

Results at a Glance

Evaluation of the Specific Claims Assessment and Settlement Process

Introduction

The evaluation examined the Specific Claims Assessment and Settlement Process (SCP). The SCP 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 filed by First Nations against the Government of Canada for failing to discharge its lawful obligations with respect to 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.

Program Resources

The program consists of two funding streams:

- Grants to First Nations to settle specific claims negotiated by Canada and/or awarded by the Specific Claims Tribunal; and,
- Contributions to support First Nations in the research and development, negotiation and Specific Claims Tribunal litigation of their claims.

Over the evaluation period (fiscal year 13-14 to fiscal year 19-20), program expenditures were approximately \$3.7 billion.

Expected Results and Outcomes

The SCP is expected to contribute to the following long-term outcomes: Justice for Claimants; and Certainty for Government, Industry and all Canadians. These 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".

What the evaluation found

- Resolution of specific claims remains a clear priority for First Nations, and Canada has a continued obligation to right past wrongs.
- The SCP has the potential to advance reconciliation, however, aspects of its current design as it relates to impartiality, fairness and transparency should be reviewed.
- Greater collaboration, communication and information sharing has led to improvements in accountability and transparency. A continued focus on improving these areas is still needed.
- Capacity and resource constraints have impacted the SCB's ability to meet expectations such as legislated timeline targets 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.
- 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 significant improvement and the target was met.

Recommendations and Responses

It is recommended that CIRNAC:

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 the United Nations Declaration on the Rights of Indigenous Peoples 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.**

Response: 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 and further operational improvements.

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

- a) Communications - improving the clarity and opportunities for the 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).**
- b) Performance Measurement – improving the data collection approach with more accurate and meaningful indicators and articulation of longer-term outcomes, in consultation with First Nations.**

Response: 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 continue to work with the CIRNAC-AFN Joint Technical Working Group to identify issues requiring attention and to implement operational improvements, including: the process for intaking and processing claims; improving communications; and updating the performance measurement approach.

About this evaluation

The evaluation focused on CIRNAC's implementation of the Specific Claims Assessment and Settlement Process from April 1, 2013 to March 31, 2020. An Evaluation Working Group, consisting of the CIRNAC evaluation team, SCB program representatives, and representatives from the AFN and the Union of British Columbia Indian Chiefs, provided feedback on all phases of the evaluation. The Department of Justice's Specific Claims Legal Services Unit and Treaties and Aboriginal Government Sector's Negotiation Support Directorate were engaged in the process as well given their roles in the process.

Findings are based on the analysis of data from a document review; a review of SCP performance and financial data; 51 key Informant interviews; and, eight case studies, which included a review of documents and 20 key informant interviews. The evaluation considered, in its analysis, other activities undertaken by CIRNAC or other departments external to CIRNAC that also contribute to the overall Specific Claims Process, while not explicitly evaluating these.