



ANNUAL GENERAL ASSEMBLY
July 9, 10, 11, 2024, Montreal, QC

Resolution no. 11/2024

TITLE: Ensuring Access to Justice for Specific Claims through Policy Reform

SUBJECT: Lands, Specific Claims

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

SECONDED BY: Chief Dalton Silver, Sumas First Nation, BC

DECISION Carried; 2 Opposition; 1 Abstention

WHEREAS:

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

- i. 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.
- ii. 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.

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C. Woodhouse

CINDY WOODHOUSE NEPINAK, NATIONAL CHIEF

11 – 2024
Page 1 of 4

- B.** In November 2022, the Government of Canada and the Assembly of First Nations (AFN) entered a co-development process to transform the Specific Claims Policy and Process, including by establishing an Independent Centre for the Resolution of Specific Claims (Independent Centre).
- C.** In March 2024, the Deputy Minister of Crown-Indigenous Relations, Valerie Gideon, met with the AFN Chiefs' Committee on Lands, Territories and Resources (CCoLTR) and reiterated the Government of Canada's commitment to establish an Independent Centre, while acknowledging the narrow legislative timeline. The CCoLTR advised the AFN to continue work towards an Independent Centre, while also pursuing immediate policy reforms, including to address the significant shortfall in funding for the research and development of specific claims.
- D.** In June 2024, the AFN and the Government of Canada published a joint discussion paper setting out the key elements of a proposed Independent Centre for the Resolution of Specific Claims.
- E.** While the co-development work to create an Independent Centre has been underway, First Nations have expressed concern about elements of the Specific Claims Policy that continue to impede access to justice. The Government of Canada has an obligation to ensure that all historic grievances of First Nations, regardless of value and size, are resolved in a fair, just, and equitable manner without the imposition of technical defences.
- F.** The compensation criteria set out in the Specific Claims Policy do not result in equitable settlements for all First Nations. The compensation criteria are deficient in three significant areas and must be reformed:
- i.** First, the Specific Claims Policy should provide an option for interim restitution pending final settlement, particularly for large claims. The Government of Canada has provided an advance payment to claimant First Nations pending settlement in a small number of cases. However, the Government of Canada has not openly and fairly made advance payments available to other First Nations and arbitrarily denies other First Nations engaged in settlement negotiations this opportunity. The Government of Canada also refuses to consider other forms of financial instruments that could be used by First Nations as interim restitution measures pending the settlement of a claim, which is unreasonable, unfair, and contrary to reconciliation because it denies First Nations from applying settlement funds to pursue time-sensitive economic opportunities while the claim is being negotiated.
 - ii.** Second, the Government of Canada's refusal to compensate for harm to First Nation's sacred, unique and sui generis connection to the land prevents equitable settlements. The Specific Claims policy states: "Compensation shall not include any additional amount based on "special value to the owner" unless it can be established that the land in question had a special economic value to the claimant band, over and above its market value." This is contrary to Supreme Court of Canada jurisprudence that recognizes the sacred and unique connections that First Nations have to their traditional lands. Valuing First Nation lands as equivalent to fee simple lands in the compensation

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C. Woodhouse

CINDY WOODHOUSE NEPINAK, NATIONAL CHIEF

11 – 2024
Page 2 of 4

formula for specific claims is neither equitable nor does it accord with Canadian jurisprudence or the UN Declaration.

- iii. Third, the Specific Claims Policy's imposition of a 10% financial cap on compensation for reasonable costs associated with the acquisition of replacement lands prevents the fair and just resolution of claims. Canada's policy states, "Where compensation received is to be used by the First Nation for the purchase of other lands, such compensation may include reasonable acquisition costs, but these costs must not exceed 10% of the appraised value of the lands to be acquired." This means that First Nations must pay the vast majority of the costs associated with the acquisition of replacement lands. The actual acquisition costs to purchase replacement lands far exceed 10% of the appraised current unimproved market value of our lands, which ultimately requires First Nations to pay out of pocket for the remainder of the costs to acquire lands that were unlawfully taken in the first place. This criterion is contrary to the principles of equitable compensation.

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

1. Direct the Assembly of First Nations (AFN) to prioritize policy reform as part of the ongoing AFN- Canada Specific Claims co-development process in anticipation of the Government of Canada seeking authority this fall to enact changes to the Specific Claims Policy and Process, including Modern Treaties and Self-Government Agreements.
2. Direct the AFN to continue working jointly with the Government of Canada, and through engagement with First Nations, to develop a fully independent specific claims process through the enactment of legislation that is co-developed with First Nations to establish an Independent Centre for the Resolution of Specific Claims, and to report back to First Nations-in-Assembly on these efforts.
3. Call on the Government of Canada to work directly with the AFN and the Chiefs' Committee on Lands, Territories and Resources (CCoLTR) to amend the Specific Claims Policy to facilitate access to justice for First Nations, including but not limited to the following:
 - a. formalizing interim restitution measures pending final settlement, particularly for large claims;
 - b. making available other forms of financial instruments that could be used by claimant First Nations as interim restitution measures pending the settlement of claims;
 - c. removing obstacles to compensation for cultural losses and harms to First Nations' unique connection to their traditional lands; and
 - d. removing the arbitrary 10% financial cap on the reasonable acquisition costs of replacement lands that prevents the fair and just resolution of claims.

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C. Woodhouse

CINDY WOODHOUSE NEPINAK, NATIONAL CHIEF

11 – 2024
Page 3 of 4

4. Direct the AFN to call on the Government of Canada to ensure that adequate funding is provided to enable all First Nations with specific claims to meaningfully research, develop, and resolve their specific claims.
5. Affirm that this motion is without prejudice to Specific Claim negotiations in progress at the time the motion is passed.

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C. Woodhouse

CINDY WOODHOUSE NEPINAK, NATIONAL CHIEF

11 – 2024
Page 4 of 4