Indian Claims in Canada

An Introductory Essay and Selected List of Library Holdings

Research Resource Centre,
Indian Claims Commission,
Ottawa.

Revendications des Indiens au Canada

Un Exposé préliminaire et une Sélection d'ouvrages disponibles en Bibliothèque

Centre de documentation et
d'aide à la recherche,
Commission d'étude des
Revendications des Indiens,
Ottawa.

Cover illustration

For a full description of the medal, see: Jamieson, Melvill Allan. *Medals Awarded to North American Indian Chiefs, 1714-1922.* London, Spink & Son Ltd., 1936: 53.

Illustration sur la couverture

Pour obtenir une description complète de la médaille, voir: Jamieson, Melvill Allan. *Medals Awarded to North American Indian Chiefs, 1714-1922.* London, Spink & Son Ltd., 1936: 53.

Cat. No.: RC 31-1/1975
N° de cat.: RC 31-1/1975

Preface

In their efforts to carry out studies on Indian, Métis and Inuit claims, researchers have confronted difficult problems of access to requisite published and unpublished documents. In order to reduce these problems, the Indian Claims Commission developed a Research Resource Centre in Ottawa.

The Centre's Library has acquired a substantial collection of books, articles, serial publications, legal cases, manuscripts, indexes, tapes and maps. These chiefly pertain to the Canadian situation. They are, however, currently being augmented by comparative material from areas such as the United States, Australia, New Zealand and Scandinavia.

This bibliography is a classified guide to a substantial part of these holdings. An introductory essay has been added to provide the user with an overview of both the nature of Indian claims in this country and of attempts which have been made to deal with them. The essay and bibliography have been produced at the Centre. Any views expressed do not necessarily reflect those of the Commissioner himself.

The Library is intended for use by those directly engaged in the development of positions on native claims. It is located on the fifth floor of the Kent-Albert Building (150 Kent Street), and is open from Monday through Friday between 9:30 a.m. and noon and 1:30-4:00 p.m. The postal address is Box 2520, Station D, Ottawa, K1P 5Y4, and the telephone number is 613-995-9585.

Avant-propos

Lorsqu'il entreprend d'étudier les revendications des Indiens, Métis et Inuit, le chercheur se heurte à de sérieuses difficultés d'accès aux documents indispensables, qu'ils aient ou non été publiés. C'est afin de lui faciliter la tâche que la Commission d'étude des revendications des Indiens a créé, à Ottawa, un Centre de documentation et d'aide à la recherche.

La bibliothèque du Centre dispose d'une importante collection de livres, d'articles, de revues, de pièces de procédures, de manuscrits, d'index, d'enregistrements et de cartes. Pour la plupart, ceux-ci se rapportent à la situation canadienne; mais le Centre, désireux d'étoffer ses ressources, procède actuellement à l'acquisition de documents qui permettront d'établir la comparaison avec l'étranger, et notamment les États-Unis, l'Australie, la Nouvelle-Zélande et les pays scandinaves.

Guide pratique, la présente bibliographie signale une bonne partie des documents disponibles. L'exposé préliminaire qui l'accompagne cherche à donner au lecteur un aperçu de la nature des revendications indiennes au Canada et des tentatives qui ont été faites pour y satisfaire. L'exposé et la blibliographie ont été préparés par le Centre; ils ne sauraient de ce fait être considérés comme reflétant nécessairement le point de vue du Commissaire lui-même.

Créée à l'intention de ceux qui participent à l'élaboration des positions pour la négociation des revendications, la bibliothèque est située au cinquième étage de l'immeuble Kent-Albert (150, rue Kent) et est ouverte chaque jour de 9 h 30 à 12 h et de 13 h 30 à 16 h, du lundi au vendredi. Pour tout renseignement, écrire à: Boîte postale, 2520, Succursale D, Ottawa, K1P 5Y4; ou téléphoner au: 613-995-9585.

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INTRODUCTORY ESSAY

The native peoples of Canada have come under European influence in various ways, in differing degrees and at different historical periods. Little impact was made on the Arctic until this century and most of that has occurred since the Second World War. On the other hand, the Indians of the Atlantic coast and along the shores of the St. Lawrence encountered Europcans early in the sixteenth century. As a result of this contact, the Beothuk of Newfoundland were destroyed. Other Indians in the more southerly parts of the country have since largely moved towards a Euro-Canadian way of life. In northern areas, more continuity has been preserved with traditional patterns of living. Nowhere has native life been entirely unaffected by the advent of European settlers and their domination of territory that was once the exclusive domain of native peoples.

European-native interaction has taken many forms. The fur trade significantly altered the way of life of a large segment of the Indian population, economically as well as socially. While the fur trade introduced European goods and commercial values, it also brought with it white wcstern moral and religious persuasions. At the same time, social interaction brought into being the people of mixed ancestry often referred to as Métis.

The later occupation of land for settlement was further instrumental in modifying the economic and socio-cultural bases of native societies. Resource exploitation in almost every part of the country additionally disturbed the lives of native peoples both directly, and indirectly through its environmental effects. Such activity continues today, with similarly disruptive results.

From an early period, the government of the colonizing society made itself specifically responsible for the relationship between the immigrants and the natives. At law, the native interest in land and other natural resources could not be acquired directly by the newcomers, but rather through the agency of their government. In addition, the government assumed much of the direction of native societies, partieularly those whose traditional way of life was most disrupted. The historical relationship of the government to native groups accounts for their insistence on continuing special status as the original people of Canada. The Crown became the target of Indian grievances and claims respecting land, resources and the management of native affairs. These claims are based on aboriginal rights or on agreements made with government which were based on the Indians' position as unconqucred indigenous occupants of the land.

To implement the policy of dealing with native peoples differently from other citizens, it became necessary to determine the membership of the native societies. Raeial mixing and changing patterns of living have in many cases blurred the distinction between the original and immigrant peoples. The solution that has evolved is that people of Indian ancestry in Canada fall into two major classes in

their position vis-à-vis government. There are those recognized by the Canadian government as so-called status Indians, and a second group that includes those who are termed non-status Indians, and Métis. Status Indians are registered by the Department of Indian and Northern Affairs and possess certain rights and are subject to some limitations set forth in the Indian Act. That Act and its administrative interpretation determine what Indian status means, in practice, for the one-quarter million persons who hold it.

Non-status Indians are people of Indian extraction who for varying reasons were not registered as Indians by the department. Estimates of their numbers vary depending on the criteria applied; there are at least half a million. The category includes women who themselves or whose ancestors have lost Indian status through marriage. In addition, it encompasses those who voluntarily renounced their Indian status through what is called enfranchisement. One particularly large group without Indian status is the Métis, who form a distinct society with a group identity of their own.

Unless everyone with any Indian ancestry were to be accorded Indian status, a dividing line had to be adopted to encompass the group. Pre-Confederation Indian legislation set down loose definitions based on heredity and social factors, and these criteria were carried over into the Dominion's own early Indian legislation. In western Canada, inclusion in the treaties came to be the mark of status; hence status Indians there are frequently referred to as "treaty Indians". The list of registered Indians has been built up by ad hoc methods which often seem to have been quite arbitrary. It is for the persons and bands on this list only that the federal Department of Indian and Northern Affairs has accepted responsibility under the Indian Act.

Non-status Indians and Métis are recognized as holding a status no different from that of other Canadians. While the Government of Canada has assumed special responsibilities for education, health, welfare and economic development for status Indians, the non-status and Métis people rely on the same agencies as other Canadians for these services; this usually means the provincial governments. The British North America Act assigned to the Dominion Government responsibility for "Indians, and Lands reserved for the Indians" but gave no clearer specification of those terms. Non-status Indians and Métis argue that the government does not have the constitutional authority to limit these responsibilities by restricting the meaning of "Indian" only to those defined in the Indian Act. This question of status and membership in the status group is therefore an important element in the consideration of native claims and grievances.

The Inuit or Eskimos are a third group. Partly because of their location in the far hinterland of northern Canada, they were for long left with an ambiguous status outside these systems of administration. Some social services were provided by missionaries and traders, and through different levels and departments of government. The northerly extension of Quebec in 1912 was taken by the federal government to mean that the province became liable for its Inuit inhabitants. Meanwhile, serious deterioration of the Inuit economy was increasing the costs

of providing relief. The question of jurisdiction was resolved in 1939 when the Supreme Court of Canada declared the Inuit to be Indians for the purposes of the British North America Act. While they are therefore a federal responsibility, the Indian Act excludes them from its operation and they are dealt with separately by the government.

These, then, are the major groupings of native people, from a legal standpoint. Their claims are significantly influenced by these distinctions. There are three general categories of claims: aboriginal rights, treaty and scrip settlement grievances, and band claims. The notion of aboriginal rights underlies all other native claims in Canada. Native people claim that their rights to land derive from their original occupancy, and point out that aboriginal title has been recognized by the dominant society through various judicial decrees and actions of government. It is important to note that no treaties under which native people ceded their lands were ever made for about half the territory of Canada. On this basis, both status and non-status Indians, as well as the Inuit, are now developing or negotiating claims.

Treaty Indians have a number of claims that relate to the agreements for the cession of their lands through treaty. Some of these rest on an insistence that specific treaty terms have not been fulfilled, and that the broader spirit of the treaties has not been assumed by the government. A frequent claim is that verbal promises made at the time of the negotiations were not included in the written texts. In some areas, Indian people also emphasize in their treaty claims that these transactions constituted inadequate settlements, even if all their terms were fulfilled. These claims involve assertions about the way in which treaties were negotiated, the disparities between the two contracting parties and the alleged unfairness of the terms.

