

First Nations Land Claims

Uncertainty over the ownership of lands subject to First Nations land claims is a national problem threatening economic development and public safety. Further, the lengthy delay between a determination of validity of a specific land claim by the court or the federal government and the eventual resolution is excessive.

By 1867, the federal government was assigned exclusive jurisdiction over “Indians and Lands reserved for the Indians,” which included the power to make treaties with Aboriginal peoples under the British North America Act. The provinces were assigned jurisdiction over private property and the management of Crown lands and natural resources located within a province. This, however, left the province with no jurisdiction over treaties.

Section 91 (13) of the Constitution Act gives the province/territory the power to legislate concerning property and civil rights within the province/territory. This makes land transfers primarily a provincial concern, but a land claim that involves Aboriginal peoples or lands can engage both the provincial constitutional powers over property and the federal constitutional powers concerning Aboriginal people. Hence, both levels of government are intricately involved.

Currently, there are 1,410 First Nations land claims in Canada. As of May 28th, 2009;

- 496 were under review
- 171 were under negotiation
- 87 were in active litigation
- 337 were concluded
- 319 had been settled.

These figures do not include the Metis or Inuit claims.

One such example of land claims which have stalled economic development activity and threatened public safety relate to the Haldimand Tract in southern Ontario. During the American War of Independence (1775-1783), Joseph Brant and other Six Nations’ warriors helped the British fight American revolutionaries. Following the war, Governor Haldimand offered land to Brant and his followers to settle on under British Protection.

In 1995, Six Nations Council sued the Governments of Canada and Ontario for damages claiming the right to occupy the lands originally given to them by Haldimand was not properly surrendered. Of the 950,000 acres of territory originally set aside by the Haldimand proclamation, only 48,000 acres remain, this being the present extent of the Six Nations Reserve.

There were 29 land claims involved in the 1995 law-suit. Only four had been validated by the federal government when the lawsuit was suspended in 2004 to explore the possibility of reaching an out-of-court settlement. Of the four claims validated, only one has resulted in an offer of compensation from the federal government.

Recommendations

That the federal government:

1. Work with the provinces, territories and First Nations' communities to resolve all outstanding First Nations' land claims, either by negotiation or resolution through the courts by 2020.
2. Develop a consistent and transparent approach to the evaluation of compensation for those claims determined to be legitimate, reflective of local/regional realities, to expedite the settlement process. Where an offer of compensation does not lead to final settlement of a land claim within a twelve month period, bring forward the matter immediately to the courts for a determination of both the general valuation approach and the specific compensation to be awarded.