



COMMUNIQUE TO UBCIC CHIEFS COUNCIL

To: BC First Nation Communities, Leaders and Organizations
From: BC Specific Claims Working Group
Date: April 10, 2019
Re: **Urgently needed judicial appointments and adequate funding for First Nations at the Specific Claims Tribunal**

The Specific Claims Tribunal is an independent quasi-judicial body created by legislation in 2008 with the aim of promoting reconciliation between First Nations and the Crown by adjudicating First Nations' specific claims in a fair, impartial and timely manner. UBCIC is calling upon Canada to immediately and effectively address and remove the current barriers to the Tribunal's mandate that have left the specific claims process in a state of operational crisis.

This Communique will outline key issues currently impacting First Nations' access to justice including operational and financial barriers put in place by Canada that undermine its stated reconciliatory goals.

It is the UBCIC's firm and unwavering assertion that the Canadian government must take immediate steps to provide the necessary resources for all aspects of the specific claims process to fulfill the reconciliatory objectives and organizational standards articulated in Justice At Last and set out in the *Specific Claims Tribunal Act*, as well as invest its full efforts in restoring full judicial membership at the Tribunal. UBCIC urges Canada to uphold its commitment to ensuring that the resolution of specific claims promotes reconciliation between First Nations and the Crown and the development and self-determination of First Nations. Until these actions have been carried out, the Specific Claims Tribunal will continue to face an ever-growing wall of unresolved specific claims that cuts off any hope for renewed nation-to-nation relationships, reconciliation, and justice.

In particular, UBCIC calls on the federal government to:

- Immediately ensure a full complement of judges is appointed to address the growing number of claims before the Specific Claims Tribunal;
- Immediately increase funding for First Nations to take their claims to the Tribunal;
- Immediately remove barriers to accessing funding for this purpose, such as providing up-front funding for Declarations of Claim.

Operational Barriers

Since the Specific Claims Tribunal's inception in 2008, Canada has created numerous barriers that have prevented the Tribunal from functioning at optimum capacity and efficiency.

Since it began operating in 2011, the Tribunal has never had the full complement of six full time superior court judges stipulated in the *Specific Claims Tribunal Act* (SCTA). There is currently one full-time chairperson (set to retire in 2020) and two part-time members; a third part-time member retired at the beginning of this month. Since 2012, the Tribunal Chair has been consistently vocal in expressing his concerns regarding the lack of appointments to deal with an increasing caseload, most recently in his 2018 Annual Report, but also in public forums, such as the Pacific Business and Law Institute's December 2018 conference on specific claims, and to claims research directors across the country. He has emphasized that the Tribunal's ability to fulfill its mandate is seriously compromised and the BC Specific Claims Working Group recognizes that an adequate number of capable judges is crucial to resolving specific claims.

This ongoing issue was not resolved by any commitment to new judicial resources in the 2019 federal budget, nor has there been any public response to the Tribunal Chair's plea for more judicial appointments. The lack of movement on this issue speaks to the federal government's lack of commitment to addressing its past wrongs.

Financial Barriers for First Nations

In addition to insufficient numbers of judges at the Tribunal, First Nations have for years identified underfunding as a key barrier hindering access to the Tribunal. This is confirmed by a recent study by the BC Specific Claims Working Group and by Tribunal Chair Justice Harry Slade in his 2018 Annual Report, which concludes that "funding for Claims before the Tribunal is woefully inadequate."

The Crown-Indigenous Relations and Northern Affairs website indicates that Tribunal funding for First Nations is a discretionary expense related to annual budget disbursements; while it states that every effort will be made to provide funding for the equivalent of two years at the Tribunal, the Tribunal Chair cites 5.2 years as the average length of time for a single claim to be granted a decision and links the issue of timelines to funding inadequacies. The Tribunal's 2018 Annual Report concludes that "funding limitations and the manner in which available funding is trickled out to First Nations Claimants amount to a denial of effective access to the Tribunal."

While the 2019 federal budget included additional funding for the research and development of specific claims – effectively, the restoration of funding lost to dramatic cuts made in 2014 – there was no mention of resources to ensure full judicial membership at the Tribunal, nor have there been any commitments to address this situation. We note that the Specific Claims Branch itself has not received additional resources to cope with a mounting backlog of claims awaiting assessment beyond the legislated three-year timeframe. The remedy available to First Nations is to file their claims with the Tribunal, yet the Tribunal itself cannot possibly cope with an influx of claims with its current deficit of judges.

In addition to ensuring that a sufficient number of competent and able judges serve the Tribunal, the federal government must provide adequate resources to allow First Nations to fully participate in what is supposed to be a primary mechanism for achieving justice and restitution for Canada's failure to fulfill its legal obligations to First Nations as articulated in the *United Nations Declaration on the Rights of Indigenous Peoples*.

Background: Specific Claims Tribunal Act

In 2007, the federal government introduced its Specific Claims Action Plan: *Justice At Last* that included fundamental reforms to the specific claims process. The reforms were meant to address Canada's inherent conflict of interest in

assessing claims against it, and the prolonged delays that resulted in an ever-increasing backlog of unsettled claims. The reforms were structured around four key ‘pillars’:

- Impartiality and fairness;
- Greater transparency;
- Faster processing;
- Better access to mediation.

A cornerstone of *Justice At Last* was the formation of an independent Specific Claims Tribunal given the legislative authority to make final, binding decisions on claims in instances where claims had been rejected for negotiation by the Specific Claims Branch or when negotiations reached an impasse.

On October 16, 2008 the *Specific Claims Tribunal Act* came into force, which established the Tribunal’s mandate “to decide issues of validity and compensation relating to specific claims of First Nations.” The *Act* also stipulated that Tribunal membership would consist of six full-time superior court judges or the equivalent, with a tenure not exceeding five years.

As Canada has yet to formally commit to engagement on an independent specific claims assessment process to address its conflict of interest, the Tribunal is the only recourse for First Nations whose claims have been rejected by Canada or are at an impasse in negotiating a just and timely resolution of their claims. According to its 2018 Annual Report, the Tribunal has received 93 specific claims since 2011, 75 of which are currently active. The Tribunal’s website documents 27 decisions on validity or compensation in just over eight years. The Tribunal is respected by First Nations for its independence, expertise, and reconciliatory purpose.

Please direct any feedback and questions to Jody Woods, Research Director, UBCIC:

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