



Aboriginal Affairs and Northern Development Canada

Internal Audit Report

Audit of AANDC Support to the Specific Claims Process

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Audit and Assurance Services Branch

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ACRONYMS

AANDC	Aboriginal Affairs and Northern Development Canada
AES	Audit and Evaluation Sector
BCR	Band Council Resolution
CAC	Claim Advisory Committee
DOJ	Department of Justice
ERP	Early Review Process
FN	First Nation
LMRB	Litigation Management and Resolution Branch
MOU	Memorandum of Understanding
PWGSC	Public Works and Government Services Canada
NRCan	Natural Resources Canada
SADM	Senior Assistant Deputy Minister
SCB	Specific Claims Branch
SCBDB	Specific Claims Branch Database
SCP	Specific Claims Process
TAG	Treaties and Aboriginal Government
ToR	Terms of Reference

EXECUTIVE SUMMARY

Background

Specific Claims, generally, are claims made by a First Nation (FN) against the federal government, which relate to the administration of land and other FN assets and to the fulfillment of Indian treaties. The nature of grievances qualifying as specific claims can vary widely, reflecting the diverse historical relationships between different FNs and the Government of Canada. Examples include the failure to provide enough reserve land, the improper management of FN funds or the unlawful surrender of reserve lands. Settling specific claims in a way that satisfies both the government and the FNs is an important priority, not only because doing so discharges outstanding legal obligations the federal government owes and provides FNs with the means and resources to promote social and economic development, but also because it helps build trust between the two parties by rectifying historical injustices.

Justice At Last: Specific Claims Action Plan set in motion a fundamental reform of the specific claims process, and was launched in 2007. These reforms were intended to bring increased fairness and transparency to the process.

Audit Objective and Scope

The objective of the audit was to assess the effectiveness and efficiency of the controls in place to support the Specific Claims Process throughout the claim life cycle.

The scope of the audit was limited to AANDC's responsibilities in support of the Specific Claims processes. As such, the scope did not include the responsibilities of the Specific Claims Tribunal itself, as it is an independent body.

The audit also reviewed the management of negotiation loans associated with Specific Claims, which is managed by the Funding Services for Aboriginal Governance and Negotiations Unit.

Statement of Conformance

This audit conforms with the Internal Auditing Standards for the Government of Canada, as supported by the results of the quality assurance and improvement program.

Conclusion

Overall the audit found that the AANDC has implemented key governance and operational processes to support the efficient and effective delivery of required services and support to the Specific Claims Process (SCP), although there are some areas where improvements could be made. A summary of observations, and recommendations for improvements, is below.

Observations

The audit observed a number of operational practices and processes in place to support the efficient and effective delivery of required services and support to the Specific Claims Process.

Specifically the audit noted:

- Treaties and Aboriginal Government (TAG) business plan includes planning highlights for the SCB, which include processing of claims in a timely manner; realignment of resources to facilitate negotiated settlements and to support Canada's involvement in the Specific Claims Tribunal, and collaborating with FN's as well as federal department and agencies.
- There is alignment between the operational objectives, the Specific Claims Policy, and the applicable provisions of the *Specific Claims Tribunal Act*, which align with government priorities and the roles and responsibilities of the federal government toward FNs.
- There are a number of performance indicators and statistics linked to objectives that are being monitored regularly by the Specific Claims Branch (SCB). The audit noted examples of weekly and monthly reports that include volume and performance metrics.
- The SCB contributes to weekly TAG Senior Management Committee and bilateral meetings.
- The SCB has implemented a monitoring and performance measurement approach that contributes to AANDC's capacity to monitor claims. The approach also supports the overall goal of providing information on claims to all stakeholders and the general public.
- The Specific Claims Process is clearly defined and formalized, understood by SCB staff, and communicated to stakeholders.
- Controls over claims processing (timelines, documentation and decisions approval) exist, and they are being executed effectively.
- The process to manage Negotiation Loans associated with Specific Claims is clearly defined and formalized, understood by TAG staff, and communicated to stakeholders. Controls over loans processing exist, and they are being executed effectively, and in compliance with policy and applicable legislation.

Recommendations

The audit identified a few areas where control practices and processes could be improved. The following is a summary of the report recommendations:

1. The Senior Assistant Deputy Minister of the Treaties and Aboriginal Government Sector should ensure that an appropriate Oversight Committee, with a defined governance framework and Terms of Reference (ToR) is implemented, and ensure that the Terms of Reference of the Claims Advisory Committee (CAC) is reviewed and updated. Specifically, CAC membership within the ToR should be reviewed to include a representative from the Litigation Management and Resolution Branch.
2. The Senior Assistant Deputy Minister of the Treaties and Aboriginal Government Sector should ensure that a comprehensive risk management framework related to specific claims (including strategic and operational level risks) and a risk management process, are established to appropriately identify, assess, mitigate and monitor the identified risks related to specific claims on a regular basis.

3. The Senior Assistant Deputy Minister of the Treaties and Aboriginal Government Sector should review current systems and assess system requirements/functionality against current available systems and evaluate the cost vs. benefit of centralizing the claim management systems and databases.
4. The Senior Assistant Deputy Minister of the Treaties and Aboriginal Government Sector should implement a centralized filing system, and/or documentation protocol, where an authoritative record (complete set of key documents) is identified, applied consistently, and easily accessible, to help ensure that key documentation is available and complete.

