



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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ICC REPORTS ON THUNDERCHILD MEDIATION



Former Chief Winston Weekusk and Chief Federal Negotiator Silas Halyk sign the Thunderchild First Nation's settlement agreement. Thunderchild First Nation members voted to ratify the settlement on September 4, 2003. The deal was concluded on October 2, 2003, when then Minister of Indian Affairs Robert Nault visited the community and took part in the official signing ceremony.

The Indian Claims Commission released its mediation report on the Thunderchild First Nation's 1908 surrender claim on July 19, 2004. The claim took over 10 years to resolve, from the date it was accepted for negotiation until the settlement agreement was signed. Nevertheless, using the Commission's facilitation and mediation services, Canada and the First Nation were able to negotiate a settlement that will give the Thunderchild community a better future.

In February 1986, the Thunderchild First Nation submitted a claim under the Specific Claims Policy, which alleged that the 1908 surrender of Indian Reserves (IR) 112A, 115, and 115A was null and void.



Glenbow Archives NA-936-25

Chief Thunderchild wearing Treaty 6 coat and medals.

During the late 1880s, IR 115, IR 115A and half of IR 112A, consisting of 10,572 acres, were set aside for the use of the Thunderchild First Nation. The lands were ideally suited for farming and the First Nation's members quickly made the transition to an agricultural lifestyle. By 1903, the value of the reserve lands had been enhanced by the construction of the main line of the Canadian Northern Railway through IR 115. Shortly after the construction of the railway, the Thunderchild First Nation began to feel pressure from local officials to surrender the lands and move further north. Because of the value of the land, local politicians, business owners, settlers and clergy lobbied the Department of Indian Affairs to obtain the First Nation's surrender of the lands, and in 1907, the local Indian Agent was ordered to obtain a surrender from the Band. These initial attempts were, however, unsuccessful.

In 1908, pressure on the Thunderchild First Nation remained strong, and the local Indian Agent was told to revive efforts to obtain a surrender. That August, local Indian Affairs officials offered the First Nation rations for a full year as well as a cash payment. The meetings with the First Nation took place over two days, during which three or four votes were taken that did not lead to a surrender. Eventually, a surrender was obtained by the narrow margin of one ballot. At the time of these votes, the location of a reserve to replace the one surrendered was undetermined; the selection of replacement lands was made after the surrender.

The Thunderchild Band was forced to relocate to the site of its new reserve, IR 155B, situated about 113 kilometres northwest of the Battlefords. The new reserve consisted of rugged terrain with largely non-arable, extremely rocky soil, unsuitable for agricultural development, leaving the Band with extremely limited economic opportunities.

In February 1986, the First Nation submitted its claim to the Specific Claims Branch of Indian Affairs. Canada recognized it had breached its lawful obligation to the Band, and the claim was accepted for negotiation in July 1993. As the process of negotiation began, the parties agreed to use the Commission's facilitation services. In July 1996, the negotiations reached an impasse and the Commission was asked to inquire into the fairest way to quantify the loss of use of the land under the compensation rules of Canada's Specific Claims Policy. The

negotiations were resumed in December 1996 and for the next three years the discussion continued.

The mediation and facilitation services provided by the Commission focused entirely on matters relating to process. The Commission's role was to chair the negotiation sessions, provide an accurate record of the discussions, follow up on undertakings and consult with the parties to establish mutually acceptable agendas, venues and times. Studies supporting the negotiations, included a forestry loss-of-use study and mineral valuation study, both of which were conducted to provide the information required to value the claim.

The Chief Commissioner also encourages negotiating parties to take advantage of the Commission's experience in coordinating studies...

In October 2001, a federal negotiator invited the Thunderchild First Nation to put together a settlement proposal. The First Nation came back with a proposed settlement in January 2002. Over the next few months, offers and counter-offers were exchanged between Canada and the First Nation. In October 2002, a final offer was given to the Thunderchild First Nation, which members of the community voted to ratify in September 2003. A signing ceremony was held in October.

