

# WALKING TOGETHER

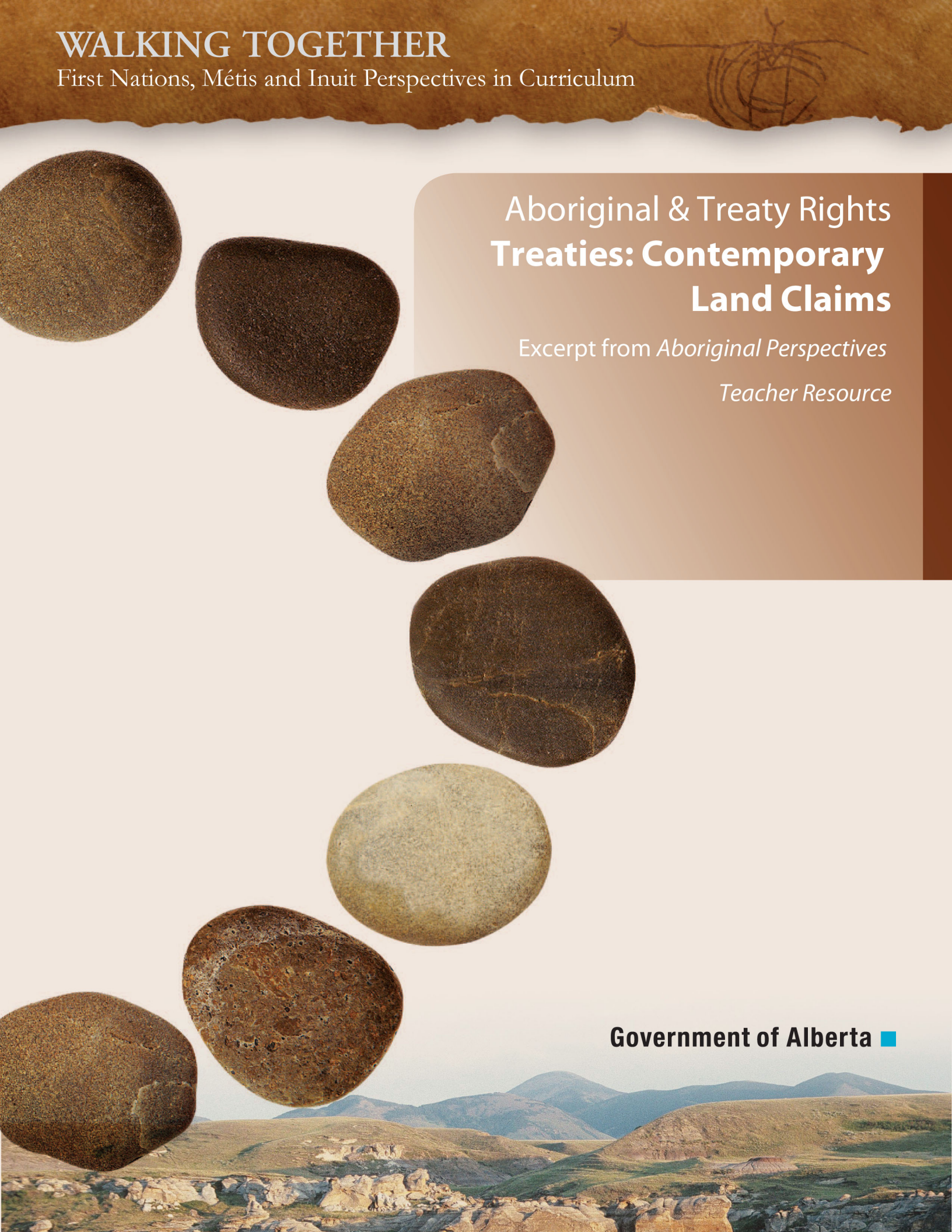
First Nations, Métis and Inuit Perspectives in Curriculum

## Aboriginal & Treaty Rights Treaties: Contemporary Land Claims

Excerpt from *Aboriginal Perspectives*

*Teacher Resource*

Government of Alberta ■





## **TREATIES: CONTEMPORARY LAND CLAIMS**

Excerpt from *Aboriginal Perspectives Teacher Resource*

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### **TREATIES: CONTEMPORARY LAND CLAIMS**

In 1973, the federal government recognized two broad classes of claims—comprehensive and specific.

