

Lucky Man Cree Nation Treaty Land Entitlement Phase II Inquiry

Backgrounder

Lucky Man was an influential Cree Chief who adhered to Treaty 6 on July 12, 1879, but unlike some other chiefs, continued to follow the buffalo hunt. Although he indicated several times that he would select a reserve, he did not choose lands in an area that was acceptable to the Canadian authorities.

Treaty 6 covered an area of about 120,000 square miles, from the Rocky Mountains in the west to Manitoba in the east. In exchange for giving up their Aboriginal rights to the land within the boundaries of the treaty, the Cree and Assiniboine Chiefs who signed on behalf of their followers were promised reserve lands, annuities, farm implements and instruction to help them change from a nomadic life of hunting buffalo to a settled agricultural existence.

Lucky Man was not alone in his effort to delay selecting reserve land, even though the buffalo herds upon which he and his followers depended were rapidly disappearing. Among his contemporaries was Big Bear, who also resisted settlement and attempted to have Canada renegotiate Treaty 6. Canada's response was to withhold rations from bands that did not settle, resulting in tension between Canada and the bands.

By early 1885, without the buffalo and without rations, the nomadic Cree were close to a breaking point. In March 1885, Louis Riel declared his provisional government and the North-West Rebellion began. Violence erupted near Frog Lake, where Big Bear had camped. The historical evidence does not show that Lucky Man participated in the killings that ensued, but he was in Frog Lake at the time. After the brief Rebellion, many of the Cree in the area, including Lucky Man, fled to Montana and settled there. He returned to Canada only once, in 1896, was arrested for the killing at Frog Lake, but was released shortly afterwards. He returned to Montana and died there.

After the Rebellion, his band members scattered. A few stayed on in the Battleford area, and were present in 1887 when the survey of Indian Reserve (IR) 116 for the Little Pine and Lucky Man Bands took place. The annuity payroll for that year showed a band population for Lucky Man of 62, although it also indicated that many had gone "south." Canada maintained a separate annuity payroll for the Band for many years, but eventually treated it as if it had been absorbed by the Little Pine Band. Later, the entire acreage of IR 116 was credited to the Little Pine First Nation in its treaty land entitlement (TLE) negotiations with Canada.

A new Chief did not succeed Lucky Man until 1974. Band members who asked to have themselves recognized officially by Canada also decided to seek a reserve based on the Band's historical population. In 1989, Canada and the Lucky Man Band signed a Treaty Land Entitlement Settlement Agreement. As part of the settlement, Canada set aside 25 square miles as a reserve, which was land enough for 60 people under the terms of Treaty 6. The population figure of 60 was based upon the Band's population in 1976. The Settlement Agreement left open the possibility that a TLE shortfall based on historical populations might exist and allowed the First Nation to make a further claim.

Canada rejected the further claim in 1994, and in 1995, the Lucky Man Cree Nation requested that the ICC conduct an inquiry into its rejected claim. Canada asserted that the Band's TLE claim was barred by the 1989 Settlement Agreement. Accordingly, the first phase of the inquiry focused on two issues: whether the First Nation could bring a claim in light of the 1989 settlement; and what year should be used to establish the band's historical TLE population.

In March 1997, the ICC found that the Settlement Agreement did not preclude the First Nation from bringing a claim for compensation for a TLE shortfall and determined that the appropriate date for evaluating a historical claim was 1887, the year of the survey for the Little Pine and Lucky Man Bands. The panel in Phase I recommended that additional payroll analysis be done and that the First Nation and Canada negotiate a settlement of the claim.

Canada rejected the claim, and in 2003, the First Nation requested that the ICC conduct a further inquiry into whether there was a historical TLE shortfall.

Issues

1 Population in 1887

On the basis of an 1887 "date of first survey," what was the population of the Lucky Man Cree Nation for treaty land entitlement purposes.

The panel found that the starting point for the analysis must be the 62 members listed on the 1887 treaty annuity payroll, in spite of the fact that many members had been identified as being "south" or in other parts of Canada. The panel's analysis took into consideration the impact of the North-West Rebellion on the Lucky Man Band and accepted the proposition that, had the Rebellion not happened, most, if not all, of the members who fled would have remained at Battleford and would have been present for the survey.

The panel also carefully considered the development of Canada's TLE policy and the wording of its most current iteration, the Draft Guidelines published in 1998. The panel found that under the wording of the guidelines, there was no reason for Canada to exclude or not count people who were listed as members but had fled. The panel also took into account other TLE settlements in which the North-West Rebellion had been a factor and in which members who had fled were counted.

2 Amount of existing treaty land entitlement lands

How much land is Canada to be credited with for treaty land entitlement purposes.

The panel reviewed the Lucky Man Band's 1989 Treaty Land Entitlement Settlement Agreement and decided that the only reasonable interpretation was that the 7,680 acres set aside was TLE land and should be credited as such.

3 Whether a shortfall continues to exist

Has Canada satisfied its treaty land entitlement obligation to the Lucky Man Cree Nation?

Based upon a credit to Canada of 7,680 acres, or land sufficient for 60 people under the terms of Treaty 6, and a base payroll for 1887 of 62, the panel determined that a shortfall of at least two people exists. On that basis, the panel concluded that Canada has not concluded its treaty land entitlement obligation to the Lucky Man Cree Nation.

Inquiry Considerations

In reaching its decisions, the panel worked towards gaining the most complete understanding of all events at issue, using historical documentation, expert reports, both written and oral, secondary sources, and legal submissions. As an independent commission of inquiry, the ICC is guided in all its work by the principles of impartiality, fairness and transparency.