



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

“WE BELONG TO THE LAND”: THE RESTITUTION OF LAND TO INDIGENOUS NATIONS

**Report of the Standing Committee on Indigenous and
Northern Affairs**

John Aldag, Chair

**MAY 2024
44th PARLIAMENT, 1st SESSION**

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Chair**

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Reports from committees presented to the House of Commons

Presenting a report to the House is the way a committee makes public its findings and recommendations on a particular topic. Substantive reports on a subject-matter study usually contain a synopsis of the testimony heard, the recommendations made by the committee, as well as the reasons for those recommendations.

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THE STANDING COMMITTEE ON INDIGENOUS AND NORTHERN AFFAIRS

has the honour to present its

FOURTEENTH REPORT

Pursuant to its mandate under Standing Order 108(2), the committee has studied the restitution of land to First Nations, Inuit, and Métis communities and has agreed to report the following:

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SUMMARY

The committee tried to give a voice to Indigenous Nations¹ in a spirit of openness and exploration of the proposed approaches for inhabiting and sharing the same land while respecting the rights of the Indigenous Nations who lived here before the arrival of Europeans. Additional sessions would be needed to fully delve into each of the issues raised. A look back at history reveals the extent of the wrongs committed against the various Indigenous Nations. The report addresses topics that readers may find traumatic. The committee acknowledges the risk that bringing them up or referring to historical costs from the negotiation of the various treaties may trigger a reaction. The committee acknowledges that before the arrival of Europeans, Indigenous Nations lived on, and managed, the land that would later become the Canada we know today. “Aboriginal title” is the legal term applied to the fact that Indigenous Nations hold communal land rights over these lands. The treaties negotiated in the early 19th century still have a lingering impact today. The travel notebooks of the commissioners who negotiated the numbered treaties clearly illustrate the Crown’s intention of occupying the land in order to subdivide it and distribute it to the settlers and immigrants who would come later. John A. Macdonald’s government showed little concern for the fate of the Indigenous Nations, and successive governments did nothing to change course.

Land is a central part of Indigenous identities, cultures, languages, governance and laws. Land is essential to respecting Indigenous rights, including the right to self-determination. Indigenous Nations were robbed of their lands throughout Canadian history, which continues to affect Indigenous health, well-being, governance, culture and ways of life. Historically, Indigenous Nations were left out of the Canadian economy and received few benefits from development on their lands. The restitution of lands to Indigenous Nations is about truth and reconciliation and is consistent with the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP).

Indigenous Nations have and continue to call for the return of their lands and use different approaches to try and get their lands back. Some have taken the Government of Canada to court, used federal polices and processes to settle their claims, or worked through international bodies. For the most part, these options have not been fully successful. In this report, the committee makes recommendations to improve existing federal policies and processes to return more land to Indigenous Nations. Recommendations include:

1 The committee tried to respect the diversity of Indigenous communities, Peoples and Nations, but thought in reflecting on all of the given terminology, that ‘Nations’ best reflected what the committee heard.

- aligning federal policies and processes that may return land to Indigenous Nations with UNDRIP;
- review the process to develop negotiation mandates for modern treaties;
- identifying and addressing barriers which may limit the use of land as compensation for specific claims; and
- improving the Addition to Reserve Policy and process to address delays.

Indigenous Nations have different needs and priorities. For this reason, the committee also recommends that the Government of Canada consider other options to return land to Indigenous Nations, including:

- exploring alternative approaches to land restitution outside existing federal policies and processes;
- identifying and establishing new approaches to respond to Indigenous Nations defending their lands;
- creating an Indigenous Rights Commission and Tribunal and a national land restitution centre;
- developing a framework to discuss the meaning and implementation of historic treaties;
- exploring the creation of tax-free mechanisms to reclaim land and fee simple title;
- exploring opportunities to support Indigenous land trusts and facilitate the donation of land to Indigenous Nations;
- developing a strategy to increase the number of Indigenous Protected and Conserved Areas in Canada;
- creating a First Nations-led Land Registry;
- ensuring that all forms of land restitution include the restoration of Indigenous governance and jurisdiction over lands and resources;
- ensuring Indigenous businesses have access to adequate, predictable and sustainable funding;

- reviewing the Social Finance Fund;
- encouraging the establishment of a working group to discuss Impact and Benefit Agreements; and
- considering options for improving access to capital.

Returning land to Indigenous Nations can contribute to economic reconciliation by ensuring Indigenous Nations can participate in the Canadian economy. The committee heard that Indigenous Nations need jurisdiction over their lands and financial capital to benefit from potential economic opportunities. The committee believes that addressing barriers to economic development can ensure that Indigenous Nations can develop their own priorities for the use and development of their lands.

LIST OF RECOMMENDATIONS

As a result of their deliberations committees may make recommendations which they include in their reports for the consideration of the House of Commons or the Government. Recommendations related to this study are listed below.

Recommendation 1

That Crown-Indigenous Relations and Northern Affairs Canada make information publicly available about the status of the Comprehensive Land Claims Policy and its approach to the negotiation of modern treaties with Indigenous Nations outside of British Columbia..... 31

Recommendation 2

That Crown-Indigenous Relations and Northern Affairs Canada work with Indigenous Nations to align its approach to the negotiation of modern treaties with the *United Declaration on the Rights of Indigenous Peoples*..... 32

Recommendation 3

That Crown-Indigenous Relations and Northern Affairs Canada work with Indigenous Nations to undertake a review of the process to develop negotiation mandates for modern treaties. 32

Recommendation 4

That, as part of larger reforms to the Specific Claims Policy and process, Crown-Indigenous Relations and Northern Affairs Canada work with First Nations to:

- **identify and remove barriers which may limit the use of land as compensation for specific claims, including the \$150 million limit on monetary awards from the Specific Claims Tribunal; and**
- **align the Specific Claims Policy and process with the *United Nations Declaration on the Rights of Indigenous Peoples*..... 34**

Recommendation 5

That Crown-Indigenous Relations and Northern Affairs Canada work with First Nations, provincial, territorial and municipal partners, as part of ongoing engagements on the Addition to Reserve Policy to:

- **identify and develop with First Nations a plan to address barriers in federal processes that may delay additions to reserve;**
- **enhance First Nations capacity to develop proposals for additions to reserve and participate in the additions to reserve process; and**
- **work with First Nations to align the Addition to Reserve Policy and process with the *United Nations Declaration on the Rights of Indigenous Peoples*. 40**

Recommendation 6

That Crown-Indigenous Relations and Northern Affairs Canada provide each House of Parliament with annual progress reports on engagements to redesign the Addition to Reserve Policy beginning in 2024. 41

Recommendation 7

That Crown-Indigenous Relations and Northern Affairs Canada and Indigenous Services Canada work with First Nations to develop a strategy to reduce barriers at the federal level for First Nations seeking to create a reserve in urban centres..... 41

Recommendation 8

That Crown-Indigenous Relations and Northern Affairs Canada, in partnership with Indigenous Nations, explore approaches to land restitution outside of the Comprehensive Land Claims Policy, the *Recognition and Reconciliation of Rights Policy for treaty negotiations in British Columbia*, the Specific Claims Policy and the Addition to Reserve Policy, such as recognizing and implementing Aboriginal title over specific parcels of land outside modern treaty processes and establishing a process to adjudicate the rights of Indigenous Nations pertaining to their lands, territories and resources in accordance with the *United Nations Declaration on the Rights of Indigenous Peoples*, and that the department provide each House of Parliament with a progress report on these efforts by December 2024..... 43

Recommendation 9

That the Government of Canada work with Indigenous Nations to identify and establish new approaches to respond to Indigenous Nations defending their lands... 43

Recommendation 10

That the Government of Canada work with Indigenous Nations to create an Indigenous Rights Commission and Tribunal to render decisions in disputes concerning Indigenous Rights. 43

Recommendation 11

That the Government of Canada work with Indigenous Nations to create a national land restitution centre..... 43

Recommendation 12

That the Government of Canada work with First Nations to develop a framework to discuss the meaning and implementation of historic treaties. 43

Recommendation 13

That the Government of Canada work with Indigenous Nations to explore the creation of tax-free mechanisms to reclaim land and fee simple title..... 43

Recommendation 14

That the Government of Canada, in partnership with Indigenous Nations, explore opportunities to support Indigenous land trusts, including tax incentives for the donation of land to Indigenous Nations or organizations. 45

Recommendation 15

That the Government of Canada consult with relevant stakeholders, including the First Nations Tax Commission and the First Nations Financial Management Board, on ways to facilitate the donation of land to Indigenous Nations..... 45

Recommendation 16

That the Government of Canada:

- work with Indigenous Nations, Indigenous organizations (such as hunters and trappers organizations) and provincial and territorial governments to develop a strategy to increase the number of Indigenous Protected and Conserved Areas in all parts of Canada and to provide sufficient funding to support Indigenous Nations and organizations working towards the development of Indigenous Protected and Conserved Areas;
- provide annual progress reports to each House of Parliament, beginning in September 2024, on progress made towards the development of a strategy on Indigenous Protected and Conserved Areas; and
- make information about the progress made towards the development of an Indigenous Protected and Conserved Areas strategy publicly available. 47

Recommendation 17

That Crown-Indigenous Relations and Northern Affairs Canada work with First Nations and the First Nations Lands Advisory Board to develop a First Nations-led land registry..... 48

Recommendation 18

That the Government of Canada work with Indigenous Nations to ensure that all forms of land restitution include the restoration of Indigenous governance and jurisdiction over lands and resources..... 52

Recommendation 19

That the Government of Canada work with Indigenous Nations and Indigenous businesses to determine funding needs and ensure that Indigenous businesses have access to adequate, predictable, sustainable and long-term funding. 52

Recommendation 20

That the Government of Canada work with Indigenous Nations and the National Aboriginal Capital Corporations Association to undertake a review of the Social Finance Fund to determine whether it is complimentary to National Aboriginal Capital Corporations Association initiatives..... 53

Recommendation 21

That the Government of Canada encourage Indigenous Nations and industry to establish a working group to discuss Impact and Benefit Agreements. 53

Recommendation 22

That the Government of Canada, in partnership with Indigenous Nations, consider options for improving access to capital, including through support to Indigenous Financial Institutions and the potential creation of an Indigenous Development Bank in Canada. 53



“WE BELONG TO THE LAND”: THE RESTITUTION OF LAND TO INDIGENOUS NATIONS

INTRODUCTION

Before the creation of Canada, Indigenous Nations governed their lands. First Nations, Inuit and Métis relationships to the land are central to Indigenous identities, cultures, governance and rights. Indigenous Nations were dispossessed of their lands throughout Canadian history and continue to experience dispossession today. As part of this history, different visions of land use were, and continue to be, imposed on Indigenous Nations. It is important that Canadian history, which is often told by non-Indigenous Peoples, is re-written by Indigenous Nations themselves. Witnesses emphasized the importance of understanding this history as a first step in truth and reconciliation. Land restitution is a pivotal part of reconciliation because it is central to self-determination. Land restitution means that Indigenous Nations can develop their own priorities for the use and development of their lands. Land restitution is also consistent with the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) which includes articles about jurisdiction over traditional territories and redress for the dispossession of lands, territories and resources.

Indigenous Nations continue to work to regain access to their lands through a variety of pathways including federal processes, the courts and international bodies. Whereas some Indigenous Nations are able to access parts of their lands through the processes, the committee heard that for many, these options are often inadequate forms of land restitution. This report discusses ways to improve federal processes and explore alternative approaches to return Indigenous lands, ultimately restoring Indigenous control over their lands and resources and enhancing self-determination.

On 21 November 2022, the House of Commons Standing Committee on Indigenous and Northern Affairs (the committee) adopted the following motion:

That, pursuant to Standing Order 108(2), the committee undertake a study on the restitution of land to First Nations, Inuit, and Metis communities in Canada; that the committee’s study take account of, but not be limited to, examination of access to and transfer of Crown land across Canada, Indigenous rights related to those lands, comprehensive land claim completion, and compensation. The study should examine the



impacts of historical and continued dispossession of First Nations, Inuit, and Métis from land, including the impact on economic development and resource extraction.

The study should also examine economic growth opportunities possible within Canada in relation to restitution of lands. All meetings for this study be televised or webcast; that the committee report its findings and recommendations to the House; and that, pursuant to Standing Order 109, the committee request that the government table a comprehensive response to the report.¹

As part of its study, the committee heard from 32 witnesses during six committee meetings and received 21 briefs. The committee wishes to thank all witnesses who took the time to participate in our study.

This report uses the term “land restitution” to describe the return of lands to Indigenous Nations because this term is used in the committee’s motion. The committee recognizes concerns raised by witnesses that this term falsely suggests that Indigenous Nations gave up their lands.² This report recognizes the history and ongoing dispossession and perspectives of Indigenous Nations who did not give up their land.

The report begins with a discussion of the history of land being stolen from First Nation and Métis. While the committee recognizes that Inuit experienced land dispossession which continues today, the committee was unable to hear from Inuit witnesses.³ The committee received one brief from the Inuvialuit Regional Corporation, which represents the Inuvialuit, the Inuit of the Western Arctic. The brief describes the relationship between the Inuvialuit and their homelands, while explaining the effects of land dispossession on the Inuvialuit. The brief states that:

1 House of Commons Standing Committee on Indigenous and Northern Affairs (INAN), [Minutes of Proceedings](#), 21 November 2022.

2 INAN, [Evidence](#), 10 May 2023, Dahti Tsetso, Deputy Director, Indigenous Leadership Initiative, 1820; INAN, [Evidence](#), 14 June 2023, Philip Goulais, Director, Former Chief, Nipissing First Nation, Ontario, First Nations Lands Advisory Board, 1650; INAN, [Evidence](#), 14 June 2023, Andrew Beynon, Director of Land Code Governance, First Nation Land Management Resource Centre, 1710.

3 For more information about Inuit history, please see: Truth and Reconciliation Commission of Canada, [Canada’s Residential Schools: The Inuit and Northern Experience](#), *The Final Report of the Truth and Reconciliation Commission of Canada*, Volume 2.

The annexation of lands has been used as a vehicle to disrupt cultural practices, family dynamics, and traditional ways of life. In which we see our people struggle socioeconomically as a result of land dispossession and disconnection from culture.⁴

The second part of the report discusses available pathways for Indigenous Nations to access their lands and considers the benefits and challenges of these approaches. In this section, the committee recommends reforms to federal policies and processes, as well as the exploration of alternative approaches to land restitution. The final section of the report discusses how land restitution can contribute to economic reconciliation for the benefit of Indigenous Nations and all Canadians.

