



# Landmark

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## Toronto Purchase Claim Accepted For Negotiation

*"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*

### CONTENTS

Toronto Purchase Claim Accepted For Negotiation	1
Signing Ceremony Held At Kahkewistahaw First Nation	4
Interview With Robert Reid	6
Looking Back: The Numbered Treaties	10

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Toronto Skyline.

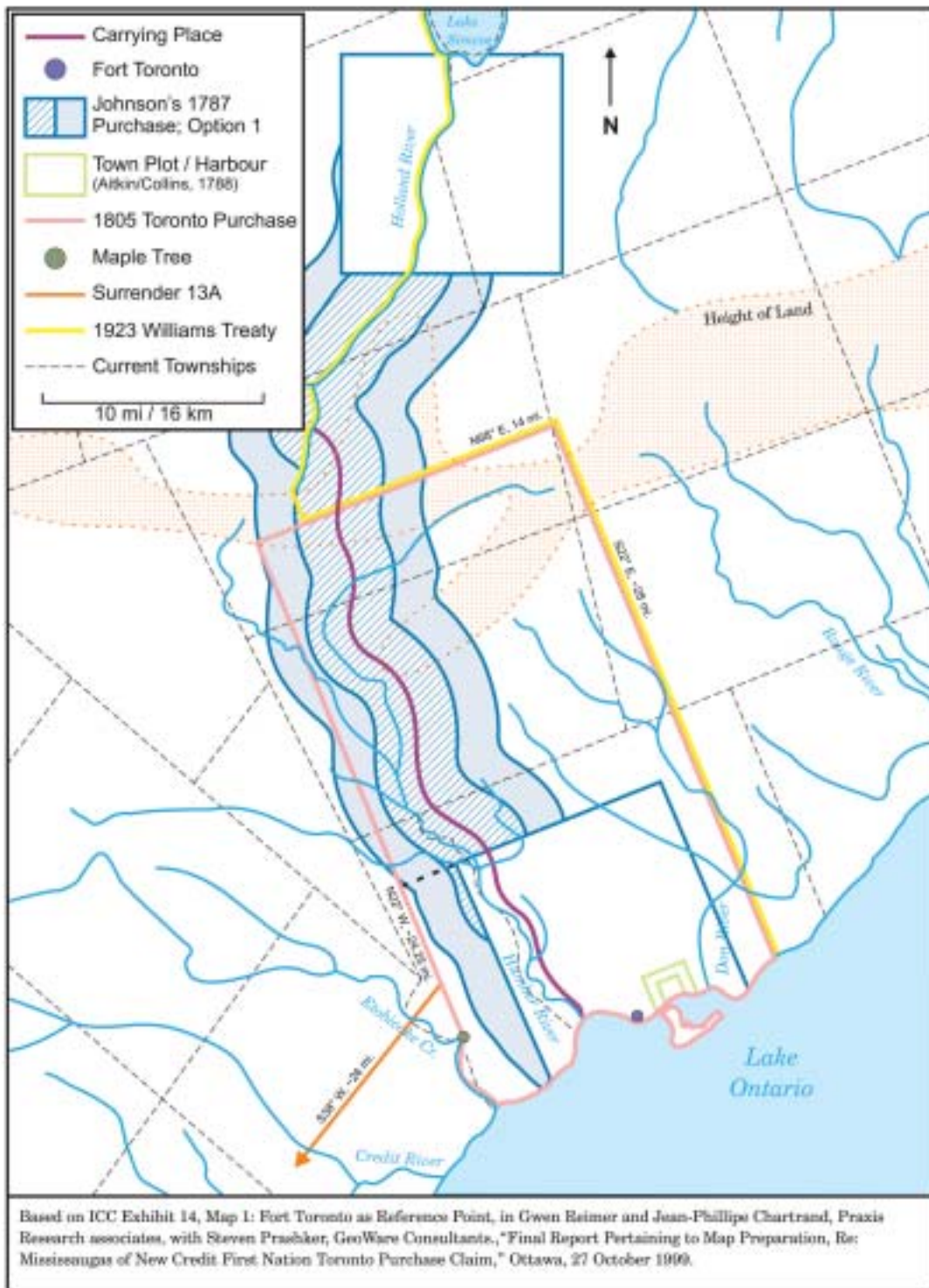
Tourism Toronto

The Indian Claims Commission (ICC) welcomed the federal government's decision to negotiate this major land claim, one that covers most of present-day Toronto, rather than having it settled through prolonged and costly court proceedings.

