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ENOCH CREE NATION



CLAIMS BACKGROUND & RESEARCH

DATA & CLAIMS RESEARCH & ANALYSIS

JUNE 2024

GuildOne Inc. for Maurice Law

Suite 100, 602 12th Ave SW Calgary, AB T2R 1J3

ENOCH CREE NATION

CLAIM DATA RESEARCH & ANALYSIS

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3 **DATA & CLAIMS RESEARCH & ANALYSIS** 0

4 **JUNE 2024** 0

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7 *resource management claims that the Enoch Cree Nation (ECN) may have and choose to*

8 *pursue against the Government of Canada.* 2

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CLAIM DATA RESEARCH & ANALYSIS

1 SUMMARY

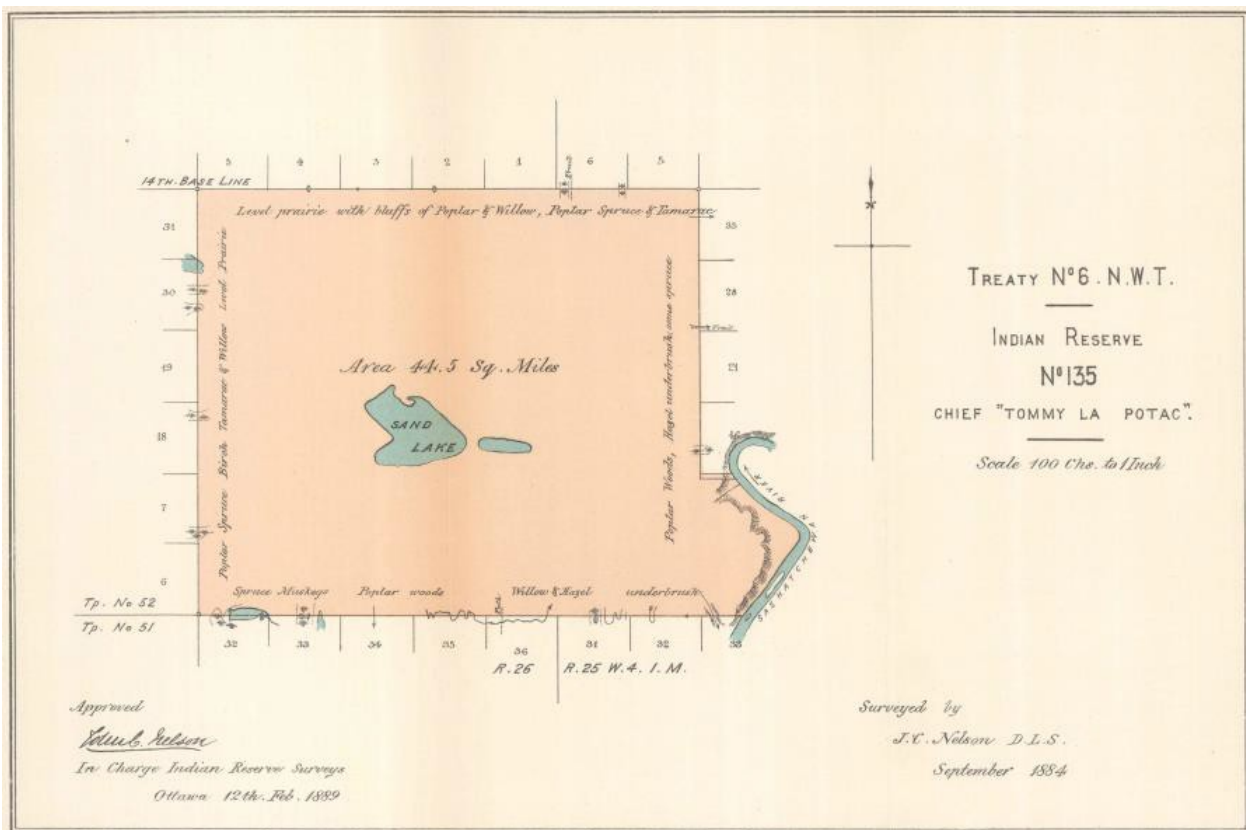
2 Using data science and industrial information architecture to support multiple potential
 3 resource management claims that the Enoch Cree Nation (ECN) may have and choose
 4 to pursue against the Government of Canada.

5

6 **Recognition and Origination**

7 Located in a strategic region of Central Alberta, the Enoch Cree Nation was
 8 established by a formal survey under the Stony Plain IR No. 135 as a 44.5 square
 9 mile reserve in 1889. Prior to the establishment of the reserve, this First Nations
 10 community was first recognized as the Lapotac Band, formed in 1842 under the
 11 leadership of Chief Thomas Lapotac, a descendant of the Strongwood Cree who had
 12 inhabited the area of the reserve since 1670