UNDERSTANDING THE TRUTH ABOUT THE LAND

Long before the arrival of Europeans in Canada, First Nations and Inuit lived on the land, water and ice of their homelands. The children born of relationships between First Nations and European fur traders became the Métis, a distinct people who also developed deep connections to specific territories. Indigenous Nations’ relationships with their territories are central to Indigenous identity and rights and are reflected in Indigenous cultures, languages, governance and laws.⁵ As explained by Innu TakuaiKAN Uashat mak Mani-Utenam:

For us, Nitassinan [traditional territory on the Quebec-Labrador peninsula] is the same as non-Indigenous [P]eople’s homes, grocery stores, farms, schools and history books. It’s the source of our food, our education, our language, our culture, our customs and our traditions. Nitassinan is rich, brimming with stories and histories, Innu place names, birthplaces, burial sites, portage sites, campsites, traditional medicines, animals and other important natural resources for us.⁶

Indigenous conceptions of the land differ from those of non-Indigenous Canadians. Hereditary Chief Stephen Augustine, of the Mi’kmaq Grand Council explained that “[w]e belong to the land, not the other way around. The land doesn't belong to us.”⁷

4 Inuvialuit Regional Corporation, *Brief*, p. 1.

5 See for example: INAN, *Evidence*, 10 May 2023, Ellen Gabriel, Indigenous Land Defender from Kanehsatà:ke, 1635, 1645; British Columbia Specific Claims Working Group, *Brief*, p. 5; INAN, *Evidence*, 19 October 2023, Graham Marshall, Councillor, Membertou First Nation, 1540, 1545; INAN, *Evidence*, 17 October 2023, Albert Marshall Jr., Board Director, National Aboriginal Lands Managers Association, 1620; Northwest Territory Métis Nation, *Brief*, p. 1; Inuvialuit Regional Corporation, *Brief*, p. 2; INAN, *Evidence*, 19 October 2023, Adam Munnings, Legal Counsel, Semiahmoo First Nation, 1545; Assembly of First Nations, *Brief*, p. 2.

6 Innu TakuaiKAN Uashat mak Mani-Utenam, *Brief*, p. 3.

7 INAN, *Evidence*, 19 October 2023, Hereditary Chief Stephen Augustine, Mi’kmaq Grand Council, 1530.



The dispossession of Indigenous Nations' lands is ongoing as many still do not have access to most of their territories today. Land restitution is a fundamental part of reconciliation and is essential for Indigenous Peoples to exercise their rights, practice their cultures on their lands and use the land according to their own priorities.⁸ Land restitution supports Indigenous sovereignty, health and well-being, and economic participation.⁹

As a first step towards reconciliation, all Canadians need to understand the history of the land.¹⁰ Graham Marshall, Councillor for the Membertou First Nation, said that “as Canadians, we also have to look at the dispossession of the land throughout this great country, understand that truth and how we have to walk and understand the truth together.”¹¹ This section of this report summarizes what the committee heard from witnesses about the history of the dispossession of First Nations and Métis lands.

The Dispossession of First Nations' Lands

First Nations experienced and continue to experience the dispossession of their lands. Dr. Bruce McIvor, Partner, First Peoples Law stated that Canada needs:

[A] day of reckoning with regard to the power and wealth that this nation is built on, and it's built on [I]ndigenous lands. It's built on the wealth of [I]ndigenous lands. It's built on displacing [I]ndigenous [P]eople from their lands and taking that wealth.¹²

Similarly, Mary Culbertson, Treaty Commissioner, Office of the Treaty Commissioner, noted that:

8 Assembly of First Nations, [Brief](#), p. 2; INAN, [Evidence](#), 14 June 2023, Mary Culbertson, Treaty Commissioner, Office of the Treaty Commissioner, 1755; James N. Tanner, [Brief](#), p. 5; INAN, [Evidence](#), 24 October 2023, Chief Shelley Bear, Ochapowace First Nation, 1640; Inuvialuit Regional Corporation, [Brief](#), p. 2–3; INAN, [Evidence](#), 5 October 2023, Harold Calla, Executive Chair, First Nations Financial Management Board, 1635; INAN, [Evidence](#), 31 May 2023, Sean Willy, President and Chief Executive Officer, Des Nedhe Development 1710; First Nations Financial Management Board, [Brief](#), p. 1; Algonquins of Pikwàkanagàn First Nation, [Brief](#), p. 1 and 5; Mikisew Cree First Nation, [Brief](#), p. 3; File Hills Qu'Appelle Tribal Council, [Brief](#), p. 3, 4; Conservation through Reconciliation Partnership Leadership Circle, [Brief](#), p. 1; British Columbia Specific Claims Working Group, [Brief](#), p. 4.

9 INAN, [Evidence](#), 17 October 2023, Amanda Simon, Chair, National Aboriginal Lands Managers Association, 1610; INAN, [Evidence](#), 24 October 2023, Chief Shelley Bear, 1635; INAN, [Evidence](#), 31 May 2023, Sean Willy, 1730; Inuvialuit Regional Corporation, [Brief](#), p. 2.

10 INAN, [Evidence](#), 10 May 2023, Dr. Bruce McIvor, Partner, First Peoples Law, 1735; INAN, [Evidence](#), 19 October 2023, Graham Marshall, 1545.

11 INAN, [Evidence](#), 19 October 2023, Graham Marshall, 1630.

12 INAN, [Evidence](#), 10 May 2023, Dr. Bruce McIvor, 1735.

Colonization is what created Canada, and created all the countries that have [I]ndigenous [P]eople and that now have outside governments running them. Those were made in the name of empire building and not ‘let’s go out and protect [I]ndigenous [P]eople and lands.’¹³

Witnesses told the committee that throughout history, the Crown relied on “false, racist premises” such as *terra nullius* and the Doctrine of Discovery to justify taking and claiming sovereignty over Indigenous lands.¹⁴ *Terra nullius* is a doctrine used to affirm that no one owned the land prior to European assertion of sovereignty. In 2014, the Supreme Court of Canada ruled that *terra nullius* never applied in Canada as confirmed by the *Royal Proclamation of 1763* (discussed in further detail below).¹⁵

The Doctrine of Discovery provided that “that when a nation “discovers” land, it directly acquires rights to that land.”¹⁶ The Doctrine of Discovery “declared [I]ndigenous [P]eoples inhuman, not worthy of rights and certainly not worthy of property rights.”¹⁷ Hayden King, Executive Director of the Yellowhead Institute described the Doctrine of Diversity as a “piece of international imperial law, [that] was the foundation of the world’s greatest plunder.”¹⁸ In Dr. McIvor’s view, Canada has “no lawful authority” for the dispossession of Indigenous lands, since it is based on the Doctrine of Discovery.¹⁹ In 2015, the Truth and Reconciliation Commission of Canada called:

[U]pon federal, provincial, territorial, and municipal governments to repudiate concepts used to justify European sovereignty over Indigenous [P]eoples and lands, such as the Doctrine of Discovery and *terra nullius*, and to reform those laws, government policies, and litigation strategies that continue to rely on such concepts.²⁰

13 INAN, [Evidence](#), 14 June 2023, Mary Culbertson, 1830.

14 References to the Crown throughout this report before Confederation mean the British Crown, and after Confederation mean the federal Crown in Canada unless otherwise noted. For example, see: INAN, [Evidence](#), 24 October 2023, Hayden King, Executive Director, Yellowhead Institute, 1540; INAN, [Evidence](#), 24 October 2023, Chief Shelley Bear, 1635; British Columbia Specific Claims Working Group, [Brief](#), p. 1; Assembly of First Nations, [Brief](#), p. 2; James N. Tanner, [Brief](#), p. 5.

15 [Tsilhqot’in Nation v. British Columbia](#), 2014, 2 SCR 257, para. 69.

16 INAN, [Evidence](#), 24 October 2023, Chief Shelley Bear, 1635.

17 INAN, [Evidence](#), 24 October 2023, Hayden King, 1540.

18 Ibid.

19 INAN, [Evidence](#), 10 May 2023, Dr. Bruce McIvor, 1735.

20 Truth and Reconciliation Commission of Canada, [Truth and Reconciliation Commission of Canada: Calls to Action](#), 2015, Call to Action 47.



While the Doctrine of Discovery was repudiated by the Vatican in 2023, Dr. Bruce McIvor argued that Canadians still needed to understand the truth about this doctrine.²¹ The following section will discuss early relationships between First Nations and the Crown, treaties, the policies of assimilation and First Nations' resistance to the dispossession of their lands.

Early Relationships Between First Nations and the Crown

Witnesses described early relationships between First Nations and Europeans. Hereditary Chief Stephen Augustine explained that:

In essence, when Europeans arrived, the early French, we allowed them to come and settle on the land as our fellow brothers and sisters. There were a lot of them. Almost 100 French people intermarried with Mi'kmaq women for the first 30 years of the 1600s. There were a lot of interrelationships. That was our way of making peace with the new arrivals. There was no question about us giving up our land. Marc Lescarbot wrote to Henry IV, King of France, and told him that the [I]ndigenous [P]eople here had no notion of private property or real estate, and they were not going to tell them that by planting their flag, they claimed sovereignty over our territory.²²

Prior to the arrival of Europeans, First Nations made treaties with one another as “a form of Indigenous diplomacy and an expression of our nationhood that was well established and used between Nations to facilitate understanding, respect and recognition of each Nations' [sic] culture, laws, legal processes, and way of life.”²³ This treaty-making practice continued following the arrival of Europeans; between 1725 and 1779, the Mi'kmaq, Wolastoqiyik, and Passamaquoddy signed Peace and Friendship Treaties with the Crown. These treaties focused on peace and friendship. First Nations did not agree to “give up the land.”²⁴ Graham Marshall, Councillor for the Membertou First Nation, explained that when signing the Peace and Friendship Treaties “our ancestors...were protecting the legacy they were leaving behind for the generations to come.”²⁵

The *Royal Proclamation of 1763* recognized the sovereignty and rights of First Nations, declaring “that Indigenous territories were not to be ‘molested and disturbed.’”²⁶ The *Royal Proclamation of 1763* also provided the foundation for future treaty making by

21 INAN, [Evidence](#), 10 May 2023, Dr. Bruce McIvor, 1740.

22 INAN, [Evidence](#), 19 October 2023, Hereditary Chief Stephen Augustine, Mi'kmaq Grand Council, 1535.

23 Mikisew Cree First Nation, [Brief](#), p. 2.

24 INAN, [Evidence](#), 19 October 2023, Hereditary Chief Stephen Augustine, 1615.

25 INAN, [Evidence](#), 19 October 2023, Graham Marshall, 1615.

26 Algonquins of Pikwàkanagàn First Nation, [Brief](#), p. 2.

indicating that First Nations lands could not be purchased by private individuals, but could only be sold to the Crown.²⁷ The principles of the *Royal Proclamation of 1763* were reaffirmed at a gathering of First Nations at Niagara which resulted in the 1764 Treaty of Niagara.²⁸

Sharing the Land: First Nations’ Perspectives on Treaties

As part of its genocidal policies, the Crown signed land-related treaties to intentionally steal First Nations lands for settlement and development.²⁹ Ultimately, Canada earned significant profits from economic development on lands stolen through treaties signed with First Nations.

Treaty negotiations were inherently unfair, since the Crown intentionally signed treaties that were not fully explained to First Nations. First Nations had interpreters during the negotiations. The concept of selling the land was not in line with First Nations’ concepts of lands and was not reflected in Indigenous languages.³⁰ Witnesses explained that the written record of the treaty negotiations excludes First Nations’ perspectives, including the spirit and intent of the negotiation process.³¹ For example, the written text of numbered treaties signed between 1871 and 1921 contain clauses describing the “cede and surrender” of First Nations lands.³² In contrast, First Nations believed they were agreeing to share the land (excluding the natural resources under the soil) with settlers.³³ Witnesses disagreed about whether the treaties included the sharing of water.³⁴

Witnesses described First Nations’ perspectives on treaties. For example, as noted by the Mikisew Cree First Nation, the treaties between First Nations and the Crown:

[C]onfirm a sacred solemn relationship that exists forever ‘as long as the sun shines, grass grows and rivers flow’... We are reminded by our Elders that our Treaty is to last

27 Government of Canada, [250th Anniversary of the Royal Proclamation of 1763](#).

28 Algonquins of Pikwàkanagàn First Nation, [Brief](#), p. 2.

29 File Hills Qu’Appelle Tribal Council, [Brief](#), p. 2.

30 Mikisew Cree First Nation, [Brief](#), p. 2; INAN, [Evidence](#), 24 October 2023, Chief Shelley Bear, 1635.

31 Mikisew Cree First Nation, [Brief](#), p. 1; INAN, [Evidence](#), 14 June 2023, Mary Culbertson, 1815; INAN, [Evidence](#), 24 October 2023, Chief Shelley Bear, 1635.

32 INAN, [Evidence](#), 14 June 2023, Mary Culbertson, 1815.

33 Ibid.; INAN, [Evidence](#), 24 October 2023, Chief Shelley Bear, 1635, 1650; Mikisew Cree First Nation, [Brief](#), p. 2; File Hills Qu’Appelle Tribal Council, [Brief](#), p. 2; Cold Lake First Nation, [Brief](#), p. 1.

34 Cold Lake First Nation, [Brief](#), p. 1; Mikisew Cree First Nation, [Brief](#), p. 2.



forever and our ancestors negotiated terms and promises that would help our future generations, as we were told our 'way of life would not be curtailed.'³⁵

Chief Shelley Bear, Ochapowace First Nation, described oral history from the negotiations of Treaty 4:

Chief Kakisiwew and Chief Kawacatoose carried sacks of dirt and placed them on the negotiating table. Chief Kawacatoose then asked treaty commissioner Morris how many sacks of money he'd brought, and stated that for each sack of money, they could have a sack of dirt in exchange. The chiefs went on to strongly assert that "this country is not for sale". Of course, this never made it into the treaty transcripts, but this exchange has been passed down through the generations.

These words illustrate our ancestors' deep connections to the lands and how such an idea as selling our lands, or country, was a concept that our people couldn't grasp. It also illustrates how our words during treaty deliberations were misunderstood, misinterpreted or totally struck from the transcripts.³⁶

Mary Culbertson, Treaty Commissioner, Office of the Treaty Commissioner, the oral history from First Nations explained that:

The land was never meant to be surrendered. The cede and surrender clause was inserted into Treaty No. 3 after. If you look at any records from the treaty negotiations, which includes diaries, journal inserts and translations that were meticulously kept by translators such as clergy, the North-West Mounted Police, etc., there is the absence of the translation of cede and surrender.³⁷

The committee heard that "[t]he Crown continues to misunderstand the spirit and intent of the Treaties made with the Imperial Crown, including the oral understanding."³⁸ Canada relies on the written text of the treaties "for justification of taking up land and resource development."³⁹

The committee heard that the Crown broke—and continues to break—many of the promises it made in treaties signed both before and after confederation.⁴⁰ Broken treaty

35 Mikisew Cree First Nation, [Brief](#), p. 1, 2.

36 INAN, [Evidence](#), 24 October 2023, Chief Shelley Bear, 1635.

37 INAN, [Evidence](#), 14 June 2023, Mary Culbertson, 1815.

38 Mikisew Cree First Nation, [Brief](#), p. 2.

39 INAN, [Evidence](#), 14 June 2023, Mary Culbertson, 1815.

40 For example, see: Six Nations of the Grand River, [Brief](#), p. 1; INAN, [Evidence](#), 24 October 2023, Hayden King, 1540; Cold Lake First Nation, [Brief](#), p. 1, 2; INAN, [Evidence](#), 14 June 2023, Mary Culbertson, 1755; File Hills Qu'Appelle Tribal Council, [Brief](#), p. 2.

promises significantly affected, and continue to affect, First Nations livelihoods and ways of life, ultimately leaving First Nations with little remaining land.⁴¹ For example, Hayden King, Executive Director of the Yellowhead Institute said that:

In Ontario, pre-Confederation treaties were sharing pacts that were almost nearly immediately broken and used to relocate [I]ndigenous [P]eople, communities and families. The people who call my community home—Beausoleil First Nation or Gchi'mnissing—were relocated four times and pushed west and south to make way for settlement.⁴²

The committee heard from some witnesses that treaty promises were also broken through legislation and agreements. Section 91(24) of the *Constitution Act, 1867*, provided the federal government with legislative authority over “Indians and lands reserved for the Indians.”⁴³ As noted by Hereditary Chief Stephen Augustine, at this point in time, “[t]he federal government took over colonizing the [I]ndigenous [P]eople, taking control over our lands and putting us on Indian reserves.”⁴⁴ The *Indian Act*, enacted in 1876, also broke treaty promises that First Nations would be able to maintain their way of life.⁴⁵ The *Indian Act* and associated policies of assimilation significantly affected First Nations. A brief by the File Hills Qu’Appelle Tribal Council noted that “rather than sharing the lands to the depth of a plow, the First Nations were dispossessed of their lands and became prisoners on the small tracts of lands called reserves.”⁴⁶ Moreover, Celeste Haldane, Chief Commissioner, British Columbia Treaty Commission said:

It was not until contact and colonization (and all the colonial policies aimed to rid First Nations from Canada and make way for settlement, and the forceful assimilation through defunct policies such as the [sic] banning [of] ceremony, removing children from our communities, and enacting the *Indian Act*.) It is through those legislative and policies that made First Nations communities into wards of the state and dependent on the Canadian state.⁴⁷

41 For example, see: Six Nations of the Grand River, *Brief*, p. 1; INAN, *Evidence*, 24 October 2023, Hayden King, 1540; Cold Lake First Nation, *Brief*, p. 1, 2; INAN, *Evidence*, 14 June 2023, Mary Culbertson, 1755; File Hills Qu’Appelle Tribal Council, *Brief*, p. 2.

42 INAN, *Evidence*, 24 October 2023, Hayden King, 1540.

43 *Constitution Act, 1867*, 30 & 31 Victoria, c. 3 (U.K.).

44 INAN, *Evidence*, 19 October 2023, Hereditary Chief Stephen Augustine, 1615.

45 File Hills Qu’Appelle Tribal Council, *Brief*, p. 2.

46 File Hills Qu’Appelle Tribal Council, *Brief*, p. 2.

47 British Columbia Treaty Commission, *Brief*, p. 3.



Some witnesses also described the Natural Resource Transfer Agreements as an ongoing breach of treaties signed between First Nations and the Crown.⁴⁸ In 1930, the Natural Resource Transfer Agreements transferred the ownership of natural resources from Canada to Alberta, Saskatchewan and Manitoba without consultation or compensation for First Nations.⁴⁹

Dispossession of First Nations Lands Without Treaties

First Nations who did not sign treaties involving land were also dispossessed of their lands. The Assembly of First Nations told the committee that:

Where a pre-existing Treaty did not exist, or was inconvenient, colonial governments would assert Crown sovereignty—which is based on a legal fiction, including the racist doctrines of discovery and *terra nullius*—and take First Nations lands and resources without consent.⁵⁰

First Nations lands were taken through federal policies. For example, the Mi'kmaq, who signed peace and friendship treaties, were displaced from their home territories in the 1940s through a federal policy of centralization in Nova Scotia. As explained by Alberta Marshall Jr., Board Director of the National Aboriginal Land Managers Association: “[I]ndividuals were ordered to leave their communities and surrounding areas forcibly—in most cases, violently. Everybody moved to either Sipekne'katik or Eskasoni.”⁵¹

Other witnesses shared their experiences of land dispossession. For example, Six Nations of the Grand River explained that:

Our people were allies of the Crown during the American Revolution, a conflict that resulted in the loss of our ancestral homelands to the south. In reward for our loyalty and our alliance, the Crown in 1784 gave to the Mohawks and such others of our nations who chose to settle here a 950,000 acre tract of land known as the Haldimand Tract, which included all of the lands within six miles on either side of the Grand River from its source to its mouth in Lake Erie. Yet because of decades of neglect of our jurisdictional integrity by successive governments, our territory today—what remains of

48 INAN, [Evidence](#), 24 October 2023, Chief Shelley Bear, 1635; Mikisew Cree First Nation, [Brief](#), p. 3–4; Cold Lake First Nation, [Brief](#), p. 2.

49 Mikisew Cree First Nation, [Brief](#), p. 3–4; Cold Lake First Nation, [Brief](#), p. 2.

50 Assembly of First Nations, [Brief](#), p. 2.

51 INAN, [Evidence](#), 17 October 2023, Albert Marshall Jr., 1625.

the Haldimand Tract—comprises only 48,000 acres in southwestern Ontario, less than 5% of what was given to us.⁵²

In a brief, Cold Lake First Nation wrote that:

In 1952, Canada, Alberta and Saskatchewan entered into agreements whereby the Provinces leased to Canada a vast area of land within the heart of Denne Ni Nenne for the purposes of establishing an air weapons range (the “Cold Lake Air Weapons Range” or “CLAWR”). Our Nation members were told that the lease would be temporary – to last for 20 years — and that we would regain access to our homeland. This did not happen. Our grandfathers and grandmothers left their cabins, traplines and fisheries in 1952, never to return. The forced expulsion of our members from the heart of our traditional lands caused the immediate collapse of our local economy and deeply impacted the social health of our community.⁵³

Witnesses described how the creation of the Canada-United States border displaced their Nations affecting access to their homelands, a situation that continues today.⁵⁴ For example, Lauren Terbasket, Policy Advisor, Negotiator for the Lower Similkameen Indian Band said:

My homelands are the Similkameen and Tulameen watersheds in south central British Columbia and Washington state. It's comprised of over 7,500 square kilometres in British Columbia and 1,700 square kilometres in Washington state. Our tribe, the Okanagan Nation tribe, is cut in half by the Canada-U.S. border, with 12 of our tribes in Washington state and seven in Canada. Our lands are unceded. We have never sold nor ceded our lands through treaty or any other legal mechanism.⁵⁵

Regardless of whether they signed treaties or not, First Nations lands were taken and continue to be taken for a variety of purposes, including railways, highways, natural resource development, the creation of national, provincial and territorial parks and military purposes.⁵⁶ For example, Larry Innes, Barrister and Solicitor, explained that:

Few Canadians know of the histories of [I]ndigenous dispossession that have followed the designation of places like Banff or the consequences that have followed. To set a

52 Six Nations of the Grand River, *Brief*, p. 1.

53 Cold Lake First Nation, *Brief*, p. 3.

54 INAN, *Evidence*, 17 October 2023, Albert Marshall Jr., 1625; INAN, *Evidence*, 19 October 2023, Adam Munnings, 1545; INAN, *Evidence*, 14 June 2023, Lauren Terbasket, Policy Advisor, Negotiator, Lower Similkameen Indian Band, 1655.

55 INAN, *Evidence*, 14 June 2023, Lauren Terbasket, 1655.

56 Cold Lake First Nation, *Brief*, p. 2; Mikisew Cree First Nation, *Brief*, p. 5; INAN, *Evidence*, 5 October 2023, Larry Innes, Barrister and Solicitor, As an individual 1635; INAN, *Evidence*, 19 October 2023, Adam Munnings, 1545.



single example, when Wood Buffalo National Park was created in the northeast corner of Alberta and the southeast corner of the Northwest Territories, the government assumed that the lands were taken up and that all [I]ndigenous rights to that area were extinguished. Denésuliné peoples, in particular, were driven from the park, their homes burned and their belongings left behind.⁵⁷

First Nations received few benefits from development on their lands, a situation that continues today.⁵⁸ For example, the Algonquins of Pikwàkanagàn’s traditional territory “includes the Kitchissippi (or Ottawa River) and the lands of the Ottawa Valley and surrounding water shed stretching across Ontario and Québec.”⁵⁹ The Algonquins of Pikwàkanagàn explained that:

With 1.2 million people living and working within our traditional territory and 84 active municipal jurisdictions fully and partially operating here, Pikwàkanagàn sees very little to none of the benefits produced from our lands. Resource extraction projects, including logging and mining, and other means of profit, like tourism, continue to our economic and jurisdictional exclusion.⁶⁰

First Nations’ Resistance to the Dispossession of Their Lands

First Nations have fought, and continue to fight, for the return of their lands. For example, the Algonquins of Pikwàkanagàn First Nation noted that “[s]ince 1772, nearly 40 petitions from our Nation to the Crown requesting protection of our lands and waters from encroachment via settlement fell on deaf ears.”⁶¹ In British Columbia, where few treaties were signed, some First Nations travelled to Ottawa in 1927 to argue that they had been “unlawfully dispossessed.”⁶² The federal government responded, “by rejecting our claim and removing our ability to raise funds that defend our rights.”⁶³

Historically, First Nations faced challenges accessing and defending their lands through the legal system. From 1927 to 1951, the *Indian Act* prohibited First Nations from raising funds to pursue their claims against the federal government, severely limiting their

57 INAN, *Evidence*, 5 October 2023, Larry Innes, 1635

58 Cold Lake First Nation, *Brief*, p. 2; INAN, *Evidence*, 19 October 2023, Adam Munnings, 1545; Mikisew Cree First Nation, *Brief*, p. 4; Algonquins of Pikwàkanagàn First Nation, *Brief*, p. 3–5.

59 Algonquins of Pikwàkanagàn First Nation, *Brief*, p. 1.

60 Ibid, p. 3–4.

61 Ibid, *Brief*, p. 1.

62 INAN, *Evidence*, 5 June 2023, Clarence T. (Manny) Jules, Chief Commissioner, First Nations Tax Commission, 1555.

63 Ibid.

ability to obtain legal assistance. Hayden King suggested that First Nations faced challenges pursuing their claims through the legal system:

As a common-law legal infrastructure became entrenched in Canada, [I]ndigenous [P]eople had few avenues to express the view that treaties were not negotiated to surrender or to cede, but to share in a spirit of mutual respect...Elsewhere in the country, treaties simply were not made, which, even by Canadian law inherited from the English, meant that [I]ndigenous [P]eople still had some form of title to it. However, here, too, [I]ndigenous [P]eople have struggled to find an audience as the constitutional division of powers has carved up our territories and the responsibility for them among the provinces, along with deploying the concept of Crown lands.⁶⁴

As will be discussed in the following sections of this report, First Nations continue to experience challenges pursuing their claims through the courts today.

Scrip and Métis Dispossession

The committee heard that, as with First Nations, Canada did not fulfil its promises to the Métis. Audrey Poitras, former president of the Métis Nation of Alberta, told the committee:

In October 1869, a group of Métis led by Louis Riel chased Canadian surveyors out of Manitoba to defend our Métis lands. Weeks later, they declared a provisional government in Manitoba to negotiate for the protection of our lands, and they did, but Canada failed to fulfill its promise. The Métis were persecuted, uprooted and scattered. Canada moved across the Prairies, making treaties with our [F]irst [N]ations, but did nothing for us... In 1885, we declared a second provisional government. That year, at Batoche, Canada tried to break us. They captured Riel, held a kangaroo trial and killed him, but we were still here.⁶⁵

Métis were dispossessed of their lands through the scrip system. Scrip was an individual allocation of land or money offered to Métis in exchange for their rights to land. Scrip was issued in some parts of Canada. Most Métis lands were purchased by speculators.⁶⁶ According to the witness, “[b]y the end of the [19th] century, Canada had reduced the Métis—the Otipemisiwak—to squatting on Crown land on the fringes of white towns and being called the road allowance people.”⁶⁷ With the exception of the Métis settlements in

64 INAN, *Evidence*, 24 October 2023, Hayden King, 1540.

65 INAN, *Evidence*, 14 June 2023, Audrey Poitras, President, Métis Nation of Alberta, 1700.

66 Ibid.

67 Ibid.



Alberta, most Métis communities do not have a collectively-owned land base today.⁶⁸ Audrey Poitras argued that “[t]he wrongs of scrip have not been reconciled. Our rights as a nation have yet to be fully respected.”⁶⁹

Effects of Indigenous Land Dispossession

The dispossession of Indigenous lands continues today and has lasting intergenerational effects on Indigenous Nations’ laws, health, well-being, family relationships, governance, cultures, languages and ways of life, which are all tied to the land.⁷⁰ The Inuvialuit Regional Corporation explained that the “annexation of land” has contributed to socioeconomic issues in the western Arctic including “the lack of healing, the high suicide rates, food insecurity, and the challenge of keeping cultural practices alive as a result of assimilationist policies that disrupt the connection that Indigenous [P]eople and the land share.”⁷¹ First Nations were excluded from economic opportunities and separated from the Canadian economy by being forced on reserves.⁷² While many First Nations lands are economically developed, First Nations receive a fraction of economic benefits and often have limited say in development despite its effects on Aboriginal and treaty rights.⁷³ The following sections outline Indigenous Peoples’ visions for land restitution and available pathways for the return of lands to Indigenous Nations.

