

ABORIGINAL CLAIMS AND THE CANADIAN MILITARY: THE IMPACT ON DOMESTIC STRATEGY AND OPERATIONS

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A great deal of research has been vested in assessing how the world has changed over the last decade, and how this poses new questions in strategic and operational thinking. It is time to begin to assess how our domestic context has changed as well. The Canadian political landscape is increasingly complex, filled with a proliferation of interest groups asserting conflicting demands on governments. Among these interests, Aboriginal issues occupy a high priority in Ottawa. This has been indicated in several Liberal red books, energies invested in the recently concluded Royal Commission on Aboriginal Peoples, and recent frameworks for federal-First Nation partnerships announced by Jane Stewart (the Minister of Indian Affairs and Northern Development) and Phil Fontaine (the National Chief of the Assembly of First Nations).

The relationship between the French, British and later Canadian militaries and "their majesties' Indian Allies," is an enduring one. Following contact, the European constructs of New France and eventually Canada were very much products of conflict and conquest where Europeans relied on crucial military alliances with Aboriginal peoples. Following Confederation, Canadian Aboriginals participated in colonial initiatives like the Nile River Expedition and the Boer War. During both World Wars Aboriginal Canadians boasted the highest enlistment rates per capita of any ethnic group in the dominion. The participation of Aboriginal soldiers in the Korean War, peacekeeping operations, and the Gulf War continues this long and proud relationship. One example of the continued respect that Aboriginal groups have for their veterans is evidenced during pow-wows. Veterans are usually asked to be flag bearers and lead the ceremonial procession of participants into the sacred circle at the onset of festivities. With this in mind, the military must recognize its living presence in Aboriginal communities and acknowledge that Aboriginal and military attitudes towards one another are rooted in the past, discussed in the present, and shaped in anticipation of the future.

As a student of Canadian history, I resolutely believe that our present circumstances are inextricably linked to our understanding of the past. Although it might be argued that DND's mandate does not make it a social-provisionary department, it has legal responsibilities towards Aboriginal peoples stemming from the Constitution, existing treaties, and land claims obligations. And although the military does not make policy or programs specific to particular ethnic or cultural groups, it must be aware of federal policies and programs that it is required to implement. Above and beyond these important respects, the military and Aboriginal peoples have a special relationship that transcends the legal realm.

The initial reaction of listeners might be that the realm of Aboriginal affairs is best left to the experts in the Department of Indian and Northern Affairs or 'DIAND.' However, Aboriginal land claims carry implications for all government departments and especially for the Canadian Forces. In fact, nearly eighty percent of Canadian military property assets are located on Aboriginal lands or near reserves and Aboriginal communities. This paper will explore how Aboriginal interests, vis-à-vis land claims, impact on strategic and operational considerations in Canada.

Following an examination of DND's current involvement in land claims processes, I will make the case for a departmental working group focussing on Aboriginal issues.

The perspectives that I am presenting are derived from existing land claims agreements, conversations with various DND employees and members of the Canadian Forces, secondary literature from both Canada and the United States, and various government documents. All recommendations and opinions expressed, however, are mine alone.

I must note from the onset that the primary focus of this paper will not be on Canadian Forces interactions with Aboriginal peoples in an aid to the civil power capacity. Although the Oka confrontation of 1990 might be an initial thought that comes to mind when the subject of "Aboriginal-military relations" is suggested, I would strongly argue that this incident is not representative of 'normal' relations (if I may still use such a term in this day and age) between Aboriginal peoples and the Department of National Defence and Canadian Forces.

ABORIGINAL CLAIMS AND THE MILITARY

Current grievance and settlement activities between the Federal Government and Aboriginal people generally fall into three categories of claims: comprehensive claims, specific claims, and claims of another kind. Not only do each of these call for different degrees of involvement from DND, but they can impact the military in different ways. I will briefly describe each and use examples show the kinds of impacts they can have on DND and the CF.

