

JAMES SMITH CREE NATION #370

DIVISION INTO THREE BANDS: THE CHAKASTAYPASIN BAND OF THE CREE NATION, THE JAMES SMITH CREE NATION, AND THE PETER CHAPMAN BAND

HISTORICAL AND LEGAL SUBMISSION

SUBMITTED TO:

INDIGENOUS SERVICES CANADA

BAND CREATION AND MEMBERSHIP DIRECTORATE

**ON BEHALF OF THE CHAKASTAYPASIN BAND OF THE CREE NATION, THE
JAMES SMITH CREE NATION, AND THE PETER CHAPMAN BAND
(COLLECTIVELY KNOWN AS THE JAMES SMITH CREE NATION #370)**

JUNE 25, 2025

I. Introduction

The Submission for Band Creation

1. The following is submitted on behalf of the Chakastaypasin Band of the Cree Nation, the James Smith Cree Nation and the Peter Chapman Band¹ in support of their request to have the Minister of Indigenous Services Canada (ISC) exercise discretion to “constitute” three separate and independent “new” bands from the invalidly amalgamated James Smith Cree Nation #370 pursuant to s. 17 of the *Indian Act*.
2. Apart from an introduction and conclusion, this Submission contains five main heads: there is a brief historical section; a section based on the claims that have been advanced through the Specific Claims process; a legal analysis section; a section addressing further policy reasons supporting the Submission for band creation; and a “next-steps” section.
3. The request for the recognition of these three separate bands is the culmination of a long history that began when Canada took steps to disperse members of the Chakastaypasin Band following the North-West Rebellion and to take a surrender of their IR98 reserve lands. Canada subsequently decided, in 1902, to take a surrender of a portion of the IR 100A reserve and to combine the group resident at IR 100A (the Peter Chapman group,² which by then included former Chakastaypasin Band members), with the James Smith Band (now known as the James Smith Cree Nation).
4. This invalid transfer of Chakastaypasin Band members and the wrongful amalgamation followed Canada’s breaches of lawful obligations owed to the three separate Treaty bands – i.e., the invalid taking of Chakastaypasin’s IR98 reserve, the invalid taking of the southern portion of IR 100A and the failure to provide the James Smith Band with its full treaty land entitlement (TLE) under Treaty No. 6.

The Specific Claims Settlement Agreement

5. JSCN #370 is in the process of finalizing a Global Settlement Agreement in relation to the land-related Specific Claims submitted on behalf of Chakastaypasin, James Smith and Peter Chapman in 2014 (the “GSA”). This is a settlement of the historic claims arising from the invalid surrender of IR98 (Chakastaypasin), the invalid surrender of the southern township of IR 100A (Peter Chapman, as a beneficiary under the Cumberland House Band) and the James Smith TLE shortfall. The GSA also addresses the historical impacts of the 1902 wrongful amalgamation. A successful ratification vote was held on June 7, 2025, and all that remains is for the Settlement Agreement to be executed.

¹ Canada refers to each of the sub-groups that currently form the James Smith Cree Nation #370 as “sectors”. For purposes of this submission, we have used the names by which these groups refer to themselves. Throughout this submission we will refer to the Chakastaypasin Band of the Cree Nation, the James Smith Cree Nation and the Peter Chapman Band. James Smith Cree Nation #370 or JSCN #370 will be used when referring to the currently recognized *Indian Act* band, which is comprised of the three groups.

² The “Peter Chapman group” was a group of members affiliated with the Cumberland House Band who had relocated to the Fort a la Corne area of Saskatchewan, led by Peter Chapman. Although this group self-identified as separate from the Cumberland House Band, Canada maintained that they never became a separate Band within the meaning of the *Indian Act* and remained affiliated with the Cumberland House Band in 1902, the date of the wrongful amalgamation.

6. Although the GSA will resolve the outstanding grievances related to the wrongful taking of reserve lands and the failure to provide sufficient reserve land as per the Treaty 6 formula, a significant grievance remains outstanding, namely, the restoration and confirmation of three separate and independent bands – i.e., the Chakastaypasin Band of the Cree Nation, the James Smith Cree Nation and the Peter Chapman Band.
7. It is only with Canada's re-constitution of these three Bands that Canada can move along the path to reconciliation with these three Treaty signatory First Nations. The re-constitution will also foster wellness, new economic and social growth and harmony among three First Nations that have been forced to manage without independence for too long.

The Specific Claims Process

8. The current Specific Claims Policy, *Justice at Last*, and the Specific Claims Tribunal (both introduced in 2008) have advanced the resolution of historic grievances by First Nations and have contributed to the goal of the Specific Claims process – “reconciliation between First Nations and the Crown”.³
9. Despite Canada's significant progress in addressing Specific Claims, there are still many types of historic grievances that have not been addressed by the policy and legislation.
10. For example, as referenced, inextricably intertwined with the three Specific Claims discussed above was the wrongful amalgamation of three groups, namely the Chakastaypasin Band of the Cree Nation, the James Smith Cree Nation and the Peter Chapman Band. Since 1902, Canada has denied these three groups recognition as separate “bands” within the meaning of the *Indian Act*, thereby depriving them of independence and of many of the benefits promised to each of them under Treaty.
11. This submission to the *Band Creation and Membership Directorate* at Indigenous Services Canada (ISC) is a request to correct these historic wrongs and further the reconciliation process by once again recognizing these three groups as three separate and independent bands, with all of the rights and entitlements associated with that independent status.
12. The Specific Claims will be discussed in further detail below, but it should be noted at the outset that the creation of these three separate bands has been discussed as a common goal with Senior Officials and various Ministers, most recently in meetings and negotiations since 2012. Independent band creation was also anticipated by Canada, Chakastaypasin, James Smith and Peter Chapman in the Specific Claims GSA:

4.5 For greater certainty, the release provided at Article 4.1(a) is not intended to preclude the exercise of ministerial discretion to recognize Chakastaypasin, Peter Chapman and James Smith as three separate “bands” as defined in the *Indian Act*. (Emphasis added)

³ SCTA S.C. 2008, c. 22, from the preamble.

13. It is respectfully requested that following the receipt of this Submission, the Minister of Indigenous Services Canada exercise their discretion and constitute three “new” separate and independent bands from the existing JSCN # 370 band list.

II. Historical Background

General Historical Overview

14. The history of these three “collectives”, “groups”, “sectors”, or “bands”⁴ has been reviewed by Canada both before 2014 and post-2014 in the context of the Specific Claims submissions. This review culminated in the acceptance of the Specific Claims related to IR 98 (Chakastaypasin), IR 100 A (Peter Chapman), and the James Smith TLE in May of 2018.⁵
15. Accordingly, what follows does not purport to constitute a comprehensive history of these three groups. What follows is an overview of their treaty adhesion, the setting aside of their reserve lands, and the purported transfer of members and the 1902 amalgamation involving these three groups.
16. The James Smith Band signed Treaty 6 in 1876 as represented by Chief James Smith, Headman Ma-twa-ahs-tin-oo-we-gin (aka Chekoosoo), Headman Jacob McLean, and Headman Bernard Constant.
17. The Chakastaypasin Band signed Treaty 6 in 1876 as represented by Chief Chakastaypasin and four Headman, namely: Kahtapiskowat (aka Big Head), Kahkneeneequansum, Napatch and Musinowkeemow.
18. The Cumberland Band signed Treaty 5 in 1876 as represented by Chief John Cochrane, Headman Peter Chapman, and Headman Albert Flett.
19. Although Peter Chapman signed Treaty 5 on behalf of the Cumberland Band, he would later lead a group of Cumberland Band members who relocated to the Fort à la Corne area of Saskatchewan. This move was necessitated by the poor quality of lands in and around Cumberland Lake and the sickness and starvation of members of the Cumberland Band. Peter Chapman would come to be known as the unofficial leader of the Cumberland Band descendants residing at Fort à la Corne, referred to in official records (including a separate Treaty payroll) as the “Cumberland Band of Indians on the Carrot River near Fort a la Corne”.

⁴ When describing the historic Chakastaypasin, Peter Chapman, or James Smith groups, the nomenclature will vary. They will be referred to as “collectives”, “groups”, “sectors”, “bands”, or “First Nations” depending on the context. Whatever the description, the central point is that they comprised a separate group of Indigenous members who identified themselves under the separate banners of “Chakastaypasin”, “Peter Chapman” and “James Smith”.

⁵ Canada’s conclusions were set out in the following three letters, all dated May 22, 2018, and signed by Joe Wild, Senior Assistant Deputy Minister, Treaties and Aboriginal Government: (i) letter addressed to Chief Wally Burns, Chief Robert Head and Chief Calvin Sanderson, related to the assessment of the James Smith First Nation’s Treaty Land Entitlement Shortfall specific claim; (ii) letter addressed to Chief Calvin Sanderson, Chief Robert Head and Chief Wally Burns, related to the assessment of the James Smith First Nation’s Chakastaypasin – Surrender of IR 98 specific claim; and (iii) letter addressed to Chief Robert Head, Chief Wally Burns and Chief Calvin Sanderson, related to the assessment of the James Smith First Nation’s Peter Chapman – Surrender of IR 100A specific claim. (Collectively, “Canada’s 2018 acceptance letters”).

