

INDIAN CLAIMS COMMISSION

REPORT ON THE MEDIATION

OF THE

STURGEON LAKE FIRST NATION

TREATY LAND ENTITLEMENT NEGOTIATIONS

May 2008

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SUMMARY

STURGEON LAKE FIRST NATION TREATY LAND ENTITLEMENT NEGOTIATIONS MEDIATION Saskatchewan

The report may be cited as Indian Claims Commission, *Sturgeon Lake First Nation: Treaty Land Entitlement Negotiations Mediation* (Ottawa, May 2008).

*This summary is intended for research purposes only.
For greater detail, the reader should refer to the published report.*

Treaties – Treaty 6 (1876); **Treaty Interpretation** – Treaty Land Entitlement; **Treaty Land Entitlement** – Policy – Population Formula – Saskatchewan Framework Agreement; **Mandate of Indian Claims Commission** – Mediation; **Saskatchewan**

THE SPECIFIC CLAIM

Sturgeon Lake First Nation submitted its treaty land entitlement (TLE) claim to the Department of Indian Affairs and Northern Development (DIAND) in 1996, alleging a shortfall of entitlement lands based on additions to the band membership after the date of first survey (DOFS). It was accepted under the 1998 Historic Treaty Land Entitlement Shortfall Policy on March 31, 2004. When negotiations to settle this claim began in June 2004, all parties at the table requested that the Indian Claims Commission (ICC) facilitate the negotiations and provide other administrative services throughout the negotiations.

BACKGROUND

The ICC's involvement in this claim related only to its mediation mandate. As such, the ICC did not receive historical records or legal submissions from the parties.

Chief Ah-yah-tus-kum-ik-im-am (William Twatt) and his councillors signed Treaty 6 in 1876 on behalf of their followers, the descendants of whom now call themselves the Sturgeon Lake First Nation. Treaty 6 specified that government officials and individual bands were to select the location of reserves to be surveyed according on a formula of one square mile for each family of five (128 acres per person). Indian Reserve (IR) 101 was surveyed in 1878. Order in Council PC 1151, dated May 17, 1889, confirmed the 34.4-square-mile reserve about 30 kilometres northwest of Prince Albert.

In 1998, following several ICC Inquiries into TLE matters, Canada amended its policy and agreed to include eligible new adherents to treaty and transferees from landless bands after the date of first survey when calculating treaty land entitlement. It was on this basis that the Minister of Indian Affairs accepted the Sturgeon Lake First Nation TLE claim in March 2004.

MATTERS FACILITATED

The ICC'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 acceptable agendas, venues, and times for meetings.

OUTCOME

On January 25, 2007, the Sturgeon Lake First Nation ratified the proposed settlement of \$10.4 million in compensation, with authorization to purchase up to 38,971 acres of land which can be converted to reserve status.

REFERENCES

The ICC undertakes no independent research during mediation, drawing on background information and documents submitted by the parties. The mediation discussions are subject to confidentiality agreements.

PART I
INTRODUCTION

In the 1870s, some reserves set aside in what is now the province of Saskatchewan under Treaty 6 did not meet the terms as negotiated and specified in that agreement. This is a report on how, almost 130 years after the survey and establishment of a reserve in Saskatchewan, a treaty land entitlement (TLE) claim based on such an error was, with the assistance of the Indian Claims Commission (ICC), successfully resolved.

The people of the Sturgeon Lake First Nation are descended from the Cree Chief, Ah-yah-tus-kum-ik-im-am. According to the records of the Department of Indian Affairs, after 1880 the Band was usually referred to as William Twatt's Band after the Chief's English name. In about 1963, the name was changed to the Sturgeon Lake Band and later to the Sturgeon Lake First Nation.¹ Sturgeon Lake Indian Reserve (IR) 101, which is the primary reserve, measures 8,889 hectares and is located approximately 29 kilometres northwest of Prince Albert, Saskatchewan. A second reserve, IR 101A, measures 320.5 hectares. The total registered band population as of January 2008 was 2,410, of whom 1,648 lived on reserve.²

This report will not provide a full history of the Sturgeon Lake treaty land entitlement claim but instead will briefly outline the historical background. It will also summarize the events leading up to the settlement of the claim and illustrate the Commission's role in the resolution process.

