



Evaluating Canada's Specific Claims Commitments

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Federal Priorities 2015–Present

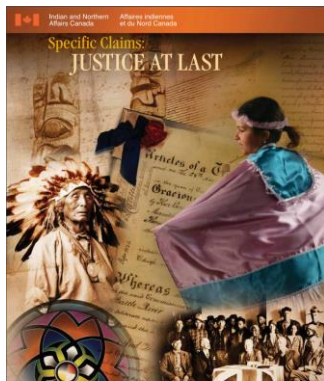
“Canada believes the existing specific claims policy and process, including the question of equitable compensation, are not in keeping with a recognition of rights, or a reconciliation-based approach to addressing issues between the Crown and Indigenous peoples. Canada is working to completely overhaul the policy, in co-operation and collaboration with Indigenous Peoples”

Joint Statement from Ministers Wilson-Raybould and Bennett regarding
Huu-ay-aht First Nation Litigation, September 5, 2017



Comparative Data – Federal Commitments and Statements

- Binding legislation on Specific Claims
- Online CIRNAC Specific Claims data base
- Publicly available documents, decisions, communiques, submissions
- Case studies/analysis of claims and negotiations



2016 Fall Reports of the Auditor General of Canada
Report 6-1 First Nations Specific Claims—Indigenous and Northern Affairs Canada

Department of Justice
Ministère de la Justice

PRINCIPLES

Respecting the Government of Canada's Relationship with Indigenous Peoples





Comparative Data – Experiences of the Specific Claims Process

- UBCIC Specific Claim 2019 Survey (preliminary)
- Reports from BCSCWG
- AFN SC Dialogue Sessions (2017-present)
- Anecdotal Evidence



June 19 & 20

SPECIFIC CLAIMS

THE ASSEMBLY OF FIRST NATIONS
INVITES YOU TO A DIALOGUE SESSION



Federal Commitments

1. Legislated 3 Year Time-Frame
2. Letters of Offer to Negotiate
3. Increased transparency and accessibility of negotiations funding:
4. Accurate and accountable reporting



1. Legislated 3 Year Time-Frame (2015-2018)

Federal Commitments

“The [Tribunal] act also introduced three-year time frames to the process. The three-year assessment period starts when the claim is filed with the Minister of Crown-Indigenous Relations and Northern Affairs”

-CIRNAC, 2019, *Specific Claims Process*



1. Legislated 3 Year Time-Frame (2015-2018)

Evaluating the Commitments

Province	Impacted Claims ¹⁶	Average Time Elapsed Since Claim Filed	Average Time Between Legal Opinion and 3 Year Deadline	Average Time Since Legal Opinion Completed
AB	5	3 yrs, 2 months, 23 days	4 months, 20 days	7 months, 12 days
BC	46	3 yrs, 5 months, 8 days	10 months, 1 day	1 yr, 2 months, 9 days
MB	2	3 yrs, 8 months, 1 day	8 months, 30 days	1 yr, 5 months, 2 days
NWT	1	3 yrs, 5 months, 15 days	8 months, 10 days	1 yr, 1 month, 27 days
NS	2	3 yrs, 1 month, 30 days	6 months, 31 days	9 months, 1 day
ON	5	3 yrs, 8 months, 19 days	9 months, 27 days	1 yr, 7 months
QC	6	3 yrs, 9 months, 3 days	6 months, 18 days	1 yr, 4 months, 4 days
SK	3	3 yrs, 3 months, 24 days	5 months, 16 days	9 months, 26 days
Total	70 ¹⁷			
National Average		3 yrs, 5 months, 17 days	9 months, 1 day	1 yr, 2 months

Table 1. Time elapsed since claim submission, legal opinion and three-year deadline, and legal opinion to present.