20. We note that Peter Chapman continues to consistently claim that Canada recognized them as a separate band and set aside reserve lands (100A) for their members, but that Canada failed to undertake the necessary process to formally complete the recognition. Canada took a different position. Since 2018, Canada and Peter Chapman agreed, in the spirit of reconciliation, to move forward with Peter Chapman participating with Cumberland House at a shared negotiation table and then accepting its portion of compensation via the JSCN#370 Global Settlement Agreement.
21. Following the signing of Treaties 5 and 6, each of the three groups had reserve lands surveyed and set aside for them pursuant to their respective treaties:
- (i) The Chakastaypasin Band received their reserve, IR 98, comprised of 15,500 acres in 1878, confirmed by OIC on May 17, 1889.
 - (ii) The James Smith Band received a 27.8 square mile (17,792 acres) reserve (IR 100) surveyed in July 1884, confirmed by OIC on May 17, 1889.⁶
 - (iii) In July 1887, a 65 square mile reserve (41,600 acres) was surveyed for the “Indians of the Cumberland District (of Treaty No 5)” (IR 100A) and was subsequently confirmed by OIC on May 17, 1889.⁷
22. Prior to the creation of IR 100A, there were numerous requests on the part of members of the Cumberland Band who were led by Peter Chapman (the Peter Chapman “group”) to relocate to Fort à la Corne (the eventual site of IR 100A).
23. In 1883, the Deputy Superintendent General of Indian Affairs (DSGIA), Lawrence Vankoughnet, wrote to John A. Macdonald, the Superintendent General of Indian Affairs (SGIA), and recommended the move of the Peter Chapman group to Fort à la Corne area, given the “utter uselessness for agricultural purposes of the land in the Reserve at Cumberland.”⁸ i.e., IR 20.
24. Superintendent Macdonald agreed, and in 1883 nine families from the Cumberland House Band at IR 20 made the long journey (roughly 250 kms southwest) to Fort à la Corne. By 1885, approximately 20 Cumberland House Band families had relocated to Fort à la Corne.⁹
25. Driven by necessity and the unsustainable land quality at IR 20, the movement of the Peter Chapman group had the effect of geographically dividing the Cumberland House Band into two *de facto* Bands, namely the Cumberland House Band remaining at IR 20 and the group led by Peter Chapman who took up residence around Fort à la Corne.

⁶ Indian Claims Commission Report, James Smith Cree Nation, TLE Inquiry, Report on Issue 9, Amalgamation, March 2005 Report, p. 1. (ICC Report, James Smith Amalgamation).

⁷ A separate reserve of 6.29 square miles (4,025 acres) was set aside for the Cumberland House Band near Cumberland Lake.

⁸ L. Vankoughnet, DSGIA, to John A. Macdonald, 85 SGIA, November 23, 1883, LAC, RG 10, vol 3736, file 27580 (ICC Exhibit 1, pp 99-100).

⁹ J.M. Rae, Indian Agent, to the Indian Commissioner, September 8, 1885, LAC, RG 10, vol 3736, file 27580 (ICC Exhibit 1, pp 168-69).

26. By 1885, the Peter Chapman group had settled in the Fort à la Corne area, and IR 100A was then set aside for the “Indians of the Cumberland District” in July 1887. The reserve totalling 65 square miles (41,600 acres) was confirmed by OIC on May 17, 1889.

The Attempted Discontinuance of the Chakastaypasin Band

27. Following the outbreak of the North-West Rebellion in 1885, the Chakastaypasin band members were forced to flee their reserve. As early as July of 1885, Crown agents took the position that “Chakastaypasin should be broken up, and its reserve surrendered.”¹⁰ The Crown implemented a plan whereby, between 1885 and 1895, former Chakastaypasin band members were intentionally “scattered” among neighbouring bands. Some were added to the James Smith Band list, resident on IR 100, but the majority were added to the Cumberland House IR 100A band list (i.e., the Peter Chapman group residing at Fort à la Corne).
28. By October of 1889, the Crown was satisfied that (in accordance with its plans), the Chakastaypasin Band had been thoroughly broken up, and most of its members transferred to the Peter Chapman Band or the James Smith Band.¹¹ As a result, the Chakastaypasin Band payroll was discontinued.
29. The government’s desire to take back Chakastaypasin’s IR 98 reserve lands and open them up for settlement, along with the addition of a section to the *Indian Act* formally permitting the transfer of individuals between bands, led to the need for the government to retroactively formalize transfers of former Chakastaypasin members to other bands. A memo prepared by the Indian Commissioner in February of 1896 traced the dispersion of the Chakastaypasin Band from 1888 through to 1895.¹²
30. On May 18, 1896, the Indian Agent wrote to the Indian Commissioner enclosing “the consents of the members of the Cumberland Band No. 100A to accept into their Band the remnant of the Chakastaypasin Band No. 98.” These consents, dated May 10, 1896, admitted 16 “Big Head Band families” and 7 James Smith families into the Cumberland Band 100A.¹³ A further Consent to Transfer form admitting one former Chakastaypasin member into the James Smith Band was forwarded at the same time. So, by May of 1896, the department had obtained the consent of the Cumberland Band 100A to the admission of the Chakastaypasin members into its Band, but did not have the consent of Chakastaypasin members themselves for the transfer.¹⁴
31. The Indian Agent called a meeting of former members of the Chakastaypasin Band on June 12, 1896, for the express purpose of obtaining their signatures on an application for

¹⁰ Hayter Reed, Assistant Indian Commissioner, to the Indian Commissioner, July 29, 1885, Glenbow Archives, Edgar Dewdney Papers, document m320, box 4, file 66, pp 1417-18 (ICC Exhibit 18a, pp 4-5); L Vankoughnet, DSGIA, to Edgar Dewdney, Indian Commissioner, October 28, 1885, LAC, RG 10, vol 3584, file 1130, part 1B (ICC Exhibit 1, p 206), cited by the ICC at p. 373 of the James Smith Cree Nation – IR 98 Inquiry Report.

¹¹ TP Wadsworth, Inspector of Indian Agencies, to the Indian Commissioner, July 26, 1888, LAC, RG 10, vol 3809, file 53828-1 (ICC Exhibit 1, p 407).

