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Settling Old Debts

A Plan for Expediting Canada's Land Claims Process

By Joseph Quesnel

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About the Author

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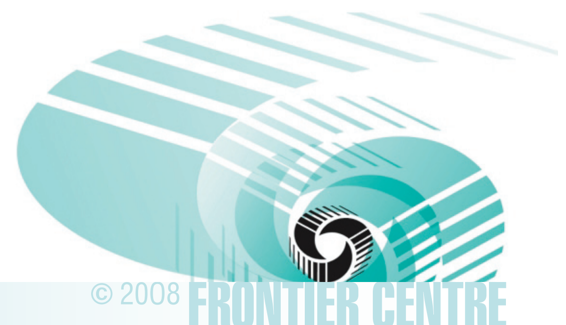

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Executive Summary

- Some of the major flashpoints in Native-government confrontations involve issues related to specific claims, such as Oka and the ongoing Caledonia standoff in southern Ontario.
- Ottawa passed Bill C-30, The Specific Claims Tribunal Act, while a step in the right direction as it creates an independent tribunal with enforcement powers, limits financial awards and does not include a sunset clause for filing and resolution.
- At the current rate, a single land claim can take up to 13 years to resolve, and with a backlog of 800-1,000 claims, the process could take over 100 years.
- Unresolved land claims total between $2.6 billion and $6 billion. Some sources estimate, with the number of claims increasing annually, the value is closer to $10 billion. Such unresolved claims create tremendous economic uncertainty and prevent investment. They represent lost opportunities for First Nation communities. This is a central reason to expedite their resolution.
- Land claims are part of the "right-based agenda" for First Nations. But once this area is resolved, these communities can focus exclusively on socio-economic improvement.
- The newly created specific claims tribunal has a cap on compensation awards of $150 million. Although they are similar to courts in structure and process, they face this limit in a manner other courts do not.
- The federal government should remove the cap on financial awards and balanced that action with a sunset clause. This would show First Nations that the government is committed to justice.
- To prevent opportunism, the independent tribunal should adopt very clear and strict rules for accepting the validity of specific claims. This would counter-balance any attempts to flood the system with vexatious claims.
- To balance the proposal, First Nations would need to accept a specific claims filing and settlement deadline. Each deadline would be different, but firm in enforcement. This will bring all claims to the fore, up front, and eventually help provide finality.
- Any expedited land claims process should involve a requirement that First Nation governments provide transparent and accountable governing institutions. This means they must adopt accountability measures, similar to the First Nation Governance Act. Monies from settlements should go towards community benefit, not corrupt band structures.
- The legislation should mandate First Nation input into the choice of judges to sit on the tribunal and should consider establishing First Nation advisory councils, drawing from all regions of Canada, which provide input into which claims get adjudicated.

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Background

Despite the recent establishment of an independent tribunal to expedite First Nation land claims through The Specific Claims Tribunal Act, challenges still exist that prevent the resolution of all claims. However one may feel about the validity or justice of a particular claim, it is evident that Canada requires a lasting solution to the issue of outstanding specific claims. Unresolved land claims are a "contingent liability" on the Crown and represent an impediment to First Nation economic development. While seeking justice, Canadians should also be opposed to opportunism within the land claims process.

Oka. Caledonia. Ipperwash Park. These are words that hold conflicting emotions for many Canadians, both First Nation and non-Aboriginal. All incidents involve violence from First Nations over land issues, or involved "standoff" situations that led to tragic violence in some instances. While not directly addressing the issue of the morality of "civil disobedience" or the matter of the rule of law, it is clear that something is wrong in Canada involving First Nations and access to their traditional territories. The tragedy is that both the Oka crisis in Quebec and the ongoing Caledonia standoff in southern Ontario are so-called specific claims disputes that should be dealt with under Canada's specific claims policy. Up until very recently, the government did not even have an independent tribunal to settle these disputes, but instead relied on a system where the Crown acted in a conflict of interest where it was responsible for negotiating claims for First Nations, but also had a government responsibility to protect the interests of non-Aboriginal Canadians.

