



IN BAD FAITH TEN YEARS LATER

A look back at a pivotal report from the NCRD on Justice at Last and where we are today.

SETTING THE STAGE

*...false reports of successful outcomes and of fulfilling commitments to First Nations have clearly informed AANDC's 2014-15 Report on Plans and Priorities which reveals that **planned spending dollars for the Aboriginal Rights and Interests Program will be reduced by almost 60% in the 2016-2017** fiscal year as a result of "the sunset of funding ... for Justice At Last: Specific Claims Action Plan."*¹

1. 2014-2015. Report. Aboriginal Affairs and Northern Development Canada and Canadian Polar Commission. "2014-15 Estimates: Report on Plans and Priorities." Government of Canada, p. 26.

*The planned termination of Justice At Last and the absence of any discussion with First Nations about this plan reflect **AANDC's preoccupation with expediency at the expense of justice** and its misplaced confidence that the Canadian public will simply **applaud the apparent cost savings**. It is shortsighted in the extreme. Hundreds of unresolved claims will linger without any process for settling these outstanding grievances, inviting confrontation and further conflict.*

CLAIM SUBMISSIONS ARE DROPPING...

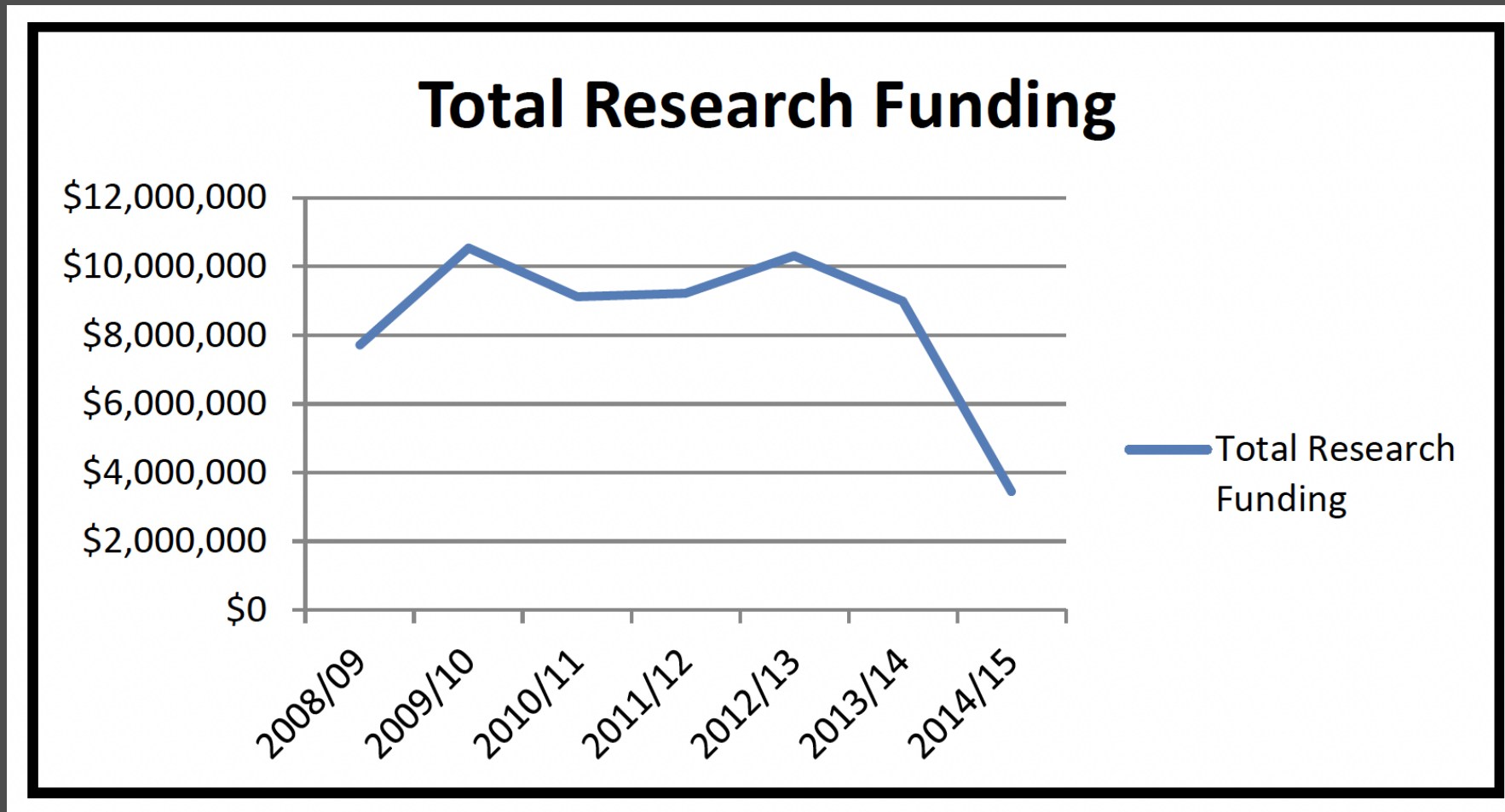
2015: *Of the 339 claims represented in the Specific Claims Survey, **respondents identified 230 that are currently in Research and Development.** These claims will be filed with the Minister in the coming years but are not reflected in AANDC's reports. Without reference to claims in development, Canada's data suggests that the submission of specific claims is diminishing. This is not the case.*

