SPEAKING NOTES FOR ATLANTIC POLICY CONGRESS OF FIRST NATIONS CHIEFS EXECUTIVE MEMBER CHIEF JEAN GUY CIMON AND JOHN G. PAUL, EXECUTIVE DIRECTOR APCFNC AT AN APPEARANCE BEFORE THE STANDING SENATE COMMITTEE ON ABORIGINAL PEOPLES CONCERNING BILL C-6, THE SPECIFIC CLAIMS RESOLUTION ACT

Introduction

On behalf of the Atlantic Policy Congress of First Nation Chiefs Secretariat Inc., we are pleased to have the opportunity to share some of our knowledge, thoughts, and concerns about the Specific Claims Resolution Act.

We understand that the honorable members of the Senate Standing Committee have been given a responsibility to not only hear concerns from the public about this new law but also to amend the ACT to address concerns raised with provisions of the ACT.

It is for this reason; we are participating in this process, not only to share our thoughts and concerns with the Specific Claims Resolution Act but also to offer recommendations to change critical provisions of the Act we feel will essentially address our concerns. But before we get into this, we want to share some information on who we are.

Background

The Atlantic Policy Congress of First Nation Chiefs Sect. is a Chiefs Policy & advocacy organization, whose members include 34 of the Mi'kmaq, Maliseet and Passamaquoddy First Nations Chiefs of the four Atlantic Provinces and the Gaspe Region in Quebec, including Eastern Maine. The population of the Mi'kmaq, Maliseet and Passamaquoddy in the Wabanaki territory is approximately 30,000 people. Of the 34 Mi'kmaq, Maliseet and Passamaquoddy communities, 15 communities have a population of 500 people or less; 10 communities have a population between 501-1000 people; and 9 communities have a population of between 1000-3100 people.

When we presented to the Parliamentary Standing Committee on this Bill in November 2002 we outlined some crucial figures on the rate of settlement of claims in our region to highlight the inadequacy of the current system. The rate has not changed since then (unfortunately) and still relevant for today's hearing. Since the imposition of the Specific Claims Policy in 1973, Atlantic First Nations have submitted approximately 58 specific

claims. Of the 58 specific claims within the system; 26 claims are "under review"; 5 claims are "under negotiation"; 27 claims are classified as "other claims"; and 10 claims have been settled. Based on preliminary statistics, we understand that approx 23,000 acres of reserve land were unlawfully undertaken in our region. The current reserve land base left after these illegal undertaking is approximately 34, 376.05 hectares.

We are quite distressed with the rate at which claims are being settled in the Atlantic. Of the 58 claims submitted in the Atlantic since 1973, only 10 claims have been settled. It took 30 years to settle 10 claims. At this rate, the claims in the Atlantic will not be settled for another 150 years and this is totally unacceptable. In one instance, in the Atlantic a claim submitted in 1982 over the unlawful taking of 248 acres of land an agreement was finally reached twenty years later in November 2002.

These statistics do not include the potential number of specific claims not yet submitted into the system. According to the TARR centre in Nova Scotia, there are potentially 35 more claims ready for submission within Nova Scotia alone and at least the same number in New Brunswick, as well as others.

We provide you these statistics because it has relevance to the burdens being imposed on our small First Nation communities in particular.

We have a huge stake in making sure specific claims are settled in a fair, just, and equitable manner. We have the fastest growing population in Canada and yet our land base is decreasing.

On a more positive note we have treaties, treaty rights, aboriginal title and aboriginal rights and such are safeguarded by section 35 of the Constitution Act, 1982.

In the spirit of protecting our rights, we wish to note to the Committee that the Chiefs submissions to the Standing Senate Committee, however, is not to be construed as meaningful consultation as justification for infringement of the Aboriginal and Treaty rights of the Mi'kmaq, Maliseet and Passamaquoddy Nations.

Background of the Joint Task Force

In 1998, after years of cooperative work, First Nations and Canada, via the Assembly of First Nations, released the Joint Task Force (JTF) Report, which provided a cooperative basis for a truly independent body dealing with specific claims--in fact the JTF Bill outlined a jointly-appointed Commission and Tribunal that provided for the effective, fair and expeditious resolution of all claims within a reasonable fiscal framework;

These claims involve legal obligations arising from past federal dealing with First Nations;

A large backlog of over 500 claims exists. The Backlog continues to grow every year, along with the Federal governments contingent liabilities;

First Nations communities continue to suffer from the ongoing inability to access lands and assets that are rightfully theirs;

The Government of Canada's Specific Claims Policy is intended to resolve claims arising from breaches of the Crown's lawful obligations through negotiations;

Bill C-6 known as the Specific Claims Resolution Act, does not create an independent and impartial body designed to clear up the huge back log of claims;

The conflict of interest in having Canada decide claims against itself remains and is entrenched in legislation;

It is the view of our Chiefs that Canada's Specific Claims Resolution act does not retain the basic elements of the Joint Task Force (JTF) Bill;

Today, Canada's Specific Claims Resolution act would create a system that is worse. At least today the ICC exists and at least allows all claimants to obtain a public investigation, a report, and a non-binding recommendation.

Although there have been several initiatives to set up an independent, effective system to resolve these claims, the most promising one is in the Joint Task Force's Report of 1998. This was the product of joint discussions between officials from the Assembly of First Nations and from the federal government. In a spirit of partnership, each side found ways to address the concerns raised by the other. The result of those discussions was a detailed and technically sound bill for a system to resolve specific claims.

This JTF bill proposed a jointly-appointed Commission and Tribunal that provided for the effective, fair and expeditious resolution of all claims within a reasonable fiscal framework.

Under Bill C-6 the federal government retains its domination over the system. It does not create an independent and impartial body designed to clear up the huge backlog of claims. Instead, the Bill enables the government to closely control the pace of settlements and decisions. Access to the Tribunal is severely limited, appointments are at the unilateral discretion of Canada for short terms, and the federal government is rewarded for delaying the settlement of claims. Claims are treated as a matter of discretionary spending which must be tightly controlled, instead of legal debts or liabilities. The conflict of interest in having Canada decide claims against itself remains and is entrenched in legislation.

In fact, Bill C-6 would create a system that is worse than the current system, which at least allows all claimants to obtain a public investigation, a report, and a non-binding

recommendation on their claim from the Indian Claims Commission (ICC). Bill C-6 does not allow this independent, public review for claims above the cap.

Specific problems with Bill C-6

First: Definition of Specific Claims

The approach of the Joint Task Force was to build on the definition in the official federal policy statement, Outstanding Business (1982), with a modest expansion in light of case-law over the past decades.

Bill C-6 narrows the definition of claims compared even to 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 (as in JTF); and

(iii) claims based on laws of Canada that were originally United Kingdom statutes or royal proclamations (as in JTF).

Bill C-6 also adds a list of claims that cannot be filed. These include: claims less than 15 years old; claims based on land claims agreement entered into from 1974 onwards; claims based on an agreement listed in a schedule to the bill; claims concerning the delivery of funding or programs relating to policing, regulatory enforcement, correction, educations, health, child protection or social assistance, or similar public programs or services; claims based on agreement that provides for "another mechanism for the resolution of disputes"; and claims based on aboriginal rights or title.

Second: Access to the Tribunal

The JTF placed no limit on the size of individual claims that could be brought to the Tribunal. Bill C-6 denies access to all claims over a cap, which is set out at $7 million. That amount can be lowered, as well as raised. Our Chiefs expect that the clear majority of claims will be worth above the cap. Federal projections to the contrary seem to under estimate the value of claims. Today, the ICC says that of the 120 specific claims they have dealt with, only three were worth less than $7 million dollars.

The Atlantic Policy Congress of First Nation Chiefs has reviewed the Joint Task Force report of 1998 and believes the model bill in the Joint Task Force report of 1998 shows what can and should be done in a constructive and positive spirit. The Atlantic Policy Congress of First Nation Chiefs calls on the federal government to return to the substance and spirit of the Joint Task Force Report, and resolve any remaining issues in the spirit of partnership, fairness and justice.

New legislation needs to be created which includes a genuinely independent and effective system to resolve specific claims.

We recommend to you, here, today to consider a more constructive approach:

It would ensure that Canada's unpaid lawful obligations to First Nations communities are paid. The federal government would live up to its general commitment to fiscal responsibility and debt reduction

First Nations communities would achieve both justice and the practical means to promote their economic and social development

Non-First Nations businesses would benefit from the increased spending and investments from First Nations;

The ongoing source of dispute over the past would be removed, fostering an atmosphere for joint cooperative efforts at building a better future for all First Nations;

The promise of the federal government in the Red Books would be fulfilled, and the government could create a legacy in this area that would benefit First Nations, and all Canadians, and serve as a model for the international community in resolving unpaid debts to aboriginal peoples.

The Atlantic Policy Congress of First Nation Chiefs would like the federal government of Canada to seize the opportunity to work together on creating a new Bill aimed truly at providing a just, speedy, and fair settlement of outstanding federal legal obligations.

The Specific Claims Resolution Act will merely continue the wrong that has been committed for over a century by imposing more inappropriate systems and regimes on people. Instead, the government should be working with First Nations and concentrating on how to remedy the damage done and support First Nations governmental development.

