Crown-Indigenous Relations and Northern Affairs Canada
Relations Couronne-Autochtones et Affaires du Nord Canada

Evaluation of the Specific Claims Assessment and Settlement Process FY2013–14 to FY2019–20

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List of Acronyms

AFN	Assembly of First Nations
CIRNAC	Crown-Indigenous Relations and Northern Affairs Canada
DOJ	Department of Justice
GBA Plus	Gender-Based Analysis Plus
INAC	Indigenous and Northern Affairs Canada
ISC	Indigenous Services Canada
JTWG	Joint Technical Working Group on Specific Claims
OAG	Office of the Auditor General
SCB	Specific Claims Branch
SCP	Specific Claims Process
TRC	Truth and Reconciliation Commission of Canada
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples

Executive Summary

Overview

The Evaluation Branch of the Audit and Evaluation Sector of Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC) conducted an evaluation of the Specific Claims Assessment and Settlement Process (SCP). The evaluation was undertaken as outlined in CIRNAC's Five-Year Evaluation Plan 2019-2020 to 2023-2024 and in compliance with the Treasury Board *Policy on Results* and Section 42.1 of the *Financial Administration Act.*

The evaluation focuses on relevance, design and delivery and effectiveness. The evaluation covered the period of April 1, 2013 to March 31, 2020.

The program is delivered by the Specific Claims Branch (SCB), Resolution and Partnership Sector, of Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC).

Specific claims are grievances that First Nations have against the Government of Canada for failing to discharge its lawful obligations with respect to historic pre-1975 treaties and the management of First Nation lands, monies and other assets. The resolution of specific claims advances reconciliation and supports nation building and self-governance, where settlement funds can be used by First Nations to advance their priorities and community development. Specific claims are separate and distinct from comprehensive land claims or modern treaties.

In 2016, the Office of the Auditor General conducted a performance audit, which reported on whether the department adequately managed the resolution of First Nations specific claims. The audit noted the lengthy assessment and negotiation processes are impediments to achieving restitution for past wrongs.

An Evaluation Working Group provided guidance on the evaluation process and to ensure diverse perspectives were reflected in the evaluation. This included representatives from the evaluation team, SCB program representatives, the Assembly of First Nations (AFN), and the Union of British Columbia Indian Chiefs and others.

The evaluation methods included a review of program documents, a review of performance and financial data from the specific claims database, 51 key Informant interviews (with federal government representatives, Indigenous governments, Indigenous Representative Organizations and Claims Research Units, and other Indigenous representatives); and eight case studies of specific claims in various stages of the process, which included a review of core claim documents and 20 key informant interviews as part of case studies.

The case studies considered the experiences of First Nations at various key stages in the process, examined the role of the SCB and identified key challenges at various stages of the process.

Recommendations to support improvements in CIRNAC's approach to working with Indigenous partners and managing and implementing Treaties and Agreements follow.

Relevance

The evaluation found that the need to resolve specific claims is a priority for First Nations and necessary for Canada to honour its obligations to right these past wrongs. As the Government of Canada is accountable for fulfilling statutory and fiduciary obligations to First Nations as well as upholding the honour of the Crown[1], it is expected that the need to resolve specific claims will continue on a long-term basis.

This continued need will drive the requirement for an impartial, fair, transparent and efficient policy and process for resolving specific claims through negotiated settlements and other alternatives to the courts.

In the absence of the specific claims policy and process, claims litigation would be the primary pathway to resolution, which is not the preferred approach as it is more costly and time consuming, eroding relationships with First Nations, and ultimately reconciliation between Canada and First Nations.

There are continued expectations that the specific claims policy and process will be consistent with, aligned to, and supportive of the priorities and plans of First Nations, Canada's obligations to right past wrongs, and the federal government's priorities for renewed, nation-to-nation, government-to-government relationships with First Nations, reconciliation, commitments to implement the TRC *Calls to Action*, and to be in compliance with United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

Despite incremental federal reforms, FNs, their representatives, oversight bodies and other observers have made the same criticisms that the SCP is not meeting needs and expectations and that transformational change is required to address these longstanding issues.

Design and Delivery

In terms of impartiality and fairness, and accountability and transparency, respondents pointed to UNDRIP Article 27 calling for a "fair, independent, impartial, open and transparent process" to be implemented in conjunction with the concerned Indigenous people.[2] Introduction of the Tribunal and incremental federal reforms has improved impartiality and fairness of the existing process, however it remains out of compliance with Article 27.

The resourcing of the SCP appears to have hindered the ability of First Nations to develop and submit claims, and participate in negotiations, and the SCB's ability to meet expectations, such as legislated timeline targets. For First Nations, adequacy of resourcing (including research funding outside the purview of the SCB) is the primary driver for prospective claims entering the claims resolution process.

An increase in the volume of claims combined with targets for initial review, and assessment and negotiation, have been beyond the current resources and staffing allocations, resulting in lengthy periods to resolve claims and failure to meet legislated timelines. For the SCB, according to interviews with program representatives, staff have been faced with excessive workloads, resulting in high rates of absenteeism and attrition.

[1] Note that not all specific claims arise from treaties and agreements.
[2]United Nations, United Nations Declaration on the Rights of Indigenous Peoples (New York, 2007).

Greater collaboration, communication and information sharing has led to improvements in accountability and transparency, though a continued focus on improving these areas is still needed.

Effectiveness

There are challenges with the program framework, including misalignment of indicators with outcomes and the reliance on contextual indicators. Both internal and external respondents recognized many of these and other issues (i.e., unrealistic targets) are deficiencies with the program performance framework. SCB officials indicated that some of these were already being addressed through an internal review process.

With respect to monitoring, the program uses a simple output volume calculation to monitor performance. This output volume approach looks at all claims in the SCB portfolio in a particular year, and describes how many are at various stages in their life cycle, regardless of when they were submitted to the Minister. Given that the federal government plans and budgets on a fiscal year basis, that claims are managed through different lifecycle stages (with important, including legislated, performance standards), and many of the program indicators are qualified "by year and trend," the evaluation team expected that the program would use cohort analysis to help provide insight into the performance of the claims process. Instead, the program relies on simple volume calculations, which does not fully account for the lifecycle of claim.

From a narrow operational sense (activities and immediate outcomes), program performance has been good, largely attributable to the expertise and deep dedication of staff. Performance on meeting the legislated three-year timeframe for determining whether claims will be accepted for negotiation fell slightly short of expectations. However, the last three years demonstrated a trending significant improvement and the target was met.

From a broader perspective (intermediate and ultimate outcomes), the program has not performed well. With respect to advancing reconciliation with First Nations, respondents generally agreed that the SCP has the potential to advance reconciliation however, its current design particularly as it relates to impartiality, fairness and transparency are major impediments.

Efficiency and Economy

The program has continually explored different ways to increase efficiencies (e.g., joint research, bundling claims, global settlements and scaling of these best practices) and strived to ensure a positive experience for First Nations during the claims process, and there have been pockets of success.

First Nation respondents agreed that negotiated resolutions are the most cost-effective as well as their preferred means to resolve specific claims within the *Specific Claims Policy*, and suggested that greater efficiencies could be realized through more collaboration (e.g., joint research) and consistency in the approach to different classes of claims.

Capacity and resource constraints have impacted the SCB's ability to meet expectations and First Nation calls for accelerated resolution, and hindered the ability of First Nations to participate in the specific claims process on an equal footing with Canada.

Recommendations

The findings and conclusions from this evaluation have led to the following recommendations:

It is recommended that CIRNAC:

1. Co-develop with First Nations partners a modern and transformative specific claims policy and process, that:

    - Better aligns to Government of Canada and Departmental mandates and priorities and reflects UNDRIP and the TRC *Calls to Action*, including principles of and upholding the honour of the Crown.
    - Establishes options for implementation, and a realistic and sufficiently resourced implementation plan, that can lead to more fairness, impartiality, transparency, independence and collaboration in the claims process.
    - Ensures that Indigenous customs, rules, and legal systems are systemically incorporated into the specific claims policy and process.

2. In cooperation with First Nations partners, continue its current improvement initiatives related to delivery, effectiveness and efficiency of the program, including:

    - Communications - improving the clarity and opportunities for transfer of communication from SCB to First Nations; and, within the department between the directorates with the SCB and other areas that interface with the SCB (Pre-research Negotiations support branch in Treaties and Aboriginal Government and regions (ISC)).
    - Performance Measurement – improving the data collection approach with more accurate and meaningful indicators and articulation of longer term outcomes, in consultation with First Nations.

Management Response / Action Plan

Project Title: Evaluation of the Specific Claims Assessment and Settlement Process

1. Management Response

The Specific Claims Branch (SCB), Resolutions and Partnership Sector, acknowledges the findings of the report on the "Evaluation of the Specific Claims Assessment and Settlement Process FY2013-14 to FY2019-20".

The evaluation comes at an important time for the Specific Claims Program. Following the 2016 release of the statutorily mandated review of the *Specific Claims Tribunal Act* and the Report of the Auditor General of Canada, the Specific Claims Program has made notable progress in working collaboratively with First Nations to accelerate the resolution of claims, while also working with First Nation partners to identify policy reform options for further improvement of the Program.

Since 2016, the Specific Claims Program has adopted approaches involving more collaboration and innovation with First Nation partners that are consistent with the Government's overall commitment to improving the relationship with Indigenous peoples. By working more closely and collaboratively with First Nation partners, and seeking opportunities to bundle claims or mandates and to accelerate the resolution of claims, the Program settled more claims over the last three years than ever before. 117 claims were resolved during that period, or an average of 39 per year, compared to averages per year below 20, sometimes well below this number, in previous years. Furthermore, the average rate of acceptance of claims for negotiation has been about 90% in the last three years compared to about 60% or less in previous years, reflecting efforts to make the process less adversarial and to avoid unnecessary litigation of claims.

In addition to adopting on-going operational improvements to streamline the process and improve relationships with First Nation partners in negotiations, in 2016 a Joint Technical Working Group was established with the Assembly of First Nations (AFN) and other First Nation partners to identify practical measures to improve the specific claims process. The AFN led a national policy reform engagement exercise with First Nations during the fall of 2019. This engagement resulted in updated direction from AFN Chiefs in Assembly to contemplate an independent reformed resolution process for the settlement of specific claims.

In this context, the Specific Claims Program brought forward in 2022 a first stage of policy reform. A co-development process with the AFN and other First Nation partners was launched in November 2022 to reform the specific claims process, including the establishment of a Center for the resolution of specific claims as an independent body to administer and oversee key aspects of the process. Following the 2007 *Justice at Last* policy framework, we believe this policy reform process, which will be co-developed with First Nation partners, will likely determine the program's strategic direction for the next decade or more. We therefore see the Evaluation Report's importance not only in critically assessing how the Program evolved between 2013-14 and 2019-20, but also providing insight into how stakeholders might weigh our policy reform options going forward. In this context, we will consider the reference information and analysis that grounded the Evaluation's recommendations to consider how its recommendations can be factored into policy and program reforms.

2. Action Plan

Recommendations	Actions	Responsible Manager (Title / Sector)	Planned Start and Completion Dates
1. Co-develop with First Nations partners a modern and transformative specific claims policy and process, that: a) Better aligns to Government of Canada and Departmental mandates and priorities and reflects United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the Truth and Reconciliation Commission (TRC) *Calls to Action*, including principles of and upholding the honour of the Crown. b) Establishes options for implementation, and a realistic and sufficiently resourced implementation plan, that can lead to more fairness, impartiality, transparency, independence and collaboration in the claims process. c) Ensures that Indigenous customs, rules, and legal systems are systemically incorporated into the specific claims policy and process.	First Nations have called for changes to the way specific claims are handled by the federal government. CIRNAC is working closely with the AFN and other First Nations partners to find fair and practical ways to improve the specific claims process through an ambitious specific claims reform plan CIRNAC and the AFN formally launched a co-development exercise to develop a proposal for an independent centre for the resolution of specific claims in November 2022. CIRNAC is expected to bring forward a reform proposal based on this co-development exercise in 2024. The specific claims reform initiative will be looking to set up a reformed resolution process and further operational improvements. Key milestones range from the repeal of the Order in Council limiting the Minister's authority to sign settlement agreements and an increase in the Minister's mandate approval authority (completed in October 2022) to the approval of a proposal for the implementation of a centre for the resolution of specific claims targeted to be brought forward in 2024. The principles of UNDRIP and the TRC *Calls to Action* guide the design of this reform, which is based on a co-development approach to policy development. With respect to the integration of Indigenous legal systems into the specific claims resolution process, the Department does not currently have the expertise required to fully evaluate the potential implications of this proposal. It is anticipated that an Advisory Committee on Indigenous Laws would be established as part of the reform initiative to assist the federal government and First Nations partners by advising on the role Indigenous legal traditions could have in the process.	Director General, Specific Claims Branch	*Start Date:* Ongoing *Completion Date:* 2025-2026
2. In cooperation with First Nations partners, continue its current improvement initiatives related to	SCB has introduced measures to improve the intake and processing of claims submitted by First Nations. This includes the assessing of re-submitted	Director General, Specific Claims Branch	*Start Date:* Ongoing

Recommendations	Actions	Responsible Manager (Title / Sector)	Planned Start and Completion Dates
delivery, effectiveness and efficiency of the program, including: • Communications - improving the clarity and opportunities for transfer of communication from SCB to First Nations; and, within the department between the directorates with the SCB and other areas that interface with the SCB (Pre-research Negotiations support branch in Treaties and Aboriginal Government and regions (Indigenous Services Canada (ISC))). • Performance Measurement – improving the data collection approach with more accurate and meaningful indicators and articulation of longer term outcomes, in consultation with First Nations.	claims and undertaking joint research initiatives to support the parties in coming to a common understanding of a claim. SCB is now more proactive throughout the assessment process to communicate with First Nations in order to ensure that any gaps in information do not prevent the assessment of a claim in a timely fashion. SCB has continued to improve clarity and opportunities for communication with First Nations by developing guidance for negotiators for explaining Canada's positions clearly during the resolution process. In addition, the use of mediation where warranted is improving communication and information sharing. SCB directorates work closely together during the assessment and negotiation processes and SCB collaborates with other sectors such as Treaties and Aboriginal Government in addressing cross-cutting issues. SCB maintains ongoing communications with the Department of Justice which works closely with SCB at every stage of the assessment and resolution process and with other government departments such as Indigenous Services Canada as needed. In 2021-2022, SCB changed the main departmental result indicator for the program to better reflect the number of past injustices resolved by the program. Working with the Chief Finances, Results and Delivery Officer, as well as the Central Agencies, SCB will update its approach to performance measurement in the context of the reforms to the specific claims process that are being co-developed with the Assembly of First Nations and other First Nation partners. While the focus over the coming years will be on the reform of the process through the establishment of a specific claims resolution centre, SCB will also continue to implement operational improvements to the current process, and to work with the CIRNAC-AFN Joint Technical Working Group to identify issues requiring attention.		*Completion Date:* Within 3 years

Recommendations	Actions	Responsible Manager (Title / Sector)	Planned Start and Completion Dates
	It is anticipated that through these on-going improvements SCB will be able to increase its target for claims settled per year from the current 33 to 50 by 2025-26.		

1. Introduction

1.1 Evaluation Purpose

In the Government of Canada, evaluation is the systematic and neutral collection and analysis of evidence to judge merit, worth or value. Evaluation informs decision making, improvements, innovation and accountability. Evaluations typically focus on programs, policies and generally employ social science research methods.

An evaluation of the Specific Claims Assessment and Settlement Process was required in accordance with Section 42.1 of the *Financial Administration Act* which stipulates that departments conduct a review every five years of the relevance and effectiveness of each ongoing program for which they are responsible. The Treasury Board of Canada's *Policy on Results* (2016) defines such a review as an evaluation, and requires each department to develop and publish an annual five-year departmental evaluation plan. The evaluation of the Specific Claims Assessment and Settlement Process (also referred to herein as "the program" or the SCP) was conducted as outlined in CIRNAC's Five-Year Evaluation Plan 2019–2020 to 2023–2024.

An evaluation of the Specific Claims Process (SCP) was previously completed in 2013–2014 following an audit of department support to the SCP undertaken by the department's Audit and Assurance Services Branch in 2012. In 2016, the Office of the Auditor General (OAG) conducted a performance audit, which reported on whether the department adequately managed the resolution of First Nations specific claims. The Office of the Auditor General Report, results of the evaluation (2014) and concerns of First Nations consistently noted that lengthy assessment and negotiation processes are impediments to achieving restitution for past wrongs.[3]

The Specific Claims Assessment and Settlement Process was evaluated in FY2020-21 to assess the relevance, design and delivery, performance and efficiency of the program for the period of April 1, 2013 to March 31, 2020. This program is delivered by the Specific Claims Branch (SCB), Resolution and Partnership Sector, of Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC). The evaluation was initiated and conducted by the Evaluation Branch of CIRNAC.

1.2 Program Context

Specific claims are grievances that First Nations have against the Government of Canada for failing to discharge its lawful obligations with respect to historic pre-1975 treaties and the management of First Nation lands, monies and other assets. For example, a specific claim could involve the failure to provide enough reserve land as promised in a treaty or the improper handling of First Nation money by the federal government in the past.[4]

Specific claims are separate and distinct from comprehensive land claims or modern treaties.

The Government of Canada works with First Nations to resolve outstanding specific claims through negotiated settlements. The specific claims process is voluntary for First Nations and provides a way to resolve disputes outside of the court system. The negotiated settlements honour treaty and other legal obligations.[5]

[3] Specific Claims Communications Book, updated December 2020
[4] https://rcaanc-cirnac.gc.ca/eng/1100100030291/1539617582343
[5] https://rcaanc-cirnac.gc.ca/eng/1100100030291/1539617582343

The resolution of specific claims advances reconciliation and supports nation building and self-governance, where settlement funds can be used by First Nations to advance their priorities and community development.

During the late 1800s and early 1900s, some First Nations sought redress from Canada; however, from 1927 to 1951, the *Indian Act* prohibited the use of band trust funds to sue the federal government. Claims that Canada had not fulfilled its lawful obligations to First Nations were largely ignored until 1946, when the United States established an Indian Specific Claims Commission, intensifying calls for a similar body in Canada. Over the next 15 years, parliamentary commissions examined First Nations grievances against Canada, and recommended the creation of an independent administrative tribunal to adjudicate First Nation claims, but successive government bills seeking to establish such a body were unsuccessful. In 1973, the Supreme Court of Canada issued its decision in *Calder v. British Columbia (Attorney General)* recognizing Aboriginal title to land as a legal right in Canada, putting pressure on the federal government to establish a process for resolving First Nation grievance related to the fulfillment of historic treaties and Canada's management of First Nation lands, monies and other assets. Since 1973, the Specific Claims Policy has provided a voluntary alternative dispute resolution process allowing Canada to discharge its outstanding legal obligations through negotiated settlements rather than through the courts.

The Specific Claims Policy underwent its last major reform in 2007 (*Justice at Last*), with the addition of the Specific Claims Tribunal and legislative framework adding discipline and binding judicial decisions to the process, and remains the current model in place today. The *Justice at Last*: Specific Claims Action Plan, introduced in 2007, was intended by Canada to improve the existing specific claims process and to address the backlog of claims in the system. *Justice at Last* proposed reforms to the specific claims process that would follow four pillars of implementation: "ensure impartiality and fairness, greater transparency, faster processing and better access to mediation".[6]

Released in November 2016, the OAG report 6—*First Nations Specific Claims—Indigenous and Northern Affairs Canada*, concluded that the Department did not adequately manage the resolution of First Nations specific claims and that funding cuts and lack of information sharing between the Department and First Nations posed barriers to First Nations' access to the process for resolving specific claims. The OAG made ten recommendations for improving fairness and transparency and the Department agreed with all of them. In 2016, the legislated five-year review of *the Specific Claims Tribunal Act*, *Re-Engaging: Five-Year Review of the Specific Claims Tribunal Act*, also made a number of recommendations, including a renewed and more positive process involving conciliation and engagement between the Government of Canada and First Nation.

