

RESEARCH & DRAFTING PACKAGE · VERSION 2.0

INDIGENOUS LAND RESTITUTION

*Four annotated pleading frameworks, a verified table of authorities, and
a coordinated litigation-and-negotiation strategy*

Track 1 His Majesty the King in right of Canada

Track 2 His Majesty in right of a Province

Track 3 The Crown in right of the United Kingdom

Track 4 Charles III in a personal capacity — threshold assessment



DRAFT · RESEARCH AID
NOT LEGAL ADVICE
NOT FILE-READY

MARIE SESHAT LANDRY

CEO & Founder, Landry Industries Inc. · OSINT Investigator · Moncton, New Brunswick

LandryIndustries.ca · MarieLandrySpyShop.com · ORCID 0009-0008-5027-3337

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IMPORTANT LEGAL NOTICE & DOCUMENT CONTROL

READ BEFORE USE

This package is a **research and drafting aid**. It is not legal advice, not a legal opinion, and not a pleading that can be filed. It was not prepared or reviewed by a lawyer licensed in any Canadian province or territory, or in England and Wales. Every page is marked DRAFT for that reason.

No claimant, territory, treaty, parcel, limitation analysis, cause of action or allegation in this package has been verified for any particular Indigenous nation. Bracketed text is a placeholder, not a fact. Nothing here should be filed, served, published as a statement of anyone's legal position, or relied on for a decision, until qualified counsel acting on the instructions of an authorized Indigenous governing body has reviewed it.

The two United Kingdom tracks (Track 3 and Track 4) are retained only as **threshold assessments**. On the authorities verified for this edition, Track 4 (Charles III personally) faces direct statutory and judicial barriers in both Canadian and English courts, and this package recommends against filing it (see Part VIII).

PURPOSE

To help Indigenous nations and their authorized counsel scope evidence-based claims for recognition of title, restitution of land, treaty enforcement, compensation, accounting, consultation and negotiated remedies, and to separate the claims that the verified law supports from those it does not. Indigenous nations have distinct histories, laws, rights, territories and settlement preferences. Nothing here assumes that all nations want the same remedy, or that one proceeding could speak for all of them.

DOCUMENT CONTROL

FIELD	DETAIL
Title	Indigenous Land Restitution — Research & Drafting Package, Version 2.0
Supersedes	v1.0, "Indigenous Land Restitution: Four preliminary draft pleading frameworks" (11 pp., dated 22 October 2026)
Prepared by	Marie Seshat Landry, Landry Industries Inc. (LandryIndustries.ca · MarieLandrySpyShop.com), Moncton, New Brunswick. ORCID 0009-0008-5027-3337
Research method	Live web verification on 22 October 2026. Primary texts (statutes, judgments, court dockets) were consulted where they could be retrieved; official summaries and reputable secondary sources were used where they could not. Each authority carries a verification grade (see "How to Use This Package").
Currency	Federal statutes checked against Justice Laws consolidations current to 30 September 2026. Pending appeals and negotiations are flagged R and must be re-checked before any use.
Status	DRAFT — working legal concept — not file-ready
Intended readers	Indigenous governing bodies, their legal counsel, researchers and negotiators

FIELD	DETAIL
Sensitive material	No Indigenous oral history, sacred or culturally restricted information is reproduced. Any such material gathered for a real claim must be handled under the nation's own protocols and OCAP [®] principles (Part XII).

WHAT THIS PACKAGE DOES NOT DO

It does not identify a claimant, define a territory, assess any nation's evidence, calculate any loss, or decide which forum is best for a real case. It does not reproduce oral histories or culturally restricted knowledge. It does not take a position on contested political questions about sovereignty; it describes how Canadian and UK courts currently treat them.

VERSION HISTORY

VERSION	DATE	CHANGE
1.0	22 Oct 2026	Original four-track concept with four research links.
2.0	22 Oct 2026	All four original links checked; 60+ further authorities verified; procedural corrections (Crown naming, notice, forum, remedies); 2025–2026 case law integrated (Cowichan, Wolastoqey, Nuchatlaht, Gitxaala, Kebaowek, Restoule follow-on); Tracks 3–4 converted to threshold opinions; schedules, checklist, table of authorities and bibliography added.

