



# LANDMARK

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*"I have heard the elders say that when the terms of the treaties were deliberated the smoke from the pipe carried that agreement to the Creator binding it forever. An agreement can be written in stone, stone can be chipped away, but the smoke from the sacred pipe signified to the First Nation peoples that the treaties could not be undone."*

Ernest Benedict, Mohawk Elder  
Akwasasne, Ontario  
June 1992

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## MESSAGE FROM THE CHIEF COMMISSIONER ON THE 15<sup>th</sup> ANNIVERSARY OF THE ICC

In the fall of 2006, the Indian Claims Commission (ICC) celebrated its fifteenth anniversary. This occasion afforded us the opportunity to look back over the past 15 years and reflect upon our successes and the lessons we have learned along the way.

The Commission was created in 1991, following the Oka crisis, as an independent body to conduct public inquiries into specific land claims disputes between First Nations and the Government of Canada. Since that time, it has made important contributions to the specific claims process. I would like to take this opportunity to thank all Commissioners, past and present, who have headed and served this body with dedication. I would also like to thank the staff members whose diligence and professionalism made possible its accomplishments. I am very proud of what we, a part-time Chief Commissioner and part-time Commissioners and a small team of staff, have achieved together.

The Commission's mandate – to conduct inquiries and to provide mediation/facilitation services – is fulfilled by Commissioners and staff, in the ICC's offices and in the field during staff visits and community sessions and mediation sessions anywhere in Canada. The ICC's inquiry and mediation processes enable Canada and First Nations to take a fresh look at claims, and those processes offer innovative solutions to the parties in their efforts to resolve complex and contentious issues of policy and law.

The ICC has always supported the creation of a fair, effective and permanent independent process for dealing with the specific land claims of First Nations. It first began urging government to establish an independent claims body in its 1995-1996 Annual





Commissioner Daniel J. Bellegarde and staff members Denis Lafrance, Ginette Delorme and Audrey Larivière, receive certificates from Chief Commissioner Renée Dupuis in appreciation of their 15 years of service to the Commission. Absent: Jo-Ann Smith.

*Report.* It has appeared before parliamentary committees charged with studying legislation to this effect. As always, the considerable expertise that we've gained over the past 15 years is at the disposal of the government as it examines ways to improve the specific claims process.

This expertise would make the Commission the ideal organization to build upon should a permanent body be created. Our unique role is to bridge different perspectives as we work with parties who have opposing viewpoints. Despite all our best efforts, different perspectives will likely continue to characterize the specific claims process in Canada. This

concept of bridging will remain critical if we are to make collective progress in the resolution of specific claims.

As to the immediate future of the Commission, Commissioners and staff are committed to fulfilling our mandate until a permanent, independent claims body is created. Until then, the Commission will continue to offer government and First Nations impartial and effective services, continuing our work on specific claims inquiries and mediation/facilitation to specific claims negotiation tables.

*Renée Dupuis, C.M., Ad. E.*

## RECENT PUBLICATIONS

Since March 2006, ICC has released the following seven inquiry reports:

- Blueberry River First Nation and Doig River First Nation [Highway Right of Way and IR 172]
- Cowessess First Nation [1907 Surrender – Phase II]
- James Smith Cree Nation [Treaty Land Entitlement]
- Kluane First Nation [Kluane Game Sanctuary and Kluane National Park Reserve Creation]
- Opaskwayak Cree Nation [Streets and Lanes Claim]
- Taku River Tlingit First Nation [Wenah Specific Claim]
- Williams Lake Indian Band [Village Site]

Each is available on ICC's website at [www.indianclaims.ca](http://www.indianclaims.ca).



# 15 YEARS OF FAIRNESS IN CLAIMS NEGOTIATION

During the past 15 years, the Indian Claims Commission has become an effective alternative to litigation in specific claims disputes. Created in 1991, it remains the only post-Oka improvement to date in the specific claims area. Many of its successes can be attributed, in part, to its unique inquiry process and flexible mediation/facilitation services. The Commission's guiding principles have also played a part in its continuing contributions to Canadian law and policy.

## Inquiries

One of the Commission's first acts was to establish a five-step process to inquire into and review government decisions regarding the merits of a rejected claim, or the applicable

compensation principles when a dispute has arisen over the compensation criteria being applied to settle an accepted claim. The first step in the process is a careful assessment of a request from a First Nation that the Commission review its rejected claim or review which compensation criteria should apply to settle its accepted claim. If the Commission agrees to the First Nation's request to conduct an inquiry, government and First Nation representatives are brought together to discuss the claim, clarify legal issues and plan any necessary research. During the second stage (the preparation for inquiry), the Commission will arrange and chair a planning conference at which the relevant issues will be identified and the parties will attempt to generate a single list of issues.

