

TORONTO PURCHASE SPECIFIC CLAIM

Arriving at an agreement



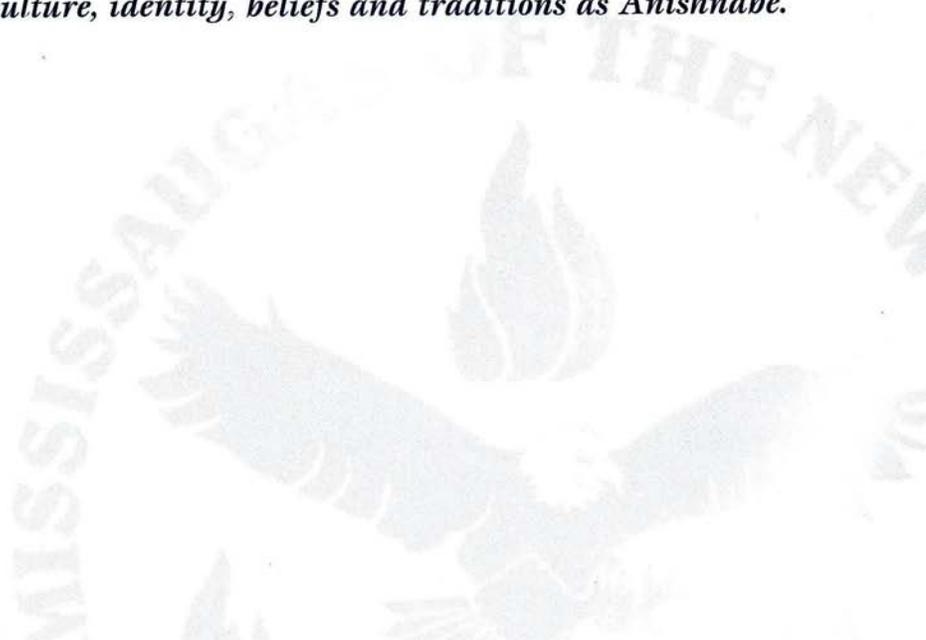
MISSIONS OF THE NEW CREDIT





COMMUNITY VISION

The 'Vision' of the Mississaugas of the New Credit is that of a united, thriving, self-sufficient and self-determining Anishnabek community, living a joyful celebration of our heritage. Our heritage includes our culture, identity, beliefs and traditions as Anishnabe.



Introduction

INTRODUCTION

The intent of the documentation contained within the following pages is to inform people of the process involved and the steps taken by the Mississaugas of the New Credit First Nation to secure a fair and just settlement for the Toronto Purchase Specific Claim.

The information will detail the history of a displaced people, providing the reader with a glimpse into who the Mississaugas are and from whence they came.

Following the history of the Mississaugas, will be an account of the steps taken by the First Nation to initiate the claims process and the process itself.

The conclusion of which will be the process to reach a settlement between the Federal Government and the Mississaugas of the New Credit for the Toronto Purchase of 1805.

As our community vision states, we are a people striving to achieve a “united, thriving self-sufficient and self-determining Anishnabek community.” Thereby, in pursuing a settlement of the Toronto Purchase, we are in no way trying to displace any persons from the land that is our Traditional Territory. We are a fair people working towards closure for past grievances.



