

INAC - Frequently Asked Questions from First Nation Claimants

About *The Specific Claims Tribunal Act*

This document provides an overview of frequently asked questions from First Nation claimants about The *Specific Claims Tribunal Act* (the *Act*). Jointly developed with the Assembly of First Nations, the Act creates an independent Tribunal with the power to make binding decisions on specific claims. More general information about the Act and the overall action Canada is taking to speed up resolution on specific claims is available on the [Internet](#).

Under what circumstances can a First Nation file a claim with the new 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.

Are there any restrictions on Tribunal decisions regarding compensation?

Yes. The Tribunal cannot award compensation in excess of \$150 million per individual claim, nor can it award punitive damages, compensation for cultural or spiritual losses or non-financial compensation.

Do provinces have to participate?

Participation in Tribunal proceedings by a province or territory is voluntary in all cases. If a province chooses not to participate, the Tribunal's decision can only deal with the issue of federal liability. However, if the province or territory chooses to participate in the Tribunal process, then it must become a party to the proceedings and certify in writing that it has taken the necessary steps to be bound by the Tribunal decision.

Can the Tribunal deal with claims related to land?

Yes. The Tribunal can hear all varieties of specific claims, including land-related ones, but cannot award land as compensation. However, as with the approach in negotiations, First Nations could still use their compensation to purchase land on the open market on a willing-buyer/willing-seller basis.

What changes to the specific claims process does the *Act* bring about?

The *Act* includes a requirement for all claims submissions to meet a Minimum Standard for kinds of information and form and manner (see below for more details). The Minimum Standard came into effect on October 16, 2008.

The *Act* also includes provisions to speed up the resolution of specific claims by setting time limits on Canada's internal processes. For example, if the Minister has not notified a First Nation whether its claim has been accepted for negotiation within three years, the First Nation can either wait for the results of the assessment or go to the Tribunal for a binding decision on validity and compensation. Likewise, a First Nation can go to the Tribunal for a binding decision if three years of negotiations have not resulted in a final settlement agreement.

What is the new Minimum Standard for claims submissions? When was it developed?

In simple terms, the new Minimum Standard sets out what information is required in a claims submission and how it must be presented. Discussions on this Minimum Standard took place with the Assembly of First Nations in the summer of 2008. A copy of the complete Minimum Standard is available on the [Internet](#). Copies can also be obtained through the following toll-free numbers: 1-800-567-9604 or (TTY) 1-866-553-0554.

What information is required by the Minimum Standard?

The Minimum Standard sets out the kinds of information that must be included in a specific claims submission. For example, the Minimum Standard says that claims submissions must include:

- An historical report and references, outlining the factual circumstances surrounding the grievance
- A claim document, listing the allegations, the grounds for a claim, legal arguments supporting each allegation and a statement of the facts to validate the allegations
- Copies of supporting documents - referred to in the historical report and claim document.

First Nation claimants are encouraged to review the Minimum Standard for complete details on these requirements.

How must claims be presented to meet the Minimum Standard?

The Minimum Standard also establishes how specific claims must be presented. For example, specific claims submissions must be sent by mail or courier to the Director General, Specific Claims Branch at Indian and Northern Affairs Canada at the following address:

Director General
Specific Claims Branch
Indian and Northern Affairs Canada
Terrasses de la Chaudière
10 Wellington Street, Room 1660
OTTAWA ON K1A 0H4

A claims submission cannot be submitted electronically by fax or e-mail.

First Nation claimants are encouraged to review the Minimum Standard for complete details on what is required.

Do claims automatically go to the Tribunal if they are not accepted for negotiation or if negotiations do not result in a settlement agreement?

No, the Tribunal will only consider those claims that have been referred to it by First Nations.

How long can a First Nation expect to wait for a response to a new claim submitted under the new process?

The claim will undergo a review within six months of the date that it is received by the Specific Claims Branch. The purpose of this review is to determine whether the claims submission meets the Minimum Standard. Only claims that meet the Standard will be filed with the Minister.

If the claim does not meet the Minimum Standard, it will be returned to the First Nation with an explanation as to why it has not been filed with the Minister.

Once a claim is filed, the Minister will notify the First Nation in writing of the filing date. If the First Nation does not receive a response as to whether the claim has been accepted for negotiation within three years of the filing date, the First Nation will have the option to refer the claim to the Tribunal for a binding decision on validity and compensation.

