



[AANDC](#) > [Acts, Agreements & Land Claims](#) > [Land Claims](#) > [Specific Claims](#)

## A Guide to the Specific Claims Negotiation Process

In this guide, you will find an overview of specific claims and learn about the negotiation process. It provides information about the various steps in the process, how negotiators reach agreement on compensation and how third party interests are taken into consideration when a claim is negotiated. There are also examples of successful specific claim negotiations from across Canada.

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### Table of Contents

- [Overview](#)
  - [Taking Action: Resolving Specific Claims to the Benefit of All Canadians](#)
  - [Why Negotiate?](#)
  - [Historical Treaties of Canada](#)
  - [Why is Canada negotiating claims based on, in some cases, 200-year-old treaties?](#)
  - [Specific Claim Successes Across Canada](#)
  - [The Specific Claim Negotiation Process: Step by Step](#)
  - [The Specific Claims Tribunal](#)
  - [Quick Facts About Specific Claims](#)
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### Overview

Specific claims deal with the past grievances of First Nations. These grievances relate to Canada's obligations under historic treaties or the way it managed First Nation funds or assets. Promises made were not always promises kept. It is Canada's preference to address these outstanding grievances through negotiation. Canada does not take away privately owned lands to settle any claims.

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### Taking Action: Resolving Specific Claims to the Benefit of All Canadians

In June 2007, the Government of Canada announced an action plan to improve and speed up the resolution of First Nation specific claims in order to provide justice to First Nations and certainty for all Canadians.

Canada's Specific Claims Action Plan has fundamentally altered the way specific claims are handled, bringing greater fairness, speed and transparency to the process. This action plan is delivering concrete results.

The creation of a Specific Claims Tribunal is key to Canada's revitalized approach to addressing specific claims. Canada and the Assembly of First Nations jointly developed the legislation to establish the Tribunal. This legislation is called the *Specific Claims Tribunal Act*. It came into force on October 16, 2008.

The Tribunal is an independent body with the power to make binding decisions to resolve specific claims. It provides an alternative to the courts for First Nations when other options fail. The Tribunal has the authority to make binding decisions on the validity of claims and award monetary compensation up to \$150 million per individual claim.

Three-year time frames – one for assessing claims and one for negotiating claims – are also now in effect. If these time frames are not met, a First Nation can opt to refer its claim to the Tribunal. Prescribed time frames have never before been part of the specific claims process. This tool will help speed up resolution, keeping the focus on concrete results.

We are already seeing progress. During the 2008-09 fiscal year, Canada addressed a record 118 specific claims. The number of specific claims addressed in the previous fiscal year, 54, was also a record. We look forward to building and improving on this success in the future.

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## Why Negotiate?

Canada negotiates claims with First Nations because they lead to win-win solutions for all concerned. Negotiated settlements provide fair financial compensation to First Nations for past damages. The cash, and sometimes land and cash settlements, enable First Nations to invest in areas that produce tangible improvements in the lives of their members – whether training to create career options for youth, residential housing and community infrastructure, or economic development opportunities. These investments, in turn, can generate spin-off economic benefits and the potential for new business partnerships with neighbouring communities.

Where there are specific claims which involve a land component, settlements also resolve land ownership questions. When confusion over land is removed, doors may be opened to new economic development opportunities, including the establishment of First Nation businesses and possible joint ventures with non-Aboriginal businesses.

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## Historical Treaties of Canada



This image shows the location of historical treaties across Canada. This includes:

- The Peace and Friendship Treaties reached between 1725 and 1779
- The Upper Canada Land Surrenders between 1764 and 1862
- The Robinson Treaties of 1850
- The Douglas Treaties reached between 1850-1854
- The Numbered Treaties reached between 1871 and 1921; and
- The Williams Treaties of 1923.

## Why is Canada negotiating claims based on, in some cases, 200-year-old treaties?

The relationship between Aboriginal and non-Aboriginal people in Canada began centuries ago at the time of 'first contact' between the two groups.