First year Canada provided # of Claims in research stats 2021/2022: **968 Claims** identified by First Nations for research and development (Canada funded 940 Claims)

2025/2026: **1332 Claims** in Research & Development (Canada funded # unknown)

417.93% growth in the last decade

RESEARCH FUNDING PICTURE IN 2015





*In 2014-15, claims research units across Canada received 30 to 60 percent cuts to their annual funding for the research and development of specific claims. At a May 2014 national meeting FSAGNU officials informed directors of claims research units that of the **\$6 million** allocated to claims research and development in 2014-2015, \$2 million had been set aside to cover the costs of First Nations taking claims to the Tribunal.*

FY 2025/2026: \$12 Million research budget, +\$35M in requested need from First Nations

FY 2026/2027: \$4 million budget...

ELIMINATING THE BACKLOG

The Specific Claims Branch has eliminated the backlog of claims that were in the research and assessment stage at the time that the Specific Claims Tribunal Act came into effect in October 2008. ... In October 2008, a total of 541 files were in research and assessment. Three years later, in October 2011, all these files had been assessed and all of the associated First Nation claimants had been informed about the outcome of that assessment.

With the backlog cleared, the Specific Claims Branch does not anticipate difficulties in completing the research and assessment process for new claims submitted by First Nations. ...

