

# INAC - Specific Claims Action Plan - Frequently Asked Questions

## AN OVERVIEW

### **What are specific claims?**

Specific claims deal with past grievances of First Nations. These grievances relate to Canada's obligations under historic treaties or the way it managed First Nation funds or other assets, including reserve land.

Since 1973, the Government of Canada has had a policy and process in place to resolve these claims through negotiations rather than through the courts. Canada completes a review of the facts of each claim to determine whether it owes a lawful obligation to the First Nation. If a lawful obligation is found, Canada negotiates a settlement with the First Nation and (where applicable) the province. These settlements provide First Nations with fair compensation to resolve the claim once and for all.

The Government of Canada prefers to resolve claims by negotiating settlements with First Nations. In contrast to litigation, negotiated settlements are jointly developed by the parties working together to ensure fairness for all.

### **What is Canada's Specific Claims Action Plan?**

On June 12th, 2007, Canada announced a decisive new approach to accelerate the resolution of specific claims in order to provide justice for First Nation claimants and certainty for industry and all Canadians. This new approach, which builds on the lessons learned from years of study and past consultations, is outlined in *Specific Claims: Justice At Last – Canada's Specific Claims Action Plan*. Through this action plan, Canada is moving forward with major reforms that will fundamentally alter the way specific claims are handled. The Specific Claims Action Plan will ensure impartiality and fairness, greater transparency, faster processing and better access to mediation. It is a critical first step to bringing the specific claims process into the 21st century to deal with the existing backlog of claims once and for all.

### **Why is Canada proposing this new approach?**

Canada and First Nations agree that the process needs to be improved. First Nations are frustrated with the slow pace of progress in resolving their outstanding claims. They question the fairness of a system where the government is perceived as defendant and judge deciding on the legitimacy of claims.

The number of claims in the federal system has also doubled between 1993 and 2006 and there is a backlog of claims awaiting attention or action. This had led to repeated calls from all quarters for more resources to speed up the process. Another issue demanding urgent attention is the need to make greater use of mediation services in stalled negotiations. All of these problems have been long discussed and well documented, most recently in Negotiation or Confrontation:

It's Canada's Choice – Final Report of the Standing Senate Committee on Aboriginal Peoples  
Special Study on the Federal Specific Claims Process.

### **What are the key elements of Canada's action plan?**

Canada's *Specific Claims Action Plan* has four pillars:

- 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 remove bottlenecks and ensure faster processing of claims
- better access to mediation to help reach negotiated settlements.

The new tools and structures in this plan respond to key First Nation concerns, as well as the key recommendations in the Standing Senate Committee's report. They also build on lessons learned from experience and are shaped by past consultations with First Nations and other key stakeholders.

### **Were First Nations involved in the development of this new approach?**

This new approach has been shaped by many reports, studies and recommendations that First Nations have advanced in the past. Over the summer of 2007, discussions took place between federal officials and First Nation leaders on key implementation matters relating to the new approach. These talks were led by a Joint Canada-Assembly of First Nations (AFN) Task Force, which was announced on July 25, 2007.

## **IMPARTIALITY AND FAIRNESS: AN INDEPENDENT CLAIMS TRIBUNAL**

### **How will the tribunal be created?**

Legislation, developed jointly with the AFN, received Royal Assent in June 2008 to create this new independent body. The legislation is called the *Specific Claims Tribunal Act* and the body it creates is called the Specific Claims Tribunal. The Act will come into effect 120 days after Royal Assent on October 16, 2008.

### **How will the new tribunal work? Will it have the power to make binding decisions and who will make those decisions?**

The Specific Claims Tribunal will be made up of the equivalent of six full-time sitting superior court judges, with the authority to make binding decisions. Under the *Specific Claims Tribunal Act*, a First Nation will have the option of filing its claim with the Tribunal if the claim is rejected for negotiation or if negotiations fail. The Tribunal will develop its own rules governing its practices and procedures as well as general rules for the management of its staff and administration of its internal affairs. The legislation also specifies that the Tribunal may make rules of practice and procedure related to time limits for its process.

### **Are there certain scenarios in which First Nations will be able to file claims with the tribunal?**

Yes. Under the legislation, there are three scenarios in which a First Nation could file a claim with the tribunal:

- if a claim is not accepted for negotiation by Canada, including a scenario in which Canada fails to meet the three year time limits for assessing claims,
- at any stage in the negotiation process if all parties agree; or
- after three years of unsuccessful negotiations.

