



Specific Claims: JUSTICE AT LAST

HISTORY OF CALLS FOR AND EFFORTS TO CREATE AN INDEPENDENT TRIBUNAL ON SPECIFIC CLAIMS

Since 1947, there have been numerous calls for an independent body to adjudicate specific claims. Over the past 60 years, the concept of such an independent body has been a recurring theme in Canadian public policy discussion. There have also been several attempts over the years to create an independent claims body with the power to make binding decisions on government. However, to date, none of these initiatives has succeeded.

With the Least Possible Delay

In July, 1947, the Special Joint Committee of the Senate and the House of Commons reported:

“That a Commission, in the nature of the Claims Commission, be set up with the least possible delay to inquire into the terms of the Indian treaties... and to appraise and settle in a just and equitable manner any claims or grievances arising thereunder.”

In 1961, a Joint Committee of the House and Senate reiterated the recommendation for a Claims Commission. In March 1962, the first draft legislation for a Claims Commission was approved by then Prime Minister Diefenbaker’s Cabinet; however, this draft legislation was never introduced because of the 1963 election call.

Proposed Indian Claims Act

Bill C-130, entitled the Indian Claims Act, was introduced into the House of Commons by then Prime Minister Lester Pearson on December 14, 1963, but withdrawn to permit consultation with First Nations.

An Act with the same title was re-introduced by Prime Minister Pearson’s government on June 21, 1965, but died on the Order Paper due to the 1965 election.

A New way to deal with past grievances: the Specific Claims Policy

In 1973, Canada’s Specific Claims Policy was established to assist First Nations in addressing their specific claims through negotiations with the government as an alternative to litigation. A process was put in place to deal with these claims, which includes an assessment by Canada to determine whether it owes a lawful obligation to a First Nation and negotiation of a fair and just settlement to honour its obligations.

Improvements to the specific claims policy and process have been made over the years. The Specific Claims Policy remains in effect today.

Re-Igniting the Debate

In 1979, an unpublished report prepared for Canada about its administrative process for resolving specific claims cited ‘conflicting duties’ in the federal government’s involvement in claims settlements. The report recommended the creation of an independent body which would “for all purposes be a specialized court.”

In 1983, the “Penner Report” called for a quasi-judicial process for managing failed negotiations and the neutral facilitation of negotiated settlements.

In March of 1990, the House of Commons Standing Committee reiterated the need for an independent claims body in a report entitled *Unfinished Business: An Agenda for All Canadians in the 1990’s*. A joint Canada-First Nations working group looked at creating a permanent, legislative entity with tribunal-like powers.

The Indian Specific Claims Commission

In January of 1991, the Indian Specific Claims Commission (ISCC) was created under the federal *Inquiries Act* primarily as an alternative to the courts for First Nations whose specific claims have been rejected by Canada. In such cases, a First Nation can refer its claim to the Commission to conduct an independent review of the government's decision. If requested, the ISCC can also provide mediation and facilitation services to help Canada and First Nations reach an agreement.

The Commission was only intended as an interim measure, until a permanent independent body with adjudicative powers could be created. In its annual reports to Parliament over the past ten years, the ISCC repeated its recommendation that such a permanent body should be created. The Commission remains in existence today, but continues to have only 'non-binding' recommendatory powers.

Renewed Calls for A Permanent Claims Body

In 1996, the Royal Commission on Aboriginal Peoples recommended an independent lands and treaties tribunal to replace the ISCC. This followed extensive consultations with First Nation people across the country.

Two years later, in a report entitled *Aboriginal Rights in Canada: An Agenda for Action*, the Canadian Bar Association recommended "the creation of a legislative-based Specific Claims Tribunal with a clearly defined mandate to adjudicate the resolution of specific claims."

A decade of failed attempts: towards Bill C-6

Subsequent attempts on the part of the Government of Canada and the Assembly of First Nations (AFN) to agree upon the form and content of claims reform did not meet with success in the end. In 1992-1993, a Joint Working Group, composed of representatives from both Canada and the AFN, failed to achieve agreement or finalize a report.

In 1998, the Joint First Nations-Canada Task Force on Specific Claims Policy Reform recommended an independent commission to assess claims as well as a tribunal to assist in resolving disputes. The work of this Joint Task Force ultimately led to the development of Bill C-6, the *Specific Claims Resolution Act*, which received Royal Assent in November of 2003. The *Act* would have allowed binding decisions on the validity of claims and compensation amounts valued up to \$10 million, but was rejected by First Nations and never implemented. One of First Nations' key concerns with the legislation was the financial limit on tribunal decisions.

Negotiation or confrontation: It's Canada's Choice

The Standing Senate Committee on Aboriginal Peoples recently conducted a thorough review of the specific claims process. The recommendations in its report, entitled *Negotiation or Confrontation: It's Canada's Choice*, were accepted by the Senate in February 2007. The Senate report pinpointed the lack of independent adjudication and the slow pace of the current process as the key problems. It recommended that the government create an independent claims body with decision making powers, dedicate \$250 million in funding per year to paying settlements and implement other improvements, such as putting more resources into the negotiation process.

Justice At Last: The Specific Claims Action Plan

In June 2007, the Government of Canada announces the development of 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. Through this approach, outlined in *Specific Claims: Justice At Last*, Canada is proposing major reforms that will fundamentally alter the way specific claims are handled. Key elements of this plan are the creation of an independent tribunal, dedicated funding for settlement and refocusing the work of the current Commission to make better use of its services in dispute resolution once the new tribunal is in place.

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 necessary legislation. 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.