

BUILDING A BETTER CLAIMS PROCESS: OPEN DIALOGUE KEY TO SUCCESS IN RESOLVING CLAIMS

The claim of the Blood Tribe/Kainaiwa in Alberta was accepted shortly after the community session. Elders Rosie Red Crow, Rosie Day Rider and Marie-Louise Oka speak at the community session in October, 1997.



Canada together right at the start to discuss the claim in an open and informal environment facilitated by a neutral third party. Getting the parties together at the outset is not a feature of the regular specific claims process used by the Department of Indian Affairs (though there appears to be a general trend toward opening the lines of communi-

Since its inception, the Indian Claims Commission has seen 16 specific claims of First Nations settled or accepted for negotiation by Canada.

These successes are a result of the ICC's unique inquiry process and its ability to provide mediation assistance when requested by the parties. One of the main lessons learned from these successes is that a process built on open communication and cooperation between Canada and the First Nation can go a long way towards resolving claims.

In the best cases, claims are accepted early on in the ICC's process. Early acceptance saves all the parties a great deal of time, money and energy because there is no need to go through a full inquiry.

To date, 7 claims have been accepted for negotiation at an early stage of the process. One of the keys to this success is the effectiveness of the ICC's "planning conferences". The planning conference is the first stage of any ICC inquiry. The idea is simple: bring the First Nation and

cation and sharing information).

ICC Commissioners firmly believe in the effectiveness of these meetings. It gives the parties an opportunity to resolve problems through agreement rather than argument, through cooperation instead of confrontation. Along with the potential for early settlement, the conferences can go a long way towards clarifying and narrowing the issues in a claim, making for a timely and efficient inquiry process.

"Face-to-face discussions help to avoid misunderstandings and clarify failures of communication," said ICC Co-Chair Dan Bellegarde. "We quickly saw that getting the parties together made the process more efficient and could lead to the claim's resolution. It was a simple but dramatic first step that proved its value almost overnight. Both the First Nation and Canada can be credited for breakthroughs — the First Nation for patience and perseverance, and Canada for reconsidering its previous rejection and agreeing to participate in an innovative approach."

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Planning Conferences: Why they Work

The planning conferences are a series of meetings usually chaired by Commission Counsel or the Commission's Legal and Mediation Advisor. The First Nation, Canada and their legal advisors all take part. The first order of business is to give the First Nation and Canada an opportunity to discuss any preliminary concerns which must be resolved before the inquiry begins. The parties can then talk about the nature of the claim and the issues involved.

The participants are encouraged to be as involved as possible in all aspects of planning and conducting the inquiry. They identify and explore the relevant historical and legal issues and determine which historical documents they intend to rely on. Time frames are set. They also disclose which elders, community members, or experts will be called as witnesses. The Commission chairs and facilitates the meetings, preparing briefing materials which are sent to the parties in advance. This helps ensure a smooth and informed dialogue.

The Commission places great emphasis on the need for flexibility and

informality in the discussions. The idea is to create an atmosphere that is not confrontational, that emphasizes working together for mutual benefit. Commissioners have learned through experience that open discussion in an informal setting can address concerns and head off impasses before they arise.

It is important that the parties have an opportunity to review their positions in view of recent developments. The law regarding treaty and aboriginal rights is constantly evolving, and recent court decisions can have an impact on the claim. Sometimes, there is a basic misunderstanding of the issues involved.

Commission Counsel Ron Maurice, who has chaired a number of these conferences, states "There have been talks where both parties were able to clear up misunderstandings which were preventing a resolution. There have also been a number of occasions where new facts come to light or recent developments in the law shed a fresh perspective on the merits of the claim. The importance of planning conferences cannot be overstated because face-to-face discussions are critical to the process of resolving claims."

The Process in Action

The ICC's report on the Chippewa of the Thames' Muncey Land Claim Inquiry, released in December 1994, is a good example of how the process works. The parties tried mediation, but were unsuccessful. The ICC decided to proceed to an inquiry. The First Nation and Canada arrived at the first planning conference not knowing what to expect. As discussions commenced, it became apparent that both parties were committed to settling the claim in a way that was timely and fair.

Commission Counsel Ron Maurice chaired the meetings which led to the settlement: "The relaxed atmosphere allowed for free-flowing discussion between the parties, and a great deal was accomplished. At the end of the day, Canada agreed to reconsider its position on a point which had been the cause of much frustration for the First Nation. At later meetings, the parties worked together to reach a settlement that was quite innovative. It shows that claims discussions do not have to be combative. The parties do not have to work against one another — they can work with each other to find win-win solutions."