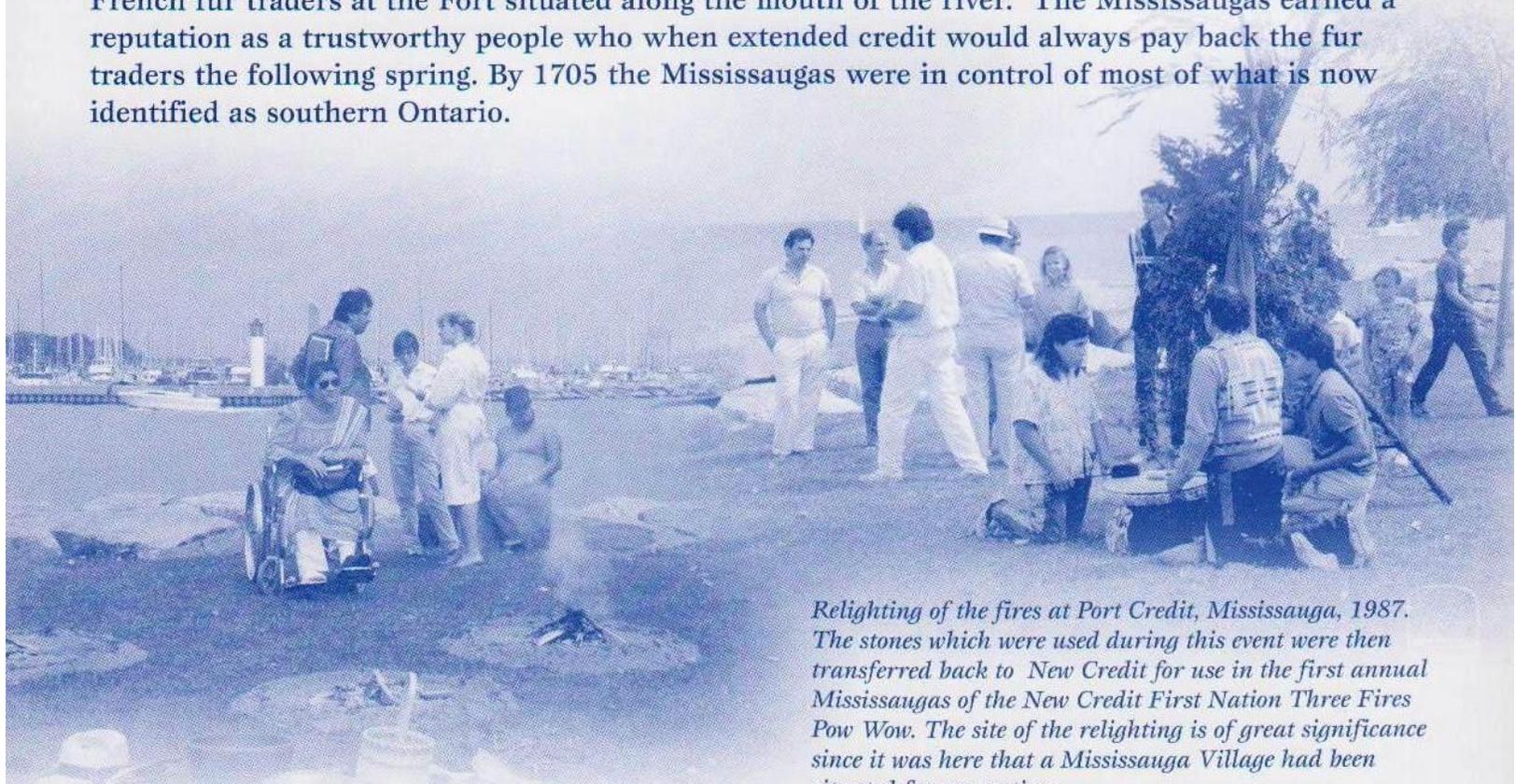
WHO WERE THE CREDIT RIVER INDIANS?

In the 1600's the Iroquois invaded what is now known as Southern Ontario, driving out the Tobacco, the Neutral and the once mighty allies of the French, the Huron. The Iroquois did this in order to secure new trapping grounds. They had depleted most of the beaver population and other fur-bearing animals in their traditional territory, now identified as New York State.

During the Beaver Wars, starting in 1695, the Mississaugas, traditional enemies of the Iroquois, travelled southward from their settlements on the north shore of Lake Huron near the Mississagi River, and drove the Iroquois back to their traditional territory south of Lake Ontario. There were two major groups within the Mississauga Nation. One branch drove the Iroquois down the Trent River system to the Bay of Quinte and then settled in that area.

