

INDIAN CLAIMS COMMISSION

OPASKWAYAK CREE NATION STREETS AND LANES INQUIRY

PANEL

Commissioner Daniel J. Bellegarde (Chair)
Commissioner Alan C. Holman
Commissioner Sheila G. Purdy

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To the Indian Claims Commission
John B. Edmond

February 2007

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SUMMARY

OPASKWAYAK CREE NATION STREETS AND LANES INQUIRY Manitoba

The report may be cited as Indian Claims Commission, *Opaskwayak Cree Nation: Streets and Lanes Inquiry* (Ottawa, February 2007).

*This summary is intended for research purposes only.
For a complete account of the inquiry, the reader should refer to the published report.*

Panel: Commissioner D.J. Bellegarde (Chair), Commissioner A.H. Holman,
Commissioner S.G. Purdy

Treaties – Treaty 5 (1876); **Reserve** – Proceeds of Sale – Streets and Lanes; **Compensation** – Damages; **Band** – Trust Fund; **Manitoba**

THE SPECIFIC CLAIMS

In September 1976, The Pas Band (now the Opaskwayak Cree Nation) submitted a claim to the Department of Indian Affairs and Northern Development (DIAND) alleging that the streets and lanes delineated in the subdivision of land surrendered in 1906 from Indian Reserve (IR) 21A to establish The Pas townsite had been alienated without adequate compensation. The claim also alleged improper use of \$2,000 of the Band's capital funds to clear trees and brush from the streets and lanes in the surveyed subdivision. The claim was rejected by the Minister of Indian Affairs in June 1977, and the rejection was confirmed in June 1978. The portion of the claim relating to the use of band funds for clearing the streets and lanes was rewritten and submitted by the First Nation in May 1986. The claim was again rejected by DIAND in 1994. In June 2002, the Opaskwayak Cree Nation asked the Indian Claims Commission (ICC) to conduct inquiries into the two claims and, in September 2002, the ICC notified the First Nation and Canada of its intention to conduct an inquiry. A planning conference was held in December 2002, after which Canada conducted new research into both claims. As a result of the new facts established in that research, the Opaskwayak Cree Nation acknowledged that there was no basis for either specific claim and withdrew the two claims from the ICC inquiry.

BACKGROUND

In August 1906, The Pas Band surrendered 500 acres in IR 21A to the Crown for railway and townsite purposes. The land was subdivided into lots to create the townsite of The Pas, and the lots were sold at public auction. Some of the streets and lanes were cleared of trees and brush in 1912 to enhance the value of the adjacent lots. A Band Council Resolution and an order in council authorized the use of \$2000 of the Band's funds to defray the costs of this clearing, but, as research conducted during the ICC inquiry demonstrated, no band funds were actually used for this purpose. The streets and lanes shown in the subdivision survey were transferred to the town of The Pas by order in council in September 1916. Research conducted during the ICC inquiry concluded that compensation would not normally be paid for streets and lanes and that no compensation was owing to the Opaskwayak Cree Nation.

ISSUES

Was there an expenditure of \$2000 from the Band's capital account used to clear the lands comprising streets and lanes? Did Canada permit or cause the streets and lanes to be alienated without adequate compensation?

OUTCOME

The ICC made no findings. Prior to the completion of the inquiries, the two specific claims were withdrawn by the Opaskwayak Cree Nation when supplementary research conducted in the course of the inquiry effectively removed the basis for the claims.

REFERENCES

In addition to the various sources noted below, ICC inquiries depend on a base of oral and documentary research, often including maps, plans, and photographs, that is fully referenced in the report.

Treaties and Statutes Referred To

Treaty 5 (1876); *Indian Act*, RSC 1906, c. 81; *The Manitoba Boundaries Extension Act*, SC 1912, c. 32; *An Act to provide for the Further Extension of the Boundaries of the Province of Manitoba*, SM 1912, c. 6; *An Act to incorporate The Town of The Pas*, SM 1912, c. 93; *Dominion Lands Act*, RSC 1906, c. 55; *Land Titles Act*, RSC 1906, c. 110; *Manitoba Supplementary Provisions Act*, RSC 1906, c. 99; *The Municipal Act*, RSM 1902, c. 116.

Other Sources Referred To

DIAND, *Outstanding Business: A Native Claims Policy – Specific Claims* (Ottawa: Minister of Supply and Services, 1982), reprinted in (1994) 1 ICCP 171–85.

COUNSEL, PARTIES, INTERVENORS

P.B. Forsyth for Opaskwayak Cree Nation; V. Russell for the Government of Canada; J.B. Edmond to the Indian Claims Commission.

PART I
INTRODUCTION

BACKGROUND TO THE INQUIRY

This is a report about an Indian Claims Commission (ICC) inquiry which concluded when the claimant, the Opaskwayak Cree Nation, withdrew its claims. Research conducted during the ICC's planning conference stage had demonstrated that no claim existed.

The Opaskwayak Cree Nation (OCN, formerly The Pas Band) has reserve land in northern Manitoba, about 630 kilometres (392 miles) northwest of Winnipeg and close to the Saskatchewan border. The reserve is not a single block of land but consists of 17 separate parcels, varying in size from 10 to 5,200 acres, designated as Indian Reserve (IR) 21 and 21A to 21P. The most populated of these settlements are located in and around the town of The Pas. The First Nation's membership totals about 4,600, and approximately 2,800 live on reserve.¹

On September 17, 1976, The Pas Band submitted a claim to the Office of Native Claims of the Department of Indian Affairs and Northern Development (DIAND), relating to the alienation without adequate compensation of streets and lanes delineated in the subdivision of land surrendered in 1906 from IR 21A to establish The Pas townsite.² The claim also alleged improper use of \$2,000 of the Band's capital funds to clear trees and brush from the streets and lanes in the surveyed subdivision. After research and legal review by departmental staff, the claim was rejected by letter from the Minister of Indian Affairs on June 30, 1977. After a second review of the facts in the claim, the rejection was confirmed by letter dated June 20, 1978.

The portion of the claim relating to the use of band funds for clearing the streets and lanes was rewritten and submitted to the Specific Claims Branch (SCB), the successor to the Office of Native Claims, on May 9, 1986. According to its usual procedures, SCB reviewed the First Nation's research and produced its own report in October 1990. The First Nation undertook to do additional research on the issue and made substantial changes to the SCB report: a second draft, dated August

¹ Opaskwayak Cree Nation website: www.opaskwayak.mb.ca/history.php, accessed October 20, 2005.

² Kenneth P. Regier, Regier, Stewart, Barristers and Solicitors, to Jean T. Fournier, Executive Director, Office of Native Claims, September 17, 1976, with report, "The Pas Band of Indians – Claim Respecting Streets and Lanes in the Town of The Pas," by Treaty and Aboriginal Rights Research Centre of Manitoba (TARR Manitoba), August 27, 1976 (ICC Exhibit 2a).

1992, was resubmitted. According to a memorandum to file in DIAND records, Canada verbally informed the First Nation in a conference call on May 24, 1994, that the streets and lanes claim was not accepted for negotiation.³ Although there are references to a rejection letter dated August 5, 1994, neither Canada nor the First Nation was able to locate it. Both parties, however, agreed that the 1986 claim submission was rejected.

On June 18, 2002, Chief Frank Whitehead, Opaskwayak Cree Nation, asked the Indian Claims Commission to undertake a review of the two claims relating to both the improper alienation of the land covered by the streets and lanes and the use of band funds for clearing on the surrendered land.⁴ By letter dated September 27, 2002, the Commission notified the First Nation and Canada of its intention to conduct an inquiry into the matter.⁵

MANDATE OF THE COMMISSION

The mandate of the Indian Claims Commission is set out in federal Orders in Council providing the Commissioners with the authority to conduct public inquiries into specific claims and to issue reports on “whether a claimant has a valid claim for negotiation under the [Specific Claims] Policy where the claim was already rejected by the Minister.⁶ This Policy, outlined in DIAND’s 1982 booklet entitled *Outstanding Business: A Native Claims Policy – Specific Claims*, states that Canada will accept claims for negotiation where they disclose an outstanding “lawful obligation” on the part of the federal government.⁷ The term “lawful obligation” is defined in *Outstanding Business* as follows:

³ Kathleen Kerr, Negotiating Analyst, Specific Claims West, Memorandum to file, June 1, 1994 (ICC Exhibit 9a, p. 78).

⁴ Chief Frank Whitehead, Opaskwayak Cree Nation, to Indian Claims Commission, June 18, 2002, and Opaskwayak Cree Nation Band Council Resolution No. 02-104, June 20, 2002 (ICC file 2106-14-1, vol. 1).

⁵ Phil Fontaine, Chief Commissioner, Indian Claims Commission, to Chief Frank Whitehead, Opaskwayak Cree Nation, September 27, 2002 (ICC file 2106-14-1, vol. 1).

⁶ Commission issued September 1, 1992, pursuant to Order in Council PC 1992-1730, July 27, 1992, amending the Commission issued to Chief Commissioner Harry S. LaForme on August 12, 1991, pursuant to Order in Council PC 1991-1329, July 15, 1991.

⁷ Department of Indian Affairs and Northern Development (DIAND), *Outstanding Business: A Native Claims Policy – Specific Claims* (Ottawa: Minister of Supply and Services, 1982), 20; reprinted in (1994) 1 *Indian Claims Commission Proceedings* (ICCP) 171–85 (hereafter *Outstanding Business*).

The government's policy on specific claims is that it will recognize claims by Indian bands which disclose an outstanding "lawful obligation," i.e. an obligation derived from the law on the part of the federal government.