ICC Co-Chairs Dan Bellegarde
and James Prentice with
Commissioner Carole Corcoran
at a community session.

The Importance of a Cooperative Approach

Planning conferences sometimes evolve into a mediation rather than a full inquiry. The Commission's mandate allows it to act as a mediator in land claims negotiations between the parties. Mediation can occur at any stage in the process, not just at the outset of the inquiry. Commissioners have found that mediation, like the planning conferences, works because it encourages open communication. ICC Commissioners continue to recommend in Annual Reports that: "Canada should make use of the existing mediation mandate of the Commission to facilitate the resolution of claims".

Under its mediation mandate, the ICC has undertaken a number of initiatives to apply the concept of cooperative and "open, face-to-face" dialogue to resolve claims. One example is the Michipicoten Pilot Project, which involves several claims of the Michipicoten First Nation, located near Wawa, Ontario. At the request

of the parties, the ICC has acted as the facilitator for this Project, first proposed by Michipicoten Chief Sam Stone. The project marks the first time federal government and First Nation officials have worked cooperatively, conducting joint research and formulating a joint claims submission. This will eliminate the duplication of work which is a problem with the current system.

In keeping with the ICC's tradition of flexibility and informality, claims accepted early on can be negotiated while other research continues. So far, the Project has been quite successful and the parties are pleased with the progress. The Project is being watched by many people involved in claims negotiations because it could prove to be an effective model for a new, collaborative claims process. It represents some of the fundamental principles advanced by the ICC.

A Commitment to Cooperation

Currently, the Assembly of First Nations (AFN) and Canada are working together

as part of a Joint Task Force on Claims Policy Reform to create a new and improved process for resolving land claims. It is hoped that this process will lead to the establishment of an Independent Claims Body with binding authority to resolve claims when negotiations result in an impasse. The ICC is pleased to note that the JTF talks are making substantial progress, and the commitment of the parties is evident.

The ICC has been exploring innovative approaches since 1991. Commission Co-Chair James Prentice states: "Obviously, we share the goal of First Nations and Canada to find more effective ways to resolve claims which build healthy communities and stronger relationships. We will continue to advocate and support Canada and the AFN in their efforts to develop a mandate and policies for the new independent claims body. This is a task which requires the commitment of all parties and, indeed, all Canadians."

RESOLVING CLAIMS: AN OVERVIEW OF THE ICC'S WORK

THE FOLLOWING CLAIMS WERE ACCEPTED AT AN EARLY STAGE OF THE ICC PROCESS:

Blood Tribe/Kainaiwa (Akers Surrender), AB
Chippewa Tri-Council (Collins Treaty), ON
Chippewas of the Thames (Muncey Land Claim), ON
Fishing Lake First Nation (1907 Surrender), SK
Mikisew Cree First Nation (Treaty Entitlement to Economic Benefits), AB
Nak'azdli First Nation (Aht-Len-Jees IR5), BC
Sturgeon Lake First Nation (Agricultural Lease), SK

COMPLETE LIST OF ICC INQUIRIES WHICH LED TO CLAIMS BEING ACCEPTED AND/OR SETTLED

1. Blood Tribe/Kainaiwa (Akers Surrender), AB Accepted
2. Canoe Lake Cree Nation (Primrose Lake Air Weapons Range), SK Accepted/Settled
3. Chippewa Tri-Council (Collins Treaty), ON Accepted
4. Chippewas of the Thames (Muncey Land Claim), ON Settled
5. Cold Lake First Nation (Primrose Lake Air Weapons Range), SK Accepted
6. Fishing Lake First Nation (1907 Surrender), SK Accepted