Most status Indians belong to bands, which possess rights to reserve lands held in common. There are approximately 550 Indian bands in Canada holding rights to 2,200 reserves. Most bands, whether in treaty or non-treaty areas, likely have specific claims to broach. The most numerous and widespread are those stemming from reserve land losses. Reserve lands were sometimes lost through squatting or re-surveys, though most typically as a result of formal surrenders and expropriations. Claims may be based on the specific nature and legality of these occurrences or on the general propriety of such forms of alienation. Management of band funds and reserve resources and the administration of band affairs, particularly with regard to economic development, are central features of many potential band claims.

As will be evident, land is an extremely important element of native claims in general. Native peoples are becoming more articulate about their unique relationship to the land both past and present, and about the meaning it has for them. At the same time, they are aware that the material standard of living that has been achieved generally in Canada derives ultimately from the land and its resources. As a consequence, they seek not only a role in determining the way in which the land and other resources are used, but also a just portion of the benefits derived from their exploitation. This theme is basic in the aboriginal rights claims, but it also

appears in treaty claims, where the original land agreements may be in question and in band claims concerning lost reserve land or other natural resources.

For the native people, trusteeship, a fundamental element in native claims, involves both protection and assistance. When the Government assumed political control over native people, undertook responsibilities for reserve land and band finances, and imposed special limitations on Indians as a feature of Indian status, it adopted a protective role over Indians and their affairs analogous to that of a guardian or trustee towards a ward or beneficiary. From this relationship flow grievances and claims which pertain to the Government's management of Indian resources.

I THE NATURE OF CLAIMS

Aboriginal Rights

The concept of native or aboriginal rights to land stems from a basic fact of Canadian history: that Indian and Inuit peoples were the original, sovereign inhabitants of this country prior to the arrival of the European colonial powers. The Indian understanding of the legal content of aboriginal title has been described in a statement tabled before the House of Commons' Standing Committee on Indian Affairs and Northern Development by the National Indian Brotherhood. It said,

> Indian title as defined by English law connotes rights as complete as that of a full owner of property with one major limitation. The tribe could not transfer its title; it could only agree to surrender or limit its right to use the land. English law describes Indian title as a right to use and exploit all the economic potential of the land and the waters adjacent thereto, including game, produce, minerals and all other natural resources, and water, riparian, foreshore, and off-shore rights.

While its content has never been clarified in Canadian law, aboriginal title has been referred to by the judiciary as "a personal and usufructuary right", or right of use and occupancy, "dependent upon the good will of the Sovereign".

The British colonists felt wholly justified in their encroachment on Indian lands because of their belief that their civilization, especially as it was manifested in powerful Christian states supported by sedentary agriculture and a developing technology, was inherently superior to native cultures based on hunting, fishing, gathering and sporadic horticulture. In their view, this superiority and its accompanying ideology unquestionably carried with it a right and a duty to prevail. But while denying native sovereignty or full land ownership, the British Crown came to acknowledge the existence of a certain native right to the land. While such recognition was not always honoured, it gained increasing legal force in colonial times: in the policy of treating with the Indians to acquire lands for settlement, in colonial statutes, in instructions transmitted to colonial governors, and eventually with full Imperial authority in the Royal Proclamation of 1763.

A most significant document in the controversy which has surrounded the notion of aboriginal title, this Proclamation delineated lands that were to be reserved to the Indians at that time. These consisted of land outside the Hudson's Bay Company's territory and the new colonies of Quebec East and West Florida, and west of the "Sources of the Rivers which fall into the Sea from the West and North West as aforesaid". Partly designed to cope with serious abuses which had sparked forceful Indian reaction, it included a general prohibition against purchasing "any Lands whatever, which, not having been ceded to or purchased by Us [The Crown] as aforesaid, are reserved to the said Indians, or any of them".

In order that Indian territory could be legally acquired in those areas in which settlement was to be encouraged, that is in Nova Scotia and old Quebec, the Proclamation outlined a policy under which such lands could be purchased at a public meeting of the Indians "to be held for that Purpose by the Governor or Commander in Chief of our colony respectively within which they shall lie . . .". Such a procedure underlay the pre-Confederation treaties made in Upper Canada, now southern Ontario.

Since Confederation, recognition of aboriginal title has been expressed in the major treaties, in which various Indian tribes agreed to "cede, release, surrender, and yield up" their interest in the land; and in a substantial number of government agreements, Orders in Council, policies, and legislation pertaining to land in general and to native peoples.

One important example of these was the transfer in 1870 of Rupert's Land and the North-Western Territory from the Crown to the Dominion of Canada. A schedule to the Orders in Council effecting this conveyance provided that Indian claims to compensation for lands required for settlement would be "considered and settled in conformity with the equitable principles that have uniformly governed the British Crown in its dealings with the aborigines". In 1875, the Canadian government exercised its right over provincial legislation by disallowing the British Columbia Crown Lands Act, because it failed to recognize Indian rights in the land. The 1912 Boundaries Extension Act, by which much of what is now northern Quebec was annexed to that province, provided that Quebec would recognize the Indians' territorial rights "to the same extent, and will obtain surrenders of such rights in the same manner, as the Government of Canada has heretofore recognized such rights and has obtained surrender thereof . . .". As a final example, the 1921 Order in Council authorizing the negotiation of Treaty No. 11 in the Northwest Territories stated that it was "advisable to follow the usual policy and obtain from the Indians cession of their aboriginal title . . .".

This traditional acceptance of the concept of aboriginal title has not, however, been consistently honoured or practised. The title has not been extinguished by treaty in large areas of Canada, including Quebec, most of British Columbia, the Yukon, the Inuit areas in the Northwest Territories, and the Maritime Provinces. In addition, extinguishment has been challenged in the Indian areas of the Northwest Territories. Native claims respecting their title have been formally

advanced for well over one hundred years in British Columbia, and subsequently in all the non-treaty areas. Although such claims differ in some respects from region to region, they basically take one of two forms. The first consists of a demand for formal legal recognition of a subsisting title and the rights that flow from it. The second is a demand for adequate, fair compensation for the loss or extinguishment of this title.

In the unsettled areas of northern Canada where the traditional pursuits of hunting, fishing and trapping persist, the Indian and Inuit proposals for claims settlement are more heavily oriented towards achieving the affirmation of aboriginal rights, in the belief that cultural integrity and development can best be maintained through active participation in the control of the development and use of northern lands. The President of the Indian Brotherhood of the Northwest Territories recently explained that his people

> . . . see a land settlement as the means by which to define the native community of interest in the north, and not to obscure it. This is why we stress . . . that formalization of our rights is our essential goal, rather than the extinguishment of those rights . . . .
>
> . . . Now we seek, through a land settlement, a resource base under our own control, which ensures our autonomy and our participation as equals in those decisions which affect our lives.

In contrast, in the southern, more populated areas of Canada where the land has become densely settled, aboriginal title claims place more emphasis on compensation for the extinguishment of the title, and the restitution of rights such as hunting and fishing, and exemption from taxation. In all of these areas, the native peoples view a possible settlement as a means by which they may develop and achieve control of their lives and communities.

Indian Treaties and Scrip Settlements

While the land rights of native peoples in Canada have by no means been treated uniformly, there did develop in British North America a consistent body of precedent and tradition which was utilized on new frontiers where fairly rapid settlement or resource exploitation was being promoted. This involved the making of treaties under which native peoples surrendered most of their territorial rights and gained various forms of compensation. Although numerous land surrender treaties had already been made in the Thirteen Colonies, it was not until after the American Revolution that the system was first systematically used in Canada.

Algonkian-speaking peoples formed the Indian population of southern Ontario when the European claim to territorial sovereignty passed from the French to the British in 1763. However, European settlement did not occur there to any degree until twenty years later. In these post-Revolutionary years, the separation of the Thirteen Colonies from British North America created an urgent need for land on which to settle disbanded soldiers and other Loyalists. The unsettled areas of British North America provided a ready solution to the problem.

About ten thousand United Empire Loyalists moved into the area of the St. Lawrence-lower Great Lakes. In presiding over this settlement, the Imperial Government did not simply grant land to these newcomers without regard for the Indian inhabitants. As has been seen, the Royal Proclamation of 1763 declared that Indian land rights could only be alienated at a public meeting or assembly of the Indians called for the purpose, and then only to the Crown. Although often honoured only in the breach, the Proclamation principles were respected in what became southern Ontario through a complicated series of formal treaties and surrenders.

To the government, these treaties were little more than territorial cessions in return for once-for-all grants, usually in goods, although there is contemporary evidence that some of the Indians involved considered that the government was assuming broader trusteeship responsibilities as part of the bargain. Annuities, or annual payments for the land rights ceded, appeared in a treaty in 1818, after which they became usual. At this stage, the provision of land for Indian reserves only occasionally formed part of the surrender terms. Similarly, the right to continue hunting and fishing over ceded territories was very rarely mentioned in the written terms of surrender. Not until 1850, when cessions of land rights were taken by William Robinson along the northern shores of Lakes Huron and Superior, were treaties made that granted to the Indians all four items: once-for-all expenditures, annuities, reserves and guarantees concerning hunting and fishing. It was for this reason that Alexander Morris, most widely known of the government's negotiators, wrote of them as constituting the "forerunners of the future treaties" to be made by the recently created Dominion.

The provisions of many of the southern Ontario treaties and surrenders are quite discordant with more recent agreements conveying far greater benefits to native peoples elsewhere. Most cessions made in Ontario after 1830 were concluded in trust. The government assumed responsibility for disposing of the ceded lands on the Indians' behalf, with the proceeds of sales usually going to the particular Indians involved. As with those made earlier, which were ofttimes outright surrenders with the government as purchaser, there are strong arguments that inadequate compensation was given. Surrenders concluded prior to 1818 provided for a lump sum payment along with a nominal yearly rent: in one 1816 surrender of Thurlow Townsbip, for instance, the yearly rent was fixed at one peppercorn. In an 1836 surrender, it was considered sufficient to promise the Chippewa claimants vague agricultural and educational aid in exchange for their surrender of one and one-half million acres south of Owen Sound. The Robinson Huron and Superior Treaties, as well, supplied only minimal payments to the Indians, although they contained provisions for a limited augmentation of annuities in the future. One oversight in the former treaty presumably left aboriginal rights intact at Temagami.

