



Responsible Land Governance: Towards an Evidence Based Approach

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY
WASHINGTON DC, MARCH 20-24, 2017



RECONCILING INDIGENOUS LANDS WITH THE HONOUR OF THE CROWN: CERTAINTY IN BOUNDS, SECURITY IN PARCELS & EQUITY IN RIGHTS

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Abstract

Circumstances are coalescing in Canada to reconcile Indigenous peoples and the Crown. The courts have set out that Indigenous lands can only be minimally impaired; that Indigenous peoples must be consulted over resource projects on abutting Crown lands; that the Honour of the Crown pervades all dealings with Indigenous lands. This is reflected in the resolution of specific land claims regarding the spatial extent, location and boundaries of parcels of Indigenous lands. Three case studies of First Nation Reserves (Mississauga First Nation, Kitselas First Nation, and Williams Lake First Nation) are evidence of successful institutional resolution - of incorrect boundaries; of incorrect location; of unauthorized encroachment. Resolution by way of acknowledgement of past grievances and recognition of land rights, as illustrated in the case studies is necessary to create equality between Indigenous and non-Indigenous communities.

Key Words:

Indigenous land rights, reconciliation, equity, Honour of the Crown

This paper does not necessarily reflect the views of Natural Resources Canada or the Government of Canada.



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Context

Circumstances have coalesced in Canada to advance reconciliation between Indigenous peoples and the Crown, such that all might prosper. This is particularly true in securing land rights of Indigenous peoples, specifically First Nations, some 400,000 of whom live in 3048 First Nation communities (Reserves). Reconciliation is defined as a way to establish and maintain a mutually respectful relationship between Indigenous and non-Indigenous peoples. (The Truth and Reconciliation Commission of Canada, 2015). Section 35(1) of the *Constitution Act 1982*, states “the existing Aboriginal and treaty rights of the Aboriginal peoples of Canada are hereby recognized and affirmed.” The purpose of this section was to recognize and affirm treaty rights, wherein 1984, the Supreme Court of Canada acknowledged that Canada has a fiduciary relationship towards First Nations, specifically in regards to Reserve lands (Guerin v. The Queen, 1984).

The *Royal Proclamation of 1763* stated that the British Crown pledged to honour and protect Indigenous peoples. This document recognized the existence of Aboriginal title, the inherent Aboriginal right to land or territory, during European settlement of what is now Canada. The duty to protect Indigenous peoples is incumbent on the Crown when it has “knowledge, real or constructive, of the potential existence of the Aboriginal right or title and contemplates conduct that might adversely affect it” (*Haida Nation v. British Columbia (Minister of Forests)*, 2004). Canadian courts have ruled on three important principles with respect to Indigenous lands. Firstly, Indigenous lands can only be minimally impaired if land is to be taken in the public interest (*Osoyoos Indian Band v. Oliver (Town)*, 2001) in that the Crown must only “expropriate or grant the minimum interest required in order to fulfil that public purpose”. Secondly, there must be meaningful consultation in that “the Crown’s duty to consult and accommodate Aboriginal peoples, even prior to proof of asserted Aboriginal right and title, is grounded in the principle of the honour of the Crown” (*Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)*, 2004). Thirdly, the Honour of the Crown pervades all dealings with Indigenous lands (*Beckman v. Little Salmon/Carmacks First Nation*, 2010).

In 1991, the *Royal Commission of Aboriginal People* was established and mandated to “investigate the evolution of the relationship among Indigenous peoples (Indian, Inuit and Metis), the Canadian government, and Canadian society as a whole” (Royal Commission on Aboriginal Peoples, 1996, p. 11). In 2008, the United Nations *Declaration on the Rights of Indigenous Peoples* advanced support for the creation of a framework for reconciliation. In 2015, the *Truth and Reconciliation Commission of Canada* brought forth *Calls to Action* which highlighted steps that are needed for reconciliation to occur, using



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many points from the 2008 United Nations *Declaration*. Each of these documents identified important actions to be taken in regards to the recognition and resolution of past wrongs with respect to Indigenous lands in order to create equality. Statements in the 2015 *Speech from the Throne* (Making Real Change Happen, December 2015), and *Calls to Action* by the Truth and Reconciliation Commission (2015) were meant as a way to “renew the relationship between Canada and Indigenous peoples that is based on recognition of rights, respect, co-operation and partnership” (Making Real Change Happen, p.6. 2015).

This can be achieved in part via rigorous and meaningful consultation with Indigenous peoples (Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage), 2005) and the resolution of land claims.

Given this trend to reconcile Indigenous people and land rights, this paper will examine three Specific Claims from First Nations regarding the location and extent of their lands. Using case studies, this paper will illustrate the importance of resolving Specific Claims to help aid in reconciliation by acknowledging past grievances against First Nation communities and resolving land claims to create equality between Indigenous and non-Indigenous communities.

