

C-123.

Third Session, Twenty-Sixth Parliament, 14 Elizabeth II, 1965.

THE HOUSE OF COMMONS OF CANADA.

BILL C-123.

An Act to provide for the disposition of Indian claims.

First reading, June 21, 1965.

THE MINISTER OF CITIZENSHIP AND IMMIGRATION.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1965

THE HOUSE OF COMMONS OF CANADA.

BILL C-123.

An Act to provide for the disposition of Indian claims.

HER Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

SHORT TITLE.

Short title. **1.** This Act may be cited as the *Indian Claims Act*.

INTERPRETATION.

Definitions. **2.** In this Act, 5
"Band." (a) "band" means a body of Indians that is a band for the purposes of the *Indian Act*;
"Commission." (b) "Commission" means the Indian Claims Commission referred to in section 3;
"Crown." (c) "Crown" means the Crown in right of Canada 10 or the Crown in right of the United Kingdom, as the case may be;
"Crown in right of Canada." (d) "Crown in right of Canada" means His Majesty the King or Her Majesty the Queen in right of Canada; 15
"Crown in right of the United Kingdom." (e) "Crown in right of the United Kingdom" means His Majesty the King or Her Majesty the Queen in right of the Kingdom of Great Britain and Ireland or in right of the United Kingdom of Great Britain and Ireland, as 20 the case may be;
"Member of a band." (f) "member of a band" means a person who is listed on the Band Lists maintained in the Department of Citizenship and Immigration as a member of a band; and 25
"Minister." (g) "Minister" means the Minister of Citizenship and Immigration.

COMMISSION ESTABLISHED.

- 3.** (1) There shall be a Commission to be called the Indian Claims Commission, consisting of a Chairman, a Vice-Chairman and three other commissioners to be appointed by the Governor in Council, one of whom shall be appointed from among persons who are Indians within the meaning of the *Indian Act*. 5
- (2) Each commissioner shall hold office during good behaviour for a period not exceeding ten years, but may be removed at any time by the Governor in Council upon address of the Senate and House of Commons. 10
- (3) The Chairman shall be appointed from among
- (a) the judges of the Exchequer Court of Canada or of the superior, county or district courts of any of the provinces of Canada; or 15
- (b) persons who are barristers or advocates of at least ten years standing at the bar of any of the provinces.
- (4) If the Chairman is absent or unable to act or if the office is vacant, the Vice-Chairman has and may exercise all the powers and functions of the Chairman. 20
- 4.** If a commissioner is by reason of absence or any incapacity unable to perform the duties of his office, the Governor in Council may appoint a temporary substitute commissioner upon such terms and conditions as the Governor in Council may prescribe. 25

DUTIES OF COMMISSION.

- 5.** Subject to this Act, the Commission shall hear and consider every claim that is brought before it as provided in this Act and that comes within any of the following classes of claims, namely, 30
- (a) that lands in any area that now forms part of Canada were taken from Indians by the Crown or by an officer, servant or agent of the Crown on behalf thereof without any agreement or undertaking to give compensation therefor; 35
- (b) that lands set apart for the use and benefit of Indians in any area that now forms part of Canada were granted, sold or otherwise disposed of by the Crown or by any officer, servant or agent of the Crown and no compensation was given in respect thereof to such Indians or the compensation given was so inadequate as to be unconscionable; 40
- (c) that moneys held by the Crown for Indians living in any area that now forms part of 45

Canada were improperly used by the Crown or by any officer, servant or agent of the Crown on behalf thereof;

- (d) that the Crown failed to discharge any obligation to Indians living in any area that now forms part of Canada, arising under any treaty, agreement or undertaking; or
- (e) that the Crown or any officer, servant or agent of the Crown on behalf thereof, in any transaction or dealing with Indians in any area that now forms part of Canada, other than a transaction or dealing relating to lands, failed to act fairly or honourably with those Indians and thereby caused injury to them.

WHO MAY BRING A CLAIM.

Who may be claimants.

