



P.C. 1990-883
15 May, 1990

PRIVY COUNCIL • CONSEIL PRIVÉ

(T.B. Rec. 813561)

WHEREAS a Tripartite Council consisting of representatives of the Government of Canada, the Government of Ontario and the Indian Chiefs of Ontario, herein referred to as the Chiefs of Ontario, was established on March 16, 1978, for the purpose of identifying, clarifying, negotiating and resolving matters of mutual concern to the Government of Canada, the Government of Ontario and the Status Indians residing in Ontario;

WHEREAS on September 28, 1978 Mr. Justice E. Patrick Hartt was appointed to a commission, named the Indian Commission of Ontario, by the Governments of Canada and Ontario under Order in Council P.C. 1978-3044 of September 28, 1978 and Provincial Order in Council 2838/78 and a resolution by the Executive Council of the Chiefs of Ontario in August of that year; which appointment was extended to December 1985 by Orders in Council P.C. 1980-3/2996 of October 30, 1980, P.C. 1981-4/255 of January 29, 1981, P.C. 1982-1/3156 of October 14, 1982 and P.C. 1983-3069 of September 30, 1983;

WHEREAS the Government of Canada, by Order in Council P.C. 1985-3117 of October 10, 1985, and the Government of Ontario and the Chiefs of Ontario agreed to appoint Roberta Louise Jamieson, of the Six Nations Indian Reserve, as Commissioner of the Indian Commission of Ontario for a period of six months commencing October 1, 1985 and terminating March 31, 1986; and which appointment was extended to March 31, 1989 by Order in Council P.C. 1986-4/767 of March 26, 1986 with certain terms of reference;

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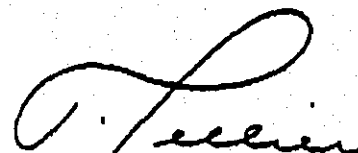
WHEREAS the Government of Canada, by Order in Council P.C. 1989-1/625 of April 13, 1989, the Government of Ontario and the Chiefs of Ontario agreed to extend the Indian Commission of Ontario for a period of twelve months commencing April 1, 1989 and terminating March 31, 1990, and to extend the appointment of Roberta Louise Jamieson for a period of two months commencing April 1, 1989 and terminating May 31, 1989;

AND WHEREAS the Government of Canada, by Order in Council P.C. 1989-1248 of June 23, 1989, and the Government of Ontario, by Order in Council OC 1584/89, and the Chiefs of Ontario agreed to appoint Harry S. LaForme of Toronto, Ontario, as Commissioner of the Indian Commission of Ontario for a period of ten months commencing June 1, 1989 and terminating March 31, 1990;

THEREFORE, HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL, on the recommendation of the Minister of Indian Affairs and Northern Development and the Treasury Board, is pleased hereby:

- (a) to extend the appointment of Harry S. LaForme of Toronto, Ontario, as Commissioner of the Indian Commission of Ontario for a period terminating March 31, 1995; and
- (b) to extend the functions and duties of the Indian Commission of Ontario, as outlined in Annex "A" hereto, for a period terminating March 31, 1995, with the provision that a review of the Commission's mandate be completed by March 31, 1993.

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ANNEX A

Functions and Duties of the Indian Commission of Ontario

1. MISSION STATEMENT

The objective and responsibility of the Indian Commission of Ontario is to facilitate negotiations and discussions to establish First Nation self-government and negotiations and discussions relating to matters and arrangements with respect to the exercise of jurisdiction and powers by First Nations' governments in Ontario, and to resolve land claims. (In these Orders in Council "First Nation" has the same meaning as "band", as defined by the Indian Act, RSC 1985, c. 1-5)

2. FUNCTIONS

- 2.1 To provide a forum for the negotiation of self-government issues;
- 2.2 To facilitate the examination and bring about resolution of any issue of mutual concern to the federal government and provincial government, or either of them, and to all or some of the First Nations in Ontario, which the Tripartite Council refers to the Commission by formal direction or as otherwise requested by the parties as hereinafter described; and
- 2.3 Under the general direction of the Tripartite Council, to acquaint the residents of Ontario with the activities of the Commission and with the nature and progress of the matters before it.

3. DUTIES

- 3.1 To perform in accordance with this Order, all functions, duties and activities assigned by way of a formal direction of the Tripartite Council referring a matter for examination and resolution to the Commission and which direction shall confirm the agreement of the parties as to:
 - a) the nature of the matter;
 - b) the objective of the matter being referred to the Commission;
 - c) the process to be implemented;

d) the resources to be allocated to the First Nations by the Government of Canada and the Government of Ontario;

e) a schedule for completion;

3.2 To facilitate the resolution of any matter of concern to one or more First Nations or communities and one or both of the Government of Canada and Ontario, at the request of all the parties involved in that matter, where the Commissioner believes assistance would be appropriate, and subject to the following conditions:

a) The Commissioner shall forthwith notify the members of a Senior Steering Committee consisting of Senior Officials appointed by each of the Parties (hereafter called the "Senior Steering Committee"), of the involvement of the Commission for consideration at a meeting of the Steering Committee;

b) If it is the consensus of the Senior Steering Committee that the Commission should not be involved in the matter, the Commission shall cease its involvement in the matter forthwith, subject always to further review of the matter by the Tripartite Council;

c) Upon review and consensus of the Tripartite Council, the involvement of the Commission in a matter may be confirmed or otherwise regulated;

3.3 To convene a mutually agreed-upon number of meetings of the Tripartite Council during each calendar year;

3.4 To act as Secretariat to the Tripartite Council with respect to any process or mechanism, including the process of mediation, in which the Commission is involved as in accordance with this Order;

3.5 To provide a chairperson for all Tripartite activities in which the Commission is involved who shall be the Commissioner or such other person agreed upon by the parties involved;

3.6 To provide progress reports to the Tripartite Council on a quarterly basis one of which shall be an annual report, the reports to include a summary description of outstanding issues or concerns and a

summary of the Commission's on-going and proposed activities; and

- 3.7 To assist the Tripartite Council in the identification, examination and resolution of matters of mutual concern to the Tripartite Council, including land claims.