Specific Claims

Beginning in the 1970's, Canada instituted policies to describe categories of Indigenous claims and outlined measures in how to deal with claims that were submitted (Butt & Hurley, 2006). Specific Claims are grievances over Canada's alleged failures to discharge specific obligations to First Nations (Butt & Hurley, 2006). These claims arise from the alleged non-fulfilment of Treaties and other lawful obligations, or the improper administration of lands and other assets under the *Indian Act* or formal agreements. As stated by Lombard (2016, p.205), “from 1927 to 1951, the *Indian Act* prohibited the use of Band funds to sue the government resulting in claims by First Nations that Canada was failing to respect its commitments were largely ignored”. Today, Canada is honour-bound to recognize treaty-obligations and must attempt to resolve Specific Claims. Negotiations of past grievances are typically between the First Nation and the federal government. The status of specific claims is publically available through Indigenous and Northern Affairs Canada (INAC). Over 1700 Specific Claims have been filed against Canada since 1973. These claims are reviewed and categorized by claim status (Table 1).

Table 1: Status and total number of Specific Claims as documented by INAC



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Claims submitted by a First Nation must first be researched by the First Nation and then analysed by the Department of Justice to determine if Canada has an outstanding lawful obligation. Once the legal analysis has been completed, INAC reviews the claim and determines whether to accept the claim for negotiation. If a claim is rejected, the First Nation may choose to submit the claim to the Specific Claims Tribunal or take their claim through the court system through active litigation.

The Specific Claims Tribunal

The Specific Claims Tribunal (SCT) is an independent body created by the Assembly of First Nations and the federal government. In 1974, the Office of Nation Claims was established within the federal government to review claims from First Nations (Lussier & Troniak, 2011). Specific Claims in Canada first piqued national interest in 1990. Demonstrations between First Nation members and provincial police at Oka, Quebec over a parcel of land led to military intervention and illustrated the need for an independent body to review Specific Claims. The outcome was a temporary Commission that conducted impartial inquiries on Specific Claims from 1991 through to 2009. The Indian Specific Claims Commission was authorized to review Specific Claims rejected by the government and to issue non-binding decisions. In 2003, the Commission called for the establishment of a new, independent body with the authority to make binding decisions. The SCT was established in 2008 with the aim of accelerating the resolution of Specific Claims in Canada. The SCT is comprised of Superior Court judges who have the authority to make binding decisions on claims and can award monetary compensation up to \$150 million (Lussier & Troniak, 2011). As of 2016, 87 claims have been filed with the Tribunal of which over one third originate from British Columbia.

Survey errors and Specific Claims

Survey errors account for more than 380 (approximately 22%) of the Specific Claims filed by First Nations and submitted to INAC (INAC, Status Report on Specific Claims, 2016). Survey errors are categorized into five different types (Table 2).

Table 2: Types of survey errors (as a subset of claims that have been settled through negotiation or through the SCT).



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The first type of survey error identified is incorrect location. This error occurred when a Reserve was established at a location contrary to a First Nation's wishes due to settler occupation, disagreements over land, or a misunderstanding or disregard to the location requested. The second type of error is incorrect area or exclusions. This occurred when a Reserve was surveyed with a smaller area than what was agreed to when the First Nation signed a Treaty or during discussions with a Crown agent. "Exclusions" occurred when a First Nation requested specific lands but the land were instead excluded. The third error identified is incorrect bounds. This occurred when the boundary of Reserve land was located contrary to a First Nations wishes. This error resulted in First Nation receiving less area than required for the population, cutting off access to hunting and fishing grounds, and limiting access to traditional territories. The fourth error identified is unsanctioned surrenders, roads, and easements. This occurred when lands were taken from a First Nation without consent or due process. This occurred during the expansion of rail lines through western Canada and the development of natural resources. The final survey error that was identified was encroachments. This occurred when Reserve lands were intruded upon by abutting fee simple parcels and owners.

The most prevalent survey errors were classified as "incorrect area or exclusion" at 31% and "unsanctioned surrenders/roads/easements" at 64%. In many cases, a Specific Claim is a compilation of numerous survey errors.

Case Studies

The following three case studies are claims from First Nations in Ontario and British Columbia. Each claim focuses on a different survey error- incorrect bounds, exclusions, and encroachment by settlers leading to the Reserve being placed in a location that differed from the First Nations wishes. These claims illustrate some of the ways First Nations can settle claims against Canada- via ad-hoc fact finder, through the SCT, and through federal courts.

