

# ABORIGINAL LAND CLAIMS

WITH NORRIS WILSON, A.C.I., P.A.P.P.

**“AN APPRAISER CAN BE CALLED ON TO PREPARE VALUATIONS ON BEHALF OF THE FIRST NATION, THE PROVINCE, OR THE FEDERAL GOVERNMENT, OR TO PREPARE AN APPRAISAL FOR CONSIDERATION BY THE ENTIRE NEGOTIATING TABLE.”**

## Introduction

**T**here are three main classes of land claim in Canada. The large claims to Aboriginal rights in traditional territory, whether covered by a treaty or not, are referred to as **Comprehensive Claims**. A recent example is the Supreme Court ruling in favour of the Tsilhqot'in Nation in BC, which recognized their rights to use of their traditional territory and to be consulted on any planned use of resources. Aboriginal title is not fee simple title as we understand it, but may be considered to be the sum of the rights to traditional use of land and the right to have a say in the use of the land by others.

**Specific Claims** are those of most interest to appraisers. These are claims for, among other things, compensation as a result of wrongful surrender of land, where Canada disposed of part of an existing Reserve at a price or under terms not in the best interest of the First Nation. Other examples include moving five bands onto one Reserve and selling off the four vacated parcels, or persuading the First Nation to give up the existing Reserve and accept less valuable land in a more remote location in its place. Flooding claims arise as a result of alterations to waterways for transportation or logging purposes, which led to flooding of the First Nation Reserve land.



A third class of claim is for **Treaty Land Entitlement**, where the individual Treaty specified the Reserve would include so many acres for each member or each family and the Crown is alleged to have not provided enough land to meet this obligation.

### What role does an appraiser typically play in an Aboriginal land claim?

**NW:** An appraiser can be called on to prepare valuations on behalf of the First Nation, the province, or the federal government, or to prepare an appraisal for consideration by the entire negotiating table. In these cost-conscious times, the latter is most often the choice for all parties concerned.

In addition, appraisers can act as consultant to any of the parties exclusively to provide advice on appraisal matters, setting terms of reference in cooperation with the other parties' consultants in the context of an appraisal technical team and appraisal review. As the primary appraiser for the table, a major part of the appraiser's role involves clarifying the terms of reference, the approach that will be taken during the appraisal, and the scope of the investigation. This is done so that everyone is comfortable with the process going forward. The appraiser then sets value benchmarks for the different dates that are part of the claim and begins the process of delivering a report in three different stages. The first stage is a preliminary report providing a description of the property and the sales data gathered relative to the claim, but making no valuation analysis. The appraisers, lawyers and other professionals who may be representing the different parties review the preliminary report and provide their comments and questions. Once the appraiser has satisfactorily dealt with these, he or she proceeds to stage two, which is a draft final report that includes a complete valuation. The review process

by the other professionals is repeated again and, once they are satisfied, the final report is completed and presented. That may not be the end of the matter, as other issues can arise during further negotiations requiring clarification from the appraiser.

### What unique challenges does an appraiser face when working on an Aboriginal land claim?

**NW:** Because land claims are usually historic in nature, valuation work can involve understanding the market and the local economy as far back as the first settlers. My work on the islands in the Trent Canal involved valuations at 1832, 1855 and 1880, as the canal was developed initially by the logging industry and flooding was experienced in stages. Understanding valuation of land for agriculture and for timber was required for the earliest date, but the economy diversified significantly by 1855 when railroads became a factor and, by 1880, the timber economy in Southern Ontario was actually on the wane. An understanding of historic economic geography has to be gained in order to interpret the sales evidence determined by researching Registry Office records.

There can also be challenges presented by the sheer size and scope of the land involved in the claim. Today's satellite imagery has enhanced the process considerably, as has the use of light aircraft, ATVs and snowmobiles—all of which I have used on numerous occasions.

### What are the rewards and/or drawbacks to appraisal work involving these claims?

**NW:** There is the sense that helping to settle long-standing grievances of the First Nations is a worthwhile use of your time. The focus of Canada's dealings with the First Nations is meant to be reconciliation, and land claim settlement is part of that process.

One of the drawbacks to this type of work is the length of time the process has taken in the past, although there is hope that the new Specific Claims Tribunal will help speed up settlements by encouraging parties to adhere to a set timeframe. Generally speaking, where claims may have previously taken up to 20 years to settle, the mechanisms are now in place to reach settlements in less than four years, which is still a long time.