Sparked by the legislated five-year review of the *Specific Claims Tribunal Act* and the 2016 report of the OAG, Canada committed to work jointly with the Assembly of First Nations (AFN) and First Nations to substantively reform the SCP and policy. In 2017, in response to recommendations made by the OAG's 2016 report, Canada and the AFN launched the Joint Technical Working Group (JTWG), "with a mandate to review the specific claims policy and process and to make recommendations for change".[7]

6 Specific Claims: *Justice at Last*, (2010), https://www.rcaanc-cirnac.gc.ca/eng/1100100030516/1581289304223
7 Timeline of Key National Events in Specific Claims Policy Reform, (2019), https://www.afn.ca/wp-content/uploads/2019/09/Claims_Timeline_ENG.pdf

Following the AFN's adoption of Resolution 67-2017, "Rejection of the Recognition and Implementation of Indigenous Rights Framework and Associated Processes", the AFN convened the "Four Policies and Nation Building Policy Forum" to facilitate discussion and establish First Nations principles to form the basis of any approach with the federal government. Specific Claims was one of the four policies chosen for focus and reform.

In 2017, following two national discussions with First Nations, Chiefs-in-Assembly passed AFN Resolution 91-2017, "Support for a Fully Independent Specific Claims Process", calling on Canada to work in equal partnership with the AFN and First Nations to develop a 'fully' independent process with "the goal of achieving the just resolution of Canada's outstanding lawful obligations through good faith negotiations".[8] Most recently, AFN Resolution 07-2020 "Jointly develop a fully independent specific claims process" demonstrates the continued First Nations' support for a fully independent specific claims process. Additionally, this resolution lists the principles identified by First Nations during the 2019 AFN dialogue process that, according to the AFN, must underpin a new, fully independent process, which include: the honor of the Crown; independence of all aspects of claims resolution; recognition of Indigenous laws; and no arbitrary limits on financial compensation.

In Budget 2019, the Government of Canada re-emphasized its commitment and cited the settling of specific claims as a key step in the advancement of reconciliation and redressing past wrongs.[9] Moreover, CIRNAC's 2019-2020 Departmental Plan emphasized that the government would "continue to work with First Nations, in collaboration with the JTWG, on process, policy and legislative reforms to the specific claims process. This work will include exploring options on enhancing the independence of the process."[10]

Canada's Bill C-15[11] affirms the United Nations Declaration on the Rights of Indigenous Peoples provides a framework to advance the Government of Canada's implementation of the Declaration. In a January 2020 paper, the Union of British Columbian Indian Chiefs called for an independent specific claims process that includes the recognition and integration of Indigenous laws, in accordance with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).[12]

Canada is working with the Assembly of First Nations, other First Nation organizations and First Nations in a spirit of co-operation and renewal to find fair and practical ways to improve the specific claims process. These discussions began in June 2016. This ongoing work is looking at recent court and tribunal decisions and previous reviews of the process.

The Assembly of First Nations led a policy reform engagement exercise with First Nations in Fall 2019, and shared the report of policy reform options with CIRNAC in fall 2020.

Reform measures are expected concerning the existing Specific Claims Policy, process and the *Specific Claims Tribunal Act*.

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[8] Assembly of First Nations, 2019, Specific Claims Policy Reform National Dialogue Sessions on an Independent Process, Specific Claims Policy Reform | Assembly of First Nations

9 Budget 2019, https://www.budget.gc.ca/2019/docs/plan/toc-tdm-en.html

10 Crown-Indigenous Relations and Northern Affairs Canada. (2019). Departmental Plan 2019-20.

[11] Bill C-15 Received Royal Assent on June 21, 2021.

[12] Specific Claims Communications Book, updated December 2020

1.3 Program Profile

Canada is responsible for the administration and operation of the specific claims policies and process. CIRNAC supports the Government of Canada's accountability for legally-binding treaties and agreements made with First Nations, and the government's duty to honour these past commitments, through policy, processes, and guidelines for assessing and settling specific claims through negotiation.[13]

Key activities of the SCB, with support from the Department of Justice (DOJ), include the assessment of the historical and legal facts of a claim, the negotiation of settlement agreements, supporting the presentation of Canada's interests before the Specific Claims Tribunal (also referred to as the "Tribunal"), and payment of monetary compensation to First Nations pursuant to the terms of a settlement agreement or an award from the Tribunal.

Before a claim is filed, historical claims research is done by individual First Nations, some tribal councils or by Claims Research Units (CRUs). The first step in filing a claim is generally when a First Nation applies for funding[14] to do preliminary research, which is then followed by the claim development by the FNs legal counsel, and historical researcher. The historical research could be executed by a Claims Research Unit (UBCIC, for example), or by an independent contractor. First Nations undertake claims research and development independently.[15]

Consistent with the *Specific Claims Tribunal Act* (SCTA), which defines "specific claims", describes the mandate of the Specific Claims Tribunal, establishes timelines within which certain phases of the process need to be completed, and defines certain elements of the policy and process, the program relies on the following process for resolving specific claims (see Appendix B for a pictorial description of the process as described in the OAG report, 2016):[16]

- Submission - The First Nation submits the claim to the Minister of Crown-Indigenous Relations.
- Initial review of claim - The government reviews the claim and after a period of up to six months[17] determines if the claim meets the minimum standard for claim submissions. If the claim meets the minimum standard, it is filed with the Minister and moves to the assessment phase. If the claim does not meet the minimum standard, the claim is returned to the First Nation who has the option to resubmit the claim with revisions, and restart the process.
- Assessment phase - SCB and DOJ assess the claim submission, within three years, to confirm the validity of the research and if the claim discloses a lawful obligation to the federal government, culminating in a decision whether to enter into negotiations. The First Nation is informed of the basis for the negotiation and is asked to indicate whether it is willing to engage in negotiations. Various steps occur within the three years: (1) Claims

13 See Indian and Northern Affairs Canada, The Specific Claims Policy and Process Guide. Gatineau, 2010.
14 Negotiations Support Directorate in Treaty and Aboriginal Government that provides funding and some liaison/advice to assist First Nations.
15Research and development of the First Nation's submission is outside the responsibilities of the SCB.
16 An updated description of the process was made available after the undertaking of the evaluation and for the purpose of this report. The description of the process was enhanced using information provided by the SCB to identify the collaborative process as it links to the assessment of claims under acceptance review or negotiations. However, funding decisions for proposals received are made by the Negotiation Support Directorate (Research activities) provided by the program for the purpose of this report from the following website: https://rcaanc-cirnac.gc.ca/eng/1100100030291/1539617582343#chp6
17 As required by the *Specific Claims Tribunal Act*

Research - The Research and Assessment Directorate performs additional research as needed to supplement evidence submitted by the First Nation; (2) DOJ Review and Assessment of Claim - DOJ Reviews and Assess Claim: DOJ assesses whether the claim discloses outstanding lawful obligation on the part of Canada based on a review of the First Nation submission and SCB documents; and (3) the Claims Advisory Committee stage: Research and Assessment Directorate reviews the legal opinion and prepares the Claims Advisory Committee recommendation document (which is a summary of the legal opinion) and letter to First Nations stating Canada's position on the claim. The Claims Advisory Committee reviews the documents, a Claims Advisory Committee meeting is set up, the claim moves up for approval, and Canada's position letter is sent to the First Nation. If the claim is not accepted for negotiation, the First Nation may choose to resubmit the claim with new evidence or to file the claim with the Specific Claims Tribunal. If the First Nation chooses to resubmit the claim with new evidence, the assessment of the claim resumes and further decisions are taken as to whether the claim can be negotiated.

- If the assessment of a claim is not completed within the legislated three-year timeframe, or if it is not accepted for negotiation by the Minister, the First Nation can file the claim with the Specific Claims Tribunal; for adjudication. The Tribunal, made up of judges, can make binding decisions on validity and compensation. Under the SCTA, specific claims are not subject to limitations periods that could otherwise be used to defend against them given they often arose more than a century ago.
- Negotiation and Settlement - Successful negotiation of a claim results in an agreement between the First Nation and the federal government. The final agreement is ratified and signed, final releases and compensation are provided, and the claim is settled. If after three years, a negotiated settlement has not been reached or if the First Nation is not satisfied with the progress of negotiations, they have the right, under the SCTA, to refer the claim to the Specific Claims Tribunal. However, negotiations may continue beyond three years if the First Nation chooses. If a settlement is reached, it moves forward to implementation. [18] '

The cohort methodology used in this evaluation for analytical purposes in order to demonstrate how claims have moved through their life cycle stages does not give a full picture of the SCP's output. To give the reader a better sense of volume, the following table includes what the program considers to be key outputs for the evaluation period.

[18]Specific Claims : https://rcaanc-cirnac.gc.ca/eng/1100100030291/1539617582343

Table 1: Volumes of Specific Claims from 2013-14 to 2019-2020

Fiscal Year	Claims Received	Claims Filed	Accepted for Negotiations	Not Accepted for Negotiations	File Closed	Settled Through Negotiations		SCT Awards Implemented	
						#	$ Value	#	$ Value
2013-14	44	34	23	23	17	15	$369,287,076.60		$0.00
2014-15	94	41	15	21	18	15	$35,972,152.64		$0.00
2015-16	34	66	13	11	22	11	$27,431,213.46		$0.00
2016-17	60	40	22	16	5	17	$252,580,124.00	1	$6,900,187.35
2017-18	39	47	41	3	9	31	$1,279,145,551.00	1	$16,263,719.76
2018-19	54	55	57	4	4	48	$627,047,325.73	0	$0.00
2019-20	50	49	70	8	2	33	$798,773,022.73	0	$0.00
TOTAL	**375**	**332**	**241**	**86**	**77**	**170**	**$3,390,236,466.16**	**2**	**$23,163,907.11**

Source: Program time series statistics, Excel spreadsheet (CIRNAC, 2022).

Specific claims may be filed with the Specific Claims Tribunal if they have been previously filed with the Minister and any of the following four conditions have been met: (1) the Minister has not accepted the claim for negotiation (in whole or in part); (2) three years have elapsed since the claim was filed and the First Nation has not been notified of Canada's position on the claim; (3) during the first three years of negotiations, if the Minister gives written consent to the filing of the claim with the Tribunal; and (4) three years have elapsed since the claim was accepted by Canada for negotiation (in whole or in part) and Canada and the First Nation have not reached a negotiated settlement agreement. The criteria for filing a claim with the Tribunal are set out in the *Specific Claims Tribunal Act*.

The federal government's approval process for financial mandates varies depending on the size of the mandate and whether it relates to land. For example, the Minister of Crown-Indigenous Relations and Northern Affairs can approve financial mandates and finalize settlement agreements valued at up to $50 million; and Negotiated specific claim settlements valued at between $50 million and $150 million must be approved by the Treasury Board of Canada before they can be signed by the Minister of Crown-Indigenous Relations and Northern Affairs. Specific claim financial mandates of more than $150 million must go through the Cabinet approval process. Once a settlement is reached based on such a mandate, Treasury Board approval is required as part of the federal government process to ratify the settlement and obtain authority to issue settlement funds to the First Nation

All specific claim settlements involving the regularization of interests in land, regardless of size, (usually this arises in claims where a historic surrender needs to be reconfirmed under the Indian Act in order to resolve the claim with certainty for third parties) must be approved by the Governor-in-Council before they can be finalized. This includes seeking an Order-in-Council. After all the approvals have been obtained, the minister signs the settlement on behalf of the Government of Canada. Following this, there is a 45 day requirement for Canada to pay the compensation monies to the First Nation.

Program delivery and governance of the SCP is the primary responsibility of the Specific Claims Branch, through the Negotiations and Operations Directorate, the Research and Assessment

Directorate and the Policy and Litigation Management Directorate. There is also a BC Specific Claims Resolution Directorate.

The Negotiations Support Directorate, outside of the SCB and situated in the Treaties and Aboriginal Government Sector is responsible for the administration of contribution and loan funding requests to support First Nations' participation in the specific claims process (research and development of claims, Tribunal litigation and negotiations).

The Claims Advisory Committee (with CIRNAC, ISC and DOJ membership and other departments participation as required) reviews recommendation packages prepared by SCB (with DOJ support), and makes a recommendation to the Minister of CIRNAC on whether to negotiate a claim or not. This depends on whether the SCB and DOJ assessment results in a view that there is a breach of a lawful obligation. The Claims Advisory Committee also makes recommendations to the Minister on proposed financial mandates to seek to settle a claim.

ISC regions are responsible for implementation of settlement provisions if there is a land component (i.e., additions to reserves).

The Joint Technical Working Group (JTWG), which plays an advisory role only, rather than having any governance or decision-making role, was established to examine the specific claims process and to develop recommendations for improvements.

Key beneficiaries[19] from the resolution of specific claims include:

- First Nations – greater certainty over lands; cash/land settlement that can support community development; resolution of historical grievances; and, contributions to reconciliation;
- The Government of Canada – resolution of outstanding lawful obligations and historical grievances of First Nations, certainty over lands, settlements to First Nations to support community development, contributions to reconciliation;
- Provincial and territorial governments – greater certainty over lands; contributions to reconciliation;
- Local governments adjoining First Nation communities – improved relationships and enhanced ability to make plans respecting land management, natural resources and provisions of services; and
- Private Sector – improved confidence in their business and investment decisions respecting First Nation interests in lands and opportunities to partner with First Nations.

1.4 Program Narrative

The Specific Claims Branch, within Resolution and Partnerships Sector at CIRNAC, is responsible for the assessment and settlement of Specific Claims.

The Specific Claims Branch is organized in four Directorates:

- Research and Assessment Directorate;
- Negotiations and Operations Directorate;

[19] Key Stakeholders and Beneficiaries as listed in Canada's Action Plan: Resolution of Specific Claims, Performance Measurement Strategy, Department of Indian Affairs and Northern Development, October 2008.

- British Columbia Specific Claims Resolution Directorate; and[20]
- Policy and Litigation Management Directorate.

The following activities are undertaken to support resolution of specific claims[21]:

- an assessment of the historical and legal facts of the claim;
- the negotiation of a settlement agreement, if it has been determined that there is an outstanding lawful obligation;
- management of litigation that relates to specific claims, which includes participating in proceedings before the Specific Claims Tribunal, as well as managing civil litigation files from across Canada;
- payment of monetary compensation to First Nations, pursuant to the terms of a settlement agreement or award of the Specific Claim Tribunal;
- consideration of trends and relevant legal and policy developments and their impacts on specific claims, and identification of opportunities for claims resolution through bundling of claims or mandates;
- administration of the database on specific claims; and
- engaging with First Nations to gather feedback on how to improve the specific claims policy and process;
    - policy and process administration;
    - policy application, development and reform.

As indicated by the 2018 Performance Information Profile,[22] the SCP logic model (Appendix A), as carried out by the Specific Claims Branch, identifies that the program's activities and outputs are expected to contribute to three immediate outcomes:

- Claims that meet the minimum standard are filed with the Minister;
- Canada's outstanding lawful obligations are identified; and
- Claims are resolved through negotiation or Tribunal decisions.

The immediate outcomes contribute to the attainment of the program's long-term outcomes:

- Justice for Claimants: The timely processing of claims identifying Canada's outstanding lawful obligation and resolution of claims through negotiation or a binding Tribunal decision all contribute toward justice for claimants, which is the key long-term outcome. Through these transparent mechanisms, First Nations have an opportunity to pursue their claims against Canada and obtain resolution.
- Certainty for Government, Industry and all Canadians: Timely processing of claims contributes to certainty by ensuring that First Nations have mechanisms through which to pursue their claims. Identification of Canada's outstanding lawful obligation contributes to certainty by providing knowledge of these obligations. Finally, resolution of claims through

[20] Negotiates the resolution of specific claims filed by BC First Nations. Claims from First Nations in British Columbia represent approximately half of the national inventory of claims in negotiations and one third of claims before the Specific Claims Tribunal.
[21] Specific Claims Communications Book, pages 4-5.
[22] Crown-Indigenous Relations and Northern Affairs Canada, *Performance Information Profile: Specific Claims*, (Gatineau, 2018).

negotiation or binding Tribunal decisions contributes to certainty by determining and respecting, with finality, the rights of First Nations.

Together, these two long-term outcomes are expected to contribute to the SCP's ultimate outcome that "Canada fulfills its long-standing obligations to First Nations arising out of treaties, and the administration of lands, band funds and other assets".

This in turn contributes to the Departmental Result and Core Responsibility, "Rights and Self-Determination", in which "past injustices are recognized and resolved".[23]

1.5 Program Alignment and Resources

The program consists of two streams:

(1) Grants to First Nations to settle specific claims negotiated by Canada and/or awarded by the Specific Claims Tribunal, and

(2) Contributions for the negotiation and implementation of treaties, claims and self-government agreements or initiatives

Error! Not a valid bookmark self-reference.2 provides actual spending for fiscal years 2013–14 through 2019–20 for the Specific Claims Process.

Table 2. Actual program expenditures by fiscal year. Information for the table has been provided by CFRDO and is as reported in the Department Results Reports FY13-14 through FY19-20.

Vote	Expenditure Type	2013–14 ($)	2014–15 ($)	2015–16 ($)	2016–17 ($)	2017–18 ($)	2018–19 ($)	2019–20 ($)
Vote 1	Salaries	7,434,364	6,804,507	6,601,391	7,224,225	8,539,116	8,451,267	6,149,834
	Operations and Maintenance	821,745	734,422	1,045,247	1,766,993	1,802,755	4,550,717	15,116,768
	Employee Benefit Plan	1,197,603	1,044,063	1,003,896	1,047,391	1,132,098	1,288,709	n/a
	Vote 1 Total	9,453,712	8,582,992	8,650,534	10,038,609	11,473,969	14,290,693	21,266,602
Vote 10	Grants	369,287,077	35,972,153	28,996,054	383,092,933	1,297,169,216	630,282,403	799,569,194
	Contributions (Negotiations)	1,300,000	8,801,778	8,891,551	10,739,618	11,149,684	10,519,290	13,160,091
	Contributions (Policy)	9,634,489						
	Vote 10 Total	380,221,566	44,773,931	37,887,605	393,832,551	1,308,318,900	640,801,773	812,729,285
Total		**389,675,278**	**53,356,923**	**46,538,139**	**403,871,160**	**1,319,792,869**	**655,092,386**	**833,995,887**

Source: Program financial information (Transfer Payments for Specific Claims)

[23] CIRNAC, Departmental Results Framework 2019-2020, https://www.rcaanc-cirnac.gc.ca/eng/1602010631022/1602010813619

It should be noted that additional funding, is available to support First Nations in participating in the various stages of the broader specific claims resolution process. This funding is administered by the Negotiation Support Directorate in the Treaties and Aboriginal Government Sector, and consists of the following funding amounts and mechanisms:

- $12.1 million per year in contribution funding to support First Nations in developing their claims ($8 million of this amount was provided through Budget 2019 for a five-year period ending in 2023-24);
- $2 million per year in contribution funding to support First Nations in litigating their claims before the Specific Claims Tribunal; and
- Loan funding to support First Nations in negotiating the resolution of their claims. Up to $25.9 million in loan authority is available for these loans each year. (Note: Settlements managed by SCB include an additional amount to cover the cost of such loans taken out by First Nations during the course of negotiations (i.e., loans are not a deduction from settlements; rather they are paid from an addition to settlements)).

These grants and contributions funding programs are governed by Treasury Board terms and conditions and loan funding by Order in Council, as well as the *Financial Administration Act*. The Negotiation Support Directorate administers the Negotiation loans in accordance with published Negotiation Loan Funding Guidelines as well as the Research funding which is administered through a call for proposals process. Tribunal support funding is administered through an application process also managed by Negotiation Support Directorate.

SCB administers the program through “Grants to settle specific claims”, which is the authority for the payment of specific claims settlements up to $150 million in value and for compensation awards by the Specific Claims Tribunal. The payment of specific claims settlements above $150 million requires Cabinet approval and a separate source of funds from the fiscal framework.

2. Evaluation Scope, Approach and Design

An Evaluation Working Group was convened to guide the evaluation process and to ensure diverse perspectives were reflected in the evaluation, with members from the evaluation team, SCB program representatives, including regional representatives, the AFN (and additional members suggested by the AFN, including the Union of British Columbia Indian Chiefs). The Evaluation Working Group provided feedback on the evaluation issues and methods and were included at key stages in the evaluation.