RETURNING LAND TO INDIGENOUS NATIONS

Today, many First Nations have little land remaining.⁷⁴ Stephen Buffalo, President and Chief Executive Officer of the Indian Resource Council Inc., stated that “[o]ur reserve

68 Ibid., 1705; Lac Ste. Anne Métis Community Association, [Brief](#), p. 2–3.

69 INAN, [Evidence](#), 14 June 2023, Audrey Poitras, 1705.

70 British Columbia Specific Claims Working Group, [Brief](#), p. 4; Inuvialuit Regional Corporation, [Brief](#), p. 3; INAN, [Evidence](#), 10 May 2023, Ellen Gabriel, 1645, 1715; Cold Lake First Nation, [Brief](#), 2; Mikisew Cree First Nation, [Brief](#), p. 5.

71 Inuvialuit Regional Corporation, [Brief](#), p. 3.

72 INAN, [Evidence](#), 24 October 2023, Shannin Metatawabin, Chief Executive Officer, National Aboriginal Capital Corporations Association, 1555; INAN, [Evidence](#), 17 October 2023, Stephen Buffalo, President and Chief Executive Officer, Indian Resource Council Inc., 1605.

73 For example, see: INAN, [Evidence](#), 17 October 2023, Stephen Buffalo, 1605; Algonquins of Pikwàkanagàn First Nation, [Brief](#), p. 4–5; INAN, [Evidence](#), 24 October 2023, Shannin Metatawabin, 1555; Cold Lake First Nation, [Brief](#); Mikisew Cree First Nation, [Brief](#), p. 4; Innu Takuaikan Uashat mak Mani-Utenam, [Brief](#), p. 7.

74 See for example: INAN, [Evidence](#), 17 October 2023, Stephen Buffalo, 1605; INAN, [Evidence](#), 17 October 2023, Albert Marshall Jr., 1625; INAN, [Evidence](#), 10 May 2023, Ellen Gabriel, 1635; INAN, [Evidence](#), 14 June 2023, Chief Gordon BlueSky, Brokenhead Ojibway Nation, Treaty One Nation, 1750; INAN, [Evidence](#), 17 October 2023, Shady Al Hafez, Research Fellow, Yellowhead Institute, 1725.

population is growing, the fastest-growing population in Canada, but our lands are not growing. In fact, they are shrinking, especially our traditional lands.”⁷⁵ At the same time, as reserve lands are shrinking, First Nations are experiencing an increase in demand for “housing infrastructure and development.”⁷⁶ Many Indigenous Nations continue to call for the return of their lands.⁷⁷ Land restitution is about correcting injustices and respecting Indigenous rights. It includes restoring Indigenous laws, governance, relationships and decision-making authority over the land; providing fair access to resources such as wildlife; addressing current inequities between Indigenous Peoples and other Canadians; and providing access to capital and support for capacity development to ensure that Indigenous Nations can share in Canadian prosperity.⁷⁸ Land restitution could take many forms including apologies, compensation and Indigenous stewardship over lands.⁷⁹

While approaches to land restitution may vary by Nation, witnesses identified common characteristics.⁸⁰ Land restitution must be rooted in Indigenous laws and governance, an understanding of treaties (including the idea that all land was meant to be shared), and a “broader multi-generational and intersectional approach of restoring relationships, culture and language within [I]ndigenous communities.”⁸¹ Several witnesses described UNDRIP as the foundation for land restitution.⁸² Witnesses flagged that the current UNDRIP action plan, which situates the implementation of UNDRIP as part of reconciliation, does not refer to the concept of restitution and compensation for lands, territories and resources.⁸³

75 INAN, [Evidence](#), 17 October 2023, Stephen Buffalo, 1605.

76 Ibid.

77 INAN, [Evidence](#), 14 June 2023, Audrey Poitras, 1700; INAN, [Evidence](#), 5 June 2023, Clarence T. (Manny) Jules, 1555; INAN, [Evidence](#), 24 October 2023, Hayden King, 1540; Algonquins of Pikwàkanagàn First Nation, [Brief](#), p. 1–2.

78 INAN, [Evidence](#), 10 May 2023, Ellen Gabriel, 1635; INAN, [Evidence](#), 10 May 2023, Dahti Tsetso, 1820; INAN, [Evidence](#), 5 October 2023, Celeste Haldane, Chief Commissioner, British Columbia Treaty Commission, 1720; Algonquins of Pikwàkanagàn First Nation, [Brief](#), p. 5; INAN, [Evidence](#), 17 October 2023, Shady Al Hafez, 1725; INAN, [Evidence](#), 17 October 2023, Stephen Buffalo, 1610; First Nations Financial Management Board, [Brief](#), p. 2–3; Nahnda Garlow, [Brief](#), p. 5–6; INAN, [Evidence](#), 5 October 2023, Harold Calla, 1645.

79 Innu TakuaiKAN Uashat mak Mani-Utenam, [Brief](#), p. 7; Mikisew Cree First Nation, [Brief](#), p. 1; Assembly of First Nations, [Brief](#), p. 3–4; Cold Lake First Nation, [Brief](#), p. 4–5.

80 INAN, [Evidence](#), 17 October 2023, Stephen Buffalo, 1605; James N. Tanner, [Brief](#), p. 4.

81 British Columbia Specific Claims Working Group, [Brief](#), p. 4; Mikisew Cree First Nation, [Brief](#), p. 3; INAN, [Evidence](#), 10 May 2023, Ellen Gabriel, 1635.

82 For example, see: Innu TakuaiKAN Uashat mak Mani-Utenam, [Brief](#), p. 5; Assembly of First Nations, [Brief](#), p. 2–3; Cold Lake First Nation, [Brief](#), p. 4–5; Algonquins of Pikwàkanagàn First Nation, [Brief](#), p. 2; First Nations Summit, [Brief](#), p. 1.

83 INAN, [Evidence](#), 31 May 2023, Harold Calla, 1650; First Nations Summit, [Brief](#), p. 2–3.



The committee heard that the Government of Canada is “bound by international law and domestic law to provide adequate and effective restitution to First Nations who have been dispossessed of their lands, resources, and territories.”⁸⁴ Where the return of lands is impossible or not the approach preferred by First Nations, restitution would include “just, fair and equitable compensation.”⁸⁵ Today, Indigenous Nations can use a variety of approaches to obtain access to their lands including through federal policies and processes, the courts, international bodies or by asserting their own jurisdiction. The committee heard that the Government of Canada has legal obligations to return land to First Nations in an honourable manner, to fulfil commitments in treaties and agreements.⁸⁶ Indigenous Nations may be able to access lands through federal policies and processes for specific claims, modern treaties and additions to reserve. While some Indigenous Nations have achieved success in these processes, others argued that they are ineffective in returning land to Indigenous Nations.⁸⁷ For example, Hayden King noted that:

Today, when [I]ndigenous [P]eople call for land back, especially in those areas where no treaties have been made, the federal government can conveniently hide behind federalism. In this atmosphere of fictive legal possession of [I]ndigenous lands, how can we get land back? There are a variety of tools currently deployed, most commonly the specific and comprehensive claims processes, but they rarely transfer land. Instead, they provide compensation as a form of redress to buy land back and, in some cases—and this was the former Crown-[I]ndigenous Relations minister's position on land back—turn it into Indian land via the additions to reserve policy. These tools are inadequate.⁸⁸

Where Indigenous Nations cannot resolve their claims through federal policies and processes, some turn to lengthy court proceedings or international bodies. Litigation may lead to further negotiations with federal and provincial governments, even if a court rules in favour of First Nations.⁸⁹ The committee heard that the courts have defined Aboriginal rights narrowly.⁹⁰ Proving the existence of Aboriginal title in court can also be difficult since “First Nations must rebut the presumption that Canada owns the

84 Assembly of First Nations, *Brief*, p. 6.

85 *Ibid.*, p. 4.

86 *Ibid.*, p. 2.

87 For example, see: INAN, *Evidence*, 17 October 2023, Shady Al Hafez, 1725; British Columbia Specific Claims Working Group, *Brief*, p. 2; Assembly of First Nations, *Brief*, p. 4–5; INAN, *Evidence*, 10 May 2023, Dr. Bruce McIvor, 1735, 1740.

88 INAN, *Evidence*, 24 October 2023, Hayden King, 1540.

89 INAN, *Evidence*, 10 May 2023, Dr. Bruce McIvor, 1755; First Nations Summit, *Brief*, p. 3.

90 INAN, *Evidence*, 10 May 2023, Dr. Bruce McIvor, 1750, 1800; INAN, *Evidence*, 24 October 2023, Hayden King, 1600, 1605.

land by virtue of the assertion of Crown sovereignty.”⁹¹ Finally, technical defenses, such as provincial statutes of limitation, make suing the federal and provincial governments more difficult.⁹² Taken together, lengthy and costly litigation normally does not benefit Canada or First Nations and, in the view of some witnesses, “leads neither to a respectful relationship nor to the sound administration of justice.”⁹³

Some Indigenous Nations are unilaterally asserting, or have announced their intention to unilaterally assert, their rights and jurisdiction over their lands.⁹⁴ Shady Al Hafez, Research Fellow at the Yellowhead Institute told the committee that:

In these circumstances, community members and elected leaders have been served injunctions and been surveyed, arrested and harassed by police, and have experienced racism and violence from Canadians. This reinforces the notion that there is only one acceptable way to seek restitution, and that is through government-developed and sanctioned processes alone.⁹⁵

Ellen Gabriel, Indigenous Land Defender from Kanehsatà:ke, explained that:

If we contest development, we are incessantly forced into costly colonial court systems necessitating lawyers who uphold colonial laws. As land defenders, we do not have the budget to do this, so we are considered the troublemakers in our communities... When we defend our rights, we are criminalized.⁹⁶

Indigenous Nations spend lengthy periods of time seeking justice for the dispossession of their lands through a combination of approaches. As explained by Six Nations of the Grand River:

On May 17, 2011, at the UN’s Tenth Session of The Permanent Forum on Indigenous Issues, SNGR [Six Nations of the Grand River] hosted our first side event presenting our challenges in seeking justice for our Land Rights with Canada. After 20 years of in-depth research and trying to resolve our Land Rights under Canada’s Specific Claims Policy, we had no choice but to revert to the courts... We are now in our 48th year of this battle, seeking to hold Canada and Ontario accountable for our lost lands and funds.⁹⁷

91 Assembly of First Nations, [Brief](#), p. 5.

92 Ibid.

93 Ibid.; Innu TakuaiKAN Uashat mak Mani-Utenam, [Brief](#), p. 5, 6.

94 INAN, [Evidence](#), 17 October 2023, Shady Al Hafez, 1725; Six Nations of the Grand River, [Brief](#), p. 4—5; INAN, [Evidence](#), 14 June 2023, Lauren Terbasket, 1655.

95 INAN, [Evidence](#), 17 October 2023, Shady Al Hafez, 1725.

96 INAN, [Evidence](#), 10 May 2023, Ellen Gabriel, 1710.

97 Six Nations of the Grand River, [Brief](#), p. 2.



The Assembly of First Nations wrote in a brief that “[d]espite the Government of Canada’s repeated commitments to return lands to First Nations, no effective mechanisms currently exist for land restitution in a fair and timely manner.”⁹⁸ The committee believes that as part of reconciliation, change is required to ensure land is returned to Indigenous Nations in a manner respecting their rights. The following sections explore potential solutions, including reforming federal policies and exploring alternative approaches to returning land. While the committee is aware of Indigenous concerns about federal policies and processes, it believes they can be modified to ensure land is returned to Indigenous Nations.

Reforming Federal Policies and Processes

The federal government developed policies for settling claims following litigation brought forward by representatives of some British Columbia First Nations. In *Calder et al. v. Attorney-General of British Columbia* (1973), the Supreme Court of Canada recognized Aboriginal title, noting that Indigenous Peoples’ historic occupation of the land gave rise to legal rights that had survived European settlement.⁹⁹ In 1973, the federal government developed a policy to address two broad categories of claims – specific and comprehensive land claims (also known as modern treaties).¹⁰⁰ Over time, separate policies for each type of claim were developed.

Some Indigenous Nations have reclaimed access to, and governance over, some of their lands through the federal specific claims, modern treaty and/or additions to reserve policies and processes. Witnesses described examples of returned lands being used to support economic opportunities through, for example, the creation of urban reserves. The committee also heard that federal policies and processes are lengthy, expensive, outdated and often provide compensation for lands rather than land transfers.¹⁰¹ These processes are not available to all Indigenous Nations since, for the most part, Métis cannot participate.¹⁰² The Assembly of First Nations said that “[t]he Government of Canada must take immediate steps to overhaul its policy framework to recognize and

98 Assembly of First Nations, *Brief*, p. 4.

99 *Calder et al. v. Attorney-General of British Columbia*, [1973] SCR 313.

100 Government of Canada, *General Briefing Note on Canada’s Self-government and Comprehensive Land Claims Policies and the Status of Negotiations*.

101 INAN, *Evidence*, 24 October 2023, Hayden King, 1540; INAN, *Evidence*, 17 October 2023, Shady Al Hafez, 1725; INAN, *Evidence*, 17 October 2023, Stephen Buffalo, 1605.

102 Lac Ste. Anne Métis Community Association, *Brief*, p. 2; INAN, *Evidence*, 14 June 2023, Jason Madden, Lawyer, 1725.

return First Nations lands and to ensure judicial processes are a viable alternative for First Nations.”¹⁰³

While Indigenous Nations continue to raise long-standing concerns about the negotiation and implementation of specific claims and modern treaties, improvements to policies and processes have not yet occurred. The committee is aware of Indigenous Nations’ concerns related to the negotiation and implementation of modern treaties. Many independent reviewers have confirmed that the Government of Canada is not fully meeting its obligations under the agreements, neither in spirit nor intent. Consequently, the modern treaties fail to achieve their overarching aims. The committee acknowledges these concerns and believes that reforms are possible. The following sections provide an overview of witness testimony concerning modern treaties, specific claims and additions to reserve.