Treaties Nos. 1 to 7 were made during the 1870's in the territory between the watershed west of Lake Superior and the Rocky Mountains in what was then Canada's newly acquired North-West. These treaties utilized many features of the earlier transactions, but were far more comprehensive in their provisions and more consistent and uniform with one another. Their characteristics and relative simi-

larities were not due to a broad policy worked out in advance by the federal government. Indeed, immediately before the first of these treaties was made, the Government had little information about the Indians of its new territory, let alone a policy. It proceeded to deal with the native occupants in an ad hoc fashion as necessity dictated. Almost inevitably the patterns of earlier Canadian experience were adapted to a new time and place. The seven treaties which emerged were partly shaped by the Indians themselves and were indirectly influenced by United States' practice.

The government's purpose in negotiating treaties in the North-West was to free land for settlement and development. A corollary of this was the urgent desire to satisfy the Indians sufficiently so that they would remain peaceful. The nature and extent of Indian rights to the territory were not discussed at the negotiations nor were they defined in the treaties themselves. It is evident from the texts, nevertheless, that the government intended that whatever title the Indians might possess should be extinguished, since the opening clauses of all seven agreements deal with land cession. This emphasis was not reflected in the preliminary treaty negotiations. There the stress was on what the Indians would receive rather than on what they were giving up. The Commissioners gave them assurances that the Queen understood their problems and was anxious to help them.

The loss of control over land use and the diminishing game supply threatened the traditional native way of life. While the Indians attempted to retain as much control as possible over their own territory and future, a secondary desire was the attempt to gain sufficient compensation and support to ensure their survival amidst rapidly changing conditions. As a result of hard bargaining, Indians did manage to have some additional provisions included in the treaties beyond those the government had originally intended. These included agricultural aid and certain liberties to hunt and fish.

Indians today make several points in relation to these treaties. The major one is that the treaty texts do not reflect the thrust of the verbal promises made during the negotiations and accepted by a people accustomed to an oral tradition. They state that their ancestors understood the treaties to be specifically designed to protect them and help them adapt to the new realities and develop an alternative agricultural base to complement their traditional livelihood of hunting and fishing.

Indian associations strongly deny that the treaties obligate the government only to fulfil their terms as they appear in the bare texts. They uniformly insist that the written versions must be taken together with the words spoken by the government's agents during the negotiations. In a submission to the Commissioner on Indian Claims, the Federation of Saskatchewan Indians states that:

> In his various addresses to Chiefs and Headmen at treaty meetings, Commissioner Morris had a single message for the Indians: The Queen was not approaching the Indians to barter for their lands, but to help them, to alleviate their distress and assist them in obtaining security for the future. "We are not here as traders, I do not come as to buy or sell horses or goods, I come to you, children of the Queen, to try to help you. The Queen knows that you are poor; the Queen knows that it is hard to find food for yourselves and children; she knows that the winters are cold, and you[r] children are often hungry; she has always cared for her red children as much as for her white. Out of her generous heart and liberal hand she wants to do something for you . . . ."
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> These verbal assurances and statements of Crown intent, and the many others like them, given by Morris in his address to Chiefs and Headmen, cannot be separated from Treaty documents because they were accepted as truth by the assembled Indians.

The nature and extent of the implementation of the treaty provisions are another source of grievance in this area. The government's open policy of detribalization, which held as its goal the assimilation of Indian people into the dominant society, motivated a number of specific policies which were destructive of Indian efforts to develop within the context of their own cultures. The field of education is one of the most conspicuous examples of this process, as it is easy to appreciate the effects of isolating children in residential schools where they were taught that their parents' language and culture were inferior, and had instilled in them a set of alien customs and values.

In the Indian view, during the late nineteenth and early twentieth centuries, the government failed to provide the expected agricultural assistance, and unduly restricted Indian agricultural development. It encouraged the surrender of some of the best agricultural land from the reserves when its efforts failed to turn the Indians into farmers.

All of the Prairie native organizations, along with the Grand Council of Treaty No. 3 in northern Ontario, share the view of the desirability of rewording the treaties in terms that will embody their original spirit and intent. As in aboriginal title areas, the results of such settlements could, they say, provide the basis for revolutionizing the future development of Indian peoples and reserves on native terms. The treaty Indians' organizations have outlined some specific objectives and proposals for an approach to development. A primary characteristic of these is their rejection of the concept of assimilation or detribalization, and stemming from this the conviction that the Indian people must initiate and control the development effort themselves.

Only at the turn of the century, when mineral exploitation provided the impetus, were treaties made to the north of the areas surrendered during the 1870's. Treaty No. 8 was concluded in the Athabaska District, Treaty No. 9 in northern Ontario and Treaty No. 10 in northern Saskatchewan. In addition, adhesions to Treaty No. 5 were taken in northern Manitoba to extend the limit of ceded territory to the northern boundary of the province. Finally, in 1921, following the discovery of oil at Norman Wells, Treaty No. 11 was made in the Northwest Territories.

A major question has arisen respecting Treaties Nos. 8 and 11 as to whether the agreements involved the cession of native land rights, since both the oral testimony from surviving native people who were present and the reports of those discussions which took place at the treaty-making raise substantial questions

about this. The address of the Treaty No. 8 Commissioner at Lesser Slave Lake in 1899 dealt only with what the Indians would receive; there is no reference in the extant text to ceding territory, and as with Treaty No. 11 there is little evidence that the native people were aware that land cession was involved. Nevertheless, the Commissioners made it clear that the country would be opened up for settlement and development. The Indians understood that they were not to interfere with those coming into the country for lawful purposes; in return, they sought protection for themselves in their hunting, trapping and fishing way of life.

The treaty terms were modelled closely on those of the Prairie and Parkland treaties. The provisions for reserves of land and for agricultural aid which were suited to southern conditions were applied in the North where much of the territory was not suitable for agriculture. The Indians at Fort Chipewyan reportedly refused to be treated like Prairie Indians and to be placed on reserves, since it was essential to them to retain freedom to move around. Why then did the Indians sign the treaties? Testimony from those present at the negotiations indicates that they were given ample assurances that they would not be adversely affected by accepting treaty. They would neither be confined to reserves nor lose their hunting, trapping and fishing rights.

In addition to those native people whom the federal government was prepared to recognize as Indians having an aboriginal right in the soil, there was also in the western interior of Canada a large population of Métis. For the most part, they considered themselves a group separate from both Indians and Europeans. Despite this, they regarded themselves as natives of the country and entitled, like the Indians, to some special consideration. When it appeared that they were being ignored, they forced themselves on the attention of the government in 1869-70 by denying entrance into the Red River Settlement of the Canadian appointee sent to govern the territory.

Métis had never before been dealt with as a group. Nevertheless, in 1870 the Dominion Parliament passed the Manitoba Act which, among other things, made provision for a distribution of land to the children of Métis heads of families in Manitoba. The Act accorded statutory recognition to the Métis' aboriginal title. Subsequently the heads of families themselves were included in the grant, and they were each to be given a 160-acre parcel of land, to be chosen in any section open to colonization. Alternatively, they were entitled to a negotiable certificate (scrip) enabling them to acquire such an area, an arrangement which played into the hands of speculators.

The Métis people of the North-West outside Manitoba were not included in these grants. While the treaties were being made with the Indians of the North-West in the 1870's, almost nothing was done to settle the Métis' claim. The Dominion Lands Act of 1879 enabled land grants to be made to Métis in the then North-West Territories, but this statutory provision was not acted upon until early in 1885 when an Indian and Métis rebellion was anticipated. The Street Commission appointed then to screen Métis applicants for scrip was intended to be an instrument of pacification as had been the Manitoba Act fifteen years earlier.

Eventually, the Métis' claim was met through an issue of scrip throughout the region where Indian title had previously been extinguished by treaty.

The different methods adopted for dealing with Indians and Métis, which had been first applied in Manitoba, were in this way extended further into the western interior. In 1899, they were extended into the north; two commissions were appointed to deal with the Indians and the Métis respectively within the Treaty No. 8 area. The same principle was followed for Treaties Nos. 10 and 11, except that the Indian treaty negotiators then acted simultaneously as scrip commissioners for the Métis.

The Métis' claims rest upon the same general foundation as those of persons deemed to have Indian status, that is upon an aboriginal right to territory. Métis were admitted into Indian treaties in western Canada only as an exception to a general rule. Such admission applied only to those most closely identified with the Indians, although some element of choice was permitted. The Indian Act of 1876 specifically excluded them, barring exceptional circumstances, while later amendments provided for their withdrawal.

The Manitoba Act had pointed the way to the policy to be adopted for extinguishment of Métis rights, and this differed significantly from that employed for Indians. It was not negotiated, but was unilateral, proceeding by legislation and Orders in Council. Furthermore, while the Métis were treated as persons having aboriginal title, and therefore different from other Canadians, it has never been government policy to ereate and maintain them as a category of persons with special status like the Indians. The Dominion assumed no unique, continuing responsibility towards the Métis and non-status Indians as part of its constitutional jurisdiction over Indians.

Métis claims are likely to fall into three categories. There will be claims that the distribution of land and scrip, especially under the Manitoba Act, was unjustly and inefficiently administered. As well, there may be a general claim that this form of compensation was inadequate to extinguish the aboriginal title enjoyed by the Métis community, particularly since few of them gained very much from scrip. This argument would be similar to that made by some treaty groups that the treaties constituted an imposed settlement and that they were unfair by reason of insufficient compensation. This type of claim may be reinforced by the fact that people of mixed blood have generally received no compensation beyond the western interior of Canada but are making claims jointly with status Indians in several regions of Canada such as British Columbia and the Yukon Territory. This situation helps to support the third type of claim, that Métis are Indians under the terms of the British North America Act, if not under those of the Indian Act, and are entitled to special consideration from the federal government.

