Specific Claims Reform: A New Independent Specific Claims Resolution Process

Part One: Summary Report of Regional Dialogue Sessions

Introduction

The Assembly of First Nations, First Nations and their representative organizations have consistently advocated for a fully independent claims resolution process since the 1940s.

This summary Report provides an overview of a 2019 AFN dialogue process with First Nations on what a fully independent specific claims process should look like and is part of the most recent reform effort which began in 2016.

The Report will provide the AFN and First Nations leadership with baseline data that will inform and guide subsequent AFN positions on reforming the specific claims policy and process.

Following the drafting of the summary Report, the AFN will take steps to validate and share the Report with First Nations. As a first step, a draft version of this Report will be distributed to meeting participants as soon as possible. In addition, the AFN will develop an options paper for further discussion, based upon an analysis of this summary Report, the written submissions received, and past reform efforts/recommendations. A final summary Report and options paper will be submitted to the AFN Chiefs-in-Assembly for review and possibly acceptance.

Background

In 1974, following the Calder Decision, Canada created the Office of Native Claims, which took on the dual role of accessing First Nations claims against the Crown and representing Canada in negotiations. First Nations were critical of this approach, pointing to the obvious conflict of interest manifest in Canada's control over access to claims negotiation, funding, documentary evidence, as well as the exclusion of oral testimony and First Nations legal traditions generally.[1]

The preservation of Canada's unilateral control and sustained conflict of interest as a party to each and every specific claim advanced by a First Nation has led to repeated calls for reform.

In 1982, responding to calls for greater transparency, Canada released *Outstanding Business: A Native Claims Policy*. The policy was intended to outline the specific claims process but did not address the conflict of interest.

[1] The AFN has prepared a more detailed timeline and chronology of advocacy efforts over the decades (Attached as Appendix A). As well, a Summary Report of Previous Studies and Recommendations advanced through these decades was also prepared for further context and background (Attached as Appendix B).

The 1983 Penner report on Indian Self Government validated First Nations concerns recommending that the claims resolution process be replaced with an independent body. This recommendation was never implemented.

In 1990, following the confrontations at Oka, the federal government once again agreed to take steps to reform the specific claims process, including increasing the budget for settlements and promising the creation of an independent body that could adjudicate claims. An Assembly of First Nations (AFN)–Canada Joint Working Group (JWG) was struck to review the issues.

Canada also established the Indian Specific Claims Commission (ICC) in 1991, which was a temporary independent advisory body tasked with mediating claims the minister has rejected. However, the ICC did not have the authority to make binding decisions.

In 1993, the JWG released a report with recommendations that included establishing an independent process with an independent claims body to settle outstanding claims. These recommendations were largely ignored by Canada.

In 1996 the Royal Commission on Aboriginal Peoples (RCAP) was released. RCAP called for a fully independent process to address all First Nations claims. Shortly after, a Joint AFN-Canada Task Force (Joint Task Force) was established and mandated to study the structure and authority of a potential independent claims body.

The Joint Task Force issued its final report in 1998 recommending the creation of an independent commission to facilitate negotiations and a tribunal to adjudicate disputes where negotiations failed.

In 2003, picking up on elements of the Joint Task Force Report, Canada passed Bill C-60, the Specific Claims Resolution Act. While C-60 received Royal Assent, it was never proclaimed into force as it was widely rejected by the AFN and First Nations for failing to create an independent process.

Following the collapse of Bill C-60, the Senate Standing Committee on Aboriginal Affairs undertook a study on specific claims, releasing a final report in 2006 entitled *Negotiation or Confrontation: It's Canada's Choice*. The Senate's Report called for a truly independent claims process to be developed within a two-year timeframe. The report also notes that the creation of an independent process has been recommended by 18 past government processes/inquiries.

In 2007, following a joint process with the AFN and First Nations, Canada announced *Justice at Last: Specific Claims Action Plan* (JAL), a strategy to reform the specific claims process. JAL, which was structured around four pillars, included the creation of an independent, binding tribunal. However, the department maintained its roll assessing and managing the claims negotiation process.

The Specific Claims Tribunal Act (SCTA) was viewed by many as an important step towards independence. The STCA also included a commitment by Canada to undertake a 5-year legislative review of the SCTA which would include the AFN.

At the same time, in 2009 Canada unilaterally closed the ICC – Canada had committed to converting the ICC to a mediation center responsible for assisting in specific claims negotiations during the JAL discussions with AFN – and announced that Specific Claims Branch would administer mediation services. This undermined the commitment to independence made under JAL and ultimately resulted in very little use of mediation services.

In 2014, Canada undertook the 5-year review of the STCA, unilaterally appointing Mr. Bernard Peltier as its Ministerial Special Representative (MSR) to undertake the review, which was limited to the SCTA only.

First Nations and the AFN expressed concern with this approach, noting that many of their concerns were with the policy and process and not the Act. To ensure a comprehensive review, the AFN developed an independent Expert Panel process – Canada did not accept an invitation to participate. The panel accepted submissions which resulted in a 2015 report *Specific Claims Review: Expert Based – People Driven*. The report included several recommendations including the development of a fully independent process.

The MSR completed his review in 2015 and submitted a final report the Minister of Indigenous Affairs. Despite repeated calls by First Nations and the AFN, the Minister refused to make the report public. In 2016, following the election of a new federal government, Canada finally released the 5-year review. In addition, Canada issued a report recognizing its failure to implement *Justice at Last* and committed to work with First Nations and the AFN to address their concerns.

In late Fall 2016, the Office of the Auditor General (OAG) released a report on the specific claims process. The OAG report found that Canada had failed to meet the objectives of JAL and included ten recommendations to change the policy and process. Canada accepted the OAG report and committed to working with the AFN to implement the OAG recommendations.

With the commitments of the Liberal government, and the recommendations outlined in the 5-year review, the AFN expert panel report, and the OAG report, the AFN and Canada agreed to form a Joint Technical Working Group (JTWG) to develop proposals, in collaboration with First Nations, to substantively reform the specific claims policy and process.

In 2017, following a year of joint work, and two national forums 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 First Nations to eliminate Canada's conflict of interest, and establish a truly independent specific claims process.

At the same time Canadian officials began developing a Memorandum-to-Cabinet, with input from the JTWG, seeking a federal mandate to explore options for a fully independent specific claims process and resources to support a First Nations led-engagement process on the issue.

In late 2018 federal Cabinet agreed to give Crown Indigenous Relations a mandate to explore what a fully independent specific claims process might look like. Then in May 2019, the Minister of Crown Indigenous Relations and Northern Affairs announced that Canada would commit $1.5 million dollars to a First Nations led dialogue process on what a fully independent specific claims process would look like.

The AFN, in coordination with its technical representatives on the JTWG, immediately began organizing and planning a national dialogue process to be carried out during the Fall of 2019 with First Nations. The goal of the dialogue was to hear from First Nations on what a fully independent specific claims process should look like. The outcomes from the dialogue would inform the ongoing JTWG discussions and support the development of options for consideration by the Chiefs-in-Assembly and Canada.

Dialogue Structure and Process

The dialogue process was designed and delivered in 2019 by the AFN with support from First Nations technical representatives on the JTWG.

The AFN facilitated one day dialogue sessions in the regions of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec and Nova Scotia. In addition the AFN invited First Nations and their representatives to provide written submissions respecting their views and recommendations on how to bring change to the specific claims process, with a focus on creating an independent process.

To ensure that First Nations had access to the historical record, and to focus the dialogue, the AFN developed a number of background materials, including an overview of past reform efforts and calls for an independent process.

In addition to background materials the AFN identified several key principles and elements that should be considered when discussing specific claims. Article 27 of the United Nations Declaration on the Rights of Indigenous Peoples states that:

> 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

Building on Article 27, the AFN dialogue materials highlighted five key principles that must be included in any new claims resolution process: *fairness, independence, impartiality, openness, and transparency*. In addition, the AFN identified five basic components that could make up a new process. The five components were *funding approach, claims research and development, claims resolution, adjudication, and implementation and reconciliation*.

The background materials were distilled into key questions that would be used to facilitate discussion. This would ensure both a focused conversation and that participating First Nations were given the same opportunities regardless of session.

The topic areas were: *Claims Research and Development*, *Claims Resolution (Negotiation and Mediation), Claims Adjudication and Claims Funding*. These topics helped to organize each session, but participants were not limited in advancing their ideas.

In addition to regional sessions, and requesting submissions, the AFN webcast each session for the benefit of those who were unable to attend in person within a region and for those interested in listening to the dialogue from outside a region.

Finally, the *United Nations Declaration on the Rights of Indigenous Peoples* and the Truth and Reconciliation Commission's Calls to Action have each recommended that "Indigenous laws and legal traditions be recognized and integrated into "processes involving Treaties, land claims and other constructive agreements."[2]

In an effort to begin exploring how indigenous legal traditions could be included in claims resolution, The British Columbia Specific Working Group and the Union of British Columbia Indian Chiefs (UBCIC) invited Indigenous legal expert Ardith Walkem of Cedar and Sage Law to develop a video presentation on the importance of integrating indigenous laws into specific claims processes.

To support the dialogue process and to initiate thinking on how indigenous law and legal principles could be incorporated into the claims process, UBCIC agreed to share an excerpt of the Ardith's presentation to be viewed at the beginning of each session.

Report Methodology

This Report is a summary of the 2019 AFN national dialogue process with First Nations on what a fully independent specific claims process might look like.

[2] Article 27 of UNDRIP and TRC. The BC Specific Claims Working Group produced a formal submission in 2017, following the Office of the Auditor General Report, calling for the integration of Indigenous laws and legal orders into specific claims processes. To advance this work, the BCSCWG obtained funding from Canada and the Law Foundation of BC to work with an Indigenous legal expert to produce a discussion paper and resources for communities to enact their own legal principles and laws into claims processes.

The Report is organized by each of the four topic areas used to facilitate the dialogue sessions. The four topic areas are:

- *Claims Research and Development*;
- *Claims Resolution (Negotiation and Mediation);*
- *Claims Adjudication; and*
- *Claims Funding*

Each topic area includes a summary of key messages heard at each individual session reflecting the general tone of the discussion. Under each key message the Report includes reference to specific comments.

For example, under the topic area *Claims Research and Development,* the Report will list a dialogue session (e.g. Topic 1, Fort St. John, BC) followed by the key messages and supporting comments that were delivered in Fort St. John.

It should be noted that while the AFN made every effort to faithfully capture First Nations input, it is not possible to include all topics and comments. As a result, this Report reflects our best efforts as a ***summary*** of what we heard.

In addition to a summary of key messages/comments received in each session, this Report includes comments made by written submission. Each written submission is noted within the region from which it was received, and a complete list of written submissions received is found in the Appendix.

Topic One: Claims Research and Development

The purpose of this session was to provide an opportunity for participants to discuss how identifying, researching and developing specific claims can be redesigned within an independent process.

AFN 2019 Specific Claims Reform – BC Region/Vancouver[3]
October 8th, 2019

An Independent Body should facilitate access to archival documents, expand opportunities to share and preserve oral evidence and facilitate the sharing of research, where possible, through a national database, but ownership of Indigenous knowledge must remain with the community:

It goes without saying that archival research and access to documentation is fundamental to the claims process, yet many participants expressed their frustration in accessing the needed archival material.

- We are gaining an understanding of the gaps in the documentary research and our oral history. We are doing a specific claim on a village that existed 150 years ago. Many things limited their understanding of history. How do we fit that into this process? How do we fit the loss of our population, the loss of our villages (they were spread out)? There seems to be no way to fit that into the process.

- Funding is a huge problem, but at Library Archives Canada we are finding as much as we can. There is a difference between documentation and communicating an understanding of how our culture and economies worked; how do we discuss that in the claims process?

- FIRST NATIONS records are mostly held by CIRNAC, not LAC. Need to pursue permissible disclosure request to get records from CIRNAC and then they can ship records to any LAC and CIRNA office and you can take photos of the records for no cost, but it takes a long time and [especially so] if you are limited by location and not near an LAC or CIRNAC office. Perhaps an independent body could have a record of the CIRNAC records so that FIRST NATIONS and Canada would be accessing evidence from the same set of records and go through the same process to submit requests for records to balance the process

[3] Written submissions were received from D. Hanna, Callison & Hanna Indigenous Advocates, October 7, 2019; Nlaka'pamux Nation Tribal Council Submission, October 8, 2019; Doig River First Nation, November 12, 2019; Williams Lake Indian Band, December 13, 2019; Havlik Consulting Group, December 13, 2019.

Library Archives Canada (LAC) has a new funded initiative to help communities preserve, record, transcribe, and keep an archived catalogue on a community's terms. Also, there are some funds available through LAC and others to set up document management to access, preserve, etc. If this archival initiative was within an independent process – perhaps this is a role that an independent body could help communities to do?

- We know that knowledge keepers are passing away and spec claims take so long and all the knowledge they have is being lost. Potentially there may be a ***role with an independent body to partner with LAC*** who are already funding this project or the independent body could fund it themselves ... in either case, the institution is working with communities to preserve oral histories – for free and on a community's terms - where ownership remains with them

An Independent body must expand the evidentiary basis and incorporate Indigenous oral evidence into its process to recognize the plurality of legal traditions:

- Regarding access to information, when you're trying to find the information about a place from long ago, the only information you will find is in the archives while First Nations lack the capacity to preserve oral history, in a process that does not welcome oral evidence until the Tribunal**.**

    - Generally, the National Archives is complex and challenging. You can't just hire somebody and send them to Ottawa... well you can try but it's very difficult and to a hire professional archivist and researchers is cost prohibitive. At the National Archives and BC regional archives you have to go from box to box and neither is set up for specific claims. We suggest that the National Archives become more accessible for regular people. Make information more accessible. The Federal government was really good at keeping track of the Indians... in terms of research capacity... we might as well get organized.

    - We've seen a lot of improvements with LAC working with First Nations researchers. We are making the highest number of requests in detail and scope and they have taken our concerns seriously. But we still face issues with access to information. One of the things we identified was FIRST NATIONS researchers with authorization from communities should have unfettered access to records. LAC has brought back access to file lists which is faster and a lot easier, but we are still finding research holes. We have file numbers and they aren't showing up on the filing list. Hiring research team... that's a cost... we need to have all those barriers removed. Regional office documents are available for review which is helpful, but we are still hiding holes despite those improvements.

- Biggest fears – ***Capacity of First Nations*** – no institution to support us at the First Nation level. The ***most important matter is to have is records and archives*** and yet, it's the last thing that happens. And what is an Elder? In my opinion, an Elder born before 1925... that's where we are getting lost... we failed at taking that ***oral history in the early stages so now you have history being recorded in a modern sense. Last but not least, Indian Affairs is downsizing in a fast pace so the body that you are negotiating with is going to be small, so they aren't going to be able to do 150 claims- so we must recognize that it's going to take time***.

- We have a lot of information that we've gathered from the treaty process... stepped out of treaty process but gained ***lots of information from it of land and culture... lots of people are gone now that can't participate in their oral history... how to incorporate and catalogue it and how can we actually have someone go through that***? We don't have the funding and capacity to do that. We have copious number of documents but can't seem to incorporate into the process.

An Independent process should allow for presentation of the whole context of a First Nations' claim and expand the opportunity for evidence sharing and submission:

Some participant's spoke of having to '***silo' their claims*** to deal with a very specific claim and as a result they are losing the ***context*** and what it exemplifies. How do they ***incorporate the whole story*** and give the full picture of the depth and gravity of the issue? As well, there is often a role for the province in the final settlement of a claim and yet, there is no formalized way to include the province in the current process. Again, what role could an independent process play?

- For example, one community had a land base that it was forced to surrender, and which was a source of cultural and spiritual practices. But Canada only wants to look at what happens on the reserve base today NOT all the traditional territory or the original reserve. Canada doesn't necessarily want to talk about it and for the community, their story starts with their initial reserves... information can be 'weaponized' in a way. First Nations must determine what evidence to share and how.

- This is a Canada led process, so the province has nothing to do with specific claims. Where do we look to include the ***provincial point of view***? Where does the Douglas treaty falls into this? With specific claims process ... Once received money and settled... can you then pursue title? Can you then address it using the information you have for a title case instead of a specific claim?

- We have to look at ***UNDRIP*** and start to pursue claims as First Nations, as landowners, through the province. A recommendation is to tell all the people living on the land that tax dollars go to the FIRST NATION'S community. The main issue we are having now is shared areas and overlaps – that will have to also be discussed.

- Many participants were familiar with the experience of the Williams Lake First Nation in trying to resolve its outstanding claim and it was discussed for the many lessons to be learned.

- Right now, they are in the compensation phase. They went to Canada seeking negotiation. Still in front of the tribunal in case management. ***Canada lacks the ability to move it from tribunal to negotiations efficiently.*** Part of the challenge with Williams Lake is the discord with getting the validity finding of the claim and there isn't a lot of clarity. The area of Williams Lake is not specified, so this is another dispute. The whole process was far, far too long.

An Independent process must be cautious about collaboration and co-development of claims with Canada, but building an inclusive process that recognizes the plurality of Indigenous legal traditions means expanding opportunities for evidence sharing and submission.

The idea of co-development of a claim with Canada at the research stage was introduced for discussion and the view was mixed; it is perhaps good and bad. Although it was viewed as important to have a representative of the Crown visit the First Nation.

- We've heard a lot about the communities that want a representative of Canada to come and ***see the repercussions*** – land and loss – what has happened as a result. But also want to be careful because if it's too soon, then they are improving their legal argument. Information is weaponized.

- What does it look like to develop a ***template*** with the six hundred groups that are working on their specific claims to find those things that have similarity? Perhaps the AFN could help with this. The thought is we figure out what it is that Canada is looking for, early on in the process, and create a claim template and research guide. I think co-development is a good idea. The adversarial approach is not good. At what point will the government understand that this is not a fair process? With our Indigenous laws how do we create a template to help First Nations to develop a template for Indigenous law? My little village of two hundred people, where do we begin? The process can begin in the village and move through to Canada. "Our laws are our trees talking." The land is important but how do we include that into the process?

- We are requesting a visit from Specific Claims. Every village is unique.... the loss of opportunity, lost village sites... loss by pre-emptions.... roads are one of them.... business on one side and other side is our village. Every village is unique in its own way and I think that should be part of the process. We've been patient long enough. We've been waiting so I think it's time for them to see that.

- Question the timing of Co-development, when a claim begins? or part way through when research is done? Canada needs to recognize the authority of land and the land they are on... like the hereditary system.... the connection, the belonging, the spiritual connection to the land. ***There is a connection to the land that First Nations have, and that connection needs to be part of the First Nation research on traditional governance and research.*** All that needs to be done without the federal government. Regarding ***co-development, not sure how much but there is space for them.*** We need to remember that as reserve land, there is not one generation that has the right to settle that effects future generations. So, in that regard the obligation on Canada is to make sure that they support the continued use of that benefit.... establishing a trust.... If you look at the same type of claim that has been dispersed.... some are gone. There is fiduciary obligation of Canada to assist communities for ongoing and continued benefit.

- Co-development with Canada: back and forth in benefit. Some benefits to having them engage early on – based on nation to nation... is it about monetary compensation… sometimes.... cultural loss may be a different path that you go. ***One place we'd like more collaboration with***

Canada is when they start their counter research.... share with us and then have a discussion... nations no longer see them. If the nations are involved when Canada does counter research and some discussion of research could happen at this point...

- Regarding Co-development... we both have a problem... so how do you partner people together? How to co-develop (on railways for example) ... maybe it's a class action suit... or many communities coming together on something so we don't have to go separately to fight the same fight

- Video Teresa Ryan (UBC) – suggested that everyone watch.

- What if the facts involve a that was community entirely removed: where do you start with something like that? Where do you start to co-develop with the government? The specific claim we are putting forward is the federal government took our land and made an airport circa WWII. Compensation... over $100 million isn't enough. The federal government is holding everything back. They are the ones that say we have to go to litigation and the provincial government is benefiting. I think it should be co-developed with province and then brought to the federal government. The Douglas treaty informs our approach and needs to be looked at as it was developed around a nation-based approach.

- We fought really hard for an independent process. We must have a really hard report going in. This is our opportunity to spell out how we want our claims dealt with. I don't want co-development... Independent.... give us the funding and we will design our process. Canada can't be our decision maker. What they accept and don't accept in the research and if we want our Indigenous laws in it as it connects to our land, language.... in BC everyone in our nation and village should have a profile assessment done. Smaller bands may not have the capacity or space to do this work, but it can be done. The tribunal process, is it working or not working? We can shape what we really want. We need to get ready and be prepared. ***I don't have faith in Canada in how they are going to make all these unilateral decisions. Specific Claims branch doesn't have proper funding... they have their liability and risk model.***

- In our specific claim, we had over 1000 documents and loss of oral history and only so much time to give Elder testimony.... first claim when railway came on to the reserve.... CPR was trespassing in 1885... gives rise to interference.... ***Having tribunal... having Elders tour the tribunal... also had oral history in the language, it enabled the community's Elders to testify in their language.***

- During negotiations we can have site visits. Federal representative came and we put forward the evidence that the Indian agent evicted six members in 1915. Site visits are very powerful for the community. The process could happen early such as at the Case Management Conference (CMC) or after CMC. ***At the Tribunal, experts get ready for different stages so perhaps getting the Tribunal involved earlier provides more opportunity for the community to engage in the community's oral history***.

- ***I think there should be a good discussion about the independent process... at the end of the day Canada is the judge, jury and funder.... The big question is how to address.... how do we get to Article 27 of UNDRIP? That's a huge question... in terms of fairness, time is a BIG issue***. You send in a submission and years go by before you get word. We sent in a question a year ago and we haven't received a reply yet... we'd like to know how our claim relates to Williams Lake... is it in same boat? We can wait a long time, but should we be doing research? What should we be doing? While we are asking these questions, there is silence on the other side. We have descendants of people who were forcibly removed over 100 years ago... there is a bit of reality of that when you talk to the people.

There may also be a role for an independent body to oversee the speed of the process, educate First Nations' on best practices when submitting research and secondly, facilitating the parties exchange of facts in the First Nations' formulation of their claim.

- ***TIMING: You make it part of the process. There doesn't seem to be much in the current process that requires a claim to be put in a sequence or that puts it forward in a timely manner. If they don't respond in a year, we should have a victory*** … (laughs)

- In our case the reserve Commissioner got sick, so he didn't go there- he didn't have the means to get there. Just because of that one decision, we didn't have a reserve set up in that area and then after that, it became an excuse to be forcibly removed. We could have a workshop on that. There is research that has to be done and there is a lot to be learned from each other. Railroads... rights of way issues... What about the province of British Columbia – they were complicit in their attitudes and notions.

- If we were looking at developing an independent process, how could claim submission be addressed... are we still thinking we are going to submitting a claim to Canada, to the specific claims branch? ***What about a Commission or hearing body and if we want to research a claim and we reach out and indicate what we want to do***? ***The independent body notifies Canada and then we submit the claim to the body and Canada can do the research. Right now, Canada has insufficient timelines and funding... to protect its own bottom line***. They owe a lot of money but if we were to design this from the beginning what would that look like? Maybe there is something to forfeit... if no response... then there are consequences if not responsive.

- One of the ways that you could address ***time*** is to identify (documentary) references of interest. Both the First Nation and Canada could be doing this. This would alleviate Canada's ability to argue and instead look at the facts. This would take away their drive to argue against and only engage on the sheer evidence presented.

- One of the things we can do today, wipe the slate clean at the specific claims branch –now imagine a whole new process... commission, submission, research.... all completely independent from Canada.... Canada should carry out research on their own without our research.... not necessarily adjudicate but mediate...

- Regarding the clean slate comment, something that I'd like to recommend is some sort of centralized information. Because of the election systems in our community... it's like starting over for some communities... as time passes priorities change... I would like to see information shared with communities... Who do we contact? What is needed? What it the next step? ***Templates and cheat sheets of what we need to file a claim. I urge successful communities to share what they've done and what hurdles they had to overcome to succeed. If we can help each other stand and be successful, all the better to everyone*.**

- Government has created its Ethnohistorical report... educate representatives so they know when they go to a community.... Traditional land use study was used against us... Specific claim denied, and they were battling an overlapping treaty. Traditional Land Use study followed stipulations and that's what they used against us... used space... kilometers.... They have their own in-house ethnohistorical report... spec claims... when you're arguing with them if you use the Traditional Land Use that's what they use against you.... Misuse of information! So, is there a way for an independent body to stop against the misuse of ethnohistorical report and Traditional Land Use studies? ***Do you think that there would be a way for an independent body would help communities connect and work together who are sharing similar issues? Not the data itself but the gathering...***

The idea of British Columbia specific claims independent process was also advanced in light of the unique legal and constitutional relationship the First Nations in BC have with the Crown.

- ***BC is quite unique, and we should have our own specific independent process***. To have a single independent body across Canada would be remised and I raise the question to the timeline... 1846... 1867.... 1871... 1876 ... ***Indian Act*** really rocked the boat... many of the First Nations in BC are matrilineal... but under the *Indian Act* a woman had to go to her husband's band. Loss of history, language and culture... I am very fearful... I am kind of sad... 80 percent of the published Canadian history is wrong... history here in BC did not begin in 1846. With the pre-emption, especially in BC, Lords could purchase 100 acres of land for a relative who never came, so that pre-emption shouldn't taken place.

- ***Land is the most important thing for First Nations*** and for us who live near the waterway... the water becomes part and parcel of reserves. Today there are issues with claiming land ... can't claim the land – based on the province putting in the terminal. Conversely, First Nations along waterways where erosion has taken place and they can't dump additional dirt – so loss of land there as well and as a result of the government changing the water route... so you look at those kinds of things that become very impactful and specific to BC versus east of the Rockies. Also, no treaties...

- Commission, tribunal... I agree there is probably going to be 200 specific claims hitting the table. There is a way we can remedy this and that is to put forward ***a letter of intent.***.. It needs to be put forward so the federal government knows that we're not going away and our specific claim is that area and it would lock down that claim from any sales or development. I drive home and I see all these sales of my territory from individuals and companies... I hope that a letter of intent would stop this.

- *In BC, we have to prove that the land is ours (i.e.,* **Aboriginal title***). If we could turn that around and make them show us. Canada should bear the onus of proof… us versus them... can't we work together? If we're looking at trying to form a policy... Canada should have to prove that they didn't do wrong*.

- Even through treaties – still under the same colonial government... ***policy was similar to the rest of Canada... I think it's important to look at one side of the country to another.***.. There is so much of unclaimed business. Hard to do research... so expensive to store... archives- storage and temperature... UBCIC built upon these archives... Terms of the Union of BC 1871... Dominion would take on responsibility. ***Look at colonial policy***... Douglas...