ABSTRACT

This package revises and verifies an eleven-page concept for Indigenous land-restitution litigation against four proposed defendants: the federal Crown, provincial Crowns, the Crown in right of the United Kingdom, and Charles III in a personal capacity. Every authority in the original draft was checked against live sources on 22 October 2026, and the analysis was extended with more than sixty further statutes, judgments, dockets and official records, including developments up to October 2026.

The verified law points in a clear direction. Claims against the Canadian federal and provincial Crowns rest on established foundations: section 35 of the *Constitution Act, 1982*, the title test confirmed in *Tsilhqot'in Nation* (2014), the honour of the Crown as applied in *Restoule* (2024) and *Pekuakamiulnuatsh Takubikan* (2024), and the equitable-compensation method in *Southwind* (2021). Recent title decisions show that land can be recovered from the Crown (*Nuchatlaht*, 2026 BCCA 137), while the treatment of privately held land now differs by province: British Columbia's trial court in *Cowichan Tribes* (2025) declared title over land that includes fee simple parcels, while New Brunswick's Court of Appeal in *J.D. Irving v. Wolastoqey Nation* (2025) held that title cannot be declared over private land without the owners as parties, a ruling left standing when the Supreme Court of Canada refused leave in May 2026.

By contrast, the United Kingdom tracks face threshold barriers. English courts have held since 1982 that treaty obligations to Indigenous peoples in Canada passed to the Crown in right of Canada; the UK *Crown Proceedings Act 1947* excludes proceedings against the monarch in a private capacity; and the Federal Court of Canada has struck a claim against the UK Crown for state immunity and rejected the premise that such a claim is personal to the monarch (*Commanda*, 2018 FC 189). The package therefore recommends that litigation focus on the Canadian Crowns, with UK engagement pursued through archival, parliamentary and diplomatic routes.

The deliverables are four annotated pleading frameworks, a jurisprudence digest with verification grades, procedural rules for the federal, New Brunswick and Ontario Crowns, a remedies and valuation section, a New Brunswick case study, evidence schedules A–E, a pre-filing checklist, a table of authorities and a full source list.

Keywords: Aboriginal title; land restitution; treaty rights; honour of the Crown; fiduciary duty; equitable compensation; Crown immunity; divisibility of the Crown; UNDRIP; specific claims; Wolastoqey; Cowichan; New Brunswick; Peace and Friendship Treaties.

Suggested citation: Landry, M. S. (2026). *Indigenous Land Restitution — Research & Drafting Package* (v2.0, draft). Landry Industries Inc., Moncton, NB.

EXECUTIVE SUMMARY

TEN FINDINGS FROM VERIFICATION

1. **The original draft's caution was justified and is kept.** Its central warnings (separate defendants, particularized facts, no presumed personal liability for Charles III) are all supported by the verified law. Several procedural details needed correction (finding 6).
2. **Federal and provincial Crowns are the legally responsible defendants.** Under s. 109 of the *Constitution Act, 1867*, provinces hold the beneficial interest in public lands within their borders, subject to any interest other than the province's. A claim to recover Crown land usually needs the province as a party; a federal-only claim cannot reach provincial land.
3. **Land can be returned when it is Crown land.** *Tsilhqot'in* (2014) and *Nuchatlaht* (2026 BCCA 137) declared title over Crown land. The Supreme Court of Canada has granted leave in *Nuchatlaht* (reported 15 October 2026), so the law on proof of occupation may be refined again.
4. **Private land is now the central fault line.** *Cowichan Tribes* (BCSC, August 2025) declared title over land including fee simple parcels and found Crown grants to be an unjustified infringement. *J.D. Irving v. Wolastoquey Nation*, 2025 NBCA 129, holds the opposite in New Brunswick for declarations against non-party owners, leaving a "finding" of title to support compensation from the Crown. The Supreme Court refused leave on 28 May 2026.
5. **Compensation law has become more favourable.** *Southwind* (2021) measures equitable compensation by what a properly negotiated deal would have yielded, including the land's value to the project that took it. *Restoule* (2024) produced a \$10 billion negotiated settlement for the Robinson-Huron plaintiffs and a \$3.6 billion Crown determination for Robinson-Superior, upheld as reasonable in March 2026 and reportedly under appeal.
6. **Procedural corrections.** Federal proceedings may be taken in the name of the Attorney General of Canada and must be served on the Deputy Attorney General (CLPA s. 23). In New Brunswick the Crown is designated "the Province of New Brunswick" and two months' written notice is required before suit (PACA ss. 11, 15). Ontario requires 60 days' notice for damages claims (CLPA 2019 s. 18). The Federal Court cannot hear claims against a province brought by a private party (*Toney*, 2013 FCA 217).
7. **Injunctions and execution are not available against the Crown.** Courts may grant declarations instead (CLPA s. 22; NB PACA s. 14), and no execution issues on a judgment against the Crown (CLPA s. 29; NB PACA s. 17(6)). Pleadings should therefore centre on declarations, accounting and compensation, with negotiated transfer as the practical route to land.
8. **Limitations are a live risk for money claims, less so for declarations.** *Lameman* (2008) applied limitation periods to Aboriginal damages claims; *Manitoba Métis* (2013) held that a declaration on a fundamental constitutional matter was not barred. Ontario's Act excludes claims based on s. 35 rights; New Brunswick's contains no such exclusion.

