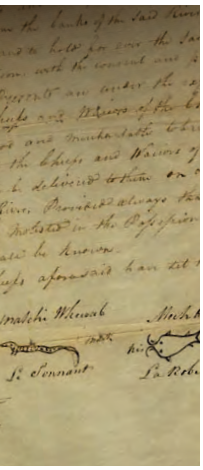

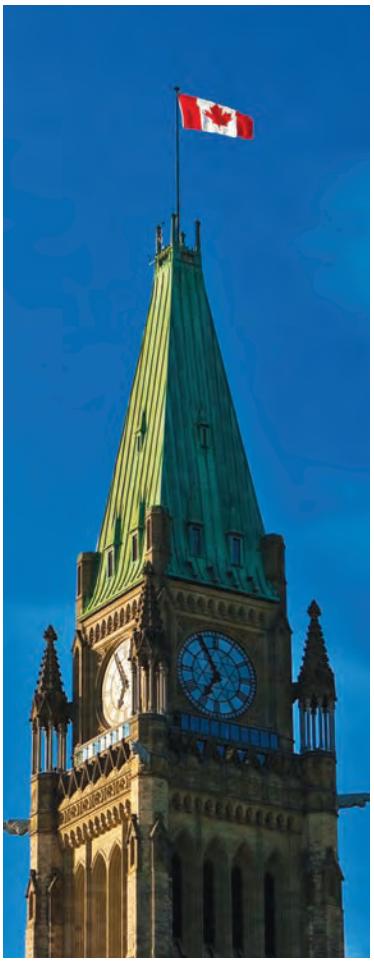

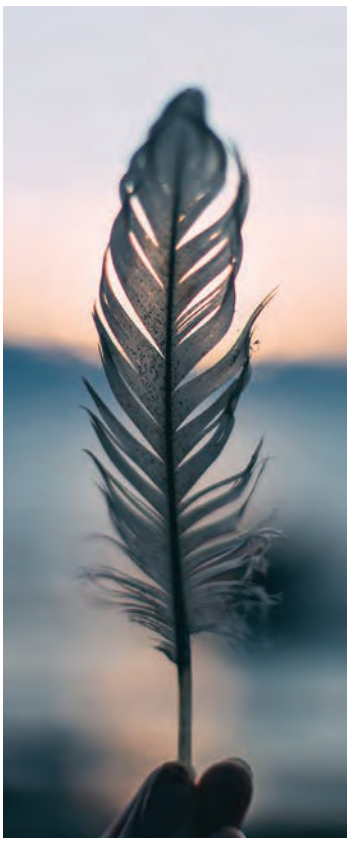

Specific Claims and the Well-Being of First Nations

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by Tom Flanagan

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Executive summary

In the vocabulary of Canadian Indigenous issues, "specific claims" are made by First Nations who have already adhered to treaties but believe that the Canadian government has not properly implemented their treaty or, even if they have not signed a treaty, believe that the government has violated the *Indian Act* in the administration of their reserve lands or trust funds. Canada has been accepting specific claims since 1974. Against a background of frequent complaints from First Nations, Canada has reorganized the claims process three times to make it faster and more remunerative to complainants, and the federal government is currently discussing further changes with the Assembly of First Nations.

There were 450 settlements up to November 15, 2017, totalling $5.7 billion (2017 dollars) in payments from the federal government. This figure does not include payments from provincial governments or the value of Crown lands transferred to First Nations as part of settlements. Approximately 400 claims are still being investigated or negotiated, and about 130 others are in some stage of litigation.

There is little statistical evidence that obtaining settlement of a specific claim makes a First Nation better off. The average Community Well-Being (CWB) index of First Nations that have received settlements is exactly the same as those who have not—59.2. The CWB of those First Nations who received earlier settlements has not grown more rapidly than the CWB of those whose settlements came later. The size of the settlement in 2017 dollars is not correlated with CWB. There is a small positive association between size of a settlement per capita and CWB, but the statistical relationship hinges on a few very large settlements and disappears when settlement size is logarithmically transformed. These results are consistent with two earlier studies that also found little or no association between specific claims settlements and improvement in CWB.

The specific claims process was originally adopted as a means for dealing with past injustices, but specific claims have turned out to be more like a flow than a stock. The process has repeatedly been made more accommodating, and legal doctrines such as fiduciary responsibility and the honour of the Crown have evolved to make success more likely. The federal government also subsidizes the preparation and negotiation of claims. These factors help explain the apparent paradox that the settlement of more and more claims has been accompanied by continual growth in the backlog of unsettled claims.

When the United States established a somewhat similar process in 1946, tribes faced a legal deadline of five years to file claims. Now in our 44th year of receiving claims, Canada should consider setting its own deadline for filing. Otherwise, the settlement of specific claims will continue to make increasing demands on the federal budget, diverting resources from programs for First Nations that would do more to enhance their future prosperity and well-being. Preoccupation with claims about past injustices does not improve future prospects, and may actually hinder progress.

Introduction

In the vocabulary of Canadian Indigenous issues, "comprehensive claims" are made by First Nations that have never signed a treaty or similar agreement; they seek recognition of Aboriginal rights and title to land. "Specific claims" are made by First Nations that have already adhered to treaties but who believe that the Canadian government has not properly implemented the treaty or, even if they have not signed a treaty, believe that the government has violated the *Indian Act* in the administration of their reserve lands or trust funds. A great deal has been written about specific claims from a legal point of view, both in law journals and in government reports (Schwartz, n.d.), but almost nothing from an economic and political view. This publication proposes to emphasize economics and politics, including topics such as political pressure, the cost to the taxpayer, the role of incentives in generating new claims, and the impact, if any, of specific claim settlements upon the well-being of First Nation communities. The conclusion is that, whatever justification for specific claims may have existed in the past, it is time to consider establishing a deadline for submitting claims as a step toward terminating the process.

A specific claim recently decided by the Supreme Court of Canada illustrates many of the historic, legal, economic, and administrative points to be discussed here. It involves the Williams Lake Indian Band from the Cariboo region of British Columbia, who are part of the larger Shuswap people (*Williams Lake Indian Band v. Canada*, 2018). In 2011, it had a registered Indian population of about 830, of whom about 230 lived on a reserve at the head of Williams Lake. The main reserve is about 1,600 hectares, or 4,000 acres, in size (INAC, 2018c). Its 2011 Community Well-Being Index of 60 is about average for First Nations (INAC, 2011).

At the time of the Cariboo gold rush, there was an Indian village at the foot of Williams Lake, which was not respected when prospectors swarmed into the region after 1860, even though British Columbia Governor James Douglas had issued a proclamation in 1859 that village sites should not be opened to preemption by settlers (Williams Lake Indian Band, 2011). In 1871, British Columbia entered Confederation and Canada took over responsibility for Indians. In 1881, Canada established a reserve at the head of Williams Lake, one much larger than the land that had been claimed at the outflow. Even though the province had a legal responsibility to make land available, Canada purchased privately developed farmland for this reserve because the province was moving slowly and the Indians were in immediate need of land to raise food.

The Williams Lake band appeared satisfied with the new reserve, though presumably they would have preferred their original site. Canada, however, had no direct authority to take back land that the province had deeded to settlers. Canada could perhaps have sued to void British Columbia's grants of land on grounds that they violated the Governor's proclamation of 1859, but that would have meant years in court while the Indians needed land right away. Canada's action seemed to administrators like a pragmatic, albeit imperfect, solution to practical difficulties on the ground and was apparently acceptable to the Williams Lake people at the time (Canada, Dep't of Justice, 2011).

Fast forward to 1984, when the Supreme Court's *Guerin* decision enunciated the doctrine of Canada's fiduciary responsibility for Indian lands. In 1994, the Williams Lake Indian Band filed a specific claim alleging that the government of British Columbia, acting for the British Crown, had violated its fiduciary responsibility to protect a pre-existing Indian settlement, and Canada was now responsible. The Department of Indian Affairs rejected the claim in 1995. In 2002, the Band requested the Indian Specific Claims Commission to examine its claim. In 2006, the Commission recommended favourably for the Band, but the Department once again refused to negotiate compensation. In 2011, the Band filed its claim with the newly created Specific Claims Tribunal (Williams Lake Indian Band, 2011), which ruled favourably to it in 2014. Canada appealed to the Federal Court of Appeal, which overturned the Tribunal's verdict in 2016 (Mandell Pinder, 2016). The Band appealed to the Supreme Court of Canada, which restored the Tribunal's judgment on February 2, 2018. This ruling was on the validity of the claims; the Tribunal now will hear further argument before assigning compensation, up to a maximum of $150 million.