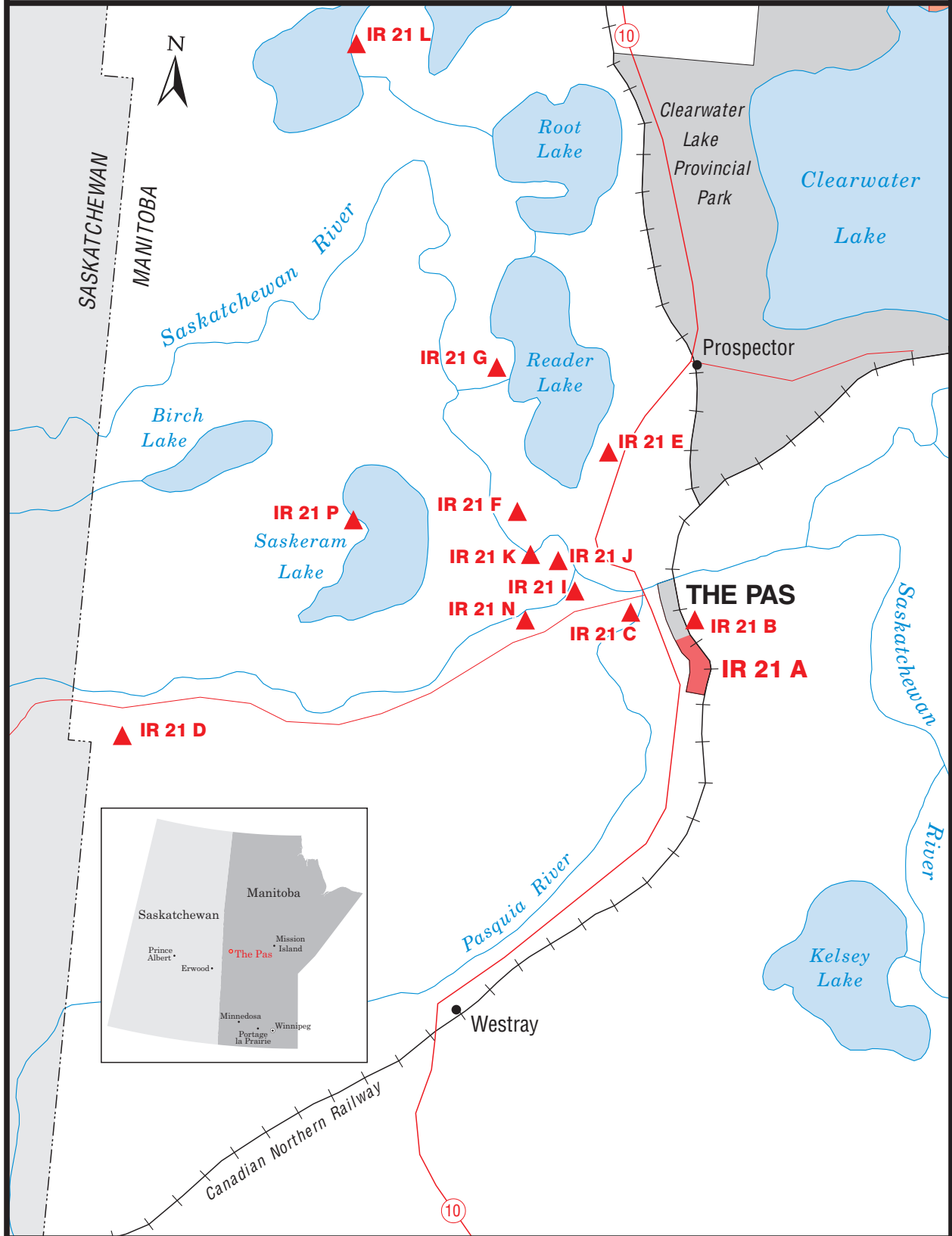
A lawful obligation may arise in any of the following circumstances:

- I) The non-fulfillment of a treaty or agreement between Indians and the Crown.
- ii) A breach of an obligation arising out of the *Indian Act* or other statutes pertaining to Indians and the regulations thereunder.
- iii) A breach of an obligation arising out of government administration of Indian funds or other assets.
- iv) An illegal disposition of Indian land.⁸

⁸ *Outstanding Business*, 20; reprinted in (1994) 1 ICCP 179–80.

Map 1

Claim Area Map



PART II

HISTORICAL BACKGROUND

The Indians of The Pas Band (now known as the Opaskwayak Cree Nation) adhered to Treaty 5 on September 7, 1876, Chief John Constant and four councillors signing on behalf of the Band. Under the terms of this adhesion, the Band was entitled to receive “a reserve on both sides of the Saskatchewan River at the ‘Pas,’” the size to be determined according to a formula of 160 acres per family of five.⁹

In 1883, Indian Reserve 21A containing 1,599.19 acres was surveyed by Dominion Land Surveyor W.A. Austin at the junction of the Pasquia and Saskatchewan Rivers in partial fulfillment of the treaty promise. This location had many advantages – excellent water transportation routes, pockets of good soil, and extended hours of sunshine during the growing season; good fishing; marshlands that sustained a variety of wild fowl; and a surrounding boreal forest, which supplied timber, large game animals, and fur-bearing species. It had long been the location of fur traders and missionaries, and it was also the site of an established Indian settlement. Surveyor Austin reported:

At this place a narrow strip of land, averaging about a half mile in width, was laid out, including all the good land that the Indians pointed out and that could be found. The rear of this portion is an extensive swamp, with a heavy moss bed from 1 to 2 feet in depth, under which, at this season of the year in places it was frozen. This swamp has scattered spruce and tamarac over it, with some pitch pines and birch; the sub-soil in some places vegetable deposit and in others sand. This portion might be easily drained, there being a good fall of from 10 to 50 feet to the marshes and river, within the distance of 20 or 30 chains.

The timber is not generally large, and is principally poplar, spruce, tamarac, with birch and some willow.

The land, class 1 and 2 on the front, and class 3 along the rear, the rear lines running nearly all through swamp, and enclosing all the available land.

Here 1,559.19 acres were given to the Band. Also a quarter section (160 acres) was laid out on the same side of the river, about 50 chains below the north-east corner of this portion of the Reserve.

The Hudson Bay Company have a station here, known as The Pas or Fort Defiance. The former word is a corruption of the Indian word “O’bah,” signifying,

⁹ *Treaty No. 5 between Her Majesty the Queen and the Saulteaux and Swampy Cree Tribes of Indians* (Ottawa, Queen’s Printer, 1969), 10–11.

“it is narrow” or “the narrows,” on account of the whole of the Saskatchewan waters running through one channel at this point.

The Church of England Mission Society have had a mission here for over 40 years. At present it is under the supervision of the Revd. Mr Reader; in fact before the Indians were resident here they built their first house and church, the remains of which only are visible.

There are some 19 houses on this portion of the Reserve, nearly all of which have small gardens attached to them.¹⁰

In June and July 1905, Canadian Northern Railway officials informed the Department of Indian Affairs that the railway was planning to extend its line from Erwood on its Prince Albert line, northerly to the Saskatchewan River, and would require approximately 72 acres of The Pas Indian Reserve for right of way and station ground purposes.¹¹ At the request of the Assistant Indian Commissioner, the local Indian Agent estimated the value of the land required by the railway and reported that the only place on the reserve suitable for station grounds was a high and dry spot where the Indians’ houses were located:

the only part of the Reserve on the south side of the Saskatchewan River suitable for Station grounds is where their trial line of survey crosses the river. It contains from 50 to 70 acres and is the only dry, clear, and habitable portion of the Reserve on this side of the River. On it there are 30 occupied Indian dwellings, the agents [sic] residence, and Govt Schoolhouse.

This piece of land is at the lowest calculation worth fifty dollars (\$50.00) per acre exclusive of the value of the improvements thereon.

The remaining 14 or 15 hundred acres on this side is composed of muskeg swamp, hay meadows and ridges of scrubby timber and would be worth from twenty five cents to five dollars per acre according to location.¹²

¹⁰ W.A. Austin, P.L.S., C.E. and D.L.S., Gloucester, to Superintendent General of Indian Affairs, April 1883, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended December 31st, 1883*, pt 1, 162 (ICC Exhibit 1a, p. 17).

¹¹ Munson, Allan, Laird and Davis, Solicitors, Canadian Northern Railway Co., Winnipeg, to David Laird, Indian Commissioner, Winnipeg, June 22, 1905, and Chief Engineer, Canadian Northern Railway, Winnipeg, to Munson, Allan, Laird and Davis, July 5, 1905, Library and Archives Canada (LAC), RG 10, vol. 3561, file 81, pt 31 (ICC Exhibit 1a, pp. 24–25).

¹² Joseph Courtney, Indian Agent, The Pas, to David Laird, Indian Commissioner, Winnipeg, August 3, 1905, LAC, RG 10, vol. 3561, file 81, pt 31 (ICC Exhibit 1a, p. 34).

The correspondence between the railway company and the department was limited to the right of way and station grounds. On May 31, 1906, however, S.R. Marlatt, the Inspector of Indian Agencies at Portage la Prairie, recommended that the Indians be asked to surrender the northern 500 acres of IR 21A at the spot where the railway intended to locate its station. Marlatt had already received several applications from people interested in purchasing land in that vicinity and it was his opinion that this location would become an important terminal; if the surrendered land was subdivided into streets, lots, and lanes, as required for a townsite, the Band would realize a substantial sum of money.¹³

On August 21, 1906, Chief Antoine Constant, Headmen David Cook and Norman Lathlin, and seven others signed a surrender document, agreeing to cede the required 500 acres in IR 21A to the Crown. The surrender contained some specific stipulations regarding the disposition of particular areas, but otherwise the land was to be sold for the benefit of the Band:

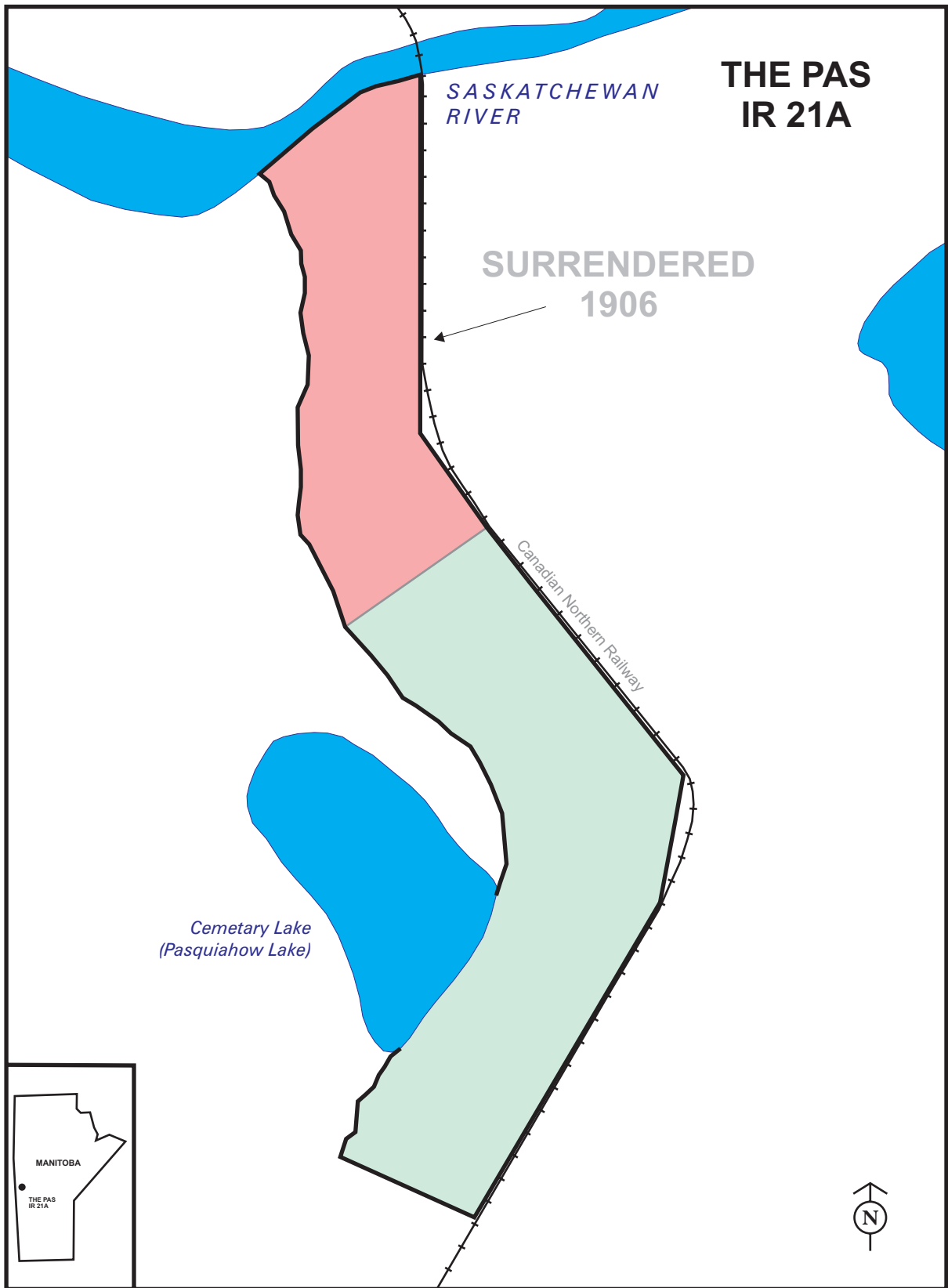
TO HAVE AND TO HOLD the same unto His said Majesty THE KING, his Heirs and Successors forever, in trust, to *sell* the same to such person or persons, and upon such terms as the Government of the Dominion of Canada may deem most conducive to our welfare and that of our people.

