



Specific Claims

INTRODUCTION

This resource guide provides an overview of the specific claims process. It covers key topics for understanding the federal law and policy governing specific claims, including the grounds and steps for bringing a specific claim, potential financial compensation, and funding options available to assist First Nations in pursuing their claims.

This guide offers general information and is not a replacement for legal advice. First Nations thinking about bringing a specific claim are encouraged to discuss their options with our team of specific claims practitioners.

WHAT IS A SPECIFIC CLAIM?

Specific claims are historical claims brought by a First Nation against Canada, relating to the administration of land and other First Nation assets and to the fulfilment of historic treaties and other agreements.

Canada established the specific claims process through federal policy and legislation. Today, the process is governed by the federal [Specific Claims Policy and Process Guide](#) and the [Specific Claims Tribunal Act](#).¹

WHAT IS THE SPECIFIC CLAIMS TRIBUNAL ACT?

Overview of the Act

The *Specific Claims Tribunal Act* came into force on the 16th of October, 2008. The *Act* governs the process for bringing a specific claim. It establishes the grounds on which claims may be brought, sets out the steps involved, and creates the Specific Claims Tribunal ("Tribunal").

¹ Canada, Crown-Indigenous Relations and Northern Affairs Canada, [The Specific Claims Policy and Process Guide](#), (Ottawa: Crown-Indigenous Relations and Northern Affairs Canada, 2021) [*Federal Policy*]; [Specific Claims Tribunal Act](#), SC 2008, c 22, s 15(1)(f) [SCTA].

The Tribunal is an independent adjudicative body tasked with assessing specific claims that cannot be resolved through negotiations. It makes binding decisions about the validity of specific claims and any resulting compensation, up to \$150 million per specific claim.

Grounds for bringing a specific claim

First Nations may bring a specific claim on the following grounds:

- The Crown failed to fulfil a legal obligation to provide lands or other assets under a Treaty or other agreement with a First Nation; or
- The Crown breached its legal obligations under the *Indian Act* or any other legislation pertaining to “Indians or lands reserved for Indians”; or
- The Crown breached its legal obligations flowing from the provision or non-provision of reserve lands, or administration of reserve lands, First Nation moneys, or First Nation assets; or
- The Crown illegally leased or disposed of reserve lands; or
- The Crown or its agents took or damaged reserve lands without providing adequate compensation; or
- The Crown’s agents or employees committed fraud in acquiring, leasing, or disposing of reserve lands.²

Excluded claims

Some claims cannot be brought under the *Specific Claims Act*, in particular:

- Claims of Aboriginal title, self-government, or other Aboriginal rights; or
- Claims based on Treaty rights related to activities of an ongoing and variable nature, like harvesting rights; or
- Claims based on a land claims agreement or self-government agreement entered into after December 31, 1973; or
- Claims concerning events that occurred less than 15 years before the claim was filed; or
- Claims about the delivery or funding of programs or services relating to policing, regulatory enforcement, corrections, education, health, child protection, social assistance, and similar programs or services; or
- Claims based on an agreement between the First Nation and the Crown containing a dispute resolution mechanism.³

WHAT ARE THE STEPS FOR BRINGING A SPECIFIC CLAIM?

Stage 1: Research, Development and Submission of a Specific Claim

The first stage of the specific claims process is research and development (“R&D”). This is the starting point for submitting a specific claim.

² SCTA, *supra* note 1, s 14(1).

³ *Ibid*, s 15(1).

First Nations are responsible for researching and preparing their specific claims.⁴ A Specific Claims Research Unit or Third Party, like a law firm, can also conduct this research at the First Nation's request.

Once the research and legal analysis is complete, the First Nation (or its legal counsel) then prepares a specific claim submission to Crown-Indigenous Relations and Northern Affairs Canada ("CIRNAC"). CIRNAC has to determine if the claim meets its minimum standards within six months of the submission date.⁵ If the claim meets these standards, it is then filed with the Minister for assessment. A claim that does not meet the minimum standards will be returned to the First Nation with an explanation about why it was not filed with the Minister.

Stage 2: Negotiation

Claims will not be filed for assessment until they meet CIRNAC's minimum standards. Once a claim meets the minimum standard and is filed with the Minister, the Minister has three years to decide whether to negotiate the specific claim.⁶

If the Minister agrees to negotiate, the parties have another three years (or longer by agreement) to negotiate a settlement agreement of a specific claim.⁷ Settlements must be approved by all the involved parties. Depending on the nature of the claim (such as, for example, a treaty land entitlement claim), a province may also choose to voluntarily participate in the negotiations.

