

Indian Claims Commission June 27, 1996

Delivered by Courier

The Right Honourable Jean Chretien
Prime Minister of Canada
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Ottawa, Ontario
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- And -

Grand Chief Ovide Mercredi
Assembly of First Nations
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Dear Sirs:

We write to you as Commissioners of the Indian Claims Commission (ICC) to inform you that we have decided to terminate our work with the Commission on March 31, 1997.

To date the Commission has conducted 28 Community sessions with First Nations Communities, completed 18 Reports of Inquiry (Report Summary appended) and have 23 additional claims inquiries in progress. The ICC has also facilitated the acceptance for negotiation of 11 other claims. In addition, we have published Annual Reports and Special Reports on changes required for Canada to improve its current claims process.

During our tenure as Commissioners, we have been privileged to serve both aboriginal and non-aboriginal Canadians, and although the Commission was created as an interim body, we believe that it has established its credibility as a fair and independent review body-despite real limitations in its mandate. We continue to feel very strongly, however, that the reform process is not moving quickly enough and that it is crucial that our Commission be replaced by a permanent claims body.

Background

The ICC was created by an Order-in-Council in 1991 with a mandate to inquire into and report on claims rejected by Canada. The mandate was meant to temporarily address the inherent unfairness of Canada unilaterally accepting and rejecting claims against itself. The Commission was intended to operate for a limited period while a Joint Working Group of First Nations and Government representatives (JWG) reviewed the

1982 Specific Claims Policy and made recommendations for reform. Unfortunately, the JWG did not reach agreement on the essential issues and Canada did not extend its mandate, which expired in July 1993. The ICC proceeded to carry out its mandate with the understanding that a permanent body with a broader mandate would eventually be created as stated by the Government of Canada (see 'The Red Book') and by the Assembly of First Nations (see Resolution # 10, July 1995). We are pleased that the parties recently resumed their policy discussions. However, as Commissioners responsible for a specific mandate, it is our duty to inform you that we believe our mandate has ended.

Over the last five years, the ICC has carried out its limited mandate with the expectation that parallel action would be taken to improve the overall claims process. In our two Annual Reports we identified several matters that needed to be addressed to improve the process and to ensure the continual effectiveness of our mandate. To date, we have received little response to any of the recommendations contained in those reports.

In addition, Canada has not accepted our recommendations in a majority of our reports (12 out of 18). We feel that lack of response has severely undermined our ability to operate independently and effectively.

The ICC has encouraged First Nations to use its inquiry process in the interests of facilitating an efficient, cost-effective and fair response to their claim. Many First Nations participated in the review process because, other than litigation, the ICC's review process is the last opportunity for a non-adversarial hearing of their claim. Initially, we believed and fostered the expectation that the ICC would provide a viable, non-litigation option to both Canada and First Nations. As an added complication, in the last three years, the failure to appoint a replacement for the Chief Commissioner and the uncertainty of its tenure has made it difficult for the ICC to operate effectively with both parties. Ultimately, by consistently failing to respond to our reports over the last five years we believe that Canada has undermined the Commission's work.

In addition to reviewing rejected claims, we were also mandated to provide mediation services to the parties. Over the last five years, Canada's representatives in the Office of Native Claims and the Department of Justice have shown great reluctance to consider mediation (despite repeated requests from the ICC and First Nations to provide or arrange for mediation).

As we stated in our Annual Report last year, many opportunities exist for an independent commission to play an effective role in claims negotiations by facilitating communications, monitoring progress and providing dispute resolution. Through mediation, and in the absence of overall policy reform, the ICC had hoped to assist both Canada and First Nations in a broader capacity. Unfortunately, it has become apparent that our efforts to improve the claims process through inquiries or mediation have fallen short. We believe this goal cannot be reached unless a process is established to require expeditious and substantive responses from Government.

Decision

The concerns expressed in this correspondence are felt deeply and personally by each of us. We are frustrated by the inability of the Government of Canada and the Assembly of First Nations to bring reform discussions to a close. We are mindful of the unrest that exists across Canada among aboriginal Canadians, many of whom are frustrated by the lack of progress in the resolution of claims. We do not wish to add to that frustration by creating artificial expectations of the Commission's ability to assist in resolving those problems.

Therefore, we wish to advise you of the following:

1. In July of 1996 the Commission will table its Annual Report, which will once again call the Government's attention to the issues addressed in this letter;
2. To assist in the development of an independent claims body, in October 1996 the Commission will table, if necessary, a Special Report with the Government and the AFN with recommendations for such a body;
3. The Commission will not accept new claims inquiries after September 1, 1996. From September 1, 1996 to March 31, 1997 the Commission will concentrate on the completion of those cases currently before the Commission. We recommend that the ICC be wound down on March 31, 1997 and the staff, resources and experience of our Commission integrated into the new independent claims body.
4. We reiterate our offer to work together with representatives of both Canada and the Assembly of First Nations to facilitate agreement between the parties on the new independent claims body.

Sincerely,

Co-Chair Daniel J. Bellegarde

Co-Chair P.E. James Prentice, Q.C.

Commissioner Roger J. Augustine

Commissioner Carole T. Corcoran

Commissioner Aurélien Gill

cc. The Honourable Ronald A. Irwin, Minister of Indian Affairs
Mr. Bill Erasmus, Chair of AFN Chiefs Committee on Claims