And upon the further condition that all moneys received from the *sale* thereof, shall, after deducting the usual proportion for expenses of management, *and compensation for Indian improvements and cash payment to Indians, be placed to our credit and Interest paid thereon in the usual way.*

And WE, the said Chief and Principal men of the said *The Pas Band of Indians* do on behalf of our people and for ourselves, hereby ratify and confirm, and promise to ratify and confirm, whatever the said Government may do, or cause to be lawfully done, in connection with the *sale of the said portion of land and disposition of the moneys arising therefrom.*

Providing that not less than ten percent of the monies realized from the sale of land surrendered be distributed pro rata to members of our Band and that the Department of Indian Affairs advance us a sum sufficient to pay for improvements now made on said surrendered land by individual members of our Band now resident on said surrendered land and that the sum so advanced shall be repaid to the

¹³ S.R. Marlatt, Inspector of Indian Agencies, Portage la Prairie, to David Laird, Indian Commissioner, Winnipeg, May 31, 1906, LAC, RG 10, vol. 3561, file 81, pt 31 (ICC Exhibit 1a, pp. 39–41).



*Department of Indian Affairs out of monies realized from the sales of said land surrendered.*¹⁴

The surrender was accepted by Order in Council on November 6, 1906.¹⁵ (On January 24, 1910, the Chief and principal men of The Pas Band signed an amendment to the original surrender agreement to increase the *pro rata* distribution of the land sale money from 10 per cent to 25 per cent, and this amendment was accepted by Order in Council on February 14, 1910.¹⁶)

In his report on the taking of the 1906 surrender, Inspector Marlatt stated that he no longer favoured the subdivision and sale by auction of individual lots, and that he now considered it would be more advantageous to the Band if the land were sold in a block by public tender “and let the purchasers make a survey to suit themselves.”¹⁷ There is no response to this suggestion on file, but if it was considered at all, it was rejected. The northerly and westerly section of the surrendered land was subdivided by J.K. McLean, DLS, in August 1907. Plan 846 (registered under NLTO [Neepawa Land Titles Office] Plan 426 at Neepawa on December 11, 1912¹⁸), shows 592 lots and notes that all the streets are 66 feet wide and the lanes 16 ½ feet wide.¹⁹ Between 1908 and 1911, 425 of these lots were sold, some by auction in June 1908 and others by application to the department.²⁰

¹⁴ The Pas Band, Surrender for Sale to the Crown, August 21, 1906, LAC, RG 10, vol. 3561, file 81, pt 31 (ICC Exhibit 1a, pp. 60–73). The passages in italics represent handwritten additions to the standard form of surrender.

¹⁵ Order in Council, November 6, 1906, DIAND, Indian Land Registry, Instrument no. 17604 (ICC Exhibit 1a, p. 85).

¹⁶ The Pas Band, Amendment to Surrender Agreement, January 24, 1910, DIAND Land Registry, Instrument no. 17604 (ICC Exhibit 1a, pp. 145–48) and Order in Council, February 14, 1910, LAC, RG 10, vol. 4025, file 292,870-1A (ICC Exhibit 1a, p. 155).

¹⁷ S.R. Marlatt, Inspector of Indian Agencies, to David Laird, Indian Commissioner, September 25, 1906, LAC, RG 10, vol. 3566, file 82, pt 31 (ICC Exhibit 1a, pp. 75–76).

¹⁸ John H. Weisgerber, Appraisal Adviser, Public Works and Government Services Canada, to Vivian Russell, Legal Counsel, Specific Claims, DIAND Legal Services, April 27, 2004, p. 13 (ICC Exhibit 10A, p. 13).

¹⁹ Canada Lands Surveys Records (CLSR) Plan 846, “Plan of the Town Plot of The Pas on Block A of the Indian Reserve on the Saskatchewan River, NWT,” surveyed by J.K. McLean in 1907 (ICC Exhibit 7d).

²⁰ John H. Weisgerber, Appraisal Adviser, Public Works and Government Services Canada, to Vivian Russell, Legal Counsel, Specific Claims, DIAND Legal Services, April 27, 2004, p. 14 (ICC Exhibit 10a, p. 14). See also Fred Fischer, Indian Agent, The Pas, to Secretary, DIA, April 12, 1912, NA, RG 10, vol. 6719, file 128A-7-1 1 (ICC

In 1911, the remaining easterly and southerly portions of the surrendered lands were subdivided by H.B. Proudfoot, DLS. His plan of survey, CLSR 1900, was registered under NLTO Plan 508 at Neepawa, and shows 1,063 lots, with all the streets being 66 feet wide and lanes 16 ½ feet wide.²¹

CLEARING STREETS AND LANES IN THE PAS TOWNSITE PRIOR TO SALE

On December 12, 1911, Surveyor Proudfoot wrote to Department of Indian Affairs (DIA) Headquarters to suggest that the various streets and avenues in the subdivision at The Pas be cleared of the standing timber before the lots were put on the market. He stated that people had asked “if permission would be given to remove the timber and clearing of the streets for the timber itself or if there is any likelihood of the same being let by tender.”²² In turn, Headquarters informed the local Indian Agent, Fred Fischer, that it was thought desirable to have some of the streets cleared “to a width of 40 feet, that is to say 20 feet on each side of the centre line” and that the timber taken off the land should be more than sufficient to pay for the clearing:

Please take this matter up with the view to having this work done. You may call for tenders by advertisement in the local papers; but the work is not to be proceeded with until sanctioned by this Department.²³

Surveyor Proudfoot submitted a plan showing the main streets to be cleared which he estimated to contain 22,638 lineal feet, and the other secondary streets totalling 66,939 lineal feet.²⁴ Someone at

Exhibit 1a, p. 191).

²¹ CLSR Plan 1900, “Plan of the Subdivision of Block 30 and Blocks 42 to 85 Inclusive in the Town Plot of The Pas, Manitoba,” surveyed by H.B. Proudfoot in 1911 (ICC Exhibit 7d).

²² H.B. Proudfoot, The Pas, to J.D. McLean, Assistant Deputy and Secretary, December 12, 1911, LAC, RG 10, vol. 4056, file 386990 (ICC Exhibit 1a, p. 165).

²³ J.D. McLean, Assistant Deputy & Secretary, to Fred Fischer, Indian Agent, The Pas December 22, 1911, LAC, RG 10, vol. 4056, file 386990 (ICC Exhibit 1a, p. 167).

²⁴ H.B. Proudfoot, The Pas, to J.D. McLean, Assistant Deputy & Secretary, January 11, 1912, LAC, RG 10, vol. 4056, file 386990 (ICC Exhibit 1a, p. 171).

the department later estimated that there were approximately 108 acres to clear,²⁵ which is nearly equal to the area of all the streets (main and secondary) to their full width of 66 feet.

On March 18, 1912, the Chief Surveyor at the DIA urged the Deputy Minister to follow through with Proudfoot's suggestion regarding clearing the streets, estimating that the costs should not exceed \$10 per acre, or about \$1,080 for the 108 acres, if the parties doing the work were also given the timber that was removed. He also was concerned there be no delay:

I think this work should not be let by regular tender as the delay would be too great. I beg to recommend that if the work is approved that Agent Fischer be instructed to let the work by the job to one or more persons who will actually do the work. He should endeavour to let it at as low a rate as the work can be done in the neighbourhood. This work if done at all should be attended to without delay.²⁶

Surveyor Proudfoot submitted another plan showing the main and secondary streets that needed to be cleared. In his covering letter, he considered that the timber on the proposed roads was too small to be of much value and estimated that it would cost \$714 to clear the primary roads and \$1,312 to clear the others, for a total of \$2,026.²⁷ He also estimated that the value of the lots would increase from \$56,060 to \$91,730 if the streets and lanes were cleared before the lots were put up for auction.²⁸ Chief Surveyor Bray agreed that the clearing would enhance the value of the lots, although perhaps not to the extent estimated by Proudfoot, and recommended that the department incur the expense of the clearing – a suggestion that was marked “approved” and “immediate.”²⁹

²⁵ Marginalia (unidentified author) on letter from Fred Fischer, Indian Agent, to Secretary, DIA, February 27, 1912, LAC, RG 10, vol. 4056, file 386990 (ICC Exhibit 1a, p. 174).

²⁶ Samuel Bray, Chief Surveyor, to Deputy Minister of Indian Affairs, March 18, 1912, LAC, RG 10, vol. 4056, file 386990 (ICC Exhibit 1a, p. 176).

²⁷ H.B. Proudfoot, Ottawa, to J.D. McLean, Assistant Deputy & Secretary, March 18, 1912, LAC, RG 10, vol. 4056, file 386990 (ICC Exhibit 1a, pp. 177–78).

²⁸ “The Pas, Keewatin [sic] District, Schedule Showing Value of Lots Before And After Improvements, Survey of 1911,” attached to H.B. Proudfoot, Ottawa, to J.D. McLean, Assistant Deputy & Secretary, March 18, 1912, LAC, RG 10, vol. 4056, file 386990 (ICC Exhibit 1a, pp.179–82).

²⁹ Samuel Bray, Chief Surveyor, to Deputy Minister of Indian Affairs, with marginalia, March 21, 1912, H.B. Proudfoot, Ottawa, to J.D. McLean, Assistant Deputy & Secretary, March 18, 1912, LAC, RG 10, vol. 4056, file 386990 (ICC Exhibit 1a, p. 183).

