Archives and Native Claims

by JAMES MORRISON*

Over the past ten years, a new species of researcher has taken up almost permanent residence in the reading rooms of the Public Archives of Canada, showering professional and technical staff with requests for material, and displaying a voracious appetite for photocopies of documents. This is the researcher investigating the grievances or "claims" of Canadian Native people, most often on behalf of Native organizations and bands, although more recently on behalf of the federal and provincial governments. The general subject of "claims" is very much in the public eye, since at the present time, practically the entire northern half of this country is being claimed by Native people on the basis of something called "aboriginal" or "Native" title. Because the affected areas are so closely tied to potential resource development, a prevailing impression is that Native people are being opportunistic, that they are "bellyaching", and "biting the (governmental) hand that feeds them". Why, it is asked, should Native people be entitled to special consideration simply because they were the first to arrive in this country? After all, in the final analysis, aren't we all immigrants, with "equal rights and responsibilities"?[1]

Because there are so many popular misconceptions about the exact nature of all this recent activity. In the first place, not all Native claims relate to aboriginal use and occupancy of lands—most research to date has dealt with such issues as the interpretation of Indian Treaties, and the management by the federal government, of Indian lands and other assets. But what both "comprehensive" and "specific" claims—as the Government calls them—have in common, is that they are part of a concerted effort by Native people to clearly define their relationship to that federal government and to the other inhabitants of this country. This effort is no recent phenomenon: Native grievances have been an integral part of the history of Canada since the arrival of the first European settlers three centuries ago.

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1 These sentiments were expressed most recently, in the early summer of 1979, by Don Blenkarn, Conservative M.P., Mississauga South, in an open letter to Noel Starblanket, President of the National Indian Brotherhood.

A SPECIAL RELATIONSHIP

At Confederation, the British Government determined that "Indians and lands reserved for the Indians" would be the responsibility of the new federal government.[2] Today, the assets of Canada's 250,000 registered or "status" Indians,[3] who are grouped into approximately 550 recognized "Bands", are administered "in trust" for them by the Minister of Indian and Northern Affairs, under authority of the *Indian Act*.[4] Although he rarely exercises his powers these days without their consent, that Act gives the Minister of Indian Affairs total discretionary control over the lives of Indian and Inuit people.

The present Indian Act has its roots in certain nineteenth century statutes of what are now the Provinces of Ontario and Quebec: those early laws were founded, at least in part, on the assumption that by providing the benefits of Christianity and civilization (the two went together) to the indigent aborigines they could eventually be raised to the level of European settlers. At that point, assimilation having taken place, legislation would no longer be necessary.[5] Thus, clauses were inserted in the various "Indian Acts" to provide for the voluntary or involuntary "enfranchisement" of individuals and Bands.[6]

The idea that Indian people should eventually have equal rights and responsibilities with the rest of the Canadian populace was fully developed in June 1969, in a "White Paper" presented to Parliament by Jean Chretien, the then Minister of Indian Affairs, on behalf of Pierre Trudeau's Liberal administration. The government proposed, among other things, to repeal the Indian Act, thus abolishing "Indians" as a legal category, and to hand over the delivery of Indian Act services to the provinces.[7] The government's goal, expressed by Prime Minister Trudeau in a speech given in Vancouver on 8 August 1969, was assimilation:

> We can go on treating the Indians as having a special status. We can go on adding bricks of discrimination around the ghetto in which they live and at the same time perhaps helping them preserve certain

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2 *The British North America Act* (1867) 30&31 Vic. cap.3, Sec.91(24)

3 Since the 1876 Indian Act, "status" has meant descent in the male line only. There are from 250,000 (estimate of the Department of Indian Affairs) to 750,000 (according to the Native Council of Canada, which represents them) Metis (mixed-blood) and "non-status" Indians in this country. There is also a distinction between the terms "Indian" and "Native" as used in the political arena (National Indian Brotherhood for "status"; Native Council of Canada for non-status). I have used both terms interchangeably.

4 *An Act respecting Indians*, Statutes of Canada, 1975

5 See John L. Tobias, "Protection, Civilization, Assimilation: An Outline of Canada's Indian Policy", *Western Canadian Journal of* Anthropology 6, No.2 (1976): 13-30.

6 Many non-status Indians are the descendants of those who chose to enfranchise themselves not, as the word implies, out of an overwhelming urge to vote in elections, but because the enfranchised Indian could take with him a certain percentage of Band assets, and gain the right (forbidden to status Indians) to lawfully consume alcohol. In the nineteenth century, the entire Wyandott (Huron) Band of Anderdon, near Windsor, was enfranchised without its consent. Indians "ordinarily resident" on Reserves gained the right to vote in 1960.

7 Department of Indian Affairs and Northern Development, *Statement of the Government of Canada on Indian Policy*, Presented to the 1st Session of the 28th Parliament (Ottawa, 1969), p.6.

> cultural traits and certain ancestral rights. Or we can say you're at a cross-roads—the time is now to decide whether the Indians will be a race apart in Canada, or whether they will be Canadians of full status.[8]

The virulence of the Indian people's reaction to this White Paper took the government by surprise. Rejecting assimilation as a product of Western theories of racial superiority, Indian people took the position that the *Indian Act*, although a "colonialist" document, was still a testimony to the direct and special relationship they had always enjoyed with the Crown—a relationship which entirely bypassed "white settler" governments, represented, after Confederation, by the provinces. The *Indian Act* should not be repealed, they said, but amended, to provide the framework for "Indian Government by and for Indian people" within Confederation. Such an Indian governing structure would be parallel, not subordinate, to provincial governments.[9]