Case study 1: Ad-Hoc Fact Finder: Mississauga First Nation- Mississagi 8

During the 1840's, petitions and complaints were sent to Governor General Lord Elgin following the opening of the Lake Huron region for mining operations from First Nations in northern Ontario regarding



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trespass by settlers into First Nation villages and hunting and fishing sites. Beginning in the 1840's, mineral deposits were found in the Lake Huron region and the area was to be surveyed and developed for mining operations. The Mississauga First Nation was a signatory to the Robinson-Huron Treaty of 1850 in Ontario and during the first survey of Mississagi 8; surveyors reduced the Reserve depth to approximately one-third the intended size by incorrectly surveying the northern boundary (Marlatt, 2004).

In 1848 and 1849, the Governor General sent two land Commissioners to investigate and discuss concerns that First Nations had with respect to the settler population. From these discussions, the Commissioners wrote the Vidal-Anderson Report (1849). On October 22, 1849, Chief Ponekeosh of the Mississauga First Nation discussed Reserve boundaries with the Commissioners (Surtees, 1986). The Vidal-Anderson report stated that the Mississauga First Nation wished for "a Reserve at Riviere au Borne to include the little lake and their farms" (Lambden, 1985, p. 12). The discussion and position of the First Nation was formalized in the Report and was to be used to inform the Robinson-Huron Treaty of 1850 (Surtees, 1986). In the Treaty, the wording for the reservation for the Mississauga First Nation echoed that of the Commissioners, stating that "the land between River Mississaga and the River Penewabecong, up to the first rapids" was the wish of the First Nation (Lambden, 1985, p. 12).

In 1852, Crown surveyors were sent to set out the official boundaries of Mississagi River 8 Reserve as agreed to in the Treaty (Figure 1). The surveyors deviated from the agreed upon boundaries, surveying to the "first falls" instead of the "first rapids" when determining the northern boundary of the Reserve (Figure 2). The surveyors would state in the field notes that "no Reserve of such size was intended to be made at this place" (Dennis, 1853, p. 12). The surveyors did propose an outline which would extend from the lake (west from small lake as shown on figure 2) back between the two rivers for six or seven miles (Dennis, 1853, pp. 12-13). Even with the additional lands added in "the spirit of justice", the Reserve was one third the intended size and excluded significant fishing and sugar bush lands (Marlatt, 2004).

Figure 1: Original plan of Mississagi River 8 by J.S. Dennis. 1853. 53334 CLSR ON

The First Nation first disputed the original survey in 1892, stating that the lands set aside for them in the 1852 survey were significantly smaller than those discussed with the Commissioners and agreed to in the Treaty. This protest was dismissed by the Crown, which stated that the First Nation's claim was unsubstantiated. In 1985, an independent fact-finder was tasked with researching and reporting on the northern boundary. The report substantiated the First Nation's claim resulting in a Lands Claims Settlement Agreement in 1994 between the First Nation, the Province of Ontario, and the Government of Canada.



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Figure 2: Image showing difference between first falls and first rapids (Lambden, 1985, p.36)

The Agreement added 40 000 acres of provincial land including subsurface rights to the existing Reserve (Figure 3) and the First Nation received over \$14 million in compensation (Privy Council Office, 2010). These monies were placed in a trust account to be managed and invested for the benefit of the present and future generations of the people of Mississagi (Trust Agreement, 1994).

Figure 3: Image showing original Mississagi 8 Reserve (in red) and lands added in 1994 (in white). Surveyor General Branch KML dataset overlaid on Google Earth.

Case study 2: Specific Claims Commission: Kitselas First Nation: Kitselas 1

The Kitselas First Nation on the Skeena River in northwest British Columbia is one of five Tsimshian Nations. Archaeological findings trace significant settlements in the area dating from 2000-1700 B.C. with the Kitselas inhabiting the area from around 1750 (Specific Claims Tribunal, 2012). Kitselas First Nation was dispossessed of a 10.5 acre parcel of land that contained its ancestral village known as Gitau, which was excluded from Kitselas 1 when lands were set apart in October of 1891 by Crown surveyors.

When British Columbia joined Confederation in 1871, the province retained control over its lands and resources, while acknowledging the Dominion of Canada's jurisdiction over Indians and their lands. Canada assumed Article 13 of the specific terms of union which defined a special obligation in the broader context of the fiduciary relationship wherein the Crown must recognize a cognizable interest if an area was occupied by a First Nation (Specific Claims Tribunal, 2012, pp. 3, 27). For the Kitselas First Nation, the Crown had a fiduciary duty to ensure that Gitau was allotted as a Reserve.

In September of 1891, the Band met with the Commissioner to request a 10.5 acre parcel be included in their lands. This parcel was also occupied by the Hudson's Bay Company (HBC) having built a storehouse in the location. The First Nations request was ignored by the Commissioner and the surveyor who drafted a sketch of the proposed Reserve to be named Kitselas 1 (FBBC4667 CLSR p.18). In May of 1901, Kitselas IR 1 was officially surveyed with the 10.5 acre parcel (now known as Lot 113, see Figure 4) excluded from the Reserve as the parcel was thought to "prove a convenience to the public" (Specific Claims Tribunal, 2012, p. 14).

