

# Frequently Asked Questions

## ABOUT SPECIFIC CLAIMS IN CANADA

### **What are land claims?**

There are two types of Aboriginal claims in Canada that are commonly referred to as “land claims”: comprehensive claims and specific claims. Comprehensive claims (which are also called modern treaties) are always about rights to land; however, specific claims are not necessarily land-related. The difference between specific claims and comprehensive claims stems in part from the history of treaty making in Canada and is explained below.

### **What are treaties?**

Over the past 300 years, the relationship between Aboriginal people and the Crown has most often been defined by treaties. There are two types of treaties in Canada: historic treaties and modern treaties.

### **What are historic treaties?**

Beginning in 1701, the British Crown entered into solemn treaties with First Nations to encourage peaceful relations between the newcomers and the original inhabitants of Canada. Many of the historic treaties signed between the 1701 and 1923 involved First Nation people giving up their rights over large expanses of land in exchange for reserves and other benefits. In 1876, the Government of Canada passed the *Indian Act* to formalize its responsibility for First Nations and reserve lands through treaty-making.

### **What are modern treaties?**

Comprehensive claims deal with the unfinished business of treaty-making in Canada. These claims arise in areas of Canada where Aboriginal land rights have not been dealt with by treaty or through other legal means. In these areas, forward-looking modern treaties are negotiated between the Aboriginal group, Canada and the province or territory. These modern treaties are enshrined in legislation and provide a clear, certain and long-lasting definition of land rights for all Canadians. This includes certainty about the ownership, use and management of land and natural resources for all parties. Some treaties have also included provisions relating to Aboriginal self-government.

### **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 Nations funds or other assets. For example, a specific claim could involve the failure to provide enough reserve land as promised in a historic treaty or the improper handling of First Nation money by the Crown. Canada completes a thorough review of the facts of each claim to determine whether it owes a lawful obligation to a First Nation. To honour its obligations, Canada negotiates settlements 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. Through these settlements, First Nations in turn provide Canada with releases to ensure that the claim can never be re-opened.



**Does Canada have a policy for addressing specific claims?**

Yes. Canada established its Specific Claims Policy in 1973, along with a process and funding for resolving these claims through negotiations. It is important to note that this process is optional for First Nations. It provides First Nations with an alternative to going to court to resolve their claims.

**Why is Canada negotiating claims which are based on, in some cases, 200-year-old treaties?**

Treaties, like any contract, remain binding legal documents despite how much time has passed. Under the historic treaties, the *Indian Act* and other agreements, Canada has certain lawful obligations to First Nations which must be honoured. Canada has not always honoured these obligations. It is in the best interest of all Canadians, Aboriginal and non-Aboriginal alike, to find mutually-acceptable ways to resolve these claims. This is the goal of Canada's Specific Claims Policy.

**What are the key steps in the specific claims process?**

The process begins when a First Nation formally submits its claim to Canada. A complete and thorough review of the facts is then conducted by Canada. This involves comprehensive historical research and legal analysis. Claims are accepted for negotiation when it is determined that Canada owes an outstanding lawful obligation to a First Nation. If an obligation is not found, the First Nation can submit more information to Canada, ask for an inquiry by the Indian Specific Claims Commission (ISCC)<sup>1</sup> or pursue the claim through the courts. If a lawful obligation is found, Canada offers to negotiate a settlement with First Nation.

As a first step, Canada and the First Nation generally negotiate a Protocol Agreement, creating a framework for negotiations and a process for information sharing with third parties. Then the negotiators develop a work plan. They also need to agree how to determine the amount of compensation that will be paid to the First Nation when the claim is settled. Studies on economic losses caused by the claim are often done to help negotiators start discussions on how much compensation would be fair to resolve the claim. Once the parties have reached a consensus, the text of a legal agreement is drafted and then submitted to a vote by the First Nation. Following a favourable vote and approval by Canada, the settlement becomes legally binding on the parties. The final step is to implement the settlement, which includes the transfer of land or the payment of cash, as appropriate.

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<sup>1</sup> This is an independent commission of inquiry, which was established in 1991. First Nations whose specific claims have been rejected by Canada can ask the Commission to conduct an inquiry. If requested, the Commission can also provide mediation and facilitation services to help Canada and the First Nations reach an agreement.

