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IN BRIEF

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1 September 1999

SETTLING LAND CLAIMS

Federal policy divides Aboriginal land claims into two broad categories. Comprehensive land claims are based on the assertion of continuing Aboriginal rights and title that have not been dealt with by treaty or other legal means in areas such as British Columbia. Specific land claims arise from alleged non-fulfilment of treaties or other legal obligations, or from the alleged improper administration of lands and other assets under the *Indian Act* or other formal agreements.

Land Claim Settlements and Legislative Considerations

Thirteen comprehensive claims have been settled since the federal government began to negotiate claims in 1973:

- James Bay and Northern Quebec Agreement (1975);
- Northeastern Quebec Agreement (1978);
- Inuvialuit Final Agreement, western Arctic (1984);
- Gwich'in Agreement, northwestern portion of the Northwest Territories and 1,554 square kilometres of land in the Yukon (1992);
- Nunavut Land Claims Agreement, Inuit of the eastern Arctic (1993);
- Seven Yukon First Nation Final Agreements, based on the Council for Yukon Indians Umbrella Final Agreement (1993); and
- Sahtu Dene and Metis Agreement, Mackenzie Valley, Northwest Territories (1994).

In August 1998, the longstanding land claim of the Nisga'a Nation was settled when representatives of the Nisga'a Tribal Council and the governments of Canada and British Columbia initialled the Nisga'a Final Agreement. The Agreement has since been ratified by the Nisga'a and the Legislative Assembly of B.C. In May 1999, negotiators for the Labrador Inuit Association and the Governments of Canada and Newfoundland and Labrador initialled the Labrador Inuit Land Claims Agreement-in-Principle, which members of the Labrador Inuit Association voted to support in July. In August 1999, representatives of the Dogrib First Nation and the Governments of Canada and the Northwest Territories initialled the Dogrib Agreement-in-Principle. Comprehensive land claim negotiations are also underway with the Treaty 8 Dene, the Atikamekw and Montagnais First Nations, the Inuit of Northern Quebec, the Innu Nation, the Algonquins of Pikwakanagan and seven remaining Yukon First Nations.

In addition, since most British Columbia First Nations did not sign treaties, much of that province is subject to comprehensive land claims. The British Columbia Treaty Commission was established in 1993 to facilitate treaty negotiations in the province. In April 1999, representatives for the Governments of Canada and British Columbia and the Sechelt Indian Band signed an Agreement-in-Principle, the first to be reached under the BCTC process. As of 31 May 1999, 51 First Nations, representing over 70% of B.C. First Nations, were participating in that process. As of July 1999, 39 of these First Nations were negotiating an Agreement-in-Principle, while nine were involved in framework discussions.

Surrender Policy

A long-standing issue associated with comprehensive claims has been the federal policy requirement that Aboriginal groups surrender their Aboriginal title to lands and resources in exchange for defined rights set out in a land claim settlement. Changes to the federal policy in 1986 allowed Aboriginal parties to retain some rights to land, but did not resolve concerns about the surrender of other rights. In 1995, reports of both the federal fact finder mandated to explore alternative models and the Royal Commission on Aboriginal Peoples suggested that certainty as to land-related rights might be achieved without extinguishment. The RCAP also criticized the comprehensive claims policy for its exclusion of certain Aboriginal groups. Although the then Minister of Indian Affairs stated his intention to use these and other proposals in considering the extinguishment issue, no comprehensive new policy has been released to date, leaving a contentious issue for Aboriginal groups to be resolved. The problematic language of cession and surrender of previous land claim agreements was not reiterated in the 1998 Nisga'a Final Agreement. Some observers feel, however, that essentially the same result flows from provisions that exhaustively define Nisga'a section 35 rights and that "release" to Canada any Aboriginal right, including title, other than the section 35 rights set out in the Agreement.

A New Claims Commission?

The establishment of a permanent independent commission for specific claims has been another ongoing land claims issue. The existing Indian Claims Commission, created as a temporary body in 1991, reviews rejected specific claims and issues non-binding decisions. Its limited mandate and the lack of government action on its recommendations have frustrated Commission members and Aboriginal groups. While the creation of an independent commission with broader powers has been on the present government's agenda since the 1993 pre-election Red Book, progress has been slow. It remains to be determined when a new or reformed commission will be established, and the extent of its powers. In the Department of Indian Affairs estimates document for 1999-2000, key initiatives in the area of specific claims include continuing work with First Nations to create an Independent Claims Body in order to improve efficiency in claims settlement and relieve the backlog of outstanding specific claims.

Parliamentary Business

In the coming session, parliamentarians can expect to address legislation associated with both new settlements and the implementation of settled claims. It is anticipated that a bill to ratify the Nisga'a Final Agreement will be high on the government's legislative agenda. Two bills related to land claim settlements, Bill C-56, the Manitoba Claim Settlements Implementation Act, and Bill C-62, the Nunavut Waters and Nunavut Surface Rights Tribunal Act, died with prorogation but should be reintroduced in their present form.

Selected References

- Moss, Wendy and Niemczak, Peter. *Aboriginal Land Claims Issues*. BP-237E. Parliamentary Research Branch, Library of Parliament, Ottawa, July 1991.
- Hurley, Mary C. *The Nisga'a Final Agreement*, PRB-99-2E. Parliamentary Research Branch, Library of Parliament, Ottawa, revised July 1999.