1. BACKGROUND

1.1. INTRODUCTION

This audit was included in the 2012-2013 to 2014-2015 Risk-based Audit Plan approved by the Departmental Audit Committee on February 23, 2012. The audit was identified as a departmental priority due to: the sensitive and visible nature of the program; recently implemented process changes; and the significance and materiality of potential contingent liabilities resulting from the settlement of specific claims.

The purpose of this audit is to provide independent, objective and supportable information that can be relied on to assess the execution of the Specific Claims Process. To achieve this purpose, the audit established a quality project management framework to help ensure the audit was carried out in accordance with recognized standards of professional practice Treasury Board Secretariat *Policy on Internal Audit*, and will follow the Institute of *Internal Auditors' Standards for the Professional Practice of Internal Auditing*.

1.2. SPECIFIC CLAIMS HISTORY

Specific Claims, generally, are claims made by a FN against the federal government, which relate to the administration of land and other FN assets and to the fulfillment of Indian treaties. The nature of grievances qualifying as specific claims can vary widely, reflecting the diverse historical relationships between different FNs and the Government of Canada. Examples include the failure to provide enough reserve land, the improper management of FN funds or the unlawful surrender of reserve lands. Settling specific claims in a way that satisfies both the government and the FNs is an important priority, not only because doing so discharges outstanding legal obligations the federal government owes and provides FNs with the means and resources to promote social and economic development, but also because it helps build trust between the two parties by rectifying historical injustices.

The government first undertook to resolve native claims in 1972 and a comprehensive policy process for the negotiation of specific claims was first introduced in 1982. This alternative dispute resolution process provided FNs with an option to negotiate the settlement of specific claims based on the premise that negotiation was more timely, cost-effective, and co-operative than litigation. This process was criticized by FNs and other parties (notably the 2007 Standing Senate Committee on Aboriginal Peoples "Negotiation or Confrontation: It's Canada's Choice"). Criticisms focus on a failure to process and review claims in a timely manner, and a perceived conflict of interest arising from continuing federal government control over the process, and a lack of an independent body to make the process more fair and effective. Canada's response to the Senate Committee Report, announced on June 12, 2007, was *Justice At Last: Specific Claims Action Plan*.

Justice At Last: Specific Claims Action Plan set in motion a fundamental reform of the specific claims process which was intended to bring increased fairness and transparency to the process. The action plan is based on four pillars:

1. The establishment of an independent tribunal with the power to make binding decisions;
2. The designation of a fund in the amount of \$250 million per year for 10 years for settlements;
3. Streamlining of internal government procedures to reduce or eliminate the backlog of unprocessed claims; and
4. Improved access to mediation services to support negotiations.

The Specific Claims Branch of AANDC is responsible for the implementation and administration of the Specific Claims Action Plan. Specific responsibilities include:

- Receiving specific claim submissions from FNs and assessing them against the Minimum Standard¹;
- Filing specific claims that meet the Minimum Standard with the Minister of Aboriginal Affairs and Northern Development;
- Making recommendations to the Minister as to whether a claim should be accepted for negotiation;
- Negotiating the settlement of specific claims with FNs;
- Monitoring and assessing negotiating tables and reporting results annually;
- Formulating financial mandates to settle specific claims;
- Paying settlements negotiated by AANDC and monetary awards issued by the Specific Claims Tribunal;
- For claims that are before the Tribunal, supporting Canada's participation in proceedings of the Tribunal by providing expertise on submitted claims, and ensuring policy objectives are respected and historical facts are correct;
- Administering the specific claims settlement fund; and
- Collecting performance data and reporting results.

The specific claims process includes four stages:

- Claim Submission and Early Review;
- Research and Assessment;
- Recommendation and Decision Making; and
- Negotiation and Settlement.

The Senior Assistant Deputy Minister (SADM) of the Treaties and Aboriginal Government (TAG) Sector is responsible for ensuring the specific claims process is operated and managed effectively, with appropriate use of human and financial resources. This accountability also extends to monitoring and assessment activities.

¹ Pursuant to Section 16(2)(a) of the *Specific Claims Tribunal Act*, the Minister of Aboriginal Affairs and Northern Development Canada has established a minimum standard in relation to the kind of information required for a specific claim to be filed as well as the form and manner for presenting the information.

In addition to AANDC, a number of key stakeholders are involved in the settlement of Specific Claims. The following provides an overview of their responsibilities:

- **Department of Justice:** DOJ plays an integral role within the specific claims process. They provide advice as to whether a claim gives rise to an outstanding lawful obligation on the part of Canada. It also provides legal advice to AANDC during the negotiation process and in Claims Advisory Committee meetings. If the claim proceeds to the Specific Claims Tribunal, DOJ will represent the interests of Government in Tribunal proceedings.
- **Specific Claims Tribunal:** The Tribunal is an independent adjudicative body with the authority to make binding decisions in respect to the validity of specific claims and to award monetary compensation to a maximum value of \$150 million per claim.
- **Specific Claims Tribunal Registry:** The Registry is the administrative arm of the independent Specific Claims Tribunal and is a federal government department pursuant to the *Financial Administration Act*.