The other Mississauga branch travelled down the old Aboriginal trail called The Toronto Trail or the Toronto Carrying place, which extended from Georgian Bay, across Lake Simcoe, down the Holland River and the Humber River to Lake Ontario. Here the group defeated the Iroquois at the mouth of the Humber. This western branch of the Mississaugas became the River Credit people. They settled the lands extending from Toronto down through Niagara and into the north shore of Lake Erie, but their principle residence was the mouth of the Credit River at the current site of Port Credit.

The name of the Credit River is derived from the Mississauga people who traded with the French fur traders at the Fort situated along the mouth of the river. The Mississaugas earned a reputation as a trustworthy people who when extended credit would always pay back the fur traders the following spring. By 1705 the Mississaugas were in control of most of what is now identified as southern Ontario.



Relighting of the fires at Port Credit, Mississauga, 1987. The stones which were used during this event were then transferred back to New Credit for use in the first annual Mississaugas of the New Credit First Nation Three Fires Pow Wow. The site of the relighting is of great significance since it was here that a Mississauga Village had been situated for generations.

HISTORICAL OVERVIEW OF AN ERA

By the mid 1700's, as the European powers fought each other for control of North America (with various Indian tribes playing strategic roles as allies) the colonies in New England and New France began to expand. Problems developed over the haphazard and often fraudulent way in which settlers acquired land from the Indians. The situation escalated to a climactic ruin when in the summer of 1763, the Ottawa warrior Pontiac led a series of devastating raids on interior trading posts in which more than two thousand settlers were killed.

Quebec fell in 1759, and the French surrendered to the British at Montreal the following year. The European powers signed the Treaty of Paris in 1763 at the conclusion of the Seven Years War, through which Britain gained control of most of the continent from Hudson Bay to the Gulf of Mexico, east of the Mississippi. The British then issued the Royal Proclamation of 1763. That proclamation, dealt with the administration of their new lands also set aside most of the interior of North America, west of the Appalachians and east of the Mississippi, as Indian Territory. In addition, the Royal Proclamation established a procedure for the surrender of Indian lands that is still in place today (in a modified form, set out in the Indian Act R.S.C. 1985, C. I-5, sections 37-41). That process was established to prevent the "great frauds and abuses... committed in purchasing Lands of the Indians" by forbidding private persons from purchasing Indian land. Instead, it required the following procedure:

...if at any Time any of the Said Indians should be inclined to dispose of the said Lands, the same shall be Purchased only for Us, in our Name, at some public Meeting or Assembly of the said Indians, to be held for that Purpose by the Governor or Commander in Chief of our Colony respectively within which they shall lie,...

This process effectively placed the Crown between the settlers and the Indians by preventing the sale of Indian lands to anyone other than the Crown. It was, as a result, the beginning of the Crown's fiduciary obligations to the Indians, and the Treaty making process as well. Most Treaties prior to the Royal Proclamation had been "peace and friendship" Treaties, not land surrenders. The majority of the land settled in Canada after 1763, was obtained through numbered Treaties.

The British Crown entered into approximately twenty different Treaties with the various Mississauga groups to secure title to "Upper Canada" for settlers and United Empire Loyalists who left the United States following the American Revolution in 1776. The Mississaugas gave up virtually all of their land between 1783 and 1820; only a few small reserves remained.

How the Mississaugas of the New Credit came to be:

In 1847, landless and greatly reduced in numbers and influence, the River Credit Mississaugas were forced from their village site on the banks of the Credit River (the current site of the Mississauga Golf and Country Club). The Band relocated to reserve land near Brantford purchased from their ancient enemies, the Iroquois, now known as Six Nations. Following the move, the River Credit Mississaugas re-named themselves "the Mississaugas of the New Credit."



THE "SALE" OF TORONTO 1787

Fearing invasion from the new neighbours to the south (which came in 1812), the Crown felt it vital to secure a military communication route from Lake Ontario to Lake Huron that did not utilize the vulnerable routes through Niagara, Lake Erie and past Detroit. In 1785, Lieutenant Governor Hamilton sent out John Collins, the Deputy Surveyor General, to explore the passage from the Bay of Quinte, up the Trent River to Lake Simcoe and then on to Lake Huron and to determine what lands would need to be purchased from the Mississaugas and Chippewas. Collins apparently went ahead and made "Treaties" with both the Mississaugas, for a rite of passage, and with the Chippewas for land from Lake Simcoe to Lake Huron. The passage proved unsatisfactory and the Crown looked for a better route.