First, Comprehensive Claims. While much of Canada was subject to treaty making from the early eighteenth to the early twentieth centuries, some large areas remained without formal agreement between government and resident Aboriginal peoples on the disposition of the land. These areas not covered include most of BC, the Territories, Northern Quebec, and Labrador. During 1973, the Federal Government undertook to cover the remaining parts of Canada with modern treaties called comprehensive land claim agreements. These are based on the concept of continuing Aboriginal rights and title which have not been dealt with by treaty or any other legal means, and thus can be seen as the modern 'treaty-making process.' The negotiations and settlements deal with land ownership; management of lands and underground resources; harvest of and management rights for wildlife, fish and forests; economic development; access rights; and financial compensations. I have used the Nunavut and Nisga'a Final Agreements for the purposes of this study.

For the military, there are potential areas of impact associated with comprehensive claims, most acutely in terms of access and development issues. I will briefly outline some of them here. First, the Canadian Forces must ensure that they can freely pass through Aboriginal settlement lands in the course of their duties, in training, conducting exercises, and carrying out manoeuvres. It is current military practice to contact impacted stakeholders, including Aboriginal peoples, prior to the use of public and private land for defence purposes, and that these interests be accommodated to a practicable extent. This practice of consultation with Aboriginal governments must be strictly maintained when the military crosses or temporarily stays on Aboriginal settlement lands or land under claim. There has also been pressure on the Department to pay user fees for access to and temporary use of Aboriginal lands. Comprehensive claim agreements also contain

provisions for Aboriginal peoples to access federal lands for wildlife harvesting and other traditional activities, which must be complied with under certain conditions.

The Department and the Forces must also be cognizant of proposed and ratified jurisdictional changes. In terms of airspace, DND must maintain its position that airspace is the exclusive jurisdiction of the federal government and is thus non-negotiable. At the same time, however, it must be mindful that the use of airspace for military activities such as low-level flying and weapons testing will continue to be controversial, as the Cold Lake and Goose Bay cases have amply demonstrated, especially if conducted over Aboriginal settlement lands. Environmental jurisdiction changes through land claim agreements may bind the Department to new arrangements or processes, and in terms of broad jurisdictional issues DND has to be mindful that existing lines of communication may change due to comprehensive claim agreements. Cultural and heritage provisions may impact on military property assets, and necessitate Aboriginal involvement in decision-making regarding certain development activities and operations.

I wish to stress some final thoughts on the implications of comprehensive claims on the military. Land is a scarce commodity, but is in high demand by Aboriginal groups facing unparalleled demographic pressures in this country. In this light, there are pressures on major federal landowners to provide land for claims. DND, with its more than 10,000 individual facilities at hundreds of locations, and as administrator of over 20,000 square kilometres of land, is seen as a prime source of potential land. This can have a dramatic impact on strategic decision-making in real property asset management, especially where overlapping claims place conflicting demands on the department and the military. In terms of defence development activities, the military must ensure that review provisions in land claim agreements do not inhibit the development of infrastructure and new facilities, the nature of operational activities, or research and development requirements.

This is only a preliminary list of considerations. The full implications of comprehensive claims agreements are still not known. Furthermore, self-government agreements are often negotiated parallel to comprehensive claims. These could have impacts on DND and the Forces in a wide range of areas from education and training to taxation agreements. As Constitutional documents, these modern-day treaties have unique legal powers that will evolve over time.

The second kind of land claims are known as Specific Claims. These arise from alleged non-fulfilment of Indian treaties and other lawful obligations, or the improper administration of lands and other assets under the *Indian Act* or formal agreements.

The military has a stake in many specific claims as well. For example, claims by the Canoe Lake and Cold Lake First Nations have led to financial compensation from DND for loss of land use due to development and use of the Primrose Lake Air Weapons Range, which the military has leased from the Saskatchewan and Alberta provincial governments since the 1950s. Agreements have included provisions for Aboriginal access to the range for traditional and commercial purposes. In this case, more than one First Nation have claims regarding the same property, but the various claimants differ in their negotiation pursuits and in what agreements they are prepared to sign. Environmental assessments that stem from the claims process may also impact

the nature and timing of DND activities on parcels of land. Without a doubt, specific claims have the potential to affect DND land use goals, "particularly when the moral strength of these claims are combined with the organizational capability of environmental groups and other well-organized users of the public lands."

The third type of claims is simply known as Other claims or Claims of Another Kind.

