



PRIVY COUNCIL

Certified to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Governor General on the 15th day of July, 1991.

The Committee of the Privy Council, on the recommendation of the Prime Minister and the Minister of Indian Affairs and Northern Development, advise that a Commission do issue under Part I of the Inquiries Act and under the Great Seal of Canada appointing, effective August 5, 1991:

Harry LaForme

to be a Commissioner and Chairman to inquire into and report on whether an Indian band has established that it has an Indian specific claim in situations where an Indian band disagrees with the Minister of Indian Affairs and Northern Development's (the Minister) rejection of a claim for negotiation by examining in particular any band alleged,

- 1.1 non fulfilment of a treaty or agreement between Indians and the Crown;
- 1.2 breach of an obligation arising from the Indian Act or any other statutes concerning Indians or the regulations thereunder;
- 1.3 breach of an obligation arising from the Government of Canada's administration of Indian funds or other assets;
- 1.4 illegal disposition of Indian land;
- 1.5 failure to provide compensation for reserve lands taken or damaged by the Government of Canada or any of its agencies; and
- 1.6 fraud in connection with the acquisition or disposition of Indian reserve land by employees or agents of the Government of Canada, in cases where such a fraud can be clearly demonstrated; and

where an Indian band disagrees with the Minister's determination as to which compensation criteria apply in the negotiation of a settlement, the Commissioners shall inquire into and make recommendations on which of the following criteria should apply,

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- 2.1 as a general rule, a claimant band shall be compensated for the losses it has incurred and the damages it has suffered as a consequence of any action taken by the Government of Canada as set out in 1.1 to 1.6 above, based on legal principles;
- 2.2 where a claimant band can establish that certain of its reserve lands were taken or damaged pursuant to legal authority, but that no compensation was ever paid, the band shall be compensated by the payment of the value of these lands at the time of the taking or the amount of the damage done, whichever is the case;
- 2.3 (a) where a claimant band can establish that certain of its reserve lands were never lawfully surrendered, or otherwise taken under legal authority, the band shall be compensated whether by the return of these lands or by payment of the current, unimproved value of the lands, and  
(b) compensation may include an amount based on the loss of use of the lands in question, where it can be established that the claimants did in fact suffer such a loss provided that in every case the loss shall be the net loss;
- 2.4 compensation shall not include any additional amount based on "special value to owner", unless it can be established that the land in question had a special economic value to the claimant band, over and above its market value;
- 2.5 compensation shall not include any amount for the forcible taking of land;

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- 2.6 where compensation received is to be used for the purchase of other lands, such compensation may include reasonable acquisition costs, but these must not exceed 10% of the appraised value of the lands to be acquired;
- 2.7 where it can be justified a reasonable portion of the costs of negotiation may be added to the compensation and recommendations may be made by the Commissioners in respect of how the parties should deal with costs before the Commission;
- 2.8 in any settlement of specific Indian claims the Government of Canada will take into account third party interests and as a general rule, the Government of Canada will not accept any settlement which will lead to third parties being dispossessed;
- 2.9 any compensation paid in respect to a claim shall take into account any previous expenditure already paid to the claimant in respect of the same claim;
- 2.10 where a claim is based on the failure of the Governor in Council to approve a surrender or the taking of land under the Indian Act, compensation shall not be based on the current unimproved value of the land, but rather on any damage that the claimant might have suffered between the period of the said surrender or forcible taking and the approval of the Governor in Council and by reason of such delay;
- 2.11 the criteria set out above are general in nature and the actual amount of any compensation offered will depend on the extent to which the claimant has established a valid claim, the burden of which rests with the claimant, as for example, where there is a degree of doubt that lands are reserve

lands, the degree of doubt will be reflected in the compensation offered; and

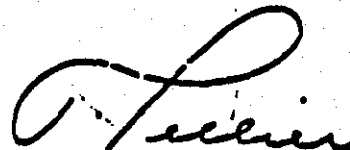
The Committee do further advise that:

- 3.1 other Commissioners be appointed from time to time;
- 3.2 the Commissioners be authorized to adopt such procedures and methods, subject to paragraphs (3.3), (3.4) and (3.5) as they may consider expedient for the proper conduct of the inquiry and to sit at such times, and in such places as they may decide;
- 3.3 the Commissioners be directed not to consider:
  - (a) laches, limitation periods or technical rules of evidence in making recommendations,
  - (b) a claim based on unextinguished native title,
  - (c) claims based on events less than 15 years old at the date of claim submission to the Government, or
  - (d) any matters not at issue when the dispute was initially submitted to the Commission;
- 3.4 the Commissioners be authorized to establish panels of three Commissioners and a report of a panel is to be considered to be a report of the Commission;
- 3.5 the Commissioners be authorized to provide or arrange, at the request of the parties, mediation services as may in their opinion assist the Government of Canada and an Indian band to reach an agreement in respect of any matter relating to an Indian specific claim;

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- 3.6 the Commissioners be authorized to rent such space and facilities as may be required for the purposes of the inquiry, in accordance with Treasury Board policies;
- 3.7 the Commissioners be authorized to engage the services of such experts and other persons as are referred to in section 11 of the Inquiries Act at such rates of remuneration and reimbursement as may be approved by the Treasury Board;
- 3.8 the Commissioners be directed to submit reports in both official languages to the Governor in Council from time to time as required and to submit an annual report in both official languages to the Governor in Council in respect of the Commission's activities and the activities of the Government of Canada and the bands relating to specific claims;
- 3.9 the Commissioners be directed to file their papers and records with the Clerk of the Privy Council as soon as reasonably may be after the conclusion of the inquiry; and
- 3.10 George R. Post be named Secretary of the Commission.

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**FLOW CHART**  
**INDIAN CLAIMS COMMISSION**  
**AND**  
**FEDERAL GOVERNMENT SPECIFIC CLAIMS PROCESS**

The attached chart illustrates in graphic form the relationship of the Indian Claims Commission with the federal government's existing specific claims process.

It should be noted that the Claims Commission is only a temporary measure, set up under the Inquiries Act to provide a sort of appeal mechanism until the federal government and First Nations develop an acceptable claims policy and process. It is not a court, although it has power to compel evidence and can provide independent legal assessment.

The Commission does not represent the independent claims resolution process called for by the Chiefs in the "First Nations Submission on Claims" of December 14, 1991. It is clearly a body intended to facilitate the resolution of disputes over validation or compensation criteria under the existing policy and process.

Part of the federal government's reasoning includes the idea that by observing the operation of the Commission, both Canada and the First Nations might get useful insights into what a future claims resolution process might need to incorporate or exclude. Therefore it is expected that the Joint Canada/First Nations Working Group will want to monitor closely the operation of and effectiveness of the Claims Commission.

Please note from the Flow Chart that the Commission facilitates the existing specific claims process and policy. Recommendations from the Commission, as it is presently designed, result in the claims going back into the existing system. This must be kept clear as we attempt to design a new policy and process which effectively eliminates the conflict of interest the federal government has in dealing with claims.

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