



# The Illegal Surrender of the St. Peter's Reserve

## WHAT IS THE SURRENDER CLAIM OF PEGUIS FIRST NATION?

# Peguis First Nation

August 2008

The Surrender of St. Peter's Reserve in 1907 was invalid due to Canada's failure to comply with the requirements of the Indian Act of 1906.

Peguis has asserted since 1907 that its reserve at Selkirk, Manitoba, known as the St. Peter's reserve, was wrongfully and illegally taken from the First Nation by Canada in 1907.

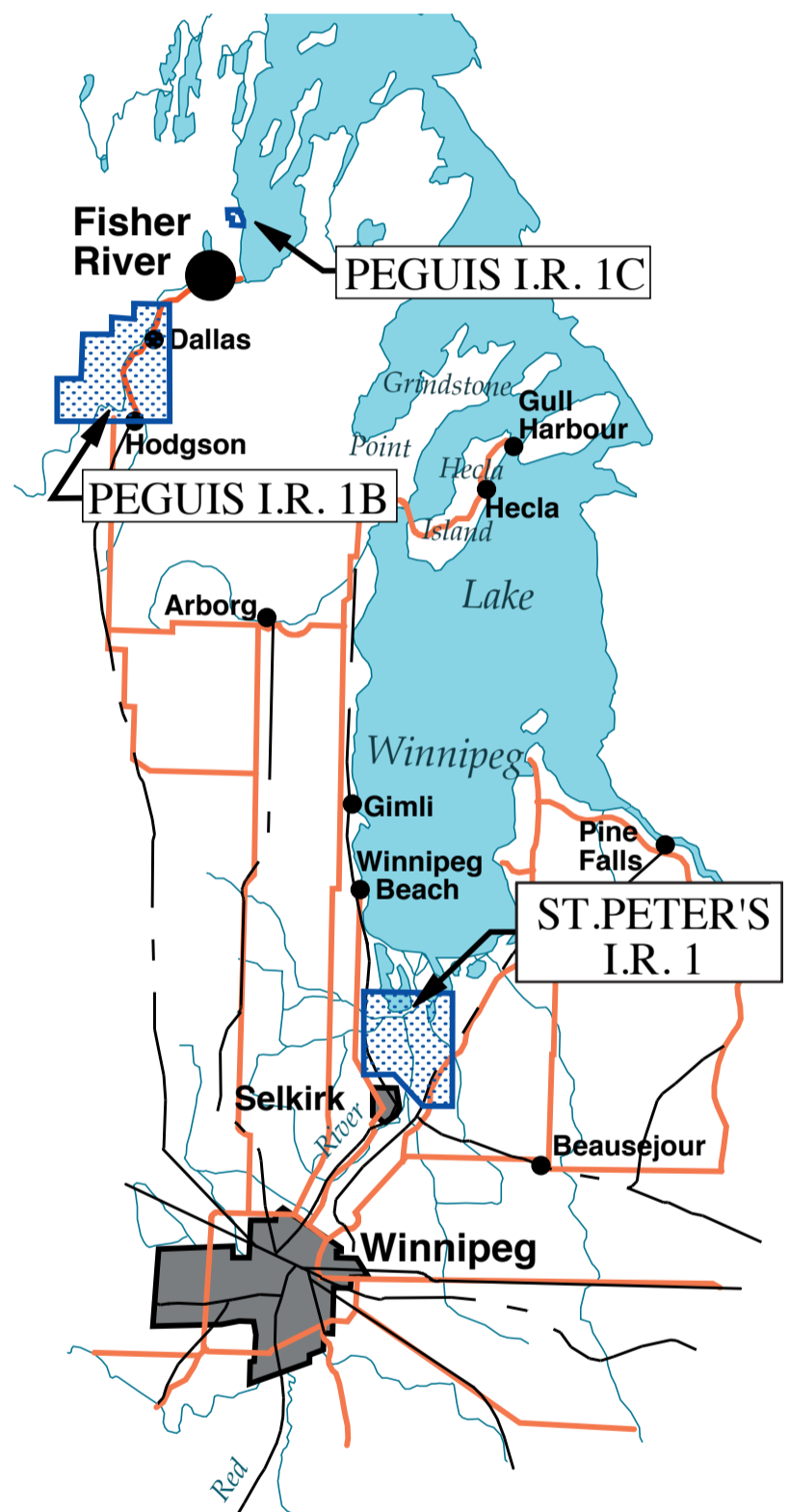
On June 29, 1998, Canada confirmed it agreed with Peguis. In its letter of that date, Canada accepted the claim of the Peguis First Nation that the 1907 surrender was void and legally invalid due to Canada's failure to comply with the requirements of the Indian Act of 1906. Canada agreed to enter into negotiations to compensate Peguis for its loss of land and economic loss on that date.

