

MARCH 21, 1991

**RESPONSE OF NATIONAL CHIEFS COMMITTEE ON CLAIMS
TO INITIATIVES OUTLINED BY MINISTER T. SIDDON ON
JANUARY 31, 1991**

WHEREAS on September 25, 1990, Prime Minister Brian Mulroney advised the House of Commons that the Government of Canada is committed to a plan of action with respect to the aboriginal people of Canada which is based on four main agenda items, the most urgent of which, he said, was action on land claims; furthermore, the Prime Minister said, "consultation with aboriginal peoples and respect for the fiduciary responsibilities of the Crown toward them will be built into the process from the start," leading in the end to "a new relationship between aboriginal and non-aboriginal Canadians based on human dignity, trust and respect."

AND WHEREAS in response to a request for advice on land claims reform by Minister Siddon, a national committee of Chiefs was established and after nation-wide consultations tabled its recommendations on December 14, 1990 in a document entitled "First Nations Submissions on Claims";

AND WHEREAS the detailed recommendations of the Chiefs Committee were approved in principle by separate resolutions by Chiefs of Alberta and Ontario and at a national assembly of Chiefs of the Assembly of First Nations;

AND WHEREAS on January 31, 1991, Minister Siddon offered his response to the Chiefs Committee, outlining five main areas in which he proposed to make immediate recommendations to Cabinet, all as summarized in a letter from him to the co-Chairs of the Committee dated February 18, 1991, a letter in which the Minister confirmed that he seeks the public support of Chiefs for the initiatives he proposed;

AND WHEREAS any future process for the resolution of Indian claims should be clearly premised on the existence of aboriginal and treaty rights (including those recognized by the Royal Proclamation of 1763) and the inherent justice of respecting those rights;

AND WHEREAS the "First Nations Submission on Claims" remains, in the view of the Committee, the appropriate basis for any future constructive dialogue between First Nations and the Government of Canada in relation to the development of policies concerning First Nations' land rights and claims;

Subsequent deliberations of the Chiefs Committee to review the Minister's proposals have confirmed the following:

- I. The Chiefs Committee has not altered its position, as set out in its submission of December 14, 1990, either regarding the fundamental unacceptability of the existing federal claims resolution policy and process, or regarding the detailed recommendations for change made in the December 14, 1990 submission.

- II. The Chiefs Committee is offering this response to the Minister's proposed initiatives in light of the obvious and pressing need for immediate progress on land claims, while recognizing that key issues in land claims resolution (including both policy and process) remain unsatisfactory to First Nations and unresolved.
- III. In light of the position of the Chief's Committee as described above, this response to the Minister's comments should not and cannot be interpreted as implying First Nations' or the Committee's consent to any aspects of current government policy with respect to land claims, or as prejudicing the assertion of any aboriginal, treaty or other rights or claims of First Nations.

On the initiatives proposed by the Minister (as set out in his letter of February 18, 1991) the Committee's response is as follows:

1. Additional Resources

The Committee welcomes the Minister's proposal in this regard as a necessary change. The Committee would reject, however, the concept of imposing arbitrary fixed annual ceilings on claims settlements. Although no one can be certain of the ultimate cost of a fair settlement process what is required is the devotion of adequate resources at all levels for a fair and expeditious settlement of all claims, and in particular of adequate funding of the research and negotiation costs of First Nations and the cost of operating any independent process. The Committee also believes that the Government of Canada should ensure that personnel hired to supervise or participate on its behalf in the settlement process are adequately trained and are mandated to seek just settlements for First Nations claims.

The Committee's detailed recommendations with respect to resources are set out on pages 11 and 12 of the December 14 submission.