6. (1) Subject to this Act, a claim relating to any band may be brought before the Commission against the Crown in right of Canada by

- (a) the council of that band on behalf of the band or in the case of a band that has a chief but no council, by the chief on behalf of that band;
- (b) an adult member of that band on behalf of the band if the band has no council or chief and the member satisfies the Commission that he has been authorized by the band to bring the claim on its behalf;
- (c) a council or a person described in paragraph (a) or (b) on behalf of a band where that band has amalgamated with, or was formed as a result of the amalgamation of, one or more bands any of which, if they had remained separate bands, could have had a claim brought on its behalf pursuant to paragraph (a) or (b); or
- (d) a council or a person described in paragraph (a) or (b) on behalf of a band where that band was formed as a result of the division of a former band into two or more new bands, which former band could, if it had not been divided, have had a claim brought on its behalf pursuant to paragraph (a) or (b).

Time limit for bringing claims.

(2) No claim shall be heard by the Commission unless notice thereof is filed with the Commission by a council or person described in subsection (1) within three years from the coming into force of this Act.

Notice of claim.

(3) Every notice of a claim shall be in writing and shall set out the particulars of the claim with reasonable certainty and detail.

POWERS OF COMMISSION AT HEARINGS.

Evidence at hearings.

7. (1) The Commission, in hearing any claim pursuant to this Act, shall not be bound by the legal rules of evidence but it shall make no award in respect of a claim unless that claim is supported by

(a) evidence in writing that is reasonably contemporaneous to the time when the subject matter of the claim arose; or

(b) oral evidence that is corroborated in a material particular by evidence other than oral evidence.

Rules respecting hearings, etc.

(2) Subject to the approval of the Governor in Council, the Commission may make such rules as it deems necessary or advisable respecting

(a) the conduct of its hearings and the procedures for the bringing of claims, and

(b) the production and inspection of any documents that are in possession of the Crown in right of Canada and that are required by any person acting for or on behalf of a band in respect of a claim.

Powers as to witnesses and documents.

(3) The Commission has, as regards the attendance, summoning and examination of witnesses and the production and inspection of documents, all such powers, rights and privileges as are vested in a superior court of record in civil cases.

Sittings.

(4) The Commission may sit at such times and places as it considers necessary or desirable for the hearing of any claim brought pursuant to this Act.

Hearing of claims together.

8. Where, in the opinion of the Commission, claims brought on behalf of two or more bands of Indians arise out of the same matter, the Commission may direct that the claims be heard and considered together.

DECISIONS AND AWARDS OF THE COMMISSION.

Decisions and awards of Commission.

9. (1) Subject to this Act, the Commission shall, as soon as possible after the completion of the hearing of any claim pursuant to this Act, render in writing a decision on the claim setting forth the reasons for its decision and the amount of money, if any, awarded by it in respect thereof.

Payment of moneys by Crown to be taken into account.

(2) The amount of any moneys paid, and the money value of any other compensation given, by the Crown at any time in respect of the matter out of which the claim arose shall be taken into account by the Commission in making any award in respect of the claim.

Commission to specify bands to which award to be paid.

10. (1) Where by any decision of the Commission on a claim an amount of money is awarded in respect thereof, the decision shall specify the band or bands to which the money should be paid and the proportionate share of each such band.

Notice to
be given of
decisions.

(2) Notice of a decision of the Commission on a claim and of the award, if any, made by it shall be given to the band on whose behalf the claim is brought and to the Minister in such manner as the Commission directs.

Payment of
moneys not
admission
of validity
of claim.

11. The payment of any moneys or the giving of any other compensation by the Crown at any time in respect of a matter out of which a claim arose shall not constitute an admission as to the validity of that claim. 5

Payment
of awards.

12. All moneys awarded to a band in respect of a claim made pursuant to this Act shall be paid out of moneys appropriated for that purpose by Parliament and shall be paid into the capital moneys of that band for the use of that band or for distribution to the members thereof to the same extent and under the same terms and conditions as moneys derived from the sale of surrendered lands. 10 15

Orders and
decisions
final.

Jurisdiction
as to prerog-
ative writs.

13. (1) Except as provided in this Act, every decision or order of the Commission is final and conclusive.

(2) The Exchequer Court of Canada has exclusive original jurisdiction to hear and determine every application for a writ of *certiorari*, prohibition or *mandamus* or for an injunction in relation to any decision or order of the Commission or any proceedings before the Commission. 20

Limitations.