In addition to the Specific Claims Branch, a number of key people/groups are involved in the Specific Claims Process within AANDC. The following provides an overview of their responsibilities:

- **Claims Advisory Committee:** Chaired by the Director General of the Specific Claims Branch, and comprised of other senior AANDC and senior DOJ officials, the committee issues recommendations to the Minister of Aboriginal Affairs and Northern Development on whether claims should be accepted for negotiation. The Committee also recommends financial mandates for approval to those with the appropriate delegated authority.
- **Financial Management and Strategic Services Branch (Funding Unit):** Administers loan funding for First Nations negotiating specific claims.
- **Central Negotiations Branch (Assessment/Historical Research Directorate):** This unit arranges independent mediation services during negotiation at the request of FNs and AANDC.
- **Litigation Management and Resolution Branch (LMRB):** This unit manages Canada's participation in proceedings of the Specific Claims Tribunal and also has an interface with SCB in the event a claim in negotiation is/or becomes the subject of active litigation.
- **Regional Operations Sector:** Regional offices participate in CAC meetings and at negotiation tables.
- **Lands and Economic Development Sector:** LED participates in CAC meetings and where appropriate, negotiating tables.

The key legislation, policies, and guidelines governing the Specific Claims Policies include:

- *The Specific Claims Action Plan (2007)*
- *The Specific Claims Tribunal Act (2008); and*
- *The Specific Claims Policy and Process Guide (2009).*

1.3. SPECIFIC CLAIMS STATISTICS

Table 1 below outlines the volume and status of claims filed with the Minister between April 2009 and November 2012. The statistics for 2009-10 provides insight into the distribution between claims that are accepted for negotiations and those where no outstanding legal obligation was found.

Table 1

Specific Claims filed with Minister between April 2009 and November 2012					
	2009-10	2010-11	2011-12	2012-13	Total
Claims not accepted for negotiations	25	6			31
Claims withdrawn by claimant and Closed	3	1			4
Claims currently under assessment	5	35	28	29	97
Claims that have entered negotiations	17				17
Claims filed with the Specific Claims Tribunal	1				1
Total	51	42	28	29	150

As described in Table 2 below, between April 2009 and November 2012 a total of 44 claims were settled through the negotiation process, for a total of over one billion dollars in settlements. The settlement of claims represents the end of the claim life cycle, and therefore these settled claims from this time period were initially filed with the Minister prior to 2009.

Table 2

<u>Specific Claims Settled</u> April 2009 – November 2012	Total Claims	Amount (\$M)
Specific Claims settled	44	\$1,154.1

Since the *Specific Claims Tribunal Act* came into effect in October 2008, 35 claims have been filed with the Specific Claims Tribunal. Of those 35 claims, 25 were not accepted for negotiation by AANDC, as it was determined that there was no outstanding legal obligation. The remaining 10 claims had been accepted for negotiations by the Department prior to their filing with the tribunal.

2. AUDIT OBJECTIVE AND SCOPE

2.1. AUDIT OBJECTIVE

The objective of the audit was to assess the effectiveness and efficiency of the controls in place to support the Specific Claims Process (SCP) throughout the claim life cycle. More specifically, the audit assessed whether:

1. The AANDC-SCB has effective governance controls in place to support the delivery of efficient and effective service under the Specific Claims Process;
2. The AANDC-SCB has effective controls in place to identify and manage the risks of achieving the service requirements of the Specific Claims Process;
3. Efficient and effective controls are in place throughout the four stages of the Specific Claims Process to help ensure that claims are processed in accordance with the Specific Claims Policy, and applicable provisions of the Specific Claims Tribunal Act; and
4. Effective program management controls are in place to support an efficient service delivery of the Specific Claims Process in the areas of Budgeting, Reporting, Claims Processing and IM/IT.

2.2. AUDIT SCOPE

The scope of the audit was limited to AANDC's responsibilities in support of the specific claims processes. As such, the scope did not include the responsibilities of the Specific Claims Tribunal itself, as it is an independent body.

The scope of the audit included the responsibilities of the Specific Claims Branch in support of the Specific Claims Process. Within AANDC, the Specific Claim Branch is responsible for assessing claims submissions against the minimum standard and filing them with the Minister, researching and assessing the claims, negotiating settlements, and paying settled claims and also awards made by the Tribunal. The audit also reviewed the management of negotiation loans associated with Specific Claims, which is managed by the Funding Services for Aboriginal Governance and Negotiations Unit. Specifically, the scope of the audit covered:

- The program's management control framework in place to help ensure effective and efficient management of the four stages of the specific claims process;
- The Department's controls for monitoring and reporting on the progress of claims; and
- The Department's controls in place to ensure timely and accurate processing of the settlement payments, negotiation loans, and tribunal awards.

The scope included Management Accountability Framework and Core Management Control elements that help ensure effective governance, risk management, stewardship, and accountability related to support to the Specific Claims Process.

3. APPROACH AND METHODOLOGY

The audit was conducted in accordance with the requirements of the [Treasury Board Secretariat Policy on Internal Audit](#) and followed the Institute of Internal Auditors' *Standards for the Professional Practice of Internal Auditing*. The audit examined sufficient, relevant evidence and obtained sufficient information to provide a reasonable level of assurance in support of the audit conclusion.