Negotiations began with an assessment of the current market value of the original St. Peter's Reserve and Peguis Reserves 1B and 1C (Being land received in exchange for the original Reserve). The land appraisal completed in 2002 was updated in October 2007.

An assessment of the current value of economic loss from Peguis' inability to use the St. Peter's Reserve for economic activities (specifically agriculture, forestry, mining, mineral extraction, and other land development) associated with the St Peter's Reserve was then conducted and offset by actual economic activities conducted by Peguis at the St. Peter's Reserve after 1907 and at the Peguis Reserves after relocation began in 1908. The last of these studies was completed in June, 2006.

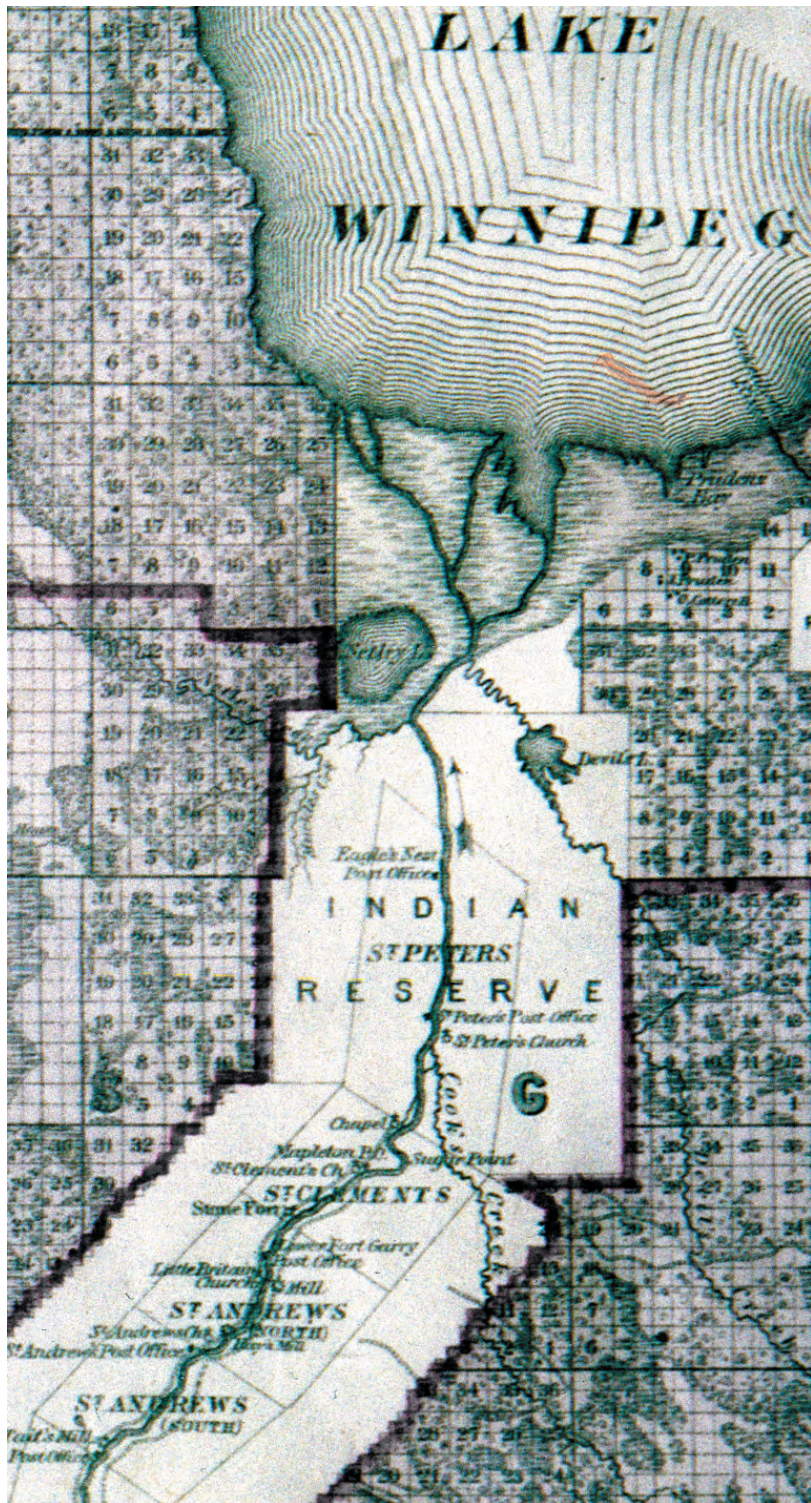
Negotiations also included an assessment of losses arising from the community relocation (community infrastructure, physical relocation and loss of communal property) and losses arising from an alleged error in the survey of the location of the south boundary of St. Peter's Reserve.