## ICC'S INQUIRY PROCESS

<b>STAGE 1</b>	<b>Initial Request for Inquiry</b>  The Commission reviews the First Nation's request for an independent inquiry and, if it agrees to accept the specific claim for review and assessment, a panel of three Commissioners is formed to hear the inquiry.
<b>STAGE 2</b>	<b>Preparation for Inquiry</b>  Briefing material is prepared and sent to all of the parties in advance to facilitate discussion. Counsel for both parties are asked to state the issues to be addressed by the inquiry, from which the Commission staff will attempt, in consultation with counsel for the parties, to generate a single list of issues. A planning conference is held among the parties and their counsel. In many instances, the need for further research is identified. If there is no consensus by the parties on a single list of issues, this matter is placed before the panel for decision.
<b>STAGE 3</b>	<b>Staff Visit and Community Session(s)</b>  Commissioners and staff attend a session or series of sessions in the First Nation's community to hear directly from Elders and other knowledgeable members of the First Nation. In some instances, expert witnesses may be called upon to present evidence or testimony and are subject to cross examination by the other party.
<b>STAGE 4</b>	<b>Written and Oral Submissions</b>  Both parties present submissions to the panel.
<b>STAGE 5</b>	<b>Commissioners' Final Report</b>  The panel of Commissioners consider the evidence, testimony and submissions presented to them and issue a final report that contains their findings and recommendation that the Minister of Indian Affairs not reconsider the decision to deny the specific claim, or that the Minister of Indian Affairs accept the specific claim for negotiation.



Commissioner Daniel J. Bellegarde listens to an Elder during the Cold Lake Cree Nation and Canoe Lake Cree Nation community session.

Should the parties be unable to do so, the panel of Commissioners for the inquiry defines the issues to be resolved. Unless it appears that the claim can be resolved at this stage, a staff visit to the community will be organized at which Commission staff will explain ICC's process to the community, meet with Elders and make arrangements for the community session.

The Commission believes that a First Nation's oral traditions and oral history provide important sources of information to supplement the written record of a claim. This belief was incorporated into its inquiry process from the start, and is most evident during the community session, when the panel of Commissioners for an inquiry, along with staff, visit a First Nation's community to hear from Elders and other community members regarding the claim. The oral evidence collected during the community session becomes part of the official record of the inquiry and of the community's written history, making it more accessible to the community itself and ensuring its preservation. This ICC initiative regarding oral history was in advance of the Supreme Court of Canada's decision, *Delgamuukw* (1997), which stated that First Nation's oral history should be placed on an equal footing with written history.

Following the community session, legal counsel for the parties provide the Commission with written submissions on facts and law, followed by oral hearings. As is the case with oral evidence gathered in the community session, oral submissions to the panel of Commissioners are recorded and transcribed and added to the record of the inquiry. These submissions

#### Since 1991:

ICC has completed 72 inquiries (with reports)

ICC has participated in over 170 claims (13 per cent of all known specific claims)

52 per cent of the claims ICC recommended be accepted for negotiation were accepted by the Minister of INAC

ICC has conducted 238 planning conferences, 106 staff visits and 83 community sessions have been held

5,355 km is the farthest Commissioners and staff have travelled to reach a First Nation community

ICC has travelled to Alberta, British Columbia, Manitoba, New Brunswick, Ontario, Quebec, Saskatchewan, and Yukon

assist the panel to decide whether there is an outstanding legal obligation to the First Nation. Expert evidence may be brought by either party within the course of an inquiry. Typically, a written report must precede an oral hearing of an expert witness.

The end result of the Commission's inquiry process is a report containing a historical background on relevant facts related to the claim, the panel's analysis of all the evidence presented, as well as its findings and recommendations to the Minister of Indian Affairs. The recommendations are not binding on either party, but can motivate government to negotiate the settlement of a claim. The ICC's statistics reveal that 14 per cent of claims are accepted for negotiation while the inquiry is underway. Whatever the outcome, the ICC's inquiry reports are a source of documentary evidence for both parties and for the general public.



Commissioners Jane Dickson-Gilmore, Sheila G. Purdy and Alan C. Holman listen to the evidence presented at the Carry the Kettle First Nation community session.

## Mediation

Many of the Commission's successes have been achieved through mediation/facilitation. It was realized early in the Commission's history that, with the help of an impartial mediator, open discussions among the parties involved in a specific claim led to a greater understanding of issues. Solutions that are acceptable to all the parties are more likely to be found in this atmosphere.

The Commission provides facilitative mediation services, which are culturally sensitive, informal, non-threatening and flexible, at any stage of the claims process – even before a claim is filed. The process begins when both the First Nation and the Government of Canada agree to the ICC providing mediation services. The ICC mediator will then meet with the parties to review and discuss the different types of mediation and facilitation services available. The Commission's goal is to help Canada and the First Nation arrive at a shared

### Mediation Facts

Biggest claim in terms of compensation – Kahkewistahaw First Nation's 1907 surrender claim for \$94.65 million in federal compensation

Smallest claim in terms of compensation – Blood Tribe/Kainaiwa's Akers surrender claim for \$3.55 million in compensation

Number of current mediation/facilitation files – 26

By the end of 2006, the ICC had provided mediation services at more than 950 negotiation meetings

understanding and agreement as to how the mediation process will be conducted. This innovative method ensures

## ICC'S MEDIATION PROCESS

<b>STAGE 1</b>	<b>Preparation for Mediation</b>  The Commission reviews the claim being negotiated and brings representatives of the negotiating parties together face-to-face to discuss the issues and terms of the negotiation and mediation protocol agreements.
<b>STAGE 2</b>	<b>Negotiation Process</b>  The Commission facilitates discussions on compensation, assists the parties by coordinating the gathering of information including land appraisals and joint loss of use studies, and monitors the parties' decisions and undertakings.
<b>STAGE 3</b>	<b>Settlement</b>  When and after the negotiating parties reach an agreement in principle, lawyers for the First Nation and Canada work together to draft a final settlement agreement which is initialled by the negotiators and ratified by both parties.
<b>STAGE 4</b>	<b>Final Mediation Report</b>  The Commission reports to the federal government, the First Nation and the public on the outcome of the negotiation.



