

The Coldwater Narrows Specific Land Claim: A Story of Colonization?

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Abstract

This article explores the political, economic, and social effects of Specific Land Claims on Indigenous communities. It uses the example of the Chippewas Tri-Council, with a focus on the Chippewas of Rama First Nation, to argue that Specific Land Claims in Canada, despite minor benefits to communities (these benefits being almost always limited to economic benefits), are ultimately part of a process created by a colonial government which contributes to continued colonization of Indigenous communities.

Indigenous peoples in Ontario have a unique relationship with the Canadian government. Unlike the relationship in the eastern Canada and Quebec, it began long before Confederation. Because of this early contact, Indigenous groups were exposed to western religions, settler populations, and the treaty process very early in the settlement process. Pre-Confederation Treaties are mostly unique to the regions of Canada that experienced early contact and were made for various reasons. Peace and Friendship Treaties, some of the most well-known “other” types of treaties, were used to establish alliances. Among other examples are treaties made to establish rights-of-way giving settlers permission to pass through waterways peacefully and giving the Crown the right to build roads.¹ There are many factors that lead to significant uncertainty with regards to these treaties including uncertainty about which communities they were dealing with (e.g. the Collins Treaty, the Chippewas versus the Mississaugas), and especially language barriers. Despite the use of translators, the nature of many Indigenous languages prevented the translation of concepts that were foreign to the people, most significantly land ownership.

¹“Treaty Research Report, the Williams Treaties (1923),” *Aboriginal Affairs and Northern Development Canada*, accessed December 5, 2014, <http://www.aadnc-aandc.gc.ca/eng/1100100029000/1100100029002>.

The relationship between Indigenous people and the Crown changed following the war of 1812 and with this change came a shift of power into the hands of the Crown and then the Canadian government. This change occurred due to dwindling Indigenous populations and increased certainty surrounding US borders. Complaints that had been aired regarding use of Indigenous lands prior to this shift were silenced. In recent years, following a resurgence of Indigenous populations and culture, communities have begun to demand that their past grievances be addressed. It was not until the creation of a Specific Land Claims Policy, under the auspice “Outstanding Business” that progress slowly began to be seen.²

This paper will examine the continued colonizing effects experienced in relation to Specific Land Claims in Ontario. More specifically, it will examine the experience of the parties involved in the Coldwater Narrows Specific Land Claim, with a focus on the Chippewas of Rama First Nation. This settled Land Claim is uniquely significant with regards to Specific Land Claims in Ontario and by studying it we will see the political, economic and socially colonizing effects that Specific Land Claims have had on the communities involved.

The decision in *Calder et al. v. Attorney-General of British Columbia* in 1973 spurred government responses to long standing questions regarding the legitimacy of land surrenders, the implementation of treaty provisions, and use of lands across Canada. Specific Claims negotiations commenced through the Office of Native Claims (ONC) following its establishment in 1974.³ Despite this, it was not until the publication of *Specific Claims: Justice at Last* in 2007 and subsequently enactment of the *Specific Claims Tribunal Act* (SCTA) of 2008 that there was a comprehensive Specific Claims policy that featured an unbiased third party in place with

² A brief history of government-Indigenous interactions seemed necessary in order to provide context for the rest of the essay. There exists an incredibly long and complex relationship between Indigenous peoples and the Canadian and British governments that must be understood in order to see the effects on Indigenous communities.

³ “History,” *Specific Claims Tribunal Canada*, accessed December 5, 2014, www.sct-trp.ca/hist/hist_e.htm.

authority to award compensation (to a limit of \$150 million) in order to expedite the process.⁴ Before this, the Federal Government acted as both judge and jury with regards to Specific Land Claims, determining which claims would be accepted for negotiations. This era, lacking an unbiased third party under the direction of the *Outstanding Business* policy, is where the Coldwater Narrows claim began.

The federal government's first priority in negotiating Specific Land Claims was "to discharge its lawful obligation as determined by the courts if necessary. Negotiation, however, remains the preferred means of settlement by the government, just as it has been generally preferred by Indian claimants"⁵ What is left unstated is that these negotiations were often Indigenous groups' only means of settlement. Further, the negotiations themselves have proven to be just another tool in the colonialism tool chest. As Bonita Lawrence describes, the Canadian Land Claims process is "far from being "progressive," [it] involves Canada's refusal to negotiate with Indigenous peoples as equals... The colonial nature of the process is masked by liberal pluralist notions that Native peoples are an "interested group" whose "claims" must be measured against the needs of other "groups" of citizens."⁶ Indigenous communities' very admittance to the process represents a political obstacle course full of hoops through which Indigenous communities must jump.

