

CHAPTER FOUR

Land Claims

AS YOU READ

The reading that begins this chapter is from a speech that marked the end of a long struggle for one First Nation in Canada. Nisga'a leader Dr. Joseph Gosnell delivered the speech in the British Columbia Legislature in 1998, more than one century after the Nisga'a first petitioned the B.C. and federal governments to recognize their land rights and negotiate a treaty.

Dr. Gosnell's speech and the land-claim settlement made news around the world.

Much has changed since the Nisga'a first presented their land claim. Governments and Canadian society have shown growing empathy for Aboriginal issues, increased respect for Aboriginal cultures, and a desire to resolve outstanding claims to land and other Aboriginal rights.

As you read this chapter, think about the different kinds of land-claims issues facing First Nations, Métis, and Inuit peoples. How are these issues a result of each group's unique history?

FOCUS QUESTIONS

As you read this chapter, consider these questions:

- ▲ Why are land claims important to many Aboriginal groups?
- ▲ In what ways do Aboriginal peoples value land and land claims?
- ▲ What are different types of land claims recognized by the federal government?
- ▲ What are different methods for resolving land claims?
- ▲ How is self-government related to land claims?
- ▲ Governments and various groups of non-Aboriginal and Aboriginal peoples have often viewed Aboriginal land rights differently. What ideas and experiences have shaped their perspectives? How have their perspectives changed over time?

Speech to the British Columbia Legislature

By Dr. Joseph Gosnell

Madame Speaker, Honourable Members, ladies and gentlemen.

Today marks a turning point in the history of British Columbia. Today, Aboriginal and non-Aboriginal people are coming together to decide the future of this province.

I am talking about the Nisga'a Treaty — a triumph for all British Columbians — and a beacon of hope for Aboriginal people around the world....

A triumph because, under the Treaty, the Nisga'a people will join Canada and British Columbia as free citizens — full and equal participants in the social, economic, and political life of this province, of this country.

A triumph because, under the Treaty, we will no longer be wards of the state, no longer beggars in our own lands.

A triumph because, under the Treaty, we will collectively own about 2000 square kilometres of land, far exceeding the postage-stamp reserves set aside for us by colonial governments. We will once again govern ourselves by our own institutions, but within the context of Canadian law.

It is a triumph because, under the Treaty, we will be allowed to make our own mistakes, to savour our own victories, to stand on our own feet once again.

A triumph because, clause by clause, the Nisga'a Treaty emphasizes self-reliance, personal responsibility, and modern education....

A triumph, Madame Speaker and Honorable Members, because the Treaty proves, beyond all doubt, that negotiations —

not lawsuits, not blockades, not violence — are the most effective, most honourable way to resolve Aboriginal issues in this country.

A triumph that signals the end of the Indian Act — the end of more than a century of humiliation, degradation, and despair.

In 1887, my ancestors made an epic journey from the Nass River here to Victoria's inner harbor.

Determined to settle the land question, they were met by a premier who barred them from the legislature....

Like many colonists of the day, Premier Smithe did not know, or care to know, that the Nisga'a is an old nation, as old as any in Europe.

From time immemorial, our oral literature, passed down from generation to generation, records the story of the way the Nisga'a people were placed on Earth, entrusted with the care and protection of our land.

Through the ages, we lived a settled life in villages along the Nass River. We lived in large, cedar-planked houses, fronted with totem poles depicting the great heraldry and the family crests of our nobility. We thrived from the bounty of the sea, the river, the forest, and the mountains.

We governed ourselves according to Ayuukhl Nisga'a, the code of our own strict and ancient laws of property ownership, succession, and civil order....

But there were dark days to come.

We took to heart the promises of King George III, set out in the Royal Proclamation of 1763, that our lands would not be taken without our permission, and that treaty-making was the way the Nisga'a would become part of this new nation.

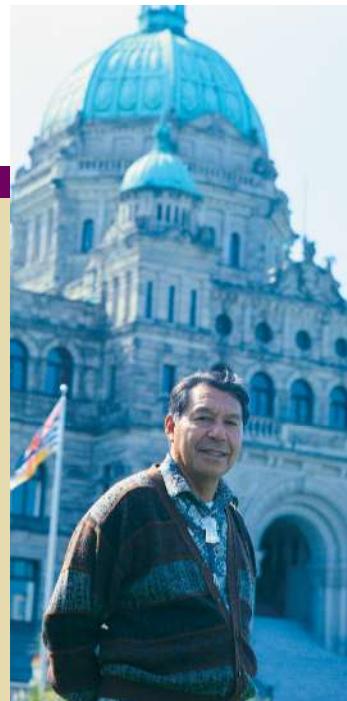
We continued to follow our *ayuukhl*, our code of laws. We vowed to obey the white man's laws, too, and we expected him to obey his own law — and to respect ours.

But the Europeans would not obey their own laws, and continued to trespass on our lands. The king's governments continued to take our lands from us, until we were told that all of our lands had come to belong to the Crown....

Still, we kept faith that the rule of law would prevail one day, that justice would be done....

In 1913, the Nisga'a Land Committee drafted a petition to London. The petition contained a declaration of our traditional land ownership and governance and it contained the critical affirmation that, in the new British colony, our land ownership would be respected. In part the petition said

We are not opposed to the coming of the white people into our territory, provided this be carried out justly and in accordance with the British principles embodied in the Royal Proclamation. If, therefore, as we expect, the Aboriginal rights which we



The Nisga'a Treaty, which Dr. Joseph Gosnell helped negotiate, was the first in modern British Columbia history. Dr. Gosnell is shown here standing outside the legislature building in Victoria, British Columbia.



This Nisga'a longhouse is in New Aiyansh, British Columbia, where the Nisga'a Treaty was initialised. What animals are represented on the longhouse? What do you think their presence says about the Nisga'a relationship to the land and its resources?

claim should be established by the decision of His Majesty's Privy Council, we would be prepared to take a moderate and reasonable position. In that event, while claiming the right to decide for ourselves, the terms upon which we would deal with our territory, we would be willing that all matters outstanding between the province and ourselves should be finally adjusted by some equitable method to be agreed upon which should include representation of the Indian Tribes upon any commission which might then be appointed....

Sadly, this was not to be the case....

How the world has changed. Two days ago and 111 years after Smith's rejection, I walked up the steps of this legislature as the sound of Nisga'a drumming and singing filled the rotunda. To the Nisga'a people, it was a joyous sound, the sound of freedom.

What does "freedom" mean? I looked it up in the dictionary. It means "the state or condition of being free, the condition of not being

under another's control; the power to do, say, or think as one pleases."...

People sometimes wonder why we have struggled so long to sign a treaty?...

To us, a treaty is a sacred instrument. It represents an understanding between distinct cultures and shows respect for each other's way of life. We know we are here for a long time together. A treaty stands as a symbol of high idealism in a divided world. That is why we have fought so long, and so hard.

I have been asked, has it been worth it? Yes, a resounding yes. But, believe me, it has been a long and hard-fought battle. Some may have heard us say that a generation of Nisga'a men and women has grown old at the negotiating table. Sadly, it is very, very true....

We have worked for justice for more than a century. Now, it is time to ratify the Nisga'a Treaty, for Aboriginal and non-Aboriginal people to come together and write a new chapter in the history of our nation, our province, our country and indeed, the world.

The world is our witness.
Be strong. Be steadfast. Be true.

REFLECTION

1. What adjectives would you use to describe the tone of Gosnell's speech? What words and phrases contribute to this tone?
2. What features of self-determination does he highlight?
3. Find examples in this speech that demonstrate the Nisga'a people's approach to land-claims issues. What does this approach reflect about their culture?

The Value of Land

MANY CANADIANS, BOTH ABORIGINAL AND NON-ABORIGINAL, FEEL A STRONG CONNECTION TO LAND. FARMING

families, for example, often become emotionally attached to their land, particularly when a farm is passed from generation to generation. The longer people spend in one location and the more their lives revolve around the land and its natural life cycles, the stronger the bond becomes.

Modern society, however, has become very mobile. People are less likely to put down roots. They are also less likely to make their living directly from the land. To many people, land has become a commodity — something to be bought and sold. It has monetary value and practical uses, but little hold on their hearts and spiritual identities.

In contrast, land lies at the very soul of traditional First Nations and Inuit political, economic, social, cultural, and spiritual ways of life. According to the oral tradition, the land is physically and spiritually a part of people. It is part of their identity as humans. Teachings from the oral tradition maintain that the land has sustained humans, plants,

But nobody really owns land. This teaching is passed on from the Elders. There is only one owner and he is not a human being. He is the one who owns the land and we are here to live together and share the land.

— Wilf Tootoosis, Saulteaux,
In the Words of Elders: Aboriginal Cultures in Transition

AS YOU READ

As you learned in Chapter Two, traditional First Nations and Inuit cultures were tied to the land and its resources. The land had value in complex ways that intersected with virtually every aspect of life, including spirituality.

Today, First Nations, Métis, and Inuit peoples in Canada are surrounded by value systems that frequently see the land in a different light. A value system is a set of standards or qualities considered desirable.

How might a resource company value the land? What about urban dwellers, a farmer, a national park conservation officer, and an environmental activist? How might these people's values compare to traditional Aboriginal values? How do they compare to your own values?

This section examines various First Nations, Métis, and Inuit cultural values regarding land as a way to understand why land claims play a central role in many Aboriginal people's aspirations. The values discussed represent general cultural beliefs, but do not represent the beliefs of all Aboriginal individuals by any means. As you read pages 111–117, consider how you value land. Are you connected to a particular reserve, settlement, or other place on the land? What experiences created this connection?

and animals for thousands of years and will sustain them in the future. People care for the land and it cares for them in return, in a reciprocal relationship of giving and taking.

Many Métis people hold similar ideas, although in general their cultural connection to land relates more to political, economic, and social pursuits rather than spiritual beliefs.

Native people did not feel ownership of land or homes, they felt the responsibility of preserving it through caring for it. They maintained the area for future use and productivity. Land was a shared, living entity.

— Twylah Hurd Nitsch, Seneca,
In the Words of Elders: Aboriginal Cultures in Transition

ECONOMIC VALUE

In non-Aboriginal society, the most prevalent value attached to land is economic. This value is what the land or its resources can be bought or sold for on the open market. In this sense, land value can be quantified in dollars. An individual must own land in fee simple to take full advantage of this kind of land value. This does not mean they have to sell it. People who own land can use it as a security to borrow money. They can then invest that money in ways that generate income.



The Nakoda First Nation operates Nakoda Lodge, a hotel, restaurant, and conference facility that makes use of the First Nation's prime land in the Rocky Mountains to create economic benefits for the community. What other First Nations or Métis ventures can you name that use land to create economic benefits for their communities?

From an Aboriginal worldview, land is also economically valuable. It provides a place for people to make a living, in both traditional and non-traditional ways. Hunting, fishing, and trapping still play a role in many Aboriginal people's lives. Without a land base and access to unoccupied Crown lands, many of these ways of life would be impossible.

An Aboriginal sense of economic value is inherently sustainable. Land is so much a part of other aspects of life that traditional Aboriginal people would no more destroy the land than they would destroy themselves. The end goal is the maintenance of a way of life and the community.

This is not to say that Aboriginal peoples today do not wish to take advantage of the revenue that can be generated from land. Forestry, energy, and mineral resources contribute to the prosperity of many Aboriginal communities. A wide range of other industries — from agriculture to tourism — also require land.

Aboriginal communities generally pursue such opportunities as a way to re-invest money in the

The one thing we have to be sure of is, our people have always lived off the land. Now define living off the land in today's terms. Today's terms would mean that if we are entitled to live off the land, as per agreement with Treaty No. 8 in this area, the definition has to change, today, because we cannot survive on the trapping and hunting economy. What else does the land provide: It provides trees, which should belong to the Native people, not to Japanese companies. The Athabasca District, this area has more stuff, minerals, oil and gas than the rest of the world. There are only 4000 of us Indians, maybe, in this whole area. They could pay us off a million dollars a day, a month and still have lots of profits for themselves. So that is what we have to push for. If people have to live off the land, we have to have some control of surface and sub-surface rights.

— Roland Woodward, *Inkonze: The Stones of Traditional Knowledge*

community to strengthen it. Development is done carefully, with an eye to future generations and their needs.

CULTURAL VALUE

Aboriginal cultures are deeply connected to land. Aboriginal people's stories, histories, and traditions are tied to the land of their ancestors. By maintaining a link to that land and its resources, Aboriginal people can retain a connection to their culture.

For example, in the Métis culture, land means freedom and autonomy — it is a means to an end. It is what their people have demanded as their right throughout their history as a nation. Land is associated with an independent way of life that is inextricable from other cultural values.

In addition, land strengthens cultures and provides for their future. A common land base encourages people to live near one another and maintain elements of their culture, such as ceremonies, kinship ties, and language.

SPIRITUAL VALUE

For many First Nations and Inuit peoples, the cultural value of land is intertwined with its spiritual value. Traditional First Nations and Inuit spirituality is not separate from other parts of life. Spirituality is involved in every aspect of life and in every part of the world.

Some First Nations people use the expression *Mother Earth* to express the sense that the land gave birth to the people and nourishes them. In return, the people must respect, nurture, and protect the land, as they would a mother. Land is an integral part of a person's identity.



The Keewatin Career Development Corporation helps co-ordinate the programs of career development agencies from northern Saskatchewan. At the organization's summer camp, pictured here, Charlotte Sylvestre gets ready to show students from Descharme Lake, Saskatchewan, how to make dried fish. Why might a career development organization have a program that teaches traditional pursuits, such as drying fish? Of what value is land to a program like this?

The land's spiritual value is sometimes tied to a specific piece of land. A particular location may be the place of traditional ceremonial gatherings, such as the Sundance. Another might be an ancestral burial ground or a site known for spiritual power.

Métis culture is more associated with Christian religions, such as Roman Catholicism, so it has less of this sense of spiritual connection to land. However, some Métis people may feel a strong bond to the spirituality of their First Nations ancestors and relatives. If they do, they may share these spiritual connections to land.

The day of my birth I was helpless and my mother took care of me.... The Northwest is also my mother, it is my mother country.... I am sure that my mother country will not kill me any more than my mother did forty years ago when I came into the world, because a mother is always a mother, and even if I have my faults, if she can see I am true she will be full of love for me.

— Louis Riel



At the Turton Lake Trapping School in the Northwest Territories, 120 kilometres from the nearest settlement, a group of Dene teens spends the winter trapping marten and beaver, hunting geese, fishing — and hitting the books. Here students at the school are shown holding furs at the Fur Harvesters Auction House in North Bay, Ontario. How does this program demonstrate the educational value of land?

EDUCATIONAL VALUE

For countless generations, First Nations and Inuit peoples passed on their traditional knowledge through everyday teaching. Children collected plants with their parents, learning what each one was used for. They listened to Elders tell stories about their ancestors, often while working alongside them on the land. An uncle might teach a nephew how to set a snare, or a grandmother might guide her granddaughter's hand as she learned to prepare a buffalo hide. Education was informal and part of everyday life on the land.

People observed the natural world around them and were accustomed to reading its signs of weather, seasonal change, and animal activity. People observed and experienced natural laws at work — such laws showed the hand of the Creator,

which reinforced spiritual beliefs. Experienced people in the community modelled behaviour that showed respect for these laws. Knowledge and values were conveyed at the same time.

Today, students in many Aboriginal-run schools learn traditional knowledge and values as part of their overall education. As in the past, learning happens inside and outside the classroom.

Having a land base has another important educational value — it facilitates Aboriginal language use and preservation. People are encouraged to learn and use traditional languages if other people living around them speak those languages.

