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Presentation to the Senate Standing Committee on Aboriginal Affairs

Regarding Bill C-6 - Specific Claims Resolution Act

by

Grand Chief Carol McBride

Algonquin Nation Secretariat

Ottawa

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Good evening Senators and staff,

Thank you for the chance to speak today. My name is Carol McBride and I am Grand Chief of the Algonquin Nation Secretariat, which represents the First Nation communities of Timiskaming, Barriere Lake, and Wolf Lake. Our traditional territory lies in northwestern Quebec and northeastern Ontario. With me today is Peter Di Gangi, the Director of our Tribal Council.

We area glad to have a chance to speak to you about Bill C-6, because we believe that as the Bill currently stands, it will have a negative impact on our communities, and will be a step backwards in the effort to obtain a truly independent and fair process for resolving Specific Claims. To put it simply, the status quo, as bad as it is, would be better than a future under Bill C-6.

We have reviewed the testimony of some of the previous speakers, including representatives of the Assembly of First Nations, and we believe that they have provided you with ample information on the shortcomings of the Bill.

Realizing that time is short, and not wanting to repeat what others have already said, there are two areas that I will focus on tonight. One has to do with the content of the Bill as it affects our member First Nations. The other has to do with the process which has been used to move it through the system.

Background.

Our three member communities have very different histories, but all of us have potential Specific Claims. Unlike many other parts of the country, we did not get involved in the

Claims process until the mid-1990's, so we have spent the last five years preparing the research and documenting our history to identify potential claims that we might have. We are now putting these into the system. I would like to give you sketch of our members:

- Wolf Lake never received reserve lands even though they began petitioning for a reserve in the 1880's. They lived in the bush until 1970 when they were forced to disperse their settlement at Hunter's Point. Today, they are pursuing a claim for reserve lands. The basis for their claim is not treaty or any law, but the fact that the Crown promised them lands and then went back on the promise, and they suffered as a result.

- Barriere Lake did not get a reserve until 1963, but Quebec would only allow barely enough lands for housing - just 59 acres. They have been severely impacted by the operation of storage reservoirs at Dozois and Cabonga, leading to flooding and erosion of their tiny reserve.

- My own community is Timiskaming. Our reserve was surveyed in 1854, originally at over 69,000 acres. Through a series of re-surveys and almost 40 surrenders, many of them apparently illegal, our land base was reduced to just 5,000 acres.

I should also mention that the Algonquin nation is party to a number of treaties with the British Crown, entered into between 1760 and 1764. These treaties were not land surrender treaties - they were peace and friendship treaties which covered a range of issues to ensure our protection and our coexistence.

Content of Bill C-6.

So, we are late coming into this, and we have begun to identify a number of claims which we want to pursue under the Specific Claims policy. Unfortunately, Bill C-6, if it goes

forward, will prevent us from doing this because it will change the definition of what a Specific Claim is.

We have seen testimony from the Minister of Indian Affairs and his officials, saying that Bill C-6 does not change the Specific Claims policy, that it only makes it more precise and confirms existing practise. I have to tell you that either they don't know their own policy, or else they are not telling you the truth.

Bill C-6 restricts the definition of a Specific Claim to fit into the narrow interpretation which the Department of Justice has chosen. If this happens, then our member communities, and many First Nations in Quebec, will be negatively affected.

Another major problem relates to the cap of $7 million which would prevent large claims from being able to go to the Tribunal. This will have the effect of punishing those First Nations who have experienced the worst losses, and allow Canada to avoid being brought under a binding authority on its worst breaches. This cannot be said to be fair.

I'll give you some examples of how these things would directly affect our communities:

- Bill C-6 restricts treaty claims to those involving lands or other assets. It would eliminate claims based on treaty rights to hunt or fish. It would eliminate claims arising from unfulfilled aspects of the treaties of 1760 which do not necessarily deal with land.
- Bill C-6 would not allow claims based on what they call "unilateral Crown undertaking" - this means in simple terms, a promise by the Crown. For instance, a promise to create a reserve outside of treaty or outside of legislation. Well, in Quebec, almost all of the reserves were created by unilateral Crown undertaking, and many communities who still do not have reserves may have claims based on Crown promises to set aside reserves for them.

- Bill C-6 would prevent the Tribunal from ruling on claims worth over $7 million dollars. But Wolf Lake's Claim for a reserve, if you calculate the cost of land, housing, infrastructure, and loss of services, would amount to much more than that. Canada tells us to trust them - that we could still negotiate this claim without going to the Tribunal. But based on our history and the way the federal government has treated our people, there is no reason to trust them. Without the incentive that comes from being able to appeal to a higher binding authority, Canada will not be motivated to deal honestly with these kinds of claims. That was the whole reason to have an independent claims body with real teeth - to compel Canada to negotiate in good faith, because it could not be trusted to do so on its own.
- The damages experienced by Barriere Lake as a result of flooding and relocations from the Cabonga and Dozois reservoirs could well exceed the $7 million cap.
- There are a number of boundary changes and very large surrenders at Timiskaming which appear to have been illegal, and these will likely be over the $7 million cap.