Over time, there have been instances in which the Crown has not fulfilled its treaty and other obligations.

The Government of Canada is accountable for legally-binding treaties and agreements signed between the Crown and First Nations in those early years of our history.

Canada has a duty to honour past commitments made with First Nations. While centuries may have passed since a treaty was signed, this does not diminish Canada's obligation to keep its promises.

First Nations, like all Canadians, expect their legal rights to be respected and upheld.

In all cases, when a claim is settled, First Nations provide Canada with releases that ensure the claim can never be re-opened.

Addressing claims helps Canadians come to terms with our history while bringing closure to the longstanding grievances of First Nations.

## Specific Claim Successes Across Canada

The following are examples of specific claim settlements from across Canada.

## British Columbia

**The First Nation:** The Shxwhá:y Village (Skway First Nation) is located about two miles west of Chilliwack. There are about 344 members.

**The Claim:** In 2000, the Shxwhá:y Village First Nation filed the Dyke & Road Right of Way on Skway IR #5 specific claim under Canada's Specific Claims Policy. The basis of the First Nation's claim was that a flood control dyke and road was constructed on the Shxwhá:y Village Reserve in 1949 without consent and without proper compensation. Canada accepted the claim for negotiation in 2003.

**The Settlement:** The settlement included a total cash component of \$3.85 million. Canada's financial contribution to the settlement totalled \$2.1 million. The Province contributed \$1,311,000 and the City of Chilliwack contributed \$450,000 to the settlement.

## Saskatchewan

A special type of specific claim known as Treaty Land Entitlement claims make up a significant number of the specific claims of First Nations in Saskatchewan.

**The First Nations:** In 1992, 25 First Nations signed the Saskatchewan Treaty Land Entitlement Framework Agreement. Since 1992, another eight First Nations have signed separate Treaty Land Entitlement agreements.

**The Claims:** A Treaty Land Entitlement claim arises when a First Nation asserts that the Government of Canada did not provide all of the reserve land promised under an historic treaty signed with the Crown.

**The Settlements:** The agreements (Saskatchewan Treaty Land Entitlement Framework Agreements and eight additional agreements signed since 1992) provided about \$445 million in federal compensation, and enabled First Nation signatories to acquire up to 2.7 million acres of land.

Learn more by watching the [Treaty Land Entitlement – The English River Story](#) video.

## Ontario

**The First Nation:** The Michipicoten First Nation is located 24 kilometres south of Wawa, along a beach on the northeast shore of Lake Superior. There are about 700 members.

**The Claim:** The First Nation's claim dates back to the Robinson Superior Treaty of 1850. The land provided to the First Nation for its reserve was not what had been promised. Its eastern and western boundaries did not honour an 1853 agreement between the Chief and the Crown on the size and location of the reserve.

**The Settlement:** Canada and Ontario reached a settlement of the claim with the First Nation in 2008. It included 3,000 acres of provincial Crown land and financial compensation of \$46.8 million from Canada.

See the success through the [Beyond Borders – The Michipicoten Story](#) video.

## Quebec

**The First Nations:** The Wôlinak Abenakis First Nation is located 20 kilometres southeast of Trois-

Rivières, and has about 225 members. Odanak Abenakis First Nation is located 32 kilometres east of Sorel and is adjacent to the municipality of Pierreville and has about 1,865 members.

**The Claim:** The basis of the claim was that the Crespieul Reserve was sold in 1910 without the two Abenakis First Nations' proper consent.

**The Settlement:** The claim was settled in 2007. The Odanak Abenakis and Wôlinak Abenakis received approximately \$4.8 million in financial compensation for the loss of their lands.

## New Brunswick

**The First Nation:** The Madawaska Maliseet First Nation is located 1.6 kilometres east of Edmundston in the northwestern region of New Brunswick. There are about 238 members.