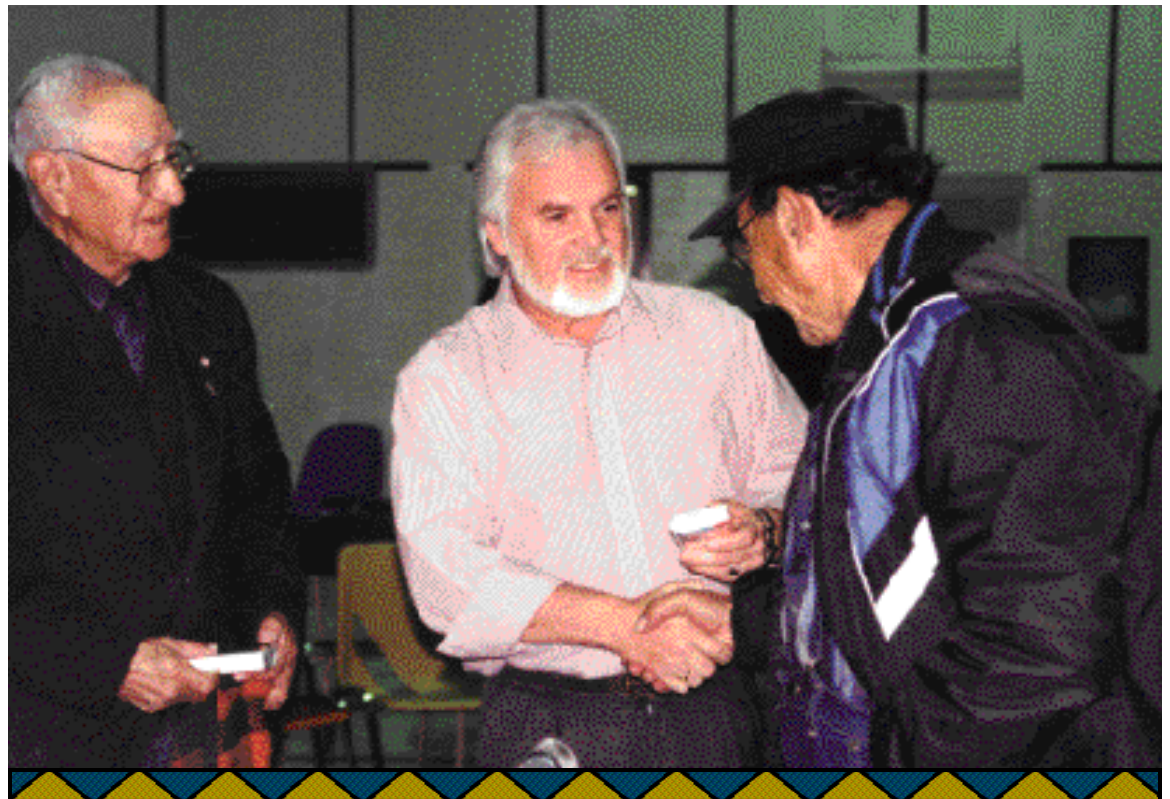
7. Fort McKay First Nation (Treaty Land Entitlement), AB Accepted
8. Kahkewistahaw First Nation (1907 Surrender), SK Accepted
9. Kawacatoose First Nation (Treaty Land Entitlement), SK Accepted
10. Mikisew Cree First Nation (Treaty Entitlement to Economic Benefits), AB Accepted
11. Moosomin First Nation (1909 Surrender), SK Accepted
12. Nak'azdli First Nation (Aht-Len-Jees IR 5), BC Accepted
13. Sturgeon Lake First Nation (Agricultural Lease), SK Accepted

ICC CLAIMS SETTLED THROUGH MEDIATION AND FACILITATION

1. Carry the Kettle Band (Treaty Land Entitlement), SK Settled
2. Little Black Bear Band (Sale of Surrendered Land), SK Settled
3. Roseau River Anishinabe First Nation (Treaty Land Entitlement), MB Settled



INDIAN CLAIMS COMMISSION RECOMMENDATIONS LEAD CANADA TO BROADEN POLICY AND ACCEPT TWO FIRST NATIONS' CLAIMS



ICC Commissioner Roger Augustine presenting tobacco to Elders John Kay (right) and Fred Poorman (left) at the Kawacatoose Community Session in Saskatchewan.

Recommendations made by the Indian Claims Commission have led to a change in Canada's specific land claims policy. On April 30, 1998, the Minister of Indian Affairs and Northern Development, the Honourable Jane Stewart, announced that the Department would accept two previously rejected land claims based on the ICC's recommendations. Further, the Minister stated that the Department would broaden its policy with regard to

Treaty Land Entitlement (TLE) claims based on the ICC's recommendations.

Prior to the policy change, Canada had maintained that TLE calculations must be based on the band's population on the "date of first survey" of the reserve. New members or new adherents to treaty who joined the band after this date were not entitled to be counted in determining a First Nation's land base. Canada's new policy represents a major departure. The new policy embraces the general

principle that all treaty Indians are entitled to be counted in a land entitlement calculation even if they become members of a First Nation after the original survey of reserve land.

