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SPECIFIC CLAIMS IN CANADA

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SPECIFIC CLAIMS IN CANADA

INTRODUCTION

Beginning in the early 1970s, Canada instituted policies describing two broad categories of Aboriginal "claims" and outlining measures for dealing with them. Comprehensive claims involve assertions of unextinguished Aboriginal title to land and resources. Specific claims declare grievances over Canada's alleged failures to discharge specific obligations to First Nations groups (*Indian Act* "bands") under a number of headings. This paper provides a brief review of developments related to the specific claim system.

PRIOR TO 1973

A. Parliamentary Reports

Assertions of outstanding commitments owed by Canada to First Nations groups remained largely unconsidered by government well into the 20th century. From 1927 to 1951, the *Indian Act* prohibited the use of band funds for claims against government. In 1947, the special Senate-Commons committee struck to examine the *Indian Act* and other Indian Affairs matters recommended*, inter alia*, the immediate establishment of a "Claims Commission" "to inquire into the terms of all Indian treaties … and to appraise and settle in a just and equitable manner any claims or grievances arising thereunder."(1) The 1959-1961 joint committee on Indian Affairs also advocated an "Indian Claims Commission" "to hear the British Columbia and Oka land questions and other matters."(2)

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(1) Special Joint Committee of the Senate and the House of Commons, *Minutes of Proceedings and Evidence*, No. 41, 9 July 1947, Recommendation 2. Not coincidentally, in 1946 Congress had enacted legislation to establish an Indian Claims Commission for the adjudication of a broad range of claims against the United States.

(2) Joint Committee of the Senate and the House of Commons on the *Indian Act*, *Minutes of Proceedings*, No. 16, 30 May-7 July 1961.

B. Government Legislation

In 1963 and 1965, the Liberal government revived a draft legislative initiative of the previous Conservative regime with the introduction of An Act to provide for the Disposition of Indian Claims (Bills C-130 and C-123). The bill would, *inter alia*, have established a five-member Commission with binding decision-making authority over five broad classes of claims,(3) the power to award financial compensation – with no prescribed limit – and to fund claimants' research of their claims. Bill C-123 died on the *Order Paper* in the fall of 1965 and was not reinstated.

C. The White Paper

In 1969, the Liberal government issued its controversial – later withdrawn – White Paper on Indian Policy.(4) It proposed repeal of the *Indian Act* and the termination of distinct "Indian" legal status, while acknowledging the existence of limited government obligations toward Indians. Accordingly, a Claims Commissioner was appointed to consider and make recommendations for the resolution of specific grievances, serving from 1969 to 1977. First Nations groups objected to this limited and, in their view, ineffective mandate.

DEVELOPMENTS FROM 1973 TO 1990

A. The *Calder* Decision

The 1973 decision of the Supreme Court of Canada in *Calder et al.* v. *Attorney General of British Columbia*(5) confirmed that Aboriginal peoples' historic occupation of the land gave rise to legal rights in the land that survived European settlement. The decision influenced the federal government to undertake not only first-time processes for the negotiation of comprehensive land claims, but also new processes for resolving specific claims.(6)

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(3) These included claims related to: unextinguished Aboriginal title; uncompensated or inadequately compensated disposition of reserve lands; undischarged obligations under agreements, including treaties; mismanagement of trust funds; and failure of the Crown "to act fairly or honourably" with Indians.

(4) *Statement of the Government of Canada on Indian Policy, 1969*.

(5) [1973] S.C.R. 313.

(6) Department of Indian Affairs and Northern Development, "Statement Made by the Honourable Jean Chrétien, Minister of Indian Affairs and Northern Development on Claims of Indian and Inuit People," Communiqué, 8 August 1973.