Generally speaking they fall into two categories: claims relating to Aboriginal title, and claims relating to federal government responsibility. An example of the first is the Algonquins of Golden Lake claim, which has put pressure on DND to provide land and resources from CFB Petawawa to help settle a land claim based on traditional use of the Ottawa rivershed. An example of a claim relating to federal government responsibility are negotiations for the return of Camp Ipperwash, which recently saw DND, DIAND, and the Kettle and Stoney Point First Nation reach agreement regarding the appropriation of the Stoney Point Reserve in 1942 and the continued use of the property until the early 1990s. The agreement included provisions for the return of the former military camp to the First Nation, a cash settlement, environmental clean-up, and housing. In this instance, the claims process has been complicated by internal divisions within the First Nation over who should receive the land and compensation. A certain group, asserting themselves as members of a distinct, self-proclaimed "Stoney Point Band," occupied the former camp in the early 1990s. The tragic death of Dudley George, under dubious circumstances, during a confrontation with the OPP in 1995 continues to resonate in the press and in parliaments.

Perhaps the Ipperwash case, more than any other, illustrates the importance for DND and the Forces to be aware of the complex histories of their properties and why past decisions were made. Departmental and military representatives must be aware of the intricacies of historical contexts and past decisions rendered, as well as current developments, in order to adequately represent the military's interests in both a compassionate and just manner.

What, then, does all of this mean? At a time when Defence budgets are shrinking, Aboriginal claims demand scarce resources for negotiations and compensation. As the military faces difficult decisions regarding its property assets, land claims put additional pressures on, and add complications to, strategic decision-making and operational planning in the domestic sphere. But they are also a key element in the federal government's agenda, and must be respected for their legal weight in the courts and their moral weight in the eyes of the citizenry.

THE DEPARTMENT AND LAND CLAIMS

With a knowledge of the various types of claims, and having established the importance of the military understanding and being involved in these processes, I will briefly explain how DND is presently organized to deal with land claims. There is no longer a single administrative unit to deal with the ubiquitous category of "Aboriginal affairs." Instead, various branches of the department are responsible for particular spheres of responsibility. Property considerations are dealt with by the Directorate of Aboriginal Claims and Property Information [within the Real Asset Property and Plans division], who are tasked with: supporting negotiations of Aboriginal claims; providing representational services to senior departmental officials on all Aboriginal issues; and who participate in interdepartmental caucus meetings and working groups on

individual claims and broader policy direction. It is crucial that this presence be maintained so that DND and the Forces are seen as team players and not an aloof group who are not concerned with land claims and Aboriginal rights. The Director of Law A provides legal support by reviewing proposed clauses of claims that are flagged as having potential impact on DND and CF activities. The Director General Environment looks after specific environmental clauses, Human Resources is responsible for provisions that might impact members of the Forces and Employment Equity, and regional property officers are aware of negotiations impacting real property assets in their area of responsibility. Finally, while not a part of the claims world, participants (military and civilian) in the Departmental Aboriginal Advisory Group (or DAAG) provides support to DND employees who are Aboriginal, share information on Aboriginal issues, and provide input or feedback to DND on issues impacting Aboriginal members of the Forces and, in general, Aboriginal peoples in Canada.

Ms. Louise Fréchette, the former Deputy Minister, noted in her opening remarks to the October 1997 Conference on Ethics in Canadian Defence, that the Department faced ethical challenges in the management of its vast land and infrastructure holdings. She noted that the Department must be responsible for its "interface with aboriginal people" and determine what its "responsibilities [are] when it comes to negotiations with aboriginal people with regards to land claims?" She was correct in highlighting this as a complex and challenging question that the military needs to face. I would like to outline a viable means of exploring this question in a more holistic and inclusive manner.

PROPOSALS AND CONCLUSIONS

I suggest that, in light of the important implications that land claims and implementation measures have on the military, an internal departmental working group be established to look at Aboriginal issues and, more specifically, land claims and related federal policies. This would help to ensure that the various departmental and military stakeholder groups involved in or impacted by land claims maintain an appreciation and awareness of what others are doing and that they consider macro issues. This is particularly important because DND officials no longer negotiate claims directly with Aboriginal groups, instead providing advice and guidance to DIAND negotiators. Since DND and military representatives are no longer sitting at negotiating tables, it is imperative that the Departmental representative who attends interdepartmental meetings has a clear, coherent understanding of the military's needs from all perspectives. I should stress one key criteria. The group could not be involved in clandestine intelligence gathering. When I see front-page headlines like that in the October 24th issue of the Ottawa Citizen, proclaiming that the "Military Spied On Native Protesters," I cannot emphasize enough that the military must ensure this group is a forum for the dissemination and exchange of ideas, not espionage.

