TAKING ACTION, BUILDING TRUST

A Response to the Office of the Auditor General's Report on Specific Claims

Presented to Minister Carolyn Bennett

Prepared by National Claims Research Directors

JANUARY 2017

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EXECUTIVE SUMMARY

In 2015–16, the Office of the Auditor General of Canada (OAG) conducted an audit of the specific claims process. Directors of specific claims research units (CRUs) from across Canada prepared a joint, comprehensive, evidence-based submission for the audit called *No Access, No Justice*, which documented how Canada's implementation of the specific claims policy created enormous barriers for Indigenous Nations seeking to access a fair process for their specific claims. *No Access, No Justice* included twenty recommendations: tangible, achievable steps that Canada could undertake to create a more equal and transparent process that would support the just resolution of specific claims.

The OAG report, called *Report 6—First Nations Specific Claims—Indigenous and Northern Affairs Canada* (released November 2016), documents how Canada is failing in its duty to adequately manage the resolution of specific claims. The report shows that Canada repeatedly misrepresented progress on specific claims, underfunded essential aspects of the process, failed to incorporate feedback from Indigenous Nations, refused to engage in real negotiation, and created significant barriers to successful claims resolution. The OAG report included ten recommendations for enhancing fairness and transparency; Indigenous and Northern Affairs Canada (INAC) agreed with all of them.

In this response, we compare recommendations from *No Access, No Justice* with those from the OAG report to identify concrete actions that INAC can take within the next six months to begin to restore trust in the process, enhancing transparency and facilitating genuine collaboration into the future. These actions are organized under seven key areas of substantive concern – funding, treatment of "small-value" claims, mediation, communication, reporting, joint oversight, and the Specific Claims Tribunal – and are summarized in the report conclusion.

Overall, this response calls for an end to INAC's secrecy and unilateralism and recommends tangible measures of accountability. We call for Canada to take immediate and sustained action on funding to address the increasingly unequal distribution of resources in the system and enable Indigenous Nations' full and equal participation in the specific claims process. We also recommend that issues related to the Specific Claims Tribunal be included in current discussions related to the

review of specific claims policy. Throughout, we emphasize that specific claims practitioners (Indigenous Nations and CRUs actively involved in preparing and negotiating specific claims) must be proactively and directly engaged in the review of policies and practices. These practitioners have worked for years within a system of mounting obstacles; their feedback is essential to the creation of more equitable and transparent processes that will lead to the just resolution of specific claims.

In the spirit of accountability and real change, we ask INAC to publicly release, by June 30, 2017, a report describing work undertaken and the specific results achieved on these actions. As we explain in this report, real action on specific claims will be a test case of the Liberal government's intention to honour its promises and act upon Canada's obligations as a signatory of the United Nations (UN) Declaration on the Rights of Indigenous Peoples.

Introduction: Building trust to create an equitable working relationship

In 2015–16, the Office of the Auditor General (OAG) reviewed the implementation and impacts of Indigenous and Northern Affairs Canada's Specific Claims Action Plan: Justice at Last. The OAG audit asked, "Are specific claims being resolved?" As a group, the National Claims Research Directors prepared a comprehensive, evidence-based submission for the audit, called *No Access, No Justice: Canada's Implementation of Justice at Last and the Failure to Resolve Specific Claims*.[1] To the OAG's question, we answered, "No."

No Access, No Justice documented how Canada's implementation of Justice at Last created enormous barriers for Indigenous Nations seeking to access a fair process to resolve their specific claims. Implementation of Justice at Last not only failed to establish the fairer, faster, and more transparent process that the plan itself was supposed to ensure; it also created many new obstacles that impeded claim resolution and generated widespread mistrust of the process among Indigenous Nations. Auditor General Michael Ferguson fully and strongly agreed with our position, saying publicly at the release of the report that changes to negotiation and funding had created barriers that made claim resolution more difficult. "The Department was aware of these barriers," Ferguson said, "but did not address them."

The Department could not help but be aware of these barriers; as our submission documented, between 2008 and 2015, Indigenous Nations and CRUs sent repeated and extensive communications to the Department, raising concerns about new obstacles in the process. During this time, Indigenous Nations made dozens of written, publicly available interventions – submissions, press releases, open letters, and calls for engagement. These efforts met with inertia and silence, as did many attempts to solicit even basic information about program changes.

