

## **PRE-CONFEDERATION CLAIMS**

As part of the Government's Native Agenda, a decision was made to drop the pre-Confederation bar and extend the Specific Claims Policy to include pre-Confederation Claims which disclosed an outstanding lawful obligation on the part of the Crown. At the Yellowknife meeting of the Joint Working Group on Specific Claims (September 29 and 30, 1992) Federal representatives stated that the government was now accepting pre-Confederation claims for consideration and that a specific cut off date was not part of the Policy. Indian representatives asked for information on pre-Confederation claims that have been accepted for negotiations. The following list responds to that request. For reasons of Access to Information and Privacy Act the actual names of the bands have not been given.

### **PART A**

The following claims are examples of pre-Confederation specific claims which were accepted prior to the change in policy guidelines despite the fact that they arose to Confederation:

#### **Ontario Claim A**

At issue is whether the 1850 Robinson-Huron Treaty intended a reserve larger than that which has been recognized as the Band's reserve to date. The Province of Ontario is involved because the subject lands have been in the possession of or were alienated by Ontario and Ontario has obtained the profits from the land. This claim has been accepted for negotiation of a settlement based upon conclusion that a larger reserve should have been set aside.

#### **Ontario Claim B**

At issue is the location of the northern boundary of the reserve which was originally described in the Robinson-Huron Treaty of 1850. This claim was accepted for negotiation of a settlement on the basis that there remains an outstanding unfulfilled treaty obligation involving both Canada and the Province of Ontario. The Province of Ontario is required to acknowledge that its interest in the land is subject to an Indian reserve interest in favour of the band, while Canada's obligation is to administer the subject land as a reserve under the Indian Act. In addition, both Canada and the Province of Ontario may be required to provide the Band with compensation by reason of having administered the lands as Crown lands which were unencumbered by the Indian reserve interest.

### **Ontario Claim C**

The band signed two provisional surrenders, one in 1819 and one in 1820, thereby surrendering approximately 552,190 acres of land, but reserving a tract of land for themselves. A confirmatory surrender was signed in 1822 but no mention was made of the reserved tracts. A patent to a parcel of land, falling within this tract, was granted to an individual. The band brought a specific claim alleging that this patent was wrongfully given, the land never having been surrendered.

Canada accepted the claim on the basis that it had breached an agreement that it had concluded with the Chippewas in 1819 and 1820. Since pre-1867 claims were, at that time, not accepted for negotiations it was determined that the Crown in right of Canada had assumed responsibility for treaty obligations through devolution of colonial obligations and through specific assumption and affirmation of treaties, both before and after 1867.

### **Ontario Claim D**

At issue are 400 acres of land which were purchased, around 1842, by the Crown for the benefit of several bands using the annuity funds of the bands' predecessors. The lands were used by the Indians for farming purposes including the making of maple sugar. In the 1860's, there was oil speculation in the area. Although no surrender was taken, the Crown subdivided and sold the Indian properties to exploration syndicates, which included in their membership several leading political figures of the day. Several parcels were subsequently forfeited to the Crown for incomplete payment and were later resold by the Crown. The proceeds of the sales were deposited to the band Trust Account. Canada has accepted the claim for negotiation of a settlement on the basis that the lands involved were Indian reserve lands, and that a surrender of the subject lands was required. As a surrender was never secured, Canada is responsible for the Indian losses.

## **PART B**

The following specific claims have been accepted subsequent to the change in policy guidelines:

### **Ontario Claim E**

At issue in this claim are the exact boundaries of a Reserve, which were established pursuant to the Robinson-Huron Treaty of 1850. Because of an error in the survey, the reserve that was actually set aside was smaller than the reserve intended by the parties at the time of the treaty. This claim has been accepted for the negotiation of a settlement based on the fact that Canada has a lawful obligation within the Specific Claims Policy to recognise the additional lands as part of the Reserve, or, in the alternative, on the basis that there is an outstanding treaty land entitlement owed to the Band for this additional land. In addition, the Province of Ontario is required to acknowledge that its interest in the land is subject to the band's reserve interest, and to provide compensation for loss of use of the land.

**Ontario Claim F**

At issue in this claim are the exact boundaries of the Reserve, which were established pursuant to the Robinson-Superior Treaty of 1850. Because of an error in the survey, the reserve that was actually set aside was smaller than the reserve intended by the parties at the time of the treaty. This claim has been accepted for the negotiation of a settlement based on the fact that Canada has a lawful obligation within the Specific Claims Policy to recognise the additional lands as part of the Reserve, or, in the alternative, on the basis that there is an outstanding treaty land entitlement owed to the band for this additional land. In addition, the Province of Ontario is required to acknowledge that its interest in the land is subject to the band's reserve interest, and to provide compensation for loss of use of the land.

**British Columbia Claim G**

At issue is whether burial grounds should have been set aside for the Band pursuant to the Vancouver Island Treaty. Canada accepted the claim for negotiation of a settlement on the basis of the unfulfillment of a treaty right, it having been determined that the intent of the treaty was such that burial grounds should have been set aside for the benefit of the Band.

**British Columbia Claim H**

At issue is whether the Band was entitled to a Road Township. Canada accepted the claim for negotiation of a settlement on the basis that DIAND had breached its undertaking to establish the subject lands as reserve for the benefit of the Band.

**PART C**

In addition, the following claim was originally rejected prior to the change in policy guidelines, based on the fact that it pre-dated Confederation, but has since been accepted for negotiation:

**Ontario Claim I**

At issue in this claim, is whether Canada is liable for the sale of 200 acres of reserve land where a surrender was never taken but where other indices of band consent were present. Initially, only a portion of this claim was accepted (53.9 acres), based on the fact that the balance of the 200 acres was alienated by the Province of Canada before 1867. Recently, the Band has been advised that the entirety of their claim should be accepted for negotiation of a settlement on the basis that the land was reserved for the Band, pursuant to the terms of a surrender made in 1820, and was never surrendered by the Band prior to its sale by the federal Crown.

**PART D**

Two pre-Confederation specific claims have been rejected subsequent to the change in policy guidelines, based on grounds other than the fact that they pre-dated Confederation. These specific claims are:

**Ontario Claim J**

At issue in this claim is whether an Order-in-Council passed in favour of the band in 1798 had the effect of creating a reserve interest in favour of the Indians. Although the Order-in-Council did not have the effect of establishing such a reserve, an Indian reserve was established for the Indians by 1829-1830 when a survey of land was finally completed. Subsequent surrenders have made it such that the Indians were left with approximately two square miles of land around their village. As such, there is no validity to the Band's claim that it suffered a loss of use of some 26,325 acres of land located in the southern part of a Township in southern Ontario. During the review of this file, Criterion No. 8 (bar to pre-Confederation claims) of the Specific Claims Policy was dropped, and the Band was notified that its claim had been rejected on the basis that a lawful obligation did not arise out of this claim. The pre-Confederation liability as between the Province of Ontario and Canada was never addressed within this claim nor was it ever considered as a factor which lead to the rejection of this claim.

**Ontario Claim K**

The bands filed a claim alleging that a surrender entered into in 1836, was invalid and claiming that they thus had an unextinguished aboriginal interest in 1.5 million acres of land in southern Ontario. Despite the pre-Confederation status of this claim, it was agreed that the claim would be reviewed on its merits without reference to the comprehensive or specific claims policies. It was concluded that the claim should not be accepted for negotiation on the basis that there was no fiduciary obligation on the part of the Crown with regard to the surrender. The pre-Confederation status of the claim was not considered as a factor which lead to the rejection of the claim.

SC/TLE  
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