¹² A.E. Forget, Indian Commissioner, to the Indian Agent, Duck Lake Agency, February 3, 1896, LAC, RG 10, vol. 1594 (ICC Exhibit 1, p. 735), cited by the ICC at p. 398 of the James Smith Cree Nation – IR 98 Inquiry Report.

¹³ ICC IR 98 Report, at p. 399.

¹⁴ ICC IR 98 Report, at p. 402.

transfer. The members present at that meeting “flatly refused unless they are allowed something for the Checastapasins (sic) Reserve”.¹⁵

32. On October 15, 1896, at the time of the treaty payments, 27 former Chakastaypasin Band members signed an “Application for admission to Cumberland Band No 100A” and another family applied for admission to the James Smith Band.¹⁶
33. The ICC concluded that all transfers of former Chakastaypasin Band members to the Cumberland Band at IR 100A that took place prior to 1895 **were invalid**, since those transfers would have required the consent of the whole of the Cumberland Band, including those resident at IR 20, to accept the transfer of these former Chakastaypasin Band members.¹⁷
34. The Indian Claims Commission concluded that there had been a lack of informed consent regarding the consequences of these transfers. Another problem with the transfers was the utilization of s. 140 of the 1895 *Indian Act*:

140. When by a majority vote of a band, or the council of a band, an Indian of one band is admitted into membership in another band, and his admission thereinto is assented to by the superintendent general, such Indian shall cease to have any interest in the lands or moneys of the band of which he was formerly a member, and shall be entitled to share in the lands and moneys of the band to which he is so admitted; but the superintendent general may cause to be deducted from the capital of the band of which such Indian was formerly a member his per capita share of such capital and place the same to the credit of the capital and place the same to the credit of the capital of the band into membership in which he had been admitted in the manner aforesaid.¹⁸

35. As noted by the Indian Claims Commission, Canada attempted to use s. 140 to eradicate the Chakastaypasin Band:

With the introduction of section 140 to the *Indian Act* in 1895, Indian Commissioner A.E. Forget instructed that all Chakastaypasin members should be transferred to the “Cumberland band No. 100A” **and [that] Big head’s Band [i.e., Chakastaypasin Band] be “done away with”**.¹⁹

36. The ICC concluded that, as with the pre-1896 transfers, these post-1896 transfers were also invalid. This was based on their conclusion that “even if the Chakastaypasin individuals and families seeking to transfer could do so under section 140, a valid transfer required the consent of the receiving band. In this case, the 27 Chakastaypasin individuals

¹⁵ Letter dated June 20, 1896, from R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, cited by the ICC in their IR 98 Report, at p. 403.

¹⁶ See ICC IR 98 Report, at p. 403.

¹⁷ ICC IR 98 Report, at p. 456.

¹⁸ S.C. 1895, c. 35, s. 8.

¹⁹ See ICC Report, JSA, p. 28.

and families, including Big Head, required the consent of the whole of the Cumberland Band – both those resident at IR 20 ... and those at IR 100A.”²⁰

37. As will be discussed further in the legal analysis section, the transfer of Chakastaypasin Band members and the purported amalgamation between the Cumberland Band at IR 100A (Peter Chapman Band) and the James Smith Band have been acknowledged by Canada as being invalid and unlawful.

The Purported Amalgamation of the Cumberland Band at IR 100A (or Peter Chapman Band) with the James Smith Band

38. On July 24th, 1902, the Cumberland Band (Peter Chapman group) from Treaty 5 purportedly entered into an amalgamation agreement with the Treaty 6 James Smith Cree Band. Initially, although acknowledging that there was neither a treaty process nor any statutory provision authorizing this purported amalgamation, Canada claimed that this amalgamation was a valid exercise of “its prerogative power to bring about the amalgamation”.²¹
39. There are several legal flaws associated with this purported “amalgamation agreement”; flaws that have been acknowledged by Canada in the 2018 acceptance of the Specific Claims, which will be discussed below.

III. Canada’s Acceptance of the Specific Claims

Introduction

40. At the time these Band Creation Submissions are being drafted, the Specific Claims GSA with the James Smith Cree Nation is being finalized. The Settlement Agreement has been initialed by all parties, a successful Ratification Vote was held on June 7, 2025, and all that remains is for the GSA to be executed.
41. The point of discussing the Specific Claims is that the legal basis for Canada’s acceptance of the Specific Claims is also relevant to this request to reinstate Chakastaypasin, James Smith and Peter Chapman as separate and autonomous bands.
42. The pending Specific Claims Global Settlement Agreement (the “GSA”) involves three primary claims: the Wrongful Surrender of IR 100A Claim; the Wrongful Surrender of IR 98 Claim; and the James Smith TLE Claim.
43. As Canada is aware, these Specific Claims were most recently filed in 2014 on behalf of the James Smith Cree Nation #370 and were accepted for negotiation by Canada in May of 2018. In the acceptance letters for these three Specific Claims, Canada made several “without prejudice” admissions that establish the basis for these band re-creation requests.²²

²⁰ ICC IR 98 Report, at p. 461.

²¹ See ICC Report, JSA, p. 39.