In all cases, this process will bring greater fairness to the process while accelerating the settlement of outstanding claims. The tribunal will look strictly at questions of fact and law to determine whether the claim fits within the criteria for filing and establishing a claim under the *Act*. Where a claim is found to be valid, the tribunal will apply a rigorous process to establish how much monetary compensation is owed to the First Nation.

### **What other changes will the legislation bring about?**

The legislation includes provisions that complement the work of the tribunal by enforcing some time limits to improve Canada's internal processes and bring greater rigour to the process for government and First Nations alike. There are time limits for claims submitted to Canada **before** and **after** coming into force of the legislation. This is necessary to ensure fairness for all First Nations with future claims as well as those with claims already in the current system. These legislated timelines are expected to significantly reduce the existing backlog of claims waiting to be assessed within three years of coming into force.

The legislation also includes a requirement for a minimum standard on the information that is required when First Nations submit their claims to Canada so that incomplete claims submissions can no longer bog down the system. This will not only bring greater transparency to the process, but will also help ensure the government can more quickly process claims.

### **What needs to be done before the tribunal opens its doors for business?**

As noted above, the *Specific Claims Tribunal Act* will come into effect 120 days after receiving Royal Assent on October 16, 2008. The following steps will be taken during this period of transition:

- judges to be selected to sit on the tribunal and a staffing process needs to be completed for its registry
- Canada-AFN Liaison & Oversight Committee to be created to continue joint efforts on specific claims reform as set out in the [political agreement](#)
- as part of its work, the Canada-AFN Committee to develop minimum standard for claims submissions and recommendations about the tribunal's rules and procedures
- the tribunal to develop its own set of rules and procedures
- Canada to conduct an information campaign to explain the new process to First Nations and other Canadians. The new minimum standard for claims submissions will be made public during this campaign and will be published on the Web site of Indian and Northern Affairs Canada.

It is anticipated that the tribunal will open its doors for business in the fall of 2008.

**What are the time limits for assessing claims submitted to Canada after coming into force of the legislation?**

*For claims submitted to Canada after coming into force:* these claims will undergo a preliminary review within six months of the date that Canada receives them. The purpose of this review is to determine whether the claim meets the minimum standard for claims submissions. Only claims that meet the minimum standard will be deemed to be filed with Canada.

Once claims are officially filed, Canada will then have three years to respond whether the claim has been accepted or rejected for negotiation. If the First Nation does not receive a response from Canada within this three-year time period, the claims will be deemed to be rejected and the First Nation has the option to refer its claim to the tribunal for a binding decision.

Claims that do not meet the minimum standard will be returned to the First Nation with an explanation that the claim has not been filed with Canada and cannot be filed until further information is received.

**What are the time limits for assessing claims that are already in the system?**

*For claims already in the federal system:* these claims will undergo a preliminary review within six months of coming into force. Like the process for newly submitted claims described above, claims that do not meet the minimum standard will be returned to the First Nation. If the First Nation provides the information required to meet the minimum standard within six months of receiving the results of Canada's preliminary review, the claim will be deemed to be filed with Canada on the date of coming into force of the legislation. The three-year period for a response from Canada on whether to accept or reject the claim would begin at that time. If, however, the First Nation takes longer than six months to provide the information required to meet the standards, the claim will not be deemed to be filed until the date the complete claim is received.

As for newly submitted claims, once a claim is filed with Canada, these claims will then be subject to the three-year time period for receiving a response from Canada on whether to accept or reject the claim for negotiations. If Canada fails to meet this three-year timeline, the First Nation would have the option of referring the claim to the tribunal for a binding decision.

**Will a First Nation have to file its claim with the tribunal after three years of unsuccessful negotiations?**

No. A First Nation *may* file its claim with the Tribunal if a settlement has not been reached after three years of negotiations. It is important to note that this is an option only; negotiations may continue beyond three years. For claims that are currently in negotiations, the three-year time period will begin upon the coming into force of the legislation.

**Can Canada unilaterally send a claim to the tribunal?**

No, only the First Nation can send a claim to the tribunal.

**Are there any other restrictions on tribunal decisions?**

Yes. Tribunal decisions will not address claims valued at over \$150 million, punitive damages, cultural and spiritual losses or non-financial compensation. Participation by a province as a

party before the tribunal is wholly voluntary. However, if a province chooses to participate as a party in a particular proceeding, it must certify that it will be bound by the tribunal decision.