Comprehensive claims are based on the recognition that there are continuing Aboriginal rights to lands and natural resources. Such claims arise in those parts of Canada where Aboriginal title has not previously been dealt with by treaty and other legal means. Comprehensive land claims are currently under negotiation in the Yukon, Labrador, most of British Columbia, Northern Quebec, Ontario, and the Northwest Territories. The claims are termed “comprehensive” because of their wide scope. Comprehensive claims include such things as land title, fishing and trapping rights, financial compensation, and other social and economic benefits.

Specific claims, on the other hand, deal with specific grievances that First Nations may have regarding the fulfillment of treaties. Specific claims also cover grievances relating to the administration of First Nations lands and other assets under the Indian Act.

From the early 1970s to March 1996, the government provided Aboriginal groups with approximately \$380 million for work on their claims. This money enabled Aboriginal peoples to conduct research into treaties and Aboriginal rights and to research, develop, and negotiate their claims.

In 1986 the federal government announced a new comprehensive claims policy in answer to Aboriginal groups’ concerns. One of Aboriginal peoples’ main concerns had to do with the abolition (the act of formally destroying something through legal means, either by making it illegal or simply no longer allowing it to exist in any form) of their rights and title to land. Historically, this was a problem with the treaty-making process. In the past, the federal government would only negotiate treaties if Aboriginal peoples accepted “extinguishment” of their Aboriginal rights and title.

The new claims policy provided other options to this total extinguishment of rights and title. It also widened the scope of comprehensive claims negotiations to include crucial issues raised by Aboriginal peoples. Negotiations could now include offshore wildlife harvesting rights, the sharing of resource revenues and Aboriginal peoples’ participation in environmental decision making. Negotiations could also include a federal government commitment to negotiate self-government with the First Nation.

Another big change in the process of negotiating comprehensive claims came in 1990. Up until then, the federal government would negotiate no more than six claims at one time. After the new 1990 policy, there was no longer any limit on the number of claims the federal government was willing to negotiate with First Nations.

### **COMPREHENSIVE CLAIMS**

The negotiation of comprehensive claims is a long and painstaking process, requiring many years to complete. The following outline deals with claims settled before March 1996, and those still under negotiation. The objective of all these claims is to enable Aboriginal peoples to take charge of their own destinies, build strong, self-sustaining communities and protect their languages and cherished traditions.

<b>CLAIM</b>	<b>STATUS</b>	<b>BENEFITS</b>
The Cree and Inuit of Northern Quebec	Final agreement in 1975	Compensation of \$225 million over 20 years, community lands with hunting and trapping rights over large areas, and provisions for local government systems.
The Naskapi of Northern Quebec	Final agreement in 1978	Compensation of \$9 million and special education powers
The Gwich'in of the Mackenzie Delta Region, Northwest Territories, are one of five regional Dene and Métis groups who together claim Aboriginal land use and occupancy of about 1.2 million square kilometres of land.	Final agreement in 1992	Approximately 24 000 square kilometers of land, plus some mineral rights.
Sahtu Dene and Métis, also one of the regional Dene and Métis groups in the western N.W.T.	Final agreement in 1994	About 41 400 square kilometers of land, plus some mineral rights.

These last two settlements also give the Gwich'in and the Sahtu Dene and Métis a share of resource royalties from any oil and gas or mining developments in the Mackenzie Valley, and guaranteed Aboriginal harvesting rights. In addition, they participate on boards that make decisions about renewable resources, land-use planning, land and water use, and the impact of industrial projects on the environment.

<b>CLAIM</b>	<b>STATUS</b>	<b>BENEFITS</b>
Treaty 11 Thicho of North Slave region of the western N.W.T. Originally part of the larger Dene/ Métis claim, the Treaty 11 Thicho filed their own comprehensive claim in 1992. Claim addressed issues like land ownership, Aboriginal harvesting rights, access to resources and self-government negotiations.	Two interim agreements in 1994.	The withdrawal of about 13 000 square kilometres of Crown land around four Thicho communities and guaranteed Thicho participation in the process regulating the North Slave region.