13 **SEPTEMBER 1884 SURVEY PLAN INDIAN RESERVE 135**



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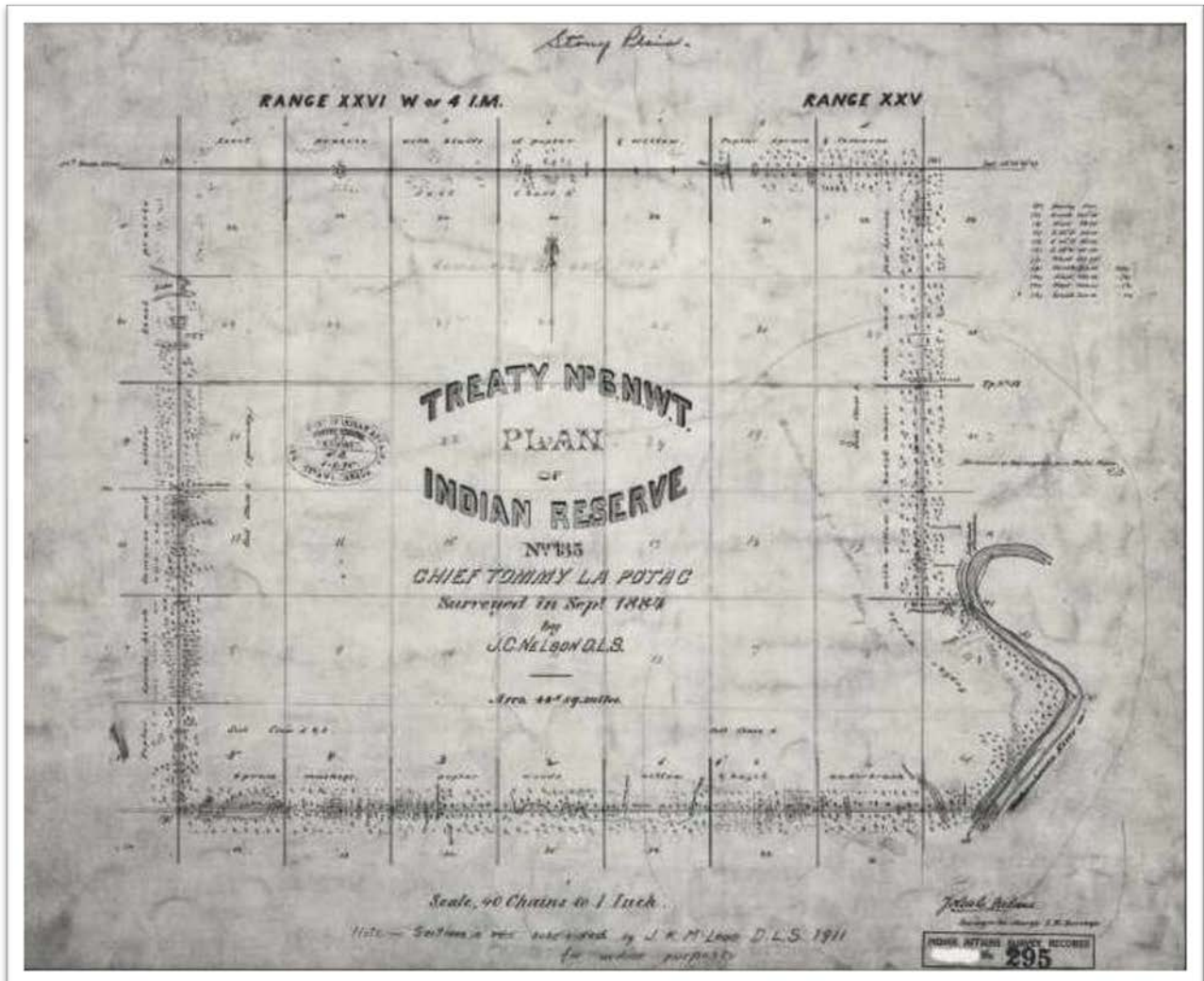
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Treaty 6 and Foundation

The Lapotac Band entered the Confederacy of Treaty 6 in 1877. Under the leadership of Chief Thomas Lapotac, and continuing under his brother Chief Enoch Lapotac, the band was committed to building productive economic relationships with European settlers, bridging relations between settlers and other bands, and fostering a strong First Nations community.

1887 SURVEY INDIAN RESERVE 135 PLAN



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9



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Reserve Lands & Population]

2 As of 2024, ECN controls two reserves: No.135, with a remaining acreage of
 3 13,111.9, and a small and uninhabited reserve located to the northwest of
 4 Edmonton in Lac Ste. Anne Country, No.135a, which encompasses 4.9 acres. The
 5 population of No. 135 is estimated at 1,800 residents, with a total of 2,789
 6 registered band members (2019).¹

7

RESERVE LANDS

BAND	NUMBER	RESERVE	
Enoch Cree Nation	440	ENOCH CREE NATION NO. 135	12,837 Acres 53.4805 Latitude -113.7475 Longitude 
		ENOCH CREE NATION NO. 135A	5 Acres 53.7327 Latitude -114.4204 Longitude 

8

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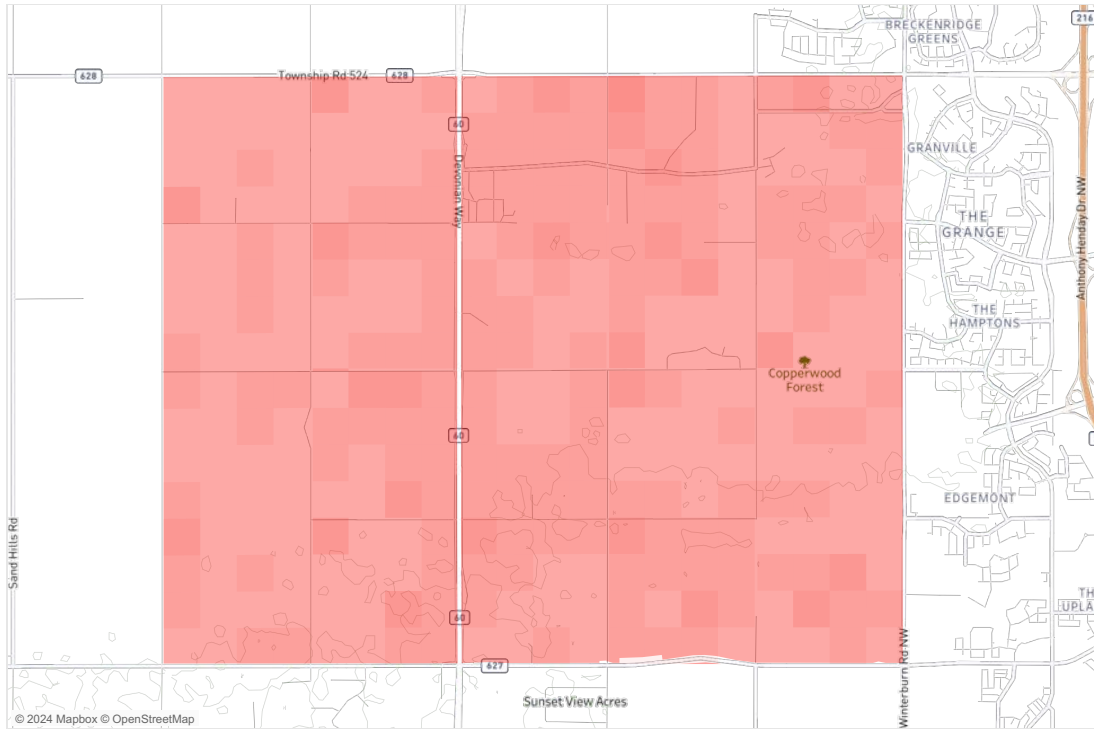
¹ https://en.wikipedia.org/wiki/Enoch_Cree_Nation