This stated, who would be involved and what would this internal working group look like? A prospective list of interested parties would likely include the Director Aboriginal Claims and Property Information, someone from DND Employment Equity, representatives from each of the three services (Air Force, Army and Navy), and a representative from the DAAG. The group would meet monthly or bi-monthly to discuss Aboriginal-military matters and land claim developments in terms of the status of specific cases, departmental positions and activities, and

federal policy changes. To ensure that no one member of the working group dominates agenda-setting, I would suggest that a rotating chair be implemented.

Some additional recommendations with regard to how the military can better develop and sustain a corporate knowledge of Aboriginal claims may be derived from a RAND Corporation study completed for the Department of Defense (DoD) south of the border. This study concluded that, in order for DoD to improve working relations with Native Americans, the military should develop and make available "histories and maps of prior Native American use of DoD agency-administrated land" that would be "useful in preparing for consultations with recognized tribes and in implementing relevant statutes." I would add that such histories and maps would help to clarify complexities associated with overlapping claims, claims by non-status Aboriginal peoples, or splinter groups that claim to be distinct First Nations, like the Stoney Pointers at Ipperwash.

The Department should consider developing a geographic information system to detail settlement areas from land claim agreements, areas designated by groups as traditional lands, lands under claim, and DND/CF real property assets. DND would have to ensure that such a tool is seen only as a tool for decision-making, and not as a legally-binding entity. Map coordinates related to Aboriginal claims and lands could be developed in cooperation with DIAND and other federal departments, as well as Aboriginal groups already undertaking similar projects, and DND information could be derived from existing departmental databases. Likewise, given the need to better understand the histories of Aboriginal-military relations in their historical context, independent consultants could be hired to provide objective, balanced research on controversial land holdings, or better yet, academic research should be encouraged on the history of certain properties. These would provide non-legally binding discussion papers for consideration and analysis.

At the regional and base levels, it is imperative that commanders and property officers remain current on claims processes and their Aboriginal neighbours. Due to the close proximity of most DND land to Aboriginal communities, the 1997 Defence Planning Guidance document stated:

DND/CF interaction with Aboriginal individuals and groups is potentially significant on a daily basis. In the conduct of training, domestic operations, and all normal business which involves Aboriginal Canadians, Commanders must be cognizant of the land restoration, economic development and Employment Equity policies of the Department, and of all applicable federal policies and laws.

With similar considerations in mind, including, of course, land claims, Mitchell and Rubenson suggested to the American military that a coordinator for Aboriginal affairs should be designated at DoD installations "to help retain institutional memory and policy expertise." He or she could focus on compiling and keeping up to date anthropological information on Aboriginal groups, note changes in public leadership and sentiments expressed in the local media, and assess the potential impact of military plans, projects, programs and activities on Aboriginal lands in light of federal policy and program requirements and treaty and land claim provisions.

Perhaps most importantly, the Department and the Canadian Forces must stress the positive strides that they are making, and the interest that they are taking, with respect to land claims and Aboriginal issues. In recent years, the chief nemesis of the Department and the Forces has been the media. With the high political weight given to Aboriginal issues in the Ottawa of the 1990s, it is imperative that the Department and the Forces be aware that bad press vis-à-vis land claims can only hurt their public image and erode positive relations between Aboriginal peoples and the military. DND must ensure that its strategic and operational needs are met, but it must not view Aboriginal claims and self-government negotiations as ways of settling "that Indian problem." It is time to reconceptualize these processes as means of establishing workable "government-to-government" relationships with federally recognized Aboriginal governments in a manner that best meets the needs of all parties involved.

As recognized in the Constitution, Aboriginal peoples occupy a distinct place in Canadian society. Land claims are an important means of recognizing Aboriginal rights and of forging a more positive relationship between Aboriginal peoples and the Government of Canada. As shown, DND and the Canadian Forces must continue to devote resources to participate in Aboriginal land claim processes and ensure that implementation measures are being fulfilled. This can only be achieved through solid management and good communication both within and outside of the department. A proactive, concerted, and involved approach can maintain and foster positive relations between the military and their Aboriginal members and neighbours.