On June 17, 2003, the Commission released its inquiry report on the specific claim by the Mississaugas of the New Credit First Nation. The Toronto

Purchase claim alleged that a large expanse of land stretching from Lake Ontario north to Lake Simcoe had not been properly surrendered. It also alleged that the Crown breached its fiduciary duty to the Mississauga First Nation in transactions concerning the purchase in 1787 and 1805. The ICC announced that, as a result of Canada's agreement to proceed with negotiations, it had suspended its inquiry into the claim.





*At the end of hostilities between Great Britain and its former American colonies, the land north of Lake Ontario became very important for its strategic value and as a destination for British Loyalists fleeing the United States. "The Carrying Place" was an ancient aboriginal portage from the mouth of the Humber River to the Holland River, part of the route from Lake Ontario to Lake Huron that wound northward via Lake Simcoe and from there to Georgian Bay.*





Sir Edmund Wyly Grier watercolour, *Toronto in 1849*, (T 10350) Toronto Public Library, (TRL) J. Ross Robertson Collection: JRR 341

*Looking westward from Gooderham & Worts' Mill on Trinity Street to Fort York on the far left.*

ICC Commissioner Daniel J. Bellegarde, who served on the panel investigating the claim, said that Canada's decision to proceed with negotiations illustrates the important contribution that the Commission makes to the specific claims process. "We are mandated to assist in any way we can with the resolution of specific claims. Our inquiry process, a major component of which is the planning conference, is designed to achieve a successful outcome."

After the end of the American Revolution, the British wanted to ensure their control of the northern shore of Lake Ontario and access to the fur trading routes and resources in northwest Ontario. In 1787, a treaty was signed between the British and the Mississaugas by which the First Nation surrendered the area north of the lake including the "Carrying Place," an ancient portage between the Humber River flowing into Lake Ontario and the Holland River flowing into Lake Simcoe and leading to Georgian Bay. The vagueness of the original surrender document, together with the many discrepancies in the accounts of the circumstances surrounding it, created doubts as to the surrender's validity, as well as to the exact lands it covered. The British were aware of the irregularities in the 1787 surrender; however, they did not discuss them with the Mississaugas. The issue was put aside until further negotiations took place in 1805 culminating in a formal deed drawn up and executed on August 1. The First Nation submitted the claim, which had been rejected by Canada in 1993, to the ICC for inquiry in 1998. The ICC's inquiry process was started and numerous planning conferences were held.

Commissioner Bellegarde noted that the planning conferences organized by the Commission provided the first opportunity for the parties to meet face-to-face. "We bring the parties to the table early on, in a climate that fosters open dialogue. As a result, the parties were willing to re-examine the facts and come to an agreement."

He added that the Commission has been invited by the parties to facilitate the negotiations: "Now with the negotiating phase set to begin, the ICC's mediation unit, which has helped First Nations and the federal government to reach timely settlements on a number of claims over the past four years, has been invited to play a continuing role in the resolution of this particular claim."

Commissioner Bellegarde observed that the decision to proceed to negotiation avoids the costs of litigation. "This decision has effectively saved the Canadian taxpayer and the First Nation a great deal of money that would have been spent on fighting the claim in the courts."

A copy of the *Mississaugas of the New Credit First Nation Inquiry, Toronto Purchase Claim*, is available on-line at [www.indianclaims.ca](http://www.indianclaims.ca). If you wish to receive a copy by mail, call (613) 943-3939 or e-mail: [mgarrett@indianclaims.ca](mailto:mgarrett@indianclaims.ca).



# Signing Ceremony Held At Kahkewistahaw First Nation

In a formal signing ceremony held on June 25, 2003, the Minister of Indian Affairs, Robert Nault, and the Kahkewistahaw First Nation's Chief, Louis Taypotat, ratified a \$94.6 million settlement for the First Nation's 1907 land surrender claim. Commenting on the historic settlement, ICC Chief Commissioner, Renée Dupuis, said she was happy to see the claim come to a successful conclusion.