Figure 4: Plan showing Kitselas 1 with 10.5 acre excluded parcel by E.M. Skinner. 1901. BC124 CLSR BC.



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In 2000, Kitselas First Nation filed their claim with the INAC Specific Claims Branch. This claim was rejected nine years later. The First Nation would then file their claim with the SCT in 2011. The SCT found that the First Nation had established a breach of legal obligation by Canada due to the non-inclusion of the 10.5 acre parcel. The tribunal held that the First Nation had established that the site was used by the Kitselas First Nation and that the Crown failed to act in the best interest of the First Nation.

In 2014, Canada appealed the Tribunal's decision, stating that there was no cognizable Indian interest in the parcel and therefore, no fiduciary obligations. The Federal Court of Appeal dismissed the judicial review application by Canada and found that the SCT was correct in finding that the Kitselas First Nation had validly established a breach of legal obligation as a result of the non-inclusion of the parcel. This outcome focuses on the fiduciary duty of the Crown during the creation of Reserves:

...Reserve creation in British Columbia did not result from a treaty process, but rather from a unilateral undertaking of the Crown, notably set out in Article 13 of the British Columbia Terms of Union and in the various Crown instructions issued to implement the Article. As a result, there were no negotiations with Aboriginal people to determine the parameters of the Reserve allotment policy, and the actual allocation of land for Reserve creation purposes was largely left to the discretion of Crown officials acting pursuant to the instructions they received (Canada v. Kitselas First Nation, 2014, p. 51).

The next phase of litigation will focus on compensation owed to the First Nation and the extent of obligations to be divided between the federal and provincial governments. The Kitselas case gives precedent to other Specific Claims cases across the country, especially that of the Williams Lake Indian Band (Killen, 2015).

Case study 3: Federal Court of Appeal: Williams Lake Indian Band: Williams Lake 1

The Williams Lake Indian Band, located in the central interior of British Columbia is a member of the Secwepemc (Shuswap) Nation. Historical and archaeological data indicates that the First Nation occupied several settlements that represented great cultural importance around Williams Lake prior to colonization (Indian Claims Commission, 2006). In 1858, settlers followed the Fraser River into the interior of British Columbia and settled on unsurveyed lands which led to conflicts between First Nations and settlers (Specific Claims Tribunal between Williams Lake Indian Band and Her Majesty the Queen in Right of Canada, 2013). The First Nation would be powerless to stop some 1500 acres of its traditional village (the



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very epicentre as a community) from being pre-empted by settlers and granted/patented by the Crown in the 1860s. Encroachment by settlers led to Reserve lands being set aside some 10 km east of the traditional village lands.

In January 1860, *Proclamation no. 15* was issued by Sir James Douglas, Governor of Vancouver Island, to regulate the settlement of land in mainland British Columbia and to set the terms under which settlers could record as interest on unsurveyed lands in the Colony (Specific Claims Tribunal between Williams Lake Indian Band and Her Majesty the Queen in Right of Canada, 2013). This legislation permitted settlers to claim up to 160 acres of unsurveyed land unless they were Indian Reserves or settlements (Indian Claims Commission, 2006). *Proclamation no. 15* was meant as a way for settlement to proceed quickly within the colony and for First Nations to retain uninterrupted possession of their traditional/customary settlements. The unprecedented influx of settlers and lax implementation of colonial policies resulted in no lands being set apart for the Williams Lake Indian Band. With no land base, the Band lived on lands owned by the Catholic Church. This led to both the Chief and the Father of the Church requesting land from the Department of Indian Affairs for the First Nation (Specific Claims Tribunal between Williams Lake Indian Band and Her Majesty the Queen in Right of Canada, 2013). In 1879, federal and provincial authorities took notice of the failure to allot a Reserve and in 1881, some 4,000 acres of land was set aside 10 km east of their traditional village lands (See Figure 5 and Figure 5a) (Specific Claims Tribunal between Williams Lake Indian Band and Her Majesty the Queen in Right of Canada, 2013). The traditional lands that the Band historically occupied had been claimed by European settlers. The Commissioners admitted that mistakes had been made by allowing European settlement on the traditional sites however, they stated that nothing could be done to rectify the error: “with respect to white men’s rights they (the Commissioners and the First Nation) cannot interfere, they need not therefore ask for any land that has been sold by the Government” (Library and Archives Canada, 1879). This oversight by the Commissioners and the Crown resulted in the loss of the traditional lands and burial grounds that had been occupied by the First Nation (Figure 6).