SOCIAL VALUE

Land has a significant social value. It provides an anchor and focal point for Aboriginal communities — it is home. It provides the location for social gatherings and spiritual ceremonies — virtually all of which traditionally take place in natural settings, using natural materials. Such gatherings reinforce a sense of community, feelings of belonging, a sense of identity, and self-esteem.

POLITICAL VALUE

The economic, social, cultural, spiritual, and educational values of land intersect with land's political value. Aboriginal leaders see land as an important component of self-government and self-determination. Land provides a springboard from which to work politically to meet community needs. Aboriginal peoples can work within or alongside the Canadian political system to ensure the success of their communities.

Indigenous Knowledge

Using old magazines and newspapers, create a collage that represents your own ideas about and values surrounding the land. Your collage can use photographs, headlines, writing, paint, crayon, fabric, and even natural materials you collect from outside. Think about how your experiences with the land (or lack of experiences) have shaped your ideas and values.

PROFILE

LAUNA LOYIE

Paddle Prairie Métis Settlement

For someone who loves the land as much as Launa Loyie does, becoming an environmental technologist was a real eye-opener.

Her mother, a traditional Cree woman, taught Loyie that there are repercussions to everything humankind does to the land. Now Loyie understands exactly what her mother meant.

"After some research on the Athabasca River, I realized that there are five to seven pulp mills and several municipalities that discharge waste into the river. There are also timber operations near the river. These activities cause temperature disturbances that upset the delicate balance of aquatic life. From the headwaters of Jasper to the Athabasca basin, a 1231-kilometre journey, the people of Fort Chipewyan are surrounded by water that is not as healthy as it once was," explains Loyie.

In 2000, the thirty-two-year-old single mother returned to school to complete a two-year environmental technology program at Fort McMurray's Keyano College.

"Most students found they didn't like being out in the heat and cold, sun and rain, to conduct field research. But I grew up on a farm picking roots in the fields. My father hunted and we grew a big garden. We chose to live without electricity or running water for years, and I hated it. I'd say to my parents, 'This is the twentieth century. Why can't we live like everybody else?' But now I look back and I'm glad for

those times. I can function without amenities better than most people my age."

In high school, Loyie had a penchant for sciences, and considered becoming a nurse. "But with the cutbacks and the work schedules in hospitals — double shifts and night shifts compromising the health of the staff — I decided on a career in environmental technology."

Originally from Keg River, Alberta, Loyie now works as an environmental monitor for the Paddle Prairie Métis Settlement. Her job is to ensure that oil and gas extraction on settlement land complies with environmental protection standards.

Loyie enjoys performing chemical analysis of air, soil, and water, but the results of her work are sometimes discouraging.

"From what I see, in general, it seems we are taking a lot more from the environment than we are reclaiming," she observes.

On the other hand, she counters, new companies continue to learn more about protecting the environment from their own research and from other companies that have been operating longer than they have. Innovation may be the key to restoring environmental health.



Launa Loyie

REFLECTION

How do Loyie's work and concerns reflect her heritage? What qualities make her good at her job? Write about your own career or work plans.

TALKING CIRCLE

THE VALUE OF LAND

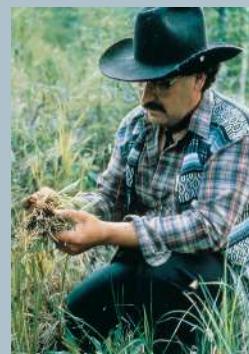
Elders possess generations of knowledge about traditional values and how they can be understood and used today. The reading on pages 116–117 includes Russell Willier's ideas about the importance of land and traditional land management techniques. Willier is a well-known Alberta Elder from the Sucker Creek Reserve in Alberta. Authors David Young, Grant Ingram, and Lise Swartz spent time with Willier to write *Cry of the Eagle: Encounters with a Cree Healer*. In the excerpt on page 117, the authors describe Willier's reasons for wanting a section of the Swan Hills [in Northern Alberta] designated as a retreat for Aboriginal peoples. Read the excerpt and then discuss Willier's ideas or your own about Aboriginal land management techniques and how they can contribute to Aboriginal and non-Aboriginal societies today.

You may wish to invite an Elder to your class to facilitate your talking circle. If you do so, be sure you use proper community protocol to issue the invitation. Your teacher will help you with this.



What I can't understand is when they go logging in the Swan Hills or Hinton area, they leave the land next to broke; there are no trees there, no roots, herbs, nothing. Why don't they put the farmers there, since it's already cleared and wasted land anyway? They should put the farmers where the loggers have already done the damage. Then they try to plant little trees there. Why don't they just cut down and drag out the big trees they need without uprooting the entire area? If they left the smaller trees, the wind wouldn't knock them down and the trees would re-grow a lot faster. Even if the government says people and jobs come first, they still have to have respect for nature, because in the long run it works against people. They can't see the future. There's a lot of damage being done to the environment that should be discussed in order to realize what's happening to our country here. We call it the blessed country, but it is sure to go back to rock in no time. I might not see that, but our great-grandchildren will.

— Russell Willier, *Cry of the Eagle: Encounters with a Cree Healer*



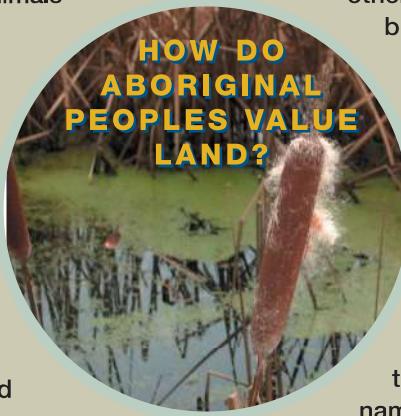
Russell Willier

This land [part of the Swan Hills] is in the centre of the area traditionally used by natives for vision-quest purposes. Logging is being done nearby, and Russell is concerned that the vision-quest sites may soon be ruined. Russell would like to continue to have a place to take young people for a wilderness experience that would include instruction in the vision quest, survival skills, the Sweetgrass Trail, and other traditional native skills and knowledge. He would also like to instill in native young people traditional values connected with hunting, particularly a respect for the animals and a responsiveness to the delicate balance of nature. This means teaching them to exercise control over the numbers of animals killed, to vary the seasons and places in which animals are hunted, and to obey the fishing and hunting regulations....

It is important that more native people become Fish and Wildlife officers. This would give them the authority to discipline those few who create problems for everyone, and they would likely have a better understanding of native needs and environmental issues. As Russell says, his ancestors have been hunting in this area for many centuries while maintaining long-term ecological balance. Experienced hunters had a vast knowledge of the resources of the land and the changing conditions of game populations. Their hunting practices were characterized by their willingness to exercise self-control. Even today, successful hunters who exhibit competence, skill, and spirituality, and who do not hunt excessively, are respected and are often contrasted with those who hunt recklessly.

REFLECTION

How do Russell Willier's ideas about the land demonstrate traditional values? How do his ideas compare to those of James Carpenter on pages 76–77?



Russell sees a great deal of waste of animal remains that could be used to regenerate wildlife. Most big-game hunters dispose of moose remains and other large animal intestines by throwing them in the dump. They should be required to leave the remains behind in the forest or bring them to the trapline where other animals can eat them. This is particularly important for large, commercial fisheries. Although fisheries located on Lesser Slave Lake are regulated by quotas set by the government, their means of disposal of fish-heads and other remains is not only wasteful, but also destroys wildlife. The present practice is to dump the remains in a large hole, which is then covered with lye. An animal that comes along and eats the remains dies of lye poisoning. This, says Russell, is representative of the wrong attitude that many non-natives have developed towards the environment, namely "grab, make a dollar, and forget about the rest." Fisheries make considerable profits from their catch, and there are enough fish remains to feed many local animals. Dispersing these remains in areas where animals are starving should be mandatory. This would create jobs for native people in northern Alberta, where there is much unemployment.

— David Young, Grant Ingram, and Lise Swartz,
Cry of the Eagle: Encounters with a Cree Healer

LOOKING BACK

Create a concept map that shows how the settlement of land claims could bring about political, economic, social, cultural, educational, and spiritual self-determination for Aboriginal peoples. In what aspect might you expect Métis culture to differ from those of First Nations and Inuit peoples? Why?

Land-Claims History

AS YOU READ

Through land claims, Aboriginal peoples assert many of their rights as indigenous peoples in North America. Claiming land rights is akin to claiming rights to culture and self-determination. Through land, groups are often better able to ensure their cultures' future.

Pages 118–121 explore the early history of land claims in Canada. Review the major concepts you have read about in the textbook so far, such as Aboriginal rights, Aboriginal title, inherent rights, land rights, treaty rights, self-determination, self-government, and sovereignty. Make a list of these concepts and be sure you understand each. As you read, consider how these ideas relate to land claims. Make notes each time you see a connection between what you are reading in this section and what you learned earlier.

THE HISTORICAL ROOTS OF LAND CLAIMS STRETCH BACK TO THE ROYAL PROCLAMATION OF 1763. THE PROCLAMATION RECOGNIZED ABORIGINAL TITLE TO THE LAND AND ESTABLISHED THE CROWN'S EXCLUSIVE RIGHT TO

- ✖ negotiate the “extinguishment” of that title.

Over the next century and a half, the government and many First



Gkisedtanamoogk, of the Wabanaki First Nation from Burnt Church, New Brunswick, participates in a land-claims demonstration outside the Supreme Court on June 21, 2001. Protestors laid hundreds of blankets on the lawn. What statement do you think the protestors were trying to make with the blankets?

Nations signed treaties. In the government's view, these gave the Crown ownership of Canada. In return, the Crown promised to reserve land for the First Nations and to provide them with payments of cash and goods, ongoing support in areas such as education, and continued traditional use of the lands covered by treaties.

Large areas of the country, along with the many people living there, were completely left out of the treaty process. For example, no Métis or Inuit groups signed any treaties. Some First Nations were also left out. Many of these groups argue that they still hold legal title to their traditional lands. Even groups that did sign treaties sometimes contend that the government failed to honour its obligations, or to uphold promised land rights.

Through land-claims negotiations, Aboriginal groups and governments (both federal and provincial) try to resolve these disputes.

The Royal Proclamation of 1763 continues to loom large in Canada today. When Canada patriated its constitution in 1982, Aboriginal peoples made sure the constitution protected their rights as affirmed by the Royal Proclamation.

THE NISGA'A NATION PETITION

When British Columbia became a province in 1871, the federal government planned to aggressively pursue treaties there, just as it had across the prairies. But B.C.'s first lieutenant-governor, Joseph Trutch, had other ideas. He did not believe that First Nations had land rights and advised Canada's prime minister,



Nisga'a Chief Israel Sgat'iin, shown here in a robe of silver-tipped grizzly bear, was a staunch defender of his nation's traditional lands.

In 1886, he had two government surveyors "escorted" out of the Nass Valley. "These are our mountains and our river," he reportedly said.

John A. Macdonald, not to pursue treaties in B.C.

The Nisga'a Nation of northwestern B.C. has spearheaded Aboriginal land-rights activism in Canada. In the 1880s, the Nisga'a sent delegations to Ottawa and Victoria to defend their land rights, but got no response. In 1890, they established the Nisga'a Land Committee to defend their interests.

In 1913, the committee sent a formal petition to the British government. The petition argued that the Nisga'a had never surrendered their land under the terms of Britain's Royal Proclamation of 1763. It called for negotiations.

The petition marked an important event in Canada's history: the first time a First Nation used European law to argue for its rights.

LAND CLAIMS: A LOADED TERM?

In the Cree language, a land claim is described as *kâwi ta tipeyihhtamihk askiy* (to own the land again). In Blackfoot, a land claim is *iihtai'tsskao'pistsi ksaahkoistsi i'tomootspistsi* (fighting for lands that were taken away from us.) However, many Aboriginal peoples reject the term *land claims*. They see land as their inherent Aboriginal right, not something they need to claim and defend.

That said, land claims are an historical, political, and legal reality in Canada. The term has widespread use, even among those who reject its validity. By using it in this book, we do not intend any negative reflection on Aboriginal beliefs or aspirations.

... [T]he term “Land Claim” is itself both a misleading title and an insult to First Nations. If there is any doubt as to ownership, the benefit of the doubt must go to the original owners — the First Nations. Why should we have to claim our own lands? The burden of proof of legal title or interest in First Nations lands must rest with Canada.

— Six Nations of the Grand River Territory,
“Inadequacies of the Federal Land Claims Policies”

REFLECTION

What is your opinion of the term *land claim*? Do you agree with the perspective of the Six Nations of the Grand River Territory? Explain your answer.

However, the British government referred the problem back to Canada's government — and little happened.

LAND CLAIMS AND THE INDIAN ACT

In terms of land claims, the 1876 Indian Act has had two lasting effects. In the act, the federal government made itself the arbiter of who qualified as a Status Indian. For years, the federal government

refused to recognize land claims from anyone except Status Indians. This disqualified Inuit people, Métis people, and First Nations people without status under the Indian Act.

The Indian Act also established roadblocks for First Nations people who qualified to submit land claims. For example, in 1927, partly in response to the Nisga'a petition, the federal government amended the act to make it illegal for First Nations to raise money to pursue land claims. This restriction remained in place until 1951.

THE CALDER CASE

After 1951, revisions to the Indian Act meant that First Nations could once again organize to pursue land rights. In 1955, the Nisga'a re-established their land committee, re-naming it the Nisga'a Tribal Council.

In 1967, the council launched a court battle that became known as the Calder case, named after council president Dr. Frank Calder. The Nisga'a contended that they still held legal title to their traditional lands, since they had never signed a treaty. Their case went all the way to the Supreme Court of Canada. However, the court could not reach consensus on the validity of the Nisga'a claim and ended up rejecting it on a technicality.

In its ruling, however, the court declared that, in the absence of an agreement in which the Crown explicitly stated its intention to extinguish title to land, Aboriginal peoples could still hold rights to land and resources. This meant Aboriginal title legally pre-existed any declarations by the Crown regarding sovereignty.

CEDED AND NON-CEDED LANDS: WHERE ARE THEY?

Treaties cover many parts of Canada. The Canadian government generally considers these areas **ceded lands** — given up by First Nations. In the government's view, this was the point of treaty making and in keeping with the intentions of the Royal Proclamation of 1763.

Many First Nations believe, however, that their ancestors did not understand that treaties were aimed at ending their Aboriginal title and rights to land. They believe that their ancestors saw the treaties as agreements to share some of their land for certain purposes, such as agriculture, while retaining inherent rights to the land. They also argue that, according to oral tradition, the written treaties fail to accurately reflect important verbal agreements that were part of the negotiations. In their view, First Nations have never given up Aboriginal rights to their lands.

A large part of Canada remains outside any treaty. These are **non-ceded lands**, areas

Aboriginal peoples never made agreements to share. These lands include some of Canada's most remote regions, which have not experienced the pressures of settlement and development like those that triggered treaty making in other parts of Canada.

These lands also include most of British Columbia, which includes some of Canada's most populated urban centers. British Columbia is an exceptional case in Canada and an important focus of this chapter.

REFLECTION

Using a blank map of Canada, block out the territory covered by Canada's historic treaties. These treaties are shown on a map on page 25. As you work through this chapter, continue to block out territories covered by land-claims agreements. Use different colours for historic treaties and modern treaties.



The *Calder case* is the first of many significant court cases First Nations have used to support their rights claims. This photograph shows Nisga'a leader Frank Calder speaking to media after a meeting in 1973 with Prime Minister Pierre Trudeau and Minister of Indian Affairs Jean Chretien.

As a result, the Calder case was far from a defeat for Aboriginal land rights. Before the Calder ruling, the federal government held the position that Aboriginal title did not exist as a legal concept. This allowed it to turn a blind eye to Aboriginal land rights in large sections of the country. The Supreme Court's recognition of Aboriginal title required new respect for Aboriginal land claims — and a new commitment from governments to settle them. Governments could no longer claim exclusive authority to make decisions concerning Aboriginal lands.