The case illustrates several points that arise repeatedly in specific claims: the importance of the doctrines of fiduciary responsibility and honour of the Crown, which now underpin most claims; the slowness of the process—24 years and counting; and the frequent changes in organization and process in hearing claims. Not as common but still important is the intricacy of the legal question involved here: to what extent is Canada responsible for long-ago decisions of other governments made in circumstances very different from contemporary life? This difficulty perhaps explain how divided the judges have been. Thirteen judges have ruled on this dispute: one in the Special Claims Tribunal, three in the Federal Court of Appeal, and nine in the Supreme Court of Canada. Of the thirteen, seven ruled against the Williams Lake Indian Band and six ruled for it. But the decision of the Supreme Court, dividing 5-4, is final.

The Process

In 1946, after 20 years of considering various proposals, the United States enacted legislation to establish the Indian Claims Commission (Rosenthal, 1990: 47–110). Its jurisdiction included claims that, in Canadian terminology, might be considered both specific and comprehensive. The next year a Special Joint Committee of the House of Commons and Senate recommended creation of a similar commission for Canada. Proposals and even draft legislation followed regularly thereafter, but nothing was accomplished in the 1950s and 1960s (Pelletier, 2015a: 20–21).

The 1969 *White Paper* of Pierre Trudeau's Liberal government acknowledged that some specific claims might be valid and proposed to appoint a Commissioner to carry out "further study and research" (Chrétien, 1969: s. 5), but nothing substantial was done at the time. The government, however, was spurred to action after the Supreme Court's decision in *Calder v. British Columbia* ([1973] SCR 313). *Calder* did not exactly uphold the existence of unextinguished aboriginal rights in British Columbia because the Justices split 3-3 on that vital question. But it led to Pierre Trudeau's famous admission that "perhaps you have more legal rights than we thought you had when we did the White Paper" (Allen, 2013: 19). In a statement of August 8, 1973 by Minister of Indian Affairs and Northern Development Jean Chrétien (Pelletier, 2015a: 20), the government formally accepted the legitimacy of both comprehensive and specific claims and promised to deal with them.

In 1974, the Department of Indian Affairs and Northern Development established the Office of Native Claims. Eight years later, a departmental statement summarized what the Office had accomplished through the end of fiscal 1981/82 regarding specific claims:

> Approximately 250 specific claims had been presented to the Department by the end of December 1981. Twelve claims had been settled involving cash payments of some $2.3 million. Seventeen claims had been rejected and five had been suspended by the claimants. Negotiations were in progress on 73 claims and another 80 were under government review. Twelve claims had been filed in court and 55 others referred for administrative remedy (e.g. return of surrendered but unsold land). (Munro, 1982: 13).

First Nations were not happy with these results, and their complaints struck chords that have been heard repeatedly up to the present. The process was not

impartial, they said, because the Department adjudicated as well as investigated claims. It was too slow. The legal basis was too narrow because it was based on a strict interpretation of the written treaties and did not accept claims based on events prior to 1867. The government was not providing sufficient funding to First Nations to help them research and negotiate their claims.

In response, the government in 1982 clarified and reorganized the specific claims process, though without fundamental changes. Within the Department of Indian Affairs, the Office of Native Claims, with advice from the Department of Justice, would remain both the investigator and adjudicator of claims. Compensation would be available only if it could be shown that the government of Canada had breached its "lawful obligations" under treaty or legislation. An improvement from the First Nation point of view was that the government renounced any appeal to statutes of limitation or the common law doctrine of laches[1] to forestall claims (Munro, 1982).

The rejigged process ticked along at a slightly faster rate in the 1980s and early 1990s, settling 33 additional claims by the end of fiscal 1990/91—about four a year, compared to about two a year in the 1970s (INAC, 2017a). But big trouble was brewing because of a claim from the Mohawks of Kahnesatake, filed with the Office of Native Claims in 1977 and dismissed in 1986. This claim went back to a 1717 land grant from the Governor of New France to the Sulpician order for a religious establishment at Oka, including a village for the Mohawks. The Mohawks would later claim that the Sulpicians had sold land that should have been held in trust for them. Things came to a head in the Oka crisis of 1990 after the town announced plans to develop a golf course on land that the Mohawks said should have been theirs (Swain, 2010: 11–30).

After the armed confrontation was finally defused, the federal government bought the disputed lands and still holds them in trust for the Mohawks of Kahnesatake, pending resolution of issues in their system of governance (Swain, 2010: 163–166). At the same time, the Conservative government of Brian Mulroney appointed the Royal Commission on Aboriginal Peoples to examine native grievances in general, and also reorganized the specific claims process in a much more fundamental way than had been done in 1982. In 1991, the government opened the door to pre-Confederation claims, promised more money for research and negotiation, and announced formation of an independent advisory body, the Indian Specific Claims Commission (ISCC). This would be a panel of six lawyers who could investigate specific claims rejected by the Department of Indian Affairs Office of Native Claims. The ISCC could make positive recommendations for settlement, but its mandate was only advisory; final authority

1. "Laches" is unreasonable delay in asserting a claim, which may lead to its dismissal.

would remain with the Minister of Indian Affairs for smaller claims and with the Governor in Council for larger claims. All of this was understood at the time to be only temporary, while consultations continued with the Assembly of First Nations (Butt and Hurley, 2006: 5).

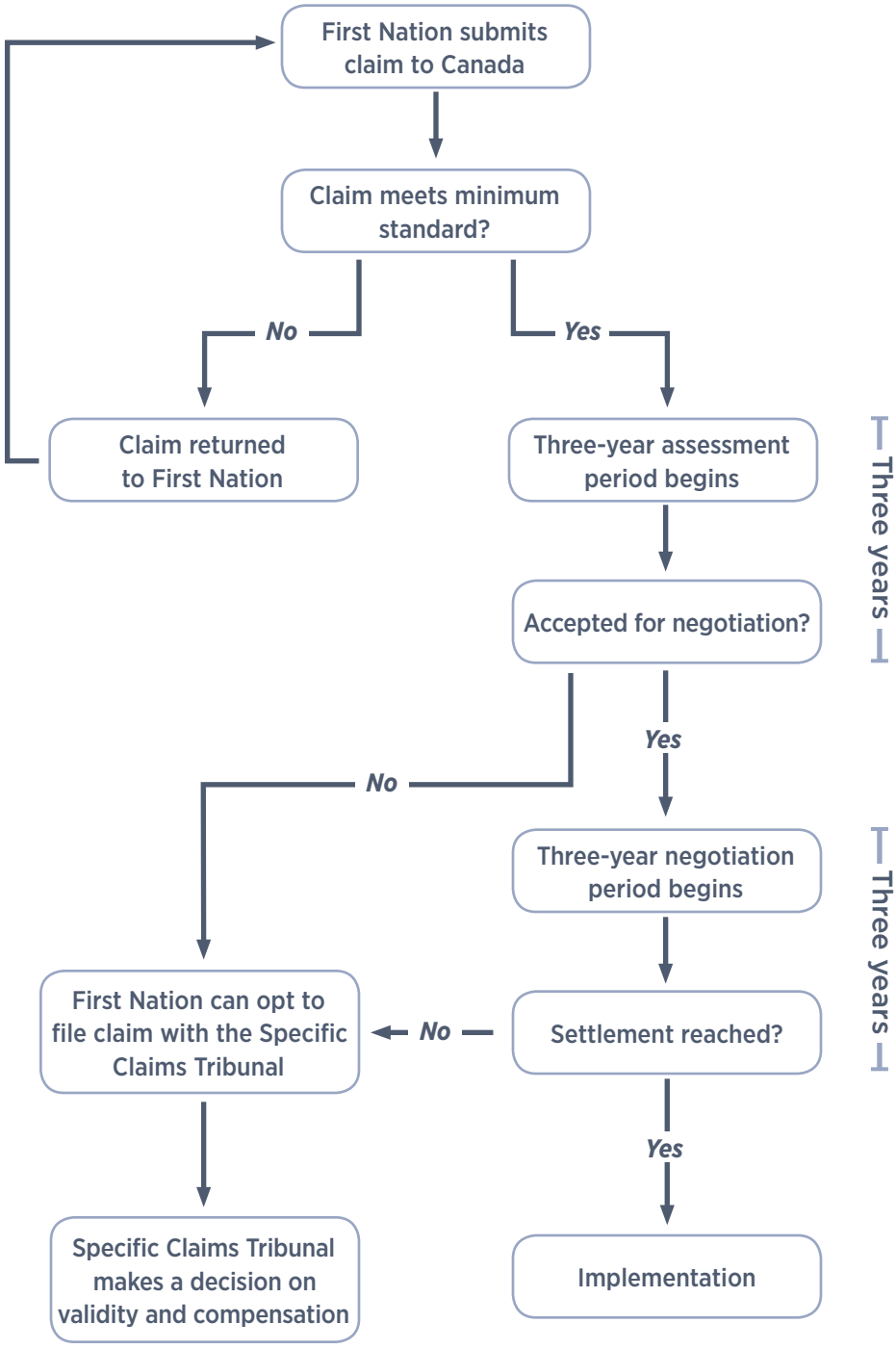
The Mulroney reforms made the specific claims process much more productive for First Nations. In the 16 years from fiscal 1991/92 to 2006/07, there were 231 settlements, representing an average pace of about 14 a year (INAC, 2017a). However, the criticism continued. The Assembly of First Nations (AFN) wanted an independent tribunal with decision-making rather than advisory authority. It also wanted higher financial limits on settlements and more resources committed to the process so that the preliminary stages of investigation and negotiation could proceed more rapidly. The ISCC also voiced similar criticisms. The Liberal government headed by Jean Chrétien attempted to legislate with the *Specific Claims Resolution Act, 2003*, which was passed and given royal assent but never proclaimed because the AFN was not satisfied (Butt and Hurley, 2006; Canada, Dep't of Justice, 2003). Though the Act would have established a Tribunal with decision-making authority, the members would have been appointed by the Governor in Council, not jointly selected or approved by the AFN.