In the case of the Coldwater Narrows land claim, the Chippewas Tri-Council (Chippewas of Rama First Nation, Chippewas of Georgina Island First Nation, and the Beausoleil First

⁴*Specific Claims Tribunal Act*, SC 2008, c22, s.20(1)(b). www.canlii.org/en/ca/laws/stat/sc-2008-c-22/latest/sc-2008-c-22.html.

⁵ "Outstanding Business: A Native Claims Policy- Specific Claims," *Indian and Northern Affairs Canada*, accessed December 5, 2014, www.afn.ca/uploads/files/sc/comp_-_outstanding_business_a_native_claims_policy.pdf.

⁶ Bonita Lawrence and Enakshi Dua, "Decolonizing Antiracism," *Social Justice* 32, no. 4 (2005): 124-25.

Nation, now referred to as the CTC) made their initial submission to the land claim process in November 1991. It was not until April 1996 that a response was received from the Specific Claims branch which unilaterally dismissed the CTC's claims stating that "the claim did not disclose an outstanding lawful obligation on the part of the Government of Canada."⁷ Following this response the CTC had three options: give up, litigate, or to appeal to the Indian Specific Claims Commission (ISCC) to conduct an inquiry into the validity of their allegations; they chose the latter.

Throughout the Inquiry process, which lasted from August 1996 until March 18, 2002, extensive research was completed to determine the facts surrounding the surrender of the tract of land in question as. Ultimately, the Canadian government's final resolution to accept the CTC's claim came after the CTC was forced to threaten to question the honour of the Crown and their willingness to negotiate, or in this case participate in their own program, in good faith. As Peter Russell points out, "[i]n all of this we can see the deeply ironic side of decolonization: the colonized's success in overcoming their subjugation is achieved through the colonizers' political instruments."⁸ This particular phenomenon is one that will continue to be seen throughout the process of land claim settlements, both specific and comprehensive. The reality is that, as is typical with modern colonial government, the land claims processes were designed unilaterally by colonial political institutions. Even in the case of the Coldwater Narrows Claim put forth by the CTC, issues such as hunting, fishing, and trapping rights were excluded from qualification as

⁷ "Chippewas Tri-Council Inquiry: Coldwater-Narrows Reservation Surrender Claim," *Indian Claims Commission*, March 2013, accessed December 5, 2014, [Http://publications.gc.ca/collections/Collections/RC31-15-2003E.pdf](http://publications.gc.ca/collections/Collections/RC31-15-2003E.pdf).

⁸ Peter H. Russell, "Aboriginal nationalism- Prospects for Decolonization," *Social Justice* 32, no.4 (2005): 60.

“lawful obligations”.⁹ Although Indigenous groups recognize that the way forward is likely to be one that combines aspects of both cultures, these unilateral impositions force Indigenous groups to conform to a colonial mold of even restitution.

One major problem with the land claim system itself is apparent in the timeline presented above to reach the final outcome of the Coldwater-Narrows Claim. Negotiations lasted from 2002 until July of 2012 when the settlement offer was ratified by the communities involved. The process was not complete until it was implemented later that year. Overall, the process took over 21 years from its first submission to an implemented Specific Claim Settlement in 2012. Upon implementation, the claim became largest Land Claim Settlement in Canadian history.

The reality of land claims settlements for many Indigenous Communities is that they are a means to generate financial resources in order to implement the programs and institutions that are necessary to fix the very problems created through colonization. The elimination of culture, tradition, language and, most importantly, the family unit through assimilationist policies is an undercurrent to all Indigenous-Government interactions. These policies have lead great political thinkers to question the benefit of adopting liberal democratic ideals, especially in recognition of the dark underside of the very policies that created such a society.¹⁰

The nature of the Canadian government’s proposition for justice forces indigenous groups involved to adopt a colonial mindset. By limiting the possible forms of justice to

⁹ William B. Henderson and Derek T. Ground, “Survey of Aboriginal Land Claims,” *Ottawa Law Review* 26, no. 1 (1994): 215.

¹⁰ Pankaj Mishra, “The western model is broken,” *TheGuardian.com*, last modified October 17, 2014, <http://www.theguardian.com/world/2014/oct/14/-sp-western-model-broken-pankaj-mishra>.

compensation (and very rarely the return of lands)¹¹, affected Indigenous communities begin to see through a capitalist lens that has no bearing on traditional cultural values. Further, “[t]he assumption that, in most cases, a compromise sum of money will settle the claim and the grievance limits possibilities for creative solutions that would deliver substantive justice to claimant communities.¹²” What fails to be seen is that “other ways of conceiving of the good life have existed long before a crudely utilitarian calculus ... replaced thinking in our most prominent minds.”¹³ The continued colonization process is balanced on top of an unstable tower of assumptions that make the colonizer’s way the only one. It is unfortunate that many Indigenous leaders are forced to disregard this reality in the pursuit of the means of subsistence for their communities. Quite often involvement in these processes results in representative Indigenous leaders following a trend “towards accommodation of Western cultural values and acceptance of integration into the larger political economic system.”¹⁴ Their position as leaders encourages communities to follow in their footsteps leading them away from “the institutions that in the past governed social and political relations among [their] people.”¹⁵ This phenomenon is further entrenched in the establishment of required institutions for the purposes of administering funds that are received, band administered trusts for example.