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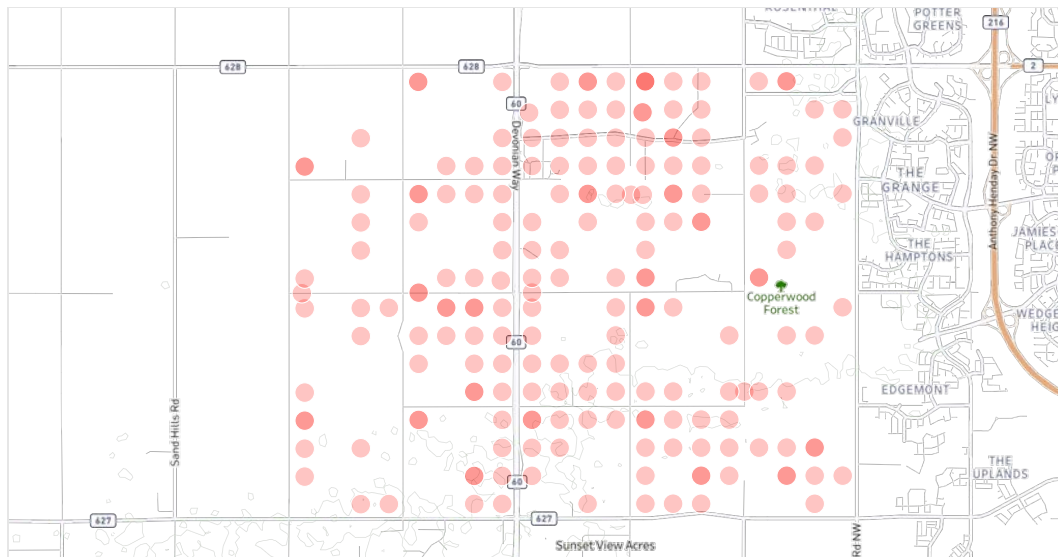
ENOCH CREE NATION 135



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PRODUCING LANDS FOCUS FOR ANALYSIS



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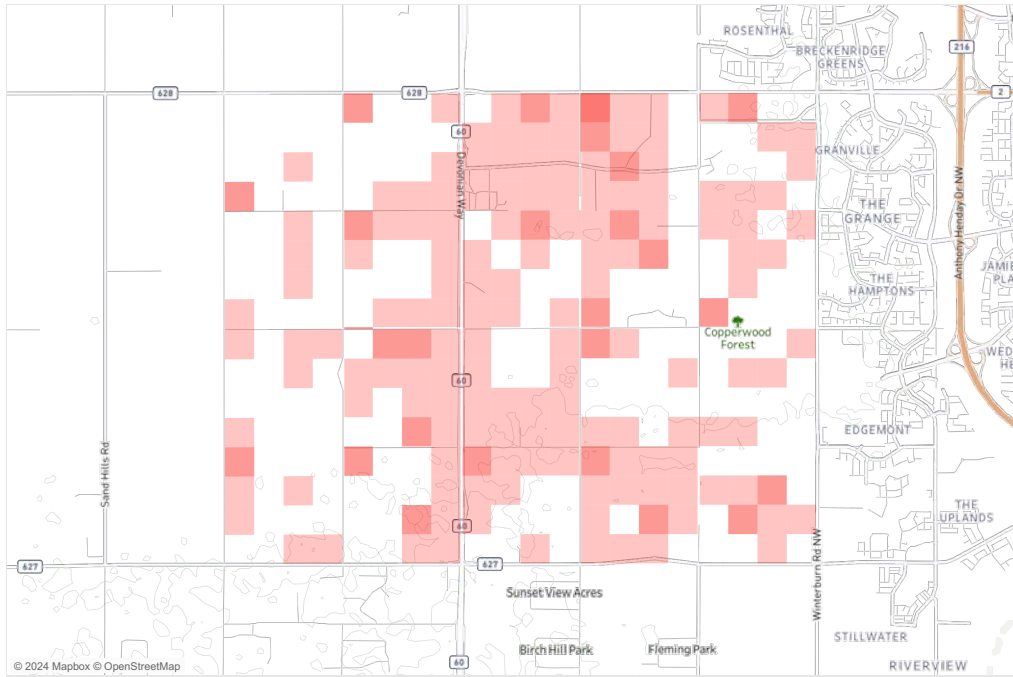
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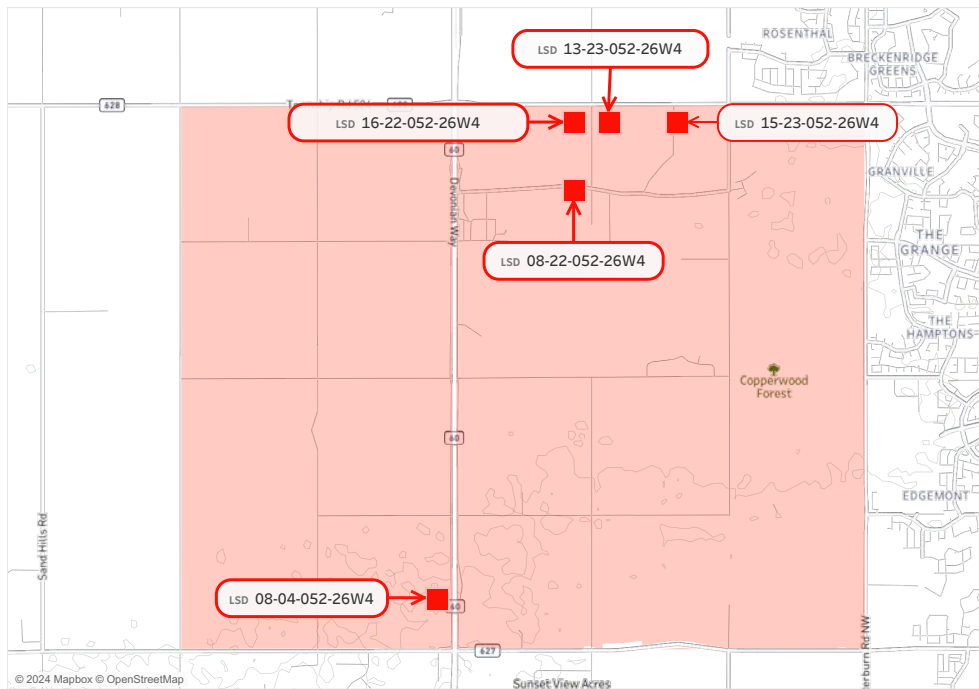
LICENSED SUBDIVISIONS WITH PRODUCTION