In 1973, the federal government announced a revised land-claims policy, and the following year it created the Office of Native Claims, which could, for the first time, negotiate land-claims settlements based on unextinguished Aboriginal title. The meaning of this development is the topic of the next section, pages 122–134.

LOOKING BACK

Re-read Dr. Joseph Gosnell's speech from pages 108–110 and write in your journal about the significance of the Nisga'a land claim to other Aboriginal land claims in Canada.

THE EVOLUTION OF FEDERAL POLICY ON ABORIGINAL LANDS

1763	Royal Proclamation recognizes Aboriginal title to land in the West and gives the Crown the exclusive right to negotiate the extinguishment of Aboriginal title	1760
1876	Indian Act forbids selling or leasing reserve land to any group except the Crown	1780
1889	Indian Act revision gives the federal government more control over management of reserve land, including the ability to lease reserve land over band council objections	1800
1913	Nisga'a petition is the first land claim in Canadian history	1820
1927	Indian Act revision makes it illegal for First Nations to hire a lawyer (without the government's permission) to pursue claims against the federal government	1840
1951	Indian Act revision removes restriction on First Nations legal action against the federal government	1860
1967	Nisga'a Tribal Council sues the federal government in what became known as the <i>Calder case</i>	1880
1973	Supreme Court ruling on the <i>Calder case</i> finds that Aboriginal title exists in Canadian and Aboriginal law	1900
1974	Federal government launches the Office of Native Land Claims	1920
1981	<i>In All Fairness: A Native Claims Policy</i> gives more flexibility to land-claims negotiators	1940
1982	Constitution Act recognizes Aboriginal rights and gives modern land-claims agreements the same protection as treaty rights	1960
1985	Coolican Report criticizes the federal government's policy of requiring the extinguishment Aboriginal title and rights in land-claims settlements	1980
1986	Federal government revises claims policy and removes requirement that rights and title be extinguished in land-claims settlements	2000
1990	Oka crisis results in changed attitudes towards many Aboriginal rights issues	
1990	Federal government revises claims policy, removing six-claim limit on the number of claims it will negotiate at one time	
1991	Federal government revises claims process to improve efficiency and creates the Indian Specific Claims Commission and the Indian Claims Commission to review land claims rejected by the federal government	
1998	<i>Gathering Strength — Canada's Aboriginal Action Plan</i> affirms the federal government's understanding that treaties, both historic and modern, are a key basis for the future relationship between Aboriginal peoples and the Crown	



First Nations Land-Claims Issues

AS YOU READ

First Nations with status under the Indian Act often have different perspectives on land issues and land claims than other Aboriginal peoples. Status First Nations people also differ from one another in these perspectives, but they tend to share many key concerns. Different perspectives are the result of different histories, cultures, and current political and economic situations in Canada. This section deals with the land-claims process and the issues affecting First Nations land claims. As you read, make a list of key issues that affect these land claims. What makes some claims easier to resolve than others? What approaches seem to work best in settling claims?



Review the excerpt from the Constitution Act on page 80 to find where modern land-claims agreements are mentioned. How does the constitution support the rights gained in historic and modern treaties?

ABORIGINAL GROUPS LAUNCH LAND CLAIMS WHEN THEY BELIEVE THEY ARE ENTITLED TO MORE LAND THAN THEY HAVE. INDIAN AND NORTHERN AFFAIRS CANADA DEFINES TWO MAIN TYPES OF LAND CLAIMS:



- **Comprehensive land claims** flow from Aboriginal rights and title that, like the Nisga'a territory, have never come under treaties or other legal agreements. The settlement of a comprehensive land claim is considered a modern-day treaty.
- **Specific land claims** arise when First Nations believe the government has not properly fulfilled treaty or other legal obligations.



OFFICE OF NATIVE LAND CLAIMS



In response to the Calder decision, the federal government launched the Office of Native Claims (ONC) in 1974. The ONC was to handle both specific and comprehensive land claims. Formation of the ONC

represented a major step in the government's recognition of Aboriginal rights. However, government policy still sought to extinguish Aboriginal title to the land, rather than to share or accommodate it. In order to settle claims, Aboriginal groups had to agree to give up their Aboriginal title. The federal government wanted to achieve a degree of "certainty" that any settlements they reached would be final. They did not want to face additional claims in the future.

The ONC's first seven years resulted in only two successfully concluded comprehensive land claims, one with the James Bay Cree and one with the Naskapi in northern Quebec. In 1981, the federal government updated and expanded its land-claims policy in a document titled *In All Fairness: A Native Claims Policy*.

The new policy gave negotiators a bit more room to manoeuvre. They could now grant First Nations title to their own reserve lands and partial rights to other land — for hunting and fishing, for example. The policy also offered First Nations more authority to administer their own affairs, though it stopped short of full self-determination. The policy failed to address the needs of Aboriginal peoples without reserve lands.

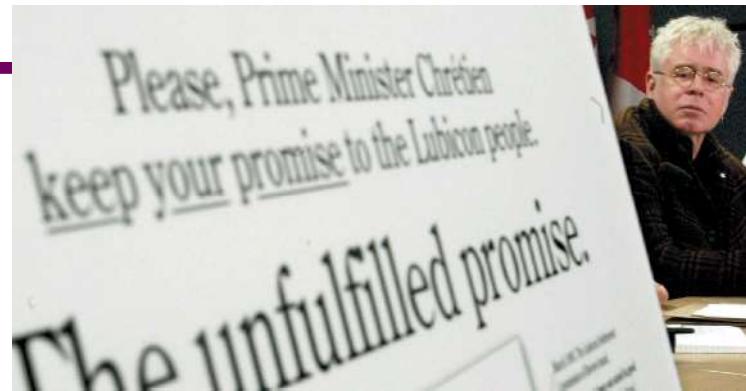
In 1982, parliament enshrined Aboriginal rights in Section 35 of Canada's new constitution. Constitutional amendments in 1983 made it clear that modern land-claims agreements would have the same status as other treaties. Although Quebec refused to participate in the new constitution, it passed provincial legislation affirming these land rights.

THE COOLICAN REPORT

Some Aboriginal groups criticized *In All Fairness: A Native Claims Policy* for its continued emphasis on extinguishing Aboriginal title to lands outside reserves. They also felt that the government remained committed to assimilating Aboriginal peoples, rather than helping them preserve their societies and cultures.

In 1985, the federal government appointed a task force to re-examine the government's land-claims policy. The Task Force to Review Comprehensive Claims, headed by Murray Coolican, met with Aboriginal representatives across Canada. It recommended sweeping changes to federal policy in its report *Living Treaties, Lasting Agreements* — better known as the Coolican Report.

The report criticized the approach of the past as fundamentally flawed. This approach offered cash and reserves in exchange for extinguishing Aboriginal title. "To date," stated the document, "treaties and modern settlements have provided neither the finality desired by governments nor the guarantee for the future desired by Aboriginal peoples."



Many non-Aboriginal Canadians support Aboriginal land claims, often from principles of fairness and justice, echoing the Coolican Report's findings. In this photograph from 2003, singer-songwriter Bruce Cockburn asks Prime Minister Jean Chrétien to settle a land-claim promise the prime minister made to the Lubicon Lake Cree in 1993.

The report urged Ottawa to build "living," lasting partnerships with Aboriginal peoples, instead of limited, final settlements. Furthermore, it recommended that the federal government consider political, social, and cultural issues in negotiating land claims, in addition to economic issues.

In 1986, the federal government responded to the Coolican Report's findings by removing the requirement that land-claims settlements extinguish Aboriginal title. This change made it possible to settle several long-standing claims that had been hung up on this one requirement.

Aboriginal peoples have never accepted the notion that the price of their well being in the land of their ancestors was the abandonment of their cultural distinctiveness and special Aboriginal status. Through centuries of social and economic hardship and a sustained government policy of assimilation, their deep sense of Aboriginal identity has remained remarkably strong, and their communities have survived.

Canada still has an opportunity to make lasting agreements with Aboriginal peoples based on the recognition and affirmation of their Aboriginal rights and with respect for their unique and enduring place in Canadian society.

— *Living Treaties, Lasting Agreements* (Coolican Report)

THE LAND-CLAIMS PROCESS

To launch a comprehensive claim, an Aboriginal group must research its case and submit evidence to the federal government through Indian and Northern Affairs Canada (INAC). Specific claims in the western provinces go to Specific Claims West, which is the part of INAC responsible for settling specific claims in British Columbia, Alberta, Saskatchewan, Manitoba, and the Yukon.

The government then reviews the claim and decides if it has legal merit.

If the government accepts the claim, it begins negotiating with the Aboriginal group to settle it. Provincial or territorial governments participate as well, because the lands in dispute often fall within their jurisdictions.

If the government rejects a comprehensive claim, the Aboriginal group can ask the Indian Claims Commission (ICC) to review the decision. The ICC was created by the federal government in 1991. It is an independent body that can hold public inquiries into land claims rejected by the federal government. It also sometimes mediates in disputes between the government and Aboriginal groups. The Indian Specific Claims Commission (ISCC), also recreated in 1991, reviews issues surrounding specific claims.

If an ICC or ISCC review fails and the Aboriginal group wishes to continue their claim, it may have to file a lawsuit against the government.

Court battles carry huge costs — potentially crippling to an Aboriginal group — and can take years. They also create winners and losers, a situation that can lead to frustration and confrontation. The federal government and most Aboriginal groups place a high priority on negotiating land claims whenever possible.

Comprehensive Claims

According to government guidelines, comprehensive claims must meet the criteria that follow:

- The Aboriginal group is, and was, an organized society.
- The Aboriginal group has occupied its territory since time immemorial. Its occupancy was “an established fact” when European nations asserted their claim on the territory.
- The Aboriginal group occupied the territory mostly to the exclusion of other organized societies.
- The Aboriginal group continues to use and occupy the territory for traditional purposes.
- The group’s Aboriginal title and rights have not come under any treaty, or become restricted by other lawful means.

Comprehensive claims are highly complex. It can take years for all sides to reach a final agreement. In the first three decades of the government’s claims policy — from 1973 to 2003 — only fifteen comprehensive claims reached resolution.

COMPREHENSIVE CLAIM: THE ALGONQUINS OF GOLDEN LAKE FIRST NATION

The Algonquins of Golden Lake First Nation put forward its comprehensive land claim in 1985, stating its claim to 3.6 million hectares in southeastern Ontario. Two historic treaties cover the region, but neither treaty involved the Algonquins of Golden Lake.

In 1772, just nine years after the Royal Proclamation of 1763, the First Nation sent its first petition to the Crown protesting the loss of its lands. More than two centuries later, in 1983, it delivered its twenty-ninth petition. In each document, the First Nation insisted that it had never surrendered its traditional lands and so it retains title to those lands.

It is safe to say that the Golden Lake claim posed fewer complications in 1772. Today, the area they claim includes one of Canada's largest military bases, CFB Petawawa. It also covers Algonquin Provincial Park and the entire National Capital Region — including Parliament Hill. More than one million people now live in the area, and 59 per cent of the land is privately owned.

The Ontario government began negotiations with the First Nation in 1991, and the federal government joined them in 1992. In 1994, the three parties issued a "Shared Objective" statement to give people a sense of where the talks might ultimately lead. Since then, the statement has served as a guide for the negotiations.

Of course, it is one thing to share an objective and it is another thing to reach it. Land-claims negotiations often involve a lot of stops and starts — sometimes with years in between. Nearly a decade after releasing the statement, the negotiators still had not begun to iron out the specific details of a final agreement. Even optimistic observers do not expect a settlement until 2009.

REFLECTION

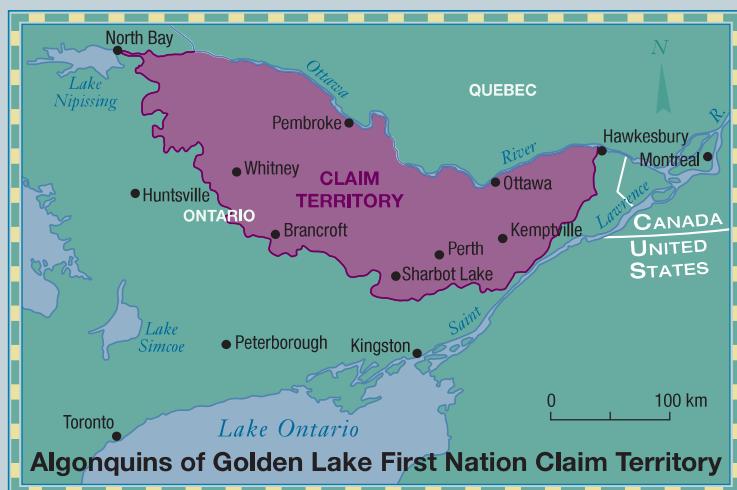
What is happening with the land claim now? To find out, enter *Algonquin land claim* into an Internet search engine.

Shared Objective

...We are committed to achieving a just and equitable settlement of the longstanding claim of the Algonquins of Golden Lake First Nation, and in doing so, we intend

- to avoid creating injustices for anyone in the settlement of the claim;
- to establish certainty and finality with respect to title, rights, and interests in the land and natural resources with the intention of promoting stability within the area and increasing investor confidence;
- to identify and protect Algonquin rights;
- to protect the rights of private landowners, including their rights of access to and use of their land;
- to enhance the economic opportunities of the Algonquins with the intention of also benefiting and promoting general economic and commercial opportunities in the area;
- to ensure that Algonquin Park remains a park for the appropriate use and enjoyment of all peoples;
- to establish effective and appropriate methods and mechanisms for managing the lands and natural resources affected by the settlement, consistent with the principles of environmental sustainability; and
- to continue to consult with interested parties throughout the negotiation process and to keep the public informed on the progress of negotiations.

— Joint statement by the Government of Canada, the Government of Ontario, and the Algonquins of eastern Ontario



In September 2003, the Siksika First Nation used oral history as evidence to present and settle a specific land claim with the federal government. The case involved a 1910 land surrender that left the Siksika First Nation with less land than it had been promised by the government. In this photograph, Minister for Indian and Northern Affairs Robert Nault is signing the agreement with Chief Stimson. The First Nation received \$82 million in financial compensation — money that will be placed in a trust fund for future community projects.



Specific Claims

According to the federal government, reasons for filing specific land claims include

- unfulfilled treaty or Indian Act obligations, including unfulfilled treaty land entitlements
- illegal sale or expropriation of First Nations land
- failure to fairly compensate First Nations for land expropriated, sold, or damaged by the government
- mismanaged trust accounts or leases of reserve land to third parties

The history behind each specific claim is unique. In some cases, groups never received the land promised to them. For example, some First Nations never received reserves, even though they signed treaties that promised them.

I remember our head chief, when approached some years ago about surrendering his reserve, replied in this way. He bent down and plucked a handful of grass and, handing it over, said "This you can use." Then, bending down with his right hand, he picked a handful of earth and pressed it to his heart and said "This is mine and will always be mine for my children of the future."...

— Akay-Na Muka (James Gladstone), Kainai First Nation, in his first speech in the Senate on August 13, 1958

Some First Nations selected a reserve, but received too little land. The numbered treaties determined the size of reserves based on a per-person calculation. Sometimes First Nations had bigger populations than the government accounted for.

In contemporary times, some First Nations populations have grown, putting a strain on reserves originally allocated for fewer people. In addition to natural growth, some First Nations populations have expanded considerably because of people reinstated by Bill C-31 and other government actions.

From 1885–1918, the Canadian government actively pursued a policy of land expropriation to further its immigration drive and to build roads and railways. Under Clifford Sifton and then Frank Oliver, the office of the Superintendent of the Interior and Minister of Indian Affairs pushed many of its Indian agents to convince First Nations to surrender land. Some First Nations agreed or were forced to agree.

