INTRODUCTION
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On December 16, 1981 the Honourable John Munro, Minister of Indian and Northern Affairs released the federal government's latest policy on comprehensive Native land claims. Entitled "In All Fairness - A Native Claims Policy" the booklet is divided into two parts. Part I provides the background of the present policy and Part II is concerned with the future of comprehensive land claims negotiations and the basic policy the government will follow. The Appendix includes a summary of the state of the major comprehensive claims to date. The issue of Specific Claims policy is not dealt with here, a statement on this is forthcoming.

What is immediately apparent about this new, revised policy on claims is that it is not markedly different from its 1973 predecessor. Indeed, it represents only a modest refinement of the earlier document. The interim eight year period which has been one of intense claims activity by Native groups and organizations and the federal and provincial levels of government has not produced anything very new to facilitate the settlement of outstanding claims, aside from the establishment of the Office of Native Claims in 1974. The fruits of its labours remain to be seen as we move into the second decade of the claims process.

We would like to present excerpts from the new policy statement for your consideration at this time. We will also offer comment from a number of persons on specific portions of the statement in a later issue. Individuals wishing to comment should contact the Policy Editor. For a complete copy of the work, one may write to the Ministry of Supply and Services, Ottawa, referring to Catalogue No. R15-1/1981, ISBN 0-662-51672-9.
COMPREHENSIVE CLAIMS

FORWARD

Essentially what is being addressed here are claims based on the concept of "aboriginal title" - their history, current activities surrounding them, and our proposals for dealing with them in the future. While this statement is concerned with claims of this nature it does not preclude government consideration of claims relating to historic loss of lands by particular bands or groups of bands. Indeed, the government, in consultation with Indian organizations across Canada, is currently reviewing its policy with respect to specific claims over a wide spectrum of historic grievances-unfulfilled treaty obligations, administration of Indian assets under the Indian Act and other matters requiring attention. A further statement on government intentions in the area of specific claims will be issued upon completion of that review process.

INTRODUCTION

Indian and Inuit people through their associations have presented formal land claims to the Government of Canada for large areas of the country. In response to their claims, the government has three major objectives:

1. To respond to the call for recognition of Native land rights by negotiating fair and equitable settlements;
2. To ensure that settlement of these claims will allow Native people to live in the way they wish,
3. That the terms of settlement of these claims will respect the rights of all other people.

The present policy statement is meant to elaborate the Government of Canada's commitment to the Native people of Canada in the resolution of these claims. Comprehensive land claims relate to the traditional use and occupancy and the special relationships that Native people have had with the land since time immemorial.

RECENT HISTORY

Prior to 1973 the government held that aboriginal title claims were not susceptible to easy or simple categorization; that such claims represented, for historical and geographical reasons, such a bewildering and confusing array of
concepts as to make it extremely difficult to either the courts of the land or the government of the day to deal with them in a way that satisfied anyone. Consequently, it was decided such claims could not be recognized.

However, by early 1973 the whole question of claims based on aboriginal title again became a central issue; the decision of the Supreme Court of Canada in the Calder Case, an action concerning the right of assertion of Native title by the Nishga Indians of British Columbia, established the pressing importance of this matter. Six of the judges acknowledged the existence of aboriginal title. The court itself, however, while dismissing the claim on a technicality, split evenly (three-three) on the matter raised: did the native or aboriginal title still apply or had it lapsed? At the same time, the Cree of James Bay and the Inuit of Arctic Quebec were trying to protect their position in the face of the James Bay Hydro Electric project.

It is from these actions that the current method of dealing with Native claims emerged.

BASIC GUIDELINES

When a land claim is accepted for negotiation, the government requires that the negotiation process and settlement formula be thorough so that the claim cannot arise again in the future. In other words, any land claims settlement will be final. The negotiations are designed to deal with non-political matters arising from the notion of aboriginal land rights such as, lands, cash compensation, wildlife rights, and may include self-government on a local basis.

