



## **What is the history of this issue and how does it impact First Nations?**

First Nations held lands and territories provide the cultural, legal and spiritual basis for the ongoing well-being of First Nations. Since confederation, Canada has mismanaged, dispossessed and stolen First Nations lands and territories. First Nations continue to grapple with the harm caused by these actions. Taking concrete steps to meaningfully address this shared past is at the heart of reconciliation and a requirement for a renewed nation-to-nation relationship.

Canada's Specific Claims Policy and process are designed to facilitate the negotiation and settlement of First Nations historic grievances for the mismanagement of their lands and assets, or non-fulfilment of Treaties. Since the creation of the Office of Native Claims in 1974, First Nations have argued that Canada's unilateral management and control of the specific claims process creates an unacceptable conflict of interest. To address this conflict, First Nations have consistently called for the creation of a fully independent specific claims process.

In 2007, Canada announced the creation of the Specific Claims Tribunal. The Tribunal is an independent adjudicative body for specific claims that First Nations and Canada are unable or unwilling to negotiate. Despite the creation of the Tribunal, Canada continues to control the process of submitting, reviewing and negotiating specific claims. Additionally, the existing process is burdened by arbitrary limits on financial compensation and fails to provide due recognition to Indigenous laws. An independent process could help to ensure that claims are resolved in a timely manner and in a way that is responsive to the needs of First Nations.

## **How has the AFN's recent advocacy affected this area?**

In late 2016, the AFN and Canada formed a Joint Technical Working Group (JTWG) with a mandate to examine the specific claims process and develop joint recommendations for change. The JTWG is made up of AFN policy staff, First Nations technical experts from across Canada, and federal officials. The JTWG continues to meet on a regular basis.

In the fall of 2017, the AFN Chiefs-in-Assembly passed Resolution 91/2017, *Support for a Fully Independent Specific Claims Process*, calling for the creation of an independent specific claims process. In 2019, the AFN carried out a national dialogue process with First Nations to seek input on what a fully independent specific claims process should look like. Feedback from sessions in nine regions and multiple written submissions from First Nations resulted in a Draft Summary Report which was released on the AFN website in 2020.

Following the conclusion of the dialogue process, the AFN developed a draft proposal to create a fully independent specific claims centre (Proposal) drawing directly from the Draft Summary Report. The development of the draft Proposal included an initial round of peer review by First Nations experts, including researchers, legal experts and the Specific Claims Tribunal, followed by a second round of peer review by First Nations experts on Indigenous legal traditions.

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In 2020, the AFN passed resolution 09-2020 *Jointly Develop a Fully Independent Specific Claims Process* calling on Canada to work directly with the AFN and the Chief's Committee on Lands, Territories and Resources to develop an Independent Centre for the Resolution of Specific Claims consistent with the United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration) and based on the following principles identified by First Nations during the 2019 AFN dialogue process:

1. **The Honour of the Crown** – The specific claims process must be consistent with the Honour of the Crown.
2. **Independence of all Aspects of Claims Resolution** – All aspects of the specific claims process must be handled independent of Canada.
3. **Recognition of Indigenous Laws** – The specific claims process must provide due recognition to the laws, legal orders and dispute resolution mechanisms as articulated by participating First Nations.
4. **No Arbitrary Limits on Compensation** – There will be no financial constraints, such as the \$150-million cap on the jurisdiction of the Specific Claims Tribunal.

### **Where do we hope to go in the future?**

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The AFN has finalized a draft Proposal to create a fully independent specific claims centre that is consistent with the Honour of the Crown, fully independent, incorporates Indigenous laws, and is free from arbitrary limits on financial compensation. The draft Proposal was publicly released for comment on the AFN website in 2021. The AFN will review all input received, revise the draft proposal accordingly, and publicly release a final version which will support AFN advocacy efforts and provide a clear First Nations vision for specific claims reform.

It is anticipated that Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC) will require Cabinet approval of any substantive reform. The AFN will seek opportunities to participate, highlighting the minimum standards for redress mechanisms outlined in the UN Declaration and AFN resolution 09-2020. If successful, the AFN and Canada will work together through a transparent process to jointly develop legislation and a fiscal framework to create a fully independent specific claims center consistent with the AFN Proposal and mandates.