Sturgeon Lake First Nation submitted its TLE claim to the Department of Indian Affairs and Northern Development (DIAND) in 1996. It was accepted under the 1998 Historic Treaty Land Entitlement Shortfall Policy on March 31, 2004.³ When negotiations to settle this claim began in June 2004, all parties at the table requested that the Indian Claims Commission facilitate the negotiations and provide other neutral third-party administrative services throughout the negotiations.

¹ Indian Claims Commission, *Sturgeon Lake First Nation: Red Deer Holdings Agricultural Lease Inquiry* (Ottawa, March 1998), reported (1998), 10 ICCP 3 at 12.

² Canada, Indian and Northern Affairs Canada [INAC], First Nation Profiles, Sturgeon Lake First Nation, <http://sdiprod2.inac.gc.ca/fnprofiles> (consulted November 21, 2007).

³ Andy Mitchell, Minister of Indian Affairs, to Chief Earl Ermine, Sturgeon Lake First Nation, March 31, 2004, ICC file 2107-31-2M, vol. 1.

THE COMMISSION'S MANDATE AND MEDIATION PROCESS

The Indian Claims Commission was created as a joint initiative after years of discussion between First Nations and the Government of Canada on how the process for dealing with Indian land claims in Canada might be improved. Following the Commission's establishment by Order in Council⁴ on July 15, 1991, Harry S. LaForme, a former commissioner of the Indian Commission of Ontario, was appointed as Chief Commissioner. With the appointment of six Commissioners in July 1992, the ICC became fully operative. The ICC is currently being led by Chief Commissioner Renée Dupuis (QC), along with Commissioners Daniel J. Bellegarde (SK), Jane Dickson-Gilmore (ON), Alan C. Holman (PEI), and Sheila G. Purdy (ON).

The Commission has a double mandate: to inquire, at the request of a First Nation, into its specific land claim; and to provide mediation services, with the consent of both parties, for specific claims at any stage of the process.

An inquiry may take place when a claim has been rejected or when the Minister has accepted the claim for negotiation but a dispute has arisen over the compensation criteria being applied to settle the claim. As part of its mandate to find more effective ways to resolve specific claims, the Commission has established a process to inquire into and review government decisions regarding the merits of a claim and the applicable compensation principles when negotiations have reached an impasse. Since the Commission is not a court, it is not bound by strict rules of evidence, limitation periods, and other technical defences that might present obstacles in litigation of grievances against the Crown. This flexibility removes those barriers and gives the Commission the freedom to conduct fair and objective inquiries in as expeditious a way as possible. In turn, these inquiries offer the parties innovative solutions in their efforts to resolve a host of complex and contentious issues of policy and law. Moreover, the process emphasizes principles of fairness, equity, and justice to promote reconciliation and healing between Aboriginal and non-Aboriginal Canadians.

The Commission provides broad mediation, facilitation, and other administrative services at the request of both the First Nation and the Government of Canada. These services are available

⁴ The original Commission has been substantively amended in the years since 1991, most recently on November 22, 2007, whereby the Commissioners are, among other things, directed to complete all inquiries by December 31, 2008, including all inquiry reports, and to cease, by March 31, 2009, all their activities and all activities of the Commission, including those related to mediation.

at any stage of the specific claims process, including research, submission, review, acceptance, and negotiation. Together with the mediator, the parties decide how the mediation process will be conducted. This method ensures that the process fits the unique circumstances of each particular negotiation. The mediation process used by the Commission for handling claims is aimed at increasing efficiency and effectiveness in resolving specific claims.

