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frustrating task of claiming land

The federal government's protection of native interests, pledged in treaty after treaty, has been about as secure as a slab of Swiss cheese.

And one of the biggest holes is native land claims.

Six Nations is claiming a total of 4,900 acres in East Hawkesbury Township, east of Ottawa, and Innisfil Township, south of Barrie. The Mississaugas of the New Credit are negotiating compensation for 54 acres in Mississauga.

The delay in settling the Six Nations' claim is "outrageous," said Phil Monture, who researches and negotiates the band's claims. The way the government has treated New Credit is "patently unfair," said Harry LaForme, the New Credit band's lawyer.

"There isn't a perfect mechanism for settling claims, but surely it can be improved," Mr. Monture concluded.

The first step is for the government to follow its policy, they agree.

New Credit's claim is an example. The policy states that if a band proves part of its reserve was taken without being surrendered — the official word for permitting the government to assume control of the land — the band will be compensated the unimproved value of the land.

The government admitted no surrender exists in this case, but it says it doubts the validity of the claim and will negotiate at only 50 per cent.

Mr. LaForme, who has worked with bands across Canada, settling three claims and negotiating five more, has suggestions to improve the policy.

A way to settle disputes during negotiation is needed, he said. "The government is not only your adversary but your judge. If they have an opinion and we have an opinion, they decide what's right. For them to function fairly, they need arbitration."

Arbitration is not mentioned in the government's policy.

Indian Affairs Minister William McKnight is aware of this concern, said Specific Claims Director J. R. Goudie, but "the government is not prepared to go into arbitration."

The refusal to negotiate claims from circumstances that occurred before Confederation is another obstacle, Mr. LaForme said. If the government

admits — and it does in the New Credit claim — that it erred before and after 1867, it is logical that it correct both errors, not just one, he said.

"If they did something unlawful, they did something unlawful."

Claims that Mr. LaForme calls "morally improper" are not addressed, either. "Probably every band has one," he said, citing examples such as a judge deciding that part of a reserve should not have been designated a reserve, land taken for the clergy or for timber or just taken before the band has voted on the issue.

Worse than flaws in the policy is the government's attitude, Mr. LaForme said. Officials negotiating claims have been told: "We'll determine the value and we'll tell them, 'Take it or leave it,'" he said.

"There are more claims being settled now," Mr. Goudie said, "so that indicates to me there is negotiation."

Six claims were settled between 1974 and 1976, the first three years of the policy. Nine claims were settled between 1984 and 1986 and four claims have been settled this year.

The will to settle claims does not exist, Mr. LaForme insisted, and that is obvious in both the government and the rest of Canadians.

Former Minister of Indian Affairs David Crombie was "prepared to listen and tried to understand" and was committed to fair settlements, Mr. LaForme believed. But the minister could not control his staff, which did not share his commitment, he said.

Mr. McKnight is credited with sorting and straightening the staff and being honest and direct, but he is less "human" than his predecessor, Mr. LaForme said. Indians can expect "not much positive and a lot of unfairness" from him, he said.

The government is also avenging settlements in which bands received more than they deserved because the government's negotiators "did their job poorly," Mr. LaForme said his sources told him.

"They're mad because they got euchred."

He isn't sorry. "Bands deserve everything they can get. They can't pay bands enough to get the ledger to balance."

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They also say Indians already get too much, more than they deserve, in housing, health and education benefits and tax exemptions. They charge Indians will just spend the money on alcohol and televisions.

The issue of claims becomes a joke, Mr. LaForme said.

And that attitude, prevalent in dealing with claims, "represents everything about the relationship between Indians and Canada," he said. The future does not look better, he said. "I thought I would see change in my lifetime. But I don't think I will."

Indians are playing a number of aces in the law and courts to stay in the game.

The Royal Proclamation of 1763, which retains the force of a statute in Canada, is considered the most important source of Indians' right to land. The proclamation limited the settlement of Europeans in North America to a boundary from Hudson's Bay south and along the Appalachian Mountains. Land west of that line belonged to Indians and only the Crown could acquire it by treaty.

A decision in the case of Calder versus the Attorney-General in the British Columbia Court of Appeal in 1971 recognized the right where the proclamation did not — in the far west, which was not identified when the proclamation was announced.

The Nishga Indians of northwestern British Columbia sought a declaration that their rights were not legally extinguished on the land they had always occupied. The court upheld the concept of aboriginal title and split three-three on the question of legally extinguishing title. Although the court ruled the proclamation does not apply to British Columbia and no other title exists, the presumption of natural justice gained support.

The case was dismissed in 1973 because of a technicality.

The Supreme Court of Canada's decision in *Guerin versus The Queen* in 1984 set another important precedent that the government has a duty to act according to the standards of a private trustee and is liable for its conduct.

The government leased part of the Musqueam Reserve in Vancouver in 1957 but the terms of the lease were not what the band agreed to. The lease was



Harry LaForme

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Mr. Goudie denied fiscal restraint is even a policy, saying, "I'm not aware of any particular restraint. The government determines whether there is a lawful obligation and if there is, it compensates the band.

"These are complaints that have been well articulated," he added. "The government is looking at these. Whether the process will open up I don't know."

There are about 576,000 Indians in Canada, comprising only two per cent of the population, so there is little motivation for the government to improve the way it deals with them, Mr. LaForme said. "We don't influence many ridings."

The response from the rest of Canadians is often: "That was 100 years ago. How long are we going to have to keep paying for this?" Mr. LaForme said. "The rest of the population gets tired of it. People have other things to

much less valuable and the court ruled the band would not have agreed to it. The government hid the terms of the lease from the band for 12 years. It was ordered to pay the band \$10 million to compensate for lost opportunity to develop the land during the lease.

Many bands, including Six Nations, threaten to file their claims in court, but they are reluctant. The idea seems contradictory, Mr. Monture said, because recovering what was taken would cost even more.

The irony is that settling claims would answer the question: How long are we going to have to keep paying for this? "Only once," Mr. LaForme said. "All we want is outstanding matters resolved, to have what is rightfully ours," Mr. Monture said. "The people of Six Nations certainly shouldn't accept less."

Settlement would also help secure Indians' future, they agreed. "We could expand our land base. We could have economic development. We could have our own programs," Mr. LaForme said. "We would never be a burden on the public."

When New Credit received \$289,000 as compensation for another claim, people on the reserve asked: "What are we going to do with our money?" Mr. LaForme remembered. "It was like they earned it. It's a sense of accomplishment. You feel it in the community."

"If you can address your own needs your own way, surely that's going to create self-esteem," Mr. Monture said.

The failure of many claims, including the ones in East Hawkesbury and Innisfil townships and Mississauga, is also felt. "You feel abused, crushed," Mr. LaForme said. "It makes you feel you're the least important segment of Canadian society. Even the beaver has more respect than we do.

"The last time I saw McKnight I was so depressed I couldn't work for two days. It's enough to make you give up."

"It's the aspect of humiliation," Mr. Monture said. "The people with the money are the people with the power and you are going to give in to them."

Pay now or pay later is the crux of the issue. And the longer the wait, the higher the price of "the Indian problem."

"The claims are not going to go away," Mr. Monture said.