In 1787, Sir John Johnson, head of the Indian Department, called a council of the Mississaugas at the Bay of Quinte to distribute "presents" (trade goods such as blankets, kettles and gunpowder) to reward the Mississaugas for their loyalty to the British during the American Revolution. In total £1,700 worth of trade goods was distributed to all of the various Mississauga groups at three different locations across southern Ontario. At that Council, Sir John Johnson discussed a number of potential land sales along the north shore of Lake Ontario and in particular they discussed a potential purchase of the "carrying place" from Toronto to Lake Simcoe.

Although these discussions were later characterized as the "sale" of Toronto, and the £1,700 worth of presents were later characterized wrongly as payment for the Toronto Purchase, in actual fact, nothing was sold at that Council in 1787. The deed to the land that was "found" many years later was blank, with the marks of three Chiefs from the Toronto area on separate scraps of paper wafered onto the blank deed. There was no description of the land "sold" in the deed.

The only record which remains of the lands discussed in 1787 is contained in a letter written by Sir John Johnson twelve years after the fact in 1798:

ten miles square at Toronto, and two to four Miles, I do not recollect which, on each side of the intended road or carrying place leading to Lake Le Clair (Lake Simcoe), then ten miles square at the Lake and the same square at the end of the water communication emptying into Lake Huron- this Deed was left with Mr. Collins, whose Clerk drew it up to have the courses inserted with survey of these Tracts were completed and was never returned to my office...

It is important to note that Sir John Johnson considered the purchase to be "ten miles square." He is not certain about the width of the strip up to Lake Simcoe, but he was clear that it was either two or four miles on either side of the Carrying Place. It is also important to note that the boundaries of the land as discussed with Sir John Johnson and the Mississaugas did not include the Toronto Islands. "Ten miles square" at Toronto would not have captured what was then the Toronto peninsula (the Toronto Islands did not become islands until a great storm later in the 1800's).



THE "SURVEY" IN 1788

Johnson's recollection of his agreement with the Mississaugas in 1787 is critical to the position of New Credit with respect to the Toronto Purchase. The boundaries of the land described by Johnson were significantly different than the boundaries the Crown attempted to survey the very next year in 1788. At that time Lord Dorchester and Sir John Johnson met again and discussed the purchase of the carrying place from the Mississaugas. Payments were made that year to Chippewas from Lake Simcoe and Mississaugas from the Rice Lake area, and presumably to the River Credit Mississaugas, though it is not known how much.

Shortly after Lord Dorchester and Sir John Johnson departed, the surveyor, Alexander Aitkin, attempted to survey the lands purchased from the Mississaugas. He immediately encountered difficulties. He had been instructed to make the eastern boundary at the end of Ashbridges Bay, but the River Credit Mississaugas said they had only given up to the Don River. He encountered similar problems in the west, when the Mississaugas said the boundary was the Humber River, not the Etobicoke River. In a letter written on September 15 1788, Aitkin acknowledges that the Indians protested the eastern boundary and his attempt to survey land westward beyond the Toronto River (the Humber River). It was only when the military was called in that the Indians were "prevailed upon to give up to the River Tobicoak (Etobicoke River) but no further."

Over the objections of the Mississaugas, Aitkin did a coast sketch from the eastern end of Ashbridges Bay to the Etobicoke River. He surveyed up the Etobicoke River about three miles, but then abandoned the survey because the Mississaugas were so hostile and his military protection had departed. This is a far cry from Sir John Johnson's "ten miles square at Toronto and two to four miles on each side of the intended road or carrying place."

