

Assembly of First Nations

50 O'Connor Street, Suite 200
Ottawa, Ontario K1P 6L2
Telephone: (613) 241-6789 Fax: (613) 241-5808
www.afn.ca



Assemblée des Premières Nations

50, rue O'Connor, Suite 200
Ottawa, Ontario K1P 6L2
Téléphone: (613) 241-6789 Télécopieur: (613) 241-5808
www.afn.ca

ANNUAL GENERAL ASSEMBLY
July 14-15-16, 2026, Ottawa, ON

Resolution no. 52/2026

TITLE: Filling Vacancies at the Specific Claims Tribunal

SUBJECT: Lands, Claims

MOVED BY: Chief Joe Miskokomon, Chippewas of the Thames First Nation, ON

SECONDED BY: Chief Lisa Robinson, Wolf Lake First Nation, QC

DECISION Approved by the AFN Executive Committee by consensus.

WHEREAS:

A. The *United Nations Declaration on the Rights of Indigenous Peoples* (UN Declaration) states:

- i. Article 8(2): States shall provide effective mechanisms for prevention of, and redress for:
 - (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;
 - (c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;
- ii. Article 27: States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.
- iii. Article 28(1): Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

B. Historical actions illegally undertaken by colonial governments have resulted in the dispossession of First Nations, including the illegal alienation of their lands, the creation of and subsequent failure to protect Indian

Certified copy of a resolution adopted on the 1st day of September, 2026 in Calgary, Alberta

Chiselhouse.

CINDY WOODHOUSE NEPINAK, NATIONAL CHIEF

52 – 2026
Page 1 of 3

reserves, villages and fishing areas, the systematic denial of rights to fish and access water, and the illegal disruption and removal of sacred sites and grave sites.

- C. The federal specific claims process is one of the few mechanisms available for First Nations to exercise their right to redress for historical breaches of lawful obligations by the Crown.
- D. The Specific Claims Tribunal (Tribunal), established on October 16, 2008, is an integral component of Canada's specific claims policy (Justice At Last), and is the only independent adjudicative body available to First Nations not subject to statutes of limitations.
- E. First Nations regard the Tribunal's independence, authority to make final and binding decisions, and legislated timelines ensuring timely access to independent adjudication as fundamental to its legitimacy and effectiveness.
- F. The *Specific Claims Tribunal Act* (SCTA) stipulates that the Tribunal consist of a roster of superior court judges appointed by the Governor in Council, of which the maximum may be six full-time and/or part-time members. Section 7 of the SCTA establishes that each member, including the Chairperson, shall be appointed for a term not exceeding five years and each member is eligible to be reappointed for one further term. The Chairperson supervises and directs the work of the Tribunal, including allocation of work and assigning hearings to members.
- G. Justice Victoria Chiappetta was appointed as a full-time member of the Tribunal in June 2019 for a five-year term and appointed Tribunal Chairperson on December 11, 2020 (five-year term). Justice Chiappetta's appointment as Chair is not being renewed for a second term due to a technical interpretation of the SCTA around term limits.
- H. Justice Chiappetta was the sole full-time member of the Tribunal and carried approximately 50 percent of Tribunal cases. Her cases will likely be stayed or adjourned until a new Chair is appointed, a process which could take over a year due to backlogs in provincial superior courts. Part-time members account for only about 10 percent of cases at the Tribunal.
- I. Currently, the Tribunal has no formally appointed Chair and no full-time member. Its current membership consists of three part-time members: Justice Ducharme (ON), whose term expired on April 13, and has yet to be renewed for a second term; Justice Roy (NB) whose term expires next year; and Justice MacDonald (BC), who the Tribunal website identifies as acting Chair.
- J. Between January 1 and July 7, 2026, 15 claims were filed with the Tribunal, compared with nine during all of 2025, demonstrating First Nations' increasing reliance on the Tribunal for independent adjudication and contributing to the Tribunal's already heavy workload.
- K. The Tribunal has never operated with its legislated full complement of members, despite its heavy volume of cases and contrary to the consistent recommendations made by former Chair, Justice Harry Slade and First Nations.
- L. The specific claims process is already rife with unreasonable delay, particularly in relation to negotiations. The Tribunal is supposed to serve as a stopgap if negotiations stall or if a First Nation experiences undue delay. Without a full-time Chairperson and no full-time members, the Tribunal becomes another instrument of delay in the resolution of First Nations claims, creating a further barrier to their right to redress under the UN Declaration.

Certified copy of a resolution adopted on the 1st day of September, 2026 in Calgary, Alberta

Chiselhouse.

CINDY WOODHOUSE NEPINAK, NATIONAL CHIEF

52 – 2026
Page 2 of 3

- M.** The federal government's failure to prevent disruption of cases before the Tribunal or ensure it has enough judges to fulfill its legislative mandate is another example of this government's shifting priorities, away from redress and reconciliation to economic development, at the expense of justice, and resulting in precarity for First Nations seeking resolution of their claim.

THEREFORE BE IT RESOLVED that the First Nations-in-Assembly:

- 1.** Direct the Assembly of First Nations (AFN) to call on the Government of Canada to take immediate steps to appoint a Specific Claims Tribunal Chairperson and fill Tribunal member vacancies so that cases currently before the Tribunal and future cases may proceed without undue delay and disruption.
- 2.** Direct the AFN to send an open letter within three months to the Ministers of Justice and Crown-Indigenous Relations and Northern Affairs calling on the Government of Canada to appoint a Tribunal Chairperson and fill Tribunal member vacancies.
- 3.** Direct the AFN to make efforts to engage and collaborate with likeminded organizations, including the B.C. Specific Claims Working Group (BCSCWG), the Indigenous Bar Association, and the Canadian Bar Association, to highlight the urgency of this issue and advance advocacy efforts to ensure that Tribunal member vacancies are filled.

Certified copy of a resolution adopted on the 1st day of September, 2026 in Calgary, Alberta

Chiselhouse.

CINDY WOODHOUSE NEPINAK, NATIONAL CHIEF

52 – 2026
Page 3 of 3