*The Kahkewistahaw First Nation's Chief, Louis Taypotat, and Minister of Indian Affairs, Robert Nault, sign the settlement that brings to a close the First Nation's 1907 specific land claim. The settlement will not only benefit the First Nation, but will also help Saskatchewan's economy as it is expected that much of the settlement money will be spent within the province.*



*The children of the Kahkewistahaw Band can now look forward to a brighter future. The First Nation has already set aside money for a new school and housing. Most of the \$94.6 million will be used to set up a trust fund to support economic development, land purchases and community infrastructure.*

Kahkewistahaw First Nation is located about 160 kilometres south of Regina, Saskatchewan. The First Nation has a total population of 1,407 registered members, with 445 people resident on-reserve. The members of the Kahkewistahaw First Nation voted to accept the settlement on November 25, 2002. The settlement is the second largest land claim settlement in the history of Canada and the largest in Saskatchewan. The First Nation may use the settlement proceeds to purchase land on a willing-seller/willing-buyer basis and request that up to 29,000 acres be set apart as reserve, which will be subject to Canada's Additions to Reserves Policy. The First Nation will receive the settlement money over a period of five years.



## KAHKEWISTAHAW 1907 SPECIFIC CLAIM TIMELINE

**1881** – The 46,816-acre Kahkewistahaw Indian Reserve is surveyed and named for the man who negotiated the reserve, Chief Kahkewistahaw (or "He Who Flies Around").

**1906** – Chief Kahkewistahaw dies.

**January 1907** – After a particularly brutal winter, a federal government representative approaches the leaderless and starving Kahkewistahaw First Nation with cash in hand and a new offer to buy the best of their lands. The offer is rejected at first, but is eventually accepted by the desperate people.

**March 1989** – The Kahkewistahaw First Nation submits a claim under the federal Specific Claims Policy.

**January 1992** – The Specific Claims Branch of Indian and Northern Affairs Canada reviews the claim. Canada's preliminary position is that the 1907 surrender was valid and that Canada has no obligation to compensate Kahkewistahaw for any loss.

**August 1994** – At the request of the First Nation, the ICC begins an inquiry into Kahkewistahaw's specific land claim.

**February 1995** – The ICC conducts first planning conference between the parties.

**February 1997** – The ICC releases its inquiry report on the specific land claim inquiry. The ICC inquiry concludes that the 1907 land surrender is valid and unconditional. However, the Commission also finds that Canada owes a fiduciary obligation to the First Nation and that Canada has breached that obligation.

**December 1997** – The federal government accepts the claim for negotiation.

**November 1998** – The federal government and the Kahkewistahaw First Nation request that the ICC act as facilitator and mediator in the negotiations.

**November 2002** – The members of the Kahkewistahaw First Nation vote to accept the settlement offered by Canada.

**February 2003** – The ICC releases its report on its mediation of the negotiations.

**June 2003** – A formal signing ceremony is held to ratify the settlement agreement.



*Chief Taypotat listens to an elder's prayer. In a recent interview with ICC staff, Chief Taypotat expressed gratitude to the elders whose testimonies and spiritual support led to the claim being settled. The Chief also thanked the First Nation's staff and lawyers, the federal government's negotiators, and the ICC for all the hard work that brought the land claim to a close.*



