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Specific Claims: Justice At Last

Specific Claims Action Plan 2007

Why we must act

Canada's Specific Claims Policy recognizes that the Crown has sometimes failed to uphold its lawful obligations under historic treaties or has mismanaged First Nation funds or other assets for which it is responsible under the *Indian Act*. The Policy also provides an avenue to resolve these historic grievances co-operatively through negotiation.

However, in recent years, First Nations have been frustrated with the specific claims process itself. It is slow, cumbersome and costly, creating new challenges for First Nations trying to resolve outstanding issues that have already languished long enough.

The number of unsettled claims in the federal system has doubled since 1993 and there is a growing backlog of claims awaiting attention or action. This is an unacceptable state of affairs for First Nation people and for all Canadians – a situation that delays economic and social progress in Canada, to the detriment of the country as a whole.

Decisive action

The Government of Canada is serious about living up to its lawful obligations. After years of debate and inaction, it is taking historic steps to retool the specific claims process in order to bring justice to First Nations and certainty to all Canadians.

The ***Specific Claims Action Plan*** proposes fundamental reforms to ensure:

- impartiality and fairness
- greater transparency
- faster processing
- better access to mediation

These very necessary and overdue changes will help restore confidence in the integrity and effectiveness of the process to resolve specific claims.

A New Approach

Canada will re-engineer the system and retool the specific claims process to bring it up to 21st century standards.

The new tools and structures respond to First Nations' concerns as well as the main recommendations in the 2006 Standing Senate Committee on Aboriginal Peoples' Special Study of the Specific Claims Process. The reforms build on lessons learned from experience and are shaped by consultations with First Nations and other key stakeholders.

Specific Claims: Justice At Last will take action in four priority areas:

- creation of an independent tribunal to bring greater fairness to the process
- more transparent arrangements for financial compensation through dedicated funding for

settlements

- practical measures to ensure faster processing on smaller claims and more flexibility for extremely large claims
- refocusing the work of the current Indian Specific Claims Commission (ISCC) to make better use of its dispute resolution services once the new tribunal is in place

With these improvements, the Specific Claims Action Plan will dramatically speed up the settlement of outstanding specific claims so First Nations and other Canadians can move on and move forward together.

Impartiality and fairness: An Independent Claims Tribunal

Canada will create an independent tribunal that can make binding decisions where claims are rejected for negotiation or when negotiations fail.

The independent tribunal will be made up of judges. These judges will have the necessary experience, capacity and credibility to examine historical facts and evidence. They will be able to address complex questions surrounding Canada's legal obligations and determine appropriate levels of compensation.

There are three scenarios in which a First Nation could file a claim with the tribunal:

- when a claim is not accepted for negotiation by Canada;
- where all parties agree that a claim that has already been accepted should be referred for a binding decision; or,
- after three years of unsuccessful negotiations.

In the first scenario, the tribunal would determine whether Canada has an outstanding lawful obligation. In the remaining cases, the tribunal would establish how much monetary compensation is owed to the First Nation. These interventions will bring greater fairness to the process while accelerating the settlement of outstanding claims.

Decisions of the tribunal would **not** address claims valued at over \$150 million, land or resources, punitive damages, cultural and spiritual losses, or non-financial compensation. Nor would they be binding on other levels of government, although provincial and territorial governments would be free to participate on a voluntary basis.

Periodic reports would be issued by the tribunal to keep governments, legislatures and taxpayers up to date on its activities.

Greater transparency: Dedicated Funding for Settlement

Finding information about spending on specific claims is not easy the way proposed spending has been presented to Parliament and others. Reports prepared by Indian and Northern Affairs Canada (INAC) have not provided a detailed breakdown of specific claims payments. This makes it difficult for First Nations and other interested Canadians to determine how well the government is handling claims or whether adequate funding is available.