2. Specific Claims Commission

First Nations have consistently sought, and independent commentators have repeatedly recommended, an independent review of claims, so that Canada will not act as both defendant and judge of claims and to ensure that all claims settlements are fair and expeditious. The establishment of an independent claims commission would be a positive development, provided that:

- i) any independent commission must be entitled to review both aspects of the settlement process, i.e. validation (including interpretation of the validation standards) and the determination of the form and amount of compensation;
- ii) the commission must have "teeth" – it must have the capacity to break the impasses which invariably arise during claims negotiations. Canada should be willing, where requested, to enter into agreements with claimants at the outset of negotiations whereby negotiation deadlines may be set and impasses resolved through a fair process in defined circumstances without the need for the subsequent consent of all parties at every

stage. The Committee's detailed recommendations in this regard are set out in recommendations 15 through 21 of the December 14 submission;

- iii) the commission must be adequately financed to fulfil its mandate;
- iv) the order-in-council or other authority establishing the commission should state that this claims appeal and review process it supervises is without prejudice to the right of claimants to proceed to court, if they choose, and to any First Nations treaty and aboriginal rights as well as all other rights First Nations have or may have in law; and
- v) the mandate of the Commission should be consistent with its independence from the parties; the detailed mandate of the Commission and the mechanism for appointing members to the Commission should be finalized only after consultation with First Nation leaders.

The above powers should pose no difficulties for the Government, given that the Minister has previously indicated his willingness to establish a special court for the resolution of land claims.

3. "Fast Tracking" of Certain Claims

The Minister's comments to date have not provided sufficient detail to permit evaluation of this proposed initiative and, indeed, several Committee members question whether First Nations would benefit from the proposed separation of claims valued at less than \$500,000. However, any acceleration of the existing settlement process would be welcome, provided that all First Nation claimants still have the right of appeal to the proposed claims commission.

4. Willingness To Negotiate Pre-Confederation Claims

This reversal of an arbitrary exclusion of many valid claims is very welcome, although if a fair, expeditious claims resolution process is not established the benefits of this proposal will be illusory. While Canada's desire for provincial cost-sharing of these claims is noted, Canada's commitment to resolve pre-Confederation claims cannot be contingent on provincial involvement.

5. Establishment of Joint Working Group

This was recommended by the Committee and remains a welcome and essential aspect of claims reform, although the Minister's comments in this regard did not outline in detail the proposed mandate of the group.

Required:

- i) The working group's mandate should be to review all outstanding issues of claims resolution policy and process (including those detailed in the December 14, 1990 Chiefs' submission) with a view to making recommendations on what is necessary to create a fair and just policy and process.
- ii) A reasonable time-frame for completion of the group's work must be established (for example, to make its initial report within six months).
- iii) Canada must make a commitment to implement the working group's recommendations upon request.
- iv) The working group must be adequately funded to fulfil its mandate.
- v) The members of the working group should be jointly appointed by Canada and First Nations.
- vi) The Chair should be occupied by one intimately knowledgeable about all aspects of claims negotiations; experienced in the area of consensus decision making; respected by all parties; and preferably an Indian.

6. Other Issues

No initiative on "specific claims" reform will diminish the need for the Government of Canada to deal independently and quickly with the other critical issues identified in the past by aboriginal groups and by the Government of Canada. Those issues certainly include treaty land entitlement, comprehensive claims settlement, comprehensive treaty enforcement (and/or renegotiation where appropriate) and the other three "pillars" of the Government's agenda as outlined in the Prime Minister's September 1990 address: namely, economic and social conditions on reserves, the relationship between aboriginal peoples and governments, and the concerns of aboriginal peoples in contemporary Canadian life.

7. Conclusion

If the Government of Canada is willing to embrace the above recommendations, the Chiefs Committee will view the new initiative as a positive one, an important beginning on the road toward providing a system that will permit fair and rapid settlement of First Nations' claims. Finally, it will augur the beginning of the new relationship between aboriginal and non-aboriginal Canadians envisaged by Prime Minister Mulroney in his address to the House of Commons. If, on the other hand, the Government is not willing to accept even these minimal recommendations on the resolution of land claims, First Nations will be forced to conclude that the Government is not and never was committed to a fair settlement of native claims.