DEPARTMENTAL BUDGET CUTS

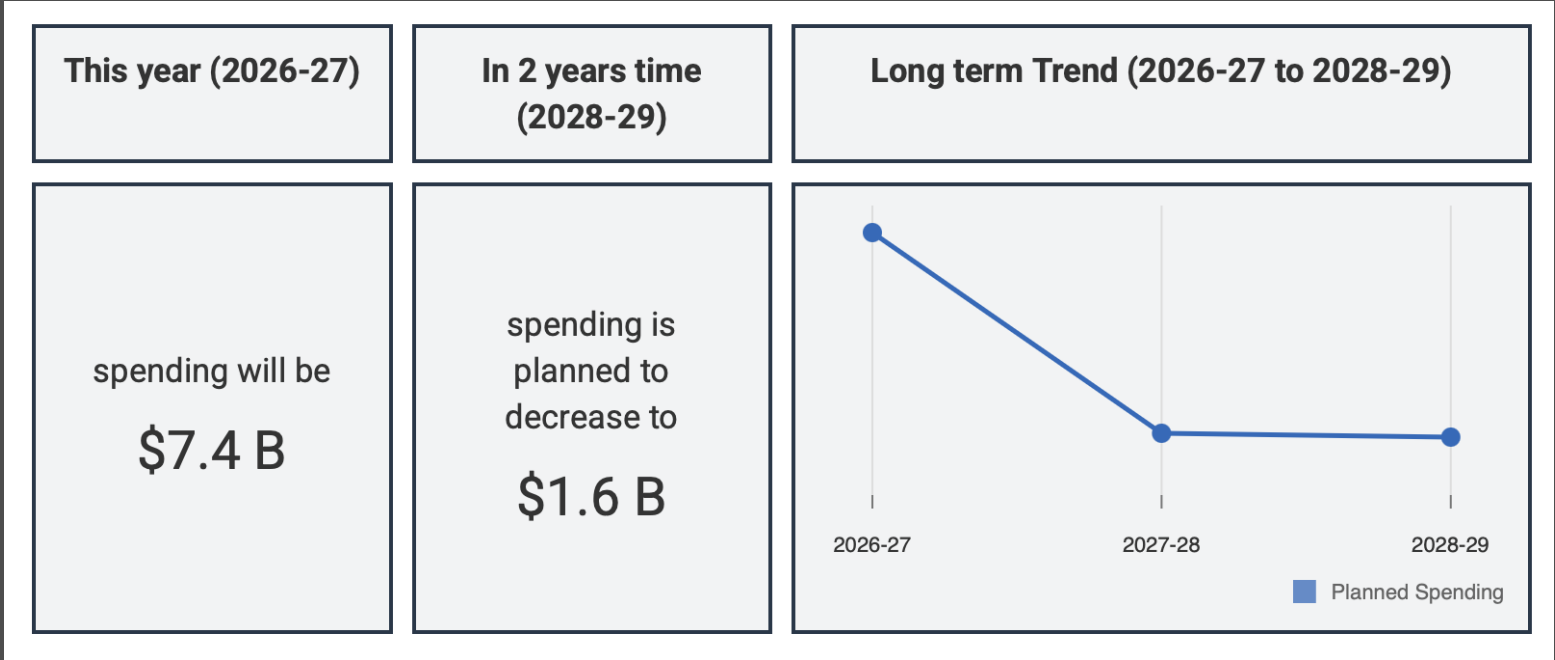
Table B: FY 2014-2017 Planned Spending on the Specific Claims Sub-Program

Budgetary Financial Resources (dollars)			Human Resources (FTEs)		
2014–2015 Planned Spending	2015–2016 Planned Spending	2016–2017 Planned Spending	2014–2015	2015–2016	2016–2017
735,583,085	731,770,925	262,192,631	77	77	44

In 2024-25, the **Specific Claims** program planned to spend **\$6.0 billion** and employ **148** full-time equivalents (FTE) . It actually spent **\$8.4 billion** and employed **152** FTEs.

	Planned	Actual	Difference (Actual - Planned)
Spending	\$6.0 B	\$8.4 B	\$2.3 B
FTEs	148	152	4

DEPARTMENTAL BUDGET CUTS



But staffing (FTE) remains unchanged – so who is feeling the cut?

SMALL VALUE = NOT WORTH NEGOTIATING

SMALL VALUE CLAIMS REMOVED FROM ACCESS TO NEGOTIATIONS

Claims that are unilaterally valued by Canada at less than \$3 million enter into an “expedited legal review”⁵² process whereby there are excluded from eligibility for negotiation loan funding and from engaging in “negotiation activity.”

If Canada has designated the claim “small value,” these letters are accompanied or followed by a non-negotiable offer of settlement, a one-time sum to cover legal costs and a 60 to 90 day deadline to accept and respond to the offer or have the claim file closed.

A RUSH TO SETTLE...

...The first nations sometimes feel that, yes, they are being pushed and shoved through the process, but we have a lot of discussions with them, and they understand that the ultimate goal is for us to get them in front of a settlement sooner rather than later.⁷⁴

⁷⁴. October 4, 2011. Evidence. Standing Committee on Aboriginal Affairs and Northern Development. Canada: House of Commons, Evidence, AANO, No. 004, 1st Session, 41st Parliament, p. 9.

