A Guide to the New Approach for Resolving Specific Claims

November 2007

ABOUT THE ASSEMBLY OF FIRST NATIONS

The Assembly of First Nations (AFN) is the national, political representative of First Nations governments and their citizens in Canada, including those living on reserve and in urban and rural areas. Every Chief in Canada is entitled to be a member of the Assembly. The National Chief is elected by the Chiefs in Canada, who in turn are elected by their citizens.

The role and function of the AFN is to serve as a national delegated forum for determining and harmonizing effective collective and co-operative measures on any subject matter that the First Nations delegate for review, study, response or action and for advancing the aspirations of First Nations.

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A - EXECUTIVE SUMMARY

The Assembly of First Nations (AFN) and the federal government have reached agreement on a package of proposals designed to fundamentally improve and advance the system for resolving First Nations specific land claims.

The key outcomes of the new approach are:

- a *Specific Claims Tribunal Act*. This is new legislation that will establish an independent body ("Tribunal") to make legally binding decisions on specific claims that cannot be resolved through negotiation; and

- a companion **Political Agreement between the Minister of Indian and Northern Affairs and the National Chief of the Assembly of First Nations in Relation to Specific Claims Reform** (the "Political Agreement"). The Political Agreement is an arrangement whereby the federal government and AFN will continue to work together on important issues related to claims that are either not included in the legislation or cannot be addressed through legislation. These include features such as improvements to the federal government's internal process for addressing specific claims. The Political Agreement includes the creation of an ongoing AFN-Canada Liaison and Oversight Committee that will meet from time to time to review how the new system is operating, consider recommendations for improvement, and participate in a comprehensive five year review of the new *Specific Claims Tribunal Act*.

Taken together, the new *Specific Claims Tribunal Act* and the Political Agreement will:

- create a new system that will accelerate the processing of claims by the federal government;
- provide increased resources for resolving claims;
- create an environment that makes it easier to achieve negotiated settlements;
- create a genuinely independent body to resolve claims that cannot settled by negotiation; and,
- establish a joint AFN-Canada forum to deal with other important matters related to claims that are not dealt with in the legislation.

The AFN has been able to play a major role in the development of the new system. The AFN believes that the new approach is a major improvement and major step forward from the current system and is worthy of support from First Nations.

B – CONTEXT

I. Background

It has been more than fifty years since a federal government first spoke of the need to establish an independent body to assist with the resolution of specific claims. In the absence of an independent body, the federal Crown has basically acted as judge and jury in defending claims against itself. This is a clear conflict of interest.

The courts have been the only alternative available to First Nations who seek enforceable decisions with respect to their claims. This can be expensive and time-consuming. Furthermore, the federal Crown can rely on "technical defenses"; that is, defenses that do not address the real issues at the heart of the claim but instead deal with legal technicalities like the passage of time which can prevent a claim from being considered on its merits.

For these and many other reasons, First Nations have called for the creation of a new body that can assist in resolving claims, one that is truly effective, efficient and independent.

This work is long overdue. The current system is too bureaucratic and largely ineffective. The main result is a massive backlog of unresolved claims, which the AFN estimates amounts to approximately 1,000 unresolved claims.

Creating a fair and just approach to claims requires constructive and cooperative work between First Nations and Canada, work that is based on real engagement and real partnership.

The AFN and the Government of Canada have been working together since June 2007 to develop a renewed approach to resolving First Nations specific land claims. The shared goal was to reform the specific claims resolution process to make it truly fair, fast and effective. A key objective was establishing an independent tribunal with authority to make binding decisions on claims. This tribunal would be available to First Nations on a voluntary basis.

To do this work, the parties established a new Joint Task Force, supported by three joint technical working groups:

- a Legislative Working Group, focused on the actual wording and content of the new legislation;
- a Processing and Submission Working Group, looking at issues related to the preparation, submission and processing of claims;

- and a Transition and Implementation Working Group, to deal with the move from the current system to the new one.

Representatives of the AFN and the federal government (including the Prime Minister's Office) met regularly. National Chief Phil Fontaine oversaw this work, along with BC Regional Chief Shawn A-in-chut Atleo who was the Co-Chair of the Joint Task Force. The AFN's Co-Chair was supported by the Co-Chairs of the Chiefs Committee on Claims, Alberta Regional Chief Wilton Littlechild and Saskatchewan Regional Chief Lawrence Joseph. The AFN's Chiefs Committee on Claims received regular updates on this work and their input was invaluable to the process.

