

# Chippewa Tri – Council Coldwater – Narrows Land Claim

## **Overview of Historical Background and Negotiation Process**

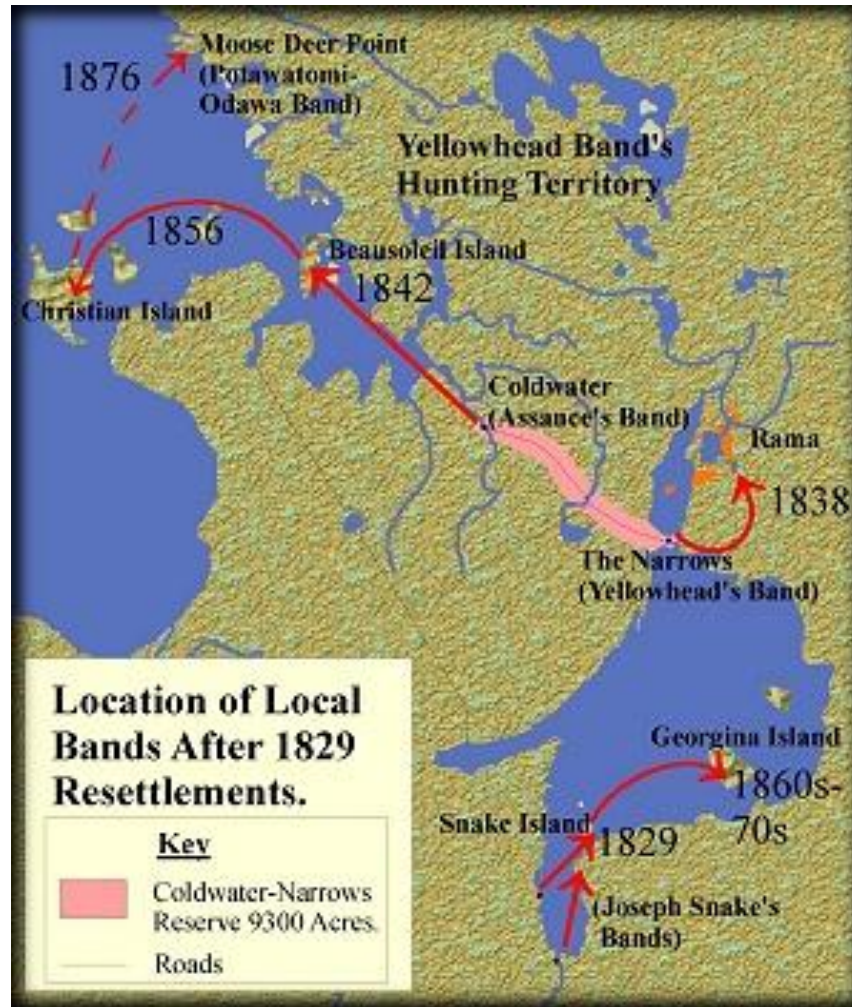
Ian Johnson LL.M., Ph.D., Chief Negotiator

March, 2012

# Coldwater – Narrows Reserve : Historical Background

- In 1830, the Chippewas of Lakes Huron and Simcoe moved on to the Coldwater – Narrows Reserve as part of a social experiment by the Indian Department
- In 1836 the Chiefs were induced to sign a surrender document when they believed they were getting a title deed to the Reserve
- The Chippewas of Lakes Huron and Simcoe then left the Coldwater-Narrows Reserve and their descendants have been deprived of the economic benefits of the Reserve

# Dispersal From Coldwater



# The Coldwater – Narrows Claim

- We began research on the Claim in the early 1980's
- The Claim was submitted to Canada in 1991 and was rejected by Canada in 1996
- After the rejection, Dr. Ian Johnson and legal counsel Alan Pratt completed further work and legal arguments in support of the Claim
- In 2002, and on the basis of the additional work and arguments by Ian Johnson and Alan Pratt, Canada overturned its 1996 objection and accepted the Claim for negotiation on very favourable terms
- Negotiations took place from 2002 until November, 2008

# How The Claim Was Valued

- Our negotiation objective was to maximize compensation through better knowledge, understanding, negotiation skill and strategic use of historical facts, economic theory and legal principles
- Canada will only compensate for the collective losses of the Chippewa and not for individual losses and we successfully convinced Canada that all losses were collective losses
- We were successful in negotiating compensation for :
  - 10,673 acres of land when Canada believed the Reserve was only 9800 ac
  - The current unimproved market value of the Reserve land based on very favourable TOR that we asserted in the face of opposition from Canada
  - Loss of use of the land from 1836 to the present which we successfully argued were 100% collective losses of the Chippewa
  - Loss of assets and improvements that existed on the land in 1836 which Canada argued were depreciating assets but for which we received full value
  - The costs of the negotiation loans and additional negotiation costs

# Key Negotiation Outcomes & Hurdles Overcome - 1

- A number of important negotiation precedents were set in the negotiation of this Claim:
  - We were able to negotiate Canada's "Proxy Model" from something that would have undervalued the Claim into an approach that provided an amount for loss of use that was higher than we initially thought possible
  - We were successful in negotiating compensation for loss of use that assumed:
    1. Each and every acre of the Reserve could have been used for economic purposes
    2. The entire Reserve could have been put to economic use in each and every year of the approximately 172 years that the First Nations had been deprived of their Reserve