In taking this stand, Indian leaders were pointing to another theme of "Indian" legislation, one which had its origins in the eighteenth rather than the nineteenth century—that the Crown would protect Indians and Indian lands from depradations by white settlers. Within these lands, however, Indian people would ordinarily be "left to their own usages and customs".[10] The document which Native people still regard as their *Magna Carta* is the royal proclamation issued by King George III on 7 October 1763. In the concluding sections of that proclamation, which established new governments for territories conquered from the French, the Crown guaranteed to the Native tribes the unmolested possession of all lands they had not already ceded or sold to Europeans. "For the present", all of North America west of the Appalachians was closed to white settlement. If, within colonies where settlement was allowed, Native people were at any time "inclined to dispose" of any lands, such lands were to be purchased "in the King's name only" at a public meeting called for that purpose. This was to avoid "great frauds and abuses" perpetrated by the settlers and their local governments in dealings with the Native tribes.[11]

When Loyalist refugees arrived in what is now Ontario after the American Revolution, they found almost all lands still reserved for the Indians under the 1763 proclamation. As lands were needed for European settlement, the Crown would approach the Native tribes "inhabiting and claiming" the lands in question, and, if they were agreable, purchase those lands for cash, goods, or annuities. In many cases, the Indian people would also keep or reserve smaller portions of the ceded tract. Not all of these lands were subsequently granted to European settlers—Indian refugees from the American Revolution, like the Six

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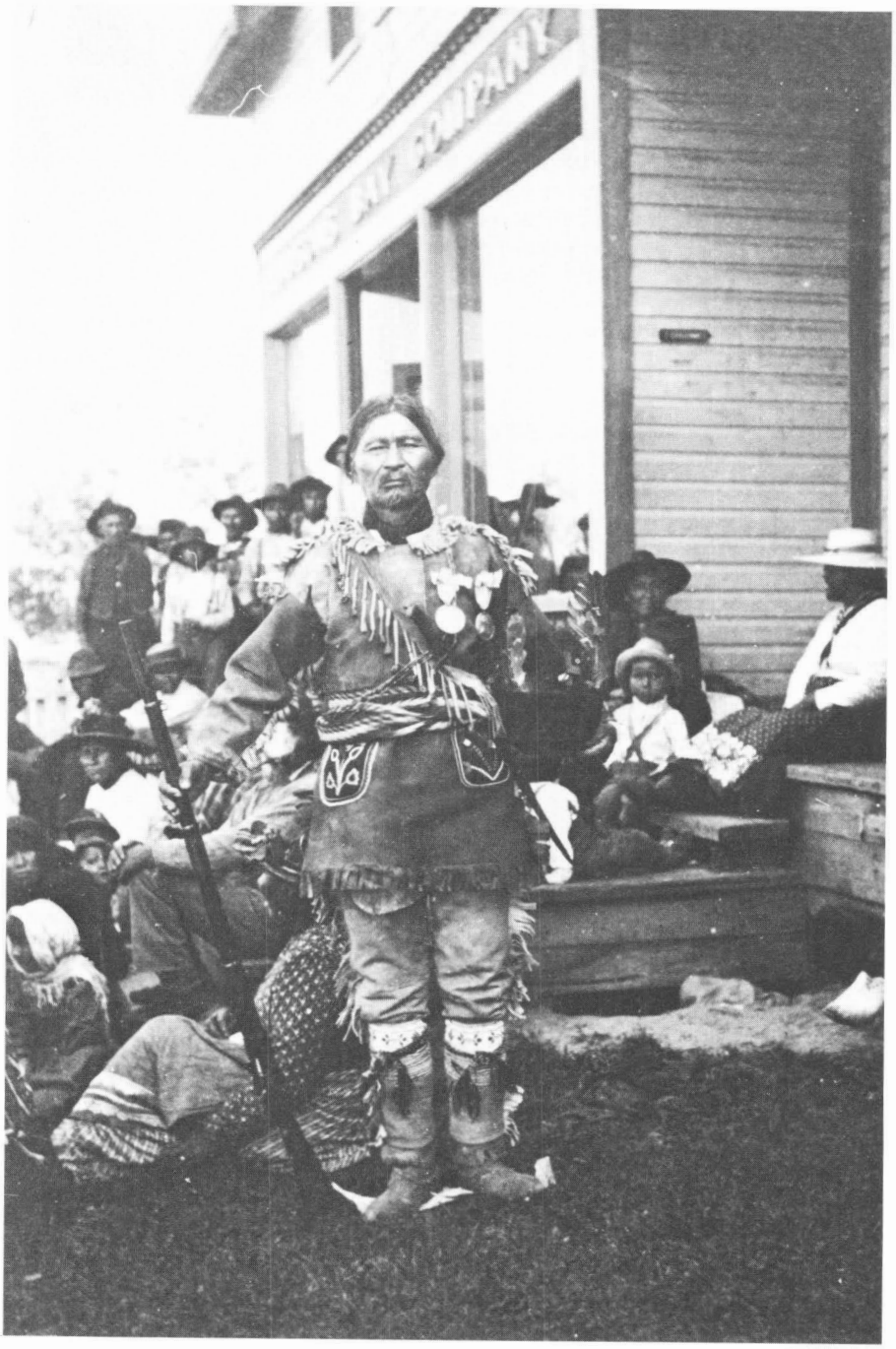
8 The full text is given in Peter A. Cumming and Neil H. Mickenberg, eds., *Native Rights in Canada* (Toronto, 1972), pp. 331-32

9 See Marie Smallface Marule, "The Canadian Government's Termination Policy: From 1969 to the Present Day", in Ian A.L. Getty and Donald B. Smith, eds., *One Century Later: Western Canadian Reserve Indians Since Treaty 7* (Vancouver, 1978), pp. 103-116.

10 Letter from Thomas Gage to Guy Johnson, dated at Boston, 18 September 1774, *Gage Papers*, William L. Clements Library, University of Michigan, Ann Arbor, Mich.

11 The Royal Proclamation of 1763, printed in Clarence S. Brigham, ed., "*British Royal Proclamations Relating to America*", *Transactions and Collections of the American Antiquarian Society* 12 (Worcester, Mass., 1912):212-18.