Stage 3: The Tribunal

The Tribunal is the last resort for resolving a specific claim. First Nations may file their claim with the Tribunal:

- a. if Canada declines to negotiate;
- b. if Canada takes more than three years to tell the First Nation that negotiations are starting;
- c. if no settlement is reached after three years of negotiating; or
- d. if the parties mutually agree to go to the Tribunal.⁸

Once a specific claim proceeds to the Specific Claims tribunal, it is typically heard in two stages: validity and compensation. In the past, these two stages were often *bifurcated* – that is, heard separately. However, the Tribunal has recently adopted a new policy: claims will no longer be bifurcated, except in exceptional circumstances. This means that both validity and compensation issues are generally addressed within a single, continuous hearing process.

⁴ Canada, *Federal Policy*, *supra* note 1.

⁵ These minimum standards are set by CIRNAC in accordance with the *Specific Claims Tribunal Act*. These minimum standards are available online: [Minimum Standard For Filing a Specific Claim Submission with the Minister of Aboriginal Affairs and Northern Development Canada](#).

⁶ *SCTA*, *supra* note 1, s 16(1)(b).

⁷ *Ibid*, s 16(1)(d).

⁸ *Ibid*, s 16(1).

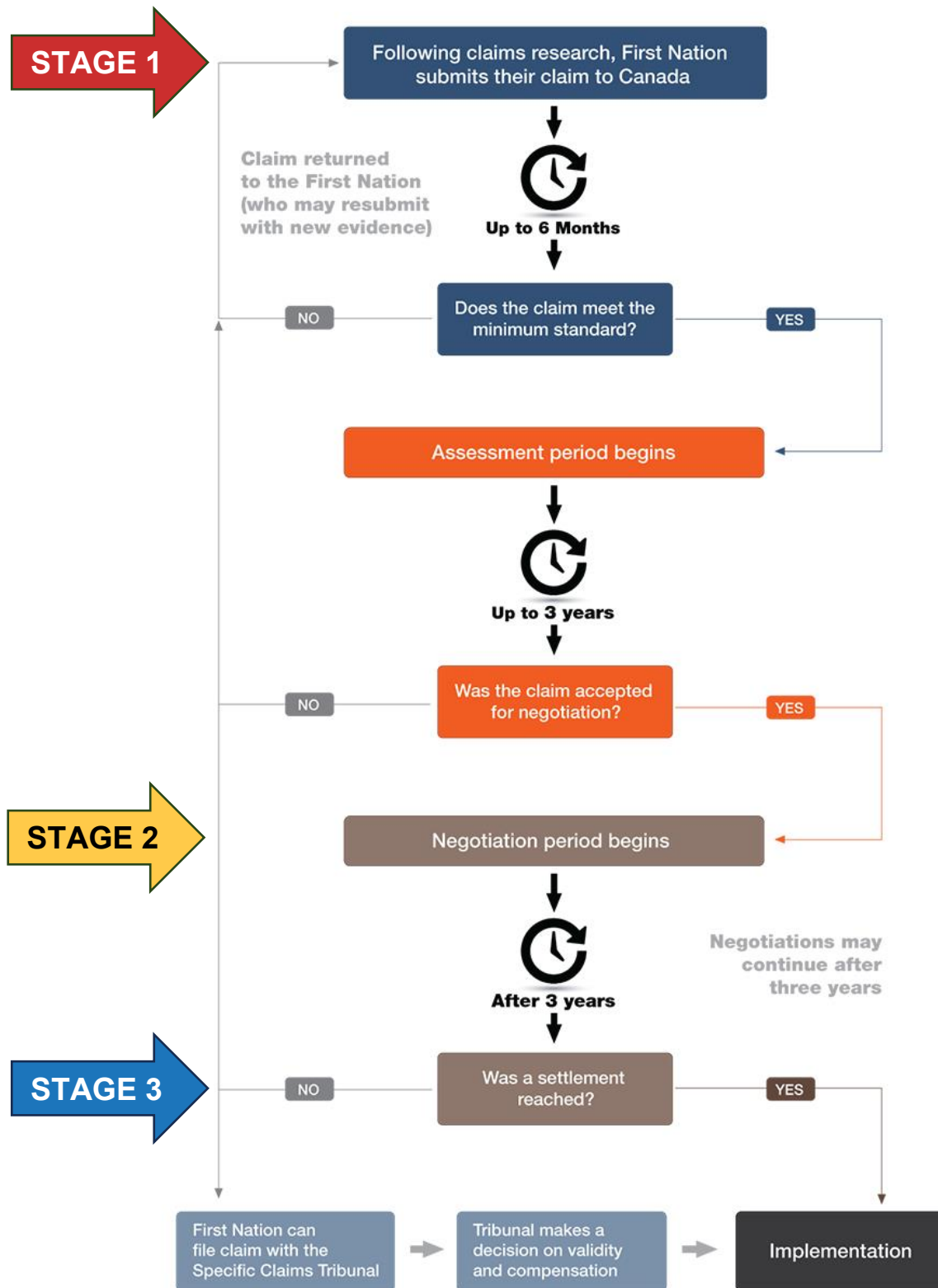
- a. **Validity Stage:** The first question the Tribunal must address is whether the claim is *valid* – in other words, whether Canada has breached a legal obligation to the First Nation that would give rise to compensation. Unlike a traditional court proceeding, the Tribunal does not hear all the evidence at once. Instead, the validity stage unfolds over a series of hearings:
 - i. **Oral History Hearings:** The process begins with oral history hearings. These hearings allow community members to share relevant oral histories directly with the Tribunal. This step ensure that the First Nation's perspective and historical experience are part of the evidentiary record.
 - ii. **Expert Hearing:** The parties then retain experts, often historians, anthropologists, genealogists or archaeologists to provide evidence to the Tribunal.
 - iii. **Legal Basis:** Finally, legal counsel for each party makes legal arguments, relying on the oral history, expert evidence and relevant law.
- b. **Compensation Stage:** In the past, the Tribunal would make a decision about whether the claim is valid and then determine the amount of compensation owed. Under the new policy, the validity and compensation stages will proceed concurrently. Despite this, the compensation analysis remains a distinct aspect of the claim. During the compensation phase, each party typically retains expert appraisers to provide estimates of the land's value and related losses. Compensation is usually based on the current unimproved market value of the land, and the loss of use and benefit since the time of the breach. The Tribunal hears expert evidence on these points and then makes a decision about the amount of compensation to be awarded. If there are multiple claimants, the Tribunal will also make a decision about how compensation is to be apportioned.

