



Specific Claims: JUSTICE AT LAST

FREQUENTLY ASKED QUESTIONS

AN OVERVIEW

What are specific claims?

Specific claims deal with past grievances of First Nations. These grievances relate to Canada's obligations under historic treaties or the way it managed First Nation funds or other assets.

Since 1973, the Government of Canada has had a policy and process in place to resolve these claims through negotiations rather than through the courts. The Government of Canada prefers to resolve claims by negotiating settlements with First Nations. In contrast to litigation, negotiated settlements are jointly developed by the parties working together to ensure fairness for all.

What are the steps in the current specific claims process?

The current specific claims process begins when a First Nation submits a claim to Canada. Canada then completes a thorough review of the facts of each claim to determine whether it owes a lawful obligation to the First Nation. If a lawful obligation is found, Canada negotiates a settlement with the First Nation and (where applicable) the province. These settlements provide First Nations with fair compensation to resolve the claim once and for all.

If an outstanding lawful obligation is not found and the claim is not accepted by Canada, the First Nation can refer its claim to the Indian Specific Claims Commission to conduct an independent review of the government's decision. If requested, the current Commission can also assist First Nations and Canada in mediating disputes. While this independent body does important work, it does not have the power to make binding decisions. It can only make recommendations for consideration by the government. Alternatively, the First Nation may choose to pursue its claim through the courts.

What is Canada's *Specific Claims Action Plan*?

Canada has developed a decisive new approach to accelerate the resolution of specific claims in order to provide justice for First Nation claimants and certainty for industry and all Canadians. This new approach, which builds on the lessons learned from years of study and past consultations, is outlined in *Specific Claims: Justice At Last – Canada's Specific Claims Action Plan*. Through this action plan, Canada is proposing major reforms that will fundamentally alter the way specific claims are handled. The *Specific Claims Action Plan* will ensure impartiality and fairness, greater transparency, faster processing and better access to mediation. It is a critical first step to bringing the specific claims program into the 21st century to deal with the existing backlog of claims once and for all.

Why is Canada proposing this new approach?

Canada and First Nations agree that the current process needs to be improved. First Nations are frustrated with the slow pace of progress in resolving their outstanding claims. They question the fairness of a system where the government is defendant and judge deciding on the legitimacy of claims. They complain, too, about the current lack of transparency in public reporting to judge the validity of their criticism or gauge just how well the government is handling specific claims.

The number of claims in the federal system has also doubled between 1993 and 2006 and there is a backlog of claims awaiting attention or action. This had led to repeated calls from all quarters for more resources to speed up the process. Another issue demanding urgent attention is the need to make greater use of mediation services in stalled negotiations. All of these problems have been long discussed and well documented, most recently in *Negotiation or Confrontation: It's Canada's Choice – Final Report of the Standing Senate Committee on Aboriginal Peoples Special Study on the Federal Specific Claims Process*.

What are the key elements of Canada's action plan?

Canada's *Specific Claims Action Plan* has four pillars:

- creation of an independent tribunal to bring greater fairness to the process
- more transparent arrangements for financial compensation through dedicated funding for settlements
- practical measures to remove bottlenecks and ensure faster processing of claims
- refocusing the work of the current Commission to make greater use of its services in dispute resolutions once the new tribunal is in place.

The new tools and structures that are proposed respond to key First Nation concerns, as well as the key recommendations in the Standing Senate Committee's report. They also build on lessons learned from experience and are shaped by past consultations with First Nations and other key stakeholders.

IMPARTIALITY AND FAIRNESS: AN INDEPENDENT CLAIMS TRIBUNAL

How will the proposed tribunal work? Will it have the power to make binding decisions and who will make those decisions?

Although negotiations will always be the first choice, Canada will create an independent tribunal that can make binding decisions where claims are rejected for negotiation or when negotiations fail. This was one of the main recommendations in the report of the Standing Senate Committee on specific claims. The independent tribunal will be made up of no more than six retired or sitting judges. These judges will have

the necessary experience, capacity and credibility to examine historical facts and evidence and to address complex legal questions surrounding Canada's legal obligations and determine appropriate levels of compensation.

Once operational, the tribunal will issue periodic reports to keep governments, legislatures and taxpayers up to date on its activities.