The AFN believes that the new package is a landmark achievement that matches or exceeds any previous attempts to reform the specific claims system. These previous attempts include the Indian Specific Claims Commission (better known as the Indian Claims Commission, or ICC). The ICC was established in 1990, following the Oka crisis, as an independent body to inquire into claims and make recommendations to government based on those inquiries, but those recommendations are not enforceable. As a result, they are often ignored by government.

In 2002-2003, the previous federal government attempted to bring into law a *Specific Claims Resolution Act* (known as Bill C-6). This Bill was not supported by First Nations as it did not deal with the real problems in the system. For example, the body it proposed would have lacked real independence, there was no role for First Nations in appointments of senior officials, it allowed the government to delay dealing with claims, and the Bill established a very low cap on the size of claims it could deal with (the cap was expected to be $10 million or less). While the bill successfully passed through Parliament, the legislation was never brought into force – due in large measure to stringent opposition by First Nations and the AFN.

The most notable effort to create a truly new approach was the 1998 First Nations-Canada Joint Task Force on Specific Claims Policy Reform (the "JTF"). The 1998 JTF report was developed with First Nations, reflected the views of First Nations and, as such, was widely endorsed by First Nations.

The 1998 JTF report included a "model bill" to resolve claims. The JTF report was a significant achievement in terms of setting out a truly fair, independent and just approach to resolving specific claims.

In the summer of 2007, after preliminary discussions between the then Minister of Indian and Northern Affairs, Jim Prentice, and the National Chief, Phil Fontaine, the federal government announced its "Justice at Last" proposal. The key elements were:

- the creation of an independent claims tribunal to deal with claims with a value of up to $150 million (this accounts for about 95% of all claims);
- dedicated funding of $250 million per year to resolve claims through negotiation or through the new tribunal;
- special fiscal arrangements to address claims above the $150 million cap;
- improvements in processing of claims by the federal government;
- refocusing the Indian Claims Commission into a body that assists in dispute resolution through facilitation and mediation; and,
- a commitment to work with First Nations to develop the new system.

There was a mutual willingness on the part of the federal government and the AFN to work together to meet the objectives of reforming the specific claims process. Accordingly, the AFN agreed to work in partnership with federal officials on the new approach and provide direct input on the wording of the new legislation to ensure it addressed substantive concerns of First Nations.

The concept of the Political Agreement that would function in tandem with the legislation came from the AFN, and much of its content represents AFN suggestions. It was clear during the discussions with government that some important matters could not be addressed purely through legislation, and the Political Agreement creates a forum and process to ensure these matters will be addressed.

The AFN believes that this joint effort has been successful in developing a new approach that is fair, efficient, effective and just.

II. The New Approach

The 2007 AFN-Canada Joint Task Force achieved two significant outcomes: the legislation (*Specific Claims Tribunal Act*) and the Political Agreement between the Minister of Indian and Northern Affairs and the National Chief of the Assembly of First Nations in Relation to Specific Claims Reform.

This guide is intended as an overview of these two items and, while each item will be dealt with in separate sections, it is important to view the two parts as a whole.

The new legislation is essentially aimed at establishing the Tribunal, and does not focus on issues related to things like the processing of claims by the federal government or negotiated settlements. Some features of the new independent Tribunal system also are addressed in the Political Agreement, such as the role of First Nations in designating appointments to the Tribunal.

The Political Agreement addresses some issues directly, or provides for forums in which these issues can be worked out in partnership in the months and years ahead.

Because they are closely connected, there will be a number of references to the Political Agreement in the section describing the new legislation. This is to make it clear that key issues were not ignored or set aside. Taken together, the new legislation and the Political Agreement create a new approach to resolving claims that is comprehensive and progressive.

C - GUIDE TO THE *SPECIFIC CLAIMS TRIBUNAL ACT*

The new legislation is called the *Specific Claims Tribunal Act*. In this section, the key, notable features are described and explained.

i. The Preamble

The new *Specific Claims Tribunal Act* legislation begins with a preamble that acknowledges fundamental principles concerning the nature of specific claims and the new system established to address them. These include the principles that the resolution of claims is in the interests of all Canadians and that the new Tribunal is aimed at providing for just and timely resolution.

There is also a companion preamble in the Political Agreement which states that resolving claims is a legal and moral obligation, and recognizes the cultural, spiritual, social and economic significance to a First Nation of recovering or replacing land that was unlawfully-taken.