9. **The UK tracks are not viable as litigation on present authority.** See *Indian Association of Alberta* [1982] QB 892 (CA), *Manuel* [1983] Ch 77, s. 2 of the *Canada Act 1982*, s. 40 of the *UK Crown Proceedings Act 1947*, and *Commanda*, 2018 FC 189.
10. **Negotiated restitution is producing land.** British Columbia legislated recognition of Haida title in 2024 and Canada recognized it by agreement in 2025; Manitoba's Treaty Land Entitlement had converted about 47% of 1.42 million entitled acres to reserve by March 2025. Litigation and negotiation should run together.

RECOMMENDED ORDER OF WORK

(1) Secure the nation's mandate and evidence protocol. (2) Build the parcel register separating Crown, private, municipal and reserve land. (3) Select the strongest Crown-land or treaty claim as a test case in the provincial superior court, naming the province and Canada. (4) File specific claims in parallel where the facts fit the *Specific Claims Tribunal Act*. (5) Pursue UK engagement through archives, Parliament and diplomacy, not the courts. (6) Do not name Charles III personally.

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HOW TO USE THIS PACKAGE

The package is built in layers. Parts I to IV set out what the law is and how it was verified. Parts V to VIII contain the four pleading frameworks, each annotated with the authority for every element and the evidence needed to prove it. Parts IX to XII cover remedies, alternatives to litigation, a regional case study and a work plan. The appendices hold the tools: fill-in schedules, a checklist, the table of authorities and the source list.

VERIFICATION GRADES

Each authority in Appendix D, and each case card in Part III, carries one of four grades. They describe how the statement was checked on 22 October 2026, not how strong the legal argument is.

GRADE	MEANING	EXAMPLES IN THIS PACKAGE
P	Primary text consulted: the statute, the judgment or the court docket itself	CLPA; <i>Federal Courts Act</i> s. 17; NB PACA; UK <i>Crown Proceedings Act 1947</i> s. 40; <i>Canada Act 1982</i> s. 2; <i>Commanda</i> , 2018 FC 189; 2025 NBCA 129
O	Official publication: court "Case in Brief", government release or official page	SCC Cases in Brief for <i>Restoule</i> , <i>Southwind</i> , <i>Pekuakamiulnuatsh</i> ; CIRNAC and ISC pages; BC Government release on Haida title
S	Reputable secondary source: law-firm bulletin, academic commentary or major news report	Tsilhqot'in pinpoints via Fasken; Cowichan details via Mandell Pinder, Osler and Torys
R	Re-check required: the matter was live or changing when checked	Cowichan appeals; Restoule-Superior appeal; Gitxaala and Nuchatlaht at the SCC

CONVENTIONS

- **[Bracketed shaded text]** is a placeholder to be replaced with particularized facts, or deleted.
- Annotations inside the pleadings are marked **AUTHORITY**, **EVIDENCE** or **RISK**. They must be removed before any pleading is finalized.
- Footnotes give the short citation and the source number in Appendix F (for example, [S18]). Full URLs and access dates are in Appendix F.
- Quotations from sources are kept short; most content is paraphrased. Counsel must read the full primary text before relying on any proposition.
- "Province" means a Canadian province. "Crown" without qualification means the Crown in right of Canada or of a province, as context requires; the UK Crown is always named as such.