²² Although the James Smith Cree Nation already exists as a “band”, the creation of the Chakastaypasin Band and the Peter Chapman Band from the existing James Smith Cree Nation #370 will effectively involve a newly constituted James Smith Band. Whether the “remaining” James Smith Band is a “new” band, or a continuation of the existing

Specific Claim for IR 100A Surrender

44. In Canada's May 18, 2018, acceptance letter related to the Surrender of IR 100A, Canada indicated the following:
- From Canada's perspective, IR 100A was set aside for the Cumberland House Band. As discussed above, although a group of Cumberland House band members led by Peter Chapman had settled at Fort à la Corne in 1885 (at that time, the *prospective* site of IR 100A), the Peter Chapman "sector" (as it is referred to by Canada today) is not recognized by Canada as an *Indian Act* band.
 - Canada suggests that although there may have been an eventual *de facto* subdivision of the Cumberland House Band into a Peter Chapman sector, "*it is Canada's view that no formal or de facto division of the Cumberland Band occurred prior to 1902.*"
 - Canada admits that there are "outstanding lawful obligations" regarding two matters which rendered the "surrender" of IR 100 A unlawful:
 - 1) The transfer of Chakastaypasin band members to the Cumberland House Band was unlawful (characterized by Canada as an "outstanding lawful obligation") in that these transfers "*failed to comply with statutory requirements and did not involve the consent of the Cumberland Band*".²³
 - 2) The subsequent amalgamation of the Cumberland House Band with the James Smith Band in 1902, was likewise unlawful given that the purported 1902 Amalgamation Agreement involved "*members of the Chakastaypasin Band, and non-involvement by the Cumberland Band*".²⁴
 - Canada ultimately concluded that these breaches rendered the purported surrender of IR 100A "invalid".
45. As can be seen from the above, the basis for Canada's acceptance of the IR 100A Specific Claim, as found in the May 18, 2018, acceptance letter, is grounded on the unlawfulness of the purported transfers of Chakastaypasin Band members and the subsequent 1902 amalgamation.
46. In their Acceptance letter, however, Canada went on to point out that although the Peter Chapman group had migrated to IR 100A prior to 1902, it was never a band "separate from the Cumberland Band": "*it is Canada's view that the Peter Chapman sector of the James Smith First Nation has a beneficial interest in the negotiated settlement of the Cumberland House Cree Nation's Cumberland IR 100A specific claim*".

JSCN #370 band, is a technical matter that can be discussed with ISC and the s. 17 Ministerial order can be drafted accordingly.

²³ May 18, 2018 acceptance letter re assessment of IR 100A claim, at p.1.

²⁴ In other words, the 1902 Amalgamation Agreement was acknowledged to be unlawful by Canada in that it involved the illegally transferred members of the Chakastaypasin Band and failed to include the consultation or consent with all the members of the Cumberland House Band, including those residing on IR20.

47. Based on Canada's recognition of the Peter Chapman group's "beneficial interest" in the loss of IR 100A, Canada invited the Peter Chapman sector "*to participate in the negotiation of the Cumberland House Cree Nation's Cumberland IR 100A specific claim*".
48. At the same time as Canada denies the separate existence of the Peter Chapman group as a "band", Canada's May 2018 acceptance letters recognize the Peter Chapman "group" as a rights-holding collective capable of holding a beneficial interest in these claims. Ministerial recognition through s. 17 of the *Indian Act* would give legal effect to this *de facto* reality.

IV. Legal Analysis

49. The legal arguments support the position that these three bands existed historically and were unlawfully transferred and/or amalgamated by Canada and that the appropriate remedy for these three bands is the reinstatement of their separate band status.
50. Both Chakastaypasin and James Smith were separate bands that entered into Treaty with the Crown in 1876. Both satisfied the *Indian Act* definition of "band" prior to the discontinuance of the Chakastaypasin payroll by Canada (1888/89) and the purported amalgamation of the Cumberland House Band (Peter Chapman group at IR 100A) with the James Smith Band (1902).
51. As stated by the Federal Court in *Passamaquoddy Nation v. Canada*²⁵, the existence of a "band" is a question of mixed fact and law, and the question is whether a "body of Indians" satisfies the statutory definition of "band"²⁶.
52. This same point was made by the Federal Court in *Montana Band v. Canada*:

For these reasons, I interpret the *Indian Act* definition of "band" to mean an aggregate of individuals, or a group regarded as a single entity who meet the "reserve interest" part of the definition **or** who share alike in the distribution of any annuities or interest money for which the Government is responsible including treaty annuities.²⁷

53. The 1886 *Indian Act*, which applied prior to the discontinuance of the Chakastaypasin Band payroll and at the time of the purported amalgamation, defined "band" in this way:
2. (d) The expression "band" means any tribe, band, or body of Indians who own or are interested in a reserve or in Indian lands in common, of which the legal title is vested in the Crown, or who share alike in the distribution of any annuities or interest moneys for which the Government of Canada is responsible.
54. There can be no dispute that both Chakastaypasin and James Smith satisfied this definition of "band" prior to 1902, having both received reserve allotments (IR 98 and IR

²⁵ *Passamaquoddy Nation v. Canada* 2015 FC 1403 (CanLII).

²⁶ *Passamaquoddy*, at para 92.

²⁷ *Montana Band v. Canada* 2006 FC 261 (CanLII) at para 454 [Emphasis added].

100 respectively), and also having had separate paylists i.e., they shared “alike in the distribution of any annuities”, which also satisfied the definition of “band”.