At the same time as the idea was advanced that BC should have its own independent process, the concept of a new, national, "Claims Court" was proposed, recognizing that more time is needed to fully discuss the idea.

- Perhaps we need to see this new process as a "***Claims court***". They adjudicate and tell us what the settlement is.... independent process – call it "claims court" .... Understanding with a basic process to set up – structure and then we can come back together and decide roles and responsibilities of each... we are jumping all over the place... history of injustices, lack of professional services... but what we need to do is to start seriously thinking about the independent process or claims court. We can expand the role of the tribunal... but we need to establish what that box is and how it's going to work. We also have to learn how the current court system works because that's essentially what we're doing – creating our own court. We need to think about, talk about and decide what this (claims court) should look like... who does this, how it's funded. The tribunal was supposed to look like this, have this function and it was supposed to be the final word and now we know Federal government is not happy with this so have judicial reviews. In order for this to work we need to have political support... we need to educate them, and we need to report what we are doing and have support and their input also. So, we need to develop what this box is going to look like... how it will interact with us and the federal government... We need to have political support ... we can't stand together.... we need people to tell us how to fix this and how do we get our message to the government... we need to understand all of that... Claims court would receive the submissions... US establish that we have claim and terms are agree upon (collaborate) and there has to be collaboration with the claims court because they are going to tell us how to submit and present claims and to do so we have to understand how our court system works....
- **How could we expand the policy...? to include treaty hunting fishing and trapping ... but not services for spec claims.**.. and to bring it back to what we were talking about ... the claims courts... there needs to judge, jury or something. Makes me think what would claims look like... digital, stories, interactive maps, paper....

***It was said many times that the trust of Canada is broken. In discussing a new independent process, there is a need to bring a greater transparency to decision making, to reporting progress, to restoring trust*.**

- **There is a broken trust - BC, Canada, First Nation - would there be any merit in having some segway at United Nations level, so it considers all the issues we are plagued with... economic, environment issues**... I would strongly see that there would be a third independent body that Canada couldn't arbitrarily redirect funds when we are successful in our claims... Rebuilding trust – these claims are long overdue, and our people feel that. ***How do we ensure that trust is guaranteed? How can you tell community members that we can trust the government***?

- There is a Failure of Honour of the Crown. Canada is in contempt.

- Think about our roles and responsibilities and the governments as well... to come out with decisions that we can live with.

- **Maybe an independent process could bring more transparency and also be a learning body. Canada will consider claims and consider them separate even though they are connected. How it could potentially provide transparency with what's required to substantiate a claim... Communities are put into a position where they have to prove beyond a shadow of a doubt, but it's not really clear what they are expected to prove**. *If you flip, it on your head and you have Canada acknowledging that wrongs have happened.... what would independent process look like in that scenario... whether you have an adversary or friendly government in power*?

- **How are we going to work together?** One of the strongest sources of evidence is your neighbour... fishing... say "yes that is theirs." We all know where our boundaries are... Canada pits us against one another... Another thing is we have to move this whole process take out of INAC's hands... from 1865 to present it has been 'control and contain'... even if you put a new Minister at the top, you still have a whole lifetime to practice to control and contain.... This whole process should be moved to Department of Foreign Affairs and Trade (now Global Affairs Canada) so they should be able to have a better understanding as to what's important to us. We will never get a fair process if Canada hold all the cards. They have funding, they have control over it. What is a fair and independent process? Adjudicate... Honour of the Crown ... always a third party. So, I think that is one of things that we need to do and understand what the process is and drag them back to the issues.... federal government, First Nations and independent body. So, there is a continuous process that we need to understand and hold them to it.

- Skeptical... we've been part of agreements with BC where we had joint management... community members had courts – forestry manager could decide what was an aboriginal right... but there is a failure to implement decisions...

- It's difficult to look at truly independent process within Canada... Every level of government has created **issues to implement agreements that have already been negotiation or mediated**...

- Need to look at the big picture and the optimism in the room**... how does it fit into Canada's overall picture... big picture is what we're struggling with... how can it be independent if they have the reigns?**

- I would hope that it would make reference to the TRC... 45, 46 alone continues to already to address... and then the UNDRIP that took the Nations to 12 – 15 years plus another 6 years for all nations to respect it... so based on *historic patterns of the colonizers* - ***please bring things like the TRC and UNDRIP to the process...***

Topic One: Claims Research and Development – Fort St. John, BC October 9, 2019[4]

An Independent body should decide if parties negotiate and eliminate Canada's decision:

- INDEPENDENT BODY should decide if parties negotiate. Structure governance to ensure credibility: made up of FIRST NATIONs, Canada. Threshold decision taken away from Canada - today they are the gatekeepers.

There should be expanded opportunities for sharing evidence and Indigenous Law must be a part of what is developed. An Independent process must reflect decisions based on the sacred principles of honour, truth, respect, caring and love.

- Treaty 8 TARR office is one of the most well renowned TARR offices in Canada, we are a pretty productive here. So, there is a lot of information here. We have a couple of people here that were Chiefs back in the day and it is worth having them talking about what they have witnessed through the years on this stuff.

- sad that we sit here today and are saying the same thing as we did generations ago

- Elder – About Indigenous law, this has to be part of what we develop in a sense. It's about moving with those indigenous laws and how we view the world, how we view the land as Indigenous peoples into the future, so we make decisions based on *honour, truth, respect, caring, love.* ***These sacred principles - resolution needs to reflect its transparency, its honour, its integrity on the land***.

- The land is our university as Indigenous Peoples - where we learn our culture, our societies - about how we interact with each other, how we make decisions. We carry ourselves with integrity and honour. ***We are bringing back what we lost*** through the genocide of our culture.

- We must find the way through our laws and work with their laws to move into the future together, side by side, respecting each other so we can find that solution in between. This is reflected in the Two Row Wampum.

- A lot of people say that we must reinvent the treaty, what we need to do is from our laws and their laws reinvent that thing in between, that relationship. That is all we must reinvent, *we do not have to rewrite our treaties****, we do not have to rewrite anything. What we need to do is write what that relationship is between the nation to nation and part of it is specific claims,*** that is just a tiny division of what we are talking about as a whole but if we are going to do it right, we have to do it that way.

[4] A paper to explain the Cree word "pimacihowan" or "keeping the land" and "community wellness" was provided following this session in Fort St. John, October 9, 2019. Written submissions were received from Doig River First Nation, November 12, 2019; Havlik Consulting Group, December 13, 2019.

We must set parameters around how we interact with each other based on our Indigenous laws and their laws. We must recognize the plurality of legal traditions.

- Making process very limited in terms of what you can do - ***I told people it's like a process where you are sending a fox to go count your hens and he comes back licking his lips and there's feathers flying out of his mouth saying everything's okay.*** They're all good. The hen is our land, our resources, our language, our cultural.

- We must regroup as a people and relearn ourselves, who we are to pick this back up.

- Claims are made by our master – government. They made the rules on how I can make a claim against you so to speak, they are limited and one sided, it accommodates them so that eventually in reality they eradicate who we are as people and they get what they've always wanted, to say the white paper policy that they have started.

- We must set rules and parameters of how we interact with each other based on our indigenous laws and often their laws.

- So many things we would like to research but can't. Well informed claim with information to know how we can resolve it fairly, so we have justice.

An Independent process must result from a change in policy. There is a fatigue with how many times, and generations of leadership from Treaty 8 have fought for change.

- We have been set back and side -tracked so many times that the wheel is squeaking but not getting anywhere. We must have a change of policy to make better ideas to move forward. The government has given us just enough to move but when we are getting somewhere that is when the funding gets cut off and we start letting go of people again and we can't keep bringing in somebody again, starting fresh, it's just not getting anywhere.

- The late Joe Mathias, I had a chance to talk to him in his later years, he said, "you know, this will never be settled in our lifetime, maybe our great grandkids might be able to get somewhere to see the light" and he's right.

- We have to keep going if this new thing is a new place. I mentioned we need to have representatives here from this area in Treaty 8 BC to be part of the work force.

- There are a lot of things here, you have probably 80-100 people down there yesterday but here we have massive land, but the population is so small. We can't even go into break -out groups; we can probably discuss the whole thing here, I think if we can have representation here from this area that is directly working, we will get somewhere. We do have a lot of information already from TARR here that has been compiled over quite a few years.

An Independent process must bring forward Indigenous world views into a new process. There needs to be a due respect for the original people of the land and their relationship to territory.

- **Going back to the cultural laws of the land** and the people when people talk about the cultural land the resources what the land gives us and our nation from the past to the future so we are always thinking about that, that's the ingredients of the law of the land to be able to help ourselves, other nations, people of the nations of the world and we have to make sound decisions or we won't be here.

- Professor Val Napoleon (at the University of Victoria), we should get her back here to have a task force as well as past Chief and Council – to get this spearheaded.

- What we need today and tomorrow for economic needs, **our language and cultural is the most important thing that describes our world view** - without that description we can't even understand the dreamer's songs; we can't even remember those kinds of things, without that. I just find it very difficult to even describe some of these things, you guys heard one of the dreamer's songs this morning, that is what I described and those are the songs that actually formulate relations and laws of the land and a lot of people have different views over that, what is that law, for us we know that we come from 12 000 years of history here, we have evidence at Tse'K'wa (Charlie Lake Cave) that pin points in and around that time where we can actually put our stories into that place.

- There is no due respect for the original people of the land. I see the relatives, our relatives in the future flying around using drone technologies to manage the land, just like we are out driving around today. WE have the sun to provide all of our energy needs and then also to look at the water system - where we can control and distribute good water all over the world. There is also the vision of where our people have control over the natural foods and provide medicines to a large population of people because we have been using it from the context of medicine chest coming from the treaty, we need to adapt those into contemporary and future needs.

- Who are we as people, to address that in a way that refines it in a context of dreamers' ways, the songs and the language?

- I'll be 60 years old and the last 40 years I've been involved in various process of claims and there have been people that fought and argued for the rights of our people. These people have passed away, including my grandparents. With their testimonies in their own language, in their own knowing, helped us be successful in one of our claims against the government but they died before the claim was settled. I don't want to be one of those leaders that die before a settlement is done.

- We need to reclaim our territories

- I want to be able to translate our language into something that's useful.

- Elder – since 16 talks about change – still the same. The "claim business" is not working. Did it with a good heart, spirit, and intention – to provide our people with the things they need.

An independent process needs to help resolve impasse with third parties, including the provincial government.

- Look at T8BC, because of the special circumstances it's in, where the provincial government is the biggest block to our settlement - even though they say they want to settle it, negotiate - but they drag it on with so many multiple players to have to answer to.

- For example, how absurd it is even as a treaty person, an artist, a community leader I want to build an art visibility project going towards the airport to put up a symbol of our nation which is teepee structure – they said we have to talk to everybody including nations from Alberta. How absurd it has become. Where we know that the consultation issues is about major impact on our treaty, that's when it kicks in not when we have to express, when is the expression of our people having to become a consultation issue, I don't think it's ever existed but because of the bureaucratic processes it created this big industry basically of **consultation where they go around and around instead of dealing with the issue.**

- Our number one priority is TLE, Health and wellness – urban reserve, Jobs and training. We can't manage poverty and that's what's been going on.

- When we were living in the bush, we were healthy, nobody was sick, babies were born, there was no hospital – how did that little baby survive? How did I survive when I was born in 1950? **Our ancestors, the ones who passed gave us all those stories to put it in our hearts, in our pockets to keep it**. Education and health are very important for my community.

- They moved us from where we once were to where we live right now, they built us a school in 1955. Then they burnt our school down because they didn't want this generation to get an education. Then we moved back to the community. Indian Affairs built us a school and they called it an 'Indian Day Specific School'. We all went to school there and then later some of us went to grade 8 and 9. Then they took us to Fort St. John and they got their education.

- The ancestors tell us all kinds of stories. That the land is very important to First Nations because we live out of it. We made a second book; how we use the traditional medicine, how we survive (book on our plants). I worked for four years to teach Beaver language. I listened to my Elders, who were in this world first. We helped the Elders, not today – young people get mad. Every year we have a culture camp to teach about our culture. Boys want to learn but the girls don't want to. We never give up.

- Springtime we take them for trapping, very important, that is how we were raised. We helped, skin squirrels and weasels for my dad. He said I am not going to live with you guys forever, so you guys have to start to learn how to survive in the bush.

An independent process must help to eliminate delay. Claims remain unresolved and too much time is passing without resolution:

- When we advanced our land claim – we still are waiting – it has been 16 years of waiting- nothing has been done. They put the bands together but now with the land claim we have to split it 50/50. We should start working together as one. Right now, we are losing people, on August 18th my son died he was only 50, on September 18th my niece died she just turned 21.

A new process must have regard for the principle of honour:

- A real mind -boggling thing – is why overlaps are allowed when Treaties already exist. I'm 61 old years old and there is no overlapping with respect of the land and its people. You do not go past this mountain; you do not cross that river. **The sacredness of the land and people, the spirituality, you cannot put your moccasin print on somebody else's territory. That is disrespecting the Creator that made the land and the people**. Talk to your neighbours – if you are lacking something it's not too hard to talk to your neighbour and tell them, we are in this situation our people are hurting, please help. It is very simple but do not just go in there and put your moccasin print on other people's territory, we have different cultures; different tribes and people respect that. Today it's always overlapping – that came from economics of the world and the infringements on which way to generate revenue the quicker way. When it comes to claims, these things are real. It was mentioned this morning about these are the laws of the land that we have to follow and if we don't, we have a greater power up there that we have to deal with today.

- Honour at the forefront. If honour had been kept, then there would have been no indemnification clause. Indemnity can't be a part of it. That indemnity clause extinguishes our Treaty rights as it goes forward, we did it with Cows and Ploughs recently, and now our grandkids will never be able to go get Cows and Ploughs.

An independent process must bring balance to the relationship. There is much to learn from how large bureaucracies interact with First Nations people and how their education and organizations that they work for colour their perceptions, their attitudes and their decisions, leading them to believe they are superior. An independent process cannot perpetuate this:

- Recorded in Mckenize Basin, it is also recorded in the journals of Bishop and Neil Grouard how was the late Bishop, who attended the Treaty negotiations. What these two written accounts said was Sou Payaham his discussions with Grouard said these men are talking me they want me to sell them the land and I cannot do this because I am not the maker of the land, the land was made by the creator and we have obligations towards it. It would be theft for me to take money. Grouard then said the Treaty Commissioners are telling you that there will be other white men coming into this area who will be digging the earth and you are justified in taking the Treaty annuity for the loss of the use of the land that they will be using. That's the first account south of the 60th parallel of a First Nation leader and Grouard as a person who witnessed this, coming to a natural understanding of what the Treaty was about; it was an agreement to live in peace and share use of the land. In that one family and community they have a living record of what

the Treaty agreement was, the other person I learned a lot from was Harold Cardinal, he did a lot of work with the Elders over in Saskatchewan and Alberta.

- Cree word, **pimacihowan,** is the closest approximation to one meaning of the word "vocation", which is a word used in English and Treaty. Pimacihowan wasn't what the Treaty Commissioners were thinking about when they used that word vocation. They were thinking about hunting, fishing and trapping as ways of making a living and feeding yourself. But when the leaders who negotiated Treaty on the First Nations side used pimacihowan what they were talking about was this cultural world view and all of their values, all of their laws and customs which was explained in that video, is the relationship of the Cree in that instance but for First Nation people, to all of their relations and the mutual obligations they have towards them.

- The Crown can no longer assume that their rights are superior to the rights of the Dene-zaa, those rights are co-equal. The Crown- in approaching any decision that has the potential to affect the rights of the Dene-zaa - must find a way to balance those rights with Crown rights at the beginning of the process. Larger implications of that court case have been ignored by both the federal and provincial Crown. The only time the federal Crown has acted in accordance with it, is in an environmental assessment that they undertook for mining. A company wanted to build a coal mine which had the potential to have a small effect on caribou. The quientette herd (the area in which the mine was going to be) was already beyond the level acceptable impact. So the province would have to come up with a plan that showed how that habitat would be restored before even a nominal impact on caribou could be permitted. Treaty 8 people have this constitutionally protected right to hunt caribou in accordance with their traditional seasonal realm.

- Crown government must sit down and talk to First Nations about changes to regulations, policies and laws that will allow a balance to be established and that balance is called optimization. It is the idea that you achieve the best protection over treaty rights and the best ability of treaty peoples to have peaceful enjoyment in the exercise of their rights. At the same time, you accomplish the best achievable economic developmental resource, development model that is consistent and compatible with protecting these treaty rights.

The Specific Claims Policy and Process are too tightly constrained and must be made more flexible if we are to achieve reconciliation:

- We should be focusing more on the Crown's Comprehensive Claim Policies and their Specific Claims Policies because north of 60 where we have Treaty 8 First Nations and Treaty 11 First Nations, those treaty nations are allowed to participate under the comprehensive claims policy in actions with the Crown in right of Canada that address reconciliation of rights interest and governance authorities. From my perspective as a technician, **the Specific Claims policy is too tightly constrained by existing legislation and policy and by Crown's interpretation of those to have the flexibility to achievement of reconciliation**. Processes that Justice Arknow's described in his book on reconciliation arising out of the Treaty Commission in Saskatchewan or in the processes that we are undertaking in Treaty 8 Alberta **to arrive at a similar mutual understanding of the spirit and intent of what Treaty 8 is because right now the Crown's**

understanding is vastly different than the understanding of any of the First Nation Peoples in this room. Who are the descendants of the Chiefs and Headmen who adhered to that Treaty?

- What was the intention behind the Specific Claims Process in the first place? If this is the basic concept, does not make sense to have it limited to just historical grievances? The buzz word of the day – reconciliation. How can you have it if you tie something up and you have 10 more occur in the future? **Can't exercise your treaty rights if there is no land or animals left. We would like to see a broadening of the Specific Claims Policy to incorporate more.**

- For 30 years I have been saying there are 100 things you can't do but maybe one thing we can peg into and give it a try. Timing – the people that really suffered and were owed compensation are not around anymore.

- **I think that the Commission that they created in Saskatchewan would be a good working model. I was troubled when that Commission's Report was left to smolder rather than being acted upon**. I was also troubled by the book that was published by one of the Head Commissioners of the BC Treaty Commission who said that the BC Treaty Commission was so bound by the rules around it that it had the potential creating in BC the next Beirut or the next Middle East Crisis because of the Crown's inability to achieve meaningful reconciliation through that interest based process.

An independent process may help to educate the public of the history of the people. Recording and preservation of oral history and Indigenous laws is on-going and must be included in a new process

- INDEPENDENT BODY must serve a public education function and create platforms to reach an understanding. Where is there a separate, resourced body that has the time and resources to handle this. What is the history of Indigenous people across Canada to facilitate an educational role?

- There are many stories from the Elders and how they traveled. *We need to interview more Dane-zaa people in Treaty 8 country, so we have better evidence; I know there is a lot of information that is recorded**.**

- I'm wondering how much history do the Beaver people have to fight with? For example, amassing of the Dene-zaa warriors at Fort St. John and the pushing of the prospectors, settlers and the government agents down Taylor Hill to the Peace River. That event signaled to the Crown and others that the tolerance that the Dene-zaa had for others coming into their territory had reached a level where they were compelled to act to protect their relationships these lands and resources event if it meant violence. The Crown people at Fort St. John at the time sent messages to Ottawa saying that you had better send a Treaty Commissioner here to negotiate a peace because if the Dene-zaa continues we will not be able to stop them. This is the first and only incident where Treaty 8 First Nation people actively contested the actions of the Crown, settlers and the prospectors acting under Crown dominion, it was an exercise in First Nation

dominion under your own laws. In another example, around 1823 the contemporary history tells us that the Dane-zaa and these fur company factors had a social agreement, they had a social contract, they had created economy of inner dependence and the fur trading company unilaterally made a decision to close that fort which would have destroyed the economy of the Dane-zaa but also the social contract that they had. So that those people were no longer were a collaborative enterprise supported by the Dane-zaa, they became interlopers and they took legitimate action in the context of the world view of the Dane-zaa do as stewards of the land.

- The second part of it is in our Regional Strategic Environmental Assessment where we have been discussing for the last 4 years this concept of peaceful and quiet enjoyment, which is the right not to be unreasonably interfered with in the exercise of your usual way of life. Their words and their meanings in Dane-zaa are essentially either very similar or identical to their words and meanings as expressed in Cree. This is something that is very close in meaning so we've had people from the other Dane-zaa First Nations, who have focused on this word "pimacihowin" would be said in Dane-zaa to express this concept of by the rules of which you structure all of your relations on the landscape.

- Water Rights Claim – creek come down and runs into river. There was a cabin built in the middle of that valley, they stopped everyone going up. Mounted Police went up valley the reason was because they got invited to. A lot of spiritual happenings there so anybody that goes up the valley including Indian Agents, prospectors, trappers, surveyors, they would have to be escorted to get passed and they have to check in to go up the valley.

- In our community we interviewed people on video; put on record. We have people who know the oral history.

- Since 1965 we have documented a lot of things where there is evidence of our ancestors that were really close to the land, they spoke their own languages. Their own expression – dream mapping, dream mapping has been around for 100's and 100's of years, it's evidence of a relationships between the spirit dimension and the physical world. Inside those dream maps are stories and context that clarifies our spiritual truth of what is happening. Those things are never really used in the context of negotiation because it must be English; it never captures the tapestry of the richness of that story. We need that depth of knowledge because English words are very limited. *Would like to see in the future how those types of things can be included as a complete thing.

- Tapestry of the environment. "Kema" a place of pure, nature, undisturbed by man – when you are part of that and you are there, that's when everything falls off and you are happy. We need multiple medias to tell that complete story, so we can better tell that story. That is the greatest gift we had, that it was free. Document and organization their world view and deep culture in what they think.

- Sharing research is not possible, most documents obtained by Treaty 8 - undertaking some records are very confidential and political – traditional land use, genealogy. Always a very strong interest in maintaining confidentiality.

- It has taken a really long time to get our information back from Treaty 8. We had to hire an independent researcher; I don't even think we have it all back yet. We have bulk acquisitions, and someone brought in to sort out what is our nations from everyone else.

- We have huge vast repositories there to find key documents. It is a huge legacy for the community. We have audio/visual information to preserve and maintain these records.

- It will be hard to share – perhaps the records coming from claims (RG10 file) there is information general for everyone. Example: University of Saskatchewan /UBCIC library/ Precedent – Treaty and Historical Research Centre. Set-up to access specific claims research – staff were there to help you specifically. There was no prior vetting of file or retracting information, it was golden times.

- Our traditional knowledge is fragmented. This is what colonization has done to our Traditional Knowledge. That is why people don't know but if we put it all together now you start to formulate something about why things happen. E.g., Dream the hunt – negotiate with the animal. The laws that describe hunting. Today education is really pan-America – treated as all the same. This needs to be researched and brought up in a contemporary way.

An independent body must mean the federal government cannot define its own obligations:

- *A thousand-foot version – other big picture thing - ability for Crown to define what its obligations, that cannot continue to be workable if there is a serious intention to look at UNDRIP. If serious intention to implement what the courts are saying.*

- Cannot have Department of Justice come forward with its minimum legal obligation. More than the morals of marketplace.
- You must take away the ability to the federal government to define its own obligations and that has to be handed to that independent third party.

Treaty 8 may need its own process:

- How will AFN help us to get what is rightfully owed to the Elders? I went to AFN meetings; I know you are involved with a lot of law making. I never once heard you fight for Treaty 8 of Northeast BC. We have documentation. How will you help us – that is what I want to know?

- To explain, we have the federal crown without the involvement of the province, the federal government made a bunch of promises that it couldn't keep; we have not gotten enough attention. ***We need unique regional considerations – such as the ones we face here.***

- Most of our issues are land based but can't be addressed in the current Specific Claims Policy. Third party does not claim any responsibility to the Treaty. There is no recourse other than going to court. There should be a penalty. Example: Annuity and TLE.

An independent body must not perpetuate a narrowing scope of treaty interpretation. It must expand its parameters to be able to address contemporary concerns and expand the understanding of resolution.

- You must expand the parameters if you are talking about creating an institution – how is that going to be structured, what is that institution going to be able to do? What are the rules under which it will operate? We saw this with ICC – given no binding authority then Specific Claims Tribunal was created but tied to the policy. **Key historical grievances are not included. Needs to be big enough to capture what is important. Also have the problem – very fundamental – the interpretation of Treaty. Heart is preservation of a traditional mode of life. Cuts the heart out of the Treaty, how can you address reconciliation if you can't address the core of the Treaty**? This goes towards all out contemporary concerns of cumulative impacts, historical and going forward.

- **If reconciliation and UNDRIP are behind this, it must capture the heart of the Treaty and the Treaty can't be interpreted by government unilaterally. And the jurisdictional issues need to be addressed. Have a festering grievance of narrowing the scope of Treaty**.

- Can't participate to any legislation that extinguished it (treaty). All inter-related and policy forces you just to deal with bits and pieces to reconcile. That is the main limitation of the policy.

- Cree word – Provide better understanding of what absence of any will at Crowns level to move discussion and negotiation… you agree to. Only way to deal with is to discuss and negotiate or take them to court. The Crown is hung up on *Horseman,* but we have six rooms of evidence that says otherwise. In Treaty Governance Process – took evidence we had and submit it to Supreme Court. Court said would not relook it to say if accepted or would re-interpret. Number of nations – building a war chest to go back to court. Saskatchewan Treaty Commissioner tried to do shared understanding of international meaning of Treaty, the foundational issues.
  *" Reflect a shallow view of history government has".
  Mainly grounded in different language, meanings, world views, and cultural values.

- We must take the threshold decision making out of Canada's hands of the department and put it into the independent body. Have an interest to do history right – a way to structure it so has broad appeal. So jurisdictional gap does not get played with to the detriment is never the other way.

- If land is an achievable way to reach reconciliation.

- We need those to be compensable losses – deemed – put in legislative shopping list; not looped into common law. Intergenerational impacts.

- The way the Crown and First Nations approach land management and use of resources. Right now, seriously out of balance. We need to reconcile this need to... allow forest conversation and restoration. The time to restore landscapes so that practice of Treaty rights can continue. To allow level of peaceful enjoyment to be actualized.

- Need to understand spirit of the people, in order to understand the context (e.g. Val Napoleon research).

- What kind of outcomes on the resolution of claims? Not just compensation for damages of past some way to make nations whole, try to reinvigorate what suppressed things.