PART I

VERIFICATION REPORT ON THE ORIGINAL DRAFT

Every link and every legal proposition in the eleven-page v1.0 concept was checked against live sources on 22 October 2026. This part records what held, what needed qualification, and what had to be corrected.

1.1 Method and grading · 1.2 The four original research links · 1.3 Proposition-by-proposition audit · 1.4 Material corrections and additions

1.1 METHOD AND GRADING

The verification followed three rules. First, primary text was preferred: where a statute, judgment or docket could be retrieved, it was read directly. Second, where a court website blocked automated retrieval, the proposition was checked against an official summary (such as a Supreme Court of Canada "Case in Brief") or at least one reputable secondary source, and graded accordingly. Third, anything still moving (an appeal, a leave application, a negotiation) was graded **R** and dated, because it may have changed by the time this package is read.

Three limits apply. Some court websites (including the Supreme Court of Canada's decisions database and BAILII) refused automated access during the check. For those judgments, paragraph-level pinpoints come from secondary sources and must be confirmed against the reasons. Ontario's e-Laws site could not be rendered, so Ontario statutory wording was confirmed through indexed text and practitioner commentary. Finally, no paid database was used; counsel should note-up every case before relying on it.

WHAT "VERIFIED" MEANS HERE

Verified means that the citation exists, that the court, date and holding were confirmed from the source named, and that the proposition in this package fairly reflects that source. It does not mean the authority is binding in a given court, that it will apply to a given nation's facts, or that it has not been distinguished in a later case.

SCOPE OF THE CHECK

CATEGORY	ITEMS	NOTES
Links in the original draft	4	All four resolve to real sources; one points to a catalogue page rather than the Act (Table 1.2).
Legal propositions in the original draft	22	18 confirmed, 3 confirmed with qualification, 1 corrected (Table 1.3).
Canadian statutes and constitutional provisions	14	Federal statutes checked against consolidations current to 30 Sept 2026.
Canadian judgments	40+	Including six decided or advanced since August 2025.
UK statutes, judgments and parliamentary sources	6	Crown Proceedings Act 1947; Canada Act 1982; two Court of Appeal decisions; Commons Library; Royal Trustees.
Official records, settlements and statistics	15+	CIRNAC, ISC, BC Government, Royal Household, Senate committee material.

1.2 THE FOUR ORIGINAL RESEARCH LINKS

TABLE 1.2 — STATUS OF THE RESEARCH LINKS IN V1.0

LINK AS GIVEN	GRADE	FINDING
<i>Crown Liability and Proceedings Act</i> (Justice Laws, C-50)	P	Resolves to the official consolidation, current to 30 September 2026 (last amended 1 July 2024). The Act governs damages claims and procedure against the federal Crown. Key sections for this package: s. 21 (concurrent jurisdiction of provincial superior courts), s. 22 (no injunction or specific performance; declarations instead), s. 23 (naming and service), s. 29 (no execution), s. 30 (payment from the Consolidated Revenue Fund) and s. 32 (limitation periods). ¹
<i>Tsilhqot'in Nation v. British Columbia</i> , 2014 SCC 44	S	The URL follows the Court's standard Lexum format but refused automated retrieval during the check. Citation, date (26 June 2014), unanimous reasons by McLachlin C.J. and the holdings were confirmed from multiple secondary sources. Use is accurate. ²
<i>Ontario (AG) v. Restoule</i> , 2024 SCC 27	O	Resolves to the Court's official "Case in Brief" (a staff summary, not the reasons). Judgment date 26 July 2024, unanimous, Jamal J. The draft cites it only as a research starting point, which is appropriate. Counsel should cite the reasons, not the summary. ³
<i>Crown Proceedings Act 1947</i> (GOV.UK)	P	Resolves, but to a Cabinet Office catalogue entry (first published 15 April 2009) that links an 8-page act paper, not to the revised statute. Replace with the revised text on legislation.gov.uk. Section 40(1) excludes proceedings against the monarch in a private capacity, and s. 40(2) confines the Act to liabilities "in respect of His Majesty's Government in the United Kingdom". ⁴

ADDITIONAL PRIMARY SOURCES NOW RELIED ON

The original draft identified only four starting points. This edition adds the statutes that control the procedure in each track, so that a reader can see where each procedural rule comes from:

- *Federal Courts Act*, s. 17 (Federal Court's concurrent jurisdiction where relief is claimed against the federal Crown) and s. 19 (intergovernmental disputes only where a province has consented).⁵
- *Constitution Act, 1867*, ss. 91(24) and 109, and *Constitution Act, 1982*, ss. 25, 35 and 35.1.⁶
- *Proceedings Against the Crown Act*, R.S.N.B. 1973, c. P-18, and *Limitation of Actions Act*, S.N.B. 2009, c. L-8.5.⁷
- *Specific Claims Tribunal Act*, S.C. 2008, c. 22, and the *United Nations Declaration on the Rights of Indigenous Peoples Act*, S.C. 2021, c. 14.⁸
- *Canada Act 1982* (UK), s. 2, which ends the UK Parliament's power to legislate for Canada.⁹

1. *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, ss. 21–32 [S1].

2. *Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44; holdings confirmed via Fasken and Bennett Jones bulletins [S18].

3. *Ontario (Attorney General) v. Restoule*, 2024 SCC 27, Case in Brief [S19].

4. *Crown Proceedings Act 1947* (UK), 10 & 11 Geo. 6, c. 44, s. 40, latest revised version [S12].

5. *Federal Courts Act*, R.S.C. 1985, c. F-7, ss. 17, 19, 48 [S2].

6. [S3], [S4].

7. [S8], [S9].

8. [S6], [S5].

9. *Canada Act 1982* (UK), 1982, c. 11, s. 2 [S13].

1.3 PROPOSITION-BY-PROPOSITION AUDIT

Table 1.3 lists every substantive legal proposition in v1.0, the verdict and the authority that supports or corrects it. "Confirmed" means the proposition is accurate as stated. "Qualified" means it is accurate but incomplete in a way that matters for drafting. "Corrected" means the wording needed to change.

TABLE 1.3 — AUDIT OF V1.0 PROPOSITIONS

#	PROPOSITION IN V1.0	VERDICT	AUTHORITY AND COMMENT
1	Federal Crown, provincial Crowns, UK Crown and Charles III personally are not interchangeable defendants.	CONFIRMED	Divisibility of the Crown: <i>Indian Association of Alberta</i> [1982] QB 892 (CA); <i>Commanda</i> , 2018 FC 189 at paras 8, 12–16; s. 109, <i>Constitution Act, 1867</i> .
2	A nationwide class action would face major differences in rights, evidence and remedies.	CONFIRMED	Title and treaty rights are collective and held by the rights-holding community: <i>Behn v. Moulton Contracting</i> , 2013 SCC 26. Band-class settlements exist (<i>Gottfriedson</i>) but concern different causes of action.
3	The claimant must be authorized by its governing body.	CONFIRMED	<i>Behn</i> : individuals may assert the collective's rights only with its authorization.
4	Federal claim belongs in "[Federal Court of Canada / competent court]".	QUALIFIED	Federal Court has concurrent (not exclusive) jurisdiction (FCA s. 17(1)); provincial superior courts also have jurisdiction (CLPA s. 21). The Federal Court cannot hear claims against a province by a private party (<i>Toney</i> , 2013 FCA 217), so a claim needing both Crowns usually goes to the superior court.
5	Federal defendant styled "His Majesty the King in Right of Canada".	QUALIFIED	CLPA s. 23(1): proceedings <i>may</i> be taken in the name of the Attorney General of Canada; s. 23(2) requires service on the Deputy Attorney General. Confirm the style required by the chosen court's rules.
6	Provincial defendant styled "His Majesty the King in Right of [Province]".	CORRECTED	Not universal. In New Brunswick the Crown is designated "the Province of New Brunswick" (PACA s. 11) and two months' prior written notice must be served on the Attorney General (s. 15). Use each province's statute.
7	Declaration of title requires a defined area and evidence meeting the legal test.	CONFIRMED	<i>Tsilhqot'in</i> : sufficient, continuous (where present occupation is relied on) and exclusive occupation at sovereignty; territorial, not site-specific, approach; affirmed in <i>Nuchatlaht</i> , 2026 BCCA 137.
8	Treaty claims must plead the exact promise, interpretation and breach.	CONFIRMED	<i>Restoule</i> , 2024 SCC 27 (augmentation clause interpreted; Crown discretion must be exercised honourably).
9	Duty to consult requires Crown knowledge, contemplated conduct and potential adverse effect.	CONFIRMED	<i>Haida Nation</i> , 2004 SCC 73; <i>Rio Tinto Alcan</i> , 2010 SCC 43.
10	Fiduciary duty requires a specific relationship, control over an interest, breach and loss.	CONFIRMED	<i>Guerin</i> , [1984] 2 SCR 335; <i>Wewaykum</i> , 2002 SCC 79; <i>Manitoba Métis</i> , 2013 SCC 14 (no fiduciary duty on those facts).
11	Compensation requires a legal basis, causation and valuation method.	CONFIRMED	<i>Southwind</i> , 2021 SCC 28 (measure of equitable compensation).
12	Suspension or restraint of federal decisions "where legally available".	QUALIFIED	No injunction or specific performance against the Crown; courts may make declaratory orders (CLPA s. 22). Judicial review of a specific decision is a separate proceeding.
13	Demand for every federal parcel nationwide is not an automatic entitlement.	CONFIRMED	Title is proved territory by territory (<i>Tsilhqot'in</i>); no authority supports a national restitution order.
14	Provincial claim must address private fee simple and third-party rights.	CONFIRMED	Now sharpened by <i>Cowichan</i> , 2025 BCSC 1490 and 2025 NBCA 129 (Part III, Part VI).