Specific land claims arise when: (1) Canada has failed to set aside land under the treaties: (2) where reserve land was taken illegally; or where Canada has improperly administered First Nations' lands or other assets. In other words, specific claims deal with issues where First Nations were fraudulently dealt with by the federal governments. In the case of money or assets, this can be defined as theft. There are instances, where they are valid, where the government broke lawful agreements with First Nation communities, over a treaty signed, or over assets or cash held in trust for First Nations. For example, the Kainai (Blood) Nation in Alberta filed a claim over the absence of compensation received for the surrender of land, which they finalized in 1889. This claim was not finalized until 1995, with the government acknowledging there was clear violation of a legal agreement.[1]

There are also comprehensive negotiations that deal with claims where treaties have not already been signed between a First Nation and the government. If a First Nation did not sign an historic treaty with the federal government, they enter into negotiations to develop one. British Columbia has a large number of these, as does the Yukon. They are also called "modern treaties" as they are negotiated by present government and First Nations.

It was also common knowledge within government that a single specific claim could take as long as 13 years to resolve and that the government was dealing with 800-1000 backlogged claims. At this rate, this means it could take up to 112 years to resolve them all and this does not account for the 60 or so that are filed every year. Statistics from Indian Affairs indicate that the federal government has resolved roughly 20 per cent of the 1,337 specific claims put forward by First Nations between 1 April 1970 and 30 September 2006.[2]

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"Even devoting a fraction of recent government surpluses would go a long way towards the final resolution of all claims.

This study will call for a stabilization of this increase, as well as a plan to deal with all specific claims as quickly as possible once a final volume is determined.

Moreover, there are enormous costs associated with the specific claims process. Sources within the Assembly of First Nations (AFN), the major organization representing on-reserve Indians, estimate that the total value of unresolved land claims is between $2.6 billion and $6 billion.[3] The chief disadvantage of unresolved claims is the enormous economic uncertainty it creates. Without knowing who really controls land, economic development is impeded and communities lose the benefits that could accrue from the land, including potential natural resources. It should be stressed, however, that access to new lands does not guarantee material improvements. The key is that this land is used productively by the First Nations themselves.

Even devoting a fraction of recent government surpluses would go a long way towards the final resolution of all claims.

In addition, a sunset clause is necessary for filing and resolving all claims. In the long run, Canada will save more by putting all necessary monies towards this process now and ensuring that all claims are settled. Costs of endless litigation and government negotiation over a century could be brought down considerably if an expedited process stabilized the number of claims and dealt solely with the backlog over perhaps 25-30 years.

If there is any issue that involves government mismanagement it is the issue of government handling of First Nation lands. Originally entered into as a means to facilitate non-Aboriginal settlement, these treaties were eventually disregarded by government at many turns. The reserve system itself, through the Indian Act, was an attempt to separate reserve Indians from settlers as they prepared to be "civilized." Rather than deal with these land claims, successive governments chose instead to ignore them. Governments chose to follow the path of legal resistance. Their preferred course was to follow the barest minimum of legal requirements involved and to prefer the solution that appeased the public and minimized the burden on taxpayers.[4]

Moral and Economic Reasons for Expediting the Process

The central contention of this study is that the existing approach must change. The first reason is for fundamental justice. A central premise of this paper is that specific land claims are about just restitution. They relate to restitution for illegal activity conducted by the Crown against First Nations. They are not about "redistribution of wealth" or global economic justice. They are not about achieving "cosmic justice" as some thinkers such as Thomas Sowell have written about as it concerns unattainable ends.[5] The Canadian government has spent billions on meeting Aboriginal needs that do not stem from treaties, so this proposal does not address such matters. It only applies to valid specific claims from validly-signed treaties.

Settling land claims is not about trying to raise First Nations to a position of complete social equality with other Canadians with the mistaken belief that such settlements are all that is necessary to such a desirable end, although their timely resolution will assist in attaining that goal. Only individual and group advancement can do that. They are a simple matter of righting a wrong and achieving basic justice where a clear

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infringement of rights has occurred. To be sure, opportunism does exist within what many call the "Indian Industry," and these tendencies should be rooted out. This proposal calls for strict guidelines for ensuring the validity of a claim so as to avoid any abuse.