To summarize, Quebec First Nations are not party to land surrender treaties. Reserves in Quebec were most often set up by unilateral Crown undertaking. Many of our claims are worth more than $7 million. The cap, and the changes in the definition of what a Specific Claim is, will have a negative impact on Quebec First Nations. It seems to us that the rights and interests of Quebec First Nations, and the kinds of claims that they have, were not considered in the development of this Bill - or if they were, a decision was made to make certain adjustments in order to prejudice our interests.

If Canada was really committed to a fair and independent claims process, it would have left the definitions as they were and let the Commission rule on what was an admissible claim, or adopted the definitions that were contained in the Joint Task Force report. That way, they could be free to advance their views and the First Nations could do the same, and let the commission decide. Instead, the federal government has taken the opportunity to stack the deck in its favour one more time before handing things over. This is sharp dealing of

the worst kind because they don't even appear to want to be honest about what they are doing.

A third big problem area has to do with the lack of true independence so long as Canada controls the appointment of Commissioners. Other speakers have already explained this, but we too share their concerns. Just seeing the way the government has manipulated the Committee process with C-6 gives us a very clear idea of the kind of abuse that results from unilateral appointments when one side can stack the deck.

There are many other big problems with Bill C-6, but we do not have the time to review them here.

Process.

Now I would like to briefly touch on some grave concerns we have about the process which was used to get this Bill to this stage. Minister Nault has said that there was ample consultation with the First Nations. That is simply not true. Yes, there was serious cooperative work between 1995 and 1998 in the Joint Task Force, but then the federal government walked away. When they came back, it was with C-6 which is very different from what the Joint Task Force called for.

Since then, the federal government made no serious effort to consult us or our members or our political organizations. Instead, it was more like they were telling us what was going to happen, and we should support it or get out of the way. We were lucky enough to appear before the Standing Committee of the House of Commons, but many First Nations were refused the chance, and in the end, the Liberals used their majority on that committee to ram the Bill through and they entirely ignored the testimony of the First Nations. It seems like the Parliamentary process has been manipulated to restrict debate and prevent our interests from being considered or accommodated. That is shameful, especially because

Canada has a special fiduciary duty to the First Nations. This means the government must act with our best interests in mind and be honest. We feel that this Bill, and the way the government has proceeded with the Bill, are in breach of these fiduciary duties.

Now here we are before the Senate Committee. We are having our fifteen minutes, but for the record we have to say that this is not adequate consultation, and our appearance here in no way supports the process that Minister Nault has imposed.

As Senators will you do the right thing? Will you ensure that our rights are considered and accommodated? I hope that you will, but I must say that I have many doubts now.

We are being told by Minister Nault about how we need to learn about transparency and accountability, and about how we need to run our governments at home. But with this Bill and Bill C-7 we have had a chance to see how your government is run and it's a lot different than what the Minister expects from us. After seeing how this legislation has been rammed through, and all of the misinformation and half-truths that have come from the Department of Indian Affairs, and the way the Committee process has been manipulated by the government, we don't really see any evidence of accountability or transparency or democracy. In fact, I think you could take some lessons from us.

We are hoping that as Senators you will have the integrity to do the right thing no matter which party appointed you. You must act as a check on the power of the executive arm of this government. You have a duty, not just to the First Nations, but also to Canadians, to ensure the integrity of the democratic process.

The right thing to do is to recommend that this Bill be withdrawn and that the government sit down with the First Nations and work on something that is more balanced and takes our views and our interests into account. As it is, the Bill is so bad that it cannot be fixed by

amendment. It should go back to the drawing board so that we can make it better and all be proud of the result.

The Algonquin people have suffered greatly since we welcomed the Europeans into our territory over 200 years ago. We have been exploited and lied to by many governments over the years, and our situation has only gotten worse. But here we are today, still hoping that your institutions will consider and accommodate our interests. Our experience with Bill C-6 and Bill C-7 does not inspire much confidence, but we appeal to you to make a difference and do the right thing.

Meegwetch.

SIX NATIONS COUNCIL

PRESENTATION

TO THE

SENATE STANDING COMMITTEE ON ABORIGINAL PEOPLES

HEARINGS ON BILL C-6:

THE SPECIFIC CLAIMS RESOLUTION ACT

SIX NATIONS OF THE GRAND RIVER TERRITORY

CHIEF ROBERTA JAMIESON

MAY 28, 2003

INTRODUCTION

Sago, Skenoh – Bonjour, greetings to the Chair and members of the Standing Committee. I thank the Committee for providing Six Nations of the Grand River Territory the opportunity to present our position regarding Bill C-6, *An Act to establish the Canadian Centre for the independent Resolution of First Nations Specific Claims to provide for the filing, negotiation and resolution of specific claims and to make related amendments to other Acts, "The Specific Claims Resolution Act"*.