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TOP 5 LICENSED SUBDIVISIONS BY PRODUCTION



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1 EVIDENTIARY CLAIMS SUPPORT

2 The project has developed models in support of claims for wrongful government
3 charges and deductions and/or underpayment for Take-or-Pay Gas (TOPGAS),
4 operating, marketing, and administrative charges (OMAC), assessments of 1902
5 SURRENDER & inequitable reservoir DRAINAGE, EXPORT TAX and potential
6 actions for ENVIRONMENTAL LIABILITIES.



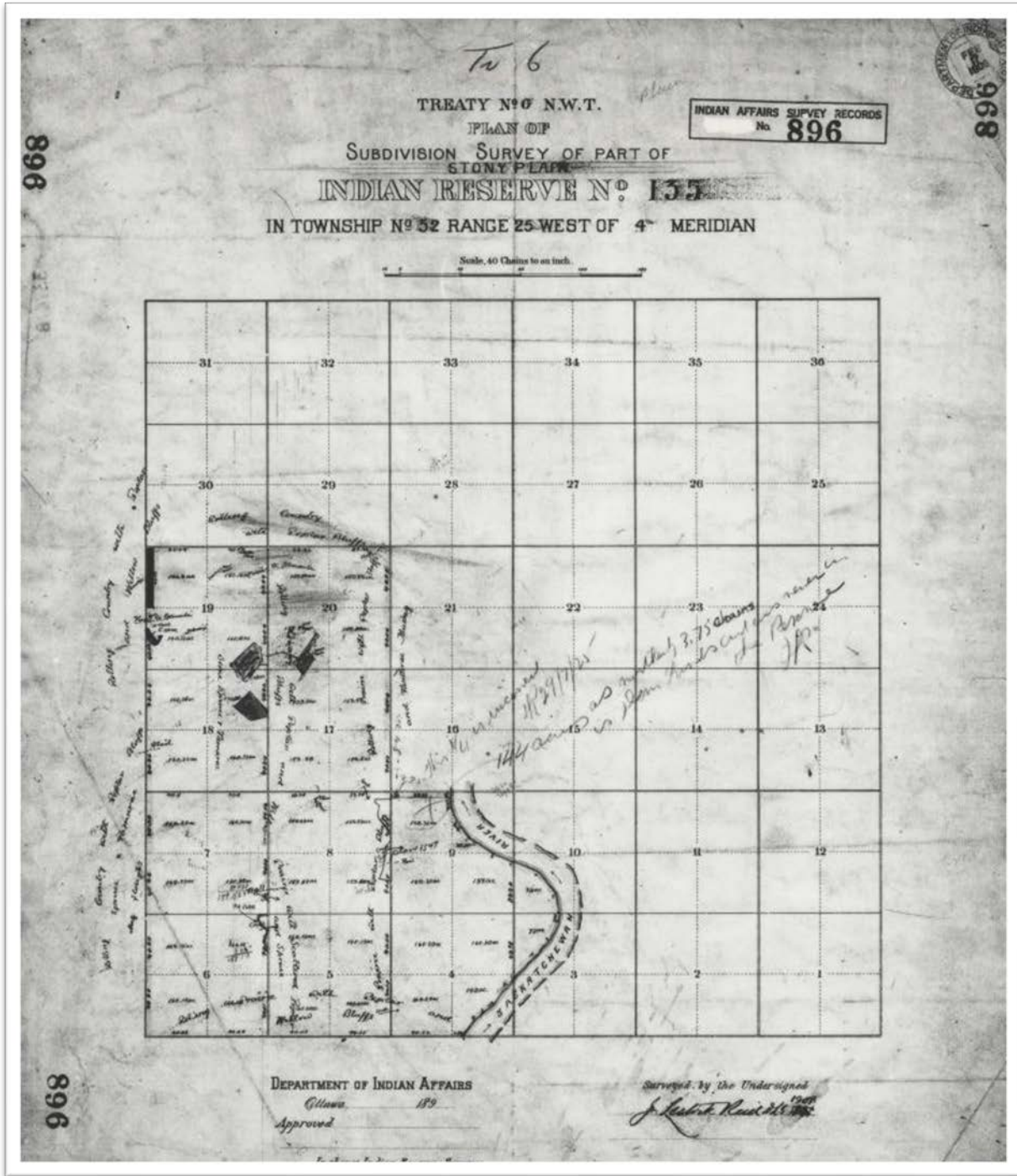
7
8 **AVENUES OF FURTHER EXPLORATION**

9 GuildOne believes that its analysis may lead to further potential claims on behalf of
10 Enoch. Significant legacy pollution resulting from Federally permitted oil and gas
11 development and its negative impact on the Nation’s ecosystems and cultural and
12 agricultural land use require significant resources to address. Recent Federal
13 claims filed by Treaty 8 First Nations are establishing the necessity of ecological
14 restoration as a critical part of the Reconciliation process.

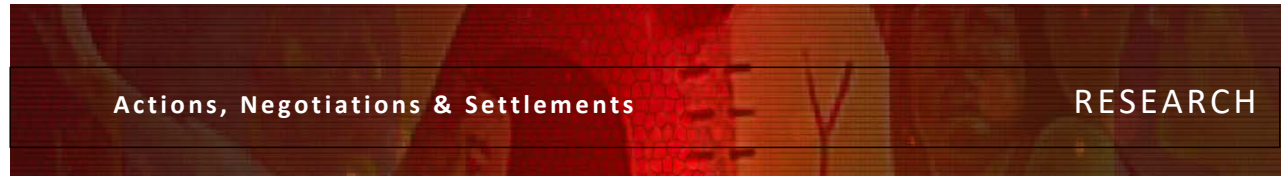
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Royal Proclamation, 1763	➤

SiteMap ▼

Constitution Act, 1982 Section 35

What is Section 35 of the Constitution Act?

Section 35 is the part of the Constitution Act that recognizes and affirms [Aboriginal rights](#). The Canadian government did not initially plan to include Aboriginal rights so extensively within the constitution when the Act was being redrafted in the early 1980s. Early drafts and discussions during the patriation of the Canadian Constitution did not include any recognition of those existing rights and relationships, but through campaigns and demonstrations, Aboriginal groups in Canada successfully fought to have their rights enshrined and protected.

3

4

Efforts Toward Economic Reconciliation

5

The Constitution Act of 1982 signalled a turning point in relations between the

6

Government of Canada and First Nations through the recognition and affirmation of

7

Indigenous Treaty rights under Section 35.² This key piece of legislation laid the

8

foundations for First Nations to assert the full entitlements provided by signed

9

treaties and begin the process of redressing governmental failures to abide by their

10

terms, in addition to seeking compensation for other historical wrongs against their

11

territory and sovereignty.

² https://indigenousfoundations.arts.ubc.ca/constitution_act_1982_section_35/

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Key Settlements