#	PROPOSITION IN V1.0	VERDICT	AUTHORITY AND COMMENT
15	Do not join all provincial Crowns by default.	CONFIRMED	Each province holds its own lands (s. 109); joinder requires a legal connection.
16	UK historical involvement or shared monarch does not establish present liability.	CONFIRMED	<i>Indian Association of Alberta; Manuel</i> [1983] Ch 77; <i>Canada Act 1982</i> s. 2; <i>Commanda</i> .
17	Review the Crown Proceedings Act 1947; not all remedies are available against the UK Crown.	CONFIRMED	CPA 1947 s. 40(2)(b)–(c) confine it to HM Government in the UK.
18	International principles do not automatically create a private damages action.	CONFIRMED	<i>Kebaowek</i> , 2026 FCA 174: UNDA provides a framework and does not itself implement UNDRIP's articles; compare <i>Gitxaala</i> , 2025 BCCA 430 (BC statute).
19	Office of monarch does not establish personal liability.	CONFIRMED	CPA 1947 s. 40(1); Commons Library CBP-8885 (personal immunity); <i>Commanda</i> at para 17.
20	Crown Estate assets are not the monarch's personal assets.	CONFIRMED	Royal Household: the Crown Estate is not the monarch's personal property; profits go to the Treasury.
21	Limitation periods, laches and immunity must be reviewed.	CONFIRMED	<i>Lameman</i> , 2008 SCC 14; <i>Chippewas of Sarnia</i> (ONCA 2000); <i>Manitoba Métis</i> (declaration not barred).
22	Indigenous data sovereignty and confidentiality should be respected in valuation.	CONFIRMED	OCAP® principles (FNIGC).

1.4 MATERIAL CORRECTIONS AND ADDITIONS

The audit found no fabricated authority and no proposition that misstated the law in a way that would mislead a reader. The draft was cautious throughout. The main changes in this edition are therefore additions and procedural precision rather than reversals.

CORRECTIONS

- Styling the provincial defendant.** The v1.0 template named "His Majesty the King in Right of [Province]" for every province. New Brunswick's statute requires a different designation, "the Province of New Brunswick".¹⁰ Each province has its own Crown-proceedings statute and the template now directs the drafter to it.
- Pre-suit notice.** v1.0 mentioned "notice/service" generally. The verified rules are specific and fatal if missed: two months' written notice to the Attorney General in New Brunswick before an action is brought,¹¹ and 60 days' notice in Ontario for damages claims, failing which the action is a nullity.¹²
- Forum for combined federal-provincial claims.** The Federal Court cannot exercise jurisdiction over a province in an action by a private party, absent statutory consent.¹³ A title claim that needs both Crowns will normally be brought in the provincial superior court.

¹⁰ *Proceedings Against the Crown Act*, R.S.N.B. 1973, c. P-18, s. 11 [S8].

¹¹ *Ibid.*, s. 15(1); s. 15(2) extends a limitation period that would otherwise expire during the notice period by seven days after the notice period ends [S8].

