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SOCIAL AFFAIRS

The Specific Claims Process: Recent Legal and Policy Reforms

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Federal policy divides Aboriginal land claims into two broad categories: specific claims and comprehensive claims. Specific claims arise from the alleged non-fulfillment of historic treaties between First Nations and the Crown, or improper administration of First Nations lands and other assets by the Crown. Comprehensive claims are based on the assertion of continuing Aboriginal rights and title that have not been dealt with by treaty or other legal means. This overview focuses on the specific claims process.

Between April 2010 and April 2011, 18 specific claims were settled at a total value of approximately \$666 million. The monetary value of the claims settled in this period ranged from \$134,283 to \$231.4 million. As of 5 April 2011, 503 specific claims remain in the federal inventory of claims under assessment or in negotiations.¹

Issue | Canada engages in a new approach to resolve specific claims made by First Nations.

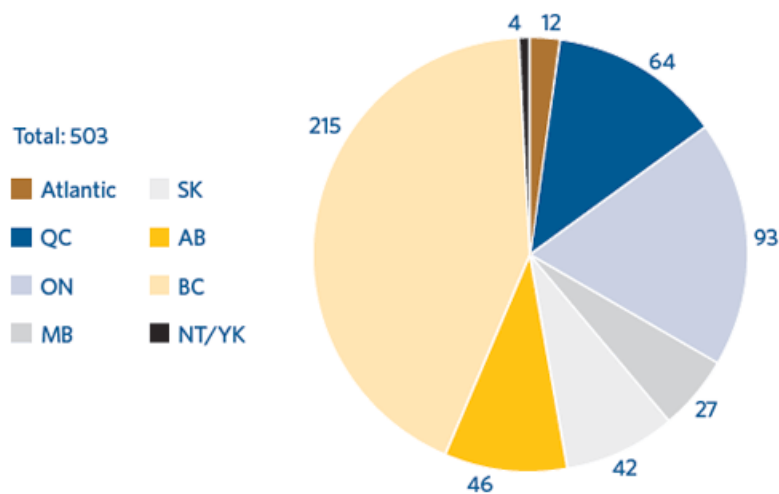
Synopsis | The *Specific Claims Tribunal Act* established an administrative tribunal with the authority to make binding decisions on claims and to award monetary compensation up to \$150 million per claim. Claims over \$150 million will be dealt with through a specially mandated Cabinet process.

Timing | Under the *Specific Claims Tribunal Act*, certain claims will be eligible for filing with the Specific Claims Tribunal as of 16 October 2011.

Specific Claims Action Plan

Over the past several years, the federal specific claims process has been the subject of legal and policy reform initiatives intended to reduce the backlog of outstanding claims. In response to a 2006 report of the Standing Senate Committee on Aboriginal Peoples, which highlighted the need for reforms to the specific claims process in several areas, the federal government launched *Specific Claims: Justice at Last – Canada’s Specific Claims Action Plan* in June 2007. The reforms proposed in the action plan included an independent tribunal to make binding decisions on claims that cannot be resolved by negotiations, dedicated funding for specific claims settlements, and practical measures to improve the processing of both small and large claims.²

Location of Specific Claims Under Assessment or in Negotiations (as of 5 April 2011)



Source: Figure prepared by the Library of Parliament using data obtained from Indian and Northern Affairs Canada.

Specific Claims Tribunal Act

The *Specific Claims Tribunal Act* was introduced in the House of Commons on 27 November 2007 and came into force on 16 October 2008. The Act creates the Specific Claims Tribunal, an administrative tribunal composed of Superior Court judges with authority to make binding decisions on claims and to award monetary compensation up to a maximum of \$150 million per claim.

The Act stipulates that a First Nation may file a claim with the tribunal if the claim has been previously filed with the minister of Indian Affairs and Northern Development, and if:

- the minister has notified the First Nation of his or her decision not to negotiate the claim, in whole or in part, after the coming into force of the Act;
- 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;
- in the course of negotiating the claim, before the three years have elapsed, the minister consents in writing to the filing of the claim with the tribunal; or
- 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.

In effect, the *Specific Claims Tribunal Act* introduces three-year timelines for the assessment and negotiation of specific claims. As a result of these timelines, certain cases will become eligible for filing with the tribunal as of 16 October 2011.

With this deadline in view, the Specific Claims Tribunal is currently preparing for the commencement of operations. Between November 2009 and November 2010, several Superior Court judges were appointed to the tribunal, and Justice Harry Slade was appointed as its chairperson. Draft Rules of Practice and Procedure were made public in June 2010 and are currently under review by the Department of Justice. The tribunal's first annual report, dated 30 September 2010, provides a synopsis of work undertaken to that date and of anticipated activities through the current and following fiscal years.³

Political Agreement Between the Federal Government and the Assembly of First Nations

The introduction of the *Specific Claims Tribunal Act* in November 2007 was accompanied by the signing of a political agreement between the Minister of Indian Affairs and Northern Development and the National Chief of the Assembly of First Nations. The political agreement provides for additional discussion on improvements in the resolution of specific claims not directly addressed in the legislation, including matters related to claims that exceed the monetary cap of \$150 million. The development of a Cabinet process to address claims over \$150 million is ongoing.

FURTHER READING

- Butt, Emma, and Mary Hurley. *Specific Claims in Canada*. Publication no. 2006-18-E. Parliamentary Information and Research Service, Library of Parliament, Ottawa, 2006.
- Indian and Northern Affairs Canada. *The Specific Claims Policy and Process Guide*. Ottawa, 2009.
- Senate, Standing Committee on Aboriginal Peoples. *Negotiation or Confrontation: It's Canada's Choice*. Ottawa, December 2006.

1. Indian and Northern Affairs Canada, *Reporting Centre on Specific Claims* (see the Indian and Northern Affairs Canada website).
2. Indian and Northern Affairs Canada, *Specific Claims: Justice at Last – Canada's Specific Claims Action Plan*, Ottawa, 2007.
3. Specific Claims Tribunal Canada, *Annual Report*, Ottawa, 30 September 2010.