Since Canada is either refusing to negotiate small value claims or terminating negotiations, it is clear that the bureaucratic imperative to close files quickly in a pantomime of efficiency and public accountability trumps good faith negotiations to resolve specific claims with finality and in the spirit of reconciliation.

THE (NOT SO) INDEPENDENT TRIBUNAL

...Canada will create an independent tribunal that can make binding decisions where claims are rejected for negotiation or when negotiations fail. ... The independent tribunal will be made up of retired or sitting judges. These judges will have the necessary experience, capacity and credibility to examine historical facts and evidence and to address complex legal questions surrounding Canada's legal obligations and determine appropriate levels of compensation.

In June 2014 Canada passed the Administrative Tribunals Support Services of Canada Act (ATSSCA), which came into force on November 1, 2014. The Act established the Administrative Tribunals Support Services of Canada to "consolidate the provision of support services to 11 administrative tribunals by way of a single, integrated organization."⁸⁸ As a result, the Registry of Specific Claims ceased its operations on October 31, 2014 and its staff and resources have been transferred to the ATSSC. The ATSSC is now responsible for determining administrative procedures and providing all facilities and support services, including financial, research and analysis services, to the Specific Claims Tribunal.

Independence is central to the role of the Specific Claims Tribunal and its ability to resolve claims fairly.

2025/2026: The Tribunal remains absorbed into the ATSSCA, and as a result its independence remains under threat.

THE RECOMMENDATIONS

RESOURCING/FUNDING

1. 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. Some of this funding could be redirected from the Specific Claims Branch who report a reduced work plan. Immediate restoration of specific claims research funding would allow current and new claims to be researched and developed giving these claims access to the resolution promised by Justice at Last.
2. 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.
3. Provide adequate funding to First Nations who have claims filed with the Tribunal.
4. 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.
5. Renew commitment to annual specific claims settlement fund at current or increased levels.
6. 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.

THE RECOMMENDATIONS

Negotiations and Mediation

1. 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).
2. Abandon the practice of making settlement offers, unilateral decisions and underfunding – because these approaches undermine reconciliation and true resolution.
3. Abandon the practice of assigning value to a claim without consultation with First Nations. AANDC officials are not qualified to make these valuations and their unilateral imposition undermines negotiations.
4. 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.
5. Immediately cease referring to the issuance of non-negotiable, final, take-it-or-leave-it offers as “negotiation.”
6. Abandon conflict-of-interest laden mediation services established by AANDC and reconvene discussions with the Assembly of First Nations to establish a truly independent Mediation Centre.
7. Under this new, independent Mediation Centre, identify and develop opportunities for mediation, and engage in mediation with First Nations.

THE RECOMMENDATIONS

Public Reporting

1. 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.
2. Incorporate data on claims that are currently in Research and Development into reports and projections.
3. Public reporting should be explicit about claims that have been accepted/negotiated/expedited offer rejected etc.
4. Public reporting should indicate which negotiation scheme a claim has entered into (expedited/small claims, etc.) – until this practice is halted.

THE RECOMMENDATIONS

Oversight

1. Convene a Senate Standing Committee Study into *Justice at Last* in which First Nations are directly involved.

Tribunal

1. Restore the independence of the Tribunal by keeping the administration of the Tribunal separate from the centralized administrative unit created by recent legislation.
2. Work with the Judiciary to ensure the Tribunal is adequately staffed.
3. Integrate Tribunal decisions into the assessment of claims.
4. Create a streamlined process whereby First Nations can request that their rejected or closed claims be re-assessed in light of Tribunal decisions.

A LINK TO WATCH...

- [https://www.tbs-sct.canada.ca/ems-sgd/edb-bdd/index-eng.html#infographic/program/INAC-BWM17/intro/.-.-\(panel_key.-.-'profile\)](https://www.tbs-sct.canada.ca/ems-sgd/edb-bdd/index-eng.html#infographic/program/INAC-BWM17/intro/.-.-(panel_key.-.-'profile))

Canada is trying to make this information “pretty” but appears to be falling into the same trap with respect to transparent and comprehensive reporting on all aspects of the process.