- Looking ahead, not only is the independence critical but the definition of what is a Specific Claim is equally important. We must roll back the prohibition of hunting, trapping, fishing claims – if anyone is serious about reconciliation, then how can you decide not to talk about the heart of Treaty as well as the spirit intent

The independent body must be legislated and not be a delegated authority of CIRNA:

- Will this body have delegated authority? The First Nations Health Authority, Children & Family – entirely by contract so government holds strings. We have seen this before; Canada losing their mind, not responding to annuity claim because see the claims beyond what they can deal with. Unless body has something that gives them binding authority.

- We need stronger institutional distinctiveness than *First Nations Health Authority* for example. We would want to be an independent body backed by federal legislation that does not fall under or is an arm of government of Canada. Hard to get constitutional amendment when deals with indigenous people.

- What happens when you leave any discretion with the government? The bureaucrats will twist it to meet their interests (example, used minimum std. policy).

- What about the community side? Our person that needs to be funded as well so we have the capacity to be involved**. First to do for reconciliation – acknowledgement that we do not have shared understanding of things like Treaty. We must work towards this and use as a basis for moving towards reconciliation**.

Adjudication of claims (at the Tribunal) is necessary. Perhaps we should look to the Human Rights Tribunal model of investigation and adjudication in transforming this process:

- Cynical and long view was to adjudicate the low hanging fruit.

- Look at several human rights bodies – have a commission and tribunal.

- Not making all claims adversarial in nature because government wants to minimize its legal obligation.

- Could be a lot of constitutional models to use.

- Having a dialogue to rectify historical wrongs. Different funding focus – Human Rights Commission – with a special adjudicated role.

- The legislated settlement cap – it basically incentivizes Canada to slow things down, you know the cost of settlement is increasing in time (a loss of use claim can escalate very quickly during passage of time). For example, a claim filed in 1999 – decade to reject – one first claim to file Specific Claims Tribunal. This claim was under the cap but now 9 years later, is well over the cap. 20 years after filed, continued delays – tribunal can't schedule things in a timely way.

- Not having a cap that rewards Canada is necessary**.**

- **Create ethical spaces for truth telling**. To protect and restore caribou habitat that threatens resource use and jobs has been a polarizing process. Best example – in wood national park an on-going dispute of drying up of Peace Athabasca Delta not because of dams on Peace but because of natural processes UN said to Canada. A sub-committee convergent validation formed with Elders and graveyard scientists. Two different knowledge and value systems reaching agreement. Requires people explain it but do not hold so fiercely to it that can't accept other knowledge generated in those systems

We need a Commissioner, adjudicator, and a body to police it. There must be oversight of the independent body.

- It is one to two years between hearings because all the steps need to happen in between. Canada gets away with a lot of delays

- If claim is historic enough and based on high land values – you will blow right through the cap. Litigation stretches out far more than it ever should meanwhile the loss of use is mounting.

- There should be oversight over the independent body.

- Why can't have United Nations oversee it with the framework of Article 27 of UNDRIP guiding it. Canada controls access to a negotiation table, rests in their hands to decide but if given to an independent body – how would decisions be made on how a claim is accepted?

- In transitioning to a different process – reminded in 2008, when went to Indian Claims Commission to the Specific Claims Tribunal we had an annuity arrears claim. We were heading to have hearing date and discuss list of issues and all that abruptly stopped. When I hear of changing of structure and policy, we need to be very careful with transitional provisions so don't claims don't get set back.

- We will need some type of grandfathering in clause**.**

An independent process must ensure interest-based negotiations and expand understanding of resolution:

- We need to break from policy driven negotiations. Negotiations at one time were interest based but that has been thrown out the window. If you are allowed to present a more contextual perspective to change the narrow minimal view of legal obligation. Talking about a cold clinical face to it, to show it is a pattern that is contributing to the vicious social cycle.

Topic One: Claims Research and Development – Six Nations of the Grand River, Ontario October 24, 2019

An independent body could facilitate access to archival documents (LAC), provide a national database for existing research (with parameters), and record and preserve oral history evidence for inclusion in a new process.

- Loss of corporate knowledge at LAC. Competence of reference archivists is questionable. Hours have changed, just having the time to do research is a challenge. Need competent staff who are able to answer questions. When file relates to more than one community, need access to those.

- LAC has dismantled records. Just getting hands on materials to prove your case is difficult. Redacted copies, easier said than done. Lack of funding, resources, need to properly staff. Value in collecting oral history and having that as a repository. Needs to be in a neutral body.

- No great experiences at LAC. Went through process, clearances. Archivist said we have no record of this. Two processes of people there, and those we talk to are siloed. They are not talking to each other. Archivists on the ground don't have authorization to let you use them. Government researchers have access to the records, we need same access as government researchers have.

- Government still invokes privacy to limit access to things like treaty pay lists. Need access to that kind of information. What is sensitive if it goes back 100 years? One more example of how government officials are interpreting their own information impacts claims.

- One of subjects that was touched upon is the issue of trying to get access to documents. Library Archives Canada (LAC) is overloaded and they don't have the funding to get the documents. They cannot keep up and cannot process the material to make it accessible ... that is a black hole of records.

- We need to have a conversation about creating a national database for our own use... if designed by us... What would that look like? Today everything is digital... perhaps reach an agreement with Canada to get a digital copy of the documents that we want from them... So, if you had a national database... not private documents, maybe not even government... but common papers... If we want to be in this together, we need to develop the big word "trust" ...

- Regarding the issue of accessibility... 60 kilometers of documents that simply aren't accessible. So would some communities want access and help from an independent process? Maybe, but that may raise the question to **flexibility**....

- During the Vancouver session.... there is big fear involving Canada too early in the research... a way to tackle the issue... look at how to prevent those things from happening.... First Nation research and submit... Canada does the same... but then document dump us... bog us down with documents that aren't necessary... ***In an independent process, perhaps during the research***

process, both parties would be responsible to research at same time... not showing hand – evens the playing field... strictly keep it that it's equal as possible by doing a document list sharing that is complete as possible that allows...

- So, you would sign an MOU? I don't know but research at same time and document sharing up front to allow for efficient researching.

- Our Nation has only been able to resolve one claim... a simple one... we are in litigation and asking how they (the government) managed the resources and land... asking for accounting... Canada admits that they don't have the records of management. Which raises issue of proof... should Canada get off the hook for not being able to produce documents? So while Canada cannot produce its own documents, they take issue with the Nations' records because they are not held by its repositories... so in Canada's eyes, no weight can be put on them as they are not credible... Canada has all the cards on their deck.

- This then raises the question as what role does the independent process have that can prevent that... could an independent body act essentially as a referee?

- Could an independent body house a database...I think what you're talking about is separating an independent process from First Nation... if that is the case would we be in the realm of the constitution of Canada... it would have to be recognized by judicial and constitution...

- How do you deal with oral testimony from the independent process? The LAC project "Listen and Hear their Voices". If independent process did it for First Nation's use and benefit...if our own people wanted to.... we don't have anything to hide other... If independent body had this ... different levels of access for different documents... communities sets the level of access... but could only be approved through chiefs and council.

- An independent body could help keep archives... as well it could fund community research. LAC doesn't have the best answer... so we are talking about flexibility again. Some communities have their own ability and capacity and can house their oral history and those that cannot … we must communicate, support and work together... can ask to access other oral history of communities.

- Independent process will not live forever so need to have the back-up plan for these oral histories... each community decides what happens initially for housing and if the Independent process fails and closes... what happens to that information....

- I would like to see us bringing extra credence to oral testimony – need a change in the legal framework as to what is considered appropriate. We need more emphasis on indigenous laws and traditions. We would view this as important evidence. Independent process can help to educate at getting a better understanding of appreciating oral histories. We need a more holistic understanding of importance of oral history, and not let oral history stop with a claim; it has larger use for community and understanding for the enhancement of community and go back

and draw from it beyond just the Specific Claims. Build on Ardith Walkem, not just person-to-person law, but holistic law. How we can use oral history is to build up wider world and legal traditions – uphill battle trying to get courts to understand?

- Oral history is not static – not just a point in time, oral history doesn't stop with one generation. We are the next generation where the stories of people are just as important.

- Under the Indian Claims Commission process, the Commission would go into community to hear stories. We could go back to having independent body visiting community almost like a victim statement. In our community we are now land locked. How the impact of that way of life impacts generations just like residential school. When you take out a person's way of life like fishing and travel and put us where we don't have access – that has lasting impact for future generations. they have lost a way of life. Independent process should have people visit to the communities. Judges don't know the people nor what they have been through. It makes a big difference when you visit community and see the impacts on community of the land – seeing the community will have a huge impact on claims settlement because adjudicators will see what we've lost. Have some kind first-hand knowledge what it is to live our lives and what the people go through and lost.

- In our community we are the sole financer a lot of our activities. A few years ago, we created comprehensive community plan made up of two documents. One is the plan broken into themes, goals and strategies. Projects into the future on where we want to go. The companion document is a number of engagements and talks called "Community Story" which captures talking with people in the community, their ideas and remembrances and thoughts on the past. We have done that work. We have also done traditional land use study - Ardith's video captured a bit of it. It is that loss – it is real even if not articulated. We have dense forest cover, there are still deer around, so people want deer meat, or fish, they will do that. Inside the reserve. But it is the loss, we can't go hunting anywhere else. So, there is that kind of a loss and the stagnancy that comes from living at one location since reserve creation. An independent entity could go through that exercise to try and capture that loss – talk to the hunters and hear about their experience. Grappling with how an independent body how can that really help in terms of development into future or the articulation of claims of a different nature.

- Answer probably lies in consolidating information. The sense of wrong and grievance is carried by community until resolved. The process should start with the pain – maybe we don't have the specifics, but it should start with the sense of grievance – the earlier it is communicated by the community in terms of what happened and the impacts, then that may provide the impetus for joint problem solving.

- Treaty lands and environment department – most of the work of the research team is following the agenda of earlier councils of 1870s – leadership of day identified 7 or 8 claims that they knew were wrong. No matter what council of the day has this agenda as backdrop by leadership of the past. Already have agenda base on documentary history. We have good number of minutes of meetings – specific hearings of the 1880s – we have 80 pages of documents by the

leadership of the 1880s. Sometimes we base our decisions on what our leadership wanted back then – that is closest we have oral history. Are these minutes from our leadership? That may be our contribution to oral history

- Are consultants and attorneys' barriers to the process? How do we get equal access to information? There should be a centralized body where we can access the documents, so we do not have to re-invent the wheel.

- INAC makes available a limited pool of funding and we are competing with each other.

- We have come a long way. We have to look at what we have and how do we make it better. Silos have been built around First Nations; how do we break it down to have a system of sharing knowledge between First Nations. ON Aboriginal Lands Assoc. made a website – something researchers who have been around a long time made it – website for resources. When we were in the inquiry Government of Canada told us in 1805, they never had a banking system – but we told them doesn't matter because they did something with our money. Our Nation did the research and found out they did have banking system and stored stolen Indian money. We have all these studies - we have had to do for our claims, and if we had a group to put centres of research together to share that information. When you talk about silos and this is my money, we are coming to a place where we share instead of hoarding money and not getting anything. An Elder told us that if First Nation put money together, they could have anything they wanted. How do we pool our money and have best bang for our buck? Refuse the silos government put us in. We have to look at ourselves and say if we only get this much money as our First Nation, if we shared this money.

- We need to share resources money. Our Nation came back together again, and we are finding we are not all at the same level. We want to make our own laws, but everyone at their own level. Our Nation has been assertive what we want and get things done. Get the Nation back together again and work the way. They may have own things at own FIRST NATIONS but as collective group we are stronger. Government given us money for years for research so we need to get together to that sharing, we have come long way, but we should take next step to have organizations that have funding.

- Look at the Saskatchewan Treaty Agreement as a good example – key to success was creating the Office of Treaty Commissioner – neutral body with researchers. When we do one claim each, it is a natural competition. We need impartial body to share information with everyone.

- Done work with a lot of First Nations across the country related to oral testimony. Respecting oral history as evidence is still problematic. Supreme Court put them on an equal basis. The reality is the lower court judges are not following that, not even the Tribunal.

- Our own lawyers have to provide submission and that can take so long; burden is so strong against you. An independent process would assist greatly in doing that. Each First Nation needs to do this on their own. People dying off, getting sick, get nervous at oral hearing. Beautiful

stuff they share is not there. Evidence preserved as soon as possible. May be better if needs to be better than now. Independent process would be very good.

- The best trial decision I have seen – Robinson-Huron case in Ontario – Judge attended ceremonies, where Elders are most comfortable. Own environment, using own customs. She did that. Participated in smudges. Understood laws and traditions of the 1850 period. Provided that in the background before she did her analysis. An Independent process might train judges to better understand our differences. The cultural differences are so stark. Elders exhausted, scared, sometimes not the best evidence into the hearing because of their fear.

- In Vancouver we talked about whether independent body could help to facilitate the preservation and gathering of relevant oral testimony. Still the property of community.

- LAC has a program to help a community to transcribe, store, preserve oral testimony. Community gets to decide where it is housed. Independent body might take on a role like this.

- Challenges for Elders to give testimony in a court like setting. Maybe a process could take those testimonies where people are comfortable.

- It is important that representatives from Canada come to community to understand the laws and impact. Difference in cultures and world views – cultural competency training is needed.

Perhaps the independent body could facilitate an early exchange and review of the factual foundation of a claim between the parties, including Indigenous knowledge:

- One of things we do when we get a request is to look at the validity of a claim, we employ our researchers to do that. Maybe one thing we can add is to sit with Canada and if there is a lawful obligation, then why can't we work on that together?

- Not every aspect of a claim is accepted by Canada. For example, if you list 4 issues and they come together but 3 are not accepted... then we should have mini reassessments by tribunal for validity. If the main allegation... if the main one is accepted the others are not accepted or viewed as important then comes the issue of spending years on all other allegations if the claim falls on a technical breach of the *Indian Act* for example. If we have an independent body and key allegations are focused on... breach of *Indian Act*.... so, settle the one aspect you agree upon or do you need to do absolutely everything?

- We need to cover all your bases... we will break our claims down in many groups instead of a larger claim because experience has told us that they (Canada) will take one small issue and destroy (our chances are better with smaller claims).

- We need a re-organization of the entire process and bring in more Indigenous forms of information. We need to re-haul – that's our goal. We also need flexible funding.

- Research is organic. Is there a way that we engineer a process to fact gather at the start with an efficient process? People know storytellers – have handful of people sharing their stories without having to detail it through RG10 documents. If it leads to common understanding of what happened.

- We have ever been able to come together in our region – most treaties are pre-Confederation – important not just look at text of treaties but minutes predating written treaties. See what we wanted out of the whole thing. There are minutes for meeting with Crown with dozen Chiefs, Chiefs said that should reserves not meet our needs they should be augmented. Primary source right there for us to come together – but could be because of lack of structure for us to do this. We need leadership to draw from FIRST NATIONS to have some common things. Need to amass all the reports from government – and find if there are commonalities there.

- So, for issues of access to info – if that is the case – what do we do to address that?

- Finding commonalities and stuff, before we used to have general councils – First Nations got together and talked about things coming down and positions they were taking. Went to different places where we used to talk about a lot of issues at these General Councils. Today these political orgs (like the AFN and Chiefs of ON) bring chiefs together but does not actually give FIRST NATIONS time together to talk to one another and I think that is what we need to do. Instead of fighting we need to work together to make that change. Study those General Councils, what they talked about and how they were formed.

- One co-worker applied for fellowship and sponsored by American Philanthropic organization which let him travel and do some research in US in archives outside of Canada. Each archive has a repository, and each has different information. Some of our records are not in Canada but it is very expensive to do research in American Institutions.

- Instead of compiling 100s of documents we should start on the land with our stories. Funding would instead go to Nations compiling their stories instead of funding being used to compile colonial documents.

- When we look at surveyors that is only one surveyor's opinion. Chief and Surveyor could stand by side and have different impression of where the boundary is, but it is only the surveyor's opinion goes to Ottawa. While common law boundaries change, Indigenous boundaries continue to be the same and share values across time. Oral testimony comes in – what was intent of the party?

- Work in land code – if we go back in time and see survey instructions - there is some interesting things with conversation with surveyors that are really interesting. How would an independent body help us track our traditional boundaries?

- Function of National Archives – they are biased. They administer document management. They decide what is redacted. How do we house those documents with a different entity?

- Regarding heritage and Burials – how are our records kept? How do our records become repatriated? A movement to repatriate some of these records would be really interesting. Start with personal papers – bring them back to community or tribunal organization and move them out of the archives. I ordered 62 files for a claim. I got 12 back after a year and a half and it was all stuff I couldn't use. A few months ago a colleague of mine is at Indian Affairs doing research and my colleague came across boxes that have the name of the First Nation I was working from and it said "Do Not Release to name of FIRST NATIONS Researcher" – indication that National Archives works for Canada. I am not unique to that.

- By nature of work we are trying to do, they showed us photo of collection of documents and we have same style of collection of thousands of documents – each First Nation has boxes and boxes of documents – something to think about is that an issue if we don't share stuff that might be helpful, the management of it, storage of it. We have to have the right facilities to store that stuff.

- The vault was when this was controlled by Department's District office - full of original documents – when stuff come from district it was supposed to be there for 30 years, then regional and then headquarters. But the district office never sent it forward. When district was moving, they asked the two largest communities if wanted the documents. We had not place to put them, so we ended up letting them go to and they got pilot project and micro-filmed them. I have 43 years of collecting documents – but that is how I learned history by transcribing original documents. I have filing cabinets of stuff. How do you maintain documents and put them in a place for other peoples to use?

- Should reps come visit your community? Impacts to our culture and what we may have lost. Additional impacts when reserve lands taken and encroachment impact on our community – environmental impact, loss of traditional use, way of life. In our region, with encroachment farms and city and resource extraction impact our community and if somebody comes sees my community in chemical valley, they will see the impact.

- Do we need document intensive search to show wrong? Probably not. Probably better to hear from people about how loss of reserve impacts way of life, sense of community. Shouldn't have to be quantifiable. How do you talk about the province It is often provinces fault?

The policy must be reformed, and lawful obligation should be expanded upon to include harvesting rights. The independent body should be the "mechanism" to enforce treaty rights:

- What's the policy and what will that look like... treaties... have been cut out... hunting, fishing and trapping have been cut out for example... those are considered individual claims and involves the province so excluded. This isn't fair.

- We have been resourceful... there are core elements of the treaty to bind Canada and First Nation together but there are no mechanisms that binds them together... the First Nation and

Crown made the agreements, so it does still fall on the federal government to uphold their duties.

- **What about the Treaty Commission Offices would that be a better place to have those issues discussed and resolved? When you try to do too much you end up not getting anything involved**.

- The Tribunal decided annuities as a First Nation claim not individual... could that not be extended to hunting, fishing, trapping? An individual hunting claim for example is very different from cutting off an entire territory. These claims are different. What I am saying is that everything that is a community right is a Specific Claim.

The independent body must inform First Nations affected by its decisions:

- Then the independent body should be tasked with looking at decisions... and should look for other communities that it would also concern... right now no retroactive mechanism to address issues unless you re-file.

- So the independent body would play a broader role to make sure communities are aware and involved in process and material that may impact them is shared. A failure to inform is a breach.

One size does not fit all in designing a process to support claim negotiation and implementation:

- The term "global settlement" has come up when multiple claims have come through the system and that methodology ... Canada were not responsive... the numbers were too far apart... global settlements undervalue the claims brought forward... the other part is when you get a global offer they don't break done what they are valuing for each thing... run into issues that Canada cannot afford to bulk settle these issues...

- What about "equitable compensation" .... will the whole claims process explode on itself because of cost? I guess it comes down to is there other resolution mechanisms that can be addressed?

- I think we must have our eyes wide open to what would be acceptable to communities... we are talking about people who are poor... they pretty well will accept everything.

- Equitable compensation... are we better by doing it now... case by case... is that something that Canada's might accept... you're going to have to ask over 650 communities... Instead of making an agreement upfront in order to get Canada to change process... so 50/50 model for minor … but then we have an issue of applying consistently... different communities view different issues.... Canada needs to budget so need to have an idea.... there are questions though to think about. If you are proposing that, what if the independent process, given the nature of this claim, it falls under this model.

- In a new process, there is a need for much oversight and control.... needs to get out of Canada hands... who is sitting there and roles... if you give them … How do you think that they should be appointed?

- Bureaucrats hide behind the rules. We need a creative solution. Our Nation's interests so different from BC, Maritimes, different values and needs. Flexibility is required. One size does not fit all.

- Spec Claims policy is no good. Access to information, where they did wrong, control resources we need to access and hire, put limits on loans/funding. Back to legislation where we could not hire lawyers, 1927. It's not much different.

- Arthur Manuel – Why do you keep crying on the shoulder of the person who stole your land

- We have 4 years under Trudeau to get something done.

- Perception of Government of Canada managing, limiting liability is prevailing view. Resolve claims in a responsible fiscal framework. Cap funding is a fundamental problem. Is it just a process for small claims? Something else? From Government of Canada point of view – bureaucrats – how do they get a mandate? What do they need to justify expenditure of public funds? What are better ways?

- Most of our claims have been rejected. We've settled a few. Most of the issues have been submitted. All we can do is go to the Tribunal. Started a couple of years ago.

- We have to find a new comprehensive independent process. Not too many moving parts, works from starts to end, to settlements

- The idea that it must be done to accommodate our First Nation is important. Process to accommodate every FIRST NATION, all different, different expectations, claims. It has to be a flexible process. That's why it is a challenge. It can't be rigid, flexible, covers from beginning to end.

- There are many difficulties involved. I am skeptical. Who has the resources? Provinces have, but they don't want to come to table or get involved. How to share with someone who doesn't want to share? I don't have the answers.

An independent process must be designed outside of CIRNA. Funding must be taken out of CIRNA:

- We need to find a way to help communities that deal with complex claims... our only frame for funding now is research... there has to be some other way for funding... there are a lot of CRU's that didn't make enough progress and not successful in the time that Canada thinks that it

should take. So, we must have programs to balance and make sure they are capable and successful to just throw people to the wolves.

- What do you think of multi-year funding? What if you did a five-year work plan? A year for research isn't enough... Has had examples of being prescriptive with time... it seems to be that multi year funding... as a minimum. How much does an average claim cost in terms of research, legal, negotiation to resolve claim? I would say about a million... If someone said if you have a community, how much do you need for a resolution?

- We have negotiation that has been sitting for 15 years...

- First Nations burnt out on Specific Claims, there is not much hope. Some of the Nations, the usefulness lies in the research and using it in other negotiations and community planning. We identify grievances in terms of documentary records and then sometimes claim will be filed but the research is more of an asset than the claims and if it is useful to the community, how can research be useful outside of claims?

- INAC used to do counter research that we could use – and at least it was useful for the community to have. But counter research no longer done with their budget cuts.

- The predisposition of Canada's system is their search for "certainty" which for them means extinguishment. Those are their rules. They control the money, and they have nothing to lose from walking away from the table. That's Canada's greatest defence. It is not a level playing field. Even the tribunal is impacted by a lack of proper resources.

- Many so-called small claims, if they are pre-confederation claims, when damages brought forward, the claim compensation gets really big.

- One size should not fit all.

- Principle – neutralize power Canada has over us. They have the records, control access to the records. Given this, it is amazing that we can do what we do.

The Specific Claims Policy must eliminate extinguishment:

- We have taken our issues to United Nations to expose Canada's use of extinguishment of rights to land has to cease. This has to be off the table.

- Another way to get certainty. The video was good. Think about services, promises to higher standard to meet our actual needs.

- Canada should talk about creative solutions. They can't pay us all out. It is about protecting liabilities. When we were at UN – creative solutions were discussed.

- Canada and Ontario, previous government, committed to legislative changes to allow FIRST NATIONS to control resource revenue sharing. We haven't given up the land, just agreed to share it, not other side of the fence.

An independent body should report to the international community:

- Recommend "take it or leave it attitude" not working. UN proposal – appropriate mechanisms, good faith negotiations, check and balance process. Tribunals only resolve various issues. Either you go to court or you don't. Hoping UNPFIS – international tribunal. Wanted a real independent person to look at the progress, hold them accountable.

- Seeking progress be reported directly to UN, process of checks and balances. Parliament of Canada reported to on progress. Facts on website of Indian Affairs lopsided, not right. Indian Affairs hides. Parliamentarians need to know. UN needs to know.

- In 2011, nothing has really changed. We must do away with extinguishment, come up with creative solutions. Its our land and resources that have made the country rich. North American caucus at the UN recommended that.

There is a need for an adjudicative body that is culturally competent and focused on reconciliation:

- There is the Specific Claims Tribunal, but how much teeth does it have... If you eliminate judicial review... rather limit judicial review so it is not used as appeal … then it has teeth.

- Need to fix a few realities. Comprehensive policy is dead. Canada classed surrenders as a special claim, not specific or comprehensive. Policy – Our policy is that we have no policy. DOJ Lawyer. We are operating in a policy vacuum. Good faith negotiations, evidence needs to be suitable in court. That means gathering Elders testimony, early and powerfully: Delgamuukw 1997
- Ktunaxa case in Supreme Court of Canada – how Canada deals with sacred places. Get 5 minutes when you present. In 5 min I got to say trial judge spent 100 days in mountains, meeting people, language. The Appeal took 1.5 days in Vancouver. Judges saw paper. Specific Claims has no chance of understanding people's history and culture, no chance of understanding place.

- Specific Claims Tribunal – I wanted to wear traditional clothes but was told I needed to wear business attire. Chief couldn't give tobacco. I guess we can tell whose courts this is. The Tribunal apologized. Even arranging of the room. Took an attempt to honour how the court would look, shattered it.

- In another case, the AFN doesn't recognize his community as a band. Canada doesn't either. Canada knows no mechanism for consulting with traditional governance. In examining an

Independent body – perhaps look to the NZ Waitangi Tribunal.

- In 2005 *Mikisew Cree* decision – procedural treaty rights recognized. 1677, 1764 Niagara Treaty, 1766 treaties. We have a Dispute Resolution Mechanism. Crown obligation by treaty – it is a treaty right. It is a fact that the Crown has the obligation. Procedurally - crown pretends it doesn't exist. *Chipewyan of Sarnia* case, Court of appeal. Canada obliged to follow. Canada is splitting the department. Oldest continuous title – Deputy Super Intendent General Indian Affairs (DSGIA) – SIGIA designated in treaties as Crown's counterpart, breach of treaty because position is abolished.

- Reconciliation is not only the residential school reconciliation – that's one kind. The Reconciliation we are concerned about – is found in the *Vanderpeet* trilogy: British assertion of sovereignty and the fact that Indigenous people were already here. How do you reconcile this assertion with pre-existence of laws? Court said that is the purpose of s.35. In 2005 *Haida* – treaties were one way of doing that. Peace/friendship treaties about coexistence in the same area. Land treaties do not surrender. In 1997 *Delgamuukw* – Indigenous Legal systems need to be incorporated in common laws. But the Two Row Wampum means we are separate.