Figure 5

Plan showing first official survey of Williams Lake 1 by W.S. Jemmett. 1884. BC77 CLSR.

Figure 5a:

Inset of Plan BC77 showing sites marked “Indian Graves” along the north shore of the San Jose River, west of Williams Lake 1 Reserve by W.S. Jemmett. 1884. BC77 CLSR.



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In 2002, the Band requested a review by the Indian Claims Commission after Canada rejected their claim for their village lands in 1995. In 2006, the ICC found that Canada had a fiduciary obligation to the Williams Lake Indian Band based on the interest the Band had in the village sites that were not set aside for the benefit of the Band (Indian Claims Commission, 2006).

Figure 6:

Image showing location of current Reserve, Williams Lake 1, and the Town of Williams Lake, highlighting the traditional lands claimed by the First Nation. Surveyor General Branch KML dataset overlaid on Google Earth.

Canada rejected the recommendations of the ICC in 2009, resulting in the Band taking the claim to the SCT. In 2014, the SCT agreed with the findings of the Indian Claims Commission and held that the Crown had breached its legal and equitable duty in allowing settlement on the lands traditionally occupied by the First Nation. Again, Canada rejected the findings, leading to a judicial review that was accepted by the Federal Court of Appeal to have the SCT findings dismissed. The Federal Court of Appeal set aside the SCT's decision, stating that Canada did not breach its legal obligation to the Williams Lake Indian Band and was therefore not liable for any possible breaches of legal obligation of the colony of British Columbia (Her Majesty the Queen in Right of Canada and Williams Lake Indian Band and Cowichan Tribes, 2016). The Court of Appeal stated that The Crown was not responsible for the errors of the pre-Confederation Colonial government; the setting aside of a larger Reserve at a later time mitigated any grievance by the First Nation; and that the Crown was not responsible for administering its own proclamation. The Williams Lake Band appealed this decision and the claim will be heard by the Supreme Court of Canada on April 27, 2017.

Discussion

For reconciliation to occur there must be an awareness of the past, acknowledgement of the harm that was inflicted, atonement for the causes, and actions to change behaviour (The Truth and Reconciliation Commission of Canada, 2015). The three case studies looked at Specific Claims with regards to survey errors at time of first survey. Two of the three First Nations have resolved their Specific Claim which resulted in equitably secured land rights for their community. This was done via the acknowledgement of grievances by the Crown and recognizing First Nations rights to lands.



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The acknowledgement of past grievances against First Nation communities is the first step in restoring and developing positive relationships between First Nation, and provincial and federal governments:

“The purpose of engaging in a transaction of acknowledgement and forgiveness is not to bind Indigenous and non-Indigenous people in a repeating drama of blaming and guilt, but jointly to acknowledge the past so that both sides are freed to embrace a shared future with a measure of trust” (Royal Commission on Aboriginal Peoples, 1996).

Historic promises and agreements to Indigenous communities by Canada have been overlooked as illustrated by some 1700 Specific Claims, of which some 450 (approximately 26%) have been settled through negotiations. The negotiation and renewal of new agreements can be an important mechanism for re-establishing and adjusting relationships over time (Royal Commission on Aboriginal Peoples, 1996). Today, Specific Claims are being acknowledged by the federal government and the courts which give First Nation communities a voice with respect to land tenure and development occurring on their lands. The Canadian court system is hearing more claims regarding Indigenous land¹ and is ruling in favour of First Nations and their grievances against the Crown. This acknowledges past wrong-doings by the Crown and works towards building a successful relationship. The acknowledgement of survey errors recognizes that Treaty promises were not fulfilled and Canada must act in the First Nations best interest when settling claims.

Recognizing First Nation rights to land is the second step to reconciliation with respect to land rights. The recognition of land rights through court decisions via the resolution of Specific Claims allow First Nations to take part in discussions regarding development on traditional territories that may adversely affect rights. First Nations rights to lands were recognized by the Canadian court system in 1973 by the landmark case of *Calder v. The Attorney General of British Columbia* which acknowledged the existence of Aboriginal title in Canada. After the Calder decision, many more cases to do with Aboriginal Law were heard by the Supreme Court of Canada. From seven in the 1970's, to over 20 in the 1990's, *Calder* opened the door for other Indigenous cases to be heard. In 1997, *Delgamuukw v. British Columbia* established criteria on how courts determine if Aboriginal title still exists: the land must have been occupied prior to sovereignty, if present occupation is relied on as proof of occupation pre-sovereignty, if there is continuity between present and pre-sovereignty occupation, and at sovereignty, that occupation

¹ Two cases regarding Aboriginal law are scheduled to be heard by the Supreme Court of Canada in 2017 so far: March 22, 2017: First Nation of Nacho Nyak Dun et al v. Government of Yukon regarding treaty rights; April 27, 2017 Williams Lake Indian Band v. Her Majesty the Queen in Right of Canada as represented by the Minister of Indigenous and Northern Affairs Canada regarding the failure of Canada to protect the First Nation's village lands.



