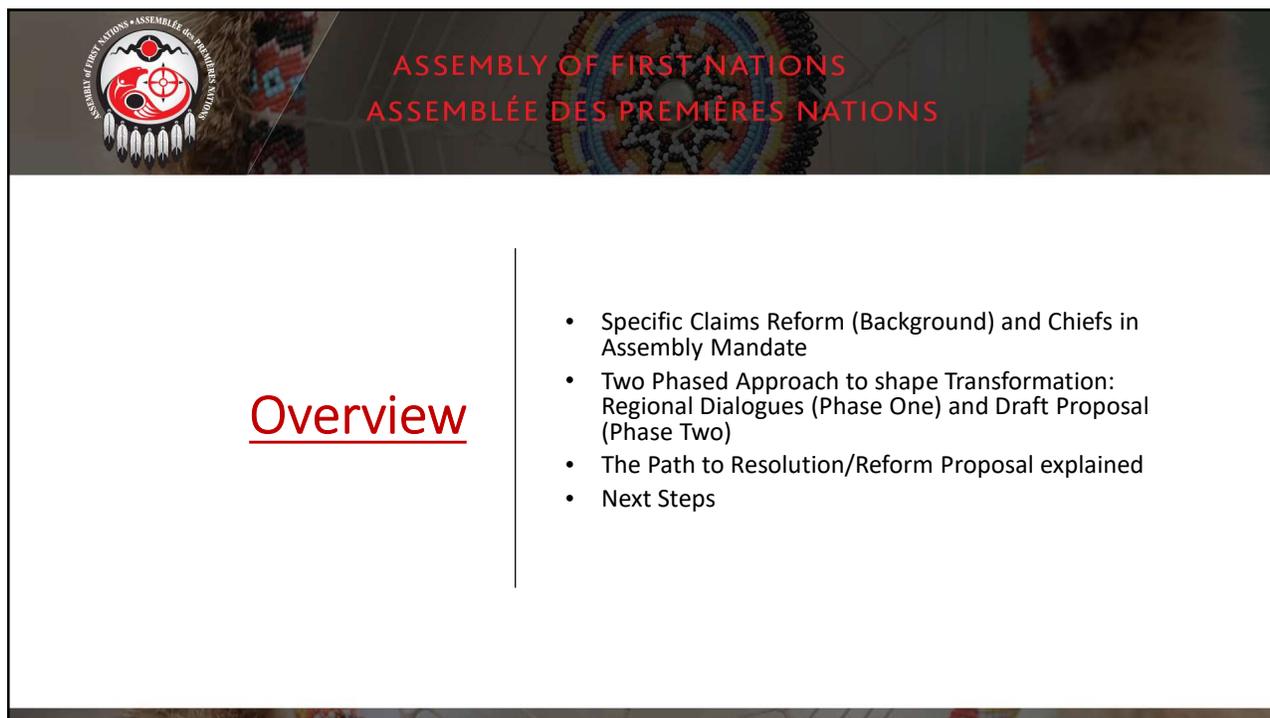




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5 Year Review & OAG (2016)

- In 2016, Canada released its mandatory Five-year review of Specific Claims Tribunal Act (2015) and by independent mandate, the Office of the Auditor General issued its own Report on Specific Claims (2016) finding Canada failed in its implementation of JAL.
- In response, Canada and AFN agreed to form an AFN-Crown-Indigenous Relations and Northern Affairs (CIRNAC) Joint Technical Working Group (JTWG) to develop recommendations to transform the process for consideration by First Nations and Canadian leadership.
- The JTWG is comprised of the AFN, First Nations technical experts and the Specific Claims Branch

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2017 – Shift in Focus and Mandate

- Two AFN forums in 2017 resulted in a shift in focus:
 - Desire for fundamental change – Canada’s process constitutes a conflict of interest and the just resolution of claims requires a **fully independent specific claims process**
- AFN Resolution 91/2017 *“Support for a Fully Independent Specific Claims Process”*
 - Calls on the AFN to “jointly develop a fully independent specific claims process with the goal of achieving the just resolution of Canada’s outstanding lawful obligations through good faith negotiations”.