Many First Nations also lost land after World War I, when the government took over land to give to veterans.

Some First Nations lost these lands without any compensation. Others were compensated, but at less than market value. These piecemeal

losses add up to a lot of land: by the 1950s, Aboriginal peoples in Saskatchewan and Manitoba had lost almost one third of the land originally set aside for their reserves.

Specific land claims are more common than comprehensive claims. As of September 2003, according to Indian and Northern Affairs, 252 specific claims had been settled and 112 more were in negotiation. To help deal with the volume of claims, the government created a “fast track” process in 1991. This

gave the Director General of the Specific Claims Branch the authority to settle any claims up to \$500 000.

Despite some improvements to the process, many First Nations remain frustrated by the length of time it takes to settle claims, by the costs involved in pursuing claims, and by the growing backlog of claims waiting for review. The Assembly of First Nations estimates that it will take 150 years for the government to catch up, unless the process can be improved dramatically.

RESEARCHING SPECIFIC LAND CLAIMS

On March 31, 1958, the Michel Band ceased to exist when the whole band was enfranchised under Section 110 of the Indian Act. As part of the government’s enfranchisement policy, band members lost their reserve, which was about 24 kilometres northwest of Edmonton.

In 1985, descendants of these band members and their supporters formed a group called the Friends of the Michel and filed a specific claim with the federal government for “invalid surrenders of reserve land.”

To what extent have First Nations in Alberta made gains through land claims?

WHAT TO DO

1. Using the library, Internet, and this textbook, research two land claims from Alberta. You may choose to find the status of the Michel Band’s claim or one of the land claims that follow:
 - Lubicon Lake Cree Land Claim
 - Woodland Cree Settlement
 - Loon River Settlement
 - Nakoda (Stoney) Submission
 - Siksika (Blackfoot) Submission
 - Mountain Cree Submission
 - Blood-Cardston Claim
 - Peigan Nation Claim
2. Your research should investigate the main events and issues of each claim, including if, how, and when they were settled. If they are not settled, explain why. You might want to create a timeline of important events.
3. Examine each land claim in terms of the benefits or proposed benefits for the communities involved.
4. Create a PowerPoint™ presentation to explain each claim. Include graphics, such as maps or photographs. Your presentation should provide a summary comparison of the two claims and should be no longer than twelve slides.
5. Present your project to the class.

Thinking About Your Project

As a class, discuss the similarities and differences among the land claims presented.



Obstacles to Settlements

Fair settlements for land claims pose many challenges, such as assessing the precise entitlement, choosing lands, or agreeing upon fair compensation for lands. Third party interests must be accommodated. Third parties might be innocent people whose homes or businesses are on disputed land. Some third parties may even be other Aboriginal groups.

In addition, First Nations are forced to negotiate with a government that has relatively unlimited resources at its disposal. The system also puts the federal government in the awkward position of reviewing and validating claims made against itself. In the land-claims game, the government is both a player and the referee.

SASKATCHEWAN'S URBAN RESERVES

Some First Nations are finding innovative ways to develop their communities through agreements with provincial or municipal governments. Since the early 1980s, several First Nations in Saskatchewan have established urban reserves through agreements with municipal governments. Municipal governments have powers delegated from the provincial government.

The first urban reserve in Saskatchewan was the Opawikoscikan reserve — established in 1982 in Prince Albert by the Peter Ballantyne Cree Nation. This reserve, and others established later in Saskatoon, Yorkton, and Fort Qu'Appelle, is unlike urban reserves in other provinces. Most urban reserves began as rural reserves and became part of municipalities as a result of urban sprawl or annexation of lands by the municipality. In Saskatchewan, urban

reserves are the result of First Nations communities buying land in municipalities and converting the land into new reserves.

Most urban reserve lands belong to First Nations that have other land bases outside the municipality. Some urban reserves were created by purchasing lands and buildings. Most were created from lands once owned by the federal government and given to First Nations communities to satisfy past treaty entitlements.

Urban reserves have the same legal status as rural reserves. In most cases, the First Nation with an urban reserve signs an agreement with the municipality that deals with law enforcement, taxation, and municipal services.

In recent years, some First Nations in other provinces have drawn up plans to create their own urban reserves. Many First Nations see them as a way to promote economic self-sufficiency by providing more diverse sources of income and employment for their members. In turn, this could lead to better self-governing possibilities.



The Peter Ballantyne Cree Nation settled a specific land claim in December 1993. It received \$62.4 million, most of which was earmarked to purchase additional land. Since then, the First Nation has created many urban reserves that serve a variety of purposes, such as this school on the edge of Prince Albert, Saskatchewan.

REFLECTION

How might Saskatchewan's urban reserves be a model for other Aboriginal peoples as they pursue land claims and self-government goals?

PROFILE

JOE WEASEL CHILD

Siksika First Nation

For sixteen years, Joe Weasel Child, Land Claims Manager for the Siksika Nation of southern Alberta, has pressured the federal government to make good on its treaty promises.

After countless legal battles, delays, and legislative setbacks, is he ready to give up? Not by a long shot. According to Weasel Child, the victories along the way have been sweet, despite the many challenges.

"From the start, our leaders signed the treaty with false understanding. They were told they were signing a peace treaty and that Her Majesty the Queen wanted to set aside a place for them to live, protected from the Europeans coming into Canada," Weasel Child explains. "They signed Treaty Seven in 1877, but by 1892, our nation was already suffering relinquishment of land."

In the early 1900s, the First Nation's situation got worse. At this time, there was a general effort among Indian agents on the prairies to sell reserve lands. By the 1950s, half of the Siksika's 621.6 square kilometre parcel of land was sold — at half the fair market price.

The nation then lost another 10.7 hectares of prime land near Castle Mountain, not through a land sale, but through deceit. According to Weasel Child, "Since the prairie land we were initially given had no timber on it, we were given a parcel in the mountains so we could have wood for building houses. Later, we were told the land had burned."

If government officials thought this news would prompt the First Nation to give up ownership of the parcel, it was mistaken. For several decades, the Siksika Nation tried to have its ownership

of the land formally recognized and protected by the government, but to no avail. Only recently have representatives of the Department of Indian and Northern Affairs and Parks Canada agreed to enter into negotiations to finally settle the matter.

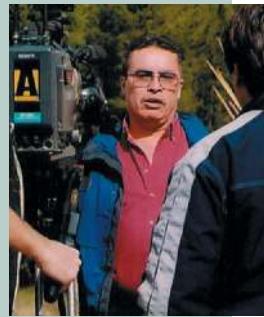
The First Nation has had some success already with land claims. In 1992, mineral rights to a 4860-hectare parcel were restored to the Siksika Nation. In 1998, they settled three land claims, amounting to approximately 10 per cent of the land that had been sold. The nation still has an outstanding land claim for 46 575 hectares, along with claims for ammunition and livestock promised in 1879.

The loss of land has left the Siksika Nation, which has 6000 members, with an overcrowding and unemployment problem on their reserve.

"Today we have twice the population we had at treaty signing, but only half the land. That makes it tough for band members who would like to move back to the reserve. There is a four to five year backlog in housing here," says Weasel Child.

REFLECTION

In what ways did the Siksika First Nation lose sections of the reserve lands it was promised in Treaty Seven? What specific problem does Weasel Child identify as resulting from this land loss? Use proper community protocol to invite a local band council member to your class. Ask him or her to discuss how unfulfilled treaty promises affect his or her First Nation today or how resolution of a land claim has benefited the community.



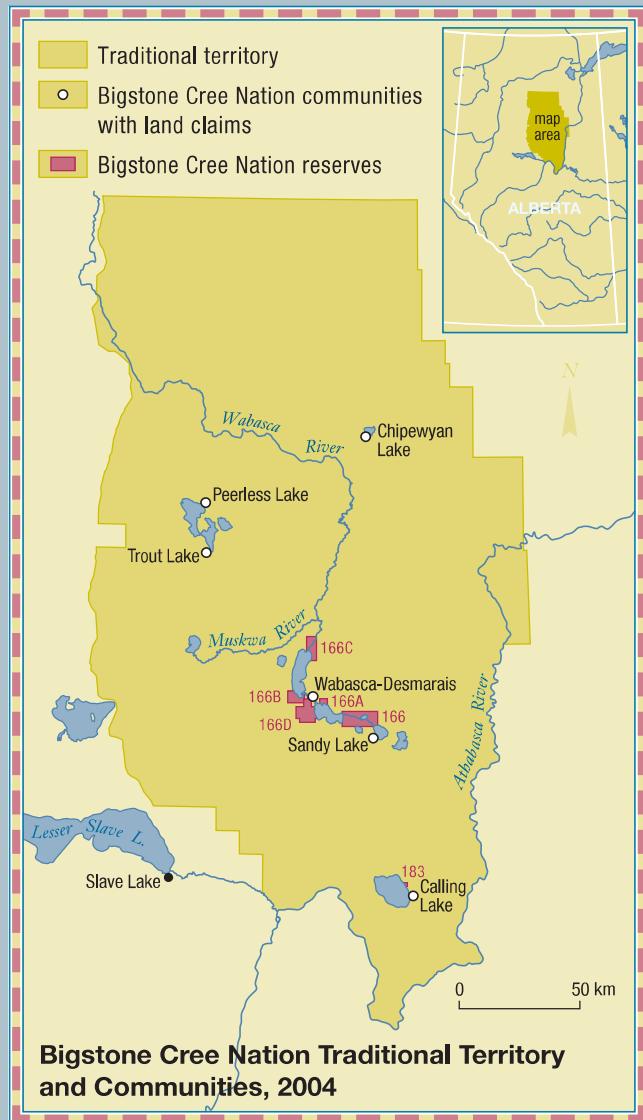
Joe Weasel Child is being interviewed here in front of Castle Mountain.



SPECIFIC CLAIM: BIGSTONE CREE NATION

In 2001, the population of the Bigstone Cree Nation (BCN) in Alberta was approximately 5805. Most of the BCN's members now live in one of six main communities in northern Alberta.

In the nineteenth century, however, the Bigstone Cree lived in extended-family groups of two to five families each. These groups used a large territory in their circular seasonal migrations — a huge piece of what is now Alberta. These groups did not all have a sense of common political identity.



In 1899, when government officials negotiated Treaty Eight at Wabasca, many First Nations participants had to put aside their traditional systems of political and social organization to meet the needs of treaty negotiations. Different groups were sometimes labelled as members of the Bigstone Cree, even if this label had nothing to do with traditional kinship ties or other alliances. This somewhat arbitrary grouping meant it took many years for the BCN to adjust and organize itself politically to negotiate effectively with the federal government.

A second problem affecting the BCN's treaty rights is that the government had no way of getting an accurate population count at the time of the treaty negotiation. The government met and negotiated with people who happened to be in the Wabasca area at the time.

Further complicating the situation, the federal government gave many First Nations the option of either taking treaty or taking scrip. People who took treaty became Status Indians. Those who took scrip gave up their treaty status and received scrip entitling them to either 240 acres (97.1 hectares) of land or \$240 in cash. By 1901, 235 members of the BCN had taken treaty and 106 had received scrip.

At that time, few settlers showed interest in moving to northeastern Alberta. As a result, the treaty commissioners saw no need to set aside reserve lands right away. They decided to put off a formal land survey until later, when non-Aboriginal settlement began to interfere with traditional land use.

In 1913, the Department of Indian Affairs finally surveyed land for a reserve. In the meantime, more people had come forward to join the BCN or to accept scrip. Many people in outlying areas, however, did neither. They simply carried on with their traditional lives, hunting and trapping.

In the 1920s and 1930s, fur markets declined. Many of those who had not felt any need to take treaty now came forward. These groups were added as adhesions to the population of the BCN, again without consideration of natural alliances and kinship patterns.

It became increasingly clear that the size of the 1913 reserve could not accommodate the BCN's population. In 1925, leaders began to request additional reserve land. In 1937, the Department of Indian Affairs ruled that the BCN was entitled to an additional 11 585 hectares, but for some reason only a portion of this land was set aside for them.

More than half a century later, in 1989, the BCN filed a specific land claim. It argued that the 1913 and 1937 surveys both failed to provide enough land for the group's actual population.

In the BCN's view, the government never fulfilled its treaty obligations. Furthermore, the claim argues, any effort to correct the treaty land entitlement should take into account the BCN's population growth to the present day.

Treaty Eight promised 128 acres (51.8 hectares) per person. Based on the BCN's current population, that adds up to a big reserve: about 300 800 hectares. The BCN reserve is currently 21 170 hectares. In other words, the BCN believes it is owed a further 279 630 hectares.

The federal government initially rejected the claim. It said the government had fulfilled its obligations under Treaty Eight, based on the earliest official population survey in 1909. According to those figures, the BCN has all the land it is entitled to.

The BCN appealed this decision to the Indian Specific Claims Commission (ISCC). Before the ISCC could complete its inquiry,



While waiting for a resolution of its claim, the Bigstone Cree Nation called for a freeze on further commercial activity on Crown land it identified as part of its traditional territory. When that failed to happen, it put up "No Trespassing" signs, sparking a dispute with oil and gas contractors. Based on what you can read in this sign, what sources of authority does the First Nation use for its territorial claim?

however, the federal government changed its policy towards treaty land entitlement claims. In 1998, it decided to reverse its earlier decision and accept the BCN land claim for negotiation.

In February 2002, the BCN released a position paper on its claim. The paper includes a summary of historical events from the band's perspective and an outline of the benefits it hopes to achieve in an eventual settlement. In addition to land and cash compensation, it also seeks a greater stake in managing the area's many natural resources, including gas, oil, and forests.

REFLECTION

What is the current status of the Bigstone Cree Nation's land claim? For an update, you can visit the BCN's Web site at www.bigstonecree.com. Research another unsettled specific land claim in Alberta. Summarize the history and issues involved. If possible, invite a member of a community involved in a land claim to speak to your class.

PATHS TO RESOLUTION

It is easy to understand why First Nations sometimes become frustrated by the land-claims process. Many have waited centuries for justice. When appeals and legal action fail, First Nations have sometimes felt pressed to take more direct action to assert their rights.

The Cardston Blockade

In the early hours of July 21, 1980, members of the Kainai First Nation blockaded an access road near Cardston, Alberta, with a large tipi. They wanted to draw attention to an outstanding land claim their nation had pursued for years.

Although the intentions of the First Nation were peaceful — they just wanted the federal government to agree to negotiations — the situation escalated to a more heated



In early 1980, Alvin Many Chief was one of several young Kainai men who ran from Blackfoot Crossing, where Treaty Seven was signed, to Ottawa carrying a sacred bundle that contained land-claim documents and earth from the Kainai reserve. The group was frustrated with years of stalling by federal government officials with regard to the nation's land claim. Many Chief currently teaches school on the Blood reserve.

What still bothers me most about the blockade was that the RCMP gave an order to bring in an armed SWAT team. We were asking in peace for clarification of our land claim and this justified bringing in trained, armed officers? How did they see us? Why did they think they would have to go that far? I always thought to myself, isn't this Canada, that is supposed to be multicultural and accepting of different cultures? Do we treat First Nations less humane than everyone else? It was really tough to see our Elders, who were there in support of us, physically restrained.

— Alvin Many Chief, Kainai First Nation

conflict. On July 26, the RCMP used dogs to break up the blockade, and several protesters were arrested during the physical confrontation. The blockade was over in a few days, but the land claim remains unsettled.

The Oka Crisis

Canada's most famous confrontation over land claims happened in 1990. The small town of Oka, near Montreal, wanted to expand its municipal golf course. It proposed clearing a wooded area, known locally as "the Pines," to make way for an additional nine holes. However, the nearby Haudenosaunee community of Kanesatake viewed the Pines as sacred ground and had long claimed it as traditional territory.