This silence was one major source of frustration and mistrust. Another was the information that the Department did in fact share with CRUs and/or make public. The Department consistently misreported progress on claims, releasing misleading information that over-reported success and concealed the negative effects of the implementation of Justice at Last. The audit concluded that, overall, the Department's "public reporting of results was incomplete and masked actual outcomes" (section 6.73). For example, in April 2013, INAC publicly announced that it had cleared the backlog of specific claims when in fact it had unilaterally closed hundreds of claims rather than resolving them. (These "closed" claims actually contribute to a new backlog, as they must either be addressed by the Tribunal or will re-enter the system via resubmission.)

[1] The National Claims Research Directors form a national body of technicians who manage over thirty centralized CRUs mandated to research and develop specific claims on behalf of Indigenous Nations. As practitioners who work closely with communities, legal counsel, funding administrators, the Specific Claims Branch, claims negotiators, and Specific Claims Tribunal members, the National Claims Research Directors are uniquely positioned to analyze specific claims policies and processes and recommend ways to improve their fairness and efficiency.

In *No Access, No Justice*, we wrote that INAC's implementation of Justice at Last amounted to dishonourable conduct on Canada's part that has resulted in a deep and growing rift between Indigenous Nations and the Crown – one characterized by a profound mistrust toward government processes, systems, and promises. The National Claims Research Directors made twenty recommendations for improvement of the equity and accessibility of specific claims processes. The OAG report made ten recommendations; these paralleled ours. The OAG report also includes responses from INAC to each recommendation; in every case, INAC agreed, and the Department repeatedly noted that it is currently working with the Assembly of First Nations (AFN) to "establish a process in which Canada will work collaboratively with First Nations to identify fair and practical measures to improve the specific claims process." The Department and the AFN are now working together within the framework of an AFN/INAC Joint Technical Working Group on Specific Claims.

The Liberal government has signaled its intention to approach specific claims differently. In November 2016, Minister Carolyn Bennett released her report on a five-year review of the Specific Claims Tribunal Act; she writes that "A key aspect of reconciliation is the resolution of historical grievances" and concludes that "it is time for Canada to re-engage in constructive dialogue regarding the specific claims process." After facing years of obfuscation, stonewalling, and deliberate attempts to delay or block claims resolution, Indigenous Nations look forward to constructive dialogue, and also to seeing concrete evidence of Canada's willingness to address bias in the process and move toward a more just and equitable working relationship.

In this response, we compare recommendations from *No Access, No Justice* with those from the OAG report to identify immediate actions that INAC can take to begin to restore trust in the process – to enhance transparency and facilitate genuine collaboration into the future. This response translates the two sets of recommendations into concrete activities that can commence within six months. These actions and measures are organized under seven key areas of substantive concern: funding, treatment of "small-value" claims, mediation, communication, reporting, joint oversight, and the Specific Claims Tribunal. Overall, we call for a fairer allocation of resources, greater transparency, and better communication. We repeatedly emphasize that the participation of specific claims practitioners (Indigenous Nations and CRUs) is essential in any program reviews that seek to create a transparent and equitable specific claims process and on any bodies that oversee implementation of policy and procedural changes.

Specific claims arise out of racially discriminatory legislation and policies that resulted in the alienation of traditional Indigenous lands, resources, and ways of life. Redress, restitution, and compensation for this alienation constitute a human right of Indigenous peoples and an obligation of Canada as a signatory to the UN Declaration of the Rights of Indigenous Peoples (UNDRIP). Policy reform and institutional renewal must now be in line with this Declaration – and therefore must be undertaken in full and equal partnership with Indigenous Nations. As a signatory of the UNDRIP, Canada must align its actions, starting now, toward developing this partnership and creating fair and transparent systems for redress. Immediate, concrete

action on specific claims reform will demonstrate Canada's intention to move toward fulfillment of its international obligations.

1. Funding

Overall, funding changes made under Justice at Last worked systematically to undermine Indigenous Nations' position in the specific claims process. The increasingly unequal distribution of resources created a growing imbalance in capacity for participation and a sense that the system was actively working against Indigenous Nations' ability to prepare and negotiate claims. For example, the OAG report highlights how INAC's internal expenditures (2013–16) stayed constant while average annual funding for Indigenous Nations participation fell by over 35 percent in the same period.

Article 39 of the UNDRIP recognizes that "Indigenous peoples have the right to have access to financial and technical assistance from states … for the enjoyment of the rights contained in this declaration." However, underfunding and inequity in resources are undermining Indigenous Nations' role as full and equal partners in specific claims processes (and thus their right to access processes of redress). The UN Committee on the Elimination of Racial Discrimination expressed concern regarding the financial burdens Indigenous Nations incurred in seeking to resolve land disputes via specific claims (see CERD/C/CAN/CO/19-20, pages 6–7).

Recommendations from *No Access, No Justice*:

- Immediately restore and increase funding to research and develop specific claims based on the number of new claims in development and taking into account that the research must be comprehensive and that documents must meet the Minimum Standard.
- Provide resources to all claimants at all stages of the claims process at levels commensurate with the new demands on claimants at the filing stage, as well as in the event that they go before the Tribunal.
- Renew commitment to annual specific claims settlement funding at current or increased levels.

Recommendations from OAG report:

- In cooperation with First Nations, INAC should develop a clear and consistent methodology for funding to First Nations to adequately support the research and preparation of claims.
- In cooperation with First Nations, INAC should develop an evidence-based methodology for loan funding to adequately support First Nations' participation in the negotiation process.

Summary and immediate actions:

Both our submission and the OAG report state that funding must be adequate to support Indigenous Nations' research and preparation of claims and participation in negotiation. The OAG report suggests joint creation of a methodology by which funding levels are established. We agree with the creation of a consistent and transparent funding mechanism. Research funding must be commensurate with the actual increased costs associated with all aspects of claim preparation (e.g. rising legal fees). The distribution of funds between government and Indigenous Nations must also be made equitable; ongoing transparency and public accountability are needed to ensure the fair arrangement of resources. We suggest four actions Canada can undertake immediately as concrete evidence of its willingness to address funding-related bias in specific claims processes:

- Immediately restore annual research funding to 2009 levels.
- Provide adequate and equitable funding to support Indigenous Nations filing claims with the Tribunal (including during preparation of the statement of claim and participation in any judicial review of Tribunal decisions).
- During development of a consistent funding methodology, focus on equity in the distribution of resources (i.e. funds to Indigenous Nations must be on par with those provided to INAC and Department of Justice staff) for all stages of the process.
- Develop a joint funding implementation committee with regular public reporting requirements.

2. Treatment of "small-value" claims

In a 2015 report called *In Bad Faith: Justice at Last and Canada's Failure to Resolve Specific Claims*, CRU Directors noted that Canada was refusing to negotiate the majority of claims accepted by the Minister, despite publicly reporting otherwise. The Department was unilaterally imposing a preliminary value upon each claim. The Department identified the majority of these claims as "small value" when, in fact (as we found in a 2014 Specific Claims Survey), many of them were only small portions of much larger and more complex claims. A claim designated "small value" was then directed to an expedited resolution process; Indigenous Nations were denied the opportunity to negotiate it. Canada demanded releases on the remaining substantive portions of the claim as a condition of settlement. Indigenous Nations then received limited take-it-or-leave-it offers with arbitrary, short deadlines in which to accept or reject them. The basis for Canada's offer was often not provided. Negotiation was refused outright by SCB officials.

"Paternalistic, self-serving, arbitrary and disrespectful of First Nations" was how a decision from the Specific Claims Tribunal characterized the Department's approach to "small-value" claims. (The OAG report cites this decision; see section 6.41.)

Recommendations from *No Access, No Justice*:

- Abandon the practice of partial acceptances with blanket releases. Releases should only be considered for allegations that have been resolved – not on rejected allegations (which can access the Tribunal).
- Abandon the practices of making settlement offers, unilateral decisions, and underfunding, because these approaches undermine reconciliation and true resolution.
- Abandon the practice of assigning value to a claim without consultation with First Nations. INAC officials are not qualified to make these valuations and their unilateral imposition undermines negotiations.
- Unpin imposed claim value from negotiation strategies. Process "small-value" claims in the same way as "normal" claims. These are historical grievances that require reconciliation and acknowledgement.
- Immediately cease referring to the issuance of non-negotiable, final, take-it-or-leave-it offers as "negotiation."

Recommendations from the OAG report:

- In cooperation with First Nations, INAC should make its negotiation practices to expedite small-value claims (up to $3 million) acceptable to both parties.

Summary and immediate actions:

Both the Nations Claims Research Directors' submission and OAG report highlighted the lack of equity in the way the SCB designates "small-value" claims and then abandons negotiation. We agree with the OAG recommendation that INAC must make its practices with respect to small-value claims acceptable to both parties. We also recommend that the valuation of a claim should be a negotiated, transparent, and properly resourced process. The Department can take immediate actions to demonstrate a shift toward a fairer and mutually acceptable treatment of these claims:

- Cease the practice of partial acceptances with blanket releases.
- Cease the practice of unilaterally valuing claims during the assessment phase.
- Negotiate with Indigenous Nations in a fair and transparent way to establish the value of all claims before any offer is generated.
- Negotiate all claims regardless of value.
- Immediately stop issuing non-negotiable, final, take-it-or-leave-it settlement offers.

3. Mediation

Better access to mediation was one of the four key pillars of Justice at Last. In its public reporting, Canada wrote that Indigenous Nations were failing to use the mediation services available to them and suggested that Indigenous Nations might be unaware of these services.

However, in *No Access, No Justice*, we documented widespread mistrust of mediation as established. To save money, Canada abandoned a joint AFN/INAC process for creating an independent mediation centre and instead unilaterally hired the mediators and housed the office within INAC. The result was a lack of independence. In addition, Canada repeatedly demonstrated unwillingness to engage in mediation. A 2014 *Specific Claims Survey* reported that of the 283 represented Indigenous Nations, only 2 sought mediation for their claims. Both Nations reported that Canada agreed to mediation but then walked away.

Recommendations from *No Access, No Justice*:

- Abandon the conflict-of-interest-laden mediation services established by INAC and reconvene discussions with the Assembly of First Nations to establish a truly independent mediation centre.
- Under this new, independent mediation centre, identify and develop opportunities for mediation, and engage in mediation with First Nations.

Recommendations from the OAG report:

- INAC should work with First Nations to develop and implement a strategy to use mediation more frequently.

Summary and immediate actions:

Both the Nations Claims Research Directors' submission and the OAG report recognize that the mediation centre – housed within INAC – lacks independence and neutrality. A joint process to create and staff an independent mediation centre is essential. This process will take time. In the interim, we advance two recommendations for INAC in its approach to mediation:

- Acknowledge the illegitimacy of its in-house approach to mediation.
- Work with Indigenous Nations and claims practitioners to develop a protocol for the creation and operation of a truly independent mediation centre.

4. Communication

Our submission to the audit documented numerous instances of INAC's failure to communicate with CRUs and Indigenous Nations. We showed that the Department consistently neglected to inform these groups regarding changes in policy and negotiation strategies or internal review processes, in spite of extensive efforts by CRUs to obtain this information. We frequently had to engage in the time-consuming process of making Access to Information (ATI) requests to access basic details about changes to specific claims policies and processes (e.g. in 2014, we filed a request for records pertaining to AANDC's 2012–13 evaluation of the Specific Claims Action Plan and internal procedures – to which CRUs and First Nations made many representations). In general, *No Access, No Justice* showed that INAC failed to provide information that would better allow CRUs and Indigenous Nations to

prepare claims or participate in claims-related processes. The OAG report agreed with our assessment of INAC's communication and practices.

Recommendations from *No Access, No Justice*:

- Through meaningful dialogue with First Nations, jointly develop and apply performance measures to assess the clearing of the backlog. These should be guided by the principle that claims in the backlog are only cleared when they are concluded with finality. Reporting should be based on these performance measures.
- Incorporate data on claims that are currently in research and development into reports and projections.

Recommendations from the OAG report:

- INAC should work with First Nations to ensure that its process to resolve claims includes a step where First Nations are made aware of the facts that the Department of Justice will rely on to assess whether First Nations claims disclose an outstanding lawful obligation for the Government of Canada.

Summary and immediate actions:

Clear and *proactive* communication will be essential to rebuilding trust in the process and moving toward a working relationship. Communication must be regular and transparent. Furthermore, it must be bilateral: the Department needs to create regular opportunities for program-improving feedback from CRUs and Indigenous Nations. To this end, we have three immediate action items that will begin to create trust in the Department and build a foundation for an ongoing working relationship:

- Create regular opportunities for Indigenous Nations and CRUs to provide input into policy changes and the Department's practices. To facilitate this engagement, provide special bulletins on any upcoming changes to program policy and practices (including concrete details on how these changes will affect the preparation, submission, and negotiation of claims).
- Continue working with Indigenous Nations and CRUs to jointly develop clear and reasonable guidelines pertaining to the minimum standard and minor technical issues. Communicate these guidelines to all Indigenous Nations and claim practitioners.
- Provide regular updates to Indigenous Nations and CRUs on program operations and results.

5. Public reporting

The Department's deliberate misrepresentation of program progress was a key source of frustration among Indigenous Nations and CRUs, as documented in *No Access, No Justice*. For example, as we've described, the Department released information about how it had "cleared"

the backlog of claims, though this accounting was based on very limited and misleading performance measures.

The OAG report also strongly condemns INAC's approach to public reporting. It notes that monitoring and reporting of activities and results are an essential part of INAC's accountability for specific claims overall. And yet, the OAG report finds, INAC's "public reports were incomplete and did not contain the information needed to understand the actual results of the specific claims process. More specifically, the Department did not publicly report some negative results of the process." In short, public reporting worked to conceal the barriers created by implementation of Justice at Last and create false representations of success.

Recommendations from *No Access, No Justice*:

- Public reporting should be explicit about claims that have been accepted, negotiated, expedited, or had the offer rejected.

Recommendations from the OAG report:

- INAC should clearly report complete information about the specific claims process to allow the government and Canadians to assess real results.
- INAC should update its website to reflect the full range of negotiation practices for all types of specific claims.
- INAC should keep the information on the specific claims process on its website up to date.

Summary and immediate actions:

The provision of clear, accurate, and up-to-date information is an essential step toward creating a fair and balanced representation of the process, so that participants and the public can fairly appraise its work. We recommend two actions within the next six months that will demonstrate transparency and accountability:

- Immediately update the INAC website to accurately represent the status of individual claims and claims resolution overall. (Label claims as "closed" only when they have been settled and payment has made or else the Specific Claims Tribunal has decided on their validity and the compensation due. Include in statistics the claims that are currently in research and development stages.)
- Six months from present (i.e. by the end of June 2017), release a publicly available, evidence-based report outlining concrete progress on the recommendations within the National Claims Research Directors' response to the audit. (The Directors will then respond to this report.)

6. Joint oversight

In the report *In Bad Faith*, the CRU Directors suggested that Canada should convene a Senate Standing Committee study into Justice At Last in which Indigenous Nations are directly involved. We recognized the need for overall assessment and review of the specific claims process, with joint oversight between Indigenous Nations and Canada. The OAG likewise suggested a review of INAC's systems and practices to ensure that the process is collaborative.

Recommendations from the OAG report:

- In collaboration with First Nations, INAC should review its systems and practices to understand why the majority of claims are not settled through negotiation and improve the resolution of claims in line with the aims of Justice at Last.
- In collaboration with First Nations, INAC should develop practices to gather, monitor, and respond to information and feedback about the specific claims process. These practices should be designed to improve the specific claims process and its outcomes.

Summary and immediate actions:

We support the auditor's recommendation of a review of INAC's systems and practices. The AFN/INAC Joint Working Group will be one key forum for this review. However, the review should also include oversight by Indigenous Nations stakeholders – communities and organizations directly engaged with specific claims processes. Essential to this process is genuine collaboration: an end to INAC unilateralism. Our recommendations for immediate actions on the issue of oversight pertain to steps INAC can take to facilitate transparency and accountability of the review:

- Release regular progress reports on the AFN/INAC Joint Technical Working Group on Specific Claims, including main activities undertaken and decisions made.
- Strike a joint oversight committee that includes claims practitioners for implementation of any policy or program changes.
- Continue working groups involving CRUs and Indigenous Nations who are actively involved in preparing, submitting, and negotiating specific claims and create new ones as need arises.

7. The Specific Claims Tribunal

An independent claims tribunal was the government's action on the "impartiality and fairness" pillar of Justice at Last. The Specific Claims Tribunal has already issued numerous decisions that have clarified many issues common to specific claims; over time, if properly resourced, the Tribunal process could create a predictable legal framework, thus facilitating claims resolution. However, our findings in *No Access, No Justice* revealed Indigenous Nations' significant concerns related to the capacity and independence of the Tribunal. As well, a lack of resources undermines Indigenous Nations' ability to take their claims to the Tribunal.

The audit did not assess processes related to the Tribunal. Furthermore, at the release of her November 2016 report, Minister Bennett stated that Indigenous Nations generally expressed satisfaction with the Tribunal and were more concerned with specific claims processes. However, a 2015 AFN Independent Expert Panel Report found – as the CRUs did – that Indigenous Nations were concerned about staffing levels and administrative autonomy at the Tribunal. The 2014 annual report of the Chair of the Tribunal (by Justice Harry Slade) raised these same concerns (see http://www.sct-trp.ca/pdf/Annual%20Report%202014.pdf, page 2).

Operations of this body are essential to the equitable function of the specific claims process as a whole. We therefore included Tribunal-related concerns in *No Access, No Justice* and continue to raise them here.

Recommendations from *No Access, No Justice*:

- Provide funding to the Tribunal to adequately address the volume of claims that can be expected to be filed with the Tribunal due to the large number of rejected claims and file closures. Provide adequate funding to First Nations who have claims filed with the Tribunal. Provide funding for First Nations to initiate and participate in judicial reviews of Tribunal decisions commensurate with the resources available to Canada to engage in judicial review.
- Restore the independence of the Tribunal by keeping the administration of the Tribunal separate from the centralized administrative unit created by recent legislation.
- Work with the Judiciary to ensure the Tribunal is adequately staffed.
- Integrate Tribunal decisions into the assessment of claims.
- Create a streamlined process whereby Indigenous Nations can request that their rejected or closed claims be reassessed in light of Tribunal decisions.

Summary and immediate actions:

Lack of funding creates a barrier for Indigenous Nations wanting to take their claims to the Tribunal. Our key immediate action, therefore, addresses this deficit; above, we recommended that Canada provide adequate funding to support Indigenous Nations filing claims at the Tribunal. Over the longer term, the Department needs to institute a clear and transparent methodology for Indigenous Nations to access Tribunal funding. This methodology is separate from the one being devised from research and development money, and should take into account all parts of the Tribunal process (e.g. preparation of the statement of claim, preliminary case conferences, hearings, community visits).

Our interim recommendations for immediate action are to ensure that the Tribunal is not excluded from ongoing program review processes:

- Include the Tribunal in the joint work involving Indigenous Nations around revision of the specific claims process as a whole, in order to address key issues of capacity (e.g.

adequate number of appointments and French-fluent staff) and independence (e.g. administration of the Tribunal separated from the current centralized administrative unit).
- Solicit, pay for, and publicly release independent legal analysis demonstrating (a) how Tribunal decisions have been integrated into claims assessment processes to date and (b) how this integration can be improved over time. (This analysis should be repeated annually, under guidance of the Joint Working Group, such that INAC's integration of Tribunal decisions into claims assessment processes can be monitored over time.)

Conclusion: Immediate actions for change

In response to the question guiding the federal audit of specific claims – "Are specific claims being resolved?" – we answered, "No." The Auditor has joined us in calling for an end to the unilateralism, misinformation, and secrecy that has characterized the specific claims process, and which has alienated Indigenous Nations and generated multiple barriers to the just resolution of claims.

The UN Declaration on the Rights of Indigenous Peoples affirms that Indigenous Nations have a right to redress and to "just and fair procedures for the resolution of conflicts and disputes with States." Overall, the Declaration sets out "a standard of achievement to be pursued in a spirit of partnership and mutual respect" (page 4). This spirit has been deeply lacking in specific claims processes and the implementation of Justice at Last. Systematic bias has continuously undermined Indigenous Nations' capacity to act as full and equal partners in specific claims processes, which, paradoxically, are intended to address longstanding historical wrongs and promote equity and reconciliation.