55. Canada has admitted the historic existence of these two bands and has also admitted the invalid transfer of Chakastaypasin Band members and the wrongful amalgamation that occurred in 1902. As Canada’s May 2018 Specific Claims acceptance letters stated: the transfers of Chakastaypasin Band members and the amalgamation of the Cumberland Band with the James Smith Band represented an “*outstanding lawful obligation*” in that these “*failed to comply with statutory requirements and did not involve the consent of the Cumberland Band*”.
56. After Canada’s acceptance of the Specific Claims in 2018, the Federal Court’s 2020 decision in *Watson v. Canada*²⁸ noted that a band amalgamation was invalid for similar reasons. Regarding an amalgamation, Justice Phelan of the Federal Court noted:

[2] ... In amalgamating two Treaty 4 bands, the Chacachas Band and the Kakisiwew Band, without their consent, the Crown breached its fiduciary obligations owed to the two bands and failed to honourably fulfill and uphold the promises in Treaty 4 in accordance with the principle of the honour of the Crown. By causing two bands to share a reserve, receive treaty annuities together and share a band governance structure without consent, the Crown prevented the bands from exercising their treaty rights as separate rights-bearing collectives.

[...]

[291] As there was no statutory authority to amalgamate bands under the *Indian Act*, the Crown’s authority to amalgamate bands comes from its discretionary authority under the Crown prerogative to make decisions consistent with its duties to Aboriginal peoples. In exercising its discretionary power over band membership and reserve lands to combine the bands, the Crown had a *sui generis* obligation to act in the Historic Bands’ best interests.

[292] Given that the combination of bands fundamentally affected the ability of the Historic Bands to the use and benefit from their own reserve lands, I have determined [that] the Crown had a duty to consult with the Historic Bands prior to combining the bands’ membership and reserve interests as part of its fiduciary obligations to the Bands.

[293] By not consulting with Chacachas particularly regarding the amalgamation of the Bands, especially given the recorded protests of the returning Chacachas members in 1883, the Crown breached the fiduciary obligations it owed to Chacachas.²⁹

57. Treaty bands possess a treaty right to continuity and as noted by the Federal Court in *Watson*, a treaty right to band continuity makes sense: if Canada could amalgamate bands

²⁸ *Watson v. Canada*, 2020 FC 129 (CanLII).

²⁹ *Watson* at paras 2 and 291-293. Note that Justice Phelan characterizes the right to be consulted on amalgamation as a fiduciary obligation and the failure to consult with the band “prior to combining the bands’ membership and reserve interests” as a breach of the Crown’s fiduciary obligations. In light of the recent Supreme Court of Canada decision in *Restoule 2024*, it is clear that treaty implementation invokes the core mandate to act honourably and this may give rise to justiciable duties, though not necessarily fiduciary duties.

arbitrarily or for administrative convenience, Canada could avoid providing treaty rights and benefits it owed to individual bands. Frustrating the implementation of a treaty because of administrative convenience is antithetical to the Honour of the Crown in implementing treaties.³⁰

58. Canadian jurisprudence has established strict conditions under which treaty rights can be unilaterally extinguished or consensually forfeited: none of the necessary conditions for a “legal” extinguishment of the treaty nation of Chakastaypasin Band was met.
59. Prior to 1982 it is well established that the extinguishment of a treaty right (including the right to exist as a treaty collective) must be clear and plain. Although the *Indian Act* of the day provided for the transfer of individuals between bands (s. 140 enacted in 1895), there was no provision in the *Indian Act* for band amalgamations, nor was there any explicit declaration by Canada that they were extinguishing the treaty rights of any of these bands, namely their treaty right to exist as separate treaty-rights bearing collectives.
60. The upshot of their treaty right to existence is that the Chakastaypasin and James Smith Bands, as treaty bands, could not be terminated at the whim of the federal government without the fully informed consent and vote of the membership of the bands involved, and Canada has admitted that no such legitimate consent was obtained.³¹ The irony of the current situation must be noted – i.e., Canada discontinued and amalgamated these separate Treaty bands without imposing any of the procedural pre-conditions that it is now insisting must be met in order for there to be Band division or de-amalgamation so as to “undo” Canada’s errors.

Peter Chapman Band

61. Admittedly, the Peter Chapman group has a different history. Although the leader Peter Chapman adhered to Treaty 5, he did so as a “Headman” of the Cumberland House Band.
62. Even though a “Peter Chapman Band” did not adhere to treaty as an autonomous band, it is arguable that they did subsequently satisfy the *Indian Act* definition of “band” after the members of the Cumberland House Band migrated to the Fort à la Corne area by 1885.
63. While resident at this location, it is arguable that the subsequent allocation of IR 100A in 1887 (confirmed by OIC in 1889) for the “Indians of the Cumberland District” was in fact an allocation of reserve land for the Peter Chapman group, making them a “band” within the meaning of the *Indian Act*, as a “body of Indians” who “own or are interested in a reserve”.
64. Alternatively, when the Peter Chapman group took up residence on the newly allotted IR 100A, they began to receive their treaty annuities under a payroll. Beginning in September of 1886 and every year thereafter, the “Cumberland Band Paid at Fort à la Corne” (i.e. the

³⁰ *Watson* at para 303, citing *R v Marshall*, [1999] 3 SCR 456, 1999 CarswellNS 262 at para 52.

³¹ Although the James Smith Band was not “extinguished” in that it continued to exist as a recognized band, its inherent make-up was altered by the 1902 wrongful amalgamation. James Smith was forced to accept and accommodate new band members which altered their cohesiveness and band identity; a reality that has generated a unique and challenging governance structure to this day.

Peter Chapman Band) received its own Treaty playlist separate from the Cumberland Band at IR 20.

65. Shortly after the migration of the Peter Chapman group from IR 20 to Fort à la Corne in 1885, there are references in government documents to the Peter Chapman group as a separate “band”. After the allotment of IR 100A, there are references to IR 100A as being “Peter Chapman’s reserve”, and further references to those members of the Cumberland Band living at IR100A as “Peter Chapman’s Band”.³² These references continue until Peter Chapman’s death in 1892.³³
66. Despite the disputed “band” status of the ancestors of those who today identify as the Peter Chapman Band (who elect their own Chief and Council under the umbrella JSCN #370 Election Act), s. 17 imposes no requirement that an applicant band “prove” their historic band status. Further, Canada has never stated that, as a matter of policy, the creation of new bands requires a historic existence as a recognized “band”.
67. As will be discussed below, it has always been the understanding of the parties – Canada, Chakastaypasin, James Smith, and Peter Chapman – that full reconciliation required the exercise of the s. 17 *Indian Act* process and the Minister’s creation (restoration) of three separate bands.

V. Other Policy Reasons Supporting Band Creation

68. Whatever the merits of the legal existence of the three groups as separate and autonomous historic bands, Canada has long been aware of and has accepted the “existence” of three components or, to adopt Canada’s terminology “sectors” of the James Smith Cree Nation #370.
69. For example, in 2002 the James Smith Cree Nation enacted their own *James Smith Cree Nations Election Act, 2002 (JSCNEA 2002)* which set out a governance structure that reflects the existence of the three separate groups, and ensured that all three of these groups were adequately represented by a joint council (a Chief and four headmen for each sector) with provision made for a decision-making quorum (one Chief and at least two Headmen from each sector). The following provisions in the *JSCNEA 2002* are most instructive:

V. COMPOSITION OF THE GOVERNMENT OF THE JAMES SMITH CREE NATIONS

1. In the interim, until the James Smith Band is restored to its original state, and until the Chakastaypasin Band and the Peter Chapman Bands are reinstated, the Government of the James Smith Cree Nations shall be composed of a Joint Band Council consisting of a Chief and Four Headmen for each of the James Smith, Peter Chapman and Chakastaypasin Cree Nations.

³² ICC Transcript, November 20, 2001 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 18b, p 25, James Burns); ICC Transcript, June 27-28, 2001 (ICC, James Smith Cree Nation IR 100A Inquiry, Exhibit 18a, p 56, Robert Constant).

³³ R.S. McKenzie, Indian Agent, Duck Lake Agency, to the Indian Commissioner, May 23, 1888, LAC, RG 10, vol 9098, book 4, p 95 (ICC Exhibit 1, p 274).

2. A quorum of the Joint Council for the James Smith Cree Nations shall consist of the Chief and 2 Headmen from each of the James Smith, Peter Chapman and Chakastaypasin Cree Nations.

70. Canada has acknowledged the existence of this governance structure in its three Specific Claims acceptance letters. Canada's acknowledgement appears in all three acceptance letters:

Canada understands that the James Smith First Nation is comprised of three groups: the James Smith sector, the Peter Chapman sector, and the Chakastaypasin sector, and that each sector is represented by its own elected Chief and Council.³⁴

71. As noted above, Canada has been anticipating this request for band recognition and the Specific Claims GSA has identified the inevitability of this request:

4.5 For greater certainty, the release provided at Article 4.1(a) is not intended to preclude the exercise of ministerial discretion to recognize Chakastaypasin, Peter Chapman and James Smith as three separate "bands" as defined in the *Indian Act*.

VI. Conclusion

72. The invalid transfer of Chakastaypasin Band members and the wrongful amalgamation followed Canada's breaches of lawful obligations owed to the three separate Treaty bands – i.e., the invalid taking of Chakastaypasin's IR98 reserve, the invalid taking of the southern portion of IR 100A and the failure to provide the James Smith Band with its full treaty land entitlement (TLE) under Treaty No. 6. The Crown's historic breaches also resulted in a complicated governance structure within the only recognised *Indian Act* Band, the James Smith Cree Nation #370.
73. In its May 2018 letters accepting the Specific Claims for negotiation, Canada has taken steps towards recognizing Chakastaypasin, James Smith and Peter Chapman as legitimate rights-holding collectives. It is now time to complete the process of reconciliation by exercising ministerial discretion to once again constitute these three bands as separate and autonomous *Indian Act* bands.
74. Accordingly, the three existing groups that currently make up the James Smith Cree Nation # 370, being Chakastaypasin, James Smith and Peter Chapman, make this submission and request that the Minister creates (or, more accurately, restores) three "new" bands pursuant to the authority granted under s. 17 of the *Indian Act* to:

- (a) Constitute three new bands from the current membership of the James Smith Cree Nation, namely the Chakastaypasin Band of the Cree Nation, the Peter Chapman Band, and the James Smith Cree Nation.

