

The Facts on Claims

Indian Claims
Commission

*Fairness in
claims negotiation*



THE FACTS: WHAT ARE INDIAN LAND CLAIMS?

Land claims are unresolved grievances between Indian Bands – also called First Nations – and the Government of Canada relating to land and resources.

TWO TYPES OF CLAIMS

The federal government first announced a formal policy on claims in 1973. That policy divides grievances into two broad categories: comprehensive and specific claims. The **Indian Claims Commission** considers only specific claims.

COMPREHENSIVE CLAIMS

Comprehensive claims may arise when a First Nation asserts aboriginal rights and title to land. Most of these claims are in British Columbia where no land surrender treaties were made. Others are in Newfoundland, parts of Atlantic Canada, Quebec, and the Yukon.

Federal policy bases these claims on traditional use and occupancy of the land and requires First Nations to exchange aboriginal rights and title for treaty rights. Some First Nations object to this requirement because they believe it asks them to extinguish their aboriginal title and, by doing so, to extinguish their aboriginal identity.

To date, 15 comprehensive claims have been settled; the settlements form modern treaties protected under the Constitution. Settlements typically define First Nation territory, provide cash and may establish resource management and government structures.

Well-known comprehensive claims:
Nisga'a, Inuit (Nunavut)

SPECIFIC CLAIMS

Specific claims arise when a First Nation alleges that the federal government has not honoured its treaties, agreements or legal responsibilities. Most of the outstanding claims across Canada are specific claims. About 1296 of these claims have been submitted to government since 1970 and about 442 have been concluded.

According to federal policy, a valid specific claim exists when a First Nation can prove the government has an "outstanding lawful obligation" by demonstrating:

- the non-fulfilment of a treaty or agreement
example: failing to provide reserve land promised in a treaty, creating a treaty land entitlement
- a breach of an *Indian Act* or other statutory obligation
example: allowing another party to use reserve land without band permission
- the mishandling of Indian funds or assets
example: selling logs or minerals off reserve land at below market value or without band permission
- an illegal sale or disposition of Indian land
example: selling reserve land without a vote of band members to approve the sale

The policy also recognizes claims that the government says go "beyond lawful obligation." These include:

- failure to compensate a band for reserve land taken or damaged under government authority
example: paying less than market value, or nothing, for land taken by government in a legal surrender
- fraud by federal employees in connection with the purchase or sale of Indian land
example: purchase of reserve land at less than market value by the Indian agent involved in taking the land surrender

Specific claim settlements typically include cash to compensate for the value of land or resources taken unlawfully, or to purchase land to create a reserve or add to an existing reserve.

Well-known specific claims:
Qu'Appelle Valley flooding, Kahkewistahaw

MORE INFORMATION

Website: www.indianclaims.ca

Manon Garrett, Communications: (613) 943-2737

Français au verso

2005