**The Claim:** Madawaska Maliseet First Nation's specific claim related to the use of three parcels of reserve land Canadian Pacific Railway (CPR) used for the construction of a section of railway running from Woodstock to Edmundston in the late 1800s. After the land was abandoned by CPR around 1971, it was then used by Fraser Papers Inc. for a pipeline. The First Nation's claim was based on allegations that the government failed to protect and preserve the First Nation's interest in the reserve when the CPR ceased to use the land for railway purposes.

**The Settlement:** The claim was settled in 2008; Canada provided approximately \$5.7 million in compensation to the First Nation and also confirmed the reserve status of the claimed lands. As well, the Madawaska Maliseet First Nation and Fraser Papers Inc. negotiated an agreement to allow the company to continue operating its pipeline.

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## The Specific Claim Negotiation Process: Step by Step

This flow chart outlines the steps usually taken in the negotiation process for specific claims.

### STEP 1: Claim Accepted for Negotiation

Following a historical and legal review, specific claims are accepted for negotiation when Canada concludes it has an outstanding lawful obligation to the First Nation.

### STEP 2: Joint Negotiation Protocol Agreement Reached

This is an agreement that sets out the process and "ground rules" for negotiations. It includes studies, timetables, etc.

### STEP 3: Studies/Research on Compensation

Research and studies help negotiators determine the amount of compensation that should be paid to a First Nation when its claim is settled.

### STEP 4: Discussions on Compensation

The negotiators review the studies and work to reach consensus on how much compensation would be fair to settle the claim.

## **STEP 5: Settlement Proposal and Drafting of a Final Settlement Agreement**

The negotiators agree on the key terms of a proposed settlement. The settlement agreement is then drafted.

## **STEP 6: Settlement Agreement Initialled by Negotiators**

Negotiators for the First Nation and the government initial the agreement.

## **STEP 7: First Nation Ratification Vote**

First Nation members have an opportunity to say yes or no to the settlement agreement through a community vote.

## **STEP 8: Ratification by Canada**

If approved by the First Nation membership, the next step is for the First Nation leadership and the Minister of Indian Affairs and Northern Development to sign the settlement agreement.

## **STEP 9: Implementation of the Agreement**

Land is transferred, or cash is paid, as appropriate.

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## **The Specific Claims Tribunal**

Negotiations will continue to be Canada's first choice for resolving specific claims. However, First Nations can now refer their claims to the independent Tribunal for a binding decision when other options fail. Composed of superior court judges, the Tribunal provides an alternative to the courts and brings finality to the process.

It is important to note that there is no situation in which a claim automatically goes to the Tribunal. First Nation participation in the Tribunal process is entirely voluntary just as it is with the overall specific claims process.

There are four scenarios in which a First Nation can opt to file a claim with the Tribunal:

- if a claim has not been accepted for negotiation by Canada
  - if Canada fails to meet the three-year time frame set out in the legislation for assessing claims
  - at any stage in the negotiation process if all parties agree
  - if three years of negotiations do not result in a final settlement
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## Quick Facts About Specific Claims

- First Nation participation in specific claims negotiations is entirely voluntary.
  - Before a claim can be accepted for negotiation, the claim must clearly show that Canada has an outstanding lawful obligation.
  - The vast majority of negotiations result in final settlements. Negotiated settlements are jointly developed by the First Nation and the government working together to reach a mutually-agreeable settlement.
  - The interests of third parties are taken into consideration during negotiations.
  - Private property is not on the table, nor is anyone asked to sell their land unwillingly. If land changes hands, it only happens on a willing-seller/willing-buyer basis.
  - As of December 31, 2009, over 760 specific claims have been concluded across the country, including 327 claims resolved through negotiated settlements. Canada's contribution to these settlements has ranged in value from \$15,000 to \$125 million, with an average settlement value of \$6.6 million.
  - Specific claim settlements bring closure to past grievances. Settled claims cannot be re-opened.
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