B. Office of Native Claims

In 1974, the Office of Native Claims (ONC) was established within the Department of Indian Affairs and Northern Development (DIAND), with the dual role of reviewing Indian claims arising from governmental failure to discharge "lawful obligations" and representing the government in negotiations with First Nations groups. A 1979 report to the ONC described the "familiar situation where a government agency has conflicting duties in relation to Indian claims," and concluded that "[t]he need for impartiality and the appearance of impartiality as well as finality … strongly argue [*sic*] for the establishment of an independent body separate from departmental structures for the settlement of specific claims."(7)

C. New Specific Claims Policy

In 1982, acknowledging that its specific claims policies to date had proved lacking,(8) the federal government issued *Outstanding Business: A Native Claims Policy – Specific Claims*.(9) Under the policy, claimants were required to establish the existence of one of four outstanding "lawful obligations":

- non-fulfilment of a treaty or agreement;
- breach of an obligation under the *Indian Act* or another statute related to Indians;
- breach of an obligation in administration of Indian funds or other assets; and
- unlawful disposition of reserve land;

or of two reserve-related circumstances:

- failure to provide compensation for reserve lands damaged or taken by the government; and
- clear cases of fraud in acquiring or disposing of reserve land by federal employees or agents.

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(7) Gérard La Forest, *Report on Administrative Processes for the Resolution of Specific Indian Claims*, DIAND, Ottawa, 1979, unpublished, pp. 17, 64.

(8) From 1970 through 1981, of 250 claims submitted, 12 had been settled.

(9) Minister of Supply and Services, Ottawa, 1982. In 1981, the federal government had released *In All Fairness: A Native Claims Policy – Comprehensive Claims*.

The claim evaluation process entailed: review by the ONC; referral to the federal Department of Justice (DOJ) for legal advice; ministerial acceptance or rejection of the claim; and negotiation of definitive settlements of accepted claims. Finally, *Outstanding Business* articulated guidelines for the submission of claims and general criteria governing compensation, which did not include a monetary cap.

First Nations groups and others criticized these policy measures and their implementation. A primary objection concerned Canada's continued involvement in the claims process, which was seen to represent an inherent conflict of interest. In 1983, the Report of the House of Commons Special Committee on Indian Self-Government (Penner Report) considered claims-related issues, including the 1982 model, and issued a strong recommendation for a new claims policy, with a legislated process to be negotiated between Canada and First Nations representatives. The Report considered it "imperative that the new process be shielded from political intervention," and proposed that legislation provide for both a neutral party to facilitate negotiated settlements, and a quasi-judicial process for instances of failed negotiations.(10)

A 1990 Report of the House of Commons Standing Committee on Aboriginal Affairs noted, without making specific recommendations, the ongoing "high level of dissatisfaction" with claims policies, the "very slow rate" of processing, and the "recurring suggestion [that the process] should be managed or monitored by a body or bodies independent of [DIAND and the DOJ]."(11)

DEVELOPMENTS FROM 1991 TO 2002

A. Further Reform

In 1986, the specific claim of the Mohawks of Kanesatake was rejected. In 1990, a portion of the territory claimed served as the focus of dispute with the neighbouring Municipality of Oka. Events of the summer of 1990 prompted both renewed calls for review of claims processes, and a measure of government responsiveness.

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(10) *Report of the House of Commons Special Committee on Indian Self-Government*, Minutes of Proceedings, Issue No. 40, 12 and 20 October 1983, p. 115.

(11) *Unfinished Business: An Agenda for All Canadians in the 1990s*, Minutes of Proceedings and Evidence, Issue No. 20, 31 January-21 February 1990, p. 3.

A December 1990 study by the Assembly of First Nations (AFN) Chiefs Committee on Claims (Chiefs Committee) prepared at the request of the Minister of Indian Affairs (Minister) recommended fundamental reforms to overall claims policy,(12) including the establishment of a joint AFN-DIAND working group to develop an independent claims process.(13) Subsequent initiatives announced by then Prime Minister Brian Mulroney in April 1991(14) included a joint working group to review *specific* claims policy and, as an interim measure, creation of a "Specific Land Claim Commission" as an "independent dispute resolution mechanism."

B. Indian Claims Commission

By Order in Council,(15) the Indian Claims Commission (ICC) was established under Part I of the *Inquiries Act* as a temporary, independent advisory body with six Commissioners mandated to review specific claims rejected by government and to issue non-binding decisions.(16) In the ensuing years, this limited mandate and the perceived lack of government action on ICC recommendations have frustrated Commission members and First Nations claimants.

