



AFN SPECIFIC CLAIMS REFORM PROPOSAL

Public Comments Summary

May 5 to October 31, 2021



AFN Specific Claims Reform Proposal

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This document provides a summary of the comments received by the AFN on its draft Specific Claims Proposal to create a fully independent specific claims centre (Proposal). These comments were received during the AFN's public comment period from May 5th to October 31st, 2021.

Executive Summary

The AFN received comments from First Nations, legal counsel, researchers, and individuals. Commenters widely supported the Proposal's four principles of fairness and the call for the elimination of Canada's conflict of interest. Some commenters provided input on the entire Proposal, while others focused on specific elements. All the comments received were helpful and will inform the finalization of the Proposal.

Commenters provided constructive feedback on the following nine issues:

1. Governance of the Independent Centre for the Resolution of Specific Claims (ICRSC)
2. Impact of Reform on Ongoing and Closed Claims
3. Funding
4. Resource Hub
5. Claimant Standing
6. Long-term Capacity of the ICRSC and the Specific Claims Tribunal
7. Revisions to the Specific Claims Tribunal Act
8. Concerns Expressed by Claimants in Quebec
9. Indigenous Laws

The AFN will continue to review all feedback received and revise the draft Proposal accordingly.

Geographic Breakdown of Comments

Region	Number of Comments
British Columbia	10
Alberta	1
Saskatchewan	1
Ontario	1
Quebec	3
Anonymous/ no region specified	3

Key Comments

1. Governance of the ICRSC

The draft Proposal envisions a system of governance that will be jointly established to ensure that all core functions of the ICRSC work in an efficient and complementary fashion. Several commenters recommended that the AFN clarify how the fully independent specific claims process will be governed. Commenters suggested that the draft Proposal be revised to illustrate the selection process for the ICRSC governance structure. Additionally, commenters requested additional information on how the ICRSC governance structure can facilitate the swift resolution of specific claims. It was recommended that the ICRSC governance be selected by the AFN and First Nations.

2. Impact of Reform on Ongoing and Closed Claims

This reform effort is expressly being undertaken without prejudice to First Nations currently involved in the existing specific claims process, including active negotiations and claims before the Specific Claims Tribunal. Commenters requested further clarity on how the transition to a fully independent specific claims process will impact ongoing claims and claims that have been unilaterally closed by Canada.

3. Funding

The draft Proposal envisions a Funding Division that will provide funding to First

Nations to support the resolution of their specific claims. Commenters widely supported the idea that funding to claimants should be provided by an independent body. Several commenters expressed concern about longstanding issues in the funding of specific claims, such as inadequate funding and the impact of loan funding on First Nations. Commenters requested further clarity on how funding will be provided in a consistent and equitable manner that meets the individual needs of each claimant. Multiple commenters suggested that loan funding be replaced with grant funding.

4. Resource Hub

The Resource Hub will store a collective body of research materials, such as archival documents, First Nations accounts, and expert reports, to facilitate research for First Nations. Commenters expressed strong support for the idea of a Resource Hub to help First Nations access documents and provide a central repository to store documents and archival materials. Several commenters suggested that the Resource Hub must be accessible to all First Nations, regardless of their remoteness. Additionally, commenters requested clarification on how the Resource Hub will regulate disclosure of documents and ensure that confidential information will not be disclosed without consent.

5. Claimant Standing

One commenter raised the issue of claimant standing in a new, fully independent specific claims process. This commenter requested clarification on whether non-status and Métis communities will be able to bring forward specific claims in the ICRSC.



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6. Long-term Capacity of the ICRSC and the Specific Claims Tribunal

Commenters noted that the ICRSC must receive stable, predictable funding and resources in order to operate effectively. Commenters also noted that the capacity of the Specific Claims Tribunal to resolve specific claims must be protected. Specifically, commenters suggested that the Tribunal must be provided with enough judges and resources to ensure that it can operate effectively. Moreover, commenters expressed concern that the Tribunal is currently receiving inadequate and inappropriate resources from the Administrative Tribunals Support Service of Canada (ATSSC). It was argued by several commenters that the Tribunal be removed from the ATSSC structure so that it can select its own staff and procure its own resources.

7. Revisions to the Specific Claims Tribunal Act (SCTA)

The transition from the current process to a new, fully independent process will require revisions to the SCTA and other laws. One commenter recommended that section 21 of the SCTA be amended to ensure that no First Nation must surrender its rights when being awarded compensation by the Specific Claims Tribunal. Another commenter submitted that the preamble to the SCTA be amended to affirm the recognition of Indigenous laws and legal traditions.

8. Concerns Expressed by Claimants in Quebec

Commenters from Quebec provided input on the challenges faced by claimants in Quebec. These commenters expressed a need for the ICRSC to have dedicated staff, including Tribunal members, who can communicate and work in French and who have a strong grasp of the civil law system in Quebec. One commenter noted that the only French-speaking member of the Tribunal has recently resigned.

9. Indigenous Laws

A fundamental feature of the ICRSC will be the recognition of and respect for Indigenous laws. The ICRSC will support the recognition of the laws, legal orders, and dispute resolution mechanisms as articulated by participating First Nations. Commenters expressed strong support for the recognition of Indigenous laws in the new, fully independent process. Several commenters had useful recommendations for ensuring that the recognition of Indigenous laws is successful. These recommendations included ensuring representation from First Nations across Canada on the Advisory Committee on the Application of Indigenous Laws and enabling First Nations to express themselves in their own languages in the specific claims process.



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Conclusion

October 3, 2018

The AFN received useful feedback from all commenters who took part in the public review period. Commenters demonstrated a high degree of consensus on the need to eliminate Canada's conflict of interest in the specific claims process. Additionally, commenters provided diverse perspectives on how the specific claims process should be reformed to meet the needs of all First Nations. The AFN will continue to review all input received from commenters as it finalizes the Proposal.

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Appendix A – AFN Specific Claims Reform Proposal Questionnaire

AFN Specific Claims Reform Proposal

This questionnaire allows First Nations and other interested parties to provide comments and feedback on the AFN Specific Claims Reform Proposal. The AFN will review all responses and revise the Reform Proposal, as necessary.

After submitting this form, respondents will be able to view all submitted responses. Respondents may also submit comments privately via email to jdonovan@afn.ca.

jdonovan@afn.ca (not shared) [Switch account](#)

* Required

Optional: What is your name & the name of your organization/First Nation?

Your answer

Please enter today's date. *

Date

Please provide any general comments or feedback on the AFN Specific Claims Reform Proposal below. *

Your answer

Please provide comments, if any, on the four principles of fairness contained in the AFN Reform

Proposal (Honour of the Crown, independence of claims resolution, recognition of Indigenous laws, and absence of arbitrary limits on financial compensation).

Your answer

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Please provide comments, if any, on the Claim Registration, Development, Filing, and Review process in the AFN Specific Claims Reform Proposal.

Your answer

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Please provide comments, if any, on the Funding Division in the AFN Specific Claims Reform Proposal.

Your answer

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Please provide comments, if any, on the Resource Hub in the AFN Specific Claims Reform Proposal.

Your answer

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Please provide comments, if any, on the functions of the Tribunal and Commission in the AFN Specific Claims Reform Proposal.

Your answer



Are there any other sections of the AFN Specific Claims Reform Proposal that could be improved?
Please identify the specific section(s) and provide your comments below.

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