As of May 10, 2016, Canada announced its full support and implementation of the UNDRIP, and a key tenet of the Liberal Party platform is a "renewed, nation-to-nation relationship with Indigenous Peoples, based on recognition, rights, respect, cooperation, and partnership." Minister Carolyn Bennett has promised to bring these principles to bear on specific claims policy, committing to working with the AFN, Indigenous Nations, and other interested parties, and to implementing all ten recommendations from the OAG report. Her press release after the audit states that all Canadians benefit when "we take concrete steps to advance reconciliation with Indigenous Nations." In that spirit, we have recommended key actions that, in addition to its longer-term collaborative work with the AFN, the Department can undertake without delay to indicate a new approach to specific claims and to bring about immediate and positive changes that reflect the principles of reconciliation and good faith:

1. Funding

- Immediately restore annual research funding to 2009 levels.
- Provide adequate and equitable funding to support Indigenous Nations filing claims with the Tribunal (including during preparation of the statement of claim and participation in any judicial review of Tribunal decisions).

- During development of a consistent funding methodology, focus on equity in the distribution of resources (i.e. funds to Indigenous Nations must be on par with those provided to INAC and Department of Justice staff) for all stages of the process.
- Develop a joint funding implementation committee with regular public reporting requirements.

2. Treatment of "small-value" claims

- Cease the practice of partial acceptances with blanket releases.
- Cease the practice of unilaterally valuing claims during the assessment phase.
- Negotiate with Indigenous Nations in a fair and transparent way to establish the value of all claims before any offer is generated.
- Negotiate all claims regardless of value.
- Immediately stop issuing non-negotiable, final, take-it-or-leave-it settlement offers.

3. Mediation

- Acknowledge the illegitimacy of INAC's in-house approach to mediation.
- Work with Indigenous Nations and claims practitioners to develop a protocol for the creation and operation of a truly independent mediation centre.

4. Communication

- Create regular opportunities for Indigenous Nations and CRUs to provide input into policy changes and the Department's practices. To facilitate this engagement, provide special bulletins on any upcoming changes to program policy and practices (including concrete details on how these changes will affect the preparation, submission, and negotiation of claims).
- Continue working with Indigenous Nations and CRUs to jointly develop clear and reasonable guidelines pertaining to the minimum standard and minor technical issues. Communicate these guidelines to all Indigenous Nations and claim practitioners.
- Provide regular updates to Indigenous Nations and CRUs on program operations and results.

5. Public reporting

- Immediately update the INAC website to accurately represent the status of individual claims and claims resolution overall. (Label claims as "closed" only when they have been settled and payment has made or else the Specific Claims Tribunal has decided on their validity and the compensation due. Include in statistics the claims that are currently in research and development stages.)
- Six months from present (i.e. by the end of June 2017), release a publicly available, evidence-based report outlining concrete progress on the recommendations within

the National Claims Research Directors' response to the audit. (The Directors will then respond to this report.)

6. Joint oversight

- Release regular progress reports on the AFN/INAC Joint Technical Working Group on Specific Claims, including main activities undertaken and decisions made.
- Strike a joint oversight committee that includes claims practitioners for implementation of any policy or program changes.
- Continue working groups involving CRUs and Indigenous Nations who are actively involved in preparing, submitting, and negotiating specific claims and create new ones as need arises.

7. The Specific Claims Tribunal

- Include the Tribunal in the joint work around revision of the specific claims process as a whole, in order to address key issues of capacity (e.g. adequate number of appointments and French-fluent staff) and independence (e.g. administration of the Tribunal separated from the current centralized administrative unit).
- Solicit, pay for, and publicly release independent legal analysis demonstrating (a) how Tribunal decisions have been integrated into claims assessment processes to date and (b) how this integration can be improved over time. (This analysis should be repeated annually, under guidance of the Joint Working Group, such that INAC's integration of Tribunal decisions into claims assessment processes can be monitored over time.)

We are asking INAC to release a six-month progress report in June 2017, outlining actions undertaken and results achieved on the items outlined in this response. The Liberal government's immediate and concrete action will indicate its willingness to create fair and transparent processes to address long-standing historical grievances and begin a new relationship.