The probability of significant errors, fraud, non-compliance, and other exposures was considered during the planning phase.

The Principle audit techniques used included:

- Interviews with key individuals at AANDC-SCB (HQ and Specific Claims West), DOJ and the Funding Services for Aboriginal Governance and Negotiations Unit (Loans);
- Review of relevant documentation related to the Specific Claims in the areas of reporting, policies, procedures, templates and guidelines, contracts, agreements and memoranda of understanding, and budgets;
- Assessments of the adequacy, effectiveness, efficiency, and economy of management practices, financial controls and accountability structures in place to claims processing;
- Audit fieldwork was conducted primarily at AANDC headquarters in Gatineau, Quebec but also included a site visit to the Specific Claims West offices in Vancouver, the week of September 24th, 2012.

The approach used to address the audit objective included the development of audit criteria against which observations, assessments, and conclusions were drawn. The audit criteria developed for this audit are included in Appendix A.

4. CONCLUSION

Overall the audit found that the AANDC has implemented key governance and operational processes to support the efficient and effective delivery of required services and support to the Specific Claims Process (SCP). Specifically, AANDC has implemented sound practices in the areas of financial and resource planning, monitoring, communication, performance measurement, claims and loan processing and financial controls.

Although a number of sound practices have been implemented, the audit identified few areas where control practices and processes could be improved. Four key recommendations were identified relating to governance; risk management; and branch management controls.

5. FINDINGS AND RECOMMENDATIONS

Audit findings and related recommendations for improvement are categorized below by the following key elements: governance; risk management; claim process controls; and branch management controls.

5.1. Governance

5.1.1 Management Oversight Committees

To deliver on the ultimate objective of the SCP, effective project governance is critical. The audit examined whether an effective oversight body with clear governance protocols has been established, and whether information to support efficient and effective oversight exists and is implemented.

As stated in AANDC's Canada's Action Plan: Resolution of Specific Claims – Performance Management Strategy (October 2008), the SADM of the TAG Sector is accountable, through the Deputy Minister, to the Minister for the effective and efficient operation of the Specific Claims Action Plan. This accountability includes the sound use of human and financial resources, implementation and operation of program activities. It also encompasses monitoring, assessing and advising the Deputy Minister and Minister about the current status of implementing the action plan, the activities and results of the Specific Claims Tribunal, as well as potential future policy and program directions pertaining to specific claims.

The Action Plan also specifies that the Claims Advisory Committee (CAC) is the main administrative mechanism for addressing specific claims. It is chaired by the Director General of the Specific Claims Branch and attended by the General Counsel for specific claims at the Department of Justice and other officials with an interest in the specific claim. One of the functions of the CAC is to review the legal advice provided by the Department of Justice and recommend to the Minister whether a specific claim should be accepted for negotiation. The roles and responsibilities of the CAC are further confirmed in the CAC's Terms of Reference (October 2002).

We further noted other processes in place to assist in the governance of the SCP. The TAG Senior Management Committee meets on a weekly basis to discuss sector management, and when appropriate program management. When appropriate, Issues arising in regards to the SCP would be discussed during those meeting. Attending the meetings are the SADM, TAG, and Sector Director Generals.

The Policy Committee, whose membership consists of the DM and ADMs meets on at least a bi-weekly basis. All specific claims valued at over \$150 million require a discrete Cabinet mandate before an offer to settle can be made. Policy Committee's role regarding the SCP is to approve all Memoranda to Cabinet required to obtain financial mandates for claims valued at over \$150 million.

We noted that, although operational committees exist, a formal oversight body, with defined governance structure and ToR has not been implemented. If an existing oversight body is used to provide oversight over the SCP, then the SCP should be established as a regular item on the agenda to support a robust oversight role. The presence of an oversight body is important to help ensure that management's direction, plans and actions are appropriate and responsible. The oversight body would oversee implementation of the Specific Claims Action Plan and associated management practices, such as, strategic planning, risk management and internal controls related to the SCP. Without adequate oversight, there is a risk that expected results are not achieved. In addition, as noted above, the ToRs of the CAC have not been updated since October of 2002 and membership of key stakeholders, such as the

Litigation Management and Resolution Branch (LMRB) has not been confirmed within the ToR. Since LMRB is the lead branch for claims at the Tribunal, SCB and LMRB will be increasingly collaborating. Formalizing their participation at the CAC forum will support this working relationship

Recommendation #1:

The Senior Assistant Deputy Minister of the Treaties and Aboriginal Government Sector should ensure that an appropriate Oversight Committee, with a defined governance framework and Terms of Reference (ToR) is implemented, and ensure that the Terms of Reference of the Claims Advisory Committee (CAC) is reviewed and updated. Specifically, CAC membership within the ToR should be reviewed to include a representative from the Litigation Management and Resolution Branch.

5.1.2 Strategic Direction and Planning:

The audit noted that the SCB has a clearly defined and communicated strategic direction and objectives, which are aligned to its mandate. It was observed that TAG's business plan includes planning highlights for the SCB, which include: processing of claims in a timely manner; realignment of resources to facilitate negotiated settlements and to support Canada's involvement in the Specific Claims Tribunal; and collaborating with FN's as well as federal department and agencies. There is alignment between the operational objectives, the Specific Claims Policy, and the applicable provisions of the *Specific Claims Tribunal Act*, which align with government priorities and the roles and responsibilities of the federal government toward First Nations.