Second, this approach of stalling land claims and allowing them to fester over long periods of time simply does not work and will cost more for everyone in the long run. The "snail's pace" approach benefits only lawyers and consultants who have a vested interest in long, drawn-out court battles. The slow pace of endless negotiations costs taxpayers and First Nations and increases the chances for confrontation on the part of First Nations with their government.

It took Ottawa a long time to even acknowledge their land liability to First Nations. In fact, in 1927, the federal government amended the Indian Act to make it a crime to raise money in order to prosecute any claim of an Indian tribe or band in respect of the "land question."[6] So, while understanding that it failed its lawful and moral obligations to First Nations, the government tried its best to ensure that no one raised these issues in courts or before government, even to the point of criminalization. This restrictive law would not even be repealed until the 1950s.

For decades, First Nation leaders, human rights advocates and treaty process participants called for the establishment of an independent claims process. It was long recognized that the current system was inadequate and perpetually in a conflict-of-interest situation as the Ministry of Indian and Northern Affairs (INAC) was pulled in two divergent directions. While obligated to deal with its fiduciary duty towards non-Aboriginal Canadians in negotiating comprehensive and specific treaties with indigenous peoples, INAC also represented Native peoples across Canada; thus, the body pledged to represent native peoples sat on the opposite side of the negotiating table during treaty talks. While subsequent Liberal governments worked on and even passed legislation creating such an independent body (the Liberals under then Prime Minister Jean Chrétien created an independent specific claims body, which was tabled in 2002 and passed a year later, but his successor, Paul Martin, never proclaimed the law). Instead, the actual establishment of this body came under the current Conservative government.

The new specific claims tribunal, established under Indian Affairs Minister Jim Prentice, was universally seen as a positive step in the right direction by First Nation leaders. However, many leaders instantly saw the limits of such a body. While it was independent of government and could make binding decisions over claims, it also had legislated limits on its awards. Specific claims often involve cash settlements, as well as land, or a mixture of both. In The Specific Claims Tribunal Act, specific claims are capped at $150 million and the legislation excluded claims that involved punitive damages.

These caps should be lifted, first to demonstrate to First Nations that the government is committed to principles of justice and second, in conjunction with a sunset clause, it is in the interests of all parties to ensure that all claims are resolved fully and completely. Putting all available resources to an issue is important, if it translates into final resolution over the long term. Simply put, continuing the process, even under the new expedited tribunal, will continue to mean untold public costs and costs to First Nation communities over the long term.

Governments should prioritize land claims as important projects that need immediate resolution. They should not respond to them only during flashpoint times, but as matters of both just restitution and reconciliation (as in the case of the government's apology for residential schools), as well as an issue that need final resolution in order to assist First Nations in other pressing areas, such as economic development and social improvement. Historically, to ignore land claims, judging from the present reality, has not served government, First Nations, or the public well. It is time for a new approach.

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Land Claims, Economic Development and Self-Government

While many First Nation leaders and academics stress the "justice" arguments in favour of Aboriginal rights, there is a noticeable dearth of research into economic development issues. Aboriginal and non-Aboriginal scholars devote considerable hours to arguing that political self-government is the panacea to First Nation problems. While this paper makes the argument that self-government should be the eventual goal of First Nations, who would then be freed from the shackles of the Indian Act, it also understands that many of the problems which beset First Nation communities are economic and social in nature. As First Nation author Calvin Helin argues, the central problem that confronts Canada's Indian population is government dependency.[7] Without losing sight of the goal of self-government, this author believes that First Nations should focus on immediate socio-economic improvement first. Achieving this involves harnessing the economic wealth that all First Nations could potentially have access to and create. Once these communities achieve a measure of self-reliance, they will be able to establish healthy self-governing institutions, and residents themselves will also likely be healthier as a result of their increased independence.