In its Annual Report for 2000-2001,(17) the ICC observed that the specific claims process remained "painfully slow" and "in gridlock." Commissioners called for increased federal funding and resources to improve the situation and reiterated their long-standing view of

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(12) The Assembly of First Nations, and First Nations generally, have questioned the federal policy distinction between comprehensive and specific claims, describing it as arbitrary and without legal basis.

(13) Assembly of First Nations, Chiefs Committee on Claims, *First Nations Submission on Claims*, Ottawa, 14 December 1990.

(14) The government proposed: fast-tracking claims of under $500,000; removing the exclusion of pre-Confederation claims; increasing the value of settlements within the Minister's approval authority; and devoting additional resources to the specific claim process.

(15) P.C. 1991-1329, as amended by P.C. 1992-1730.

(16) The ICC may also undertake an inquiry when a claim has been accepted for negotiation but compensation criteria are in dispute. Under the ICC's dual mandate, it may, at the parties' request, provide mediation to help them settle disputes by mutual agreement at any point in the specific claim process.

(17) Indian Claims Commission, *Annual Report 2000-2001*, Minister of Public Works and Government Services Canada, Ottawa, 2001. The Report noted that, since its creation in 1991, the ICC had completed 55 inquiries. This and other ICC publications may be reviewed on the Commission's Web site at: http://www.indianclaims.ca/publications/default-en.asp?lang_update=1.

the "pressing need" for an independent claims body to "remove the bottleneck … and [to advance settlement of] hundreds of existing and future First Nation land claims."[18]

In the ICC's 2001-2002 Report,[19] the then Chief Commissioner noted that:

> Although the resolution of specific land claims continues to be a lengthy and sometimes frustrating process from the perspective of the parties involved, … [t]here are indications that the federal government is contemplating reform of the present land claims system, something which this Commission has been advocating in the most forceful terms almost since its inception.

He appealed to the government to act: "An independent claims body is urgently needed to bring justice and fairness to the specific land claims system. The creation of such a body would be in the best interest not just of First Nations but of all Canadians."

C. Royal Commission on Aboriginal Peoples

In its 1996 Final Report, the Royal Commission on Aboriginal Peoples underscored the need for structural change in the handling of Aboriginal land claims. It recommended, *inter alia*, the establishment by federal statute of an independent Aboriginal Lands and Treaties Tribunal which would replace the ICC and, in the area of specific claims: review federal funding to claimants; monitor negotiations and issue binding orders; and adjudicate claims referred by claimants, providing remedies where appropriate.[20]

D. Joint Assembly of First Nations – Government Working Groups

In July 1992, Canada and the AFN had agreed to undertake a concurrent review of specific claims policy and process, and to make recommendations for reform. The Working Group did not reach consensus on all issues prior to the expiry of its mandate in 1993, but its shared view of the need for an independent process was underscored in draft recommendations proposing legislation to create an Independent Claims Body (ICB).

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(18) In May 2001, the then ICC Co-Chairs told the House of Commons Standing Committee on Aboriginal Affairs, Northern Development and Natural Resources that the specific claim situation was reaching "crisis proportions" and characterized the need for a "permanent, fully empowered" independent claims tribunal as a human rights matter: *Evidence*, Meeting No. 18, 29 May 2001.

(19) Indian Claims Commission, *Annual Report 2001-2002*, Minister of Public Works and Government Services Canada, Ottawa.

(20) *Report of the Royal Commission on Aboriginal Peoples*, Vol. 2, *Restructuring the Relationship*, Part Two, Chapter 4, "Lands and Resources," p. 591 *et seq.*, Recommendations 2.4.29-2.4.33.

In 1996, a second Joint First Nations – Canada Task Force (JTF) began considering the structure and authority of such a body. The JTF's 1998 Report(21) set out a draft legislative proposal for a reformed specific claims process, defining its key features as including:

- Elimination of Canada's conflict of interest through an independent legislative mechanism, to report directly to Parliament and First Nations;
- Establishment of both a Commission to facilitate negotiations, and a Tribunal to resolve disputes in cases of failed negotiations;
- Tribunal authority to make binding decisions on the validity of claims, compensation criteria and compensation awards, subject to a budgetary allocation of settlement funds over a five-year period;
- Definition of issues within the jurisdiction of the Commission;
- Independent funding for First Nations research and negotiations; and
- Joint review after five years, to include consideration of outstanding matters such as lawful obligations arising from Aboriginal rights.

