Considering Valuation Approaches Outside of Specific Claims: Insights and Possibilities

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Agenda

- Introductions
- Valuation spaces
- Challenges and limitations
- “New” approaches and opportunities
- Discussion

Introductions

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Valuation Spaces

- Valuation and compensation are occurring in many spaces
  - Compensation for infringements or impacts to section 35(1) Title and Rights (e.g., historical losses).
  - Breaches of fiduciary obligations concerning reserve lands under the Indian Act (e.g., Specific Claims).
- Principles and methods may differ across these spaces, though the underlying foundations are common.
- What’s included in compensation, and what’s left out, is of significant importance.

Valuation Spaces cont.

- Indigenous Nations are advancing and navigating valuation in accordance with their own priorities.
- Some considerations include:
  - Litigation versus negotiation
  - Pecuniary versus non-pecuniary
  - Timelines, capacity, strategy

Challenges and Limitations

SCTA: Grounds of a claim

Claims include

- A failure to fulfil a legal obligation of the Crown to provide lands or other assets…
- A breach of a legal obligation of the Crown under the *Indian Act* or any other legislation — pertaining to Indians or lands reserved for Indians — of Canada or of a colony of Great Britain of which at least some portion now forms part of Canada;
- A breach of a legal obligation arising from the Crown's provision or non-provision of reserve lands, including unilateral undertakings that give rise to a fiduciary obligation at law, or its administration of reserve lands, Indian moneys or other assets of the First Nation;
- An illegal lease or disposition by the Crown of reserve lands;
- A failure to provide adequate compensation for reserve lands taken or damaged by the Crown or any of its agencies under legal authority; or
- Fraud by employees or agents of the Crown in connection with the acquisition, leasing or disposition of reserve lands.

Gaps in SCTA

Claims do not include

- Any harm or loss that is not pecuniary in nature, including loss of a cultural or spiritual nature (s.20(1)(d)
- Claims are for historic loss (15 years +) and do not consider current or future adverse impacts (s.15(1))
- Claims are only against Canada and cannot consider hold other potentially culpable parties liable (ie proponent) (s.20(i)
- Compensation models rely on legal principles applied by the Courts when bringing market value forward (s.20(1)(e))

“New” Approaches and Opportunities

- Methods drawn from Multi-Attribute Utility Theory (MAUT)
- Also draw on anthropology, ecology, community-engaged methods, environmental assessment.
- Use both quantitative and qualitative methods to categorize tangible and intangible losses.
- Widely used in policy and decision-making contexts across many fields. Applying these methods to valuation between Indigenous Nations and the Crown is new.

“New” Approaches and Opportunities cont.

- Rely on **values**, reflecting input about impacts from community members
- Rely on **facts**, to identify consequences of impacts on those values that matter the most
- Use natural **metrics** to measure different categories of impact
- Include all **impacts**, both to tangible categories of impact and intangible categories, with reference only to the event(s) in question.

Illustrative Compensation Categories and possible types of impacts

MAUT on Trial

- Kikino Metis decision - Alberta Court of Appeal
- Interdisciplinary approaches are favoured by Indigenous Nations but may face challenges when tendered in Court
- Negotiations allow expert teams to be flexible; litigation does not
- Monetary compensation is only partial redress

Discussion

Gaps in SCTA:

- Cultural or spiritual loss as being non-pecuniary
- Addressing past, present, and future impacts
- Claims against culpable parties
- Thinking about market value in the Courts

Opportunities:

- Compensation for ‘intangible’ losses
- Current and future impacts, opportunities for revenue sharing and different forms of benefit agreements
- Updating how the Courts apply compensation

Discussion cont.

Recent collaborative work on advancing compensation and valuation strategies suggest several ongoing challenges:

- Challenges of evidence never stop
- Specific claims may be part of a bundled strategy
- Law is one tool, and a limited one, but the Courts can value things differently
- “Newer” valuation methods offer opportunities
- Looking back, and looking forward, may require different approaches, but these can inform one another

Further Resources

- Some of the work presented reflects outcomes from a collaborative workshop between the Union of BC Indian Chiefs, the BC First Nations Regional Information Governance Centre, and the University of British Columbia held in September, 2025 entitled “Advancing Compensation and Valuation Strategies: Tools, Trade-offs, and Tactical Know-How for Nations.

- A Guide has been developed that consolidates practical guidance on compensation valuation in order to support informed, confident, Nation-led decision-making on valuation approaches best aligned with their interests. For more information, please get in touch with Nicole Kaechele at: nicolekaechele.bc@gmail.com or the BC FNRIGC at: https://www.bcfnrigc.ca.

- Some of the methods discussed are part of collaborative publications, including:
    - Gregory, R., Halteman, P., Kaechele, N., Kotaska, J. & Satterfield, T. 2020. Compensating Indigenous social and cultural losses: a community-based multiple-attribute approach. Ecology & Society 25 (4).

    - Gregory, R., Halteman, P., Kaechele, N. & Satterfield, T. 2023. Methods for assessing social and cultural losses. Science 381: 478-481.

Thank You