### What specific skill set does an appraiser require to deal effectively with Aboriginal land claims?

**NW:** An appraiser needs to have and demonstrate respect for the parties, an understanding of the basis for the claim, an understanding of applicable Treaty rights and obligations, and also have the imagination to be able to look at land today and see the signs that indicate its history. For instance, satellite imagery may indicate an old field pattern on land which has subsequently returned to forest, thus indicating that it had been farmed at one time.

### What techniques most come into play in Aboriginal land claim appraisals?

**NW:** Because we are dealing with land valuation, the direct comparison approach is the technique that is often relied upon. Occasionally, I have also used the subdivision residual method. However, the current thinking in calculation of the present value of the loss of use of claim land involves a version of the income approach which entails such steps as setting benchmarks for land value at different historical time periods, determining land rental rates and calculating annual cash flow. The resulting economic return to land is then brought to a present value and forms the basis for compensation. It is a very complex process.



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**Is there significant demand for appraisal services related to Aboriginal land claims?**

**NW:** Because it is such a highly specialized field of appraisal work, there are not a lot of appraisers involved in Aboriginal land claims. Those of us doing this type of work are getting older and there is a definite need to get some younger appraisers involved. Also, with the previously mentioned Tribunal process now involving lawyers, adjudicators and tighter timelines, there could well be an increased demand for appraisers to serve as expert witnesses.

As for volume of work in this area, there are a number of outstanding claims in Ontario alone that are in various stages of negotiation. You can find a list of Ontario claims that have been accepted for negotiation at: <https://www.ontario.ca/aboriginal/current-land-claims>

A list of active claims for Canada is available at: [http://services.aadnc-aandc.gc.ca/SCBRI\\_E/Main/ReportingCentre/PreviewReport.aspx?output=PDF](http://services.aadnc-aandc.gc.ca/SCBRI_E/Main/ReportingCentre/PreviewReport.aspx?output=PDF)

**What advice would you give an appraiser considering Aboriginal land claim work?**

**NW:** Be prepared to spend a lot of time waiting for the parties to review your work. As I said earlier, the land claims process is measured in years.

**If an appraiser wants to get into Aboriginal land claim work, how should he or she go about it?**

**NW:** From time to time, there are courses available through the Appraisal Institute of Canada (AIC). There is also a limited amount of literature in the AIC and US Appraisal Institute libraries. However, because the field is so complex, I would definitely suggest that the appraiser intern with an experienced practitioner. You can also network at events such as the National Claims Research Workshop held in Ottawa in October. While it is more for people involved in the historical research aspect of claims, it is a good place to meet people who are part of the process.

**If an appraiser is seeking more information on this subject, are there any resources you can suggest?**

- <http://www.thecanadianencyclopedia.ca/en/article/land-claims/>
- <https://www.aadnc-aandc.gc.ca/eng/1100100030285/1100100030289>
- <https://www.ontario.ca/aboriginal/current-land-claims>



**N**orris Wilson, B.A., AACI, P.App, is the Senior Director, Research, Valuation & Advisory, with Altus Group Limited in Ottawa. He has nearly four decades of experience as a real estate appraiser and has been involved in numerous high-profile assignments in Ontario, British Columbia, Saskatchewan, Manitoba and Quebec. Although having appraised all types of properties, his interests are expropriation appraisal, First Nations land claims and special purpose properties. He has been declared an expert witness in the field of real estate appraisal before various courts and tribunals and has spoken at a number of industry conferences in Canada and China on the subject of expropriation and the valuation of partial interests in land.

Norris is currently working with Lac des Mille Lacs First Nation, Ontario and Canada on an historic flooding claim involving land valuations at several dates between 1875 and today. This is a Specific Land Claim named for the fact that the claim arises out of a specific grievance, in this case flooding of a part of the LDML FN Reserve in 1875. He has also served as a consultant to the Rainy River First Nations on the successful negotiation of their land claim and on compensation matters with counsel for Peguis First Nation in what became the largest Specific Claim settlement in Canada – \$200 million. As an appraiser for the parties, he valued 20,000 acres of rural land in Quebec, 4,500 acres of land in Northwestern Ontario, 1,100 islands drowned and damaged by raising of water levels in the Trent Severn Canal system, and Reserve land flooded by dams on the Qu'Appelle River in Saskatchewan.