Chief Louis Espaniel with medals awarded his grandfather by George III for service in the War of 1812, Biscotasing, Ontario, c. 1906. (Archives of Ontario S-7631)

Nations, also received grants of land from the Crown.[12] By 1867, most of what became the Province of Ontario had been acquired from the Indians in this way, although some Native groups continued to hold their lands "by virtue of their original title", the royal proclamation.[13]

Making such purchases on behalf of the Crown were the officers of the "Indian Department", which had been established by the British Government in 1755 to wrest control of Indian Affairs from the unruly American colonies. Aside from implementing the "Indian" provisions of the royal proclamation, these officers were also charged with maintaining the military alliance with the Native tribes—thus their uniform and military rank. This alliance saw the Indian people of eastern Canada support the British Government during the American Revolution, and play a pivotal role in the War of 1812, although in both those conflicts they were principally defending their own lands from attack.[14] In a peculiar way, then, the present Department of Indian Affairs, as the lineal descendant of that earlier body, is further testimony to the Indian people of their special relationship to the Crown.

After Confederation, that Crown—represented now by the Federal Government—preceded European settlers to western and northern Canada, negotiating eleven Indian Treaties between 1871 and 1930. In exchange for surrendering all their "right, title and interest" to their lands, the Indian people were promised annuities, reserves of varying sizes, continued hunting and fishing rights, and government services, such as education, medical help and agricultural assistance.[15]

The royal proclamation of 1763 is still considered to have the force of a statute in Canada.[16] Native people consider it the principal source of their title to areas of the country not covered by treaty or land surrender—much of the Maritimes, Quebec, British Columbia, the Yukon and the North West Territories, but also including portions of Ontario where, they allege, there have been no valid surrenders.[17] At the same time, some groups have successfully challenged the Treaties themselves. In 1973, Mr. Justice Morrow of the North West Territories Supreme Court ruled that the Dene People of the Mackenzie Valley still retained

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12 The texts of most of these agreements are printed in *Canada. Indian Treaties and Surrenders From 1680 to 1905*, 3 vols. (Toronto, 1971). Governor Haldimand's Grant of 1784 to the Six Nations is in Vol. 1, p.251 (No.106).

13 The quotation is from *The Report on the Affairs of the Indians of Canada*, Section III, Journals of the Legislative Assembly of the Province of Canada, 1847, Appendix "T". The St. Regis Akwesasne Reserves #15 (Quebec) and #59 (Ontario), on the St. Lawrence River, are still considered to be held by virtue of the Royal Proclamation of 1763.

14 See Robert S. Allen, "The British Indian Department and the Frontier in North America, 1755-1830", *Canadian Historic Sites: Occasional Papers in Archaeology and History*, No. 14 (Ottawa, 1975): 5-125.

15 For the texts and accounts of negotiations of Treaties 1 to 7 (1871-77) see Alexander Morris, *The Treaties of Canada with the Indians*, (Toronto,1971).

16 *Rex vs Lady McMaster* (1926) Ex.C.R. 68, at p.72.

17 For the definitive analysis of the Royal Proclamation: its intent, its geographical scope, and its continuing application, see the doctoral thesis of Brian Slattery (now at the College of Law, University of Saskatoon), *The Land Rights of Indigenous Canadian Peoples*, D.Phil., Oxon., 1979.

sufficient interest in the land to file a *caveat* (notice of interest) in those lands because, basically, Treaties 8 and 11 (1899 and 1921) had been understood by Indian people as peace, not land surrender, treaties.[18]

The first forums for the presentation of grievances were the solemn Councils held in the seventeenth century with the Native tribes by the Governor of New France or his various English counterparts. As quasi-sovereign protectorates, those tribes came to know that, in the words of British Commander-in-Chief Thomas Gage, writing in 1775, "in all their landed disputes (with the settlers) the Crown has always been their friend."[19] This is not to suggest that these disputes were always adjusted to the satisfaction of the Natives: some claims predate the British conquest of New France. Descendants of the "Christian" Iroquois, for example, who came to reside in the early eighteenth century at a Sulpician Mission near Lake of Two Mountains (Oka), Quebec, are still claiming those Mission lands as their own. The present catalogue of outstanding claims includes the illegal surrender or expropriation of Indian lands, corruption and malfeasance on the part of Indian Department officials, violations by provincial governments of Native hunting and fishing rights guaranteed by Treaty, and unfulfilled land entitlement under Treaty.

Continuing the long-standing practice, representatives of the Grand General Indian Council of Ontario would, from the late nineteenth century, make frequent trips to Ottawa to place their grievances before the Governor-General or the federal government.[20] On the national scale, the North American Indian Brotherhood, founded in 1944, pressed for reforms in the administration of Indian Affairs, and espoused the cause of claimant Bands across the country.[21] By the 1960s, pressure was mounting in Parliament as well as in Native communities for a proper resolution of all claims and grievances and for appropriate changes to the 1951 *Indian Act*.

THE CLAIMS PROCESS

The modern era of Native claims research began in May 1969. After nearly a year of meetings between Indian people and Government regarding proposed amendments to the *Indian Act*, delegates to a national assembly decided that claims were so closely interwoven with that Act and the overall future of Indian people that a great deal of future research was necessary. The vehicle chosen was called the National Committee on Indian Rights and Treaties, and it was authorized by the General Assembly of the National Indian Brotherhood to investigate "treaty, aboriginal, acquired and residual rights" of all kinds, and to draft a new Indian Act for presentation to the Assembly.[22] Between April 1970 and March 1973, the Privy Council Office provided a little over one million dollars for the conduct of

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18 *In Re Paulette*, (no.1) (1973) 39 DLR (3rd) 45 NWT; (no.2) (1973) 42 DLR (3rd) 8 NWT.