In early 2006, the Conservatives came to power in Ottawa and Calgary lawyer Jim Prentice became Minister of Indian Affairs and Northern Development. Prentice was intimately familiar with the file because he had served for ten years as co-chair of the ISCC. He was sympathetic to the cause of specific claims and determined to bring about the changes he had advocated when he was with the Commission. In his roughly 18 months as Minister, he managed to hammer out new legislation through a joint task force with the AFN. The basic concepts were presented in a ministerial paper entitled *Specific Claims: Justice at Last* (Prentice, 2007), leading to passage of the *Specific Claims Tribunal Act* in 2008 (Canada, Dep't of Justice, 2008).

One important innovation was the Specific Claims Tribunal. Equipped with decision-making rather than advisory power, it would be composed of superior court judges appointed by the Governor in Council. The AFN did not get a formal role in appointing the personnel, but the judges would enjoy judicial independence and so could not easily be accused of being political pawns. The government also promised to set aside $250 million a year for ten years in order to settle claims—a much larger sum than had ever been put on the table before. Finally, Section 41 of the Act provided for a comprehensive review of the new approach after giving it a chance to work for five years. **Figure 1** is a schematic diagram of the specific claims process as established by the 2008 reforms.

There were 158 settlements from fiscal 2007/08 to November 15, 2017, about the same average pace of 14 a year as prevailed from 1990/91 to 2006/07. That

Figure 1: Steps in the improved specific-claims decision-making process



Source: Adapted from figure, The Improved Process, in INAC, 2010.

overall comparison is a bit misleading, however, as the Mulroney process was much more productive in the 1990s and slowed down thereafter. The Prentice reforms more or less restored the pace of settlements to what it had been in the 1990s.

The five-year review provided for in the statute was carried out by Benoît Pelletier, Professor of Law at the University of Ottawa and a former Quebec Minister of Aboriginal Affairs (Pelletier, 2015a; 2015b). Pelletier concluded that the *Specific Claims Tribunal Act* was basically sound and not in need of immediate amendment. He did find, however, that the Tribunal was understaffed and had trouble keeping up with its workload: at the time of writing, it had the equivalent of only two full-time members, as compared to the maximum of six allowed by the Act (Pelletier, 2015a: 24). He also made many technical recommendations for procedural changes intended to expedite the proceedings of the Specific Claims Branch and the Tribunal.

In 2016, the Auditor General's office also carried out a study on the handling of specific claims (Auditor General of Canada, 2016). Like the Pelletier report, it called for appointment of more judges to the Tribunal, as repeatedly requested by Justice Harry Slade, the Chair of the Specific Claims Tribunal (SCT). As well, the Auditor General's report saw a need for more generous funding to First Nations to aid them in researching and negotiating claims (appropriations had been cut during the Harper government's attempt to balance the federal budget after 2011); and better sharing of information by the government with First Nations (for example, the reasoning given by the Department of Justice when claims were rejected for negotiation). The general tenor of the two reports was that the *Specific Claims Tribunal Act* of 2008 and the new process established along with it were basically sound but had not lived up to expectations because of insufficient funding and overly rigid interpretation of the law.

The Auditor General was particularly critical of the pace of settling claims, pointing out that most claims settled in this period had already been in the system for years before the reforms took place. In six of the eight years under review, more new claims were received than old claims were settled (Auditor General of Canada, 2016: 6.21). In other words, a new backlog was developing even as the old backlog was being cleared.

The current Liberal government has promised to make changes along lines recommended in the two reports and to discuss all changes with the AFN (INAC, 2016). This may take some time as the Trudeau government has promised to review many Indigenous issues in concert with the AFN. However, if the past is any guide, changes will come; and when they do, they will reflect much of what the AFN is asking for. The door will be opened to more types of claims; more money will be made available to claimants for research and negotiation; and more resources will be promised to make the process speedier.

By the Numbers

There were 450 settlements of specific claims from December 12, 1974 to November 15, 2017. As part of these settlements, the federal government paid $4.7 billion in nominal dollars ($5.7 billion in 2017 dollars, adjusting for inflation). To illustrate the magnitude of this sum, it is in the same range as what will eventually be paid out to First Nations people who attended residential schools—$5-6 billion (Flanagan and Jackson, 2017: 5). The average settlement was $10.4 million in nominal dollars, or $12.7 million in 2017 dollars. However, the average is not a very meaningful statistic because of the extraordinary range of federal payments, ranging from zero to $171 million. The median was only $1.4 million, barely more than a tenth of the mean. The large difference between the mean and the median arises from the effect of a relatively small number of very large settlements. It should be kept in mind these payouts represent only the federal share of financial compensation. Settlements sometimes also provide for transfer of land or cash payments from provinces, but those data are not included here.

Of 618 recognized First Nations, 275 (45%) have received at least one settlement, and the average number of settlements per First Nation, among those who have received any, is about 1.6. Again, the average is not very meaningful because of the wide range of variation. Table 1 shows the number of First Nations that have received a given number of settlements. The 112 First Nations that received more than one settlement apiece obtained in total 342 settlements, or 76% of all settlements. The collective value of these 342 settlements was $4.3 billion in 2017 dollars, or 74% of all payouts. Obviously, the gains from specific claim settlements have been unequally distributed. Most First Nations have received nothing while those with multiple payouts have gained about three fourths of the total. It is unclear from published data to what extent those First Nations who have not received settlements have not (yet?) filed specific claims or have filed but have had those claims rejected.

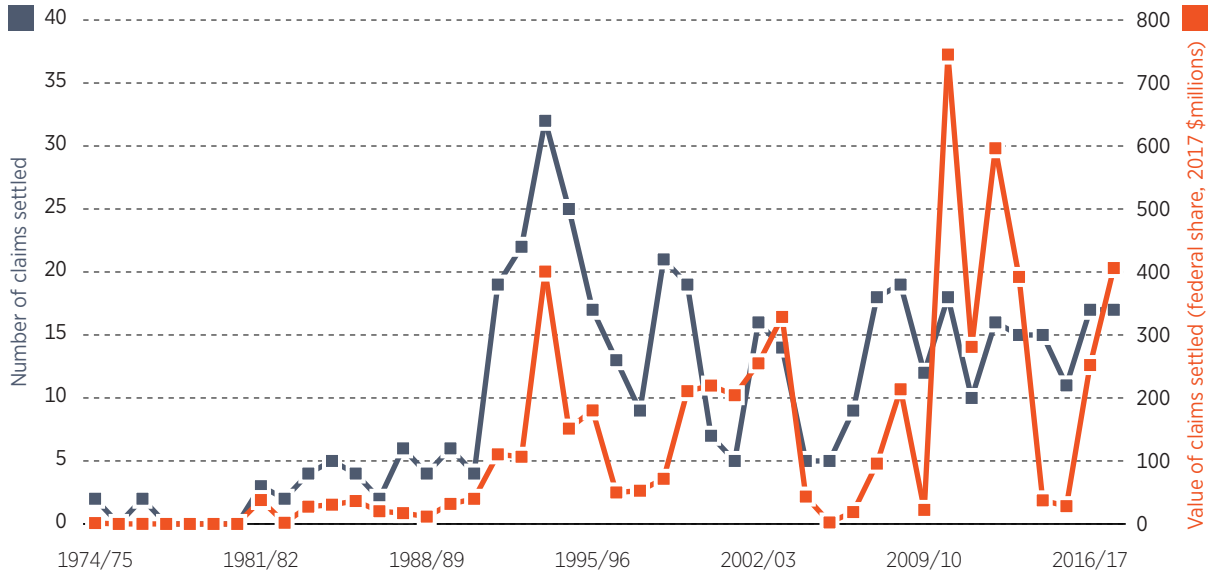
Figure 2 shows the year-by-year pace of activity in this field from 1974 to 2107, measured in both number of settlements and constant 2017 dollars. The curves for number of settlements and total value of settlements track each other in general but not exactly because of the highly variable value of settlements. Taking this into account, it is clear that specific claims activity started off slowly in 1974, whether measured in dollars or number of settlements,

Table 1: Numbers of specific claim settlements

Number of settlements per First Nation	Number of First Nations receiving settlements	Number of settlements	Number of settlements per First Nation	Number of First Nations receiving settlements	Number of settlements
25	1	25	5	3	15
10	1	10	4	4	16
9	1	9	3	25	75
8	1	8	2	69	138
7	4	28	1	163	163
6	3	18	0	343	343

Source: Compiled by the author from INAC, 2017a.