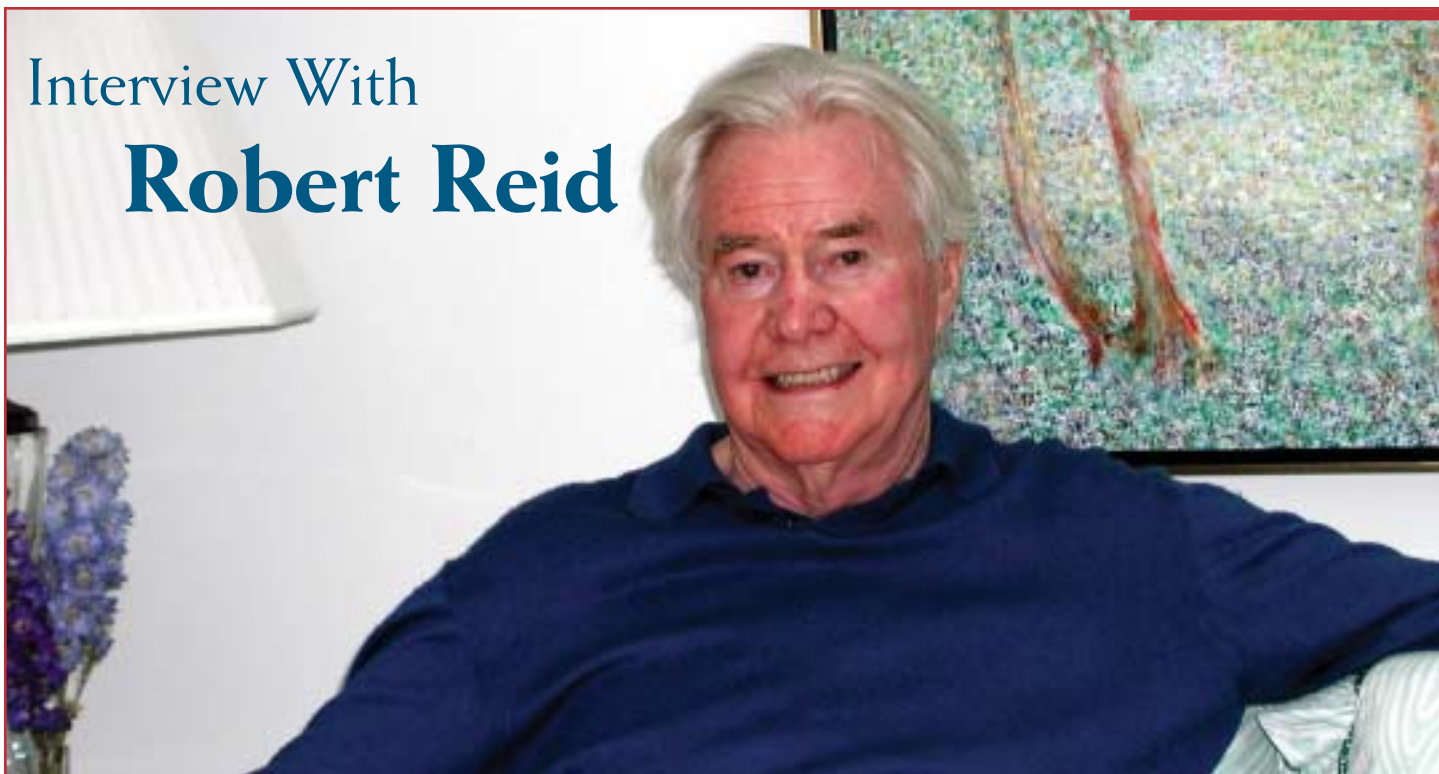
*Photo by Dallas E. Maynard*

*A teepee painted with a picture of Chief Kahkewistahaw stands outside the Kahkewistahaw Community Centre. Despite pressure from local farmers and politicians, Chief Kahkewistahaw refused to sell his people's reserve.*



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## Interview With **Robert Reid**



*Former Ontario Supreme Court judge, Robert Reid chats with the ICC on his many years' experience in land claims.*

**R**obert Reid, a pioneer in the land claims process and a former Ontario Supreme Court judge, recently celebrated his 80th birthday. The milestone gave him the opportunity to look back over his many years' experience as a mediator between the federal government and First Nations.

Mr Reid calls the ICC the "bright shining light" of land claims in Canada and is proud to have played a part in the history of the Commission. "I don't know of any organization or process that has been as successful as the Commission in actually improving the process for land claims, and this occurred during the ten years that I was with the Commission. I think it is a spectacular success. I doubt that by changing its nature it's going to be any better."

Born in Stratford, Ontario, in June 1923, Robert F. Reid became a lawyer in 1949 and a justice of the Supreme Court of Ontario in 1974. Since his resignation from the bench in 1990, Mr Reid has built a private practice with a strong focus on mediation and alternative methods of dispute resolution.

Mr Reid was involved with the ICC from its beginning; he was asked by the first person appointed to the Commission, Harry LaForme, to review the order in council that set its mandate and terms of reference. Having little knowledge of First Nations' issues at that time, Mr Reid looked at the order in council from the viewpoint of a specialist in administrative law. "I gave him an opinion to the effect that you couldn't do anything with the terms of reference because they were internally contradictory; they were ridiculous."

The birth of the Commission was not without its difficulties. A year later Mr Reid was again approached by Mr LaForme and asked to help create a system through which the Commission would process claims. The first system that had been adopted was, in Mr Reid's opinion, too similar to the confrontational, time-consuming and highly technical court system. As an expert in mediation, Mr Reid was sure that a better way could be found through alternative methods of dispute resolution.



"Why don't we start off informally, so that, when an Indian band has a claim, they don't have to go out and get research done and pay for research? All the Commission has to do is go in and talk to people and see if there is a claim. Do it on an informal basis. We will try to do the whole thing cooperatively, and if there is good will and honesty on both sides, then it will work."