The land that Cardston sits on is part of the "Big Claim" that has not been settled. This claim extends south almost to the Canada-U.S. border. As far as I know, the Cardston Blockade was supposed to bring attention to the outstanding claim — the fact that it wasn't being settled. All of us members of the tribe were always told by our Elders that the Mormons had leased the land for ninety-nine years and that this lease had expired before the blockade occurred. The people of Cardston deny that there ever was a lease agreement signed. Originally Red Crow agreed to let Charles Ora Card and his Mormon settlers *maahkitsstoyiimsaiksi* (to camp there for the winter). This is what I was told.

— Makai'stoo (Leo Fox),
Kainai First Nation

In fact, their claim to the land had been unresolved for almost 300 years. In 1717, without consulting Haudenosaunee residents, France's King Louis XV granted a section of land about 30 kilometres west of Montreal to a religious order. Disputes over title to this piece of land have been ongoing since that time, sometimes erupting in violence. Official land claims in 1975 and 1986 had been turned down by the federal government. By 1990, tensions were high surrounding the land claim and government attitudes towards Kanesatake claims.

When months of negotiations between the town of Oka and Kanesatake residents seemed to be going nowhere, Oka officials walked out. The town announced that it would begin development of the golf course. The federal government showed no signs of intervening, so some Kanesatake residents decided to take matters into their own hands. They began by barricading a dirt road that ran through the Pines.

Kanesatake residents were not united in this decision. The community had long been divided politically between people supporting democratically elected chiefs and people supporting chiefs selected according to longhouse traditions of the Six Nations Confederacy. Both leadership systems had been competing in the community for decades, causing deep divisions.

Traditionalist members of the community supported the longhouse chiefs and the Warrior Society, which led the movement to build the barricade.

The town responded to the barricade with a court injunction to



International news crews clamoured to speak to Kanesatake and Kahnawake residents during the Oka crisis. Here Paris-Match journalist Michel Payrard speaks to Helene Gabriel, a spokesperson for the Haudenosaunee. Traditional Haudenosaunee governance practices include important roles for women. The degree to which traditional practices should be followed has been a cause of considerable controversy at Kanesatake before, during, and after the Oka crisis.

have it removed. Although they were cautioned to use diplomacy in implementing the injunction, the provincial police stormed the barricade. In the fight that broke out, a police officer was shot and killed.

This launched a seventy-eight-day armed standoff between Kanesatake residents, their kin from Kahnawake, the police, and, eventually, the Canadian Armed Forces. People around the world watched, transfixed, as the crisis unfolded. The Haudenosaunee at Kahnawake responded to events at Kanesatake by blocking the Mercier Bridge, an important connection between Montreal and outlying communities such as Chateauguay. In one of the ugliest moments of the standoff, groups of Chateauguay residents threw rocks and shouted derogatory insults as cars of Kahnawake residents left the community. The cars were filled mostly with Elders, women, and children.

Since Oka, governments and the First Nations involved have worked to build and maintain an atmosphere of sensitivity and mutual respect. This finally resulted, in December 2000, in a land governance deal for Kanesatake.



Six Nations leader Billy Two Rivers (to the left of the stop sign) is shown here supporting a Lubicon Lake Cree protest in 1987 at a road blockade that prevented logging and oil trucks from passing. The Lubicon were demanding royalties from the profits made on their land. (Names of others pictured are not available.)

⦿ Lubicon Lake Cree

⦿ For many years, the Lubicon Lake Cree were overlooked by the outside world. Their traditional lands were in a remote and inaccessible part of northern Alberta. In the late 1970s, however, an all-weather road was built into their territory and oil exploration began. When they saw the environmental damage being done to their lands, the Lubicon Lake Cree resisted the changes. They wanted to preserve their land and way of life.

⦿ The community began to build a global network of organizations and individuals to help them with legal matters, boycotts, lobbying, and negotiations.

Indigenous Knowledge

First Nations have used a variety of methods to pursue their land claims: negotiation, lawsuits, blockades, media pressure, and armed resistance. Each method has benefits and drawbacks. With a partner, describe as many benefits and drawbacks for each method as you can. Do more research on the history of the Kanesatake land claim and details of its settlement or the Lubicon Lake Cree's outstanding claim. Analyze the methods used in each case. What conclusions can you draw?

They received much international attention during the 1988 Olympics in Calgary. The Olympic Torch Relay was sponsored by Petro-Canada, one of the oil companies responsible for damaging traditional Lubicon land. The Lubicon Lake Cree organized demonstrations to greet the relay as it moved across the country. Lubicon Chief Bernard Ominayak followed the torch and issued press releases to the media about his nation's situation.

Following the Olympics, the Lubicon Lake Cree settled an agreement with the Alberta government to establish a reserve, but the federal government refused to negotiate other issues with the First Nation.

In 1989, the Alberta government awarded a large paper company the timber rights to a section of traditional Lubicon land. The community and its supporters began an international boycott against the company in 1991. The boycott ended in 1998 after the company decided to end timber cutting on Lubicon lands until the nation's land rights were settled. Negotiations with the federal government have been ongoing since 2000.

LOOKING BACK

Before moving on to the next section, be sure you can describe each of the following concepts with at least one specific example: ceded land, non-ceded land, comprehensive land claim, specific land claim. What are some of the obstacles to settling a land claim?

Métis and Non-Status First Nations Land Claims

MÉTIS AND FIRST NATIONS
PEOPLE WITHOUT STATUS
MAKE UP A SIGNIFICANT PROPORTION
OF CANADA'S ABORIGINAL POPULA-
TION. Many of these people grapple
with economic and social hardships
in the midst of a society that views
them as neither Aboriginal nor part
of mainstream society.

NON-STATUS LAND CLAIMS ISSUES

Most Aboriginal leaders dispute the government's right to legislate who does and does not belong to various groups of Aboriginal people. They wonder why, for example, someone cannot claim their Aboriginal ancestry and the rights that accompany that ancestry simply because his or her great-great-grandfather decided to accept scrip. They wonder why someone is denied rights because of who his or her mother or grandmother decided to marry.

They point to people like Stephen Kakfwi. This prominent Dene leader, a former premier of the Northwest Territories, is the son of two full-blooded Dené Tha' parents. However, because his grandfather gave up his status to own property and open a business, Stephen Kakfwi is officially considered a non-Status Indian by the federal government.

When the federal government passed the Indian Act in 1876, it had to decide to whom that law would apply. It decided that, for the purposes of the act, an *Indian* was "Any male person of Indian blood reputed to belong to a particular band; any child of such person; any

AS YOU READ

Some people describe Métis people and First Nations people without status as "Canada's forgotten people." Despite their Aboriginal heritage, the government has treated them, until recently, as part of Canada's general population.

Many Métis people and First Nations people without status see land claims as their best hope for economic stability and cultural survival. They want to emerge from the shadows and claim their rights as Aboriginal peoples.

As you read pages 135–142, consider how the land claims of Métis people and First Nations people without status differ from those of First Nations people with status and treaty rights. What factors make Métis and non-status land claims difficult to address?

We the Métis and non-Status Indians, descendants of the "original people" of this country, declare

- That Métis nationalism is Canadian nationalism. We embody the true spirit of Canada and are the source of Canadian identity.
- That we have the right to self-determination and shall continue, in the tradition of Louis Riel, to express this right as equal partners in Confederation.
- That all native people must be included in each step of the process leading to changes in the Constitution of Canada.
- That we have the right to guaranteed representation in all legislative assemblies.
- That we have the inalienable right to the land and the natural resources of that land.
- That we have the right to determine how and when the land and resources are to be developed for the benefit of our people and in partnership with other Canadians for the benefit of Canada as a whole.
- That we have the right to preserve our identity and to flourish as a distinct people with a rich cultural heritage.
- That we have the right to educate our children in our native languages, customs, beliefs, music, and other art forms.
- That we are a people with a right to special status in Confederation.

... We whose purpose in life is tied to the land have become a landless people. We have come to be seen as squatters on our own land. We will never give up our right to the land and its natural resources. To forsake the land is to forsake ourselves.

— Native Council of Canada, *Declaration of Rights* (1979)



From an Aboriginal perspective, treaty rights are not linked to registration under the Indian Act — but the federal government will not admit that. Most historic treaties (and there are over 500 of them) contain the phrase “and their descendants” or an equivalent phrase in the section dealing with to whom the treaty applies. None of them contain the term “registered” or even specifically exclude Métis — although the Indian Act does both. Since a treaty, by definition, cannot be unilaterally altered by one party or by unilaterally imposed legislation, all descendants of Indians involved in treaties technically have treaty rights. But the federal government consistently refuses access to those rights by unregistered Indians and Métis.

— Congress of Aboriginal Peoples

- woman who is or was lawfully married to such person.”

By defining who would be considered an Indian, the government also decided who would not be considered one. If a person was not on their lists, the Indian Act did not apply to them. These early lists generally coincided with individuals belonging to First Nations that signed treaties. Individuals with treaty rights were generally the same as those with status under the Indian Act. As far as the federal government was concerned, these were the only individuals to be included in its legislation, programs, and services.

Over time, due to the scrip process, involuntary enfranchisement, loss of status through Indian

The awkwardness and inconsistencies of federal legislation that defines who is and is not considered a First Nations person can be seen in the situation of people like Stephen Kakfwi, a prominent Dene leader who is officially a non-Status Indian in the eyes of federal legislation. Situations like Kakfwi's are common in every First Nations and Métis community across the country. Kakfwi is shown here with his wife, Marie Wilson.



Act rules, and mistakes that occurred in creating the Indian register in 1951, many people lost their status or never gained status, even though they were as eligible as others.

Today, most First Nations people with treaty rights also have status. However, people with status do not necessarily have treaty rights. For example, people who regained status through Bill C-31 do not necessarily have membership in a band, which is usually required to receive treaty rights. This is a highly controversial and difficult issue for First Nations today. It comes down to a conflict between individual and collective rights. An individual might be morally and legally entitled to belong to their band (and receive the benefits that come with band membership, such as living on a reserve), but a band might claim the right to restrict the size of its membership to match its resources. A band that already faces a housing shortage for long-term members of its community will have a difficult time accepting new members reinstated by federal legislation.

However the situation is solved leads to injustice. Either individuals do not receive benefits they are entitled to receive or whole communities might see their benefits eroded. There are no simple solutions. The problems result from decades of colonial policies and laws. Even if the federal government today completely backed away from any role in deciding who is and is not a status First Nations person, the legacy of its historic involvement would remain.

LEGISLATION AND IDENTITY

One of the most fundamental rights of self-determination is the right to identity. First Nations people considered non-status according to the Indian Act are in a different legal position from many other First Nations people, including some members of their own families.

However much legislation affects a person's rights and privileges, it is not their identity. Much of a person's identity is personal — a part of themselves that involves their culture, language, family, friends, relationships, experiences, values, and spirituality. How do issues of self-identity complicate rights issues for First Nations people?

Your Project

- Choose one of the following topics to explore the idea of identity:

Topic A: Research and read stories by Aboriginal writers who explore the concept and meaning of identity. While reading, consider these questions: How important is official (government) recognition to the author or narrator? If it is important, explain why. According to the stories, what aspects of culture are critical to a person's identity? Create a dramatic presentation of your ideas about identity and those presented in the stories you read. Use creative devices such as music, voice, light, and gestures to express yourself.

Topic B: Write a poem or short story that represents important components of a person's identity. Think about factors such as name, culture, family and kinship relationships, ancestry, language, and so on. Prepare a dramatic reading of your work, incorporating some of the creative devices suggested in Topic A.

If you don't have status as an Indian, are you an Indian? Can a bureaucrat change a person's race, his or her very genetic makeup, with a stroke of a pen? Can a judge suddenly turn you into something you're not with a carefully worded decision from the bench?

... [M]aybe the best definition of a non-status Indian is this: an Indian person that some wise guy in Indian Affairs has decided to throw into some artificially constructed category where the government can then deny his or her rights.

The more we ponder on this the more convinced we become that the term "non-status Indian" is one of the most ridiculous creations of the Canadian bureaucracy of all time.

And that's saying something.

— Editorial, *Windspeaker* (October 2003)

As it stands now, I am a status person under section 6.2 of Bill C-31. My two girls are not Native in the government's eyes. They have one-quarter Native blood. Do I tell my daughters that they are not Native because the government says it's so? No, I don't think so.

— Connie Chappell, Charlottetown, Prince Edward Island

Topic C: Create a painting, sculpture, collage, or other work of art to represent your own sense of identity. What type of media would best express your ideas? Display your work for the class, along with a brief statement that points out the key features of and rationale for your design.

- After listening to and viewing your classmates' projects, hold a class discussion about the important features that make up a person's identity. Are there different kinds of identities? For example, are there some identities that are legislated by government and others that are personal? How do issues of identity impact people's emotions, rights, and life opportunities?



Adrian Hope, also known as The Senator, was a well-known Métis leader in the early days of political activity by Métis communities in Alberta. He and leaders like Stan Daniels, leader of the Métis Association of Alberta, are credited with a resurgence of Métis land rights activism in the 1970s. This activism resulted in a settled land claim in 1990.



MÉTIS LAND-CLAIMS ISSUES

The land rights promised by the Manitoba Act and Dominion Lands Act were never fulfilled for most Métis people. The vast majority of Métis and First Nations people who took scrip never received the land they were entitled to receive.

Those who did receive land found their communities widely scattered. The federal government refused to handle Métis claims to land on a collective basis, which would have provided blocks of land large enough to accommodate whole communities. Such a land base would have assisted Métis people in preserving their social and cultural ties. Instead, the federal government would deal only with individual Métis people, a policy that facilitated scrip fraud and speculation.

Many Métis people who had been displaced from their lands in Saskatchewan and Manitoba moved farther west in search of a new start. Many settled in and near communities around Alberta, such as St. Albert, Lac La Biche, Lac Ste Anne, Whitefish, and Victoria (an historic Métis settlement). Some of these people settled before 1870, some after the Red River Resistance in 1870, and still more after the 1885 Resistance in Saskatchewan. The displaced Métis families re-established their communities, basing

them on traditional pursuits such as farming and annual buffalo hunts. The most significant Métis hunt in Alberta was the Edmonton Hunt, which involved French-speaking Métis people from Lac La Biche, Lac Ste Anne, and St. Albert.

As in earlier Métis history, most of these settlers did not receive title to their land. They established land-holding systems like that at Red River, each farm stretching back from riverfronts. In some cases, families even settled next to the same families they had lived near at Red River.

Once again, however, history seemed to destined to repeat itself. As non-Aboriginal settlement continued in the late nineteenth and early twentieth centuries, many Métis families were forced to move from their homes.

The Métis Population Betterment Act

During the Depression of the 1930s, conditions for many Métis people in Alberta had reached a crisis point.

Organizers, such as Adrian Hope, travelled by boxcar around the province to speak with Métis communities about forming a farming association to bring pressure on governments to ease the problems faced by Alberta's Métis population. On one of his trips, Hope slept under Edmonton's High Level Bridge and travelled to Calgary with eighty cents for expenses.

In 1932, Joseph Dion, Malcolm Norris, Felix Calahoo, Peter Tomkins, and James Brady formed the Métis Association of Alberta. This group decided to resolve the issues that faced their people once and for all. Instead of petitioning the federal



Having a land base where many members of a cultural community can live together facilitates the continuity of traditions such as weaving the Métis sash (shown in this photograph). What other Métis traditions might be preserved at the Métis Settlements?

Why are traditions more difficult to maintain among widely dispersed community members?

government, as so many Métis communities had done in the past, they decided to pursue their land rights with the provincial government. In addition, the association pressured the provincial government for education, medical care, and free hunting and fishing permits.