Former Indian Affairs Minister Robert Nault and Chief Louis Taypotat sign the Kahkewistahaw First Nation's settlement agreement in June 2003. The Commission conducted an inquiry into the First Nation's 1907 surrender claim and provided mediation services after the claim was accepted for negotiation.

that the process fits the unique circumstances of each particular negotiation. The process can include:

- arranging for and chairing negotiation meetings;
- coordinating joint studies (e.g., loss-of-use studies);
- monitoring the parties' decisions and following up on their undertakings; and
- providing or arranging for mediation on specific issues when the parties have reached an impasse.



The oral testimony of an Elder from the James Smith Cree Nation is recorded.

The Commission has provided mediation/facilitation services on 52 files since its creation in 1991. The ICC's mediation services have facilitated the speedy settlement of claims, avoiding costly and lengthy court processes.

## ICC's Guiding Principles

1. Independence and impartiality
2. Fairness and natural justice
3. Openness and transparency
4. Importance of oral history

The ICC is a neutral body, which favours neither party. Its impartiality has always been an essential attribute. Both Commissioners and staff strive to ensure that neutrality is more than simply a watchword, that all keep an open mind during each stage of an inquiry or mediation. This position is equally vital during a mediation. Without our impartiality and independence, our attempts to bring parties together to reach a satisfactory agreement – to mediate effectively – would be fruitless.

The Commission is not an advocate for any party, even though it is a promoter of broader education on land claims. The ICC increases public awareness of the issues involved in specific claims through its publications and its website, as well as various speaking engagements by Commissioners and staff. The Commission has also appeared several times before parliamentary committees to report on our work and respond to questions from Members of Parliament and Senators. It most recently appeared before the Standing Senate Committee on Aboriginal Peoples, on November 1, 2006 (see associated article on page 9).

The ICC is an independent commission of inquiry, responsible for its own budget, and must produce its own reports to Parliament. Governed by the *Inquiries Act*, it reports to Parliament through the Minister of Indian Affairs, who is designated as the appropriate minister under the *Financial Administration Act* since July 2004. However, the ICC maintains its independence and autonomy by having its corporate services provided by the Canadian Human Rights Commission.

## ICC Contributions to Policy and Law

The ICC has made considerable contributions to the specific land claims process over the past 15 years, some of which have led to fundamental changes to Canadian law and policy. Even when the Commission's recommendations in an inquiry are not accepted, its work may lead the government to re-examine its policy or its position on the issues in a claim.

The Commission's acceptance of oral history and tradition as an integral part of its process, which preceded the Supreme Court's 1997 decision on *Delgamuukw*, is not the only example of the Commission's contribution to policy and law. Another ICC innovation led to a reversal of government policy regarding treaty land entitlement (TLE). Following the ICC's 1995 recommendation in the case of the Fort McKay First Nation TLE inquiry, the way of counting the number of Indians in a given band was changed to include not just the population as of the date of first survey but also people who transferred from other bands, people who married into the band, or people who were absent. The previous policy did not take into account the migration that once marked the nomadic way of life of Aboriginal people. As a result, some treaty Indians had never had land set aside for them in a

treaty land entitlement calculation for a band. Thanks to the Commission's findings in the Fort McKay First Nation inquiry, Canada reconsidered its position on TLE validation criteria.

*Thanks to the Commission's findings in the Fort McKay First Nation inquiry, Canada reconsidered its position on TLE validation criteria.*

This year, work has continued on a project which will benefit everyone involved in specific claims research. The Commission is creating summaries of all its inquiry and mediation reports. These summaries will be paired with a key word index, which will allow users to locate the subject they're interested in and find all ICC reports on the subject. Users can then read the summaries of these reports and decide whether they wish to consult the complete report. The final result will be a web tool providing easier access to the wealth of historical and legal information and analysis in ICC reports. It should prove useful to parties before the Commission (First Nations and Canada),



Glenbow Archives NA-2974-18, Chipewyan encampment, Fort McKay, AB.