Are there certain scenarios in which First Nations will be able to file claims with the tribunal?

Yes. There are three scenarios in which a First Nation could file a claim with the tribunal:

- when a claim is not accepted for negotiation by Canada
- in cases where all parties agree that a claim that has already been accepted should be referred for a binding decision; or
- after three years of unsuccessful negotiations.

In the first scenario, the tribunal would look strictly at questions of history and law to determine whether Canada has an outstanding lawful obligation under the Specific Claims Policy. Under the latter two scenarios, the tribunal would apply a rigorous process to establish how much monetary compensation is owed to the First Nation. In all cases, these interventions will bring greater fairness to the process while accelerating the settlement of outstanding claims.



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IMPARTIALITY AND FAIRNESS: AN INDEPENDENT CLAIMS TRIBUNAL (CONT.)

Can Canada unilaterally send a claim to the tribunal?

No, the federal government will not be able to send a claim to the tribunal without the First Nation's consent.

GREATER TRANSPARENCY: DEDICATED FUNDING FOR SETTLEMENTS

Are there any other restrictions on tribunal decisions?

Yes. Tribunal decisions would not address claims valued at over \$150 million, land or resources, punitive damages, cultural and spiritual losses or non-financial compensation. Nor would they be binding on other levels of government, although provincial/territorial governments would be free to participate on a voluntary basis.

How will Canada's action plan bring greater transparency to the process?

New funding arrangements will be put in place that are more transparent and which better meet the needs of the revamped program. Finding information about spending on specific claims is not easy the way proposed spending has been presented to Parliament and others. This makes it difficult for interested Canadians to determine how well the government is handling claims or even whether adequate funding is available. Having substantial and visible funding in place that is dedicated to specific claims settlements will address this lack of transparency. This will also underscore Canada's commitment to honour its outstanding debts to First Nations.

To hold the government to account, explicit targets will be set for resolving outstanding claims and results of those efforts routinely reported so Canadians can judge for themselves whether government is delivering on its commitment to settle specific claims.

How much funding will be available each year for settlements under the plan? What would trigger these payments?

There would be two triggers for authorized payments, which would have an upper limit of \$250 million per year or \$150 million per settlement.

- jointly approved specific claim settlements; or
- tribunal decisions.

FASTER PROCESSING: IMPROVING INTERNAL GOVERNMENT PROCEDURES

What new measures will be put in place to speed up internal government procedures?

The goal is for all new claims to receive a preliminary assessment within six months to identify those that qualify for negotiation and to sort them for faster processing. Similar claims will be bundled at the research and assessment stages to speed up decisions regarding their legitimacy. Small value claims will undergo an expedited legal review to quickly conclude whether they will be accepted or declined for negotiation.

In addition, there will be a streamlined approach to processing in order to better address the diversity and complexity of specific claims. Special efforts will be made to negotiate small value claims more quickly -- as those account for about 50 per cent of cases now languishing in the clogged system. Very large claims, valued at \$150 million or more, which currently bog down the system, will be referred for separate processing so they can be dealt with outside the policy and processed in a way that better responds to their size and complexity.

What tools will be used to help the government sort claims for processing?

Key to this new approach will be maximizing the wealth of research studies and data amassed over the past thirty years as Canada has worked on these issues. Greater use will be made of existing data bases and other easily accessible sources of information to support the early review process and other improvements.

BETTER ACCESS TO MEDIATION: REFOCUSING THE WORK OF THE CURRENT COMMISSION

Will other tools be used to resolve disputes before resorting to the tribunal?

Every reasonable effort will be made to achieve negotiated settlements and cases would only go to the tribunal when all other avenues have been exhausted. Before that happens, Canada and First Nations must have somewhere to turn when negotiations sour. Mediation is an excellent tool that can help parties in a dispute to reach mutually beneficial agreements. Canada recognizes that this tool should be used more often in stalled negotiations and is committed to increasing its use.

What will happen to the current Commission once the new tribunal is in place?

The Indian Specific Claims Commission (ISCC) has been of assistance to Canada and First Nations, providing valuable facilitation and mediation services over the past sixteen years. Once the new tribunal is in place, it will be important not to lose the Commission's experience and expertise in this crucial area.