These statements of principle provide some useful direction to First Nations and Canada as they work together to develop those parts of the system that are not addressed in the legislation itself.

The statements of principle contained in the preamble of the legislation should also provide valuable guidance to the Courts as they interpret the new Act.

ii. The New Process

New legislation establishes an independent Tribunal and a new approach to resolving specific claims. The new approach is described in the *Specific Claims Tribunal Act*.

It must be stated upfront that the legislation only deals with claims with a value up to but not exceeding $150 million. This was setout in the federal government's "Justice at Last" proposal and, as such, was non-negotiable. The $150 million cap covers the vast majority of claims (approximately 95%). Dealing with claims that exceed the $150 million cap is, according to the Political Agreement, and issue that must be addressed in further discussions.

Filing a claim

In the new process, First Nations will file claims with the federal government. The Minister of Indian Affairs (hereafter, "the Minister") can establish reasonable minimum filing requirements. For example, the Minister might require that the grounds of the claim be provided along with certain key documents. Through the

Political Agreement, the AFN and Canada will work together to produce joint recommendations on what these minimum requirements should be.

Timeframe
Once the claim is filed, the Minister then has to respond to it within the framework set out in the legislation. There is a three year "clock". That is, if a claim is not accepted or rejected within three years of filing, the First Nation claimant can then proceed to the independent Tribunal. This prevents the federal government from delaying the processing of a claim by simply not responding to it.

Any claim that is not resolved through negotiations within three years also can proceed to the Tribunal.

Claims Already in the System
The new *Specific Claims Tribunal Act* provides that claims already filed and awaiting a decision by the Minister as to whether they will be accepted for negotiation will be deemed (for the purpose of the three year "clock") to have been filed on the date that the new legislation comes into force. Further, First Nation claimants will have a six month opportunity to refresh claims without losing their place in the queue. In addition, claims that have been previously rejected for negotiation can be filed again under the new legislation.

Dealing with the Validity of a Claim and Compensation Criteria at the Same Time
Under the new legislation, both validity and compensation are "live" issues. That is, they will be tried and determined together in a single proceeding. In the previous legislation, First Nations had to go through separate steps to deal with these issues, which added to the time and money required to resolve a claim. The "one-stop decision making" process is consistent with the overall goal of resolving claims in a more timely and efficient manner.

Compensation Criteria
The new legislation provides a general standard for compensation that the Tribunal considers just, based on principles of compensation applied by the Courts. In other words, there is the broad concept of "just" compensation (fair, impartial and moral) as well as a requirement to look at principles applied by the Courts. These principles would include things like ensuring compensation takes into account inflation, lost investment potential and the like.

The new legislation is confined to looking at "financial" losses. There cannot be recovery of "punitive" damages (aimed at punishing the government, for example) or losses of a "cultural or spiritual" nature. This was a firm position of the federal government and was non-negotiable.

As well as providing a general standard, the new legislation identifies specific compensation rules for different categories of cases. For example, the new legislation requires that the compensation for unlawfully-taken land is to be "market value at the time the land was taken." The compensation must be adjusted, or brought forward based on legal principles.

This means if land was worth $100,000 when taken, the Tribunal would have to consider whether legal principles require that the amount be increased based on simple interest, compound interest, inflation or some combination of these or other factors.

Existing federal policies on interest and inflation compensation are not binding on the Tribunal.

The Tribunal may award costs. It is expected that the federal government will continue its program to fund claimants, as currently exists for First Nations who participate in the Indian Claims Commission inquiry process. Therefore, in awarding costs, the Tribunal will take into account this funding.

The Crown has the discretion to pay out an award in installments over a period of up to five years. Interest would be paid based on a formula that is similar to that currently used in negotiated specific claims settlements.

Finality of Decisions, Reacquisition or Replacement of Lost Land

Under the new legislation, if a First Nation claimant receives an award of compensation from the Tribunal for unlawfully taken land, its interest in that same land is surrendered.

This is consistent with the current system. At the same time, there is often an accompanying commitment on the part of the federal government that if the band purchases the lost land from a willing seller, or acquires replacement land, the federal government will cooperate in having the land designated as an addition to reserve.

In recognition of the cultural, spiritual, social and economic importance of such land to First Nations, the Political Agreement requires the AFN and federal government to resolve issues concerning the replacement or reacquisition of lost land. This necessitates, among other things, adjustments to the federal Additions to Reserve policy.

iii. The Independent Tribunal

Appointments to the Independent Tribunal
The new legislation provides that Tribunal members will be composed of sitting judges from the federal and provincial Superior Courts.