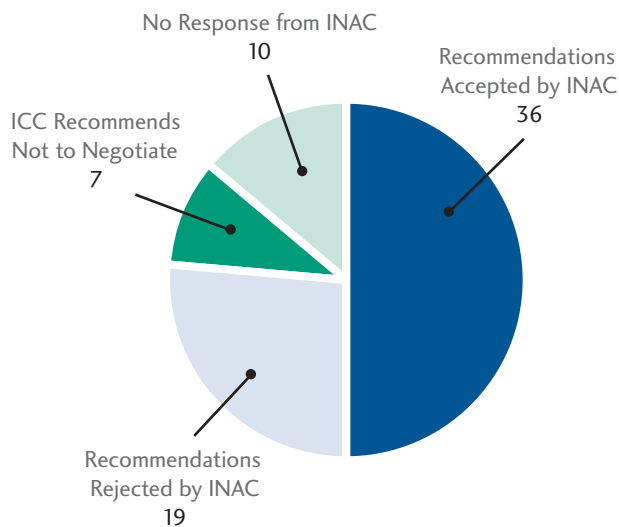
The ICC's recommendation in the Fort McKay inquiry caused a reversal in the government's treaty land entitlement policy.

researchers, policy-makers, the legal community and interested parties. This tool is sure to promote a greater appreciation of the Commission's work and will help disseminate information about specific claims.

## Our Results Speak for Themselves

The ICC's processes are effective. During the past 15 years, the Commission has participated in over 170 claims. This substantial number represents at least 13 per cent of all known specific claims. The Commission has completed more than half of the total requests for inquiry it received since its creation in 1991. What is also significant is that the Minister of Indian and Northern Affairs Canada has accepted 52 per cent of claims the Commission recommended be accepted for negotiation. What's more, 32 per cent of the claims for which the ICC provided mediation/facilitation services were settled through mediation between 1998 and 2006.

## GOVERNMENT RESPONSES TO ICC RECOMMENDATIONS, 1991-2007



Since it was launched in 1996, our website – a valuable resource with a wealth of information about specific claims – has received an average of over 70,000 hits per year. Last year alone, over 90,000 hits were recorded. Over the summer, the site was modified and its search function was greatly improved. Anyone interested in specific claims should visit the site and subscribe to the new “Email Alerts” program at [www.indianclaims.ca/services/default-en.asp](http://www.indianclaims.ca/services/default-en.asp), to receive up to date information on publications and ICC news.

## GET THE FACTS ON CLAIMS

What are Indian land claims? What is a TLE claim? What is a surrender claim?



How many times have you found yourself trying to provide quick, accurate answers to these questions? Specific claims are based on history, law and policy and are often complex. The Indian Claims Commission has a series of fact sheets called “The Facts on Claims” to explain the basics behind specific claims. They are available free of charge, as are all the Commission's publications, as a useful public education tool for any organization or First Nation with an interest in claims.

If you're looking for information about the Indian Claims Commission, check out the “Information Guide: Fairness in Claims Negotiations.” This publication provides information about the role and mandate of the Commission and of the history behind its creation. The Guide also contains explanations of the Commission's inquiry and mediation processes and has a “Frequently Asked Questions” section.

To get the Facts on Claims or the Information Guide, call (613) 943-2737 or download them from our website at <http://www.indianclaims.ca/publications/justthefacts-en.asp>.



# INDIAN CLAIMS COMMISSION APPEARS BEFORE STANDING SENATE COMMITTEE

On November 1, 2006, Chief Commissioner Renée Dupuis appeared before the Standing Senate Committee on Aboriginal Peoples, which was charged with conducting a special study of specific claims and the federal government's process for examining them. The committee was asked to identify the cause of delays in the process, as well as to recommend ways to improve how these claims are dealt with. Part of this study included a review of the Indian Claims Commission's present and future role in light of the federal government's decision not to proclaim the *Specific Claims Resolution Act*.



Chief Commissioner Renée Dupuis

The Commission was invited to put its experience regarding the specific claims process at the disposal of the committee members – as it has been honoured to do over the years.

The Chief Commissioner began by explaining the ICC's mandate and its work to the committee members. She also spoke at length on ICC's operating principles of independence and impartiality, fairness and natural justice, openness and transparency and the importance of oral history.

Since it began this study in May 2006, the committee heard from a number of witnesses who have offered various suggestions to improve the claims process. The Chief Commissioner presented three of the ICC's ideas for a better claims process, based on its observations over the past 15 years.

1. A better application of the precedents and principles that have been generated through 30 years of settling specific claims. Over 270 specific claims have been settled, and it would be possible to assess groupings of these claims, such

as: treaty rights, flooding claims, claims regarding rights of way over land, surrender claims, or treaty land entitlements.

2. Increased use of mediation, not only for claims which have been accepted and which are in the negotiation process, but also for claims at any stage of the process.
3. Some additional resources in the system – for First Nations to conduct research, prepare their claims, and negotiate accepted claims; for officials in Indian and Northern Affairs Canada and the Department of Justice to process claims that are submitted more quickly; and for the Commission in order to carry out our mandate for inquiries and mediations.

Members of the committee were searching for a model to improve the settlement of claims. One member said that what stood out about the Commission is that its process has the confidence of all the parties. Could the Commission's process serve as a model to improve the settlement of claims?



Library of Parliament / Bibliothèque du Parlement - Marc Fowler

The Standing Senate Committee on Aboriginal Peoples conducted a study on the specific claims process, and released its report in December 2006.