What about a First Nation with a claim in the backlog. How long will they have to wait for a response?

In accordance with the transition provisions in the *Act*, the claim will undergo a review to determine whether it meets the Minimum Standard. The First Nation will be notified whether the claim has met the Minimum Standard prior to April 16, 2009.

If the claim meets the Minimum Standard, the filing date will be October 16, 2008.

If the claim does not meet the Minimum Standard, it will be returned to the First Nation with an explanation as to why it could not be filed. If the First Nation provides the information required to meet the Minimum Standard within six months of receiving the results of the review, the claim will be deemed to be filed with the Minister as of October 16, 2008. If, however, the First Nation takes longer than six months to provide the information required to meet the Standard, the filing date will be the date on which the claim is found to have met the Standard.

If a First Nation receives notification from the Minister that its claim has not been accepted for negotiation before the three-year time frame for assessment expires, can the First Nation refer it to the Tribunal?

Yes. If a First Nation receives notification from the Minister that the claim has not been accepted for negotiation before the end of the three-year assessment period, the First Nation can refer the claim to the Tribunal if it wishes to do so.

Do First Nations have to file their claims with the Tribunal after three years of negotiations?

No. There is never a requirement to file a claim with the Tribunal. However, a First Nation can

opt to file a claim with the Tribunal if a settlement agreement has not been reached after three years of negotiations.

If a claim has been in negotiations for over three years, will the First Nation have to wait another three years before it can file the claim with the Tribunal?

For claims that are currently in negotiations, the three-year time period will begin on October 16, 2008. A claim can be filed with the Tribunal before this time period expires, but only if the First Nation and the Minister agree.

Once a claim has been filed with the Minister, can a First Nation add additional information?

Once a claims submission has been filed with the Minister and the First Nation has been notified, no further evidence or allegations can be added to the original submission. A First Nation may withdraw its claim and re-submit it with new evidence or allegations but the evaluation process will begin from the start.

What about a claim that was rejected for negotiation before the *Act* came into force? May a First Nation file it with the Tribunal?

No. The transitional provisions in the *Act* do not allow such claims to be filed with the Tribunal. However, a First Nation may choose to submit its claim again, in which case, it will be treated in the same manner as a new claims submission.

Will Canada still base its decisions to negotiate on advice from the Department of Justice?

The Department of Justice will continue to provide legal advice on the federal government's lawful obligation. This advice will be taken into account when a decision is made whether to accept a claim for negotiation. The three-year time frame for assessing claims includes the legal review.

Does the Tribunal have its own time limits?

The *Specific Claims Tribunal Act* does not include time limits regarding the Tribunal process. However, the *Act* says that the Tribunal shall conduct hearings with regard to achieving an expeditious resolution. The *Act* authorizes the Tribunal to develop rules of practice and procedure governing the imposition of time limits.

How is the Tribunal independent from government?

The Tribunal is a stand alone arms' length body. Staffed by impartial judges, it will have the power to make binding decisions on the government and First Nations on the validity of and compensation for specific claims. The Tribunal's decisions will be made independently from the government. In keeping with the *Act*, the Tribunal has the authority to 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.

The Tribunal will also have its own budget and will be fully accountable to Parliament for its expenditures as well as its operations. The Tribunal will also be responsible for preparing its own annual reports to keep the government and all Canadians up-to-date on its activities.

Will funding be available to support First Nations through the Tribunal proceedings?

Yes. Funding to participate in the proceedings of the Tribunal will be made available. Once the Tribunal notifies the parties that it has accepted a claim, a First Nation can submit a funding proposal to the Department for consideration. Reasonable costs will be covered and assessed on a case-by-case basis.

What is the process for submitting a claim to the Tribunal?

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 office of the Registrar can be reached at:

Specific Claims Tribunal Registry
427 Laurier Ave., 4th Floor
P.O box 31
Ottawa, ON
K1R 7Y2
Web: www.sct-trp.ca
Phone: (613) 947-0751

When will the Tribunal be fully operational?

The selection process for judges to sit on the Tribunal is underway. The goal is that the Tribunal will be fully operational by winter 2008/09.

How can I find out more about the status of claims in the system?

A complete list of the claims at the various stages of the specific claims process is available on the Internet.