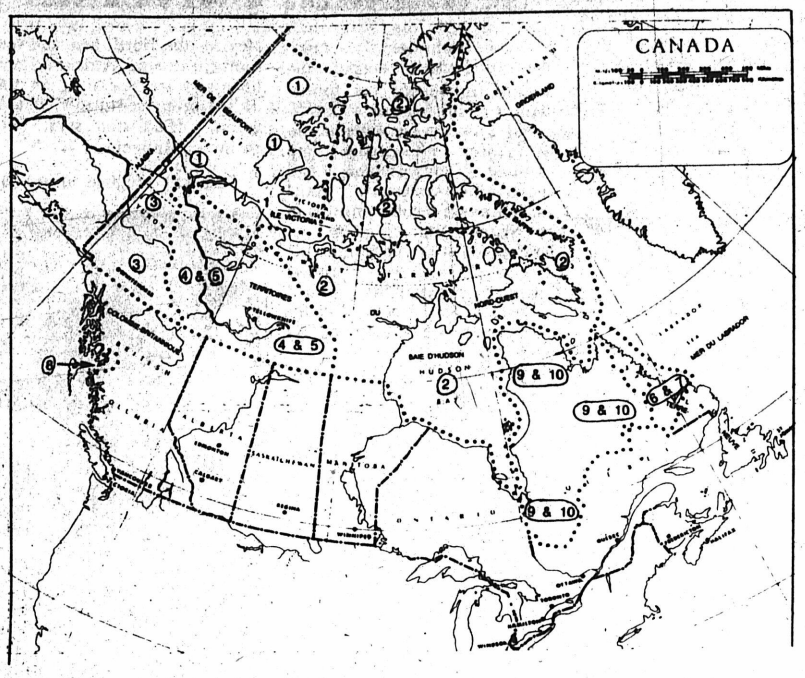
Major Native Land Claims in Canada

Canadian Office of Native Claims explains governmental policy and process for negotiation of Native claims

(Editor's Note: From time to time, this newspaper publishes stories about efforts toward settlement of aboriginal claims of Canadian Eskimos and Indians. It is sometimes difficult to understand Canadian Native Claims settlement issues because of differences of national policies, procedural approaches for handling of claims, and unique political claimates faced by Canadian Natives. This is part one of a series of five articles on what the Canadian Government considers are the ten major Native claims and an explanation of how the government is handling them. The series, prepared by the Office of Native Claims in the Department of Indian Affairs and Northern Development first appeared in the Whitehorse STAR earlier this month.)



NATIVE LAND CLAIMS IN CANADA – The areas outlined on this chart show approximate boundaries of the various claims that have been laid by different Native groups across Canada. These are: (1) Committee for Original Peoples Entitlement (COPE), (2) Inuit Tapirisat of Canada (ITC), (3) Council for Yukon Indians (CYI), (4) Indian Brotherhood of the Northwest Territories (IBNWT), (5) Metis Association of the Northwest Territories (MSNWT), (6) Labrador Inuit Association (LIA), (7) Naskapi Montagnals Innu Association (representing Labrador Indians), (8) Nishga Tribal Council, (9) Grand Council of Crees of Quebec (GCCQ) and (10) Northern Quebec Inuit Association (NQIA).

—Map originally published in The Whitehorse STAR

The Policy

From the earliest days of European settlement in North America, the relationship between Indians and non-Indians was characterized by an assumption on the part of colonial governments that Native people had an interest in the land which had to be dealt with before non-Native settlement or development could take place.

In the British colonies, Brtish policy (resulting in various proclamations, statutes and orders) required that British subjects recognize the interests of Native people in the land and provide compensation in cases where the taking and using of such land interfered with their traditional pursuits.

This gave rise, in what was to become Canada, to the practice of entering into agreements with various tribes. Recognition of Native rights in these early agreements followed the same procedure as a military or commercial alliance – through a "treaty," solemnized by giving of presents, which commuted Native rights in the land and at the same time reserved specific areas for continuing Indian use.

The best known expression of this policy was the Proclamation of 1763, which set limits to European settlement and reserved the land outside these limits for Indian use.

At the time of Confederation, this policy was adopted by the new Federal Government which was given, under the B.N.A. Act, legislative authority over "Indians, and lands' reserved for Indians."

The significant elements of the policy were the exchange of Indian interest in the land for particular parcels of land reserved exclusively for Indian use, as well as other benefits, and the creation of a government department charged with managing the affairs of Indian people.

Between 1871 and 1923, for example, a series of so-called 'numbered treaties' were entered into with Indian people in Ontario, the Prairie Provinces and the Northwest Territories.

These treaties provided that the Crown would set aside reserves for Indians and would provide other benefits such as cash payments, annuities, schools, medical assistance, and recognition of hunting and fishing rights, in return for the relinquishment of the Native interest in the land.

After the signing of Treaty No. 11 in 1921, however, attention turned away from the question of dealing with the Native interest in the land, as all the areas that had been needed for settlement or development had now been secured through the treaties, and lands that remained were not immediately needed for such purposes.