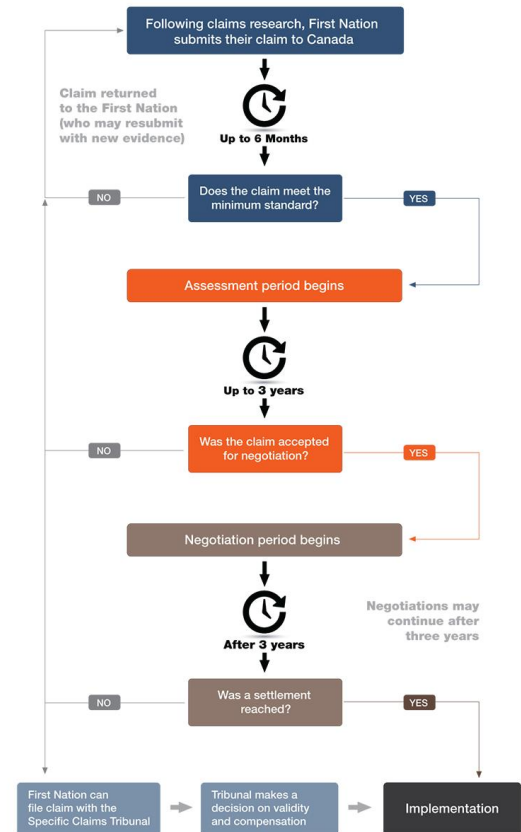


1. Legislated 3 Year Time-Frame (2018-2019)

Federal Commitments

- December 2018 – informed that SCB aiming at returning to meeting 3 year deadline
- January 2019 – informed that a new plan in place to address backlog