**I own property within an area covered by a specific claim that relates to land. Will my property be taken away from me to settle the claim?**

**No.** Regardless of where your property is located, this will **not** happen. Private property is **not** on the negotiating table. The current ownership of land is not at issue when a claim is being negotiated under the Specific Claims Policy. Canada does **not** take away privately owned lands to settle any claims, nor are private property owners asked to sell their land unwillingly. If land changes hands after a settlement of a land claim, this can only happen on a willing-seller/willing-buyer basis.

**How is compensation determined?**

Under the Specific Claims Policy, compensation is based on legal principles. As part of the negotiation process, work is done to help negotiators reach agreement on the amount of compensation that will be paid to the First Nation when the claim is settled. To this end, studies are typically done by independent consultants who are specialists in various fields. The type of studies that are done depends primarily on the nature and location of the claim and is determined through negotiation. For example, the studies on a land-related claim could look at financial losses on the claim land related to forestry, agriculture and mining. In addition, land appraisals may be done as part of the process for determining the scope of compensation. All studies are reviewed by experts for the negotiating parties and used by the negotiators as a basis for discussions on compensation.

**Why does it sometimes take years to settle a specific claim?**

The length of the process varies. While some claims can be resolved quickly, others may take years to research, review, negotiate and settle. It all depends on the nature of the claim and the complexity of the issues involved. Most specific claims deal with events that happened a long time ago, in some cases over a hundred years or more. Both the historical events behind these claims and the process for determining how much compensation is fair requires careful research and thorough analysis. The goal of negotiations is to reach a mutually acceptable settlement that will be legally binding on the parties. Great care must be taken to ensure that these settlements provide First Nations with fair compensation and resolve all of the issues so the claim can never be re-opened. Along the way, the parties may have different views of their own obligations and entitlements. Working through all of these issues can take time, but can also help to establish a better working relationship between the parties.

**Who's involved in negotiating specific claims?**

Negotiations involve Canada, the First Nation that submitted the claim and (where appropriate) the province. Indian and Northern Affairs Canada oversees the process of reviewing claims, negotiating them and then implementing settlements on behalf of the Government of Canada.

## **What happens when land-related specific claims are settled? Can land be included as part of a settlement?**

Land-related specific claim settlements generally include cash compensation. This compensation can be used to purchase an agreed-upon amount of land on the open market within a specified area and period of time. Should the First Nation choose this option, they can ask Canada to give the purchased lands reserve status. The lands do not automatically become reserve lands, but must first meet the criteria of Canada's Additions-to-Reserves Policy. For example, this policy ensures that reserve creation won't hinder access to private property. Both the Additions to Reserves Policy and the settlement also require the First Nation to consult any neighbouring municipality and the province before the land can be added to reserve.

## **Is Crown land ever included as part of a settlement of a land-related claim?**

Under Canadian law, the provinces are the owners of most Crown lands. When provincial governments are involved in negotiations, settlements of land-related claims can sometimes lead to the transfer of provincial Crown lands to Canada to be set aside as reserve lands for the First Nation. The transfer of the land is subject to the terms of the settlement that is negotiated and must meet the criteria of Canada's Additions To Reserves policy (described above). In addition, most provinces have public consultation processes that are followed before the land transfer takes place.

## **What benefits do settlements bring?**

Both Aboriginal and non-Aboriginal Canadians benefit from the resolution of specific claims. Negotiated settlements are about justice, respect and reconciliation. They are not only about coming to terms with the past and respect for treaties but also about building a better future. While addressing injustices that have undermined trust and understanding, settlements also bring hope and new economic opportunities to First Nation communities. First Nations who receive settlements often, in turn invest their settlement dollars in neighbouring communities through land purchases and economic development.

The resolution of claims outside of the court process is in the best interests of all Canadians. The process of working together to achieve common solutions helps to build strong and respectful relationships. Negotiations lead to "win-win" situations that balance the rights of all concerned. All Canadians will benefit from Canada's commitment to honouring its lawful obligations to First Nations.

### **Quick Facts:**

- Most negotiations are successful and few claims end up moving to the courts. As of March 31, 2006, over 460 specific claims have been concluded to date across the country. This includes 273 claims settled through negotiations. About half of these claims related to land and roughly one third of these settlements involved the provincial governments. About 120 claims are in negotiation across the country.