At long last, in the spring of 2008, the Negotiating Teams for Peguis and Canada reached a tentative agreement on the financial terms of settlement. A proposed settlement agreement is now being prepared for Peguis and Canada. The Members of Peguis can expect to be asked to vote on acceptance of the proposed Settlement agreement in the fall of 2008. The information provided in these community meetings is intended to keep all Members informed of the possible settlement so that we can be prepared when a vote is called.



# Historic Background

## PEGUIS SURRENDER CLAIM



1874 Dept. of the Interior map, courtesy of Provincial Archives of Manitoba.

The Peguis Band originally established itself in the Red River valley in and around the area now known as the Town of Selkirk in the early 1800's.

Prior to 1870, the year that Manitoba entered the Canadian Confederation under the terms of The Manitoba Act, Chief Peguis had granted title or "deeds" to land in the area to both Indians and non-Indians. This practice was continued by his son, Chief Henry Prince, at the time of Treaty 1 in 1871 and after that date. Under Treaty 1, Peguis had the right to select the land it occupied for Reserve; local non-Indians and Metis also claimed a right to land they occupied in the area under the provisions of The Manitoba Act.

Canada proceeded to survey and set apart land as St. Peter's Indian Reserve in 1873/74 without resolving the competing claims to land in the area of the St. Peter's Reserve. Chief Prince continued to sell and issue deeds, and title to such land continued to transfer from one person to another after 1871. Disputes over the land inevitably arose.

Canada authorized at least two formal inquiries into the disputes and claims in 1885 and 1896, but they did not resolve the ongoing local land disputes. Canada finally established a Royal Commission in 1907 led by Manitoba's Chief Justice Hector Howell to enquire into the land disputes.

Rather than attempting to resolve the claims of Peguis and protect its interests, Chief Justice Howell, apparently acting under instructions from Ottawa, proceeded to "negotiate" and secure a surrender of the St. Peter's Reserve.

The surrender was allegedly taken in 1907. It was immediately contested by Members of Peguis and many other persons, including the local federal Member of Parliament.

Canada failed to protect the interests of Peguis First Nation. Canada failed to meet its legal, fiduciary and statutory obligations to the First Nation in advancing and accepting the flawed and improper surrender.

Constitutionally, Indian interests in land cannot be taken without a full and informed consent of the majority of its members, and Canada is duty bound not to accept a surrender if it is improvident - being not in the interests of the First Nation.

Due to the alleged fraud involved and grossly inappropriate circumstances of the 1907 surrender, the Land Registrar for Manitoba refused to accept the registration of patents for the land in St. Peter's Reserve after the surrender.

As a result, in 1911, Manitoba appointed its own Commission of three judges to further enquire into the circumstances of the 1907 surrender. In its Report, the provincial Commission concluded that the surrender was indeed invalid.

As an apparent acceptance of the above conclusion of Manitoba's judicial Commission, in 1914 Canada itself requested the Exchequer Court to declare that the surrender was void and invalid, but shortly thereafter dropped the lawsuit without explanation for political reasons. In 1916, Canada passed The St. Peter's Reserve Act which affirmed the titles to land of the area residents, including many prominent Manitobans, upon the payment of \$1.00 more per acre of land purchased. However, no other action was taken by Canada to recover the St. Peter's Reserve for Peguis First Nation or to compensate Peguis for the illegal taking of its land.

After 91 years, Canada finally accepted that the 1907 surrender was invalid and that it has an outstanding legal obligation to provide Peguis First Nation fair compensation for the illegal taking of the St. Peter's Reserve.

# Basic Financial Terms of Settlement

## PEGUIS SURRENDER CLAIM

### A. Negotiation Costs:

Most First Nations do not have the financial resources to fund the costs associated with the negotiation of Specific Claims. As a result, Canada established its Loans to Native Claimants Funding Program, to provide loans to First Nations to offset claim negotiation costs – the costs of appraisals, economic loss studies, negotiation meetings, First Nation representation and administration and of course, required legal services. Over the course of the ten years of negotiations, Peguis incurred negotiation costs in the amount of \$ 5,128,628.00. Funding was approved and provided each year during negotiations by Canada's Funding Division based on an approved negotiations workplan. In order to complete the claim settlement agreement, Canada provided a further \$230,175.00 in loans this year. Finally, Peguis negotiated a contribution of \$250,000.00 to offset its costs in the community approval process. Total loans are then \$5,608,803.00.

Negotiation costs are an add-on to the overall financial settlement by Canada. The loans are then repaid to Canada upon final settlement, that is why they are deducted from the overall amount of settlement.