On the following Monday (March 25, 1912), a letter was drafted to Agent Fischer, instructing him to have the streets and lanes cleared by reliable people, the costs to be no more than \$20 per acre plus the timber they remove. If he could not “let the work by jobs,” he was to hire his own gangs to make the clearings. However, according to the marginalia on this document, this letter was not sent because there was some disagreement among departmental officials about whether or not a Band Council Resolution (BCR) was required before an order in council authorized an expenditure from the capital account.³⁰ On April 4, 1912, Headquarters instructed Fischer to obtain the requisite BCR and to explain to the Band that the value of the lots would be greatly enhanced because of this work.³¹

At about this time, the boundaries of the Province of Manitoba were extended north to Hudson Bay. Provincial legislation accepting the boundary extension was assented to and came into force on April 6, 1912; Dominion legislation was assented to on April 1, 1912, and brought into force on May 15, 1912.³² The area of The Pas reserves was now part of the Province of Manitoba and no longer within the federal District of Keewatin (a part of the Northwest Territories).

At the same time, the town of The Pas was incorporated by legislation assented to on April 6, 1912, that specifically transferred all the surrendered land from IR 21A, including the streets and lanes, to the town:

1. All that certain territory on block A of the Pas Indian reserve, on the Saskatchewan River, in the Province of Manitoba, comprising blocks numbered from (1) to thirty (30), both inclusive, blocks thirty-three (33) to eighty-five (85), both inclusive, blocks A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P and S, also blocks 15a, 16a, 65a, 75a, 76a, 78a, 79a, and 82a, *and all streets and lanes contiguous to said blocks*, and also Mission Island, and the lands occupied by the Hudson’s Bay Company, the English Church Mission and the Canadian Northern Railway, all as shewn on a plan of survey made

³⁰ J.D. McLean, Assistant Deputy & Secretary, DIA, to Fred Fischer, Indian Agent, The Pas, March 25, 1912, LAC, RG 10, vol. 4056, file 386990 (ICC Exhibit 1a, pp. 184–85).

³¹ J.D. McLean, Assistant Deputy & Secretary, DIA, to Fred Fischer, Indian Agent, The Pas, April 4, 1912, LAC, RG 10, vol. 4056, file 386990 (ICC Exhibit 1a, p. 187).

³² *The Manitoba Boundaries Extension Act*, SC 1912, c. 32 (ICC Exhibit 6b); *An Act to provide for the Further Extension of the Boundaries of the Province of Manitoba*, SM 1912, c. 6 (ICC Exhibit 6c).

by J.K. McLean, D.L.S., dated A.D. 1907, and on file in the Department of Indian Affairs at Ottawa, is hereby created a town corporation, under his name of 'The Town of The Pas,' with all the powers and privileges set forth in "The Municipal Act."³³

On April 12, 1912, Fischer reported that The Pas band members were all away hunting and were not expected to return until at least the middle of May. According to marginalia on this document, the Chief Surveyor asked the department's accountant if there was another way to proceed so that this work should be done with "the least possible delay." The accountant, Frederick H. Paget, replied that it might be possible to use funds from the Band's interest account until the proper authority could be obtained:

The amount can be advanced provided authority is afterwards obtained when Band passes resolution – an Order-in-Council will be necessary when the Band passes resolution. In the meantime under the circumstances the amount can be advanced from Interest a/c to be refunded later on. FHP. 23/4/12³⁴

Bray forwarded this information to the Deputy Minister on April 23, 1912, seeking approval to proceed. This request was denied on the basis that a BCR should be obtained before work began.³⁵

It was not until May 21 that Agent Fischer managed, with considerable difficulty, to get the requisite BCR from the Chief and Council:

I must say I had a great deal of trouble to obtain this release. David Cook one of the Councillors refused to sign the release and did all in his power to prevent the others from doing so, I was obliged to have a second meeting and a good deal of argument to obtain the result.³⁶

³³ *An Act to Incorporate The Town of The Pas*, SM 1912, c. 93 (ICC Exhibit 10b, pp. 155–56). Emphasis added.

³⁴ Fred Fischer, Indian Agent, The Pas, to Secretary, DIA, April 12, 1912, with marginalia, LAC, RG 10, vol. 4056, file 386990 (ICC Exhibit 1a, p. 190).

³⁵ Samuel Bray, Chief Surveyor, to Deputy Minister, April 23, 1912, with marginalia, LAC, RG 10, vol. 4056, file 386990 (ICC Exhibit 1a, p. 192).

³⁶ Fred Fischer, Indian Agent, The Pas, to Secretary, DIA, May 21, 1912, LAC, RG 10, vol. 4056, file 386990, (ICC Exhibit 1a, p. 196).

The BCR of The Pas Band, signed by Chief Antoine Constant and two councillors on May 21, 1912, requested “that a sum not exceeding Two Thousand Dollars, be paid out of money standing to the credit of this Band, for the purpose of Clearing the streets in the townplot of The Pas.”³⁷ On June 6, 1912, Order in Council PC 1912-1548 authorized the disbursement:

On a memorandum dated 31st May, 1912, from the Acting Superintendent General of Indian Affairs, stating that a resolution has been passed by the Indians of the Pas band, Manitoba, in favour of an expenditure of \$2000 being made from their capital on the work of opening up streets through the surrendered portion of their reserve which was surveyed into a townplot last season.

The Minister recommends, as the work when completed would be of permanent value to the band, that, under section 90 of the Indian Act, authority be given for the expenditure thereon of the sum above mentioned from the capital at the credit of the Pas band, which amounts to \$19,053.66.³⁸

Section 90 of the 1906 *Indian Act* reads as follows:

90. The Governor in Council may, with the consent of a band, authorize and direct the expenditure of any capital moneys standing at the credit of such band, in the purchase of land as a reserve for the band or as an addition to its reserve, or in the purchase of cattle for band, or in the construction of permanent improvements upon the reserve of the band, or such works thereon or in connection therewith as, in his opinion, will be of permanent value to the band, or will, when completed, properly represent capital.³⁹

Although previous correspondence indicated that officials in Ottawa wanted the streets cleared of timber as soon as possible, it was a full month after receiving the proper authorities that any further action was taken. On July 4, 1912, the Deputy Superintendent General of Indian Affairs (DSGIA), Frank Pedley, asked the Surveys Branch to inform him about what was required to open

³⁷ The Pas Band, Band Council Resolution, May 21, 1912, LAC, RG 10, vol. 4056, file 386990 (ICC Exhibit 1a, p. 197).

³⁸ Order in Council PC 1912-1548, June 6, 1912, LAC, RG 10, vol. 4056, file 386990 (ICC Exhibit 1a, p. 202).

³⁹ *Indian Act*, RSC 1906, c. 81 (ICC Exhibit 6a, p. 32).

up the streets and lanes at The Pas.⁴⁰ W.R. White, an employee in the Surveys Branch, replied that a decision had been made to hire contractors to clear but not grub (i.e., not remove the roots) approximately 125 acres of streets, either by contract (with band members employed where possible) or by day labour, with two gangs of men working under capable foremen.⁴¹

On July 19, 1912, Pedley wrote to Robert Rogers, the Superintendent General, with a proposal on how to proceed:

An Order in Council has been passed of which I enclose a copy, authorizing the expenditure of \$2000.00 being made from the Capital Funds of the Pas band of Indians, Manitoba, for opening up streets through the surrendered portion of their reserve, which was surveyed into townplots last season.

I would recommend that this work be done by day labour, employing two gangs of men under a competent foreman, one gang to work from the northerly end and the other from the southerly end of the townplot, Indians to be employed as labourers in so far as this is possible; the foreman to be paid \$2.50 per day, the labourers at current rates, which will be about \$2.00 per day.

If you approve, will you kindly name someone who might be employed as foreman for this work?⁴²

According to the marginalia on this document (which is difficult to read), the Minister did not approve Pedley's suggestion, and no action was taken (the last of the notations is by Samuel Bray, Chief Surveyor, dated August 16, 1912: "No Action accordingly.")⁴³

⁴⁰ Deputy Superintendent General of Indian Affairs (DSGIA) to Surveys Branch, July 4, 1912, LAC, RG 10, vol. 4056, file 386990 (ICC Exhibit 1a, p. 203).

⁴¹ W.R. White to Deputy Minister, July 9, 1912, LAC, RG 10, vol. 4056, file 386990 (ICC Exhibit 1a, pp. 204–05).

⁴² Frank Pedley, DSGIA to Mr Rogers, July 19, 1912, LAC, RG 10, vol. 4056, file 386990 (ICC Exhibit 1a, p. 206).

⁴³ Various marginalia on memo from Frank Pedley, DSGIA, to Mr. Rogers, July 19, 1912, LAC, RG 10, vol. 4056, file 386990 (ICC Exhibit 1a, p. 206).

A search of the Band's trust funds, both in the handwritten ledgers and the published accounts included in the annual reports of the Department of Indian Affairs, found no debit of \$2000 or any other disbursements for street clearing work in either the capital or interest accounts.⁴⁴

There is at least one reference in the documents which seems to indicate that the town of The Pas may have been responsible for clearing the streets and lanes, not the department or any other third party. In June 1912, the Department of Indian Affairs instructed surveyor D.F. Robertson to examine the survey posts in The Pas townsite. In a memorandum dated September 18, 1912, Robertson reported that street-clearing activities in the town had disturbed some of the original survey posts:

The lots are now properly posted and posts marked according to the numbers shown on the blue print enclosed with the instructions and all posts well driven into the ground.

*The men working for the town in clearing some of the streets and ditching had apparently not been warned against disturbing the posts and a considerable number of the posts had to be reset. I have written to the town clerk, calling his attention to this in order that these men might be cautioned by him and in that way avoid if possible any further disturbance of these posts.*⁴⁵

JURISDICTION OVER STREETS AND LANES IN THE PAS TOWNSITE

On July 4, 1914, David Clapp, the solicitor for the town of The Pas wrote to the Secretary of the Department of Indian Affairs asking if the streets, avenues, and lanes in the original townsite of The Pas had ever been transferred to the province.⁴⁶ J.D. McLean, the Assistant Deputy and Secretary, replied that a formal transfer was not necessary:

⁴⁴ Brad Morrison, "The Indian Claims Commission, Opaskwayak Cree Nation, Streets and Lanes Inquiry, Research Report – \$2,000 Streets & Lanes Expenditure," August 18, 2003, paras. 92–97 (ICC Exhibit 9a).

⁴⁵ Donald F. Robertson, DIA, The Pas, to "Sir," September 18, 1912, LAC, RG 10, vol. 4058, file 392,837 (ICC Exhibit 1a, pp. 217–18). Emphasis added.

⁴⁶ David Clapp, Town Solicitor, to Secretary, DIA, July 4, 1914, LAC, RG 10, vol. 6720, file 128A-7-1G (ICC Exhibit 1a, p. 322).