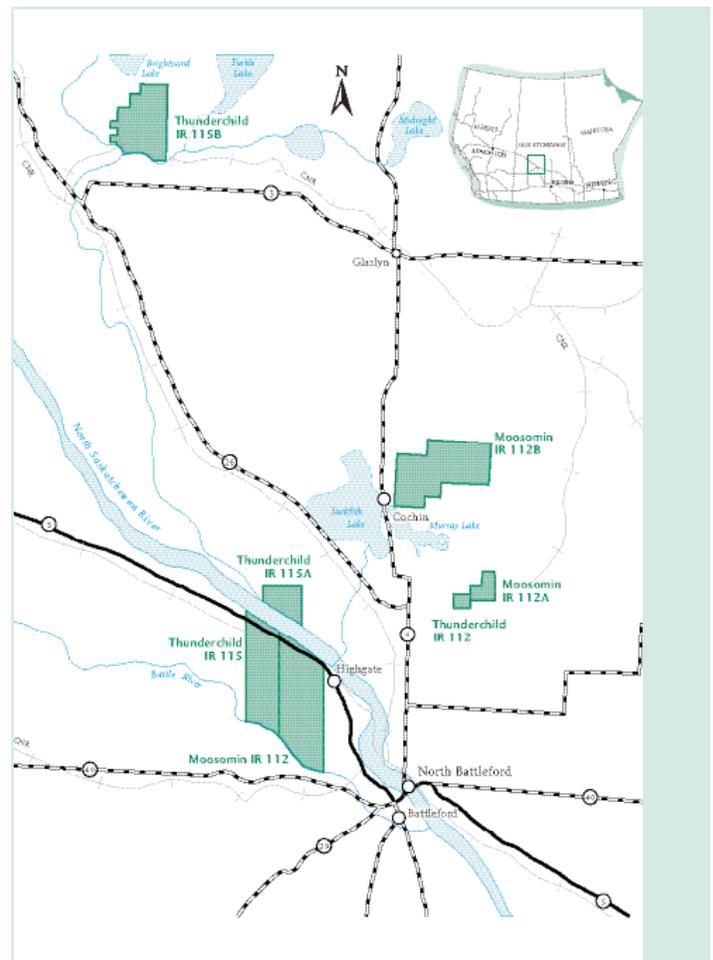
In the report, Chief Commissioner Renée Dupuis makes a number of observations and recommendations aimed at making the process easier for future claims negotiations. She notes the high turnover rates in negotiators and legal counsel, "an ongoing problem that continues to plague the process," pointing out that Thunderchild First Nation representatives had to deal with four different federal negotiators and four different Justice Department lawyers over the course of the negotiations.

Madame Dupuis advises parties in negotiation to take their time at the start of the process to review the vast amount of work already done on similar past claims in order to

determine what additional study needs to be done, rather than to conduct "unnecessary, overlapping, and expensive work." This would shorten the negotiation process and save money for both the parties and Canadian taxpayers.

The Chief Commissioner also encourages negotiating parties to take advantage of the Commission's experience in coordinating studies, a cost-effective service that can provide added value to the overall process.

The settlement provides \$53 million in compensation to the Thunderchild First Nation, which will be put in trust as a long-term asset for the benefit of the community. The Thunderchild First Nation is permitted to acquire 5,000 acres of land to be set apart as a reserve within 15 years of the settlement and subject to Indian and Northern Affairs' Additions to Reserve Policy.



This map shows the location of the Moosomin (see story on page 4) and Thunderchild First Nations' reserves.



Glenbow Archives NA-2386-1

Cree at Moosomin Reserve in Saskatchewan.

MOOSOMIN CLAIM RESOLVED

On July 19, 2004, the Indian Claims Commission (ICC) released its mediation report on the Moosomin First Nation's 1909 reserve land surrender claim. Using the ICC's mediation services, the federal government and the Moosomin First Nation negotiated a settlement on the claim, which was signed in October 2003. The settlement included \$41 million in compensation, which was put into a trust account for the community.

The Chief Commissioner of the ICC, Renée Dupuis, says she is pleased that the Commission was a part of resolving a claim that dated to 1909. "The fact that the parties were able to arrive at a settlement by availing themselves of the ICC's mediation services is very gratifying."

The claim involved the surrender of Moosomin Indian Reserves (IR) 112 and 112A on May 7, 1909, in exchange for

a reserve farther north, near Cochin, Saskatchewan. The Moosomin First Nation claimed that the surrender was invalid because the Band's consent to the surrender did not comply with the requirements of the *Indian Act* and the Crown did not fulfill its fiduciary obligations in relation to that surrender.