In British Columbia, the Province did not recognize that Indian people had any title and considered the land question settled with the setting aside of reserves.

In 1926, however, a special Committee of the Senate and House of Commons recommended that in lieu of treaty monies payable in other areas, a sum of $100,000 be expended annually for the benefit of Indians in B.C. who had not been brought under treaty.

Novertheless, the Native people in these areas, which included most of British Columbia, northern Quebec and the lands north of 60' gradually began to feel the pressure of non-Native settlement and development on lands which they had previously used and occupied on a relatively exclusive basis.

As early as the 1890's, for example, the Nishga Land Committee had been organized to press the issue of their land claims with the Federal Government, because of their concern over the absence of any treaties to safeguard their land.

After the Second World War, Indian people increased their efforts to obtain acceptance of claims based on aboriginal title. Parliamentary Committees recommended it and Native organizations pursued it right through the 1950's and 1960's, both at the political level and through the courts.

Finally, in 1973, the situation was brought into sharp focus by the Supreme Court of Canada's decision on the Nishga land claim (the Calder case). The Nishgas 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."

Although the claim was rejected on the basis of a technicality, the Court split three to three on the substantive issue of whether the Native title had or had not been "lawfully extinguished."

The Federal Government recognized the significance of that decision On August 8, 1973, the Minister of Indian and Northern Affairs announced the Government's policy on claims of Indian and Inuit people.

This policy stated two things.

On the one hand, it reaffirmed a long-standing Government policy that lawful obligations to Indian people must be met: the Government would continue to deal with grievances that Indian people might have about the Government's administration of Indian lands and other assets under the various Indian Acts and regulations, and those claims that might exist with regard to the actual fulfillment or interpretation of the Indian Treaties or Agreements and Proclamations affecting Indians and reserve lands.

Claims based on these grievances were described in the policy statement as 'specific claims.'

At the same time, however, the statement also indicated the Government's willingness to negotiate settlements with Native groups in those areas of Canada where any Native rights based on traditional use and occupancy had not been extinguished by treaty or superceded by law.

While this Native interest has never been definitively recognized in Canadian law, it relates to traditional Native usage and occupancy of land in these areas (the Yukon, Northern Quebec, most of British Columbia, and the Northwest Territories).

The policy recognized that non-Native occupancy of this land had not taken this interest into account, had not provided compensation for its gradual erosion, and had generally excluded Native people from benefiting from developments that might have taken place as a result of non-Native settlement.

Claims that Native people might make on this basis were termed "comprehensive claims."

One of the main purposes of the comprehensive claims negotiation process is to translate the comcept of "aboriginal interest" into concrete and lasting benefits in the context of contemporary society. Such benefits can be many and varied. They can include lands; hunting, fishing and trapping rights; resource management; financial compensation; taxation; Native participation in government structures; and Native administration of the implementation of the settlement itself.

Final settlement confirms these benefits in legislation, to give them the stability and binding force of law. The significance of the element of finality is that negotiations on the same claim cannot be reopened at some time in the future.

It is recognized, however, that the relationship between Native people and the Government is a dynamic one and must be allowed to evolve over time.

Final agreements must provide for change as circumstances may require in the future.

Another function of the claims negotiation process is to provide a forum which will take into account the interests of non-claimant groups in the area that may be affected by a claim settlement.

Settlement of the claim must accommodate these interests, else settlement will merely give rise to another set of grievances. The involvement of the provincial or territorial governments is essential to ensure this accomodation.

In the case of claims arising in the provinces, provincial participation is particularly necessary becasue lands and resources which may for part of a settlement are under provincial jurisdiction.

The Process

In July, 1974, the Office of Native Claims was established within the Department of Indian and Northern Affairs to deal with the increasing number of claims which were being prepared and submitted to the Federal Government.

Claims are referred to this Office, which has the responsibility, under the authority of the Minister, to enter into discussions and negotiations with Native groups and associations concerning their claims.

It has a small staff which works closely with other government departments and agencies which may be involved (such as Justice, the Department of the Environment, Energy, Mines and Resources, Finance, and so on), and draws heavily on the support of other departmental program areas.

The Office also has a role to play in advising the Minister with regard to the further development of Federal claims policy, and to the processes for settling both comprehensive and specific claims.

When comprehensive or specific claims are referred to the Office, the first step is a careful analysis by ONC staff. Included in this analysis is an examination of the supporting documentation submitted by the claimant group and of the results of the Office's own research on the claim.

In cases where clarification is needed on some of the elements of the claim, the Office arranges for meetings to be held with the claimant group to discuss the issues. The claim is also referred to the Department of Justice for a legal review and analysis, and to other departments that may be involved, for their comments.

The last step in the process is reference of the documentation to the Minister of Indian Affairs, for a formal response to the claim on behalf of the Government of Canada. If the evidence produced by the claimant group substantiates the claim, the Office of Native Claims initiates negotiations under the Minister s direction. Where the findings do not substantiate the claim, the claimants are so advised and are provided with copies of the key documents used by the Government in rendering its opinion on the merits of the claim.

Next week: Part Two of the series – more on the complex and lengthy negotiation process.