*It is very clear that the Commission could be extremely busy with its mediation services alone.*

*- Chief Commissioner Renée Dupuis*

The Chief Commissioner pointed to the success the ICC has had with its process and with its guiding principles. She asserted that there is much in the Commission's process that should be maintained and could be expanded. She made particular mention of the Commission's community sessions and its encouragement of joint research between the parties.

The ICC has a twofold mandate: to inquire into rejected specific claims or into accepted claims in which a dispute has arisen over compensation criteria; and to offer mediation services to specific claims negotiation tables. The mediation part of the Commission's mandate interested the members of the committee. Under its current mandate, the committee asked, could ICC offer its mediation service for claims that are the subject of high-profile reclamations, such as Ipperwash and Caledonia?

The Chief Commissioner emphasized that, according to the Commission's mandate, mediation can be offered *at any stage of the specific claims process*. "What we have observed during our 15 years of experience, is that the mediation mandate is not limited to a claim that has been rejected or accepted." An examination of the ICC's terms of reference reveals few limitations to the situations in which the Commission can be involved as a mediator/facilitator – all that is required is a request for ICC mediation and the consent of both parties. Mme Dupuis noted: "It is very clear that the Commission could be extremely busy with its mediation services alone."

The Senate committee's meetings concluded in November 2006, and a final report which is available on its website was published in December.

## ANNUAL REPORT 2005-2006 TABLED IN HOUSE OF COMMONS

The ICC's most recent annual report, for the year 2005-2006, was tabled in the House of Commons on November 3, 2006. Since its inception, the Commission, as it is mandated to do, has used its annual report to recommend improvements to the specific claims process to the government. This report contains two such recommendations.



Cover of ICC's  
2005-2006 Annual Report.

The first asks the federal government to give priority to the creation of an independent tribunal for specific claims resolution, but that it do so in consultation with First Nations. The report outlines the various attempts to create such a body through joint working groups, parliamentary committees and legislation. The second recommends that the Minister of Indian and Northern Affairs Canada encourage the use of the Commission's mediation and facilitation services at any stage of the specific claims process. The Commission has noticed over the years that, if its mediation services are used before a claim is accepted for negotiation, a resolution may be timely. The report further recommends that ICC mediation services should be used as soon as a claim is submitted to the Minister and throughout the specific claims process.

During 2005-2006, work was completed on three inquiries – on claims from the Blueberry River First Nation and Doig River First Nation, the Taku River Tlingit First Nation, and the Williams Lake Indian Band. The Commission also published five mediation reports on the Blood Tribe/Kainaiwa, Akers surrender; the Chippewas of the Thames First Nation, Clench defalcation; the Keeseekoowenin First Nation, 1906 land claim; the Qu'Appelle Valley Indian Development Authority, flooding claim; and the Touchwood Agency mismanagement (1920–24) claim. These mediation files were completed in the 2004–2005 fiscal year.

A highlight of the year was the ICC's appearance before the House of Commons Standing Committee on Aboriginal Affairs and Northern Development (AANO) on November 15, 2005. AANO's members were interested in oral history and concerned about delays in settling claims. They also wanted to know about the Commission's operations and its staff, and showed interest in the ICC's success with its mediation process.

The *2005-2006 Annual Report* is available on-line at [www.indianclaims.ca/publications/annualreports-en.asp](http://www.indianclaims.ca/publications/annualreports-en.asp).

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## RESEARCH UNIT HELPS TELL THE STORY BEHIND THE INQUIRY

The ICC is divided into five departments, or units, which support the Commissioners in fulfilling its mandate. The nine-member Research Unit (which is part of the larger Legal/Research Unit) works with ICC's legal counsel to compile the documentary record and write the history of specific claims within the Commission's inquiry process. "The Research Unit is the engine room for the ICC," says the Unit's Manager, John Hay. "Every inquiry has a unique story to tell. Our researchers write the history of the claims for the guidance of the Commissioners, the lawyers, the First Nations and the general public."

Commission Counsel John Edmond oversees the work of the Legal/Research Unit. He says specific claims research is meticulous and painstaking work. "ICC researchers must often comb through thousands of documents submitted by the parties to the inquiry, Canada and the First Nation. They compile and organize, fitting the pieces together, making sure there are no gaps, before they even start to write the history of a claim." This work requires a keen eye and a historian's training.

Eventually, the details from the submitted documents, which sometimes cover a period of 100 years or more, are linked together in a fully footnoted narrative of the First Nation's history.

### A Second Look

Once the Commission has agreed to conduct an inquiry, it asks the parties for all the supporting documents that were reviewed by the Specific Claims Branch at Indian and Northern Affairs Canada during its initial consideration of the claim. The work of ICC's Research Unit begins with this material.

The submitted material might consist of primary source documents, such as historical correspondence, maps, treaty annuity paylists and surrender agreements. Secondary source material, such as research reports or other relevant



ICC's Research Unit. Back row, left to right: Mike Murphy, John Hay, Hugh Stevenson, Matt Armstrong, Ryan Murphy. Front row, left to right: Nicole Edwards, Sara Wallace, Stephanie Phillips (absent: Raymond Binda).

publications, might also be included to provide a broader context of circumstances and events. During the course of an inquiry, the documentary record is usually supplemented with additional material, such as evidence from experts or transcripts of Elders' testimony at ICC community sessions.