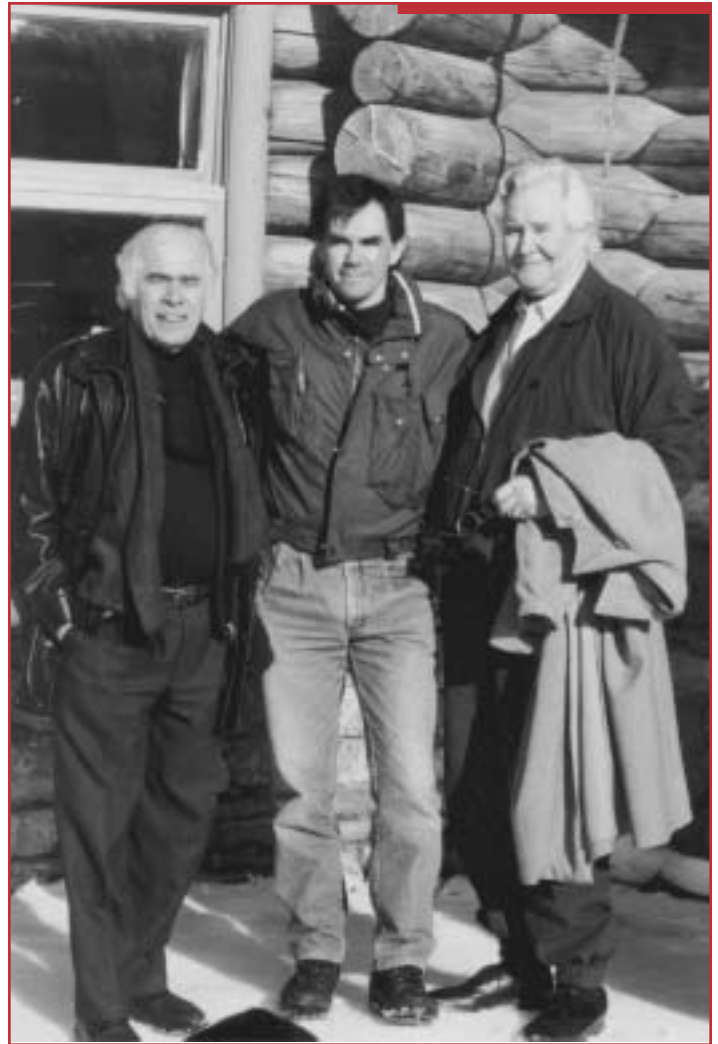
His idea was met with skepticism from those who had experienced a claim system in which disputing parties, in some instances, refused to sit at the same table with each other. However, the current Commission process eventually grew from this seed, and a key factor was the idea of a planning conference.

Mr Reid saw the planning conference as an informal meeting that would bring representatives of the First Nation and government together to discuss the claim openly in a non-adversarial, cooperative setting. There was much discussion over the use of the planning conference as some Commissioners worried that the informality might affect the integrity of the proceedings.

The planning conference is often the first time that the parties meet face to face. It gives each side a chance to identify and explore the relevant historical and legal issues and determine which historical documents they intend to rely on. The parties may also disclose which elders, community members or other experts will be called as witnesses, and set the time frames for the remaining stages of the inquiry. In numerous cases, the Commission's planning conference has evolved into mediation between the parties rather than a full inquiry.

"We've discovered – and I think you can establish it statistically – that the success the Commission has had over the years in resolving land claims has been through the informal process, rather than the formal process. I gladly claim credit for that because I am proud of it, and I'm so glad that there were people who were ready to listen."

When looking to the future of land claims, Mr Reid is not so optimistic: "I'm sorry to say I can't be positive about it. I think the situation can be fixed, but it will take a change in attitude, particularly on the part of the federal and provincial governments. I'm not criticizing the individual government representatives, but the



*During a 1997 Commissioners meeting in Banff, Commissioners Aurélien Gill and James Prentice pose with Special Mediation Advisor Robert Reid.*