Band Claims

The third major class of claims encompasses the multifarious, scattered claims of individual Indian bands. Several categories of these can be identified at present, and include claims relating to the loss of land and other natural resources

from established reserves, and issues pertaining to the government's stewardship of bands' financial assets over the years. Underlying all these claims is the difficult question of trusteeship.

The full story of the government's management of reserve resources and band funds across Canada is only gradually being pieced together from the files of the department, missionaries and others, and from the oral testimony of Indian people themselves. The resources include not only land itself but also minerals, timber, grazing lands and water. Band funds in most cases derive from land and other resource sales. Where land was surrendered and sold off from reserves, the capital went into band funds, to be administered by the federal government.

Land losses from established Indian reserves account for by far the majority of band claims so far brought forward. Groups of them are probably sufficiently similar to be classified on a regional and historical basis. Grievances arising in New France have certain elements in common, as do Indian claims in the Maritimes, in Ontario, in the southern Prairies, and in British Columbia. The problem of pressure for reserve land acquisition by speculators and settlers is central to all.

The French, who were the first European power to control the northern half of North America, were the first to establish any sort of Canadian Indian policy. Their approach was pieced together as geographical distance from the mother country, overwhelming native military strength, a fur trade economy, and negligible settlement dictated. They sought, if unsuccessfully, the Indians' assimilation into French-Canadian society and saw the converted natives as equal in civil and legal status to France's European subjects.

There are conflicting interpretations as to whether Indian territorial rights were affirmed or extinguished under the French régime; treaties were never concluded for territory either in New France or in Acadia. As to white colonists, so to Indians, land was given through imperial grace. However, the Crown, instead of granting such tracts directly to the native people, handed them in trust to the most efficient civilizing and Christianizing agencies then known, the religious orders. Six Indian reserves were formed in this manner.

With the British takeover in 1760, France's Indian allies were secured in the use of their lands. In 1851, 230,000 acres were set aside as Indian reserves and a further 330,000 acres were similarly appropriated by the Quebec Lands and Forests Act of 1922. Additional reserves were created through the transfer of land from the provincial to the federal government by letters patent issued by Quebec, through direct purchase by the Dominion from a private party, or through private leases.

The native peoples of Quebec have, over the years, sought increased compensation for land lost from these reserves; settlement of disputes between bands and tribes over reserve ownership; restitution for damages done through logging, fishing and canal construction; and compensation for questionable band fund management. The existence of these grievances suggests a basic difference in

view between the Indians and the federal government, which has historically tended to judge the issues solely on their legal merits as seen by the Department of Justice.

In the nineteenth century, for instance, the complaints of the Hurons of Lorette and the Montagnais of Pointe-Bleue against white squatters went unnoticed; charges that the municipality near the Iroquois Oka reserve had unjustly taken over land to allow for the construction of three roads were only briefly considered, as was the Caughnawaga claim for land sold as a clergy reserve. The St. Regis Iroquois' protests against the Quebec government's unilateral renewal of leases to, and sale of, islands in the St. Lawrence, along with their claim to compensation for the flooding of additional islands by the Cornwall Canal, were to no avail. Dozens of claims to islands, first voiced in the eighteenth and nineteenth centuries, remain unsettled, and many of the current disputes over expropriation, whether by settlers, clergy or the Crown, go back to these earlier years. At the root of much of this lack of responsiveness is the government's and the courts' persistent denial of the Indians' contention that they owned the land initially granted to the religious orders, on the grounds that title thereto had been given direcly to those orders, and not to the Indians themselves.

The arrival of the British in New France, so far as the Indian people were concerned, did not favourably alter the natives' condition. The same could be said for the Maritimes. As British settlement and power increased, large tracts were set apart for Indian use and occupation. Although these lands were called Indian reserves, they were not guaranteed to the Indians through treaties, and were subsequently reduced as the land was required for settlement. Further pressures on these reserves in the Maritimes in the early nineteenth century, coupled with problems in dealing with flagrant non-native squatting, motivated the colonial governments to appoint commissioners to deal with and supervise reserves. These officers apparently had and certainly exercised the right to sell reserve lands without Indian consent. With Confederation, the existing reserves were transferred to the jurisdiction of the federal government, though for a long time the underlying title lay with the respective provinces.

Claims have been presented to the federal government for past reserve land losses. Within this category, several main types of claims are emerging. A large number contest the legality or status of surrenders of reserve lands. These include submissions on surrenders processed without proper Indian consent, uncompleted sales of surrendered land, sale of lands prior to their being surrendered, lack of letters patent for completed sales, and forged Indian signatures or identifying marks on surrenders. In Nova Scotia, a general claim has also been presented contesting the legality of all land surrenders between 1867 and 1960. This is based on the argument that the Micmac Indians of that province constituted one band and that under the Indian Acts of the period surrenders could only be obtained at a meeting of a majority of all band members of the requisite sex and age. Another group of Maritime band claims against the federal government arises from the contention that a number of reserves transferred to the federal government after Confederation were subsequently listed or surveyed by the

Department of Indian Affairs as containing smaller areas than the original acreages listed, or were simply never surveyed and registered as reserves at all.

There are also Maritime Indian claims against the federal government relating to the latter's trusteeship role. The Union of Nova Scotia Indians has put forth a number of claims concerning mismanagement by the government of its obligation to ensure adequate and proper compensation for reserve lands surrendered or expropriated for highway rights-of-way, utility easements, and other public purposes.

The sources of Indian claims in southern Ontario are similar to those in Quebec and the Maritimes. Probably the bulk of them have not yet been disclosed: at any rate, no formal comprehensive claims statement has emerged. In common with Quebec, though, past cases of recorded claims for such losses abound. Some have been rejected by the Departments of Indian Affairs and Justice, or by the courts; many, however, lie dormant. It would not be unreasonable to expect these, and new contentions based on them, to be advanced in greater numbers in the near future.

Indian people have claimed that both cessions concluded under unjust circumstances and legally questionable government expropriations of reserved lands were common. Government initiatives, along with pressure from white speculators and settlers, were, as usual, dominant factors. The Six Nations' Grand River surrender in 1841, the Mohawks' cession of Tyendinaga Township in 1843, the Moore Township surrender made by the Chippewa later that year, and the 1847 cession by the St. Regis Iroquois of Glengarry County, are prime examples of contentions that surrenders were attained under pressure. All these were ceded in trust, although there is evidence that the trust provisions were not always upheld. Similar grievances pertain to the government's acquisition of unceded islands. Equally familiar was the variety of expropriation which allowed the sale of individual lots from Indian reserves for clergy and state purposes. Disputes over the status of territory, too, were prevalent. These were generally related to squatter infiltration and occasionally extended into inter-tribal conflicts for reserved lands and, accordingly, for annuities.

The social and economic factors underlying the loss of Indian reserve lands in central and eastern Canada soon found expression on the Prairies. In the years following the making of the treaties and the setting aside of the reserves, the southern prairies were gradually settled. Towns and cities sometimes grew on the very edges of reserves or even around them, and railways ran through them or along their boundaries. As in Ontario, so on the Prairies, reserves located on good farming land were coveted by settlers. For all these reasons, political pressure frequently developed for the surrender of all or a portion of a reserve. In many cases the Indian Department responded by obtaining a surrender of the reserve land in question; proceeds from the sales of such land were credited to the particular band's fund, and administered under the terms of the Indian Act.

In recent years, the bands and Indian associations of the Prairies have clearly articulated several claims arising from previous government policies in relation to

land surrenders. At present, they are examining both the justification for these surrenders in general, and the legality and propriety of specific cessions, such as those involving Enoch's Band, near Edmonton. Three surrenders took place. The entire Passpasschase Reserve was ceded shortly after most of the band members left treaty and took Métis scrip. The remaining members moved elsewhere, and subsequently the band and its assets were amalgamated with Enoch's Band, residing on the Stony Plain Reserve. In 1902 and 1908, political forces largely supported, if not generated, by the Minister responsible for Indian Affairs himself, compelled the surrender of portions of this reserve. In taking the surrenders, government officials used approaches which appear to have been morally and legally dubious. Such questions surround many other surrenders in the Prairie region and northern Ontario.

At the heart of many Indian grievances in the northern Prairie Provinces is the issue of unfulfilled treaty entitlements to land. Complex in themselves, such claims have been further complicated at the outset by the need for provincial assent to any proposed transfer of lands to Indian Reserve status. Under the 1930 Natural Resources Transfer Agreements, the three Prairie Provinces obliged themselves to transfer to the federal government, out of unoccupied Crown lands, sufficient area to meet unfulfilled treaty obligations. Native people have felt that there has been provincial reluctance to comply with this and disputes have arisen over the exact nature of the commitments. The Island Lake bands in Manitoba, for instance, have raised the matter of what population base should be utilized in the granting of unfulfilled treaty entitlements. A substantial proportion of the bands' allotments under Treaty No. 5 were made in 1924, but the land assigned was approximately 3,000 acres short, if based on the populations at that date and on the treaty terms. The bands maintain that their total entitlement should be computed using a recent population total, with the 1924 alloment simply subtracted from the new allocation.

In addition, this case points to the inequality amongst the various treaties' land provisions throughout the West. In common with other treaties in Manitoba, Treaty No. 5 provides for 160 acres per family of five, compared with the 640-acre figure used for other treaties. Since the land in this region of Canada is non-arable, an additional inequity is present relative to more southerly, fertile regions. The bands contend that a fair solution, satisfying the twin criteria of population datum and uniform treaty terms, would be an alloeation of almost 300,000 acres.