Elders and community members testify at the Williams Lake First Nation community session. Oral history and traditions supplement the documentary record.

## Paper Trail

Once the submissions are received, the Research Unit begins to examine each item and organize them in a chronological order. "There can be hundreds, and sometimes thousands, of historical documents in an inquiry," says Researcher Matt Armstrong. "By the time our work is complete, we have read each and every document numerous times, and some of the documents are in such bad condition you need a magnifying glass to read them." Mr Armstrong says that, despite the sheer volume of documents received for each inquiry, the Unit's researchers do not become discouraged. "Every document we receive helps us form a more complete picture of the events as they unfolded. As historical researchers, it is our duty to answer the question, 'What happened?' as best we can."

Not all the documents received from the parties are properly referenced. Consequently, ICC researchers spend quite a bit of time hunting down sources and documents at various archives and libraries. Researcher Sara Wallace is currently trying to find the source of a document submitted without any archival references. "That's when your historical training comes in: how to use the archives, knowing which repository the document can be found in." Ms Wallace says that although researchers analyze the documents, their analysis stops short of making conclusions. "It's not our job to

interpret the documents. We provide the panel of Commissioners for the inquiry with a documentary record that is well organized and authenticated."

The role of the Research Unit is to ensure that the historic record is as complete and comprehensive as possible. If gaps in the evidence are identified, a joint research project is often suggested to the parties and coordinated by the unit. "Research, undertaken by third-party contractors on behalf of both parties in an inquiry, is usually preferred," says John Hay. "In that way, both parties are more likely to accept the results, avoiding the need for rebuttal research."

*Every inquiry has a unique story to tell. Our researchers write the history of the claims for the guidance of the Commissioners, the lawyers, the First Nations and the general public.*

*- John Hay, Research Manager*

Once the documentation has been collected and organized, the Research Unit is responsible for drafting the historical background on the claim. In some cases it may be the first time that a comprehensive history of the event is set to paper. "It's our job to take several decades (or more) of records and turn them into something that all the parties can use, taking many different voices into account when writing the story of the claim," says Stephanie Phillips. "Making sure the Commissioners are fully informed when it comes to making their recommendation is a big responsibility."



A community member makes reference to a map during his testimony at the Betsiamites First Nation community session. The information presented during community sessions helps Commissioners and staff better understand the issues relating to the claim.

## The Importance of Neutrality

One of the Commission's guiding principles is to maintain its neutrality at all stages of an inquiry. Maintaining a neutral position is important to all the researchers and their work contributes to it by identifying the facts of an inquiry. These facts are compiled in a historical narrative that is presented to the panel of Commissioners for the inquiry, without the researcher's interpretation of the significance of the material. As Nicole Edwards notes, "We must identify the 'who,' 'what,' 'when,' 'where' and 'why' of the claim but we must refrain from judging if the 'why' was right or wrong. Even if the documents themselves are not neutral, the historical narrative prepared by the researchers must be."

*Maintaining a neutral position is important to all the researchers and their work contributes to it by identifying the facts of an inquiry.*

"One of the benefits of an ICC inquiry is that the parties work together to resolve grievances and find solutions," says researcher Stephanie Phillips. "This can only be achieved if everyone who participates feels that the Commission is neutral, that its process is fair, that everyone can be heard and that all views have equal importance."

## The Digital Age

Once the record is organized, an annotated index of the historical documents is prepared by the ICC's researchers. This index serves as a reference tool for the Commissioners, the parties involved in the inquiry and their legal counsel. The process used to create this index has remained essentially the same since 1992, when the first three researchers were hired by the Commission. However, the ICC's annotated indices and exhibits are now distributed to the parties on CD-ROM, with links to scanned images of the documents.

The ICC was ahead of its time in developing a way of putting all the documents, reports, transcripts, audio and visual evidence, such as videos, which comprise the official record of

an inquiry, onto user-friendly CD-ROMs. This is a major change from the Commission's early days when all the documentation was photocopied and sent to the parties. "We went from data base entry into this CD project," reports one of the ICC's four research technicians. "As technology advanced, our process has evolved from being paper-oriented to providing digital images of the documentary record on CD-ROMs, accessible through electronic links embedded in the indices."

The process of putting all these pieces of evidence on CD-ROMs is long and involved. The technicians have even encountered some problems that the software manufacturers were not aware of. However, as the research technicians say, "We've had to create our own solutions – but, as a group, we've solved everything that's been thrown at us."

## Oral History and Community Sessions

In 1997, the Supreme Court of Canada stated in the *Delgamuukw* decision that oral history should be "placed on an equal footing" with written history. The Court noted that it would put an "impossible burden of proof" on Aboriginal peoples if the Court did not consider oral history since that was the way First Nations kept records. The Commission has included oral history and tradition as part of its inquiry process since its creation in 1991. During the community sessions, Commissioners and staff travel to a First Nation community to hear from Elders and other members of the community.

Research Manager John Hay notes: "Those accounts of historic events passed down by the Elders to succeeding generations can provide an important balance to government records."