E. Government Response

The creation of some form of ICB with broader powers had been on the Liberal government's agenda since the 1993 pre-election Red Book.(22) In May 2000, the AFN Executive Committee considered a federal proposal featuring elements of the 1998 JTF model, and expressed concern over key differences between the two, including, most notably, a $5-million cap on individual Tribunal compensation awards(23) and a federally controlled rather than a joint appointment process. Joint technical discussions on the federal proposal occurred in the ensuing period.(24)

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(21) Assembly of First Nations and Specific Claims Branch, *Report of the Joint First Nations-Canada Task Force on Specific Claims Policy Reform* (JTF Report), DIAND, Ottawa, 1998, pp. 9-10.

(22) Liberal Party of Canada, *Creating Opportunity: The Liberal Plan for Canada*, Ottawa, 1993, p. 103. See also *Securing Our Future Together: Preparing Canada for the 21st Century*, Ottawa, 1997, p. 80; and *Gathering Strength: Canada's Aboriginal Action Plan*, 1998, http://www.ainc-inac.gc.ca/gs/chg_e.html.

(23) In May 2001, AFN Confederacy of Nations Resolution 10/2001 "encourage[d] the Minister to ensure that the new [ICB] is truly independent by removing the proposed monetary limitation on its jurisdiction and ensuring that adequate resources are provided."

(24) According to AFN documents on the ICB process, in February 2002, the AFN Chiefs Committee concluded that it could not recommend First Nations endorsement of the federal proposal in its present form, and that the issues should be addressed at the political level.

BILL C-6, THE SPECIFIC CLAIMS RESOLUTION ACT[25]

A. Overview

Bill C-6, An Act to establish the Canadian Centre for the Independent Resolution of First Nations Specific Claims to provide for the filing, negotiation and resolution of specific claims and to make related amendments to other Acts, was introduced in the House of Commons in October 2002.[26] Adopted by the House in March 2003, the bill was modified by the Senate in October through a number of substantive government amendments in which the House of Commons concurred. The legislation received Royal Assent on 7 November 2003, becoming Chapter 23 of the Statutes of Canada for 2003.

The intent of the Specific Claims Resolution Act (SCRA) is to modify the existing specific claim process by creating a new administrative body consisting of a Commission to facilitate claims negotiation and dispute resolution and a Tribunal to make binding decisions on the validity of claims and compensation awards, to a prescribed maximum of $10 million per claim, with the government having sole authority over the appointment process.

B. Response to Bill C-6

Throughout the legislative process, reaction to the SCRA, not surprisingly, came in the main from First Nations organizations whose constituents stood to be the most directly affected by it. The AFN and others identified as problematic the potential lack of independence of the bill's appointment process, the capped claim limit and the lack of a significantly strengthened financial commitment to the resolution of specific claims.

Then Minister of Indian Affairs Robert Nault noted that the SCRA's proposed simplified process for resolving claims would foster improved economic development for First Nations communities, while the Commission and Tribunal would be neutral arm's-length bodies, enhancing transparency and eliminating perceived conflict of interest.[27] Departmental

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(25) Legislative Summary LS-431E, entitled Bill C-6: The Specific Claims Resolution Act, as well as the full legislative history of Bill C-6, are available on the LEGISINFO Web site at: http://www.parl.gc.ca/LEGISINFO/index.asp?Language=E&Session=11&query=3139&List=toc.

(26) The bill was originally introduced in the 1st session of the 37th Parliament as Bill C-60, but died on the *Order Paper* when Parliament was prorogued in September 2002.

(27) House of Commons, *Debates*, 18 June 2002.

documentation further noted that the SCRA did not prevent the Minister from consulting with First Nations on appointments to the Centre, and that the claim limit was subject to eventual regulatory review.

