AFN Special Chiefs Assembly
December 9-11, 2008 Ottawa, ON

Resolution no. 82/2008

SUBJECT:	ENDORSEMENT OF THE THINK TANK PRINCIPLES FOR LARGE SPECIFIC CLAIMS
MOVED BY:	Chief Fabian Alexis, Okanagan Indian Band, BC
SECONDED BY:	Chief Jaret Cardinal, Sucker Creek, AB
DECISION:	Carried (3 opposed)

WHEREAS:

A. There must be just treatment for all specific claims;

B. The new Specific Claims Tribunal Act does not permit claims above $150 million to access the Tribunal to obtain independent and impartial adjudication;

C. The Indian Claims Commission process, currently available to investigate and report on all specific claims, regardless of size, will soon cease to exist;

D. The AFN and Canada agreed in the November 27, 2007, Political Agreement on Specific Claims to address issues not adequately addressed in the new Act itself;

E. That Political Agreement provided for a joint Liaison and Oversight Committee ("LOC") composed of representatives from the AFN and Canada, to be a forum for ongoing discussion;

F. The Political Agreement squarely places large claims on the LOC agenda;

G. When AFN agreed to work with Canada on a new adjudicative body, it was on the basis of clear assurances from Canada that the existing claims policy would continue to apply;

H. Canada's plan to develop a distinctive process for large claims was understood among First Nations as having the goal of improving the handling of all claims, not as an excuse to abandon established core principles;

I. These core principles include the commitment by Canada to assess and negotiate specific claims on their merits, and not to reject or discount them based on technical defences such as limitations periods;

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J. The limits in the new Act on the mandate and authority of the new Tribunal are based on its distinctive role as an adjudicative body and do not warrant backwards steps in how Canada itself assesses or negotiates claims;

K. Canada appears ready to announce important measures, such as a revised formulation of its existing specific claims policy (*Outstanding Business*), with little or no discussion with AFN or with members of the claimant community;

L. It would be inconsistent with the honour of the Crown for Canada to now unilaterally change its claims policy, on which many First Nations have relied, for the worse;

M. The AFN organized a "Think Tank" on November 20 & 21, 2008, at which leaders and advisers on large claims could identity problem areas and propose solutions;

N. There was an apparent consensus at the Think Tank that federal policy and administration is in some respects becoming worse, not better, with respect to large claims;

O. The Think Tank participants developed and agreed upon a statement of principles to guide the treatment of large claims, and called upon the AFN to advocate for these principles;

P. Think Tank participants also recognized the need for direct discussions with claimants concerning policy and administrative changes that may affect them.

THEREFORE BE IT RESOLVED that:

1. The Chiefs-in-Assembly direct the Assembly of First Nations to establish a process to engage and actively involve First Nations and their regional and national representatives through the Chiefs Committee on Claims, at all stages in Specific Claims policy development.

2. The Chiefs-in-Assembly call upon the Assembly of First Nations to advance the following principles in its engagement with Canada:

   a. The honour of the Crown is always at stake: the Crown must fairly and justly settle its outstanding lawful obligations in all specific claims and grievances regardless of value or subject matter (e.g., including hunting, fishing, trapping).

   b. All specific claims and grievances must be addressed within one policy jointly developed by Canada and First Nations, with similar core principles, for the purposes of determining Canada's outstanding lawful obligations on the balance of probabilities (e.g., limitations and laches do not pre-empt a decision on lawful obligation; cultural losses are compensable; land and other resources as a component of compensation remain negotiable).

   c. The consideration of whether a claim is a breach of an outstanding lawful obligation should continue to be based on a balance of probabilities and not take into consideration a risk analysis.

   d. No claim or grievance should be worse off after *Justice at Last* and/or *The Specific Claims Tribunal Act* than under *Outstanding Business*.

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e. All specific claims currently at a negotiation table should continue uninterrupted; a Cabinet mandate is not required for negotiations to continue (as opposed to a mandate to settle).

f. The creation and mandate of the Alternative Dispute Resolution (ADR) Centre committed to in *Justice at Last* must be jointly developed by Canada and First Nations to address all claims, including those previously rejected.

g. Procedural fairness and due process requires that the Specific Claims Branch's process ensure a reciprocal opportunity for the First Nation to know the case it must meet (e.g., understanding the legal and factual foundation for the decisions made and timely disclosure of relevant documents uncovered by Canada provided to the First Nation for comment).

h. Procedural fairness requires research funding guidelines to be transparent and adequate to enable the First Nation to research, submit, evaluate their options, negotiate and settle or otherwise resolve their Specific Claim.

i. The Crown as fiduciary must ensure a First Nation has the resources necessary to make a fully informed decision within a reasonable period of time and ensure that they are not prejudiced by lack of resources. (i.e., to consent to negotiate within the Minister's authority; apply to the Specific Claims Tribunal).

j. Procedural fairness and due process must not be limited by Ministerial authority; a First Nation must be given the opportunity to make representations if the decision maker is Cabinet (i.e., just because the Minister's authority is limited to claims valued under $150 million should not oust procedural fairness).

k. First Nations, as well as their regional and national representatives through the Chiefs Committee on Claims, must be consulted and actively involved at all stages in Specific Claims policy development.

l. A decision on an outstanding lawful obligation requires written reasons for a decision (whether the decision maker is the Minister or Cabinet) in order for the First Nation to fully understand and adequately consider its options.

m. A full and final release in a fair and just settlement of specific claims does not require reference to extinguishment, surrender or release of Aboriginal Rights and Title, Treaty Rights and Title, or Natural Resources or other rights of the First Nation without the free, prior and informed consent of the affected First Nation.

3. That any agreement-in-principle reached by the AFN on specific claims policy reform in accordance with the above principles be brought to the Chiefs -in -Assembly at the July 2009 Annual General Assembly for their consideration and approval.

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