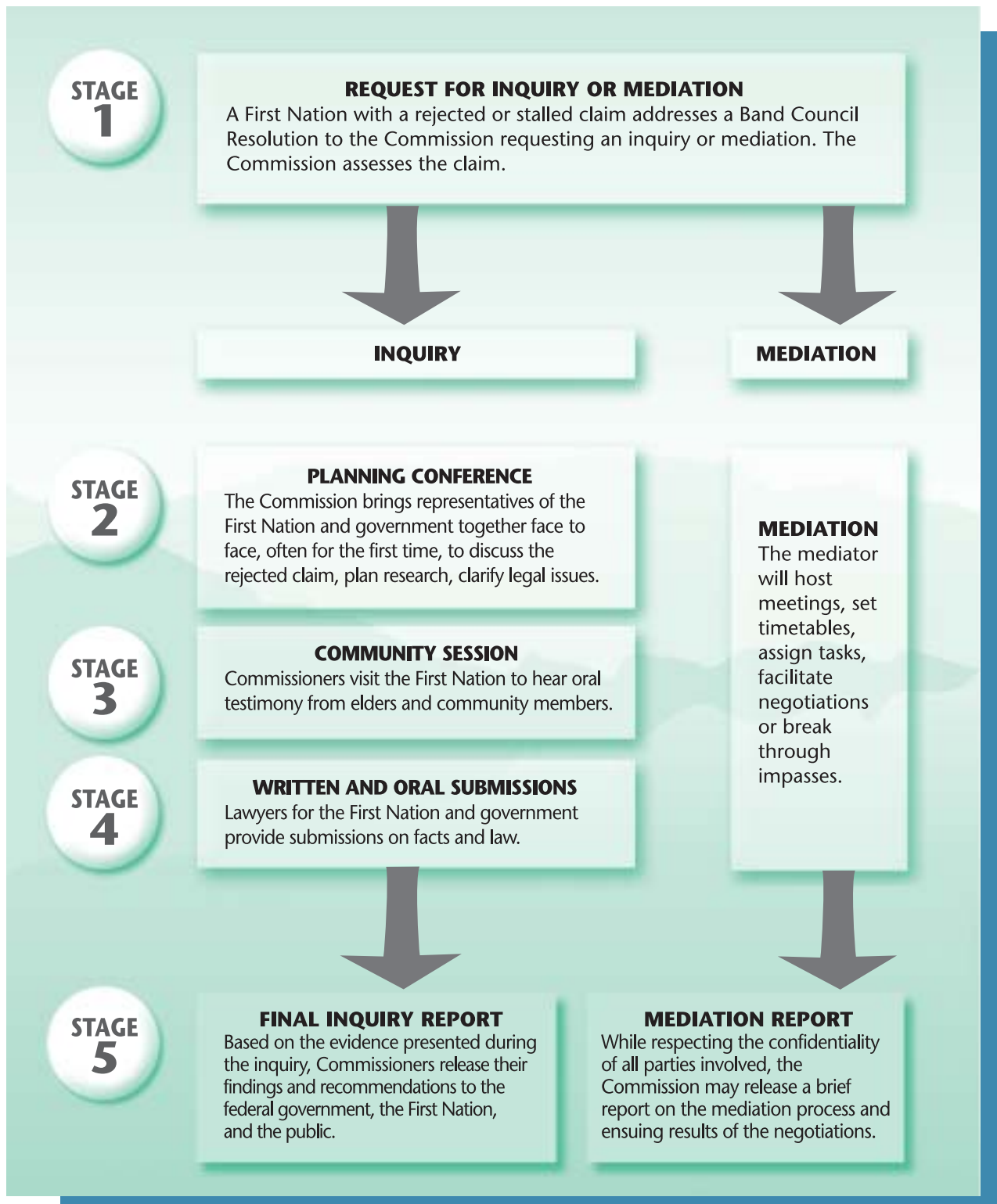
people who are sent to negotiate land claims, even today, have no idea of native attitudes or customs."

He relates a story in which, during a break in negotiations in northern Manitoba, he had a chat with the federal government's representative. Canada's representative was annoyed that the meeting, up to this point, had been an oral history of all the events, conflicts and troubles that the First Nation had experienced in its dealings with the federal government.

He asked Mr Reid why it was necessary for them to listen to old history. Mr Reid answered: "Because if you



# The ICC Process



*The planning conference, an important step in the ICC's inquiry process, was developed from Mr Reid's idea of an informal meeting where the parties can meet face to face. The purpose of the planning conference is to have the parties jointly plan the inquiry process.*





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don't know it, you can't begin to understand that what most First Nations want is merely an apology and some kind of recognition that they have been treated badly. Your process turns the whole thing into a matter of dollars. They look rapacious because you don't offer them anything else."

Mr Reid was disappointed in the representative's question, because it showed a fundamental lack of understanding of how aboriginals do things and an attitude that was not conducive to resolving the dispute.

"I've seen people argue tiny little issues of law, without any instruction at all in native culture, native attitudes. I've said during these sessions, 'All they want is an apology.' And in reply, I hear: 'No. An apology is an acceptance of error, of wrong doing.' That reaction reflects the insurance industry's attitude, which is that you're not allowed to say you did it, even if you did, and you are certainly not allowed to apologize for the accident you caused, because that costs money."