PART II
A BRIEF HISTORY OF THE CLAIM

In August 1876, representatives of Her Majesty the Queen met with Plains Cree, Wood Cree, and other tribes of Indians at Fort Carlton in the vicinity of Duck Lake north of Saskatoon to negotiate Treaty Six. In exchange for the surrender of Aboriginal title to 121,000 square miles of land in what is now central Saskatchewan and Alberta, the Crown promised to provide the Indians with perpetual annuities, schools, agricultural assistance, a medicine chest, and reserve lands. The treaty specified that government officials and individual bands were to select the location of reserves, which were to be surveyed based on a formula of one square mile for each family of five (that is, 128 acres per person):

And Her Majesty the Queen hereby agrees and undertakes to lay aside reserves for farming lands, due respect being had to lands at present cultivated by the said Indians, and other reserves for the benefit of the said Indians, to be administered and dealt with for them by Her Majesty's Government of the Dominion of Canada; provided, all such reserves shall not exceed in all one square mile for each family of five, or in that proportion for larger or smaller families, in manner following, that is to say: that the Chief Superintendent of Indian Affairs shall depute and send a suitable person to determine and set apart the reserves for each band, after consulting with the Indians thereof as to the locality which may be found to be most suitable for them.⁵

Chief Ah-yah-tus-kum-ik-in-win and four councillors signed Treaty 6 at Fort Carlton on August 23, 1876,⁶ on behalf of the 23 families paid with them at that time.⁷ When interviewed after the treaty negotiations, the Chief indicated that his people wanted the reserve on the north side of Sturgeon

⁵ Canada, *Treaty No. 6 between Her Majesty the Queen and the Plain and Wood Cree Indians and Other Tribes of Indians at Fort Carlton, Fort Pitt and Battle River, with Adhesions* (Ottawa: Queen's Printer, 1964), 3.

⁶ Canada, *Treaty No. 6 between Her Majesty the Queen and the Plain and Wood Cree Indians and Other Tribes of Indians at Fort Carlton, Fort Pitt and Battle River, with Adhesions* (Ottawa: Queen's Printer, 1964), 5-7.

⁷ W.J. Christie, Indian Commissioner, Fort Garry, Memorandum, October 10, 1876, in Library and Archives Canada (LAC), RG 10, vol. 3636, file 6694-1.

Lake.⁸ A year later, the acting Indian Agent reported that the Band had already built houses and had begun to cultivate the land:

Ah-yah-tus-kum-ik-in-win and band would like their reservation around Sturgeon Lake about 18 miles north of Prince Albert. They have built some houses and have wood out for four more. They have six bushels of barley sown and 20 of potatoes besides a garden.⁹

In the summer of 1878, surveyor Elihu Stewart received verbal instructions from Lieutenant Governor David Laird and Assistant Surveyor General Lindsay Russell to define the boundaries of the reserve at Sturgeon Lake. Stewart began his work on August 19, and completed it on September 20, after the Chief had met with the Lieutenant Governor to resolve a disagreement concerning the boundaries.¹⁰ The reserve as surveyed by Stewart measured 34.4 square miles (22,042 acres) and was confirmed by Order in Council PC 1151, dated May 17, 1889. This acreage satisfied the land entitlement under Treaty 6 for 172 people ($22,042 \div 128 = 172$). The Order in Council provided a brief description of the reserve land:

In the north-eastern part the surface is chiefly rolling and covered with poplar, most of which is small and scrubby, and jack-pine. There is little open ground, some tamarac muskegs occur. The soil is a sandy loam containing much vegetable fibre. North of the lake there are stretches of open land well adapted to farming. The western extremity is heavily timbered with spruce of superior quality. Sturgeon Lake is a long narrow expansion of Sturgeon or Net-Setting River, and runs easterly, across the reserve. This stretch of water has high bold shores, and abounds with fish and fowl. It is used by lumbermen to get out timber.¹¹

⁸ W.J. Christie, Indian Commissioner, Fort Garry, Memorandum, October 10, 1876, LAC, RG 10, vol. 3636, file 6694-1.

⁹ James Walker, Acting Indian Agent, Battleford, NWT, to Lt. Governor, NWT, Battleford, August 20, 1877, LAC, RG 10, vol. 2656, file 9092.

¹⁰ Natural Resources Canada, Field book 729, Canada Lands Surveys Records (CLSR), E. Stewart, Dominion Land Surveyor (DLS), Indian Reserve survey diary, 1878–79, September 9, 1878.