Substantial and visible funding dedicated to specific claims settlements will be put in place. It will be visible in all public reporting documents. In addition to being more transparent, these funding arrangements will better meet the needs of the revamped program.

Dedicated funding for claims settlements will underscore Canada's commitment to honour its outstanding debts to First Nations. It will also ensure accountability by demonstrating how the federal government is delivering on these commitments.

There would be two triggers for authorized payments, which would have an upper limit of \$250 million

per year or \$150 million per settlement:

- jointly approved specific claims settlements; or
- tribunal decisions.

To hold government to account, explicit targets will be set for resolving outstanding claims and results of these efforts routinely reported so Canadians can judge for themselves whether government is delivering on its commitment to resolve outstanding specific claims.

Faster processing: Improving internal government procedures

To complement the work of the new tribunal, changes will be made to improve INAC's internal processes.

The goal is for all new claims to receive a preliminary assessment within six months to identify those that qualify for negotiation and to sort them for faster processing. Similar claims will be bundled at the research and assessment stages to speed up decisions regarding their validity. Small value claims will undergo an expedited legal review to quickly conclude whether they will be accepted for negotiation.

There will be a streamlined approach to processing in order to better address the diversity and complexity of specific claims. Special efforts will be made to negotiate small value claims – which account for about 50% of cases now in the system – more quickly.

Separate arrangements will be established outside the specific claims process to handle larger claims, valued at \$150 million or more. These relatively rare, but more difficult, claims bog down the system due to their size and complexity. Removing them from the specific claims process and dedicating separate resources to these files will speed up the processing of remaining claims.

Greater use will be made of existing data bases and other easily accessible research sources to support the early review process. This will also help to accelerate claims settlements.

While these major changes will revitalize and greatly improve the current process, the fundamental principles of the Specific Claims Policy will not change. Negotiations remains the preferred method to settle claims; and the test for confirming an outstanding lawful obligation is an objective measure that ensures fairness for all.

Better access to mediation: Refocusing the work of the current Claims Commission

Negotiated settlements will always be Canada's first choice. However, sometimes negotiations break down. When they do, a neutral observer can help to get both sides back to the table to work out their differences. Mediation is an excellent tool that can help to jump-start stalled negotiations and lead to mutually beneficial agreements.

Canada is committed to using mediation more frequently.

The Indian Specific Claims Commission (ISCC) has been of assistance to Canada and First Nations over the years, providing valuable facilitation and mediation services. Once the new tribunal is in place, it will be important not to lose the Commission's experience and expertise in this crucial area.

To make sure this doesn't happen, the ISCC's mandate will be changed to focus exclusively on resolution services. These services can help Canada and First Nations to overcome impasses at all stages of the process. The Commission will no longer conduct any new inquiries into claims that have been rejected.

The refocused Commission would only consider claims as defined by the Specific Claims Policy.

A transition plan will be developed to ensure that work presently underway by the current Commission can be properly completed in the coming year, if that is the wish of the First Nation with the rejected claim.

Next steps

Over the summer of 2007, discussions will take place between federal officials and First Nation leaders about these changes. Discussions will focus on transforming the Indian Specific Claims Commission and on shaping the legislation intended for introduction in Fall 2007.

As there have been numerous studies and extensive consultations with First Nations on these issues in the past, the goal is to conclude these discussions quickly. The overarching objective is to implement these solutions to the longstanding problems surrounding the specific claims process to bring justice to First Nations and certainty for all Canadians.

Find out more

If you wish to get more information on this initiative or to share your views on related implementation matters (such as refocusing the work of the current Commission and/or improving information sharing on specific claims in general), please contact us at:

Indian and Northern Affairs Canada
10 Wellington Street, Room 1660
Gatineau, QC K1A 0H4
Web: [Indian and Northern Affairs Canada](http://www.inac.gc.ca)
Toll free number: 1-800-567-9604
TTY (toll free): 1-866-553-0554

Date Modified: 2009-08-27