5.1.3 Stakeholder Collaboration and Communication:

The Specific Claims Process requires the collaboration of a number of parties in order to complete the assessment and negotiation of specific claims within the timeframes set out in the Act.

Major stakeholders consist of the FNs and the DOJ. However, during the SCP, SCB relies on the services of other service providers, such as PWGSC, NRCan and contract researchers among others.

Collaboration and communication with the FNs is critical during the SCP. A number of processes have been established to define and communicate the roles of both parties. Once a claim has been accepted for negotiations, for higher value claims a joint negotiation protocol is signed by AANDC and the FN which specifies the milestones as well as the timetable. Each party assign a negotiator which is responsible for the process.

The DOJ plays an integral role in the SCP to assess claims against the Minimum Standard, and if filed with the Minister, reviewing the research and developing a legal opinion regarding whether or not the claim gives rise to a lawful obligation on the part of Canada. The DOJ issues a legal opinion to the Research Unit detailing the lawful obligation, if any. The DOJ also provides advice on financial mandates approved by the CAC and during the negotiations. Research has demonstrated that during the period preceding the Action Plan, several years would often lapse between the time the DOJ would receive a claim and the date it would submit its legal opinion. In order to mitigate the risk of an FN filing a claim with the Tribunal,

the SCB must assess the validity of a claim within three years, as prescribed by the Specific Claims Tribunal Act. As such, it is necessary for the SCB to obtain legal opinions from the DOJ in a much more expedite manner. Based on these requirements, the SCB and DOJ agreed to a timeline of one year to produce these opinions. In order to help ensure that requirements are well understood AANDC and the DOJ have entered into a Memorandum of Understanding (MOU) which is renewed on an annual basis. The MOU specifies the requirements of the SCB for the year as well as DOJ's FTE commitment.

On certain claims, NRCAN services are called upon to provide mapping, survey products and expertise. Public Works and Government Services Canada (PWGSC) assists the SCB by providing advice on appraisals of claim lands. Specifically, PWGSC services include assistance in the development or reviewing of the TOR for appraisals, review and advice on appraisals and review appraisal reports. The SCB reviews and updates MOU agreements with NRCAN and PWGSC on an annual basis.

5.2. Risk Management

To support the efficient and effective delivery of the SCP, an effective risk management framework must be in place. The audit examined whether the SCB has a documented approach to risk management that includes risk identification, assessment, mitigation and monitoring.

The audit noted that SCB participated in a risk assessment as part of the Corporate Business Plan process, and provided input into the risks profiles developed at the departmental level, and also at the TAG sector level. The assessment concluded that the overall risk of the SCB not achieving its objective in regards to processing the backlog of claims and moving new claims quickly through the review and assessment process was low and that the proposed mitigating strategies in place were adequate to manage the identified risks.

In 2008, representatives of the SCB and DOJ participated in the completion of a risk assessment exercise as part of Canada's Action Plan. The assessment included identifying strategic, operational and project level risks which were assessed for likelihood and impact. The exercise also involved proposing mitigation strategies to manage each risk.

The following risks specific to the SCB were all rated as low:

- Risk that FNs decline to negotiate and turn to the Tribunal;
- Risk that the number of claims filed are greater than expected, creating another backlog;
- Risk that existing claims (as at October 2008) are not reviewed and assessed by March 31, 2011; and
- Risk that contribution and loan funds may not be used by the recipient for the intended purpose.

As part of the 2012-2015 Corporate Business Plan exercise, a risk assessment at the sector level was completed by TAG. The assessment identified risks in the areas of:

- Government and Aboriginal Partnership;
- External Partnership;

- Legal;
- Implementation; and
- Resource Alignment and Program Alignment.

The assessment does specify the need to pursue settlement of specific claims in a manner consistent with the time frames legislated in the *Specific Claims Tribunal Act* (2008), reducing the potential number of claims that could be referred to the Tribunal.

Although the current risk assessment, assessed the risks associated with the Sector, it did not represent a fulsome environmental scan of all of the strategic and operational risks that may impact the SCP and SCB, and didn't measure the risks for likelihood or impact. The SCB would benefit from completing such an exercise related solely to the specific claims to determine the areas which are most at risk to further assist the SCB in focusing their efforts to priority activities. In addition we noted that the risk management process to identify, assess, mitigate and monitor risk has not been formally defined.

Recommendation #2:

The Senior Assistant Deputy Minister of the Treaties and Aboriginal Government Sector should ensure that a comprehensive risk management framework related to specific claims (including strategic and operational level risks) and a risk management process, are established to appropriately identify, assess, mitigate and monitor the identified risks related to specific claims on a regular basis.

5.3. Claims Processing Controls

The audit found that The Specific Claims Process is clearly defined and formalized, understood by SCB staff, and communicated to stakeholders. The SCB has implemented a number of controls to help ensure that claims are processed in accordance with the Specific Claims Policy and applicable provisions of the *Specific Claims Tribunal Act*. In addition, the audit found that controls are in place to help ensure that disbursements are in accordance with the *Financial Administration Act*. Audit testing found that these controls over claims processing (timelines, documentation and decisions approval) are being executed effectively.

