



UBCIC RESEARCH

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JULY 30, 2002

***REPORT ON RACIAL
DISCRIMINATION
AGAINST
INDIGENOUS
PEOPLE IN CANADA***

**(APPENDIX 1: LISTS
OF ARRESTS IN BC)**

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**NUXALK
NATION**

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REPORT ON RACIAL DISCRIMINATION AGAINST INDIGENOUS PEOPLES IN CANADA

To: United Nations Committee on the Elimination of Racial Discrimination

Re: Canada's Violations of the *International Convention on the Elimination of All
Forms of Racial Discrimination* (ICERD) affecting Aboriginal Peoples in Canada

Date:
July 30, 2002

SUBMITTERS:

Turtle Island Support Group
Coalition for a Public Inquiry into Ipperwash
Friends of the Lubicon
Skwelkwek'welt Protection Centre
Sutikalh Camp
House of Smayusta, Nuxalk Nation

APPENDIX I: LIST OF ARRESTS AND CHARGES

A. SKWELKWEK'WELT AND SUTIKALH

British Columbia Assets & Lands Corporation Offices Occupation – May 2001

1. Sarah Deneault	Criminal Contempt
2. Nicole Manuel	Criminal Contempt
3. Amanda Soper	Criminal Contempt
4. Johnny Guitar	Criminal Contempt
5. Mindy Dick	Criminal Contempt
6. Geoff Humphrey	Criminal Contempt
7. Simon Riis	Criminal Contempt
8. Rose Jack	Criminal Contempt
9. Larrisa Nelson	Criminal Contempt
10. Kiko Montilla	Criminal Contempt
11. Joe Romandia	Criminal Contempt
12. Gary Bob	Criminal Contempt
13. Marcus Sauls	Criminal Contempt
14. Francis August	Criminal Contempt
15. Max Carpenter	Criminal Contempt
16. Trevor Dennis	Criminal Contempt



Native Youth Movement at Sun Peaks Village Horse and Carriage Incident - June 24, 2001

17. Nicole Manuel	Mischief
18. Dave Sanderson	Arrested for Obstruction of a Peace Officer (Released shortly after with no charges laid) - McGillivray Lake Raid
19. Geoff Humphrey	Obstruction of a Peace Officer - McGillivray Lake Raid
20. Amanda Soper	Mischief
21. Rose Jack	Arrested for Uttering Threats (Released shortly after with no charges laid)
22. Joe Romandia	Mischief (Charge of Assault was dropped when the Crown realized his action taken were in defense of his sister)
23. Kiko Montilla	Outstanding Warrant for 2 Assault Charges

SUTIKALH - Melvin Creek Roadblock - July 5, 2001

24. Roy Howlett	Intimidation by Blocking a Road
25. Lawrence Pascal	Intimidation by Blocking a Road
26. Jeremiah Kinistino	Intimidation by Blocking a Road
27. Waylon Paquachan	Intimidation by Blocking a Road
28. Krisandra Alfred	Intimidation by Blocking a Road
29. Alaina Tom	Intimidation by Blocking a Road

Forcible Removal of Secwepemc From Their Home at Skwelkwek'welt Protection Centre - July 23, 2001

- | | |
|---------------------|-------------------|
| 30. Charlie Willard | Criminal Contempt |
| 31. Irene Billy | Criminal Contempt |
| 32. George Manuel | Criminal Contempt |
| 33. Henry Saul | Criminal Contempt |



Excavator

- | | |
|----------------------|----------|
| 34. Marcus Sauls | Mischief |
| 35. Rodrick Anderson | Mischief |
| 36. Rose Jack | Mischief |
| 37. Trevor Dennis | Mischief |
| 38. Emery Dick | Mischief |

Skwelkwek'welt Summer Roadblock

- | | |
|--------------------|-----------------------------------|
| 39. Miranda Dick | Intimidation by Blocking a Road |
| 40. Joe Romandia | Intimidation by Blocking a Road |
| 41. Beverly Manuel | Intimidation by Blocking a Road |
| 42. Nicole Manuel | Intimidation by Blocking a Road |
| 43. Amanda Soper | Intimidation by Blocking a Road |
| 44. Rose Jack | Intimidation by Blocking a Road |
| 45. Marcus Sauls | Intimidation by Blocking a Road |
| 46. Trevor Dennis | Intimidation by Blocking a Road |
| 47. Dustin Eberly | - Intimidation by Blocking a Road |

