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At a Glance: The Specific Claims Tribunal Act

The *Specific Claims Tribunal Act* received Royal Assent in June 2008 and came into effect on October 16, 2008. The legislation creates an independent tribunal with the power to make binding decisions on the validity of and compensation for specific claims. The Tribunal is a key part of a new approach to improve and speed up the resolution of specific claims across the country.

Main Elements of the Legislation

Developed jointly with the Assembly of First Nations, the legislation establishes a new independent body called the Specific Claims Tribunal.

Subject to the conditions set out in the *Specific Claims Tribunal Act*, there are four scenarios in which a First Nation may opt to file a claim with the Tribunal:

- when the Minister has notified the First Nation of his or her decision not to negotiate the claim, in whole or in part;
- when three years have elapsed after the day on which the claim was filed with the Minister and the Minister has not notified the First Nation in writing of his or her decision on whether to negotiate the claim;
- when in the course of negotiating the claim, the Minister consents in writing to the filing of the claim with the Tribunal; or,
- when three years have elapsed after the day on which the Minister has notified the First Nation in writing of his or her decision to negotiate the claim, in whole or in part, and the claim has not been resolved by a final settlement agreement.

The Tribunal may develop: its own rules governing its practices and procedures; its own general rules for the management of its staff and administration of its internal affairs; and its own rules of practice and procedure related to time limits for its process.

Tribunal Structure & Appointments

The independent Tribunal will be made up of the equivalent of six full-time members, who will come from the existing bench of experienced superior court judges in the provinces. These individuals will be appointed in accordance with the current process for judicial appointments to tribunals, which requires the consent of the judge in question, as well as his or her Chief Justice. The selection process for judges to sit on the Tribunal is underway.

The Tribunal is supported by an administrative arm called the Registry. Currently, an Interim Registrar has been hired with the participation of the Assembly of First Nations in the selection process. This person is responsible for setting up the administrative offices, developing operating systems to support the work of the Tribunal and conducting staffing processes. The Registry is located in Ottawa. The goal is that the Tribunal will be fully operational by winter 2008/09.

A New Minimum Standard

As required by the legislation, a [new Minimum Standard for claims submissions](#) has been established and came into effect on October 16, 2008. Discussions on this Minimum Standard took place with the Assembly of First Nations in the summer of 2008. The new Minimum Standard ensures that claims submissions will be presented in a particular form and contain certain kinds of information.

Accountability & Reporting

The Tribunal will issue annual reports to keep the government and all Canadians up to date on its activities. It will be fully accountable to Parliament for its expenditures as well as its operations. A review of its work will be initiated no later than five years from the date the legislation came into force. This

review process will enable Canada and First Nations to assess the Tribunal's effectiveness to ensure that it has met the expectations of all concerned.

Quick Facts on Specific Claims:

- Specific claims deal with the past grievances of First Nations. In general, these grievances relate to Canada's obligations under historic treaties or the way it managed First Nation funds or other assets, including reserve land.
- Canada completes an assessment of the facts of each claim to determine whether it owes a lawful obligation to a First Nation. If the claim is accepted, Canada negotiates a settlement with the First Nation and (where applicable) the province or territory. In the past, about 70 per cent of claims were accepted.
- If a claim has not been accepted for negotiation by Canada, a First Nation may choose to take the claim to the Tribunal for a binding decision.
- The Government of Canada prefers to resolve claims by negotiating settlements with First Nations. The vast majority of negotiations result in final settlements. In contrast to litigation, negotiated settlements are jointly developed by the parties working together.
- The interests of third parties are taken into account during the negotiations. Private property is not expropriated to settle claims, nor is anyone forced to sell their land unwillingly. Compensation received by a First Nation through a claim settlement can be used by a First Nation to purchase land on a willing-buyer/willing-seller basis. This includes a negotiated settlement or a settlement resulting from a decision of the Tribunal.
- Since 1973, about 300 specific claims have been 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 \$6.5 million. As of September 30, 2008, 138 specific claims are under negotiation.

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