In reply I would say that no formal transfer of streets, avenues and lanes is made by the Department, as the filing of the plan showing same is considered a sufficient dedication thereof.⁴⁷

McLean did not provide any rationale, but legislation in force at the time indicates that there is merit to the statement. When the 1907 subdivision was made, The Pas was in the Northwest Territories and the appropriate legislation was the *Dominion Lands Act*. According to section 79 of the 1906 Act, streets and lanes in towns and villages were deemed public highways⁴⁸ and section 86.1 of the *Land Titles Act* of the same year required that subdivision surveys be registered.⁴⁹ With the extension of the boundaries of the Province of Manitoba in 1912, the 1906 *Manitoba Supplementary Provisions Act* would apply to the streets and lanes in The Pas, given that it was now part of the Province of Manitoba. That legislation specifically stated that roads were vested with the province once the survey was confirmed:

s. 7 All road allowances in townships surveyed and subdivided, and all road allowances set out on block lines surveyed, in the Province shall be vested in the Crown in the right of the Province; and it is hereby declared that all road allowances in townships heretofore surveyed and subdivided, and all road allowances set out on block lines heretofore surveyed in the Province, shall be deemed to have become the property of the Crown in the right of the Province upon the confirmation of the survey.⁵⁰

Finally, under the province's *Municipal Act*, "[t]he possession of every public road, street, bridge, lane, square or other highway, in a city, town, village or rural municipality, shall be vested in the municipality ..."⁵¹

⁴⁷ J.D. McLean, Assistant Deputy and Secretary, to David Clapp, Town Solicitor, The Pas, July 13, 1914, LAC, RG 10, vol. 6720, file 128A-7-1G (ICC Exhibit 1a, p. 323).

⁴⁸ *Dominion Lands Act*, RSC 1906, c. 55, s. 79, as quoted in ICC Exhibit 4a, p. 5.

⁴⁹ *Land Titles Act*, RSC 1906, c. 110, as quoted in ICC Exhibit 4a, p. 5.

⁵⁰ *Manitoba Supplementary Provisions Act*, RSC 1906, c. 99, s. 7, as quoted in ICC Exhibit 4a, p. 6.

⁵¹ *Municipal Act*, RSM 1902, c. 116, s. 664.

At this time, J.K. McLean's 1907 survey was registered with the Neepawa land office but Proudfoot's 1911 survey was not.⁵² In 1915, the town expressed serious concerns with the original survey of The Pas townsite, especially with regard to the streets and lanes and wanted the Department of Indian Affairs to do a new survey to rectify the problems:

I am sorry that your Department is not prepared to give the town a correct survey of lots which you have placed upon the market and from which you have realized great sums of money. No one here is sure of the dividing line between the lots and when the town is re-surveyed, as it must be before long, some of the very large buildings here will be partly on other people's land and either must be removed or a purchase made. This fact is known to the Registrar, Mr. J.B. Cain and I understand that he is determined sometime or other to refuse to register any of the lands in The Pas and compel a re-survey. The Town Engineers, who are very experienced surveyors and have had to go over the roads and streets report to the Council from time to time that the original survey is defective in every respect. Your Dominion Land Surveyors may have been experienced in field work but they evidently do not know anything about laying out a town-site. Their location of the roads and streets here show even a novice that they had never done that kind of work before.⁵³

The department did not agree to a resurvey until 1919 but, in the meantime, despite the fact that it believed that the title to the streets and lanes was already vested in the province, an Order in Council was passed on September 19, 1916, confirming that fact.⁵⁴

In 1919, J.D. McLean, Assistant Deputy and Secretary of Indian Affairs, wrote to the District Land Registrar at Neepawa, Manitoba, to say that there would be an amendment to the September 19, 1916, Order in Council to reflect some "minor changes [which] were made in the streets and lanes in the final plan of a portion of the town plot recently registered in your office under No.

⁵² McLean's survey was registered on March 12, 1912. It would appear that Proudfoot's survey was not registered until 1920 (see letter from J.A. Shearer, District Registrar, Neepawa, to Clerk of the Privy Council, December 13, 1920, LAC, RG 10, vol. 4026, file 292,870-1C [ICC Exhibit 1a, pp. 443-44]).

⁵³ David Clapp, Town Solicitor, The Pas, to J.D. McLean, Assistant Deputy and Secretary, May 4, 1915, LAC, RG 10, vol. 6719, file 128A-7-1 1 (ICC Exhibit 9a, p. 173, transcript and copy in ICC Exhibit 1a).

⁵⁴ Order in Council, September 19, 1916, DIAND Land Registry, Instrument no. 16392 (ICC Exhibit 1a, pp. 355-57).

508.”⁵⁵ Consequently, Order in Council PC 1921-42 was issued on January 10, 1921, ordering the streets and lanes shown on the registered plans be transferred to the town of The Pas.⁵⁶

No money was ever paid to The Pas Band for the purchase of surrendered land making up streets and lanes in the town of The Pas.

⁵⁵ J.D. McLean to J.A. Shearer, District Registrar, Neepawa, Manitoba, December 25, 1920, LAC, RG 10, vol. 4026, file 292,870-1C (ICC Exhibit 1a, p. 445).

⁵⁶ Order in Council PC 1921-42, January 10, 1921, DIAND Land Registry, Instrument no. 16404 (ICC Exhibit 1a, pp. 449–50).

PART III
ISSUES

According to a draft dated February 6, 2003, the issues to be considered in the inquiry were:

Alleged Wrongful Alienation of the Streets and Lanes

1. Did Canada permit or cause the streets and lanes to be alienated without adequate compensation:
 - a) contrary to the provisions of the *Indian Act*
 - b) contrary to the terms and conditions of the surrender of 1906, or,
 - c) contrary to the statutory and/or fiduciary duties owed by Canada to the First Nation?
2. If yes, is the First Nation entitled to be compensated for the streets and lanes land by Canada?

Alleged Wrongful Expenditure of \$2,000 for Clearing of the Streets and Lanes

3. Was there an expenditure of \$2,000 from the Band's capital account used to clear the lands comprising the streets and lanes?
4. If yes, was the expenditure of \$2,000 from the Band's capital account to clear the streets and lanes lands,
 - a) contrary to the provisions of the *Indian Act*;
 - b) contrary to the terms and conditions of the surrender of 1906; or,
 - c) contrary to the statutory and/or fiduciary duties owed by Canada to the First Nation?
5. If yes, does Canada owe any compensation or damages to the First Nation resulting from the \$2,000 expenditure?⁵⁷

⁵⁷ "Draft Statement of Issues," Indian Claims Commission, Second Planning Conference Summary, February 7, 2003, revised March 5, 2003 (ICC file 2106-14-1, vol. 1, app. 2).

PART IV
THE INQUIRY

THE \$2,000 EXPENDITURE

In order to understand what happened with the part of the claim relating to the alleged expenditure of \$2,000 to clear streets and lanes in The Pas townsite, it is necessary to know something about how this claim was researched and reviewed in the past.

In the early 1970s, the federal government began to fund native organizations to research and develop land claims. In Manitoba, the Treaties and Aboriginal Rights Research (TARR) Centre was established to research and develop land claims for First Nations in that province. In 1974, the Department of Indian Affairs established the Office of Native Claims (ONC) to receive and review these claims and to make recommendations as to their validity.

On September 17, 1976, the legal firm of Regier Stewart forwarded a “Claim Respecting Streets and Lanes in the Town of The Pas,” which had been written on behalf of The Pas Band. In his covering letter, Mr Kenneth Regier made a point of saying that this was the first claim forwarded to ONC from Manitoba, and that he expected that it should take “no longer than four weeks to assess same as to whether or not there is a prima facie case so that negotiations can be entered into and funding arranged.”⁵⁸

The claim submission that accompanied Mr Regier’s letter dealt with both the improper alienation of the streets and lanes (discussed below) and the alleged improper use of the Band’s capital funds to establish the streets and lanes:

The first mention of streets and lanes occurs in 1912. On May 21, 1912 the Chief and Councillors of The Pas Band signed a release by which a sum not exceeding \$2,000.00 was to be paid out of monies standing to the credit of the Band for the purpose of clearing the streets in the town plot of The Pas (Document 5). Interestingly in an accompanying letter the Indian Agent reported that he had a great

⁵⁸ Kenneth P. Regier, Regier, Stewart, Winnipeg, to Jean T. Fourier, Executive Director, Office of Native Claims, Ottawa, September 17, 1976 (ICC Exhibit 2a, p. 1).

deal of trouble to obtain the release. This was understandable since the Band's credit at the time was only \$19,053.66. (Document 5).⁵⁹

In the Summary of Facts in the 1976 claim submission, the First Nation stated:

2. The available documents showed that The Pas Band paid for at least most of the cost of establishing the streets and lands [*sic*] – on the other hand there was no evidence of any cost sharing by The Town of The Pas. This second point cannot be more definite because some of the files of the Department of Indian Affairs and Northern Development are missing;⁶⁰

The First Nation concluded from the available evidence that the Band had “paid the entire cost of establishing the streets and lanes from its funds.”⁶¹

Upon receipt of the First Nation's claim submission, the Office of Native Claims undertook its own review; its research findings were set out in a report dated January 17, 1977. This report did not consider the legality of the use of the Band's capital funds for road clearing, but rather attempted to demonstrate that the value of the lots was enhanced by the clearing of the streets and lanes to an amount greater than the \$2,000 expenditure and, therefore, the First Nation had suffered no damage.⁶²

The Minister of Indian Affairs, Warren Allmand, wrote to the First Nation's solicitor on June 30, 1977, rejecting the claim. An attached report gave some further details about the enhanced value of the lots, but also included some information about the jurisdiction of those particular lands passing to the province before the First Nation had authorized the expenditure:

⁵⁹ TARR Manitoba, “The Pas Band of Indians – Claim Respecting Streets and Lanes in the Town of The Pas,” September 17, 1976, p. 3 (ICC Exhibit 2a, p. 7). The documents referred to can be referenced in ICC Exhibit 1a, pp. 196–97.

⁶⁰ TARR Manitoba, “The Pas Band of Indians – Claim Respecting Streets and Lanes in the Town of The Pas,” September 17, 1976, pp. 9–10 (ICC Exhibit 2a, p. 13).

⁶¹ TARR Manitoba, “The Pas Band of Indians – Claim Respecting Streets and Lanes in the Town of The Pas,” September 17, 1976, pp. 9–10 (ICC Exhibit 2a, p. 14).

⁶² [ONC, author unknown], “Report, The Pas Surrender 1906,” January 17, 1977, pp. 11–12 (ICC Exhibit 3a, pp. 11–12).

In the interim, between April 4, 1912 – (the date of issuance of instructions to obtain band consent for clearing streets and lanes), and May 21, 1912 (the date the Band approval was given), the Manitoba Boundaries Extension Act came into force on May 14, 1912 [*sic*]. Therefore, jurisdiction over the streets and lanes of The Pas, passed from the Crown in the Right of Canada to the Province of Manitoba.⁶³

Minister Allmand’s rejection of the expenditure aspect of the streets and lane claim referred to the jurisdictional issue:

It is my understanding that the Band believes compensation is owed them because \$2000 of Band funds were used to clear streets and lanes in unsold areas of the townplot. Since, as the attached report outlines, title to the streets and lanes passed to the Province of Manitoba in 1912, I am advised that the Department may not have had authority to clear the streets and lanes. However, the available evidence suggests that the \$2000 which the Band authorized should be expended on clearing streets and lanes was recouped with profit as a result of the increased value it gave to the lots. Therefore, it is my preliminary view that to the extent that the \$2000 was recovered by subsequent sales that no damages are owing arising from the actions taken by the Government in this matter. Nevertheless, I would suggest that in consultation with the Office of Native Claims, you may wish to make a further assessment as to whether the Band suffered financially as a result of this expenditure.⁶⁴

Following a review of some specific aspects relating to the improper alienation part of the claim with which the First Nation had taken issue, J. Hugh Faulkner, Mr Allmand’s successor as Minister of Indian Affairs, wrote to the Band’s solicitors. With respect to the expenditure for clearing of streets and lanes in 1912, Minister Faulkner stated that he had reviewed the position taken by his predecessor and shared his views.⁶⁵

On September 1, 1978, the ONC produced yet another report on the issues of the expenditure for clearing streets and lanes. The main purpose of this paper was to address the question of whether

⁶³ [No author, no date], “The Pas Band Claim to the Streets and Lanes of the Town of The Pas,” p. 4, report attached to letter from Warren Allmand, Minister of Indian Affairs, to Kenneth P. Regier, June 30, 1977 (ICC Exhibit 4a, p. 7).

⁶⁴ Warren Allmand, Minister of Indian Affairs, to Kenneth P. Regier, June 30, 1977, p. 2 (ICC Exhibit 4a).

⁶⁵ J. Hugh Faulkner to Gavin M. Wood, Regier, Stewart Barristers and Solicitors, Winnipeg, June 20, 1978, p. 2 (ICC Exhibit 4b, p. 2).

the expenditure was proper in light of the timing of the *Manitoba Boundaries Extension Act*. It did refer to the related provisions in the *Indian Act*, but once again the research performed focused on the enhanced value of the lots. According to an analysis of 61 lots sold in 1914, the actual value received for these lots was \$7,519 above the valuation placed on the lots prior to the clearing. Because the \$2,000 expenditure was totally recouped, it concluded that “regardless of whether or not there was authority in the provisions of the Indian Act to authorize the expenditure there can be no claim, as no damages were incurred.”⁶⁶

In May 1986, the First Nation submitted a revised claim concerning the \$2,000 component of The Pas Band streets and lands claim. This claim alleged that the expenditure was unlawful because it was not authorized by section 90 of the 1906 *Indian Act*, that Canada could not excuse its actions because the expenditure was recouped through advanced value, and, “when the actual historical records are taken into account, the projected increase in land sales prices did not occur.”⁶⁷ This latter allegation was based on work which added to the research of the 61 sales made in 1914, taking into consideration those sales which had been cancelled in subsequent years and sold years or decades later at lower prices.⁶⁸

It has been the practice of the Specific Claims Branch to ensure that the facts in First Nation claim submissions are accurate, a step referred to as “confirming research.” A draft report was completed in October 1990, which specifically did not draw any conclusions from the facts:

This draft historical report presents the historical facts which are known at this time concerning the above noted claim. Other historical facts may subsequently be found to be relevant to this claim that are not included in this draft historical report. This draft historical report does not draw any conclusions concerning the facts presented nor does it constitute a Government of Canada position on this claim.⁶⁹

⁶⁶ ONC, “\$2000 Expenditure for Clearing Streets and Lanes,” September 1, 1978, pp. 1–2 (ICC Exhibit 3b, pp. 1–2).

⁶⁷ Vic Savino, Savino & Company, Barristers and Solicitors, Winnipeg, to Bob Goudie, Director, Specific Claims Branch, May 9, 1986, p. 7 (ICC Exhibit 2c, p. 7).

⁶⁸ Vic Savino, Savino & Company, Barristers and Solicitors, Winnipeg, to Bob Goudie, Director, Specific Claims Branch, May 9, 1986, pp. 5–6 (ICC Exhibit 2c, pp. 5–6).

⁶⁹ SCB, “The Pas Streets and Lanes Claim,” October 1990, p. 1 (ICC Exhibit 3c, p. 1).

This report was sent to the TARR Centre where it was substantially revised and finalized in a second draft dated August 1992.⁷⁰ The revised report, along with draft legal and factual questions relating to the expenditure of band funds for street clearing, was submitted to Specific Claims West (SCW) Branch by Opaskwayak's acting Chief, Frank Whitehead, on October 14, 1992. The allegation was the same as that in 1986:

It appears clear to us that the authorization of the expenditure of Band funds to clear the streets & lanes at The Pas was beyond the authority set out in the Indian Act. As well, and perhaps just as significantly, the stated benefit which Indian Affairs used to justify the expenditure, ie. increased value of the lots, did not materialize.⁷¹

In a conference call on May 24, 1994, Canada verbally informed the First Nation that the streets and lanes claim "was not accepted for negotiation."⁷² In July 2002, the Public Information Status Report of the Specific Claims Branch indicated that the claim was rejected by letter dated August 4, 1994,⁷³ but an extensive search by both Canada and the First Nation failed to locate any written notification or explanation of the rejection.

As the second stage of the inquiry process, it has been the practice of the Indian Claims Commission to bring the parties together at a planning conference to try to reach agreement on the issues to be considered and to set dates for other stages of the inquiry. That first planning conference for the Opaskwayak streets and lanes claim was set for December 18, 2002, and, in preparation for it, staff in the Claims Unit of Manitoba DIAND re-examined the research conducted during the various claim submissions and reviews, and discovered that no one had ever checked the trust

⁷⁰ "The Pas Indian Band Streets and Lanes Claim: Expenditure of Band Funds for Street Clearing," 1st Draft, Specific Claims Branch, October 1990; 2nd Draft, TARR Centre August 1992 (ICC Exhibit 2e).

⁷¹ Frank Whitehead, Acting Chief, Opaskwayak Cree Nation, to Alan Tallman, Assistant Negotiator, SCW, Vancouver, October 14, 1992, p. 2 (ICC Exhibit 1a, p. 540).

⁷² Kathleen M. Kerr, Negotiating Analyst, SCW, Memorandum to file, June 1, 1994, p. 2 (ICC Exhibit 9a, p. 78).

⁷³ INAC, Public Information Status Report, Specific Claims Branch, Opaskwayak Cree Nation (Band 315): www.ainc-inac.gc.ca/ps/clm/pis_e.pdf, accessed July 2002.

accounts to confirm that the First Nation's capital funds were in fact used to pay for the clearing of the streets and lanes. A preliminary look at these records failed to find any deduction in this regard:

Following a review of all the basic documentation, it was noticed, in connection with the \$2,000 expenditure claim, that a most fundamental archival source had not been researched – Indian Band Trust Accounts. A cursory review of the capital and interest accounts of The Pas for 1912 and immediate surrounding years was then conducted, and no disbursement(s) were evident in connection with street clearing for the 1906 surrendered lands of IR 21A. It appears that all previous activity on the \$2,000 expenditure claim between Canada and the First Nation had been premised on the notion that capital monies had indeed been spent because historical documentation had revealed that such an expenditure had been authorized by band council resolution and by an order-in-council.⁷⁴

Canada undertook to conduct new research on the alleged wrongful expenditure of \$2000 from band funds. Initially, this research was to be limited in scope, but it was later decided that it should be expanded so that it would meet the needs of both the First Nation and the ICC inquiry:

During the February 7, 2003 planning conference, Canada had indicated that its research on the \$2,000 street clearing expenditure would be limited in scope. The research effort, however, ended up being much more thorough and elaborate in nature. The Claims Unit of LECIO, Manitoba DIAND decided to conduct an extensive investigation in order to produce a comprehensive research report which would be of use to OCN in re-examining the \$2,000 claim. The other objective of the Manitoba DIAND research endeavour was to render a report which could be filed as an exhibit and be taken into consideration by the ICC should the \$2,000 claim proceed to formal inquiry. Given the foregoing intentions, research done in a superficial manner would not have sufficed.⁷⁵

Records researched in this study included archival records of the Department of Indian Affairs (RG 10) and the Department of the Interior (RG 15) in the Library and Archives Canada; The Pas Band

⁷⁴ Brad Morrison, Claims Analyst, INAC (Manitoba Region), Land Entitlement and Claims Implementation Office (LECIO), "The Indian Claim Commission, Opaskwayak Cree Nation, Streets & Lanes Inquiry, Research Report – \$2,000 Streets & Lanes Expenditure," August 18, 2003, para. 18 (ICC Exhibit 9a).

⁷⁵ Brad Morrison, Claims Analyst, INAC (Manitoba Region), LECIO, "The Indian Claim Commission, Opaskwayak Cree Nation, Streets & Lanes Inquiry, Research Report – \$2,000 Streets & Lanes Expenditure," August 18, 2003, para. 23 (ICC Exhibit 9a).

capital and interest trust accounts from 1910 to 1921 in both the handwritten ledgers and the published versions in the annual reports of the Department of Indian Affairs; records of the provincial government held at the Manitoba Archives; newspaper records; and The Pas town council minutes held at the Sam Waller Museum in The Pas.⁷⁶

As well as the fact that all previous research failed to include the trust accounts, this review found that two other important documents were either overlooked or their importance not recognized. One was the July 19, 1912, memorandum from DSGIA Frank Pedley to Robert Rogers, Minister of Interior. The text of this memo referred to the Order in Council that had been passed authorizing the expenditure of \$2,000 from the capital funds of The Pas Band, and it recommended how the work should proceed. The marginalia, however, indicated that the Minister disapproved of Pedley's suggestions, writing "No" on the memorandum; the memo was returned to Pedley with the instructions, "No Action," and it then made its way through the bureaucratic channels until it reached the Survey office where Samuel Bray, Chief Surveyor, commented "No action accordingly."⁷⁷

The second document was the surveyor's report from this period, which indicated that the clearing of the streets and lanes was being conducted by town employees:

The men working for the town in clearing some of the streets and ditching had apparently not been warned against disturbing the posts and a considerable number of the posts had to be reset. I have written to the town clerk, calling his attention to this in order that these men be cautioned by him and in that way avoid if possible any further disturbance of these posts.⁷⁸

The conclusion, therefore, was that previous research had missed important documents and that there was no evidence that any First Nation's money was spend to clear the streets and lanes:

⁷⁶ Brad Morrison, Claims Analyst, INAC (Manitoba Region), LECIO, "The Indian Claim Commission, Opaskwayak Cree Nation, Streets & Lanes Inquiry, Research Report – \$2,000 Streets & Lanes Expenditure," August 18, 2003, paras. 25–36 (ICC Exhibit 9a).

⁷⁷ Frank Pedley, DSGIA, to Mr Rogers, July 19, 1912, LAC, RG 10, vol. 4056, file 386990 (ICC Exhibit 1, p. 206); Brad Morrison, Claims Analyst, INAC (Manitoba Region), LECIO, "The Indian Claim Commission, Opaskwayak Cree Nation, Streets & Lanes Inquiry, Research Report – \$2,000 Streets & Lanes Expenditure," August 18, 2003, paras. 62–63 (ICC Exhibit 9a).