ICC Co-Chair Dan Bellegarde said the move was a positive sign. "It is always encouraging when the Minister and her department are willing to reconsider their positions and policies on specific claims, particularly when they involve treaty obligations to First Nations. Our Commission has released

“...OUR APPROACH IS BASED ON THE STRAIGHTFORWARD PRINCIPLE THAT EVERY TREATY INDIAN IS ENTITLED TO BE COUNTED WHEN DETERMINING THE SIZE OF A FIRST NATION’S LAND BASE. THE MINISTER’S ANNOUNCEMENT RECOGNIZES OUR HARD WORK IN THIS AREA AND RESPECTS THE UNDERLYING PRINCIPLE OF FAIRNESS.”

a number of reports on TLE claims and we have developed a set of guidelines and principles that can be used when evaluating these claims. Our approach is based on the straightforward principle that every treaty Indian is entitled to be counted when determining the size of a First Nation’s land base. The Minister’s announcement recognizes our hard work in this area and respects the underlying principle of fairness.”

Treaty Land Entitlement claims arise when a First Nation asserts that Canada has failed to provide it with sufficient reserve lands under the terms of treaty. Many of the treaties signed in western Canada in the late 1800s included a formula defining the amount of land to be provided. For example, treaties 1, 2 and 5 provide for 160 acres per family; treaties 3, 4, 6, 7, 8, 9 10 and 11 designate 1 square mile per family of five, or 128 acres per person.

A number of historical factors have led to claims based on treaty land entitlements. Band populations were fluctuating during the late 1800s to early 1900s as Indians began to settle on reserves and make the transition

from hunting, trapping and fishing to agriculture; census records for bands were inaccurate or incomplete; the survey of reserves was delayed for a period of time following the treaty signing; and new bands and individuals adhered to treaty after the original treaties were signed.

The ICC has recommended that new individuals who join a band or band members who move to a reserve — called “late additions” or “late adherents” - are entitled to their treaty land provided they had not received land as a member of another band. The Minister’s announcement stated that: “...the new approach would ensure TLEs will no longer be based solely on the government’s original band population count but will include people who joined bands shortly afterwards and were not counted under any other treaty settlement.”

The two claims accepted by the Minister as a result of the new policy concern the Fort McKay First Nation in Alberta and the Kawacatoose First Nation in Saskatchewan. The ICC conducted an inquiry into the Fort

McKay First Nation’s claim and released its report in December 1995. That report prompted the Department to review its policy on TLE claims. The ICC’s report on the Kawacatoose First Nation claim was released in March 1996, and a response was delayed while the Department continued its review.

In making the announcement, Minister Stewart thanked the ICC for the reports which “...assisted Canada during the TLE policy review and permitted Canada to reconsider its position on TLE validation.”

ICC Co-Chair James Prentice stated, “The announcement signals an approach to resolving claims based on fairness towards Aboriginal people and respect for the Crown’s promises made in the treaties. The Minister correctly points out that an adequate land base is the foundation on which to build strong, self-determining communities. Everyone benefits from this arrangement.”

The ICC’s reports for the Fort McKay First Nation and Kawacatoose First Nation can be found on the ICC web site at www.indianclaims.ca.



NEW ICC PUBLICATIONS

Qu'Appelle Valley,
Saskatchewan, 1885.
The ICC's report on
the Qu'Appelle Valley
Indian Development
Authority Inquiry is
now available.
(C-017638B)



ICC Co-Chair
James Prentice and
Commissioner
Carole Corcoran releasing
the report of the
Athabasca Chipewyan
First Nation Inquiry in
Edmonton (April, 1998).



The following publications are now available from the ICC:

*Indian Claims Commission Proceedings,
Volume 6*

*Indian Claims Commission Proceedings,
Volume 7*

*Qu'Appelle Valley Indian
Development Authority Inquiry Report
on Flooding Claim*

*Sturgeon Lake First Nation Inquiry
Report on Red Deer Holdings
Agricultural Lease Claim*

*Chippewa Tri-Council Inquiry Report on
Collins Treaty Claim*

*Friends of the Michel Society Inquiry
Report on 1958 Enfranchisement Claim*

*Athabasca Chipewyan First Nation
Inquiry Report on WAC Bennett Dam
and Damage to Indian Reserve No.
201 Claim*

Landmark Newsletter, Spring 1998

*All publications are available in both
English and French and are free.
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www.indianclaims.ca.*

