



LAND CLAIMS

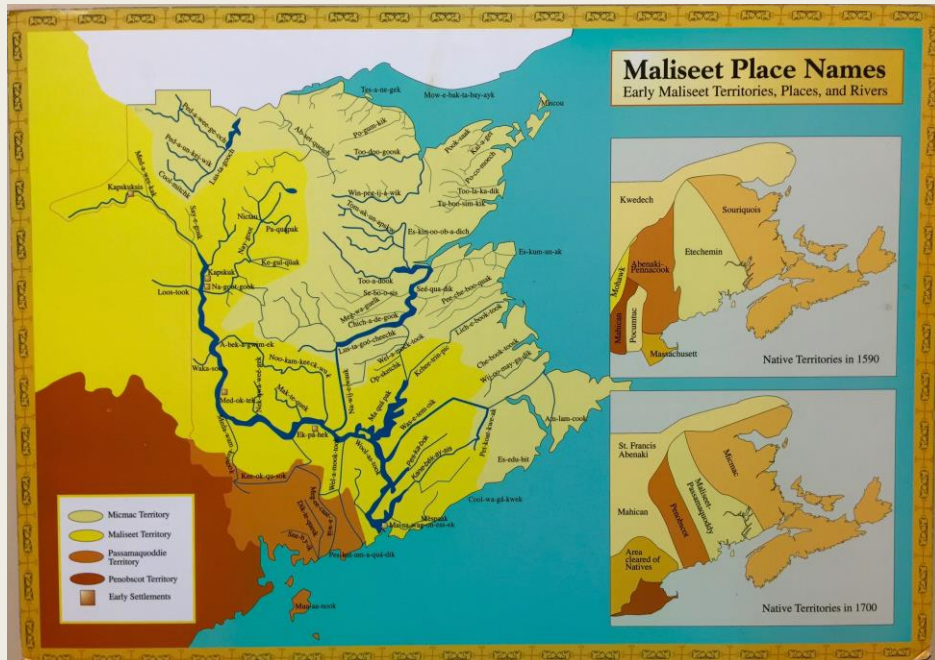
By

David Perley

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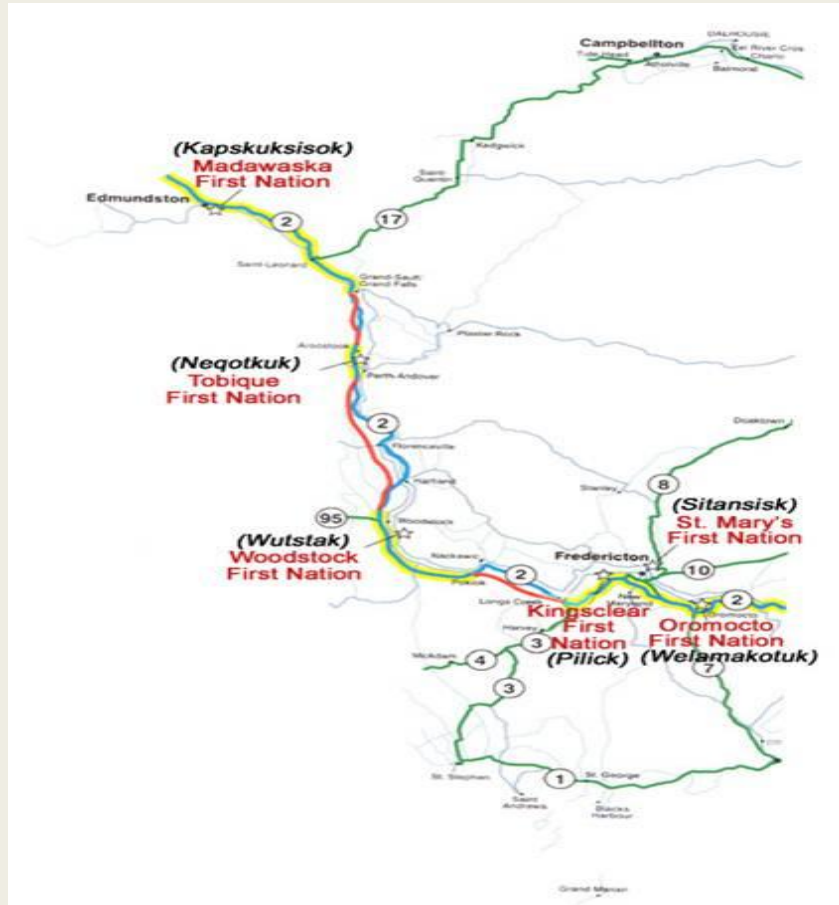


Canada's Land Claims Policy (History)



