



*“A Rotating Carnival Ride of Roadblocks”:*

Findings of the NCRD National Survey on  
Access to Information Processes

# Canada's 2022 Engagement with NCRD



Treasury Board Secretariat (TBS) and Department of Justice (DOJ) committed to supporting National Claims Research Directors (NCRD) engagement on access to information and privacy legislation:

1. National survey of First Nations claims researchers
2. Interviews with frequent requesters
3. Legal review of *ATIA* and *Privacy Act*
4. Discussion paper



# Indigenous Peoples' Right to Redress for Historical Wrongs

The fair and just resolution of specific claims is one component of the human rights articulated in the *United Nations Declaration on the Rights of Indigenous Peoples* and a legal obligation for Canada:

## Article 28

(1) Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.



# Upholding the Right to Redress Requires Full Access to Information

- Canada requires First Nations to produce documentary evidence to substantiate land claims and historical grievances against the Crown
- Canada controls access to the majority of records required by FNs to substantiate their claims
- Access to information has direct impacts on Nations' abilities to seek justice through government mechanisms for redress
- Fair and equal access to information is an essential part of any effective mechanism for redress



# First Nations Claims Researchers Survey Responses

- Excessive and Costly Delays Receiving Records
- Inconsistently Applied Exemptions and Excessive Redactions
- Distrust of ATI Mechanisms and Canada's Conflict of Interest
- Structural and Systemic Barriers to Redress

“The ATI process seems more about gatekeeping access to records, rather than facilitating access.”

“ATI, as presently designed, feels more like a rotating carnival ride of roadblocks than a good faith system showing any kind of commitment to open government.”



# Excessive and Costly Delays Receiving Records

- 30-day legislated timeframe for response is ineffective
- 83% of claims researchers said that it took at minimum over 60 days to receive the files they requested
  - “I generally don't expect to hear back regarding an ATIP request for six months.”
  - “We made an informal request last October (2021), and we're still waiting for a file.”
  - “Most requests get timeline extensions anywhere from 90 days to over 200 days.”
  - “Due to delays and roadblocks, we face additional delay-related costs to manage the processing of information requests regularly. We often have to "chase" departments for updates on our requests or remind them they exist!”
- An additional barrier to upholding ethical obligations to First Nations clients who have waited decades for the resolution of these claims.



# Inconsistently Applied Exemptions and Excessive Redactions

- “Exemptions seemed arbitrarily applied.”
- “I understood why they did it [redacted information]. But most of it was unnecessary. I eventually got to see most of the materials pulled - After a researcher colleague who was in the Indian Affairs reading room found two huge boxes marked "Do not release to [*Respondent's Name*]" and sent me a photo. I sent the photo back to INAC and got some results.”
- “We made the same ATI records request to three different departments (related to claims advocacy). One of these was the specific claims tribunal so it was not subject to ATIA - and the tribunal was able to provide a complete record set that we then were able to compare with what DOJ and INAC released. **What we received in terms of redactions was vastly different.**”



# Distrust of ATI Mechanisms and Canada's Conflict of Interest

- Government inefficiency, under-resourcing, and structural incapacity are a function of Canada's conflict of interest
- “So many things have gone wrong over the years, that **the only thing I have faith in is that time delays are inevitable and that doing a request efficiently is not in the gov's best interest.**”
- “If you can't review the original file(s) yourself, you are **relying on the Crown to do the right thing. Not wise in my experience.**”





# Structural and Systemic Barriers to Redress

- “I have been told by Information Management officials at DOJ that **the system was not designed to handle the volume of requests that various government departments receive, so the problem is systemic and structural.** I have also been told by CIRNA that the department does not have the staff to go through the volume of requests made on a regular basis and that they are still addressing the backlogs resulting by COVID closures.”



# ATI Legislation Inappropriate Mechanism for Specific Claims

“Barriers to accessing information present a serious barrier to access to justice: this is particularly problematic because the government is theoretically representative of, and democratically obligated to be responsive to, the claimants. It just seems obtuse, unjust and undemocratic to obfuscate information in that [the claims] context. **I do not think the ATI process is an appropriate lever for accessing that information: there should be a separate procedure.**”



# Recommendations

- **“I think if we could get the same level of access as INAC researchers would be a start.** The files at INAC are files that belong to our communities and we should be able to access them when we need them.”
- To improve access to information **“create independent oversight mechanism** to ensure Canada was not in conflict of interest with respect to controlling information for validating claims against themselves.”



**“Unfulfilled redress for historical and ongoing wrongs is the main obstacle for reconciliation.** Without adequate truth and remedy processes, it will be difficult to ensure sustainable relationships between Indigenous peoples and the States within which they live based on trust, mutual respect and partnership.”

*- Former UN Special Rapporteur on the Rights of Indigenous Peoples,  
Ms. Victoria Tauli-Corpuz*