¹² *Crown Liability and Proceedings Act*, 2019, S.O. 2019, c. 7, Sch. 17, s. 18; *Corrigan v. Ontario*, 2023 ONCA 39, as described in WeirFoulds commentary [S11].

¹³ *Alberta v. Toney*, 2013 FCA 217 at paras 14–42 (majority) [S37].

4. **Replacing the UK link.** The GOV.UK page is a catalogue entry; the revised Act on legislation.gov.uk is the authoritative text.

ADDITIONS

1. **A direct Canadian precedent on Tracks 3 and 4.** In *Commanda v. Her Majesty the Queen of Canada et al.*, 2018 FC 189, the Federal Court struck a claim against the UK Crown for lack of jurisdiction. It held that the UK Crown, as a foreign state, is immune under s. 3 of the *State Immunity Act*; that courts must treat the UK Crown as distinct from the Crowns in right of Canada and the provinces; and it rejected the argument that suing the Queen as successor to George III and Victoria was a personal claim.¹⁴ v1.0 did not cite it.
2. **The 2025–2026 title cases.** *Cowichan Tribes* (BCSC, 7 Aug 2025), *J.D. Irving v. Wolastoqey Nation* (NBCA, 11 Dec 2025; leave refused 28 May 2026) and *Nuchatlaht* (BCCA, 2 Apr 2026; SCC leave granted, reported 15 Oct 2026) change how restitution of private and Crown land should be pleaded.
3. **Restoule's aftermath.** The Robinson-Huron settlement (\$10 billion, announced 17 June 2023) and the Robinson-Superior Crown determination (\$3.6 billion, January 2025; upheld as reasonable in March 2026) show how a declaratory treaty judgment converts into money.
4. **UNDRIP after October 2026.** *Kebaowek*, 2026 FCA 174 (16 Oct 2026) reversed the Federal Court's FPIC-informed approach to consultation under federal law; *Gitxaala*, 2025 BCCA 430 is before the Supreme Court (leave granted 21 May 2026).
5. **Federal non-derogation clause.** Since 27 November 2024 the federal *Interpretation Act* requires federal laws to be read as upholding s. 35 rights, replacing statute-by-statute clauses.¹⁵
6. **Specific claims as a parallel route.** The Tribunal can award money only, capped at \$150 million per claim, and cannot hear claims based on Aboriginal title.¹⁶

BOTTOM LINE OF THE AUDIT

The four-track structure is retained, but the tracks are no longer treated as equivalent. Tracks 1 and 2 are developed into full annotated frameworks. Tracks 3 and 4 become threshold assessments that explain, with verified authority, why litigation is not recommended and what alternatives exist.

¹⁴ *Commanda v. Her Majesty the Queen of Canada et al.*, 2018 FC 189 (Prothonotary Tabib, 16 Feb 2018) at paras 5–18 [S36].

¹⁵ Department of Justice Canada, "S-13 Royal Assent" (Nov 2024) [S7]; UNDA s. 2(2) shown as repealed in the current consolidation [S5].

¹⁶ *Specific Claims Tribunal Act*, S.C. 2008, c. 22, ss. 15(1)(f), 20(1)(a)–(b) [S6].

PART II

CONSTITUTIONAL AND HISTORICAL FRAMEWORK

Who can be sued, for what, and where, depends on a small number of constitutional rules: the Royal Proclamation and the treaties, the division of land and legislative power in 1867, section 35, the divisibility of the Crown, and the honour of the Crown.

2.1 The Royal Proclamation and the treaty order · 2.2 Division of powers · 2.3 Section 35 and justification · 2.4 Divisibility of the Crown · 2.5 Honour of the Crown and fiduciary duty · 2.6 UNDRIP in Canadian law

2.1 THE ROYAL PROCLAMATION AND THE TREATY ORDER

THE ROYAL PROCLAMATION OF 7 OCTOBER 1763

Issued by George III after the Treaty of Paris, the Proclamation reserved lands west of the Appalachian divide to Indigenous nations, barred private purchases of Indigenous land, and required any acquisition to be made by the Crown at a public meeting or assembly of the nation concerned.¹⁷ The Proclamation is expressly preserved by s. 25(a) of the *Canadian Charter of Rights and Freedoms*, which prevents the Charter from being read to diminish rights recognized by it.¹⁸

For pleading purposes the Proclamation does three things. It is evidence that the Crown recognized pre-existing Indigenous interests in land. It establishes the procedure (Crown-only, public, consensual) against which later dispositions can be measured. And, in the Privy Council's 1888 decision in *St. Catharines Milling*, it was treated as the source of the "Indian title", a view the Supreme Court later moved beyond by grounding title in prior occupation rather than in the Crown's grant.¹⁹

TREATIES

Canada's treaty relationships fall into broad families. Each requires its own reading; no pleading should treat "the treaties" as a single instrument.