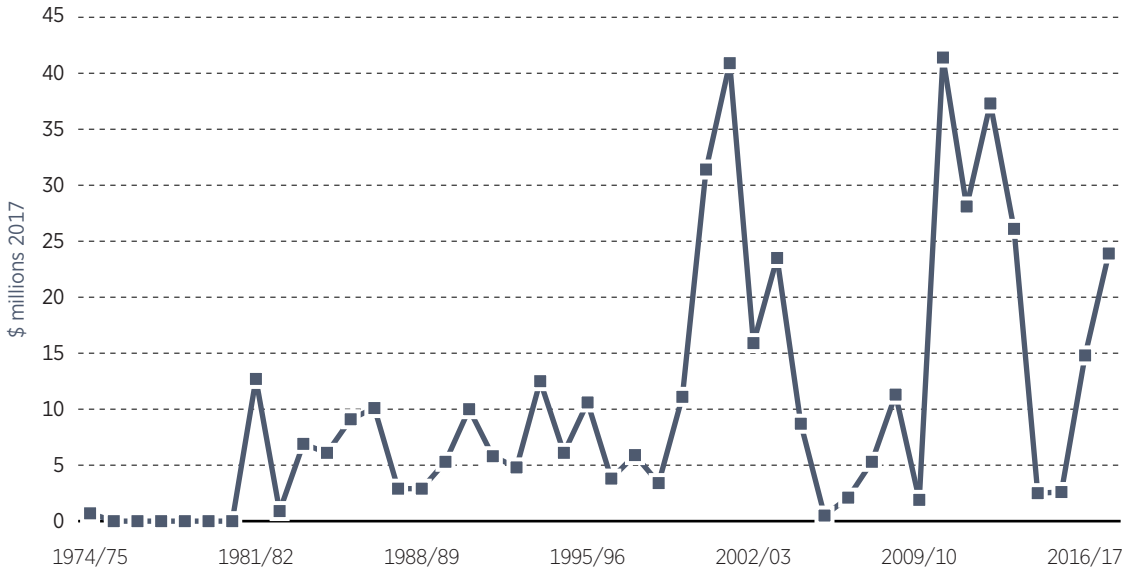
Figure 2: Number and value of specific claims settled in each fiscal year, 1974/75–2017/18*



Notes: *Denotes as of Nov 22, 2017. **Inflation numbers for 2017 are estimates based on the average of monthly CPI from Jan.–Nov. 2017.
Sources: INAC, 2017a; Statistics Canada, 2018; author's calculations.

increased slightly after the 1982 reforms, spiked dramatically after the 1991 Mulroney reforms but gradually declined thereafter, only to increase again with the Prentice reforms of 2008. The average size of settlements, measured in 2017 dollars, has also tended to increase over time, though there is much variation from year to year (Figure 3).

Figure 3: Average size of settlement (federal share, $ 2017), 1974/75–2017/18*



Notes: *Denotes as of Nov 22, 2017. **Inflation numbers for 2017 are estimates based on the average of monthly CPI from Jan.–Nov. 2017.
Sources: INAC, 2017a; Statistics Canada, 2018; author's calculations.

Community Impact

The settlement of specific claims is intended mainly to right past injustices, but it is also fair to ask whether payout of this large sum of money—almost $6 billion in 2017 dollars spread over more than 40 years—has improved the well-being of recipient communities in any measurable way. Although the settlement of specific claims is primarily an exercise in corrective justice (righting the wrongs of the past), political leaders have also sometimes said they expected settlements to have a positive effect on recipient communities' future economic growth (Prentice, 2007).

To test whether this positive, prospective effect is actually happening, we can use the Community Well-Being (CWB) Index, which is a measure of standard of living and quality of life for all Canadian communities, including First Nations (INAC, 2015; O'Sullivan and McHardy, 2007). It is calculated by researchers in Indigenous and Northern Affairs Canada, based on Statistics Canada census data. The time series extends back to the 1981 census, with updates every five years except for 1986, when the CWB Index was not calculated.

The CWB Index is a summation of four equally weighted aspects of on-reserve life as measured by Statistics Canada data: per-capita income, education, housing, and workforce participation.

1 Per-capita income is logarithmically transformed, so that the impact of income on well-being is not overestimated, and the presence of one or two millionaires in a small First Nation cannot have an undue effect.

2 Education is measured in two ways:
- percentage of the community aged 15 and over that has completed at least grade 9 (weighted 2/3 of the education component);
- percentage of the community aged 20 and over that has at least finished secondary school (weighted 1/3 of the education component).

3 Housing is also measured in two ways, emphasizing both quantity and quality:
- quantity—percentage of the population living in housing with no more than one person per room, that is, not crowded;
- quality: percentage of the population living in dwellings that do not need major repairs, that is, in good shape.

4 Labour force participation is also measured in two ways:
- percentage of the population aged 20 and over who are involved in the labour force, which means seeking work even if not now employed;
- percentage aged 15 and over actually employed.

These four aspects of community life are standardized into percentages, weighted as described above, and then added together to give the final CWB score, which can range from 0 to 100. Note that the logarithmic transformation of per-capita income renders the CWB Index less purely economic in character. It is not just about purchasing power; it encompasses other values such as security (housing), intellectual achievement (education), and personal fulfilment (labour force participation).

Two earlier studies have tried to determine whether specific claim settlements have a positive relationship with CWB Index. White, Spence, and Beavon (2007) looked at specific claims data from 1974 through 2001. They divided First Nations into three groups: those that never filed a claim; those that filed but received no settlement (it is not clear whether this group was composed only of those whose claims were rejected, or includes those with claims still under review); and those that received a settlement. The researchers tracked CWB scores for the three different groups from census 1981 through 2001. Although all three groups improved over this 20-year period, there was no difference in the rate of improvement among them. There was no evidence that improvement tended to accelerate after filing a claim or receiving a settlement. The researchers' findings are suggestive but not conclusive because they did not take the monetary amount of settlements into account.

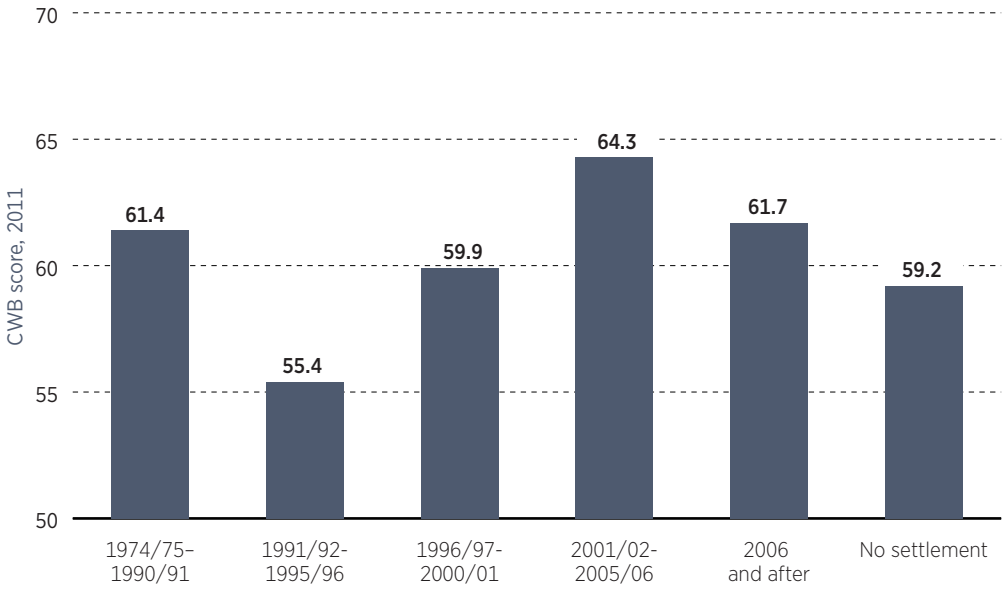
Flanagan and Harding (2016) looked at treaty-land entitlement settlements in Saskatchewan. These are a special category of specific claims in which both the provincial and federal governments contribute money to First Nations to purchase additional reserve land. In general, CWB scores did not increase any more rapidly for First Nations that received settlements than for those that did not. However, there was a noticeably more rapid improvement in CWB scores for a small subgroup of recipients that (1) used their award to buy urban land for addition to their reserves and (2) pursued an aggressive business strategy on their urban reserves (casinos, industrial and commercial parks, and so on) Again, these findings are suggestive but limited to a small subset of specific claim settlements in one province.