However, in July 2002, the AFN Annual General Assembly adopted a resolution of non-support for the legislation "in its present form" based, in part, on the view that: the bill would not make the process fairer, more efficient or transparent; it differed significantly from Joint Task Force proposals, and could create a claims process worse than the current system.(28) First Nations witnesses from across the country were unanimous in expressing similar concerns in House and Senate Committee hearings, stressing issues of independence, fairness and timeliness. Many described the bill as "fatally flawed" and called for it to be withdrawn in favour of a renewed joint process.(29)

Then ICC Chief Commissioner Phil Fontaine portrayed the bill as one containing both strengths – such as the creation of an independent Tribunal and the focus on alternative dispute resolution – and weaknesses, such as the cap on compensation and continued ministerial control of the process. He emphasized the importance of respecting fundamental principles, including independence and access to justice, in the creation and operation of a specific claims body.(30)

SUBSEQUENT DEVELOPMENTS

A. Government and Assembly of First Nations

Although duly enacted, the *Specific Claims Resolution Act* was not proclaimed in force. In January 2004, a news release outlining DIAND's legislative strategy indicated, among other things, that "[t]he Government will move to implement the [SCRA] … . It will also work with the Assembly of First Nations and its members to address some of their concerns in the

(28) AGA Resolution No. 8, July 2002.

(29) House of Commons Standing Committee on Aboriginal Affairs, Northern Development and Natural Resources, *Evidence*, Meetings No. 7 and 8, 27-28 November 2002; Standing Senate Committee on Aboriginal Peoples, *Evidence*, Issues 13-18, 30 April-11 June 2003.

(30) House of Commons Standing Committee on Aboriginal Affairs, Northern Development and Natural Resources, *Evidence*, Meeting No. 5, 26 November 2002. In its Annual Report for 2002-2003, the ICC reiterated the set of core principles representing minimum standards against which it had urged the House Committee to measure the SCRA.

course of the bill's implementation."[31] Subsequently, in July 2004, a meeting of the AFN Confederacy of Nations called on the government to refrain from proclaiming the SCRA in force until First Nations concerns were addressed, or to replace it. The resolution also called for renewed joint efforts to reform the specific claims system, notably in areas such as appointments to and independence of specific claims bodies, the definition of specific claims, efficiency, access and resources.[32]

According to the Assembly of First Nations, the then Minister in September 2005 advised that the federal government intended not to pursue proclamation of the SCRA, and would concentrate instead on improving the existing specific claims process. The AFN also indicated that a joint AFN-DIAND Technical Working Group established to consider alternatives for amendments to the SCRA prepared a paper in 2005 setting out options under a number of headings. They include the appointment process, the definition of "specific claim," the claim limit and fiscal framework, and delay.[33] As previously indicated, these same matters were addressed in the 1998 JTF Report.

B. Parliamentary Committee

To date, Bill C-6 remains unproclaimed, and the existing specific claims process remains in place. On 4 October 2005, in recognition of the need to address outstanding issues in the area, the House of Commons Standing Committee on Aboriginal Affairs and Northern Development (the Committee) adopted a motion to commence a study of First Nations specific claims.[34] In hearings held between 27 October and 15 November 2005, the Committee heard from a range of witnesses, including representatives from DIAND and the DOJ, the Indian Claims Commissioner, as well as negotiators and counsel representing First Nations in specific claims negotiations and related legal proceedings.

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(31) Department of Indian Affairs and Northern Development, "Minister Announces Collaborative Legislative Strategy for Aboriginal Affairs," News Release, 21 January 2004.

(32) Confederacy of Nations Resolution No. 14, May 2004.

(33) Assembly of First Nations, *Resolving Land Claims*, "Specific Claims Resolution Act," http://www.afn.ca/article.asp?id=127.

