating to the mandate challenge
- the document collection (7 volumes of documents, with annotated indices) (Exhibits 1 and 1a) (These are identical to Exhibits 1 and 1a in the Cumberland House Cree Nation: IR 100A Inquiry.)
- Exhibits 2–25 tendered during the inquiry
- transcripts of community sessions (3 volumes) (Exhibits 18a–18c)
- transcript of oral session (1 volume)

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