In British Columbia, the history of Indian reserves is substantially different from that elsewhere. During the 1850's, when Vancouver Island was still provisionally governed by the Hudson's Bay Company, certain minor surrenders were concluded by the Company's Chief Factor, James Douglas, for several parcels of land there. But these, along with the territory in the northeastern corner of the mainland included in Treaty No. 8, are the only areas covered by treaty. The dual governorship of the two colonies — Vancouver Island and British Columbia — under Douglas in 1858 was soon accompanied by the establishment of comparatively liberal reserves both within and outside the treaty areas. But then, expanding

white settlement motivated Douglas' successors to reverse his policy of allowing the tribes as much land as the Indians themselves judged necessary, and accordingly to reduce the reserves wherever possible. Only with great reluctance did the colonial government allot new reserves in areas opening to settlement.

By 1871, when the colony entered Confederation, Indian complaints concerning the failure to allot adequate reserves and reserve land reductions were already numerous. Yet, the Terms of Union that year did nothing to allay these grievances. Fundamentally, the Terms provided for the transfer of responsibility for reserves to the Dominion Government, and for the conveyance of land from the province to the Dominion for new reserves. As no amounts were agreed upon, a dispute immediately arose between the two over the appropriate acreage to be allotted per family. The province declared ten acres sufficient; the federal government proposed eighty. An agreement establishing an Indian Reserve Commission was concluded in 1875 to review the matter, but there continued to be provincial resistance against attempts to liberalize reserve allotments.

This is one source of Indian claims in British Columbia. A recent report by the Union of British Columbia Indian Chiefs, entitled *The Lands We Lost,* details others. This includes the by now familiar pattern of encroachment by non-Indian people, together with questions about various government surveys and Commissions, federal Orders in Council, and reserve land surrenders. A prime cause of such losses, and the major grievance expressed in this regard, was the work of the federal-provincial McKenna-McBride Commission, set up in 1912 to resolve the outstanding differences between the two governments respecting Indian land in British Columbia. The Commissioners were appointed to determine the land needs of the Indians and to recommend appropriate alterations to the boundaries of Indian reserves. All reductions were to require the consent of the bands involved, but in practice this stipulation was not followed. The recommendations were subsequently ratified by both governments under legislation which authorized these reductions irrespective of the provisions of the Indian Act controlling the surrender of reserve lands. Eventually, some thirty-five cut-offs, aggregating 36,000 acres, were made, while lands of far less value, although of larger area, were added to reserves.

II DEALING WITH NATIVE CLAIMS

Courts and Claims Commissions

Only occasionally have the courts in Canada been asked to adjudicate issues concerning the rights of Indian people. Although there are exceptions, in general the judicial system has not responded positively or adequately to native claims issues. Respecting aboriginal rights, the judiciary decreed that any European colonial power, simply by landing on and laying claim to lands previously undiscovered by white European society, became automatically the sovereign of this

"newly discovered" land. Occupation was taken to confirm that right. Rather than obligations which came with the assumption of sovereignty, native rights were conceived as matters of prerogative grace by both government and courts.

Indian people have faced clear social and cultural obstacles in becoming litigants in a legal system largely foreign to their experience. And even if some might have considered taking action through this forum, they had until very recently little or no capacity to pay the necessary legal fees. As a result, most of the early but significant decisions in the area of fundamental Indian rights have been handed down in cases where the Indian people affected were not directly represented. Many of these cases involved disputes between the federal and provincial governments over questions of land and resources. Indian rights became material to the cases only because the federal government sought to rely upon them to reinforce its own position by citing its exclusive constitutional responsibility for Indian people and lands.

What was, until very recently, the only significant case on the question of aboriginal title in Canada was decided by the Judicial Committee of the Privy Council in 1888. This, the *St. Catherine's Milling* case, involved litigation between the federal government and the Province of Ontario over the question of whether the former could issue a timber licence covering lands eventually declared to lie within Ontario. The Indians themselves were not represented. The federal government, for its part, argued that it had properly acquired the title to the land from the Indian people; the Judicial Committee of the Privy Council denied that native people, at any time, had "ownership" of their land in the sense that Europeans understood the term, and stated " . . . that the tenure of the Indians was a personal and usufructuary right, dependent upon the good will of the Sovereign". The Law Lords went on to say that the effect of signing treaties with Indian people was to extinguish this "personal and usufructuary right", and to transfer all beneficial interest in the land covered by the treaty immediately to the Province. Nearly a century was to pass before the nature of aboriginal title would receive further consideration by Canada's highest court of appeal.

The courts have also rendered judgments on the nature and effect of the treaties. At least three possible interpretations of the Indian treaties have been put forward. Some have been regarded as transactions between separate and independent nations. Such has been the traditional claim of many Six Nations Indians. Secondly, they have been characterized as special protective agreements in which Indian peoples surrendered their rights to land in return for irrevocable rights conferred upon them by the Government. Thirdly, they might be interpreted as according the Indians no rights "beyond a promise and agreement" analogous to any commercial contract made at the time with the government. A judgment written by the Judicial Committee in 1897 opted for this last interpretation in a dispute amongst the Attorneys-General of Canada, Ontario and Quebec. Indian people have thus found themselves constrained by adverse precedent before they had begun to make their own arguments in court.

In addition to the rights at stake in this case, the courts have also dealt with the promise of continued hunting and fishing rights. Their decisions have affirmed the federal government's right to break express promises made by treaty. However, on occasion the judiciary has questioned the morality of such legislative action. Many of the most fundamental treaty promises regarding social and economic development have not yet reached the courts. It would require a radical departure from established precedent for the courts to accord such obligations the character understood by the Indians.

Cases touching the many reserve land loss grievances have on occasion come before the courts. Little can be learned about the direction which the courts might take in future land loss claims from a reading of these judgments, as they disclose no clear pattern of judicial thought. Decisions on claims concerning the mishandling of Indian monies have been equally rare and uninstructive. The fundamental question of the relationship between the federal government and Indian people in the areas of management of land and monies remains legally undefined. Indian people regard this relationship as one of trust and the federal government has often referred to it in these terms. This fiduciary obligation places a very heavy burden on the federal government to act in good faith and always to consider the best interests of Indian people to be of paramount concern.

As an avenue for Canadian Indian claims, the legal system could only have been seen in native eyes as an incomprehensible gamble. Only in recent years have the courts responded more favourably to Indian claims, not in the sense of fully and satisfactorily resolving them, but rather in providing a basis from which Indian people might negotiate with government.

The first Canadian attempt to hear and settle Indian claims outside the courts came with the establishment by parallel legislation, in 1890-91, of a three-man Board of Arbitrators. Appointed to inquire into disputes between the Dominion and the provinces of Ontario and Quebec, the Board, with one federal and two provincial members, considered respective federal-provincial responsibilities in the area of Indian affairs. Claims were presented by the Department of Indian Affairs on behalf of the Indians. It generally stated that the satisfaction of native grievances was the obligation of the old Province of Canada before 1867, and of Ontario and Quebec thereafter. The provinces countered that such obligations rested solely with the Crown in right of the Dominion.

In all, some twenty cases were placed before the Board, which was heavily dependent on the opinions of the governments' legal and administrative officers. This system proved unsatisfactory, since the claims became embedded in federal-provincial conflicts. The Board itself had no final adjudicatory power, and by the early 1900's had waned into insignificance. With few exceptions, the Indians derived no benefit from its activities.

Realization on the part of both native and non-native people in the United States that the ordinary courts were unsuitable forums for the presentation and resolution of Indian grievances and claims brought forward a response that

was increasingly to preoccupy Canadian governmental and native thought. Efforts which began in the 1930's in the United States to establish a special adjudicatory body with powers to hear and determine Indian claims culminated in 1946 with the creation of an Indian Claims Commission. In Canada, the Joint Committees of the Senate and House of Commons on the Indian Act and on Indian Affairs, which sat in 1946-48 and 1959-61 respectively, recommended establishing a similar, though more limited, body. As a result, enabling legislation received first reading in the Commons in December 1963, and the draft bill was sent to Indian organizations, band councils and other interested groups for comment; a slightly amended version of the proposal was introduced in June 1965.

The terms of the bill provided for a five-person Indian Claims Commission, one member of which was to be an Indian, with a chairman who was a judge or lawyer of at least ten years' standing. The jurisdiction of the commission would have been limited to acts or omissions of the Crown in right of Canada or of the United Kingdom, but not in right of a province. Because of this and stipulations about evidence, there was substantial doubt as to whether it would have been able to decide on the merits of the aboriginal title issue in British Columbia, a claim which comprised one of the main rationales for the creation of the body.

The suggested Canadian commission would have lacked jurisdiction to hear classes of cases which, in the United States, formed the bulk of those heard. These included claims for the Government's failure to act "fairly or honourably" where land was involved, as well as others requiring that treaties be re-opened on grounds such as unconscionable consideration. The Canadian legislation would have permitted the commission to consider only failure to fulfil treaty provisions, not the general question of re-opening treaties. The bill also ignored the Indian organizations which were emerging as a force at that time. Instead, the proposed commission was to be authorized to hear claims on behalf of bands, as defined by the Indian Act; regional Indian organizations, however, might not have been recognized as claimants. Further, the commission would have been given authority only to make money awards, not to restore land.

Because of these and other inadequacies, this proposal for an adjudicatory commission met with Indian opposition. On second reading, it was referred to a Joint Committee of both Houses of Parliament, but was allowed to die following the dissolution of Parliament later in 1965. Nothing further was done towards establishing a commission, although the Government's intention to do so appeared to be unchanged. In September 1968, the Minister of Indian Affairs stated that he proposed to introduce a bill "in the weeks to come" to establish an Indian Claims Commission, and he reaffirmed this intention the following December. On this occasion, though, he remarked that the bill had been referred for amendment to the Cabinet Committee on Health, Welfare and Social Affairs. This appears to have been the Government's last public discussion of the projected commission before the announcement of a new Indian policy in June 1969. This demise was attributed to consultations with Indian representatives and the review of Indian policy which had preceded the drafting of the new White Paper.