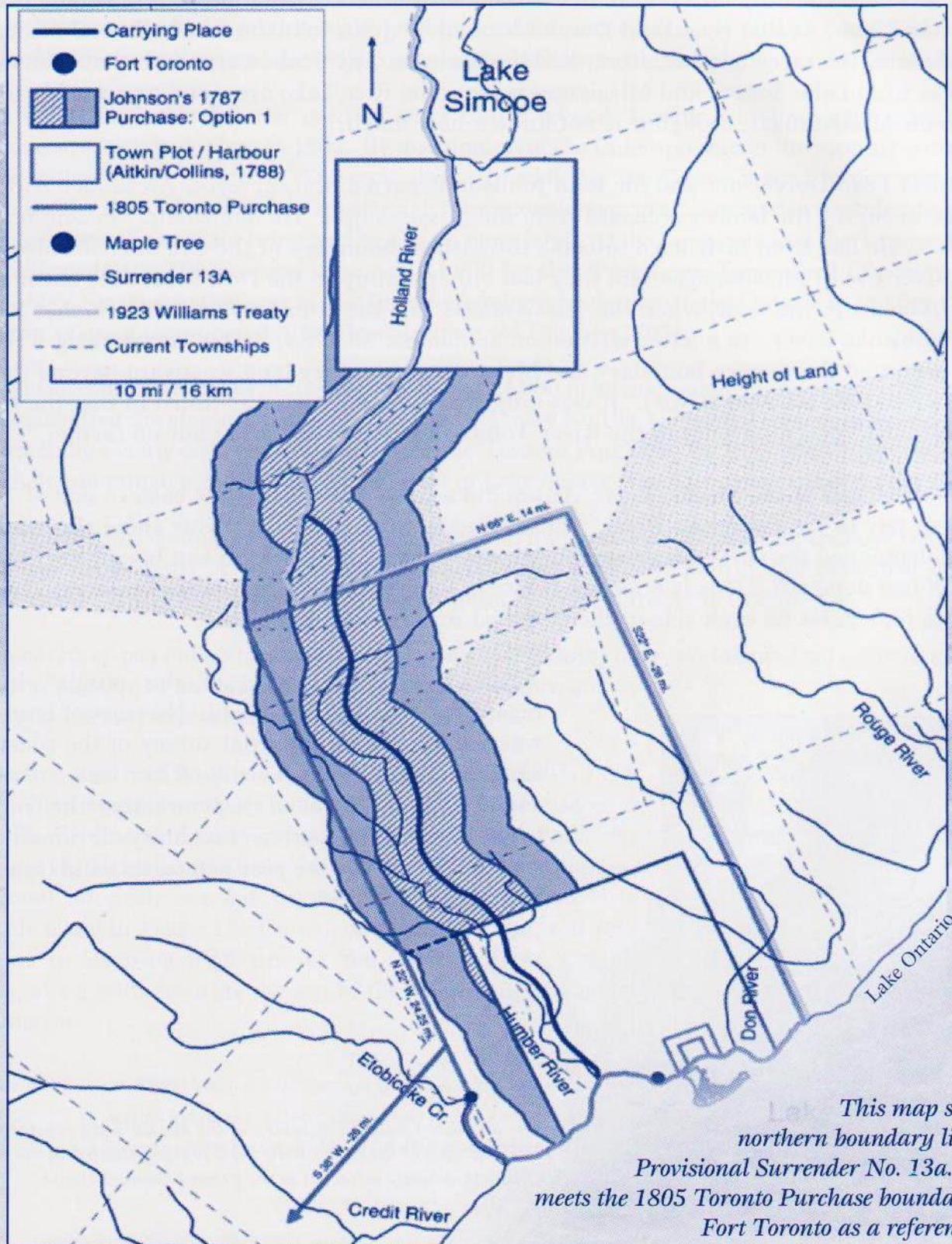
There was no "meeting of the minds" in 1788 regarding what had been sold. No tract of land was surveyed; only a partial survey of the coast and a small portion of the Etobicoke River was completed. The eastern boundary, the northern boundary and the western boundary all remained undetermined. As the year before, no valid transaction took place in 1788.



The original Council Chambers of the elected body representing the Mississaugas of the New Credit First Nation, located in the core area of the community adjacent to the present Council House.

