REPORT OF THE COMMITTEE **THURSDAY, June 12, 2003**

The Standing Senate Committee on Aboriginal Peoples

has the honour to present its

FOURTH REPORT

Your Committee, to which was referred 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, in obedience to its Order of Reference dated Wednesday, April 2, 2003, has examined the said Bill and now reports the same with the following amendments:

1. *Page 22, clause 47:*

   (*a*) Replace line 4 with the following:

   (*a*) in relation to a specific claim that is before the Commission, to summon witnesses or to order production of documents;

   (*b*) whether the claim and any other specific

   (*b*) Replace line 7 with the following:

   (*c*) any other issue that needs to be resolved

2. *Page 24, clause 56:* Replace line 1 with the following:

   maximum of ten million dollars, based

3. *Page 29, clause 76:* Replace line 19 with the following:

   considers appropriate. In carrying out the review, the Minister shall give to first nations an opportunity to make representations.

4. *Page 29, new clauses 76.1 and 76.2:* Add after line 32 the following:

   76.1 The Minister shall, before making a recommendation under section 5 or subsection 20(1) or 41(1), notify claimants – which notification may be by ordinary mail sent to their latest known addresses – that they may, during a period that the Minister specifies of not less than 30 days after the date of the notice, make representations in respect of appointments to the office or offices in question.

76.2 (1) At no time shall a person who was appointed under section 5 or subsection 20(1) or 41(1) act for any party in connection with any specific claim in relation to which they performed any work or concerning which they obtained significant information during their term in office.

(2) Persons who were appointed under section 5 or subsection 20(1) or 41(1) shall not, within a period of one year after the end of their term in office, accept any employment with or enter into a contract for services with the Department of Indian Affairs and Northern Development or a first nation that had a pending specific claim – before the Commission or the Tribunal, in the case of the Chief Executive Officer, or, in the case of a commissioner or adjudicator, before the Division of the Centre to which the person was appointed – at any time during their term in office.

5. *Page 30, new clause 77.1 :* Add before line 1 with the following:

77.1 During the period of one year after the coming into force of section 76.1, the reference in that section to "claimants" shall be read as a reference to "claimants under this Act or under the Specific Claims Policy of the Government of Canada".

Your Committee also made certain observations, which are appended to this report.

Respectfully submitted,

THELMA J. CHALIFOUX
Chair

OBSERVATIONS

to the Fourth Report of the Standing Senate Committee on Aboriginal Peoples

Comments on Bill C-6, The Specific Claims Resolution Act

Waiver Requirement on Rulings of Validity

The Committee frequently heard, both from First Nations and neutral observers, that the requirement for claimants to waive their rights to compensation above the specified cap (as set out in Section 32) in order to obtain a Tribunal ruling on the validity of their claim was the single most significant flaw with the Bill. The government expressed concern that removing this requirement would pose undue and unpredictable financial risk and might imbalance the overall operations of the Commission and Tribunal. Given the safeguards built into the legislation (Section 71), this seems to reflect an excessive concern with risk aversion. We are concerned that the financial cap on validity will create two categories of claims within the system and could create a significant impediment to the settlement of larger claims. However, we recognize that, in its early years, the Centre may need to operate under conservative principles and that an

incremental approach to this issue might be most appropriate. Therefore, the Committee did not amend the Bill with respect to this provision.

We would ask that the Minister in the review of the Act in three to five years, pay particular attention to the impact on the cap on validity. The effects on larger claims, the increase or decrease in the number of First Nations choosing to utilize the courts and the frequency of the use of the Tribunal when claims are rejected for negotiation are all areas of interest.

Delay

One of the primary goals of this Bill is to provide for more speedy resolution of claims. Nonetheless, there are many areas of potential delay built into the process. Most notably, there is no requirement on the Minister to make a decision on whether to accept a claim for negotiation within a set time period. We have been told that this flexibility is necessary because of the complexity of many claims and the limited legal and other resources available to the Minister to make these determinations. As well, the government may be limited in the number of claims it can address because of the budget available for settlements. We would therefore urge the government to allocate significant additional resources to the process of validity determination, negotiation and settlement of claims so that the admirable goals of the Bill can be met.

We would ask that the Minister, in the review of the Act in three to five years, pay particular attention to the impact of the issues of delay and resources that have been allocated to the process of validity determination.