## **GREATER TRANSPARENCY: DEDICATED FUNDING FOR SETTLEMENTS**

### **How will Canada's action plan bring greater transparency to the process?**

New funding arrangements are being put in place that are more transparent and which better meet the needs of the revamped process. Finding information about spending on specific claims is not easy the way proposed spending has been presented to Parliament and others. This makes it difficult for interested Canadians to determine how well the government is handling claims or even whether adequate funding is available. Having substantial and visible funding in place that is dedicated to specific claims settlements will address this lack of transparency. This will also underscore Canada's commitment to honour its outstanding debts to First Nations.

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

### **How much funding will be available each year for settlements under the plan? What would trigger these payments?**

There will be a dedicated fund of \$250 million per year for ten years for the resolution of specific claims. This dedicated funding will be used to pay compensation resulting from both negotiated settlements and tribunal decisions.

## **FASTER PROCESSING: IMPROVING INTERNAL GOVERNMENT PROCEDURES**

### **What new measures will be put in place to speed up internal government procedures?**

As described above, the legislation to create the tribunal puts a three-year time limit on the amount of time that Canada takes to assess future claims (claims submitted to Canada after coming into force). Claims in the existing backlog (claims submitted to Canada before coming into force) are subject to a six month early review process to determine whether they are complete to the minimum standard; once a claim is complete, the First Nation will be notified that the claim has been officially filed with Canada and the three-year time limit for assessment will then begin. This would mark the first time that such time limits would be put in place and would help to significantly reduce the existing backlog in a timely fashion.

To help meet these new deadlines, similar claims will be bundled at the research and assessment stages to speed up decisions regarding their legitimacy. Small value claims will undergo an expedited legal review to quickly conclude whether they will be accepted or declined for negotiation.

In addition, 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 more quickly -- as those account for about 50 per cent of cases now languishing in the clogged system. Very large claims, valued at more than \$150 million, which currently bog down the system, will be referred for separate processing in a way that better responds to their size and complexity.

**What tools will be used to help the government sort claims for processing?**

Key to this new approach will be maximizing the wealth of research studies and data amassed over the past thirty years as Canada has worked on these issues. Greater use will be made of existing data bases and other easily accessible sources of information to support the early review process and other improvements.

## **BETTER ACCESS TO MEDIATION**

**Will other tools be used to resolve disputes before resorting to the tribunal?**

Every reasonable effort will be made to achieve negotiated settlements. Most negotiations are, in fact, successful, with about 90 percent of tables reaching a final settlement. However, if negotiations reach an impasse, Canada and First Nations must have somewhere to turn. Mediation is an excellent tool that can help parties in a dispute to reach mutually beneficial agreements. Canada recognizes that this tool should be used more often in stalled negotiations and is committed to increasing its use.

**What will happen to the current Commission once the new tribunal is in place?**

The Indian Specific Claims Commission (ISCC) was established in 1991 as an interim measure to inquire into rejected specific claims or disputes concerning compensation criteria or to arrange mediation services at the request of Canada and First Nations. The Specific Claims Tribunal replaces the inquiry function of the Commission.

As part of its work on implementation matters relating to the overall specific claims action plan, the Joint Canada-Assembly of First Nations Task Force developed some guiding principles to help avoid any duplication between the ISCC and the new tribunal and to ensure that inquiry work presently underway at the current ISCC can be appropriately addressed in the transition to the new system.

In keeping with this joint planning, the ISCC stopped conducting new inquiries when the *Specific Claims Tribunal Act* was introduced. The ISCC is focussing on completing inquiries that are at an advanced stage by December 31, 2008. An inquiry is considered to be at an advanced stage when the community session that is normally held as part the process was either scheduled or completed by the date that the legislation was introduced.

**What options will First Nations have in cases where inquiries can not be completed in time? What about cases where an inquiry has already been completed? Will these First Nations be able to submit their claims to the tribunal?**

In keeping with the transition plan developed by the Joint Task Force, a process will be made available to First Nations with claims before the ISCC that are not at an advanced stage and in

cases where a full inquiry has been completed but Canada disagrees with the ISCC's recommendation to accept the claim. First Nations with claims in either scenario are eligible for an expedited assessment if they do not wish to submit any new information to support their claim. From the date that the *Specific Claims Tribunal Act* receives Royal Assent, these First Nations will have six months to notify Canada whether they wish to submit any additional information to support their claim. Once a First Nation confirms in writing that they have no new information to submit, Canada will have another six months to make a decision to accept or reject the claim. As this decision would be made after the coming into force of the legislation, the First Nation will then have the option of taking its claim to the new tribunal. On the other hand, if the First Nation does submit new information to Canada, the expedited process will not apply and the claim will proceed through the regular process established under the legislation which requires a decision on the claim from Canada within three years.