The evaluation focused on the implementation of the Specific Claims Assessment and Settlement process (also referred to herein as “the program” or the “SCP”) from April 1, 2013 to March 31, 2020. In scoping the evaluation it became clear that the overall Specific Claims Process (SCP) involves two important interfacing departmental activities/program areas that, while outside the “mainstream” specific claims assessment and settlement process which is the subject of the evaluation, they contribute nonetheless to the overall Specific Claims Process picture. These include the upstream (pre-) activities related to the funding for First Nations to undertake independent research to develop their claim in the first place and the downstream post-program activities (implementation). While the funding was specifically not examined and thus not part of the scope of the evaluation per se, because these activities interface with the SCP, decision was taken, on the guidance of the Evaluation Working Group, to ensure that information and views about these important aspects (funding to research claims) and implementation was collected by key informant interviews and case studies to ensure that the evaluation portrayed a complete

picture of the overall Specific Claims Process beyond the focus of the evaluation at the program level.

Finally, while the effectiveness and efficiency of the claims assessment and settlement process, impacts the rate at which First Nations file claims with the Tribunal, the Tribunal process is considered to be outside the scope of this evaluation.

The evaluation's design and data collection methods were guided by Treasury Board's *Policy on Results* (2016).

This evaluation focuses on relevance, design and delivery and effectiveness as they relate to the SCB's implementation of the Specific Claims program and in the context of the overall SCP. With regards to issues of relevance, less emphasis was placed on the question of whether or not there is continued need for the program, as the Government of Canada is accountable for fulfilling statutory and fiduciary obligations to First Nations as well as upholding the honour of the Crown[24]. In answering this question, the evaluation emphasized a greater focus on whether or not the program is relevant in its current form and analysed to what extent the program addresses the needs of First Nations communities. The evaluation questions and issues about design and delivery and the performance of the program were organized to correspond to the program's existing logic model.

The evaluation methods included:

- Document review;
- Review of SCP performance and financial data (from the specific claims database);
- 51 key Informant interviews (with federal government representatives, Indigenous governments, Indigenous Representative Organizations and Claims Research Units, and other Indigenous representatives); and
- Eight case studies of specific claims in various stages of the process, including a review of core claim documents and 20 key informant interviews[25]. The case studies considered the experiences of First Nations involved at various key stages in the SCP, examined the role of the SCB and identified key challenges at various stages of the process.

The use of multiple lines of evidence and triangulation in analysis increased the reliability and validity of the evaluation findings and conclusions.

2.1 Limitations and Mitigation Strategies

Most evaluations face constraints that may affect the reliability of findings.

Table 3 outlines the limitations encountered during this evaluation as well as the mitigation strategies put in place to increase the reliability of the evaluation findings.

[24] Note that not all specific claims arise from treaties and agreements.
[25] Case studies examined the Beardy's & Okemasis and the Rebellion Band Annuities Claims, Beecher Bay First Nation Rocky Point Village Site Claim, Big Grassy First Nation Highway Claim, Kitigan Zibi Anishinabeg First Nation Global Settlement Project, Lake Babine Nation, Tachek I.R. 25 (Topley Landing) Claim, Mississaugas of the Credit First Nation Treaty 22 and Treaty 23, and Smith's Landing First Nation Annuity Claim.

Table 3. Limitations, impacts, and mitigation strategies.

Limitation	Impact	Mitigation Strategy
The evaluation scope focusses on the SCB claims assessment and settlement process. The effectiveness and efficiency of the claims assessment and settlement process is dependent on upstream research conducted by First Nations to prepare claims for submission, which is outside the scope of the program.	The research conducted by First Nations is one variable that contributes to volume of claims submitted, which in turn impacts the SCB's part in claims assessment and settlement (e.g., meeting timelines, backlogs, resource adequacy). Excluding the preparatory work conducted by First Nations from the evaluation would not provide a complete picture of the SCP.	Key informant interviews were held with those knowledgeable about this early claims research and development, including department representatives, First Nations and Claims Research Units. Case studies examined this part of the SCP. The Evaluation Working Group includes members familiar with claims research and development.
The evaluation scope focusses on the SCB claims assessment and settlement process. The effectiveness and efficiency of the claims assessment and settlement process impacts the implementation of settlement provisions, particularly those with land components, involving ISC regional offices (i.e., Additions to Reserve). Settlement implementation is outside the scope of this evaluation.	The efficiency and effectiveness of settlement implementation impacts ISC regional offices, and the relationship between Canada and First Nations. Excluding settlement implementation from the evaluation would not provide a complete picture of the SCP.	Key informant interviews were held with those knowledgeable about settlement implementation, including ISC regions and First Nations. Case studies examined this part of the specific claims process. The Evaluation Working Group includes members familiar with this part of the specific claims process.
The evaluation scope focusses on the SCB claims assessment and settlement process. The effectiveness and efficiency of the claims assessment and settlement process, impacts the rate at which First Nations file claims with the Tribunal. The Tribunal process is outside the scope of this evaluation.	The efficiency and effectiveness of the specific claims process is one variable that contributes to the volume of claims filed with the Tribunal, and which in turn impacts the SCB (e.g., required to be involved in Tribunal process, claims returned to the mainstream specific claims process). Excluding the Tribunal process from the evaluation would not provide a complete picture of the SCP.	Key informant interviews were held with those knowledgeable about the Tribunal process, including First Nations and the SCB. Case studies examined the Tribunal process.
The evaluation could not comprehensively assess performance against expectations for five of the nine indicators because program performance targets were not set (for four indicators), or the method to calculate performance was unclear (for one indicator). There was also apparent misalignment between indicators and outcomes for two outcomes.	The evaluation does not provide an exhaustive assessment of performance against five of the six SCP outcomes.	Key informant interviews were used to supplement performance data.
Detailed data about human resources (e.g., number of Full Time Equivalent (FTE)'s, average number of files per FTE, rates of attrition) was not available for the evaluation.	The evaluation was not able to provide more insight into some of the human resource issues raised by respondents internal to the SCB.	Findings related to human resource issues were made only when a high proportion of respondents held similar views.

3. Relevance: Continued Need

Resolution of specific claims remains a clear priority for First Nations and Canada has a continued obligation to right past wrongs.

The *Specific Claims Policy* recognizes that the Crown has sometimes failed to uphold its lawful obligations under historic treaties or has mismanaged First Nation lands, monies and other assets for which it is responsible under the *Indian Act*.[26] This includes both historic and contemporary breaches. Specific claims are made by a First Nation against the federal government for its failure to discharge lawful obligations related to these past grievances.

Settlement funding can provide First Nations with a solid foundation to invest in their people and economies, support community development and self-sufficiency, and restore their capacity to participate in regional economies.[27] Claims and related litigation are among the federal government's largest outstanding acknowledged contingent legal and financial liabilities.[28] Canada has a legal obligation to resolve these claims, and the *Specific Claims Policy* provides a mechanism to do so through negotiation. This obligation did not change during the time period being evaluated, and remains pertinent today. Addressing these past wrongs is a cornerstone of the Government of Canada's reconciliation agenda (for more information, see Section 3.2 Alignment with Federal Priorities).

First Nations bear a substantial cost to research and negotiate claims to enable them to prepare their claim prior to participating in the SCP. Respondents reported that scarce resources are often diverted from other important priorities (see Section 3.10: Capacity and Resources). First Nations assess the receiving environment (i.e., within CIRNAC and in many cases a provincial or territorial government) for a claim before its development and submission, and as reported in the case studies (e.g., Mississaugas of the Credit First Nation Treaty 22 and Treaty 23, and Smith's Landing First Nation Annuity Claim), how the claim fits into their strategic plans and priorities (e.g., towards self-government) to ensure the highest return for their investment of scarce resources.

Changing jurisprudence has resulted in more favourable conditions for First Nations to research, develop and submit claims.

Changes to case law during the time period being evaluated have resulted in more favourable conditions for First Nations to research, develop, and submit claims. Tribunal or court decisions over the years have set precedents that impacted the way that Canada assesses claims, which in turn have been more favourable to some First Nations. Williams Lake is an example of a major one (additional examples are included in the report).

[26] Indian and Northern Affairs Canada, *The Specific Claims Policy and Process Guide.* Gatineau, 2010. https://www.rcaanc-cirnac.gc.ca/eng/1100100030501/1581288705629
[27] St. Germain, G., & Sibbeston, N. Negotiation or Confrontation: It's Canada's Choice. Final Report of the Standing Committee on Aboriginal Peoples Special Study on the Federal Specific Claims Process. Ottawa, 2006. https://sencanada.ca/content/sen/Committee/391/abor/rep/rep05dec06-e.pdf
[28] Ibid.

The impact of changing jurisprudence is illustrated by the Tribunal's 2014 Driftpile First Nation Claim with respect to determining the strength of evidence and the 2016 Huu-ay-aht First Nation Claim decisions with respect to determining present-value, gleaned as part of case studies:

- In its examination of the evidence brought forward by Canada and the Driftpile First Nation, the Tribunal concluded that since neither party could prove their perspective, the fiduciary onus was to be borne by Canada. In light of the Tribunal's decision, the SCB and DOJ reconsidered the strength of Canada's defence in the Beecher Bay First Nation Rocky Point Village Site Claim, and concluded it was weak.
- Until the December 2016 Huu-ay-aht and Beardy's Tribunal decisions there was limited judicial guidance on how the legal principle of equitable compensation should be applied to update historic values in Indigenous claims and the parties typically settled on the basis of 80% CPI and 20% compounded Band Trust Fund rates, which reflects savings rates in Canada over the last 100 years. These judicial decisions provided guidance indicating that the application of 100% band trust fund rates is appropriate for updating known values. Subsequent judicial decisions at the Tribunal and Supreme Court of Canada indicated that for more speculative historic values a more nuanced approach is needed, which takes into account whether the nominal values being updated are realistic. SCB has developed guidance regarding the implementation of these concepts in a negotiation environment. This decision was a turning point for many First Nations contemplating, developing or in active negotiation of claims. At the time of the Huu-ay-aht First Nation decision, Kitigan Zibi Anishinabeg First Nation was actively negotiating its Global Settlement Project, and had received a compensation offer from Canada in 2014. Given the Tribunal's decision, Kitigan Zibi Anishinabeg proposed reviewing the offer, and following a joint study of the spending and saving habits of Kitigan Zibi Anishinabeg, agreement was reached on an alternative to the 80/20 approach to update historical loss. This led to a 50% increase in Canada's settlement offer.

First Nations feel more willing to engage in the claims resolution process.

Despite longstanding and widespread criticisms of the Specific Claims Process, including in the 2016 OAG report where it was concluded that Canada was failing in its duty to manage specific claims resolution, and some serious constraints to participation (including capacity to undertake the initial research required), First Nation respondents reported an increased willingness to engage in the claims resolution process with Canada, particularly since 2015. The main reasons given were Canada's adoption of a more collaborative, flexible and creative approach to claims processing, many First Nations preference for negotiation rather than litigation, and a more trusting and constructive working relationship.

Federal officials cited the government's 2015 commitments to achieve reconciliation with Indigenous peoples and to implement the recommendations of the Truth and Reconciliation Commission of Canada (TRC).[29]

The *Principles Respecting the Government of Canada's Relationship with Indigenous Peoples*, released in 2017, were specifically mentioned by First Nations and federal respondents in

[29]Truth and Reconciliation Commission of Canada, *Calls to Action* (Winnipeg, 2012).

considering the evaluation issue of relevance.[30] Federal respondents agreed that they served as a backdrop, enabling negotiation teams to think differently, and be more innovative and flexible, as gleaned by case studies:

- The *Principles* were raised by the Kitigan Zibi Anishinabeg negotiation team as the catalyst to review Canada's 2014 compensation offer in light of the Tribunal's decision on the Huu-ay-aht First Nation claim regarding Canada's 80/20 method, to reconcile Kitigan Zibi Anishinabeg's language preferences and protect third party interests within the limits of the *Specific Claims Policy* to resolve negotiation impasse over the "absolute surrender" language typically required in a settlement agreement, and to adjust the threshold for ratification from a majority of *electors* to a "double majority" of electors.
- The *Principles* also served to encourage federal officials to reconsider the strength of Canada's defence in the Beecher Bay First Nation Rocky Point Village Site Claim in light of the 2014 Tribunal decision on the Driftpile First Nation Claim, and research evidence that led the Claim Advisory Committee to recommend the claim for negotiation.

The volume of claims submitted by First Nations is not expected to diminish in the foreseable future.

During the evaluation period, and based on the data from the Specific Claims Database that was made available for the evaluation, there were 375 claim submissions received by CIRNAC. The number of claims submitted has fluctuated year-to-year, without any evident annual pattern, the lowest being 39 in 2017–18 and the highest 94 in 2014–15. In 2018–19 and 2019–20 there were 54 and 50 claims submitted respectively. Of the 375 submissions over the evaluation period, 93% (n=350) met the minimum standard and were filed with the Minister. Table 4 in the report provides an illustration.

According to recent data from the program, as of March 31, 2020, there were 1916 claims in the Specific Claims Inventory: 150 in assessment, 332 in negotiations and 62 under the purview of the Specific Claims Tribunal (Table 10).[31]

In terms of settlements, Budget 2019 noted that as of March 2019, the federal government had settled 68 specific claims since November 2015, which was a 40% increase over the number of specific claims settled from 2012 to 2015.

Given the more favourable conditions for First Nations to submit claims, and a greater willingness on their part to participate in the process, the volume of claims is not expected to diminish in the long-term, particularly as First Nations and their legal counsel reported inventories of claims not submitted, and new research is revealing additional historic and contemporary breaches.

[30]Department of Justice, *Principles Respecting the Government of Canada's Relationship with Indigenous Peoples.* Ottawa, 2017. https://www.justice.gc.ca/eng/csj-sjc/principles-principes.html
[31] Bi-monthly fact sheet. June 2021. Specific Claims Branch.

3.1 Relevance: Alignment with Federal Priorities

> The intent of the SCP strongly aligns with the federal priorities to achieve reconciliation with Indigneous peoples through a renewed, nation-to-nation, government-to-government relationship based on recognition of rights, respect, co-operation and partnership. However, opinions varied in regards to the extent of alignment possible for the current SCP.

The SCP aligns strongly with federal priorities, particularly reconciliation and supporting nation-to-nation relationships. Settling claims improves the lives of First Nations and contributes to the advancement of reconciliation. Often, where specific claims have been settled, it has resulted in an improvement in the lives of First Nations people, and has also strengthened relations between Canada and First Nations, and between First Nations and the communities that surround them.

The government is committed to renewing its relationship with Indigenous peoples based on recognition of rights, respect, co-operation and partnership.[32] Treaties between First Nations and the Crown are of the utmost value in ensuring a strong and collaborative relationship between the federal government and First Nations.[33] Budget 2019 drew a connection that settling specific claims is one means to advance reconciliation.[34] The SCP is viewed as a mechanism to help right past wrongs and address longstanding grievances of First Nations through a voluntary process to seek resolution of claims through negotiations, rather than through the court system. This is intended to renew relationships and advance reconciliation in a way that respects the rights of First Nations and all Canadians.[35] Most First Nations agree with this perspective.[36]

Many of those interviewed from different interview categories, were of the view, that in the negotiation process, there are attempts made by Canada to minimize liability and mitigate risk and that this is inconsistent with the pursuit of reconciliation.[37] As noted above, to improve specific claims, and so advance reconciliation, the federal government is working with the AFN (supporting a nation-to-nation relationship) and other parties in a spirit of co-operation and renewal to find fair and practical ways to improve the specific claims policy and process through the AFN-led engagement sessions and the JTWG on Specific Claims.[38]

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[32]Crown-Indigenous Relations and Northern Affairs Canada, Specific Claims: Righting Past Wrongs and Building for the Future. Gatineau, 2019. https://www.rcaanc-cirnac.gc.ca/eng/1100100030291/1539617582343
[33]Indian and Northern Affairs Canada, Evaluation, Performance Measurement, and Review Branch. Formative *Evaluation of the Specific Claims Action Plan* (Gatineau, 2011).
[34]Department of Finance, *Investing in the Middle Class: Budget 2019* (Ottawa, 2019).
[35]Crown-Indigenous Relations and Northern Affairs Canada, *Specific Claims: Righting Past Wrongs and Building for the Future*. Gatineau, 2019. https://www.rcaanc-cirnac.gc.ca/eng/1100100030291/1539617582343
[36]Assembly of First Nations, Independent Expert Panel. *Specific Claims Review: Expert Based - Peoples Driven* (Ottawa, 2015).
[37]British Columbia Specific Claims Working Group, Back to the Backlog: Canada's Inaction on Late Specific Claims Assessments (Vancouver, 2019).
[38]Crown-Indigenous Relations and Northern Affairs Canada. Grants to First Nations to settle specific claims negotiated by Canada and/or awarded by the specific claims tribunal, and to Indigenous groups to settle special claims (Gatineau, 2019).

3.2 Relevance: Alignment with Federal Roles and Responsibilities

While the objectives of the SCP align with federal roles and responsibilities, the manner in which the SCP has been implemented is regarded as lacking transparency, fairness and independence.

Specific claims arise from Canada's failure to discharge lawful obligations with respect to pre-1975 treaties and the management of First Nation lands, monies and other assets. The federal government has legal obligations to First Nations in accordance with the Royal Proclamation and the *Indian Act* and other legal instruments,[39] is accountable for legally-binding treaties and agreements made with First Nations, has a duty to honour these past commitments and has a treaty obligation to resolve and settle these claims in a timely manner.[40]

The honour of the Crown requires the Crown and its departments, agencies and officials to act with honour, integrity and fairness in all its dealing with Indigenous peoples. While the objectives of the SCP strongly align with federal roles and responsibilities, the manner in which the program has been implemented, including its very design, is widely regarded as lacking transparency, fairness and independence, as reported by interviewees and documents reviewed. Additionally, respondents reported that the existing SCP is slow, inflexible, and burdened by authority limits on financial mandates. However, First Nation respondents reported an increased willingness to engage in the claims resolution process with Canada, particularly since 2015. The main reasons given were Canada's adoption of a more collaborative, flexible and creative approach.

3.3 Relevance: Alignment with CIRNAC Mandate and Priorities

The intent of the SCP aligns with CIRNAC'S mandate to renew nation-to-nation and government-to-government relationships between Canada and First Nations, to build capacity and support First Nations vision of self-determination. In practice, opinions varied on the extent of alignment possible for the current SCP.

Consistent with its overall mandate,[41] CIRNAC has taken a more interest-based, collaborative and participatory approach to SCP, by working with First Nations to promote shared interests. According to interviews with the program, this includes providing forums for the parties to amicably, constructively and creatively work together to resolve old disputes and find common interests moving forward and where parties cannot agree, having impartial, credible and efficient forums for dispute resolution.

[39]Indian and Northern Affairs Canada, *Specific Claims: Justice At Last* (Ottawa, 2007).
[40]Indigenous and Northern Affairs Canada, Evaluation, Performance Measurement, and Review Branch. *Evaluation of First Nations Specific Claims Program* (Gatineau, 2018).
[41]Mandate: Crown-Indigenous Relations and Northern Affairs Canada continues to renew the nation-to-nation, Inuit-Crown, government-to-government relationship between Canada and First Nations, Inuit and Métis; modernize Government of Canada structures to enable Indigenous peoples to build capacity and support their vision of self-determination; and lead the Government of Canada's work in the North (from https://www.rcaanc-cirnac.gc.ca/eng/1539285232926/1539285278020)

For example, CIRNAC has prioritized modernizing institutional structures and governance to support the SCP.[42] As a member of the JTWG on Specific Claims, CIRNAC has been exploring innovative methods and negotiation processes to settle land claims, specifically to address priorities of funding to support the research and development of claims, an improved process to resolve claims with a value greater than $150 million, the use of mediation in negotiation processes, improving the clarity of public reporting, and enhancing the independence of the process.[43]

While respondents agreed that the SCP supports First Nations to "build capacity and support their vision of self-determination" through claim settlements of financial compensation and/or land, the transactional, lengthy and litigious nature of the specific claims process was widely regarded as not advancing "a nation-to-nation and government-to-government relationship between Canada and First Nations". Even in those cases where the *Principles Respecting the Government of Canada's Relationship with Indigenous Peoples* were employed, such as in the Kitigan Zibi Anishinabeg Global Settlement Project and Beecher Bay First Nation Rocky Point Village Site Claim, opinions about the impact on the relationship between Canada and First Nations differed sharply, with federal officials viewing the relationship to be more positive than First Nation respondents.

The intent of the SCP aligns with CIRNAC's strategic outcome to support good governance, rights and interests of First Nations. In practice, opinions varied on the extent of alignment.

Settling claims acknowledges historical wrongs, such as a failure to acknowledge treaty rights and promised lands and the process of settling claims intends to improve the lives of First Nations. The resolution of these longstanding injustices can restore some of the economic and social strength of communities and promote their self-sufficiency. This includes improving the quality of life for members of First Nation communities, promoting their economic prosperity and those of neighbouring communities, and enhancing the ability of the next generation of First Nations citizens to contribute to both their own communities and to Canada as a whole. The intent of the SCP aligns well to CIRNAC's strategic outcome to support good governance, rights and interests of First Nations. However, in practice, opinions vary about the extent of the alignment due to factors in the process for bringing claims forward and the time periods to settle claims (to be discussed in later sections).

The SCP aligns with the Minister's 2019 mandate letter requiring ongoing work with First Nations to redesign federal policies on Additions to Reserve and on the SCP.

[42]Crown-Indigenous Relations and Northern Affairs Canada, *Specific Claims: Righting Past Wrongs and Building for the Future*. Gatineau, 2019. https://www.rcaanc-cirnac.gc.ca/eng/1100100030291/1539617582343
[43]Ibid.

The mandate letters of the Minister of Indigenous and Northern Affairs Canada (INAC) (2015)[44] and Minister of Crown-Indigenous Relations (2017)[45] do not directly refer to the SCP, although there is reference to clarifying obligations and ensuring the implementation of pre-Confederation, historic, and modern treaties and agreements. The mandate letter of the Minister of Crown-Indigenous Relations (2019) states "Continue ongoing work with First Nations to redesign federal policies on additions to reserves, and on the Specific Claims process".[46]

The SCP is consistent with the Minister's mandate letters. For example, the AFN–Canada JTWG is a collaborative mechanism to improve the SCP. This is an example of current collaborative mechanisms that are in place, which respond to efforts being made to improve the program as per the Mandate letter and thus demonstrates alignment.

3.4 Relevance: Alignment with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and Truth and Reconciliation (TRC) *Calls to Action*

The *Specific Claims Policy* and process are aligned with the UNDRIP and the TRC but not fully in compliance with some Articles and *Calls to Action*. Of note, the team found no evidence that Indigenous customs, traditions, rules and legal systems have been systemically incorporated in the *Specific Claims Policy* and process.

As noted above, in 2015, the Government of Canada committed to achieve reconciliation with Indigenous peoples and to implement the Truth and Reconciliation of Canada *Calls to Action*. In 2016, the government endorsed the UNDRIP without qualification and committed to its full and effective implementation,[47] and in December 2020, *Bill C-15: The United Nations Declaration on the Rights of Indigenous Peoples Act,* was introduced, described as a key step in renewing the government's relationship with Indigenous peoples.[48]

Redress for past wrongs, such as dispossession of lands, territories and resources, is viewed as a fundamental human right by UNDRIP, and *Call to Action* 45 (iii) of the TRC, and in this, the overall objective of the SCP is aligned.

Interviewees were asked for their views on how well the assessment and settlement of Specific Claims complies with the UNDRIP and the TRC *Calls to Action*. While the Specific Claims process exists as a mechanism to address issues outside of the courts, and to do so in ways that are advantageous to First Nations parties, First Nations respondents were in broad agreement that the specific claims policy and process, did not fully adhere to, and meet the minimum standards

[44]Office of the Prime Minister, *Minister of Indigenous and Northern Affairs Mandate Letter*. Ottawa, 2015. https://pm.gc.ca/en/mandate-letters/2015/11/12/archived-minister-indigenous-and-northern-affairs-mandate-letter
[45]Office of the Prime Minister, *Minister of Crown-Indigenous Relations and Northern Affairs Canada Mandate Letter*. Ottawa, 2017. https://pm.gc.ca/en/mandate-letters/2017/10/04/archived-minister-crown-indigenous-relations-and-northern-affairs
[46]Office of the Prime Minister, *Minister of Crown-Indigenous Relations and Northern Affairs Canada Mandate Letter*. Ottawa, 2019. https://pm.gc.ca/en/mandate-letters/2019/12/13/minister-crown-indigenous-relations-mandate-letter
[47]United Nations, United Nations Declaration on the Rights of Indigenous Peoples (New York, 2007).
[48]Department of Justice, Bill C-15: United Nations Declaration on the Rights of Indigenous Peoples Act (Ottawa, 2020).

(as prescribed by law), of the UNDRIP articles 8(2b), 27, 31 and 40,[49] or the TRC *Calls to Action* 45(iii) and 45(iv).[50]

Specifically, these articles which related specifically to foundational issues around the transparency, fairness, independence, and integration of Indigenous laws and legal traditions in the Specific Claims Process have been raised repeatedly since concerted federal efforts to address specific claims began in 1974 with the establishment of the Office of Native Claims.

The government has made incremental efforts to address these through, for example, *Outstanding Business: A Native Claims Policy* (1982) and *Justice at Last* (2007), which established an independent Tribunal with the power to make binding decisions. For decades, First Nations have also been involved in policy reform.

Most recently, for example, the AFN–Canada JTWG was launched in 2017 to improve the specific claims policy and process.

3.5 Design and Delivery: Impartiality and Fairness

While the Tribunal has improved impartiality and fairness, First Nations perceive Canada to remain in an inherent conflict of interest by being both the object of the complaint and the one that has to resolve it - and have called for a fully independent SCP.

Justice at Last introduced an independent Tribunal to make binding decisions where claims are rejected for negotiation or when negotiations fail.[51] This was one of the main recommendations in the report of the Standing Senate Committee on Aboriginal Peoples, and intended to address the widespread concern with "the apparent conflict of interest wherein the Government of Canada is

[49]Article 8: States shall provide effective mechanisms for prevention of, and redress for: (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources.
Article 27: States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.
Article 31 (1): Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.
Article 31 (2): In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.
Article 40: Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the Indigenous peoples concerned and international human rights.
[50]Call to Action 45(iii): Renew or establish Treaty relationships based on principles of mutual recognition, mutual respect, and shared responsibility for maintaining those relationships into the future.
Call to Action 45(iv): Reconcile Aboriginal and Crown constitutional and legal orders to ensure that Aboriginal peoples are full partners in Confederation, including the recognition and integration of Indigenous laws and legal traditions in negotiation and implementation processes involving Treaties, land claims, and other constructive agreements.
[51]Indian and Northern Affairs Canada, *Specific Claims: Justice At Last* (Ottawa, 2007).

both the causer and the 'resolver'" and "wherein a department that is the object of the complaint is also the one that has to resolve it."[52]

Respondents external to the federal government stated that, despite the introduction of the Tribunal, the SCP is not impartial or fair, and Canada remains in a conflict of interest position (acting, in what some respondents perceive as being "judge, jury and banker").[53] Further, their experience is that approaches among the SCB negotiators are inconsistent, with some considered to use less collaborative approaches than others, thereby, negatively influencing the resolution of claims, the trusting relationships between the government and First Nations, and reconciliation.

With few exceptions, respondents felt that the DOJ focused narrowly on minimizing Canada's legal liabilities at the cost of fairly resolving claims. While the Tribunal was regarded as contributing to impartiality and fairness, it was not viewed as sufficient to similarly influence the mainstream SCP. As noted in Section 3.5: Alignment with UNDRIP and the TRC *Calls to Action*, external respondents supported an independent process largely consistent with AFN Resolution 91/2017 *Support for a Fully Independent Specific Claims Process*.

A few external respondents positively cited recent cases involving more collaborative approaches, contributing to impartiality and fairness (e.g., discussions that helped clarify the claim and led to the submission of a Supplementary Legal Opinion for the Mississaugas on the Credit First Nation Treaty 23 and Treaty 23 Reserve Claim; and dialogue to ensure a complete submission for the Smiths Landing First Nation Annuity Claim, prior to preliminary review). As well, some noted previous successful use of collaborative approaches (e.g., work described by one respondent on the settlement of 14 claims in 5 years, starting in 1997, for the Michipicoten First Nation, in which case the parties were described as working through the claims in a collaborative fashion—with the researchers and lawyers working together).

The government's view, as noted by the Standing Senate Committee on Aboriginal Peoples, is that "The Government surrenders its fiduciary duty to First Nations once they have obtained separate legal counsel."[54] Further, program officials cite the fact that an independent Tribunal, not the Government of Canada, makes determinations of validity of a claim and on compensation where the parties do not see a path to resolution through negotiation. In addition, respondents internal to the federal government did not raise any conflict of interest issues, stating that impartiality and fairness had improved over the evaluation period. As evidence, improvements to the SCP were cited, such as "objective research and assessment", changing case law, adoption of a more flexible risk-based[55] claims assessment approach, the increasingly more common reassessment of previously submitted claims, funding to support First Nations' participation in the SCP, greater collaboration between the SCB and First Nations at early stages of the SCP, and

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[52]Senate of Canada, *Negotiation or Confrontation: It's Canada's Choice, Final Report of the Standing Senate Committee on Aboriginal Peoples Special Study on the Federal Specific Claims Process* (Ottawa, 2006).

[53]In a 1979 unpublished report, Supreme Court Justice Gérard La Forest wrote that "the Office of Native Claims in the Department of Indian Affairs has "conflicting duties in relation to Indian claims" and that, in the interest of impartiality, an independent body should be established outside of the department to settle Specific Claims." (from: Senate of Canada, *Negotiation or Confrontation: It's Canada's Choice, Final Report of the Standing Senate Committee on Aboriginal Peoples Special Study on the Federal Specific Claims Process* (Ottawa, 2006)). Note that the Justice calls for an independent "body," rather than incrementally improving the independence of the existing specific claims process.

[54]Ibid.

[55]Risk based assessment arise when the DOJ has found that there is no lawful obligation on the part of Canada and the level of adverse outcome is medium for one or more of the allegations – in these cases the SCB will review the claim based on non-legal risk factors.

engagement with communities focussing on building trusting relationships and reconciliation. Several respondents noted that the program had successfully experimented with collaborative approaches since the 1980s (e.g., joint research to agree on the facts of a claim), but this approach had been abandoned in the past due to cost and time concerns. Some program officials suggest that this approach is starting to be utilized again.

As noted in the *Principles Respecting the Government of Canada's Relationship with Indigenous Peoples*, the Government of Canada's commitment to reconciliation and to work more collaboratively, have positively influenced the resolution of some claims (e.g., Beecher Bay First Nation Rocky Point Village Site Claim, Kitigan Zibi Anishinabeg Global Settlement Project), introducing greater flexibility, collaboration, and innovation, to fairly resolve claims. These cases, like the successful experimentation with collaboration early in the claims process, do offer proven ways to tangibly increase transparency and improve fairness.

3.6 Design and Delivery: Accountability and Transparency

Greater collaboration, communication and information sharing has led to improvements in accountability and transparency, however, more improvements are needed. Program reporting and forecasting were identified as areas for improvement.

To address concerns among First Nations about "the lack of transparency in public reporting to judge the validity of their criticisms or gauge just how well the government is handling specific claims", *Justice at Last* introduced more visible and substantial funding (i.e., for settlements through the Specific Claims Settlement Fund) to better meet the needs of the SCP, widely available information about spending on specific claims, and explicit targets for resolving outstanding claims to hold the government to account.[56]

SCB respondents generally felt that the program was transparent, indicating that the policy, timelines and process are all accessible to the general public and citing the publicly available "Reporting Centre for Specific Claims" website and mentioned that First Nations can request a status update on their claims at any time. Program officials have stated that First Nations have access to full historical records through Library Archives Canada, departmental records and private archives and there are no restrictions for First Nation researchers. Program officials also stated that SCB shares with First Nations historical documents and annex of documents that have been uncovered during the assessment. The program also noted however that legislation – and not the SCB staff - govern the rules around disclosure of some information.

Transparency has, however, remained a concern of First Nations, central agencies and other external respondents interviewed. First Nations urged greater collaboration and communication (e.g., about changes – even changes to processes, and timelines), and information sharing (e.g., access to full historical records,[57] disclosure of research, method to determine final settlement offers, settlement agreements for other claims) from Canada from the very onset of a claim (at the early research stage) for the process to be more transparent (and efficient). They stressed the importance of understanding the status of a claim at any given time and in detail, and in cases

[56]Indian and Northern Affairs Canada, *Specific Claims: Justice At Last* (Ottawa, 2007).
[57]Records are accessible though Library and Archives Canada and various archival funds and through the departmental records office which are not the responsibility of the SCB.

where claims are rejected, detailed information as to the reasons why, so that deficiencies can be addressed.

In terms of the public reporting, some external respondents offered the view that performance indicators were sometimes misleading (e.g., “false representations of success”) and the performance story was not being comprehensively communicated (e.g., the “Reporting Centre for Specific Claims” website is an “information system” focused on transactional outputs rather than bigger picture statements about performance and outcomes, and exceptions are not explained). The misalignment of outcomes and indicators was noted by the evaluation team and program officials stated that weaknesses in the program performance framework were being addressed through a review of outcomes and performance indicators and that new indicators would be introduced. *Justice at Last* noted that public reporting failed to shed light on the program’s human and financial resources, an issue that remains.

In terms of reporting, central agencies agreed that accountability had improved internally through the Claims Advisory Committee, more thorough information being provided to central agencies and a more central role for CIRNAC’s Chief Financial Officer. However central agencies have expressed the view that program reporting needs improvement. For instance, the program’s reporting approach describes how many claims are at various stages at their lifecycle regardless of when they were submitted to the Minister.

Central agencies have also expressed that forecasting needs to be improved. In particular, the reporting/forecasting process of the Specific Claims Settlement Fund. The latter is of particular concern given increasing pressure on the Specific Claims Settlement Fund and concerns about its sustainability. In 2009, the Specific Claims Settlement Fund was resourced at $250 million annually for 10 years to pay out settlement agreements and awards of the Tribunal, and has been replenished on four occasions since then with a current funding profile up to 2025/26. In conjunction with these replenishments, SCB has worked collaboratively with central agencies to improve the forecasting and reporting processes, which has included changes to the reporting content and more frequent communications, including the creation of the Specific Claims Interdepartmental Steering Committee.

As noted in Section 3.5: Impartiality and Fairness, collaboration between the program and First Nations and engagement with communities were identified as important factors contributing to fairness. External respondents agreed that these factors also advanced transparency, with the free flow of information between the program and First Nations an important aspect. While First Nations stated that there was room for improvement, they did recognize that, over the evaluation period, federal officials are increasingly reaching out to clarify issues during the assessment phase (rather than simply rejecting claims outright), collaborating during the research and negotiation stages, and communicating information about funding availability and allocation methods, and generally maintaining open lines of communication. As one example, the SCB launched its first e-bulletin (Fall 2020), providing First Nations with an update on the progress on claims, information in response to impacts on regular business due to the COVID-19 pandemic, and key program contacts.

3.7 Design and Delivery: Rapid Processing

The program has continually explored different ways to increase efficiencies and improve claims processing with some success. However, persistent resource limitations have resulted in the three-year legislation time being met in just over half of the claims filed with the Minister over the evaluation period based on data provided. Also, there was general consensus among respondents that meeting the timeline targets should not occur at the cost of fairness, justice and transparency, or ensuring a positive experience for First Nations during the claims process so as to not detrimentally impact the relationship and trust built with Canada.

At the time of *Justice at Last,* the average time to process a claim was 13 years, leading to "repeated calls from all quarters for more resources to speed up the process".[58] To address this issue, improvements were made to internal government procedures including establishing hard timeline targets to initially review, and then also to assess and negotiate claims.

Based on the data made available for the evaluation, and because the data and indicators make it difficult to assess, it is unclear if the average time to process claims received by CIRNAC and filed with the Minister over the evaluation period show improvement compared to the 13 year average reported in *Justice at Last*. Of the 505 claims subject to negotiation during the evaluation period (including those accepted prior to the evaluation period), 43% had been resolved through negotiations by 2021-22 (Table 8). The data also shows that the legislated three-year time frame to determine if the claim will be accepted for negotiation was only met for 46% of claims filed with the Minister over the evaluation period (Table 14). Establishing the Tribunal, also reportedly, by some interviewees, facing resource issues, does not appear to have improved overall processing time—of the 87 claims filed with the Tribunal over the evaluation period, 84% remain to be heard (Table 4).

Recent communications about the pace of settlement and assessment of claims provided by the program to supplement the data analysis undertaken for the evaluation indicate that the pace of settlement has been increasing. The Fact Sheet July 2021 highlights that "a total of 117 claims were resolved over the past three fiscal years (2018-19 to 2020-21), the highest number of claims settled over any consecutive three year period since the beginning of the program" and indicates that "for the previous three year period between 2015-16 to 2017-18, a total of 59 claims were settled". While the data in the Fact Sheet July 2021 is not presented in a way that accounts for the tracking of any particular claim through a 3-year period, it shows that the pace of settlement and assessment of claims is trending as increasing overall.

To increase efficiencies and in order to address the diversity and complexity of specific claims, a streamlined approach to claims processing was implemented by the SCB, (e.g., bundling of similar claims at the research and assessment stages and negotiation stages expedited legal review of small claims, separate arrangements outside the SCP to handle larger claims valued at $150 million or more). In the case of bundling at the negotiations stage, multiple similar claims were grouped into larger projects as a means to avoid duplication of effort and a broader use of

[58] Ibid.

studies and expertise amongst tables resulted in leveraging accomplishments in several negotiations.

SCB respondents expressed frustration that the introduction of the *Justice at Last* timeline targets was not accompanied by a corresponding increase in human and financial resources. According to program sources, the SCB has not had an increase in FTE's since 2007, although the volume of claims has increased. Following *Justice at Last*, there was a focus on reducing the backlog of claims, which, given the limited resources, occurred at the expense of thorough consideration of claims in the inventory. This reportedly led to some claims being rejected as not having merit, then being submitted by the claimants to the Tribunal, and then being brought back into the SCP for negotiation. So, while there was an initial reduction in the backlog, many of the rejected claims were reportedly returned to the SCP. Respondents reported that the persistent resource limitations continued to impact all aspects of the SCB's ability to administer the SCP (e.g., communications with First Nations, collaborative approaches, maintaining a consistent complement of negotiators) and ultimately processing times.

ISC regions are responsible for the implementation of settlement provisions if there is a land (Additions to Reserve) component. This can also be a complex and lengthy process, requiring, in one case, 15 years from settlement. The division of INAC into 2 separate departments - CIRNAC and ISC has added a further complexity and pressure to this part of the process, as the former INAC regional offices are now part of ISC.

Internal respondents reported that the SCB has been actively exploring different ways to increase efficiencies and improve processing times. These include collaborating on early research and claims assessment (e.g., to agree on the facts of claims which yield downstream efficiencies during the negotiation and settlement stages), bundling of claims, global settlements, and delegation of decision-making and authorities. The Kitigan Zibi Anishinabeg Global Settlement Project successfully employed several of these efficiencies to the satisfaction of the First Nation and Canada. Nevertheless, respondents stressed that some claims are more complex than others, or more challenging than anticipated, and simply require more time and effort.

First Nations respondents universally expressed frustration with the program's inability to meet timelines. There was a general consensus among respondents, that meeting the timeline targets should not occur at the cost of fairness, justice and transparency, or ensuring a positive experience for First Nations during the claims process so as to not detrimentally impact the relationship and trust built with Canada. Respondents did not suggest dispensing entirely with timeframe targets, but rather to ensure they are reasonable while respecting reconciliation.

3.8 Design and Delivery: Access to Mediation

> The use of mediation services to resolve impasses during negotiations has been very limited. Canada is reluctant to use mediation and there is a common concern that mediation is not a worthwhile mecanism due to its non-binding nature to resolve disputes.

Justice at Last recognized that, before First Nations decide to file a claim with the Tribunal, access to an alternative dispute resolution mechanism was important to help settle disputes that may

have stalled negotiations.[59] Canada recognized that mediation should be used more often to resolve these impasses, and committed to increasing its use in the future by providing access to a neutral third party. The *Justice at Last* included a commitment to support mediation services. In 2011, the Mediation Services Unit under Treaties and Aboriginal Government sector was created to administer the services, supported by 5 FTE's and a Request for Proposals to establish a roster of mediators was launched.