³⁴ See all three 2018 specific claims acceptance letters, *supra*, note 5.

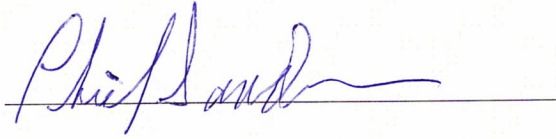
VII. Next Steps

75. After Canada receives this Submission requesting band creation, the three sectors of the James Smith Cree Nation # 370 would respectfully request:
- An acknowledgement by Canada of the receipt of this Submission.
 - An acknowledgement by Canada that, apart from an agreement on the division of assets, the Submission contains all the necessary substantive information required for the Minister to exercise discretion in creating three new bands.
 - It is requested that Canada convene a meeting with the leadership of Chakastaypasin, James Smith and Peter Chapman **as soon as reasonably possible** to discuss the necessary “next steps” in the band creation process and that Canada will specify the form and content of the three-sector agreement dividing existing reserve land and other assets in order that the Minister may execute the band creation order.

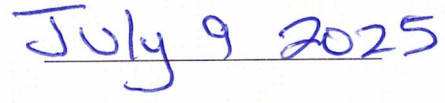
ALL OF WHICH IS RESPECTFULLY SUBMITTED this 9th day of July, 2025.

[Signature pages follow]

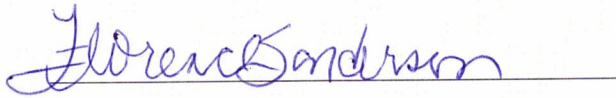
Chakastaypasin Band of the Cree Nation



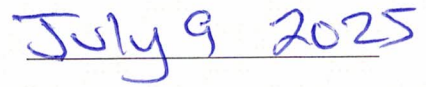
Chief Calvin Sanderson



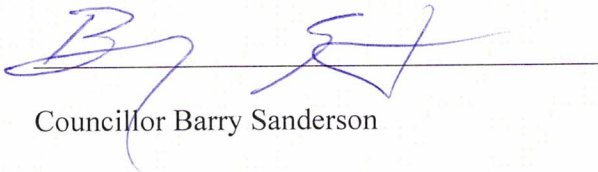
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Councillor Florence Sanderson



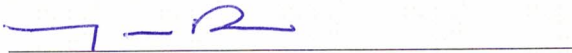
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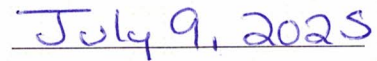
Councillor Barry Sanderson



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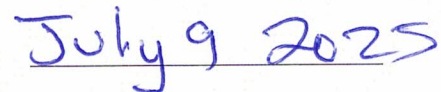
Councillor Marjorie Sanderson



Date

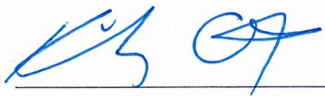


Councillor S. Dane Sanderson



Date

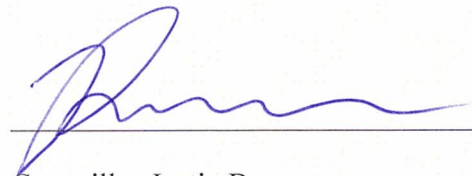
James Smith Cree Nation



Chief Kirby Constant

July 9, 2025

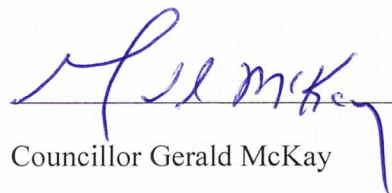
Date



Councillor Justin Burns

July 9/2025

Date



Councillor Gerald McKay

July 9 2025

Date



Councillor Alvin Moostoos

July 9, 2025

Date



Councillor Tanya Moostoos

July 9th /25

Date

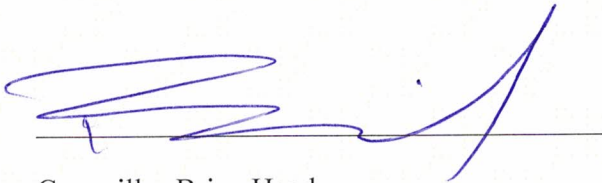
Peter Chapman Band



Chief Robert Head

July 9 2025

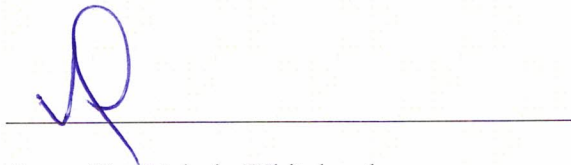
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Councillor Brian Head

July 9 2025

Date



Councillor Valerie Whitehead

July 9 2025

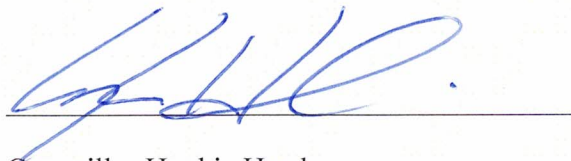
Date



Councillor Adam Whitehead

July 9 2025

Date



Councillor Hughie Head

July 9 2025

Date