Commission Counsel John Edmond is also impressed by the clarity of Elders' recitations, which he says "are much richer, and more clearly remembered, than you'd find among the general population." He notes that community sessions are a valuable opportunity to "hear stories you would never have heard otherwise, learn the historical background and connect the documents with what you've heard."

Nicole Edwards says community sessions are the most challenging aspect of the job, but that they offer the



Community sessions allow Commissioners and staff access to the oral history related to the claim. Commissioner Alan C. Holman (right) and Daniel J. Bellegarde listen to Elders and community members during the Williams Lake First Nation community session.

researchers valuable access to the oral history related to the claim. “We use the oral testimony we have heard at a community session when we create the inquiry’s historical record. We treat the oral evidence with respect, never paraphrasing the Elders or the community members – letting them speak for themselves. In this way we can add to the historical record while remaining neutral.”

*Community sessions are a valuable opportunity to hear stories you would never have heard otherwise, learn the historical background and connect the documents with what you’ve heard.*

*- Commission Counsel John Edmond*

Sara Wallace recalls the first community session she attended. “The gathering of the oral evidence is an extremely important part of the inquiry process. The communities value the recollections of their Elders as a treasure.”

She found the site tour of the claim area was also very important. “You can look at a map, but actually seeing the physical location can change your perspective.”

Giving Commissioners and government representatives a visual reference can add clarity to the inquiry. The site visit often helps them identify land and landmarks that were

previously only labels on a map. It can also serve to ground the discussions of the panel of Commissioners for the inquiry during their deliberations. At times, seeing the landmarks associated with the claim jogs the memories of Elders and

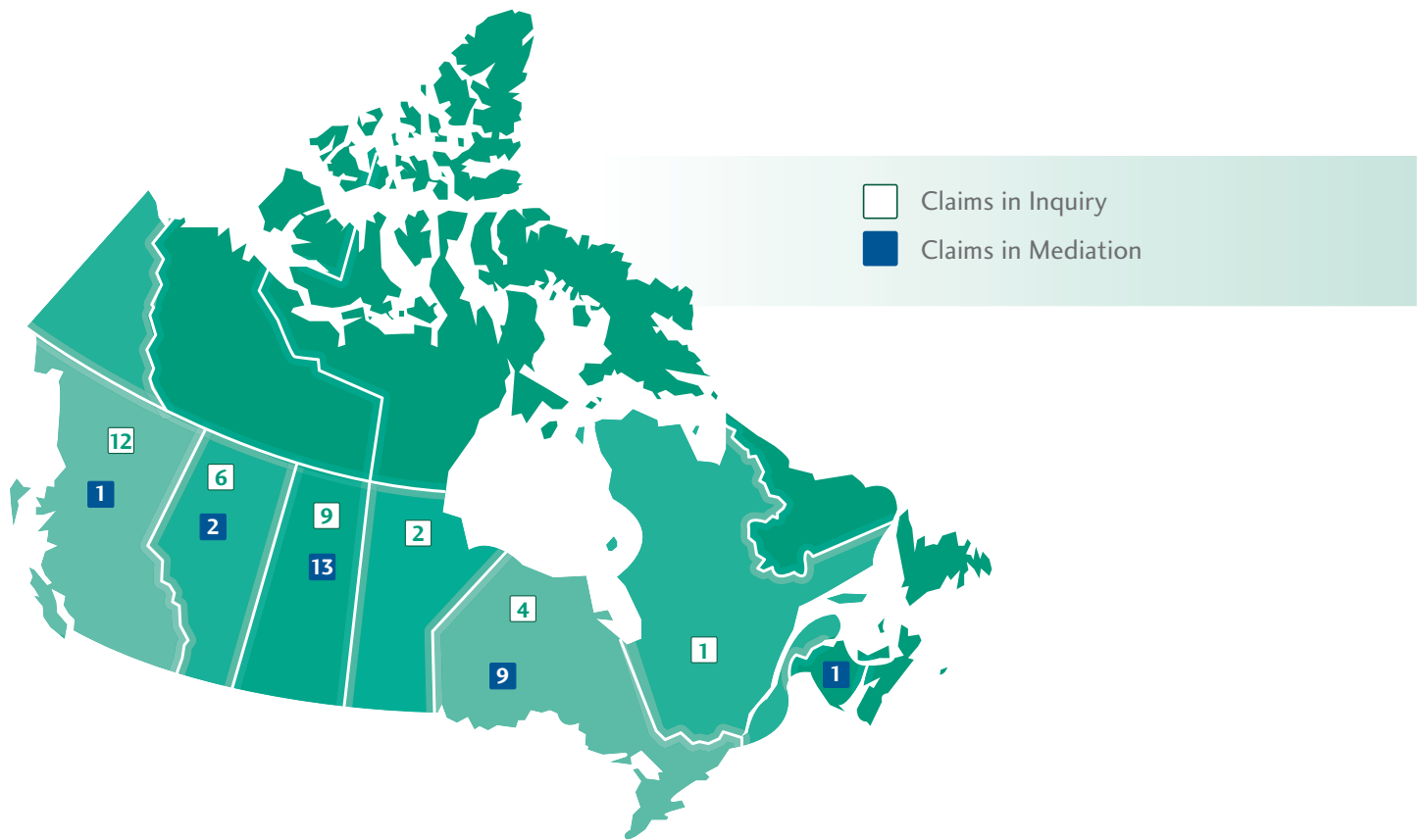


Commissioners and ICC staff members visit the sites associated with the Sturgeon Lake First Nation’s land claim.

others from the community, helping them to speak more clearly about the area when they’re giving evidence.