An appointment is for one term (maximum five years) and a tribunal member can only be reappointed for one additional term. A Tribunal member will be a tenured (until age 75) judge before, during and after their term on the Tribunal, so they will not have a significant personal stake in whether their term is renewed or not.

The Political Agreement provides that Canada will engage with the AFN in recommending the judges designated to serve on the Tribunal.

Composition of the New Tribunal
The legislation provides that the Tribunal members will be drawn from a roster of eighteen judges. While there were discussions early on about appointing six full-time judges to serve on the Tribunal, for practical reasons the legislation contemplates that there will be sufficient judges to address the work load up to a maximum that is equivalent to the work of six full-time judges. The roster of eighteen judges meets this requirement.

Manner in which the Tribunal Tries Cases
The new legislation provides that cases will be tried by a single Tribunal member. This individual is termed the "adjudicator."

The new legislation gives the adjudicator very broad discretion to determine how to proceed. In the legislation, the Tribunal is directed to take into account the need for an "expeditious" (prompt) resolution and is authorized to take into account "cultural diversity" in its process.

Under the legislation, the Tribunal may establish a committee to develop general rules on procedural matters, including awards of costs. In so doing, it may take guidance from an advisory body consisting of "interested parties."

First Nations want a role in developing rules and guidelines for the Tribunal. In the Political Agreement, the AFN and Canada commit to working together to make a joint submission to the Rules Advisory Committee. Preparing this submission will be a priority in the lead-up period before the new Tribunal is fully engaged in hearing cases.

It will be important to ensure that the Tribunal's process reflect the values of flexibility, efficiency and respect for cultural diversity, particularly with respect to transmission of oral history. Adopting highly elaborate or overly-formal rules, such as those used in many courts, might only serve to unnecessarily complicate and prolong the adjudication process.

Elimination of Time-Related Technical Defences
The new legislation prevents the federal government from relying on technical defenses such as statutes of limitations. Such defenses penalize First Nation claimants for the passage of time and prevent a claim from being considered on its merits.

iv. The Positive Definition of a Specific Claim

The definition of "specific claim" in the new legislation builds on the one contained in *Outstanding Business*, the government of Canada's longstanding policy statement on its approach to specific claims. The new definition, however, provides welcome clarifications for First Nations:

- The definition of specific claims has been refined to make it clear that it includes **pre-Confederation claims** (lawful obligations arising from the conduct of British or colonial executives);
- The definition of claims arising from "treaties or agreements" has been refined to refer to "treaties or other agreements," to make it clear that agreements do not have to be of the **same nature** as treaties;
- The category relating to the "administration of reserve lands" has been clarified so that it refers to "the provision of reserve lands, including unilateral undertakings that give rise to a fiduciary obligation in law." A reasonable interpretation of this provision includes claims arising from, among other things, acts or omissions relating to the implementation of treaty or reserve commission recommendations (a category of lawful obligation recognized by the Supreme Court of Canada in the *Wewaykum* decision);
- The category relating to "compensation for reserve land taken or damaged" is now defined as referring to "inadequate compensation." This clarifies the fact that the government cannot reject these claims if no compensation was provided in the first place.

This new and clarified definition of specific claims is an important breakthrough for the fair resolution of First Nations claims in that it removes a number of technical obstacles to First Nations bringing claims forward.

Exclusions
The new legislation excludes some claims, such as those less than 15 years old, those arising from modern land claims agreements, those dealing with agreements in areas such as social services, and claims in excess of $150 million.

The new legislation also contains one other exclusion: claims based on treaty rights "of an ongoing or variable nature, such as harvesting rights." These are freestanding rights that are not attached or associated with lands or assets. For example, a claim that federal activity interfered with a right to harvest in traditional territory outside of a reserve could not be brought as a specific claim under the new legislation. It would have to be dealt with either in a forum dealing with treaty rights or in the courts.

It must be emphasized, however, that treaty rights of an "ongoing or variable nature" can be taken into account in assessing compensation for unlawfully surrendered or expropriated treaty land. For example, a claim for lost reserve land may result in compensation for the loss of use of that land, including the loss of its use for harvesting or such as a claim in a treaty to be provided with cattle or agricultural instruments (so-called "cows and ploughs" claims).