This publication approaches the same issue with a larger database extending over a longer period of time. An initial observation is that the mean 2011 CWB score (59.2) for those First Nations who have never received any settlement (n = 269) is exactly the same as for those that have received one or more settlements

(n = 241).[2] A quick conclusion might be that the expenditure of $5.7 billion (2017 dollars) over 43 years, plus process costs, has had no measurable positive impact on the average well-being of recipient First Nations. However, comparisons of means at this level takes account of only one dichotomous variable, namely the reception (or not) of a settlement. But it is intuitively obvious that at least two other variables might make a difference. First is the length of time after settlement; the longer that time period, the more chance for the settlement money to be used in constructive ways that might promote better outcomes in education, housing, employment, and income. The second variable is the size of the settlement; a larger settlement provides more cash for constructive investment.

Figure 4 shows the 2011 CWB scores for six groups. The first five (reading from left to right) are those that have received one or more settlements, grouped according to when the first settlement was received. The sixth is the control group of First Nations who have received no settlement. Figure 4 does not show any consistent impact of the time variable. If lapse of time worked as hypothesized, the first five bars in the chart should gradually decrease in height, looking from left to right, because less time would have been available for the settlement to have an effect. Instead, there is no obvious temporal pattern.

Figure 4: Average CWB scores in 2011, by First Nations grouped by year of first settlement

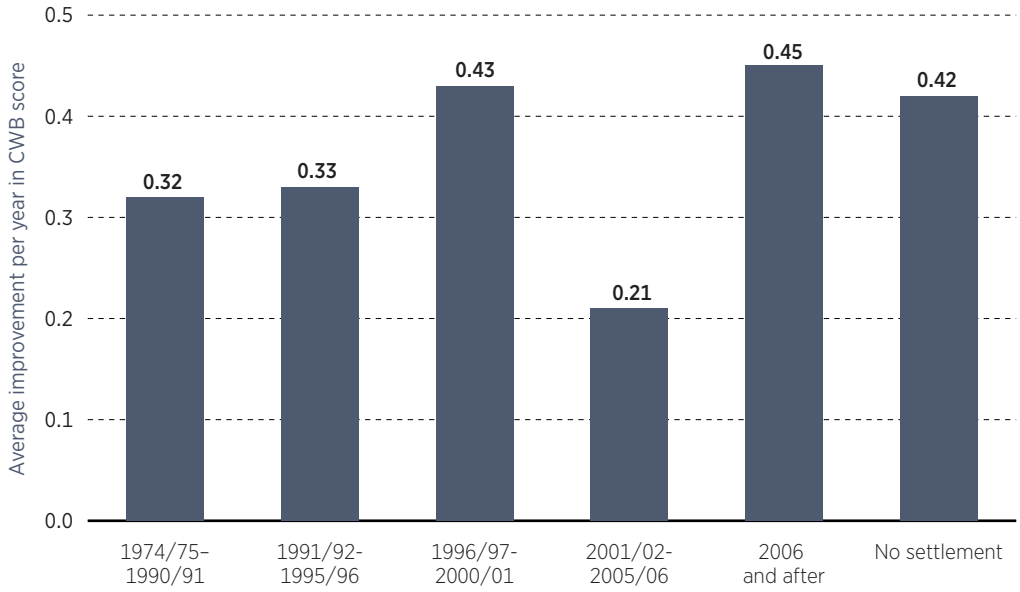


Sources: INAC, 1983, 2017a, 2018a, 2018c; Statistics Canada, 2015; author's calculation.

2. The 2011 CWB Index is available for only 510 First Nations, so the numerical totals here are different from those in the preceding section.

Figure 5 is a more sensitive test of the impact of the time variable. It shows the average annual rate of improvement in CWB scores for each of the five settlement-receiving groups, calculated from the average starting point of that group. The sixth group, whose members did not receive any settlement, is also shown for comparison. Again, there is no consistent pattern. Three of the five groups show a lower annual rate of improvement than the control (no-settlement) group, while two show a higher rate, of which one is only very slightly higher. Overall, there is no evidence that First Nations that received settlements earlier have tended to improve their CWB scores more rapidly than those who received them later or did not receive any settlement.

Figure 5: Average improvement per year in CWB scores, by First Nations grouped by year of first settlement

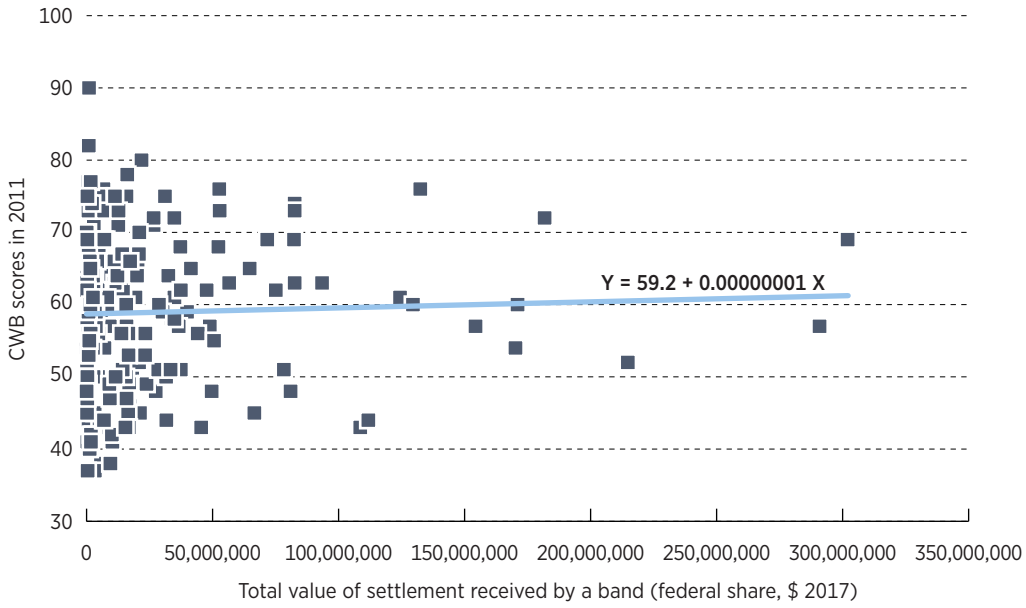


Note: The average improvement per year is calculated as the average of the mean CWB score in 2011 for each group (i.e., 1974/75–1990/91) minus the mean CWB score in the starting year, divided by the number of years for each group from its starting year to 2011. The starting year for the 1974/75–1990/91 group is 1981; for 1991/92–1995/96, 1991; for 1996/97–2000/01, 1996; for 2001/02–2005/06, 2001; and, for 2006 and after, 2006. For those bands which do not receive any settlement, the starting year is 1981.

Sources: INAC, 1983, 2017a, 2018a, 2018c; Statistics Canada, 2015; author's calculation.

What about the impact of the monetary value or size of the settlement? Figure 6 shows a scatter plot of the regression of 2011 CWB upon monetary size of settlement measured in 2017 dollars. Note that the regression line is almost perfectly horizontal, signifying a coefficient of zero between the two variables—in other words, no association. The result was similar when the regression was redone with the natural logarithm of settlement size (not shown here), which

Figure 6: Regression of 2011 CWB scores upon size of settlement ($2017) received by bands



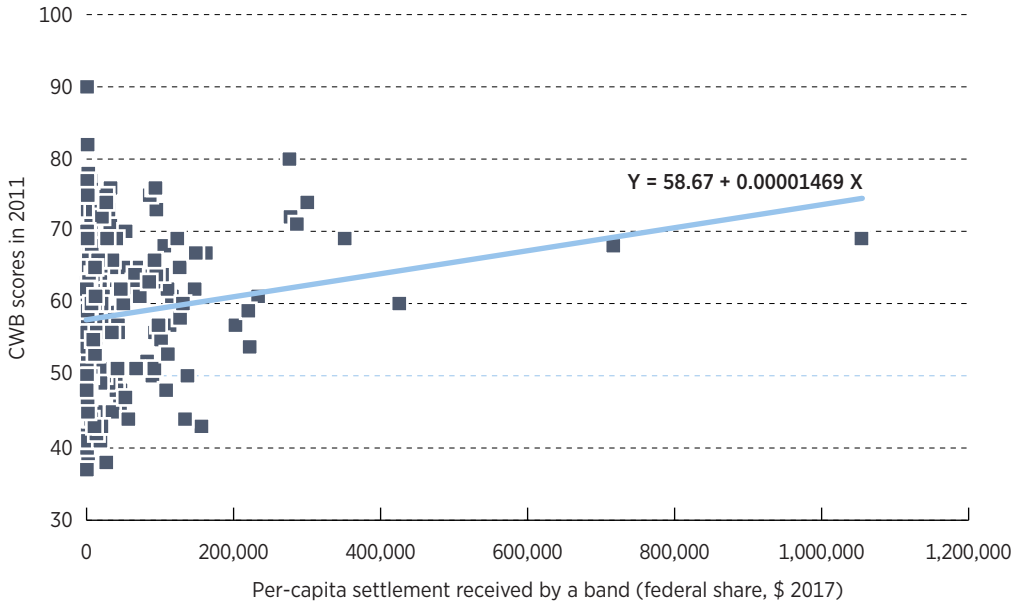
Notes: [1] This regression excludes bands that did not receive any settlement from the federal government or did not have a CWB score in 2011. [2] X coefficient is not statistically significant at 5%. (P - value 0.67).