TORONTO PURCHASE

1805 Toronto Purchase Boundary Map



This map shows the northern boundary line of the Provisional Surrender No. 13a, where it meets the 1805 Toronto Purchase boundary using Fort Toronto as a reference point.

THE TORONTO PURCHASE OF 1805

As a result of the extensive historical research which has been conducted into the "sale" of 1787 and the survey of 1788, it has been determined that from at least 1794 onwards, the Crown believed the arrangements made between Johnson and the Indians in 1787 and 1788 did not constitute a valid Treaty and that the Crown lacked legal title to the lands around the new capital city of York (now Toronto). The 1787 Deed with the Indians and the 1788 coast sketch were too vague to make for a valid surrender or sale.

This is why the Crown felt the need to enter into a second Toronto Purchase agreement with the Mississaugas, which took place in 1805. By that time all of the Chiefs present at the meeting with Sir John Johnson at the Bay of Quinte in 1787 were dead. In addition, the Crown waited to properly purchase Toronto until a time when another substantial "provisional surrender" was under consideration and the Mississaugas were once again being paid to give up more land. At the same time that the Toronto Purchase was "confirmed," the Mississaugas were paid £1,000 for the "Provisional Surrender" (Treaty No. 13a, 2 August 1805) for land to the west of the Toronto purchase lands along Lake Ontario to the Brant Tract at Burlington (Crown Grant No. 3 3/4 to Joseph Brant, 24 October 1795).

Note that Government officials of the day considered £1,000 to be inadequate for the Treaty No. 13a lands, and suggested that the amount be doubled to £2,000. Treaty No 13a. comprised considerably less land than the fourteen by twenty-eight miles surveyed for the Toronto Purchase. In 1815, the Chippewas agreed to sell a much less valuable 250,000 acre tract, west of Lake Simcoe; the Crown offered and paid £4,000.

By this time the Mississaugas had realized that the Crown's promises regarding the Indians' rights to hunt and fish on surrendered or sold lands were worthless as settlers moved in and prevented them from exercising their Treaty rights. The Mississaugas pleaded for help from the Crown:

We now rely on you Father to protect us when we want to Encamp along the lake and not suffer us to be driven off as we now are on the Lands we formerly sold our Father, altho we were promised to encamp and fish where we pleased.

The meeting was held on July 31 and August 1 and 2, 1805, were, from the Mississaugas perspective, focused on securing a reserve at the Credit River and fishing rights in the Credit and Etobicoke Rivers and the Sixteen and Twelve mile Creeks. These negotiations were about survival, not fair payment for land that had been effectively taken in 1788. The Crown, on the other hand, was very interested in securing legal title to the Capital of the Colony, Toronto, along with securing the last of the Mississaugas' land on Lake Ontario.

Peter Jones, a Mississauga Chief and Methodist minister helped his people survive the impact of European settlement. Calotype taken by David Octavius Hill and Robert Adamson, August 4, 1845 in Edinburgh.



In preparation for the meeting with the Mississaugas, the Crown prepared four different plans - two of the Treaty No. 13a Lands and two of the 1787 Toronto Purchase. Surveyor William Chewett sent the four plans to William Claus, Deputy Superintendent General Dept. Indian Affairs (and the government official who led the 1805 negotiations with the Mississaugas) along with instructions for their use:

Herewith enclosed I send you two small Plans of the Mississague Tract (the Treaty No. 13a lands with their Descriptions, having made two Descriptions of each as requested and numbered the same 1st and 2nd. Also two descriptions of the Toronto purchase in the year 1787, numbered 1st and 2nd, which ever of these descriptions may be taken for the Toronto purchase, the corresponding number must be taken for the Mississague Tract...

The first Description is according to the survey made by (unreadable) - the 2nd is that which you were pleased to say the Indians conceived to be the true Boundary.

The western boundary of the 1787 Toronto Purchase would become the eastern boundary of Treaty No. 13a. Claus knowing that the western boundary of the 1787 Toronto Purchase had been hotly contested by the Mississaugas in 1788, went ahead and had Chewett prepare two plans of the 1787 Purchase - likely one with the Etobicoke River as the western boundary, as surveyed by the Crown, and a second plan with the Humber River as the western boundary, as the Mississaugas had maintained at the time. Which plan the Mississaugas would accept for the 1787 Purchase would then dictate which plan of Treaty No. 13a to use, and Chewett numbered them, so that Plan 1 of the 1787 Purchase was to go with Plan 1 of Treaty No. 13a, and Plan 2 was to go with Plan 2 - in other words the western and eastern boundaries would coincide if the Plans were used properly.

Claus met with the Mississaugas on July 31, 1805, armed with the two plans of the 1787 Purchase, but only showed the Mississaugas Plan 1 - which was what Aitkin had attempted to survey in 1788 (over the objection of the Mississauga Chiefs who had negotiated with Sir John Johnson directly). Not wishing to play his hand, Claus requested the Mississaugas state where they thought the boundaries of the 1787 Toronto Purchase had been. Chief Quinepenon replied:

Father - All the Chiefs who sold the Land you speak of are dead and gone. I now speak for all the Chiefs of the Mississagues; We cannot absolutely tell what our old people did before us, except by what we see on the plan now produced & what we remember ourselves and have been told.

Claus replied that the new deed would be made out as soon as possible and that the Mississaugas would be provided with a copy. Regarding any compensation Claus stated:

...he had it not at present in his power but he will report their request to the Governor and hopes from his reputation of their conducts the General may be induced to comply with their request.

The very next day, Claus returned to the River Credit with the fresh deed and it was executed with the Mississaugas. The Crown then gave the River Credit Mississaugas ten shillings for the Toronto Purchase. For "confirming" the boundaries of the 1787 Toronto Purchase, as surveyed incorrectly by the Crown in approximately 1788, and for giving the Crown legal title (which they did not have up to this point) to 250, 880 acres of prime southern Ontario land upon which the capital city sat, the Crown gave its Indian allies, who in only seven years time would prove key in repulsing the American invasion of Canada, the mere sum of ten shillings.

THE TORONTO ISLANDS

The 1787 Purchase as described by Johnson and by the Mississaugas (when they objected to Aitkin's 1788 coast sketch), would not have included the Toronto Islands. The Mississaugas were adamant that the eastern boundary was the Don River - and if the Don had been used as the eastern boundary, then the watery sandpit that was the Toronto Islands, would not have been part of the purchase.

It was not until the eastern boundary was pushed an additional three miles to the east, to the end of the Ashbridges Bay, that the Toronto Islands would have been included in the sold lands. The Mississaugas have always believed that they did not relinquish the Toronto Islands because they were of great spiritual and religious significance to them. They could never envision knowingly surrendering this sacred land.

The ten miles square that Sir John Johnson bargained for would not have included the Toronto Islands. He wanted to secure a communication route from Toronto to Lake Huron and he was interested primarily in that route. The Toronto Islands are not part of that route. Nor would it have been clear to the Mississaugas in 1788 that Aitkin's coast sketch included the Islands, because Aitkin only sketched the coast of Lake Ontario from the end of Ashbridges Bay to the Etobicoke River. He makes no mention of the peninsula that was to become the Toronto Islands.



The Toronto Islands were included unilaterally by the Crown in the full survey that was completed by 1798. When faced with the "fait accompli" of Plan 1 in the 1805, the Mississaugas acquiesced to what had surveyed by the Crown, but there is no evidence of any discussion that the Toronto Islands were to be included in 1805 Purchase. To this day, the Mississaugas of the New Credit are adamant that they would never have knowingly surrendered the Toronto Islands, as they were sacred ground with significant religious and spiritual importance to the Mississaugas and to other First Nations as well. The islands were a place of peace and healing.



NEW CREDIT'S POSITION TODAY

As noted in the previous pages, the Crown's fiduciary duty to First Nations can be traced back directly to the Royal Proclamation of 1763. Since the Indians are prohibited from selling their land to anyone other than the Crown, then the Crown has an obligation to deal honourably and fairly with the Indians when purchasing their lands.