- *Ross River Dene* exercise prerogative. If the prerogative is limited by the law of the land, courts in Canada say Indigenous Laws part of the laws of the land. From the beginning it is prerogative. There is no law in Canada directing how to deal with these and resolve them. UK SPECIFIC CLAIMS limits prerogative by indigenous legal systems. AR&T site specific, used in conjunction with Crowns Law. Concerned Canada is developing these processes and policies, not in a vacuum, but by actively ignoring laws and legal obligations.

Topic One: Claim Research and Development – Thunder Bay, Ontario
October 29, 2019[5]

An Independent Body must educate the general public on history of First Nations, the foundations of our shared history and our need for reconciliation based on shared understanding:

- The Royal Proclamation is a foundational document in our shared history, but the doctrine of discovery has no human rights basis in law. There is an urgent need to educate the public, the whole of Canada. We need to challenge these core misunderstandings. These are wrong concepts and perhaps the Independent body can perform this role.

- The general public may have a notion of what reconciliation means, but ask why do we have to pay for the generation before? If they knew the history of this country, on how land was acquired, they might better understand.

An Independent body could facilitate an early dialogue prior to claim development and consider joint research:

- Could an independent body have a sit down prior to claim development - pull together claims that are similar to make this a better process for First Nations. One party should not validate the claims submission of another party. Department of Justice assesses the validity, but we never see the analysis. Setting the bar is like a shot in the dark. So, maybe at a claims' initial stages, at the bare bones, we sit down with Canada. Grouping of claims is also an approach. The Saskatchewan Framework Agreement (TLE) is a good example.

- There may be efficiencies in joint research that have expertise to work from. Junior researchers will need time to learn. First Nations have different research principles at the community level - sharing, capacity, access to LAC. Independent could perhaps fill some of those gaps.

An independent body must eliminate DoJ deciding lawful obligation and bring transparency, perhaps through a human rights tribunal model:

- We need to shift the burden of proof to the Crown - how did that meet obligation? Currently, cannot get a mandate without DOJ giving the green light. That needs to change. Specific Claims Branch has created barriers in assessment.

- It appears that Canada is cherry picking the claims process. The door is opening to the ones that are being infringed upon. We have limited resources. What are we going to change here? Who is responsible to sit down and design the system?

[5] A written submission was submitted by the Anishinabek Nation, December 13, 2019.

- We submit multiple allegations and they may only agree to 2 out of 4. Everything should be negotiable. Canada needs to have more of an open mind.

- Maybe the CHRC is a model. The complaint is brought forward and investigated. The parties try to resolve at early stages. We need to eliminate duplication. Perhaps a peer review to expedite the process.

- We need transparency of the assessment. In the 1970s, the Indian Agent had control of the submission process. Access to legal is new (only since 1951). There are many historical disadvantages. Could not sue the Crown until 1951.

Topic One: Claim Research and Development – Edmonton, AB[6]
November 5, 2019

An Independent Body should maximize resources to create efficiencies and undertake research, provide claims template (where possible) and facilitate capacity building:

- Research is too expensive. It is wrong that the onus is on the FIRST NATIONS to undertake resources to submit a claim. Puts elected leaders in a Hobbesian predicament: do we build houses or legal research? Not a choice we should have to make. Process is asking leadership to invest political capital - when issue cannot be resolved during one term of leadership.

- We need to develop more comprehensive approaches e.g. TARRs of the past. ICC did its own research to facilitate FIRST NATIONS and Canada. We should design templates based upon common factors (TLE; cows and plows). Matters that can be evaluated/quantified. Fact specific situations will determine whether template is viable - recognizing we cannot take this approach with every claim - some may be too complex.

The Independent Body receives a claim application form to put Canada on notice that a claim is being asserted and the research stage follows:

- INDEPENDENT BODY could undertake research and provide templates. It could facilitate capacity building and public education. The INDEPENDENT BODY, not the tribunal. We should create a claims application form - without prejudice - for filing with the INDEPENDENT BODY to put Canada on notice that this claim is being asserted and the research stages can follow.

- The process is ripe for claims to be categorized and easily formatted. The current process is too time consuming and we need to find efficiencies. We need to create a de-risking application process for claims that are similar in fact to prior claims that have been litigated ad decided upon. Where the Tribunal or courts have rendered a decision that informs all similar claims that follow. This creates an efficiency (of process) and the people who benefit are the Elders. there are many people who are no longer with us - who never saw claims resolution because the process takes so long. Justice Delayed is Justice Denied.

- The onus is on First Nations to prove validity under the current process. This must shift.

The Independent body should assist with the preservation of oral history evidence:

- Elder - one community will be filing a claim that involves a waterway. The County put a berm next to the water source lake, so no water ran into lake. We are being interviewed to record history. My late husband interviewed many Elders before he died and recorded much history. Do I hand this over to the Band? We are now staking a claim and it will take years. I am 80 years now. This is what I am questioning too - everything gets filed in Ottawa, gets filed in an RG

[6] Briefing Note prepared by Dean Janvier was provided to the AFN, November 5th, 2019.

13 file and never seen again. We need access to information.

- We create a better process we need to create efficiencies. Recognize this is an important question. Another example of a different approach is the New Zealand model - develop a common explanation of the claim (to create more transparency and openness of process).

We need to establish a lands rights centre – a national office with regional sub-offices. Independent of federal government and not FIRST NATIONS institution either but a centre that becomes a repository of facts to enable access.

- Canada should not be making a report card on itself or sitting in judgement on its own mistakes[7]. Ermineskin took Canada to court for its handling of our money and the SPECIFIC CLAIMSC ruled against us. UNDRIP means nothing. an INDEPENDENT BODY should have no connection to Canada. It should be an international body. There have been so many recommendations from the international community - the UN - why should we believe we would get a fair shake? AFN cannot speak for us - they are an incorporated body - we should speak on a nation to nation basis.

The co-development of claims with Canada requires further discussion:

- Regarding co-development of claims with Canada - there might be opportunities in a defined process to conduct joint research and it should be an option that is on the table and be available. But in undertaking joint research, neither party is bound. FIRST NATIONS are proprietary and so sharing research may not be of interest for some.

- Look at the ICC's work on the Cold Lake Air Weapons Range claim - it was a claim of a third kind - Minister agreed to negotiate, without prejudice. ICC was the neutral third party - held a series of community sessions and took 'will says' of Elders. They provided simultaneous translation and held sessions in the community. The ICC was the INDEPENDENT BODY to go and do this work - in the language, in a voluntary hearing process with community members attending - it is a good example. Community involvement is key. Could this be a role for INDEPENDENT BODY - oversee negotiations in community - community based/community driven process.

An independent body must be open to joint research and joint valuation studies:

- The process takes too long, it too expensive and heavily weighted toward western legal processes that are adversarial not win/win. Claims are resolvable. For many, the legal issues have been answered and its only about quantifying value in dollar and cents. We must create an optional, fast track, First Nation driven process for these types of claims as single issue or bundles but take no more than 24 months (within term of Chief and Council).

[7] A statement was orally delivered by the Ermineskin First Nation during the session.

- We must be open to joint research and joint valuation studies - using a neutral 3rd party - this is necessary to get to a final agreement that is subject to ratification. Canada must provide grant funding to the FIRST NATIONS.

A new process must result from a review of the policy and process:

- We must review the *Specific Claims Tribunal Act* (SCTA) and operations without amending SCTA. We need a review of Specific Claims policy and process.

- Barriers are inside central agencies - someone has to do this work - SCB is well aware of the problems; DOJ is well aware of the problems; finance is well aware of the problems. There is a new minority government, this government should support this pilot. This must include a community process - involving a neutral third party - to drive the process. Check points can be agreed upon re: process. Plain language summaries provided to parties for credibility of process. First Nations should request community hearing - not an evidentiary hearing but a truth telling. First Nations will always have the final say in whether to accept a final agreement. Crown should pay in full as soon as agreement is reached - not at the whim of a political party.

Adjudication is necessary and must be credible:

- We must consider establishing a Specific Claims Resolution court as an adjunct to the Federal Court - that is impartial and credible. The lesser option is empowering the SCTA, but this will require legislative amendment, and this takes time.

- First Nations want a process that is credible; that has integrity. The pilot project can result in win/win and takes each of us one step forward in creating trust.

- This is a solvable issue. The building blocks are in place. We must consider the political, economic and social realities of FIRST NATIONS communities.

Topic One: Claim Research and Development – Halifax, NS
November 12, 2019

An independent body must help educate Canadians on the history of First Nations:

- There is not a wide understanding of the First Nations in the Maritimes. Lands tickets prior to the formation of Canada gave title to individuals and First Nations. Then provinces were formed. Today there are outstanding issues around title. Research after 1867, there are long standing issues in the Maritimes. If you look at the research, there are multiple bands. There was a collective group of Nations and not only one community to settle with. Other bands taking issue with title. Treaty First Nations (in the west) understand the process but in the east, there is no process. Natural Resource Transfer Act in the west still affects the east. Since 1964, there is no discussion around economic loss. For example, a claim exists where a highway bisects a reserve and severed the community. This is an outstanding issue but there is no process to address it. The current policy is too narrow. This discussion has no place.

- Need more knowledgeable people. Education – Urban reserve – need to educate the public

An Independent process should facilitate research, include oral history evidence in its process and permit the whole of claim to be received:

- First Nations was to advance the whole of its specific claims and not separate the claim, CIRNA suggested the claims be separated. The loan was put on the First Nation. In 2008, Canada accepted the claim for negotiation and council didn't agree to Canada's terms. We didn't see what their valuation process, it was not transparent. Getting close – but it isn't the 80/20.

- The current process/policy isn't working.

- It is the First Nation doing all the fitting. Oral history is not being recognized. The process severs the knowledge. How to combine federal, provincial and community processes?

- Could the Independent body assist in the gathering of information? National archive under the Independent body. Harness the information that currently exists? For example, what was the history of the territory, what research has already been done?

- Some communities have created a research centre – there is an archive but for national data you need permission. Elders don't want to give knowledge freely.

- We need to look at provincial regional, then national protocols.

- Regarding Research – need to include the church and its records. Designated lands for different resources.

- Agreements with First Nations were pre-confederation. Not recognized as part of the process.

- Historical society – to access historical documents. They are starting to digitize.

- Research (TARR) stops. Collective Mi'kmaq should be included. Using the information that was done and move forward. High costs to the First Nation, appraisers, legal, research. Two policy (ATR) and specific claims do not work together. Making the research more accessible. Example of the 13 communities.

- Independent body- if it has access to information can house its own. Need the background information. Missed data, Canada may falter the validation process.

- We adhere to "OCAP – ownership, control, access and possession" when discussing sharing our information. It is a way to protect information.

- First Nation information governance center - What role could Canada, could be a research assistant. Need access to the same information that Canada has access.

- Consistency – need Canada at the beginning. Employees get groomed into the community.

- No capacity for the communities. Turn-over of people is a hurdle.

- Funding is a barrier. Not enough to access researchers.

- Should be a central spot to access information. Building archives for communities is important

- SCB restored research funding for the next 5 years. At the Staff level – our budgets are often stand-alone no fix security in funding.

- Canada could take advantage of being in the community at the onset of a specific claims.

- Meeting with Canada on your territory could be advantageous. Give them a different perspective. We told them you did this to use, now you have to fix it.

- We need more capacity in the community and building that learning curve for Canada.

- The *Indian Act* is common but there is a lot of diversity across Canada.

- We need to ensure flexibility and diversity.

- Researchers need to come to community. Helps moving forward in realizing the world views. Where is your territory, not just the reserve? How can we give land to the First Nation?

- Made in Nova Scotia, then New Brunswick has a different process, can go for title. Made in Nova Scotia has more flexibility. Need to include ATR access.

- What does reconciliation mean? We need to have an agreed upon process. Community needs to be part of that process. *How can an Independent Body – increase the Scope of acquiring land.*

- Claims resolution – there is a more holistic role an INDEPENDENT BODY can play. Working in tandem, amalgamate the process. (Pre-designation). To go backwards after ratification is expensive. Canada can transfer lands from province to federal to FIRST NATIONS. The process should be balanced.

- Transfer of knowledge needs to be brought back to the community. AFIRST NATIONS to help do a workshop and bring "what a Specific Claim is" to communities.

- Need an informed decision to be able to vote on decisions

- There is a current effort for archives Canada is working with certain communities to gather information.

- There has been discussion to maximize other institutions (for example, partner with university students to help gather information, and in particular students from their own communities).

An Independent body should oversee negotiations and ensure consistent interpretation of policy by the Crown:

- In the last 5 years we have gone through 6 federal negotiators. The way the compensation formula is stipulated, the value of money is not addressed. In the east – there seems to be less compensation within the 80/20 formula. Here the focus is on 80/20 and not accounting for the increase in population under reserve creation in the east. The numbered treaties took into consideration the number of people within a family. There is no such formula here.

- In our community we are preparing to use the Tribunal. There has been too much turn around with negotiators. It is now November – August was the last time they communicated with us.

- When accessing information – no discussion on title. We do have a "Made in Nova Scotia" - tripartite, Federal/provincial/First Nations process that operates under a renewable MOU.

- Land here is unceded. The federal comprehensive claims process is different. Two different processes. Now you have to negotiate with the province.

- We have not used a third-party during negotiations. Negotiation funding – it is limited to collective research. Need to include the loss of use from pre-confederation

- How could we learn from the west with land use planning?

- Need a formula to not recreate the wheel. Develop MOU to work with province. In the event of leadership changes, secure position. Protect and preserve with the path they are on.

- Factors- stability, consistency, (elements with the MOU)

- Made in Nova Scotia– unique process.

- Need to utilize the research they have.

- What were the successes, which communities settled?

- In two claims we are looking to buy back our land on a willing seller, willing buyer basis. We are using our own dollars to buy back the property. Then going through the ATR process to convert what we have purchased to reserve. We are using the recently revised policy.

- Specific Claims process is hard to move forward. It is designed for failure.

- Negotiators – Canada is dictating who are their negotiators. Took about a year to get the team together, now going into a community election.

- Title with pre-confederation claims needs to be considered. Let's put more on the table and recognize the need to look at other processes.

- Negotiations need to be inclusive. Made in Nova Scotia table – could be good model to work with provinces.

- Issues of Right of Way is not part of the federal process. Made in Nova Scotia process – 5 communities that were relocated. The process of compensation – only for loss of land (e.g. railway, farmlands).

- Aboriginal Right and title – We are not a treaty territory. What are the strengths that we can use in the Atlantic? Best practices should be shared.

- Independent body – deliver continuity, accountability and ownership.

- Potentially may need to use the tribunal, they have a mediation service.

- Inconsistency in the review may trigger the need to go to the tribunal.

- The real risk is that the amount of the loan funding is going to out-weigh the value of the claim.

- Can land be added to the Specific Claims process? Compensation for lands in the current policy is too rigid. We need to find new solutions to economic loss. What [are] the objective criteria, in negotiation? where would a third party be part of the Independent body? Have all at the table from the beginning to police behavior of Canada. The conduct of the parties is a real factor.

- They need to come to the table with a mandate. Getting the mandate at an earlier stage.

- Guiding principles that could be outlined (example of TLE – transparency, etc.).

- Now we have independent process across Canada. TLE has an advantage of oral history. The issue of domesticating the Specific Claims process nationally.

An independent process should oversee claim settlement implementation, particularly when land conversion (under the Additions to Reserve Policy) is a component of settlement (thereby involving the province):

- Collective lands need to be included (Crown lands). What are other examples that could form settlement (national defense lands) what is the economic loss, it was good land taken.

- In two separate claim settlements that have lands as a component, we need to have two separate referendums. Each is a challenging process. Shared lands create challenges. There is no forum, could this be role for the Independent Body?

- What is the relationship with the province? There is necessary relationship with the province and access provincial funding? There are existing issues with types of lands you can access.

- Need a leader in research to put all information together. The ATR process is complicated. Why are we doing two different processes?

- We have long outstanding issues but dragged into the old process

- Need to include the pre-confederation issues within the ATR process. How can we work with the provinces? Possibility a third party.
- Some reserve lands cannot be developed because the original reserve was swamp. Nova Scotia has a lot of swamp lands. High cost of making the land serviceable. Had to fight for own communities' information to be included. Our laws/protocol was used as an avenue to include this community information.

- Recommend a pilot with an Independent Body.

An Independent process must eliminate Canada's policy of extinguishment:

- There are examples of us trying to bundle claims. We lost title – under *Indian Act* we are required to surrender lands in order to settle. We are looking at getting defeated again through

the process. Extinguishment is not right. This is as a precondition - Canada says we need to surrender in order to negotiate.

Topic One: Claims Research and Development – Quebec City, Quebec
November 20, 2019[8]

An Independent process must preserve and include oral testimony of Elders as evidence:

- We are losing important knowledge from the Elders of the community – if we can safe-keep this evidence it would be very useful. Oral testimony would be fair and support reconciliation.

- We submitted a claim, the process is very slow, and ignores First Nations knowledge.

- Our FIRST NATIONS community will share our scientific /FIRST NATIONS knowledge – the process must respect our laws and approach.

An Independent process must give effect to UNDRIP and be designed to include third parties, including the province, where necessary:

- How do we get the Government of Quebec to come to the table regarding specific claims?

- I think it's worth it to think about how to include the province of Quebec in the process – it would be up to the First Nations to include Quebec in the process? (FIRST NATIONS or Canada is responsible to include the province?)

- QC was willing to come to the table as long as they were not liable for any of the settlement moneys – they would support on adding lands and communications.

- The new government of QC also noted that it embraced the UNDRIP. How it will frame it will be interesting to see.

- Our Nation supported/helped develop the UNDRIP – a member had a hand in the drafting of that document. He has always stated that the UNDRIP needs to be characterized by Indigenous peoples, and NOT settler states.

- I want to reflect on the issue of Quebec. The difficulty of getting Quebec to the table has been fraught. Our claim is unique in that it dates back to the seigniorial period – Quebec takes the position that they were here before us, that is a problem.

- Third party interests continually grow as we wait for our claim to be completed

[8] A written statement and a draft proposal were provided by the Mohawk Council of Kahnawake, November 20, 2019. A written submission was submitted by the Algonguin Nation Secretariat, December 12, 2019.

An Independent process must address overlapping issues between nations:

- "I would like to talk about the convention in Quebec – we have the James Bay Convention – my community is not part of the convention, but we are surrounded by the convention. The convention says it abolished our rights, but we were never consulted. A lot of communities that are surrounded by the convention – used as a strategy by QC to abolish as many rights as possible. Nobody said there are Algonquin living on that land.

- We sat down with the Cree to discuss the convention, and the Cree asked for sovereignty on our lands, but we will never give up our sovereignty.

- There was a study for 36 years, but we were not included.

- I'm surrounded by the convention, but I don't benefit from it. My rights have been abolished. We never gave away our rights. We never gave away Algonquin lands. We have to correct this mistake." We cannot enter our issue into the specific claims process. We will never have the right to access that specific claims process.

- It is important that we really understood well the impact and the emotional burden that certain situations.

An Independent process must eliminate a narrow and minimalist approach to remedies, which fails to consider Indigenous laws:

- Unilateral changes to policy, conditional terms of settlement, extinguishment, prolonged delays and lack of funding cannot be sustained.

An Independent process should facilitate transparency and the exchange of information between the parties:

- The specific claims process was not adequate – we received an informal / cold letter. After three years of working on the specific claims process, we think that the process is insulting.

- There should be sharing of information – we could exchange our info at the beginning of the process. We need to have a discuss before Canada's responds with a rejection/acceptance. There needs to be greater co-development.

An Independent process should make mediation mandatory:

- Mediation should be mandatory between parties – call that process what you will. The rules should be responsive to Native Culture.

- The two parties should sit together.

Topic One: Claim Research and Development – Saskatoon, Saskatchewan
November 26, 2019

An Independent body must ensure a Nation-to-Nation approach, respect the languages of the First Nation and facilitate access to research claims:

- Language – of our Nation; language is critically diminished. This process must focus on language– particularly on research. May need resources for languages – funding – ability to understand historical documents

- 'Co-development regime': Important to sit as a Treaty Partner…but in the end, the process to own, to ensure the document belongs to the FIRST NATIONS, that part of it needs to be owned.

- We do need a process independent of CIRNA. The CHRC – example of a process where there is an arm's length body – Commission can hire experts, is independent of government: example of process which can be accessed by First Nation's in the development of their claims

- Government proclivity to narrow issues from what is submitted doesn't serve FIRST NATIONSs well, in some cases FIRST NATIONSs seek to expand a narrow mandate from feds to better reflect what was submitted

- In order to get to a process which is meaningful, need to move to more of a Nation-based approach, as opposed to a larger federal approach

- Canadian Human Rights Tribunal model works, but we still need to be tied to the Crown (bilateral or multilateral process which commits to the process, to treaty model identity, etc.)

- Nation specific mandating (still some kind of need for federal process). We need a process that commits to the people

- Office of the Treaty Commissioner is a good model, but this is more than education. This process is more than education

- SPECIFIC CLAIMS process is the centerpiece of nations - nations should own the process from beginning to end. The tendency is for governments to compare FIRST NATIONSs, but there is a need for Nation specific issues (GSK)

- One size fits all approach will not work. Nation-based means distinctions between Nations and between respective relationships to the Environment (doesn't necessarily mean FIRST NATIONS based or Treaty based): may imply inter-provincial or international research. The language of Indigenous is used often but it is problematic – we are not Métis.

An Independent body should facilitate early dialogue and hold parties accountable:

- Good start for Crown representatives to be involved prior to submission of claim (face to face)
- Central nature of Treaty relationship (this process shouldn't just be about remedy for breach, but needs to itself **implement** the treaty relationship)
- Would invoke s. 25 of the Charter (linkage to *Royal Proclamation* and reserve lands). All these legal gymnastics are about making Canada accountable.
- First point for dialogue is once you're in negotiation but there should be earlier chance for dialogue which is less 'disjointed'
- Both parties are getting information at the same time, but no chance to discuss specific implications of such new information. Perhaps an independent process is useful here.
- Government opinions within the documentary record is itself contradictory
- Should have people who won their land claims come and talk to us about how they won.
- Our lands cross provincial boundaries so an independent process may help with interprovincial research and interprovincial projects; need to part of Specific Claims scoping and measure for loss of use.
- INDEPENDENT BODY should support national, regional and local approaches.

An Independent body must ensure continuity of dialogue between the parties, as mediator, as keeper of the process:

- For process to renew and restore, needs continuity. Currently there is no dialogue until 3 years have lapsed and this is problematic. Early, face to face discussions are needed and the earlier the better.
- Transparency is an important principle.
- Considered using mediation but whole of process is intimidating. We do not have the capacity. We do not have full time staff. Personality of negotiators has a big influence on the process. First negotiator seemed open to listening and learning. He was reassigned. New negotiator says take it or leave it. If a neutral 3rd party was at the table, they could help keep the process.
- Independent process may help to be keeper of the process as leadership change(s). It is important to have orientation with each new change at the table. These tables take time and process needs to be in place to track the record of discussion.

Topic One: Claim Research and Development – Winnipeg, Manitoba
November 28, 2019

An Independent body could play a role in the overall claim review:

- Right now, settler laws override the Creator's law – this is the bad faith experience. Government right now comes to the table with pre-determined numbers. We call this "negotiating in a vacuum". This needs to be addressed.

- I am concerned about the sincerity and honesty of this process. The legal community has a lot of responsibility to carry for this situation.

- Process needs to be respectful. (What could and INDEPENDENT BODY do to address this)

An Independent body could function as a central repository for claims research and/or strengthen capacity within the region:

- Re central repository: as a CRU we note a lack of transparency. Most FIRST NATIONS in Manitoba don't even know that they have claims.

- If they do have claims, the claims are in our resource archive but not within the community (necessarily). With community elections and loss of corporate memory – records get lost

- What has to be fixed first is the communication on claims. This includes the idea that FIRST NATIONS could approach an INDEPENDENT BODY or Canada and discuss their claims – give them access to extant resources. An INDEPENDENT BODY, could be a moderator (ultimately Canada has the majority of these documents).

- If communities are able to gather this research on their own, then an archive could be established away from Canada and run by the FIRST NATIONS itself

- CRUs could use more capacity to communicate with Nations.

- FIRST NATION's struggle is communities having different scenarios about lost records. We should start looking at an archive (maybe TARR). Should be good communications around this. A FIRST NATIONS PTOs/TARRs/REGIONS etc. should start to lobby for this.

- Canada holds documents that we don't have access to. We've had instances where government repositories have lost files (missing) from multiple repositories for the same period of time and geographic areas. It looks suspicious and erodes trust

- It's hard for us to negotiate when we know they have documents we need.

- We are advancing our claim resolution. It would be nice for a research database that is maintained regionally. We'd all like capacity and an intern and archives. But it could be regional. A center of support for Manitoba. A Centre of Excellence for Manitoba region.

- FIRST NATIONS in this region need to be supported.

An Independent process is a way to start over, together. To rebuild based upon Nation-to-Nation relationships as described by Treaty:

- ***The problem is that the foundation we are trying to build off is already broken. You can't build a good house with a broken foundation***

- The Elders always tell us that we never gave up the land, we shared it. The Treaties try to tell us that we gave up lands in exchange for certain provisions – many of which we never received

- This is the White paper policy – Indian affairs came here and met with a planning committee.

- Elder, I am concerned about the role and the intention of the federal government. We have to watch ourselves when we say independence. – it means you're are by yourself. The Process needs to be a joint effort of all governments including FIRST NATIONS.

- Consider a joint relationship rather than an independent process because you will also lose control of it if it's independent. We are in an adversarial relationship, but it need not be this way. There are many models of diplomacy (e.g. in one community, a clan mother would be selected to represent the nation during a negotiation – not an *Indian Act* Chief)

- Our claim was at Indian Claims Commission when ICC was closed down. In 2016 Minister stated she was bringing back the ICC. She told him their claim was in the queue. Perhaps special role for INDEPENDENT BODY to fast track abandoned (by Harper) ICC claims. The Government uses divide and conquer tactics. (What could and INDEPENDENT BODY do to address this)

- How would we go about mediating these claims (where overlap issues apply)? How do you see specific claims process evolving?