(3) A decision or order of the Commission is not subject to review or to be restrained, removed or set aside by *certiorari*, prohibition, *mandamus* or injunction or by any other process or proceeding in the Exchequer Court on the ground that a question of law or fact was erroneously decided by the Commission or that the Commission erred as to its jurisdiction, but any party to a claim brought before the Commission may refer to the Exchequer Court any decision or order of the Commission on the ground 25 30

(a) that the Commission had no jurisdiction to entertain the proceedings in which the decision or order was made or to make the decision or order, or

(b) that the Commission's decision or order was based upon an erroneous view of its jurisdiction. 35

Appeal to
Supreme
Court.

14. (1) An appeal lies from a decision of the Exchequer Court made pursuant to section 13 to the Supreme Court of Canada, upon leave therefor being obtained from a judge of the Supreme Court upon application made within one month after the making of the decision sought to be appealed from or within such further time as the judge under special circumstances allows. 40 45

Entry of
appeal.

(2) No appeal lies after leave therefor has been obtained under subsection (1) unless it is entered in the Supreme Court within sixty days from the making of the order granting leave to appeal.

COMMISSION AND STAFF.

Other em-
ployment
prohibited.

15. The commissioners shall devote the whole of their time to the performance of their duties under this Act, and shall not accept or hold any office or employment inconsistent with their duties and functions under this Act. 5

Inquiries and
investigations
by single
member, etc.

16. The Commission may authorize one or more of its members or any person designated by it to conduct an inquiry or investigation on behalf of the Commission in relation to any claim and for that purpose the Commission may delegate to that member or members or person such of its powers under this Act as the Commission deems necessary for the carrying out of that inquiry or investigation. 10 15

Quorum.

17. A majority of the commissioners constitutes a quorum of the Commission for the hearing and determination of any claim. 20

Delivery of
decisions.

18. All of the commissioners present at the hearing of a claim need not take part in the rendering of a decision on that claim, and in the absence of any commissioner, the decision may be rendered by a majority of the commissioners who were present at the hearing of the claim. 25

Vacancies.

19. A vacancy in the membership of the Commission does not impair the right of the remainder to act.

Oath of
office.

20. Every commissioner shall, before entering upon the duties of his office, take and subscribe before the Clerk of the Privy Council an oath in the following form: 30

“I, A.B., do solemnly swear that I will truly and faithfully, to the best of my skill and knowledge, execute and perform the office of (commissioner or Chairman as the case may be) of the Indian Claims Commission. So help me God.” 35

Residence
of Com-
missioner.

21. Each commissioner shall, during his term of office, reside in the City of Ottawa or within twenty-five miles thereof or within such other distance thereof as the Governor in Council may fix.

Salaries of commissioners. **22.** Each commissioner other than a commissioner in receipt of salary under the *Judges Act* shall be paid such salary as may be fixed by the Governor in Council and is entitled to be paid reasonable travelling and other expenses incurred by him in the performance of his duties while away from his ordinary place of residence. 5

Secretary. **23.** There shall be a secretary of the Commission who shall be appointed by the Governor in Council to hold office during pleasure and shall be paid such salary as the Governor in Council may fix. 10

Application of Public Service Superannuation Act. **24.** (1) The secretary and other officers and employees of the Commission shall be deemed to be persons employed in the Public Service for the purposes of the *Public Service Superannuation Act*.
Idem. (2) The Governor in Council may declare any person for the time being holding the office of a commissioner, other than a person who is in receipt of a salary under the *Judges Act*, to be a person employed in the Public Service for the purposes of the *Public Service Superannuation Act*. 15 20

INDIAN CLAIMS APPEAL COURT.

Court established. **25.** There shall be an Indian Claims Appeal Court which shall hear and determine all appeals brought pursuant to section 26.