Cabin B&E

- | | |
|--------------------|---|
| 48. Geoff Humphrey | Break & Enter (Charges Dropped)
Resisting Arrest |
|--------------------|---|

Issuing of Seizure Notice - November 2001

- | | |
|--------------------|--|
| 49. Marcus Sauls | Breach of Bail Conditions |
| 50. Dave Sanderson | Obstruction of a Peace Officer & Resisting Arrest |
| 51. Mike | Obstruction of a Peace Officer & Resisting Arrest |
| 52. Jim Gregory | Obstruction of a Peace Officer & Assaulting a Peace Officer |
| 53. Amanda Soper | Outstanding Warrant for Obstruction of a Peace Officer &
Assaulting a Peace Officer |

Skwelkwek'welt Winter Roadblock - December 2001

- | | |
|-----------------------|---|
| 54. Irene Billy | Intimidation by Blocking a Road |
| 55. Janice Billy | Intimidation by Blocking a Road |
| 56. Elizabeth Clemah | Intimidation by Blocking a Road |
| 57. Winnie McNab-lulu | Intimidation by Blocking a Road |
| 58. Shiela Ignace | Intimidation by Blocking a Road |
| 59. Dave Sanderson | Intimidation by Blocking a Road, Obstruction of a Peace Officer, Mischief, Resisting Arrest |
| 60. Marcus Sauls | Breach of Bail Conditions |

B. PARTIAL LIST OF PEOPLE CHARGED re: THE BURNT CHURCH FISHERIES CONFLICT 2001

1. Robert Paul	24. Roland Joe
2. Derek Dedam	25. Wendy Mitchell
3. James Ward	26. Dennis Dedam
4. Danny Ward	27. Shane Francis
5. James Simon	28. Curtis Bonnell
6. Martina Parker	29. Steven Comeau
7. Rayburn Dedam	30. Clifford Larry
8. John Lambert	31. Wilfred Dedam
9. Keith Lambert	32. Terry Doorwood
10. Buddy Dedam	33. Dave Keyway
11. Tretiak Larry	34. Eldon Joe
12. Shane Ward	35. Alvery Paul
13. Dana Dedam	36. Gary Summerville
14. Joey Grant	37. Ivan Mallet
15. Joey Ward	38. David Bartibogue
16. Larry Parker	39. Alfred Dedam (Big Cove)
17. Wilbur Dedam	40. Donald Sanipass (Big Cove)
18. Mark Simon	41. Roy Abraham Peters (Big Cove)
19. Jason Barnaby	42. Brian Caplin (Listigouche)
20. Stafford Paul	43. Donald Barnaby (Listigouche)
21. John William Duplessis	44. Tracy (Christian Peacemaker Teams - CPT)
22. Leo Bartibogue	45. Father Robert Holmes (CPT)
23. Brian Bartibogue	46. William Payne (CPT)

C. PARTIAL LIST OF ARRESTS at IPPERWASH September 1995

At least 28 Indigenous people were arrested as a result of the police assault against the Stoney Point Peoples non-violent land, treaty and cultural rights protest and occupation of Ipperwash Park. Some of these include:

1. David George
2. Rose Manning
3. Bruce Manning
4. Bert Manning
5. Joanne Manning
6. Stacey George
7. Gina George
8. Robert George
9. Warren George Jr.

10. Glenn George
11. Pierre George
12. Carolyn George
13. Marcia Simon
14. Melva George
15. Nicholas Cottrelle
16. Stewart George
17. Judas George
18. Bernard George

In all, sixty-two charges were laid, and most of these were dropped before trial. The last protestor to go to trial, Warren George, was convicted despite using precisely the same evidence that acquitted Nicholas Cottrelle.

D. SENTENCES for NUXALK Defenders 1998



Nuxalk Chiefs and elders in Court 1998

Nuxalk Chief Qwatsinas was sentenced to 45 days in jail and the sentence was suspended. Warren Snow, Harry Schooner, Emily Johnny, Collette Schooner and Ernie Tallio were sentenced to 21 days in jail, sentence suspended. All defendants received two years probation and had to sign an undertaking to keep the peace.