ENDNOTES

1. See, for example, *Adjusting Course: A Naval Strategy for Canada* (Ottawa, April 1997), 11-16.

2. On historical interpretations of the Aboriginal-military relationship, see for example R.S. Allen, *His Majesty's Indian Allies: British Indian Policy in The Defence of Canada, 1774-1815* (Toronto: Dundurn Press, 1993); C.J. Jaenen, *Friend and Foe: Aspects of French-Amerindian Cultural Contact* (Toronto: McClelland and Stewart, 1976); Desmond Morton, *The Last War Drum* (Toronto: Hakkert, 1972); G.F.G. Stanley, "The Six Nations and the American Revolution," *Ontario History* LVI/4 (1964); S.F. Wise, "The American Revolution and Indian History," in J.S. Moir, ed. *Character and Circumstance: Essays in Honour of Donald Grant Creighton* (Toronto: Macmillan, 1970). For perspectives on the participation and experiences of Aboriginal veterans during and after the World Wars, see Canada, Department of Veterans Affairs, *Native Soldiers, Foreign Battlefields* (Ottawa: Minister of Supply and Services, 1993); Canada, Royal Commission on Aboriginal Peoples (RCAP), *Report of the RCAP, Volume One: "Looking Forward, Looking Back," Chapter 12: "Veterans"* (Ottawa: Supply & Services, 1997); Canada, Senate, *The Aboriginal Soldier After the Wars* (Ninth Report of the Standing Senate Committee on Aboriginal Peoples, March 1995); J.F. Davison, "We Shall Remember: Canadian Indians and World War II" (M.A. Thesis, 1992, Trent University); Fred Gaffen, *Forgotten Soldiers* (Penticton, BC: Theytus Books, 1985); and the film *Forgotten Warriors*, dir. Loretta Todd, narration by Gordon Tootoosis, NFB, 1996.

3. This is not entirely true. The Aboriginal hair policy was introduced in February 1998, and Aboriginal members of the CF can now apply for permission to wear their hair long or braided. See "He Will Wear a Braid," *The Maple Leaf/La Feuille d'érable* 1(11) 1998, 20.

4. This is recognized within the department. For instance, this geographical relationship is noted in "Environmentally Sustainable Defence Activities: A Sustainable Development Strategy for National Defence," December 1997, http://www.dnd.ca/admie/dge/sds/sds1_e.htm, 4, and Louise Fréchette, "Opening Remarks," *Ethics in Practice: Proceedings of the Conference on Ethics in Canadian Defence*, 30-31 October 1997, Ottawa, 6.

5. In order to understand the status of a claim, it is helpful to know the stages of development in the comprehensive claims process:

a) Framework Agreement - establishes the scope, process, topics, parameters, and the order and time frame for negotiations;

b) Eligibility - agreement on the criteria for membership in the Aboriginal group which will benefit from the claim;

c) Agreement-in-Principle (AIP) - a document has been agreed upon which contains the outcome of the preliminary negotiations conducted in accordance with the framework agreement. There are 30 to 40 chapters of matters agreed in principle which must then be subject to close scrutiny, fleshing out, detailed negotiations and agreed revisions;

d) Land Selection - process of arriving at an agreement on the particular real estate the group will own within the overall settlement area;

e) Final Agreement - once the detailed negotiations of the AIP are finalized and land selection is completed, the resulting information is assembled in the final agreement;

f) Ratification and Legislation - the membership of the Aboriginal group must ratify the final agreement, after which the Government must give its blessing. It is then legislated and in due course appended to the Constitution. At that point, it can be revised only by mutual agreement. Since the legislation becomes part of the Constitution, it takes precedence over all federal legislation and policies if there is a conflict;

g) Implementation - a wide range of planning, organization and implementation activities must then be undertaken to put the agreement into effect

Director General Aboriginal Affairs (DGAA), "Detailed Report on Aboriginal Land Claims," Presentation to Joint Ops and Plans Conference, 23-25 January 1996. See also DIAND, Comprehensive Claims Policy.

