History of the ICC and of Specific Claims in Canada

From colonial times through the first half century of Confederation, the federal government and First Nations entered into treaties that created mutual obligations. Many claims derive from the assertion by First Nations that certain treaty provisions have not been honoured by the government. Claims can also derive from breaches of obligation arising out of the *Indian Act* and other statutes, legal duties of the Crown, improper administration of Indian funds or other assets, or illegal disposition of Indian land.

Government policy divides claims into two categories: specific and comprehensive. **Specific claims** arise from the breach or non-fulfillment of government obligations found in treaties, agreements, or statutes. **Comprehensive claims** are based on unextinguished aboriginal title.

In the fall of 1990, the federal government asked First Nation Chiefs to recommend ways to improve the claims process. Following consultations with their communities, the Chiefs Committee on Claims produced the First Nations Submission on Claims. It received the support of a special assembly of the Assembly of First Nations in December of that year.

Among their 27 recommendations, the Chiefs proposed that an "independent and impartial body ... with authority to ensure expeditious resolution of claims" be established. This body would assist the negotiation process by bringing the parties together and recommending solutions to contentious issues.

In July 1991, the federal government responded to the Chiefs' submission by creating the Indian Specific Claims Commission as a Commission of Inquiry. Justice Harry S. LaForme served as the first Chief Commissioner until February 1994, when he was appointed a Justice of the Ontario Court (General Division). He was replaced in April 1994 by Commissioners Daniel J. Bellegarde and P.E. James Prentice, who acted as Co-Chairs until Phil Fontaine's appointment as Chief Commissioner in August 2001. In June 2003, Renée Dupuis was appointed Chief Commissioner following Mr Fontaine's resignation.

The mandate of the Indian Claims Commission is to address disputes arising out of the specific claims process. This process is based on Canada's Specific Claims policy called *Outstanding Business*, which was published in 1982.

Under the government's current policy, First Nations must research and submit specific claims to the government. The government then decides whether to accept a claim for compensation negotiations.

Negotiation of validated claims may result in an offer of compensation to First Nations. However, concerns have been raised that restitution is currently restricted by government criteria that First Nations often believe to be unfair or applied in ways that are unfair.

For many years, First Nation and government negotiators have attempted to put an end to deadlocked land claims, but there has been little progress. Negotiations have been slow and difficult, and relatively few settlements have been reached. This backlog of unresolved claims is not acceptable.

Before the creation of the Indian Claims Commission, First Nations were unable to challenge government decisions without going to court. As an alternative to court action, the ICC has offered a fresh and positive approach for First Nations that desire an independent review of government decisions.

For many years, the Commission urged the federal government to create a permanent, independent claims body. On November 4, 2003, parliament passed the *Specific Claims Resolution Act*, legislation to establish the Canadian Centre for the Independent Resolution of First Nations Specific Claims, which has not been proclaimed. In the meantime, the Commission continues to exercise its mandate.