19 Letter from Thomas Gage to Guy Johnson, dated at Boston, 3 February 1775, *Gage Papers*.

20 PAC, RG10, Vol.1963, File 5045-2.

21 Readers interested in the overall subject of Native claims should see the as yet untitled report on the subject by Richard Daniel, a former researcher with the Indian Association of Alberta. Copies should be obtainable in mid-1980 from John Leslie, Chief, Treaties and Historical Research Centre, Department of Indian Affairs, Les Terrasses de la Chaudière, Hull, Québec.

22 Tyler and Wright Research Consultants Limited, *Specific Claims Research and Development Funding Evaluation Study 1978/79*, Volume One (Ottawa, 1978), p.8.

such research.[23] Although by doing so it can be said to have implicitly accepted the notion of aboriginal rights, the federal government explicitly adopted the opposite position.

In the government's "White Paper" of June 1969, the Minister of Indian Affairs declared that

> the Government will appoint a Commissioner to consult with the Indians and to study the recommend accpetable procedures for the adjudication of claims...[24]

In December of that year, Lloyd Barber, at that time Vice-President of the University of Saskatchewan, was appointed Indian Claims Commissioner by order-in-council under the authority of the *Public Inquiries Act*. Dr. Barber's terms of reference empowered him to consider and make recommendations on claims relating to:

> —The occupation of land by others without the prior and formal agreement thereto of the Indians using the land—The performance of the terms of treaties and agreements formally entered into by representatives of the Indians and the Crown, and
> —The administration on monies and land pursuant to schemes established by legislation for the benefit of the Indians.[25]

Claims based on aboriginal use and occupation of land were specifically exempt as, in the words of the order-in-council, that category of grievance

> is so general and undefined that it cannot be settled except by a policy to enable Indians to participate fully as members of the Canadian Community, as is now being proposed by the Government of Canada.[26]

Because the Indian Claims Commission was thus so directly bound to the 1969 White Paper—which had been immediately condemned as a betrayal of the consultation process on the *Indian Act*, and as a vehicle for their unwilling assimilation into Canadian society—the National Indian Brotherhood and the various regional associations refused to officially recognize its existence, although they were later to develop a personal rapport with the Commissioner himself.

Skirmishing between the government and Indian people over the exact nature of their claims continued. In 1972, the federal Treasury Board approved the "Indian Rights and Treaty Research" funding program, which was to provide, by 31 March 1976, seven and a half million dollars through the Department of Indian Affairs, to national and regional associations and some individual Bands.[27] Although the guidelines for this program were broadly defined as archival and field research into "Indian rights and treaties", this was not supposed to mean either an attack on the treaties themselves, or an investigation of "aboriginal" rights.

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23 Ibid.
24 "White Paper", p. 6.
25 Report of a Meeting of a Committee of the Privy Council on Matters of State, 19 December 1969. P.C. 1969-2405
26 *Ibid.*
27 Tyler and Wright, p. 9.

Treaty Nine Commissioners (2nd, 3rd and 5th from right) *prepare to address assembled Cree Indians from the verandah of the Hudson's Bay Company post at Fort Albany on James Bay, 1905.* (Public Archives of Canada PA-59541)

What effectively changed the government's position was the Supreme Court of Canada decision in early 1973 in what has since become know as the *Calder* case. In 1968, the Nishga Indians of northern British Columbia had sought a declaration "that the aboriginal title, otherwise known as the Indian title, of the Plaintiffs to their ancient tribal territories... has never been lawfully extinguished." The Court split three-three on the main issue of "extinguishment", while the seventh member rejected the claim on a technicality.[28] The possibility of some future, more favourable, definition of aboriginal rights prompted the Liberal administration, through the Minister of Indian Affairs, to announce a new policy on the claims of Indian and Inuit people in August 1973. Two types of claims were outlined. The first, thenceforth to be known as "specific claims" were those involving the government's "lawful obligations" to Indian people. In a virtual rewrite of Dr. Lloyd Barber's terms of reference, they were defined as grievances relating to the Government's administration of Indian lands and other assets, as well as to the fulfillment or interpretation of Indian Treaties.[29]

The new category, called "comprehensive claims" was to apply to those areas of Canada where the Native interest had not been extinguished by treaty or superceded by law. The government's policy statement suggested a series of negotiated settlements, wherein the Native interest would be extinguished in return for compensation.[30] Financial support was then made available to Native

28 *Calder et al V. The Attorney-General for British Columbia* (1973). SCR 316.

29 Department of Indian and Northern Affairs, "Native Claims: Policy, Processes and Perspectives". Opinion Paper Prepared for the Second National Workshop of the Canadian Arctic Resources Committee, Edmonton, February 1978, p. 3.

30 Department of Indian And Northern Affairs, "Comprehensive Land Claims in Canada: A Chronology of Major Events" (Ottawa, June 1977), p. 1.

groups and associations for research, development and negotiation of "comprehensive claims"—a package entirely separate from the "Rights and Treaty Research" program, which was earmarked for "specific claims". Immediate target groups were those in northern Canada, where resource development was a pressing concern. By the end of the fiscal year 1976-77, for example, the Inuit Tapirisat of Canada, the Council for Yukon Indians, the Indian Brotherhood of the Northwest Territories, Committee for Original People's Entitlement (COPE) and the Metis Association of the Northwest Teritories had between them received about seven million dollars in contributions and loans.[31]

Because Indian groups were effectively boycotting the Indian Claims Commission, and submitting their grievances directly to the federal government, and "Office of Native Claims" was established in 1974 within the Department of Indian and Northern Affairs to evaluate and negotiate both categories of grievance.[32] The adjudicatory functions of this in-house section might possibly have been taken over by the Canadian Indian Rights Commission, established in 1975 by the federal government to report directly to a Joint Cabinet/National Indian Brotherhood Committee.[33] Although the three Commissioners (one each for the Prairies, Ontario and Quebec/The Maritimes) have been appointed, and preliminary work done on defining the issues, the Commission's future is uncertain following the withdrawal of the National Indian Brotherhood from the Joint Committee—in protest, among other things, at the Trudeau government's proposal to "repatriate" the *British North America Act* without involving Indian people—and the election of a Conservative administration in Ottawa. The federal government has continued to provide funds for "specific" claims research and development—about two and a quarter million dollars in each of the past three years. In 1977-78 the Department of Indian Affairs stressed that no new research projects could be started, and although this clause was subsequently dropped, departmental policy is to channel as many claims as possible through the Office of Native Claims. Beginning in 1972-73, most regional Indian associations formed "Rights and Treaty Research" programs, hired staff, and sent them to member communities to define outstanding grievances, and to various archival repositories to collect documentary support. What follows is an outline of the types of material found useful in claims research.