### B. Final Legal Services:

Peguis was advised by Rod McLeod, a recognized specialist in Aboriginal Law and specific claim negotiations. He was in fact retained by Peguis in 1989, some eighteen years ago to assist in advancing both the Peguis Treaty land entitlement and surrender claims. After battling 3 claim rejections, he assisted in the independent TLE enquiry which resulted in the acceptance of the Surrender Claim for negotiation by Canada. The surrender claim was a very complicated claim taking 10 years to conclude, in fact the largest single specific claim that may be settled in the history of Canada. Final fees payable to the Law Firm of James R. McLeod are \$1,750,000.00, the amount also included in the overall settlement amount and paid upon settlement.

### C. Claim Compensation:

As generally set out above, and in more detail in previous information materials, compensation for the Surrender Claim was determined as follows:

Peguis claimed:

- The current unimproved market value of the Claim Land;
- The current value of the annual economic loss from its inability to use the land for agriculture, forestry, mining, mineral extraction, other land development (commercial, etc.), and resource harvesting; and
- Losses arising from its community Relocation (community infrastructure, physical relocation and loss of property).

This compensation claimed by Peguis was offset by credits to Canada for:

- The current unimproved market value of the Peguis Reserves 1B and 1C;
- The current value of the annual economic loss from its inability to use the land for agriculture, forestry, mining, mineral extraction, other land development (commercial, etc.), and resource harvesting;
- Costs paid by Canada for the community Relocation;
- Amounts paid to Peguis for the sale of St. Peter's Reserve common land;
- Amounts paid to Peguis for other uses of the Peguis Reserves (land transactions); and
- Amounts paid to Peguis under the St. Peters Reserve Act to discharge liens on Claim land.

Each value is converted into current dollar values and a final calculation produced to provide a guideline for settlement negotiation purposes.

Peguis and Canada negotiated the amount to be payable to the Peguis Trust upon settlement - \$118,750,000.00 on a "global basis". It is a "net amount" representing the negotiated difference between the current land values of the St. Peter's and Peguis Reserves, between the economic loss associated with the lost opportunity to use the St. Peter's Reserve and Peguis use of that Reserve and Peguis Reserves after 1907, to which is added any shortfall in relocation support, and finally, the settlement of the alleged south boundary claim.

Council has proposed that a per capita payment be made to individual Members (\$1,000.00) at the end of the first calendar year to all persons 18 years of age and older, a somewhat larger payment for elders (\$1,500.00).

# Consideration for Settlement

## PEGUIS SURRENDER CLAIM

Canada returned approximately 511 acres of unsold land at St. Peter's Reserve to Peguis in 1993, now set apart as Peguis Reserves 1D, 1E, 1F, 1G, 1H and 1I. In addition, Peguis secured the right to the transfer of up to about 15,100 acres (more than 1/3) of the former Reserve to Peguis subject to the terms of the recent Treaty land entitlement settlement. This is not consideration for the Surrender claim, but important to note because Peguis has and will have a significant amount of land as Reserve which originally formed part of the former St. Peter's Reserve. The TLE and Surrender Claims were negotiated together over the last 10 years as it was expected that the settlement terms and legal settlements would have some inter-relationship.

As consideration for the financial settlement of the 1907 surrender claim, being the sum of \$118,750,000.00 after costs are paid, Peguis will be asked to provide:

- a. an affirming absolute surrender of the former St. Peter's Reserve, of the land described in the claim settlement agreement; and
- b. a legal release affirming the final settlement of the Surrender Claim, the included "south boundary claim" and matters incidental to the negotiations and settlement.

Settlement funds will be paid into the trust set up by Peguis, they will not be paid to Peguis First Nation directly, nor will the funds then be held in an account of the Department of Indian and Northern Affairs for investment by Canada.

## Compensation Used for Community Benefit

Similar to the TLE settlement, except for the proposed per capita payment, the compensation will be administered by Trustees elected by the Membership of Peguis and the funds managed by an independent professional investment management firm. Funds cannot otherwise be used for direct per capita payments, for First Nation operating deficits or debt. It is expected that the annual income on the capital alone will be used for community projects such as housing, education, protection of our rights, elder care, economic development, cultural education and similar purposes for both on and off Reserve Members of Peguis.

## Next Steps

After the legal agreement is concluded, Canada must obtain Treasury Board approval of the proposed settlement before Peguis is asked to vote on the settlement. Council anticipates Treasury Board approval by late September and a Surrender Claim settlement vote before year end 2008 if all goes as planned.

Please take the time to read this material. If you have any questions, please speak to any member of Council or our Staff Legal Advisor Lloyd Stevenson.



St. Peters , Manitoba, 1880  
Source: P.A.M. ; Early Canada, (1967): Energy, Mines, and Resources Canada