The thrust of this policy is to exchange undefined aboriginal land rights for concrete rights and benefits. The settlement legislation will guarantee these rights and benefits.

ALTERNATIVES CONSIDERED

When the federal government was reviewing its policy on comprehensive native land claims, it looked at the experience of some other countries such as Australia, the United States, New Zealand and Greenland to see how they approached settlement of claims. Two in particular, the United States and Australia, were more thoroughly studied because in both cases major settlements of aboriginal claims have been achieved and because there are many similarities to our own situation. The Alaska Native Claims Settlement Act of 1971 was passed in favour of the first inhabitants of that state; in Australia's northern Territory, the Australian Aboriginal Land Rights (Northern Territory) Act was passed in 1976.

In both cases, although processes other than direct negotiations were employed, Native people had a marked input into the settlements and on what forms they should take. In Alaska, for example, hearings were held before a Congressional committee and representation was made on behalf of Native people. In Australia, a government-appointed Lands Commission, charged with preparing legislation, heard testimony from different aboriginal tribes. The
outcome in both cases was that land and other benefits were provided to the Native groups despite pressure from other interests. In neither case were the demands of the Native groups fully met, however, and whether such a model of settlement is to be preferred to negotiated settlement remains to be seen.

Further alternatives considered by the government included arbitration, mediation and the courts. There are drawbacks to all three approaches.

For example, while a court may be able to render a judgement on, say, the status of lands, it is unable to grant land as compensation or to formulate particular schemes that would meet the needs of the plaintiff. In general, it can be said that the courts have not been found by the Native peoples to be the best instrument by which to pursue claims.

There are a number of compelling advantages to the negotiation process, as the federal government sees it. The format permits Natives not only to express their opinions and state their grievances, but it further allows them to participate in the formulation of the terms of their own settlement. When a settlement is reached, after mutual agreement between the parties, a claim then can be dealt with once and for all. Once this is achieved, the claim is nullified.

Thus the negotiation process is seen by the Canadian government as the best means of meeting the legitimate concerns of the Native people in the area of comprehensive claims. It is a process which allows a good deal of elasticity in approach to the concerns of the Native people, it is at once an expression and mutual appreciation of the rights and values of all parties in Canada. And an important factor that cannot be discounted—the government is fully committed to its success.

PROCEDURES

Process

Current practices in relation to determining the validity of claims will continue to be used.

Those potential claimant groups requiring assistance in the preparation of a claim will be given straightforward indications of the many aspects of settlement that may need to be considered and upon which the government is prepared to proceed.

Negotiations with a group will occur only if and when their claim has been accepted. Negotiations will then take place only with those persons who have been duly mandated to represent the claimant groups.

Claimant groups should have enough money to develop and negotiate their claims, however, the spending restraints of government and their limits will be kept in mind.

Negotiations concerning claims North of 60° will be bilateral between the claimant groups and the federal government leading to federally legislated settlements. However, provision will be made for the territorial governments to be involved in the negotiations under the leadership of the federal government.

Where claims fall in provincial areas of jurisdiction and in those cases where
provincial interests and responsibilities are affected, provinces must be involved in claims negotiations in order to arrive at fully equitable settlements.

Eligibility

Those who benefit from the settlements must be Canadian citizens of Native descent from the claimed area, as defined by mutually agreed criteria. Examples in the past of such criteria have included such conditions as: percentage of Native blood, persons adopted by Natives according to traditional customs, and, where cases merit, people who are considered Native by a determination of a majority of the Native community.

In short, conditions for eligibility are negotiable. Persons living in the area of negotiated settlements who have already benefitted under a previous settlement with the Government of Canada are not eligible for benefits under another one.

Persons who are not subject to the Indian Act in no way become subject to the Act by virtue of a land claims settlement.

APPENDIX

To date, success in the settlement of comprehensive claims has been limited to the James Bay and Northern Quebec Agreement of 1975 and the supplementary Northeastern Quebec Agreement of 1978. These agreements, which are currently being implemented pursuant to Quebec and federal legislation, provided for the ownership of land; exclusive hunting, fishing and trapping rights; substantial participatory roles in the management of local and regional governments, financial compensation, control over education and social and economic benefits.