Settlements often include provisions requiring the community to warrant that funds will be allocated in a way that is beneficial for the future good of the Community. Although there are

¹¹ “Outstanding Business: A Native Claims Policy- Specific Claims,” *Indian and Northern Affairs Canada*, accessed December 5, 2014, www.afn.ca/uploads/files/sc/comp_-_outstanding_business_a_native_claims_policy.pdf

¹² William B. Henderson and Derek T. Ground, “Survey of Aboriginal Land Claims,” *Ottawa Law Review* 26, no. 1 (1994): 217.

¹³ Pankaj Mishra, “The western model is broken,” *TheGuardian.com*, last modified October 17, 2014, <http://www.theguardian.com/world/2014/oct/14/-sp-western-model-broken-pankaj-mishra>.

¹⁴ Taiaiake Alfred, *Peace, power, righteousness: An indigenous Manifesto*, (Don Mills, Ontario: Oxford University Press, 1999), 4.

¹⁵ *Ibid.*

no formal mechanisms through which the government oversees this¹⁶, the impression of control over Indigenous Communities further contributes to at least perceived inequality which is often the representation of the colonized/colonizer relationship. This also opens the door for a possible situation of further colonization activity should the government choose to pursue legal avenues to enforce such a warranty. The legal framework within which settlements fall is yet another example of the colonizing aspects of the Specific Land Claims settlement process.

The position of the Canadian government is indicative of their intentions with regards to settlements. In a section of the Ministry of Aboriginal and Northern Development Canada website entitled “Why Negotiate?” the following statement is made:

Ultimately, righting past wrongs is simply the right thing to do. Settling land claims helps Canadians come to terms with our history while bringing closure to longstanding grievances for First Nations. Negotiated settlements help rebuild relationships and generate benefits for all Canadians. These benefits include economic benefits, new opportunities for business partnerships and certainty for First nations, industry and area communities. Negotiations lead to “win-win” situations that balance the interests of all Canadians.¹⁷

Although it seems that they, the Canadian government, feel a moral obligation to address past endeavors aimed at capitalizing on resources that were not theirs to use for such purposes, the statement is ultimately framed around the economic benefits that will be created. Settlement funds, as stated above, are intended to be used for the future good of the community. What seems to be implied from both of these ideas is that settlement funds are intended to be used in a way that will allow Indigenous Communities to assimilate into “white culture”. By excluding cultural connections from these negotiations and focusing on the good that can be done for “all

¹⁶Often trusts and allocation agreements are confidential information intended to be seen by only community members.

¹⁷“Why Negotiate?” *Aboriginal Affairs and Northern Development Canada*, accessed December 5, 2014, <https://www.aadnc-aandc.gc.ca/eng/1100100030322/1100100030323>.

Canadians”, the Canadian government is continuing with its long established assimilationist attitude.

Within Indigenous communities such as the Chippewas of Rama, Specific Claims sometimes serve a unique purpose of unifying the community. The vote held to ratify the Specific Claims settlement offer saw a resounding 97% vote of support for the acceptance of the offer.¹⁸ The question that remains to be seen, but is beyond the scope of this paper, is where the motivation stemmed from for such support. Were community members motivated by feelings of reconciliation and the potential for the settlement to contribute to nation-building and the restoration of culture? Or was the support reflective of an assimilated, capitalist population? For the sake of this paper we know that the colonial processes were followed and so we see continued colonization through this.

The economics of the Coldwater-Narrows Claims, specifically in relation to the Chippewas of Rama, are closely related to the social implications of the settlement. The expectation with regards to settlement funds, as previously stated, seems to be that the community will have the capacity to contribute to a colonial, capitalist society (i.e. they will assimilate). The social ramifications of the whole process contribute to this mentality in that the process and its offered aspects of reconciliation are separated from culture and tradition from the very beginning of the process at the negotiation tables.