In Mr Reid's opinion what is needed is a move away from what he calls the "insurance industry attitude." "The federal government's attitude towards land claims did not change greatly during the time I was involved and it hasn't changed greatly from the beginning. The federal government is in a very odd position and doesn't seem to recognize it. It is regarded by the Supreme Court of Canada as having something close to a trust relationship with native people. The Supreme Court would not go as far as saying that it is a trust relationship, but it is as close as you can get without saying so, and therefore Canada's concern should be to advance legitimate claims and to assist with legitimate claims."

Mr Reid admits there was a time when he was unaware of Canada's relationship with its aboriginal peoples. He now thinks that educating non-aboriginal Canadians about the history and legal issues between Canada and its aboriginal peoples is the best way to resolve the conflicts between the two groups.

"Not only are Canadians ignorant of the Commission, its work, the need for its work and the value of its work, but they are ignorant generally, on an enormous scale, of the relationship between Canada and the Indian population of this country. They see only what remains

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**"The federal government's attitude towards land claims did not change greatly during the time I was involved and it hasn't changed greatly from the beginning."**

**- Robert Reid**

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after the years of wreckage. It is almost as if the ship has sunk, and they see the flotsam and jetsam."

Mr Reid would like to see a massive campaign to educate Canadians on the issues, events and actions behind the problems they see in aboriginal communities today. He thinks that average Canadians would be appalled if they knew the actual history of Canada's First Nations and that they would want justice to prevail once they were aware of all the facts.

In Mr Reid's opinion, a cycle of ignorance has been created because nothing is taught in schools about the historic relationship between Canada and its aboriginal peoples and because, as adults, Canadians are informed by journalists who went to those same schools. An education campaign to break this cycle of ignorance could only be spearheaded by aboriginal people themselves, Mr Reid says.

He hopes that aboriginal leaders will eventually see the value of educating non-aboriginal Canadians and points out that the best source of education for Canadians is the Commission's reports, which contain the histories of individual First Nations and give a telling account of what was lost in the way of resources and economic development.



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# Looking Back

## The Numbered Treaties

**A**t the time of Confederation in 1867, the legal responsibilities of the British Crown were transferred to the federal government of Canada; these included the legal relationship that had been created with Canada's aboriginal peoples. Within a few years, the new Canadian government launched what would become two waves of treaty making, the first to open the Prairies for farming and the railway, and the second to open the north for mining and logging.

In the first wave, from 1871 to 1877, Treaty Commissioners, instructed to secure clear title to the land, met with First Nations throughout northwestern Ontario and the southern Prairies. Weakened by the disappearance of the buffalo and new diseases, many First Nations on the Plains believed treaties would ensure their physical, cultural and spiritual survival. They sought guarantees that they could continue to hunt, fish and govern themselves.

Kathleen Lickers, Commission Counsel for the ICC, says that when she reads the numbered treaties she is often amazed that the aboriginal representatives had the foresight to negotiate what they did, without the benefit of the English language or legal advice. "It is so compelling to read these documents. It is awe-inspiring, actually. If you look at what information they had available to them; to know whom they were actually dealing with and where they were going to be 200 years forward, it's astounding."

Treaties 1 and 2 were signed in southern Manitoba in 1871, and a total of seven treaties had been signed when the first wave ended in southern Alberta in 1877. No numbered treaties were signed for 22 years until Treaty 8 in 1899. It covered parts of northern Alberta, British Columbia, Saskatchewan and southern parts of the Northwest Territories. This treaty started a sporadic second wave of treaty making, which ended in 1921 with Treaty 11 being signed in the Northwest Territories.

Each of the treaties is different; First Nations across Canada's vast and varied landscape required and asked for different things. Most treaties guarantee some hunting and fishing rights. All numbered treaties promise reserve land, education, farming assistance and treaty payments from \$5 to \$32 a year. Treaty 6 guarantees a "medicine chest."

Treaty rights have been recognized and confirmed in the Constitution Act of 1982. Treaty rights must be distinguished from aboriginal rights. Treaty rights exist only because of the legal relationship detailed in the treaty itself. Aboriginal rights do not depend upon treaties, they rest on aboriginal people's use and occupation of the land for thousands of years.

First Nations see treaties as symbols of an ongoing relationship. What Prairie First Nations understood was that they had agreed to share the land with newcomers for farming. But what the government of the day understood was that First Nations had agreed to release ownership of most of their traditional territory and live under Canadian law.

Almost as soon as treaties were signed, there were problems implementing the agreements, which caused treaty First Nations to protest. The federal government was sometimes slow to provide reserve land, giving rise to treaty land entitlement claims.