According to program information, in recent years, CIRNAC and First Nations claimants underwent, and are undergoing, successful mediation sessions from which best practices will inform a strategy. For example, the 2018 Big Grassy First Nation Highway specific claims mediation enabled collaboration between the First Nation, the Specific Claims Tribunal, and specific claims negotiators: an agreement-in-principle between the parties was reached within two days, and a financial mandate was approved for the agreed-upon amount.

Additionally, Canada and Kinistin First Nation recently agreed to use mediation concerning their agricultural benefits specific claim due to an impasse with respect to compensation. Terms of Reference and information-sharing agreements have been put in place for the benefit of other First Nations bringing forward agricultural benefits claims. First Nations' views on the successes of mediation processes will inform future opportunities with First Nations for mediation, refine processes and a mediation strategy.

According to evaluation interviewees, and some program information, the use of mediation services has reportedly been very limited – reported as being used only 1 time between 2013-14 and 2019-20. And in the case(s) where it has been used, the process is reportedly very lengthy. Most respondents external to the federal government were unaware that mediation services were even available outside the Tribunal process.[60] The OAG found that there is a continued need for the federal government to embrace mediation (or other dispute resolution mechanisms), this was the experience of some First Nations respondents who had proposed using mediation services to resolve impasses during negotiations, but were rebuffed by Canada (both parties have to agree to submit a dispute to mediation).[61] Other external respondents expressed reluctance to engage in mediation because the available mediators were retained by Canada and therefore the respondents felt that they may not be neutral.

Both internal and external respondents also expressed concern that mediation is not a worthwhile exercise because it is a non-binding process, meaning the parties can withdraw from mediation at any time, and a decision cannot be imposed on the parties by the mediator.

[59]Ibid.
[60]The Tribunal also offers mediation services, providing a Tribunal member to serve as mediator.
[61]Office of the Auditor General of Canada, *Report 6—First Nations Specific Claims — Indigenous and Northern Affairs Canada*. Ottawa, 2016. https://www.oag-bvg.gc.ca/internet/English/att__e_41846.html

3.9 Design and Delivery: Program Delivery and Governance

Program delivery and governance structures have made positive impacts on the program, opening lines of communication and collaboration between the government, First Nations and other parties, and promoting flexible and innovative approaches to claims resolution. However, lack of coordination between claim negotiations and settlements involving land has caused delays in implementation of settlement provisions.

There is a mixed sense amongst interviewees as to whether there is a clear understanding of the roles and responsibilities of the parties involved in the SCP. External interviewees, on the one hand, expressed that there is confusion over the roles and responsibilities of federal parties in the SCP, particularly the degree of influence over decisions (i.e., CIRNAC and the DOJ in acceptances of claims for negotiation). Internal respondents, however, responded that they were confident that all involved parties, including First Nations, have a clear understanding.

Respondents offered the following observations regarding SCP governance and its supporting advisory bodies (JTWG and Claims Advisory Committee), and their influence on program delivery:

- The JTWG and Claims Advisory Committee advisory bodies are regarded as effective and helpful. Respondents view the JTWG as open and collaborative, and the Claims Advisory Committee as ensuring consistency in the acceptance of claims, providing a repository for best practices, and a platform for the SCB to experiment with innovative approaches to claims resolution.
- Lack of coordination between claim negotiations and settlements involving land has reportedly caused delays beyond the immediate SCP and into the sphere of implementation of settlement provisions. Poor communications between the separate functions of those responsible for negotiations and settlement (Specific Claims (SCB)) and those responsible for implementation (ISC regions, responsible for Additions to Reserve), are factors offered by respondents. These issues have been compounded by the division of INAC into 2 separate departments which has added further complexity and pressure to this part of the process, as the former INAC regional offices are now part of ISC and hence the end-to-end SCP (i.e., including implementation aspects) are across two Departments (CIRNAC subject to different mandates and priorities).
- Although the DOJ has continued to play an important role at the assessment and negotiation stages (e.g., providing legal opinions, risk assessments, acting as general counsel), its influence on the assessment and negotiation stages has evolved over the evaluation period as the SCB has exercised more discretion, pragmatism and flexibility (e.g., considering other factors, such as reputational risk, when assessing risk[62]) in consideration of supporting favourable outcomes for First Nations.
- The SCB has increasingly been maintaining more open lines of communication with First Nations, and has been more willing to listen and collaborate with them and the broader claims community.
- The Negotiations Support Directorate, which is not part of the SCB, but plays an important downstream role, has proven more responsive to feedback from the National Claims Research Directors, a national body of specialized technicians representing 18 Claims Research Units across Canada.

[62]Program information provided is that very few claims are accepted on a risk basis.

- There were dissenting opinions about the Tribunal. External respondents interviewed as part of case studies viewed the Tribunal as an important alternative to the mainstream specific claims process (although in the Lake Babine Nation Tachek I.R. 25 (Topley Landing) Claim, it was felt the Tribunal did not consider oral and written evidence equally). Some respondents, however, tended to view the Tribunal as biased and adversarial, overstepping its mandate (i.e., into negotiation, establishing unrealistic timelines), unfamiliar with government policies and process, and rendering decisions that have greatly increased Canada's contingent liability (the Tribunal rejection of the 80/20 compensation method in the 2016 Huu-ay-aht First Nation Claim). Other SCB respondents observed that the Tribunal is a very effective part of the program and functions well, and the new jurisprudence it has issued has been a positive factor by providing the opportunity for more claims to be submitted (including previously rejected claims).

Overall, while external respondents expressed some confusion over the roles and responsibilities of federal parties in the SCP, particularly the degree of influence over decisions (i.e., CIRNAC and DOJ in acceptances of claims for negotiation), internal respondents were confident that all involved parties, including First Nations, have a clear understanding.

3.10 Design and Delivery: Capacity and Resources

Chronic resource constraints have impacted the SCB's ability to meet expectations such as legislated timeline targets and hindered the ability of First Nations to participate in the specific claims process on equal footing with Canada.

In some cases, First Nations have diverted scarce resources from other important community priorities, while in others, First Nations have spread claim efforts over multiple years which has delayed claim resolution and foreclosed economic development opportunities.

Further, it was noted by both internal and external respondents that broader use of more collaborative approaches discussed earlier, are important contributors to relationship building in support of reconcilliation. There is also a requirement for more resources than are currently availabe.

Capacity and resource constraints have been persistent issues facing the SCP. *Justice at Last* observed that the lengthy period required to resolve the average claim had led to "repeated calls from all quarters for more resources to speed up the process".[63] Respondents internal and external to the federal government were in broad agreement with this statement. Further, it was noted by both internal and external respondents that broader use of more collaborative approaches discussed earlier, are important contributors to relationship building in support of reconciliation. There is also a requirement for more resources than are currently available.

There is inconsistent awareness among First Nations respondents about the resources available to assist with the development of claims and participation in the negotiations process, and the

[63]Indian and Northern Affairs Canada, *Specific Claims: Justice At Last* (Ottawa, 2007).

administrative procedures to access funding. The process to obtain funding is regarded to be administratively onerous (i.e., three funding mechanisms, three proposals, multiple budgets, and multiple reports required for the same claim as it moves through the process), consuming scarce administrative resources. Many respondents were unaware about the increase from $4M to $12M and availability of multi-year funding for research, and the increase in the maximum allowable amount and increased flexibility for negotiations support. As noted earlier, First Nations bear a substantial cost to research and negotiate claims, well beyond that provided through the SCP's grants and contributions (in spite of the increase in research funding), a serious constraint to their participation in the specific claims process.

For example, the Mississaugas of the Credit First Nation reportedly invested approximately $150,000 to research and submit their Treaty 22 and Treaty 23 claim, well beyond the $25,000 available through the SCP. Respondents reported that scarce resources are often diverted from other important community priorities (e.g., those contributing to wellbeing) to do so, or distributing claims efforts over multiple years to align with funding ceilings. The latter can delay claim resolution and return on the investment of settlement compensation. Respondents also reported that those First Nations that already have healthy and substantial own-source revenue are in a much better position to consider and to prepare claims, to invest in them through the SCP life cycle and to manage the risk that their claims may not be resolved in their favour.

First Nation respondents were particularly sensitive to the power imbalance with Canada, due to constrained funding and limited human resource capacity, during the negotiations process. Loan funding for negotiations is a substantial issue for First Nations, with some feeling this mechanism "holds power over them, and they'll have to say yes to a settlement because they have loan funding outstanding", an issue that has caused the disruption of some claims.

According to internal respondents, an increase in the volume of claims combined with targets for initial review, and assessment and negotiation, have been beyond the SCB's current resources and staffing allocations (and those of First Nations), resulting in lengthy periods to resolve claims and failure to meet legislated timelines (as described in Section 3.7: Rapid Processing). Similarly, DOJ capacity issues (e.g., staffing levels) have slowed delivery of legal opinions. Central agencies expressed concern about the growing contingent liability and pressure on the Specific Claims Settlement Fund.

As noted in this report, the program has made considerable efforts to improve the experience of First Nations during the SCP (within the confines of the *Specific Claims Policy* and resource availability), however, efforts have been impacted by not meeting performance targets. According to interviewees, SCB staff have also been reportedly under serious pressure, with excessive workloads resulting in reported high rates of absenteeism and attrition (e.g., due to stress).

3.11 Design and Delivery: Audit and Evaluation Recommendations

The program has made progress on recommendations resulting from various evaluations, audits, including the 10 recommendations made by the OAG in the 2016 audit of the department's management of the resolution of First Nations specific claims. At the time of the evaluation, most of the OAG recommendations have been met or partially met, however, there are some areas identified as needing some attention.

In 2016, the OAG reported on whether the department adequately managed the resolution of First Nations specific claims.[64]

In its 2016 audit, the OAG was critical of the department's management of the resolution of First Nations specific claims.[65] The OAG made ten recommendations. As of March 31, 2021, CIRNAC reports that all of the recommendations have been implemented.

3.12 Design and Delivery: Gender-based Analysis Plus

Gender-based Analysis Plus (GBA Plus) considerations have not been reflected in the design and delivery of the program. While most respondents did not view GBA Plus as relevant to the SCP, others noted that women had been uniquely and disproportionately impacted by breaches of Crown obligations and have been overlooked in the redress process.

GBA Plus considerations have not been reflected in the design and delivery of the SCP. Most respondents did not view GBA Plus as relevant to the SCP, since the process is gender neutral and solely designed to address historic grievances. Furthermore, the program is not in the position to follow up with First Nation's on how compensation has impacted them.

Other respondents stressed the need to consider GBA Plus, noting that women have disproportionately experienced losses in instances in which the Crown has not fulfilled its treaty obligations or has mismanaged First Nation funds or other assets, and have been overlooked in the redress process.

One First Nations respondent observed that the *Specific Claims Policy* discourages claims which address the specific and unique ways women have been negatively impacted by breaches of Crown obligations (e.g., impacts on traditional land use activities, transmission of language and culture, how children were raised). This respondent stressed the need for multidisciplinary studies to establish the contribution of Crown breaches on broader socio-economic and environmental losses suffered by First Nations, and to find other ways to compensate for these losses beyond financial and land settlements.

3.13 Design and Delivery: Performance Measurement

There are substancial challenges with the program framework, including misalignment of indicators with outcomes, the reliance on contextual indicators that do not allow for targets and a fairly simplistic reliance on volumes without accounting for fiscal year activities.

[64]Office of the Auditor General of Canada, *Report 6—First Nations Specific Claims — Indigenous and Northern Affairs Canada*. Ottawa, 2016. https://www.oag-bvg.gc.ca/internet/English/att__e_41846.html
[65]Office of the Auditor General of Canada, *Report 6—First Nations Specific Claims — Indigenous and Northern Affairs Canada*. Ottawa, 2016. https://www.oag-bvg.gc.ca/internet/English/att__e_41846.html

The evaluation team was unable to comprehensively assess performance against expectations because targets were not set for four of the nine indicators identified in the 2018 Performance Information Profile, as listed below:[66]

- number and percentage of submissions filed with the Minister, by year and trend;
- number and percentage of claims for which CIRNAC assessment is overturned by Tribunal;
- number and percentage of claims accepted for negotiation; and
- number and percentage of claims resolved through the Tribunal.

The Specific Claims Program distinguishes those indicators that provide *contextual* information from those that provide *performance* information. Contextual indicators, like those above, provide information about external conditions relevant to the performance of the program, they do not provide any information related to the evaluation issue of SCP "effectiveness". As such, contextual indicators are outside the control of the SCP and so a target is not applicable.

There are also opportunities to improve the alignment between some outcomes and indicators. For example, the ultimate outcome "Canada fulfills its long-standing obligations to First Nations arising out of treaties, and the administration of lands, band funds and other assets" is measured by the indicator "number and percentage of claims assessed within the legislated three-year time frame, by year and trend".

Both internal and external respondents recognized many of these and other (i.e., unrealistic targets) are deficiencies with the program performance framework. SCB officials indicated that some of these were already being addressed through an internal review process.

The method the program uses to calculate several indicators warrants comment. Nearly all of the program indicators are based on different stages in the lifecycle of a claim, for example, number and percentage of submissions filed with the Minister—by year and trend, number and percentage of claims accepted for negotiation—by year and trend, and number and percentage of accepted claims resolved through negotiation—by year and trend. Given that the federal government plans and budgets on a fiscal year basis, that claims are managed through different lifecycle stages (with important, including legislated, performance standards), and many of the program indicators are qualified "by year and trend," the evaluation team expected that the program would use cohort analysis to help provide insight into the performance of the claims process. Instead, the program relies on simple volume calculations, which obscures important information about the lifecycle of a claim, where efficiency improvements could be warranted, and the impact of efficiency improvements. An example of the different approaches follows:

- Cohort approach: During FY2015-16, 66 claims were filed with the Minister, 46 in 2014-15 and 20 in 2015-16. Of these, 1 was accepted for negotiation in 2015-16, 2 in 2017-18, 17 in 2018-19, 21 in 2019-20, 3 in 2020-21 and 1 in 2021-22—for a total of 45 of this cohort of claims accepted for negotiation.
- Volume approach: During FY2015-16, the program reported that 13 claims were accepted for negotiation. These were not claims filed with the Minister during FY2015-16, but claims that were prior to 2013-14, in 2013-14 and 2015-16.

[66]Crown-Indigenous Relations and Northern Affairs Canada, *Performance Information Profile: Specific Claims*, (Gatineau, 2018).

Both methods of analysis have merit, conveying important information to monitor the program and improve performance; excluding one or the other does not provide the full picture of performance as noted in Section 3.6: Accountability and Transparency. In the following section, where possible, results of the cohort and volume methods of analysis are provided.

3.14 Performance: Achievement of Outcomes

For the following sections, a review of program data including financial, performance, monitoring and other data collated in the Specific Claims Database and held by CIRNAC on specific claims was conducted to help address the questions of performance and efficiency/economy. The evaluation used data and data sources identified in the program's Performance Information Profile, including the program's Specific Claims Database and the Aboriginal Treaty Rights Information System.

3.14.1 Acceptable submissions are filed with the Minister

Indicator 4.1.1.1: Number and percentage of submissions filed with the Minister—by year and trend.[67]

As a *contextual* indicator, targets were not set by CIRNAC and assessment of performance against expectations is not relevant.

> The proportion of claims filed with the Minister has remained relatively constant, above 90%.

As targets were not set by CIRNAC for this contextual indicator, assessment of performance against expectations is not relevant.

During the evaluation period (2013–14 to 2019–20) there were 374 claim submissions received by CIRNAC (Table 4). An additional 4 claims were received prior to the evaluation period but reviewed against the minimum standard during 2013-14.

Of the 378 submissions considered during the evaluation period, 93% (n=350) were filed with the Minister. The proportion of claims received that met the minimum standard and were filed with the Minister ranged, without any evident annual pattern, from a low of 82% (n=40) in 2013-14 to a high of 100% in 2017-18 (n=40), 2018-19 (n=54) and 2019-20 (n=49). 7% (n=25) of claims submissions were retuned because they did not meet the minimum standard.

Of the claim submissions received by CIRNAC in each fiscal year, the proportion of claims filed with the Minister has generally remained relatively constant above 90%. The only exceptions were fiscal years 2013-14 at 82% (n=40) and 2014-15 at 88% (n=77). The program reported that, at this time, the minimum standard was applied very strictly resulting in lower filing rate. Over the evaluation period, however, the program has adopted a more flexible approach resulting in higher filling rate, only returning claims that did not fit within the policy or had a major technical deficiency.

[67] The program noted that this indicator has (since the end of the evaluation period) been replaced with "percentage of specific claim assessments completed within the legislated timeframe of 3 years."

Table 4: The number and percentage of specific claims submissions filed with the Minister, for claims received between fiscal years 13-14 and 2019-20.

Fiscal year received	Number of submissions received*	Total number and percentage of the original submissions that were returned	Percentage of the original submissions received that were filed	Total number of resulting submissions filed	Number, percentage and fiscal year of submissions filed with the Minister							
					2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21
Prior to 2013-14	4*	-	100%	4	4 (100%)	-	-	-	-	-	-	-
2013-14	44	8 (18%)	82%	40[1]	30 (75%)	10 (25%)	-	-	-	-	-	-
2014-15	94	11 (12%)	88%	77[2]	-	31 (40%)	46 (60%)	-	-	-	-	-
2015-16	34	3 (9%)	91%	31	-	-	20 (65%)	11 (35%)	-	-	-	-
2016-17	60	3 (5%)	95%	55[3]	-	-	-	29 (53%)	26 (47%)	-	-	-
2017-18	39	-	100%	40[4]	-	-	-	-	21 (53%)	18 (45%)	1 (3%)	-
2018-19	54	-	100%	54	-	-	-	-	-	37 (69%)	17 (31%)	-
2019-20	49	-	100%	49	-	-	-	-	-	-	31 (63%)	18 (37%)
Total	**378**	**25 (7%)**	**93%**	**350**	**34 (10%)**	**41 (12%)**	**66 (19%)**	**40 (11%)**	**47 (13%)**	**55 (16%)**	**49 (14%)**	**18 (5%)**

Source: Program time series statistics, Excel spreadsheet "1. EVALUATION DATA – SCB input. Approved. DEC 20 2021" (CIRNAC, 2021b).

Notes: Percentage of submissions filed with the Minister is calculated as: the number of submissions filed divided by the number of specific claims received.

*The total number of claims received *includes* 4 claims received prior to the evaluation period but reviewed against the minimum standard during 2013-14.

[1-4]Some correction of the data was required to address the following considerations:

[1]In 2013-14, 1 received claim submission was split into 5 filings.

[2]In 2014-15, 8 claim submissions were bundled into 1 filing, and 1 filed claim was not subjected to the ERP process but went directly to filing.

[3]In 2016-17, 2 submissions was combined as 1 submission, and in another case, 2 submissions were combined as 1 filing.

[4]In 2017-18, 1 submission was split into 2 filings.

The target to complete 100% of determinations within six months was met for those claims received during 2013-14, 2014-15 and 2018-19. Over the entire evaluation period, performance fell slightly short of expectations at 93%.

The annual target for this indicator is 100% of submissions received will be reviewed within six months by CIRNAC to determine if the submission meets the minimum standard for filing with the Minister. The target was met in 2013-14, 2014-15, and 2018-19 (Table 5).

Table 5: The number and percentage of completed determinations within six months, for claims received between fiscal years 2013-14 and 2019-20. *

Fiscal year received	Number of submissions received*	Duration of determination (months)							Total number and percentage of submissions filed within 6 months	Average duration (months)
		>6	5-6	4-5	3-4	2-3	1-2	<1		
2013-14	44	-	4 (9%)	13 (30%)	14 (32%)	11 (25%)	2 (5%)	-	**44 (100%)**	**3.6**
2014-15	94	-	55 (59%)	26 (28%)	8 (9%)	5 (5%)	-	-	**94 (100%)**	**5.0**
2015-16	34	1 (3%)	25 (74%)	4 (12%)	3 (9%)	-	-	1 (3%)	**33 (97%)**	**5.3**
2016-17	60	8 (13%)	40 (67%)	8 (13%)	4 (7%)	-	-	-	**52 (87%)**	**5.4**
2017-18	39	4 (10%)	17 (44%)	7 (18%)	7 (18%)	3 (%)	-	1 (3%)	**35 (90%)**	**5.5**
2018-19	54	-	28 (52%)	13 (24%)	8 (15%)	4 (7%)	-	1 (2%)	**54 (100%)**	**4.6**
2019-20	49	11 (22%)	30 (61%)	6 (12%)	-	2 (4%)	-	-	**38 (78%)**	**5.6**
Total	**374**	**24 (6%)**	**199 (53%)**	**77 (21%)**	**44 (12%)**	**25 (7%)**	**2 (1%)**	**3 (1%)**	**350 (93%)**	**5.0**

Source: Program time series statistics, Excel spreadsheet "Excel spreadsheet "1. EVALUATION DATA – SCB input. Approved. DEC 20 2021" (CIRNAC, 2021b).

Notes: Percentage of determinations completed is calculated as: the number of completed determinations completed divided by the number of specific claims received.

*The total number of claims received excludes 4 claims received prior to the evaluation period but reviewed against the minimum standard during 2013-14.

During 2015-16, 3% (n=1) of determinations required more than six months, 13% (n=8) in 2016-17, 10% (n=4) in 2017-18 and 22% (n=11) in 2019-20. Over the entire evaluation period, performance fell short of expectations, with 94% (n=350) of determinations meeting the six month target. The average duration of determinations over the evaluation period was 5.0 months, from a low of 3.6 months in 2013-14 to a high of 5.6 months in 2019-20. This is attributed to factors both within and outside the control of CIRNAC, such as Specific Claims Branch capacity limitations and the complexity of some claim submissions requiring a longer duration to review

(e.g., collaboration required between the Specific Claims Branch and First Nations to clarify allegations, history or context), DOJ capacity constraints and the time required to receive legal opinions.

3.14.2 Canada's outstanding lawful obligations are identified

> Of the 87 claims filed with the Tribunal over the evaluation period, 14 of these were heard by the Tribunal, with Tribunal decisions overturning 9 CIRNAC assessments.

The evaluation team was unable to assess performance against expectations for the indicator – *number and percentage of claims for which CIRNAC assessment is overturned by Tribunal* – because targets were not set for this indicator in the Performance Information Profile or otherwise. The program did not provide a rationale for the lack of target during the evaluation, however, program response to this is that the program cannot be held accountable for a decision out of its control.[68]

During the evaluation period (FY2013-14 to FY 2019-20), 87 claims were filed with the SC Tribunal (Table 6). The reason for filing, as identified in the Specific Claims Database, was either "no lawful obligation" or partial lawful obligation." No claims were filed for reasons of "three year assessment elapsed," "three year negotiations elapsed," "Minister's consent," "not admissible" or "not identified."

Of the 87 claims filed with the SC Tribunal, decisions have been rendered on 16% (n=14), with 64% (n=9) of CIRNAC assessments overturned by the SC Tribunal.

The percentage of CIRNAC assessments overturned by the SC Tribunal has fluctuated from year-to-year, without any evident annual pattern (since each claim is unique), from 100% (n=3) for claims filed with the SC Tribunal in 2013-14 to 33% (n=1) for filings in 2016-17. The SC Tribunal did not render any decisions on claims filed during 2017-18 and 2018-19. Based on information gleaned through interviews, this is attributed to the volume of claims submitted to the Tribunal and its capacity limitations.

[68]The SCTA also has its own performance measures, its also a legislated component, including the reporting section. If the program had this indicator, it was done in error and not advised. It has since been removed from the SCB Performance Information Profile as it is not an action which CIRNAC leads nor can be realistically held accountable for. If the Tribunal overturns an assessment, the CIRNAC regular legislated timelines and targets kick in – should a First Nation re-submit, the then 3 year assessment period starts once the claim is filed with the Minister, etc.

Table 6: The number and percentage of claims for which the CIRNAC assessment is overturned by the SC Tribunal, for claims active at the SC Tribunal between the fiscal years 2013-14 to 2019-20.

Fiscal year	Number of claims filed with the Specific Claims Tribunal	Number and percentage of claims filings heard by the Specific Claims Tribunal	Number of and percentage CIRNAC assessments overturned by the Specific Claims Tribunal
2013–14	19	3 (16%)	3 (100%)
2014–15	11	5 (45%)	3 (60%)
2015–16	10	2 (20%)	1 (50%)
2016–17	16	3 (19%)	1 (33%)
2017–18	4	-	-
2018–19	6	-	-
2019–20	21	1 (5%)	1 (100%)
Total	**87**	**14 (16%)**	**9 (64%)**

Source: Program time series statistics, Excel spreadsheet "March 31, 2021, file "NEW VERSION October 26 2021 – Specific Claims Data – March 31 2021" (CIRNAC, 2021a).

Note: Percentage of CIRNAC assessments overturned is calculated as: the number of CIRNAC assessments overturned by the SC Tribunal divided by the number of claims filings heard by the SC Tribunal.

Of the claims filed with the Minister in each fiscal year, those filed more recently had a higher likelihood to be accepted for negotiation.

As contextual indicator targets were not set by CIRNAC, an assessment of performance against expectations is not feasible.

There were 332 claims filed with the Minister and assessed for negotiation during the evaluation period (Table 7). An additional 97 claims filed with the Minister prior to the evaluation period (between 2008-09 and 2012-13) were also assessed for negotiation during the evaluation period. A total of 429 claims were therefore considered for negotiation during the evaluation period.

Of the 429 claims assessed for negotiation during the evaluation period, 72% (n=311) were accepted for negotiations, with the remainder awaiting or in assessment, not accepted for negotiations, in litigation or on hold. It is important to note that data is incomplete because the legislated three year time frame had yet to elapse for those claims filed since December 2018 (the date stamp of the dataset provided by the program was December 2021).

Of the claims filed with the Minister in each fiscal year, those filed in 2016-17 were more likely to be accepted for negotiations (90%, n=36) compared to those in earlier years (e.g., 2013-14, 59%, n=20). The reasons for the annual fluctuations are not clear, but could be related to a combination of factors, from the approach taken to review claims for negotiation, to the volume and complexity of claims accepted for negotiations in the years prior to the evaluation period.

Table 7: The number and percentage of claims accepted for negotiation, for claims filed between fiscal years 2013-14 and 2019-20.*

Fiscal year filed with the Minister*	Number of claims filed with the Minister*	Number and fiscal year of claims accepted for negotiation									Total number and percentage of claims accepted for negotiation
		2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	
Filed prior to 2013-14	97 [709]	23 (3%)	15 (2%)	10 (1%)	7 (1%)	11 (2%)	19 (3%)	7 (1%)	13 (2%)	2 (<1%)	**107 (15%)[1]**
2013-14	34	-	-	2 (6%)	15 (44%)	1 (3%)	-	1 (3%)	-	1 (3%)	**20 (59%)**
2014-15	41	-	-	-	-	14 (34%)	13 (32%)	1 (2%)	2 (5%)	1 (2%)	**31 (76%)**
2015-16	66	-	-	1 (2%)	-	2 (3%)	17 (26%)	21 (32%)	3 (5%)	1 (2%)	**45 (68%)**
2016-17	40	-	-	-	-	6 (15%)	1 (3%)	24 (60%)	4 (10%)	1 (3%)	**36 (90%)**
2017-18	47	-	-	-	-	7 (15%)	5 (11%)	12 (26%)	16 (34%)	1 (2%)	**41 (87%)**
2018-19	55	-	-	-	-	-	2 (4%)	2 (4%)	3 (5%)	23 (42%)	**30 (55%)**
2019-20	49	-	-	-	-	-	-	-	-	1 (2%)	**1 (2%)**
Total 2013-14 to 2019-2020	332	-	-	3 (1%)	15 (5%)	30 (9%)	38 (11%)	61 (18%)	28 (8%)	29 (9%)	**204 (61%)**
Total all years*	**429 [1041]**	**23 (5%)**	**15 (3%)**	**13 (3%)**	**22 (5%)**	**41 (10%)**	**57 (13%)**	**68 (16%)**	**41 (10%)**	**31 (7%)**	**311 (72%)**

Source: Program time series statistics, Excel spreadsheet "Excel spreadsheet "1. EVALUATION DATA – SCB input. Approved. DEC 20 2021" (CIRNAC, 2021b).

Notes: Percentage of claims accepted for negotiation is calculated as: the number of claims accepted for negotiation divided by the number of specific claims filed with the Minister.

*The total number of claims filed *includes* 97 claims *filed* prior to the evaluation period (of a total of 709 claims filed between 2008-09 and 2012-13) but *assessed* between 2013-14 and 2019-20, and *excludes* 18 claims *received* during the evaluation period but *filed* after this period (56 claims were filed in 2020-21, 18 of these were received during the evaluation period). The dataset is incomplete for those claims filed since December 2018 because the date stamp of the dataset provided is December 2021, within the 3-year legislated assessment time frame.

[1]There were 10 claims where no fiscal year of filing was available or there was an irregular acceptance process (i.e., from litigation). These claims were not filed with the Minister, and are not included in total 2013-14 to 2019-2020. However they are included in the total number of claims accepted for negotiation prior to 2013-14. As a result, the total number and percentage exceeds the number of claims filed.

Table 8: The number and percentage of accepted claims resolved through negotiation between fiscal years 2013-14 and 2019-20.*

Fiscal year claim accepted for negotiation*	Number of claims accepted for negotiation*	Number and fiscal year of accepted claims resolved through negotiation									Total number and percentage of accepted claims resolved through negotiation
		2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	
Accepted prior to 2013-14	241	15 (6%)	15 (6%)	9 (4%)	15 (6%)	25 (10%)	35 (15%)	13 (5%)	10 (4%)	7 (3%)	**144 (60%)**
2013-14	21	-	-	1 (5%)	1 (5%)	3 (14%)	-	1 (5%)	2 (10%)	1 (5%)	**9 (43%)**
2014-15	14	-	-	1 (7%)	1 (7%)	-	-	2 (14%)	1 (7%)	-	**5 (36%)**
2015-16	15	-	-	-	-	-	-	1 (7%)	2 (13%)	-	**3 (20%)**
2016-17	24	-	-	-	-	3 (13%)	2 (8%)	1 (4%)	2 (8%)	1 (4%)	**9 (38%)**
2017-18	45	-	-	-	-	-	11 (24%)	8 (18%)	6 (13%)	2 (4%)	**27 (60%)**
2018-19	73	-	-	-	-	-	-	7 (10%)	3 (4%)	2 (3%)	**12 (16%)**
2019-20	72	-	-	-	-	-	-	-	7 (10%)	1 (1%)	**8 (11%)**
Total 2013-14 to 2020-2021	264	0	0	2 (1%)	2 (1%)	6 (2%)	13 (5%)	20 (8%)	23 (9%)	7 (3%)	**73 (28%)**
Total all years*	**505**	**15 (3%)**	**15 (3%)**	**11 (2%)**	**17 (3%)**	**31 (6%)**	**48 (10%)**	**33 (7%)**	**33 (7%)**	**14 (3%)**	**217 (43%)**

Source: Program time series statistics, Excel spreadsheet "Excel spreadsheet "1. EVALUATION DATA – SCB input. Approved. DEC 20 2021" (CIRNAC, 2021b).

Notes: Percentage of claims resolved through negotiation is calculated as: the number of claims resolved through negotiation divided by the number of claims accepted for negotiation.

*The total number of claims accepted for negotiation includes 264 claims accepted for negotiation during the evaluation period and an additional 241 claims accepted for negotiation prior to the evaluation period (between 2008-09 and 2012-13) but subject to negotiation since the beginning of the evaluation period.

3.14.3 Claims are resolved through negotiation or Tribunal decisions

> The target to resolve 50% of accepted claims through negotiations was met for only those claims received during 2017-18.

The annual target for this indicator is 50% of claims accepted for negotiation are resolved through negotiations. The target was only met for those claims accepted for negotiation in 2017-18 (Table 8).

According to Table 7 there were 311 claims accepted for negotiation during the evaluation period. The program adjusted this value down to 264 (Table 8), and provided the following explanation for this large discrepancy:

> "In order to balance the number of claims accepted for negotiation and settled per fiscal year, the values had to be reviewed and revised due to many variables in the process and individual claims' activity history. Therefore the total number of claims accepted for negotiation, in addition to the claims already settled, also includes the claims that have been [sic] accepted for negotiation but filed with the SC Tribunal and the claims currently in active negotiations. All other occurrences of the claims' acceptances have been excluded (No Lawful Obligation (NLO), File Closed (FCL), Administrative Remedy (AR), Litigation (LIT), Compensation Awarded by the Tribunal (CAT))."

Using these revised figures from the SCB, there were 264 claims accepted for negotiation during the evaluation period (Table 8). An additional 241 claims were accepted for negotiation prior to the evaluation period (between 2008-09 and 2012-13). A total of 505 claims were therefore subject to negotiations during the evaluation period.

Of the 505 claims subject to negotiations, 43% (n=217) were resolved through negotiations. The percentage of claims resolved through negotiations has fluctuated from a low of 11% (n=8) for those claims accepted for negotiations during 2019-20, to a high of 60% (n=27) for those claims accepted for negotiations during 2017-18.

These annual fluctuation are likely due to a combination of factors, from the volume and complexity of claims accepted for negotiations in the years prior to the evaluation period, to the level of effort and duration required to negotiate and settle a claim. Duration is particularly pertinent for those claims accepted for negotiation in the last half of the evaluation period.

Additionally, of the 264 claims accepted for negotiations during the evaluation period, 28% (n=73) have been resolved through negotiations through 2021-22 (Table 8). This figure drops to 23% using the figure of 311 claims accepted for negotiations during the evaluation period from Table 7 (above).

Of the 87 claims filed with the Tribunal over the evaluation period, 14 of these were heard by the Tribunal, with 3 resolved by the Tribunal.

As contextual indicator targets were not set by CIRNAC, an assessment of performance against expectations is not feasible.

During the evaluation period, 87 claims were filed with the SC Tribunal and 14 claims were heard by the SC Tribunal (Table 9). Of these, 21% (n=3) have been resolved by the SC Tribunal.

Table 9: The number and percentage of claims resolved through the Tribunal, for claims active at the Tribunal between the fiscal years 2013–14 and 2019–20.

Fiscal year	Number of claims filed with the Specific Claims Tribunal	Number and percentage of claims filings heard by the Tribunal	Number and percentage of claims resolved by the Tribunal
2013–14	19	3 (16%)	0
2014–15	11	5 (45%)	3 (60%)
2015–16	10	2 (20%)	0
2016–17	16	3 (19%)	0
2017–18	4	-	0
2018–19	6	-	0
2019–20	21	1 (5%)	0
Total	**87**	**14 (16%)**	**3 (3%)**

Source: Program time series statistics, Excel spreadsheet “Filed at the Tribunal” (CIRNAC, 2021a).

Note: Percentage of claims resolved by the SC Tribunal is calculated as: the number of claims with SC Tribunal award and compensation paid divided by the number of claims filings heard by the SC Tribunal.

3.14.4 Justice for Claimants

There was disagreement between respondents internal and external to the federal government about the extent to which the SCP contributes to "Justice for Claimants."

External and some internal respondents also emphasized the importance of the SCP contributing to developing a strong, respectful and trusting relationship between Canada and First Nations as part of "Justice for Claimants" and irrespective of the actual final resolution (or not) of the claim.

There is no evidence that Indigenous customs, rules and legal systems have been systemically incorporated in the *specific claims policy* and process.

The SCP establishes "Justice for Claimants" as a long-term outcome measured through the percentage of awards of the Tribunal paid within 45 days of the award being made, and the percentage of compensation payments made in accordance with negotiated settlement agreements. Respondents internal to the federal government feel that the specific claims program contributes to "Justice for Claimants", although some did recognize that the program does suffer from credibility issues and settlements do not provide for broader losses (e.g., cultural impacts). The value of settlements was often offered as an example of "justice".

In comparison to internal respondents, those external to the federal government do not feel that the SCP contributes to "Justice for Claimants", for a variety of reasons. Many cited the lack of a fair, impartial, and independent process for resolving claims, and the government's inherent conflict of interest. Some pointed out that the SCP is designed entirely within the *Indian Act* framework, the colonial construct which led to dispossession of their lands and monies in the first place. As noted in Section 3.4 Alignment with TRC *Calls to Action* and the United Nations Declaration on the Rights of Indigenous Peoples, there is no evidence that Indigenous customs, traditions, rules, and legal systems have been systemically incorporated in the specific claims policy and process.

The government's narrow interpretation of "value for money" as a measure of success was identified as a barrier to justice, fairness and transparency, particularly given the SCP is a "process" (rather than "program") to address Canada's lawful (rather than "discretionary") obligations. Others observed that the federal government fails to understand the justice values from the perspective of First Nations, and simply providing financial compensation does not achieve justice. Capacity constraints (including funding) among First Nations, and excessive delays in settling claims (and resultant negative impacts on potential investment returns) were also cited as issues at odds with justice.

External and some internal respondents also emphasized the importance of the SCP contributing to developing a strong, respectful and trusting relationship between Canada and First Nations, as part of "Justice for Claimants" and irrespective of the actual final resolution (or not) of the claim.

Of the 329 claims received by CIRNAC and filed with the Minister during the evaluation period, over half are in the research and analysis, and negotiations stage. Ten percent have been settled through negotiations with the total federal share of compensation of $3,390,696,464.

By the close of the evaluation period, data provided for the evaluation shows that, for the entire program inventory, 1916 claims were received by CIRNAC (Table 10). As of March 31, 2020 8% were under assessment, 17% in negotiations, 53% concluded, and 23% closed.

Over the evaluation period, 170 claims (dating back to 2008) have been settled through negotiations (Table 11). Of these, 35% were claims in British Columbia, 21% Quebec, 15% Saskatchewan, 13% in Alberta, 12% Ontario, and 1% each in Nunavut, Manitoba, New Brunswick. While this general geographical distribution of claims is somewhat consistent from year-to-year, there can be substantial variation. For example, in 2018-19, 65% of claims settled occurred in Quebec while 10% were in British Columbia. Theses annual differences are almost certainly due to a combination of the date claims were received, their complexity and settlement approach (e.g., individual, bundled).

Over the evaluation period, of the 170 claims settled through negotiations, the total federal share of compensation was $3,390,696,464.16 (Table 12). The federal share was greatest in Alberta at 37%, followed by Ontario 25%, Saskatchewan 15%, British Columbia 14%, Quebec 5%, New Brunswick 2% and Nunavut 1%.

Table 10: The number and percentage of claims by status, for all claims (n=1916) in the program inventory as of March 31, 2020.

Under Assessment			In Negotiations	Concluded				Other		
RES	DOJ	LOS	ACT	SET	CAT	NLO	AR	LIT	SCT	FCL
93 (5%)	14 (1%)	43 (2%)	332 (17%)	545 (28%)	2 (<1%)	420 (22%)	33 (2%)	55 (3%)	62 (3%)	317 (17%)

Note: Percentage of claims at a particular status point is calculated as the proportion of all claims submitted to Specific Claims since late 1970s, and their corresponding status on March 31, 2021.

Legend: RES conducting research and analysis, DOJ preparing legal opinion, LOS legal opinion signed, ACT accepted for negotiations, SET settled through negotiations, CAT compensation awarded by the SC Tribunal implemented, NLO no lawful obligation found, AR claim resolved through administrative remedy, LIT claim in active litigation, SCT claim active at the SC Tribunal, and FCL file closed.

Source: Program time series statistics, Excel spreadsheet “Inventory on March 31 2020” (CIRNAC, 2020).

Table 11: Number of claims (dating back to 2008) settled, by province, between fiscal years 2013-14 and 2019-20.

Fiscal year claim settled	Number of claims settled	NT	BC	AB	SK	MB	ON	QC	NB
2013-14	15	-	4 (27%)	3 (20%)	4 (27%)	-	4 (27%)	-	-
2014-15	15	-	11 (73%)	-	-	-	-	-	1 (7%)
2015-16	11	-	7 (64%)	1 (9%)	-	1 (9%)	2 (18%)	-	-
2016-17	17	-	9 (53%)	2 (12%)	1 (6%)	-	4 (24%)	-	1 (6%)
2017-18	31	1 (3%)	11 (35%)	9 (29%)	2 (6%)	1 (3%)	4 (13%)	3 (10%)	-
2018-19	48	-	5 (10%)	2 (4%)	10 (21%)	-	-	31 (65%)	-
2019-20	33	-	13 (39%)	5 (15%)	8 (24%)	-	6 (18%)	1 (3%)	-
Total	**170**	**1 (1%)**	**60 (35%)**	**22 (13%)**	**25 (15%)**	**2 (1%)**	**20 (12%)**	**35 (21%)**	**2 (1%)**

Source: Program time series statistics, Excel spreadsheet “1. EVALUATION DATA – SCB input. Approved. DEC 20 2021” (CIRNAC, 2021b).