I would like to share with you a Haudenosaunee (Iroquois) teaching:

> One day there was a young boy out hunting alone in the bush. He heard a voice calling to him. He stopped and looked around but did not see anyone and continued on his way. He heard the voice again, telling him to look down. The young boy realized that the voice was coming from a stone. He sat next to the stone and listened. For several days the young boy would come and sit by the stone listening. He would bring fish and game for the stone as thanks for sharing the wonderful stories of life. The young boy started telling the people in his village about the stories and things he was learning from the stone and they began to come and listen too. Soon all the people in the village were happier and treating each other better from listening to the stories the stone shared.

As with all teachings, it has a lesson. It demonstrates the respect and tie we experience with the land. Our ancestors listened and heard the messages provided by the land and resources upon which we now rely. Lessons are taken from nature and acted upon. The messages are heard. Six Nations hopes the Standing Committee on Aboriginal Peoples does nothing less.

Six Nations knows and appreciates this Committee's history of listening to the Aboriginal voices of Canada. Demonstrated by the recommendations and statements included in the February 2000 report *Forging New Relationships: Aboriginal Governance in Canada*. One statement parallels our request today: "Aboriginal witnesses spoke of the need for independent structures outside the regular courts that can address the grievances of Aboriginal peoples, and supervise the negotiation and implementation of relationships between Aboriginal peoples and Canada."[1] The Committee response in Recommendation Two was forward looking suggesting a new Office of Aboriginal Relations be created outside the Department of Indian and Northern Affairs (DIAND).[2] In the Chairman's Foreward, the Honourable Charlie Watt comments on "echoing" the Penner Report of 15 years earlier.[3] Another three years has passed since the Senate Report was issued without federal government action to remedy the lagging government to government relationship.

Sadly, the machinery of Canadian democracy leaves us distanced from our own lands and resources; still seeking fair resolution. Bill C-6 does not provide the fair, independent and speedy solution to long outstanding historical obligations on the part of the federal government that is being sought. Many First Nations were not heard by the House of Commons Standing Committee or the House below, literally. Their requests to attend the hearings disregarded. Another Nation's representatives are still making decisions that impact directly on our daily lives, thus well-being, without hearing our voices.

It is insulting for Minister Nault to describe the calls to withdraw Bill C-6 from the legislative process as the work of only a few First Nation leaders. People of the Six Nations have been seeking redress through a fair and just process, using our voices about the treatment of our land and resources by government, almost immediately after the issuing of the *Haldimand Proclamation* in 1784. There is a difference between listening and being heard. It is time that we were heard! This is not the legacy we want to leave our children and grandchildren. Do you?

THE SIX NATIONS COMMUNITY AND ITS CLAIMS

The purpose of this presentation is to provide the Standing Committee with a view into the reality of Six Nations members and the effects of long outstanding claims in the current specific claims process that will not be addressed in the proposed legislation of Bill C-6.

On October 25, 1784, Sir Frederick Haldimand, Captain General and Governor in Chief, issued a Proclamation authorizing Six Nations to take possession of and settle upon the banks of the Grand River. The lands allocated to Six Nations under the *Haldimand Proclamation* extended from the mouth of the Grand River at Lake Erie to the head, six miles from each side of the River proportionately, consisting of approximately 950,000 acres (384,465 hectares). This amount of land was never received by Six Nations.

Six Nations of the Grand River Territory is home to the Mohawk, Oneida, Onondaga, Cayuga, Seneca and Tuscarora peoples. It is situated in southern Ontario near the communities of Brantford, Caledonia and Hagersville. Six Nations has the largest membership in Canada, 21,690 as of March 31, 2003.[4] Our members are residing on 4.8 percent, 45,482.951 acres of what was the original allocation. Six Nations of the Grand River Territory main reserve area is registered at DIAND as Indian Reserve #40.

From 1974 until December 19, 1994, Six Nations filed 27 "specific claims" against the Crown seeking resolution to the outstanding obligations. To date only one claim has been resolved, the CNR Settlement on November 4, 1980, resulting in a 259.171 acre addition to community land. A further four claims were validated as outstanding lawful obligations owed to Six Nations and recommended to proceed to negotiations. In Minister Nault's own words, Canada has a legal obligation to Six Nations. He stated: "When you accept a claim, you accept legal responsibility for wrongdoing of sorts based on our fiduciary obligation through the Indian Act, treaty or some other act. This is very much a legal process."[5] Canada has admitted wrong doing in those four instances and Six Nations is still without redress.