The White Paper and The Indian Claims Commissioner

The first of a series of contemporary responses to Indian claims started with the 1969 White Paper on Indian Policy. That event marked the beginning of a new era of unprecedented claims activity. The Government proposed an approach which it said would lead to equality of opportunity. This was described as "... an equality which preserves and enriches Indian identity and distinction; an equality which stresses Indian participation in its creation and which manifests itself in all aspects of Indian life". To this end, the British North America Act would be amended to terminate the legal distinction between Indians and other Canadians, the Indian Act would be repealed, and Indians would gradually take control of their lands. The operations of the Indian Affairs Branch would be discontinued and services which had previously been provided on a special basis would be taken over by the federal or provincial agencies which serve other Canadians. Economic development funds would be provided as an interim measure. In short, Indians would come to be treated like all other Canadians: special status would cease.

In laying out these proposals, the Government continued to recognize the existence of Indian claims, and proposed the establishment of an Indian Claims Commission, but solely as an advisory body. It was made clear that the Government was not prepared to accept aboriginal rights claims: "These", the Paper said, "are so general and undefined that it is not realistic to think of them as specific claims capable of remedy except through a policy and program that will end injustice to Indians as members of the Canadian community. This is the policy that the Government is proposing for discussion." Treaty claims, while acknowledged, were also placed in a dubious light: "The terms and effects of the treaties between Indian people and the Government are widely misunderstood. A plain reading of the words used in the treaties reveals the limited and minimal promises which were included in them. ... The significance of the treaties in meeting the economic, educational, health and welfare needs of the Indian people has always been limited and will continue to decline. ... [O]nce Indian lands are securely within Indian control, the anomaly of treaties between groups within society and the government of that society will require that these treaties be reviewed to see how they can be equitably ended." The Government apparently felt that while the central aboriginal and treaty claims had little virtue, and were directly at odds with the proposed policy, there were instances where claims might be accepted. Lawful obligations would be recognized.

Rather than proceeding with the kind of commission discussed in the 1960's, it was decided that further study and research were required by both the Indians and the Government. Accordingly, the present form of commission was established under the Public Inquiries Act to consult with the Indian people and to inquire into claims arising out of treaties, formal agreements and legislation. The Commissioner would then indicate to the Government what classes of claims were judged worthy of special treatment, and recommend means for their resolution.

Given the nature of Indian views on their rights and claims as we now understand them, it is not surprising that their reaction to the White Paper was

strongly negative. The National Indian Brotherhood immediately issued a statement declaring that, "... the policy proposals put forward by the Minister of Indian Affairs are not acceptable to the Indian people of Canada ... We view this as a policy designed to divest us of our aboriginal, residual and statutory rights. If we accept this policy, and in the process lose our rights and our lands, we become willing partners in cultural genocide. This we cannot do."

In the following months, native groups across the country forcefully and repeatedly echoed this response. When the Commissioner, Dr. Lloyd Barber, was appointed in December 1969, the National Indian Brotherhood rejected his office as an outgrowth of the unacceptable White Paper, viewing it as an attempt to force the policy on native people. Indians saw the White Paper as the new articulation of a long-resisted policy of assimilation. The proposal was denounced as a powerful, threatening extension of traditional Indian policy in Canada.

In rallying to oppose this apparent challenge to their rights, the native peoples have in turn produced extensive statements of their own positions. While difficulties were encountered in arranging for research funding, sufficient government monies were made available to finance some of this work. The resulting statements, together with concerted legal and political action on the part of Indians, have led to significant changes in the Government's approach.

An early response occurred in August 1971, when in reply to submissions from the Commissioner and Indian leaders, the Prime Minister agreed that the former would not be exceeding his terms of reference if he were to "hear such arguments as the Indians may wish to bring forward on these matters in order that the government may consider whether there is any course that should be adopted or any procedure suggested that was not considered previously". The Commissioner took this to mean that he was free to look at all types of grievances and claims, including aboriginal rights issues.

In August 1973, the Government made a substantial change in its position on aboriginal rights by announcing that it was prepared to negotiate settlements in many areas where these had not been dealt with. Then, in April 1975, on the basis of proposals developed through consultations between Indian leaders and the Commissioner, the Government accepted an approach to the resolution of Indian claims based upon negotiations.

Aboriginal Rights

In the non-treaty areas of Canada, criticisms of the White Paper centred around the proposed transfer of responsibility for Indian Affairs from federal to provincial authority and the Paper's refusal to recognize or deal with aboriginal rights claims. The Union of New Brunswick Indians, for example, announced its complete rejection of the policy, and the Indians of Quebec stated through their Association that they would have nothing to do with its implementation until a treaty had been concluded with them. Then, in September 1971, Indian representatives from across Canada completed their succinct position paper on "the

territorial aspects of Indian claims based on aboriginal title". This statement was later supported by a Parliamentary Standing Committee during the life of a minority government, but never brought to a vote in the Commons.

In July 1972, a substantial answer to the Government's denial of aboriginal rights claims was presented in the *Claim Based on Native Title* by the Union of British Columbia Indian Chiefs. The Union asked the Prime Minister and the Government of Canada

> . . . to realize what a shock it was to the Indians, especially of British Columbia, to be told in 1969 that grievances relating to claims based on native (aboriginal) title to land 'are so general and undefined that it is not realistic to think of them as specific claims capable of remedy' except through the new policy then proposed — a policy which, if unaltered, totally rejects that historic claim. For the Indians of British Columbia, sometimes as individuals, sometimes as organized groups, have for generations maintained a claim for compensation, adjustment or restitution based on denial, without their consent and without compensation, of their ancient rights to use and enjoy the land that was theirs.

The submission declared that the native people must be compensated for the loss of their rights to the land throughout the whole of British Columbia, including the loss of surface, subsurface, riparian and foreshore rights. This claim was based squarely on the doctrine of aboriginal title, and contains lengthy arguments supporting the validity of the concept. In doing so it distinguished between a claim to present title, as was being asserted in the courts by some British Columbia Indians, and its own contention that the Indians had aboriginal title prior to the coming of non-Indian settlers, but are now largely denied the rights of occupancy and use which that title carries with it. Except for hunting and fishing rights, the claim is primarily for compensation, not restitution.

The Union did not consider the courts an acceptable means of achieving settlement, and declared that only the Government and Parliament, whether through an overall legislative settlement or an adjudicatory commission, could effectively deal with the issues. Either method would have been acceptable, though on balance at that time the Union favoured the second. Since then an approach through direct negotiation has gained acceptance. The adjudicatory commission's function would have been to determine the amount of compensation due various claims. The claim to aboriginal title would have been recognized in legislation constituting the commission, which would avoid the time-consuming process of each group of Indians having to establish the fact and extent of its title. The objective would be to determine the possibility of restitution, especially in questions of hunting and fishing and riparian or foreshore rights, and, in most cases, the amount of compensation for loss of rights.

The value of the land was to be assessed at the time the Indians lost the use of it: the date of the treaty in the British Columbia treaty areas, and the date of establishment of reserves elsewhere. This amount would he converted to a present dollar equivalent and compensation paid at five per cent simple annual interest. The resulting fund would be administered by a province-wide development corporation owned and managed by Indian people. This proposal, its authors

believed, would not only settle the grievances of the past, but would lay a foundation for the social and economic development of the Indian communities of the province.

Well before this statement of the British Columbia land claim was presented, the Nishga Indians of the northwestern part of the province had begun their search through the courts for a judicial declaration that their aboriginal title had never been surrendered by treaty or otherwise extinguished. The case, *Calder v. Attorney-General of British Columbia,* was first heard in the British Columbia Supreme Court in 1969. Dismissed by that court, it was appealed to the British Columbia Court of Appeal where it was again dismissed. Finally, it was taken to the Supreme Court of Canada where, in January 1973, seven judges divided four to three against the Nishga claim. Six of the bench supported the notion of an aboriginal title "dependent upon the good will of the Sovereign", but there was no agreement on the fundamental questions of how such rights might be extinguished or evaluated.

Three of the judges held that aboriginal rights are without value unless the government obliges itself to pay by enacting compensation legislation. They also held that such rights can be extinguished implicitly through land legislation necessarily denying their continued existence. Three other judges declared that aboriginal rights cannot be extinguished without compensation or without specific direct legislation removing the right to compensation. Occupation, they said, was a proof of the continued existence of aboriginal rights and the Nishga appear to have been in possession of the Nass Valley from time immemorial; they have never made any surrender agreement with the Crown.

The Nishga lost their case on the collateral and technical point that the issue could only properly come before the court with provincial authorization. The substantive issue as to whether the Nishga have aboriginal rights remains unresolved by the courts, as it does for all other native peoples in Canada pursuing aboriginal rights claims. The judgment has left unanswered many questions as to the nature of aboriginal title, its worth, the manner by which it can be extinguished, and the degree of proof necessary to establish a valid claim to aboriginal title.

The decision not to pursue the issue further through the courts seems to have been chiefly a result of a change of attitude by the Government. The Prime Minister, speaking to a delegation from the Union of British Columbia Indian Chiefs immediately after the Supreme Court decision, told them that the judgment had led him to modify his views. He appeared to be impressed with the minority judgment and remarked, "Perhaps you have more legal rights than we thought you had when we did the White Paper".

At the same time, both the native people and the Canadian Government were aware of the negotiated agreement made between the United States' Government and the native peoples of Alaska, which had become law in December 1971. The native Indians, Inuit and Aleut had laid claim to almost all the land area of the state, an area which they had continued to use and occupy. Native action, prompted by oil and gas leases, resulted in a land freeze in 1966 pending settlement of their claims. Several bills were subsequently presented to Congress under

different sponsorships: the legislation which emerged as the Alaska Native Claims Settlement Act of 1971 marked a radical departure from any previous native land settlement policy in the United States, or elsewhere.