Access to land and resources is a fundamental part of wealth creation. The Peruvian economist Hernando De Soto noted that one of the best ways to elevate the status of downtrodden people is to allow them to access wealth through their land. Without certainty of title, land cannot be put towards productive purposes or leveraged as collateral for loan purposes.[8] In effect, he argued, wealth is "frozen" as it cannot be accessed. This observation is as true for First Nations in Canada in 2008 as it was for the rural poor of South America, or in any developing country.

While leaving aside issues of individual private ownership of land, it is important that First Nations receive certainty of title to the lands and resources that ought to be available to their communities.

The Standing Senate Committee on Aboriginal Peoples released a report in 2007 entitled, Sharing Canada's Prosperity – A Hand up, not a Handout. This report looked at the barriers to economic development experienced by First Nation communities. One of its chief conclusions was the following:

> The Committee found that increased access to lands and resources - including through the resolution of land claim and treaty land entitlement settlement agreements as well as the negotiation of resource revenue sharing arrangements from development on traditional territories - is fundamental if the existing Aboriginal economic opportunity structure is to change in any significant way.[9]

The report, in evaluating First Nation communities all across Canada, all found strong empirical evidence that,

> Communities whose access and jurisdiction over lands and resources has been success-fully negotiated enjoy greater economic benefits than those communities who have not concluded land claim agreements. Land and cash transfers to Aboriginal people, as a result of settled land claims, will be important economic drivers in the future.[10]

Professor Bryan Schwartz, a lawyer for many First Nations, argues that resolving land claims should not solely be seen through the lens of the "grievance agenda",

"The central problem that confronts Canada's Indian population is government dependency.

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but should be as part of an economic empowerment agenda. He writes that: "When bands get their claims settled and they get the resources, they are put in trust funds and they contribute to community development and to self-sufficiency."[11]

It is also significant that First Nations themselves realize that recognition of their rights to land and resources are critical to ending dependency and attaining a measure of economic self-sufficiency.

In the end, policy makers and politicians can present the issue to the public as one in which First Nations will eventually achieve self-reliance and increased wealth.

Resolving land claims, both specific and comprehensive, is the first step along the long road towards economic development and self-reliance and the eventual goal of political and cultural self-determination. Expediting land claims, from the government and First Nation perspective, should be viewed as part of this process and not separate from it.

Capping Compensation

While there is certainly a good economic argument to make for capping compensation awards available through a land claims tribunal, capping does not serve the interests of First Nations or Canadian taxpayers in the long run. It is also the case that claims that exceed the $150 million would have to be dealt with by the federal government anyway, so it would make sense to have these claims go through this binding tribunal.

First Nation leaders and communities argue that as long as the government caps settlement compensation, the land claims tribunal is nothing more than a glorified "small claims court"[12] and not really a body that seriously will handle all claims, big and small.[13] It should also be noted that courts established by government are not subject to arbitrary limits in the amounts they can offer in litigated claims, so it makes little sense to limit land claims tribunal in a different manner, as these tribunals are similar in

> **"Capping does not serve the interests of First Nations or Canadian taxpayers in the long run.**

structure and process to a court, as former Indian Claims Commission head Jim Prentice said:

> If it is intended that an independent claims tribunal replace the court forum for the final resolution of claims, then its jurisdiction must include the power to award compensation. This is a subject at which the federal government has balked, on the basis that unlimited awards would cause disruptions in budgetary planning. It can be pointed out, however, that other courts are not subject to any arbitrary limits in the amounts that they can offer in litigated claims. Therefore, it makes little sense to restrict the jurisdiction of a specialized tribunal in this way, when the courts, who do not possess any particular expertise, are not similarly limited.[14]

Resolving valid specific claims against the government should not be viewed as discretionary spending, like education or health care. They are contingent liabilities on the Crown and they must be dealt with one way or another. They are not simply aspects of departmental spending, as they deal with lawsuits against the Crown.

It also makes no sense to limit land claims tribunals in such a manner, as any perception that the tribunals are half-hearted as regards First Nations will only impede that community's belief that Canada is committed fully to the process. First Nations would also interpret the lifting of the cap as evidence that Ottawa views land claims resolution as "justice and human rights issues." Moreover, having strict guidelines for determining the validity of claims will also signal to First

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Nations that they have a clear responsibility to ensure that the claims they bring forward are valid and foundational.