Early Review Process:

As required by the *Specific Claims Tribunal Act*, prior to being accepted by the Minister, claims submitted by FNs are required to meet a minimum standard of quality. This requirement was implemented in order to streamline the SCP. The standard provides clear guidelines to FN to assist in the preparation of claims to increase the quality of submissions, hence reducing the time required for research and assessment. The Early Review Committee (ERC) was established in order to review and assess whether each claims meets the minimum standards. In the event that the claim meets the minimum standard, the claim is filed with the Minister.

In our review of claim files, we have noted that all claims reviewed were submitted for filing to the Minister had been reviewed by the ERC and decision were supported by a Record of Decision.

Research and Assessment:

Once a claim is filed, the Minister has three years to decide whether to accept the claim for negotiation. During this period, research in regards to the validity of the claim must be completed by the SCB and provided to the DOJ in order to provide a legal opinion to determine if the claim rises to an outstanding lawful obligation.

A recommendation document and a draft letter, both based on the legal opinion is presented to the CAC for review and submission to the Minister if a claim is being recommended for negotiation.

In order to complete this assessment, and determine whether there is an outstanding lawful obligation related to the claim, the SCB has implemented a process with established timelines to help ensure that information is obtained and considered in a timely manner.

In our review of claims processed within the period under scope, in all claims reviewed, we have been provided with supporting documentation demonstrating that the recommendation to the Minister, whether to accept or not accept a claim for negotiation, had been researched, assessed, a legal opinion had been provided by the DOJ, and was reviewed by the CAC.

Negotiation

In cases where claims are accepted for negotiation, First Nations and SCB representatives enter into negotiations. Prior to negotiations, confirmation of the basis upon which Canada is willing to negotiate the claim and agreeing to negotiate on that basis must be obtained from the FN. During the negotiation phase a financial mandate is established, based on detailed a valuation (often with input from PWGSC and NRCan), recommended by the CAC, and approved by the proper delegated authority. Once a settlement is agreed upon, a settlement agreement is approved by the proper delegated authority and signed by the Minister.

In our review of files we noted that prior to beginning negotiations, all files documented the acceptance of negotiations by FNs via a Band Council Resolution. We also noted that all financial mandates had been reviewed by the CAC, and approved by the proper delegated authority. In cases where a settlement was agreed upon, file testing found the settlement agreement had been approved by the appropriate delegated authority and signed by the Minister.

Settlement

Once the settlement is agreed upon and ratified by the parties, AANDC must issue payment within 45 days.

In our review of files, we noted that payments had been made in accordance with the *Financial Administration Act* and by the proper delegated authority.

Loans

AANDC provides recoverable loans to support FNs in the negotiation process. The loans are determined on an annuals basis based on a workplan which is approved by AANDC negotiator. The audit found that the process to manage Negotiation Loans associated with Specific Claims is clearly defined and formalized, understood by TAG staff, and communicated

to stakeholders. Controls over loans processing exist, and they are being executed effectively, and in compliance with policy and applicable legislation.

In our review of claims files for which a loan was disbursed, we have noted that the loan amount was substantiated by an approved work plan. We also noted that disbursement of the loan had been approved by the proper delegated authority.

5.4. Management Controls

5.4.1 Accountability

The audit found that the SCB authorities, roles, responsibilities and accountabilities are well defined, communicated, and understood throughout the branch.

5.4.2 Performance Measurement

There are a number of performance indicators and statistics linked to objectives that are being monitored regularly by the Specific Claims Branch. The audit noted examples of weekly and monthly reports that include volume and performance metrics. The SCB has implemented a monitoring and performance measurement approach that contributes to AANDC's capacity to monitor claims. This approach also supports the overall goal of providing information on claims to all stakeholders and the general public.

5.4.3 Information Systems

The Specific Claims Database is a national on-line system which tracks the progress of specific claims from receipt to settlement and produces various pre-established reports. The database is also a critical tool used for the calculation of the contingent liability of claims. The Research & Policy and Negotiation branches have their own management project tools which serves to forecast and monitor the various steps included in the assessment and negotiation process, something that the Database has not been designed to do. The additional monitoring practice was implemented after the Specific Claims Tribunal Act, to support monitoring of the 3-year legislative timelines.

The SCBDB also includes financial data on settled specific claims as well as estimates for claims under assessment and in negotiation. The data is utilized to calculate the liabilities and contingent liability associated with the claims.

In the course of our audit we have noted that a number of employees were maintaining claims information using software, such as spreadsheets to manage their case load on a daily basis. As noted by the employees of the SCB, although the SCBDB maintains and provides reporting information as to the status of all claims, it currently does not have the functionality to assist in the management and forecasting of claims of an on-going basis.

We also noted that a spreadsheet developed prior to the implementation of the SCBDB to calculate the estimated contingent liability amount, was still maintained by the Branch.

Maintenance of these databases and systems require additional resources as information must be entered numerous times and reconciled. The associated risk is with respect to the timeliness, accuracy and completeness of data. Also, the use of multiple, overlapping systems, that need to be reconciled on an ongoing basis, is not an efficient use of resources.