Sources: INAC, 2017a, 2018a; author's calculation.

partially corrects for the non-normal distribution of that variable (long right tail). As with length of time, there is no statistical evidence for a positive relationship between size of settlement and 2011 CWB scores.

However, it might also be argued that the most important consideration is the size of the settlement in proportion to population: a seemingly large settlement might not have as much impact if its effects were spread across a larger population. Figure 7 tries to assess the importance of population size by regressing the CWB Index upon the size of settlement per capita (2017 dollar value of the settlement divided by 2011 band population). Figure 7 does show a positive association between the two variables, statistically significant at the .05 level. The regression line slopes upward, showing that an increase in the size of the settlement per capita is positively related to higher CWB scores. However, visual inspection of the scatter plot shows the finding to be tenuous because the slope of the regression line is heavily dependent upon a small number of settlements larger than about $300,000 per capita. Indeed, the slope of the line becomes much less steep and the relationship between variables is no longer statistically significant when the natural logarithm of settlement dollars per capita is used to correct for the skewed distribution of settlement size.

Figure 7: Regression of 2011 CWB scores upon per-capita settlement ($2017) received by bands



Notes: [1] This regression excludes the bands that did not receive any settlement from the federal government or did not have a CWB score in 2011. [2] Per-capita settlement received is calculated as a ratio of total settlement received by a band to its 2011 population. [3] X coefficient is statistically significant at 5%. (P - value 0.024).

Sources: INAC, 2017a, 2018a; author's calculation.

To carry the analysis further, a qualitative strategy, similar to what Flanagan and Harding (2016) used for Saskatchewan treaty-land entitlement settlements, might be employed. One would have to look at each settlement, noting its date, absolute and per-capita size, and how the payment was used. Such a research strategy might well identify a subgroup of cases in which, under particular conditions, a settlement triggered subsequent improvement in CWB. Such an analysis would be worth doing for its obvious policy implications, but it cannot be attempted here because, with 450 cases to examine in detail, it would become a major project in its own right.

It is not really surprising specific claims settlements have at best a weak statistical relationship with improvement in CWB. Settlements are awarded on the basis of events usually more than a century, sometimes two centuries, in the past, as refracted through the lens of contemporary legal doctrines such as fiduciary responsibility and honour of the Crown, and sometimes affected by political pressure from the government of the day. These factors have no connection with what a First Nation is doing today to improve its standard of living. Also, awards are usually made to First Nations' trust funds with restrictions on

immediate spending. Except in special circumstances, recipients are free to use the annual interest but not the capital. The proceeds are no doubt useful to the First Nation's budget but would not normally have a transformational impact.

There is also another side to this finding. If specific claims settlements are not associated with improvements in CWB scores, neither are they associated with poverty. Zero correlation cuts both ways. Specific claims cannot claim to be a social justice measure helping the poorest First Nations because settlements are obtained on the basis of long-ago events combined with current legal doctrines and political pressures, all of which are essentially random in relation to contemporary standard of living.

Specific Claims—a Non-Renewable Resource?

The politicians and First Nation leaders who push for the settlement of special claims, though they do not say so explicitly, speak about them as if there is a definite number of past injustices awaiting remedy. Hence the title of Jim Prentice's 2007 paper, *Justice at Last*. The implication of this and many other statements is that it is time for Canada to deal with the legacy of an unjust past, to make reparations, and wipe the slate clean, thereby allowing First Nations to focus on their future. According to this line of thought, specific claims—past injustices—are like a pool of hydrocarbons in an oil-field reservoir and they exist in a finite quantity that can be extracted until the supply is exhausted.

However, after 43 years, there is no sign that the supply of claims is approaching exhaustion (table 2). Compare these totals to those in table 3, which summarizes the situation at the end of fiscal 1981/82. Twelve claims had been settled by the end of fiscal 1981/82. As of February 23, 2018, a grand total of 465 claims had been settled, 463 by negotiation and two by the Specific Claims Tribunal. Thirty-six years of effort including three administrative reorganizations had settled an additional 453 claims, while the number of rejected claims had grown from 17 to 432. All of this seems like progress in clearing the backlog. Yet, in fact, the backlog grew in those same 36 years. In 1981/82, there were 165 claims under assessment or negotiation, but by 2017/18 that total had grown to 399, while the number in litigation before the Specific Claims Tribunal or other courts grew from 12 to 133 (administrative remedy is not discussed here because it is defined differently in the two compilations). After 36 years of effort, the backlog consisting of cases under assessment, in negotiation, or in litigation has more than tripled, growing from 165 to 532.

Rationale of specific claims

At some point the federal government will probably announce an agreement with the AFN purporting to clear the backlog by accelerating the claims process, but it is unlikely to be any more effective than the 1982, 1991, and 2008 attempts at reorganization. To understand why, we must look more closely at the logic of specific claims. Let us assume that the leaders of First Nations pursue specific claims, at least in part, out of economic motives, seeing claims as a way of obtaining money. They may have other motives as well, such as attachment to a

Table 2: National summary of specific claims, as of February 23, 2018

Type of disposition	
IN PROGRESS	
Under assessment (157)	
Date research & analysis started	56
Justice Department preparing legal opinion	40
Legal opinion signed	61
In negotiations (242)	
Active	241
Inactive	1
Total	***399***
CONCLUDED	
Settled through negotiations	463
Compensation awarded by the SC Tribunal implemented	2
No lawful obligation found	432
Claim resolved through administrative remedy	32
Total	***929***
OTHER	
Claim in active litigation	61
Claim active at the SC Tribunal	72
File closed	341
Total	***474***

Source: INAC, 2018b.

Table 3: Summary totals of specific claims, end of fiscal 1981/82

Type of disposition	
Claim settled	12
Claim rejected	17
Claim under investigation	80
Claim in negotiation	73
Claim in litigation	12
Claim referred for administrative remedy	55
Total	***249***

Source: Compiled by the author from Munro, 1982.

particular piece of land or a desire to reverse a past injustice, but economic calculation will be part of the story for those charged with managing the business of a First Nation. It would be a rational choice, then, to pursue a claim if its expected value is greater than the cost of obtaining that value. Expected value will be affected by three factors: the monetary value of the settlement, the probability of receiving a settlement, and the length of time required to achieve the settlement. The first two factors are positively related to expected value, the third negatively.

Over time, the legal environment has become steadily more favourable to specific claims, thus raising the probability of success. Section 35 of the *Constitution Act, 1982* offered constitutional protection to "the existing aboriginal and treaty rights of the aboriginal people of Canada," thus conferring a higher level of judicial scrutiny upon alleged violations of treaty rights, which are now deemed constitutional rights. The Supreme Court's *Guerin* decision ([1984] 2 SCR 335) ruled that the federal government had a "fiduciary duty" toward First Nations in the management of reserve lands. Fiduciary duty was an old concept in common law, but this was the first time it appeared in the Indigenous field. Since *Guerin*, it has been applied retroactively, allowing old decisions about land management to be re-examined.

An even broader impact flowed from the Supreme Court's *Haida Nation* decision ([2004] 3 S.C.R. 511), which expanded another old concept, "the honour of the Crown," into a master principle for dealing with First Nations: "The government's duty to consult with Aboriginal peoples and accommodate their interests is grounded in the honour of the Crown. The honour of the Crown is always at stake in its dealings with Aboriginal peoples … It is not a mere incantation, but rather a core precept that finds its application in concrete practices" (para. 16). The doctrine of the honour of the Crown has also been applied retroactively, allowing virtually all previous decisions, not just those dealing with land management, to be critically re-examined. These legal developments have raised the probability of success in two ways: by opening the door to claims that previously would not have been considered, and by increasing the chances of success for all claims under consideration. The effect was felt both inside and outside the courtroom, because politicians and civil servants, as well as lower-court judges, were bound by the new legal rules. Decisions one or even two centuries old are now being reviewed against legal principles that did not apply to Indigenous issues when the officials of that era made those decisions.