5 ECN has successfully concluded multiple claims in defense of the community's
 6 rights to its territory. In 2004, ECN reached an out of court settlement with the
 7 Crown for \$54 million in compensation for lost oil and gas revenues from the 1908
 8 surrender of 16 square kilometres of land on the grounds that Canada has failed in
 9 its fiduciary duty to protect the mineral and subsurface rights of the land for ECN
 10 during its sale to private interests.³

11

3
<https://www2.epl.ca/edmontonacitycalledhome/Papaschase.cfm#:~:text=In%202004%2C%20the%20Enoch%20Cree,16%20square%20kilometres%20in%201908.>

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Papaschase

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Aboriginal History Documents (Papaschase)

3

Other First Nations land claims in the Edmonton area

Enoch:

Mahminahwatah, known in English as Tommy Lapotac, brought the Enoch band members into Treaty 6 in 1877. The Enoch Cree Nation was named for its second chief, Enoch Lapotac, who led the community after 1884.

Settlers in Stony Plain and Edmonton businessmen asked the federal government for the full surrender of the Enoch reserve in 1898 and 1899. Enoch band members refused, but with no access to funds, they surrendered 37 square kilometres of their reserve in 1902 in exchange for fencing and farm equipment they could have claimed under treaty. Edmonton businessmen John A. McDougall and Richard Secord bought 70 per cent of this Enoch land.

In 2004, the Enoch Cree First Nation, just west of Edmonton, reached a \$54 million out-of-court settlement with the Government of Canada over a land claim that covers a large area of west Edmonton. The settlement related to the surrender of 16 square kilometres in 1908. Although the land was sold to the Government of Canada, Ottawa still had an obligation to protect the First Nations' interest in the subsurface and mineral rights of the land. Rather than going to court, Canada settled the claim, and the band ratified the agreement shortly after.

4



Government of Canada

Gouvernement du Canada

ENR/IGIS

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The Government of Canada and Enoch Cree Nation reach agreement on Yekau Lake Practice Bombing Range

From: [Crown-Indigenous Relations and Northern Affairs Canada](#)

News release

November 13, 2020 — Enoch Cree Nation, Treaty 6 Territory, Alberta — Crown-Indigenous Relations and Northern Affairs Canada

Honouring Canada’s legal obligations to First Nations, righting historical wrongs and working collaboratively to renew the relationship is key to advancing reconciliation with First Nations in Canada.