Between 1902 and 1907, local settlers and politicians petitioned the Department of Indian Affairs to have the rich agricultural lands in the Moosomin Reserve on the North Saskatchewan River near Battleford opened up for settlement, but the Moosomin Band twice emphatically refused to surrender any of these lands. In January 1909, a letter of petition, purporting to represent the views of 22 members of the Moosomin Band, proposed the surrender of the reserve on certain terms. Curiously, not a single member of the Band actually signed or affixed his mark to the

document as an expression of an intention to surrender the reserve. This letter prompted local clergymen and Indian Affairs' officials to renew their efforts to secure a surrender of both of the Band's reserves on less favourable terms. Indian Agent J.P.G. Day went to the Moosomin Reserve on May 7, 1909, with \$20,000 in cash to be distributed to the Band if it agreed to a surrender.

Crown officials deliberately set out to use their authority and influence to subordinate the interests of the Moosomin Band to those of settlers, clergymen and local politicians...

In this third and largely undocumented attempt by Canada to obtain the surrender, Moosomin band members apparently surrendered 15,360 acres of the best agricultural land in Saskatchewan in exchange for a reserve that the department itself later described as hilly, stony, and practically useless. Even though the department's records are replete with information on virtually every other subject involving the Band, there are no details from Agent Day about any surrender meeting or discussions, and there is no record of the votes cast.

In July 1986, the Moosomin First Nation submitted a claim under Canada's Specific Claims Policy asserting that the 1909 surrender was invalid because Canada had not met the legal requirements for a valid surrender. The claim was rejected by the Specific Claims Branch of Indian Affairs in March 1995. Three months later, the Moosomin First Nation requested that the Commission conduct an inquiry into the claim.

In its inquiry report, released in March 1997, the ICC concluded that Canada had breached its fiduciary obligations in securing the surrender of the Moosomin reserve lands because the Crown failed to respect the Band's decision-making autonomy and, instead, took

advantage of its position of authority by unduly influencing the Band to surrender its land. Crown officials deliberately set out to use their authority and influence to subordinate the interests of the Moosomin Band to those of settlers, clergymen and local politicians, who had long sought the removal of the Indians and the sale of their reserves. The Crown failed to meet its fiduciary duty to exercise its power and discretion in a conscientious manner. The Commission found that the surrender was foolish, improvident and exploitative, both in the process and in the end result.



Saskatchewan Archives Board R-A16817

The Moosomin First Nation was named after Chief Moosomin, who led the band from approximately 1884 to 1902. Following his death, the band was left without a chief recognized by Indian Affairs until 1909.

As a result, at the end of the inquiry, the claim was accepted for negotiation by Canada in December 1997. In 2000, after the parties had encountered some difficulties in the discussions, the First Nation asked the ICC to provide facilitation services. With the agreement of the negotiating parties, the Commission chaired the negotiation sessions, provided an accurate record of the discussions, followed up on undertakings, and consulted with the parties to establish mutually acceptable agendas, venues and times for meetings. Following complicated and intense negotiations, delays and several months of offers and counter-offers between the negotiating parties, a tentative agreement was reached in May 2002. Members of the Moosomin First Nation voted to ratify their settlement in September 2003 and a signing ceremony was held in October 2003.

The report makes two recommendations to parties contemplating similar negotiations. The first is that the Commission's mediation services be used right from the start of a negotiation, rather than waiting until discussions are floundering and on the verge of collapse. The second is that parties take the time to review research conducted in past claims before embarking on new studies in order to avoid costly and time-consuming duplication. "The end result," says

the report, "would almost certainly be a shorter negotiation process and an earlier settlement, at considerably less cost to the First Nation, Canada, and Canadian taxpayers."

"The fact that the parties were able to arrive at a settlement by availing themselves of the ICC's mediation services is very gratifying."

Chief Commissioner Renée Dupuis

Chief Commissioner Dupuis commented that the claim took many years to resolve and that she was pleased that the Commission played a role in its settlement. "The parties alone get credit for settling this claim. However, the outcome of the negotiations indicates the Commission's ability to advance land claim settlements. The Commission's inquiry process was able to produce movement towards validation and the Commission's mediation process helped bring the negotiations to a successful conclusion."



Chief Mike Kahpeyewat and Chief Federal Negotiator Silas Halyk sign Moosomin First Nation's settlement agreement on July 2, 2003. Members of the Moosomin First Nation voted to ratify this settlement on September 6, 2003.