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2017 – Federal MC Process & Engagement Funding

- The AFN participated in a federal MC process in 2017:
 - Updated mandate for SCB to engage on what a fully independent specific claims process might look like.
 - Funding to support First Nations led-engagement
- Following a period of inaction, SCB indicated that the MC submission had been accepted.
- In 2019 Minister Bennett announced that her government would provide funding to support a First Nations-led engagement process by the AFN.

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2019 – AFN Dialogue Sessions

- AFN planned and carried out a comprehensive engagement process in the fall of 2019 with AFN regions with the goal of seeking input into **what a fully independent specific claims process should look like.**
- Engagement would produce two outcomes:
 - A comprehensive “what we heard” summary report
 - A draft proposal based on First Nations input
- Canada was unable to participate (due to the federal election).

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Summary of Regional Dialogue Sessions

- AFN carried out 9 regional dialogue sessions in 2019:
 - Vancouver, BC
 - Fort St John, BC
 - Edmonton, AB
 - Saskatoon, SK
 - Winnipeg, MB
 - Six Nations, ON
 - Thunder Bay, ON
 - Quebec City, QC
 - Halifax, NS
- In addition to in-person dialogue sessions, the AFN sought written submissions.
- Each Session was Webcast and a Comprehensive Written Summary of this considered dialogue was prepared and published on the AFN website (2020)

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2020 - Draft Proposal Process

- Following the 2019 dialogue, the AFN and its technical team began developing an **Assembly of First Nations** draft proposal for a fully independent specific claims process.
- The drafting process included an initial peer review period which incorporated comments from several claims experts.
- In fall 2020, AFN provided the CCoLTR a comprehensive briefing on the draft reform proposal and claims reform process.
- It was agreed that the AFN would seek an updated resolution mandate identifying the core principles that must be included in any new specific claims process

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2020 AFN Resolution

- In December 2020, Chiefs-in-Assembly passed AFN resolution 09-2020 identifying four principles required in any new specific claims process:
- **The Honour of the Crown:** the specific claims process must be consistent with the Honour of the Crown.
- **Independence of all Aspects of Claims Resolution:** specifically including funding and oversight of claims and their resolution that must be handled independent of Canada.
- **Recognition of Indigenous Laws:** The recognition of First Nations' laws may impact the conduct of adjudication, dispute resolution and negotiation.
- **No Arbitrary Limits on Compensation:** there will be no financial constraints, such as the \$150-million cap on the jurisdiction of the Tribunal or the Commission –All claims regardless of size should have access.
- **These four principles are reflected in the Draft Proposal.**

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2021 - Draft Proposal Process cont.

- The AFN carried out a second phase of peer review with several Indigenous legal experts in 2021 seeking input on how to better incorporate Indigenous laws into the proposed process.
- The final step required to complete the draft proposal is a period of public comment and review (Summer 2021).

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The Centre: Core Functions

- The AFN Draft Reform Proposal would create a new Independent Claims Resolution Center (The Centre) which would operate as an independent entity entirely separate from SCB with 5 core functions:
 1. Registrar
 2. Funder
 3. “Resource Hub”
 4. Commission
 5. Adjudication (Current Tribunal)
- The Centre will be created by federal statute and require a 5-year legislative review
- The SCTA will require amendment to harmonize objectives

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The Centre: Governance

- A system of governance will be established jointly with Canada to ensure The Centre operates consistent with the UN Declaration.
- Create an Advisory Committee on the Application of Indigenous Laws to advise and inform the work of The Centre.

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The Centre: No arbitrary financial limits (Upper or lower)

- Every claim that meets the criteria to ground a claim is eligible to be submitted to The Centre – regardless of potential value (big or small) or which approach a First Nations may choose to pursue (adjudication or negotiation).
 - The potential settlement value of a claim shall in no way impede access to justice or resolution.
 - The claim is being advanced by a First Nation, not assessed by the Crown for its “validity”.