(34) The motion proposed specifically "that the Committee … inquire into, and report upon (a) [t]he current status of the Indian Specific Claims Commission itself, [its] legislative and administrative framework and the necessity for institutional and legislative reform to replace or alternatively, expand the jurisdiction of the said Commission; (b) the position of the Assembly of First Nations, [its] affiliates, the Canadian Bar Association and the position of First Nations and other First Nation organizations on the subject of specific claims in Canada," House of Commons Standing Committee on Aboriginal Affairs and Northern Development, *Minutes of Proceedings*, Meeting No. 43, 4 October 2005, http://www.parl.gc.ca/committee/CommitteePublication.aspx?SourceId=129448.

Witnesses before the Committee articulated a range of concerns related to the current specific claims process in Canada, including excessive delay, the growing backlog of claims, a general lack of resources, and the government's conflicting roles in the process.

There was general consensus among witnesses that the primary challenge to the current specific claims process is significant delay throughout the process, particularly in obtaining DOJ legal opinions on individual claims. Several witnesses estimated that a "typical" specific claim may take 11 to 20 years before final disposition, while delays may be exacerbated for the more complex claims. A number of witnesses suggested that engaging in joint research and grouping claims according to common themes would help to accelerate the process. Government witnesses acknowledged the problem of delay, and stated that the government was currently working with the DOJ to try and group claims thematically in an attempt to expedite the process within the DOJ. In addition, government witnesses articulated their plans to encourage joint research with the AFN.(35)

Witnesses also identified as a serious related concern the lack of government resources devoted to specific claims, which they considered a primary cause of delays throughout the process. Specific criticism was directed at Bill C-6 for not addressing the delays "caused by government underfunding and understaffing."(36)

The perceived conflict of interest in the government's dual role in the process as both party to specific claims and judge of their merits was also raised as an issue of concern. Witnesses emphasized the need for a specific claims process providing access to an effective, truly independent third party. Several maintained that the establishment of such a body should be the result of a joint process that was satisfactory to all parties.

Several witnesses stressed the importance of remaining focussed on the purpose of the specific claims process, the settlement of First Nations grievances against the federal Crown for its failure to fulfil historical treaties and other legal obligations. One witness

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(35) House of Commons Standing Committee on Aboriginal Affairs and Northern Development, *Evidence*, Meeting No. 48, 27 October 2005, testimony of then DIAND Deputy Minister Michel Roy. Ms. Nadia Bartolini, Research Manager, Specific Claims Branch, DIAND, added that the Department was discussing the idea of developing "some type of foundational research on particular issues" in order to group together claims with common interests and common subject matters: *Evidence*, Meeting No. 49, 1 November 2005.

(36) House of Commons Standing Committee on Aboriginal Affairs and Northern Development, *Evidence*, Meeting No. 50, 3 November 2005, testimony of Mr. Alan Pratt.

highlighted the "remedial purpose" of the process as a means of reconciling past breaches of the Crown's lawful obligations to Canada's First Nations with the Crown's duty to be honourable:

> When we come to examining the process of rectifying specific claims and settling specific claims, we are talking about diagnosing past errors of a legal character … about turning those past errors today into capital in the form of land, compensation, and possibly other assets that will become the seeds for a healthy economy. They are also, or should be, a major source of societal recognition of the past wrongs and a recognition that a new form of reconciliation, redress, and harmony can be brought to the relationship.(37)

The Committee's study was not completed owing to the dissolution of Parliament on 28 November 2005.

CONCLUSION

There is general agreement among all interested parties that the establishment of a permanent, independent claims body is essential to deal with specific claims in Canada more fairly and effectively. The ICB concept has been endorsed by First Nations organizations, the federal government, the ICC, the legal community, and other organizations. Notwithstanding this general consensus, agreement on practical details as to how an ICB process could or should work appears to remain elusive.

The ICB model set out in the SCRA came under heavy criticism from First Nations groups and communities, whose dissatisfaction can largely be attributed to the significant differences between the legislation and the JTF proposals. Key points of contention between the federal government and First Nations have already been suggested. The most prominent relates to the monetary framework for settling specific claims. The JTF Report acknowledged that this area proved the most difficult in which to achieve agreement. In the end, its budgetary proposals were not incorporated into the SCRA; the Act's cap on compensation awards was and is strongly opposed by First Nations organizations and others. A second major source of disagreement arising from the legislation has to do with control over the ICB appointment process and associated First Nations concerns about the body's independence. First

(37) *Ibid.*

Nations consider that conflicts of interest will persist as long as the federal government retains sole control over the composition of the Tribunal, and favour the joint appointment process recommended by the JTF.