Modern Treaties

The 26 modern treaties were signed¹⁰⁴ to set out the land and resource rights of the Indigenous signatories and improve the social, cultural, political and economic well-being of the Indigenous Nations concerned. Also referred to as comprehensive land claim agreements, modern treaties are generally signed to settle Indigenous title and rights. Modern treaties are nation-to-nation relationships between Indigenous Nations, the Crown, the provinces and, in some cases, a territory. Modern treaties differ from historical treaties signed before 1975 in many ways. For example, modern treaties are more detailed than historical treaties, are negotiated over years as opposed to days and the parties are represented by lawyers and negotiators.¹⁰⁵ The following section will discuss witness testimony about modern treaties in Canada.

Witnesses had differing views about modern treaties. For example, the committee heard concerns about the premise of the negotiation of modern treaties. Dr. Bruce McIvor, Partner at First People’s Law, argued that modern treaties are not a way to obtain land because, like past historical policies, they are “about removing [I]ndigenous [P]eople from their lands so that non-[I]ndigenous [P]eople can exploit them.”¹⁰⁶ Other witnesses

103 Assembly of First Nations, *Brief*, p. 6.

104 See, for example: *James Bay and Northern Quebec Agreement*, 1975; *The Northeastern Quebec Agreement*, 1978.

105 Land Claims Agreements Coalition, *Differences between Historical and Modern Treaties*.

106 INAN, *Evidence*, 10 May 2023, Dr. Bruce McIvor, 1735.



also discussed modern treaties. For example, Larry Innes, Barrister and Solicitor, said that:

In the settlement of modern land claims, you see the large transfers of lands from Crown governments to [I]ndigenous governments with the recognition of their prior ownership, depending on the perspective you take. This then leads to the development and institution of [I]ndigenous laws over those lands, and the opportunities to create both jobs and wealth from those lands for those communities as a part of Canada.¹⁰⁷

On the other hand, Celeste Haldane, Chief Commissioner of the British Columbia Treaty Commission, described modern treaties as “a true sharing of constitutional sovereignty” which “operationalize” UNDRIP.¹⁰⁸

Other witnesses raised concerns about the policy for the negotiation of modern treaties outside of British Columbia, known as the Comprehensive Land Claims Policy. The Assembly of First Nations argued that the Comprehensive Land Claims Policy does not align with UNDRIP and is “inconsistent with Canadian jurisprudence.”¹⁰⁹ Some witnesses suggested that this policy needs to be examined and replaced.¹¹⁰ The committee heard that the federal government is currently “distancing itself from the [Comprehensive Land Claims] Policy.”¹¹¹

Other witnesses discussed factors contributing to delays in the negotiation of modern treaties including the need for certainty about land rights, federal government departments operating in silos, outdated negotiation mandates, the short length of negotiation meetings, and the turnover of federal negotiators.¹¹² Celeste Haldane noted that recent changes, including the co-development of a policy to guide modern treaty negotiations in British Columbia (known as the *Recognition and Reconciliation of Rights Policy for Treaty Negotiations in British Columbia* (BC RRR policy)) have expedited negotiations.¹¹³ Moreover, once modern treaties are signed, delays in passing federal

107 INAN, [Evidence](#), 5 October 2023, Larry Innes, 1705.

108 INAN, [Evidence](#), 5 October 2023, Celeste Haldane, 1555.

109 Assembly of First Nations, [Brief](#), p. 4.

110 INAN, [Evidence](#), 17 October 2023, Shady Al Hafez, 1735; INAN, [Evidence](#), 17 October 2023, Chief, Byron Louis, Okanagan Indian Band, 1740; Assembly of First Nations, [Brief](#), p. 4.

111 Assembly of First Nations, [Brief](#), p. 4.

112 INAN, [Evidence](#), 5 June 2023, Shannon Cumming, Legal Counsel, Northwest Territory Métis Nation, 1600, 1615; INAN, [Evidence](#), 5 October 2023, Larry Innes, 1650; INAN, [Evidence](#), 24 October 2023, Hayden King, 1600.

113 INAN, [Evidence](#), 5 October 2023, Celeste Haldane, 1555; Government of Canada, [Recognition and Reconciliation of Rights Policy for treaty negotiations in British Columbia](#).

ratification legislation may affect First Nations community support for a modern treaty.¹¹⁴

Witnesses identified potential solutions to address these challenges, including:

- that all levels of government (including federal departments) adopt and embrace the BC RRR policy;¹¹⁵
- that governments take the necessary time and provide sufficient resources to fully engage at modern treaty negotiation tables;¹¹⁶
- more flexibility in federal negotiation mandates;¹¹⁷
- that Canada “expeditiously conclude a policy annex to the [BC] RRR Policy on the constitutional status of lands and related jurisdictional issues with BC [British Columbia] and Negotiating Nations;”¹¹⁸ and
- that Canada work with negotiating First Nations in British Columbia to develop and fund mechanisms to gather data on the valuation of lands, territories and resources in accordance with the co-development commitment in the BC RRR policy.¹¹⁹

The committee believes that modern treaties can contribute to reconciliation. The committee recognizes that the federal government has distanced itself from the Comprehensive Land Claims Policy, but it believes a clear statement outlining the federal government’s approach to modern treaty negotiations is needed. For this reason, the committee recommends:

Recommendation 1

That Crown-Indigenous Relations and Northern Affairs Canada make information publicly available about the status of the Comprehensive Land Claims Policy and its

114 British Columbia Treaty Commission, *Brief*, p. 4.

115 INAN, *Evidence*, 5 October 2023, Larry Innes, 1650; INAN, *Evidence*, 5 October 2023, Celeste Haldane, 1725.

116 INAN, *Evidence*, 5 June 2023, Shannon Cumming, 1615.

117 Ibid.

118 First Nations Summit, *Brief*, p. 5.

119 Ibid.



approach to the negotiation of modern treaties with Indigenous Nations outside of British Columbia.

As the federal government distances itself from the Comprehensive Land Claims Policy, the committee believes it should consider how the federal government’s approach to negotiations aligns with the implementation of the *United Nations Declaration on the Rights of Indigenous Peoples*. The committee therefore recommends:

Recommendation 2

That Crown-Indigenous Relations and Northern Affairs Canada work with Indigenous Nations to align its approach to the negotiation of modern treaties with the *United Declaration on the Rights of Indigenous Peoples*.

The committee recognizes the frustrations of Indigenous Nations who have been in negotiation for decades. Negotiation mandates determine what federal negotiators can offer during the negotiation of modern treaties. The committee agrees that the process to develop negotiation mandates need to be reviewed. Therefore, the committee recommends:

Recommendation 3

That Crown-Indigenous Relations and Northern Affairs Canada work with Indigenous Nations to undertake a review of the process to develop negotiation mandates for modern treaties.

Specific Claims

Specific claims are “historical grievances brought against the federal government by First Nations when Canada fails to fulfill its lawful obligations as set out in statutes, treaties, agreements, or the Crown’s reserve creation policies.”¹²⁰ Specific claims are resolved through the Specific Claims Policy and process. The following section will discuss First Nations successes and challenges in the Specific Claims Policy and process as well as potential solutions.

Some First Nations have found success resolving their claims through the specific claims process.¹²¹ Today there are still hundreds of unresolved specific claims in British Columbia alone. The British Columbia Specific Claims Working Group argued that these unresolved

120 British Columbia Specific Claims Working Group, *Brief*, p. 1.

121 INAN, *Evidence*, 31 May 2023, Sean Willy, 1635; Cold Lake First Nation, *Brief*, p. 3.

claims reflect “First Nations’ widespread dispossession through the illegal appropriation and alienation of their lands.”¹²²

The committee heard concerns about the Specific Claims Policy. According to the Assembly of First Nations, the Specific Claims Policy does not meet “the minimum standards for redress and restitution” in UNDRIP because specific claims settlements do not usually provide land. There is also a conflict of interest since Canada assesses claims against itself in the specific claims process.¹²³ The British Columbia Specific Claims Working Group further explained that often:

First Nations are under immense pressure to accept one-time cash payments. In negotiations, Canada emphasizes one-time financial payments as the preferred and most expedient settlement option and the means to facilitate the purchase of private lands ‘on a willing-seller/willing-buyer basis.’¹²⁴

The committee heard about the challenges First Nations faced in accessing land through the Specific Claims Policy and process. The committee heard that the specific claims process requires First Nations to agree to the federal or provincial interpretation of pre-1975 treaties before entering into discussions about land restitution.¹²⁵ Delays in the negotiation of specific claims settlements, caused by factors such as limited staff at Indigenous Services Canada and the Department of Justice Canada, may affect First Nations’ opportunities to purchase land.¹²⁶ While at various points during the specific claims process, First Nations can choose to submit their claims to an independent body known as the Specific Claims Tribunal, it can only award a maximum of \$150 million in compensation which may create a barrier to land return.¹²⁷ Ultimately, the committee heard that further discussions with First Nations on options for land restitution through specific claims are needed, including around reforming the land transfer process from third parties and alternative models to expand the willing-seller willing-buyer framework.¹²⁸

The committee believes that, with the appropriate changes, the specific claims process could contribute to reconciliation and facilitate the return of Indigenous lands. The

122 British Columbia Specific Claims Working Group, *Brief*, p. 1.

123 Assembly of First Nations, *Brief*, p. 4, 5.

124 British Columbia Specific Claims Working Group, *Brief*, p. 2.

125 INAN, *Evidence*, 24 October 2023, Hayden King, 1600.

126 British Columbia Specific Claims Working Group, *Brief*, p. 3.

127 *Ibid.*, p. 2.

128 *Ibid.*, p. 5.



committee recognizes that the Assembly of First Nations and the Government of Canada are currently working to reform the specific claims process.¹²⁹ The committee believes that this work could examine land restitution within the specific claims process in accordance with UNDRIP. Therefore, the committee recommends:

Recommendation 4

That, as part of larger reforms to the Specific Claims Policy and process, Crown-Indigenous Relations and Northern Affairs Canada work with First Nations to:

- **identify and remove barriers which may limit the use of land as compensation for specific claims, including the \$150 million limit on monetary awards from the Specific Claims Tribunal; and**
- **align the Specific Claims Policy and process with the *United Nations Declaration on the Rights of Indigenous Peoples*.**

Treaty Land Entitlement Claims

Treaty Land Entitlement (TLE) Claims are a type of specific claim concerning First Nations who did not receive the allotted amount of reserve lands promised by Canada in the Numbered Treaties.¹³⁰ In Manitoba and Saskatchewan, First Nations and the federal government have signed framework agreements to resolve outstanding TLE claims.¹³¹ Some First Nations have successfully resolved their claims and used their land entitlements to create urban reserves, a topic that will be discussed further in the Additions to Reserve section of this report. The following section will discuss the challenges for resolving remaining TLE claims along with potential solutions.¹³²

Witnesses identified concerns with the process for resolving TLE claims including significant delays and different regional approaches for resolving third party interests.¹³³ The 1997 *Manitoba Treaty Land Entitlement Framework Agreement* provided financial compensation and lands that would be set aside as reserves for signatory First

129 Ibid., p. 1.

130 INAN, *Evidence*, 14 June 2023, Grand Chief Chris Henderson, Executive Director, Treaty Land Entitlement Committee of Manitoba Inc., 1750.

131 Ibid.

132 Ibid., 1810.

133 British Columbia Specific Claims Working Group, *Brief*, p. 3.

Nations.¹³⁴ Some witnesses raised concerns about the location of lands that some First Nations are able to purchase under the Agreement, as well as challenges working with provincial governments if the identified lands are outside of Manitoba.¹³⁵ At times, First Nations have taken Canada to court related to TLE claims. The committee heard that the TLE Committee of Manitoba Inc. was “successful in court proceedings” against Canada. A court found that a breach of obligations under the *Manitoba Treaty Land Entitlement Framework Agreement* altered the land transfer and reserve creation process in the agreement “without the written consent of our member First Nations.”¹³⁶

The 1992 *Saskatchewan Treaty Land Entitlement Framework Agreement* provided First Nations with financial compensation to purchase private or Crown land.¹³⁷ The committee heard concerns that the Government of Saskatchewan has been auctioning off Crown lands and entering into long term leases situated in First Nations’ “ancestral and traditional lands.”¹³⁸ As a result, First Nations have a limited amount of land they can acquire for the creation of reserves or to practice hunting, fishing and trapping.¹³⁹ The File Hills Qu’Appelle Tribal Council described this situation as “a breach of Treaty...which [the] government [of Saskatchewan] continues to ignore so long as they benefit by the sales and leases.”¹⁴⁰ In terms of potential solutions, the committee heard that the Office of the Treaty Commissioner in Saskatchewan could play a role in addressing TLE issues.¹⁴¹

Additions to Reserve

Through a continuation of its colonial approach, Canada makes it seem like First Nations who purchase land have a choice to keep the fee simple title of their lands or turn it into a reserve through the additions to reserve process. Reserve lands have tax-free status,

134 INAN, *Evidence*, 14 June 2023, Chris Henderson, 1745; *Framework Agreement: Treaty Land Entitlement*, 1997.

135 INAN, *Evidence*, 14 June 2023, Chris Henderson, 1810.

136 *Ibid.*, 1745.

137 *Ibid.*, 1810; Government of Saskatchewan, *Treaty Land and Entitlements*, *Saskatchewan Treaty Land Entitlement Framework Agreement*, 1992.

138 File Hills Qu’Appelle Tribal Council, *Brief*, p. 4; INAN, *Evidence*, 24 October 2023, Chief Shelley Bear, 1655.

139 File Hills Qu’Appelle Tribal Council, *Brief*, p. 4.

140 *Ibid.*

141 INAN, *Evidence*, 14 June 2023, Mary Culbertson, 1755.



but cannot be used as collateral, limiting financial and economic opportunities.¹⁴² Also, the “regulatory regime on [F]irst [N]ation [reserve] lands is not as rigorous as off-reserve lands regulatory processes,” which can provide advantages for First Nations.¹⁴³ Some First Nations choose to maintain the fee simple legal status of purchased lands which means they pay property taxes, but can use the land as collateral to access capital and have greater flexibility for businesses.¹⁴⁴ Generally, First Nations with significant resources are more likely to hold fee simple lands as they can be used to develop corporations and generate profits.¹⁴⁵

First Nations who wish to have their lands turned into a reserve can apply to do so through the Addition to Reserve Policy and process. Although Parliament could enact legislation to create a reserve, this has rarely happened because the federal government prefers the existing policy and process.¹⁴⁶ The following section will discuss the benefits of additions to reserve including the creation of urban reserves and the challenges faced by First Nations throughout the process. The final part of this section examines potential solutions to accelerate the additions to reserve process.