Appeals to Court. **26.** (1) An appeal from a decision of the Commission may be brought to the Indian Claims Appeal Court
 (a) by the Crown or any band on whose behalf a claim is brought before the Commission on the ground that the award of the Commission in respect of that claim was unreasonable; and
 (b) by any band on whose behalf a claim is brought before the Commission on the ground that no award was made by the Commission in respect of that claim and that the failure to make any award was unreasonable. 25 30 35

Time limit for bringing appeal. (2) Every appeal to the Indian Claims Appeal Court shall be brought within six months from the date of the decision of the Commission being appealed from, by notice of appeal filed with the Registrar.

Powers of Court. **27.** (1) Upon the hearing of an appeal brought pursuant to this Act, the Indian Claims Appeal Court may confirm or vary the decision of the Commission or may refer the claim back to the Commission for such further hearing as the Court may direct. 40

- Decisions final. (2) The decision of the Indian Claims Appeal Court on any appeal brought pursuant to section 26 is final and conclusive.
- Judges. **28.** (1) The judges of the Exchequer Court of Canada are *ex officio* judges of the Indian Claims Appeal Court. 5
- President. (2) The Governor in Council shall designate one of the judges of the Indian Claims Appeal Court to be the President thereof and he shall preside at any sittings of the Court at which he is present and shall appoint another judge to preside at any sittings of the Court at which he is not present. 10
- Sittings and hearings. (3) The Indian Claims Appeal Court may sit and hear appeals at any place or places, and the President of the Court shall arrange for sittings and hearings as may be required. 15
- Quorum and decision on appeal. (4) Three judges of the Indian Claims Appeal Court constitute a quorum and the decision on any appeal shall be determined by a vote of the majority of the judges present and in the event of an equality of the votes, the President or other presiding judge has a second or casting vote. 20
- Superior court of record. Expenses. (5) The Indian Claims Appeal Court is a superior court of record. 25
- (6) A judge of the Indian Claims Appeal Court is entitled to be paid travelling allowances under the *Judges Act* as for attendances as judge of the Exchequer Court. 25
- Rules of Court. **29.** Subject to the approval of the Governor in Council, the Indian Claims Appeal Court may make such rules respecting the conduct of appeals and the procedure for the bringing of appeals as it deems necessary to enable it to discharge its duties under this Act. 30
- Registrar. **30.** The Registrar of the Exchequer Court is *ex officio* the Registrar of the Indian Claims Appeal Court. 35

GENERAL.

- Payment of award full discharge of claim. **31.** The payment by the Crown to a band of the amount of money awarded by the Commission or fixed by the Indian Claims Appeal Court in respect of a claim made by that band pursuant to this Act is full discharge and satisfaction by the Crown of that claim. 40

Provision of assistance in bringing of claims.

32. (1) Where, on application on behalf of a band by a council or person described in subsection (1) of section 6, the Commission is satisfied that the band does not have sufficient resources available to enable it

- (a) to prepare and bring before the Commission a claim within the classes described in section 5 relating to that band or to pursue before the Commission any such claim; 5
- (b) to prepare and pursue or oppose an appeal to the Indian Claims Appeal Court from a decision of the Commission on a claim relating to the band; 10
- (c) to prepare and pursue or oppose a reference to the Exchequer Court of any decision or order of the Commission relating to the band or an appeal to the Supreme Court from a decision of the Exchequer Court on any such reference; or 15
- (d) to prepare and pursue or oppose a claim relating to the band referred back to the Commission for further hearing by the Indian Claims Appeal Court; 20

the Commission may, subject to such terms and conditions as it may prescribe, provide to the band such reasonable assistance for that purpose, including financial assistance, as the Commission deems appropriate. 25

Payment of assistance.

(2) All amounts required for the provision of assistance pursuant to subsection (1) shall be paid out of moneys appropriated by Parliament for that purpose.

Commission may forgive repayment.

(3) Where the terms and conditions on which any assistance has been provided to a band pursuant to subsection (1) provide for the repayment by the band of all or part of the cost of such assistance, the Commission may at any time, if in its opinion special circumstances exist warranting it to do so, forgive repayment by the band of all or part of the amount so repayable by it, but where any such amount the repayment of which has not been forgiven pursuant to this subsection becomes due and payable it may be recovered out of any moneys of the band held by Her Majesty. 30 35 40

Coming into force.

33. This Act shall come into force on a day to be fixed by proclamation of the Governor in Council.