Council of Yukon First Nations.	Umbrella Final Agreement in 1993, establishing the basis for negotiation of individual settlements with each of 14 Yukon First Nations.	Total settlement lands of 41 400 square kilometres of 25,900 square kilometres include mines and minerals, and approximately \$242.6 million (1989 dollars). Guaranteed participation on boards that manage national parks and wildlife areas, special economic and employment opportunities and specific hunting and fishing rights.
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Four individual claims have been settled under the umbrella agreement with Yukon First Nations: the Vuntut Gwitchin First Nation, the First Nation of the Na-cho Ny'a'k Dun, the Champagne of Aishihik First Nations, and the Teslin Tlingit Council. These four First Nations have received a portion of lands and monies of the larger settlement. Six more First Nations are negotiating final land claim and self-government agreements with the federal government. The four remaining Yukon First Nations are preparing for their land claim negotiations.

<b>CLAIM</b>	<b>STATUS</b>	<b>BENEFITS</b>
Atikamekw and Montagnais: 12 communities claiming 700 000 square kilometres in Quebec and Labrador.	Claim stems from earlier one submitted by the Conseil des Atikamekw et des Montagnais (CAM). However in 1994, three major groups in the Atikamekw and Montagnais voted to dissolve the CAM corporation and negotiate three separate settlements.	Under negotiation
Innu Nation representing the Innu of Davis Inlet (Utshimassits) and Sheshatsiu, claiming large central portions of Labrador	Framework agreement for negotiation reached in 1995.	Under negotiation
Algonquins of Golden Lake, claiming 3400 square kilometres on the Ontario side of the Ottawa River watershed.	Framework for negotiations reached in 1994 and substantive negotiations to date on land and resources	Under negotiation

### **SPECIFIC CLAIMS**

While some First Nations' grievances relate to events dating back a century or more, others are more recent. Between 1927 and 1951, under the terms of the *Indian Act*, First Nations could not hire a lawyer to bring a claim against the Crown without the Government of Canada's permission. When those provisions of the *Indian Act* were repealed, First Nations were able to pursue their outstanding grievances against the Crown.

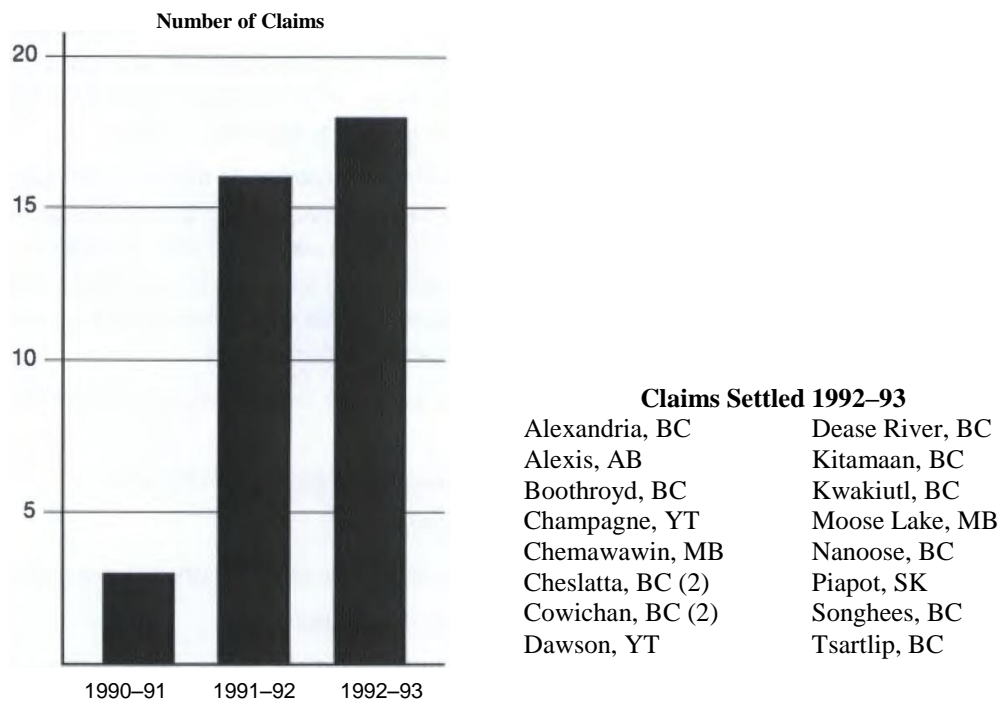
In 1973, the federal government established the Specific Claims Policy, which permits the investigation of First Nation claims that treaty or other legal obligations have not been fulfilled. In 1991, Canada changed the specific claims process to resolve claims more efficiently and fairly. It provided additional funding to deal with specific claims, lifted restrictions on pre-