Recommendation #3:

The Senior Assistant Deputy Minister of the Treaties and Aboriginal Government Sector should review current systems and assess system requirements/functionality against current available systems and evaluate the cost vs. benefit of centralizing the claim management systems and databases.

5.4.4 Record Management

Information and records are essential components of effective management. The creation, maintenance and accessibility of records are essential to the conduct of business, to demonstrate accountability and to retain and transfer knowledge.

Information maintained for each specific claims contain vital information which substantiate the decisions made throughout the process such as:

- Historical documentation;
- Communication with the FN throughout the process;
- Record of decision;
- Minimum standards review;
- Analysis at the assessment stage;
- Legal opinion;
- CAC recommendation;
- Approval by the Minister or delegate
- Negotiations protocol;
- Settlement agreement;
- Other relevant documentation.

Having an easily accessible and complete set of documents is increasingly important as more FNs elect to take claims to the Tribunal. It would also improve efficiency when responding to other requests for information (e.g. Audits).

As noted in the Formative Evaluation (2011), throughout the years the Specific Claims Process has been criticized by FNs for the length of time it took for the completion of negotiations. The overall objective of the Specific Claims Action Plan is to ensure that specific claims are resolved with finality in a faster, fairer and more transparent way. As the decisions made by the SCB will be under constant scrutiny, and may be brought to the Tribunal, it is of the utmost importance that the decisions made can be substantiated in order to demonstrate the validity of the process followed.

In our review of a sample of 30 claim files the required supporting documentation was available to help ensure that claims were completed as per the approved process. However, in numerous cases, we noted that documentation was not kept centrally. The audit team observed at least four different sources (between both offices) from which documentation was retrieved.

Currently SCB has offices situated at HQ and in Vancouver, with each office using the local electronic document library within the Comprehensive Integrated Document Management System (CIDMS). These local libraries cannot be easily accessed from a non-local office. For example, Specific Claims West (Vancouver) staff cannot create and manage documents in the Headquarters CIDM library. This has enhanced the requirement to maintain documents in a multitude of offices.

In addition to ensuring that relevant data is maintained, proper records management can improve efficiency and productivity by reducing the amount of time searching for missing or misfiled records. It also promotes better decision making by providing managers with pertinent and timely information. This issue will become more prominent as the number of claims going to the Tribunal increases, necessitating the provision of complete and authoritative files in an expedited manner.

Recommendation #4:

The Senior Assistant Deputy Minister of the Treaties and Aboriginal Government Sector should implement a centralized filing system, and/or documentation protocol, where an authoritative record (complete set of key documents) is identified, applied consistently, and easily accessible, to help ensure that key documentation is available and complete.

6. MANAGEMENT ACTION PLAN

Recommendations	Management Response / Actions	Responsible Manager (Title)	Planned Implementation Date
<p>1. The Senior Assistant Deputy Minister of the Treaties and Aboriginal Government Sector should ensure that an appropriate Oversight Committee, with a defined governance framework and Terms of Reference (ToR) is implemented, and ensure that the Terms of Reference of the Claims Advisory Committee (CAC) is reviewed and updated. Specifically, CAC membership within the ToR should be reviewed to include a representative from the Litigation Management and Resolution Branch.</p>	<p>The Claims Advisory Committee (CAC) membership already includes representatives from the Litigation Management and Resolution Branch (LMRB) at the Director level. The CAC Terms of Reference are currently being revised and updated. The DG, LMRB, the Chief Financial Officer, and the Director General, Lands and Environmental Management will be invited to become members of the CAC.</p> <p>The Senior ADM, TAG will examine using the Joint Steering Committee on Litigation Issues for quarterly, strategic oversight to the specific claims process. In the past, this committee has played a role in discussing issues impacting the Specific Claims Process and the Specific Claims Tribunal.</p>	<p>Sr.ADM, Treaties and Aboriginal Government Sector</p>	<p>March 2013</p>
<p>2. The Senior Assistant Deputy Minister of the Treaties and Aboriginal Government Sector should ensure that a comprehensive risk management framework related to specific claims (including strategic and operational level risks) and a risk management process, are established to appropriately identify, assess,</p>	<p>A Specific Claims risk assessment framework will be undertaken and integrated into the corporate risk assessment framework. The Specific Claims risk assessment framework will address elements unique to the Specific Claims Process including: the impact of the Specific Claims Tribunal, funding pressures, and human resource pressures. As well, the risk assessment would take into account the</p>	<p>Sr.ADM, Treaties and Aboriginal Government Sector</p>	<p>September 30th, 2013</p>