SOURCES AT THE PUBLIC ARCHIVES OF CANADA

Some regional associations, particularly those from western Canada, keep full-time staff in Ottawa; researchers from other groups make very frequent visits. The main reason for this is an obviously critical group of documents—the records of the Department of Indian Affairs. Current files are kept at departmental headquarters in Hull; although there is a general 30-years secrecy rule on government documents, a series of "access to files" guidelines allows accredited researchers to see all but certain categories of material—these include submissions to Cabinet, documents with a security classification, legal opinions,

31 *Ibid.*
32 Tyler and Wright. p. 11.
33 Tyler and Wright. pp. 50-51.

information concerning individual Indians, or inter-governmental correspondence. In the latter two cases, material can be examined with consent of the particular individual or government concerned.[34]

Most other Indian Affairs records can be found at the Public Archives of Canada in Record Group 10, mecca for claims researchers. Since 1974, given the heavy demand for this material, Archives staff have been involved in a major campaign to sort, classify, and microfilm their holdings. So far, the results have been impressive for which, as well as for his services as a guide to the records, researchers owe major thanks to David Hume, archivist directly responsible for the Indian Affairs material. Next to be processed are the more recent acquisitions from headquarters, as well as a great number of files from local offices across the country. Aside from the need to protect original records, a major reason for microfilming the Indian Affairs records was to offer the reels for sale to interested groups or repositories, with the aim of reducing the research and travel costs of Native organizations, and thus the demands placed on facilities and services at the Public Archives of Canada. So far, only organizations from the Prairie Provinces have made extensive purchases. One would hope that Provincial Archives and research libraries will also see fit to acquire materials relevant to their areas.[35]

As far as content is concerned, the Indian Affairs records are sparse up to about 1820—the really relevant documents for the early period come from other sources—expanding thereafter in geometric progression by decade. The early records consist for the most part of Council proceedings with the Native tribes, at which the principal matters of mutual interest, military preparations and the sale of land for the purpose of white settlement, were discussed, or of correspondence relating to those subjects. After 1830, when zeal to civilize the Indians really begins, the picture becomes more complete, and it is possible to study in some detail the reserves and assets of the Indian people of what are now southern Ontario and Quebec. In view of the generally haphazard methods of records management prevailing at that time, particularly at the field office level, it is amazing that so many nineteenth-century documents have actually survived. The office records of George Ironside, for example, Indian Superintendent for Manitoulin Island in Georgian Bay during the 1840s and 1850s, were found in 1884 by a successor, hunting through the attic of Ironside's former residence.[36] At the same time, many of the nineteenth-century pre-Confederation papers are extremely difficult to use. A good example of this is the correspondence of the Governor-General's Civil Secretary, who, from the late 1840s until 1860 was also Superintendent-General of Indian Affairs. Although there is an excellent general finding aid and shelf list to the whole R.G. 10 series, the above correspondence (R.G. 7) was arranged, in the best nineteenth-century fashion, by letter number, and indexed by personal name, with only the scantiest details as to subject.

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34 Access to recent files is through the Treaties and Historical Research Centre at the Department of Indian Affairs. This office also provides guidance and advice to academics and members of the general public on "Indians and lands reserved for the Indians".

35 Lists of archival files available on microfilm can be obtained from the Public Records Division, Public Archives of Canada.

36 PAC, RG10, Vol. 1763, File 5045-2, J.C. Phipps to Department, August 1884.

Researchers are compelled, therefore, to sift through great quantities of material in the hopes of finding relevant information. The later nineteenth-century and twentieth-century records are usually arranged by topic (reserve lands, schools, annuities, estates, timber, minerals, etc.) and by Band or District, which greatly simplifies the reader's task. Here the shelf list is indispensable.

Next in importance to the Indian Affairs records, for western and northern Canada at least, are the files of the Department of the Interior (R.G. 15). Because the federal government colonized those parts of Canada,[37] these records contain a wealth of detail on land settlement. Of particular importance to Metis organizations are the records of land allotments, or of "scrip" redeemable in Dominion Lands, which were given to Metis people in the west and north for the surrender of their "Indian title". The *Manitoba Act* of 1870, for example, had provided for the appropriation of 1,400,000 acres of land in that Province to be divided among the children of "half-breed heads of families".[38] For the past few years, researchers for the Manitoba Metis Federation have been trying, among other projects, to determine if those terms were actually fulfilled.[39] For the history of Rupert's Land (the Hudson's Bay Company Territory) and the North-West Territory prior to 1870, the Public Archives of Canada has microfilm copies of the Hudson's Bay Company's records (M.G. 20), the originals of which are at the Provincial Archives of Manitoba in Winnipeg.[40] A rich source of data for historians and social scientists, these records are less useful for "specific claims" research—with the notable exception of British Columbia—although they do contain some information on the context of the "Robinson Treaties" of 1850 (which covered the North Shores of Lakes Huron and Superior) and Treaties 1 to 7 (1871-77), covering northwestern Ontario and the three Prairie Provinces. For "comprehensive" claims which require evidence as to the aboriginality of individuals and groups, the Hudson's Bay Company material is indispensable, since the journals, reports, accounts and correspondence of the various Company posts can be used to glean genealogical information. The same observation applies to the "miscellaneous" Fur Trade Records at the Public Archives of Canada (M.G. 19), although only for northeastern Ontario and northwestern Quebec.[41]

The Records of the Surveyor-General's Department (R.G. 88) have proven useful for details on the creation and survey of Indian Reserves. There is also material on the early establishment of reserves in western Canada in the files of the Royal Northwest Mounted Police (now the R.C.M.P.). That Record Group

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37 The Yukon and the Northwest Territories are still colonies of the federal government, administered by the Department of Indian and Northern Affairs.