It became apparent to Six Nations Council, throughout negotiations to resolve the Block #5 Moulton Township Claim (30,800 acres) and the Flooding of Six Nations Lands by the Welland Canal Feeder Dam (2,415.60 acres), that a satisfactory resolution acceptable to the Six Nations Community would not be achievable under the federal Specific Claims process. Arbitrary discount factors were being introduced by Federal Negotiators with "take it or leave it" circumstances. The most offensive term of the negotiations was the pre-requisite for extinguishment of our children's rights to the land at issue. Six Nations Council has an accepted obligation to plan ahead and make decisions with the seventh generation in mind.

Canada's Specific Claims Negotiators suggested if the negotiation terms and lack of creative solutions were a problem, litigation was always available. It was at this point that Six Nations Council directed the law firm of Blake, Cassels & Graydon LLP to proceed with a Statement of Claim against the Crown in Right of Canada and the Crown in Right of Ontario seeking a full accounting of Six Nations' lands and monies. The Notice of this intended action was filed on December 23, 1994 and a Statement of Claim filed on March 7, 1995.

DIAND's response was to close all Six Nations' 26 claim files as of January 31, 1995, including the validated claims. These claims were not rejected, thus DIAND systematically prevented Six Nations from referring these claims to the Indian Claims Commission as an alternative forum to pursue negotiated settlements. A Commission inquiry of a rejected First Nation specific claim results in a public report and a recommendation for negotiation if an outstanding lawful obligation is found. Two additional Six Nations' claims were filed with DIAND in 1995. The Specific Claims Branch also refused to review the other two Six Nations' claims.

The commencement of litigation resulted in Canada ceasing to provide to Six Nations any research dollars normally allocated to the Six Nations Land Research Office. This was despite Six Nations' assurances that any research dollars normally allocated would not be used in any form to support litigation proceedings.

EFFECTS OF NOT SETTLING SIX NATIONS CLAIMS

Jurisdictional uncertainty and "ownership" on lands where Six Nations' interests remain unattended and addressed by the Crown, has generated confrontation and blockades against surrounding municipal developments in the past. Six Nations people are acting on the knowledge that the land was granted to us to enjoy for ever. The benefit of land and resource use should be ours.

The Indian Commission of Ontario (ICO) mediated the signing of the Grand River Notification Agreement on October 3, 1996. First of its kind in Canada, eight municipalities, two First Nations, a conservation authority and the governments of Canada and Ontario agreed to information sharing, consultation on economic development, land use planning and on environmental issues without prejudicing Six Nations' land claims. The Grand River Notification Agreement was renewed on October 3, 1998. The Agreement is being reviewed and due to be renewed October 3, 2003.

While benefiting from the notifications received in compliance with the Agreement, Six Nations community members despair at reading about economic growth in the surrounding communities. The activities and plans for expansion located on lands under claim. Recently, the City of Brantford sold a large area of industrial land for over $5.5 million at the going rate of $55,000 an acre. Six Nations community members are waiting to experience the benefit as originally embodied in the *Haldimand Proclamation*.

As a result the real issue, unresolved Six Nations' claims, causing the effects of uncertainty and impediments to economic development in the participant municipal communities and Six

Nations, continues to fester. Our members are distressed at reading the success of neighbouring communities and waiting for our turn.

Six Nations has always believed that the best solution to this complex situation is a negotiated and binding agreement between Six Nations and Canada. As a result of a lobbying effort during the week of December 6, 1999, by Six Nations, Minister Nault appointed on March 31, 2000, his "Special Representative" to lead the negotiations in establishing a Protocol for Settlement Negotiations, a framework agreement. To participate in the Protocol negotiations Six Nations was expected to suspend its court case: Six Nations v. The Attorney General of Canada and Her Majesty the Queen in Right of Ontario. Meanwhile, Canada was appealing Justice Kent's order for Canada to provide complete and proper answers to Six Nations' written Examination for Discovery.

Canada's resistance to cooperate has forced Six Nations to court for a response. Substantive issues have not been addressed after eight years. We are still in the Discovery phase of the litigation process. There is inherent inequity between Six Nations and the federal government with its unlimited resources to participate in the litigation process. The lack of cooperation questions Canada's support and commitment to its *Gathering Strength – Canada's Aboriginal Action Plan*, for healing our failing relationship.

During the past year no substantive change has occurred in the approach taken by the Minister which would permit meaningful negotiations to proceed. The Court case continues.

CONCERNS WITH PROPOSED BILL C-6 "*The Specific Claims Resolution Act*"

It is apparent to Six Nations that in Bill C-6 Canada has not honoured its undertakings to establish a truly independent Specific Claims Commission and Tribunal as negotiated, determined and recommended by the Joint Task Force on Claims and other critics. The power and resource imbalance between Canada and First Nations is not addressed or alleviated by the Bill's provisions.

