



# A New Beginning for the Resolution of Specific Claims in Canada

The Specific Claims Process at a Glance



## ***Our Shared History***

Since the early 1700s, British and, later, Canadian governments have entered into treaties with First Nations across the country often to purchase or have Indian lands ceded to the Crown. In 1876, the *Indian Act* was passed, making the Crown responsible for managing reserve lands and certain monies belonging to First Nations.

Over time, there have been instances in which the Crown failed to fulfill its treaty obligations or has mismanaged First Nation funds or other assets. First Nations, like all Canadians, expect their legal rights to be respected and upheld. Likewise, Canadians' commitment to justice demands these legal obligations be discharged and outstanding debts to First Nations paid in full.

In 1982, *Outstanding Business: A Native Claims Policy* was published and a specific claims process was created to advance these goals. The policy offers an alternative dispute resolution process so First Nations can have their claims addressed through negotiations with government rather than going to court. In contrast to lawsuits, negotiations are more co-operative and cost-effective, and they lead to 'win-win' solutions. Negotiated settlements are jointly developed by the parties working together. They help build relationships and generate multiple benefits for all Canadians.

## ***Taking Action: Resolving Specific Claims***

The Government of Canada is serious about living up to its lawful obligations. It has taken historic steps to retool the specific claims process in order to bring justice to First Nations and certainty for all Canadians.

The unfinished business of specific claims led to the June 12, 2007 announcement of a new action plan to improve and speed up the process. Key to this revitalized approach is the creation of an independent tribunal and practical measures to ensure faster processing of specific claims by the government. Over the summer of 2007, Canada and the Assembly of First Nations jointly developed the legislation to establish the tribunal. This legislation is called the *Specific Claims Tribunal Act*. It came into force on October 16, 2008 – achieving, in one short year, a goal that has been sought after for over sixty years.

*Outstanding Business* has now been replaced by an updated policy publication that reflects these major changes to the specific claims process. This pamphlet gives an overview of these developments.

### ***A New Option: The Specific Claims Tribunal***

Negotiations will continue to be Canada's first choice for resolving specific claims. However, First Nations can now refer their claims to the independent Tribunal for a binding decision when other options fail. Composed of superior court judges, the Tribunal provides an alternative to the courts and brings finality to the process.

It is important to note that there is no situation in which a claim automatically goes to the Tribunal. First Nation participation in the Tribunal process is entirely voluntary just as it is with the overall specific claims process.

There are four scenarios in which a First Nation can opt to file a claim with the Tribunal:

- if a claim has not been accepted for negotiation by Canada
- if Canada fails to meet the three-year time frame set out in the legislation for assessing claims
- at any stage in the negotiation process if all parties agree
- if three years of negotiations do not result in a final settlement.

### ***Measures for Faster Processing***

Major improvements have also been made to internal government procedures to ensure faster processing of specific claims. These changes include:

#### ***A New Minimum Standard***

A new Minimum Standard for claims submissions has been established and is now in effect. This standard sets out what documentation is required in a submission and how that information must be presented.

This means that First Nations will have clear guidelines to follow when they are preparing their claims. They will know ahead of time exactly what Canada needs to begin its assessment of a claim. This will not only bring

greater transparency to the process, but will also ensure that the government can more quickly process claims.

The new requirements include, for example:

- an historical report and references, outlining the factual circumstances surrounding the grievance
- a claim document, listing the allegations, the grounds for a claim, legal arguments supporting each allegation and a statement of the facts to validate the allegations
- copies of all supporting documents referred to in the historical report and claim document.

### ***A Streamlined Approach***

A streamlined approach has been adopted that better addresses the diversity and complexity of claims.

Similar claims will be bundled at the research and assessment stages to speed up decisions regarding their acceptance for negotiation.

Special efforts will be made to negotiate small value claims – which now account for about 50 per cent of the claims in the system – more quickly.

As they represent such a significant expenditure of public funds and tend to be highly complex, claims greater than \$150 million must be handled in a different way. These claims will no longer be accepted without first going to Cabinet for a decision about whether to enter into negotiations and to approve a financial mandate. There are very few large value claims.

### ***Tighter Timelines***

Three-year time frames for assessing and negotiating claims are now in effect. If these time frames are not met, a First Nation can opt to refer its claim to the Tribunal. The three-year assessment period starts as soon as the Minister of Indian Affairs and Northern Development finds that the claim meets the Minimum Standard. The three-year negotiation period begins on the day the Minister notifies the First Nation that the claim is accepted for negotiations.

Special transition measures are set out in the *Specific Claims Tribunal Act* to ensure that the backlog of claims is not just shifted onto the new Tribunal. For claims that were already in negotiation before the *Act* came

into effect, the three-year negotiation period started on October 16, 2008. The same goes for claims that were already under assessment on the date of coming into force as long as they meet the Minimum Standard.

### **Dedicated Settlement Fund**

A dedicated fund of \$250 million per year for a period of ten years has been set aside for the resolution of specific claims. This means that there will be significantly more funds dedicated solely to the settlement of specific claims than ever before.

### **The Improved Process**

The following graph illustrates the steps in the specific claims process:



## ***Policy Principles Remain the Same***

The action plan is focussed on accelerating the resolution of specific claims. While Canada is implementing new measures to speed up the assessment and negotiation process, the Specific Claims Policy remains essentially the same:

- a claim can only be submitted by a First Nation, as defined in the Specific Claims Policy
- First Nation participation in the process is completely voluntary
- before being accepted for negotiation, a claim must show that Canada has an outstanding lawful obligation
- once a claim is accepted for negotiation, any eventual compensation is based on established legal principles and supported by proven facts, such as land appraisals or loss of use studies
- third party interests must be taken into account. Private property is not on the table, nor are private property owners asked to sell their land unwillingly. If land changes hands, it only happens on a willing-seller/willing-buyer basis
- mediation services will be available to help the parties reach negotiated settlements
- negotiations lead to 'win-win' solutions that balance the interests of all Canadians; they ensure that settlements lead to a just resolution of First Nations' claims and are fair to all parties.

## ***Bringing Closure to First Nation Grievances: Benefits for All***

Specific claim settlements spell success for everyone involved.

Final settlements provide First Nations with financial compensation for past damages. Sometimes, they include money to purchase land to replace land improperly taken from a First Nation. In all cases, in return for this compensation, First Nations provide Canada with releases that ensure the claim can never be re-opened. There is closure and justice at last.

This certainty produces economic and social benefits for affected First Nations, governments, industry and local communities alike. Most importantly, negotiated settlements help to foster strong relationships between First Nations and all Canadians so they can proceed to build a shared future together.

### ***Want to Know More?***

For more information about these improvements, visit our Web site:

<http://www.ainc-inac.gc.ca/al/ldc/spc/index-eng.asp>

Or call (toll free):

1-800-567-9604 or (TTY) 1-866-553-0554.