

Backgrounder

Specific Claims in Canada

Over the past 300 years, the relationship between First Nations and the Crown has most often been defined by 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. From 1871 to 1923, as more European and Asian settlers arrived and moved into western Canada, the Government of Canada signed land treaties to open up land for the railroad and resource development.

The 1763 Royal Proclamation of King George the Third of Britain established a framework for undertaking any future settlements of First Nation lands. Thereafter, it was accepted policy that while title to the land mass of Canada was vested in the Crown, First Nations still had an interest in the land based on their prior use and occupation. No settlement of land could be undertaken, therefore, until the First Nation's interest had been surrendered in negotiations between the Crown and First Nation occupants.

Among its many provisions, the *Indian Act* sets out certain federal government obligations and requires the Minister of Indian Affairs and Northern Development to manage reserve lands and certain monies belonging to First Nations.

Many of the historic treaties established between the 1700s and 1930 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 lands reserved for First Nations through treaty-making.*

Specific Claims

It is recognized that Canada has not always honoured its legal obligations arising from the historic treaties, the *Indian Act* and other formal agreements between First Nations and the Crown. For the most part, specific claims deal with the outstanding grievances that First Nations may have regarding Canada's fulfilment of its obligations under historic treaties or its administration of First Nation lands or other assets under the *Indian Act*.

Note: Each specific claim is different because it pertains to the unique historical relationship between the Crown and a particular First Nation. For example, a specific claim could involve the failure to provide enough reserve land, the improper management of First Nation funds or the surrender of reserve lands without the lawful consent of a First Nation. Claims alleging a shortfall in the amount of land allocated for reserves are called Treaty Land Entitlement (TLE) claims.

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* In this document, when the term "First Nation" is used in the context of the *Indian Act* and specific claims, it refers to an *Indian Act* band.

The Benefits of Settling Specific Claims

Settling specific claims brings long-term benefits to both First Nation members and their neighbours. The cash and sometimes land and cash settlements enable First Nations to strengthen the social and economic well-being of their communities, encouraging investment and promoting development both on First Nation lands and in surrounding communities.

In addition, the resolution of outstanding grievances renews the relationship between First Nations and Canada in a manner that builds mutual trust and understanding while promoting new opportunities for strong and viable partnerships between Aboriginal and non-Aboriginal Canadians in the future.

Specific Claims Policy

Between 1927 and 1951, the *Indian Act* made it an offence for a lawyer to receive payment from a First Nation to bring a claim against the Crown without the Government of Canada's permission. When those provisions of the *Indian Act* were repealed in 1951, First Nations began organizing to pursue settlements to resolve their outstanding grievances or specific claims against the Crown.

In 1973, responding to First Nations' frustration at having to go to the courts to settle their historic grievances, the Government of Canada established the Specific Claims Policy. Under the policy, Canada looks at allegations that treaty or other legal obligations have not been fulfilled.

Claims are accepted for negotiation when it is determined that Canada has an outstanding lawful obligation to a First Nation. If a lawful obligation is found, specific claims settlements are negotiated between First Nations, Canada and (where applicable) the relevant province or territory.

Government policy recognizes that a specific claim exists when a First Nation establishes that its grievance gives rise to a lawful obligation through:

- the non-fulfilment of a treaty or another agreement between First Nations and the Crown
- the breach of an *Indian Act* or other statutory responsibility
- the breach of an obligation arising out of government administration of First Nation funds or other assets
- an illegal sale or other disposition of First Nation land by government

The Specific Claims Policy was clarified in 1982 and 1991. Since 1973, the Government of Canada has settled over 200 specific claims. At present, over 100 specific claims are in negotiation.

THE SPECIFIC CLAIMS PROCESS

STEP	PROCESS
Submission of Claim	The process begins with a formal submission from the First Nation.
Research of Claim	To assess whether or not to accept the claim for negotiation, the Government of Canada undertakes an important assessment; the Department of Justice formulates a legal opinion.
Acceptance or Rejection of Claim	The Government of Canada informs the First Nation of the decision. If a lawful obligation is not found, the First Nation can submit more information, ask the Indian Specific Claims Commission (ISCC)* to intervene or litigate. If a lawful obligation is found, the claim goes into negotiation.
Negotiations	After creating a general framework for negotiations, the parties work towards an Agreement-in-Principle (AIP). Following ratification, the AIP becomes a Settlement Agreement. The final step in the negotiation process is the signing ceremony.
Implementation	Transfer of land or cash (as appropriate).

Building A Better Future for First Nations and All Canadians

Canada is committed to honouring its lawful obligations to First Nations by negotiating agreements that bring full and final closure to longstanding claims to the benefit of all Canadians. Accordingly, there is significant consultation with First Nation members and other interested parties throughout the negotiation process. Consultation addresses the concerns of all interested parties and fosters positive relations between First Nations and surrounding municipalities.

It is important to note that private property is **not** on the table during the negotiations of specific claims settlements. If an Aboriginal group wishes to buy private property, there must be a willing seller and a willing buyer.

By addressing historic injustices that have undermined trust and co-operation, strong partnerships among Aboriginal people, governments and the private sector are emerging. The resolution of specific claims lays the groundwork for creating healthy, prosperous First Nation communities that can participate, along with their non-Aboriginal neighbours, in the economic growth of Canada.

For more general information, please visit DIAND's Web site at: <http://www.inac.gc.ca>. Additional information on specific claims is also available at: http://www.inac.gc.ca/ps/clm/scb_e.html

September 2001

* The ISCC is an independent commission of inquiry, which was established in 1991 under the federal *Inquiries Act* primarily to provide an alternative to the courts for First Nations whose specific claims have been rejected by Canada.