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must have been exclusive (para. 146-159). In 2014, *Tsilhqot'in Nation v. British Columbia* established Aboriginal title for the First Nation which may have implications for other communities. The duty to consult and accommodate First Nations when dealing with settled and unsettled claims allows First Nations to be part of the discussion in how their lands and traditional territories are developed (Kinch, 2015). The right to lands allows First Nations to be part of the consultation process when any development occurs in their traditional territories. Meaningful consultation with respect to land development, building respectful relationships, and obtaining the free, prior, and informed consent of Indigenous peoples before proceeding with development projects is essential for reconciliation. As stated by the United Nations *Declaration of The Rights of Indigenous People* (2008) “Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise required” (25(2)). Increasingly, the management of Indigenous lands is being done in ways where First Nations retain autonomy from the Crown when managing their lands.

Specific Claims help to create equality through land rights that are representative of historical Treaty agreements wherein additions to the land base may lead to socio-economic development within the community:

When we come to examining the process of rectifying specific claims and settling specific claims, we are talking about diagnosing past errors of legal character...about turning those past errors today into capital in the form of land, compensation, and possibly other assets that will become the seeds for a healthy economy. They are also, or should be, a major source of societal recognition of the past wrongs and a recognition that a new form of reconciliation, redress, and harmony can be brought to the relationship (House of Commons Standing Committee on Indigenous and Northern Affairs, 2005)

Honouring historical agreements and settling grievances can help to secure property rights that are fundamental to a community's economic and social development, livelihood and sustenance (MacKay, 2004). Settlement agreements should aim to “renew and establish treaty relationships based on principles of mutual respect and shared responsibility for maintaining relationships in the future” (Truth and Reconciliation Commission of Canada, 2015, p. 45(iii)). The recognition of grievances over historical Treaties aids in the development of new agreements based on mutual support, respect, and assistance between Indigenous communities and Canada. Lands, resources, and traditional knowledge are the



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foundation upon which Indigenous peoples can rebuild the economies of their communities and improve the socio-economic circumstances of their people (Anderson, Schneider, & Kayseas, 2008).

Conclusion

Herein are 2.5² accounts of equitable processes; equitable insofar that First Nations are receiving what they bargained for. Land rights are being secured over parcels whose location and spatial extent have been agreed-upon by the affected communities. One suspects that both types of institution – ad hoc, impartial, fact-finder whose recommendations are implemented; and the Specific Claims Tribunal to adjudicate formal grievances - are merely the thin end of the wedge. Indeed, there are now 64 on-going claims before the SCT, the majority of which involve grievances over land – failure to set aside land, incorrect areas and locations of parcels, failure to prevent losses of land or of stuff from said lands (e.g. sand/gravel). Such volumes of grievances can be interpreted to be either a sad lament on injustices suffered by Indigenous peoples or brilliant evidence of how all Canadians – but Indigenous peoples in particular – are now being reconciled with the land. This momentum bodes well for boundary certainty, for parcel security, and for socio-economic development for communities – the honour of the Crown manifest.³

² As the Williams Lake Indian Band claim has not yet been settled, we cannot assume that the First Nation will receive what it has bargained for.

³ Anticipated by recommendations to build Indigenous land management capacity, in: Nichols, et al. Legal Surveys Division & property infrastructure on Canada Lands: Strategies for the 21st century. Final Report. April 1998.



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Tables

Table 1:

Status	Total number of Specific Claims
Under assessment	131
In negotiations	218
Settled through negotiations	417
No lawful obligation found	429
Claim resolved through administrative remedy	32
File closed	349
Claim in active litigation	68
Claim filed with Specific Claims Tribunal	87

Table 2:

Type of error	Total
Incorrect location	6
Incorrect area or exclusion	120
Incorrect bounds	9
Unsanctioned surrenders/roads/easement	248
Encroachments	2



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Figures

Figure 1:

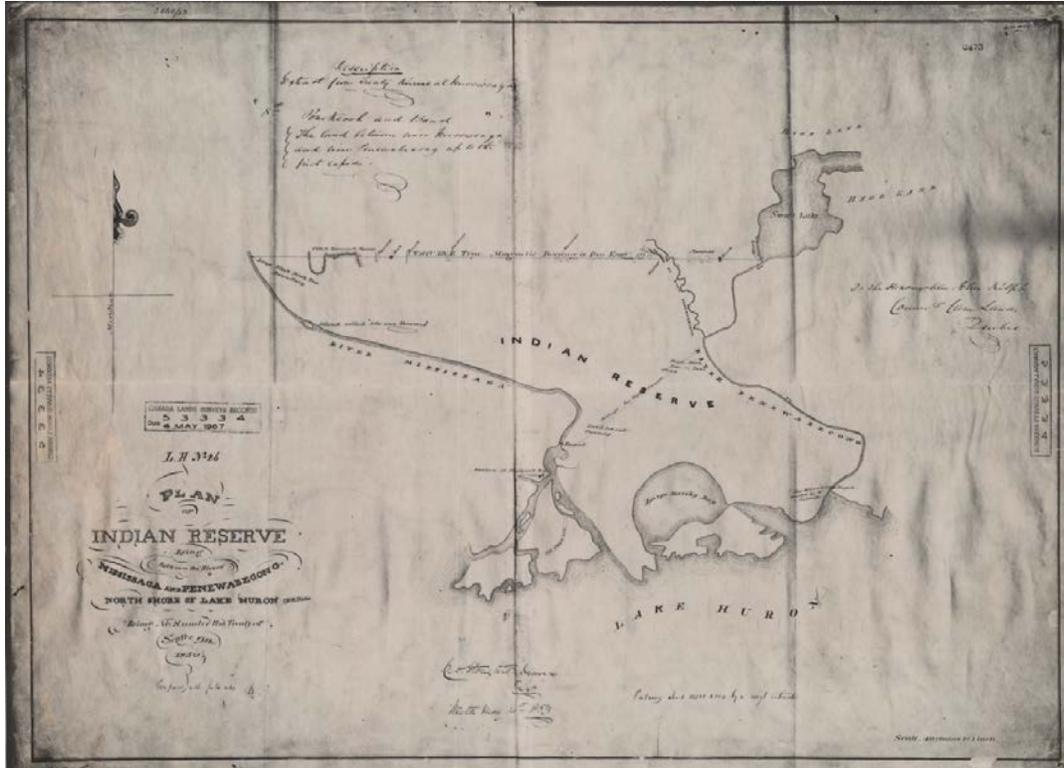
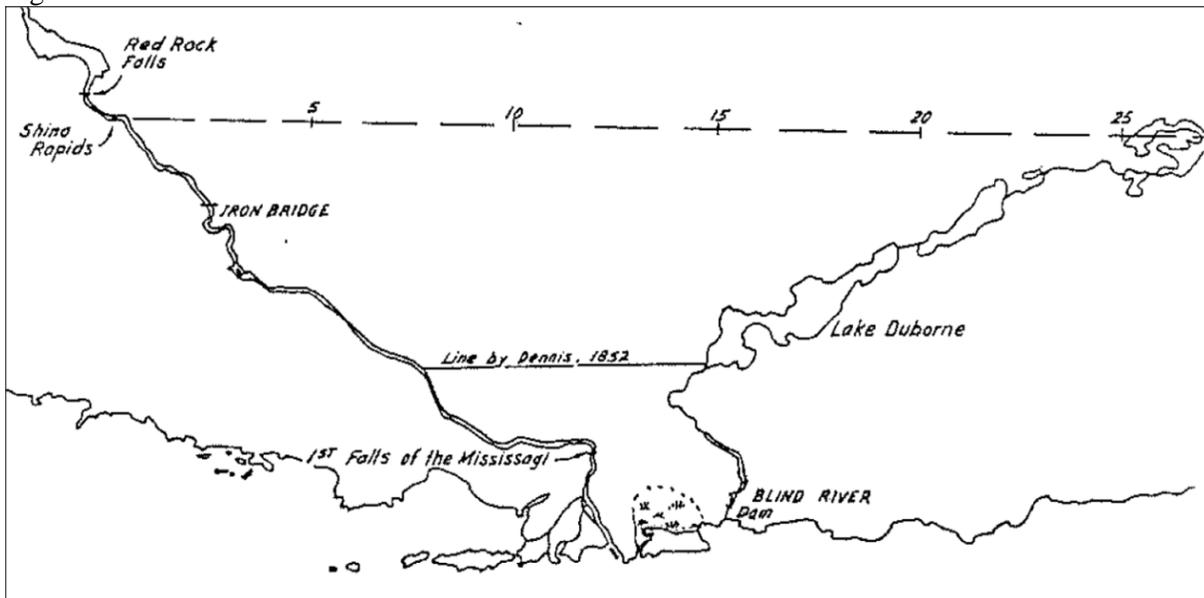


Figure 2:





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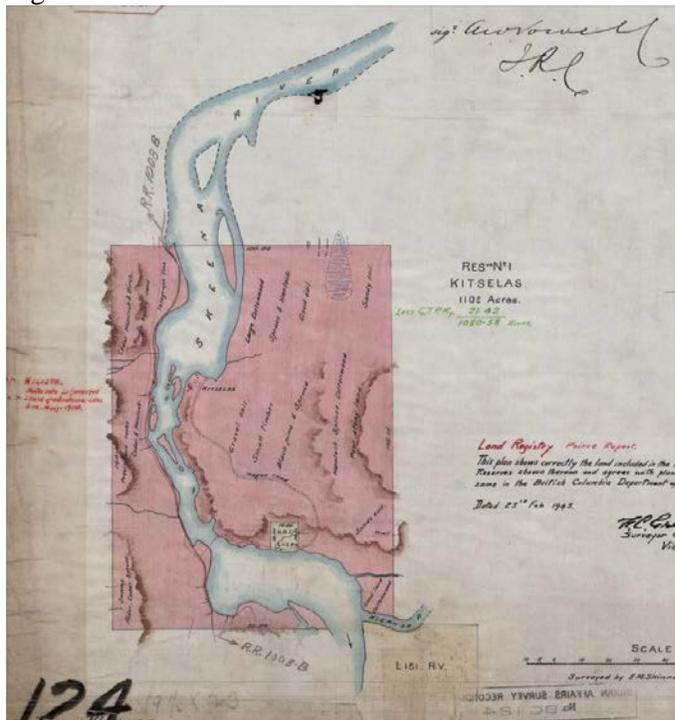
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Figure 3:



Figure 4:





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Figure 5:

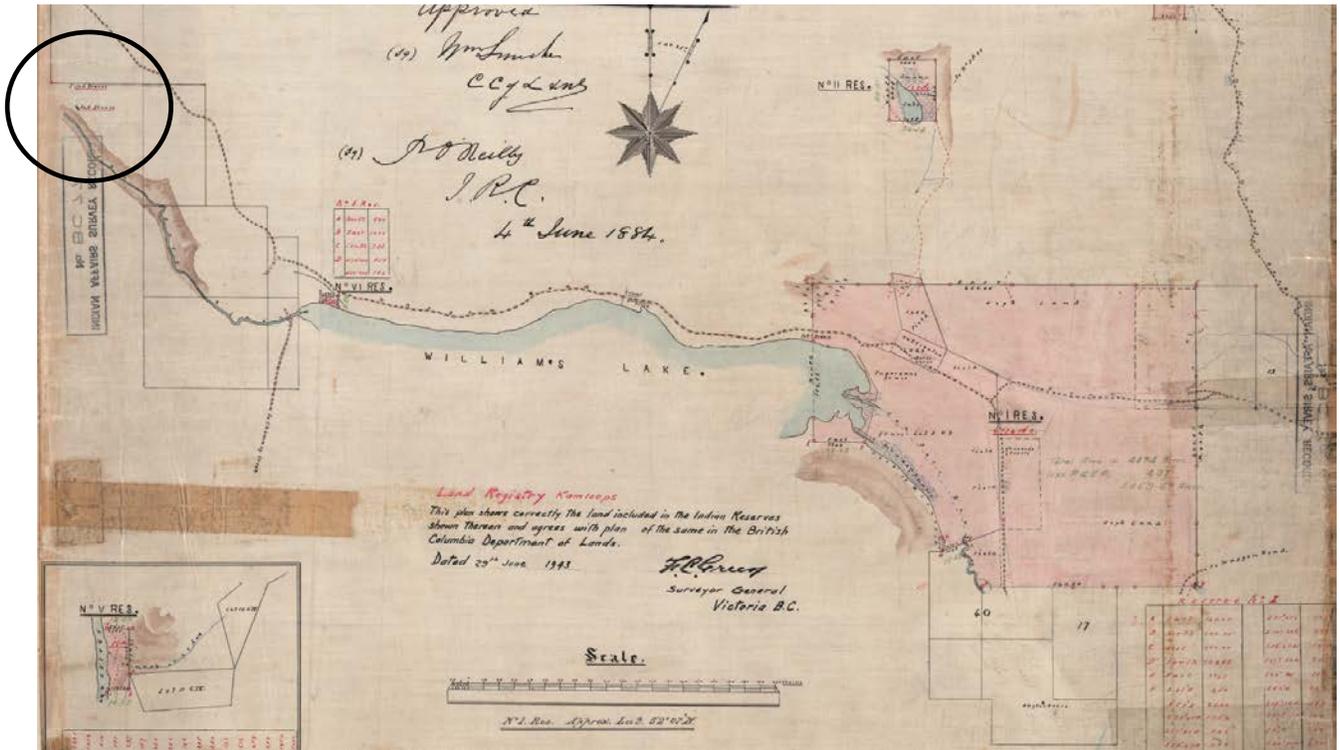


Figure 5a:





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Figure 6:

