



SPECIFIC CLAIM SUBMISSIONS: RESEARCH, DRAFTING AND SUBMISSION

John Burns ~ Donovan & Company

6th Floor, 73 Water Street

Vancouver, BC V6B 1A1

Website: www.aboriginal-law.com

Telephone (604) 688-4272

Fax (604) 688-4282

Specific Claims Submissions

- The Starting Point:
 - What is a Specific Claim?
 - *Specific Claims Tribunal Act, s.14*

What is NOT a Specific Claim?

- ❑ Too recent
- ❑ Based on modern-day Treaty
- ❑ Based on funding for programs or services
- ❑ Based on agreement with dispute resolution mechanism
- ❑ Based on, or “alleges”, aboriginal rights or title
- ❑ Based on treaty rights to activities of a variable nature



Filing Requirements

- What happens after a claim has been filed?
- Minimum Standards Review
- Timeframes for Canada's Response



Role of First Nation

- Identify potential claims
- Setting priorities
- Source of evidence
 - ▣ oral history
 - ▣ documentary evidence
- Review of claim prior to submission



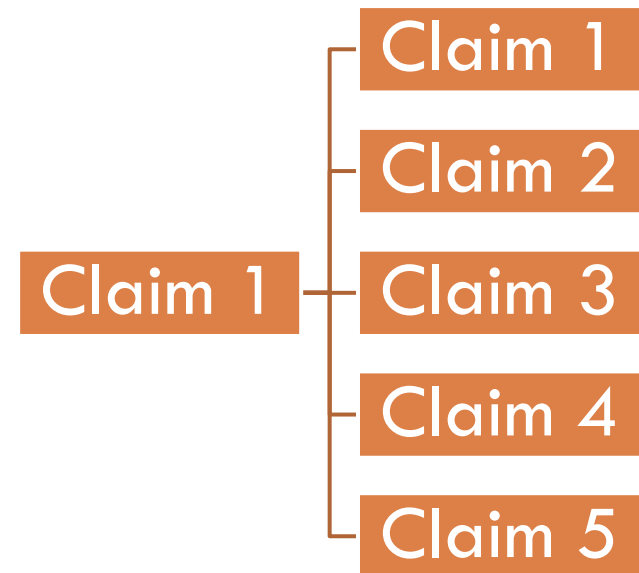
Roles of Researcher & Lawyer

- Need for mutual respect / good working relationship
- Need for interaction at all stages
- Potential significance of draft research reports



Avoiding the “Partial Acceptance” Problem

- What is a partial acceptance?
- Attempts to resolve post-submission
- Avoiding the problem by submitting multiple claims



The Need to Identify the Harm

- Establishing a breach of legal obligation is not sufficient
- Need to establish damages
- Preliminary evidence of damages may be sufficient
- Shifting the onus
 - ▣ the “self-dealing” fiduciary



Comments on Drafting Claims

- Write clearly; proofread carefully
- Tell the story (start at the start)
- Executive summary (to orient the reader)
- Where possible, let the documents do the heavy lifting
- Tell the whole story (embrace your weakness)
- Situate your claims within the existing legal framework



Identify Your Remedy

- *Specific Claims Tribunal Act*, ss. 20(1)(e)(f)(g)(h)
- *Specific Claims Policy & Procedure Guide (Annex)* ss. 1, 2, and 3
- The critical difference between a taking with and taking without lawful authority



Advancing Specific Claims

- Grant funding is currently available
- The Tribunal will help clarify the law and resolve impasses
- First Nation benefits when its Specific Claims are identified, researched, and resolved