Under the current process the federal government decides internally and secretly whether specific claims are valid or not. Section 30 of Bill C-6 does not change that policy. Further in s. 18 of the Bill, the proposed Commission would report to the Minister of Indian and Northern Affairs Canada not directly to the public. Compensation is determined through negotiations, with a high level of federal control over the rules being applied. The federal government currently as both adjudicator and defendant is in conflict of interest; this is unchanged by Bill C-6 and heightened by the reporting requirements or lack thereof (s. 30(3)).

The federal Specific Claims process and the Indian Claims Commission are meant to be alternative avenues for First Nations with outstanding federal or provincial government obligations to find resolution without resorting to more costly and lengthy court processes. Six Nations has an unresolved claim that was submitted to DIAND 20 years ago. Resolution in the specific claims process was first sought over 30 years ago. We are still waiting for an accounting.

A summary of concerns with Bill C-6 are:

1. **Definition of Specific Claims Criteria**

Under the current Specific Claims Policy, First Nations must fit within the criteria or what constitutes the definition of a specific claim or are precluded from bringing a claim. First Nations have been affected by the limited criteria. Bill C-6 narrows the criteria further compared to the current federal policy. It excludes (i) obligations arising under treaties or agreements that do not deal with land and assets; (ii) unilateral federal undertakings to provide lands or assets; and (iii) claims based on laws of Canada that were originally United Kingdom statues or royal proclamations.

The focus of Six Nations' land issues relates to the *Haldimand Proclamation*, 1784, a pre-confederation royal proclamation. There is nothing in Bill C-6 to ensure that our claims will not be adversely affected by the new policy.

2. **Access to the Tribunal**

All claims over the cap, which is set out at $7 million, are denied access to the Tribunal for an independent determination of claim validity. That amount can be unilaterally defined by the federal cabinet. It can be lowered, as well as raised. The majority of claims, whose content deal with land damage or loss issues, will be seeking compensation that is above the cap. First Nations are expected to pay legal fees and negotiation fees out of the $7 million. When you consider that the federal government can extend the process and thus cause First Nations to spend money – grossly unacceptable. Federal projections to the contrary seem to under estimate the value of the claims. In their presentation to the House Standing Committee on Bill C-6, an Indian Claims Commission representative stated that in 11 years of inquiring into federal government rejected claims, only three claims out of over a 100 were valued a $7 million or less.[6]

This provision of the Bill will most certainly deny Six Nations access to consideration by a neutral or independent Tribunal as to the validity of our specific claims. Minister Nault did not address this issue in his presentation to this Committee on Tuesday, May 6, 2003. The myth about Bill C-6 he attempted to dispel was that every First Nation, no matter the size or amount of their claim, would have access to the variety of alternative dispute resolutions mechanisms at the Commission. He forgot to mention that this only takes place, for claims over $7 million, after he has made a determination as to the claim's validity. The right to a determination by an independent body of claim validity should be a separate issue from the amount of compensation sought. Bill C-6 does not change the current specific claims process some of Six Nations' issues are caught in.

3. **Access to Independent Inquiries and Reports**

Under the current system, First Nations have the right to request an investigation and report by the Indian Claims Commission after a claim is rejected by Canada. The Commission assesses the First Nations application for inquiry. Once accepted, the *Inquiries Act* gives the Indian

Claims Commission the power to compel the production of documents and order witnesses to appear. The Commission produces final reports on its findings on the claims inquiry and its recommendation for negotiation or not are released publicly. The recommendations and findings are not binding. However, they carry the moral authority and prestige of that whole body.

There is no such option under Bill C-6 for claims over the cap. A First Nation with a claim worth more than the cap might in theory persuade the Commission to appoint a non-binding arbitrator, but nothing in the government's Bill gives this arbitrator the legal authority of the Commission, nor would any report carry the same weight. Under Bill C-6, Canada can prevent a claimant from ever asking for non-binding arbitration by simply not saying whether it will accept or reject a claim (ss. 31and 32).

The federal government is not required to provide reasons for finding a First Nation claim invalid (ss. 30 and 31). The DIAND Minister may send the notice that the claim is invalid and will not be accepted for negotiation without any reasons given. The First Nation with a claim over the $7 million cap has only litigation left for resolution. Time and resources invested in the specific claim process is lost.

4. **Delay**

Delay is a major problem in the current system. It explains much of the current backlog estimated to be over 550 claims. Bill C-6 does not create an independent and impartial body designed to clear up the huge claim backlog. Instead, it is an instrument that enables the federal government to closely control the pace of settlements and decisions.

Bill C-6 permits the Minister of DIAND to "consider" a claim indefinitely at an early stage in the process. There are no time limits for compliance that must be observed. The proposed framework authorizes and rewards the federal government for delay at the expense of First Nations well being. The longer the claims are delayed Canada does not have to be accountable to the First Nations.