4. POWERS AND AUTHORITIES

- 4.1 To grant to the Commission the powers and authorities listed below which are required to enable it to deal effectively with the matters, including land claims, referred to it;
- 4.2 To convene and adjourn meetings in consultation with representatives of the Government of Canada, the Government of Ontario, and the First Nations in Ontario and upon reasonable notice;
- 4.3 Should the Tripartite Council be required to consider a matter on an urgent basis, to convene a meeting at its sole discretion upon 30 days notice at which alternate representation of the parties would be acceptable;
- 4.4 To convene and adjourn meetings to consider the financial requirements of one or more of the parties;
- 4.5 To meet separately or jointly with representatives of the Government of Canada, the Government of Ontario or the First Nations in Ontario;
- 4.6 To request any representatives to the Tripartite Council, upon reasonable notice:
- a) to deliver to the Commission any document or information available to that party. However, nothing in this Order shall be construed as a requirement of any party to make available information that is privileged or would in court proceedings give rise to a right to receive from the court an order providing exemption from disclosure or is, in the case of information in the possession of Canada, a record for which an exemption is provided in the Access to Information Act, R.S.C. 1985, c.A1, as amended and as it may be amended from time to time, or is, in the case of information in the possession of Ontario, a record for which an exemption is

provided in the Freedom of Information and Protection of Privacy Act, S.O., 1987 c. 25, as it may be amended from time to time;

- b) to make available any person in the employ of any of the parties for the purpose of assisting the Commission in its efforts to facilitate the resolution of an issue, provided, -however, that should the Government of Canada, the Government of Ontario, the First Nations in Ontario, or any one or more of them be unable to comply with any such request, the reasons for being unable to comply with that request shall be provided in writing to the Commission, and to representatives of the Government of Canada, the Government of Ontario and the First Nations in Ontario, as the case may be;
- 4.7 After due consultation with the parties, to impose deadlines for the completion of any process, or any stage of any process, being facilitated, examined or otherwise by or before the Commission;
- 4.8 To set questions and to request responses from the parties, and in consultation with the party concerned, set a reasonable time period for receipt of the response;
- 4.9 To present verbally or in writing, at its discretion or at the request of the Tripartite Council, to any or all of the parties, suggestions for their consideration and response with a view to alleviating adverse effects and with a view to arriving at a mutually acceptable resolution of any matter which is the subject of negotiation;
- 4.10 After consultation with the representatives of the Government of Canada, the Government of Ontario and the First Nations in Ontario to the Tripartite Council, to suspend any of the Tripartite processes created by the Tripartite Council, on the condition that the suspension and the Commission's reasons in writing for such suspension shall be discussed and either confirmed or rejected at the next scheduled meeting of the Tripartite Council. Failure by the Tripartite Council to achieve agreement on the issue shall be treated as confirmation of the suspension;
- 4.11 With the consent of the Tripartite Council, to facilitate the reference of any issue, or any

element of any matter, to a court of competent jurisdiction or to any tribunal, body or person;

- 4.12 With the agreement of the parties to a matter which has been referred to the Commission for examination and resolution, to act as or arrange for a mediator or arbitrator on any issue or any element of any matter;
- 4.13 On the application of a party in a matter which is before the Commission, to determine whether an impasse in the negotiations has occurred. If in the opinion of the Commission an impasse has occurred, the Commission may suggest alternative dispute resolution mechanisms to resolve the impasse, and require the parties to attend one mediation, or other meeting to attempt to resolve the impasse;
- 4.14 To recommend to the Tripartite Council the appointment of a commission under The Inquiries Act, R.S.C. 1985, c.I-11, the Public Inquiries Act, R.S.O. 1980, c.411, or any other appropriate legislation, to inquire into such matters as the Commission considers necessary. Subject to section 4.5 herein, where a party decides not to follow the recommendation of the Commission to establish a commission of inquiry that party shall state its reasons for doing so in writing to all other parties and the Commission within thirty days of the date of the refusal;
- 4.15 To engage the services of such^a counsel, clerks and advisors as may be required to carry out the functions and duties of the Commission within its budgetary limits;
- 4.16 The authority, to be exercised by the Commissioner, to disburse the funds provided to meet the expenses of the Commission, subject to such terms and conditions as are approved by the federal Treasury Board and by the Ontario Management Board of Cabinet and subject to audit in accordance with the provisions of the Audit Act, R.S.O. 1980, c 35; and
- 4.17 To agree that all the expenses of the Commission be shared equally among the Government of Canada, the Government of Ontario and the First Nations in Ontario, with Canada's share being subject to approval of the federal Treasury Board and Ontario's share being subject to approval by the Ontario

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Management Board of Cabinet on the recommendation of
the Minister Responsible for Native Affairs.