Summary of Court Cases since 1998

COMPLETED TRIALS

TRIAL	TOTAL CHARGES	CONVICTIONS	STAYED/DISMISSED ACQUITTED
Early Stuart 1999	36	19 *	17
Spring 1999	6	3 *	3
Victors (1999)	4	0	4
Chester Douglas #1	3	0	3
Hunting 1997	2	2	0
	<u>51</u>	<u>24</u>	<u>27</u>

* PRESENTLY UNDER APPEAL (which is likely to be heard late 2002)

Early Stuart Appeal Main Issues

Determination of meaning of "conservation"; whether compensation is to be paid for lost fishing opportunities; whether aboriginal consent is required to close fishery

Spring 1999 Appeal Main Issues

Recreational fishery was open at the time that the aboriginal fishery is closed

TRIALS PRESENTLY IN PROGRESS

TRIAL	TOTAL CHARGES	REMAINING	STAYED/DISMISSED ACQUITTED
Mid Summer 1999	41 (12 individuals)	29	12
Coho 1999	27 (8 individuals)	21	6
Early Stuart	22	13	9
Spring 2000	6	4	2
Gravel Trial	12 (3 individuals)		
	<u>108</u>		<u>29</u>

Summer Trial main issues:

Whether compensation should be paid for lost fishing opportunities

Determine meaning of "conservation", whether escapement goals equal conservation and can justify infringement of aboriginal right

Whether Crown can open commercial and recreational fisheries and still justify closure of aboriginal fisheries

Whether the Crown can mistakenly calculate returns, discover the error and still charge Aboriginal fishermen anyway

Coho Trial main issues:

Deals with Red Zone closures: not optimistic about outcome

Obstruction Charges: will focus on Enforcement Protocol; may lead to acquittals

TRIALS NOT YET HEARD

TRIAL	TOTAL CHARGES
Chester Douglas #2	2
Prince George Hunting	2 (3 individuals)
Princeton Hunting	4 (2 individuals)
2001 Fishing	97+/- (19 individuals)
	<u>105</u>

41 41 > 90
27 > 49 > 18
22 > 18
6 > 18
12 > 18
108

POPULATION STATISTICS

From Statistics Canada:

Table: Aboriginal identity population(1)1996

	Total population	Total Aboriginal population	Aboriginal population as % of total population
			%
Canada	28,528,125	799,010	2.8
Newfoundland	547,160	14,205	2.6
Prince Edward Island	132,855	950	0.7
Nova Scotia	899,970	12,380	1.4
New Brunswick	729,630	10,250	1.4
Quebec	7,045,080	71,415	1.0
Ontario	10,642,790	141,525	1.3
Manitoba	1,100,295	128,685	11.7
Saskatchewan	976,615	111,245	11.4
Alberta	2,669,195	122,840	4.6
British Columbia	3,689,755	139,655	3.8
Yukon Territory	30,655	6,175	20.1
Northwest Territories	64,120	39,690	61.9

**Geographic
distribution
of
Aboriginal
population**

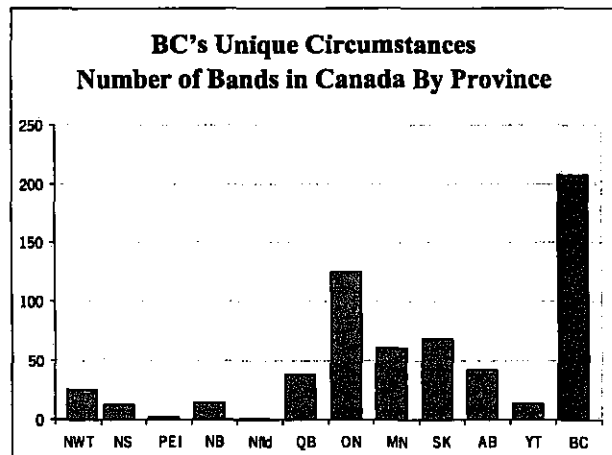
	%
Canada	100.0
Newfoundland	1.8
Prince Edward Island	0.1
Nova Scotia	1.5
New Brunswick	1.3
Quebec	8.9
Ontario	17.7
Manitoba	16.1
Saskatchewan	13.9
Alberta	15.4
British Columbia	17.5
Yukon Territory	0.8
Northwest Territories	5.0