In 1934, the Alberta government responded by appointing a commission to study the matter. The Ewing Commission recommended the creation of Métis farming colonies on Crown land, under the supervision of the provincial government. This led to the passage, in 1938, of the Métis Population Betterment Act. The act defined a Métis person as someone “of mixed white and Indian blood, but not ... an Indian or treaty Indian as defined by the Indian Act.”

A committee of Métis and government representatives selected lands for the twelve new settlements. In 1943, the Métis Betterment Trust Fund was established to manage income from resources taken from Métis Settlement areas. Adrian Hope recalls “In 1942, we had sat down with Dr. W. W. Cross (then Socred [Social Credit party] minister of public welfare) and began talking about what would happen if we found coal or gold on the settlements. Who would get the money? ‘Well, it will be put into the Métis trust fund,’ replied the minister.”

Although it wasn’t gold and coal, the Métis Settlements did have a wealth of resources in oil and gas. However, the approximately \$30 million that the province received by the 1970s for this wealth did not go into the trust fund. Adrian Hope was on hand to fight the injustice,

beginning in 1961. In 1969, with Stan Daniels, president of the Métis Association of Alberta, he helped launch the first lawsuit against the provincial government to reclaim the resource revenue.

In 1988, the Alberta government settled the lawsuit with \$310 million in financial compensation, title to Métis Settlement lands, and legislated self-government.

Before the Depression, we used to sell everything we raised and live on the leavings. But in the “dirty thirties,” there was no market for any of our produce. Whatever we raised we ate, so actually we lived better than we had in the twenties. We had lots of cream and butter and we butchered a pig or sheep once in a while. We were short of clothes, because we had no money to buy them, but we ate well....



Maurice L'Hirondelle

In the early 1930s, the Métis people began to organize so they could get a better deal from the government. As the Depression continued through the thirties, the Métis people were in terrible shape. A lot of them couldn’t pay taxes and lost their land — not only the Métis, but lots of other people too — usually because they couldn’t pay the mortgage payments they were saddled with. I don’t know how many times we lost our land because of taxes during the thirties. We were just making enough money to buy the bare necessities and the councillor for our district was not in our favour, so he didn’t give us much roadwork to pay our taxes. We pretty well had to pay in cash. Then the Métis people organized to see if we could get some land where we could settle without being kicked out.... After the land was set aside, the people who had no place to go and had no land were able to move onto this land and build themselves homes. At least you could build a cabin and there was a lot of timber, a lot of moose and fur-bearing animals and good farm land.

— Maurice L'Hirondelle, East Prairie Métis Settlement



MÉTIS SETTLEMENTS

In July 1989, eight Métis Settlements (Buffalo Lake, East Prairie, Elizabeth, Fishing Lake, Gift Lake, Kikino, Paddle Prairie, and Peavine) and the Province of Alberta signed the Métis Settlements Accord. The agreement gave the Métis Settlements ownership of their lands, self-government, and the right to share revenues from the development of natural resources on their lands. The accord took effect in November 1990 when the Province of Alberta passed into law an amendment to Alberta's constitution.

This amendment, the Métis Settlements Act, created local governments for each of the settlements and a collective government in the form of the Métis Settlements General Council (MSGC). Each of the governments established by the act now has powers and privileges the province cannot change without consent of the settlements. The members of each settlement elect five-person councils. These councils run local programs and services and have the power to pass bylaws in matters such as health, safety, welfare, public order, pest control, business regulation, water, sewage, local development, and land-use planning.

Council bylaws are approved by council members and a majority of settlement members present at public meetings. This system gives all settlement members the right to express

their opinions directly on issues that come before their settlement council. Settlement councils and their bylaws are accountable to their members and the MSGC.

The MSGC includes five councillors from each of the eight settlements and four executive members who are elected by the MSGC. The MSGC holds title to all settlement lands and is responsible for matters that affect the collective interests of the settlements. It has the power to enact General Council Policies in areas such as membership, resource development, taxation, and regulation of hunting, fishing, trapping, gathering, and land use. General Council Policies have the same status as other provincial laws and must conform to the regulations of the Métis Settlements Act.

The Métis Settlements also have a forum for resolving disputes among members. The Métis Settlements Appeals Tribunal deals with disputes over land, land access, leases, and membership. The tribunal includes representatives from all the settlements. Tribunal decisions are made by interpretations of Métis Settlement legislation and regulations, settlement council bylaws, General Council Policies, and traditional customs. In some cases, the tribunal relies on interpretations of decisions by Alberta courts, provincial legislation, and expert opinion.



The Métis Settlements have the only legislated Métis governments in Canada and are the only Métis communities with title to their land. The Métis Settlements Accord, shown being signed here in 1989, was a significant moment in Métis rights.

REFLECTION

How did having a land base make self-government possible for the Métis Settlements? Now that the settlements have title to their land, what kinds of options will they have in terms of economic development? How does Métis Settlements self-government compare to other forms of self-government you studied in Chapter Three?

A NEW ERA IN MÉTIS AND NON-STATUS RIGHTS

Métis and First Nations people without status have long been caught in a jurisdictional struggle between the federal and provincial governments. The British North America Act gave the federal government responsibility for “Indians and lands reserved for Indians.” The federal government argues that this clause means Indians *on* lands reserved for Indians. In other words, they accept responsibility for First Nations people who live on reserves. In this argument, all other Aboriginal people are under provincial jurisdiction.

The Supreme Court has ruled that Inuit people are to be included in this section of the British North America Act 91 (24), but there is no

ruling on Métis people and First Nations people living off reserves or who are not eligible to live on reserves.

In practice, the federal government has assumed responsibility for Métis people in the Northwest Territories, Yukon, and Nunavut, but not south of the 60th parallel. They argue that Métis people in the provinces are a provincial responsibility because Métis rights in those provinces were extinguished through the scrip process.

Despite recognition in the Constitution Act of 1982, Métis people still do not benefit from the same levels of programs and services offered to other Aboriginal peoples. Furthermore, with the exception of people at the Métis Settlements,

... And this “new beginning” comes at a time when there is a new reality for the Métis Nation and all governments in Canada. I speak of course of the recent decision of the Supreme Court of Canada in [the Powley case]. Not only did the highest court in this land unequivocally affirm that the Métis people have existing constitutionally protected rights, the law is very clear that all governments have an obligation to ensure Métis rights are recognized and accommodated in this country.

Powley is just another affirmation of the Métis Nation’s unique history, identity, culture, and special relationship to our lands. As a distinct people, we hold the inherent right of self-determination and aspire to fully implement Métis self-government within the Canadian federation.

For centuries, we have struggled with Canada on the battlefield, in the political arena, and in the courts to defend our nationhood, our lands, our rights and our culture...our people have never given up their rights or determination to be self-governing.

Unfortunately, the written and unwritten policies of Sir John A. Macdonald and

successive unsympathetic governments continue to haunt our relationship with Canada. Today, we are still witness to the shameful legacies of these policies:

- No one in the federal government, not even the Federal Interlocutor, has a mandate to negotiate with us.
- The Métis Nation is the only Aboriginal people that is still largely a landless people within our own homeland.
- On-going jurisdictional bickering between Canada and the provinces has left us in limbo as our children and communities fall farther behind other Canadians.
- An on-going strategy attempts to deal with Métis as individuals rather than respecting our collective rights and well-established self-government structures.

— Speaking notes of Audrey Poitras at the Canada-Aboriginal Peoples Roundtable (April 19, 2004)



Audrey Poitras

they do not have access to a secure land base.

The federal government has been slow to resolve Métis and non-status rights issues. In 1985, the government created a position for a Federal Interlocutor for Métis and Non-Status Indians. This was the first time Métis and First Nations people without status had an official point of contact in the federal government to whom they could address their concerns.

Responding to the Supreme Court's 2003 Powley decision is a

priority for the Federal Interlocutor's office. In April 2004, the government allocated approximately \$10 million for Métis organizations to help them further develop their membership lists, especially in terms of individuals who might have harvesting rights according to standards set in the Powley case.

Constitutional recognition of Métis status and the Powley decision have led to a new era in Métis rights. In this new period, negotiations with the federal government will likely play a significant role.

COMPARING MÉTIS RIGHTS

How do Métis land rights in Alberta compare to Métis rights in other parts of Canada?

WHAT TO DO

1. With a partner, research the terms of the Manitoba Act and Alberta's Métis Population Betterment Act and Métis Settlements Act. In your own words, prepare a summary of the Métis land rights given by each act.
2. Compare the three acts and answer the following questions: What was each act's immediate impact on the lives of Métis peoples? What is each act's long-term significance? Did each act fulfill its stated purpose?
3. Now choose a group of Métis people from outside Alberta. Research your selected group and compare its culture and land rights with that of Alberta's Métis population. The Manitoba Métis Federation, for example, has launched a major land claim on behalf of former scrip holders. Settlement of this claim could have enormous implications for Métis people across the West.
4. Answer the following questions: How and why do Métis land rights vary? How do the issues that face each group compare? What organizations are most active in asserting Métis land rights?
5. Prepare a written report of your analysis that is no more than three pages long. If you prefer, instead of a written report, you and your partner may give an oral presentation that should last no longer than 10 minutes.

LOOKING BACK

Before moving on to the next section, be sure you can answer the questions that follow: What are the bases of Métis land rights? What are the bases of non-status First Nations land rights? Why have some Métis and non-status First Nations people formed alliances to deal with rights issues? How do their rights compare to those of First Nations people with status and treaty rights? What issues stand in the way of Métis and non-status First Nations land claims? What gains have Métis people made in resolving land claims?

Comprehensive Land-Claims Settlements

COMPREHENSIVE LAND-CLAIMS NEGOTIATIONS ARE LONG AND COMPLEX. NEGOTIATIONS FOLLOW SIMILAR STAGES TO THOSE FOR SELF-government agreements. First, the parties involved develop a Memorandum of Understanding, which affirms the commitment of everyone involved to the negotiations. Then, negotiators develop a Framework Agreement, in which they agree upon the issues to be discussed, the process for discussing them, and deadlines.

Negotiators then work on an Agreement-in-Principle (AIP), which is the longest stage in the negotiation process. An AIP is based on the issues identified in the Framework Agreement and contains all the agreements that will form the final settlement. The last stage is the Final Agreement, which contains the details of negotiated settlements on all issues, including resources, financial benefits, self-government, and land ownership. The Final Agreement must be ratified by the Aboriginal group or groups involved, the province or territory, and Canada. Parliament then passes legislation that makes the Final Agreement valid.

These Final Agreements are explicitly protected by the Canadian constitution. Significantly, if self-government is part of the land-claim settlement process, aspects of self-government agreements are also constitutionally protected.

AS YOU READ

Pages 143–155 explore some of Canada’s settled comprehensive land claims and the complex issues that confront negotiators. As you read, make notes about the following aspects of each claim history: What Aboriginal groups and levels of government were involved? When did the claim begin and end? What prompted the Aboriginal group or groups to file a claim? What issues most concerned them? How was the claim resolved?

SETTLED COMPREHENSIVE CLAIMS

- 1975 The James Bay and Northern Quebec Agreement
- 1978 The Northeastern Quebec Agreement
- 1984 The Inuvialuit Final Agreement
- 1992 The Gwich'in Agreement
- 1993 The Nunavut Land Claims Agreement
- 1993 Council for Yukon Indians Umbrella Final Agreement
- 1995 The Vuntut Gwich'in First Nation
- 1995 The First Nation of Nacho Nyak Dun
- 1995 The Teslin Tlingit Council
- 1995 The Champagne and Aishihik First Nations
- 1997 The Little Salmon/Carmacks First Nation
- 1997 The Selkirk First Nation
- 1998 The Tr'ondëk Hwéch'in First Nation
- 2002 The Ta'an Kwach'an Council
- 1994 The Sahtú Dene and Métis Agreement
- 2000 The Nisga'a Agreement

REFLECTION

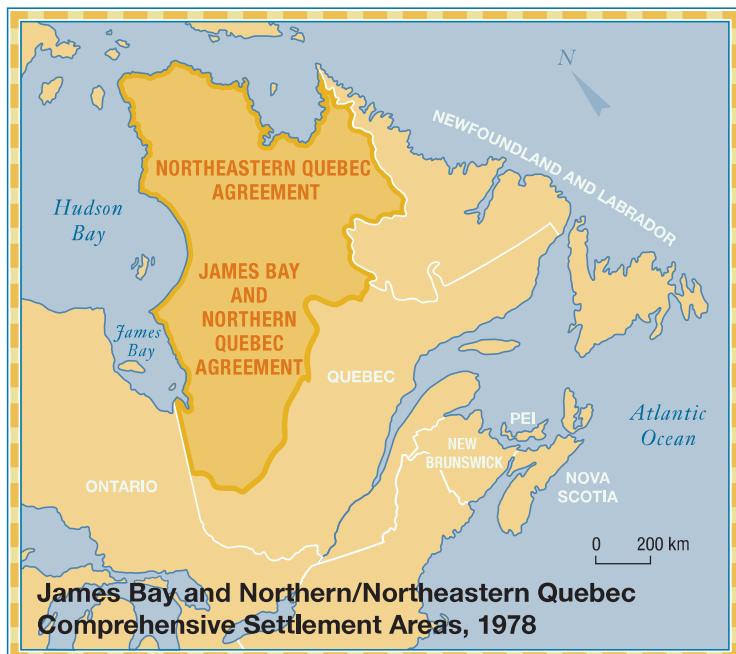
Visit the Indian and Northern Affairs Web site at www.ainc-inac.gc.ca for the most recent listing of settled and outstanding comprehensive land claims, background information on all the claims, and details of final agreements. You will need to refer to this Web site for a project at the end of this section.

JAMES BAY AND NORTHERN QUEBEC AGREEMENT

The James Bay and Northern Quebec Agreement (JBNQA), signed in 1975, was the first major agreement between Aboriginal peoples and Canada's government in nearly seventy years.

In many ways, it resembled the numbered treaties signed in the late 1800s. The Cree and Inuit peoples of northern Quebec agreed to surrender their Aboriginal title to a large territory. In return, they received some land, cash compensation, and ongoing economic support.

However, the JBNQA also broke new ground. It gave the Cree and Inuit a greater role in governing their lands, economy, and society. It also promised them a voice in negotiations for future industrial development in their traditional territory.



The James Bay and Northern Quebec Agreement, signed in 1975, is considered Canada's first modern treaty.

What Triggered Negotiations?

For two centuries, northern Quebec was part of Rupert's Land, under the control of the Hudson's Bay Company (HBC). The HBC transferred the land to Canada in 1869.

In 1898 and 1912, parliament expanded Quebec northward and eastward, creating the province's current boundaries. When Quebec took control of its northern territories, it became responsible for settling land-related issues with the First Nations and Inuit peoples living there.

For decades, that did not happen. Quebec had little interest in developing the north and so felt little pressure to address the land question. First Nations and Inuit peoples continued their traditional ways of life based on hunting, trapping, and fishing.

Then, on April 30, 1970, Quebec Premier Robert Bourassa announced a massive hydroelectric project. The James Bay Hydroelectric Project would reconfigure the waterways and flood a huge area of northern Quebec.

Immediately, Cree and Inuit peoples affected by the proposed dam began to organize opposition to the project. Twenty-two-year-old Billy Diamond, a newly elected chief, quickly emerged as a vocal Cree spokesperson.

In 1973, the Indians of Quebec Association went to court to try to stop the project. It argued that the First Nations and Inuit peoples affected by the project had never surrendered title to their land, and that Quebec had failed in its obligation to negotiate with them. The court agreed and issued an injunction to stop the project.