Additions to reserve can support the acquisition of additional lands to meet growing community needs and priorities, protect critical habitats, and improve well-being.¹⁴⁷ Some First Nations have created urban reserves through the additions to reserve process including at the site of the former Kapyong barracks in Winnipeg, Manitoba; in Swan River, Manitoba (Sapotaweyak Cree Nation); and in Vancouver, British Columbia (Squamish First Nation). Urban reserves contribute to economic growth and consequently economic reconciliation; employment; business development; the generation of own source revenue; and the creation of gathering places for First Nations living in urban centres.¹⁴⁸ Urban reserves may also benefit neighbouring non-Indigenous communities.¹⁴⁹ For example, the committee heard about how access to a wastewater facility on the English

142 INAN, [Evidence](#), 17 October 2023, Amanda Simon, 1650; INAN, [Evidence](#), 24 October 2023, Hayden King, 1600.

143 INAN, [Evidence](#), 31 May 2023, Sean Willy, 1725.

144 Ontario Land Trust Alliance, [Brief](#), p. 2–3; INAN, [Evidence](#), 31 May 2023, Sean Willy, 1725; INAN, [Evidence](#), 19 October 2023, Amanda Simon, 1650.

145 INAN, [Evidence](#), 19 October 2023, Amanda Simon, 1650.

146 Assembly of First Nations, [Brief](#), p. 5.

147 INAN, [Evidence](#), 17 October 2023, Amanda Simon, 1650; Six Nations of the Grand River, [Brief](#), p. 2, 3.

148 INAN, [Evidence](#), 24 October 2023, Shannin Metatawabin, 1555; INAN, [Evidence](#), 24 October 2023, Chief Shelley Bear, 1655; INAN, [Evidence](#), 31 May 2023, Sean Willy, 1635, 1655; INAN, [Evidence](#), 14 June 2023, Chief Gordon BlueSky, 1755, 1820.

149 First Nations Lands Advisory Board, [Brief](#), p. 2.

First Nation’s urban reserve was shared with a nearby municipality.¹⁵⁰ Sean Willy, President and Chief Executive Officer of the Des Nedhe Group explained the benefits of the wastewater facility for the surrounding communities:

The rural municipality wins with the higher tax assessment rates now that the lands are serviced by a [F]irst [N]ation. Local developers win because they can sell smaller lots at higher value due to not needing to sell large land sizes for septic fields. The local landowners win, as their land values have gone up in price because of [F]irst [N]ation involvement. The environment wins because we are moving away from lagoons or septic fields, which are predominant in Saskatchewan, to a state-of-the-art waste-water treatment facility.¹⁵¹

Despite the potential benefits, some witnesses questioned the underlying logic of the additions to reserve process.¹⁵² Hayden King, Executive Director of the Yellowhead Institute, explained that:

Let's say you have submitted a land claim and you have earned some restitution in the form of financial compensation. You take that money from your stolen land and you purchase land, and then you vest title in that land back to the federal government. The land that's been stolen from you, you've bought back, and then you turn around and give the title back to the federal government, who then transfers it to reserve status. It seems like a very strange philosophy and approach to land back, where you finally have your land back and now you're giving it to the federal government to manage.¹⁵³

Six Nations of the Grand River also noted that “Six Nations is a Sovereign Nation, so why do we do all the work, spend our own resources, merely to give the land back to Canada to dictate to us how we can use or not use our lands?”¹⁵⁴

The committee heard that the additions to reserve process is onerous and lengthy, taking often more than a decade to turn land into a reserve.¹⁵⁵ According to the Assembly of First Nations there is a “massive backlog” of proposals for additions to

150 INAN, [Evidence](#), 31 May 2023, Sean Willy, 1635.

151 Ibid., 1640.

152 INAN, [Evidence](#), 10 May 2023, Dr. Bruce McIvor, 1745; Six Nations of the Grand River, [Brief](#), p. 2–3.

153 INAN, [Evidence](#), 24 October 2023, Hayden King, 1600.

154 Six Nations of the Grand River, [Brief](#), p. 3.

155 INAN, [Evidence](#), 14 June 2023, Mary Culbertson, 1825; INAN, [Evidence](#), 14 June 2023, Philip Goulais, 1650; INAN, [Evidence](#), 17 October 2023, Stephen Buffalo, 1625; INAN, [Evidence](#), 17 October 2023, Albert Marshall Jr., 1625; INAN, [Evidence](#), 17 October 2023, Amanda Simon, 1645; INAN, [Evidence](#), 19 October 2023, Graham Marshall, 1610; INAN, [Evidence](#), 24 October 2023, Hayden King, 1600; Six Nations of the Grand River, [Brief](#), p. 2, 3.



reserve, including over 700 at various stages of completion.¹⁵⁶ Some witnesses raised concerns about the Addition to Reserve Policy which, they contend, sets out “very narrow, restricted categories under which Canada might consider adding lands.”¹⁵⁷ The committee heard that the policy:

[P]rioritizes non Indigenous property owners, makes insufficient land allocations, does not transfer non contiguous lands to Indian reserve status, and creates obstacles to land selection through conflicts with provincial and municipal governments who claim easements and subsurface rights on desired lands.¹⁵⁸

While a brief explained that the Crown has “fiduciary duties to fund and facilitate an expedited addition to reserve process,” witnesses described the additions to reserve process as costly, bureaucratic, and marred by delays.¹⁵⁹ With limited resources, First Nations are required to put together lengthy applications to participate in the process.¹⁶⁰ Factors contributing to delays throughout the process include: the absence of clear steps to follow; a lack of service standards or guidelines; a lack of effective mechanisms to address third party interests; a lack of coordination, capacity and knowledge about the process between federal, provincial and municipal governments; federal staff turnover/inadequate staffing levels; and Canada’s procedures for land acquisition.¹⁶¹ The committee heard that federal government staff spend time examining their liabilities rather than prioritizing returning lands to First Nations.¹⁶² One witness told the committee that an application for an addition to reserve was delayed due to a typo.¹⁶³ Ironically, new legal developments cause further delays, as government officials consider the implications of these decisions.¹⁶⁴ First Nations receive little guidance throughout the process and are left to navigate disputes with third parties and local municipalities,

156 Assembly of First Nations, [Brief](#), p. 5.

157 INAN, [Evidence](#), 14 June 2023, Andrew Beynon, 1710.

158 British Columbia Specific Claims Working Group, [Brief](#), p. 3.

159 INAN, [Evidence](#), 14 June 2023, Philip Goulais, 1710; INAN, [Evidence](#), 17 October 2023, Patricia Mitchell, Executive Director, Manitoba USKE, 1750; INAN, [Evidence](#), 19 October 2023, Adam Munnings, 1625; Assembly of First Nations, [Brief](#), p. 5; INAN, [Evidence](#), 24 October 2023, Hayden King, 1600; Mikisew Cree First Nation, [Brief](#), p. 6.

160 INAN, [Evidence](#), 14 June 2023, Andrew Beynon, 1710; Francis Cadeau, [Brief](#), p. 4.

161 INAN, [Evidence](#), 19 October 2023, Adam Munnings, 1545, 1625; Assembly of First Nations, [Brief](#), p. 5; Francis Cadeau, [Brief](#), p. 4; INAN, [Evidence](#), 17 October 2023, Amanda Simon, 1645; INAN, [Evidence](#), 17 October 2023, Patricia Mitchell, 1750; INAN, [Evidence](#), 17 October 2023, Stephen Buffalo, 1645; First Nations Lands Advisory Board, [Brief](#), p. 3, 4.

162 INAN, [Evidence](#), 19 October 2023, Adam Munnings, 1625.

163 INAN, [Evidence](#), 17 October 2023, Patricia Mitchell, 1750.

164 First Nations Lands Advisory Board, [Brief](#), p. 2.

and negotiate with provinces.¹⁶⁵ First Nations often lack the capacity—including funding, training and human resources—to accelerate the additions to reserve process, but the federal government does not provide funding for capacity development.¹⁶⁶

Delays in adding land to reserve create challenges for economic development. As explained by Philip Goulais, Director, Former Chief, Nipissing First Nation, Ontario, First Nations Lands Advisory Board, “[w]e don't have those lands back under clear title, which is awkward for investors and for developers. We're not able to move at the speed of business.”¹⁶⁷ Delays also hinder the resolution of TLE claims and, in such circumstances, Mary Culbertson, Treaty Commissioner, Office of the Treaty Commissioner, argued that delays represent “a continued breach of treaty.”¹⁶⁸ Taken together, the Assembly of First Nations shared its view that “the failed ATR [additions to reserve] process and the Government of Canada’s unwillingness to use legislative means to create Reserves leaves unanswered the question of whether Canada is in fact willing to create Reserves as a means of restitution.”¹⁶⁹

Some witnesses provided suggestions and recommendations, including the need for a First Nations-led approach “where communities are involved as partners at the earliest stages and not once decisions have been made or planned.”¹⁷⁰ Some First Nations-led initiatives already exist. For example, the committee heard about the work of Manitoba USKE and the National Aboriginal Land Managers Association, who build capacity and support First Nations throughout the additions to reserve process.¹⁷¹

Other recommendations from witnesses included the need to: expand First Nations reserves to encourage development, particularly in urban centres; explore broader reforms in partnership with the First Nations Lands Advisory Board (which may include amendments to the *Framework Agreement on First Nation Land Management*); revise the policy and process in accordance with UNDRIP; create an Additions to Reserve Land Institute to support First Nations and stakeholders; and consider the Organisation for

165 INAN, [Evidence](#), 14 June 2023, Chief Gordon BlueSky, 1750; INAN, [Evidence](#), 19 October 2023, Adam Munnings, 1625.

166 INAN, [Evidence](#), 14 June 2023, Mary Culbertson, 1825; INAN, [Evidence](#), 17 October 2023, Stephen Buffalo, 1640; INAN, [Evidence](#), 17 October 2023, Amanda Simon, 1645.

167 INAN, [Evidence](#), 14 June 2023, Philip Goulais, 1710.

168 INAN, [Evidence](#), 14 June 2023, Mary Culbertson, 1825.

169 Assembly of First Nations, [Brief](#), p. 5.

170 First Nations Financial Management Board, [Brief](#), p. 2.

171 INAN, [Evidence](#), 17 October 2023, Patricia Mitchell, 1715, 1750; INAN, [Evidence](#), 17 October 2023, Amanda Simon, 1630.



Economic Co-operation and Development's report *Linking Indigenous Communities with Regional Development in Canada* which includes recommendations on additions to reserve in Canada.¹⁷²

Changes to existing policies were also recommended by some witnesses, including the need to: increase flexibility; eliminate “narrow policy categories”; eliminate policy barriers (such as requirements that First Nations resolve environmental issues in advance of additions to reserve); develop a land management manual for urban reserves; and develop a dispute resolution mechanism to address third party interests.¹⁷³

Changes to the additions to reserve process were also recommended, including suggestions to “streamline ATRs [additions to reserve] which involve minor boundary adjustment or return of former reserve land to a First Nation;” “reduce or eliminate the role of federal officials in ATR [additions to reserve] submissions to the Minister;” provide increased funding and resources for geomatics; and, resolve historic addition to reserve land requests through an ombudsperson.¹⁷⁴

The committee believes that improving the Addition to Reserve Policy and process supports economic reconciliation. The committee is aware that Crown-Indigenous Relations and Northern Affairs Canada is currently working with First Nations to redesign the Addition to Reserve Policy and accelerate the processing of requests for additions to reserve. The committee believes that this work should address the concerns raised by witnesses during the study. The committee therefore recommends:

Recommendation 5

That Crown-Indigenous Relations and Northern Affairs Canada work with First Nations, provincial, territorial and municipal partners, as part of ongoing engagements on the Addition to Reserve Policy to:

- **identify and develop with First Nations a plan to address barriers in federal processes that may delay additions to reserve;**

172 First Nations Financial Management Board, *Brief*, p. 2, 4; Francis Cadeau, *Brief*, p. 2, 6; Organisation for Economic Cooperation and Development, *Linking Indigenous Communities with Regional Development in Canada*, 21 January 2020; First Nations Lands Advisory Board; *Framework Agreement on First Nation Land Management*, 1996.

173 INAN, *Evidence*, 17 October 2023, Amanda Simon, 1650; First Nations Lands Advisory Board, *Brief*, p. 4; Francis Cadeau, *Brief*, p. 4, 6.

174 First Nations Lands Advisory Board, *Brief*, p. 4; Francis Cadeau, *Brief*, p. 2–4.

- **enhance First Nations capacity to develop proposals for additions to reserve and participate in the additions to reserve process; and**
- **work with First Nations to align the Addition to Reserve Policy and process with the *United Nations Declaration on the Rights of Indigenous Peoples*.**

The committee is aware that in the past, First Nations have made several efforts to reform the Addition to Reserve Policy and process.¹⁷⁵ The committee wishes to monitor ongoing discussions to ensure they result in changes that address the long-standing concerns of First Nations. Therefore, the committee recommends:

Recommendation 6

That Crown-Indigenous Relations and Northern Affairs Canada provide each House of Parliament with annual progress reports on engagements to redesign the Addition to Reserve Policy beginning in 2024.

The committee agrees that urban reserves can be an important success story for Canada, providing benefits to First Nations communities and all Canadians. The committee believes that targeted support is needed to address the unique realities of creating reserves in urban centres. For this reason, the committee recommends:

Recommendation 7

That Crown-Indigenous Relations and Northern Affairs Canada and Indigenous Services Canada work with First Nations to develop a strategy to reduce barriers at the federal level for First Nations seeking to create a reserve in urban centres.

Exploring Alternative Approaches to Land Restitution

The committee heard that, in many cases, existing federal policies and the courts are not effective avenues for Indigenous Nations seeking the return of their lands.¹⁷⁶ The following section will discuss witness ideas for broad reforms and specific changes that could facilitate land restitution.