# Key Negotiation Outcomes & Hurdles Overcome - 2

- Canada argued that the assets and improvements lost in 1836 should be depreciated over time. We successfully negotiated the full value of the assets and improvements as of 1836 with the value brought forward to the present day with no depreciation
- We were also successful in convincing Canada that the First Nations should be entitled to an Additions to Reserve component [including the creation of Reserves in urban areas] that gives you the option to replace the same amount of land that was lost in 1836. This was very difficult to achieve as this amount of new Reserve land has never been agreed to before in southern Ontario
- We were also successful in keeping the Claim on track when Canada introduced the Chippewas of Nawash as a fourth beneficiary to the Claim, and were further successful in limiting Nawash's entitlement to (10%). Nawash had argued for a 25% share

# Key Negotiation Outcomes & Hurdles Overcome - 3

- Once negotiations ended in November, 2008, we were able to keep the Claim moving to settlement by way of continuous lobbying of MPs and officials at Indian Affairs, meeting with local MPs, and letters to the Privy Council, Cabinet Ministers and the Prime Minister
- Once negotiations ended in November, 2008, we were able to influence the federal mandating process through the use of a Claim Summary & Rationale document that we provided to the federal negotiation team, and which the federal team used to explain the Claim settlement to senior officials, line Ministries and Cabinet
- We also used this information to develop and table an Aide Memoir to Cabinet – the first time this has ever been done in a Specific Claims process



# The Offer In Perspective

- The Offer:
  - \$307 Million – including about \$10 million to cover the loans and another \$6.33 million to cover final costs
  - ATR component of 10,673 acres
  - A warranty by the Councils that the settlement will be used for the long term benefit of the First Nations
  - Full and final releases and a surrender of the Coldwater Narrows Reserve
- The offer is more than twice as large as the largest single Specific Claim in Canada to date
- The offer will provide almost \$89 million to each of the CTC First Nations.
  - Money that can provide for a PCD today.
  - Money that can be invested and start to earn interest today.
  - Money that can start to benefit all members, on-reserve and off, today while also providing for future generations

# Apportionment

- Several criteria were considered by the Councils in determining apportionment within the Tri-Council
  - There are population differences but it was never contemplated that the settlement funds would be dispersed on a per capita basis
  - Infrastructure costs for a bridge, road, phase 3 hydro, etc. are roughly equal between the First Nations
  - Land for ATR is at a higher price in York Region than Simcoe County
  - On balance an even split seemed to level out the different factors

# The Offer – Could We Have Done Better

- All a negotiation team can do is make a recommendation on a settlement
- In my opinion, it is not likely that any other negotiation team could have achieved a better result
  - The negotiation team had a much better knowledge of the facts as the core of the team has remained unchanged throughout the process, while Canada changed negotiators, legal counsel and other supporting players numerous times
  - We were better prepared and more skillful on every issue
  - I believe that we out negotiated Canada on every head of damage
  - The Federal Team was placed under extreme time pressures to settle the Claim, pressure which we used to your advantage
- The current claim settlement represents the best result that could have been achieved in the Specific Claims negotiation process
- With 89 million dollars of your own money; combined with partners who could leverage this money many times over; invested in business development on new Reserve lands in urban areas; and with the tax advantages of Aboriginal ownership on Reserve lands; this settlement provides the means for competitive advantage that could pay substantial dividends for generations to come

# The Offer – Likelihood Of Renegotiating

- There is opposition within the federal government to the Claim being settled for this amount of money
- There were powerful voices within Cabinet and the Conservative Caucus that wanted to see this claim go to Court for a decision
- There are likely individuals within the federal government who would like to see the vote fail as an unsuccessful vote means the compensation doesn't have to be paid
- This process has been long and frustrating for the First Nations. Federal officials have also described it as a long and difficult process that they have no wish to repeat
- The new rules being used by Specific Claims Branch (SCB) to value claims could not achieve the same result again
- In fact, I have been told that the SCB will never allow the negotiations strategies we used to our advantage to be used against them again
- I met with senior officials of SCB in Ottawa recently and was told that they have no appetite for repeating the process they went through in the CNR mandating process
- In the event that the First Nations vote to not accept the proposed settlement, it is unlikely that Canada will be prepared to renegotiate the Claim within the foreseeable future

# Closing Remarks

- I have been involved in this Claim since 1980 and it has been a long and, at times, frustrating process
- More has been achieved in this Claim than I originally thought possible when we started
- I believe that this settlement can create the foundation for transformational change in your First Nation and create opportunities and wealth long into the future
- It has been an honour and privilege to assist the CTC First Nations in researching, preparing and negotiating the Claim
- **As Chief Negotiator for the CTC First Nations, I recommend that the membership of the First Nations accept the federal offer and the settlement of the Claim**
- **It is my very strong opinion that Canada will not renegotiate this settlement within the foreseeable future**