Overview of steps 1-3

CIRNAC has a diagram that sets out the specific claims process.⁹

⁹ Canada, Crown-Indigenous Relations and Northern Affairs Canada, *Specific Claims* (Ottawa: Crown-Indigenous Relations and Northern Affairs Canada, 2025), online: <<http://www.rcaanc-cirnac.gc.ca/eng/1100100030291/1539617582343>>.

SPECIFIC CLAIMS PROCESS



HOW MUCH FINANCIAL COMPENSATION IS AVAILABLE FOR A SPECIFIC CLAIM?

Negotiation settlement

If the parties negotiate a settlement of a specific claim, Canada will compensate the First Nation for loss and damages suffered as a result of the federal government's breach of legal obligations.¹⁰ A settlement can also include other forms of restitution, such as an apology, and reimbursement of the First Nation's negotiation costs. The amount of compensation paid depends on "the extent to which the [First Nation] has established a valid claim."¹¹ The Minister can finalize settlements of up to \$50M. Larger settlements must be approved by additional government decision-makers.¹²

Canada may also consider "return of the land" if the First Nation can show that its reserve lands were never lawfully surrendered or otherwise taken under legal authority.¹³ For land-based compensation to be a part of the settlement, the relevant province(s) must be included in the negotiations since Crown land typically provincially "owned".

Tribunal award

If the First Nation succeeds before the Tribunal, the maximum compensation available is \$150M.¹⁴

The Tribunal can only award monetary compensation for a claim.¹⁵

IS THERE ANY FUNDING TO HELP BRING A SPECIFIC CLAIM?

There is limited federal funding available to help a First Nation advance its claim at each stage of the process. Certain financial institutions and insurers also offer financing options for First Nations looking to research and advance specific claims.

First Nations may authorize a representative to submit a funding application on their behalf. As part of our work on specific claims, lawyers at JFK Law advise clients on obtaining funding or financing for specific claims.