Today, Chief William Morin and the Honourable Carolyn Bennett, Minister of Crown-Indigenous Relations, announced that the Enoch Cree Nation and the Government of Canada have taken a major step forward on the path of reconciliation and renewal by concluding a negotiated settlement to resolve the Yekau Lake Practice Bombing Range specific claim.

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Yekau Lake Practice Bombing Range

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In 2007, ECN initiated a claim against the Government of Canada for its usage of

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the Yekau Lake Practice Bombing Range during World War II. In 1942, the

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government took approximately 1,300 acres of IR No. 135 surrounding Yekua Lake,

6

ECN’s primary water supply, as a practice bombing range for the British

7

Commonwealth Air Training Plan, resulting in pollution by 12,000 smoke bombs. In

8

2020, the Government of Canada settled the claim for \$91 million for the permanent

9

productive use of the bombing range land, water supply, and other damages.⁴

10

⁴ <https://www.canada.ca/en/Crown-indigenous-relations-northern-affairs/news/2020/11/the-government-of-canada-and-enoch-cree-nation-reach-agreement-on-yekau-lake-practice-bombing-range.html>

Alberta Approves Transfer Of Cemetery To Enoch Cree Nation



1

JULY 3, 2022

By Jeremy Appel, Local Journalism Initiative Reporter

(ANNews) – The provincial government has approved the transfer of a small parcel of land in west Edmonton that holds an Enoch Cree cemetery back to the nation, **CTV News reported.**

The piece of land, which is near Anthony Henday Drive and Whitemud Drive, was part of the Enoch Cree Nation’s reserve land until the Canadian government forced it to surrender in 1908.

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Land Use Negotiation & Settlement

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Some efforts at economic reconciliation have avoided court action. In 2022, another

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successful claim was achieved by ECN to redress the wrongs of the 1908 surrender.

6

A small piece of land within the City of Edmonton that prior to 1908, has served as

7

a First Nations cemetery, was subject to an agreement to transfer the parcel’s

8

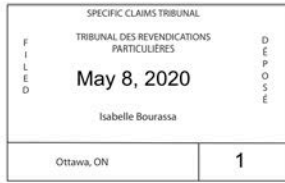
ownership back to IR No.135⁵.

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⁵ <https://www.albertanativenews.com/alberta-approves-transfer-of-cemetery-to-enoch-cree-nation/>

ENOCH CREE NATION

CLAIM DATA RESEARCH & ANALYSIS



SCT File No.: SCT - 6001-20

SPECIFIC CLAIMS TRIBUNAL

BETWEEN:

ENOCH CREE NATION

Claimant

v.

HER MAJESTY THE QUEEN IN RIGHT OF CANADA
As represented by the Minister of Crown-Indigenous Relations

Respondent

DECLARATION OF CLAIM
Pursuant to Rule 41 of the
Specific Claims Tribunal Rules of Practice and Procedure

This Declaration of Claim is filed under the provisions of the *Specific Claims Tribunal Act* and the *Specific Claims Tribunal Rules of Practice and Procedure*.

May 8, 2020

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Breaches of Trust & Fiduciary Duty

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Other significant failures of duty by the Crown to ECN are still being pursued as
 4 claims. In 2020, Maurice Law filed a Declaration of Claim with the Specific Claims
 5 Tribunal on the grounds that the Crown’s actions during the 1902 surrender of IR
 6 No.135 land failed to comply with the surrender terms mandated by the Indian Act
 7 of 1886, constituted a breach of fiduciary and trust duty, and breached statutory
 8 and common law in how the Government of Canada managed expenditures from
 9 ECN’s capital accounts.⁶

⁶ <https://atssc-rwut.sct-trp.ca/apption/cms/UploadedDocuments/20206001/001-SCT-6001-20-Doc1.pdf>

1

Impacts of Evolving Frameworks & Policies



UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

adopted by the General Assembly on 13 September 2007



UNITED NATIONS
New York and Geneva, 2008



United Nations
Human Rights

OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS

2

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United Nations Declaration on the Rights of Indigenous People

4

These settlements, agreements, and pending claims are in the context of an

5

overarching movement towards First Nations sovereignty, consultation, and

6

reconciliation and the uncertain future of historical laws like the *Indian Act*. In

7

2007, the United Nations adopted the UN Declaration on the Rights of Indigenous

8

Peoples (UNDRIP), which outlines the rights to autonomy, security, and cultural and

