

OUR LAND IS OUR FUTURE

UNION OF BRITISH COLUMBIA INDIAN CHIEFS

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Martin Reiher
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Crown-Indigenous Relations and Northern Affairs Canada
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Via email: martin.reiher@canada.ca

March 23, 2021

Dear Martin Reiher,

Thank you for attending the Union of BC Indian Chiefs quarterly Chiefs Council meeting in February and for participating in the specific claims session at the Our Gathering event last week. The BC Specific Claims Working Group (BCSCWG) appreciated the opportunity to highlight some of the key issues affecting First Nations in British Columbia and making these issues known to the Specific Claims Branch and associated offices in the Resolution and Partnerships sector.

Time constraints at both meetings meant that several issues remain unaddressed or require fuller discussion. Following up on your agreement to meet with the BCSCWG and in keeping with our mutual commitment to open and truthful communication, we would like to invite you to attend a virtual meeting to continue a discussion of several issues identified by BC Nations. We have set aside two possible dates for this meeting in the coming weeks: May 19th, 10-12pm and May 26th, 10-12pm. Please let us know if you are available on either of these dates.

The issues BC Nations identified as priorities for our discussion are the following:

- **Canada's commitment to the joint development of a fully independent specific claims process which eliminates its conflict of interest.** At the Our Gathering event, Chief Don Tom stated unequivocally that Nations are calling for a fully independent process and have been doing so for decades. He stressed that taking incremental steps to bring "more independence" to the resolution of specific claims is an unacceptable substitute for truly transformative change that eliminates Canada's conflict of interest. The BCSCWG would like to discuss what steps are being taken to ensure this message is communicated to the Minister and to Cabinet.

- **The full integration of Indigenous laws into an independent process.** A new, fully independent process for resolving specific claims must integrate Indigenous laws and legal traditions into all parts of the process. What steps is Canada taking to achieve this?
- **Removal of the \$150 million cap.** At Our Gathering, Chief Byron Louis and Kukpi7 Judy Wilson, whose Nations both have large value claims, pointed out that the \$150 million cap is discriminatory and unfair: it denies large claims access to transparent and collaborative resolution according to legal principles and undermines the honour of the Crown. It has been noted by Crown representatives that Nations have access to resolution processes for these large value claims through court proceedings or through a Cabinet process. However, specific claims – particularly BC claims – are often barred from court due to technical defenses and are costly as well as adversarial. Further, the Cabinet process operates entirely in secret and Nations and their legal representatives are excluded. Canada has stated that negotiated settlements are the preferred method of resolution and achieving reconciliation. What is Canada’s position on the removal of the cap? How does this align with the honour of the Crown and Canada’s international human rights commitments?
- **A full accounting of the \$12 million annual research funding allocation.** In response to Chief Lee Spahan’s question at Our Gathering, you stated that there ought to be full transparency regarding the distribution of \$12 million allocated per year for the research and development of specific claims. On the basis of public announcements, the claims research community understood that the full \$12 million would go directly to claims research units and individual First Nations to research and develop their claims. Will you be able to provide the BCSCWG with detailed data regarding the \$2 million of this budget that was not distributed to claims research units or First Nations for claims research and development contrary to public commitments?
- **Status of negotiation loan funding.** Please provide an update on plans to convert specific claims negotiation funding from loan funding to contribution funding. How will Nations be involved in discussions about this initiative?
- **New negotiation funding guidelines.** The new negotiation funding guidelines, developed unilaterally by Canada, state that loan amounts should not exceed claim value, effectively penalizing smaller value claims. Canada’s own conduct and policies create delays which run up the costs of settling claims. Linking access to funding to claim values that are adversely impacted by Canada’s conduct is contrary to the honour of the Crown and Canada’s commitments to the resolving its outstanding lawful obligations. How will Canada work collaboratively with Nations to resolve this issue?
- **Canada’s conduct at negotiation tables.** First Nations are reporting that negotiators are arriving unprepared for negotiations and that they are being told that “it is not in the policy to deal with reconciliation at negotiation tables.” At Our Gathering you confirmed that reconciliation is a government-wide mandate and therefore it must have a place at negotiation tables. What steps are you taking to ensure that Canada’s negotiators and representatives from Department of Justice come to negotiation tables prepared to work in good faith toward a just and fair settlement that aligns with Canada’s commitment to reconciliation and the *UN Declaration on the Rights of Indigenous Peoples*?

We emphasize again that direct and open communication with Indigenous Nations is essential for the fair and just resolution of historical claims, as is actively pursuing joint decision-making instead of the unilateralism that routinely characterizes Canada’s approach. This is particularly important now as Canada reaffirms its commitment to human rights and equality, and the implementation of the UN Declaration.

Again, please let us know if you are available to meet with us on either of the above dates. We look forward to continuing this important discussion.

Sincerely,



Kukpi7 Judy Wilson
Co-Chair, BC Specific Claims Working Group
Chief, Neskonlith Indian Band
Secretary-Treasurer, Union of BC Indian Chiefs



Chief Dalton Silver
Co-Chair, BC Specific Claims Working Group
Chief, Sumas First Nation

CC/

Union of BC Indian Chiefs Council
Minister Carolyn Bennett, Crown-Indigenous Relations and Northern Affairs
National Chief Perry Bellegarde, Assembly of First Nations
AFN Chiefs Committee on Lands, Territories and Resources
BC Assembly of First Nations
First Nations Summit