CHIPPEWAS OF THE THAMES INITIAL AGREEMENT WITH CANADA TO SETTLE CLENCH DEFALCATION CLAIM

On April 7, 2004, the Chippewas of the Thames First Nation and Canada initialled the settlement agreement on a claim by the First Nation dating back to the mid-19th century. The ceremony took place on the reserve in Muncey, 30 km southwest of London, Ontario.

Referred to as the Clench Defalcation, the claim is based on misappropriation of money owed to the Chippewas of the Thames from the sale of lands the First Nation surrendered to the Crown in 1834. The funds were taken by Joseph Brant Clench, who had been appointed agent for the sale of Indian lands in southern Ontario in 1845.



Federal government negotiator, Bev Lajoie (left) and Chippewas of the Thames First Nation Chief, Kelly Riley, initial the agreement.



Band members and war veterans enjoy the festivities. From left to right: Reginald Albert, Ken Albert, and Arnold Albert.



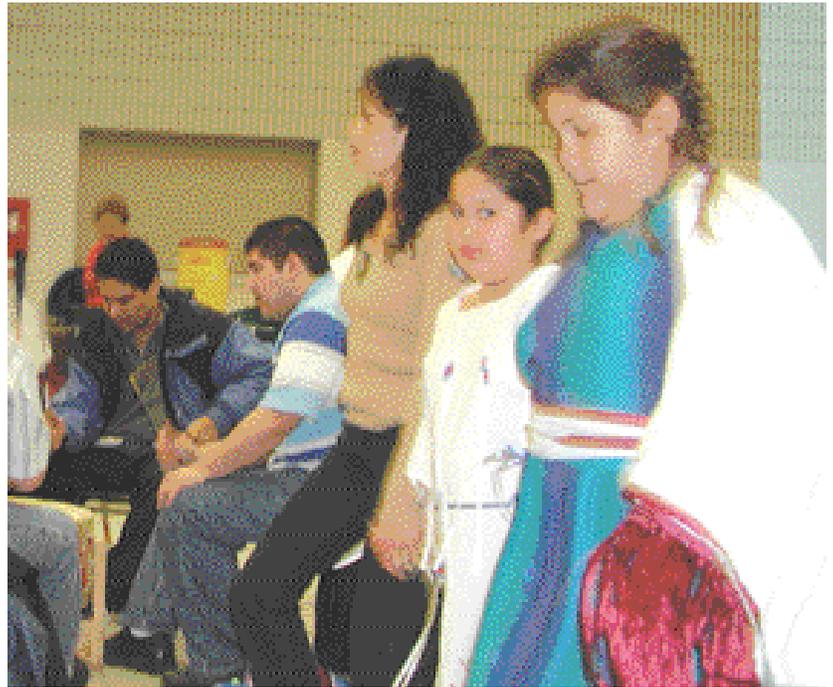
The settlement signed in April will provide \$15 million to the First Nation over a five-year period.

Chippewas of the Thames band councillors (from left to right) George Kennedy, Kristen Hendrick and Martha Albert show their satisfaction during the signing ceremony in the community hall.



It was an exciting time for the children of the community, some of whom participated in the event as singers or dancers.