The people of the Chippewas of Rama First Nation have long been separated from their culture, mainly due to early contact with religious figures and settler populations. The claim itself stemmed from the fact that the CTC members were a part of a social experiment in which

¹⁸ “Coldwater Narrows Land Claim Settlement,” *Turtle Island Native Network*, accessed December 7, 2014, <http://www.turtleisland.org/discussion/viewtopic.php?f=8&t=9808>.

they were placed onto the Coldwater and Narrows lands in order to establish farming communities in an attempt to address decreasing living conditions among the various communities in the south-central Ontario. These actions would be repeated throughout history with the lands being called reserves. Throughout the process the CTC invested its own money into infrastructure to later have the Chiefs sign a surrender despite their understanding that they were receiving the deed to the communities due to their success.¹⁹ The repercussion of the government's refusal to address these cultural divides is that the only means of subsistence known to many of the indigenous peoples involved is one of the colonizer.

A belief held commonly by many indigenous communities and government actors is that the settlement of Specific Land Claims can lead to an era of peace, putting aside the contention, and in some cases, confrontation, that existed while the fate of the claims were unknown.²⁰ However, in the case of the CTC and other Indigenous Communities in the area, it would mean continued contention due to the need for litigation to address the issue of harvesting rights (see *Alderville Indian Band et al v. Her Majesty the Queen et al*). This necessity stems from the exclusion of the aforementioned harvesting rights from inclusion in the Specific Claims negotiations.

The Chippewas of Rama First Nation pride themselves on being “a proud, progressive First Nation community”²¹ but I would caution this by stating that the measure of success here seems to be one conceived by colonial powers. On the other side of this is the view held by their late elder John Snake. Snake felt that the way toward peace was through pow wow, “[w]e are

¹⁹ “Chippewas Tri-Council Inquiry: Coldwater-Narrows Reservation Surrender Claim,” *Indian Claims Commission*, March 2013, accessed December 5, 2014, [Http://publications.gc.ca/collections/Collections/RC31-15-2003E.pdf](http://publications.gc.ca/collections/Collections/RC31-15-2003E.pdf).

²⁰ The Honourable Gerry St. Germain and the Honourable Nick Sibbeston, “Negotiation or Confrontation: It’s Canada’s Choice,” *Parliament of Canada*, accessed November 15, 2014, <http://www.parl.gc.ca/Content/SEN/Committee/391/abor/rep/rep05dec06pdf-e.htm#TOP>.

²¹ “Home,” *Chippewas of Rama First Nation*, accessed December 7, 2014, www.mnikaning.ca/index.asp.

dancing around the world celebrating life. The Drum represents the heartbeat of each and every one of us.²² Perhaps the use of some of the funds from the land claim settlement for a state-of-the-art pow wow grounds is evidence of a commitment to a revival of Indigenous culture thus making the Specific Land Claims process, at least in part, decolonizing. And perhaps this method is evidence of a new way forward that combines mainstream ideologies with traditional cultural values. “What you have to do,” explains Indigenous scholar Taiaiake Alfred, “is know your basic principles in the first place, and then blend the contemporary and traditional together—but you have to have the principles right.”²³

The political, economic, and social aspects of the Coldwater Narrows Specific Land Claim are complex. Added to the complexity is the very nature of the colonizer/colonized relationship that exists between the Indigenous communities involved and the Canadian government. To understand the subtleties extensively would be a feat in itself given the length of the relationship and the number of policies involved. The Specific Claims process, which is colonially framed, and the potential for action regarding funds create an “ideological barrier that must be removed for genuine decolonization. If there is to be a political community shared by the descendants of the colonizers and the colonized based on consent rather than force, it will have to be based on reciprocity of respect for one another’s collective achievements and capabilities.”²⁴

Ultimately, Specific Land Claims settlements may be a step toward decolonization and reconciliation, however, in order for Indigenous communities to reach a point where colonization

²² “Chippewas of Rama First Nation... The Gathering Place,” *Chippewas of Rama First Nation*, (Community Newsletter, November 2014): 3.

²³ Taiaiake Alfred, *Peace, power, righteousness: An indigenous Manifesto*, (Don Mills, Ontario: Oxford University Press, 1999), 11.

²⁴ Peter H. Russell, “Aboriginal Nationalism- Prospects for Decolonization,” *Social Justice* 32, no. 4 (2005): 63.

ends and decolonization begins, it is imperative that there be no more unilateral decisions on the part of the Canadian government. The political structures of Indigenous communities cannot be relegated to things of the past and must be considered relevant to modern life. The difficulty with this is that Indigenous quests for decolonization “challenge the very legitimacy of the nation building and nationhood so central to these settler societies’ sense of their own achievement and identity.²⁵” Hence, true decolonization will only come from a place of information and education by all parties involved. Although Specific Claims may play a part in the decolonization of Indigenous communities by providing funds necessary to invest in culture, their very effectiveness as true decolonization tools is contingent upon a transformation from a process of colonization itself. After all, true decolonization cannot be borne from more colonization.

²⁵ Peter H. Russell, “Aboriginal Nationalism- Prospects for Decolonization,” *Social Justice* 32, no. 4 (2005): 58.

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