To make sure this doesn't happen, the ISCC will no longer conduct any new inquiries into claims that have been rejected. Its mandate will be changed to focus exclusively on dispute resolution services. These services can help Canada and First Nations in overcoming impasses at all stages of the process. As a neutral third party, the revitalized Commission would only consider claims as defined by the Specific Claims Policy.

Will the ISCC continue to operate while work to establish the tribunal is underway?

Yes. A transition plan will be developed to ensure that work presently underway by the current Commission can be properly completed in the coming year, if that is the wish of the First Nation with the rejected claim.

MOVING FORWARD TO A NEW AND IMPROVED SYSTEM

Will the current specific claims process continue while work to implement these changes is ongoing?

Yes. During the transition to the new system, Canada will continue to work with its First Nation and provincial/territorial partners through the current specific claims process.



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MOVING FORWARD TO A NEW AND IMPROVED SYSTEM (CONT.)

Is there anything that won't change under the new system?

While these major changes will dramatically improve the specific claims process, the fundamental principles of the Specific Claims Policy will not change. The Government of Canada reaffirms that negotiation remains its preferred method to settle claims, as this is invariably more effective than confrontation and adversarial approaches.

The test of confirming that an outstanding lawful obligation exists – the core of the current policy – is an appropriate measure by which Canada can determine the debt it owes to a First Nation. This approach provides an objective measure that ensures fairness for all.

Will Canada need help from other levels of government to make this plan work?

Yes. As with the current process, the Government of Canada will continue to depend on willing partners to make its plan work. The federal government does not have exclusive jurisdiction over these issues or sole liability for specific claims. Almost all pre-Confederation claims and about half of those south of 60° involve Crown lands. Under Canadian law, the provinces are the owners of most of the Crown lands. In addition, since provinces and municipalities make many of the development decisions that impact lands that may be the subject of specific claims, they need to be a part of this process.

Ultimately, resolving this outstanding business is a national problem which requires a national solution that is in the national interest.

Will the interests of third parties continue to be protected when land-related specific claims are settled under the new process?

Yes. The interests of third parties will still have to be taken into account during negotiations. As it is at present, private property will not be on the table, nor will private property owners be asked to sell their land unwillingly. If land changes hands as a result of a settlement under the new process, this could only happen on a willing-seller/willing buyer basis.

Will these changes take effect immediately? If not, what needs to be done before they can be implemented?

The reforms proposed in Canada's action plan on specific claims will not be put in place overnight. Over the summer of 2007, discussions will take place between federal officials and First Nation leaders as work to implement these changes proceeds. Discussions will focus on transforming the Indian Specific Claims Commission and on shaping the legislation intended for introduction in the Fall of 2007. As there have been numerous studies and extensive consultations with First Nations on these issues in the past, the goal is to conclude these discussions quickly so legislation can be brought forward in the fall of 2007. A work plan will be developed to move forward on the changes and ensure a smooth transition to the new system in the coming year.

Will Canada consider making other changes to the system in the future?

This Action Plan is the first step in an ongoing process to reform the specific claims program to resolve these longstanding issues for all time. Over the longer term, the Government of Canada is committed to working with First Nations to develop other initiatives to further enhance the process. Regular review is envisioned to assess progress, hold all parties to account and make ongoing improvements to the system as required.

How will improving the specific claims process benefit all Canadians?

By ensuring impartiality and fairness, greater transparency, faster processing and better access to mediation, Canada's action plan on specific claims will achieve the objective of restoring confidence in the integrity and the effectiveness of the process. Equally important, as Canada fulfills its lawful obligations to First Nations and eliminates the backlog in the system, taxpayers will be relieved of this outstanding debt.

The very necessary and overdue changes proposed in this action plan will accelerate claims resolutions so First Nations and all Canadians can more quickly realize the benefits of negotiated settlements. These benefits include economic benefits, new opportunities for business partnerships and certainty for First Nations, industry and area communities.

It is in the best interests of all Canadians to bring closure to First Nation's grievances and put the mistakes of the past behind us. In doing so, we can move forward together in a spirit of partnership and put our joint energies into building a better future.

How can I find out more about this initiative?

If you wish to get more information on this initiative or to share your views on related implementation matters (such as refocusing the work of the current Commission and/or improving information sharing on specific claims in general), please contact us at:

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