⁷⁸ Extract from report of Donald F. Robertson, DLS, The Pas, LAC, RG 10, vol. 6719, file 128A-7-11 (ICC Exhibit 9a, p. 153).

99. Because of the foregoing oversights, past research on the \$2,000 expenditure claim went off on a tangent. Research efforts and energies were directed towards the nebulous area of land valuation to refute the mistaken notion that the money was, indeed spent, and that it was recouped through the subsequent surrendered land sales.
100. A review of the Departmental trust account records; departmental annual reports; the July 19, 1912 Pedley/Rogers memo; ancillary RG 10 information, newspaper accounts and Town records, support the conclusion that no \$2,000 expenditure was paid or spent on the clearing of streets and lanes in The Pas. No evidence was found supporting the payment or spending of \$2,000 from The Pas Band's capital account for the clearing of streets and lanes.⁷⁹

Because of this research, Opaskwayak First Nation passed a BCR on September 13, 2004, withdrawing the part of the claim dealing with the \$2,000 expenditure for streets and land clearing from the ICC inquiry:

AND WHEREAS, as a result of supplementary research undertaken on the \$2000 expenditure issue, it has been adequately demonstrated that, although the \$2000 expenditure was authorized by both The Pas (OCN) Council and federal Privy Council of the day, these funds were not withdrawn from The Pas (OCN) Trust Funds for this purpose;

AND WHEREAS, the findings of this supplementary research effectively remove the basis for that portion of the "Streets and Lanes" claim dealing with the \$2000 expenditure by our First Nation for street and lane clearing in the 500 acre portion of IR #21A surrender [sic] for sale in 1906;

NOW THEREFORE BE IT RESOLVED that we, the Chief and Council of the Opaskwayak Cree Nation do hereby withdraw that portion of The Pas Streets and Lanes specific claim currently before the Indian Claims Commission that deals with the \$2000 expenditure of First Nation funds for the purpose of clearing the streets and lanes in the 500 acre portion of Indian Reserve #21A surrendered for sale in 1906.⁸⁰

⁷⁹ Brad Morrison, Claims Analyst, INAC (Manitoba Region), LECIO, "The Indian Claim Commission, Opaskwayak Cree Nation, Streets & Lanes Inquiry, Research Report – \$2,000 Streets & Lanes Expenditure," August 18, 2003, paras. 99–100 (ICC Exhibit 9a).

⁸⁰ Opaskwayak Cree Nation BCR 04-067, September 13, 2004, (see: Appendix B). The covering letter from Chief Frank Whitehead to John B. Edmond, Commission Counsel, ICC, is dated September 10, 2004, but the letter and attachment were not provided to the ICC until it was faxed to Marcelle Marion, Associate Counsel, ICC by Vince

WRONGFUL ALIENATION OF STREETS AND LANES

The claim submitted to the Office of Native Claims in 1976 alleged that the conveyance of the streets and lanes to the town of The Pas in 1916 was invalid because no compensation was paid, contrary to the terms of the *Indian Act*, the 1906 surrender, and/or other statutory or fiduciary duties owed by Canada.⁸¹ The Minister of Indian Affairs rejected the claim by letter dated June 30, 1977, on the grounds that (a) the *Indian Act* empowered the Crown to subdivide the surrendered land into townplots; (b) that when the subdivision survey was registered at the Land Titles Office in 1908 the streets and lanes became public highways under the *Dominion Lands Act* and as such were no longer considered unsold surrendered lands; and, (c) as a result of the subdivision, “the Band gained considerably more financially from the sale of individual lots in the town, than would have been the case had the entire surrendered area been sold as one block.”⁸² The First Nation’s legal counsel objected to some of the details in the report on which Minister Allmand’s rejection was based,⁸³ and the department reassessed the claim and upheld the rejection. This part of the claim was not subject to any further review before Opaskwayak Cree Nation brought it to the ICC in 2002.

During the ICC inquiry, however, John H. Weisgerber, an appraisal advisor, employed by Public Works and Government Services Canada (PWGSC), carried out research to set the alienation of the Opaskwayak streets and lanes in historical context. He completed his work in April 2004. Mr Weisgerber thoroughly investigated current and past practices regarding the dedication (i.e. transfer to the local municipality) of streets and lanes in subdivisions. For this he was able to use land immediately adjacent to The Pas townsite – The Pas Centre and The Pas Annex were two subdivisions abutting on the eastern boundary of the surrendered 500 acres, which were developed and sold in 1912–13. The research showed that, “under municipal and land titles legislation of the

Sinclair, OCN, on November 15, 2004 (ICC file 2106-14-1, vol. 3).

⁸¹ TARR Manitoba, “The Pas Band of Indians – Claim Respecting Streets and Lanes in the Town of The Pas,” September 17, 1976, p. 10 (ICC Exhibit 2a, p. 14).

⁸² Warren Allmand, Minister of Indian Affairs, to Kenneth P. Regier, Regier, Stewart, Barristers & Solicitors, Winnipeg, June 30, 1977, pp. 1–2 (ICC Exhibit 4a, pp. 1–2).

⁸³ Kenneth P. Regier, Regier, Stewart, Barristers & Solicitors, Winnipeg, to Warren Allmand, Minister of Indian Affairs, July 29, 1977 (ICC Exhibit 2b).

time, upon registration of a plan, the streets and lanes of a subdivision were dedicated to public use. Title to streets and lanes vested in the Province, while possession and by-law making power was exercised by the relevant municipal authority.”⁸⁴

Mr Weisgerber also looked at the history of the marketing activity for developed land in the townsite established on the surrendered land, in The Pas Centre and The Pas Annex and in Minnedosa, Manitoba (located on the line of the Canadian Pacific Railway and incorporated as a town in March 1883), as well as for undeveloped land near those locations. Among his findings were:

- subdivision was a common response to railway construction in smaller communities in the early 1900s;
- “the economic climate in Canada, the Province of Manitoba and The Pas was positive during the early 1900's” which, “combined with the anticipation of railway construction to The Pas, created a favorable environment for subdivision activity”;
- “Subdivision activity at The Pas was consistent with market behavior in other communities”;
- the development of The Pas Centre and The Pas Annex in 1913 demonstrated the “high expectations regarding the future growth potential in the community”;
- “the subject 500 acre subdivision had a significantly greater potential for future revenue achievement” because its location was superior to that of The Pas Centre and The Pas Annex;
- “The subdivision activity that occurred on the subject 500 acres in the early 1900's was also timely for the community. ... The early demand for the lots was strong”;
- “in the late 1880's and early 1900's, there appeared to be a large variance between the value of undeveloped land and the potential revenue that could be obtained by subdividing undeveloped land.”⁸⁵

⁸⁴ John H. Weisgerber, Public Works and Government Services Canada (PWGSC), “Historical Market Analysis Research Report, Opaskwayak Streets and Lanes Claim,” April 2004, p. 20 (ICC Exhibit 10A). See also Brad Morrison, “The Pas Annex and The Pas Centre Land Titles and Statute Information” (ICC Exhibit 10a).

⁸⁵ John H. Weisgerber, PWGSC, “Historical Market Analysis Research Report, Opaskwayak Streets and Lanes Claim,” April 2004, pp. 25–26 (ICC Exhibit 10a). Some findings are paraphrased.

The final conclusions of the research were that no claim existed:

Based on an analysis of the information contained in the body of this report, it is the opinion of the writer that:

- The Crown acted in the best interests of The Pas Band in its decision to subdivide the 500 acres.
- Streets and lanes were properly dealt with at the time of subdivision.
- Compensation is not owing to The Pas Band for the value of the Streets and Lanes.⁸⁶

On December 6, 2004, the Opaskwayak Cree Nation passed a Band Council Resolution withdrawing the wrongful alienation portion of the streets and lanes claim from the ICC inquiry:

AND WHEREAS, as a result of supplementary research undertaken on the wrongful alienation, the streets and lanes would not normally be dealt with separately and compensation received for same;

AND WHEREAS, the findings of this supplementary research effectively remove the basis for that portion of the “Streets and Lanes” claim dealing with the wrongful alienation of land within the 500-acre portion of IR #21A surrendered for sale in 1906;

NOW THEREFORE BE IT RESOLVED THAT we, the Chief and Council of the Opaskwayak Cree Nation, do hereby withdraw that portion of The Pas Street and Lanes [sic] specific claim currently before the Indian Claims Commission that deals with the wrongful alienation of land within the 500-acre portion of Indian Reserve #21A surrender [sic] for sale in 1906.⁸⁷

⁸⁶ John H. Weisgerber, Appraisal Adviser, PWGSC, to Vivian Russell, Legal Counsel, Specific Claims, DIAND Legal Services, April 27, 2004 (ICC Exhibit 10a, p. ii).

⁸⁷ Opaskwayak Cree Nation BCR 04-029 dated December 6, 2004, (see: Appendix C). The covering letter from Chief Frank Whitehead, OCN, to John B. Edmond, Commission Counsel, ICC is dated November 23, 2004, but the ICC did not receive a copy of either the letter or the BCR until it was faxed to them on January 17, 2005. See ICC file 2106-14-1, vol. 4.

PART V
CONCLUSION

For nearly two decades, the members of the Opaskwayak Cree Nation were under the mistaken impression that Canada had erred in its treatment of the streets and lanes in the part of the town of The Pas which had formerly been Indian reserve land. Because of the thorough supplementary research conducted by Canada after the First Nation asked the Indian Claims Commission to review the rejection of the claim, Opaskwayak Cree members are now satisfied that departmental officials acted properly in all aspects of the transactions, and a long-standing grievance has been resolved. Paul Forsyth, legal counsel for the First Nation throughout the inquiry proceedings, made this clear in a letter thanking the ICC:

The Historical Market Analysis Research Report prepared for Canada by Mr. Weisgerber, in respect to the “wrongful alienation” and the Historical Research Report earlier prepared for Canada by Brad Morrison in respect of the “\$2,000 expenditure”, were thorough, reasonable and convincing in the manner by which they addressed issues of concern raised by the First Nation with respect to these components of the Specific Claim.

Opaskwayak Cree Nation and the writer would like to thank the Indian Claims Commission, and in particular, Mr. Brandt [*sic*], for the efforts which enabled the issues in our Specific Claim to be fully considered and examined. If the initial rejection of the Specific Claim by Canada had been, and had been seen by us to be, the result of such a thorough review, we may not have felt the need to involve the Indian Claims Commission.⁸⁸

We too commend Mr Morrison and Mr Weisgerber, along with all the staff who assisted them, for their excellent research reports.

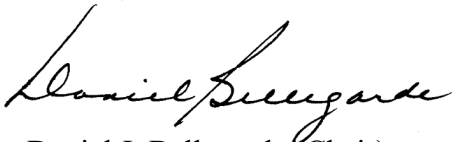
This claim illustrates how important thorough, accurate research is in the land claim process. As Mr Morrison pointed out, “[w]hether the expenditure actually occurred is a key element in the historical sequence of events and is a cornerstone of the claim,”⁸⁹ so it is remarkable to us that so much research could take place on the \$2,000 expenditure portion of this claim without the trust

⁸⁸ Paul B. Forsyth, Taylor McCaffrey LLP, Barristers & Solicitors, to Marcelle M. Marion, Associate Legal Counsel, Indian Claims Commission, January 31, 2005 (ICC file 2106-14-1, vol. 4).