- In 1967, Frank Calder and other Elders of the Nisga'a First Nation in BC filed a lawsuit declaring that Nisga'a title to their traditional, ancestral and unceded lands had never been lawfully extinguished through treaty or by any other means.
- Nisga'a lost in the lower courts but in 1973, the Supreme Court of Canada ruled that Aboriginal title to land existed prior to the colonization of the continent

Canada's Land Claims Policy (History)



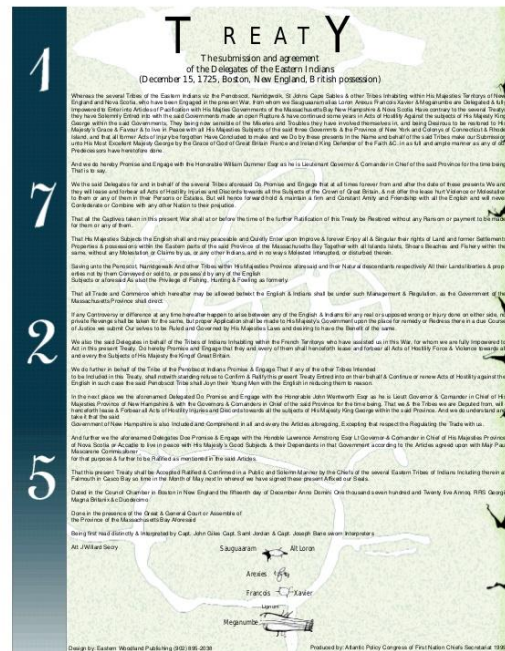
- Canada's response to the 1973 Calder Case was to create a policy to address its obligations to the First Nations of Canada.
- In 1974, the DIA established the Office of Native Claims
- In 1981/82, divided the claims policy into 2 separate policies; Specific Claims (Outstanding Business) and Comprehensive Claims (In All Fairness)

Supreme Court of Canada Cases in Support of Indigenous Land Rights and Title



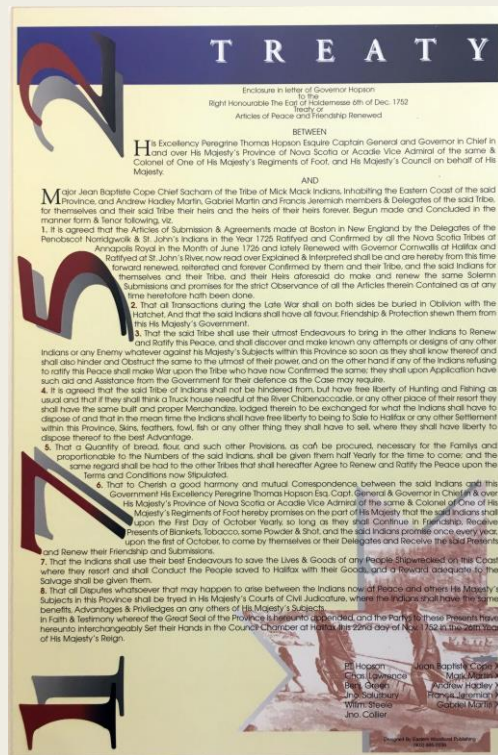
- *Guerin v The Queen* (1984): established that the “Musqueam Indian Band” has Aboriginal title to their lands
- *Delgamuukw v BC* (1997): SCC ruled that Gitksan have Aboriginal title to their land and this is an ancestral right protected by section 35(1) of the Constitution Act
- *Tsilhqot’in Nation v BC* (2014): established Aboriginal land title for the Tsilhqot’in First Nation

Canada's Land Claims Policy



- Comprehensive Claims: based on traditional use and occupancy of land by Indigenous people
- Specific Claims: claims arising from breaches of treaty, breaches of trust and circumstances such as theft and violations of the fiduciary duties of the Crown. The Indian Act outlines statutory requirements for a legal surrender of land.

Tobique Land Claim



- Tobique was established in 1801 and the government set aside 20,000 acres of land as “reserve land”
- Squatters settling on Tobique reserve
- Alleged Surrender of 1892
- Squatters and alleged surrender responsible for losing 12,000 acres of land reserved for Tobique
- Specific claim submitted in 1972

Tobique Land Claim



- Indian Act requirements for legal surrenders of land
 - *Order-in-Council (Cabinet)*
 - *Band meeting to discuss surrender*
 - *Minutes of meeting have to be submitted to Ottawa*
 - *Majority of members have to attend and give approval*
 - *The surrender has to be signed by the majority*

Tobique Land Claim



- What we found from research:
 - *No Order-in-Council on record*
 - *No record of band meeting*
 - *Majority of Tobique members at that time did not sign the alleged surrender*
 - *Forgery revealed*
 - *Amount paid per acre was less than one third the market value of land at the time*