For this reason, the Political Agreement commits Canada and the AFN to engage in a "Treaty Process" to develop a joint approach to address treaty issues not addressed in the new claims system, as well as to ensure that those claims excluded from the new system are addressed in a fair and timely manner through other processes.

v. Non-Derogation

The wording and impact of "non-derogation" clauses in federal laws that concern First Nation peoples has been a topic of much debate. For example, Parliament sometimes produces "non-derogation" clauses that are worded in a way that actually reduces their legal impact.

It was not possible to include a "standard" non-derogation clause in the new legislation. A clause that says "this legislation does not affect rights" would not be consistent with the fact that the legislation deals with cases involving rights that can go for final and binding determination by the Tribunal.

However, the language in the new legislation makes it clear that the statute has no affect whatever on the rights of a First Nation that chooses not to use it, and only impacts on rights which the legislation expressly spells out.

vi. Financial Commitments

The new legislation gives the federal government some ability to limit and manage expenditures. For example, the Tribunal will only deal with individual claims that are valued at up to $150 million. The federal government can also require that Tribunal awards be paid in installments. There also is a cap on expenses related to the time spent by judges working for the Tribunal that is equivalent to six judges working full-time. This could limit the pace of the Tribunal's work.

Over the next five years, the federal government is committed to a figure of $250 million per year to settle claims, and leaves room for additional money to be spent on claims above the cap.

There is no commitment in the new Act itself on how much the federal government can spend on funding or processing claims. A number of these issues are being dealt with through the Political Agreement.

vii. Participation by Provinces and other Third Parties

Claims brought to the Tribunal will generally involve breaches of lawful obligations by the government of Canada. Any award against Canada will arise from the federal Crown being "at fault." For this reason, there is no authority under the new legislation for the Tribunal to force a province or third party to appear and be held liable for losses which do not involve the federal Crown.

However, provinces can be held liable for losses by the Tribunal only to the extent that they have caused a breach of a federal obligation or contributed to the resulting loss, and only where the province has chosen to accept the jurisdiction of the Tribunal. There are two distinct situations addressed in the new legislation. If Canada asserts that the province is wholly or partly responsible for the breach of federal obligation or resulting loss, the province has a right to participate as a party. Otherwise, the Tribunal can, at its discretion, grant the province party status if the Tribunal finds that the province is a "necessary or proper party".

As for other third parties, the Tribunal has the discretion to permit another First Nation besides the claimant to participate in a proceeding if the Tribunal finds that the additional First Nation is a "necessary or proper" party.

The Tribunal may choose to grant intervener status to another First Nation or third party, apart from a province, so that the third party can make representations on its interests. In considering whether to allow the intervention, the Tribunal must consider all relevant factors, including the extent to which the intervention will add to the cost and length of the hearing.

viii. Non-Legislative Elements

Availability of Negotiation and Mediation Services
Under the new approach, negotiation will be the preferred method of resolving a claim.

A new Specific Claims Alternate Dispute Resolution Centre will be created that replaces the Indian Claims Commission. It will be responsible for providing facilitation and mediation services to First Nation claimants and the federal government on a voluntary and fully funded basis. The new Specific Claims Alternate Dispute Resolution Centre will be available to claimants if a claim is accepted for negotiation.

Funding for First Nations Claims
The new legislation does not include a commission or body that can administer funding for First Nations to research and advance their claims. This issue is dealt with through the Political Agreement discussed below.

D - GUIDE TO THE POLITICAL AGREEMENT

The Political Agreement – formally entitled a Political Agreement between the Minister of Indian and Northern Affairs and the National Chief of the Assembly of First Nations in Relation to Specific Claims Reform -- represents a commitment by the AFN and the Government of Canada to deal with essential, ongoing matters related to reforming the specific claims system.

It became clear very early in the discussion between the AFN and Canada that a number of important issues could not be addressed solely through new legislation. For this reason, the AFN pressed for a Political Agreement to formally commit to a process and the necessary forums to ensure these outstanding issues would be addressed. The government agreed. In late November 2007 the Political Agreement was signed by National Chief Phil Fontaine and Minister of Indian and Northern Affairs Chuck Strahl.

The Political Agreement identifies the following key issues for further discussion and resolution:

- First Nations input into the selection of Tribunal members;
- Reacquisition of lands and Additions to Reserve (the Tribunal will only award financial compensation);
- A joint approach to address Treaty issues not covered by the legislation, with a goal of developing a Treaty implementation process;
- A process to deal with claims that exceed $150 million;
- Issues related to the processing and submission of claims, and transitional issues related to moving from the current system into the new system; and
- Funding and resource issues.