- I am 40 and I want to see this done so my grandchildren can enjoy it - timeliness (What could an INDEPENDENT BODY do to address this)

- Is there a follow up gathering after this? When it comes to treaties and Specific Claims – how does that relate to NATURAL RESOURCES TRANSFER ACT? Where does the province come in? I am hearing this is the First Nations and the federal government. There is the natural resource transfer act. It is a tool they use to divide us. I am from a remote area. We were never part of treaty. Our ancestors asked questions and treaty commissioner was supposed to respond but he didn't. So, where do we fit in all this. We don't have a treaty yet but the resources in our

territory are pristine. I don't want anyone coming in and touching our neck of the woods, they should ask for permission.

An Independent body could help to educate the public to combat misconceptions:

- We're doing claims on treaties that we signed but the treaties we signed are not correct. Treaties are the foundation of our relationship with Canada and they are not fair.

- We have to go back to the original treaty arrangement where we agreed to share this land in return for compensation – which has not happened. It won't do justice to our communities if we make something that is based on the Indian Act. We need to start acting as Nations. We need to go back to the treaty arrangement and then we will win.

Topic Two: Claims Resolution (Negotiation and Mediation)

The purpose of this topic was to provide an opportunity for participants to discuss how an independent claims resolution process can support negotiations and mediation.

Topic Two: Claims Resolution – Vancouver
October 8th, 2019

An Independent process must remove claim evaluation by Canada to negotiate an expansion of compensable losses and resolution:

- Looking at the first and last questions... claims evaluated to claims being valued.... valuation and the integration of indigenous laws. What needs to happen in claim value calculating that needs to go past monetary value or even land? Indigenous laws and indigenous ways of knowing. For example, losing fishing site... loss culture, language... evaluation – if it is an independent commission body... space for integration of Indigenous laws... Canada doesn't evaluate – does its own research and submits. So, removing the process of evaluation by Canada is necessary.

- Shape the way that claims are evaluated... this process now is lacking considerably. It doesn't include cultural values or laws... we are undertaking some land use processes... 85% environmental protection of our land... Canada Paris Accord.... there is definitely environmental values that are not considered in the claims process... again land management – the loss of use and the consideration for the return of land... oral history – a lack of oral history with regards to claim submission and research... legislated – this four year or ten year doesn't provide substance or resolution... also trying to bring forward in the redress type of commentary - in event that it was reserve what would that look like today – with land management and benefits.

- Regarding oral history, it is a layer of comprehensive resolution but also Original people story... when you think about the displacement of our people from the land you are given the opportunity to learn. Our communities existed long before Canada and the *Indian Ac*t and I think these values before need to be included along with sustainability and our future.

An Independent process must be empowered to ensure good faith negotiations and parties are equipped with the necessary mandates:

- One of the experiences we are having is the fact that the people who are showing up on Canada's part don't have mandates to negotiate... They are not actually showing up in good faith to negotiate. So there is no starting or departing point. No mechanism to go around them other than going to the Tribunal. They are coming from a place where decisions can be made but the people who represent Canada do not have a mandate.
- So when it comes to Negotiation... whatever party is playing the independent role needs to have some power to make Canada play by the rules.

- What is the incentive for Canada to fully negotiate? Where the risk is greater... financial... it would greater risk to walk away- that needs to be in place. ***The only equivalent that must be maintained for viability is that Canada - by policy - does not apply technical defenses to specific claim process or otherwise we will all just go to court. The first defense that we will find ourselves arguing is that we haven't brought this claim in a timely manner. If Canada can't argue a technical defense, then they would have to argue a defense. What is there defense to their actions? Right now, there is nothing that they have to say. They can stay silent***. They can hold all of it until they get to the Tribunal. Let's envision that Tribunal uses the power to drive settlement... if we start over from a blank slate there are a few things we need to be clear about... but we need preserve the limitations.... so that Canada cannot argue a technical defense.

- Requiring the representatives of Canada to be properly mandated. An independent body needs to make sure that happens perhaps at a pre meeting. Something to get at the mechanism to mandate the people at the table. FIRST NATIONS [bring] lawyers and Chief and council. Canada needs to do the same

- An Independent body should facilitate joint expert reports during negotiations.

- We need a **levelling of the playing field... it would be really important to source expert reports. At the outset of negotiations, it would help if Canada would agree to share evaluation report and rely upon what this evaluator states. Also sharing components of other researchers as well. What is Canada relying upon. Then, we would in turn provide them what we are using as well so it is a level playing ground**.

- Transparency – is dance at the table. Internal expert reports – joint terms of references and studies – encourage this. If you are doing independent studies - if its funded by an independent body - whatever the outcome of the stud, it needs to be shared. The Independent body could then build a database. Canada has that database and they need to share it. We need something in the process that mandates independent studies and a shared database. Free flowing of information on both sides. Independent body starts to build and house expert reports. At present, we are re-doing the same analysis over and over even though it has been looked at more than once and has been used in court cases.

An Independent process must have credibility and operate with full transparency, including its public reporting to the parties:

- First Nations have grave concerns of how the bodies are funded... negotiation, research... it indicates that there is still control and Canada can change budgets.... so independent process ... what gives FIRST NATIONS assurance that it is *actually* an independent process?

- You have to show and justify what you've done for specific claims... all the transparency around the process has to be manage by an independent body.

- Independence is a necessity... being naïve as I am, I can't understand how it came to this place having negotiations with these people that are judge and jury. As more of us become aware, when I had the opportunity to sit with government, our lack of capacity is number one. The amount of information they are able to compile when we are still going through the archives is huge.

- Canada as Judge and jury – how did we get here? I think of the limitation period.... what's our leverage... how to solve this because you can't take them to court... don't have to do it if they don't want to so, what is our leverage? To some extent legal. Increasing legal leverage. We need to keep in mind what is our leverage. That's a good reason for going beyond reporting only to Canada. Instead, we may actually report to the UN or other international bodies. If not legal then it's political and moral.

- One of the strongest cases for an independent body... the transparency piece. It must be prevalent throughout all of the discussion. There's really no transparency. Every part of it is under this kind of fog. If people were actually involved in establishing what this body looks like according to their community's needs and then an independent body could understand.
- Transparency is a critical value and Article 27.

- Current process is a piecemeal. No repository for settlement. Know terms and quantifications of restitution.

An Independent body could mediate disputes between First Nations and others:

- If we can't beat Canada at the legal game, we need to use a moral game. This goes beyond a legal obligation it is a moral obligation. Whatever this independent body is, it has the potential to effect more than specific claims. Could act as mediator of FIRST NATIONS and party that they are struggling with. It would be in the FIRST NATIONS hands to decide what avenue or recourse they want. Fitting in the box of monetary or money.... there may be other frameworks using the independent body of process... doesn't look like a fiscal payment or land return.... but building relationship.... start of a process that would get Canada to the point where they want.... fully dealing with it... mechanism for re-evaluating and re negotiation the relationship

- As a third party... build with neighbours... FIRST NATIONS authority.... paying tax, utilities, environmental distress

- It has been our experience that Canada is shifting its approach in writing. There is more sharing about different negotiation letters... does appear to be a shift happening.... first just in terms of dealing with the third party... claim has been accepted and engage with the third party as they should give the land back. Also acceptance letters are much broader in scope... want to negotiate but don't see validity for claim. If there is no independent process, there is no way to make them agree to their liability. In general we want more open negotiation letters but to be transparent, so we know what we are negotiating.

- Regarding Mediation: the tribunal and specific claims branch have mediation but... independent person that you can argue to help. Learning more and putting more into these mediations can happen. Canada happy to provide and fund it.
- In our experience, mediation has failed both parties - Canada wont state that it needs mediation and both parties need to admit this.

An independent body need not be adversarial, but reflect shared decision-making:

- Regarding the Tribunal: I think that one of the challenges that a lot of the tribunals are dealing is the fact that the process is still adversary – many FIRST NATIONS want to have open negotiations and with the tribunal.

- We are talking about totally breaking the system... in a less adversarial position.... what if we took out the legal argument session until sitting at the table? FIRST NATIONS drives the table; yes, needs to be address (Independent body) and then legal position. Going back to the policy it goes back to the legal framework- how can we use case law to support the foundation of what we are trying to argue... better discussion of the full picture... not prejudice of what FIRST NATIONS view as valid positioning... Other points – who is the third party – if its land and hunting - the province is going to be the third party... that seems like the most logical approach as everyone is coming at it from then facts and then the legal aspect follows the facts.

- Communities aren't happy with results... break the system of a colonial documents in a colonial process... advance reconciliation as it's more community driven and bolsters reconciliation. We are playing Canada's game and we are tired of playing their game. Why do we have to do this? It is affecting us!

An Independent process must have respect for and be inclusive of Indigenous law:

- Regarding the issue of Indigenous law – everything in negotiation is off the record – Laws are based upon the language... really hard to translate FIRST NATIONS legal concepts into English. When you talk about Indigenous Law and having the community members speak and testify in their language... So, elders testifying, it's there forever. It is a very empowering process...

An Independent process must operate within strict timelines:

- We all have our stories and our histories to tell... looking at ways to effectively speed up process. One option is to have government agree to a strict timeline... it has to be concluded within a three to four-year timeline and you need treasury to concur with that. It's not just one department of government. We need commitment... my big fear is that we are now mixing fruit and veggies... is it a specific claim or land claim... It was blockages in BC that started this whole process. Government is not going to listen to idle talk we need some positive positions to say "here is what is and what is not acceptable". Do we have the capacity to finish and conclude in a strict timeframe? Institutional support...

An independent process should be regional/BC specific:

- We can't continue with this current specific claim process. We do need our own process... I do like the idea of what is it for BC. We need to meet to talk about that. Being realistic and practical – say what changes we want... Canada is the unilateral gatekeeper so whether this independent commission or body looks like and changing to what that looks like for us.

- This issue has been with us for so many years. The discussion that is taking place that will result in a draft that is stronger than ever and speaks to the special position that BC has. I would say that I can express two good examples... it came from Indian law – one of great law of our people, when we need to we invite people to work together and all our winter months we go around inviting third parties to come sit with us and we collaborate and work together. One was cut off lands committee – fragmented – until one leader pushed that said we have to work together 23 tribes collaborated and worked together and solved it. Another, the great victory that we had – go to court and the interveners went together and decided who had the strongest case and they collaborated on an effect together. Things can happen when tribes come together.

An Independent body must oversee negotiations fairly and depart from Canada's "cash management" strategy:

- We need to address the elephant in the room - that the specific claims branch has to manage the allotment of dollars to distribute each year on settling claims. So, they do so by accepting the claim but postponing the decisions on the claim simply because they don't have the money to complete the claim. They question certain parts of it and the band to come back with additional research that they already have. They have the information and yet they want you to jump through additional hoops so the claim can sit there and work its way back through the system and to me that's the elephant in the room.

  So, maybe we have a co-management team in there working with them someone who has oversight on our part.

- We are hitting a wall where we are past this three year mark and don't want to go to tribunal as costly and unknown... so past the three year mark and Canada is engaging in "pre-negotiation dialogue" if we were to remove that obstacle than have the ability to make decision if it is a valid claim to be negotiated and then they are mandating the party to go to the negotiation table and if they want to go to tribunal or other options or pathways... negotiations, negotiation with mediator or tribunal...

- So, it's the independent body that is assisting both parties that drives them to mediation or negotiation.

- Issues shouldn't just be monetary but include access benefits like economic interest to be able to generate revenue... increase value of land having utilities provided and they have these

programs. Provinces is kicking and screaming... gaming... especially in this province there needs to be a review of section 13 of articles of the Union...

An Independent process could help educate and inform on settlement options:

- Yes. We may have lost the use of land but maintain the benefit. Need to create community trusts instead of per capita distribution – ensure that our people have access – the future generations.

- Cost a lot to have it pulled together and to get the membership to all agree to developing a trust because you have a lot of people who say they can have [an] immediate benefit.

- Reserves meant to be for the interests and benefits of the Indians. Would *Delgamuukw* not be used.... for past, present and future.... There is a legal framework not just a fiduciary framework to look at alternative resolution and we are heavily reliant on restitution.

Topic Two: Claim Resolution – Fort St. John, BC
October 9, 2019

An Independent body, overseeing negotiations, may require a regional approach:

- We may not all be ready to move forward at the same time. We need a regional specific answer. Treaty 8 needs a special look, but province is the biggest barrier. How absurd consultation has become (airport installation has prompted full blown consultation. This is absurd). Settling our TLE is our number one priority. We are tired of managing poverty. That's what we spend our time doing. Perhaps a regional BC approach - we already have our rights here in Treaty 8.

- Overlapping territories don't exist. You cannot put your moccasins in someone else's territory. We respect our boundaries. Today we have overlaps because of economics but the Creator will deal with us one day.

- We cannot be asked to indemnify or extinguish in order to settle. This must be part of the AFN process.

An Independent body must be inclusive of and have respect for Indigenous law and Indigenous legal principles:

- Shared use of lands – "pimacihowan". The living record survives. This word has been translated into English to mean "vocation", but this translation is too restrictive. To the Treaty Commissioners this meant the vocation to hunt, fish and trap. To Treaty 8 this meant the cultural world view – cultural worldview – laws and customs. Relationships and mutual obligations. 2010 West Morberly decision of BCCA. Crown can no longer assume their rights are superior …. But this decision is largely ignored by the federal and provincial crowns- except for CEAA because the habitat of the caribou is within a mine area - province would have to devise a plan on restoring impacts because any change would be permitted. Reconciliation means the crown sits down to speak with us.

- Balance is optimization: highest and best uses model consistent and compatible with Treaty 8. "pure nature undisturbed by man" experience – dream map. To do this we focus on Treaty 8 and 11 (north of 60). We need to assess and value oral history. To honour community protocols- these must be given merit. The Social Science Research Council (SSRC) may be a good example of a way to examine claims from this research standard?

- We need multiple mediums to tell our stories. We don't have this today, but we need it. We would like to see how these mediums can be included in a new process.

- Reconciliation means optimization -> the idea that you allow Treaty people to have the best possible access to their rights while at the same time you achieve the best economic development model that is consistent with Treaty rights.

- We would like to negotiate treaty 8 infringements but face policy constraints. Our annuity valuation claim has taken SCB another year beyond their 3-year time limit to respond. Pecuniary damages are excluded under the policy. We would like to go forward with land related promises under Treaty 8 - what is claim settlement? What is a full resolution?

- Professor Val Napolean has a good handle on how our laws and legal orders govern. She is embarking upon research at UBC. Indigenous laws were part of the process from the start - at time of treaty - treaty protocols were followed - pipe ceremony - that's why First Nations are shocked by Crown's abrogation of relationship (e.g. quote from McInnes)

- What outcomes are important? Making the First Nation whole. The concept of "pimacihowan" and community wellness. The 7 grandfather teachings. This process of colonization has displaced teachings through an assimilative process. People have become disconnected from the natural world and they despair. This is evidenced by destructive behaviour and suicide.

- Our approach to reconciliation - by helping to re-establish community wellness - the medicine wheel = keep order (happiness=everything is good). Cannot measure community wellness by the number of hospital beds etc. … but rather, the function of healthy relationships between person/family/land/beings and Creator.

- We need to create an ethical space and truth telling. The INDEPENDENT BODY needs to be an ethical space. What is this? The best example is the wood buffalo national park. Competing scientific reports. Requires that people explain but not hold too fiercely that that it cannot deny or hear another world view. Another example is the Treaty Commission in Saskatchewan - First Nations yes, but not a corresponding Crown or non-Aboriginal perspective.

- Ethical Space requires that people explain their world view and values but not hold so fiercely to them that they can't acknowledge the value of other systems.

An Independent body must depart from the constrained Specific Claims policy to advance reconciliation:

- To achieve this, we need to focus on the Crown's Comprehensive Claims policies – BECAUSE North of 60 First Nations are allowed to participate with the Crown in Comp Claims that address rights. Specific Claims is too tightly constrained by federal policy to achieve reconciliation.

- How could an independent body help with this? Treaty Commission of Saskatchewan may be a good model.

- Specific claims policy results from the need/desire to find an alternative to the courts but it limits reconciliation. The elimination of laches and limitations within policy is good but policy cuts off/ limits definition of "historical claims" and does this make sense if reconciliation is at the heart. The cumulative impacts on territory over time renders T8 almost meaningless. Timeliness

of process must be fundamental.

- Fundamental (in) equality when Crown can unilaterally define what its obligations are. We must abandon the Crown's approach – it's too narrow and self-serving. It is the antithesis to reconciliation and honour of the crown. The INDEPENDENT BODY must take away the ability of the Crown to define their own liability.

- We need to break the pattern of policy driven negotiation and limiting liability and return to principles-based negotiations. This requires more contextual learning.

An Independent body must depart from extinguishment policy and facilitate a shared understanding of treaty during negotiations:

- We don't have a shared understanding of treaty – we need to strive to develop one – and use that as a basis to move toward reconciliation. "Peaceful Coexistence" is our understanding but the Crown won't acknowledge this. They insist it's an extinguishment document. We must discuss, negotiate or litigate. Same is true for NATURAL RESOURCES TRANSFER ACT. Crown is hung up on *Horseman* so until they examine it and redefine what it means – these are foundational issues. That reflects a shallow view of history and needs to be addressed. Differences in language, cultural language, and meanings that no one has come at – treaty of Saskatchewan is a model.

An Independent body should consider modelling the Canadian Human Rights Tribunal with investigative and adjudicative functions:

- Post SCB, where the focus was on adversarial - adjudicate all claims and negotiate lowest hanging fruit. Recommend INDEPENDENT BODY based upon existing human rights models where a commission (investigative) and tribunal (adjudicative) work in tandem.

- INDEPENDENT BODY could be multi-faceted - shift to a Human Rights model - enabling statute - tribunal could be housed within a larger body that has a different funding model. Different funding focus.

An Independent body must be inclusive of the provinces in overseeing negotiations:

- Regarding the role of the provinces, they should be compelled to participate. Canada has created jurisdictional gaps. If land is meaningful remedy, loss of culture, legislated - could be included as compensable losses.

- Specific performance is a remedy. The way the Crown and First Nations approach resource development, there is a need to reconcile, a need to limit economic/resource development to allow conservation and restoration. Restraint and restoration are remedies which allows one to actualize "peaceful enjoyment of T8 rights".

- There is a level of frustration with what 3rd parties are allowed to do during settlement negotiations. We cannot continue business as usual.

Topic Two: Claim Resolution – Six Nations of the Grand River, Ontario
October 24, 2019

An Independent body must expand opportunities for evidence sharing and submission and locate some of its processes within community to help educate and shape creative solutions during negotiations:

- Regarding claim validity, in each community all of these things are connected. In an alternative process – if it operated effectively as an advocacy mechanism that helped at front end: documents brought into community, people visiting people, oral history. This would help educate. We may not know what's going on during negotiations. Community may also be in negotiation with province on some issues.
- We need creative solutions: Tie resolutions to our children's education and health care

- Bundling – what can we get through the system faster? We need to go directly to communities to ask them their priorities. Are there are easy solutions/triage function: to identify easy solutions?

- I think it goes back to as a whole... if you go out to talk to an average Canadian... we have massive failure – we are constantly fighting third party interests – there is a still fundamental issue with lack of knowledge of the Canadian population... if we can tackle education we will have a better chance... if you don't have the political will there will constantly be a battle. Every single Canadian should have knowledge of what specific claims are and why it's important. And why it benefits them!

An Independent body must ensure parties are transparent and prepared (equipped with mandates) at negotiation table:

- Government lacks transparency. It has intentional unpublished policies that affect claim assessment.

- When Canada has negotiators at table – they don't have mandates. An INDEPENDENT BODY – must implement mandating regiments.

- Re: monitoring transparency" there's an office in Saskatchewan (treaty body) that we can model.

- There is a lack of funding and lack of negotiators who have an active mandate... are they really negotiating if you don't have a mandate

An Independent body can facilitate information sharing, perhaps a shared database, and joint experts when valuing claim losses:

- We need to share information on how agreements are made. Each community within Nation didn't know what the others got for settlements.

- An INDEPENDENT BODY could help us evaluate claim. Usually you have to retain experts. You want to bring information that an expert would use. Need to bring information forward related to archival loss. Create a repository of expertise-based research. Also, on cultural losses. Keep a master list of holistic experts.

- Retention of experts. Idea of Canada co- developing our research reports: One expert – chosen by both (master list could be held by INDEPENDENT BODY. This reduces costs.

- What about the central body like a Treaty Commission in Saskatchewan?

- I think that research needs to stay in the community because of it's an importance to community. It builds knowledge and capacity within the communities. Oral history and development of claim needs to remain in the community.

- In negotiations, if the table needed an expert – we could go back to independent report... expert report – we would not each be commissioning a brand-new report...

- So much money is at stake with an appraisal ... so a FIRST NATIONS would put that out to a neutral third party.... appraisers have wide varied conclusions...

- But it comes back to doing a sharing of documents and research at a much earlier time... less of inflating of budgets... less duplications...

- The cash value of settlements really dictates the resolution....

- Couldn't they cost share... Canada and FIRST NATIONS... If they are admitting liability, why shouldn't they pay for liability or at least to collect the data... reduce cost by funding it ...In theory it comes back to the outstanding loan amounts... In the (BC) treaty process they have forgiven the loans.

An Independent body must have the capacity to provide mediation:

- Preferable to negotiate and settle rapidly than go to Tribunal and go on and on and on. Mediation: We tried it – It didn't work because parties have to be ready and broke down on losses of evaluation. So, Bifurcation? Easy to manage for SCT, but you have to start all over again (i.e., More experts, hearings, etc.)

- Tribunal has no authority to deal with situation where negotiations break down. Mediation doesn't work because Canada won't mediate on substantive issues. Perhaps the Independent body can select and help train mediators to provide a spectrum of mediations. Bring people together, ask pointed questions. Bring in ideas from other settlements. Mediator being one step below arbitrator

Topic Two: Claim Resolution – Thunder Bay, ON
October 29, 2019

An Independent process must expand understanding of resolution and remedies beyond cash to include creative solutions and include the province:

- How can we put lands into the agreement/policy/process?
- Looking at urban reserves. INDEPENDENT BODY could have an ATR component.
- What are the expropriation options? Expansion of the expropriation act. To expropriate lands or resource sharing – province control.
- How can the feds induce the province to negotiate?
- Idea of pipeline – taking a percentage; Potential wealth – 4 million barrels per day. What is the net benefit to Canada? Economic stimulus. Need an economic benefit in a communication material for general public, has it for FNs, need it with ATR and SPECIFIC CLAIMS.
- Reform the transfer payment programs. Redistribution of funds that are extracted.
- Communities in the north have many issues of lack of resources. The treaty annuity.
- Communicating the known amounts. Showing the benefits of lands being added to the reserve.

Topic Two: Claim Resolution – Edmonton, AB
November 5, 2019

An Independent process must respect each community's right to decide upon settlement in due respect of the treaty relationship:

- The process is too one-sided. Its like putting a gun to vulnerable bands … "these guys agreed, these guys agreed … these guys did it … so should you …" Even contribution agreements put FIRST NATIONS under duress: sign it or else. We will not sign anything that manufactures consent. We are against their termination policy. The Canadian government is bias - it's an exercise in futility. They must honour their rule of law - which includes international law. Our treaties are international law and must be honoured and respected.

- Treaties are a living agreement and we must always honour these agreements and principles. They are international treaties that go beyond domestic borders. As such, we might consider a land claims court that FIRST NATIONS could access as a dispute resolution mechanism - that are not Canadian courts. Elders instruct against using Canadian courts. We should have international oversight anyway if not an international court.

An Independent body should have international oversight:

- We should create additional research to explore this idea further - research this option - of involving the international community.

- The AB Chiefs speaking to Lord Denning in the 1980s - he made a number of recommendations that were ignored (told us we were welcome to return any time). later found case (attached). Government still ignores its own laws - maybe we should take it to international court. Special Rapporteur Martinez.

An Independent process should facilitate early disclosure to assist negotiations, with a view toward flexible solutions and locate these within community:

- *SCB- we are trying to have earlier conversations between the parties more and more and I am interested in hearing more about how to do this - how much more collaboration can we undertaken without an INDEPENDENT BODY - to create more trust and credibility?*

- As a leader, you must frame the question in a way that can be answered e.g. how will we resolve the 1927 railway right of way claim with the Crown - this is a specific issue - the more narrow the question, the easier the focus of the discussion. The broader the question, the more it opens the door to wider challenges. To build trust, negotiators must be present in the community.

- If fundamental principle is about responding to specific experiences by FIRST NATIONS, thru a process of dialogue, what should resolution include? What do we need to address harms caused? Only through negotiation dialogue that is (globally) reflective of what community wants, will we know but all options should be on the table and not arbitrarily limited by policy.

Many settlements have been reached in the past where community members have said they didn't like it but "it was a measure of justice, but not a total answer". Sometimes it was land, sometimes money for languages, or cultural activities, or community centres etc.… If federal negotiators have flexibility to create other options within their mandates, this will go a long way to craft settlements that the community would actually like - sometimes it's an apology that's warranted. Flexibility is needed.

- WRT disclosure, longstanding complaint that Canada can say yes or no without saying why - even on matters of legal obligation. Disclosure set the stage for fruitful negotiations. More emphasis on dialogue, without prejudice, to talk with more flexibility. Body of knowledge only comes from disclosure.

Topic Two: Claims Resolution – Halifax, NS
November 12, 2019

An Independent body should facilitate negotiations with flexibility to broaden the range of settlement options, including land. One size does not fit all:

- We have not used a third-party negotiator during our negotiations. Negotiation funding – it is limited to collective research. Need to include the loss of use from pre-confederation.
- INDEPENDENT BODY – could play a role but need to include other communities.
- Regional differences – one size doesn't fit all.
- We need a process that gets us to the negotiation table.
- How could an INDEPENDENT BODY deal with funding? Continuum in funding needs to change.
- The amount of the loan funding is going to out-weigh the value of the claim. Can land be added to the SPECIFIC CLAIMS process? Compensation for lands in the current policy is too rigid.
- Find new solutions to economic loss.
- Objective criteria, in negotiation where would a third party be part of the INDEPENDENT BODY. Have all at the table from the beginning.
- There is room. Now only lands on the reserve are part of the process. Need traditional access to the lands. Resources are limited with current TARR processes. Need a relationship with other entities to help the funding process. How could we learn from the west with land use planning?
- We have two claims where we are looking to buy back our land on a willing seller, willing buyer basis. Using own dollars to buy back the property. Then going the ATR process.
- The SPECIFIC CLAIMS process – hard to move forward. It is designed for failure. Negotiators – Canada is dictating who the First Nation negotiators are. It took about a year to get the team together, now going into a community election.
- Title with pre-confederation needs to be considered. Let's put more on the table need to look at other process. Negotiations need to be inclusive. Made in Nova Scotia process– could be good model to work with provinces.

An Independent body should help educate the public with settlement implementation issues that may arise, such as urban reserve creation:

- Education – Urban reserve – need to educate the public. We have long outstanding issues but dragged into the old process.