Another factor has been the creation of specialized tribunals to investigate and adjudicate specific claims. First was the advisory Indian Specific Claims Commission in 1991, followed by the adjudicative Special Claims Tribunal in 2008. Specialized quasi-judicial tribunals, such as exist in the fields of labour relations and human rights, are often more favourable to complainants than are courts of

law. They are generally cheaper for complainants to use, adopt rules of procedure beneficial to complainants, and decide more often in their favour (Flanagan, Knopff, and Archer, 1988). For example, the Specific Claims Tribunal routinely admits hearsay oral evidence and is barred from invoking statutes of limitations or the common law doctrine of laches to refuse hearing old complaints.

Ever since 1951, First Nations wishing to advance what are now called special claims have been free to turn to courts of law (from 1927 to 1951, the *Indian Act* prohibited the use of band funds to prefer claims against the government). The desire for a specialized tribunal stems from recognition that such claims might have a smaller chance of success in ordinary courts because of rules of standing, procedure, and evidence. The ultimately successful quest for a specialized tribunal was a quest for a higher probability of success.

There have been repeated complaints about the slow pace of the specific claims process and at every reorganization the politicians have promised to speed things up. Measures were taken in 2008, such as decreeing a three-year time limit for investigation by the Special Claims Branch and another three years for negotiation. The effect of such measures, however, has been swamped by the increase in number of claims caused by other factors, such as the increase in probability of success. "Build it and they will come."

Another circumstance leading to growth in the number of claims is the increasing value of settlements. Figure 3 (p. 10) shows the trend over time. The federal government, fearing that large settlements could upset its budget, has repeatedly imposed limits on negotiated awards, but those limits have grown. In the most recent reorganization, the Harper government reserved claims over $150 million for cabinet consideration, and notionally set aside $250 million a year for ten years for all other settlements. Complaints over these limits have not ceased; and, if the past is any guide, they will probably be increased in the next re-organization, whenever it takes place.

Subsidization of specific claims

The cost side also figures in the calculus of First Nation leaders. Not counting the opportunity cost of diverting time and attention, the cost of pursuing a specific claim consists of the monetary costs of researching the claim, negotiating with INAC, and perhaps litigating in court or in the Special Claims Tribunal. Each of these three would have its own discount factor: research comes at the beginning but probably can be paid for over a period of years; negotiation comes later and extends over three years in the process as it now exists; and litigation comes later if negotiation fails to produce a settlement. There is also some uncertainty surrounding the latter two: negotiation costs will not ensue unless a claim is accepted for negotiation, and litigation will not be necessary unless negotiation fails.

There is some public information about government subsidies for these costs. At the present time, the government offers direct grants to subsidize research in the early stages and loans recoverable from settlements to support negotiations. Financial information on these subsidies for three recent fiscal years, 2013/14 to 2015/16, is shown in table 4.

Table 4: INAC funding to First Nations in support of specific claims ($ millions)

	2013/14	2014/15	2015/16
Research	7.8	4.7	4.7
Negotiations	6.1	3.6	5.0
Total	***13.9***	***8.3***	***9.7***

Source: Auditor General, 2016: 6-11.

Funding decreased over these three years because this was the time period in which the Conservative government was striving to balance the budget after having run large deficits in response to the Great Recession of 2008 (Flanagan and Jackson, 2017).

According to published guidelines (INAC, 2014) as shown in table 5, government financial support is meant to cover a "reasonable portion" of the cost of negotiations and can range from $15,000 for claims under $40,000 to $427,500 for claims over $3 million. Because of the increasingly favourable legal environment, the growing value of awards, and the possibility of receiving a subsidy for costs, First Nations are finding it ever more profitable to pursue specific claims. Specific claims are money-makers in the aggregate, even if some are unsuccessful, which helps to explain the seeming paradox that as old claims are settled, even more new claims appear.

Table 5: Guidelines for costs ($) of specific claim negotiations

Amount of claim ($)	Maximum assistance ($)
<$40,000	15,000
40,000–99,999	25,000
100,000–999,999	50,000
1,000,000–2,999,999	75,000
3,000,000–150,000,000	427,500 (3 years)

Source: INAC, 2014.

This has a certain resemblance to the exploitation of so-called non-renewable resources. There is a certain physical amount of oil and natural gas in Canada; but improvements in technology (horizontal drilling, fracking, steam-assisted recovery) mean that recoverable reserves have increased even as production has also increased. In that sense, specific claims are like other non-renewable resources: similar to the effect of technological improvements upon the recovery of oil and gas, changes in law and procedure mean that the supply of claims can continue to grow even as more claims are settled.

The Case for Time Limits

It was originally envisioned that the United States Indian Claims Commission would complete its business in ten years. The 1946 legislation stipulated that claims had to be filed by 1951 and allowed another five years for disposition. The five-year filing period was probably unrealistic; many of the 852 claims finally submitted were sketchily prepared, making it slower to dispose of them (Rosenthal, 1990: 115). Five years for resolution was certainly unrealistic; Congress extended the deadline several times until it finally shut down the Commission in 1978, with its 68 remaining cases being transferred to the United States Court of Claims (Rosenthal, 1990: 235). Yet the end of the Indian Claims Commission did not mean the end of recourse for claims. Some tribes were not satisfied with the decisions of the Commission and have continued to press claims in the regular courts or to seek redress from Congress or state legislatures, depending on circumstances. But the time limits did accomplish one worthwhile goal: they ensured that a special legal process, which was deliberately created to be temporary, did indeed come to an end.

In contrast, time limits for filing or disposition have never been imposed on the specific claims process in Canada. Claims have been received since 1974, so we are now entering the 44th year of dealing with specific claims. Even if the American time limit of five years for filing was too short, 44 years seems like a sufficiently long time for First Nations to have researched their past for injustices. The federal government is now reviewing the specific claims process again, in concert with the AFN. In return for granting some of the many concessions that the AFN is demanding, the government could insist upon a firm deadline for filing claims. That deadline could be another five or even ten years in the future as long as some finality is agreed upon. This may be the last opportunity for a long time to go back to the original understanding of righting a finite number of historical wrongs.

A deadline for filing would not have to mean the end of specific claims. They could still be preferred in ordinary courts of law, as they were before 1974 and sometimes still are. It would, however, mean the end of a special quasi-judicial organization and process with rules of evidence and procedure that do not apply elsewhere in the legal system and are particularly favourable to complainants. That would be a gain for those who believe in the classical liberal ideal of equal laws and law enforcement.

A second benefit would be the reduction in payments for specific-claims settlements, which have totalled $5.7 billion in 2017 dollars and are now running

close to $250 million a year. This money does not come from nowhere; the government of Canada has to provide for it in its annual budget, and the envelope for Indigenous spending has to compete against other demands upon a government that is already running large deficits with no short- or even medium-term plan for getting back in the black. As shown in a previous publication (Flanagan and Jackson, 2017), transfers to First Nations by the federal government levelled off after the fiscal crisis of the mid-1990s, then rose again while Paul Martin was Prime Minister and for the first few years when Stephen Harper was Prime Minister. But much of this increase was illusory as it included the $5-$6 billion payout for residential schools. Spending levelled off again after 2011 when the Harper government worked to balance the budget.

In 2015, Prime Minister Trudeau promised and now appears to be implementing a substantial increase in Indigenous spending, but much of this is committed to urgent needs such as child protection and water treatment. The Indigenous spending envelope remains pressured from all sides. In a world of limited resources, compensation programs for alleged past injustices, such as specific claims, residential schools, outside adoption of First Nations children (the "Sixties Scoop") (INAC, 2017b), and "survivors" of Indian hospitals (APTN, 2018), inevitably have to compete with current spending demands. The competition may not be visible to the public but the results will show themselves when federal spending can eventually be tracked in the Public Accounts. Specific-claims settlements should be a prime target for reduction in view of the statistical finding that they confer little measurable benefit upon First Nation communities and do not offer special help to the poorest.

A final reason for setting a terminal date is psychological. Specific claims, like demands for compensation for other grievances, are retrospective. What economist Thomas Sowell wrote of the United States is as true now as it was then, and is equally true of Canada:

> Perhaps the minority that has depended most on trying to secure justice through political or legal processes has been the American Indian, whose claims for justice are among the most obvious and most readily documented … Emphasis on promoting economic advancement has produced far more progress than attempts to redress past wrongs, even when historic wrongs have been obvious, massive, and indisputable. (1975: 128)

In a world of limited resources, focus upon past injustices does not necessarily assist, and may even interfere with, progress towards a higher standard of living.

References

Allen, Edward (2013). Reflections on the 40th Anniversary of the Calder Decision. *Northern Public Affairs*: 14–21.

APTN National News (2018). Survivors of Indian Hospitals Seeking $1.1B in Damages (January 30). <http://aptnnews.ca/2018/01/30/survivors-indian-hospitals-seeking-1-1b-damages>.