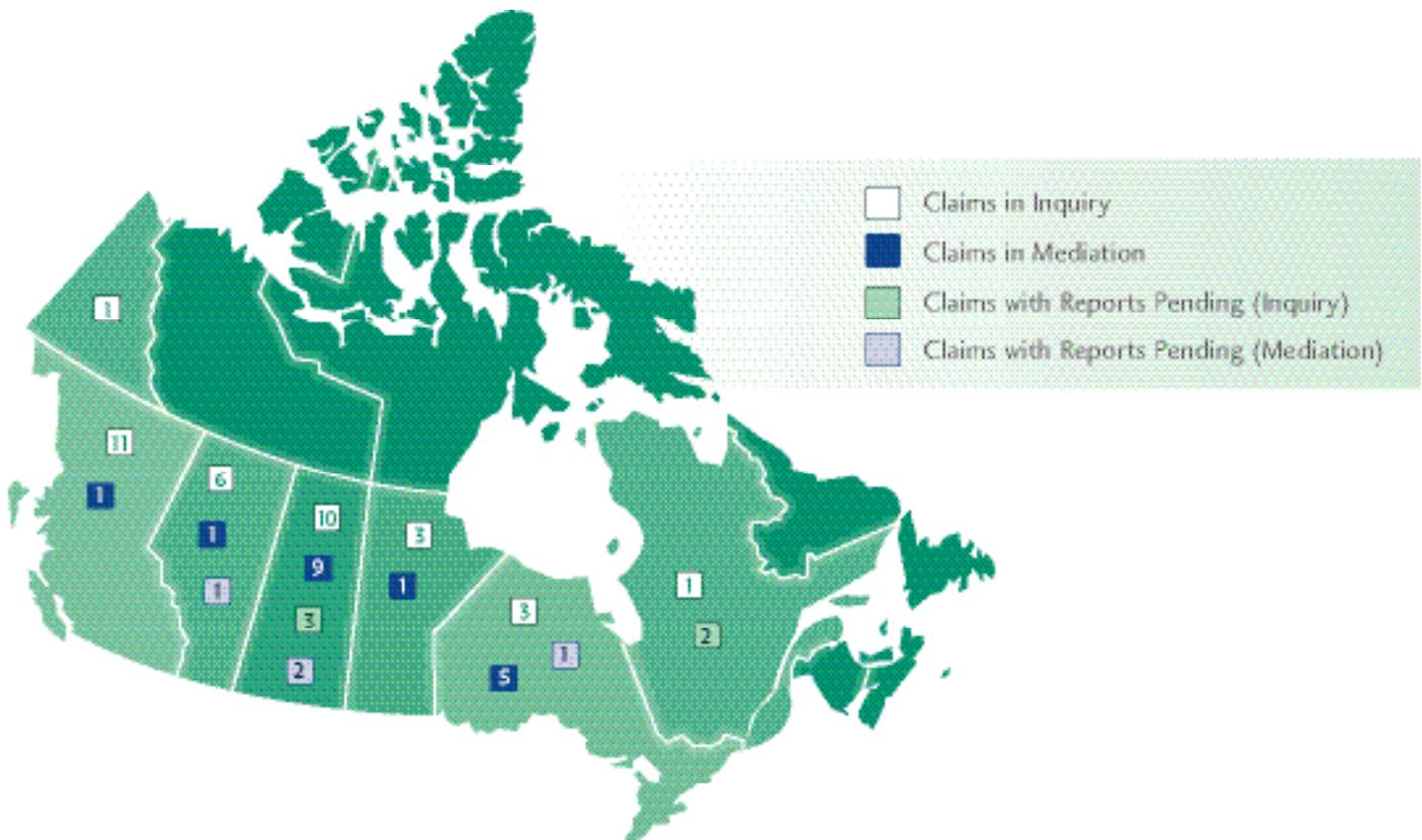
The First Nation requested that the ICC inquire into their claim in 1998. In June 2001, during a planning conference held at the ICC's office in Ottawa, the claim was accepted for negotiation by Canada. As a result of this decision, the Commission took no further steps to inquire into the claim and produced its report regarding this inquiry in March 2002. By Spring 2003, the parties had begun to discuss a settlement agreement and ratification voting guidelines. An agreement was reached in March 2004. The settlement signed in April will provide \$15 million to the First Nation over a five-year period.



The Eagle Flight Singers (above and below) perform for the guests.



CLAIMS CURRENTLY BEFORE THE ICC



CLAIMS IN INQUIRY

- Athabasca Chipewayan First Nation (Alberta)
 - Compensation criteria agricultural benefits
- Blood Tribe/Kainaiwa (Alberta)
 - Big Claim
- Cowessess First Nation (Saskatchewan)
 - 1907 surrender - phase II
- James Smith Cree Nation (Saskatchewan)
 - Treaty land entitlement
- * Kluane First Nation (Yukon) - Kluane Park and Kluane Game Sanctuary
- Lheidli T'enneh Band (British Columbia)
 - Surrender Fort George IR 1
- Little Shuswap Indian Band, Neskonlith First Nation and Adams Lake First Nation (British Columbia)
 - [Neskonlith reserve]

- Lower Similkameen Indian Band (British Columbia)
 - Victoria, Vancouver and Eastern Railway right of way
- Lucky Man Cree Nation (Saskatchewan)
 - Treaty land entitlement - phase II
- * Mississaugas of the New Credit First Nation (Ontario)
 - Crawford purchase
- * Mississaugas of the New Credit First Nation (Ontario)
 - Gunshot Treaty
- Muskowekwan First Nation (Saskatchewan)
 - 1910 and 1920 surrender
- Nadleh Whut'en Indian Band (British Columbia)
 - Lejac School
- * Ocean Man Band (Saskatchewan)
 - Treaty land entitlement
- * *in abeyance*