38 Statutes of Canada, 1870, cap. 3.

39 Some of the results of this, and other, research have already been published. See D. Bruce Sealey and Antoine S. Lussier, *The Métis: Canada's Forgotten People*, (Winnipeg, 1975); and D. Bruce Sealey and Antoine S. Lussier, eds., *The Other Natives: The Métis*, I, 1700-1885, (Winnipeg, 1978).

40 Potential researchers require written permission from Shirlee A. Smith, Archivist, Hudson's Bay Company Records, Provincial Archives of Manitoba, 200 Vaughan Street, Winnipeg, Man.

41 This writer was involved in researching a claim—that of the Teme-augama Anishnabai (Deep-Water People) to about 4,000 square miles of land in the vicinity of Lake Temagami, Ontario—which drew heavily on both the above sources. That claim is presently before the Supreme Court of Ontario, in the case of *Attorney-General for the Province of Ontario v. The Bear Island Foundation and Gary Potts et al.*

(R.G. 18) has been a frustration, however, to Metis organizations interested in the two Riel Rebellions, since the files on those subjects transferred to the Archives have been so thoroughly screened as to be almost valueless. The same caveat applies to the Records of the Department of Justice. That Department has so far been unwilling to provide researchers with legal opinions given to the federal government over the past century on the nature of Indian claims.

For eastern Canada, there is hardly a Record or Manuscript Group at the Public Archives of Canada which does not contain at least some material relevant to Native claims. Even the microfilmed French Colonial Records (M.G. 1) have been of use to groups in the Maritimes and Quebec trying to establish the general outlines of French policy towards Native people, as well as the status of particular tracts of land, such as the Catholic Missions at Caughnawaugha and at Lake of Two Mountains. The British Colonial Office Papers (M.G. 11), again on microfilm, are important for those dispatches of provincial Governors and Lieutenant-Governors which discuss Indian policy, or the purchase of particular tracts of land from the Indian people. The return dispatches of the Colonial Secretary (R.G. 7, G1) are valuable for the same reason. There is also much in the Haldimand Papers, once again on microfilm, dealing with the first land purchases in the 1780s from Indian tribes in what is now southern Ontario. Because Indian Affairs were under military control until 1830, the British Military Records (R.G. 8) can be of use although there is, however, a fair amount of duplication between the "C" series and the Indian Affairs Records. The Public Archives of Canada also holds the papers of Daniel and William Claus, whose careers as Indian Superintendents spanned the period between the Seven Years War and the War of 1812, but these documents are very poorly organized.

The Records of the Executive Councils of Quebec, Upper and Lower Canada, and the Province of Canada, on both State and Land Matters (R.G. 1) are also invaluable, because they deal directly with the attempts of colonial Governors to reconcile the conflicting interests of settlers and of Native people. This observation also applies to the post-Confederation Records of the Privy Council (R.G. 2) which contain many documents relating to Native policy and to Treaties 1 to 11 (1871-1930). For eastern Canada, therefore, it is important for researchers to go beyond the Indian Affairs material. The most essential documents, for example, bearing on the two Agreements made in 1850 by the the Hon. W.B. Robinson with the Indians of Lakes Huron and Superior (the so-called "Robinson Treaties") are to be found in the correspondence of the Governor-General's Civil Secretary (R.G. 7, G20), of the Provincial Secretary for Canada West (R.G. 5, C1) and in various records of the Executive Council.

SOURCES AT PROVINCIAL ARCHIVES

As might be expected, provincial institutions hold a great many materials of a regional and local nature relating to Native people, although these are generally scattered throughout various manuscript collections. Finding aids at these repositories which tied together "Native" subjects would be of great help to claims researchers. The following are notes on institutions with which this writer is familiar.

The *Provincial Archives of Manitoba* hold, of course, the complete collection of the Hudson's Bay Company, including those records (post-1870) not yet available on microfilm at the Public Archives of Canada. Most immediately relevant, however, are the papers of Adams Archibald (1870-72) and Alexander Morris (1872-88), the first Lieutenant-Governors of that Province. These papers contain a wealth of detail on the first "numbered treaties"—both men had been principals in the negotiations—on Indian policy, on particular reserves, and on land settlement in general. The Manitoba Archives also hold the Louis Riel Papers.

An Indian camp at Chapleau, Ontario, 1906. (Public Archives of Canada PA-19993)

At the *Archives of Ontario*, the Crown Lands Papers (R.G. 1) contain two specific packages dealing with Indian matters. Researchers should not stop there, however, since the Survey Records, Township Papers, early Land Board Minutes, and correspondence in that series are also liberally sprinkled with material on particular Bands, Reserves and land surrenders. Potentially useful as well, although at this stage difficult to crack, are the Archives' extensive holdings of nineteenth and twentieth-century municipal records. The indefatigable Hugh Macmillan, the Archives of Ontario's manuscript sleuth, has produced the largest collection of fur trade papers outside the Hudson's Bay Company's collection, as well as the Parish Records of various Indian Missions in northern Ontario in the nineteenth century. Both kinds of material have proved valuable for establishing claims based on aboriginal title. The Archives of Ontario also hold the papers of Aemilius Irving, counsel to the Province of Ontario in late nineteenth-century arbitration proceedings with the federal government over the liabilities after Confederation of the old Province of Canada (1840-67). This

collection has been a natural magnet for researchers because of the detailed files Irving assembled on Indian claims submitted to the arbitrators. As a final note, I would add that the Provincial Government, particularly the Ministry of Natural Resources, continues to hold a number of historical files relating specifically to Native claims, which have not yet been turned over to the Provincial Archives. In at least some instances, the corresponding federal file has been available at the Public Archives of Canada for some years.[42]