An Independent body as mediator should include third party issues, including the province:

- Need to include the pre-confederation issues within the ATR process. How can we work with the provinces? Possibly a third party.

Topic Two: Claims Resolution – Quebec City, Quebec
November 20, 2019

An Independent process must ensure remedies go beyond cash settlements:

- Talking about cultural/education loss of land that has been taken away is difficult because it cannot be quantified using western law/analysis. The loss goes beyond monetary value.

An Independent process must be "independent" and operate beyond the control of Canada:

- When we developed the Tribunal, we were hoping it would force Canada to negotiate honorably. We are very disappointed with how the process has played out. There is never enough funding for the Tribunal, and it takes many years to get before a judge. I'm not against a Tribunal but we need an independent mechanism from beginning to end. Are we going to have false hope again? Will Canada make the necessary efforts? So, while I really agree with the principle, I have concerns with Canada's intentions.

- Who will pay for this process? Will it be adequately funded by Canada?

- I'm not sure an independent mechanism is central to the claims issue. If we rule on the process, will it be fair for everyone? They don't respect their own process – they miss their three-year deadlines.

- Canada's will to settle is the central issue, not an independent mechanism. If Canada wants to settle, it will get settled, if they don't? …

- Will an independent mechanism improve our issues? We really need Canada to recognize what they did wrong.

- Canada is not working in good faith with First Nations communities.

- Another concern with mediation is that Canada comes without a mandate – which is a major problem – they say they can only "observe".

- Our proposal would help address some of the concerns about conduct – an INDEPENDENT BODY needs to have an independent budget that can operate separate from the federal government. The commission would not have a mandate to adjudicate claims.

- Moving forward there needs to be an independent claims commission not controlled by the government of Canada

- We need to jointly discuss our claims rather than just file our claim into the black box. There is very little dialogue.

- Claims Commission should be comprised of three distinct branches.

- I need a new process that is different than what we have now. There is a lack of resources when compared to Canada.

- If we create a new step, we need new resources – example, Tribunal.

Topic Two: Claims Resolution – Saskatoon, Saskatchewan
November 26, 2019

An Independent process must be include oral testimony and ensure it's preserved for future use:

- We need to protect hereditary systems. The federal erosion of economic benefits (and importance of self-government, which is inclusive of hereditary governance)
- Possible to reveal oral testimony that hasn't been presented
- Use of oral history evidence after resolution of claim (i.e., compensation) and for general reconciliation purposes
- Wealth of historical information gets narrowed to defined issues, then FIRST NATIONSs try to expand issues, which "wastes" time

An Independent body must have the flexibility to refer legal issues for decision to resolve impasses:

- Impasses: impasses on legal issues with large compensation attached to them are hard to resolve. And should be resolved as legal issues rather than as dollar issues
- Not easy for community voice to be heard in front of Tribunal

An Independent body must administer mediation services with efficiency and with a view toward community realities:

- Mediation – could be just another delay tactic? FIRST NATIONS reluctant to take funding for mediation due to potential that the process it could drag on for a considerable amount of time
- Timelines not always responsive to community realities

Independent process should be regional/Saskatchewan or Treaty sub-body:

- If Federal lead body (independent), then there should be a SK or Treaty based sub-body

An Independent body should facilitate information sharing in preparation for and during negotiations:

- Orientation materials for chief/council and technicians

- Ability to share information discovered for one First Nation, but useful for others could be then shared with them

- Disclosure at Tribunal should you get disclosure through independent body?

- Perhaps there are disclosure points (discrete points in time for disclosure)

- FIRST NATIONS control of how and who accesses information

- Examine decision-making of Federal/Provincial/Territorial arrangements, particularly around lands and treaty rights

An Independent process should be inclusive of the province during negotiations:

- How to involve province – for example to gain access to provincial Crown lands even where province is not directly linked to the SPECIFIC CLAIMS process

An Independent process should consider Indigenous law during mediation:

- Mediation offers opportunity to apply indigenous laws and procedures

Topic Two: Claims Resolution – Winnipeg, MB
November 28, 2019

An Independent process must include "grassroots people" at the negotiation tables:

- We need the grassroots people to be at the table
- It would be helpful for Canadian representative to come to the community. The dispute is caused by Indian Act. Grass roots people need to be there
- I don't have a voice, yet my human rights are being violated every day.
- Elder, where our issues are being dealt with, our people have to be there.

An Independent process must be credible (there is much distrust of Canada):

- There's no such thing as an INDEPENDENT BODY. Canada appoints judges. All commissions tribunals are appointed by Canada
- We have all kinds of evidence to say MPs control what happens.
- Minister has claim sitting on desk and will release it when its politically beneficial to minister (powerful lack of trust)
- I'm upset about having to go through this dialogue because in a month you'll be writing a report and spending the money that could have been used to settle claims
- SPECIFIC CLAIMS process is just that: a process rather than looking at the outcome. We can do a better job than judges to resolve disputes that involve us. We need to be able to come to the table and know that there is an honesty and a good faith. It's everything and it's the reason why we are here today because the other side has not been honest. It has deceived us and tried to destroy everything that we have tried to do
- What's missing from UNDRIP that we need in this process?

An Independent body must oversee claim settlement implementation and have the teeth to prompt action:

- There needs to be more money to resolve all outstanding claims.
- Money needed for negotiation and implementation, TLE implementation. In Manitoba, 20-year-old TLE agreement that is still not fully implemented. There needs to be a penalty clause when Canada fails to implement its agreements

An Independent process should provide timely mediation that all parties use:

- Mediator should be a third party at the table who would be the keeper of the process.
- Mediation does not work because it is not binding. What's the sense going through a process that Canada can ignore the result of. Mediators also need to be informed, neutral
- We know an independent commission that failed – the Indian Commission of Ontario. Why, Governments change, and corporate memory lost, officials had no instructions; Officials had colonial baggage. Mediation was voluntary and both sides had to agree. So, it never worked (Find that report and review so you can see what failed)
- Is there an earlier point in time that the parties could come together?

An Independent process must include and have respect for Indigenous law (e.g. clan mothers as adjudicators), treaty and international covenants:

- In setting up an independent process, the preamble must include:
    - Treaties need to guide (they predate confederation);
    - UNDRIP and 1945 UN Declaration;
    - People need to understand our treaties (i.e. community capacity);
    - Tribunal governments (clan mothers) need to be adjudicators in this process;
    - Nine covenants of the world court should form the preamble.

An Independent process should enable a "whole of community" understanding to remove silos and view disputes more globally:

- Removing silos – currently negotiators only know their part of the process. We need one government official that knows about the entire process. Someone should come in from the ground level and work their way up. That would help with negotiations and mediation. It would at least help to mitigate silos. Someone to have a "whole of community" understanding. To look at the dispute more globally

Topic Three: Claim Adjudication

The purpose of this topic is to provide an opportunity for participants to discuss the role and function of binding adjudication – such as the Specific Claims Tribunal – in an independent process.

Topic Three: Claims Adjudication – Vancouver, BC
October 8, 2019

Adjudication is necessary and should not be limited to claims under $150 million:

- Our claim is well over 150 million, but if we go through Claims process, we will be cut off at 150 million limit. I think government is trying to push us through the SPECIFIC CLAIMS process to get away from legal issues and limit their liability and amount of money they owe us. But if we try to access the courts we run up against statute of limitations, I don't know how we get around the statute of limitations.

- We need a process for claims above 150 million, we need to be able to make claims without limitation. We need a clear process.

An Independent process must take away Canada's conflict of interest:

- There is a need for an independent process that takes away whole concept of this uneven playing field. Total conflict of interest on behalf of the federal government and the tribunal. It is a process that was set up by the federal government, even when tribunal began to make decisions in favour of Indigenous Nations, then the federal of government goes to court to fight the tribunal – so we are not even given a chance. And they need to take into consideration the time where it was illegal for our Elders to gather and talk about the land question when we talk about statute of limitations.

- How could we get away from the current model? Maybe costs are managed by independent body and behaviours managed by an independent body. If the adjudicative portion of this independent body asserts that those costs and transparency is all managed by the body than we wouldn't be facing the same issues we deal with today in terms of government controlling the process and their lack of transparency.

An Independent process requires legislation with the power to adjudicate fairly, and include oral history evidence:

- If you have recourse through court or tribunal does that help negotiations? I think you need a strong body to adjudicate these issues when they cannot get resolved otherwise.

- Whatever changes we want to take place; we need to push for change in legislation so regardless of which government is in power, they have to follow the same process

- It hasn't been a fair process with the tribunal. We look at some of the evidence we presented in our hearings and some of the information rejected because we apparently didn't meet the evidentiary level according to the adjudicator. But I think of Delgamuukw and the validation of oral history. If we rely on colonial legislation, we once again are dealing with a government that we don't know what their priorities are. How do we become responsible for our own process and progress? What do we have to do to frame the conversation so that Canada sees settling our claims as a win-win? How do we make SPECIFIC CLAIMS reflect what happened with Jordan's Principle and a Human Rights Tribunal that changed processes across Canada?

An Independent process must use international mechanisms to hold Canada to a higher standard in how they resolve outstanding grievances:

- UN and Special Rapporteur reports to Canada specifically described procedures for settlement – where there are no agreements for settlement, those need to be dealt with that has been laid out for rest of the country so that the underlying title question remains. Does province at the time of the creation of reserve has jurisdiction or not? In our minds they don't have the proper authority. The UN reports state to Canada that there has been devastating human rights violation within context of Canada's history, banning of Indigenous culture, ceremony, exclusion from voting and access to lawyers, excluding access to court for land grievances, forced assimilation – what they recommend is that Canada shift their adversarial policy from putting burden on taxpayer as the intent of all of those policies and actions was to destroy us, our relationship with the land, our legal traditions, destroy our identity. If you think about it, people across the country on reserve contribute over 30 bill a year to GDP and we only receive 21 bill to reserves – we generate more money than we ever get back from Canada – we are giving more to settlement than we ever get back in this relationship. We need the courage to come together and create independent body that deals with us in a fair and just manner – the trust is not there right now, and it is reflected in all the reports I have seen. Not just about throwing more money at it, the long-term responsibility for us to have healthy environment – that is a core value, for us to survive, it is not just about money but about degradation of where we live. In the last 60 years we could drink water from the lake or river, I invite government representatives to try that today. It really is about our future and how we survive. There are international mechanisms to hold Canada to higher standard in how they resolve outstanding grievances.

- I went to UN twice to raise these issues. Canada had no respect for that process. There [were] no resolving questions put before Canada, the only response we got, because they sent Heritage Canada is "we have to get back to you." I went to UN in New York and heard Carolyn Bennet speech adopting UNDRIP – But she went on to say that UNDRIP was the ultimate expression of treaties or self-government agreements. Basically, what she was saying is that if you don't sit at the table and negotiate treaty of self-government agreements, Canada won't sit down with you. If it is not in Canada's best interest, they will not talk to you.

- **Elder,** I feel the research matrix on our part needs to look at international law. Because I recall 5-6 years ago there was a team of lawyers that did research on all levels of law – federal, provincial, international – I think matrix that has systems, practices and evaluates how to alter

the system. And we could see where these systems failed our ancestors and we don't want to pass those systems on to the next generation. We need to be feistier about our research and strategies. I agree with going to international levels.

- I question whether the tribunal is still arms length from Canada? Tribunal Act still controls the tribunal which may be a conflict of interest. We have called for changes of legislation, but Canada created the Tribunal Act to create the tribunal. Independent adjudication – we need a whole process for this. SPECIFIC CLAIMS were created to serve the needs of the government. Restitution is when Canada is found in violation. Canada tries to say it holds underlying title, but we know it is us that holds underlying title because we never ceded. They should have to prove why they are on our land. Our claims still get bottle necked at tribunal and at submission. We need UN oversight on the state's dealings with these processes.

An Independent process must preserve the protection against the statute of limitations and laches:

- I agree with going to the UN for an independent body to hold SPECIFIC CLAIMS to account. We have always said this is Indian Land. We have women out there defending some of our land from the pipelines. We have had people on the land every day of the year for I don't know how many years, we should not have time limits to bringing cases, we should not have to deal with the statute of limitation. If there are any time limits those should be put on Canada and Province to prove to *us* how they deserve to be on Indian Land

An Independent process must hold the government accountable for their behaviour without delay:

- We are in a dialogue in a big claim to Canada – we are using our traditional knowledge on how to proceed as a way to navigate a comprehensive claim and the legal landscape around collective title being held. The foundation of how we are trying to proceed is bringing recognition to how much we contribute to the greater society from the places where we live. We have the research and very clear position grounded in current legal landscape. We feel paternalism of Canada is still there, and their adversarial position is still there. Government talking nicely about reconciliation and TRC, but when we are in the room talking to the federal government, it is totally different. There needs to be consistency in political will and the government mandate. In the 4 years of this government there has been no change in what it is like to be in the room with the federal government. We continue to face opposition and constricting challenges. From our perspective, there needs to be a clear process there and how that translates into action.

- What mechanism is there to compel Canada to not repeat same negative behaviour over again? Canada has admitted liability on one claim but then fights another FIRST NATIONS on the same grounds somewhere else. FIRST NATIONS have been siloed, where they have fought those siloes Nations have been very successful. I don't see anything compelling Canada's future behaviour, they admit a wrong today but what about tomorrow? What stops them from doing the same harm tomorrow. Canada's conduct going forward needs to be adjudicated today as well.

Development of a truly Independent process requires a binding commitment, not more study and discussion:

- We all share your burden that the efforts we made for decades sometimes only lead to 2 successes. But that doesn't stop us from trying because we are not working for ourselves, we are working for our future generations. We are working against an unjust government and an unjust public – and they don't want to give us anything. And for some reason they want us to prove ourselves when we know we are the rightful title holders of this land. We face fear about when government changes, we will be pushed backwards. But we have to keep moving because only history can be the judge of our work. We often don't win, but we have to keep going and thank Creator for giving us that energy to keep moving forward.

- I brought a submission signed by our leadership. We have been dealing with Specific Claims since 1984 working with Canada and we had a commitment from the Minister that we would get through issues with the first railway in 2 years. It has now been 35 years. We have been part of many commissions, written reports. We have 2 railways, highway, high tension power line coming through our reserves, and we are left with very little. When there is a binding commitment to create a truly independent SPECIFIC CLAIMS process, that is when we will sit at the table, not just money to continue to discuss the need for such a process.

- Because of the issue with the railway, we proposed many years ago for a grievance procedure to reduce the timeline and the cost of these processes. We need a commitment from the federal government for an independent process. And we need the leadership to make a stand because the organizations often let their resolutions get buried (like at National AFN).

A new Independent process need not be adversarial to facilitate resolution and restitution, and reflect shared deliberations having respect for Indigenous law and legal principles:

- In my mind, if we need to have a completely new process, we should have a commission type body that we present claims to and Canada would never have role in deciding acceptance of claim, funding, or negotiation tables. Judiciary body could play a backstop if facilitated. Mandatory mediation couldn't work and there could always be part of body that has teeth – if tribunal has modified mandate, or a newly created adjudicative body. Any independent body would need teeth to make decisions that are binding. I have heard from BC First Nations is that we need a non-adversarial process to facilitate resolution and restitution.

- Indigenous laws need to play a role. In our community there were many international accords and declarations. Those are our ancestral laws that have been written and are there for the Nation as tools toward resolution. Indigenous laws teach us how to deal within the Nations and our relations with the Crown. We have a blueprint from Ancestral Chiefs on how to deal with the Crown – non-interference. Canada needs to recognize our laws and how we implement our own laws in this SPECIFIC CLAIMS process. We do have some case law built up against Canada with CP Rail and CN Rail – class action settlements.

- I don't like the word reconciliation – it is business as usual; government continues reaping the benefits of our territory. I want restitution rather than reconciliation for the last 152 years of genocide, destruction, theft. When we talk about the land issue and land claims, I want to hear restitution. Last year when I was elected as chief again, I started hereditary governance structure for my community – hereditary Chiefs work together with the band on issues of the land base. We sat down with hereditary Chiefs and told them that they have authority over the land and the youngest of the Chiefs said, "we know that, it is Canada and BC that doesn't know that." I wrote a letter to Crown officials asking for their strength of claim over my territory and they were silent. Their silence tells me they don't have authority or jurisdiction. As a group, we need to think outside the box – why do we always have to prove the strength of our claim, , and show them where our territory is when in fact they have no clue about the territory and no clue about what it means to be Indigenous people. I am sick and tired of hearing from non-Indigenous people that Indigenous people are freeloading. Canada destroys our land base so when it comes to adjudication, we need to take into consideration the past 150 years and look forward on how are we going to remedy that, what are the next steps? When you finally agree to a settlement through adjudication it needs to include a remedy on making something better, how will you conserve fish habitat, deer habitat for example? That needs to be included so the funding you receive through adjudication you can make the world a better place for the community.

- Weakness of tribunal is its adversarial nature and when there is a decision Canada just appeals the decision from the tribunal at the court level. There is an issue of judge appointments. We need an independent adjudication process.

- We had a claim and it was rejected because it was stated that the feds didn't have fiduciary duty at time of reserve creation. We have a lot more evidence since our original claim that would weigh more on our side, even using common law principles*. I think the system needs to be completely overhauled. We don't need to patch a terrible current process. The presentation of evidence should be broadened to larger context of situation. We end up talking about 2 sq. miles when that stops us from talking about our territory in its entirety. We should be able to talk about SPECIFIC CLAIMS in a broad context, in a relational context to our history and culture of our people. It should not be up to the feds to judge what is important to us. The system itself is corrupt. How do we address the shifting landscape about what is legal in common law and then how do we introduce notions of Indigenous laws into the mix*? Our laws state that it is not a matter of owning the land or valuing a particular spot, it is a matter of protecting it and its uses we recognize as valuable. We were responsible for it. That's what the law would say. We were responsible for caring for it – that is quite a difference of assessing value than the way the common law assesses value based on property values of adjacent properties. Let's have the discussion of what is the federal claim on our land instead.

An Independent body with an adjudicative process requires oversight:

- Moving forward in this process, there needs to be independence because we can't rely on Canada with its major conflict of interest. We need an independent body with oversight like UN Interventions and a body to oversee adjudication. It cannot just be adjudicated on Canada's laws, it needs to take into account Indigenous law, can't just be based on federal and province laws, otherwise we are going along with colonial process again.

Topic Three: Claim Adjudication – Fort St. John, ON
October 9, 2019

An Independent body could be multi-faceted, must be credible and include an adjudicative body (Tribunal):

- INDEPENDENT BODY could be multi-faceted - shift to a Human Rights model - enabling statute - tribunal could be housed within a larger body that has a different funding model. Different funding focus.

- If you have a commission, you can structure the governance so that it has broad acceptance and broad credibility – could even have First Nations or First Nations researches participate

An Independent Tribunal cannot maintain the financial cap, that only incentives Canada:

- IF INDEPENDENT BODY funding was controlled by CIRNA, continue to be hampered if its underfunded like the SCT and financial cap of $150 million. Incentives Canada if cost of settlement increases with passage of time but Canada isn't paying for this increase in cost (because of claim cap). e.g. 1999-2009 - first claim at SCT. 10 years later, claim value over the cap. Canada is being rewarded.

- Loss of use can escalate costs; cap creates major issue because Canada is not penalized for delay like they would be in normal litigation. In addition, the Tribunal doesn't have the capacity to actually address claims quickly.

An Independent Tribunal must have oversight to First Nations, Canada and UN:

- We need to police the process with oversight. We are on our third justice lawyer. Canada gets away with delay. We need oversight of the INDEPENDENT BODY - to FIRST NATIONSs, to Canada, to UN - article 47

An Independent process, once created, must plan for transition and be prepared to grandfather claims currently in the process:

- In transitioning to a future process, we must learn from the past. Transition was difficult from ICC to SCT. Our consolidated annuity claim fell through the cracks and was told to start over. We must prevent setbacks to First Nations and perhaps create a grandfathering clause.

Topic Three: Claim Adjudication – Six Nations of the Grand River, ON October 24, 2019

An Independent "appeal," such as the Tribunal, is essential to a fair, flexible, transparent process:

- I think the appeal process is essential. Why we were rejected so we had to rely on pre confederation claims to submit. We were happy to have the Tribunal as a mechanism.

- Access validity – making decisions that are binding and enforceable. Where I see that playing a role with claims that are only partially accepted – evidence that supports each side. So, having an adjudicating body to step in – navigates the validity and not only having partial acceptance... it's been a starting point. Canada is using the process – BCR signing off on all allegations... In the situation where there is an uneven division the Tribunal could help to navigate where those negotiations come in. Different framework... having someone else rule based on the facts and then to the FIRST NATIONS can see what evidence is supporting Canada's.

- So Tribunal brings transparency

- For transparency – we need to be informed of the reasons why the Crown rejects a claim. We should be able to look at legal reasons, we should be able to see all the reasons why our claim might be rejected and the legal defences of Canada against us. We each show each other our defenses against each other – instead of it being adversarial the Crown would present its case and we would present ours to them

- Canada – delays to try to diminish your claims. During negotiations, new rule at Tribunal where parties are allowed to do six-month check-ins, so now harder for Canada to put into a stay to delay.

- Tribunal seems to be working – impartial and independent. Its William Lakes ruling... both Canada and the province were liable as a result. The SCC judges in their decisions described the Tribunal as a very specialized body and therefore it needs to be respected.

- In 1998 – developed draft legislation that would have been independent claims process – it was 2 sided – independent commission and adjudicative side – Working Group on Specific Claims put together policy and made recommendations.

- Adjudicator has no vested interest in the [dispute but] must have authority for binding decision.

- Precursor to Tribunal was ICC, never meant to be permanent, was meant to be transitionary, took 13 years. Could not make binding decision.

- Timeliness is one of the restrictions that we have now. We need greater flexibility, not undo what exists, but have more flexibility, take specific issues to an independent process.

An Independent Adjudicative process should not have a financial limit:

- Canada doesn't want to tie itself to having no control.

- Their compensation framework is going towards the higher end and many of the settlements would blow through what is offered at the Tribunal, but Canada can use that to object unless the First Nation is willing to agree to a cap.

An Independent Adjudicative process need not be judges. Consideration needs to be given to changing terms of service, appointment of specialized knowledge experts.

- Their term LIMIT OF TWO 5 YEARS TERMS.... this needs to change... Yes, what about the transfer of knowledge. Why not transfer or create a process where there not a set termed appointment – don't want to preserve a bad egg yet need to make sure that body is enforceable and trusted.... move to a panel of justices more like the Supreme Court of Canada.

- Perhaps we get a judge that isn't a Superior judge but with credentials so not taking away from region. Keeping them relevant and having the built-up expertise and not draining the Superior Courts.

- Any issue that affects FIRST NATIONS person or community – have the specialized knowledge to take into consideration... If there is broader application – could not be better resourced and also specialised so judges would have the knowledge... if Tribunal is building up that knowledge. Broader implications... can it get more funding, staff and broader impact....

An Independent Adjudicative Process needs to be better resourced with Indigenous knowledge (as judges and/or as advisor to judges):

- If body has more authority and mandate – have more funding – if we put in line with Superior Court – expertise instead of being provincial it would be in Indigenous history and relations with Canada. If you put it at the level it becomes a better resource... if we are fighting the province.... also broadening it... not just FIRST NATIONS but Indigenous issues in general as well. The Tribunal is national and so needs to have expertise, so it needs that knowledge in any event.

- There is no dedicated percentage of Indigenous judges. Important to have perspective but also have also opinion…have Indigenous advisor to a panel of judges... but that still means Canadian law is superior to Indigenous law. In looking at Gladue Reports for example... restorative justice... legal plurality is recognized. Similarly, looking into all traditional law with children and families.... when they resume jurisdiction ... just in the realm of children but it affects everything... as a dispute mechanism.

An Independent Adjudicative process must be inclusive of the provinces:

- It makes me also wonder ... the agreements transpired between Crown and FIRST NATIONS but what obligation have to compel the provinces... and if we break this process back open do we

need to have policy to bring provinces to the table because it doesn't matter what you do if the provinces don't play ball... you are blocked for resolutions...

An Independent process, including adjudication, cannot be based upon "rejection of claim" by Canada, must have teeth, have the power to review the whole of the claim being advanced and allow for truth telling, in their language, by community:

- Our team walked away, taking a break from the system really literally. We looked at the radical idea that anything brought forward Canada cannot reject.... whether negotiation, Tribunal, or truth telling session... asking them what resolution looks like... for some communities having stories and documents... may be enough and others may not be enough. If Canada cannot reject the claim and truth at the very least is actualized.

- I haven't been in the process for a while, but I'm thinking that current process doesn't have teeth, so this body has to have teeth to make federal government to move, not just recommendations, have authority to make Canada change and time frames. Be able to make decisions Canada can't ignore. Timeframes is so important – what are we supposed to do in the three-years we are waiting.

- Independent body could hold Canada accountable to their own standard – what would the function be to hold them accountable, what teeth? In terms of fairness, FIRST NATIONS should have a say in terms of appointment of judges.

- We have to approach this as building something for the future. We have resolved 3 claims without going to tribunal. One claim we have is based on 10 allegations, when Canada did its review it rejected 8.5. Whether this INDEPENDENT BODY in the future can address an issue like that is important – independence structure. Getting to a place where allegations are not just the least expensive option – this is a common experience that Canada only accepts allegations that are not going to impact them largely. We need a body that deals with these allegations and can review DoJs decisions.

- We have a long experience in claims work, we are following claims agenda from the 1870s. Great mistrust with government. Each time we get involved Working Group that proposed changes to SPECIFIC CLAIMS the government refuses. We could create something but what will have full grown teeth and actually come back to us in terms of what we would really like to see?

- With one claim at ICC, inability to meet deadlines, plethora of issues with government. Collectively and through ICC we ended up hiring a lawyer – he was of the seniority that he could tell INAC to show up to meetings, with that sort of facilitation where the INAC reps had to respect him. We need individuals in adjudication need to be of such a stature that DoJ lawyers have to listen.

- Lack of resourcing in SPECIFIC CLAIMS and negotiators not having money to travel - maybe a role for adjudication for INAC to appear before judges and ask for additional resources to conduct the work

- Part of the issue is we already have a relationship with the Crown, and everything we are talking about occurs within that relationship. Respect, trust, friendship. We find we come to a negotiating table that doesn't recognize that we already have a relationship.

- We have complex, respectable, effective legal systems. Government of Canada says we don't know your law; therefore, we can't take it into account. Use ignorance as an asset. Judge Lance Finch, Duty to Learn paper. From Chief Justice of BC, Canadian lawyers and judges carry baggage they don't even realize they have.

- Language is a matter of respect. There are things you can say that you can't say in English.

- Adjudication – Tribunal Act allows for 16 judges. It is understaffed. If you want to adjudicate, get enough judges. Justice Slade said very early on, if not enough judges, Tribunal will die.

- Like idea only claimant invoke tribunal of substance, but both should be able to call in on process (when acting in Bad Faith).

- Consent important with collective rights – treaty rights are on the line when brought to court. Why would we go there? Not our judges, not our laws. If we have treaty relations to resolve concerns, maybe we should invoke the treaties. You have no right, authority. If we set up an INDEPENDENT BODY on consent, what do they have a right to do?

- Tribunal doesn't have jurisdiction over land, can't award land. Walk into Tribunal, relinquishing land as a remedy. 2/3 of claims Tribunal can't adjudicate on this. Province won't consent.

- Highlight other thoughts from last workshop on this. Language is important. When we talk about remedies for resolution of claims, often in cash or land. Ardith asked are their other losses that we are not yet calculated because we are not yet looking at. Disruption, loss of lands used for hunting flooded, how would you assist in looking at that more expansively.
- Dispossession of land, lost relationship to territory. How do we value that loss?

- When Tribunal was created, controversy on cap, limit not entirely acceptable to FIRST NATIONS community. From the very first it hasn't been wholly available to those who want it.

- To eliminate this whole notion of rejection is a loaded term. Powerful, dismissive. Proceed to next stage with rejection in hand. If we dismantle that, change language, what do we do. We must get away from the language of rejection.

- We have had a few settlements with which we are happy. Technical aspect of settlements, in both cases there were delays. You reach a settlement; you wait for the money. Every day you

are waiting, you don't get interest, can be a few thousand dollars each day. One case it was an account, FIRST NATIONS wanted special account, Canada couldn't do it. FIRST NATIONS couldn't resolve the issue. Result may be a compromise, at least we might move forward. But money can take too long to come.

- INDEPENDENT BODY should have authority over punitive damages for delays like that.

An Independent Adjudication process must be financially accessible and timely:

- We need a tribunal that does not cost us 100k to get through the door.

- Before ICC we used Indian Commission of Ontario – tripartite process looking at issues of common concern. Advanced one claim in 1970s. But nothing really much happened. It got flipped to ICC. It seemed ICC had more ability and through ICC we were able to resolve the claim and the claim itself was split in half – liability and quantum. We got through liability and got settlement; the quantum part has been languishing for 40 years – validity of transaction itself.

- There is stuff happening but not with any speed that we would prefer. There has been structures from our experience and each time we have used it has kind of worked. If we do create something our experience is it is better than what is.

An Independent Adjudication process should ensure policy is applied consistently, should be expanded to include harvesting rights and include oral history evidence:

- Uneven application of policy is always taking place across the country, that would be a breakthrough if even application policy took place from region to region.

- Are there templates we can use and tailor it?

- Negative issues - $150 million cap, s.15.1(g) harvesting – may still have access to harvesting traditional lands.

- How could an INDEPENDENT BODY improve on that? Have to be able to make binding decisions. Needs to be legislated, so decisions are binding. Open up evidence on proper use of land, losses, so understanding of FIRST NATIONS is better dealt with. Process is adversarial. How to improve that is the question. I don't know how that can be done except to open the process so oral evidence is used much more. Federal Court new rules of IBA– better use of oral evidence. Used in Robinson Huron case (Dec 2018). Judge included the Anishinabek laws. She understood the laws. For the first time the Robinson Huron treaty was interpreted in Ojibway. They compared the meaning of the words and they could tell that in some cases the words didn't connect, not a meeting of minds, there were 2 different legal systems being used, but she handled that well. It was one of the best decisions I have ever read. Everyone can learn from that, in partnership with the parties that were involved.

An Independent Adjudication process must have a transparent appointment and governance structure, perhaps case-by-case appointments, through development of a roster of judges:

- Each party should be able to put forward names and then choose the judges together. It needs to be agreeable to both parties who is adjudicating.

- Could you have case specific placement, so at least one position is flexible and changed according to case expertise or specific theme – rather than a time period, but instead thematically? There is movement and better chance of meeting the community's needs

- People with conflict of interest could be removed from cases and then it would avoid conflict in interest.

- Doctrine of Discovery and Terra Nullius – fabric of case law in Canada and manner of laws being developed. If you have judges – no matter who they are – their training and background is based on Canada's legal fiction – if legal fiction like Terra Nullius was removed and natural justice was instead used as precedent.

- It is unfortunate about the way legal system works and that we need judges etc. because SPECIFIC CLAIMS is lawful obligation. Maybe legal obligation should be translated into natural obligation. Like Marshall strategy.

- *Could have vetting process – people could apply. And then the group could be used for particular claims based on their expertise. You have a large list of people brought in. We could have a roster and then people could be accessed for particular expertise, and so each situation is individualized.*

- People would come in with fresh eyes instead of a 4-year commitment

- If we have a body with more transparency– like court system that reports on evidence being presented, then other people could see it and be used by other people

- Couldn't we look at the ICC and look at what was good and bad and where things can be improved and that could be a basis for independent body. They had process for picking commissioners. We know it didn't work well but at least we would have a model and not have to reinvent. We could improve on it

Topic Three: Claim Adjudication – Thunder Bay, ON
October 29, 2019

An Independent Adjudication process might be modelled on the Human Rights Commission and must bring greater transparency to legal review:

- Human Rights commission may be a model – bring in the complainant – try to resolve at early stages. Need to streamline history. How to eliminate duplication. Peer review to expedite the process.

- Two bodies – one for mediation. Second – an adjudication body. (Negotiation and litigation; Research component. Dispute resolution.

- May have an international example. Office of high commission. Special Rapporteur. Capacity issues

- We need greater transparency of the assessment. 1970's the Indian agent had control of the submission process. Access to the legal is relatively new (1951). Historical disadvantages. Couldn't even sue the Crown until 1951.

An Independent Adjudication process must be resourced – including resources to access the process:

- Capacity of the community to submit a claim. Need more financial resources to see the claim through. Not just lands, or administration. How much does the Crown spent to get through the process? Is there anything in process for the community? Need someone in community to see it through.

An Independent Adjudication process requires oversight:

- Reporting trigger – is there an oversight role. Maybe the UN has a role for oversight.

- Maybe taking it out of the parliamentary framework and housing at the UN.

Decisions of Governance of An Independent Adjudication process must include First Nations Leadership:

- Leadership needs to decide who are acceptable in appointment.

- Models exist regarding governance, e.g. Cree Naskapi Commission create recommendations and report back to both parties. Established precedent on appointment.

- Determine functions and powers of an INDEPENDENT BODY first, then the qualifications.

- Both sides need to nominate and decide upon qualification/criteria.

Topic Three: Claim Adjudication – Edmonton, AB
November 5, 2019

An Independent Adjudicative process must have flexible and continuous interaction with all parts of the process, including references of specific issues:

- Challenges with the Tribunal - gap between the SPECIFIC CLAIMS Branch and SPECIFIC CLAIMS Tribunal. No one is patrolling this area and it needs to be addressed - why isn't a claim simply referred to the SPECIFIC CLAIMS Tribunal?

- What about reference cases - worth looking into specific court that solely addresses specific claims because it's such a specialized area of the law. E.g. CHRC ruling and Canada uses judicial review to challenge.

An Independent Adjudicative process must be credible and have specialized, demonstrated expertise:

- Specificity of adjudicator - cannot simply be anyone - should have demonstrated expertise in the area/issues otherwise we will create a court where someone who is in line for a political/patronage appointment is deciding the case with no subject matter expertise. We need adjudicators with knowledge and expertise, or we are at the whim of political influences.

- The qualifications of the neutral 3rd party/adjudicator should have a law degree or be a judge who has adjudicated indigenous issues or should have a knowledge of indigenous issues.

- We must be prepared to always ask: How does this build trust? How do I trust a process upon which these discussions are being made? How can we trust? If the process were more open and transparent, we might be more accepting. We have an awareness of history - and how can we trust this system. Why should we trust the discussions now?

An Independent Adjudicative process should not have an arbitrary financial cap and have authority for more expansive remedies:

- Financial cap: we need more research to say why there is a cap (of $150 m) or its arbitrary. These are decisions that are made within central agencies - TB, finance, DOJ, based upon budgets, risks and a number of factors. What is the dollar and cents to rationalize these decisions? We should seek an RFP to undertake this fiscal analysis - and what other approach number might we assign to the quasi-judicial body. Whatever the number, it will have implications for Canada's treasury and politicians need cover to raise the cap - if we leave it in the hands of central agencies it is all secret and we will have no influence.

- FIRST NATIONS often negotiating for things that have no price - and there is no way to put a price.

Topic Three: Claim Adjudication – Halifax, NS
November 12, 2019

An Independent Adjudicative process is necessary to police behaviour:

- Potentially may need to use the tribunal, they have a mediation service.
- Inconsistency in the review may trigger the need to go to the tribunal.
- INDEPENDENT BODY – police behavior of Canada. The conduct of the parties is a real factor.

Topic Three: Claim Adjudication – Quebec City, Quebec
November 20, 2019

An Independent Adjudicative process must be fully resourced with the necessary expertise, including (French) language:

- We had an experience with mediation – the Tribunal did well, but there was only one French speaking judge who could not then serve as mediator, so the Tribunal reached out to Justice Manville – who had completed her term on the Tribunal. She served the mediator– the Tribunal was resourceful on our file

- But the lack of French speaking judges on the Tribunal is a limitation.

An Independent Adjudicative process risks misunderstanding/misinterpreting Indigenous laws:

- Since we are following the oral tradition, I'm going back to a story called pre-bannock. There were no lawyers. There were Chiefs, they were using their common sense. How do we use our decision-making processes in a modern context?

- How do we efficiently apply our code to the modern context?

- Someone this morning spoke about how a decision should benefit the community. The Tribunal should look at how decisions impact the community. We need to develop our own judges for the tribunal. Someone who can transmit our knowledge into a decision.

- met with the Tribunal– issue is that his world view is entirely informed by the common law. Very little room for our laws.

- They don't know our laws – the Elders have warned us not to share some of our laws because they will use them against us. The elders say, you won't have any weapons left.

- Concern about incorporating Indigenous law – how is it going to be interpreted and how will they use it?

- These questions speak to me – I don't want to think only on the judicial level, but I want to think about this from my community's perspective. We are very capable of adapting. And regarding specific claims we are still adapting.

An Independent Process must highlight regional differences:

- In QC we are nothing – we have the most difficult government. There are more rights in other parts of Canada.

- In the final report, could you highlight regional differences – there will be common issues, but we should also highlight specific regional issues.

Topic Three: Claim Adjudication – Saskatoon, Saskatchewan
November 26, 2019

An Independent Adjudicative process is necessary and requires greater flexibility:

- There is no doubt, but funding is inadequate.
- Hard to deal with settlements over the cap - another example where FIRST NATIONS [have] challenges 80/20 split - Valuation for loss of use (particularly on ag benefits)
- Hard to compare cash values across treaty areas (ag benefits T8 to T6)
- Should the Tribunal be making non-financial decisions: for example, on technical merits of a legal argument (without resolving financial issue)?
- What's the difference between an adjudicator and arbitrator (the former you can appeal); what's the desired way
- "Mediation": used to get back legal fees in annuities claim
- Seventh generation thinking
- How to deal with what was lost (far beyond monetary compensation)

Topic Three: Claim Adjudication – Winnipeg, MB
November 28, 2019

An Independent Process must acknowledge and begin with the relationship of the parties:

- Manitoba hydro agreement – what worked at the time was that there were no lawyers in the room. Traditional and natural law comes from the creator. With Hydro – we opened up their minds and hearts – we asked people, "how do you feel?" They need to open up their heart to understand natural laws. If they're hiding behind a law, we are not going to get anywhere.

- You have to look at many things: Hydro didn't want to talk about water quality etc. we did. Anything you touch in the natural world changes something else in the natural world.

- We all have signed agreements that have a future development clause in them. This idea of incorporating natural law into common law will be challenging. NATURAL RESOURCES TRANSFER ACT 1930 created a national park and a reserve on the park. They were burned out. Before we talked about the park, we established a relationship. This included the minister having to come to the graveyard in the park where they were burned out. That made a big difference. We got the land back and shared access and co management of shoreline.

An Independent process must respect Indigenous language:

- Be mindful of wording in agreements (we negotiated the difference between "a" and "the").

- Language and the loss of language in being able to talk about a community

Topic Four: Funding

The purpose of this topic is to provide an opportunity for participants to discuss how funding structures can be redesigned to facilitate independence and to ensure specific claims resolution processes are adequately resourced.

Topic Four: Funding – Vancouver, BC
October 8, 2019

An Independent funding process must be based upon a new model:

- We should be talking about whole funding structure and whole funding risk assessment, mechanisms that government uses. How they built their structure is the problem, it is not working, and we need a new and better model. We need a better process in BC because we have a majority of SPECIFIC CLAIMSs here. Otherwise, can't be a national commission, it should be based in BC, independent so it can do proper assessment and support for claims research. Right now, Canada gets to decide which cubby hole we belong to, our uniqueness in BC is not even considered.

- Working with 15 FIRST NATIONSs in BC on SPECIFIC CLAIMSs. The way funding works for last 6-8 years, Canada prioritizes funding to Aboriginal Research organizations across BC, many are specific to a specific FIRST NATIONS/ tribunal council, so that only nations within Tribunal Council can access that funding. My clients can't use UBCIC because they are required to use our law firm, there is only one research organization that we can apply to – Specific Claims Research Centre. We can apply to Canada for funding, but this process is not transparent, it is not written where to apply, how to apply, how much money you can receive. My clients received $0 because we applied to Canada. It is completely inconsistent. We need transparency in funding. There are issues of funds not being multi-year

- Specific Claims have a very narrow criterion. We should define broader criteria for what these claims are. BC is the territory that our Nations hold. Aboriginal institutions were created by government not necessarily by us. So, the government has legislation that goes with an Aboriginal institution, so the institutions themselves are defined by government. We need our own institutions not defined or led or mandated by government.

An Independent process must resource the capacity of the First Nations to research, communicate and develop an understanding of claims within their communities:

- We need capacity and funding to carry this forward. We need to be able to develop our own members to do the work who understand the history and culture of their FIRST NATIONS. We want to keep moving forward and in order to do that we need to have the capacity dollars to do that. For example, if we has an Independent body – money – here is $150 000 to employ your people to concentrate on the research... to get at the starting blocks... the reality is that if we don't send a financial report that was allocated from to Spec claims they will take the funding

back, that's our reality. We do need to develop our communities, so we don't do it at the side of our desk.

An Independent process must have sustainable, long-term financial strategy; An Independent funding process must operate, long-term funding, with complete transparency in how to access funds, what is funded, how money is allocated and where the funds are sourced:

- We need to bring the bands together in BC to talk about SPECIFIC CLAIMS, to support one another, teach each other how to apply for funds, what usually gest funding. We need to understand how SPECIFIC CLAIMS branch distributes funds, how is it allocated, where the money comes from. We need to be able to come together to find frame of reference to fix the system. How does money come from cabinet from budgeting each year? We must understand this – money distribution and location. We need to understand the impact of shifting parties in government from Liberal to Conservative, each government cuts funds and increases funds, and if we live in a yo-yo budget you cannot plan and cannot do your job. We don't know which party is going to win, we know if Conservatives get in, we are not a priority and our budgets will be cut. There is also a need to understand how do we process and work through SPECIFIC CLAIMS, who are people who can help us in the province, we need a network established for SPECIFIC CLAIMS, there seems to be a competition among us and we need to stop that.

- SPECIFIC CLAIMS research funding is 12 million, separate from negotiation, separate from settlement. Canada holds back a certain amount of funds until halfway through fiscal year – so apply a second time in the second half of fiscal year.

- Multi-year funding is extremely important. Funding shouldn't be limited to only one specific claim – we should be allowed to use the funding for any SPECIFIC CLAIMS that we find through the research. We need fixed funding for FIRST NATIONS. Funding should not have to be specific to a SPECIFIC CLAIMS, we should be able to do oral history projects on all village sites, which became reserves. Why does funding only apply to one village site? We should be funded to research whole reserve creation history and knowledge of Elders. Disparity in funding is also a huge issue – process is completely frustrating.

- We must make sure whatever the process looks like we have a long-term strategy as to how we get there. Right now, the five-year funding strategy they don't take into consideration the long-term community perspective.

- The funding for specific claims is of course ridiculous. One of our lawyers recommended that all lands in question, those resources and any funding attached should go into a fund until lands in question are rectified.

An Independent process must be transparent and timely with administration of funding:

- 6 years ago, we submitted for funding and then only denied 6 month ago.

- We are trying to get Canada to expedite process and figure out how to have funding to do that.

An Independent funding process cannot operate as a barrier to the resolution of claims:

- We have 2 claims in SPECIFIC CLAIMS process, the first is now going to federal court. Really difficult in regard to funding. When negotiating the SPECIFIC CLAIMS we use our law of "Put it all on the table." We know there are harsh words and difficult things that need to be sorted. In our first claim we went into mediation with the Crown, we talked to them about our law. We shook hands and said we were ready to settle this, but the funding was so limited that our travels costs for Elders were not covered for our Elders to participate in the process. Our law states that "Everything is interconnected" but with limited funding we have to be so specific. They do not incorporate the need for a witness to have a support person. Everything is connected for us. For me to speak I think about all my relations. But the funding does not account for our interconnection or provide me the ability to bring my daughter or mother to the negotiations. One issue we want addressed within the process is that if you do not spend the money in time, the government will claw the money back even though there are so many obstacles to spending the money. The other part is having support staff to support the process overall, we fall short on that. We had one lawyer but 3 or 4 Crown people in the room.

An Independent funding process must fully respect the inclusion of oral history evidence and respect for language by funding recording and preservation of evidence:

- In the second SPECIFIC CLAIMS process we got to bring the tribunal into the village and give them a tour of the territories, yet none of that was incorporated into evidence that the judge took into consideration. SPECIFIC CLAIMS process allows the federal government to have endless money to do their work, but we are given pennies. The other issue is access to language in the SPECIFIC CLAIMS process. We have Elders do testimony in our language but we are not given funding to translate the language so Crown could understand what our Elders said.

An Independent funding process must eliminate resolution of claims through loans to First Nations:

- We need to get away from loan funding. There are some historical debates around setting aside, in trust, resources generated from unresolved areas. Embedded within that is communal interest and obligation that keep the integrity of our territories intact. When we really look at settlement in our territory there is a major conflict of interest in who is making decision and how that proceeded to alienate the responsibility of the government to ensure our interests are protected.

- We need to get away from loan funding, getting cabinet mandates, quit accepting paternalism, move away from old negotiation policies of assumed Crown jurisdiction and move on with reconciliation. From my community – we want our land back so that we can have a future. Reserve creation process was to protect future needs of the Indians, and we know what was set aside was inadequate. We need to look at benefits that Canada has enjoyed because of illegal occupation of our reserve lands within SPECIFIC CLAIMS area of focus.

- The limited amounts given to FIRST NATIONS for the SPECIFIC CLAIMS process is Canada's risk management, trying to starve FIRST NATIONS into a certain position. Sir John A starved us onto the reserve and government has been trying to starve us off the reserve ever since. We need to move past undervaluing what the reserves are actually worth. The value of fishing station when you consider food, social and ceremonial use is extremely high. If you are salmon-based Nation you see that salmon put on everyone's plate at the table. That has a value in terms of protein, food not purchased, and our Aboriginal rights. If we can't replace salmon with another fish what is the cost of having to purchase a food source – we are subsidizing the government's failure to meet our Aboriginal right to fish, and food. We need to value food in these ways, and it is a massive calculation for monetary value of all these colonial impacts. One year of fish in that way could be worth millions of dollars. We need to stop undervaluing our natural capital. For example, salmon for visitors – we no longer have the availability of food to share our traditional economies and continue the relationships with our neighbours. Spiritual value – in order to transfer traditional knowledge, you need the ecosystem, the cultural site, to transfer that knowledge. In our territory, we have not had access to salmon for 3-4 decades but when we got salmon back, we shared it with the Elders and the Elders taught us how to properly clean the fish. That knowledge and continual practice allows us to have that knowledge. Each component of our territory has a value – when we add all the value of these systems, animals, resources of importance we are talking about millions of dollars.

An Independent funding process should administer funding needs to both the Crown and First Nations:

- Canada spends double the funding that it provides for Indigenous people in the SPECIFIC CLAIMS process. It should be that both parties are applying to independent body for funding. Canada should not show up with endless funding and we cannot even afford our lawyers. Both parties should have to apply from funding from the same independent body.

An Independent funding process should operate its own fund with equal distribution to First Nations:

- Research is a grant funding. Negotiation is loan funding. I have been doing SPECIFIC CLAIMS research for 10 years. Once Nation's get intellectual control over records, we can produce claims at much more cost effective and faster rate. There needs to be pot of money in order to set up document database in order to improve the SPECIFIC CLAIMS research efficiency. There is no money for that to date, we need a new pot of money for this. Equitable access to funds – Canada funds each claim to FIRST NATIONS to about $30000, if multiply that by 634 FIRST NATIONS in Canada, that is 19 million dollars total. If that pot of money was distributed equally to any Nation that applied, and then if not, every Nation applied we could do a second round of applications for funding money. That way Nations wouldn't be isolated from SPECIFIC CLAIMS because the money is already committed to another Nation and there would be fair distribution.

An Independent funding process should facilitate strategic partnerships with other institutions/industries/First Nations to resolve claims and build First Nation capacity:

- For funding we need to get creative. Could get employment funding and researchers through employment programs. Who are the experts? – need to find ways to connect with different experts through online platform or some other resource so all FIRST NATIONS have access to experts and resources collectively.

- Bundling the cases, bringing similar cases and sharing and creating economy to scale to share information that is similar would greatly help FIRST NATIONSs in the SPECIFIC CLAIMS process. We need to share successes; we don't even know what cases our neighbours have. If we could see what people are winning and being successful, or those that don't make it through, it is valuable to have a directory on this information to learn from other people's experience with SPECIFIC CLAIMS. This could add to cost-effectiveness

- Multi-year funding is extremely important. Funding shouldn't be limited to only one specific claim – we should be allowed to use the funding for any SPECIFIC CLAIMS that we find through the research. We need fixed funding for FIRST NATIONS. Funding should not have to be specific to a SPECIFIC CLAIMS, we should be able to do oral history projects on all village sites, which became reserves. Why does funding only apply to one village site? We should be funded to research whole reserve creation history and knowledge of Elders. Disparity in funding is also a huge issue – process is completely frustrating.

- $12 million is insufficient. Government will not change that amount of money dramatically, realistically. We have to learn our different options that are more effective and efficient. We have to recognize that INAC is an institution that is responsible for SPECIFIC CLAIMS, but that institution is supported by many other institutions. *CIRNAC is not alone – they are supported by D o F, Heritage Canada, DOJ. Whereas any FIRST NATIONS body in BC does not have a collective of institutions in support of good governance. Who do we turn to? We need to create institutions here in BC that are able to help FIRST NATIONS address these issues, not do the work but support us. We need a structure that outlines all the institutions and their roles, such as: who can lobby for us, legislative institutions, FIRST NATIONSHA etc.; i*nstitutions that are resource and policy issued; tribunal council and the FIRST NATIONS are recipients and delivery agencies to your members. We are stovepipes the same way the government is. We need to start working together. Why aren't we communicating and offering each other advice. We need to stop self-isolating as FIRST NATIONSs, we need to share our knowledge and ask for help and build relations between neighbours. We need to think of our relationship's pre-contact, we worked together interdependently. If we are really truly Indigenous people we would learn how to work together in a more horizontal manor. Money is not a guarantee, but our relationships are.

- There is a national listing of every SPECIFIC CLAIMS in BC and what stage it is in negotiation – denied, settled etc. There is a mechanism to find the information, it would be useful to put out reports internally of the claims that are ongoing, so other FIRST NATIONSs know who is in the process and who to connect with on similar SPECIFIC CLAIMs. I am working with FIRST NATIONSs

that are trying to bring communities together to work on SPECIFIC CLAIMSs collaboratively. It is important for communities to ask lawyers to help facilitate communities working together.

- As FIRST NATIONSs and leaders within our communities we need to look at the major industries in our backyards reaping the benefits of our resources. According to UNDRIP, we have the first right of refusal to any extraction on our territory. I would like to see if they partner with us and we can share benefits and from there we can start to have money to deal with SPECIFIC CLAIMS. If industry is involved and included it could be beneficial to SPECIFIC CLAIMS process. A BC Nation is a great example of SPECIFIC CLAIMS on hunting – they lost hunting due to development on their territory. Province should be held accountable for issuing hunting license – FIRST NATIONS don't see benefit from hunting licenses issued by provinces. Non-indigenous hunters are on my traditional hunting grounds. Province and industry need to be included in SPECIFIC CLAIMS to provide funding given that they are making money off our lands.

- We need institutions and people within our communities who can do the work – you look around and it is lawyers and researchers from outside the community who deal with SPECIFIC CLAIMS. How do we build our own capacity for SPECIFIC CLAIMS?

An Independent funding process must publicly report its operations, including at the international level:

- For funding, the government should first have to publish annually the amount of funding for FIRST NATIONS total on SPECIFIC CLAIMSs, and then how much funding Canada is getting for all 3 steps of the SPECIFIC CLAIMS and then we need to hold Canada accountable to the amount of funding that FIRST NATIONSs get. If Canada only gets the same amount of money that we get they will start to see the faults in their own process and see why we take long to submit claims.

- We need to look at how Canada reports and accesses their liabilities. Canada and provinces report out how they are dealing with claims. Who actually provides that AAA credit rating to Canada?

- If Canada is held accountable to reporting out false liabilities and risks, then Canada's credit rating will be held to account. That is a strategy to break cycle of injustice within SPECIFIC CLAIMS process. Funding overhaul – Canada in 1973 separated Comprehensive Claims from SPECIFIC CLAIMS but really a claim and breach is all the same liability. The FIRST NATIONS, not Canada, should decide if they are going for title, because all of sudden Canada decides if that precludes you from other processes, FIRST NATIONSs should get to decide that.

- We could submit to the UN and different international bodies on the false risks and liabilities of Canada. If Canada had to deal with their credit rating, then I think they will start dealing with us more seriously.

An Independent funding process must have a regional focus:

- The claims in BC are really unique because of our unique situation so we should define our own independent process and funding. Union of BC Indian Chiefs gets block funding, but we support the proper title holders with funding and capacity building. The block funding is inadequate, it is just the process we are currently using to just try and support bands. Canada's policy controls funding, not the Union. We need to change the funding policy – most people would not agree with the funding policy. 12 million is not nearly enough across Canada, we need adequate funding. We cannot let government get away with it.