Recommendations	Management Response / Actions	Responsible Manager (Title)	Planned Implementation Date
mitigate and monitor the identified risks related to specific claims on a regular basis.	positive impact that settling a claim has on other departmental activities including, but not limited to, self-government and treaty negotiations.		
3. The Senior Assistant Deputy Minister of the Treaties and Aboriginal Government Sector should review current systems and assess system requirements/functionality against current available systems and evaluate the cost vs. benefit of centralizing the claim management systems and databases.	<p>The Specific Claims Branch Database (SCBDB) is a national on-line system which has been designed to track the progress of specific claims from receipt to settlement and produces various pre-established reports. The SCBDB is primarily focused on reporting, but is also a critical tool used for the calculation of the contingent liability (CL) of claims.</p> <p>However, there are a number of other management systems and databases that continue to fulfill different functions in the management of the Specific Claims Process.</p> <p>The S/ADM, TAG will undertake to review and assess all of these tools and examine opportunities to centralize the information systems in a cost and resource effective manner, while recognizing the required differences in purpose and function.</p>	Sr.ADM, Treaties and Aboriginal Government Sector	March 2013
4. The Senior Assistant Deputy Minister of the Treaties and Aboriginal Government Sector should implement a centralized filing system, and/or documentation protocol, where an	A review of the information management practices in Specific Claims Branch (SCB) is underway. Preliminary findings indicate that files in SCB exist in segregated points: Research, Negotiations; in various locations in	Sr.ADM, Treaties and Aboriginal Government Sector	March 2014

Recommendations	Management Response / Actions	Responsible Manager (Title)	Planned Implementation Date
<p>authoritative record (complete set of key documents) is identified, applied consistently, and easily accessible, to help ensure that key documentation is available and complete.</p>	<p>HQ, and BC; and in various formats electronic (CIDM) and hard copy, thereby affecting the capacity to retrieve the complete record of a claim in a timely manner. In addition, it has been determined that the current File Numbering Systems in use by both SCB NCR and Vancouver do not meet Record Management standards for the federal government.</p> <p>SCB is working with Enterprise Information Record Management (EIRM) to address these issues. As a result a number of measures are being implemented:</p> <ul style="list-style-type: none"> . Approval of draft business rules will provide a safe, secure structure for the creation, maintenance, retrieval and disposition of information. The business rules include the use of naming conventions, application of consistent access control and address document security issues. . Implementation of a New File Numbering System in both NCR and Vancouver. <p>Substantial changes in the way CIDM is integrated in the work flow via: emails, file numbering systems documents and saving will be implemented. Training for staff will be required.</p>		

Appendix A: Audit Criteria

An audit plan was developed using a risk-based approach to identify key risks facing the achievement of the SCP objectives and expected results. Principle techniques used to identify the key risks included interviews with management and key stakeholders, and a documentation review. Key risks were then linked to the core processes and practices in place within AANDC that are designed to mitigate these risks. This information was then used to determine the audit criteria to support the objectives and scope of the audit.

Audit Criteria	
Governance	
1.1	Oversight bodies are established to ensure effectiveness and efficiency of the SCP.
1.2	The AANDC-SCB has clearly defined and communicated strategic directions and strategic objectives, aligned with its mandate.
1.3	The AANDC-SCB has in place operational plans and objectives aimed at achieving its strategic objectives.
1.4	External and internal environments are monitored by the AANDC-SCB to obtain information that may signal a need to re-evaluate objectives, policies and/or control environment.
1.5	The oversight body is provided with sufficient, complete, timely and accurate information.
1.6	Lines of communication exist between the AANDC-SCB, Early Review Committee, Department of Justice, Specific Claims Tribunal, Claims Advisory Committee and Mediation Services to support the identification, delivery and change management of the AANDC-SCB's services in support of the SCP.
1.7	The AANDC-SCB leverages, where appropriate, collaborative opportunities to enhance back office support service.
Risk Management	
2.1	The AANDC-SCB has a documented approach with respect to risk management.
2.2	The AANDC-SCB assesses the risks it has identified.
2.3	The AANDC-SCB formally responds to its risks.
Effective Claims Process Controls	
3.1	Lines of communication exist between the AANDC-SCB, claimants and other external stakeholders.
3.2	Feedback from Applicants / Claimants, AANDC-SCB, Requirement, Committee, Department of Justice, Specific Claims Tribunal, Claims Advisory Committee and Mediation Services drives strategic and operational planning.
3.3	The activities, schedules and resources needed to achieve objectives have been integrated into the budget.
3.4	Financial management policies and authorities are appropriately designed to mitigate

	financial risks and are communicated.
3.5	Compliance with financial management laws, policies and authorities is monitored regularly.
3.6	Management has established processes to develop and manage agreements and third-party contracts.
3.7	The AANDC-SCB has identified appropriate performance measures linked to planned results.
3.8	The AANDC-SCB monitors actual performance against planned results and adjusts course as needed.
Effective Program Management Controls	
4.1	Lines of communication exist between the AANDC- SCB, Committees, the Minister and claimants.
4.2	AANDC-SCB authority, responsibility and accountability are clear and communicated.
4.3	Feedback from the AANDC-SCB drives strategic and operational planning and changes to service support.
4.4	The AANDC-SCB provides employees with the necessary training, tools, resources and information to support the discharge of their responsibilities.
4.5	IT service levels are designed and managed to help ensure alignment of key IT service needs of the AANDC-SCB.
4.6	A timely budget is developed at the appropriate level of detail. Forecasts are monitored on a regular basis.
4.7	Forecasts are monitored on a regular basis.
4.8	Human resource planning is aligned with strategic and business planning.
4.9	The AANDC-SCB has identified planned results linked to organizational objectives.
4.10	The AANDC-SCB has identified appropriate performance measures linked to planned results.
4.11	The AANDC-SCB monitors actual performance against planned results and adjusts course as needed.