¹¹ Order in Council PC 1151, May 17, 1889, pp. 50–51.

Subsequent to Stewart's survey, there were two alterations to the land holdings of the Sturgeon Lake Band, neither of which affected the acreage for treaty land entitlement purposes. In 1913, the Sturgeon Lake Band surrendered 2,145.47 acres of its reserve land and received in exchange 1,425 acres as an addition to IR 100 and 792.4 acres that were set apart as IR 101A. The addition and new reserve were confirmed by Order in Council PC 2379, dated September 24, 1913.

ESTABLISHING A TREATY LAND ENTITLEMENT CLAIM

The treaties negotiated with the Indians in the 19th and 20th centuries in northern Ontario, the Prairies, and northern British Columbia – the Numbered Treaties – all included a formula (either 32 acres per person or 128 acres per person, depending on the treaty) for calculating the size of reserve lands.¹² Unfortunately, neither the treaties nor the correspondence and reports associated with them stated when or how those population figures were to be obtained, leaving many important questions unanswered. Were the figures determined by the number of people in the band at the time of the treaty, or when the survey was done, or at some other time? Were the numbers to be determined from the treaty annuity paylists, by a separate census, or by a count of those present when the survey was done?

After the federal government announced in 1973 its intention to settle specific claims where Canada had not fulfilled its treaty obligations to set aside reserves, researchers needed policy guidelines to answer these questions. Initially, Canada only validated claims where a shortfall of land was established based on the band's population according to the treaty annuity paylists at the date of first survey, with no consideration given to people who were absent or who joined the band after the survey. In 1983, the Office of Native Claims Branch of the Department of Indian Affairs distributed "Research Guidelines" for the validation of TLE claims which expanded the eligibility criteria to include people who joined the band after the date of the first survey:

The general principle which applies in all categories of land entitlement claims is that each Treaty Indian Band is entitled to a certain amount of land based on the number

¹² This section summarized from Donna Gordon, "Treaty Land Entitlement, A History," prepared for the Indian Claims Commission, Ottawa, December 1995, reprinted (1996) 5 ICCP 339.

of members. Conversely, each treaty Indian is entitled to be included in an entitlement calculation as a member of an Indian Band.

The following criteria are intended as guidelines in the research and validation process for treaty land entitlement claims.¹³

Under the heading “Persons included for entitlement purposes,” the guidelines included, with certain defined restrictions, those who appeared on the payroll for the year of survey, absentees, new adherents to treaty, transfers from landless bands, and non-treaty Indians who marry into a treaty band.¹⁴

In 1989, Canada and the Federation of Saskatchewan Indian Nations (FSIN) agreed to establish the Office of the Treaty Commissioner (OTC), which was charged with, among other things, developing proposals for the settlement of TLE claims in Saskatchewan that would satisfy both Canada and the First Nations. On September 22, 1992, after two years of research and negotiations, representatives of the federal and provincial governments (Saskatchewan had a legal obligation under the 1930 *Natural Resources Transfer Agreement* to provide “unoccupied Crown lands” for the creation of Indian reserves) along with most of the First Nations in Saskatchewan with recognized TLE shortfalls, signed the Saskatchewan Treaty Land Entitlement Framework Agreement defining the manner in which the parties agreed to fulfill outstanding TLE obligations to Entitlement Bands in Saskatchewan.

According to this negotiated agreement, the basis for determining the final settlement for each First Nation that signed the Framework Agreement was the “equity formula”: historical percentage shortfall \times current population \times acres per treaty (128 acres in Treaty 6) equals the quantum of land that could be purchased by a First Nation to settle a claim. The historical percentage shortfall was determined by comparing the amount of land that the First Nation actually received with the amount of land that it should have received. In order to establish that acreage, it was necessary to define who could be counted with the First Nation for entitlement purposes. The

¹³ DIAND, Office of Native Claims, “Historical Research Guidelines for Treaty Land Entitlement Claims,” May 1983, reprinted (1996) 5 ICCP 512.