As well, the Political Agreement includes the creation of an ongoing AFN-Canada Liaison and Oversight Committee that will meet from time to time to review how the new system is operating, consider recommendations for improvement, and participate in a comprehensive five year review of the new *Specific Claims Tribunal Act*.

First Nations will no doubt agree that these concerns must be addressed and incorporated into the new approach if it is to be truly fair, independent and effective.

i. The Preamble

The Political Agreement begins with a preamble which states that resolving claims is a legal and moral obligation, and recognizes the cultural, spiritual, social and economic significance to a First Nation of recovering or replacing land that was unlawfully-taken.

This preamble, taken together with the preamble in the new legislation, provides useful direction to First Nations and Canada as they work together to develop those parts of the

new claims system that are not addressed in the legislation itself.

ii. Funding for First Nations Claims

The new legislation does not include a commission or body that can administer funding for First Nations to research and advance their claims. So, this issue is dealt with in the Political Agreement.

The Political Agreement provides that an ongoing AFN-Canada Liaison and Oversight Committee will develop principles on claims funding. The Oversight and Liaison Committee provides a forum for ongoing review and discussion of funding and other processing issues. It should be noted, however, that the Liaison and Oversight Committee will look only at the funding "system," and will not be involved in funding individual claims. Funding for claims remains the responsibility of the federal government.

iii. Finality of Decisions, Reacquisition or Replacement of Lost Land

The Political Agreement requires the AFN and Canada to resolve issues concerning the replacement or reacquisition of lost land. The Political Agreement recognizes the cultural, spiritual, social and economic importance of such land. It commits Canada to working with First Nations to review its Additions to Reserves policy (which AFN views as not working effectively) with a view to ensuring that it takes into account the situation of First Nation claimants to which the release provision of the new legislation applies.

The Political Agreement further commits Canada under its Additions to Reserves policy to provide priority consideration to those addition to reserve lands affected by the release provisions of the new legislation or to lands acquired to replace them.

iv. Appointments to the Independent Tribunal

The Political Agreement provides that Canada will engage with the AFN in recommending the judges designated to serve on the Tribunal. The process for this engagement is still to be worked out by the Liaison and Oversight Committee.

The issue of appointments also touches on the Specific Claims Alternate Dispute Resolution Centre (the new body that will replace the Indian Claims Commission). The AFN-Canada Transition and Implementation Working Group has recommended that the new Specific Claims Alternate Dispute Resolution Centre be composed of mediators appointed with input from the AFN.

v. Commitment to a Treaty Process

The new legislation excludes claims based on treaty rights "of an ongoing or variable nature, such as harvesting rights." For example, a claim that federal activity interfered with a right to harvest in traditional territory outside of a reserve could not be brought as a specific claim under the new legislation. It would have to be dealt with either in forums dealing with treaty rights or in the courts.

For this reason, the Political Agreement includes a "Treaty Process" clause that commits Canada and the AFN to work together on a joint approach to address treaty issues not addressed in the new specific claims system.

vi. Treatment of Claims Excluded by the Cap on Individual Claims or by the Definition of Specific Claims

The AFN is working with the federal government through the Political Agreement to ensure that any claims not addressed by the current system are addressed in a fair and timely manner through other processes.

A key concern here is the treatment of larger claims that exceed the $150 million cap. The AFN is seeking to ensure that larger claims will be given equal consideration by the federal government; that is, that they will not delayed or neglected while smaller claims are addressed. Larger claims will no longer have access to the public inquiry process of the ICC, because the ICC itself will be replaced by the Specific Claims Alternate Dispute Resolution Centre. Therefore, it is important these claims receive their fair share of federal attention and resources.

The AFN also expects to work with the federal government in the years ahead to deal with the treatment of other claims that are excluded, even though they may be of a very similar nature to those that can be fully addressed under the new legislation.

vii. Processing of Claims by the Federal Government

The new legislation sets out a process that is expected to spark a revolution in the way the federal government deals with First Nations specific claims. Canada now knows that it must address a claim within three years from the time the new Act comes into force, or else First Nations will be able to take their claim to a fair, independent and binding adjudication process.