The Act provides for the transfer to native peoples of both land and money and for the setting up of native corporations to administer both. Alaskan natives are entitled under the Act to a total of forty million acres divided amongst 220 villages and twelve regional corporations. This amounts to about fifteen per cent of the state's area. The villages acquire the surface estate to twenty-two million acres, while the regional corporations receive the subsurface estate to that land, together with full title to sixteen million acres. The remaining two million acres are for sundry purposes including protection of existing cemeteries and historical sites. There is also provision for allotments from this amount, not to exceed 160 acres per capita, to individual natives living outside the villages. In addition, a land-use planning commission, of which at least one member must be a native person, was established. The commission's functions are advisory, not regulatory.

The monetary settlement, to be administered by the regional and village corporations, is comprised of approximately half a billion dollars from the United States Treasury over an eleven year period, and an additional half-billion from mineral revenues from lands conveyed to the state. The latter would otherwise have become state revenue. In this way, the state is sharing in the settlement of native claims.

Native people in Canada have always been keenly aware of the treatment of their brethren in the United States, and this settlement received wide publicity. The professed rationale behind the settlement was that it should not only satisfy legal and moral claims but should provide a foundation for the social and economic advancement of the native people. It has undoubtedly affected thinking in Canada on the nature of any future settlement in aboriginal rights areas in this country.

Shortly after the *Calder* decision and the Prime Minister's statement to the British Columbia Chiefs, the Yukon Native Brotherhood presented its paper, *Together Today for Our Children Tomorrow,* to the Prime Minister and the Minister responsible for Indian Affairs. The paper, undertaken with financial support from the Indian Claims Commissioner, contains the Brotherhood's proposal for negotiation and settlement of the claims of the native people of the Yukon Territory. It describes the difficulties experienced by Yukon Indians in the face of recent changes there, and outlines the Brotherhood's intention of obtaining a settlement that would help native people to influence and adjust to the rapid development of the North. This would be accomplished by ensuring them an economic base under their own control from which they might work to develop their own lives and cultures on an equal footing with the non-native population.

Such a settlement would involve the setting aside of land for the Indian people, to be held in trust in perpetuity by the Crown and controlled by native municipalities created for that purpose. Sufficient lands should be set aside to provide for municipalities where the Indian people could have permanent homes;

for historic sites and cemeteries; for hunting, fishing and trapping camps; and for economic development. Until the selection of these lands is completed, a land freeze should be imposed on all unalienated Crown lands in the Yukon. In addition to land, the Brotherhood proposed that the Indian people should receive a part of all government royalties from gas, oil, mineral and forest production and from commercial hunting in the Yukon. Further, they proposed a lump-sum cash settlement as compensation for all past grievances and individual claims.

Native participation would be guaranteed in all matters pertaining to land and water control and development and wildlife management by their representation on the relevant boards or agencies. The right to hunt and fish for food, and to trap on unoccupied lands would be guaranteed. For a period of twenty-five years, free health services would be provided and income earned on Indian lands would be free of taxation. A general corporation would be formed to manage Indian funds and provide training and resources, but control would gradually devolve upon the municipalities themselves.

The Yukon Native Brotherhood asked that a negotiating committee be established, a request which was supported by the Indian Claims Commissioner. This was agreed to by the Prime Minister. Although the task was clearly not going to be an easy one, the Government's decision to commence negotiations was a significant step forward in settling aboriginal claims throughout Canada.

In August 1973, this response to the Yukon Native Brotherhood was broadened into a statement by the Minister of Indian and Northern Affairs of general policy on the claims of the Indian and Inuit people. At the outset, the statement reaffirmed the Government's recognition of its continuing responsibility for Indian and Inuit people under the British North America Act, and referred to the Royal Proclamation of 1763 as "a basic declaration of the Indian people's interests in land in this country". It then recognized the loss of traditional use and occupancy of lands in British Columbia, northern Quebec, the Yukon and the Northwest Territories, in areas where "Indian title was never extinguished by treaty or superseded by law". For these areas, the Government offered to negotiate and enshrine in legislation a settlement involving compensation or benefit in return for the native interest. In making this offer, it expressed an awareness that "the claims are not only for money and land, but involve the loss of a way of life". The statement also pointed out that while the federal government has the authority to deal with claims in the two northern territories, elsewhere provincial land is involved. It urged that the provinces concerned be prepared to participate in the negotiations and in the settlements.

While the statement went a considerable distance in recognizing Indian claims in non-treaty areas, there are two problematical aspects. First, the policy did not cover southern Quebec and the Atlantic Provinces, where the land claims were said to be of a different character from those in the regions where original land rights were recognized. More study of the situation in these areas by both the native people and the government was suggested. In addition, there are several "non-treaty" groups in other parts of Canada, such as the Iroquois, the Sioux, and

various bands within the treaty areas. Second, there has been a great deal of concern amongst native people that the policy was heavily oriented towards the removal of rights and the provision of compensation; they would like to retain and entrench as many of their rights as possible, particularly as they pertain to land. The Inuit, for example, insist that their hunting rights be formally recognized by federal legislation and be on the basis that they have a prior right to hunt game for food or livelihood on their land.

Furthermore, while the policy provided the opportunity for dealing with claims in at least some non-treaty areas, it offered very little in relation to treaty claims and individual band claims concerning such things as reserve lands and band funds. The statement reiterated the Government's pledge to honour lawful obligations, but this does not really provide anything more than all Canadians expect of the Government on a regular basis. Nevertheless, it did refer to the Queen's statement to Indians in Calgary in July 1973, that "You may be assured that my Government of Canada recognizes the importance of full compliance with the spirit and terms of your Treaties".

The Mackenzie Valley and James Bay

Two areas in northern Canada, the Northwest Territories and the James Bay region of Quebec, have been especially significant in the litigation and negotiation of aboriginal title claims since the *Calder* decision and the opening of the Yukon negotiations. In both areas, aboriginal title has been asserted in attempts to cope with intrusive large-scale economic development and to retain the maximum of native control over their traditionally held regions. In the Northwest Territories, the native peoples are faced with a huge development project, the Mackenzie Valley pipeline, which threatens to disrupt their life. They have consistently, but unsuccessfuly, requested that the federal government impose a land freeze pending the resolution of their claims to the land, and have challenged the assertion that the treaties made in the area have extinguished their aboriginal title. They contend that the agreements they made were solely treaties of peace and friendship.

On April 2, 1973, the Chiefs of some sixteen Indian bands filed a caveat in the Land Titles Office in Yellowknife claiming aboriginal rights to almost half the land in the Northwest Territories. The effect of the caveat would have been to make any future land grants in the area subject to the claim of the Indians if it were subsequently found that they had a valid legal interest in the land. The caveat was referred to the Supreme Court of the Northwest Territories for a decision as to whether it should be accepted, and during the ensuing hearing evidence was heard from Indians involved in the treaty-making.

The following September, an interim judgment was handed down by the court, which upheld the caveat in saying, " . . . that there is enough doubt as to whether the full aboriginal title had been extinguished, certainly in the minds of the Indians, to justify the caveators [*sic*] attempt to protect the Indian position until a final adjudication can be obtained". This judgment was appealed by the federal government and was set down for hearing by the Appellate Division of the Supreme Court

of the Northwest Territories in June 1975. Meanwhile, attempts to achieve negotiations led in January 1974 to a joint announcement by the President of the Northwest Territories' Indian Brotherhood and the Minister of Indian and Northern Affairs that a committee would be established "to engage in preliminary discussions to develop the groundwork for a comprehensive settlement of Indian claims in the Northwest Territories".

The position of the Northwest Territories' Indian Brotherhood, like that of the Inuit Tapirisat of Canada, is that a settlement of native claims must precede the pipeline or any other major development projects. Although this has not yet been fully or openly accepted by the federal government, there is clearly an acceptance that a settlement must be reached as soon as possible and that negotiation is the preferred approach.

Like the Mackenzie Valley, the James Bay area is part of the Hudson's Bay Company's territories transferred to Canada in 1870. When the boundaries of Quebec were extended in 1912 to include much of this particular part of the territory, the federal government required that Quebec agree to recognize and obtain surrenders of the rights of its native inhabitants. This stipulation was not fulfilled. In a report published in 1971, the Dorion Commission appointed by the Quebec government found that the Province did indeed have such an obligation and recommended that immediate steps be taken to honour it. Subsequently, the Indians of Quebec Association began working with the Quebec Government to set up a framework for the negotiation of a settlement of their land rights. In May 1971, while these preliminary steps were being taken, the provincial government announced its intention to develop the hydro-electric power resources of the James Bay territory. Three months later, before any meetings had taken place between the Indian and provincial negotiators, the Quebec legislature established the James Bay Development Corporation, and made it responsible, with the powers of a municipal government, for developments within the affeeted region.

Environmental impact studies subsequently carried out found that the project would have a severe effect on the ecology of the region and specifically on the traditional livelihood of the native populace. This threat and the provincial government's refusal in negotiations to delay or modify the project led the native people to initiate legal proceedings to protect their rights. Thus, on November 7, 1972, of Grand Council of the Cree (of Quebec) and the Northern Quebec Inuit Association served notice on the governments of Quebec and Canada and the James Bay Development Corporation that they intended to seek an interlocutory injunction to suspend the project until their aboriginal title had been acknowledged and dealt with.