¹⁴ DIAND, Office of Native Claims, “Historical Research Guidelines for Treaty Land Entitlement Claims,” May 1983, reprinted (1996) 5 ICCP 512 at 515.

procedures established by the OTC were based on the 1983 Office of Native Claims guidelines, with additional interpretations and definitions that were accepted by both Canada and the First Nations.

Twenty-six Saskatchewan First Nations had established a TLE shortfall and were parties to the Framework Agreement, but during the negotiations, there was a recognition that there were other bands who could later prove to have valid TLE claims. As a result, Article 17 was included to ensure that those Bands would be dealt with on the same basis as those covered by the Framework Agreement, if they chose that approach.

The issue of Article 17 and its relevance to both validation and negotiation of TLE claims in Saskatchewan was considered by the Indian Claims Commission in 1996 in its inquiries into the rejected TLE claims of both Kawacatoose and Kahkewistahaw First Nations. After reviewing documentation and hearing from many of the people who participated in the negotiation of the Framework Agreement, the ICC concluded in the Kawacatoose Inquiry that Article 17 did not apply to the criteria to validate a claim, but was to apply to the settlement of claims after validation:

While the Commission has determined that the Framework Agreement does not give non-Entitlement Bands an independent basis for validation ...
... once substantiation of the claim on a non-Entitlement Band has occurred, as in the present case, section 17.03 applies, stipulating that Canada and Saskatchewan will support the extension of the principles of settlement contained in the Framework Agreement to that band.¹⁵

The ICC reiterated this position in its subsequent report on the TLE claim of the Kahkewistahaw First Nation:

Since the release of the Kawacatoose report, we remain unchanged in our view that section 17.03 is limited to circumstances in which a band's treaty land entitlement claim has *already* been accepted for negotiation in accordance with the terms of treaty. In other words, section 17.03 applies in the context of *settlement*. It does *not* afford a separate basis for *validation* apart from treaty. It represents an agreement among Canada, Saskatchewan, and the Entitlement Bands, that, once a non-Entitlement Band's claim has been accepted for negotiation independently of the Framework Agreement itself, then the settlement of that claim can be dealt with

¹⁵ Indian Claims Commission, *Kawacatoose First Nation: Treaty Land Entitlement Inquiry* (Ottawa, March 1996), reported (1996) 5 ICCP 73 at 229.

much more expeditiously by avoiding protracted bargaining on points that have already been negotiated.¹⁶

Article 17 is significant because, after the Framework Agreement was signed, Canada changed its criteria on whom to include in calculating TLE at the validation stage. In 1993, it allowed only those who were members of the First Nation at the date of first survey (including people who were absent at that date). In 1998, after the ICC had made recommendations in a number of TLE inquiries, Canada expanded the categories to also include additions to membership after the survey – new adherents to treaty, transferees from landless bands, and non-treaty people marrying into the Band. Even so, some specific aspects of the OTC working assumptions allowed the inclusion of some people who would be excluded under Canada’s guidelines and the application of the less inclusive criteria would mean that post-Framework TLE settlements would not receive levels of compensation equivalent to those First Nations who were parties to the Framework Agreement. This variance in eligibility made it difficult for Canada and Saskatchewan First Nations to reach final agreement on the total number of people to include in the treaty land entitlement formula, leaving the question to be worked out at each individual negotiation table.

¹⁶ Indian Claims Commission, *Kahkewistahaw First Nation: Treaty Land Entitlement Inquiry* (Ottawa, November 1996), reported (1998) 6 ICCP 21 at 100. Emphasis in original.

PART III
MEDIATION OF THE CLAIM

Negotiations toward settlement of the Sturgeon Lake TLE claim began in June 2004. Parties to the negotiations included Sturgeon Lake First Nation, Canada, and the Province of Saskatchewan (because of its legal obligation to provide “unoccupied Crown lands” for the creation of Indian reserves). At the request of all the parties, the ICC facilitated the discussions.

For the most part, facilitation focussed on matters relating to process. 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 the meetings. The Commission was also available to mediate disputes if requested to do so by the parties, to assist them in arranging for further mediation, and to coordinate any studies or other research that might be undertaken by the parties to support negotiations.