The Bill cannot be relied upon to reduce the backlog of claims. The growing number of unpaid legal obligations and the liability of the Crown will instead continue to grow.

There are many possibilities for delay:

- No claim can proceed to Alternate Dispute Resolution administered or supervised by the Commission, or to the Tribunal, unless the Minister has first considered it, and either accepted it for negotiations or rejected it.

- Bill C-6 says that no delay in responding can ever constitute "constructive denial." If a First Nation ever amends a claim during Commission proceedings, the claim cannot proceed to the Commission until the Minister has "considered" the amendment.

- Since a First Nation cannot take a claim to the Tribunal until all Alternative Dispute
- Resolutions are exhausted, the federal government can delay claims by the pace of its

summer and fall session of 2002-2003, not including the winter session.[8] The lack of access to education perpetuates the circle between the lack of income and the lack of health.

Many of Six Nations community members do not have housing; another basic right that suffers from the delay. Six Nations has nine waiting lists for various forms of housing programs. The number represents 1,584 families seeking housing. The wait for housing is upwards of 10 years. New homes for our seniors and disabled can only be accommodated at two a year. Thirteen families are on the waiting list. The increase in population can only exacerbate the housing shortage experienced by members. Members are waiting months even for emergency housing.

Fiscal resources are needed for recreational facilities and health programs to help counter higher incidents of cardiovascular disease, diabetes and atherosclerosis experienced by Six Nations members. A Study in Health Assessment and Risk Evaluation in Aboriginal Peoples compared a study group of Six Nations members and European dissent Hamilton residents. Though showing that significantly higher risked were experienced by Six Nations participations in all levels of income, higher rates existed in the group with lower levels of education, employment and income.[9] The lower income levels were usually experienced by single parent families; women being the head of the household.[10] Health situations are deplorable and worsening as is the case in many First Nations communities.

According to life expectancy statistics,[11] if Six Nations is delayed in resolving of our claims for another 15 years, 4,160 of our current members will probably not experience the benefits from being able to address community needs. An additional 30 year delay will deprive approximately 8,994 current members of needed services to improve our "gap in life chances."[12] Six Nations should have the right to an independent body to decide on the validity of our claims. A body that approaches the decision on claims from a non-adversarial position. Such a body would not benefit from delay.

Under the current system, a First Nation can at least argue before the Indian Claims Commission that a delay by the federal government in responding to a claim counts as constructive denial. Recourse to having a claim deemed rejected is expressly forbidden by the Bill (s. 30(4)). Court is the only public forum left to First Nations experiencing, as has Six Nations, up to 20 year delays in the specific claims current system. Sadly in Court most First Nations are without adequate resources to sustain an action, a situation frequently exploited by those acting on the government of Canada's behalf. Six Nations has had to struggle in the past to pursue our rights in litigation.

5. **Procedural Flexibility and Fairness**

The rules under C-6 favour the government by requiring the First Nation to disclose all the facts and law it is relying on in support of its claim, even before it reaches the Tribunal (s. 28). There is no requirement in the statute that the government disclose its evidence or legal arguments prior to the Tribunal stage, or even that it provide reasons for rejecting a claim.

Resource imbalance is evident in this area. Great costs are involved in preparing a claim application. The onus is still inappropriately placed on the First Nation to prove its rights. The

specific claims process does not receive any additional funding that may be passed on to First Nations to aid in participating and initiating claims. Canada appears to have unlimited resources by comparison. Equality requires that First Nations have access to funding for claims application in parity to its expenditure.

6. **Independence**

The Commission and Tribunal would not be jointly appointed by First Nations and the federal government. They would not be independent. Rather, they would be appointed solely by the federal government. The members would all have short terms of office. Faced with constantly being dependent on the federal government for re-appointment, members would feel the pressure of wanting to be favourably regarded by the government. Thus, the members would not be seen to be free to make a decision against the very government who would be responsible for their reappointment.

Access to an independent and effective tribunal is necessary to make the commission stage work properly. Faced with the prospect of an independent body making a determination as to the validity of a claim, the federal government would have real incentive to settle the claim. The option of definitive resolution by other means, such as adjudication, is what makes Alternative Dispute Resolution work. Unless both parties have a good reason or are motivated to reach a negotiated resolution, discussions could drag on indefinitely. Under the proposed system First Nations experience the ramification of unresolved claims on a daily basis.

7. **Joint Review of the System**

Bill C-6 proposes that after three years of operation to a maximum of five years, the Minister of DIAND is to conduct a review of the mandate and structure of the Centre. The Minister is to report and make recommendations for changes to the *Act* as deemed necessary and report same to the House of Commons. There is no requirement in the proposed Bill C-6 for input or consultations with First Nations before the report and recommendations are filed. The review continues to be a unilateral action on the part of the federal government against whom the claims are pending.