Confederation claims, and established the Indian Specific Claims Commission (ISCC) to provide an independent dispute resolution mechanism. The ISCC provides First Nations with an out-of-court alternative to review specific claims that have been rejected by Canada.

Government policy recognizes that a specific claim exists when a First Nation establishes that its grievance gives rise to a lawful obligation through:

- the non-fulfillment of a treaty or another agreement between First Nations and the Crown
- the breach of an *Indian Act* or other statutory responsibility
- the breach of an obligation arising out of government administration of First Nations funds or other assets
- an illegal sale or other disposition of First Nation land by government

Since 1973, Canada and First Nations have resolved more than 225 specific claims. Currently, more than 100 specific claims are in negotiation. Specific Claims West (SCW), a directorate of the Department of Indian Affairs and Northern Development, is responsible for settling specific claims in British Columbia, Alberta, Saskatchewan, Manitoba, and the Yukon.



### **FAST-TRACK PROCESS**

To resolve claims even more quickly a fast-track process is in place. Claims for less than \$500,000 can be moved through the system and negotiated much faster.

### **WHAT IS A SPECIFIC CLAIM?**

Specific claims are brought against the government because of its alleged failure to fulfill treaties and other lawful obligations. Claims may also result from the improper administration of lands

and other assets under the *Indian Act* or other formal agreements. The government accepts arising from the following situations:

- Not fulfilling a treaty or other agreement
- Breaching an obligation under the *Indian Act*.
- Illegal sale or disposal of First Nations land
- Improperly following reserve allotment procedures.
- Failure to provide adequate compensation for reserve lands taken or damaged by the government.
- Mismanagement of trust accounts or leases of reserve land to third parties.
- Improper acquisition or disposal of First Nations reserve land.

### **STEPS IN PROCESSING A CLAIM**

Each specific claim is unique, depending on the particular issues involved. Processing a claim includes:

- **Claims Submission** — A First Nation submits a claim, along with historical documents to support its allegations.
- **Confirming Research** — In consultation with the First Nation, SCW reviews the documents.
- **Acceptance** — SCW obtains a legal opinion and recommends to the Minister of Indian Affairs acceptance or rejection of the claim. Rejected claims may be referred to the Indian Specific Claims Commission.
- **Negotiation** — The First Nation and SCW negotiate a fair settlement of the grievance. Mediators can be used if necessary.
- **Settlement** — First Nation and Department of Justice lawyers draft a settlement with the assistance of negotiators.
- **Ratification** — The settlement agreement is ratified by the First Nation and then by the Minister of Indian Affairs.

Specific claims relate to the history of Canada's relations with First Nations. For the most part, specific claims deal with First Nations' land or assets. As a result of many of the agreements signed between the early 1700s and the 1920s, First Nations exchanged title to large expanses of land for certain treaty rights and reserve lands. Through these treaties, the Crown secured land for the settlement of Canada.

In 1876, the Government of Canada passed the Indian Act, which formalized its legal relationship with First Nations, especially where land and assets were concerned. However, it is recognized that Canada did not always honour its legal obligations as specified in the Indian Act, treaties and other agreements. Specific claims address a wide range of grievances — from Canada's administration of First Nations funds and assets, including timber and mineral rights, to shortfalls of promised reserve land.