⁸⁹ Brad Morrison, Claims Analyst, INAC (Manitoba Region), LECIO, “The Indian Claim Commission, Opaskwayak Cree Nation, Streets & Lanes Inquiry, Research Report – \$2,000 Streets & Lanes Expenditure,” August 18, 2003, para. 19 (ICC Exhibit 9a).

accounts ever being consulted. We suggest, therefore, that Canada develop a list of critical documents for each type of claim being researched; the appropriate list could then be shared with First Nations' researchers so that this particular error might be avoided in the future.

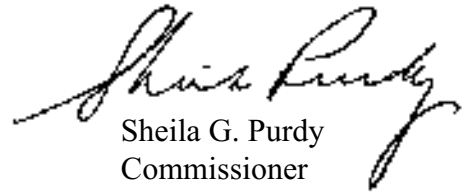
FOR THE INDIAN CLAIMS COMMISSION



Daniel J. Bellegarde (Chair)
Commissioner



Alan C. Holman
Commissioner



Sheila G. Purdy
Commissioner

Dated this 21st day of February 2007

APPENDIX A

DECLARATION

Opaskwayak Cree Nation: Streets and Lanes Inquiry

Nation crie d'Opaskwayak: enquête relative aux rues et aux ruelles

DECLARATION

On September 17, 1976, what is now the Opaskwayak Cree Nation, then known as The Pas Band, submitted a specific claim to the Minister of Indian Affairs and Northern Development alleging alienation, without adequate compensation, of streets and lanes on reserve land surrendered in 1906 and subdivided to form part of the town of The Pas. The claim also alleged improper use of \$2,000 of the Band's capital funds to clear the streets and lanes.

The claim was rejected June 30, 1977. The claim relating to misuse of band funds was revised and resubmitted as a separate claim in 1986 and again in 1992. On May 24, 1994, the First Nation was notified verbally that this claim would not be accepted for negotiation.

DÉCLARATION

Le 17 septembre 1976, l'actuelle Nation crie d'Opaskwayak, alors connue sous le nom de Bande de The Pas, a présenté au ministre des Affaires indiennes et du Nord canadien une revendication particulière dans laquelle elle fait valoir qu'on a aliéné, sans indemnisation convenable, des rues et ruelles se trouvant sur des terres de réserve cédées en 1906 et subdivisées pour former une partie de la municipalité de The Pas. Il y est aussi allégué qu'une somme de 2 000 \$ des fonds de capital de la bande a été utilisée pour déboiser les rues et ruelles.

Cette revendication a été rejetée le 30 juin 1977. La portion relative à la mauvaise utilisation des fonds de la bande a ensuite été revue et présentée séparément en 1986 et à nouveau en 1992. Le 24 mai 1994, la Première Nation a été avisée verbalement que cette revendication ne serait pas acceptée aux fins de négociation.

By letter dated June 18, 2002, followed by a Band Council Resolution dated June 20, 2002, the First Nation requested that this Commission conduct an inquiry into both claims.

On September 27, 2002, the Commission agreed to conduct an inquiry as requested.

Planning conferences were held in 2002 and 2003. On February 7, 2003, Canada proposed to conduct additional research on both aspects of the claim.

On August 26, 2003, Canada submitted a report on the alleged expenditure from band funds, which demonstrated that, although authorization had been given to debit the Band's account, no band funds were actually spent on clearing the streets and lanes on the surrendered land. By Band Council Resolution dated September 13, 2004, the Council withdrew this claim from the inquiry.

On May 3, 2004, Canada submitted its Historical Market Analysis research report, which demonstrated that the transfer of the streets and lanes in The Pas townsite to the Crown in right of the Province of Manitoba and dedicated to the Town of The Pas, without compensation to the Opaskwayak Cree Nation, was reasonable and lawful. By Band Council Resolution dated December 6, 2004, the Council withdrew this claim from the inquiry.

Since the Opaskwayak Cree Nation has withdrawn both claims from the inquiry, the Commission finds that there are no longer any matters to be inquired into.

Dans une lettre datée du 18 juin 2002, suivie d'une résolution du Conseil de bande datée du 20 juin 2002, la Première Nation a demandé à la Commission de faire enquête sur les deux revendications.

Le 27 septembre 2002, la Commission a accepté de tenir une enquête tel que demandé.

Des séances de planification ont eu lieu en 2002 et en 2003. Le 7 février 2003, le Canada a proposé de procéder à des recherches supplémentaires sur les deux aspects de la revendication.

Le 26 août 2003, le Canada a présenté un rapport sur les dépenses présumées faites dans les fonds de la bande, lequel démontre que, même si une autorisation a été donnée de débiter le compte de la bande, on n'a pas vraiment utilisé les fonds pour déboiser les rues et ruelles sur les terres cédées. En vertu d'une résolution du Conseil de bande datée du 13 septembre 2004, le Conseil a donc retiré cette revendication de l'enquête.

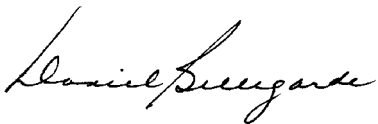
Le 3 mai 2004, le Canada a présenté son rapport d'analyse de marché historique, qui démontre que le transfert des rues et ruelles du territoire de la municipalité de The Pas en faveur de la Couronne du chef de la province du Manitoba, pour l'usage de la municipalité de The Pas, sans indemniser la Nation crie d'Opaskwayak, était raisonnable et légal. Au moyen d'une résolution du Conseil de bande datée du 6 décembre 2004, le Conseil a donc retiré cette revendication de l'enquête.

Puisque la Nation crie d'Opaskwayak a retiré les deux revendications, la Commission conclut qu'il y a lieu de conclure l'enquête.

THE COMMISSION THEREFORE
ORDERS AS FOLLOWS:

The inquiry into these specific claims is
hereby concluded.

At Ottawa, Ontario, this 14th day of
February, 2006.



Daniel J. Bellegarde, Panel Chair
Commissioner



Alan C. Holman
Commissioner



Sheila G. Purdy
Commissioner

EN CONSÉQUENCE, LA COMMISSION
DÉCLARE DONC :

Que l'enquête sur ces revendications
particulières est close.

Fait à Ottawa, Ontario, le 14 février 2006.



Daniel J. Bellegarde, président du Comité
Commissaire



Alan C. Holman
Commissaire



Sheila G. Purdy
Commissaire

APPENDIX B

BAND COUNCIL RESOLUTION, SEPTEMBER 13, 2004



OPASKWAYAK CREE NATION BAND COUNCIL RESOLUTION

*Chronological Number: 04-067
Dated This 13th Day of September, 2004.*

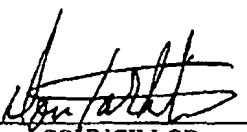


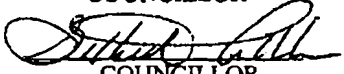


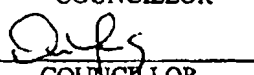
AT A DULY CONVENED MEETING of Chief and Council held in the Council Chambers on Opaskwayak Cree Nation Reserve No. 21E;

WHEREAS, the Opaskwayak Cree Nation (OCN) is currently involved in an Indian Claims Commission review and assessment of the "Streets and Lanes" specific claim that concerns 1) the alienation without compensation to OCN of land used for streets and lanes within the 500 acre parcel at Indian Reserve # 21A surrendered for sale in 1906 and 2) a \$2000 expenditure from The Pas (OCN) funds for the purpose of clearing the streets and lanes in the surrendered portion of IR # 21A;

AND WHEREAS, as a result of supplementary research undertaken on the \$2000 expenditure issue, it has been adequately demonstrated that, although the \$2000 expenditure was authorized by both The Pas (OCN) Council and federal Privy Council of the day, these funds were not withdrawn from The Pas (OCN) Trust Funds for this purpose;

AND WHEREAS, the findings of this supplementary research effectively remove the basis for that portion of the "Street and Lanes" claim dealing with the \$2000 expenditure by our First Nation for street and lane clearing in the 500 acre portion of IR # 21A surrender for sale in 1906;

NOW THEREFORE BE IT RESOLVED that we, the Chief and Council of the Opaskwayak Cree Nation, do hereby withdraw that portion of The Pas Streets and Lanes specific claim currently before the Indian Claims Commission that deals with the \$2000 expenditure of First Nation funds for the purpose of clearing the streets and lanes in the 500 acre portion of Indian Reserve # 21A surrendered for sale in 1906.

 COUNCILLOR	_____ CHIEF	_____ COUNCILLOR
 COUNCILLOR	_____ COUNCILLOR	 COUNCILLOR
 COUNCILLOR	_____ COUNCILLOR	 COUNCILLOR
 COUNCILLOR	_____ COUNCILLOR	_____ COUNCILLOR
	 COUNCILLOR	

A Quorum of Opaskwayak Cree Nation Chief and Council Consists of Five (5).

APPENDIX C

BAND COUNCIL RESOLUTION, DECEMBER 6, 2004



OPASKWAYAK CREE NATION BAND COUNCIL RESOLUTION

Chronological Number: 04-029
Dated This 6th Day of DECEMBER, 2004

AT A DULY CONVENED MEETING of Chief and Council held in the Council Chambers on Opaskwayak Cree Nation Reserve No. 21E;


WHEREAS the Opaskwayak Cree Nation (OCN) is currently involved in an Indian Claims Commission review and assessment of the Streets and Lanes specific claim that concerns 1) the alienation without compensation to OCN of land used for streets and lanes within the 500 acre parcel at Indian Reserve #21A surrendered for sale in 1906, and 2) a \$2,000 expenditure from The Pas (OCN) funds for the purpose of clearing the streets and lanes in the surrendered portion of IR #21A;

AND WHEREAS, as a result of supplementary research undertaken on the wrongful alienation, the streets and lanes would not normally be dealt with separately and compensation received for same;

AND WHEREAS, the findings of this supplementary research effectively remove the basis for that portion of the "Streets and Lanes" claim dealing with the wrongful alienation of land within the 500-acre portion of IR #21A surrendered for sale in 1906;

NOW THEREFORE BE IT RESOLVED THAT we, the Chief and Council of the Opaskwayak Cree Nation, do hereby withdraw that portion of The Pas Street and Lanes specific claim currently before the Indian Claims Commission that deals with the wrongful alienation of land within the 500-acre portion of Indian Reserve #21A surrender for sale in 1906.


COUNCILLOR


CHIEF

COUNCILLOR


COUNCILLOR

COUNCILLOR

COUNCILLOR


COUNCILLOR


COUNCILLOR


COUNCILLOR

COUNCILLOR

COUNCILLOR

COUNCILLOR

COUNCILLOR

A Quorum of Opaskwayak Cree Nation Chief and Council Consists of Five (5).