Opaskwayak Cree Nation (Manitoba)
– Streets and lanes

Pasqua First Nation (Saskatchewan)
– 1906 surrender

Paul First Nation (Alberta)
– Kapasawin town site

Red Earth and Shoal Lake Cree Nations (Saskatchewan)
– Quality of reserve lands (Agriculture)

Roseau River Anishinabe First Nation (Manitoba)
– 1903 surrender

Sakimay First Nation (Saskatchewan)
– Treaty land entitlement

Sandy Bay Ojibway First Nation (Manitoba)
– Treaty land entitlement

Siksika First Nation (Alberta)
– 1910 surrender

Stanjikoming First Nation (Ontario)
– Treaty land entitlement

* Stó:lō Nation (British Columbia)
– Douglas reserve

Sturgeon Lake First Nation (Saskatchewan)
– 1913 surrender

Taku River Tlingit First Nation (British Columbia)
– Wenah specific claim

Touchwood Agency (Saskatchewan)
– Mismanagement (1920-1924)

Treaty 8 Tribal Association [Seven First Nations] (British Columbia)
– Consolidated annuity

Treaty 8 Tribal Association [Blueberry River & Doig River First Nations] (British Columbia)
– Highway right of way-IR 72

Treaty 8 Tribal Association [Saulteau First Nation] (British Columbia)
– Treaty land entitlement and land in severalty claims

U'Mista Cultural Society (British Columbia)
– The prohibition of the Potlatch

* Whitefish Lake First Nation (Alberta)
– Compensation criteria - agricultural benefits Treaty 8

Whitefish Lake First Nation (Alberta)
– Agricultural benefits Treaty 8

Williams Lake Indian Band (British Columbia)
– Village site

Wolf Lake First Nation (Quebec)
– Reserve lands

CLAIMS IN FACILITATION OR MEDIATION

Blood Tribe/Kainaiwa (Alberta)
– Cattle claim

Chippewa Tri-Council (Ontario)
– Coldwater-Narrows reserve

Cote First Nation (Saskatchewan)
– Pilot project

Cowessess First Nation (Saskatchewan)
– Flooding

Fort Pelly Agency (Saskatchewan)
– Pelly Haylands

Fort William First Nation (Ontario)
– Pilot project

Gordon First Nation (Saskatchewan)
– Treaty land entitlement

Keeseekoowenin First Nation (Manitoba)
– 1906 lands claim

Michipicoten First Nation (Ontario)
– Pilot project

Missanabie Cree First Nation (Ontario)
– Treaty land entitlement

Mississaugas of the New Credit First Nation (Ontario)
– Toronto purchase

Muscowpetung First Nation (Saskatchewan)
– Flooding claim

* *in abeyance*

Muskoday First Nation (Saskatchewan)

- Treaty land entitlement

Nekaneet First Nation (Saskatchewan)

- Treaty benefits

Pasqua First Nation (Saskatchewan)

- Flooding claim

Skway First Nation (British Columbia)

- Schweyey Road claim

Sturgeon Lake First Nation (Saskatchewan)

- Treaty land entitlement

CLAIMS WITH REPORTS PENDING (INQUIRY)

Conseil de bande de Betsiamites (Quebec)

- Highway 138 and Betsiamites reserve

Conseil de bande de Betsiamites (Quebec)

- Bridge over the Betsiamites River

Cumberland House Cree Nation (Saskatchewan)

- Claim to IR 100A

James Smith Cree Nation (Saskatchewan)

- Chakastaypasin IR 98

James Smith Cree Nation (Saskatchewan)

- Peter Chapman IR 100A

CLAIMS WITH REPORTS PENDING (MEDIATION)

Blood Tribe/Kainaiwa (Alberta)

- Akers surrender

Chippewas of the Thames First Nation (Ontario)

- Clench defalcation

Touchwood Agency (Saskatchewan)

- Mismanagement 1920-1924

Qu'Appelle Valley Indian Development Authority
(Saskatchewan)

- Flooding claim

* *in abeyance*

PUBLICATIONS

The ICC has recently published a revised version of its Information Guide. This publication provides information about the role and mandate of the Indian Claims Commission and of the history behind its creation. The Guide also contains information on how to request an inquiry or mediation assistance and explanations of the Commission's inquiry and mediation processes. New to this version is a "Frequently Asked Questions" section.

The ICC's Information Guide is available upon request and online at www.indianclaims.ca.

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