After a year of hearings and deliberations, the Quebec Superior Court, in November 1973, granted the injunction asked for and ordered a halt to the project. The Court found that the Cree and Inuit retained their aboriginal title, in stating that,

> . . . at the very least the Cree Indians and Eskimo have been exercising personal and usufructuary rights over the territory and the lands adjacent thereto. They have been in possession and occupation of these lands and exercising fishing,

> hunting and trapping rights therein since time immemorial. It has been shown that the Government of Canada entered into treaties with Indians whenever it desired to obtain lands for the purposes of settlement or otherwise. In view of the obligation assumed by the Province of Quebec in the Legislation of 1912 it appears that the Province of Quebec cannot develop or otherwise open up these lands for settlement without acting in the same manner that is, without the prior agreement of the Indians and Eskimo.

One week later the Quebec Court of Appeal suspended the injunction.

After an unsuccessful attempt by the Indians and Inuit to have the Supreme Court of Canada consider the case, the Quebec Court of Appeal, on November 21, 1974, unanimously overturned the lower court's judgment. One justice said, for the Court, "I am of the opinion that the Indian right to the territory in question has doubtful existence and that the recourses arising out of it, if they exist, do not entitle them to obtain an injunction to stop work on the project". [*Unofficial translation*]

Meanwhile, negotiations had led to the signing one week earlier of an Agreement in Principle by the James Bay Cree, the Inuit of Quebec, the Province of Quebec and the Government of Canada. The agreement contains the proposed terms under which the native people would surrender their interest in the 400,000 square miles of land comprising the areas transferred to Quebec by the 1898 and 1912 Boundaries Extension Acts. It provides for a continuation of negotiations to establish the final terms of settlement by November 1, 1975, and for the continuation of the hydro-electric project, as modified by the agreement, without threat of further legal action. Nevertheless, a path was left open for litigation to be pursued if a final agreement was not reached by that date.

Under this agreement, the native peoples would receive 5,250 square miles of land in some form of ownership (Category I lands). Of this land, 1,274 square miles would be administered under the Indian Act on behalf of the Cree. Another 60,000 square miles would be set aside as exclusive hunting, trapping and fishing areas for the native peoples (Category II lands). These could be expropriated by Quebec for the purpose of development, providing that they were replaced, or, with the consent of the native people, compensation were paid. In addition, native people would have exclusive hunting and trapping rights over certain animals over the whole of the territory ceded, and would participate on an equal basis with the provincial government in administering and controlling hunting, trapping and fishing.

While nearly 600 acres per capita of surface and subsurface rights passed into corporate native control under the Alaskan settlement, the James Bay Cree would gain surface rights averaging some 200 acres per capita, and 2,600 acres per capita of Category II lands. This difference in emphasis illustrates the local Grand Council's interest in an agreement that would encourage the native people in their traditional way of life.

The monetary compensation would consist of $75 million in cash to be paid over a ten-year period, of which the federal government would contribute

half. This federal contribution is based on that government's responsibilities for the extinguishment of native title in the area ceded to Quebec by the 1898 Boundaries Extension Act. That legislation did not specify a provincial responsibility as did the 1912 Act. In addition, the native people would receive a further $75 million from the royalties from the hydro project, and, for twenty years, 25 per cent of royalties on any non-hydro development begun in the region within fifty years of the settlement. The Province would own mineral and subsurface rights, but on Category I lands would be obliged to negotiate consent and compensation or royalties for any exploitation of those assets.

A provincial government scheme ensuring an annual minimum income to those who wish to pursue hunting, trapping and fishing is contemplated by the agreement, as well as some special economic development programmes. Federal and provincial programmes and funding, and the obligations of the two governments, would continue to apply on the same respective bases as to other native peoples in Canada and the Province, "subject to the criteria established from time to time for the applieation of such programmes". At the federal level, these apparently refer to such matters as education, housing and health.

Native concerns regarding their environment are reflected in two further terms of the Agreement in Principle. One is the provision for extensive modifications and remedial measures to the hydro project to minimize its impact on native communities and culture. The second such term provides for assessment studies of environmental and social impacts of any future developments in the territory, with native involvement in the decision-making based on such statements.

It has yet to be seen what effect this Agreement in Principle will have on the outcome of other negotiations currently under way in aboriginal title areas. In response to Inuit concerns, the Minister of Indian and Northern Affairs has affirmed that he does not regard the Agreement as a model or benchmark for the settlement of land claims by native groups elsewhere in Canada. Nevertheless, there are indications in a recent government working paper presented to the Yukon Indians that the approach taken in the James Bay Agreement is of interest to the government in relation to other areas.

Treaty Areas

The White Paper's implication that treaty rights are neither perpetually entrenched nor socially desirable aroused a quick, firm response from Indians in the southern treaty areas. In June 1970, the Indian Chiefs of Alberta presented a counter-proposal to the Prime Minister. Entitled *Citizens Plus,* but soon known as the *Red Paper* on Indian policy, the Paper castigated the Government for its efforts to impose a policy which it said "offers despair instead of hope". Recognition of Indian status is essential for justice and for the preservation of Indian culture, the Paper asserted; moreover, the treaties are "historic, moral and legal obligations" which constitute the basis for native rights in Alberta. The Chiefs

expressed the general view of treaty Indians that the spirit of the treaties, so long ignored, must now be fulfilled.

In October 1971, the Manitoba Indian Brotherhood presented a proposal to the Government entitled *Wahbung: Our Tomorrows.* Like the *Red Paper,* it stressed the belief that, "The Indian people enjoy 'special status' conferred by recognition of our historic title that cannot be impaired, altered or compromised by federal-provincial collusion or consent. We regard this relationship as sacred and inviolate." The following year, the Grand Council of Treaty No. 3, in presenting the Minister with its brief on economic and social development, stressed in addition that:

> Our Treaty must speak to our people in the present if it is to have any meaning at all to us... The value of the lands ceded by the Indians to Her Majesty has increased many times. We Indians recognize this and accept the terms of our Treaty. It is in this spirit of recognizing that our treaty was not frozen in time but was signed to affect the future of the descendents of the two signing parties that we now ask you to examine with us how the two economic clauses must speak to our people today.

Later, the Federation of Saskatchewan Indians presented a report to the Commissioner on Indian Claims which emphasized the specific content and interrelation of treaty rights. It said that:

> ... the Saskatchewan treaties, when placed in their proper historical context and interpreted in relation to the severe problems facing plains tribes, emerge as comprehensive plans for the economic and social survival of the Saskatchewan Bands. To regard the treaties as "mixed bags" of disparate and unrelated "rights" and "benefits" — though these rights and benefits have undeniable reality — is too simplistic an analysis and fails to acknowledge their full scope and intent.

The reaction on the part of treaty Indians to the Government's White Paper has served as notice of the types of treaty claims that will eventually be brought forward. These Indians have been quite reluctant to advance their claims piecemeal. Indications are that their general claims may be ready for presentation within a year or two. In the meantime, there is some interest in preliminary discussions on pressing treaty issues such as education, and hunting and fishing rights. Eventually, other matters such as economic development, taxation, health services, and the central grievance concerning the erosion of tribal government and community fabric, will come to the fore.

While the government has received and studied the various papers submitted by Treaty Indian Associations, these papers have not been seen as official claims, and there has been no significant response except for the continuing assurance that the government will honour all lawful obligations, and the indication in the August 1973 policy statement that the spirit and terms of the treaties will be upheld. Outside the Northwest Territories, provincial involvement remains a problem, since agreements on a number of the issues might require provincial co-operation.

Consideration of treaty claims will need to be closely tied to efforts at revising the Indian Act. Treaty Indians in Alberta and Saskatchewan, at least, see the revision to the Act as a vehicle for consolidating recognition of their treaty rights. It would seem that any fundamental changes in the Act must await resolution of the basic issues in both treaty and non-treaty areas.

Band Claims

Since 1970, when the federal government began funding Indian research into claims, there has been a sizable number of claims presented by Indian bands. Nearly all have had to do with losses of land from Indian reserves. They have come primarily from the Maritime Provinces and the Prairies, with a lesser number from Quebec, Ontario and British Columbia. Some of these claims have been submitted to the Department of Indian and Northern Affairs; others have been directed through the Commissioner.

The presence of these claims has put substantial pressure on the government to react. Judging from the urgency behind some of the issues and the fact that there are potentially hundreds, if not thousands, of similar claims, this situation will probably become more acute. While a few of these claims are being resolved on an ad hoc basis, there are basic problems that must be dealt with before the bulk of them can be resolved. This is necessary to avoid the possibility of seriously prejudicing the interests of the larger Indian community. While there is urgency in dealing with some individual band claims, there is also recognition tbat every effort must be made to resolve the key questions in a way which involves full Indian representation from the area affected. In contemplating this approach, it must be appreciated that most of the issues are complex, and that it will take time before the majority of bands have carried out sufficient research and deliberations to enable them to bring their issues forward. At present, there does not appear to be any government policy in relation to these claims, other than the honouring of lawful obligations. Until there is agreement between the government and Indians on the fundamental questions, it will be difficult to deal with individual band claims effectively.

A New Approach to Resolution

In April 1975, at a meeting between the National Indian Brotherhood and a committee of federal Cabinet Ministers, a proposal for claims processes that had been developed through consultation between Prairie Indians and the Indian Claims Commissioner was put forward and accepted in principle by the Ministers.

The primary procedure for dealing with claims would allow basic issues to be brought up through provincial and territorial Indian associations and presented directly to Cabinet Ministers. The issues would be discussed in this forum to determine whether there was a basis for agreement. Through this process, general principles and parameters for settlement mechanisms might be established. Such agree-

ments would allow detailed treatment of the issues to be delegated. In some cases, this might require negotiations at a secondary level. In others, administrative machinery might be appropriate, while in further instances, it might be desirable to refer matters to the courts or specially created arbitration tribunals. In this way, the settlement processes would be tailored to the issues and based on fundamental agreements in principle. To facilitate such negotiations, a new impartial commission is proposed.

The agreement contemplates a totally original and innovative institution for dealing with claims issues. Its implementation should create a new negotiation-centred era of activity towards claims resolution.

EXPOSÉ PRÉLIMINAIRE