Negotiating the Agreement

An appeal overturned that injunction just a week later, but by then negotiations to settle the dispute had already begun. In addition to Diamond, main negotiators included Grand Chief Ted Moses for the Cree and Charlie Watt of the Northern Quebec Inuit Association.

Work resumed on the hydro-electric project and Aboriginal leaders began to realize that they

could not stop it. This put them under great pressure to reach a deal. "We were going to make the best of a bad thing," Diamond said.

They focused attention on the disruption the project would cause to their communities and way of life. They demanded compensation and recognition of their rights.

In 1975, they signed the JBNQA. The agreement included nearly \$134 million for the Cree and more

BUILDING THE OUJÉ-BOUGOUMOU CREE NATION

For much of the twentieth century, the Oujé-Bougoumou Cree saw their traditional way of life gradually disappear. Forestry and mining companies moved into their territory, forcing them to relocate their village seven times in fifty years. Meanwhile, the government refused to recognize them as a distinct First Nation.

That began to change in 1975, when the James Bay and Northern Quebec Agreement (JBNQA) included the "Chibougamou Cree." The community eventually gained band status under the Indian Act and renamed itself the Oujé-Bougoumou Cree Nation.

In 1989, the Quebec government agreed to make a financial contribution to the construction of a permanent village for the community. The federal government joined the project in 1992.

The resulting village includes a school, daycare centre, cultural centre, self-government headquarters, Elders' residence, youth centre, and church. The community runs its own housing program, building affordable homes and rental units for residents. The entire village gets its heat from a central plant fuelled by waste sawdust from nearby sawmills. The resulting heat is distributed by underground hot-water pipes.

In 1995, the Oujé-Bougoumou received an award from the United Nations as one of fifty communities that "[demonstrate] positive and practical solutions to difficult problems, and



The Oujé-Bougoumou hired renowned architect Douglas Cardinal to work with them to build their village. With labour from the community, they constructed public buildings inspired by the First Nation's traditional tipi-like dwelling, the astchiugamikw.

[have] inspiring lessons to offer to other communities and to the United Nations."

The community still struggles with depleted resources and wildlife due to clear-cutting, and with social problems left over from the decades before settlement of the JBNQA. However, Chief Sam Bosum believes that the "Oujé-Bougoumou can be an inspiration for indigenous peoples everywhere to continue their struggles to build healthy and secure communities."

REFLECTION

Learn more about the history of the Oujé-Bougoumou Cree by visiting their Web site at www.ouje.ca. How does Oujé-Bougoumou community development reinforce their traditional cultural beliefs?

than \$91 million for the Inuit. It also set up services and programs with annual contributions from federal and provincial governments.

The agreement created committees for environmental and social protection. It established Cree and Inuit school boards, turned over health and social services to Aboriginal agencies, and provided ongoing support for economic development.

The agreement covered more than 1.1 million square kilometres. It divided that territory into three categories:

- Category I lands (14 000 square kilometres) are reserved exclusively for Aboriginal communities.
- Category II lands (150 000 square kilometres) mostly surround villages. On these lands, Aboriginal peoples have exclusive hunting, trapping, and fishing rights. They also help manage wildlife.
- Category III lands (1 000 000 square kilometres) are Quebec public lands, but Aboriginal peoples have special rights to hunt and fish there.

In 1978, the JBNQA was amended to include the Northeastern Quebec Agreement (NEQA), which was negotiated by the Naskapi First Nation of Northern Quebec. In it, the Naskapi received \$9 million and more control over their education programs.

Both the JBNQA and NEQA made provisions to allow local self-government for Category I lands. This finally came to pass in 1984 with the Cree-Naskapi (of Quebec) Act, which transferred most of the

powers of the Indian Act to the First Nations' governments. The act was Canada's first Aboriginal self-government legislation.

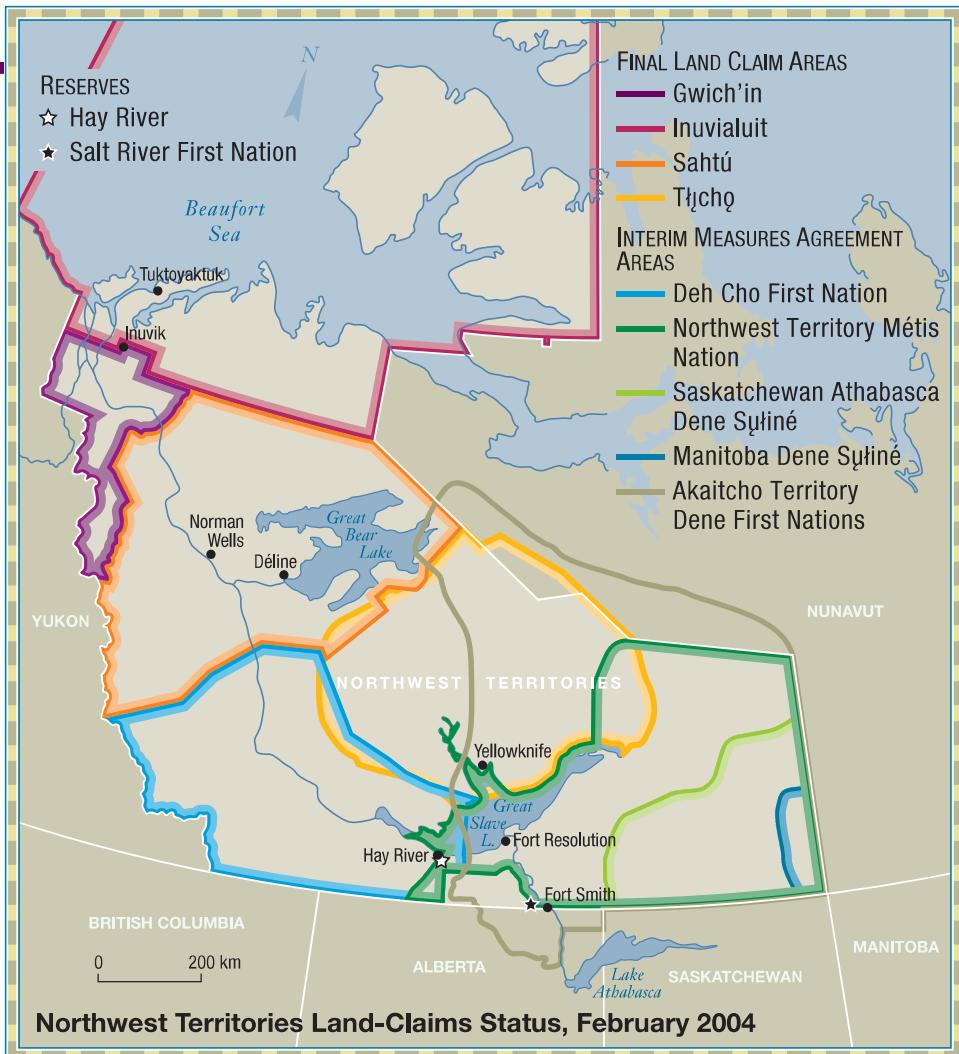
Many Aboriginal people feel that the JBNQA created expectations that are still unfulfilled. Despite this, the agreement marked a huge leap forward from the thinking that guided the numbered treaties. It placed more power and more resources in Aboriginal hands than any agreement signed before, and helped pave the way for future agreements.

It also helped shape a new generation of Aboriginal leaders. Billy Diamond and Charlie Watt went on to help draft Section 35 of the Constitution Act of 1982, which entrenched Aboriginal rights in the highest law of the country.

AGREEMENT IN PRINCIPLE WITH THE DENE AND MÉTIS OF TREATY ELEVEN IN THE NORTHWEST TERRITORIES

In 1974, the Dene and Métis peoples of the Northwest Territories presented a joint land claim. Most Métis in the territory are descendants of the region's Dene, and there is a strong bond between the groups. Like the Cree and Inuit in Quebec, the Dene and Métis felt threatened by a proposed industrial development. However, the negotiations for their land claim involved a new theme: an explicit call for self-government.

Sixteen years later, in April 1990, Dene, Métis, and government negotiators initialled an Agreement-in-Principle (AIP). Many Dene and Métis remained worried, however,



The complexity of land-claims negotiations are evident in this map of land-claims status in the Northwest Territories. The details of the settlements are even more complex. Within each claim area are territories where Aboriginal groups have mineral rights, rights of exclusive occupation and use, and special management rights and responsibilities.

that the agreement did not go far enough to protect their rights. They asked to renegotiate parts of the AIP, but the government refused. Each community was left to pursue its own course with the federal government. Today, each community has concluded an agreement based on the AIP or is in negotiations to do so.

What Triggered Negotiations?

Canada's government and First Nations in the Northwest Territories negotiated Treaty Eight in 1899 and Treaty Eleven in 1921, but the terms of the treaties were never fulfilled. Treaty Eight formalized only one reserve, and no reserves

ever emerged from Treaty Eleven. As was the case with many northern regions, the Northwest Territories faced few pressures from industry or settlers, so neither the government nor First Nations saw a need to reserve more land.

That changed in the early 1970s. Developers wanted to build a major pipeline through the Mackenzie River Valley to carry northern oil and gas to markets in the south. The Dene Nation (then called the Indian Brotherhood of the Northwest Territories) claimed that it had rights to Crown land in the valley, and went to court to stop the pipeline. The



The Mackenzie River is the longest in Canada at 1800 kilometres. This view of the Mackenzie River Valley shows some of the effects of oil exploration in the area. While advocates of the Mackenzie Valley Pipeline compare its impact to a thread across a football field, opponents compare it to a slash across the Mona Lisa.

Dene won their case in the Supreme Court of the Northwest Territories, but later lost an appeal in the Supreme Court of Canada.

Nevertheless, the government accepted the Dene-Métis land claims as a way to honour the unfulfilled terms of Treaty Eight and Treaty Eleven. This was one of the few comprehensive claims for land included in a treaty area that have been accepted by the federal government.

The government also established a public inquiry into the Mackenzie Valley Pipeline. Under the leadership of Justice Thomas Berger, the Berger Commission recommended in 1977 that a ten-year moratorium be imposed on the development project while land claims were resolved.

Negotiating the Agreement

In 1975, the Dene Nation issued a declaration calling for nationhood, which you read on pages 2–3. Métis people became worried that the Dene fight for self-government would overshadow their own rights, so they decided to pursue a separate land claim.

Eventually, the Dene and Métis renewed their partnership and negotiations continued throughout the 1980s. The AIP they reached in 1990 included a settlement for 181 300 square kilometres of land, including mineral rights for 10 100 square kilometres. It also provided a \$500 million cash settlement over fifteen years, plus a share of federal resource royalties. Furthermore, it established special hunting and fishing rights and made provisions to involve Aboriginal groups in management and protection of the environment.

The agreement was controversial. Some people saw the AIP as a significant step forward. Others objected to clauses that required them to surrender Aboriginal title in exchange for the agreement. When the government refused to renegotiate the AIP, various regions and communities began to pursue settlements of their own.

Today, each region of the Northwest Territories is in a different stage of negotiating a Land, Resources, and Self-Government Agreement.

For example, the Tłchǫ (Dogrib) have ratified a Final Agreement and

are waiting for the federal government to pass legislation to make it law. A provision in their agreement allows Métis people who lived in the settlement area before 1921 (when Treaty Eleven was signed) to be part of the agreement. Métis people in the region are working on their own claim through the North Slave Métis Alliance, but some people may choose to be part of the Tł'cho settlement.

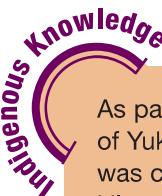
The Northwest Territories Métis Nation (formerly the South Slave Métis Tribal Council) is negotiating an AIP for lands and resources. First Nations in their region decided to pursue a treaty land entitlement (TLE) claim, so Métis people had to pursue their negotiations separately. Métis groups are not eligible to participate in TLE negotiations because their ancestors were not part of the treaty process. Métis descendants of the Gwich'in, in contrast, participated in that group's land-claim negotiations and are part of its claim settlement.

The Akaitcho Territory First Nations are part of Treaty Eight. They are trying to negotiate an agreement based on what their ancestors agreed to when they signed an adhesion to Treaty Eight in 1900 at Fort Resolution. Saskatchewan Dene Sųłiné are negotiating mostly for hunting and trapping rights. Manitoba Dene Sųłiné are claiming land as well as harvesting rights.

UMBRELLA AGREEMENT WITH THE COUNCIL OF YUKON INDIANS

In 1973, Tutchone leader Elijah Smith presented a position paper to Canada's prime minister, Pierre Trudeau. *Together Today for Our Children Tomorrow* launched a two-decade dialogue that culminated in 1993 with the Umbrella Final Agreement (UFA) with the Council of Yukon Indians (since renamed the Council of Yukon First Nations). They were the first group in the north to submit a formal land claim.

The UFA established a framework for the negotiation of individual land-claims settlements with each of the Yukon's fourteen First Nations.



As part of the Umbrella Agreement with the Council of Yukon Indians, a new national park called Vuntut was created, which covers approximately 4400 square kilometres. Vuntut means "among the lakes" in the Gwich'in language. First Nations will continue to have harvesting rights in the park and will play key roles in management of the park and its resources.

Visit Parks Canada's Web site at www.pc.gc.ca to see the location of Vuntut National Park and information about its natural and cultural significance. In small groups, create a brochure or Web site that promotes the park and Aboriginal people's involvement in its management and conservation.

One of the areas protected by Vuntut National Park is Old Crow Flats, shown in this photograph. Old Crow Flats is the Yukon's largest wetland complex and is an important habitat for waterfowl, muskrat, and other animals important to the Gwich'in people.



The Umbrella Final Agreement with the Council of Yukon Indians included guarantees for special economic and employment opportunities, specific hunting and fishing rights, and guaranteed participation in management of national parks and heritage and wildlife areas.



KEY PROVISIONS OF THE UMBRELLA FINAL AGREEMENT WITH THE COUNCIL OF YUKON FIRST NATIONS

Settlement Lands

- Lands included in Yukon First Nations settlements total 41 595 square kilometres (8.5 per cent of the Yukon's total land area)
- 25 900 square kilometres of settlement lands include ownership of minerals and oil and gas

Financial Settlement

- \$242 673 000 (1989 dollars)

Self-Government

- each First Nation to negotiate its own self-government agreement

What Triggered Negotiations?

As in Quebec and the Northwest Territories, industrial development spurred Yukon First Nations to action. In the mid-1960s, oil and mining companies had begun moving into their traditional territory. Neither the government nor the companies consulted First Nations about the developments. Most First Nations in the region believed they had much to lose and little to gain from industry in their territory.

To these First Nations, the oil and mineral boom carried echoes of the Klondike Gold Rush. Between 1896 and 1900, an estimated 60 000 people had flooded into the Yukon. By 1905, most of them had left. First Nations benefited little from the boom. They worried that the new rush for resources would once again both overrun and overlook them.

Negotiating the Agreement

From the beginning, the council insisted that it represented not only First Nations people with status, but also First Nations people without status. *Together Today for Our Children Tomorrow* described involuntary enfranchisement as “one of the most unfair tricks ever used to wipe out a race of people.” Eventually, the council joined with the Yukon Association of Non-Status Indians and officially took over the role of representing all Yukon First Nations.

Negotiators reached a tentative agreement in 1984, but the council rejected it. The council objected to the idea of extinguishing Aboriginal title in exchange for the agreement.

In addition, the agreement left out First Nations people without status.

Negotiations resumed after the federal government released a new claims policy in 1986 that removed the requirement that Aboriginal title and rights be extinguished in any final agreement. Within two years, the parties had reached an Agreement-in-Principle. They signed the Umbrella Final Agreement on May 29, 1993. All except two First Nations in the region have or are in negotiations for final agreements. The Liard and Ross River First Nations have decided to pursue their claims through the court system.

