

# 'Speedy, new' treaty deal is neither: critic

**Native advocate says government is still allowed to judge itself**

**Juliet O'Neill, The Ottawa Citizen**

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The federal government's promise of an independent and speedy process to clear a backlog of unfulfilled and breached Indian treaty obligations may not be so independent or speedy after all, says a longtime advocate of reforms.

Rolland Pangowish said yesterday that the government plan for "specific claims" legislation contains potentially fatal flaws that will leave the main promises of independence and speed unfulfilled. As it stands, the plan is "not the significant transformation" the government has claimed.

Mr. Pangowish co-chaired the 1997-98 First Nations-Canada Task Force on Specific Claims Policy Reform, directed the Assembly of First Nations lands and treaties unit from 1990 to 2003, and is currently technical adviser to Ontario First Nations chiefs on claims.

He says that while the government may have left the impression a proposed independent tribunal is going to take charge of the claims process, clear a backlog of 800 claims for land or compensation and get cracking on new incoming claims, the reality appears quite different.

The government will remain "judge and jury" of itself, deciding whether to accept, reject or negotiate a claim, and the tribunal only kicks in later -- as many as three years later -- if negotiations fail, or a claim is rejected or all parties agree to a referral to the tribunal. The fate of the 800 or so claims already in the system has not been made clear by the government, he said.

The legislation is being developed by an eight-member team, equally portioned among government and First Nations representatives, as Chuck Strahl replaces Jim Prentice as minister of Indian and Northern Affairs. A bill is supposed to be drafted for the fall session of Parliament.

"The long-standing objective of First Nations to eliminate the government's conflict of interest in judging claims against itself by establishing an independent claims body is not achieved," Mr. Pangowish wrote in a recent analysis for the chiefs of the plan announced by Prime Minister Stephen Harper in June.

A truly independent process would establish an arm's-length body to receive claims, decide on their validity and determine whether the government is legally obligated to provide land or compensation, he said.

As it now stands, the government decides all that. Public servants at Indian and Northern Affairs and lawyers at the Justice Department screen the claims and assess whether the government has a legal obligation to fulfil, whether to accept, reject or negotiate.

It is at this stage that the existing claims are bogged down -- 30 per cent of them for six to 10 years and some for more than 20 years, partly because more resources and personnel are required.

Mr. Pangowish says there is little in the government plan to address that.

The government says all new claims will receive a preliminary assessment within six months and similar claims will be bundled to speed decisions. It doesn't take legislation to improve internal management of claims, Mr. Pangowish said.

He questioned whether a government-appointed tribunal, open to political-patronage appointments, will be perceived as independent.

"In fact, the appointment of judges hostile to First Nation rights is highly likely when governments opposed to First Nation aspirations are in office," he wrote.

The "specific claims" process involves cases in which the federal government failed to provide land owed under historic treaties, or took land or other assets without providing agreed compensation.

This process differs from the comprehensive treaty process under which First Nations and governments negotiate terms and conditions of land title and jurisdiction.

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