175 Assembly of First Nations, *Brief*, p. 5.

176 For example, see: *Ibid.*, p. 6.



Broad Reforms to Support Land Restitution

Witnesses suggested broad reforms to return land to Indigenous Nations outside of existing federal policies and processes, including:

- that the Government of Canada move towards recognizing and implementing Aboriginal title over specific parcels of land outside modern treaty processes;¹⁷⁷
- the establishment of “a fair, independent, impartial, open and transparent process, giving due recognition to Indigenous [P]eoples’ laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of Indigenous [P]eoples pertaining to their lands, territories and resources, as per Article 27 of the declaration [UNDRIP];”¹⁷⁸
- the creation of an Indigenous Rights Commission with a tribunal to make decisions on matters related to Indigenous rights;¹⁷⁹ and
- the development of a national land restitution centre; a framework to discuss the meaning and implementation of historical and modern treaties; and the creation of a tax-free way to reclaim land and fee simple title.¹⁸⁰

Ultimately, the committee heard that options for land restitution must be developed with Indigenous Nations.¹⁸¹ The Assembly of First Nations believed the exploration of additional mechanisms for land restitution could take place as part of the Government of Canada’s work to implement UNDRIP.¹⁸²

While the committee is recommending reforms to federal policies and processes, it also believes that the Government of Canada could explore new solutions, in consultation and cooperation with Indigenous Nations, which may enable Indigenous Nations to

177 INAN, *Evidence*, 10 May 2023, Dr. Bruce McIvor, 1740; Algonquins of Pikwàkanagàn First Nation, *Brief*, p. 2; Mikisew Cree First Nation, *Brief*, p. 6.

178 Innu TakuaiKAN Uashat mak Mani-Utenam, *Brief*, p. 5.

179 INAN, *Evidence*, 14 June 2023, Chief Gordon BlueSky, 1830.

180 INAN, *Evidence*, 24 October 2023, Hayden King, 1540.

181 INAN, *Evidence*, 17 October 2023, Amanda Simon, 1655; Innu TakuaiKAN Uashat mak Mani-Utenam, *Brief*, p. 8; First Nations Lands Advisory Board, *Brief*, p. 4; Assembly of First Nations, *Brief*, p. 6.

182 Assembly of First Nations, *Brief*, p. 6.

access and use their lands in a manner that meets their needs and priorities. For this reason, the committee recommends:

Recommendation 8

That Crown-Indigenous Relations and Northern Affairs Canada, in partnership with Indigenous Nations, explore approaches to land restitution outside of the Comprehensive Land Claims Policy, the *Recognition and Reconciliation of Rights Policy for treaty negotiations in British Columbia*, the Specific Claims Policy and the Addition to Reserve Policy, such as recognizing and implementing Aboriginal title over specific parcels of land outside modern treaty processes and establishing a process to adjudicate the rights of Indigenous Nations pertaining to their lands, territories and resources in accordance with the *United Nations Declaration on the Rights of Indigenous Peoples*, and that the department provide each House of Parliament with a progress report on these efforts by December 2024.

Recommendation 9

That the Government of Canada work with Indigenous Nations to identify and establish new approaches to respond to Indigenous Nations defending their lands.

Recommendation 10

That the Government of Canada work with Indigenous Nations to create an Indigenous Rights Commission and Tribunal to render decisions in disputes concerning Indigenous Rights.

Recommendation 11

That the Government of Canada work with Indigenous Nations to create a national land restitution centre.

Recommendation 12

That the Government of Canada work with First Nations to develop a framework to discuss the meaning and implementation of historic treaties.

Recommendation 13

That the Government of Canada work with Indigenous Nations to explore the creation of tax-free mechanisms to reclaim land and fee simple title.



Facilitating Land Donations to Indigenous Nations

The committee heard that land trusts could be a mechanism to return lands to Indigenous Nations. Land trusts are usually not-for-profit charitable organizations focused on conservation of cultural and/or natural heritage.¹⁸³ Land trusts “work with landowners and community members to obtain funds and land donations (and sometimes purchases) within the existing state legal system[emphasis in original].”¹⁸⁴ Indigenous land trusts can enable Indigenous Nations “to assert their decision-making authority over privately held lands in their territories.”¹⁸⁵ Current estimates indicate that there are approximately a dozen Indigenous land trusts across Canada.¹⁸⁶

Witnesses made recommendations concerning support for Indigenous land trusts and ways to facilitate related land donations. For example, some witnesses recommended that individuals interested in donating land to First Nations should have access to tax credits.¹⁸⁷ Current federal programs provide tax incentives for donations of land for public purposes, but do not cover donations of land to Indigenous Nations or organizations.¹⁸⁸ The committee heard that the development of a federally legislated model of tax credits could look at relevant land boards in the United States that facilitate the process for Native American communities to purchase land from willing sellers.¹⁸⁹

The Ontario Land Trust Alliance (OLTA) recommended exemptions/payments for property taxes for Indigenous-held lands whether donated to, or purchased by, Indigenous governments and organizations through, for example, compensation from land claim settlements.¹⁹⁰ The OLTA noted that the Boy Scouts, cemeteries, mining buildings, theatres, and amusement rides in Ontario are all exempt from property taxes.¹⁹¹

183 Ontario Land Trust Alliance, *Brief*, p. 1.

184 Ibid.

185 Conservation through Reconciliation Partnership Leadership Circle, *Brief*, p. 2.

186 Ontario Land Trust Alliance, *Brief*, p. 2.

187 INAN, *Evidence*, 5 June 2023, Clarence T. (Manny) Jules, 1625; Ontario Land Trust Alliance, *Brief*, p. 5.

188 Ontario Land Trust Alliance, *Brief*, p. 4.

189 INAN, *Evidence*, 5 June 2023, Clarence T. (Manny) Jules, 1625.

190 Ontario Land Trust Alliance, *Brief*, p. 4–5.

191 Ibid., p. 5.

The committee agrees with witnesses that, if properly supported, Indigenous land trusts could promote land restitution to Indigenous Nations. The committee therefore recommends:

Recommendation 14

That the Government of Canada, in partnership with Indigenous Nations, explore opportunities to support Indigenous land trusts, including tax incentives for the donation of land to Indigenous Nations or organizations.

Recommendation 15

That the Government of Canada consult with relevant stakeholders, including the First Nations Tax Commission and the First Nations Financial Management Board, on ways to facilitate the donation of land to Indigenous Nations.

Indigenous-Led Conservation and Stewardship

The committee heard that Indigenous-led conservation and stewardship, “can and should play a critical role in the path and dialogue towards reconciliation and the restitution of lands.”¹⁹² For example, Indigenous Protected and Conserved Areas (IPCAs) are lands and waters where “[I]ndigenous governments assert their rights and responsibility to protect and conserve ecosystems through [I]ndigenous laws, governance and knowledge systems.”¹⁹³ As explained in a brief, “IPCAs are the beginning of a dialogue between Indigenous governments and the Crown about how to share the land and waters, with Indigenous Nations taking the lead.”¹⁹⁴ Today, there are an estimated 70+ IPCAs in various stages of development.¹⁹⁵

Indigenous Guardians programs are another example of Indigenous-led stewardship. There are approximately 120 guardians in Indigenous communities who “monitor and protect the lands and waters in their territories.”¹⁹⁶ Guardians also undertake other responsibilities such as training Indigenous youth and responding to climate impacts.¹⁹⁷ Indigenous Guardians programs can inform decision making about resources on

192 INAN, *Evidence*, 10 May 2023, Dahti Tsetso, 1730.

193 Ibid.

194 Conservation through Reconciliation Partnership Leadership Circle, *Brief*, p. 2.

195 Ibid.

196 Ibid., p. 3.

197 Ibid.



Indigenous territories and represent “another expression of nationhood that strengthens relationships to land.”¹⁹⁸

Together, both IPCAs and Guardians programs are “an exercise in sovereignty that communities are exploring to re[-]establish connection to land and water governance while redefining the relationship between their Nations and the Crown.”¹⁹⁹ These initiatives provide important benefits for Indigenous Nations, including strengthening respect for Indigenous rights outlined in UNDRIP, including the right to access, conserve, protect and make decisions in relation to their territories.²⁰⁰ Indigenous-led conservation initiatives also provide environmental benefits; research suggests that lands managed by Indigenous Nations have “equal or higher rates of biodiversity than lands managed by state or private actors.”²⁰¹

Research has shown that investing in Indigenous stewardship and guardians programs provides a positive return on investment. For example, research in the Northwest Territories found a minimum 2.5:1 return on every dollar invested, with research in British Columbia showing the return can be as high as 20:1.²⁰² Investing in these initiatives also empowers and heals communities, supports culture and language, and leads to benefits in areas such as education, health and well-being.²⁰³

Despite the benefits, the committee heard about barriers to Indigenous-led conservation and stewardship, including a lack of support for IPCAs and funding for IPCAs and guardians programs.²⁰⁴ The committee heard that the federal government should work with Indigenous governments and rights holders to develop pathways for land restitution, which could include Indigenous conservation and stewardship.²⁰⁵ Other recommendations included exploring the development of federal legislation recognizing

198 INAN, [Evidence](#), 10 May 2023, Dahti Tsetso, 1730, 1830.

199 Conservation through Reconciliation Partnership Leadership Circle, [Brief](#), p. 1.

200 *Ibid.*, p. 4.

201 *Ibid.*, p. 1, 2, 4.

202 INAN, [Evidence](#), 10 May 2023, Dahti Tsetso, 1730; Conservation through Reconciliation Partnership Leadership Circle, [Brief](#), p. 3.

203 INAN, [Evidence](#), 10 May 2023, Dahti Tsetso, 1825; Conservation through Reconciliation Partnership Leadership Circle, [Brief](#), p. 3.

204 Conservation through Reconciliation Partnership Leadership Circle, [Brief](#), p. 4; INAN, [Evidence](#), 10 May 2023, Dahti Tsetso, 1810; INAN, [Evidence](#), 14 June 2023, Lauren Terbasket, 1655, 1715.

205 Conservation through Reconciliation Partnership Leadership Circle, [Brief](#), p. 1.

the role of IPCAs within Canada and providing sufficient federal funding for Indigenous-led conservation and stewardship initiatives.²⁰⁶

The committee recognizes that Indigenous stewardship and conservation can contribute to reconciliation and advance land restitution to Indigenous Nations. Supporting these initiatives benefits Indigenous Nations and all Canadians, while aligning with federal goals to protect 30% of Canada’s land and water by 2030.²⁰⁷ The committee believes that the development of a federal strategy is important to increase the number of IPCAs in Canada and address challenges experienced by Indigenous Nations seeking to develop an IPCA. The committee therefore recommends:

Recommendation 16

That the Government of Canada:

- **work with Indigenous Nations, Indigenous organizations (such as hunters and trappers organizations) and provincial and territorial governments to develop a strategy to increase the number of Indigenous Protected and Conserved Areas in all parts of Canada and to provide sufficient funding to support Indigenous Nations and organizations working towards the development of Indigenous Protected and Conserved Areas;**
- **provide annual progress reports to each House of Parliament, beginning in September 2024, on progress made towards the development of a strategy on Indigenous Protected and Conserved Areas; and**
- **make information about the progress made towards the development of an Indigenous Protected and Conserved Areas strategy publicly available.**

First Nations Land Title Registry

The First Nations land management regime enables interested First Nations to move away from governing their reserve lands under the *Indian Act* by developing their own land codes according to the process set out in the *Framework Agreement on First Nation*

206 INAN, *Evidence*, 10 May 2023, Dahti Tsetso, 1815.

207 First Nations Financial Management Board, *Brief*, p. 2.



Land Management (the Framework Agreement).²⁰⁸ Today, over 100 First Nations are governing their reserve lands under the Framework Agreement.²⁰⁹ The committee heard that many of these First Nations are:

now thriving communities with enviable economic opportunities, significantly improved housing and infrastructure, members returning to live on reserve, and even attracting non-Indigenous businesses and residents.²¹⁰

A brief from an organization created under the Framework Agreement, known as the First Nations Lands Advisory Board, recommended that Canada “should continue to support improvements to the Framework Agreement,” including the development of a First Nations-led land registry.²¹¹ This proposed land title registry could be enhanced by establishing First Nations institutional capacity to undertake appraisals, assessments, and land surveys on their lands.²¹² Together, these initiatives could support the transfer of lands from provincial title to First Nations title.²¹³

The committee acknowledges the success of First Nations under the Framework Agreement and agrees with witnesses that a First Nations-led land registry could support enhanced First Nations governance over their lands. The committee therefore recommends:

Recommendation 17

That Crown-Indigenous Relations and Northern Affairs Canada work with First Nations and the First Nations Lands Advisory Board to develop a First Nations-led land registry.

SUPPORTING ACCESS TO CAPITAL AND ECONOMIC DEVELOPMENT OPPORTUNITIES

Land restitution has the potential to contribute to economic reconciliation if it provides access to capital and jurisdiction over land use and development. Land is the basis for economic development because it provides equity enabling “access to financing for investment and entrepreneurship, a taxation base to promote community development

208 *Framework Agreement on First Nation Land Management*, 1996.

209 First Nations Lands Advisory Board, *Brief*, p. 3.

210 *Ibid.*, p. 5.

211 *Ibid.*, p. 3.

212 INAN, *Evidence*, 5 June 2023, Clarence T. (Manny) Jules, 1555.

213 *Ibid.*

and a critical input for the development of business opportunities in a range of sectors, including natural resource extraction.”²¹⁴ Providing economically viable lands to Indigenous Nations has the potential to reverse the economic exclusion of many Indigenous Nations.²¹⁵ The following section will discuss potential solutions for Indigenous Nations interested in pursuing economic opportunities.

The committee heard that economic reconciliation means enabling Indigenous Nations to participate fully in the economy.²¹⁶ Economic reconciliation benefits Indigenous Nations and all Canadians.²¹⁷ Indigenous Nations generate own-source revenues through economic participation, minimizing the need for federal government funding and enabling investments in Indigenous Nation priorities.²¹⁸ Economic development can enable Indigenous Nations to improve health and well-being, build housing, protect oceans and rivers, practice their culture and provide employment opportunities.²¹⁹ Economic reconciliation benefits all Canadians by supporting the competitiveness of the Canadian economy internationally and providing certainty for international investors interested in partnering with Indigenous Nations.²²⁰ The Indigenous-led *National Indigenous Economic Strategy for Canada* suggests that economic marginalization of Indigenous Nations costs Canada’s economy \$27.7 billion per year, yet steps towards economic reconciliation have the potential to increase Canada’s gross domestic product by 1.5%.²²¹ The committee heard examples of economic reconciliation, including through the negotiation of resource royalty sharing in the Northwest Territories and developments on First Nations lands in Winnipeg and Vancouver.²²²

214 INAN, [Evidence](#), 24 October 2023, Shannin Metatawabin, 1535.

215 Ibid.; INAN, [Evidence](#), 5 October 2023, Harold Calla, 1645.

216 INAN, [Evidence](#), 24 October 2023, Shannin Metatawabin, 1535.

217 Ibid., 1550; INAN, [Evidence](#), 31 May 2023, Sean Willy, 1730; INAN, [Evidence](#), 5 October 2023, Harold Calla, 1635.

