
Land Back: Restitution of Lands in the Specific Claims Policy

**UBCIC Analysis and Policy Proposal
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Land Back is clearly an available resolution within the Specific Claims policy

Bands may be compensated “either by the *return of these lands* or by payment of the current, **unimproved** value of the lands.

- Outstanding Business: A Native Claims Policy, 1982

Barriers to Land Return

- **“Willing seller / willing buyer”** paradigm
→ Prioritizing non-Indigenous property rights over Indigenous constitutional rights to territory
- **Monetary Caps** → Limiting the land that can be purchased back
- **Notorious length of negotiations** → Rising cost of land during negotiations
- **Emphasis on monetary compensation** → Negotiators convincing FNs there is no option for land return, (conflict-of-interest)
- **Onus on First Nations to negotiate land transfers** → Provinces continue to issue leases and mining licenses during this time + tensions with municipalities and 3rd parties

ADDITIONS TO RESERVE (ATR)

- Communities must buy back land unlawfully taken, prioritization of non-Indigenous property, insufficient land allocation, obstacles to land selection, conflict with municipalities, failures to transfer non-contiguous lands to reserve status, complications re: easements, subsurface rights, etc.

TREATY LAND ENTITLEMENTS (TLE)

- Significant wait times, discrepancies across regions in dept support for resolving 3rd party interests, failures to set aside all selected reserve lands, etc.

Changes to the landscape of Canada's "lawful obligations"

- **SECTION 35(1) OF THE CONSTITUTION:** Recognizes and affirms Aboriginal and treaty rights
- **RCAP:** "Aboriginal people are seeking to replace the land they lost with other land" because "[w]ithout it, there can be no workable system of Aboriginal self-government."
- **UNDRIP:** Articles 18 and 22 emphasize the need for redress and restitution pertaining to Indigenous lands, esp though Indigenous traditions, customs and tenure systems
- **DRIPA:** Article 11(2): "States shall provide redress through effective mechanisms, which may include restitution..."
- **TRC:** Recognition and integration of Indigenous laws in negotiation and policy implementation processes
- **JURISPRUDENCE ON INDIGENOUS LAW AND GOVERNANCE AUTHORITY:** "Indigenous cultures are tied to lands and resources, failure to reserve or protect land [has] impacted language, spirituality, and the ability to teach new generations about cultural beliefs, laws" (Ardith Walken) + *Campbell* (2000), *Mitchell* (2001)

Impacts of poor land return provisions

- Violent paramilitary operations (Oka, Tyendinaga, Ipperwash)
- Tiny reserve land bases that weaken opportunities for self-determination and economic development
- Importance of land to Indigenous culture, language recovery, economies, political governance systems, and legal orders.

Recommendations for Strengthening the Land Return Mandate in Specific Claims Policy

A. LAND TRANSFER FROM THIRD PARTIES

- **1. ADDRESSING THE
CONSTITUTIONALIZATION
OF ABORIGINAL LAND**
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A. LAND TRANSFER FROM THIRD PARTIES

- **2. EXPANSION OF THE WILLING SELLER/WILLING BUYER FRAMEWORK**
 - Establishing a Specific Claims Trust Fund
 - Monies for the Trust Fund
 - Updating the Compensation Framework for Specific Claim Lands
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B. NON-ASSERTION AND CO- MANAGEMENT

- 1. THE PRINCIPLE OF
PROVINCIAL NON-
ASSERTION**
 - 2. MODELS OF CO-
MANAGEMENT**
 - 3. EXPANDED NOTIONS OF
COMPENSATION THROUGH
RRS**
-

C. LAND BACK

1. TITLE AND TREATY
PARAMOUNTCY TO
FEDERAL AND PROVINCIAL
JURISDICTION
-

Compatibility of Proposal w/ Independent Centre (ICRSC)

- Recommends the expansion of resolution approaches to incorporate Indigenous systems of restitution, including land return
- Resource Hub could provide training and skills development related to research and claim development (e.g. for co-management regimes)
- Resource Hub could also facilitate the sharing of knowledge and research across communities to enable innovation and info-sharing
- Funding Division could support the research associated with the recognition of Indigenous laws of participating First Nations

Studies and training at Centre could include land use and occupancy (traditional use studies), alienation and cumulative impact studies, toponymy mapping, etc.

On Crown and private lands, these maps could also provide inventories for negotiations with industry and the Crown, e.g. mapping easements, leases, rights-of-way, etc.

Baseline studies, economic development planning, sustainability studies, etc. could also form the basis for co-management and land return planning,