### **Will the ISCC continue to provide mediation services now that the legislation has been passed?**

The ISCC is a commission of inquiry which also provided mediation and facilitation services to help the parties reach negotiated settlements. These mediation and facilitation services have been of great assistance to Canada and First Nations over the past 16 years. Mediation and facilitation services will continue to be provided by the ISCC for the time being as it wraps up its inquiries; however, we will need to examine the best means to provide mediation and facilitation services in the future, once the ISCC is no longer a commission of inquiry.

As part of its work on implementation matters, the Joint Task Force developed some key guiding principles such as independence of mediators from both government and First Nations. These principles will be taken into account as Canada proceeds to identify an appropriate vehicle for the delivery of these mediation services.

## **MOVING FORWARD TO A NEW AND IMPROVED SYSTEM**

### **Is there anything that won't change under the new system?**

While these major changes will dramatically improve the specific claims process, the fundamental principles of the Specific Claims Policy will not change. The Government of Canada reaffirms that negotiation remains its preferred method to settle claims, as this is invariably more effective than confrontation and adversarial approaches.

The test of confirming that an outstanding lawful obligation exists – the core of the current policy – is an appropriate measure by which Canada can determine the debt it owes to a First Nation. This approach provides an objective measure that ensures fairness for all.

### **Will Canada need help from other levels of government to make this plan work?**

Yes. The Government of Canada will continue to depend on willing partners to make its plan work. The federal government does not have exclusive jurisdiction over these issues or sole liability for specific claims. Almost all pre-Confederation claims and about half of those south of 60° involve Crown lands. Under Canadian law, the provinces are the owners of most of the

Crown lands. In addition, since provinces make many of the development decisions that impact lands that may be the subject of specific claims, they need to be a part of this process.

Ultimately, resolving this outstanding business is a national issue which requires a national solution that is in the national interest.

**Will the interests of third parties continue to be protected when land-related specific claims are settled under the new process?**

Yes. The interests of third parties will still have to be taken into account during negotiations. As it is at present, private property will not be on the table, nor will private property owners be asked to sell their land unwillingly. If land changes hands as a result of a settlement under the new process, this could only happen on a willing-seller/willing buyer basis.

**Will these changes take effect immediately? If not, what needs to be done before they can be implemented?**

Work to implement Canada's action plan on specific claims began in June of 2007 and significant progress has been achieved to date. Over the summer of 2007, a Joint Canada-AFN Task Force developed the necessary legislation to create the tribunal and guiding principles to ensure a smooth and orderly transition to the new system. As there have been numerous studies and extensive consultations with First Nations on these issues in the past, it was possible to conclude this work quickly so jointly developed legislation could be brought forward in the fall of 2007.

The *Specific Claims Tribunal Act* received Royal Assent in June 2008. The legislation will come into force 120 days after Royal Assent on October 16, 2008. Work to establish the tribunal and make the transition to the new process will take place over the coming months. During this transition period, Canada will conduct an information campaign to explain the new process to First Nations and other Canadians. It is anticipated that the tribunal will be ready to open its doors for business in the fall of 2008.

The passing of the *Specific Claims Tribunal Act* will lead the way for implementation of the other key elements of Justice At Last which do not require legislation.

**Will Canada consider making other changes to the system in the future?**

This Action Plan is the first step in an ongoing process to reform the specific claims process to resolve these longstanding issues for all time. Over the longer term, the Government of Canada is committed to working with First Nations to develop other initiatives to further enhance the process. A five-year review is envisioned to assess progress, hold all parties to account and make ongoing improvements to the system as required.

**How will improving the specific claims process benefit all Canadians?**

By ensuring impartiality and fairness, greater transparency, faster processing and better access to mediation, Canada's action plan on specific claims will achieve the objective of restoring confidence in the integrity and the effectiveness of the process. Equally important, as Canada fulfills its lawful obligations to First Nations and eliminates the backlog in the system, taxpayers will be relieved of this outstanding debt.



The very necessary and overdue changes proposed in this action plan will accelerate claims resolutions so First Nations and all Canadians can more quickly realize the benefits of negotiated settlements. These benefits include economic benefits, new opportunities for business partnerships and certainty for First Nations, industry and area communities.

It is in the best interests of all Canadians to bring closure to First Nation's grievances and put the mistakes of the past behind us. In doing so, we can move forward together in a spirit of partnership and put our joint energies into building a better future.

**How can I find out more about this initiative?**

If you wish to get more information on this initiative, please contact us at:

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