9

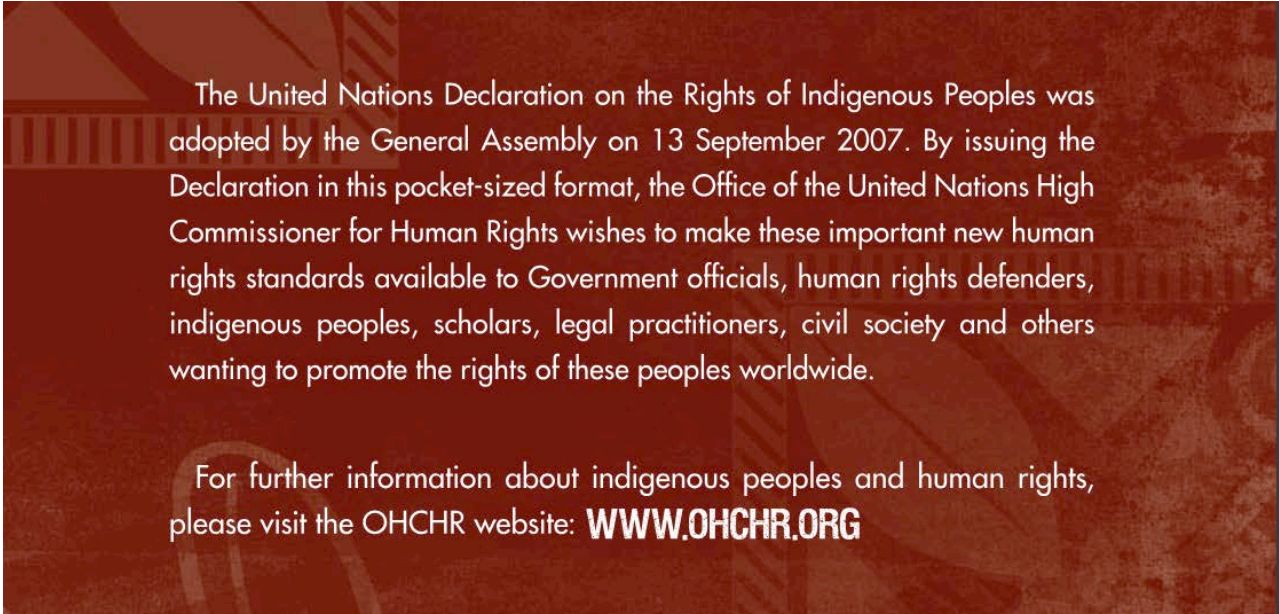
territorial continuity of Indigenous peoples under international law.⁷

⁷ https://www.ohchr.org/sites/default/files/Documents/Publications/Declaration_indigenous_en.pdf

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2 UNDRIP Concerns Among First Nations
3 Canada voted against UNDRIP when it was passed in 2007, but in 2016, endorsed
4 the declaration “without qualification” and announced that the Government of
5 Canada was committed to its “full and effective implementation”. UNDRIP received
6 Royal Assent and came into force in 2021.⁸



The United Nations Declaration on the Rights of Indigenous Peoples was adopted by the General Assembly on 13 September 2007. By issuing the Declaration in this pocket-sized format, the Office of the United Nations High Commissioner for Human Rights wishes to make these important new human rights standards available to Government officials, human rights defenders, indigenous peoples, scholars, legal practitioners, civil society and others wanting to promote the rights of these peoples worldwide.

For further information about indigenous peoples and human rights, please visit the OHCHR website: **WWW.OHCHR.ORG**

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⁸ <https://www.rcaanc-cirnac.gc.ca/eng/1524502914394/1557512757504>

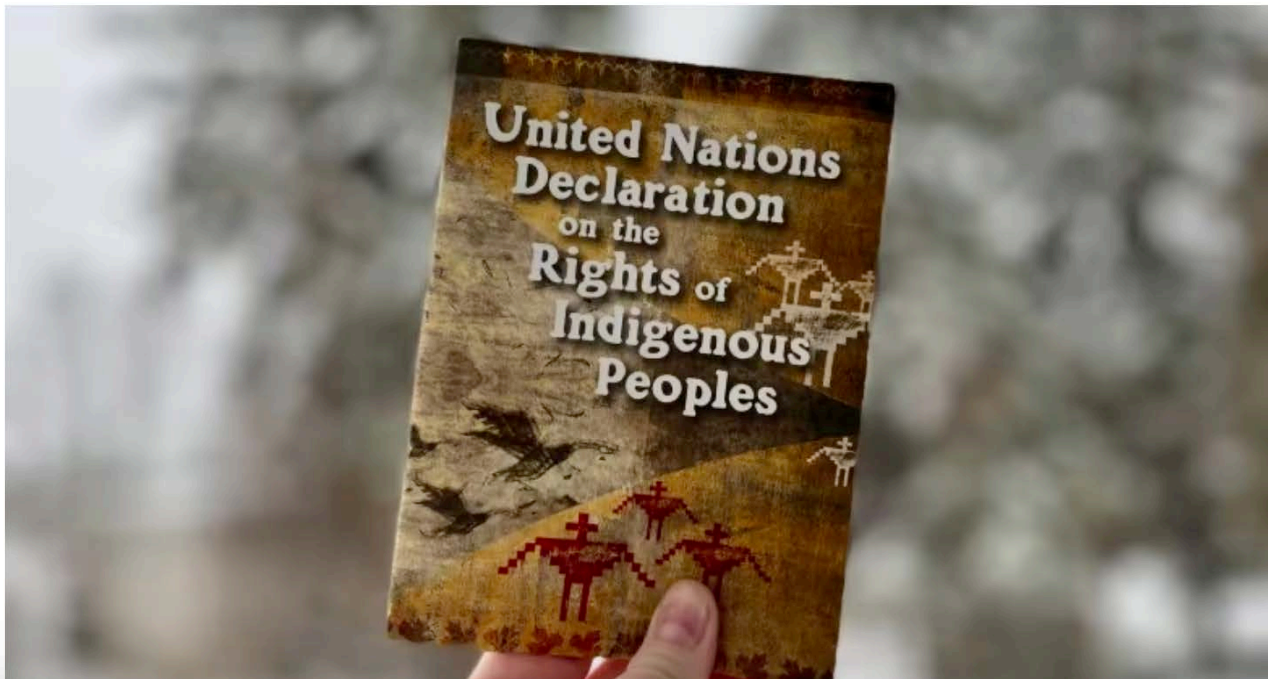
Indigenous

First Nations chiefs to debate Trudeau government's draft UNDRIP action plan

Assembly of First Nations to meet this week in Ottawa



[Brett Forester](#) · CBC News · Posted: Apr 03, 2023 2:00 AM MDT | Last Updated: April 3, 2023