SOURCES ELSEWHERE

The Archives of many religious institutions have been a great help to Native organizations. Research for the celebrated "caveat" case in the North West Territories, in which Native people attacked Treaties 8 and 11, was conducted by Rene Fumoleau, an Oblate missionary in Yellowknife, who drew heavily on documents from his Order's Archives in Edmonton, Winnipeg, Ottawa, and Montreal. The *Oblate Fathers* have been indisputably the most active missionaries among Canadian Native people in the North and West, since 1844, when they first moved up the Ottawa River.[43] Father Fumoleau's work, incidentally, is one of the few pieces of "claims research" to have actually been published.[44]

Next in importance to the Oblates is the *Anglican Church of Canada*, also very active in northern and western Canada. Here, the most valuable resources are the microfilmed records of the London-based Church Missionary Society and Society for the Propagation of the Gospel, available both at the Public Archives of Canada (MG 17), and at the General Synod Archives in Toronto. Potential readers should be warned, however, that because of their haphazard organization, these collections require a great deal of patience.

Most records of Methodist missions to the Native people of Manitoba and Ontario are housed in the *United Church Archives* at the Birge-Carnegie Library, Victoria University, University of Toronto. They provide a wealth of detail in particular on various Native communities in central and southern Ontario in the nineteenth century. The United Church Archives also have microfilm copies of the records of the Methodist Missionary Society.

The papers of the *Jesuit Fathers*, who returned to the Great Lakes area in the nineteenth century after an absence of two centuries, can be found at St-Jerome (Terrebonne), Quebec.[45] These are helpful for research on the Indian communities on Manitoulin Island and the North Shores of Lakes Huron and Superior.

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42 A case in point is PAC, RG10, Vol. 7763, File 27043-9 dealing with the land claim of the Temeaugama Anishnabai, referred to in note 41 above, which has been generating correspondence since the 1870s. The counterpart provincial file was only made available at "discoveries" connected with the Supreme Court action.

43 At last account, the Oblate Archivist was Gaston Carrière, OMI, Archives Historiques Oblates, Université St-Paul, Ottawa. Father Carrière is the author of a multi-volume documentary history of the Oblate Order in Canada.

44 Rene Fumoleau, *As Long as This Land Shall Last: A History of Treaty 8 and Treaty 11, 1870-1939*. (Toronto, 1973).

45 Archives de la Société de Jésus, Province du Canada Français, St-Jérôme (Terrebonne), Québec, especially Section A. A selection from these documents has been published in Lorenzo Cadieux, s.j., ed., *Nouvelles Relations des Jésuites*. (Montréal, 1972).

The Archives of the *Sulpician Order* hold a considerable number of documents relating to the former Sulpician Mission at Lake of Two Mountains (Oka), Quebec, and thus the long-standing claims of those "Mission" Indians to lands both at Oka, and along the Ottawa Valley. For researchers jaded with bright, air-conditioned reading rooms, the catacomb beneath the Seminaire in Vieux Montreal where these Archives are housed, provides an interesting change of pace.

Finally, the *Metropolitan Central Library* in Toronto houses a number of manuscripts bearing on Native subjects. Of particular interest to several Bands in southern Ontario are the papers of Samuel Peters Jarvis, Indian Superintendent at Toronto (York) in the 1830s and 1840s, who was involved in the misappropriation of Indian funds. The papers of Alexander Matheson, a late nineteenth-century fur trader and mining promoter in the Lake of the Woods area, contain information on the disputed boundaries of certain Indian Reserves in north-western Ontario.

CLAIMS RESOLUTION

After ten years, what have been the fruits of all this research activity? Some "specific" claims have certainly been settled. The Indian tribes of what is now southern Alberta who took part in Treaty 7 (1877), have received cash payments in lieu of the ammunition promised them, by Treaty, but never delivered. And in 1977, the Governments of Canada and Saskatchewan reached agreement with the Federation of Saskatchewan Indians on the provision of land for Bands which did not receive their full land entitlement under Treaty. There have been some positive results of a more general nature as well. The "Rights and Treaty Research" programs of the various Native organizations have been very successful in raising the level of political consciousness in their member communities. There is now a whole new generation of Native leaders who have received much of their training in research or related activities. One would also hope that more of the research findings will eventually be published; the files of most organizations are literally bulging with reports which, by themselves, would replace most of the uniformly lacklustre materials now available on Canadian Native people.

But, when all is said and done, there are still literally hundreds of claims in search of a proper resolution process. In a previous section, I outlined some of the mechanisms which had been tried, and pointed to the uncertain current status of the Canadian Indian Rights Commission. This void has left the Department of Indian Affairs' Office of Native Claims as the only functioning body. Yet, by the fall of 1978, that Office had been involved with only 57 claims, of which 5 had been settled and 5 were under negotiation. The reason for this is that most Native organizations are refusing to submit claims to it, on the grounds that the Department against which most claims are being preferred is not the agency to assess the nature of the government's "lawful obligations" to Indian people. In support of that contention, Bands and organizations which have put forward their grievances complain that the Office, acting on advice from the Justice Department, is rejecting claims on narrowly legalistic grounds.[46]

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46 Tyler and Wright. pp. 51-54.