8. **Regional Participation**

Appointments to the Commission and Tribunal are completely at the discretion of the Minister of DIAND. Requirements for Aboriginal or regional representation are not provided for in the appointing provisions of Bill C-6. Instead, it says that the office of the Centre must be in Ottawa. This further contributes to the perception that the body is under the control of the federal government rather than an independent Centre as the name suggests.

9. **Relation of the Tribunal to the Courts**

The Tribunal does not have the discretion to determine how compensation would be fixed (s. 35). Further, the Tribunal is limited to monetary awards only (s. 35(1)(c)). Bill C-6 limits the flexibility of the Tribunal to adopt innovative approaches, an aspect that is characteristic of a

tribunal. Tribunals are not subject, as a rule, to the same strict rules of procedure and evidence as courts. The Bill forces the Tribunal to act more litigiously.

Unlike courts, however, there is no process for appealing or having the decision of the Tribunal reviewed. Judicial review is explicitly provided for in the Bill but there are limitations to what is available for review.

10. **No Obligation to Publish Report**

Bill C-6 does not require that a report be published for the House of Commons, Senate or the public on the claims settled and those still in the system. Therefore, a mechanism to allow public assessment or evaluation of the pace of claim settlement is not provided.

11. **Transition and Status of Closed Files**

If the Bill proceeds, the method of transition from the current federal Specific Claims process to the Centre proposed in Bill C-6 is not addressed in its provisions. Again the federal government will decide unilaterally when the transition will take place and more importantly how. Federal policy will decide the fate of Six Nations' 28 claims currently filed with the Specific Claims Branch of DIAND.

No assurance is given in the Bill that claims in the current Specific Claims process will transfer automatically to the new method. The Six Nations' arbitrarily closed files have an uncertain status. Logically, claims currently being considered for validation by the Minister of DIAND would not be affected at all. No action is required on the part of the federal government on enactment of Bill C-6 to change its method of considering the specific claims currently backlogged in the system.

Does this apply to the closed files as well? Or will Six Nations be required to re-file all the claims with the Commission to be included in the new system at additional time and expense. Further, would the four claims found to have a valid outstanding obligation and recommended to proceed to negotiation qualify for re-application in the new process? There is no policy provided to coincide with the enactment of the Bill to reassure the members of Six Nations that their land claims will remain in the system. Actions such as these on the part of the federal government strain the First Nation-Canada relationship promised in the Speech from the Throne, and the Liberal Redbook, to work with Aboriginal people to establish an independent claims body capable of making binding determinations as to validity of a claim.[13]

12. **Conflict of Interest**

By retaining the power to determine the validity of claims under Bill C-6, the Minister of DIAND remains in a conflict of interest. The Minister's role as judge and jury will continue.

CONCLUSION

If Bill C-6 is passed in its current form First Nation citizens will continue to suffer the economic and social consequences of unremedied damage to their land bases and assets. Canadian governments will have to deal with:

- social dependency that could have been alleviated by restoring to First Nations what is legally theirs;
- increased health care costs;
- mounting litigation in the courts;
- damage awards from the courts that will grow more costly as economic losses and interest grow; and
- uncertainty over the results of litigation that will hamper planning and economic development by all concerned.

In Six Nations' experience the federal government is trying to paddle our canoe and steer Canada's boat at the same time; by deciding for us, how, where and when our outstanding lawful obligations will be resolved or addressed, if at all. The result is an emerging mountain of unresolved liability that will stand in the way of improved and co-operative relations between First Nations and society as a whole. It is hard to comprehend that the federal government really is acting in the best interests of mainstream Canadians when delaying and avoiding access to a fair and equitable specific claims process.

Bill C-6 is not faithful to the spirit of *Gathering Strength*, the Joint Task Force, not consistent with Red Book and Speech from the Throne promises, ignores recommendations from the Royal Commission on Aboriginal Peoples, this Committee and not a product of a system that a reasonable person would regard as a useful step towards achieving justice and finality. The only aspect of the proposed new federal specific claims process that has become arms length from DIAND, from Six Nations point of view, is funding. If a healthy relationship is to be developed and sustained between Canada and First Nations, it is imperative that Canada deal with the outstanding land issues and act in accordance with our constitutionally recognized rights gained in the last 20 years. To that end, Six Nations asks this Committee to study the impact of the entire suite of legislation, Bill C-6, Bill C-7 and Bill C-19, on s. 35 of the *Constitution*. We see it as a part of much larger picture – a broader termination agenda of government. Senate needs to satisfy itself and Canadians this is not the case.

We look forward to a future that is free from the burden of unresolved claims. Like our neighbours, Six Nations wants to meet the needs of our community now and those of the generations to come.