Table 12: Federal share of claims settled (for claims dating back to 2008), by province, between fiscal years 2013-14 and 2019-20.

Fiscal year claim settled	Federal share of claims settled	NT	BC	AB	SK	MB	ON	QC	NB
2013-14	$369,287,076.60		$4,380,858.00	$20,822,832.00	$99,209,713.60		$244,873,673.00		
2014-15	$35,972,152.64		$8,402,741.64						$27,569,411.00
2015-16	$27,431,213.46		$1,842,538.00	$650,307.62		$16,511,186.00	$8,427,181.84		
2016-17	$253,040,124.00		$31,623,271.00	$129,905,964.00	$257,847.00		$51,997,892.00		$39,255,150.00
2017-18	$1,279,145,551.00	$28,343,937.00	$213,968,401.00	$664,747,903.00	$177,420,727.00	$659,759.00	$161,709,227.00	$32,295,597.00	
2018-19	$627,047,325.73		$30,770,693.73	$281,186,917.00	$183,579,888.00			$131,509,827.00	
2019-20	$798,773,020.73		$173,968,379.00	$164,071,328.00	$58,525,423.73		$382,977,794.00	$19,230,096.00	
Total	**$3,390,696,464.16**	**$28,343,937.00 (1%)**	**$464,956,882.37 (14%)**	**$1,261,385,251.62 (37%)**	**$518,993,599.33 (15%)**	**$17,170,945.00 (1%)**	**$849,985,767.84 (25%)**	**$183,035,520.00 (5%)**	**$66,824,561.00 (2%)**

Source: Program time series statistics, Excel spreadsheet "1. EVALUATION DATA – SCB input. Approved. DEC 20 2021" (CIRNAC, 2021b).

The target to pay 100% of compensation within 45 days of the settlement agreeement signed by Canada was not met in 2014-15 and 2018-19. Over the entire evaluation period, performance fell slightly short of expectations at 96%.

The annual target for this indicator is that 100% of payments are made within the 45 day service standard, that is, the time elapsed from the date Canada signed the settlement agreement to the date payment is made.

The target was met in FY2013-14, FY2015-16, FY2016-17, FY2017-18 and FY2018-19; it was not met in FY2014-15 at 80% (n=12) or FY2019-20 at 90% (n=28) (Table 13 below).

Table 13: The number and percentage of payments made in accordance with negotiated settlement agreement, for the fiscal years 2013–14 to 2019–20.[69]

Fiscal year	Number of payments made	Number and percentage of payments made within 45 days	Average number of days to make a payment
2013–14	15	15 (100%)	16
2014–15	15	12 (80%)	23
2015–16	11	11 (100%)	31
2016–17	17	17 (100%)	30
2017–18	31	31 (100%)	16
2018–19	44	44 (100%)	11
2019–20	31	28 (90%)	21
Total	**164**	**158 (96%)**	**21**

Source: Program time series statistics, Excel spreadsheet “Tribunal Awards Implemented” (CIRNAC, 2020).

The average number of days to make a payment fluctuated from year-to-year, without a discernable pattern, from a low of 11 days in 2018-19 to a high of 32 days in 2015-16.

Over the evaluation period (2013-14 to 2019-20), performance did not quite meet expectations. Of the 164 settlement payments made during the evaluation period, 96% (n=158) were made within the 45 day service standard. The average number of days elapsed to make a payment was 21 days.

[69] Updated information about this table provided by the program is that the payments are counted equal to number of the claims settled, however that’s not always the case (i.e. for FY 2018-19 reported 44 payments, which counts 29 Kitigan Zibi claims as 29 payments, however there is only one payment made); to note this does not affect percentage of payments made within 45 days; It is correct that in FY 2014-15, 3 payments did not meet 45 days’ timeframe; It is also correct that in FY 2019/20, 1 payment was not made within 45 days (reports indicates 2 payments – however this was one payment for 2 claims) and this payment was delayed to COVID situation (move from the office to working from home), and new employee having issues connecting to the network.

3.14.5 Certainty for government, industry, and all Canadians

There was also disagreement between respondents internal and external to the federal government about the extent the SCP contributes to "certainty", however, respondents were in agreement that there needs to be a shift from liability concerns towards developing a strong, respectful and trusting relationship.

Respondents internal to the federal government generally agreed that settlement of claims inherently increased certainty (i.e., after a claim is settled, their title cannot be challenged and cannot be re-opened). Common views about the definition of certainty were expressed, for government certainty is viewed as a full release of government and a reduction in liabilities, while for industry certainty implies no challenge to title and land.

Respondents external to the federal government indicated that the SCP approach has not resulted in certainty, with delays in settlements only increasing uncertainty for all parties (including local governments and industry). Some stated that certainty should not be an outcome at all. Others felt that certainty does not consider the interests of the First Nations land rights and title, but focusses more on the interests and well-being of non-Indigenous Canadians. As with “Justice for Claimants”, respondents were in agreement that there needs to be a shift from liability concerns and towards developing a strong, respectful and trusting relationship.

3.14.6 Canada fulfills its long-standing obligations to First Nations arising out of treaties, and the administration of lands, band funds and other assets

Over the entire evaluation period, performance on meeting the legislated three year timeframe for determining whether claims will be accepted for negotiation was not met. The average assessment duration over the evaluation period was very close to the 3-year legislated time frame (exceeded by 7 days). However, the duration required to assess claims in more recent years has recently demonstrated a trending improvement.

The ultimate outcome of the SCP is “Canada fulfills its long-standing obligations to First Nations arising out of treaties, and the administration of lands, band funds and other assets”. The annual target for this indicator is *100% of submissions received will be reviewed within the legislated three-year time frame by CIRNAC to determine if the claim will be accepted for negotiation.* The evaluation determined that this target was not met during any fiscal year over the evaluation period.

Over the full seven year evaluation period, performance fell substantially short of expectations, with less than half (46% (n=115)) of assessments meeting the three year target.

While the target was not met in any of the earlier fiscal years from 2013-14, 2014-15 and 2016-17 (50, 12 and 5% respectively), performance increased substantially during 2017-18 and 2018-19 (93 and 94% respectively). The duration required to assess claims has followed a similar pattern, with the earlier years (2013-14, 2014-15 and 2016-17) requiring a longer period (3.1, 3.7 and 3.7 years respectively) as compared to the later years (2017-18 and 2018-19) requiring a substantially shorter period (2.1 and 2.6 years respectively). The average assessment duration

over the evaluation period was very close to the 3-year legislated time frame (exceeded by 7 days).

SCB was afforded the opportunity to review this data technical report, and on several occasions, the data tables contained in this report. Based on SCB's analysis of the same dataset, the program made several updates to Table 14 that differed from the evaluation team's analysis—the table indicates these in red text—and are discussed further below:

- In 2013-14, the SCB reported 71% of claims were assessed within the three year time legislated time frame. The evaluation team found that 7 of these claims required more than three years (by 50 days total)—resulting in only 50% of claims assessed within the three-year time legislated time frame. The program overreported performance by 21%.
- In 2014-15, the SCB reported 32% of claims were assessed within the three year time legislated time frame. The evaluation team found that 8 of these claims required more than three years (by 57 days total)—resulting in only 12% of claims assessed within the three-year time legislated time frame. The program overreported performance by 20%.
- In 2016-17, the SCB reported 48% of claims were assessed within the three year time legislated time frame. The evaluation team found that three of these claims required more than three years (by 47 days total)—resulting in only 40% of claims assessed within the three-year time legislated time frame. The program overreported performance by 8%.
- Across the entire evaluation period, the SCB reported 53% of claims were assessed within the three-year time legislated time frame. The evaluation team found that 18 of these claims required more than three years (by 154 days total)—resulting in only 46% of claims assessed within the three year time legislated time frame. The program overreported performance by 7%.

The source of the discrepancy is due to SCB's rounding the number of years required for assessment to the nearest 1/10th year. While the overestimate of performance is relatively modest, between 2 and 18 days per claim, the legislated requirement is three years.

Table 14: The number and percentage of claims assessed within the legislated 3-year time frame, for claims filed with the Minister between fiscal years 2013-14 and 2019-20 for which the 3-year time frame has elapsed.

Fiscal year filed with the Minister	Number of claims filed with the Minister	Number of claims filed included in the analysis**	Number and percentage of claims assessed	Duration of assessment (years)								Total number and percentage of claims assessed within 3 years		Average assessment duration (years)
				>3 years		2-3 years		1-2 years		<1 years				
				EPMRB Analysis	SCB Analysis	EPMRB Analysis	SCB Analysis	EPMRB Analysis	SCB Analysis	EPMRB Analysis	SCB Analysis	EPMRB Analysis	SCB Analysis	
2013-14	34	34	33 (97%)	*16 (47%)	*9 (26%) (underreporting performance of 7 claims by 50 days)	*16 (47%)	*23 (68%) (overreporting performance of 7 claims by 50 days)	1 (3%)	1 (3%)	-	-	*17 (50%)	*24 (71%) (overreporting performance of 7 claims by 50 days)	3.1
2014-15	41	41	35 (85%)	*30 (73%)	*22 (54%) (underreporting performance of 8 claims by 57 days)	*5 (12%)	*13 (32%) (overreporting performance of 8 claims by 57 days)	-	-	-	-	*5 (12%)	*13 (32%) (overreporting performance of 8 claims by 57 days)	3.7
2015-16	66	56	54 (96%)	51 (91%)	51 (91%)	1 (2%)	1 (2%)	1 (2%)	1 (2%)	1 (2%)	1 (2%)	3 (5%)	3 (5%)	3.7
2016-17	40	40	39 (98%)	*23 (58%)	*20 (50%) (underreporting performance of 3 claims by 47 days)	*10 (25%)	*13 (33%) (overreporting performance of 3 claims by 47 days)	1 (3%)	1 (3%)	5 (13%)	5 (13%)	*16 (40%)	*19 (48%) (overreporting performance of 3 claims by 47 days)	2.8
2017-18	47	46	45 (98%)	2 (4%)	2 (4%)	24 (52%)	24 (52%)	12 (26%)	12 (26%)	7 (15%)	7 (15%)	43 (93%)	43 (93%)	2.1
2018-19	55	32	31 (97%)	1 (3%)	1 (3%)	25 (78%)	25 (78%)	1 (3%)	1 (3%)	4 (13%)	4 (13%)	30 (94%)	30 (94%)	2.6
2019-20	49	1	1 (100%)	-	-	-	-	1 (100%)	1 (100%)	-	-	1 (100%)	1 (100%)	1.6
Total	**332**	**250**	**238 (95%)**	***123 (50%)**	**105 (42%) (underreporting performance of 18 claims by 154 days)***	***81 (29%)**	***99 (40%) (overreporting performance of 18 claims by 154 days)**	**17 (7%)**	**17 (7%)**	**17 (7%)**	**17 (7%)**	***115 (46%)**	***133 (53%) (overreporting performance of 18 claims by 154 days)**	**3 years and 7 days**

Source: Program time series statistics, Excel spreadsheet "Excel spreadsheet "1. EVALUATION DATA – SCB input. Approved. DEC 20 2021" (CIRNAC, 2021b).

Notes: Percentage of claims assessed within the legislated 3-year time frame is calculated as the proportion of the total number of claims filed with the Minister.
* Asterisk indicates discrepancies in EPMRB and SCB analysis of the same dataset, as discussed in the text.
**The total number of claims filed with the Minister was corrected to support the analysis, as follows. For 2015-16, the SCB requested ten claims be excluded from the analysis. For 2017-18, the SCB requested 1 claim be excluded from the analysis. For 2018-19, the SCB requested 1 claim be excluded from the analysis. In the same year, the 3-year time frame had not elapsed for 23 claims and so these were excluded from the analysis—however, 1 of these claims had already been assessed and was included in the analysis. For 2019-20, the 3-year time frame had not elapsed for any of the claims and so these claims were excluded from the analysis—however, 1 of these claims had already been assessed and was included in the analysis.

3.14.7 Advance reconciliation between Canada and First Nations

> Respondents generally agreed that the SCP has the potential to advance reconcilliation however, its current design particularly as it relates to impartiality, fairness and transparency are major impediments.

Advancing reconciliation between Canada and First Nations links to the Departmental Result and Core responsibility "rights and self-determination" in which "past injustices are recognized and resolved".

Respondents external to the federal government expressed some skepticism about the extent to which the program has advanced reconciliation between Canada and First Nations. Some felt the SCP had the potential to do so, but as noted in Section 3.2: Alignment with Federal Roles and Responsibilities and Section 3.5: Impartiality and Fairness, the lack of impartiality and fairness (i.e., Canada in a conflict of interest position as "judge, jury and banker") remains a major impediment to reconciliation. Related issues raised by respondents include Canada's failure to fundamentally change policies and practices, positional and policy-driven conduct in negotiations, narrow legalistic interpretations, inadequate program transparency, and poor resourcing of First Nations to participate in the specific claims process on equal footing with Canada.

Internal respondents generally agreed that the SCP does support reconciliation between Canada and First Nations, although there were differences in opinion regarding degree and effectiveness. The government's acknowledgement of and financial compensation for the wrongs of the past, and building strong, respectful and trusting relationships are regarded as contributing factors. Respondents stressed that the SCP alone does not fully respond to UNDRIP's redress components or the TRC *Calls to Action* with other respondents observing that additional redress is required to compensate for the impact of breaches of Crown obligations on the social fabric of First Nations (e.g., Indigenous Ways of Knowing, loss of identity, traditional land use activities, transmission of language and culture).

External respondents raised many of the same barriers to reconciliation as internal respondents, adding that the SCP is, by nature, too pragmatic, legalistic and adversarial, and the objectives of reconciliation and defending the Crown are in conflict, leading to First Nations mistrust of the process.

The chronic resource constraints within the SCB (see Section 3.10: Capacity and Resources) have impacted the SCB's ability to meet expectations (e.g., legislated timeline targets). While issuing explicit apologies or acknowledgements as part of settlement agreements was recommended, respondents noted that these are currently prohibited.

4. Efficiency and Economy

4.1 Program Budget and Expenditures

Statement of key finding.

As shown in Table 2 (page 9) Actual program expenditures by fiscal year, over the 7-year period covered by the evaluation, SCP expenditures increased and have been increasing year over year

(noting, exceptionally, FY13-14 and FY17-18 Vote 10 spending was far greater than in other years).

4.2 Efficiency of Management and Delivery

First Nation respondents agreed that negotiated resolutions are the most cost-effective as well as preferred means to resolve specific claims within the SCP and suggested that greater efficiencies could be realized through more collaboration (e.g. joint research) and consistency in the approach to different classes of claims.

Many of the same issues raised earlier in this report were also noted by respondents in context of this section—these are detailed in sections 3.5: Impartiality and Fairness, 3.6: Accountability and Transparency, 3.7: Rapid Processing, and 3.10: Capacity and Resources.

SCB respondents generally agreed that the SCP is well-managed, carried out efficiently and economically, with ongoing efforts to identify program improvements. As noted in Section 3.10: Capacity and Resources, there was widespread recognition that the program has been operating under chronic resource constraints, yet much has been achieved, and more could be accomplished if adequately resourced. ISC regional respondents, pointing to the inadequacy of resourcing for policy, research, and appraisal and indicated that there is room for improvements to be made concerning some areas of the program

Respondents external to the federal government identified many of the same issues detailed earlier in this report, highlighting the short-sighted focus on the program's operations and management budget at the expense of the resources realistically required to fairly resolve the portfolio of outstanding claims (including compensation). Respondents felt that there has not been an equitable distribution of resources to support the SCP, and the impact of under-resourcing, including activities that interface with the SCB (Negotiation Support Funding) ,were felt strongly. First Nation respondents agreed that negotiated resolutions are the most cost-effective as well as their preferred means to resolve specific claims within the *Specific Claims Policy*, and suggested that greater efficiencies could be realized through more collaboration (e.g., joint research) and consistency in the approach to different classes of claims.

4.3 Internal and External Factors

4.3.1 Department of Justice (DOJ) Legal Counsel

The DOJ provides client services to CIRNAC and practical solutions in support of the program. However, some respondents felt that the DOJ's understanding of the government's policy direction is uneven and interpretation of the law too rigid.

Several observations about the DOJ raised earlier in this report were also noted by respondents in context of this section, these are detailed in sections 3.5: Impartiality and Fairness, 3.9: Program Delivery and Governance, and 3.10: Capacity and Resources.

There is a general view among respondents external to the federal government that the primary role of the DOJ is to minimize Canada's legal liabilities at the cost of fairly resolving claims. Internal respondents recognized that the DOJ provides competent client services to CIRNAC and practical solutions in support of the program. Some were of the view that the DOJ's understanding of the government's policy direction might sometimes be uneven and as such, the interpretation of the law too rigid.

4.3.2 Tribunal Capacity

> The capacity of the Tribunal is widely regarded as stretched, a view that appears to be substanciated by performance data. Of the 86 claims filed with the Tribunal over the evaluation period, 87% remain to be heard.

Several observations about the Tribunal raised earlier in this report were also noted by respondents in context of this section, these are detailed in sections 3.5: Impartiality and Fairness, 3.7: Rapid Processing, 3.9: Program Delivery and Governance, and 3.14: Achievement of Outcomes.

Views about the Tribunal and its capacity were mixed. External respondents feel the Tribunal is an important alternative to the mainstream specific claims process, having a broader appreciation of historical wrongs (i.e., rather than simply narrow economic impacts), and considering reconciliation in its decisions. Some SCB respondents tended to view the Tribunal as unfair and adversarial, operating outside its scope, and in effect serving as an advocacy group for First Nations. Others observed that the Tribunal is a very effective part of the program and functions well.

The capacity of the Tribunal is widely regarded as stretched, a view that appears to be substantiated by performance data, of the 86 claims filed with the Tribunal over the evaluation period, 87% remain to be heard (Table 9)).

4.3.3 CIRNAC Expertise and Staff Complement

> SCB staff have reportedly been under serious pressure with excessive workloads. The transfer of the SCP from the Treaties and Aboriginal Government sector to Resolution and Partnerships sector has been widely supported.

Many of the same issues raised earlier in this report were also noted by respondents in context of this section, these are detailed in sections 3.5: Impartiality and Fairness, 3.6: Accountability and Transparency, 3.9: Program Delivery and Governance, 3.10: Capacity and Resources, and 4.2: Efficiency of Management and Delivery.

The SCB's staff complement was a commonly raised issue. According to some SCB respondents, the branch is staffed to manage about one-third of the claims currently in the inventory. Despite strong expertise and deep dedication among staff, as well as efforts to streamline processes and increase efficiency, staff have been reportedly under serious pressure, with excessive workloads

resulting in high rates of absenteeism and attrition (e.g., due to stress).[70] This has led, for example, to high turnover of negotiators with downstream impacts on negotiations, including delays and changes in tone (since negotiation practices, style and creativity are personality dependent). The lack of junior staff was identified as a particular need, although the SCB had benefitted from co-op students moving into junior positions.

The recent transfer of the SCP from Treaties and Aboriginal Government to Resolution and Individual Affairs has been widely supported by SCB respondents.

4.3.4 Procurement

> The procurement process was characterized as time consuming and onerous by some respondents. The retention of experts to support joint First Nation–Canada studies was identified as a concern.

The procurement process was characterized as time consuming and onerous by some respondents. The recent transfer of the SCP to Resolution and Partnerships Sector as well as the establishment of the Business Management Unit within SCB was identified as a positive step in this regard, and seen to be helping reduce contracting turnaround time, although the process was still viewed as cumbersome. The standing offer process was described as particularly effective, although month-long timelines were required to complete contracts.

The retention of experts to support joint First Nation–Canada studies was identified as a concern. SCB respondents noted that while First Nations favour their own experts, they are viewed by SCB respondents to be more costly than those the branch can retain.

4.3.5 Funding

> First Nations respondents identified many issues with funding including its sufficiency; consistency and predictability; complexity and the burdensome process required to apply for and administer these funds; and a need for more information to be made accessible on available funding to support their participation in the entire specific claims process.