1

2 While the Government of Canada maintains that the tenants of UNDRIP are
3 incompatible with, and should replace, the *Indian Act*, some First Nations leaders
4 involved in the consultation process have voiced concerns that that adoption of
5 UNDRIP could undermine their existing sovereignty and Treaty rights.⁹

6

⁹ <https://www.cbc.ca/news/indigenous/lametti-afn-undrip-plan-1.6797953>



Alberta First Nations chiefs call on Lt.-Gov. to withhold royal assent on sovereignty act

Lisa Johnson

Published Dec 12, 2022 • Last updated Dec 13, 2022 • 4 minute read

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3 Alberta Sovereignty Within a United Canada Act

4 Another policy change that may impact economic reconciliation WAS introduced in
5 November 2022, which grants political bodies in Alberta the ability to not enforce
6 Federal laws they deem “harmful to Alberta’s interests”. The Act was immediately
7 opposed by the leadership of Treaties 6,7, and 8 on the grounds that no First
8 Nations were consulted on its potential ramifications to their nation-to-nation
9 relationship with the Crown.¹⁰

¹⁰ <https://edmontonjournal.com/news/politics/sovereignty-act-continues-to-take-heat-from-alberta-indigenous-communities>

POLITICS | News

Canada confirms it changed land claim process, mulls Indian Act changes



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Impact of Indian Act and Specific Claims Tribunal

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Impacts to First Nations efforts at economic reconciliation may also result from

4

direct changes being made to the Specific Claims Tribunal and the *Indian Act*. In

5

August of 2023, Crown-Indigenous Relations and Northern Affairs Canada

6

announced changes to land claims by First Nations land claims through the

7

replacement of “modern surrender” for settled claims with “promissory estoppel”

8

and reported that the organizations were considering further changes to the *Indian*

9

Act and *Specific Claims Tribunal Act*.¹¹

10

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¹¹ <https://www.ctvnews.ca/politics/canada-confirms-it-changed-land-claim-process-mulls-indian-act-changes-1.6536366>


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Wrongful Actions & Inactions

The treatment of ECN as a resource producing nation by the Government of Canada has resulted in significant potential claims for compensation. Government agencies including Indian Minerals West, replaced by Indian Oil and Gas Canada (IOGC) in 1987, systemically failed in the mandate of managing and regulating resource development on behalf of First Nations through wrongful actions and inactions.

Breaches of Duty and Trust

Key breaches of fiduciary duty and trust by IOGC and its preceding organizations include allowing energy corporations to avoid agreed-upon TOPGAS payments via overcharges and royalty deductions, allowing wrongful billing for exempted operational, marketing, and administrative charges (OMAC), and under-developing production sites on First Nations land while producers drained underlying pools from the periphery of these boundaries.



Causes & Claims Analysis

FOCUS AREAS

1

2 Data Driven Analysis of Specific Claims & Evidence

3 Data science, analytics, and the application of oil industry born technologies have
4 resulted in evidence that supports that ECN has cause to pursue claims on
5 TOPGAS, OMAC, EXPORT TAX and DRAINAGE & ENVIRONMENTAL CLAIMS for
6 key periods.

7 Take or Pay Gas TOPGAS 1982-1994

8 The producers operating on ECN lands sold gas to TransCanada Pipeline
9 Corporation (TCPL) under long term contracts that included take-or-pay (TOPGAS)
10 clauses requiring TCPL to purchase a defined minimum volume of product. During
11 this time, a TCPL fund was established to support producers during a time of
12 severe economic crisis through financing support and TOPGAS contracts, with
13 gradual repayment terms based on produced volume by producers. First Nations did
14 not participate in this program, however, producers wrongfully deducted fees from
15 owed royalties for TCLP fund repayment.

16 Overhead, Marketing & Administrative Costs OMAC 1986-1990

17 First Nations are exempted from certain deductions based on operating, marketing,
18 and administrative charges (OMAC) that producers are required to pay to TCPL for
19 the distribution of products. Producers agree to pay these costs as deductions from
20 the netback pool price under their agreements with TCLP. From the period of 1986-
21 1990, IOGC established that ECN and other First Nations had OMAC wrongfully
22 applied to royalties owed to them by producers. Interest rates for the historical

ENOCH CREE NATION**CLAIM DATA RESEARCH & ANALYSIS**

1 deficits in royalties payable to ECN due to OMAC overpayments were calculated
2 using CPP and BTF interest rate benchmarks.

Drainage 1961-2023

3
4 IOGC has a fiduciary and trust duty to ensure that First Nations resource
5 production is equitably developed and that reserves do not underexploit mineral
6 pools to the benefit of off-reserve producers. However, GuildOne's analysis of ECN
7 pool utilization by producers between 1962-2023 demonstrates that XYZ. Interest
8 rates applied to the differential between equitable and actual royalties paid to ECN
9 in the artifacts in this report are based on production history for X pools and CPP
10 and BTF interest rate benchmarks.

Export Tax 1973-1980

11
12 Between 1974 and 1985, the Canadian Government intervened in the economics of
13 the oil and gas industry through a series of policies intended to stabilize the price
14 and availability of energy products for Canadians. This included fixing the price of
15 national oil sales at a lower number than other jurisdictions and applying an export
16 tax on cross-border oil sales.

Environmental Liabilities 1950-Present

17
18 Canada's failure to adequately prepare for and address end-of-life issues for oil
19 and gas wells has a significant detrimental impact on First Nations ability to
20 exercise Treaty rights to use of their land and traditional territories. Additionally,
21 the cumulative impact of industrial and urban development is now the subject of
22 several First Nations claims on the grounds that it interferes with the ability to
23 exercise Treaty rights and entitlements to their land.