218 INAN, [Evidence](#), 31 May 2023, Sean Willy, 1710, 1725; INAN, [Evidence](#), 5 June 2023, Clarence T. (Manny) Jules, 1555.

219 INAN, [Evidence](#), 31 May 2023, Sean Willy, 1710, 1720; INAN, [Evidence](#), 19 October 2023, Adam Munnings, 1545; Inuvialuit Regional Corporation, [Brief](#), p. 3.

220 INAN, [Evidence](#), 31 May 2023, Sean Willy, 1730; INAN, [Evidence](#), 5 October 2023, Harold Calla, 1635; INAN, [Evidence](#), 24 October 2023, Shannin Metatawabin, 1550.

221 [National Indigenous Economic Strategy for Canada: Pathways to Socioeconomic Parity for Indigenous Peoples](#), June 2022, p. 11.

222 INAN, [Evidence](#), 5 June 2023, Clarence T. (Manny) Jules, 1620; INAN, [Evidence](#), 5 June 2023, Shannon Cumming, 1625.



While land restitution can support economic development, the committee heard that the transfer of land on its own is not enough. Some witnesses called for resource revenue sharing and/or compensation for resource development on Indigenous lands.²²³ Others expressed the view that the restitution of lands should include restoring Indigenous governance and jurisdiction over land and resources.²²⁴

While the committee heard about economic success stories, such as the English River First Nation’s creation of businesses to support natural resource development, many Indigenous Nations face barriers that affect their participation in economic development.²²⁵ For example, First Nations may have difficulties accessing capital due to restrictions on the use of reserve lands as collateral.²²⁶ Further, “cumbersome land management provisions of the *Indian Act*,” contribute to high business costs on reserve.²²⁷ The committee heard that federal funding is insufficient to meet the growing needs of Indigenous businesses and that a new federal social finance fund may compete with the National Aboriginal Capital Corporations Association’s initiatives to support Indigenous businesses.²²⁸ Capacity may also be a challenge. Indigenous Nations who have purchased land or live close to urban centres may lack capacity to ensure “proper due diligence” on business opportunities.²²⁹

Indigenous Nations want to benefit from development and be involved in decisions on matters affecting their lands.²³⁰ The committee heard examples of situations where First Nations viewed consultation on resource development projects, sales of provincial Crown land, and the granting of mineral leases as inadequate.²³¹ The committee also heard

223 Cold Lake First Nation, [Brief](#), p. 5; Algonquins of Pikwàkanagàn First Nation, [Brief](#), p. 1; Innu TakuaiKAN Uashat mak Mani-Utenam, [Brief](#), p. 7; Mikisew Cree First Nation, [Brief](#), p. 6.

224 INAN, [Evidence](#), 17 October 2023, Stephen Buffalo, 1610; First Nations Financial Management Board, [Brief](#), p. 2, 3; Algonquins of Pikwàkanagàn First Nation, [Brief](#), p. 5; Nahnda Garlow, [Brief](#), p. 5, 6; INAN, [Evidence](#), 5 October 2023, Harold Calla, 1645; INAN, [Evidence](#), 31 May 2023, Sean Willy, 1710; Cold Lake First Nation, [Brief](#), p. 5.

225 INAN, [Evidence](#), 31 May 2023, Sean Willy, 1635.

226 *Ibid.*, 1710; INAN, [Evidence](#), 5 October 2023, Harold Calla, 1700; INAN, [Evidence](#), 24 October 2023, Shannin Metatawabin, 1535.

227 INAN, [Evidence](#), 24 October 2023, Shannin Metatawabin, 1535.

228 *Ibid.*, 1550.

229 *Ibid.*, 1545.

230 For example, see: INAN, [Evidence](#), 31 May 2023, Sean Willy, 1735; INAN, [Evidence](#), 5 October 2023, Celeste Haldane, 1720; INAN, [Evidence](#), 5 October 2023, Harold Calla, 1700; File Hills Qu’Appelle Tribal Council, [Brief](#), p. 3, 4; Cold Lake First Nation, [Brief](#), p. 5; Mikisew Cree First Nation, [Brief](#), p. 6.

231 INAN, [Evidence](#), 10 May 2023, Ellen Gabriel, 1710; Mikisew Cree First Nation, [Brief](#), p. 6.

concerns about Impact Benefit Agreements, which some witnesses believed provided limited benefits and required them to “give up the limited rights we have to object to any industrial development.”²³²

Indigenous Nations are leading the way to address some of these barriers to economic reconciliation and unlock economic development opportunities that meet their needs and priorities. For example, the *National Indigenous Economic Strategy For Canada* includes Calls to Economic Prosperity in areas such as lands, infrastructure and finance. The Strategy aims to “achieve the meaningful engagement and inclusion of Indigenous Peoples in the Canadian economy.”²³³ The committee also heard about Indigenous Financial Institutions providing loans to support Indigenous businesses and the work of the First Nations Finance Authority and First Nations Tax Commission to support First Nations to access capital. Indigenous Nations are also ensuring they are involved in development. The committee heard about Indigenous-led environmental monitoring programs, and the English River First Nation’s initiative to define the rules for companies interested in undertaking exploration on their lands.²³⁴ Non-Indigenous organizations may also play a role in addressing barriers to economic reconciliation. The committee received testimony about companies developing reconciliation action plans and the work of the Alberta Indigenous Opportunities Corporation, which provides loan guarantees to enable First Nations participation in economic development opportunities on their lands.²³⁵

Given the diversity of Indigenous Nations, initiatives needed to promote economic development may vary.²³⁶ In terms of access to capital, witnesses recommended “unconditional transfer payments to First Nations governments” to support participation in resource development, as well as stable federal financial commitments to ensure that Indigenous Nations can build their economies.²³⁷ Other witnesses called for flexible annual funding to meet the needs of Indigenous businesses.²³⁸ Calls were also made for the federal government to cede tax jurisdiction to support First Nations concerning excise taxes on fuel, alcohol, cannabis and tobacco; and federal corporate income tax to

232 Ibid., p. 4.

233 *National Indigenous Economic Strategy for Canada: Pathways to Socioeconomic Parity for Indigenous Peoples*, June 2022, p. 10; INAN, *Evidence*, 24 October 2023, Shannin Metatawabin, 1535.

234 INAN, *Evidence*, 31 May 2023, Sean Willy, 1705, 1715.

235 Ibid., 1720; INAN, *Evidence*, 17 October 2023, Stephen Buffalo, 1620.

236 James N. Tanner, *Brief*, p. 4.

237 INAN, *Evidence*, 14 June 2023, Lauren Terbasket, 1655; Mikisew Cree First Nation, *Brief*, p. 6.

238 INAN, *Evidence*, 24 October 2023, Shannin Metatawabin, 1535.



“support the application of a proposed [F]irst [N]ations resource charge” that would facilitate resource development in Canada.²³⁹ The committee also heard about work underway on a scoping study for a potential Indigenous Development Bank that could support access to capital.²⁴⁰

Some witnesses made recommendations to support capacity development, including expanding the Tulo Centre for Indigenous Economics to provide training and capacity support for interested First Nations.²⁴¹ Witnesses also suggested that resource revenue sharing ought to be at the forefront of natural resource discussions.²⁴² In the case of existing developments where Indigenous Nations have not received adequate benefits, the federal government could consider addressing resource royalties and employment provisions separately from treaty negotiations or treaty implementation.²⁴³

The committee agrees with witnesses that land restitution is vital to support economic reconciliation, enabling Indigenous Nations to choose to pursue economic development initiatives tailored to their own priorities. The committee believes that the federal government could play a role in supporting and facilitating the creation of Indigenous-led initiatives, such as the proposed Indigenous development bank. Federal funding must be predictable to ensure Indigenous Nations have access to sufficient capital to pursue economic development opportunities. The committee therefore recommends:

Recommendation 18

That the Government of Canada work with Indigenous Nations to ensure that all forms of land restitution include the restoration of Indigenous governance and jurisdiction over lands and resources.

Recommendation 19

That the Government of Canada work with Indigenous Nations and Indigenous businesses to determine funding needs and ensure that Indigenous businesses have access to adequate, predictable, sustainable and long-term funding.

239 INAN, [Evidence](#), 5 June 2023, Clarence T. (Manny) Jules, 1555, 1605.

240 INAN, [Evidence](#), 5 October 2023, Harold Calla, 1700.

241 INAN, [Evidence](#), 5 June 2023, Clarence T. (Manny) Jules, 1555.

242 INAN, [Evidence](#), 17 October 2023, Stephen Buffalo, 1620.

243 INAN, [Evidence](#), 5 June 2023, Shannon Cumming, 1635.

Recommendation 20

That the Government of Canada work with Indigenous Nations and the National Aboriginal Capital Corporations Association to undertake a review of the Social Finance Fund to determine whether it is complimentary to National Aboriginal Capital Corporations Association initiatives.

Recommendation 21

That the Government of Canada encourage Indigenous Nations and industry to establish a working group to discuss Impact and Benefit Agreements.

Recommendation 22

That the Government of Canada, in partnership with Indigenous Nations, consider options for improving access to capital, including through support to Indigenous Financial Institutions and the potential creation of an Indigenous Development Bank in Canada.

CONCLUSION

Restitution of land is essential to reconciliation, the self-determination of Indigenous Nations and the exercise of Indigenous rights. Provided that access to capital and jurisdiction over land are also provided, land restitution can unlock economic opportunities for Indigenous Nations and help to reverse the historical exclusion of Indigenous Nations from the Canadian economy. Some Indigenous Nations continue to have difficulty accessing their lands through federal policies and processes and other existing mechanisms. This report identifies ways to improve existing federal policies and processes. It also suggests exploring alternative options to support land restitution for Indigenous Nations. The committee's recommendations are intended to increase available options to ensure that all Indigenous Nations have an effective pathway to access their lands.

APPENDIX A: LIST OF WITNESSES

The following table lists the witnesses who appeared before the committee at its meetings related to this report. Transcripts of all public meetings related to this report are available on the committee’s [webpage for this study](#).

Organizations and Individuals	Date	Meeting
As an individual Ellen Gabriel, Indigenous Land Defender from Kanehsatà:ke	2023/05/10	64
First Peoples Law Bruce McIvor, Partner	2023/05/10	64
Indigenous Leadership Initiative Dahti Tsetso, Deputy Director	2023/05/10	64
Des Nedhe Development Sean Willy, President and Chief Executive Officer	2023/05/31	68
First Nations Financial Management Board Harold Calla, Executive Chair	2023/05/31	68
St. Mary's First Nation Chief Allan Polchies	2023/05/31	68
First Nations Tax Commission Clarence T. (Manny) Jules, Chief Commissioner	2023/06/05	69
Northwest Territory Métis Nation Shannon Cumming, Legal Counsel	2023/06/05	69
First Nations Lands Advisory Board Andrew Beynon, Director of Land Code Governance, First Nation Land Management Resource Centre Philip Goulais, Director, Former Chief, Nipissing First Nation, Ontario	2023/06/14	71
Lower Similkameen Indian Band Lauren Terbasket, Policy Advisor, Negotiator	2023/06/14	71

Organizations and Individuals	Date	Meeting
Métis Nation of Alberta Jason Madden, Lawyer Audrey Poitras, President	2023/06/14	71
Office of the Treaty Commissioner Mary R. Culbertson, Treaty Commissioner	2023/06/14	71
Treaty Land Entitlement Committee of Manitoba Inc. Chris Henderson, Executive Director	2023/06/14	71
Treaty One Nation Chief Gordon BlueSky, Brokenhead Ojibway Nation	2023/06/14	71
As an individual Larry Innes, Barrister and Solicitor	2023/10/05	75
British Columbia Treaty Commission Celeste Haldane, Chief Commissioner Mark Smith, General Counsel and Director of Process	2023/10/05	75
First Nations Financial Management Board Harold Calla, Executive Chair	2023/10/05	75
Indian Resource Council Inc. Stephen Buffalo, President and Chief Executive Officer	2023/10/17	76
Manitoba USKE Patricia Mitchell, Executive Director	2023/10/17	76
National Aboriginal Lands Managers Association Albert Marshall Jr., Board Director Amanda Simon, Chair	2023/10/17	76
Okanagan Indian Band Byron Louis	2023/10/17	76
Yellowhead Institute Shady Al Hafez, Research Fellow	2023/10/17	76
Membertou First Nation Graham Marshall, Membertou Councillor	2023/10/19	77

Organizations and Individuals	Date	Meeting
Mi'kmaq Grand Council Stephen Augustine	2023/10/19	77
Semiahmoo First Nation Adam Munnings, Legal Counsel	2023/10/19	77
National Aboriginal Capital Corporations Association Shannin Metatawabin, Chief Executive Officer	2023/10/24	78
Ochapowace First Nation Shelley Bear	2023/10/24	78
Yellowhead Institute Hayden King, Executive Director	2023/10/24	78

APPENDIX B: LIST OF BRIEFS

The following is an alphabetical list of organizations and individuals who submitted briefs to the committee related to this report. For more information, please consult the committee's [webpage for this study](#).

Algonquins of Pikwakanagan First Nation
Assembly of First Nations
British Columbia Specific Claims Working Group
British Columbia Treaty Commission
Cadeau, Francis
Cold Lake First Nations
Conservation through Reconciliation Partnership
File Hills Qu'Appelle Tribal Council
First Nations Financial Management Board
First Nations Lands Advisory Board
First Nations Summit
Garlow, Nahnda
Innu Takuaikan Uashat Mak Mani-Utenam
Inuvialuit Regional Corporation
Lac Ste. Anne Métis Community Association
Mikisew Cree First Nation
Northwest Territory Métis Nation
Ontario Land Trust Alliance
Six Nations of the Grand River
Standing Water Nation
Tanner, Jim

REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, the committee requests that the government table a comprehensive response to this report.

A copy of the relevant *Minutes of Proceedings* ([Meetings Nos. 64, 68, 69, 71, 75-78, 96, 97 and 103](#)) is tabled.

Respectfully submitted,

John Aldag
Chair