This points, of course, to an inherent limitation of claims research. Since the Native people whose grievances are being investigated did not keep records of their transactions, any resolution process which does not give equal prominence to oral tradition will be heavily weighted in favor of the Europeans who did. For this reason, the original research contracts specified that organizations would conduct archival "and field" research into Indian rights and treaties. Because of the government's stated policy that claims should be negotiated not litigated, as well as the fact that research contracts have always forbidden the use of such funds for litigation purposes, Native people felt they had been encouraged to believe that claims would be dealt with on equitable principles. The Office of Native Claims' insistence on "strict proof", and its reliance on the opinions of the Justice Department, strike Indian people as a form of military justice.

John Wabinicinabi and family camped near Fort Matachewan on the Montreal River, Ontario, 1906. (Public Archives of Canada PA-59585)

Faced with this Hobson's choice, some groups—those, at least, with the finances and the documents to support their allegations—have preferred to take their chances in genuine law courts. In July 1979, for example, certain members of the White Bear Band of Indians from Saskatchewan launched an action against the Government of Canada in the Trial Division of the Federal Court of Canada. In their statement of claim, which is based on a masterful piece of historical detective work by the Ottawa research firm of Tyler, Wright and Daniel, they allege that at the turn of the century, the Reserve lands of two other Saskatchewan Bands (the Ocean Man and Pheasant's Rump Bands) were illegally taken from them by officers of the Department of Indian Affairs, and their members merged with those of the White Bear Band. These "surrendered" lands were then sold to incoming settlers for the personal financial gain of certain federal officials, among them the Deputy-Minister of the Interior and the Deputy

Superintendent-General of Indian Affairs. The plaintiffs, as successors in title to the two defunct Bands, are seeking to have the original surrenders ruled invalid, and the Reserve lands returned to them.[47] If successful, this action could compel the federal government to redefine its "lawful obligations" to Indian people.

The Office of Native Claims, for its part, suggests that Indian people have unrealistic expectations, since the government must necessarily weigh the interests of the Natives against those of the populace as a whole.[48] This last point is certainly true, and it could be argued that the government has already done more than enough for a group which makes up, at most, 1% of the Canadian population. But behind these unresolved claims lies the fact that the two sides are arguing from different sets of first principles. This is especially true of comprehensive claims. In its current negotiations with the Indian and Inuit people of northern Canada, the federal government is offering settlement packages based on the James Bay and Northern Quebec Agreement of 1976. Under the terms of that Agreement, which became law on passage through the Canadian and Quebec legislatures, the Indian and Inuit people of Northern Quebec were to surrender their aboriginal title in exchange for cash compensation, different categories of reserve lands, guaranteed rights to certain resources, and various government services, with the administrative machinery to implement the package.[49]

These other groups, however, are negotiating for the recognition, not the extinguishment, of their aboriginal rights. The Inuit Tapirisat of Canada and the Committee on Original People's Entitlement, representing the Inuit of the Eastern and Western Arctic, respectively, want to establish their own territory, to be called "Nunavat", based on Inuit political institutions, and responsible "for all matters in respect of which the government of the Northwest Territories and Yukon Territory have responsibilities". The Dene Nation, formerly the Indian Brotherhood of the Northwest Territories, is calling for "a Dene government within Confederation with jurisdiction over a geographical area, and over subject matters now within the jurisdiction of either the Government of Canada or the Government of the Northwest Territories".[50] This same position is being taken by the other groups outside the Northwest Territories, and outside the purview, so far, of the federal government's policy on comprehensive claims. Grand Council, Treaty Number Nine, which represents the 20,000 Cree and Ojibway Indians of far northern Ontario, called in its 1977 Declaration of *Nishnawbe-Aski* (our people and the land), for the renegotiation of Treaty Number Nine (1905-06) to recognize the land rights and sovereignty of the Treaty Nine people.

The fundamental principle, then, from which Native groups are operating is one of "Indian Government for Indian people". Recent claims activity is designed to bolster the land and resource base for such structures for, without such a base, Indian government would be meaningless. To charges that they are

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47 *Big Eagle et al v. Her Majesty the Queen*, Statement of Claim filed in the Trail Division of the Federal Court of Canada, 5 July 1979.

48 Tyler and Wright, p. 53.

49 Department of Indian and Northern Affairs, "Native Claims", Annex C; and "Comprehensive Land Claims In Canada": pp. 20-21.

50 Department of Indian and Northern Affairs, "Native Claims", Annex A.

advocating the formation of ethnically-based territories and the eventual "balkanization" of Canada, Indian people reply that current governmental structures, based as they are on European culture and institutions, are already ethnically-based. They ask only that what is left of the "lands reserved for the Indians" (which, two centuries ago, meant practically all of Canada) remain "reserved", but under their own control, not that of the Minister of Indian Affairs, and certainly not that of the Provinces. This is why a delegation of Canadian Chiefs went to London in the summer of 1979 to protest to the Queen the possible "repatriation" of the British North America Act without their active involvement and consent. Indian people too are speaking, if not of "sovereignty-association", then at least of "renewed federalism". As Fred Plain, a former President of the Union of Ontario Indians, and one of the country's most respected Native leaders, put it recently:

> That word 'sovereignty' scares a lot of people because they think of Quebec. But the reality is that the ten provinces in Canada all have sovereignty under the *British North America Act*. They have the right to make laws on lifestyle, housing, education and so on, and they are responsible to their own people. We are asking for a third system, under federal law. Native people had their own government long before the Europeans came. We must be responsible to our own people, not a Minister in Ottawa.[51]

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51 Interview with Fred Plain, *Wawatay News* (Sioux Lookout, Ontario) October 1979: p. 9.

Résume

Les revendications territoriales de la population autochtone du Canada ont exigé certains services spéciaux de la part de plusieurs dépôts d'archives publics et institutionels. Pourquoi cela fut-il nécessaire? et quels genre d'archives y sont disponibles? . . . sont les questions auxquelles veut répondre cet article.