*The Blackfoot Treaty (Treaty 7), Crowfoot speaking.*  
Original painting by A. Bruce Stapleton. Glenbow Archives NA-40-1





National Archives of Canada C68920

*Signing Treaty 9 at Windigo, Ontario, July 18, 1930.*

Ms Lickers says that, during the late 1800s and into the early 1900s, a different legal relationship was being created between the Crown and First Nations in British Columbia and this relationship was being defined without the use of treaty making. "For the bands in British Columbia their lands were not covered by treaty. There is nothing in the *Indian Act* to say that treaty was the only way for reserves to be set aside, so many reserves in BC grew out of what is referred to as Indian settlement lands. They are lands being occupied as a component of aboriginal title lands which the Crown, in some cases, then recognized as reserve land."

Ms Lickers says First Nations and the government continue to negotiate a contemporary understanding of treaties. The Canadian courts have recently made decisions that have caused people to take another look at the numbered treaties and their relevance in today's world. "The *Marshall* case is the best current example of an attempt to give modern expression to the right to hunt for food or commercial fishing. What does "to earn a reasonable livelihood" mean? This language is an attempt to give expression today to what was negotiated in the past. But what is clear, is that the interpretation of treaties must be carried out within the special context in which such instruments were made."

Next Issue: Land Claims and Government Policies.



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## CLAIMS IN INQUIRY

Blood Tribe/Kainaiwa (Alberta) – Big Claim  
Conseil de bande de Betsiamites (Quebec)  
– Highway 138 and Betsiamites reserve  
Conseil de bande de Betsiamites (Quebec)  
– Bridge over the Betsiamites River  
Cowessess First Nation (Saskatchewan) – 1907 surrender  
– Phase II  
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  
James Smith Cree Nation (Saskatchewan)  
– Treaty land entitlement  
Nadleh Whut'en Indian Band (British Columbia)  
– Lejac School  
Opaskwayak Cree Nation (Manitoba) – Streets and Lanes  
Pasqua First Nation (Saskatchewan) – 1906 surrender  
Paul Indian Band (Alberta) – Kapasawin Townsite  
Roseau River Anishinabe First Nation (Manitoba)  
– 1903 surrender  
\*Sandy Bay Ojibway First Nation (Manitoba)  
– Treaty land entitlement  
Siksika First Nation (Alberta) – 1910 surrender  
\*Stanjikoming First Nation (Ontario)  
– Treaty land entitlement  
Stó:lo Nation (British Columbia) – Douglas reserve  
Sturgeon Lake First Nation (Saskatchewan) – 1913 surrender  
Taku River Tlingit First Nation (British Columbia)  
– Wenah specific claim  
U'Mista Cultural Society (British Columbia)  
– The Prohibition of the Potlatch  
Williams Lake Indian Band (British Columbia) – Village site  
Wolf Lake First Nation (Quebec) – Reserve lands

## CLAIMS IN FACILITATION OR MEDIATION

Blood Tribe/Kainaiwa (Alberta) – Akers surrender  
Chippewa Tri-Council (Ontario) – Coldwater-Narrows reserve  
Chippewas of the Thames First Nation (Ontario)  
– Clench defalcation  
Cote First Nation No.366 (Saskatchewan) – Pilot project  
Fort Pelly Agency (Saskatchewan)  
– Pelly Haylands negotiation  
Fort William First Nation (Ontario) – Pilot project  
Keeseekoowenin First Nation (Manitoba) – 1906 lands claim  
Michipicoten First Nation (Ontario) – Pilot project  
Mississaugas of the New Credit First Nation (Ontario)  
– Toronto Purchase  
Moosomin First Nation (Saskatchewan) – 1909 surrender  
\*Nekaneet First Nation (Saskatchewan) – Treaty benefits  
Qu'Appelle Valley Indian Development Authority  
(Saskatchewan) – Flooding  
Sway First Nation (British Columbia) - Schweyey Road  
Thunderchild First Nation (Saskatchewan) – 1908 surrender  
Touchwood Agency (Saskatchewan) – Mismanagement

## CLAIMS WITH REPORTS PENDING (INQUIRY)

Canupawakpa Dakota First Nation (Manitoba) – Turtle Mountain surrender  
Pepeeekisis First Nation (Saskatchewan) – File Hills Colony

## CLAIMS WITH REPORTS PENDING (FACILITATION/MEDIATION)

Standing Buffalo First Nation (Saskatchewan) – Flooding  
*\* in abeyance*