British Columbia's Specific Claims: A Unique History

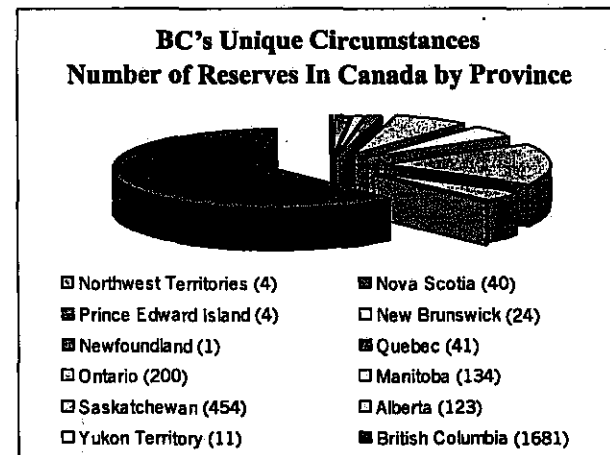
Specific Claims in BC

British Columbia Specific Claims are unique in Canada because BC Has:

- ✓ Fewer treaties
- ✓ Unique pre-confederation circumstances (e.g. Douglas claims/reserves)
- ✓ A distinctive reserve history and character
- ✓ Many bands
- ✓ Hundreds of different cultures

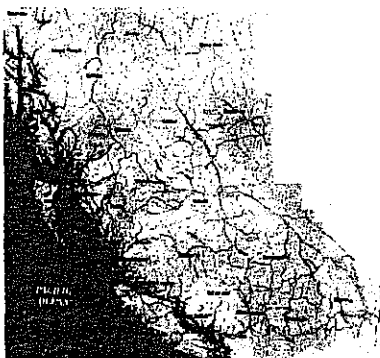


The nature of BC, the hundreds of mountain ranges, thousands of long narrow fiords along the coastline, the long salmon rivers fed from mountain tributaries might explain the relatively larger number of Bands in BC, compared to the rest of Canada. BC has over 200 bands while other provinces have relatively few.



These bands are scattered over 1681 small reserves - over 1100 more reserves than in Saskatchewan.

BC's Unique Circumstances First Nations Cultures in BC

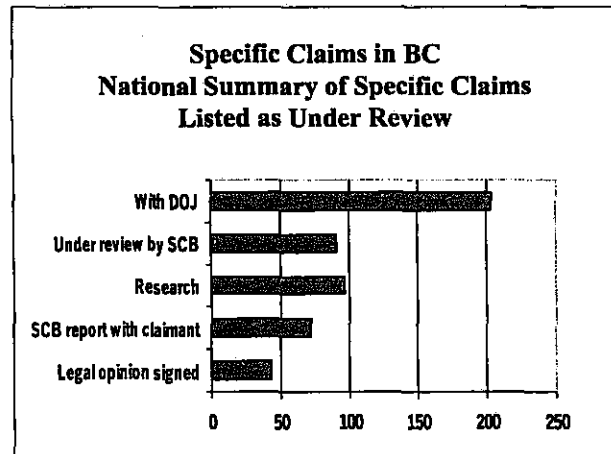


✓BC is also unique in that within this small territory west of the Rockies there are a great many different First Nation cultures. It was and is a densely populated Province, but at the time of Contact there was no single large Nation with whom to negotiate. The very different cultures had very different life styles, dependent on very different resources, and this too leads to very different kinds of Specific Claims even within BC.

✓BC's Aboriginal cultural diversity is also reflected in the number of languages spoken: "Across Canada there are approximately 60 aboriginal language groupings with more than 25 of them on BC alone" (UNBC October 200 media release: *Preserving Northern Aboriginal Languages is Key Focus of Aboriginal Languages Day Festivities at UNBC*).