Jim Prentice, in his former role as Indian Claims Commission Co-chair, asserted that specific claims should not be merely viewed as government programs, but as restitution that shows Canada's commitment to justice.[15] For a long time, First Nations viewed the federal government's reluctance to establish an independent tribunal with the power to make unlimited, binding financial awards as evidence that the government did not want to disrupt the status quo or give up any resources to First Nations.[16] Lifting the cap now would go a long way towards removing that perception, which only furthers suspicion and reduces First Nation willingness to buy into the whole process.

Regardless of how one feels about the validity of specific claims, it is clear that to lift the cap would help the process of reconciliation between First Nations and the Crown and would pay off in the long run. On a practical level, removing the cap, in conjunction with a sunset clause on filing claims, may serve as an added incentive for communities to bring all of their potential claims forward. Would this create a case of moral hazard, where First Nations would risk it all with claims because they have no incentive not to do so? Under this proposal, this would not be the case. First, First Nation claimants would face a hefty filing fee that would encourage them to file on their most substantial claim and second, strict guidelines for determining the validity of claims would ensure that only valid claims reach tribunal stage. Faced with this prospect, First Nations would more carefully evaluate which claims to bring forward and which they would allow to die.

Before one assumes that lifting the cap on compensation will open the financial "floodgates" and throw the government budgeting process into disarray, it is important to know that claims in excess of $150 million *actually represent a very small proportion of all total claims.*[17] Most specific

For decades, an entire land claims industry has been erected around the mentality that everything is up for negotiation ...

claims are small and do not even reach the capped amount. Witnesses from Indian Affairs testified at legislative hearings, held in 2006 by the Standing Senate Committee on Aboriginal Peoples, over Canada's specific claims policy, that, "There is a very wide range in the size of the financial components." They also stated that, as examples, the smallest cash component was $12,000; the largest was over $150 million. About half of the settlements fall under $2 million.[18]

According to former Indian Affairs Minister Prentice, the new tribunal will be effective at consolidating these smaller claims together and resolving them as one.[19]

While that is a positive move, the next step is to draw all of the potential claims out into the open and to adjudicate them all.

In order to increase participation, the government could allow for claims to be resolved through negotiation, mediation or some form of alternative dispute resolution. Many First Nations prefer the negotiation route over the formal, adversarial path. While maintaining filing and resolution deadlines for claims, allowing this avenue would allow First Nations to resolve outstanding land issues through methods they prefer. There is evidence that this path is preferred because it is more in line with First Nation peacemaking cultural traditions.[20] While this proposal would allow for a "hybrid" tribunal, it would always be stressed that binding adjudication is available and would be imposed if parties could not arrive at a solution.

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... This tendency should be actively opposed.

Preventing Opportunism

It is quite likely that lifting the ceiling on financial awards will create an incentive for some unscrupulous bands to press a claim which rests on spurious grounds. For decades, an entire land claims industry has been erected around the mentality that everything is up for negotiation. This tendency should be actively opposed.

It is true that when some are "given an inch, they will take a mile." But, the best way to prevent that outcome is to ensure all claims that are resolved by the independent tribunal are valid ones. This necessitates a process where an independent body assesses all potential claims submitted and decides if they are to proceed to the deliberation phase. In the past, it was the government that assessed the validity of claims, but this was a clear conflict of interest, as the government would also be the judge in a claim where it is an interested party. The best system would be to have these superior court judges evaluate these claims but with clear boundaries. Providing a strict set of guidelines would help ensure that only the claims with the strongest foundation of government wrongdoing proceed to the adjudication stage.

With the prospect of tighter, stricter criteria, this places more responsibility on First Nation communities to be reasonable in their claims. If they insist they have a real grievance, they would need to gather substantial evidence for it and to perhaps give up on more grandiose claims that are less grounded in reality.

Getting to Finality: The Sunset Clause

An ongoing problem with the current process is that the list of claims filed claims keeps growing. With a large backlog, more claims get researched and added with not end in sight. There has to be an end point to ensure finality to the process.

