



The 2nd AFN Indigenous Laws Gathering

Holding Space: Elevating Indigenous Laws to Address Historical Wrongs



June 11-12, 2024 | Hotel Musée Premières Nations, Wendake, Quebec

HOLDING SPACE: ELEVATING INDIGENOUS LAWS TO ADDRESS HISTORICAL LOSSES

For generations First Nations have called for the establishment of a fair, transparent and open process for the resolution of specific claims void of Canada's continued conflict of interest. Since Canada's endorsement of the United Nations Declaration on the Rights of Indigenous Peoples in 2016 and commitment to take all measures to ensure Canada's laws and policies are consistent with the Declaration (*i.e.*, *United Declaration on the Rights of Indigenous Peoples Act, s.5*) First Nations efforts are strengthened by *UNDRIP* Article 27 in particular:

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.

Following extensive engagement with First Nations throughout 2019 the Assembly of First Nations (AFN) developed a proposal (2021) for the creation of an Independent Centre for the Resolution of Specific Claims giving effect to the aspirations of Article 27. To guide concrete efforts that respect and give due recognition to Indigenous Peoples' laws, traditions, customs and land tenure systems, a Council of Experts in Indigenous Laws (CEIL) was established by the AFN in 2023, to share perspectives on Indigenous laws with a particular focus on their application to the resolution of specific claims. In 2022 Canada formally committed to working with the AFN to jointly develop a proposal for the creation of an Independent Centre for the Resolution of Specific Claims.

As part of the ongoing AFN-Canada Specific Claims Working Group discussions, the AFN held a Gathering on June 13th, 2023, hosted on unceded Musqueam, Squamish, and Tseil-Waututh territory [Vancouver, British Columbia], supported by the Union of British Columbia Indian Chiefs (UBCIC). The Gathering brought together local Knowledge Keepers, First Nations leaders, community members, technicians, academics and federal officials to discuss the recognition of Indigenous laws, legal orders, and systems of land tenure in the specific claims process.

Several principles emerged during the Gathering which are applicable to the recognition of Indigenous laws in the specific claims process including:

- To Maintain Flexibility: The resolution of specific claims must be flexible in recognizing Indigenous protocols, practices, ceremonies, and forms of evidence that have been historically excluded from Canadian legal processes.
- To Respect Diversity: The specific claims process must respect the wide diversity of Indigenous laws, legal orders, and systems of land tenure.

For more information, please contact the AFN Lands Sector (lands@afn.ca)



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- To Recognize Indigenous Law Throughout the Claims Resolution: Indigenous laws must be recognized in all aspects of claims resolution, including procedural and substantive elements of the process.
- To Honour Protocols and Ceremonies: The specific claims process must appropriately honour and observe the protocols of participating First Nations and recognize the centrality of ceremony in the resolution of disputes.
- To Restore Kinship and Harmony: Recognition of Indigenous laws in the specific claims process will help repair and strengthen the relationship between the Crown and First Nations and facilitate addressing past wrongs.
- To Support the Restoration of Indigenous Laws: The Parties (First Nations and Canada) must be provided with adequate and appropriate resources to support the restoration of Indigenous laws and the articulation of Indigenous laws in claims resolution.

We affirm that Indigenous laws are grounded in particular territories and remain intact and applicable to the avoidance and resolution of disputes. As we continue our efforts to design a less adversarial process to address outstanding specific claims implemented through an Independent Centre for the Resolution of Specific Claims, we initiated this 2nd Gathering on June 11th and 12th in Wendake, Quebec. We invite Knowledge Keepers and thought leaders, members of the CEIL, First Nations leadership, AFN Councils, community members, and technicians to join us to engage in further discussions. In particular we ask:

- How can we bring local Indigenous laws into the Specific Claims Process through the Centre?
- What should First Nations bringing their laws into the Centre expect from its processes? Are their processes or examples that should inform our work?
- How should the Centre's processes meet their needs? What protocols and methods do we need to think about and be aware of?
- Do we need to create specific roles within the Centre to ensure local protocols are known and respected?
- How do we support the restoration of laws for communities doing this work now and into the future?
- Are there additional principles we need to adopt?

In bringing local expertise together to further inform how we proceed with the utmost respect, our objective is to understand and plan for key concerns and continue efforts to design a Centre that meaningfully gives due recognition to Indigenous peoples' laws, traditions, customs and land tenures.