John Hay agrees that visiting the site can give you a different outlook. “Stepping around rattlesnakes basking among the rocks of an ancient petroform (rock circle) in the hills above the Thompson River certainly adds a perspective that you don’t get from the documents.”

# CLAIMS CURRENTLY BEFORE THE ICC



## CLAIMS WITHIN INQUIRY PROCESS

- Athabasca Chipewyan First Nation  
– Compensation criteria - agricultural benefits
- Blood Tribe/Kainaiwa – Big claim
- Blueberry River First Nation and Doig River First Nation  
– Compensation criteria - Highway right of way - IR 172 claim
- Carry the Kettle First Nation – 1905 surrender
- Chippewas of the Thames First Nation – Ontario Hydro right of way
- Esketemc First Nation – Wright’s meadow preemption claim
- Kitselas First Nation – Railway specific claim

- Lheidli T’enneh Band – Surrender Fort George IR 1
- Lower Similkameen Indian Band – Victoria, Vancouver and Eastern Railway right of way
- Lucky Man Cree Nation – Treaty land entitlement - Phase II
- Mississaugas of the New Credit First Nation  
– Crawford Purchase
- Mississaugas of the New Credit First Nation  
– Gunshot Treaty
- Muskowekwan First Nation – 1910 and 1920 surrenders
- Nadleh Whut’en Indian Band – Lejac School
- Neskonlith, Adams Lake and Little Shuswap Bands  
– Neskonlith reserve

Ocean Man First Nation – Treaty land entitlement  
 Pasqua First Nation – 1906 surrender  
 Paul Indian Band – Kapasiwin Townsite claim  
 Red Earth and Shoal Lake Cree Nations  
 – Quality of reserve lands (agriculture)  
 Roseau River Anishinabe First Nation – 1903 surrender  
 Sakimay First Nation – Treaty land entitlement shortfall  
 Sandy Bay Ojibway First Nation – Treaty land entitlement  
 Saulteau First Nation  
 – Treaty land entitlement and land in severalty claims  
 Siksika Nation – 1910 surrender  
 Stanjikoming First Nation – Treaty land entitlement  
 Stó:lō Nation – Douglas reserves  
 Sturgeon Lake First Nation – 1913 surrender  
 Touchwood Agency Tribal Council (Five First Nations)  
 – Mismanagement claim - compensation criteria  
 Treaty 8 Tribal Association (Seven First Nations)  
 – Consolidated annuity claim  
 Tsawwassen First Nation – English Bluffs specific claim  
 U'mista Cultural Centre – Prohibition of the potlatch  
 Whitefish Lake First Nation – Agricultural benefits pursuant  
 to Treaty 8: compensation criteria  
 Whitefish Lake First Nation – Agricultural benefits pursuant  
 to Treaty 8: historic claim  
 Wolf Lake First Nation – Reserve lands

*\* Some of these claims, while still the subject of an ICC inquiry, are in abeyance.*

## CLAIMS IN MEDIATION/ FACILITATION

Blood Tribe/Kainaiwa – Cattle claim  
 Chippewa Tri-Council  
 – Coldwater-Narrows reservation claim  
 Cote First Nation – Pilot project  
 Cote First Nation – 1905-07-13-14 surrenders claim  
 Cowessess First Nation – Flooding claim  
 Fort William First Nation – Boundary claim  
 Fort Pelly Agency – Pelly Haylands claim  
 Fort William First Nation – Pilot project  
 George Gordon First Nation – Treaty land entitlement  
 Lac Seul First Nation – Flooding claim  
 Metepenagiag Mi'kmaq Nation  
 – Hosford Lot and Indian Reserve 7 claim  
 Michipicoten First Nation – Pilot project  
 Missanabie Cree First Nation – Treaty land entitlement  
 Mississaugas of the New Credit First Nation  
 – Toronto Purchase claim  
 Mohawk Council of Akwesasne – Dundee claim  
 Mohawks of the Bay of Quinte – Culbertson Tract  
 Muscowpetung First Nation – Flooding claim  
 Muskoday First Nation – Treaty land entitlement  
 Nekaneet First Nation – Treaty benefits  
 Pasqua First Nation – Flooding claim  
 Pasqua First Nation – Treaty land entitlement claim  
 Sakimay First Nation – Flooding claim  
 Sakimay First Nation – Treaty land entitlement claim  
 Siksika Nation – Castle Mountain claim  
 Skway First Nation – Schweyey Road claim  
 Sturgeon Lake First Nation – Treaty land entitlement

*\* Some of these claims, while still the subject of an ICC mediation, are on hold.*