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The Centre: The Path to Resolution

- Claim Development > Access to Funding through Registrar
- Claim Submission to The Centre > Filed with Registrar
- Registrar gives notice to Canada of filed claim
- Commission (Facilitated) or non-Facilitated Negotiation > Parties choose the tool required to achieve settlement (flexible)
- Either facilitated or non-facilitated tables have recourse to the Tribunal to resolve impasse
- The objective of all paths is to reach a negotiated settlement in a fair, inclusive way that may incorporate Indigenous laws, considers broader understanding of lawful obligations/losses and alternate forms of remedy

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The Centre: The Commission

- The Commission will provide First Nations with a path to resolution through facilitated negotiation.
- The Commission provides facilitation to record oral history, articulate and understand Indigenous laws, and works with the resource hub to preserve documentary/oral evidence
- Commissioners (jointly appointed and need not be judges) are qualified experts in claims and mediation and possess a knowledge of First Nations communities
- The range of remedies (restitution) is not limited to monetary settlement

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The Centre: Adjudication

- The current SCT (SCTA) amended to create more flexibility between it, as adjudicator, and the negotiation tables
- A First Nation and Canada may quickly agree that the path to resolution should involve the adjudication of issues (fact/law) or they may agree to negotiate and seek recourse on discrete issues (i.e. proportionate to needs of parties)
- The available remedy will remain cash compensation only but will not be confined to an arbitrary ceiling

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The Centre: Indigenous Law and Legal Orders

- An Advisory Committee on the Application of Indigenous Laws (slide) made up of Indigenous experts will be jointly established and will offer guidance to the Centre on the application of First Nations laws and protocols at all stages of the resolutions of specific claims, including evidence sharing, incorporating Indigenous laws and ceremony in negotiations and Tribunal processes, management of sensitive information or traditional knowledge, etc.
- Superior Court Judges at the Tribunal will undergo “cultural competency training” (TRC #94; Justice Finch, Duty to Learn)

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The Centre: Monitoring Progress and Keeping Time

- The Centre will track timelines and reports of progress will at least be annual and made available to First Nations, the public and Parliament

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The Centre: Resolution and Implementation

- The Centre must be empowered to facilitate resolution of all claims regardless of their value in a timely, transparent manner that is not dependent upon the delayed and secretive Departmental, Ministerial or Cabinet mandating processes.
- The Centre – through Adjudication and/or the Commission oversees development of an Agreement in Principle. The adjudicative body (Tribunal) will have the power to enforce its timeframes.
- The Centre will have power to monitor and compel implementation (through penalties, reports to Parliament).

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The Centre: Oversight and Oversight Committee

- The Centre will report annually on all activities of all its functions (Registrar, Funder, Resource Hub, Commission and Tribunal)
- The report will be tabled with Parliament and First Nations, made public, and provided to relevant international mechanisms and procedures (such as the Committee on the Elimination of All Forms of Racial Discrimination; the UN Permanent Forum on the Rights of Indigenous Peoples)
- An Oversight Committee will be created at the time the Centre is established and include members of the Advisory committee on Indigenous Laws and the Tribunal Advisory Committee

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2021 – Engaging with Canada

- The current Draft Reform Proposal reflects a First Nations position - not yet Canada's position
- Spring 2021 - SCB plans to submit a Memorandum to Cabinet to seek endorsement of the concept of a fully independent specific claims mechanism
- This mandate from Cabinet will enable the SCB to begin in-depth dialogue with the AFN on the implementation of a fully independent specific claims mechanism.

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2021 – Engaging with Canada

- The AFN intends to release the Draft Reform Proposal for public comment – May/June
 - Ensure transparency
 - Increase pressure on federal decision makers
- Once public comment period is complete, AFN would update the Draft Reform Proposal and incorporate comments, as necessary.
- If SCB receives a positive signal from Cabinet, then the AFN and SCB will immediately begin working to develop a joint reform proposal.
 - Must be consistent with the core principles

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Next Steps

- Approve, translate and release Draft Reform Proposal for public comment (May 1, 2021)
- Review public comments (July 2021)
- Begin substantive discussions with SCB (September 2021)

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