- SPECIFIC CLAIMSs are huge liabilities for Canada with even 400 specific claims on the current Trans Mountain pipeline that was built in 1962 – why is Canada spending 11 billion on a new pipeline but not dealing with SPECIFIC CLAIMs. The funding Canada offers demonstrates that they see us and our SPECIFIC CLAIMSs as a low priority. We need to show Canada that they need to deal with outstanding claims before they can commit to any new projects, any infrastructure – they need to deal with their liability before dealing with anything new.

- Clarification – FIRST NATIONS does not deal with SPECIFIC CLAIMS, we work on Treaty Process. Second, the institutions I was referencing were created by FIRST NATIONS – in BC we spear headed land management, taxation, fiscal 4 pillars. Those are institutions that FIRST NATIONS jumped onto immediately. But many FIRST NATIONSs have not joined these institutions because of their questions. We need to discuss and share so that all FIRST NATIONs can work together at institutions. BC FIRST NATIONS Gaming commission – end result was 102 FIRST NATIONSs are benefiting from revenue sharing of gaming – that is gains from working together with institutions that support our collaboration. We need healthy communities and then we need a good public administration and we need to collaborate together. We have stronger capacity in working together, even just by the numbers. SCC and legislation [are] not the answer. My community has no more hunting, forestry, no more resources. We won at the Supreme Court of Canada the right to fish. SCC says we have the right to fish, and we are distinct in that. In reality when treaty started, other Nations got a portion of the sockeye that all of us need. Now they are taking resource from my backyard, the sea was part of our land that was allocated to us but now they legislated all that away. Now people from other parts of the territory have to come to us to get fish. How do we deal with these crises because we are all affected? Oil spill? Land slides? the loss of resources from natural disaster – does that apply to a Specific Claim?

- I agree with this really good discussion around SPECIFIC CLAIMS in general – but to get to nuts and bolts it will take way more than one day and one-hour discussion of funding. We need another venue in the interior. In our Nation, our success has been founded on health movement of my community, sobriety, strong leadership that blazed the trail for me. This conversation deserves more than hour of my time, SPECIFIC CLAIMS process can benefit all FIRST NATIONS in BC and that the small FIRST NATIONs need to be included first and foremost. Only 100 people at this AFN meeting and there are over 200 Nations in the province. Land and Resource dept in my community should be here. As our communities grow, we cannot leave communities behind. We can't leave those communities behind because they are small. They need the resources and

if they can win a SPECIFIC CLAIM it would give them resources, they need to expand community and develop something positive for their community. One hour is not enough time. You need to schedule another meeting.

Topic Four: Funding – Fort St. John, BC
October 9, 2019

An Independent funding process must have a regional focus:

- T8 wants their own funding out of tribunal council to coordinate claims research. Funding should be available on a regional level. Grant funding for research/loan funding for negotiation (which is recovered IF claim settled). IF INDEPENDENT BODY becomes the entity to administer funding, are we politicizing the INDEPENDENT BODY because we will always be competing for resources? We would need to make it objective and transparent as possible because the way the process works now – its draconian.

- Funding could assist with researching broader stories; create an institutional structure and rules to accommodate this broader story. We need resources to examine laws and customs and ways of thinking (e.g. fox archetype character that formulates ways of thinking) Common value systems are represented in our stories. In dream hunts, if I as an animal give up my life, then you must share and use all of me. This sharing meat teaching comes from the Elders).

An Independent funding process must be based on a new model:

- CRUs/independents are productive, but their work is tied to deliverables. CRUs need to preserve legacies of communities – this is very expensive if not cost prohibitive.

- Can approach funding on a class basis if you can get either Crown to agree. Canada refused research – narrowed scope - not a treaty right - rather a provincial proprietary right (T8 hunting claim in the '90s). Absent NATURAL RESOURCES TRANSFER ACT, failure to accept commercial rights to hunt, fish, trap.

- Funding is subject to appropriations. SCT needs stronger institutional independence and supports – many flaws in this current design.

An Independent funding process must not be linked to CIRNA and operate objectively with full transparency:

- INDEPENDENT BODY would need its own source of funds and not linked to CIRNA. Should have its own reporting mechanisms to Parliament – and not a reporting relationship back to the Minister.

- Funding must be as objective and transparent as possible – negotiation loan funding requires a sign off for the negotiation workplan (this is a bad thing) – at minimum we need to move this out of the Department.

- Problem with current legislation – "minimum standard" policy allows Canada – in the hands of the bureaucracy to decide when this standard is met – and not the tribunal. If Canada creates

an onerous threshold (restrictive interpretation), then this becomes an entry barrier to the process. This cannot be allowed under an INDEPENDENT BODY.

- Regarding funding, if a claim is accepted, you are eligible for "loan" funding, but loan funding is problematic, as you take more on, you have more pressure to settle. This has compounded the Crown's conflict of interest – need a negotiator to sign off work plan. They need to get their hand outs of funding. Regarding contribution funding we need an entity that is responsible of funding that is not the Crown. Are we risking politicizing the independent body because can they really make it as objective and transparent as possible?

- Some CRUs are productive and others not. They are required to tie deliverables in the different stages of research. So perhaps treating everyone the same will make it equitable. For example, if we research land uses over a traditional territory, an independent body becomes an archive of research and becomes collective experience of expertise.

- We need funding for all the broader research to occur - the whole story, which serves as the context. Funding to look at laws – that constitutes and formulates a way of thinking. Have not seen the psychology behind what makes Beaver thinking and look at what it looks like today. Whose laws and systems are going to look at it from everywhere, especially with Treaty. Dream maps/Dream time.

An Independent funding process must invest in First Nation capacity to resolve claims:

- We need to invest in capacity development within communities. We absolutely need the department to be resourced to engage (they too are under-resourced).

- We don't have a shared understanding of treaty – we need to strive to develop one. – and use that as a basis to move toward reconciliation. We understand "peaceful coexistence" but the Crown won't acknowledge this. They insist it's an extinguishment document. We must discuss and negotiate or litigate.

Topic Four: Funding – Six Nations of the Grand River, ON
October 24, 2019

An Independent process requires funding be administered outside of CIRNA, bring complete transparency and stability:

- Funding in an independent process – Government of Canada should have no roll. That body should be funded, but independence in how money distributed. Central repository to reduce cost leaves more money to go to the nation to develop CRUs.

- FIRST NATIONS kicked out of research funding – the government wants you to do it their way, but refused to follow orders from Canada, since then we have settled 3 land claims without much federal funding, 2 claims we refused to payback loan because in the agreement on the resolution claim was when we have to pay back. All the claims were different because the rules changed in the midst of the process. After doing claims, nothing surprises me anymore.

- INDEPENDENT BODY could provide research training, increase capacity in communities. Adaptable to each Nation. Funding is used as a gate keeper, barrier to accessing.

- Instability of funding delays due to funding. Canada earmark $ to body to disperse $ to CRUs. Not sure about what resources go into counter research.

- At all stages, Canada must show what they are doing, what it is costing them?

- Reporting – Quarterly reporting places a burden on the community; Needs to be more manageable.

- we need one funding process from beginning to end. Including implementation, grants not loans. We must erase past loans. Funding for negotiations after claim has been accepted. We present claims, we submit matters of land rights claims. Negotiations are multi-year things. Land selection, calculating values. Need to have funding to hire staff for multi-year projects. Need multi-year funding. Administration of funding – when money flows. Running half a year late.

- Don't filter funding from Indian Affairs Regional Offices. The funding people in Ottawa, working within DIA. We have to prepare a work plan to get funding, reviewed by federal negotiator, to determine if reasonable. Government of Canada has supervisory status. This is not independent.

- Funding for legal fees is 1/3 the going rate. That's ridiculous. A First Nations is in instant deficit. $650/hr for lawyer, $250 is what is paid by IA. Canada refuses to do joint research.

- Negotiations team – people have full time jobs and have to take time off for negotiations. Paid $100/day for negotiations, earns $300/day at full time job that needs to take vacation from.

Look at the skills of team to determine fairness of compensation. Don't give less than what Federal teams get. Look at what is happening in other countries like New Zealand.

- SCB runs out of travel budget in October of each year. We then get an email saying you have to come to them. Imposes on communities, 2 extra days to get there and back.

- Transparency means the people get to see what is happening. We need negotiators in the communities. That means fed funding needs to be consistent.

- At times of impasse, GOC threatened to collect on loans. GOC said we will move to collect on the loan when negotiations collapsed unless you promise not to pursue this issue again.

An Independent funding process must ensure equal and fair access for every First Nation advancing specific claims:

- We get funding from political organizations. Maybe we be looking at directly at funding FIRST NATIONS on where they are in their claims – object of funding is to resolve claims not only to include submission of claim but the entire process, including settlement. We don't have money for ratification, community meetings. Evaluation of PTOs, they take money from FIRST NATIONS, we want direct funding to FIRST NATIONS.

- What would it actually cost to create a stable funding amount that was attached to each community and could that funding roll over and accumulate? For a couple of reasons, there has to be equal and fair access for every FIRST NATION in Canada and secondly, hopefully communities who haven't been served could do so in a constructive way and get some solid funding.

- We kind of figured out the average... they all came out pretty equal.... Canada's methodology.... how many applied and divide that way... It came out 30, 000 per community per year – seemed stable from the data we had... 650 communities 19.5 million per year to give 30, 000... does not factor in Canada's cost .... but does that include legal cost? or just research?

- We need to have a ballpark figure to what is owed in claims... we need to have a clear understanding of what we're asking for... talking about self government, our own methods of determining amounts, terms of reference.... go to government to say this is what owed, and we need to convince Treasury Board and public of Canada.

- As a land manager asking for resources that aren't there to bring the community into getting involved... steppingstones... bringing Canada into the community to see what the situation is.... first initial step for Canada to understand what the end game is ...we need the resources to bring Canada into the game....

- We need to have universal standards that apply across the country... isn't that why they developed a SPECIFIC CLAIMS process already

- Nothing submitted that could be rejected. There has to be some mechanism to address what is being asked... may not be a financial obligation but a moral... like a truth telling... so they understand. But would that delay the process... some may like that, but others may not. But the process may be flexible and reflect what each individual community wants.... but also has to be universal across Canada so also malleable... it's a pretty monumental task...

- Our research comes from our own revenue – I do not look at current funding mechanisms – but in the past funding went to a political organization, and the political organization would hire researchers. Each FIRST NATION in the area could apply for researchers – there was no continuance in the research, and we were competing against other FIRST NATIONSs – so we decided to step back and engage our own people under our control with reporting to our structures and access of info. If Canada could cover that cost that would be great for our independent research.

- The processes for funding are very long so we fund our own claims. We have taken Canada to court to have land returned. We have a number of claims identified but issue is the amount of resources. The issue we have is the process of claims from research to settlement is so long it goes through so many councils. The problem is cost benefit. Government wants us to submit funding reports in terms of line items and that requires infrastructure we don't always have. To do our own research without hiring out allows the knowledge to stay in the community instead of leaving knowledge in hands of outside researchers.

- What does productivity mean to Canada? We submitted 4 claims but got little funding. We get nothing now, but the same problems still exist. Big thing is not enough funding for the whole process. If claim is rejected, we can't do anything – where do you get money to litigate? We need a mechanism that is fair to everyone, doesn't make us compete against each other. Biggest drawback is not enough money to keep a research person on year-round, my band has to supplement my whole research budget. Very limited pot of money to divvy out – at least we need some funding that is fair for everyone and allows us to have continual system of researchers and knowledge. We are having the same conversation as 1980.

- Canada does not want to release control. Everyone is competitive with each other with such little funding – bottom line is that this funding is not sustainable. We cannot even get 6 months of research out of federal funding. Not enough money there – we need creative solutions because FIRST NATIONS are a lot different than they were 10 years ago. They delay now because we have duty to consult but research funding is pitiful then and now.

- We are still dealing with Harper cutbacks – we lost 80% but we still haven't had a raise in our funding for at least 20 years for researchers. The capriciousness of the specific claims policy. 20 years ago, we talked about bundling claims and then there was a rejection of claims acknowledged so we pulled out claims. New policy on compensation so we had to get other specialists. We haven't been able to recover from Harper cuts. My perspective is that we have to write crazy amounts of proposals and we lose corporate memory of what we are working on.

The little nations don't get to decide what claims are being chosen. We haven't had any funding raises in decades. And we could do so much more if we had control over funneling of funds.

- Treasury only gives CRUs so much money. We are making the same amount as we did 20 years ago. The money we get can't hire a researcher. Government money has been capped for almost 30 years.

- Government funding continually cut

- Funding is based on the budget, predetermined amount of money. Can we change it so that even if it is a small FIRST NATION with pre-confederation claims, there is an onus in terms of research, regardless of size of FIRST NATIONS we will have same style of claims, if we do it by budget it is unfair for the small FIRST NATIONS because we will have same research needs as large FIRST NATIONS. We need to fund based on need not per capita.

- It takes a lot of research, so it is very difficult for one person to do that. In our community we try to have 3 researchers on each topic – like claims. Funding should be according to need, complexity and difficulty of research to advance claims. Minimum 3 person operations.

An Independent funding process must encourage flexibility, create efficiencies and eliminate unnecessary duplication:

- **went looking for figures to see what Canada** had for funding for specific claims versus what FIRST NATIONS are given... that speaks to a really bad precedent. Canada forces us into silos... done a lot of work to break down those barriers but not enough is happening on that front.

- Let's talk about how claims are researched... numerous claims on railroads... issues for every claim is identical, but they want you [to] research each one and hire a lawyer for each... such a waste of money, so there are better thing to do things. Not dealing with one face when you're sitting at the table... they have their games and departments don't talk to each other.

- Canada set out a funding for the whole process... the FIRST NATION was new to claims... if you look at just funding claims research from start to finish you don't have the flexibility to take into account everything. Some claims are far more complex, or you need to do more time to find records or find supplement records or they don't simply exist...

An Independent funding process should be developed after the redesign of the entire process:

- Start at the bottom and figure out what the resolution mechanism looks like... that will allow a process to give enough flexibility but enough insurance for a structure to be consistent... mechanism that involves the provinces to play ball... if you can't compel them.... claims will not be resolved...

- FIRST NATIONs put a paper forward – research advisory team – sat in on the process to try and create independent body. We thought it needed to be very independent because government of

Canada gives you money, they validate claim, they do everything. We proposed a new power structure – a lot of good work was done there. I still have the paper. We have been involved a long time, since the 1980s. We have gone through this process many times. For fairness it is clear FIRST NATIONS need an independent body. All the hoops we jumped through to get a little bit of money. How do you keep FIRST NATIONS at full salary to have continuance in knowledge? Funding was so small you couldn't keep someone on continuously. We developed an agreement – because government wants you to show progress, we created a point system – so council had to evaluate research groups to show Indian Affairs. It seemed to work to get dollars by points. But big bands get more money because government went by per capita. We need to stop funding by per capita. We are a small band.

- Government didn't want independent group to take part of Canada's role. We don't want another one body that controls everything again just like Canada – funding decisions etc. Because of lack of funding we have taken those creative solutions, we have partnered with universities to get work done, researchers themselves have been very creative and had to be creative to get work done. Providing education in research and meeting other needs. We got a lot of work done by partnering – we use universities ability to get funding and then they help FIRST NATIONS with history and land claims. What other work can I get out of universities. We know our history and documents; we can go out and do that education. People are begging to do our history.

- Pipe ceremony, sacred fire, fire keeper, Canada hasn't figured out why these are necessary and why it should be funded. Problem is a lack of effective place for negotiations to take place. Place is an issue. Should Canada fund a facility for this? A lack of facilities is an impediment.

- have regard for certain principles: Need for creativity. Not tinkering with GOC process designed to serve own purposes ;Need stability; Need investment, expertise beyond just research analysts, within community not being harnessed; Needs to be continuous; Need to fund for legacy; INDEPENDENT BODY carry out own research, might be a repository, accessible to many; Need to be flexible; Need a completeness of knowledge, broader understanding of what we are talking about, more fulsome; INDEPENDENT BODY form public education function
  Training and capacity – CRUs had workshops hosted on what it is to prepare a claim; Strategic partnerships; Risks lack of investment – preservation of materials over time; digital world advancing

An Independent funding process should have dedicated funding for general research projects, including public education:

- There should be some dedicated funding for general research projects that should be used across the country.... databases that allows finding aids to be accessible and available online.

- Former Indian Claims Commissioner did some of those projects but it might not be online... even general work... example: agriculture so base work is not repeated all the time... or frankly – baseline established... you then only have to focus on the piece that is specific to your

community's claim. One of the difficulties in doing that is privilege and protocols... if we want to share information... how do balance that with privilege... how would we do this?

Part of our role is treaty education and public education which would not normally be funded under research funding, so we do our own workshops and seminars with our community to advance notion of treaty rights. It would be amazing if an Independent body could not look at research as one time but as educational. We spend our own money educating mainstream Canadians, but that should be funded as a part of the process. There is a lot of ignorance off reserve where I live.

An Independent funding process must enable First Nations to develop internal capacities/research expertise:

- We need to fund for legacy. We are all around the same age and our knowledge is going to get lost if we don't get stability of funding to hire and train younger people to do the research. But if there is nothing to give people a suitable career and ensure them to stay. The benefit of an independent body – research could be non-biased if research is done by independent body. For example, NRCan as surveyors we can say we are non-biased when government asks NRCan opinion on claim. I am completely funded and can do all this work – so we need that for FIRST NATIONS research. NRCan will do research on survey work but where does it go? It sits in NRCan but if it could be housed in an independent body – if independent body funded a research repository. This research needs to be accessible to public.

- As a companion to public research, independent body can facilitate some public research and FIRST NATIONS own capacity and can act as repository then FIRST NATIONS don't have to reinvest to do research again. We need stability, multi-year, investment in FIRST NATIONS own expertise and capacity. Predictable funding for that reason. Needs to be investment for succession – knowledge transfer needs to be forecast. The continuum for SPECIFIC CLAIMS is decades. So, we need to have funding for knowledge transfer and education. Investment/funding cycle need to be as long as SPECIFIC CLAIMS process. Investment required is in knowledge, founded on measurable experiences of the SPECIFIC CLAIMS process.

- Need succession planning and we commit to teaching younger ones. Need funding that is flexible because of variance in FIRST NATIONS across the country. There's 4 FIRST NATIONS from my territory, my FIRST NATION is sole signatory to a particular treaty. There might be commonality in early meetings, but our histories diverge with independent treaties. Research is long and intensive. We need more accurate funding – instructions from surveyor general to surveyors could be useful to all FIRST NATIONS in a particular area. Knowledge which is generic that it applies to all in an area, and then the specifics after that diverge.

Topic Four: Funding – Thunder Bay, ON
October 29, 2019

An independent body should administer funding so that both parties need to request funding for claims; it levels the playing field:

- Capacity at the community to submit a claim. We need more financial resources to see the claim through. Not just lands, or administration. How much does the Crown spend to get through the process? Is there anything in the process for the community? We need someone in the community to see it through.

- Many First Nations will not pursue a claim because of the cost.

Could an independent process administer funding regionally?

- Funding is a continuous problem; the upfront costs are very high. Where the onus is on the First Nation. Enough is enough.

- Operationally, we carry out a lot of research in spite of our lack of resources but of course we could use more. How do we get more resources? Could it be regionally administered? There is no capacity at the community for analysis. Canada needs to accept responsibility that these are legal obligations, not grievances. We need the taxpayers to realize the past of Canada's behaviour and perhaps talk about this in terms of Canada's national debt.

- First Nations don't have extra resources or time. We need to outline who is doing what. Communities are stretched thin. We need the AFN and Chiefs Committee to press. How do we get past Canada's conflict of interest?

Topic Four: Funding – Edmonton, AB
November 5, 2019

An Independent funding process should follow development of a reformed process:

- Create an INDEPENDENT BODY to be the honest broker, keeper of the process, keeper of the money, repository of research. FIRST NATIONSS could benefit - it makes no sense to go to the person that wronged you and ask for money to sue them. If Crown admits the wrong, then create the capacity needed to meet to discuss the remedy.

- We need to create low cost processes to FIRST NATIONSs - e.g. templates on claims (of similar fact). We would apply to the INDEPENDENT BODY - as keeper of the process for access to public dollars - it's cheaper than going to court, so why not take this opportunity?

- Negotiation funding should not be a loan. It should be a grant. Loan dynamic becomes its own duress/pressure point. There is precedent in BC - comprehensive claims loan forgiveness was done last budget and could be done with SPECIFIC CLAIMS.

- Complex claims - are an added dimension - funding participation must be done differently.

- Final thoughts - The process takes too long, it too expensive and heavily weighted toward western legal processes that are adversarial and not win/win. Claims are resolvable. For many, the legal issues have been answered and its only about quantifying value in dollar and cents. We must create an optional, fast track, FIRST NATIONS driven process for these types of claims as single issue or bundles but take no more than 24 months (within term of Chief and Council).

- We must be open to joint research and joint valuation studies - using a neutral 3rd party - this is necessary to get to a final agreement that is subject to ratification. Canada must provide grant funding to the FIRST NATIONS.

- This is a solvable issue. The building blocks are in place. We must consider the political, economic and social realities of FIRST NATIONS communities.

Topic Four: Funding – Halifax, NS
November 12, 2019

Funding must be removed from CIRNA:

- How could an Independent body deal with funding? Continuum in funding needs to change.
- There is room. Now only lands on the reserve are part of the process. Need traditional access to the lands. Resources are limited with current TARR processes. Need a relationship with other entities to help the funding process.
- Funding is a barrier. Not enough to access researchers.
- SCB restored research funding for the next 5 years. Within our Nation, the staff level - stand-alone budget but no fixed security in funding.
- We need to recognize this flexibility and diversity.
- Recommend a pilot with an INDEPENDENT BODY.

Topic Four: Funding – Quebec City, Quebec
November 20, 2019

An Independent funding process must regard regional differences, bring transparency, particularly for claims over $150 million:

- In the final report, could you highlight regional differences – there will be common issues, but we should also highlight specific regional issues.

- There is a lack of transparency around funding – particularly for large value claims. There is a lack of movement on large value claims.

- We need to jointly discuss our claims rather than just file our claim into the black box. There is very little dialogue. We would like to be considered for special claims.

Topic Four: Funding – Saskatoon, Saskatchewan
November 26, 2019

An Independent funding process must be developed outside of CIRNA and follow redesign of process:

- Independent body would be funded by the federal government and would favor federal polices – would it be possible for the body to be run in parallel (parallel appointments from FIRST NATIONSs, F, P/T)

- CIRNA function and funding needs to be re-profiled into the AG/GG/PCO/TBS

- Always had issues with funding, eligibility and terms of funding: all always determined by Canada

- May have a fairer playing field if we don't use Canada's terms for funding, but instead use our own terms

- AG report discuss level playing field…hasn't happened yet

- Also need for evidence-based funding: necessary in particular for complex claims, particularly where the amounts provided on the front end are deducted from the final award

- Timing – if funding doesn't arrive until second half of the year, when its already spent

- Troubling that this process is being discussed as a policy issue: should move from a policy obligation to a treaty obligation (four pillars)

  Rights reserved from treaty
  Benefits arising from treaty
  …
  Treaty obligations

- Legal fee cap is set too low AND the proliferation of less than useful meetings means you need lawyers for meetings more often than you get compensation for. FIRST NATIONs should get block funding for work on this and then they should allocate as they need. Negotiators can go to decision-makers when they hit an impasse (likely because negotiators don't have access to Minister or GIC)

- Current loan funding is inadequate for the internal work it takes to manage or conclude negotiations

Topic Four: Funding – Winnipeg, MB
November 28, 2019

An Independent funding process should release funding as soon as a claim is accepted:

- Once a claim is accepted there should be an immediate money to allow this work to go get technical or legal support and not a negotiations protocol work plan to be approved prior to getting budget

An Independent funding process must provide stable funding, free from political interference:

- Research funding was cut - we had to mothball our current active claims. We have 21 outstanding claims- we had to mothball plus new claims, lost capacity and lost corporate memory. Those claims suffer from the start

- We need stable funding

- CIRNA funding hasn't worked so far. An INDEPENDENT BODY still gets its money from Canada. It's still vulnerable to political interference.

- The vacuum is being filled by insurance groups and lawyers coming in and wanting to do the services for money. It's turning into a cottage industry and lawyers need to accept responsibility for new problems being created
- Lump funding being provided to communities so that they can invest it as they see fit and use the money to fund claims

An Independent process must ensure capacity is developed/sustained within communities:

- Important aspect – research capacity building in community. we like to have community members at negotiations / as negotiators. We asked ourselves "are we going to be able to live with this agreement once our negotiators are gone"? no

- We need to develop capacity at a younger age. We don't have the funding right now to bring them along. Community-based negotiations is the way to go – you have to live with that agreement when it's done. We invite elders to these meeting and only ask them to do an opening prayer. But they have more knowledge than that. They need to guide negotiations.

- Library of knowledge for new Chief and Council

An Independent process should consider other funding models:

- We should look at other funding models

APPENDIX

A. Detailed Chronology of advocacy efforts over the decades and recent timeline (developed by the AFN);

B. Summary Report of the Historical Review of Past Calls for an Independent Specific Claims Process/Backgrounder (prepared for the AFN Joint Technical Working Group by Robert Winogron, Jeremy Bouchard and John Wilson of Gowlings WLG (Canada) LLP);

C. 2019 Specific Claims Reform National Dialogue Sessions Draft Agenda and Topics for Discussion Paper referred to at each regional dialogue session (prepared by the Joint Technical Working Group).

Written Submissions:

British Columbia

D. Callison & Hanna, October 7, 2019
E. Nlaka'pamux Nation Tribal Council, October 8, 2019
F. Williams Lake First Nation, December 13, 2019
G. BC Specific Claims Working Group, December 19,2019
H. "Askiwi pimachihowin", Treaty 8, October 9, 2019
I. Doig River First Nation, November 12, 2019
J. Havlik Consulting Group, November 13, 2019
K. Acho Dene Koe First Nation, January 6, 2020

Ontario

K. Anishinabek Nation, December 13, 2019

Alberta

L. Briefing Note, Dean Janvier, November 4, 2019
M. Ermineskin Cree Nation, Statement, November 5, 2019

Quebec

N. Mohawk Council of Kahnawake (Statement on Reform; Draft Outline for Discussion), November 20, 2019
O. Algonquin Nation Secretariat, December 12, 2019

Saskatchewan

P. Peter Chapman Band and the Chakastaypasin Band of the Cree Nation, November 29, 2019