The creation of a specialized tribunal to deal with claims would allow it to focus solely on claims to the exclusion of other duties. The Specific Claims Tribunal Act provides for such an entity that can focus on only such claims, within a narrow mandate. This was the first step towards ending the process.

In 2006, the federal Liberal Party endeavoured to rejuvenate its policy process through the establishment of the Liberal Renewal Commission, which included an Aboriginal Task Force Report. Despite the freshness of perspective that came from this process, it appears that these ideas have fallen by the wayside. However, one proposal by David Eaves focused on resolving land claims. In his proposal, Eaves focused on dividing the negotiation functions of Indian Affairs into a separate entity which could deal with settling both comprehensive and specific claims.[21] The new entity, he argued, would help mitigate any real or perceived conflicts of interests that de-legitimize the claims process and would allow Indian Affairs to focus on its central mission of assisting Aboriginal bands. A more controversial element of his proposal included the challenging statement that, "a truly ambitious Liberal government would also 'sunset' the agencies mandate – calling on it to complete its work by a fixed date, possibly as early as 2010."[22]

Eaves' proposal is ambitious and should give readers a reason to consider setting a time limit for the tribunal's work. Political scientist Tom Flanagan, an academic expert on Aboriginal issues, made a similar argument in a Globe and Mail column in which he stated that specific claims should not be an "immortal industry."[23]

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> **To be just to First Nations, it would make sense to provide a generous, but firm, filing deadline. A few years are, obviously, not enough time.**

He meant that given the historical pattern of close to 60 new claims a year, it is evident that something must be done to bring finality and certainty to the process. Flanagan agues one way this could be done is through the introduction of a filing deadline for specific claims. He states that First Nation communities have had roughly 25 years to research claims (the specific claims policy introduced in 1982), so it may be time to set a limit on the introduction of new ones.

Flanagan is also quite correct to point out that there is no limit to the ability of lawyers and historians to develop new claims. Thus, it is rational to prevent such persons from abusing the process. Without such limits, "creativity" in claims can abound, as an example from some activists within the Maori indigenous population of New Zealand shows. There, some have tried to argue the Treaty of Waitgani (the treaty covering all Maori) included radio frequencies in its provisions. A court had to wrestle with that claim, with the tribunal clearly divided on whether radio waves were covered by historic treaty. In the end, the tribunal found that the Maori had a right to be considered in the allocation of transmission waves.[24]

To be just to First Nations, it would make sense to provide a generous, but firm, filing deadline. A few years are, obviously, not enough time. Instead, to allow for "buy-in" from Aboriginal communities, many of whom are not well-resourced, they will need time to collect information and prioritize their claims. Perhaps providing funding for communities to research their well-established claims could also help speed along the process. (It should be recalled that the shortage of funding, particularly in the area of historical research into treaties, is a major impediment towards final resolution of claims.) For the sake of final resolution in the end, the federal government should consider making a large investment in historical research (for the First Nations) now.

Establishing a firm filing deadline would likely increase the volume of claims being made. This is logical as communities would realize that they either raise the issue or lose the opportunity forever. Ideally, the expedited process would bring out the most just and pressing of claims to the surface, along with the vexatious.

Dealing with this increased volume and activity will be expensive. Politicians and policy makers will justifiably worry about their ability to "sell" this proposal to the public. However, if they present the proposal as one of long-term gain through certainty and an end to a seemingly endless process, the public might well be convinced of the merits of the plan.

Beyond a filing date, this legislative framework should also include a sunset provision for final resolution and determination. This date would obviously extend beyond just the filing deadline. This could provide assurance to the First Nation involved, potential business investors and the taxpaying public that the issue will receive final, binding resolution at a definite time. As all claims are different in complexity and size, if the government were to pursue a single resolution deadline, it would have to be generous enough to encompass even the most complicated claims. The government could even consider different final settlement deadlines for different types of claims, perhaps divided by complexity or monetary value.