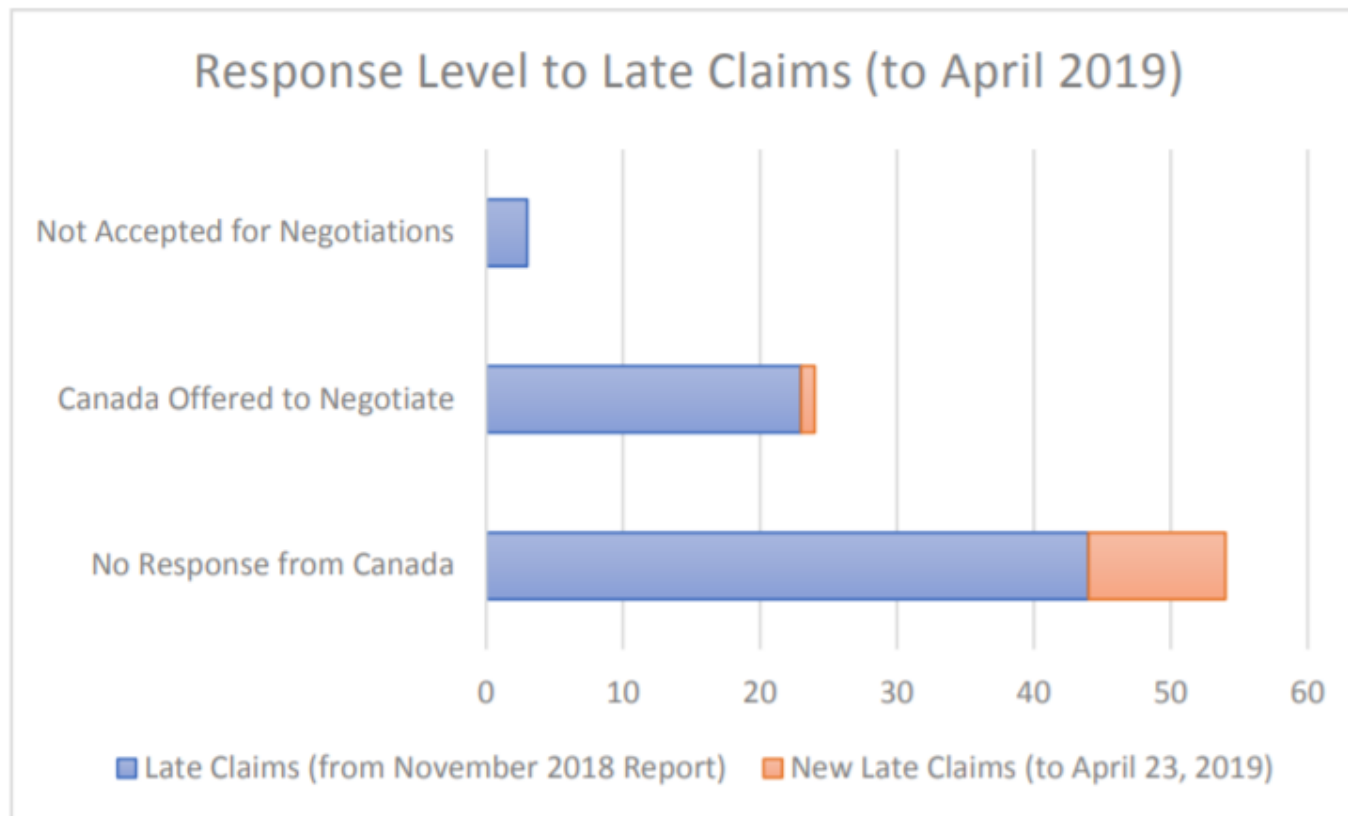
SPECIFIC CLAIMS PROCESS





1. Legislated 3 Year Time-Frame (2018-2019)

Evaluating the Commitments



Graph prepared by BCSCWG,
May 2019



1. Legislated 3 Year Time-Frame

Federal Commitments to Communication

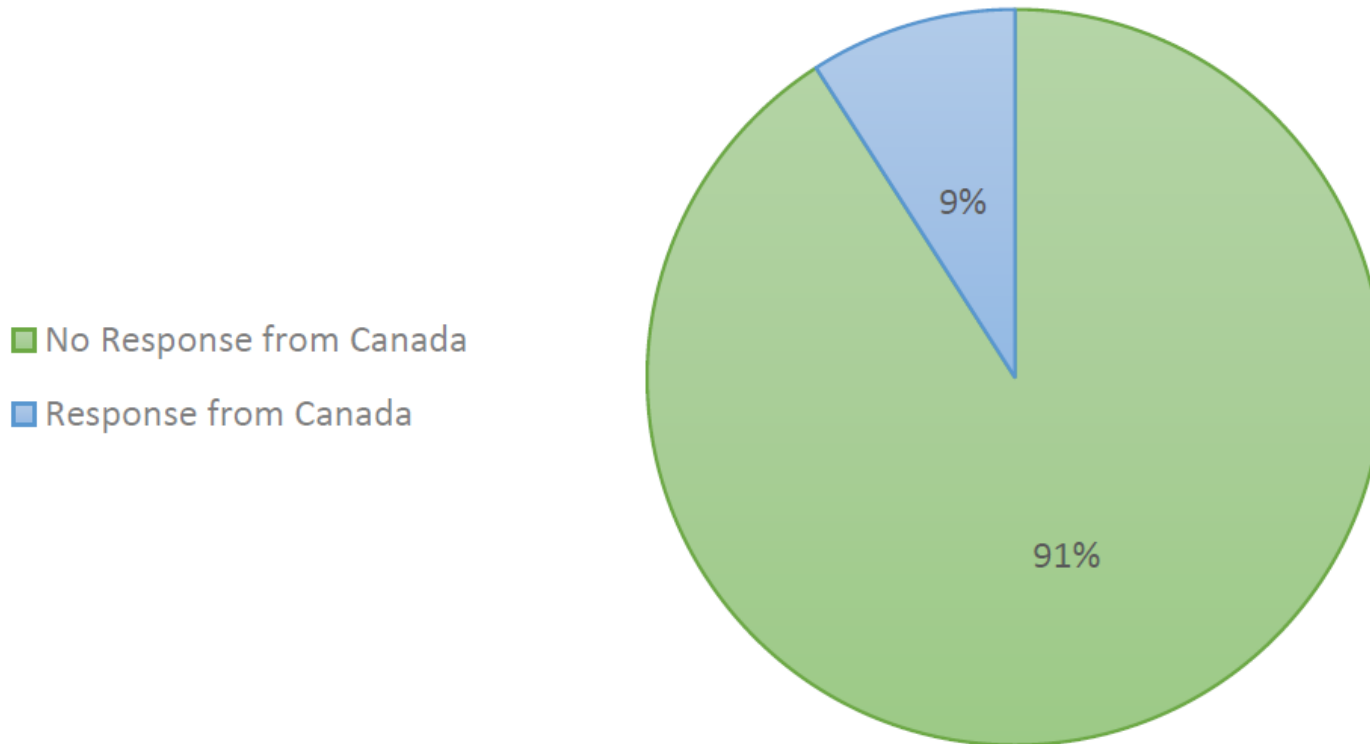
- OAG recommendation 6.66 – Indigenous and Northern Affairs Canada agreed
- Representatives from the Specific Claims Branch have publicly stated that SCB is improving communication with First Nations



1. Legislated 3 Year Time-Frame

Evaluating the Commitment

New Late Claims (to April 2019)



Graph prepared by BCSCWG,
May 2019



2. Letters of Offer

Federal Commitments

“A more participatory and co-operative approach to the resolution of claims is being implemented. The frequency and scope of communication with First Nation claimants is increasing with the goal of building trust, strengthening relationships and improving understanding of each other’s interests.”

Union Of British Columbia Indian Chiefs



2. Letters of Offer

Evaluating the Commitment

“There has been a clear change in tone in the letters in the past two years. Definitely they are willing to at least discuss almost all allegations”

UBCIC Survey 2019



2. Letters of Offer

Evaluating the Commitment

“The tone has definitely changed...The open ended willingness to discuss allegations can also be frustrating because one has no idea how serious they are.”