Although the Commission is not at liberty, based on an agreement made with the negotiating parties and addressing in part the confidentiality of negotiations, to disclose the discussions during the negotiations, it can be stated that the First Nations and representatives of the Department of Indian Affairs and Northern Development and the Province of Saskatchewan worked to establish negotiating principles and a guiding protocol agreement, which helped them to arrive at mutually acceptable resolution of the Sturgeon Lake TLE claim.

In addition to agreement on the terms of the negotiation protocol, other elements of the negotiation included agreement by the parties on the nature of the Commission’s role in the negotiations; the final population figures for determining shortfall acres for settlement purposes; the effect of Article 17 of the 1992 Saskatchewan Framework Agreement on the settlement criteria; the applicability of an honour payment to the Sturgeon Lake TLE claim; the variation of the payment schedule stipulated in the Framework Agreement; the impact of the bilateral (Canada and Saskatchewan) discussions relating to the cost-sharing provisions in the Framework Agreement; compensation for land as well as negotiation and ratification expenses; and, finally, settlement issues and agreements, communications, and ratification of the final settlement.

One issue – the application of the appropriate TLE guidelines, before and after validation, to the negotiation of TLE claims in Saskatchewan in light of Article 17 of the Framework Agreement and past practices followed by Canada in settling other claims – was also of concern to three other Saskatchewan First Nations who were proceeding to negotiations on treaty land entitlement claims. Canada and the four First Nations (Muskoday, Sturgeon Lake, George Gordon, and Pasqua) agreed that an appropriate and cost effective way to address this issue was to come together at a Common Table. The ICC was asked to facilitate the discussions. After an exchange of relevant documents and after meetings held in the fall of 2004, the parties were able to agree on eligibility criteria. Each First Nation then proceeded with its individual negotiations.

At the Sturgeon Lake table, researchers for Canada and the First Nation exchanged information relating to the background of certain band members who had been added to the Band's annuity payroll after the date of first survey to reach agreement on those eligible to be counted toward treaty land entitlement. By March 2005, the parties were able to agree on acreage and population figures. The parties worked diligently to arrive at negotiated agreements on the other outstanding issues, and in November 2006, Canada tabled its formal settlement offer which included cash compensation for land of approximately \$10.4 million plus negotiation and ratification costs, and authorization to purchase up to 38,971 acres of land, which could be converted to reserve status.

The settlement agreement was finalized and initialled by the parties in November 2006 and was presented to the members of the Sturgeon Lake First Nation for ratification on January 25, 2007, at which time 92 per cent, of those members who voted, voted to accept the settlement. On June 19, 2007, a ceremony was held at the Sturgeon Lake First Nation to sign a ceremonial document acknowledging the TLE settlement agreement, attended by the Chief, Council, Elders, and community members, the Minister of Indian Affairs, the provincial Minister of Regional Economic and Co-operative Development, and the ICC's Director of Mediation.

PART IV
CONCLUSION

Credit for the successful negotiation and settlement of the Sturgeon Lake treaty land entitlement claim belongs to the parties. They were diligent and thorough as they worked toward agreement on the numerous issues before them. The Commission, in its role as a neutral third-party facilitator, helped maintain the focus and momentum of the discussions. With the ICC performing many of the necessary administrative tasks, the negotiating parties were able to concentrate their full attention on the substantive details of the negotiations and settlement.

The experience gained and expertise developed by the Commission over the years was especially beneficial at the Common Table. The ICC was pleased to have provided the additional facilitation and administrative services to the discussions involving the four Saskatchewan First Nations with TLE claims and similar issues. The early success at the Common Table in resolving these issues has led, at the time of this writing, to the successful negotiation and resolution of three of the individual TLE claims, with the fourth First Nation anticipating ratification of its claim in the next few months.

FOR THE INDIAN CLAIMS COMMISSION

A handwritten signature in black ink, reading "Renée Dupuis". The signature is written in a cursive, flowing style.

Renée Dupuis, C.M., *Ad.E.*
Chief Commissioner

Dated this 23rd day of May, 2008.