In 1984 the Supreme Court of Canada released the following statement with regards to the Crown's obligation to First Nations:

...the nature of Indian title and framework of the statutory scheme established for disposing of Indian land places upon the Crown an equitable obligation, enforceable by the courts, to deal with the land for the benefit of the Indians.

The Crown stood in a fiduciary relationship with New Credit regarding the surrender of the Toronto Purchase lands in 1805. At the very least the Crown had two major duties:

- i. To ensure that the River Credit Mississaugas were fully informed as to their rights and the facts regarding any particular transaction.
- ii. To ensure that the Crown paid a reasonable price for surrendered land.

The Crown failed to exercise both of the said duties. The Indians were not consulted regarding the invalidity of the earlier purchase and 10 Shillings was a pathetic price for Toronto.

This breach of fiduciary obligation means that the Band is owed damages in the nature of restitution, that is to be placed in the same position as if the breach had never occurred. New Credit is owed the value of the 250, 880 acres in 1805 and lost opportunity to the date of settlement of this claim. If the Crown can prove what amount, if any, was actually paid to the River Credit Mississaugas in 1788, then that amount could be offset against the amount owing.

Compensation will primarily be in the form of money from Canada. In no case will innocent third parties be displaced.

New Credit First Nation Councillor Ward LaForme Jr. delivering welcoming remarks at the Aboriginal Festival in November, 2000. The annual event is held at the Skydome in the city of Toronto - the Mississaugas of New Credit First Nation traditional territory.



SPECIFIC CLAIM PROCESS

How a claim qualifies as a specific claim:

The Indian Claims Commission defines specific claim as a an allegation submitted by a First Nation that the federal government has failed to honour its treaties, agreements, or legal responsibilities. According to the ICC majority of the claims submitted are specific claims. Of the approximate 900 specific claims submitted since 1973, 200 specific claimes have been settled to date.

Federal policy dictates that a specific claim is deemed valid when a First Nation is able to prove that the government has an "outstanding lawful obligation" by demonstrating:

- the non-fulfillment of a treaty or agreement between Indians and the Crown.
- a breach of an obligation arising out of the Indian Act or other statutory obligation.
- the mishandling of Indian funds or assets by government administration.
- an illegal disposition of Indian land.

The government's policy also recognizes claims that they consider to be "beyond lawful obligation," including:

- failure to compensate a band for reserve land taken or damaged under government authority; eg: paying less than market value, or nothing, for land taken by government in a legal surrender.
- fraud by federal employees in connection with the purchase or sale of Indian land.

Specific Claims are typically resolved in the form of financial compensation to the First Nation.

The Mississaugas of the New Credit Council House is situated in the core area of the community. The structure erected in 1987 acts as the central building for the entire Administrative Body.



TORONTO PURCHASE SPECIFIC CLAIM

Chronological Order of Events

- Claim submitted in 1986 by the Mississauga Tribal Claims Council (MTCC).
- Claim rejected by Canada in 1993.
- MTCC requested the Indian Claims Commission (ICC) conduct an inquiry in 1993. However the ICC file was closed due to inaction by MTCC.
- The Mississaugas of the New Credit First Nation requested an independent inquiry, February 1998.
- A planning conference was held in Ottawa on July 16, 1998. Representatives of New Credit, the Department of Justice and the ICC were present at the conference where Canada agreed to review the claim on the basis of the original rejection.
- A second planning conference was held on October 1, in Toronto with Justice Robert F. Reid of the Indian Claims Commission.
- New Credit requested that the Crawford Treaty and the Gunshot Treaty be held in abeyance.
- Third planning conference was held in Ottawa, November 25, with Justice Reid.
- Canada agreed to proceed with the merits of the claim before beneficiary issue is resolved.
- New Credit submitted a fresh legal opinion March 8, 1999, including position regarding the Toronto Islands.
- New Credit submitted position regarding the Beneficiary Issue September 9, 1999.
- New Credit submitted position regarding the Compensation Issue October 18, 1999.
- New Credit awaiting Federal Government's decision regarding acceptance for negotiation, 2001.

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