Auditor General of Canada (2016). *Report 6—First Nations Specific Claims—Indigenous and Northern Affairs Canada*. <http://www.oag-bvg.gc.ca/internet/English/parl_oag_201611_06_e_41835.html>.

Butt, Emma, and Mary C. Hurley (2006). *Specific Claims in Canada*. Library of Parliament. <http://specific-claims-law.com/images/stories/specific_claims_docs/01-background_info/LoP_SpecificClaimsCanada.pdf>.

Canada, Department of Justice (2003). Specific Claims Resolution Act. (S.C., 2003, c. 23). <http://laws-lois.justice.gc.ca/eng/AnnualStatutes/2003_23/page-1.html>.

Canada, Department of Justice (2008). Specific Claims Tribunal Act. (S.C., 2008, c. 22). <http://laws-lois.justice.gc.ca/eng/acts/S-15.36>.

Canada, Department of Justice (2011). Response to Williams Lake Statement of Claim. <http://www.sct-trp.ca/apption/cms/UploadedDocuments/20117004/005-SCT-7004-11-Doc3.pdf>.

Chrétien, Jean (1969). *Statement of the Government of Canada on Indian Policy*. <http://www.aadnc-aandc.gc.ca/eng/1100100010189/1100100010191#chp13>.

Calder et al. v. Attorney-General of British Columbia. [1973] SCR 313. <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/5113/index.do>.

Flanagan, Thomas, Rainer Knopff, and Keith Archer (1988). Selection Bias in Human Rights Tribunals: An Exploratory Study. *Canadian Public Administration* 31, 483–500.

Flanagan, Tom, and Harding, Lee. (2016). *Treaty Land Entitlement and Urban Reserves in Saskatchewan: A Statistical Evaluation*. Frontier Centre for Public Policy. <https://fcpp.org/wp-content/uploads/FC17005_TreatyLand_F1.pdf>.

Flanagan, Tom, and Taylor Jackson (2017). *Bending the Curve: Recent Developments in Government Spending on First Nations*. Fraser Institute. <https://www.fraserinstitute.org/sites/default/files/bending-the-curve-recent-developments-in-government-spending-on-first-nations.pdf>.

Guerin v. The Queen (1984). [1984] 2 SCR 335. <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2495/index.do>.

Haida Nation v. British Columbia (Minister of Forests) (2004). [2004] 3 S.C.R. 511. <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2189/index.do>.

Indigenous and Northern Affairs Canada [INAC] (1983). *Schedule of Indian Bands, Reserves and Settlements Including—Membership and Population*. <http://publications.gc.ca/collections/collection_2017/aanc-inac/R31-5-1983.pdf>, as of February 2, 2018.

Indigenous and Northern Affairs Canada [INAC] (2010). *Specific Claims Action Plan*. <http://www.aadnc-aandc.gc.ca/eng/1100100030486/1100100003049>.

Indigenous and Northern Affairs Canada [INAC] (2011). *2011 Community Well-Being Database*. <https://www.aadnc-aandc.gc.ca/eng/1421420546829/1421420599563>.

Indigenous and Northern Affairs Canada [INAC] (2014). *Specific Claim Negotiation Cost Guidelines*. <https://www.aadnc-aandc.gc.ca/eng/1409247628791/1409247680426>.

Indigenous and Northern Affairs Canada [INAC] (2015). *The Community Well-Being (CWB) Index*. <https://www.aadnc-aandc.gc.ca/eng/1100100016579/1100100016580>.

Indigenous and Northern Affairs Canada [INAC] (2016). *Report on the Review of the Specific Claims Tribunal Act*. November 25. <http://www.aadnc-aandc.gc.ca/eng/1476454116038/1476454146598>.

Indigenous and Northern Affairs Canada [INAC] (2017a). Settlement Report on Specific Claims. Custom searches at *Reporting Centre on Specific Claims*. <http://services.aadnc-aandc.gc.ca/SCBRI_E/Main/ReportingCentre/External/externalreporting.aspx>, as of November 22, 2017.

Indigenous and Northern Affairs Canada [INAC] (2017b). *Sixties Scoop Agreement in Principle*. <https://www.canada.ca/en/indigenous-northern-affairs/news/2017/10/sixties_scoop_agreementinprinciple.html>.

Indigenous and Northern Affairs Canada [INAC] (2018a). 2011 Community Well-Being Index by First Nations. Data received from INSTAT, Strategic Research and Statistics Directorate via email, January 11, 2018.

Indigenous and Northern Affairs Canada [INAC] (2018b). National Summary on Specific Claims. Custom searches at *Reporting Centre on Specific Claims*. <http://services.aadnc-aandc.gc.ca/SCBRI_E/Main/ReportingCentre/PreviewReport.aspx?output=HTML>.

Indigenous and Northern Affairs Canada [INAC] (2018c). Search by First Nation. Custom searches at *First Nation Profiles*. <http://fnp-ppn.aandc-aadnc.gc.ca/fnp/main/search/SearchFN.aspx?lang=eng>, as of February 2, 2018.

Mandell Pinder LLC. (2016). *Williams Lake Indian Band v. Canada (AANDC)*, 2018 SCC 4 – *Case Summary*. March 8. <http://www.mandellpinder.com/williams-lake-indian-band-v-canada-aandc-2018-scc-4-case-summary/>.

Munro, J.C. (1982). *Outstanding Business: A Native Claims Policy*. Indian and Northern Affairs Canada. <http://www.afn.ca/uploads/files/sc/comp_-_outstanding_business_a_native_claims_policy.pdf>.

Pelletier, Benoît (2015a). *Re-Engaging: Five-Year Review of the Specific Claims Tribunal Act*. (Not generally accessible; available upon request by contacting: InfoPubs@aadnc-aandc.gc.ca).

Pelletier, Benoît (2015b). *Re-Engaging: Five-Year Review of the Specific Claims Tribunal Act*: executive summary. Indian and Northern Affairs Canada. <http://www.aadnc-aandc.gc.ca/eng/1469128451288/1469128528280>.

Prentice, Jim (2007). *Specific Claims: Justice at Last*. Indian and Northern Affairs Canada. <https://www.aadnc-aandc.gc.ca/eng/1100100030458/1100100030472>.

Rosenthal, H.D. (1990). *Their Day in Court: A History of the Indian Claims Commission*. Garland Publishing.

Schwartz, Bryan (n.d.). *First Nations and Specific Land Claims: What Are Specific Land Claims?* <http://sclaimswp.bryan-schwartz.com>.

Sowell, Thomas (1975). *Race and Economics*. David Mckay.

Statistics Canada (2015). List of Indian band areas and the census subdivisions they include. <http://www12.statcan.gc.ca/nhs-enm/2011/dp-pd/aprof/help-aide/a-tab.cfm?Lang=E>, as of February 2, 2018.

Statistics Canada (2018). CANSIM table 326-0021. *Consumer Price Index* (CPI) annual (2002=100). <http://www5.statcan.gc.ca/cansim/a26?lang=eng&id=3260021&p2=33>, as of January 15, 2018.

Swain, Harry (2010). *Oka: A Political Crisis and Its Legacy*. Douglas & McIntyre.

White, Jerry, Nicholas Spence, and Paul Maxim (2007). Assessing the Net Effects of Specific Claims Settlements in First Nations Communities in the Context of Community Well-being. In Jerry P. White, Dan Beavon, and Nicholas Spence eds., *Aboriginal Well-being: Canada's Continuing Challenge* (Thompson Education Publishing).

Williams Lake Indian Band (2011). *Statement of Claim*. <http://www.sct-trp.ca/apption/cms/UploadedDocuments/20117004/001-SCT-7004-11-Doc1.pdf>.

Williams Lake Indian Band v. Canada 2018 SCC 4. <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16969/index.do>.

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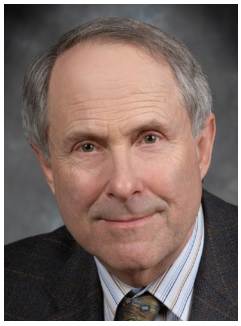

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The Fraser Institute maintains a rigorous peer review process for its research. New research, major research projects, and substantively modified research conducted by the Fraser Institute are reviewed by experts with a recognized expertise in the topic area being addressed. Whenever possible, external review is a blind process. Updates to previously reviewed research or new editions of previously reviewed research are not reviewed unless the update includes substantive or material changes in the methodology.

The review process is overseen by the directors of the Institute's research departments who are responsible for ensuring all research published by the Institute passes through the appropriate peer review. If a dispute about the recommendations of the reviewers should arise during the Institute's peer review process, the Institute has an Editorial Advisory Board, a panel of scholars from Canada, the United States, and Europe to whom it can turn for help in resolving the dispute.

Editorial Advisory Board