Funding issues have been described earlier in this report, these are detailed in sections 3.9: Program Delivery and Governance, and 3.10: Capacity and Resources.

First Nations respondents identified many issues with funding, insufficient (e.g., upper limits do not recognize the complexity of some claims) and administratively complex and burdensome processes (e.g., loan funding[71]). While some respondents external to the federal government welcomed the announcement of multi-year research funding with greater flexibility in the allocation of these funds, and increased negotiations support with more flexibility in cost categories and

[70] The SCB has reportedly studied the human resources capacity in the negotiations team. The evaluation team requested the report, but it was not forthcoming.

[71] Loan funding is outside of the SCP managed by SCB

redistribution of funds, internal respondents noted that few First Nations were taking advantage of these, possibly due to a lack of awareness. As noted earlier in this report, external respondents commonly noted a need for more information to be made accessible on the available funding to support their participation in the specific claims process.

In addition to those presented earlier in this report, respondents identified the following improvements to funding that were made during the evaluation period:

- reinstatement of the Claims Research Unit-Negotiations Support Directors Funding Services Working Group;
- the development of a suite of proxy approaches to determine monetary losses (e.g., trapping, timber and mineral losses) ;
- increased capacity within the finance team to include staff specialized in specific claims ;
- more transparency in funding decisions; and
- improvements made to the Negotiation Costs Funding Guidelines by the JTWG development of Specific Claims Research Funding Guidelines by the National Claims Research Directors

5. Conclusions and Recommendations

5.1 Conclusions

5.1.1 Relevance: Continued Need and Alignment with Federal Priorities, Roles and Responsibilities, TRC *Calls to Action*, and UNDRIP.

The need to resolve specific claims is a priority for First Nations and necessary for Canada to honour its obligations to right these past wrongs. It is expected that the need to resolve specific claims will continue on a long-term basis, particularly as First Nations reported inventories of unsubmitted claims, and new research is revealing additional historic and more contemporary breaches. This continued need will drive the requirement for an impartial, fair, transparent and efficient policy and process for resolving specific claims through negotiated settlements and other alternatives to the courts. In the absence of the specific claims policy and process, claims litigation would be the primary pathway to resolution, which is not the preferred approach as it is more costly and time consuming, eroding relationships with First Nations, and ultimately reconciliation between Canada and First Nations.

There will be continued expectations that the specific claims policy and process will be consistent with, aligned to, and supportive of the priorities and plans of First Nations, Canada's obligations to right past wrongs, and the federal government's priorities for renewed, nation-to-nation, government-to-government relationships with First Nations, reconciliation, commitments to implement the TRC *Calls to Action*, and in compliance with UNDRIP.

Retaining a policy and process to resolve specific claims is as relevant today as it has been over the evaluation period and will continue to be so in the future. Despite incremental federal reforms, FNs, their representatives, oversight bodies and other observers have repeatedly made the same criticisms that the SCP is not meeting needs and expectations and that transformational change is required to address these longstanding issues. On-going improvements to the program, whether through incremental change or more significant reform, will need to be guided by the UNDRIP and by the need to advance reconciliation in Canada.

5.1.2 Design and Delivery: Policy and Process

Justice at Last was announced in 2007, well before the start of the evaluation period. The Specific Claims Action Plan was intended to introduce “major reforms that will fundamentally alter the way specific claims are handled”, and by “building on the lessons learned from years of study and past consultations and responding to major concerns expressed by First Nations” to “ensure impartiality and fairness, greater transparency, faster processing and better access to mediation.”[72] While the four pillars of *Justice at Last* (i.e., impartiality and fairness, accountability and transparency, rapid processing, and access to mediation) have remained important, progress has been mixed (reflecting the priorities of the government of the day). While CIRNAC is to be commended for the structural and operational improvements made to the SCP over the evaluation period, the issues *Justice at Last* was intended to address have remained. This again points to the need for transformational change to address these longstanding foundational design and delivery issue discussed in sections 3.5 (impartiality and fairness), 3.6 Accountability and Transparency, 3.7 (rapid processing), 3.8 (mediation).

[72]Indian and Northern Affairs Canada, *Specific Claims: Justice At Last* (Ottawa, 2007).

In terms of impartiality and fairness, and accountability and transparency, respondents, particularly those external to the federal government, pointed to UNDRIP Article 27 calling for a "fair, independent, impartial, open and transparent process" to be implemented in conjunction with the concerned Indigenous people.[73] Introduction of the Tribunal and incremental federal reforms has marginally improved impartiality and fairness of the existing process, however it remains out of compliance with Article 27. First Nations expect a fully independent specific claims process. For example, an independent process was the subject of AFN Resolution 91/2017, [74] and the AFN-led engagement process in 2019 which led to the December 2020 AFN Resolution 09/2020 (which makes explicit connection to UNDRIP) passed at the AFN's annual General Assembly.[75]

The case for an independent claims resolution process has indeed been made repeatedly over the past four decades. As the Minister of INAC observed in *Justice at Last*, "tinkering around the edges of the process is not enough". This was the basis for the passage of *the Specific Claims Tribunal Act* and creation of the Tribunal in 2009, which established legislated structure to the process and an independent judicial body to render binding decisions on claims validity and compensation. Despite these changes, continued calls for additional measures to further increase independence in the process, guided by the government's continued commitment to reconciliation, the TRC *Calls to Action*, and UNDRIP. Public expectations are high, and calls for further transformational change in the specific claims policy and process, in partnership with First Nations, can be expected to continue.

The case for an independent claims resolution process has indeed been made repeatedly over the past four decades. As the Minister of INAC observed in *Justice at Last*, "tinkering around the edges of the process is not enough".[76] This view is as valid today as it was then, particularly in light of the government's continued commitment to reconciliation, the TRC *Calls to Action*, and recently introduced legislation to implement UNDRIP. Public expectations are high, and calls for transformational change in the specific claims policy and process, in partnership with First Nations, can only be expected to grow louder.

5.1.3 Design and Delivery: Structure and Operations

Program delivery and governance are very much government-centric. For example, *The Specific Claims Policy and Process Guide* focuses on the federal government's discharge of its lawful obligations.[77] In 1982, the federal government released *Outstanding Business: A Native Claims Policy*, which set out the policy on specific claims and guidelines for the assessment of claims and negotiations. The guiding principles of the *Specific Claims Policy* remained unchanged from those articulated in *Outstanding Business: A Native Claims Policy*, reflecting outdated perspectives of the early 1980s, such as the role of the federal government in the claims resolution process (i.e., an inherent conflict of interest position as "judge, jury and banker"). *The Specific Claims Policy and Process Guide* was not jointly developed with First Nations, and does not reflect principles related to fairness, impartiality, transparency, independence, collaboration, or upholding the honour of the Crown.

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[73]United Nations, United Nations Declaration on the Rights of Indigenous Peoples (New York, 2007).
[74]Assembly of First Nations, Resolution no. 91/2017: Support for a Fully Independent Specific Claims Process (Ottawa, 2017).
[75]Assembly of First Nations, Resolution no. 09/2020: Jointly Develop a Fully Independent Specific Claims Process (Ottawa, 2020).
[76]Indian and Northern Affairs Canada, *Specific Claims: Justice At Last* (Ottawa, 2007).
[77] Indian and Northern Affairs Canada, *The Specific Claims Policy and Process Guide.* Gatineau, 2010. https://www.rcaanc-cirnac.gc.ca/eng/1100100030501/1581288705629

The resourcing of the SCP appears to have hindered the ability of First Nations to develop and submit claims, and participate in negotiations, and the SCB's ability to meet expectations, such as legislated timeline targets. For First Nations, adequacy of resourcing (including research funding outside the purview of the SCB) is the primary driver for prospective claims entering the claims resolution process. Under-resourcing has led to a substantial backlog of unsubmitted claims (including additional historic and more contemporary breaches being revealed through new research). Under-resourcing has also led to a two-tier system of "have and have nots." Those First Nations with sufficient internal capacity are able to develop and submit claims, and advance them through the specific claims process to resolution, while those First Nations that do not are reliant on federal contributions and loans, which have additional administrative and funding restrictions.

For the SCB, according to interviews with program representatives, staff have been faced with excessive workloads, resulting in high rates of absenteeism and attrition.

Given the preceding conclusions, and the context of an outdated policy and resource constraints, the extent of program effectiveness and efficiency is not unexpected. From a narrow operational sense (activities and immediate outcomes), program performance has been good, largely attributable to the expertise and deep dedication of staff. It has continually explored different ways to increase efficiencies (e.g., joint research, bundling claims, global settlements and scaling of these best practices) and strived to ensure a positive experience for First Nations during the claims process, and there have been pockets of success. The SCP has met some of its stated targets, although the three-year legislated time has only been met in less than half the claims filed with the Minister over the evaluation period, which has contributed to the eroding relationships between Canada and First Nations. From a broader perspective (intermediate and ultimate outcomes), the program has not performed well. The confines of the current policy and process, its governance and structure, and the resources provided are the likely reasons.

The Government of Canada is committed to renewing its relationship with Indigenous peoples based on recognition of rights, respect, co-operation and partnership. Settling specific claims is one of many steps on the journey to reconciliation with First Nations and helps create a better future for everyone. Specific claim settlements help to right past wrongs, renew relationships and advance reconciliation in a way that respects the rights of First Nations and all Canadians.

The Government of Canada has a policy and process in place for addressing specific claims through negotiations with First Nations. However, First Nations and others (including the Auditor General of Canada) have called for major changes to the way these claims are handled by the government. Canada has heard these concerns and is working closely with First Nation partners to respond to these calls and overhaul its specific claims process. [78]

5.1.4 Design and Delivery: Performance Measurement

There are challenges with the program framework, including misalignment of indicators with outcomes, the reliance on contextual indicators that do not allow for targets and a fairly simplistic reliance on volumes without accounting for fiscal year activities.

[78] https://rcaanc-cirnac.gc.ca/eng/1100100030291/1539617582343

Both internal and external respondents recognized many of these and other (i.e., unrealistic targets) are deficiencies with the program performance framework. SCB officials indicated that some of these were already being addressed through an internal review process.

With respect to monitoring, the program uses a simple output volume calculation to monitor performance. This output volume approach looks at all claims in the SCB portfolio in a particular year, and describes how many are at various stages in their life cycle, regardless of when they were submitted to the Minister. Given that the federal government plans and budgets on a fiscal year basis, that claims are managed through different lifecycle stages (with important, including legislated, performance standards), and many of the program indicators are qualified "by year and trend," the evaluation team expected that the program would use cohort analysis to help provide insight into the performance of the claims process. Instead, the program relies on simple volume calculations, which does not fully account for the lifecycle of claim.

In contrast, a cohort approach which was utilized in this evaluation looks at all claims submitted to the Minister in a particular year, and describes how these claims have moved through their life cycle stages in that and subsequent years. The program should use a cohort analysis approach because it would provide additional insight into the performance of the claims process, identify where efficiency improvements could be warranted, and help to manage the program.

Notwithstanding the issues with monitoring the lifecycle of claims addition, the evaluation team and SCB worked closely together to address challenges in determining the best method to locate, calculate, and analyze the data for nine indicators that are part of the program's performance measurement framework.

5.2 Recommendations

The findings and conclusions from this evaluation have led to the following recommendations:

It is recommended that CIRNAC:

3. Co-develop with First Nations partners a modern and transformative specific claims policy and process, that:

    - Better aligns to Government of Canada and Departmental mandates and priorities and reflects UNDRIP and the TRC *Calls to Action*, including principles of and upholding the honour of the Crown.
    - Establishes options for implementation, and a realistic and sufficiently resourced implementation plan, that can lead to more fairness, impartiality, transparency, independence and collaboration in the claims process.
    - Ensures that Indigenous customs, rules, and legal systems are systemically incorporated into the specific claims policy and process.

4. In cooperation with First Nations partners, continue its current improvement initiatives related to delivery, effectiveness and efficiency of the program, including:

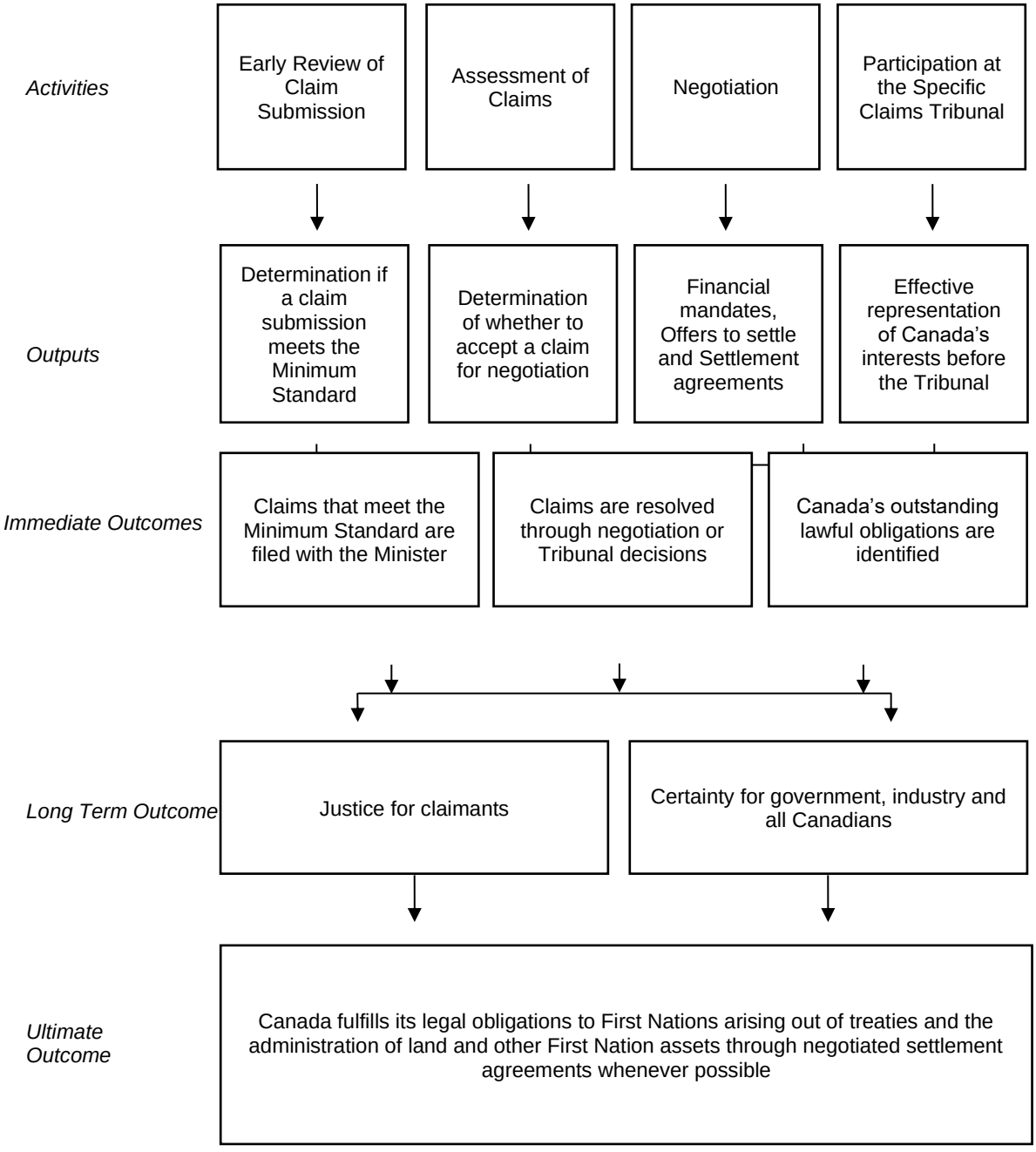
    - Communications - improving the clarity and opportunities for transfer of communication from SCB to First Nations; and, within the department between the directorates with the SCB and other areas that interface with the SCB (Pre-research

Negotiations support branch in Treaties and Aboriginal Government and regions (ISC)).

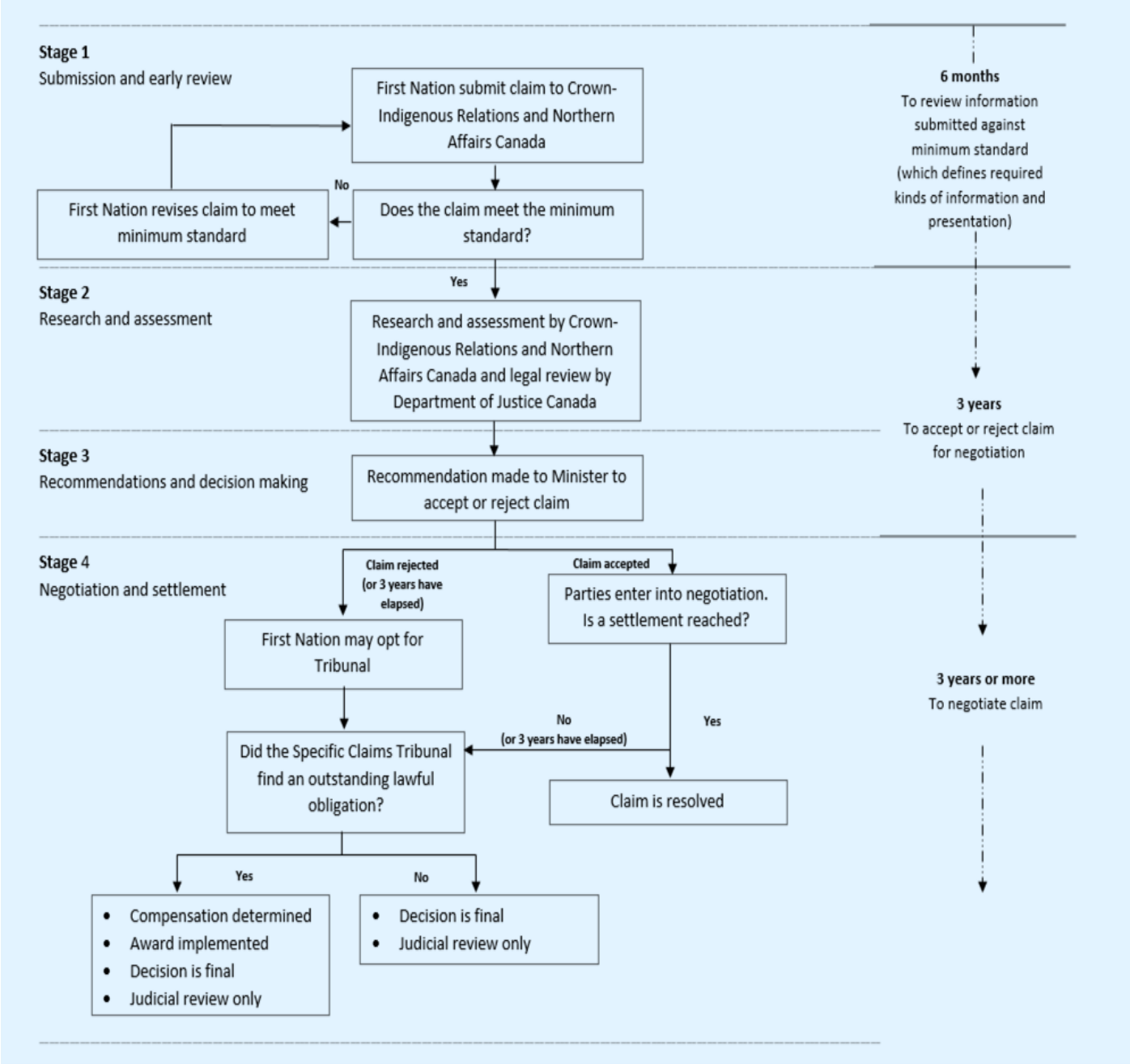
- Performance Measurement – improving the data collection approach with more accurate and meaningful indicators and articulation of longer term outcomes, in consultation with First Nations.

Appendix A - Logic Model

Note: As of the writing of this report, program confirmed that the SCB is currently working with the Performance team to update the logic model.



Appendix B - The Specific Claims Process



Source: Office of the Auditor General of Canada, *Report 6—First Nations Specific Claims — Indigenous and Northern Affairs Canada*. Ottawa, 2016. https://www.oag-bvg.gc.ca/internet/English/att__e_41846.html.