An Agreement-in-Principle, signed in 1978 with the Committee for Original Peoples' Entitlement (COPE), representing approximately 2,500 Inuit of the Western Arctic region was to have had a final agreement by October 31, 1979. Negotiations were delayed as a result of the 1979 general election, but the way was cleared for intensive discussions with the appointment of a new chief government negotiator in June 1980. After several months of unsuccessful negotiations, meetings were suspended in December 1980. It is hoped that negotiations translating the Agreement-in-Principle into a Final Agreement will resume in the near future.

In the Yukon, as a result of fresh initiatives, including the appointment of a new chief government negotiator, in May 1980, considerable progress is being made in the negotiations with the Council for Yukon Indians (CYI) which represents 5,000-6,000 Status and non-Status Indians. The goal here is to finalize an Agreement-in-Principle by the summer of 1982.

In 1977 the Inuit Tapirisat of Canada (ITC) submitted, on behalf of some 13,500 Inuit in the Central and Eastern Arctic of the Northwest Territories, a proposal for a new territory of Nunavut, to encompass all lands north of the
treeline. The proposal contained provisions respecting land, wildlife, compensation and other elements of a claim. Until late 1980 little progress was made, since government policy distinguished between the process of constitutional change and the negotiated settlement of a claim. Late in 1979, the ITC agreed to separate the claims and constitutional processes and in August 1980, a chief government negotiator - a new position - was appointed to conduct negotiation of the claims elements. Negotiation from late 1980 until late October 1981 has resulted in the initialing, in Frobisher Bay, of an agreement-in-principle on wildlife harvesting rights. Negotiations on the claims elements continue, in tandem with efforts on both sides to resolve the question of political development.

The Dene Nation and the Metis Association of the Mackenzie Valley, NWT presented separate claims in 1976 and 1977 respectively, but since the two claims did not reflect the actual degree of mutual interest among the native population, negotiation did not commence, and loan funding for research and development pertaining to claims was suspended by government between October 1978 and April 1980.

In April 1980 funding was resumed on the understanding that the Dene Nation would represent all the native beneficiaries during negotiation of the claims. In April 1981, a chief government negotiator was appointed and several negotiation sessions have been held to clarify principles.

In British Columbia, the potential for negotiating the Nishga claim is tenuous due primarily to the apprehension with which the provincial government approaches the possibility of unextinguished Native title within the province, and the doubt which the province has as to whether it should accept any responsibility to compensate Native people for the loss of use and occupancy of traditional lands. Nevertheless in June of this year a full-time chief government negotiator was appointed by the Minister to negotiate a settlement and the province has agreed to participate in the negotiations. Preliminary negotiations with the Nishga Tribal Council got underway earlier this fall.

The federal government has also accepted claims for negotiation from the Association of United Tahltns, The Gitksan-Carrier Tribal Council, the Kitwancool Band and the Kitamaat Village Council. These claims will be negotiated once the implications of the Nishga claim negotiations are apparent. Claims from the Nuu-Chah-Nulth, Haida and Heiltsuk are presently under review.

Claims on behalf of Naskapi-Montagnais Indians and the Inuit in Labrador were accepted for negotiation by the federal government in 1978. The Province of Newfoundland confirmed its willingness to participate in tripartite negotiations of these claims in September 1980. Bilateral discussions are planned to clarify the role and responsibilities that each government will assume in these negotiations.

The claim of le Conseil Attikamek-Montagnais, representing Montagnais and Attikamek bands living on the north shores of the St. Lawrence and St. Maurice rivers, was accepted by the federal government in October 1979, and has been met by a willingness to participate in negotiations by the provincial
government. The claim will be negotiated in a tripartite forum. *Le Conseil Attikamek-Montagnais* is currently completing its research with the view to entering early negotiations.