Other matters requiring resolution with respect to the form and function of an ICB include: the scope of ICB jurisdiction; the definition of "specific claims"; resource allocation; and the availability of non-monetary compensation.

The persisting common desire to establish a new, permanent, independent claims body to settle specific claims in Canada must be considered a positive sign. It seems clear that much remains to be resolved as to that body's form and functions. In the long term, whatever legislated process is proposed, the concerns outlined above will have to be taken into account if a more efficient specific claims process satisfactory to both First Nations and the federal government is to be achieved. In the shorter term, non-legislative measures to address outstanding claims and associated delays, such as expanding the jurisdiction of the ICC and increasing the resources devoted to specific claims within DIAND and the DOJ, are available to government.

APPENDIX

SPECIFIC CLAIM DATA

APPENDIX

SPECIFIC CLAIM DATA

The "National Mini Summary" issued by DIAND's Specific Claims Branch indicates that between 1 April 1970 and 31 December 2005:

- 272 of 1,318 specific claims advanced had been settled;
- the 854 unresolved claims were either in various stages of review by DIAND's Specific Claims Branch, claimants or the DOJ (626), active/inactive negotiation (122), active litigation (71) or before the ICC (35).(1)

A review of Public Information Status Reports issued by the Specific Claims Branch indicates that:

- over 50% of outstanding specific claims originated in First Nations communities in British Columbia (349) and Ontario (208);
- a significant percentage of outstanding claims had been pending for 10 or more years, with many claims initiated 15 to 25 years ago.(2)

Costs associated with some existing settlements are available from a variety of federal and provincial government sources. By way of example, documentation related to specific claim settlements in Saskatchewan and Alberta from the mid-1980s to 2006 shows that:

- The cost to the federal and provincial governments of 29 treaty land entitlement (TLE)(3) claims settled with Saskatchewan First Nations totalled over $539 million, most to be paid by the federal government. Individual settlements ranged from about $3.1 million to $62.4 million, and averaged over $18.5 million;(4)

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(1) The remainder have been closed (81), found to disclose no lawful obligation (76) or resolved administratively (35). The National Mini Summary may be reviewed at: http://www.ainc-inac.gc.ca/ps/clm/nms_e.pdf. Provincial Mini Summaries may be reviewed at: http://www.ainc-inac.gc.ca/ps/clm/msp_e.pdf.

(2) DIAND, Specific Claims Branch, Public Information Status Reports, available on-line at: http://www.ainc-inac.gc.ca/ps/clm/pis_e.html.

(3) TLEs are a class of specific claim asserting that Canada did not provide the reserve land promised under treaty.

(4) Saskatchewan, Department of First Nations and Métis Relations, "Treaty Land Entitlement First Nations," http://www.fnmr.gov.sk.ca/html/lands/tle_nations.htm.

- The cost of 12 settled TLE claims in Alberta was about $202.2 million, the provincial share being approximately one-quarter of that total, and the range of settlements being from $3 million to $41.5 million;(5)

- 13 non-TLE specific claims in Saskatchewan cost a total of about $293.6 million. Individual settlements ranged from just over $400,000 to $94.6 million.(6)

DIAND news releases for 2003-2005 mention 7 specific claim settlements over the period, with monetary compensation totalling $352.5 million; individual settlements ranged from $1.24 million to $94.6 million.(7)

(5) Alberta, Ministry of Aboriginal Affairs and Northern Development, "Settlements," http://www.aand.gov.ab.ca/AAND.asp?lid=36. In two cases, Canada undertook to provide, in addition, about $64.5 million for capital construction costs on new First Nations reserves resulting from the settlements.

(6) Saskatchewan, Department of First Nations and Métis Relations, "Specific Claims," http://www.fnmr.gov.sk.ca/html/lands/specific_intro.htm.

(7) Archived news releases are available *via* the DIAND Web site at: http://www.ainc-inac.gc.ca/nr/prs/index_e.html.