



First Nations' Counsel Perspective on Specific Claims to Village Sites and its Relationship to Aboriginal Title

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Introduction

- While Aboriginal Title and village claims can rely on similar evidence and involve the same area of land, the basis for the Crown obligations to those lands is very different.
- Therefore, the claim, negotiation and resolution of village claims and Aboriginal Title continues to be distinct.

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Specific Claims

- Specific Claims are historic grievances against the Crown for breaching their legal obligations to First Nations.
- Specific Claims settlement results in a one-time payment of compensation for past, present and future losses associated with those lands.

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Aboriginal Title

- Aboriginal Title and Rights are “recognized and protected” under s. 35 of the Constitution and under UNDRIP, UNDRIPA and Canada’s 10 Principles
- The recognition and respect of Indigenous title and rights, together with the reconciliation of asserted Crown sovereignty with the underlying Aboriginal title must result in lasting nation to nation relationships in a manner consistent with Indigenous Laws and Legal Systems and s. 35(1), UNDRIP, UNDRIPA, and Canada’s 10 Principles.

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Specific Claims and Aboriginal Title

- The resolution of a Specific Claim can be an important step forward in the ongoing rebuilding of the relationship between the Crown and an Indigenous group but that step does not address the broad scope of discussions on the recognition of Aboriginal Title and rebuilding of Indigenous governance and jurisdiction.

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Legal Basis for Specific Claim

- Fiduciary duty to Indigenous People’s reserve interests
- Fiduciary duty during reserve creation process
- Fiduciary duty in village claims

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Kwakiutl v Canada, 2022 SCTC 1

- Claimant relied on evidence that this was an important gatherings site and part of their seasonal round
- However, use and occupation is not the only relevant factor here
- The action of the Treaty parties indicated the intention of the parties to transfer Suquash to HBC

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Kwakiutl v Canada, 2022 SCTC 1

- Legal obligation to reserve village site based on Treaty - but what is a village site is interpreted based on historic record
- Suquash was both a place to hunt seals, dig clams and harvest seaweed AND a coal bed used by the HBC
- Tribunal found that the Claimant failed to establish common intention of the Parties that Suquash was a protected village

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Differences

- Claim
- Negotiation
- Settlement

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Why Pursue Specific Claims or Aboriginal Title or Both		
	Specific Claims	Aboriginal Title
Process	<ul style="list-style-type: none"> • Specific Claim Policy and Process 	<ul style="list-style-type: none"> • Variety of options
Scope	<ul style="list-style-type: none"> • Addressing past wrongs 	<ul style="list-style-type: none"> • Forward looking
Basis	<ul style="list-style-type: none"> • Crown Law 	<ul style="list-style-type: none"> • Inherent Rights
Funding	<ul style="list-style-type: none"> • Contribution funding for research and developing claim (limited) • Contribution funding for Tribunal (limited) • Loan Funding for negotiations 	<ul style="list-style-type: none"> • No funding for research or litigation • Resource intensive
Time	<ul style="list-style-type: none"> • Takes time to research and develop claims • Three years wait period on whether claim accepted for negotiations 	<ul style="list-style-type: none"> • Trials can be very long (Cowichan, Tsilhqot'in)
Remedy	<ul style="list-style-type: none"> • Compensation • No cultural/spiritual losses • Subject to cap or mandates 	<ul style="list-style-type: none"> • Declaration of title • Jurisdiction/ authority, • Economic benefit of lands

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Conclusion

- The redress of past wrongs is an important step in reconciliation.
- The redress can help Canada and Indigenous peoples form a path forward together as they continue the ongoing process of recognition and implementation of the right to self-determination, including the inherent right of self-government .

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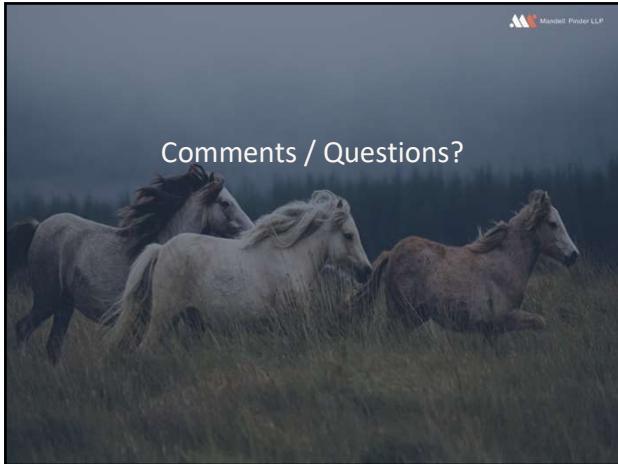
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Discussion

- Incorporating Indigenous Laws and Legal Orders into Specific Claims Processes
 - Ardith Walkem
- Semá:th Xhotsa



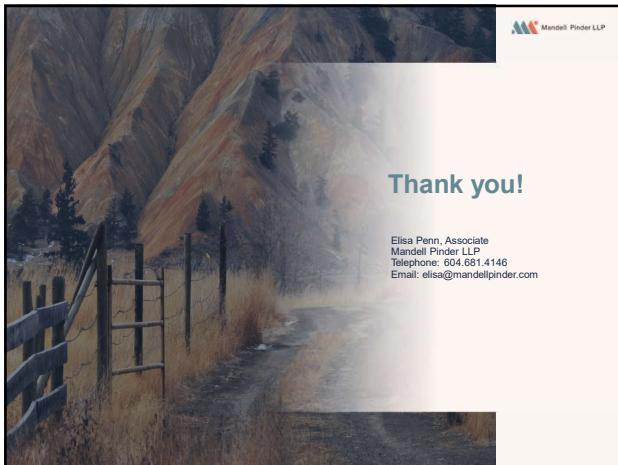
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Comments / Questions?

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Thank you!

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