-2019 UBCIC Online Survey



2. Letters of Offer

Evaluating the Commitment

“In some letters, lawful obligation was not mentioned at all. Canada offered to sit down and talk about the grievances or fix the relationship when what [we] wanted was for Canada to address its historical wrongdoing”

- UBCIC 2019 Survey



2. Letters of Offer

Evaluating the Commitment

It is Canada's view, for the purpose of seeking a negotiated settlement of the claim, that the evidentiary record was inconclusive as to whether the **Lot 54 Lands** were ever intended to be set aside as part of **Cowichan Lake IR 1**. As such, I would welcome the opportunity to explore a resolution of this grievance.

Excerpt of letter of offer received by a First Nation from the Specific Claims Branch

*“where there is doubt that the lands
were ever reserve land, the degree
of doubt will be reflected in the
compensation offered.”*

Sec 10 compensation criteria, Spec Claims Policy and Process Guide



3. Negotiation Funding – Clarity and Transparency

Federal Commitments

- Justice at Last Commitment – greater transparency in funding (2008)
- OAG Recommendations 6.43 and 6.52 (2016)
- CIRNAC response to PACP (2018)
- Public statements



3. Negotiation Funding – Clarity and Transparency

Evaluating the Commitment

Specific Claim Negotiation Cost Guidelines

Effective as of August 17, 2014

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3. Negotiation Funding – Clarity and Transparency

Up front Pre-negotiation funding

- 15,000 or 75,000?
- Loans or Grant?
- What is it for?
- How is it communicated?

“I definitely felt Canada should have advised all of us in negotiations about the change by letter”



3. Negotiation Funding – Loan vs. Grants

Federal Commitments

- OAG Recommendations 6.53 (2016)
- *Indigenous Land Rights: Toward Respect and Implementation* (2018)
- Communiqués with Canada's representatives (2018)



3. Negotiation Funding – Loans vs. Grants

Evaluating the Commitment

- Announcements at meetings after 2018 budget that loans converted to grants but that this would take time
- Inconsistent messaging about status of funding
- Inconsistent understanding of status of loans or availability of grant funding
- Subsequent announcement that this change was not going to happen.



4. Public Reporting

Federal Commitments

- Justice at Last (2008)
- OAG recommendations 6.47, 6.79, 6.80 (2016)
- Report to PACP (2018)
- Meetings with SCB representatives



4. Public Reporting

Evaluating the Commitment

In Negotiations

Active

- Date Claim Filed: 2008/10/16
 - Date Legal Opinion Signed: 2011/03/28
 - Canada Offered to Negotiate: 2011/07/25
 - Pending FN's BCR Accepting to Negotiate: 2011/07/26
-

In Negotiations

Active

- Date Claim Filed: 2009/06/03
- Research Start Date : 2009/06/04
- Date Legal Opinion Signed: 2011/09/08
- Canada Offered to Negotiate: 2012/05/16
- Pending FN's BCR Accepting to Negotiate: 2012/05/17



4. Public Reporting

Evaluating the Commitment

Specific Claims Mini Survey

RE: Clams Listed as: “Active” “In Negotiations”

1. Has a negotiator been assigned to your claim?
2. Have you signed a negotiation protocol agreement, MOU?
3. Have you received negotiation loan funding?
4. Have you developed and signed a work plan (has Canada?)
5. Are you meeting regularly or frequently with negotiators?
6. Does Canada’s negotiator have a mandate?
7. In some cases, the database says, “negotiations resumed”? Have negotiations for your claim(s)
8. How would you characterize the status of your claim(s)?
9. Does the database accurately reflect when negotiations began?



4. Public Reporting

Are negotiations active if:

- No funding had been received
- Canada has made an offer but the first nations has not agreed or provided a BCR
- No negotiator is assigned
- You are meeting with Canada but Canada's negotiator does not have a mandate
- Pre-negotiation meetings occur but a work plan is not yet developed
- No talks have occurred in 6 months, a year?
Two years?



Conclusions

1. Legislated 3 Year Time-Frame (in accordance with Justice at Last)
2. Improved communications in Letters of Offer
3. Increased transparency and accessibility of negotiations funding
 - i. Clarity and transparency
 - ii. Loan vs. Grant Funding
4. Accurate and accountable reporting



Summary

- Canada has failed to meet their own public commitments to the Specific Claims process
- Discrepancies between Canada's public vs. private statements
- Presentation of Specific Claims process differs from First Nations' experience of the process
- Overall, lack of clear communication or transparency



Moving Forward

Thank you