6. The National Defence Act, 217 (2) stipulates that "Notice of manoeuvres shall be given to the inhabitants of any area concerned by appropriate publication."

7. I have not touched on provisions for Aboriginal fishing, although this has potential impacts on naval manoeuvres. The Navy noted in *Adjusting Course: A Naval Strategy for Canada* (Ottawa, April 1997) that "coastal areas remain of vital importance to the culture and survival of many of Canada's small fishing villages and aboriginal communities" (12). This comment was made within the context of how the domestic environment determines how well international strategic demands are met, and that global geopolitical considerations might not be apparent or relevant to the Canadian public focussing on domestic concerns (11). Aboriginal land claims can be placed under this general consideration.

8. "Environmentally Sustainable Defence Activities: A Sustainable Development Strategy for National Defence," December 1997, http://www.dnd.ca/admie/dge/sds/sds1_e.htm, 4. This potential is exacerbated by the massive divestitures and downsizing of DND/CF real property assets since 1994, as well as pressures for further infrastructure reduction from outside of the department. See, for example, Canada 21 Council, *Canada 21: Canada and Common Security in the Twenty-First Century* (Toronto: Centre for International Studies, University of Toronto, 1994), 66.

9. Examples of access provisions are found in Article 21, Part 5: "Government Access," Agreement Between the Inuit of the Nunavut Settlement Area and Her Majesty in the Queen in right of Canada (Ottawa: The Minister of Indian Affairs and Northern Development and the Tungavik, 1993), 175-177; and from the July 1998 "Nisga'a Final Agreement - Access," http://www.aaf.gov.bc.ca/aaf/treaty/nisgaa/docs/nisga_agreement.html.

10. The Indian Claim Commission (ICC) reported on the claims of the various Aboriginal stakeholders in the PLAWR in 1994 and 1996. The Canoe Lake and Cold Lake inquiries are included in ICC, *Indian Claims Commission Proceedings 1* (Ottawa: ICC, 1994), 3-157. The Joseph Bighead, Buffalo River, Waterhen Lake and Flying Dust Inquiries are included in ICC, *Indian Claims Commission Proceedings 4* (Ottawa: ICC, 1996), 47-88.

11. Donald Mitchell and David Rubenson, *Native American Affairs and the Department of Defense* (Study prepared for the Office of the Secretary of Defense, Santa Monica, CA: National Defense Research Institute, RAND, 1996), 50.

12. For more information, see "The Algonquins of Golden Lake Land Claim: Staking Claims to a Brighter Future" (October 1996), <http://www.inac.gc.ca/pubs/information/info52.html>.

13. The Ipperwash controversies have been subjected to media scrutiny for much of the 1990s. Janet Davison touched on the issue in her thesis entitled "We Shall Remember," fitting into the broader context of the Aboriginal experience during the Second World War, but does not look to archival sources to make her arguments. A 1997 master's thesis from the University of Western Ontario provides a more sustained academic discussion, which I have not yet had the opportunity to read, although I supposedly drew quite different conclusions in my paper "Combined Operation: The Appropriation of Stoney Point Reserve" delivered at the Tri-University Conference in Guelph, November 1997.

14. "Welcome to DACPI," http://www.dnd.ca/admie/dgrpp/dacpi1_e.htm.

15. DAAG is an Advisory Group for Designated Group Members (AGDGM), endorsed by both the CDS and DM in May 1997. Compiled from conversations with various DND employees and members of the CF, and "Guide and Mission Statement for the National Defence Aboriginal Advisory Group (DAAG)," July 1998.
16. Fréchette, "Opening Remarks," Ethics in Practice, 6.
17. Headline taken from Ottawa Citizen, on-line edition, <http://www.ottawacitizen.com>.
18. Mitchell and Rubenson, 51.
19. "Defence Planning Guidance 1997 - Chapter 2: Strategic Direction," http://www.vcds.dnd.ca/vcds/dgsp/dpg/dpg97/chap2_e.htm.
20. Donald Garrow, Peter Garrow and Benoit Tremblay, "Presentation Report of the Survey Conducted with Aboriginal Peoples on Issues Relating to Equity Issues and the Canadian Forces," prepared for the Canadian Forces Employment Equity Division by Ojib-Hawk and Associates (October 1995).