Federal government funding

1. **R&D stage:** First Nations or their representative may apply for government R&D funding of up to **\$40,000 per claim** each fiscal year.¹⁶ The amount of R&D funding awarded

¹⁰ Canada, *Federal Policy*, *supra* note 1.

¹¹ *Ibid.*

¹² Canada, Crown-Indigenous Relations and Northern Affairs Canada, *Specific Claims* (Ottawa: Crown-Indigenous Relations and Northern Affairs Canada, 2025), online: <<https://www.rcaanc-cirnac.gc.ca/eng/1100100030291/1539617582343>>.

¹³ *Ibid.*

¹⁴ *SCTA*, *supra* note 1, s 20(1)(b).

¹⁵ *Ibid.*, s 20(1)(a).

¹⁶ Canada, Crown-Indigenous Relations and Northern Affairs Canada, *Specific Claims Research, Development and Submission Program* (Ottawa: Crown-Indigenous Relations and Northern Affairs

depends on how much funding is available, what the funding will pay for, the First Nation's budget, limits set by the federal government, and the First Nation fulfilling financial reporting requirements.¹⁷

2. **Negotiation stage:** First Nations or their representative may apply for federal loans of **up to \$200,000 per claim**.¹⁸ If Canada agrees, the loans can be renewed yearly for up to six years.¹⁹ The amount of negotiation loan funding depends on how much funding is available, what the funding will pay for, the First Nation's estimated costs, limits set by the federal government, and financial reports.²⁰ First Nations may also be able to submit supplementary funding requests, especially when aspects of a joint work plan are uncertain at the beginning of the year.²¹ Certain provinces, such as Ontario, also have funding programs for claim negotiations.
3. **Tribunal stage:** Government funding may be available each fiscal year.²² Among other things, this funding can help pay for attending Tribunal proceedings, legal costs, and expenses relating to witnesses and experts.

Own Source Funding

First Nations can also fund their claims through own-source revenues or private financing options. First Nations without enough capital to advance a claim might also be able to take out a private loan, even if they don't have off-reserve assets to pledge as security. Insurance companies are now offering to insure specific claim loans, meaning First Nations can access capital to advance their claims even without having one of the typical types of security such as off-reserve personal property. If the claim is unsuccessful or the settlement reached is too low to repay the loan in full, the insurance policy will step in to repay the loan. JFK regularly assists First Nation clients in this process on obtaining private claim financing.

HOW DOES JFK LAW HELP WITH SPECIFIC CLAIMS?

Our highly experienced team of specific claims practitioners provide assistance to First Nations at every step of the specific claims process.

1. **Securing funding and financing:** We help First Nations identify and apply for funding opportunities and loan financing, keeping track of key deadlines and reporting requirements so that communities can focus on what matters most.

Canada, 2025); Canada, Crown-Indigenous Relations and Northern Affairs Canada, [Specific Claims Research, Development and Submission Program: Guidelines](#) (Ottawa: Crown-Indigenous Relations and Northern Affairs Canada, 2024), [R&D Funding Guidelines].

¹⁷ Canada, *R&D Funding Guidelines*, *supra* note 16.

¹⁸ Canada, Crown-Indigenous Relations and Northern Affairs Canada, [Specific claim negotiation costs funding guidelines](#) (Ottawa: Crown-Indigenous Relations and Northern Affairs Canada, 2021).

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ *Ibid.*

²² Canada, Crown-Indigenous Relations and Northern Affairs Canada, [Funding for First Nations with claims at the Specific Claims Tribunal of Canada](#) (Ottawa: Crown-Indigenous Relations and Northern Affairs Canada, 2020).

2. **Building a strong claim with robust research:** We work with experts, such as historians, to help First Nations to conduct historical research and prepare their claim through our deep knowledge of historical documentation, legal requirements, and federal policies, and claims drafting and submission.
3. **Advising before, during, and after negotiations to maximize settlements:** We provide support throughout the negotiation process from planning to settlement, deploying creative solutions to reach just outcomes that benefit communities. We also advise clients through the ratification and approval stages for settlement agreements.
4. **Advocating on behalf of First Nations at the Tribunal stage:** When negotiations are unsuccessful or Canada refuses to negotiate, we provide exceptional advocacy before the Tribunal, drawing on our extensive litigation experience and deep knowledge of the Tribunal process.

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