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Governance Reform

It is essential that any movement towards land claims be accompanied by reform into the way First Nation communities are governed. Accountable and transparent governing institutions are needed in order to ensure that settlement money is spent properly. At the present time, money gained through land claims settlements go towards many band governments that do not possess structures and financial controls that ensure monies go towards community needs. This was similar to the case of the Kelowna Accord, where billions were promised but few financial controls ensured that the increased funding would go towards the people most in need.

Therefore, it makes sense to link land claims settlements to governance reform. While settlements are about achieving justice for First Nations and providing a solid base for future prosperity, it would be morally incumbent on governments to ensure that money does not go towards corrupt band institutions. The First Nation Governance Act was a comprehensive package of measures that ensured that basic financial accountability measures were in place in band politics. Introduced by then Indian Affairs Minister Robert Nault, these measures would have gone a long way towards preventing the abuses that are being prevented in this proposal. Re-introducing those measures for First Nations using the tribunal would be an effective measure.

In the past, some Aboriginal thinkers have considered the idea of directing treaty benefits directly to individuals.[25] The so-called Big Bear Solution, developed by Manitoba Métis activist Jean Allard, was just one innovative policy solution that called for treaty payments to individuals. Perhaps similar thinking could be applied to land claims resolution. Money, in whole or in part, could be directed to individuals. This idea, however, would not on its own, fully solve the problem of corrupt governance though it would be a start by giving individual Aboriginals more control over the "purse strings" which local First Nations governments would then need to tax away, similar to how non-reserve Canadian communities must raise money: by taxing residents and justifying their taxes and services.

It would be advisable to tie this expedited land claims process with made-in-Indian Country governance reform legislation that puts financial controls and separation of band politics from business requirements front and centre.

Central to this requirement is the recognition that land claims resolution and governance reform are both central to Aboriginal economic development in the long run and that both concepts are connected in an overall strategy.

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Conclusion

Canada requires a lasting solution to the issue of specific land claims, while providing the means to prevent opportunism. Resolving valid specific claims should not be about redistributing income or creating a grand vision of perfect justice. They are about providing lawful restitution for First Nation in the cases where it can be proved that they have been fraudulently dealt with by the federal government, nothing more. The Specific Claims Tribunal Act is clearly a step in the right direction and is historic.

For the first time, Canada has an Indian land claims tribunal that is independent from government and has the power to make binding decisions. This is what First Nations have demanded for decades. However, the legislation places limits on the final resolution of claims. It is limited in its ability to provide financial compensation and it does not include a firm deadline for filing claims.

This paper argued for two objectives, first, for a lifting of this cap as one way to demonstrate justice towards First Nation peoples, and second, for a generous, but firm deadline for filing and resolution. That way, the number of new claims can be brought forward soon, and the backlog can be tackled. Setting a deadline will also bring finality to this process. Concurrent with that, it is vitally important for this proceed to weed out vexatious claims from the pile. Setting strict guidelines for determining the validity of claims will also help tackle that end. Thus, this proposal should not be read as a “blank cheque” for First Nations to make any claim, regardless of its factual foundation.

The central contentions of this paper are that there is a need for justice and fairness towards First Nations, that settling land claims and finality are desirable, and that such settlements are also central to First Nations’ economic development.

By providing clarity of title to First Nations, as well as access to land and potential resources, Aboriginal communities can open-up “frozen” capital that they can leverage for development. Central to this strategy is also the requirement that any land claims resolution must be accompanied by First Nation governance reform. First Nation communities that opt into an expedited land claims process should be required to implement basic requirements of transparent and accountable governance, in particular financial controls, similar to the measures introduced by Minister Robert Nault through the First Nation Governance Act. It is common sense and ethical to ensure that monies gained from settlement go towards actual community members and not to corrupt band structures.

For decades, the federal government adopted a paradigm of first ignoring and then minimizing the impact of First Nation land claims. By viewing them as bare legal requirements that should be solely seen through the lens of public perception and minimal impact on taxpayers, it is clear that these claims will end up costing more in the long run as the cost of litigation over a century is too much for the Canadian taxpayer. It also represents lost economic potential for First Nations.

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