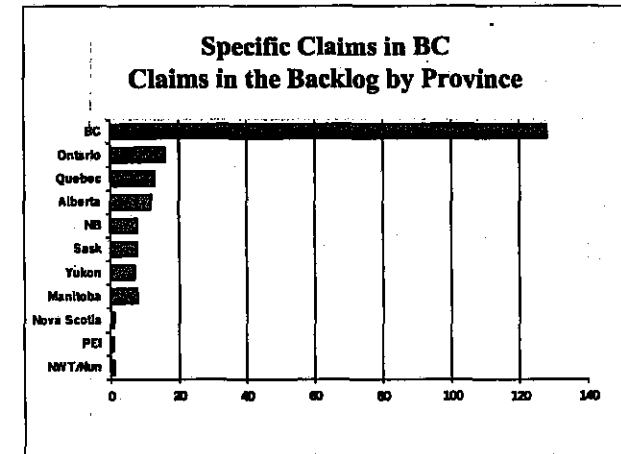
How BC's Unique Circumstances Relate to Specific Claims

Because of the distinctive circumstances of the establishment of the very many small reserves in BC, our Specific Claims are quite unique.



Claims get bottlenecked at the Department of Justice (DOJ). Of the 506 specific claims currently "under review," 203 sit with the DOJ. UBCIC Research has submitted claims that have been with the DOJ for over 10 years. It has become increasingly difficult to get information about when the Department of Justice will review and act on these claims.

(All figures cited are taken from INAC – Specific Claims Branch, Reporting Period 1970/04/01 – 2002/06/30)



BC claims also account for the largest number of claims backlogged at the DOJ. Of the 200 claims currently backlogged at the DOJ, 64% are from British Columbia. No other province is even close to this number. For example Ontario, which has the next highest number of claims in the system, has only 8.5 per cent of its claims with DOJ.

(All figures cited are taken from INAC – Specific Claims Branch, Reporting Period 1970/04/01 – 2002/06/30)

Specific Claims in BC
Diversity of Recent Claims Settlements in BC

Two claims which recently settled illustrate how a \$7 million cap does not reflect the diversity of claims in BC.

- ✓ The Okanagan Band recently settled a claim valued at \$6 million
- ✓ The Squamish Band settled a claim valued at \$20 million.

Specific Claims in BC
Relevant BC Court Cases

Several extremely important court cases have served to strengthen Aboriginal title and rights and may have direct implications for specific claims work.

These cases challenge current definitions of specific claims and support First Nations contentions that the Crown's outstanding lawful obligations extend beyond what is currently accepted for review by the Specific Claims Branch.

They also highlight the Crown's duty to consult, the timeliness of the court actions, and the great costs incurred by settling these issues in court.

Specific Claims in BC Relevant BC Court Cases

Osoyoos Indian Band v. the Town of Oliver

- ✓ This case surrounds a Section 35 taking of a strip of land for a canal for public purposes.
- ✓ The Supreme Court of Canada found the Crown had the right to use the lands for public purposes, but also had a fiduciary duty to grant only the *minimum* interest required to meet the public purpose.
- ✓ The canal was regarded as having been granted through statutory easement to the province, thus the canal land was still in reserve for taxation purposes

In 1925 a canal was built on reserve land pursuant to section 35 of the *Indian Act* which stated that Indian reserves could be used for public purposes. The Governor in Council consented to the taking of the reserve lands by the province. The town of Oliver operated and maintained the canal from thence onward.

In 1995, the Osoyoos Indian Band Council passed a resolution directing the assessment of the canal lands. They went to the Supreme Court of Canada wanting to know if the Order in Council removed the lands from reserve status so that they were not assessable and taxable by the band. The court decided that the Order in Council was granting a statutory easement to the province, such that the canal land *was still in the reserve for the purposes of section 83(1)(a)*.

Specific Claims in BC Relevant BC Court Cases

Ross River Indian Band v. Canada et al

In *Ross River*, the Supreme Court of Canada addressed the means by which reserves have been/are created and whether the Ross River Band established their land as a reserve under the *Indian Act*.

While the Court did not find in favour of the band, it affirmed that reserve creation occurs in a number of ways that must be considered in historical context.

The Court also affirmed the necessity of considering whether it was reasonable that First Nations people at the relevant time believed land to be reserved for them by a granting authority.

A number of BC specific claims rest on the issue of when and how a reserve was established. Many claims have been rejected by the Department of Justice on the absence of an Order-in-Council, despite land being reserved verbally, through written correspondence, surveyed and understood as reserved by the inhabitants for their use and benefit.

The Supreme Court of Canada's decision will have new implications for these types of specific claims.