The current Joint Task Force (which will only continue until December 31, 2007) has been at work on producing recommendations to the federal government to improve the way they internally process and fund claims. The AFN is seeking to produce a series of recommendations by the end of 2007 that will be included in a public report.

In the years ahead, the AFN-Canada Specific Claims Liaison and Oversight Committee will continue to review these issues, enabling First Nations to have input on these and other matters.

viii. Fiscal Framework

There is no commitment in the new legislation as to how much the federal government can spend on funding or processing claims. A number of issues related to this matter are being dealt with through the Political Agreement.

The AFN will work with the federal government in forums such as the Specific Claims Liaison and Oversight Committee to review funding principles and the extent to which claimants can access funding.

Over the next five years, the federal government has committed (through the Justice at Last proposal) to a figure of $250 million per year for the next five years to this new specific claims process. Money that is not spent in a given year will be carried forward to the next year. The federal government has also indicated that it will be prepared, on the basis of cabinet authorization, to commit additional money to resolve various individual claims above the $150 million individual claims cap.

ix. Transition from the Old System to the New One

The new Specific Claims Tribunal Act provides that claims already filed, but which are not resolved, will be considered "filed" on the date that the new legislation comes into force (which means that the "three year clock" begins ticking on the day the new legislation comes into force). In this way, First Nations will have the opportunity to refresh claims without losing their place in the queue. In addition, under the new statute, claims can be filed again if they have been previously rejected.

It has been further agreed that First Nation claimants that are currently engaged in the Indian Claims Commission's inquiry process and such claims are not completed by December 2008, or claims that were the subject of a positive recommendation(s) by the Indian Claims Commission but not accepted by the federal government ought to be given the option to proceed to the Tribunal rather than re-filing with the federal government. In these instances, it has been agreed that within six month of the new legislation receiving Royal Assent, the First Nation may advise the federal government whether it intends to submit new information to support its claim. If not, the federal government will then have six months to decide whether it maintains its original rejection. If so, the First Nation claimant may file its claim with the Tribunal.

The AFN-Canada Transition Working Group has addressed other aspects of transition, including recommendations on the winding down of the existing ICC and creation of the Alternative Dispute Resolution Centre.

x. Five Year Review

The Political Agreement states that the Assembly of First Nations will participate in a five year review to assess the effectiveness of the new approach to resolving specific claims. The Liaison and Oversight Committee will discuss the process and method for this five year review.

E - CONCLUSION

The Assembly of First Nations understands that land is of fundamental importance to First Nations. For our people, land is life. It is the foundation of our cultural, political and economic existence. By extension, the need to resolve outstanding land issues is of fundamental importance to First Nations.

The new approach that has been described in this document represents a significant improvement over the status quo and a fundamental shift in the federal approach to claims.

The AFN has achieved major successes in a number of areas, including the establishment of an independent Tribunal with binding authority, the definition of specific claims, a role in appointments to the Tribunal and other entities and, in general, a faster and more fair approach to claims resolution. As well, it was a major achievement to have First Nations leaders, experts and technicians at the table to draft federal legislation.

In a comparison with two notable previous attempts at claims reform – the 1998 Joint Task Force on Specific Claims Policy Reform and the federal *Specific Claims Resolution Act* (Bill C-6) – the new legislation and Political Agreement match or exceed the best aspects of these previous efforts.

The new legislation overcomes many of the fatal defects in the *Specific Claims Resolution Act*. It establishes a new adjudication system that is genuinely independent, places strict time limits on delays, and permits the overwhelming majority of specific claims to access the Tribunal if they cannot be resolved by other means.

The new legislation is of comparable quality to the 1998 Joint Task Force (JTF) Model Bill in many crucial respects. Both limit delay, both provide access to independent adjudication if necessary, and both provide a reasonably broad definition of specific claims and compensation criteria.

The conclusion of the AFN is that the new package - the legislation and Political Agreement - has integrity, practicality and a level of financial commitment that warrants serious study and consideration by First Nations.

The AFN believes that the package represents positive movement forward and an end to fifty years of futility in devising a new system. The result of this joint work with government has demonstrated real and historically significant results that will benefit First Nations and all Canadians.

This is a clear demonstration that we can work together and we must work together on any initiatives that affect our people, our lives and our lands. This approach is a model that should be applied to advance many other issues that we need to address jointly with Canada.

We thank our Elders, our leaders and all the citizens of our nations – past and present – for the guidance and support that has culminated in the fruits of this process.

Meegwetch!