Therefore, Six Nations of the Grand River Territory asks this Committee to hear our voices and recommend Bill C-6, *An Act to establish the Canadian Centre for the independent Resolution of First Nations Specific Claims to provide for the filing, negotiation and resolution of specific claims and to make related amendments to other Acts, "The Specific Claims Resolution Act,"* not be passed to enable a return to a co-operative partnership between First Nations and Canada so that a bill that achieves justice and fairness for First Nations and all Canadians, may be produced.

ENDNOTES

[1] Standing Senate Committee Aboriginal Peoples, *Forging New Relationships: Aboriginal Governance in Canada* (3rd Report) (Ottawa: Standing Senate Committee Aboriginal Peoples, February 2000) at 7 online: MSN <http://www.parl.gc.ca/36/2/parlbus/commbus/senate/com-e/abor-e/REP-E/rep03feboo-e.htm>.

[2] *Ibid.* at 17.

[3] *Ibid.* at 4.

[4] This is an increase of 131 members from the date of our presentation on Bill C-6 to the House of Commons Standing Committee on Aboriginal Affairs November 27, 2002.

[5] Minister R. Nault, Indian and Northern Affairs Canada, "Evidence to the Standing Senate Committee on Aboriginal Peoples" No. 006 (Centre Block, Parliament Hill, Ottawa, 6 May 2003) at 0900- 19 [unofficial version].

[6] Kathleen Lickers, Commission Counsel, "Evidence to the Standing Committee on Aboriginal Affairs, Northern Development and Natural Resources" No. 005 (West Block, Parliament Hill, Ottawa, 26 November 2002) at (1220) [official version] online: MSN < http://www.parl.gc.ca/InfoComDoc/37/2/AANR/Meetings/Evidence/AANREV05-E.HTM>.

[7] S. Bailey, "Water on reserves unsafe, survey finds", *Globe and Mail* (4 November 2002) at A7.

[8] Grand River Post Secondary Education Office, *Annual Report 2002-2002* (Ohsweken: Grand River Post Secondary Education Office, 2002) at 6.

[9] Preventive Cardiology and Therapeutics Research Program, Department of Medicine, McMaster University & Six Nations Health Services, "Risk Factors, atherosclerosis, and cardiovascular disease among Aboriginal people in Canada: The Study of Health Assessment and Risk Evaluation in Aboriginal Peoples (SHARE-AP)" *The Lancet Publishing Group* vol. 358, No. 9288 (6 October 2001) at 1-2, 9-11 online: MSN <http://www.thelancet.com/search/
search.isa>.

[10] *Ibid.* at 8.

[11] Turtle Island Native Network Discussion, "Aboriginal People – A Growing Population in Canada" (21 January 2003) at 3 online: MSN http://www.turtleisalnd.org/discussion/viewtopic.php?t=285; see also, Yukon Executive Council Office Bureau of Statistics, "Life Expectancy in the Yukon: Statistical estimates of how long Yukoners are likely to live" (Information sheet # - 97.08) online: MSN <http://www.gov.yk.ca/depts/eco/stats/annual/life96.pdf>.

[12] Canada, *The Canada We Want Speech From The Throne to Open the Second Session of the Thirty-Seventh Parliament of Canada* (Speech from the Throne 2002) (Ottawa: 30 September 2002) at 2 online: MSN <http://www.sft-ddt.gc.ca/hnav/hnav07_e.htm>.

[13] The Liberal Party published in Red Book I, 1993 that one of their goals was to establish in cooperation with Aboriginal peoples an independent claims commission. Red Book II, 1997 held the commitment to give the claims commission power to make binding decisions over the validity of claims.

APPENDIX A – SIX NATIONS OF THE GRAND RIVER TERRITORY PRESENTATION ON BILL C-6 TO SENATE STANDING COMMITTEE

COMPARISON CHART

STATUS QUO	BILL C-6 *SPECIFIC CLAIMS RESOLUTION ACT*
Minister of DIAND decides validity of claims	No change for claims over $7 million
DIAND does not report on claims process	Still no report required
Compensation determined through negotiations	Stays the same
Federal Government Conflict of Interest- Judge and Jury	Stays the same
Slow Handling of Claims	Unchanged
Long Delays - Backlog	Unchanged
Broader definition of Specific Claim criteria	Narrower definition - First Nations excluded
No access to independent body	Still no access
Independent inquiry through ICC	No independent inquiry
ICC legal authority to subpoena - enforce complying with requests for information	No legal authority
No time limit for determining claim validity	Unchanged
Rejected claim has access to ICC	Rejected claim only recourse is court
Access to ADR processes after claim accepted	Unaltered
ICC used constructive denial to allow inquiry for claims experience long delays	No deemed rejection permitted – impedes fair access
Federal Government does not have to disclose position	Unchanged
ICC published public reports on claims in the system and length of time to end of inquiry	No public report required