BRITISH COLUMBIA LAND CLAIMS

British Columbia had a long history of refusing to negotiate land claims, and now has a lot of catching up to do. By 2004, fifty-three First Nations (124 bands) had begun negotiating land claims. This represents about 70 per cent of B.C.’s Aboriginal population. Areas in British Columbia that were included in Treaty Eight and the Douglas Treaty are also being renegotiated so that all First Nations in the province will have similar settlements.

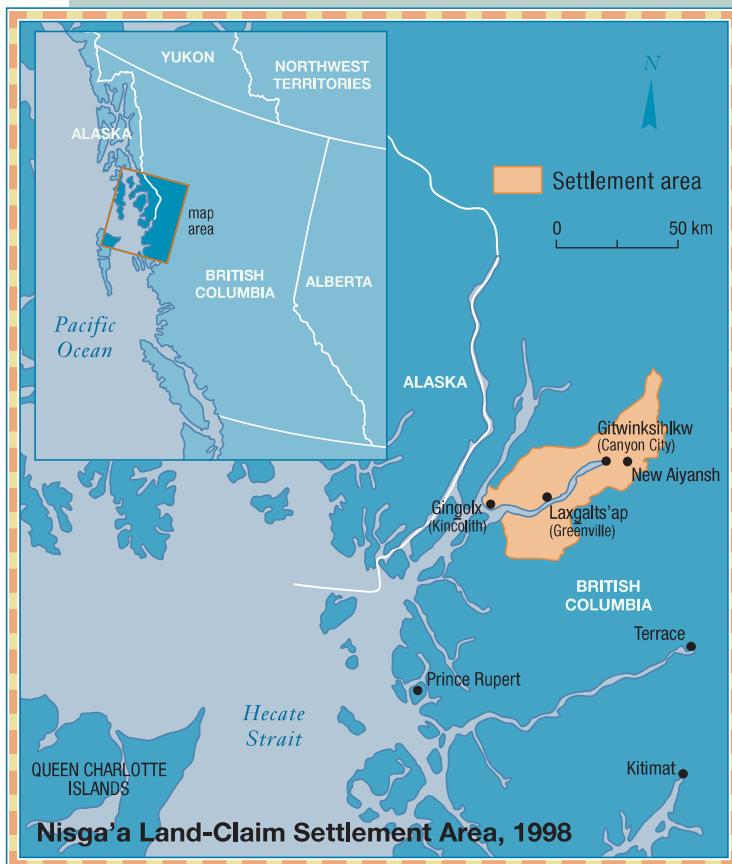
In an effort to move negotiations forward more quickly and efficiently, the provincial and federal governments, with First Nations input, created the British Columbia Treaty Commission in 1992. The commission operates at arm’s length from both government and First Nations interests. It helps co-ordinate meeting schedules and deadlines, distributes loans and grants to help First Nations research and prepare their claims, and offers advice to all parties.

REFLECTION

Why are British Columbia land claims in a unique situation compared to other claims in the western provinces?



DETAILS OF THE NISGA'A FINAL AGREEMENT



The Nisga'a Final Agreement, initialed August 4, 1998, represented not only justice, but poetic justice as well. The Nisga'a — a relatively small group of people, today numbering less than 6000 — did much to further land claims for First Nations across the country.

To the Nisga'a people, a treaty is a sacred instrument, the legal framework for a new society based on self-reliance and self-actualization. Fairly and honourably negotiated, the treaty represents a major breakthrough for aboriginal self-determination — one of the most pressing issues in contemporary Canada and around the world.

— Dr. Joseph Gosnell, leader of the Nisga'a negotiating team

The Nisga'a petition in 1913 was the first land claim in Canada. In the 1970s, their court battle for Aboriginal title, the Calder case, overturned decades of inaction and denial by federal and provincial governments. In addition, the Nisga'a made these breakthroughs in British Columbia, the only province that consistently denied Aboriginal title. In many ways, Nisga'a patience and persistence have come to symbolize Aboriginal rights struggles in Canada as a whole.

Between 1976, when the federal government first began negotiations with the Nisga'a, and the final agreement in 1998, the negotiations included more than 500 meetings and public events. The Nisga'a accepted about 2000 square kilometres of land, including surface and subsurface resources. Although this sounds like a huge area, it is actually only about 8 per cent of what the Nisga'a originally used as traditional territory. The agreement also included a cash payment of \$190 million. In return, the Nisga'a agreed to phase out their tax-free status over the subsequent twelve years.

Significantly, the agreement combined a land claim with constitutionally protected self-government — the first agreement in Canada to do this. This means that Nisga'a self-government cannot be changed or taken away unless the federal government, the provincial government, and the Nisga'a all agree.

REFLECTION

The Fraser Institute, an independent public policy organization, criticized the Nisga'a Final Agreement. Research why and form your own opinion about its arguments. Write your support or rebuttal in an essay.

NUNAVUT LAND CLAIMS AGREEMENT

In 1976, the Inuit of the eastern Northwest Territories presented a claim to the federal government. The Inuit Tapirisat of Canada (ITC) proposed a new boundary to divide the Northwest Territories and create a new territory called Nunavut, which means “Our Land” in Inuktitut.

For the next seventeen years, the ITC and then the Tunngavik Federation of Nunavut (TFN) negotiated with the federal government. In 1993, the negotiators signed the Nunavut Land Claims Agreement. The agreement marked the largest comprehensive land-claim settlement in Canadian history.

Self-Government in Nunavut

The creation of Nunavut, on April 1, 1999, represented more than two decades of work by Inuit in the eastern Arctic for greater self-determination. Along with land and financial arrangements, the Nunavut Land Claims Agreement also gave Inuit people the right to be major participants in the creation and development of Nunavut. Nunavut is a public government, which means anyone — Aboriginal or non-Aboriginal — can run for or hold public office. This is the same as other governments in Canada, where there are no special restrictions on the ancestry of who can hold office. Yet this government still provides effective self-government for Inuit people. This is because 85 per cent of Nunavut’s population is Inuit. By voting and running for office, Inuit people exert effective control of Nunavut’s government.



The Nunavut Land Claims Agreement gave Inuit ownership of 350 000 square kilometres of land, including mineral rights to an area of 37 000 square kilometres. It also included \$1.17 billion in financial benefits over fourteen years, plus a share of resource royalties. Like other major land-claims agreements, it also gave Inuit people input into wildlife and resource management.



Compare the photographs of the Nunavut legislative chambers (top) and that of the House of Commons (bottom). How does the Nunavut seating arrangement reflect an Aboriginal worldview? Based on the seating arrangement in each photograph, what differences would you expect to see in the operation of each government?



As of 2004, Premier Paul Okalik is Nunavut's only Inuk lawyer. The Akitsiraq Law School intends to change that. Akitsiraq means "to strike out disharmony and wrongdoing and to render justice" in Inuktitut. The school is a one-time program that is allowing a group of Inuit students to complete their law degrees while living in Nunavut. The students began their studies in 2001. Here, Rector Gilles Patry and Dean Bruce Feldthusen chat with students Susan Enuaraq and Sandra Inutiq at a reception for Akitsiraq Law School students at the University of Ottawa.



In October 1999, the Nunavut government and the Nunavut Tunngavik Incorporated (NTI) signed a protocol stating that the Inuit people of Nunavut could assert their Aboriginal right to self-government through the Nunavut government. The NTI is an organization that ensures Inuit economic, social, and cultural well-being through implementation of the Nunavut Land Claims Agreement.

To ensure that it fulfills this agreement, the Nunavut government has developed policies in almost all areas of its jurisdiction. A discussion of some of these policies follows.

Culture

For Inuit self-determination to be realized through public government, policy development and operations

The Inuit Tapiriit Kanatami (ITK) — formerly the Inuit Tapirisat of Canada — proudly proclaims that Canada's Inuit people are living in a "post-land-claims era." Four land-claims agreements encompass the wide Arctic region Inuit people have called home since time immemorial:

- James Bay and Northern Quebec Agreement November 11, 1975
- Inuvialuit Final Agreement June 5, 1984
- Nunavut Final Agreement May 27, 1993
- Labrador Final Agreement May 26, 2004

Visit the ITK Web site at www.itk.ca to see a map of each region. Why do you think the Inuit were able to settle their land claims while many other Aboriginal groups struggle to have their concerns addressed?



need to be culturally sensitive. In 2003, the government set up a council of community representatives to advise the government on Inuit *iliqqusituqangit*, which means "what has been known for years, a deeper knowledge." This cultural policy will provide the principles, values, and traditional knowledge upon which government decisions will be based. The advisory council intends that Inuit *iliqqusituqangit* will develop a government open, responsive, and accountable to Inuit people.

Economy

In 2000, the Nunavut government and the NTI announced a series of economic policies to promote Inuit self-sufficiency. Locally owned businesses are given preference when the government awards contracts. Government incentives are given to companies that employ Inuit workers and companies are penalized when their commitments to employ Inuit people are not met.

Education

Education is the largest expenditure in the Nunavut budget. The government is committed to increasing funding so that all children in its territory have access to a good education. New programs are increasing the presence of Inuit culture in schools. For example, Elders in the School is a program that brings Elders to schools to teach students about Inuit culture and history.

Justice

Nunavut's justice programs are sensitive to Inuit values and customs. For example, the territory has only one level of court system, reflecting Inuit tradition. Community justice committees and community-based justices of the peace divert cases from the court system as much as possible. Land-based camps have been created for offenders to learn more about traditional Inuit lifestyle. The Nunavut Law Review Commission, composed mostly of Elders, is reviewing laws and recommending changes to make them reflect Inuit custom.

Public Service

The Nunavut government is committed to building a public service that reflects the Inuit majority. To achieve this, the government is decentralizing its operations into communities outside the capital city of Iqaluit. Training programs are increasing the number of qualified Inuit workers in the public service. At the end of 2002, the government reported that about 50 per cent of its public service employees are Inuit. Its target is 85 per cent.

RESEARCHING COMPREHENSIVE CLAIMS

What issues are involved in land-claims negotiations and settlements?

WHAT TO DO

1. Working with a partner, research the details on one of the comprehensive land claims that you have learned about in this textbook. These include the
 - James Bay and Northern Quebec Agreement, 1975
 - Agreement in Principle with the Dene and Métis of Treaty Eleven in the Northwest Territories, 1990
 - Council for Yukon Indians Umbrella Final Agreement, 1993
 - Nunavut Land Claims Agreement, 1993
 - Nisga'a Agreement, 2000If you prefer, choose another comprehensive claim, such as the Innu Nation Claim of Newfoundland and Labrador that was first submitted in 1978.
2. Conduct an online research of the claim history, negotiations, and current status. If there is a final settlement, what have been the results for Aboriginal peoples

and others? Two Web sites that may be helpful starting points are

- Indian and Northern Affairs www.ainc-inac.gc.ca
 - Aboriginal Canada Portal www.aboriginalcanada.gc.ca
3. Create a Web site using an electronic program such as Front Page™ that illustrates the timeline of events, significant individuals involved in the negotiations, any complications during the negotiation process, main ideas of the agreement, and the impact of the land claim.

LOOKING BACK

Name at least two points from each settled comprehensive land-claim settlement you studied on pages 143–155 that make it unique. What issues and resolutions were similar?

Chapter Four Review

Check Your Understanding

1. Why do some First Nations object to the term *land claim*?
2. What was the first Aboriginal land claim in Canada?
3. What is the difference between ceded and non-ceeded lands? How do First Nations view ceded land differently from the federal government?
4. How did the 1876 Indian Act affect land claims?
5. How did the 1927 amendment to the Indian Act affect First Nations land claims? Why did the government make this amendment?
6. Why was 1951 an important year for First Nations land claims?
7. Explain the significance of the Calder case for Aboriginal land claims.
8. What were two complaints Aboriginal peoples had about the federal government's *In All Fairness: A Native Claims Policy*?
9. To what federal government office do Métis and non-status First Nations people address their concerns? When was this office opened and why?
10. Outline the steps that Aboriginal groups take when launching a land claim.
11. What are the differences between comprehensive and specific land claims?
12. What problems are created when land claims remain unsettled for years, decades, or longer? Provide specific examples.
13. How have changes in the lifestyle of Aboriginal peoples made land claims important to their livelihood?
14. What does it mean to "take treaty"? What does it mean to "take scrip"? If you were placed in the position of choosing between the two today, which would you choose? Explain your choice using historical examples.

15. Why does the Oka crisis stand out in land-claims history?
16. What is a Status Indian? How does having status impact a person with First Nations ancestors?
17. Why is self-government an important issue in land-claims negotiations?
18. Create a chart that includes the key conflicts and resolutions of the following land-claims agreements:
 - James Bay and Northern Quebec Agreement
 - Agreement in Principle with the Dene and Métis of Treaty Eleven in the Northwest Territories
 - Agreement in Principle with the Council of Yukon Indians
 - Nunavut Land Claims Agreement
 - Nisga'a Final Agreement

Reading and Writing

19. In your opinion, how fair was the *In All Fairness: A Native Claims Policy*? Explain your opinion in a paragraph.
20. Many of the problems affecting contemporary Aboriginal peoples result from decisions made by people long ago. Resolving today's issues can be difficult and can result in further injustices. Write an essay titled "Finding Justice for Aboriginal Peoples in the Twenty-First Century." Use specific examples that you have learned about in this textbook, additional research, and current events to form a thesis and express your opinion on this topic.
21. What role do natural resources play in land claims? Find three specific examples in this chapter and create a PowerPoint™ presentation that illustrates the impact that characteristics of the land itself have on the way and speed with which land claims are negotiated and settled.

Viewing and Representing

22. Create a work of art or performance that is titled The Value of Land. Include as many different perspectives as you can, but also include your own ideas and perspective.
23. Draw a concept map showing the structure of Métis Settlements self-government. Visit the Métis Settlements General Council Web site at www.msgc.ca to find more detail or, if possible, use protocol to request a classroom visit from a Métis Settlement councillor. What powers does each level of government have? How do these powers compare to the Core Areas of Jurisdiction listed on page 100, as identified by the Royal Commission on Aboriginal Peoples? Why were the settlements able to resolve their land claim when other Métis people have not been?
24. How can settling land claims lead to self-determination? Create a poster that demonstrates the significance of land claims for Aboriginal peoples, including the considerations that follow:
- political value
 - economic value
 - social value
 - cultural value
 - educational value
 - spiritual value

Going Further

25. As a class, role-play a land-claims negotiation. You might choose one of the land-claims settlements discussed in this chapter or create an imaginary land-claims negotiation with a scenario described by your teacher. Assign some or all of the roles that follow amongst your class members:
- Aboriginal leaders
 - Aboriginal community members
 - provincial and federal government representatives

- local landowners (could be Aboriginal, non-Aboriginal, or both)
- natural resource entrepreneurs (could be Aboriginal, non-Aboriginal, or both)
- non-Aboriginal community members
- members of another minority group
- members of the media

Your teacher can act as mediator. Your goal is to represent the various perspectives of those involved in the negotiation. Be careful that your portrayal focuses on the issues, not the personalities of the people whose views you represent. Consider what you have read throughout this chapter about the motivations and interests of all parties involved. Following the simulation, discuss the questions that follow:

- (a) How easy/difficult were the negotiations?
- (b) What were the most difficult issues to solve?
- (c) What emotions did you experience during the role-play? How did your emotions affect your decision making?
- (d) How easy was it to relate to other people's perspectives?
- (e) Which groups, if any, seemed to have more power? Less power? How can you explain the imbalance of power?
- (f) How was the dispute resolved? Were all parties satisfied with the resolution? How did you handle people who disagreed with the settlement?
- (g) What did the simulation teach you about negotiations?

LOOKING BACK

With a partner, answer the focus questions that began this chapter on page 108.