Was there meaningful consultation on this Bill?
The short answer is no.

We encourage this Committee to engage in a meaningful discussion and consultation about what really works, both in terms of strategy and priorities to achieve a mutually positive result, but mostly for the benefit of First Nations peoples.

We do not wish to spend any more time than is necessary in pointing out the flaws in Bill C-6. What we would like to move on to now is our recommendations.

Our Position

Our primary recommendation is to withdraw the bill. On September 18, 2002, the Atlantic Policy Congress First Nation Chiefs passed a motion unanimously calling on the Federal Government to extensively redraft the Specific Claims Resolution Act to secure the Joint Task Force (JTF) elements of the Bill. The Atlantic Chiefs also challenged the Federal Government to fulfill its fiduciary obligations to First Nations by withdrawing it's Specific Claims Resolution act in its current form and return to the Joint process of drafting as up held in the Joint Task Force (JTF) Model. Our Position is consistent with the position put forward by the Assembly of First Nations and other First Nations group across Canada.

Recommendations

Our primary recommendation is to withdraw this Bill. But we are also aware this Senate Standing Committee has an opportunity to make changes to the Bill. We would also like to offer some suggestions for changes.

First:

We recommend changes be made to Bill C-6 which are consistent with the recommendations agreed upon in the 1998 Joint Task Force Report. Otherwise to move forward with the Current bill, we know will compromise the ability to resolve claims in an expeditious, fair and impartial manner.

Second:

We recommend that the conflict of interest provisions within the Bill be removed. The independence of the Commission and Tribunal could be undermined by the retention of unilateral federal authority over appointments and the processing of claims.

Third:

We recommend that appointments to the Commission and Tribunal are to be made jointly by both the Federal Government and First Nations. Otherwise it will be a conflict of Interest for the Minister charged with defending the Crown to be given sole discretion to make appointments to a body that will be hearing the claims. In the current bill there is no provision for direct First Nations input.

Fourth:

We recommend that effective/specific timelines be provided for under the Commission process. In the Current bill there are far too many opportunities for federal delay built into the process. This Bill has been characterized as institutionalizing delay.

Fifth:

We recommend that the CAP provisions within the existing Bill be removed. Bill C-6 appears to be worse than the current process, where a Commission of Inquiry is available to all claims that are rejected by Government, regardless of potential monetary value. Under the Bill First Nations will be required to waive federal liability over $ 7 million to access the Tribunal. Even the Minister of INAC agreed when he made his submission to this body on May 7th that he wishes there was more flexibility in relation to the CAP because it would make for a stronger tribunal.

Sixth:

We recommend that the definition of a specific claim be defined to include claims arising from specific pre-confederation treaty provisions. Under the current bill the definition for a specific claims has been narrowed from the existing policy. Claims arising from specific treaty provisions are now to be restricted to land and not our rights or the water.

Seventh:

We recommend that the Bill be amended to provide for a substantial, long term, financial commitment. Under the current bill it is more about limiting federal liability, than about settling claims. It offers little or no hope to address the growing backlog in specific claims in the foreseeable future.

Eighth:

We recommend that the structure and procedures for the proposed Bill be more flexible. Under the current bill structures and procedures are more narrowly prescribed than the flexibility recommended by the Joint Task Force and would be made more inflexible by federal regulations not seen yet but under development.

Ninth:

We recommend that provisions be added to Bill that allow for a joint review of the process. Under Current Bill that power is being left to the discretion of the Minister.

Tenth:

We recommend that the current Bill be withdrawn or be amended to include the recommendations we have just outlined. Currently our First Nations do not believe the Bill is consistent with the high standard of conduct required of a fiduciary. The federal government currently decides internally whether specific claims are valid or not. Compensation is determined through negotiations, with a high level of federal control over the rules being applied. The government is, from our perspective, in a "conflict of interest". It is both defendant and adjudicator.

Conclusion

In conclusion we wish to reiterate a statement made by Minister Nault during these hearings where he said "that the Specific Claims Resolution Act, like these other initiatives, is about **fairness** for First Nations people. It is about **listening to them and hearing** what they say, and about **keeping promises and** recognizing our responsibilities as legislators and acting on those responsibilities. It is also about **building respect** among us and **trust** relationships, so that First Nations can enjoy a quality of life that other Canadians take for granted."

We want to remind the Committee Members that the reason why we are here today calling for the withdrawal of this Bill is precisely because out trust was betrayed by our federal partners who sat with us and co-drafted the Joint Task Force Report and who ended up ignoring it. We hope that through this process that the Senate Committee Members will be able to reinstate and uphold the Joint Task Force Report.

Thank you for your time and attention. We will be pleased to answer any questions.