TABLE 2.1 — TREATY FAMILIES RELEVANT TO RESTITUTION CLAIMS

FAMILY	PERIOD	WHAT MATTERS FOR A LAND CLAIM
Peace and Friendship Treaties	1725–1779	Concluded with Mi'kmaq, Wolastoqiyik (Maliseet) and Peskotomuhkati (Passamaquoddy) peoples in what are now the Maritimes, Gaspé and Maine. The federal government's own summary states that they did not surrender rights to land or resources. ²⁰ Title claims in these territories therefore turn on Aboriginal title, not on a treaty surrender (see Part XI).
Upper Canada land surrenders and the Robinson Treaties	1764–1862; 1850	Many involved cessions in exchange for annuities or reserves. <i>Restoule</i> interpreted the Robinson Treaties' augmentation clause.
Numbered Treaties 1–11	1871–1921	Cession clauses plus reserve land formulas. Shortfalls in reserve land underpin Treaty Land Entitlement agreements (Part IX).
Modern treaties (comprehensive land claims agreements)	1975–present	Constitutionally protected as treaty rights (s. 35(3)). Claims based on agreements made after 31 Dec 1973 are excluded from the Specific Claims Tribunal. ²¹

READING A TREATY IN LITIGATION

Treaties are interpreted to give effect to the common intention of the parties at the time, reading the text in light of its historical and cultural context, and without sharp dealing. *Marshall* (1999) applied these principles to the 1760–

¹⁷ Royal Proclamation, 1763, as summarized in secondary sources [S41]. Read the full text, R.S.C. 1985, App. II, No. 1, before pleading.

¹⁸ *Constitution Act, 1982*, s. 25(a) [S4].

¹⁹ *St. Catharines Milling and Lumber Co. v. The Queen* (1888), 14 App. Cas. 46 (JCPC) [S40]; *Calder v. British Columbia (AG)*, [1973] SCR 313; *Delgamuukw v. British Columbia*, [1997] 3 SCR 1010 [S50].

61 treaties to find a right to fish and trade for necessities, while *Marshall; Bernard* (2005) held that the same treaty right did not extend to commercial logging.²² The lesson for drafting is that the pleaded promise must be tied to what the parties actually contemplated, supported by historical evidence, not by a modern restatement.

2.2 DIVISION OF POWERS: WHY PROVINCES ARE NECESSARY PARTIES

Two provisions of the *Constitution Act, 1867* decide which Crown must be sued for land.

s. 91(24)	Gives Parliament exclusive legislative authority over "Indians, and Lands reserved for the Indians". This is legislative power, not ownership.
s. 109	Vests lands, mines, minerals and royalties in the provinces where they are situated, subject to any trusts and to any interest other than that of the province. ²³

The combined effect, settled since *St. Catharines Milling*, is that the province holds the underlying beneficial interest in public land within its borders, burdened by any Indigenous interest. When a treaty cession or extinguishment occurs, the burden lifts and the province's interest becomes unencumbered. When title is proved, the Indigenous interest is one of the "interests other than that of the Province" to which s. 109 is subject.

DRAFTING CONSEQUENCE

- A claim to the return of public land outside reserves and federal holdings must name the province, because the province holds the interest that would be displaced.
- Canada should normally also be named, because of its s. 91(24) responsibility, its fiduciary obligations and its role in historical treaty-making and reserve administration.
- Federal Crown land (for example, federal properties, port lands or defence lands) is held by Canada and requires Canada as defendant. In *Cowichan*, the fee simple interests of Canada were among those declared defective.
- In the three prairie provinces, the *Natural Resources Transfer Agreements* of 1930 shifted Crown land to the provinces subject to existing trusts and interests; counsel must review them for any claim there.

PROVINCIAL LAWS ON TITLE LAND

Tsilhqot'in held that provincial laws of general application can apply to title land, but any law that meaningfully diminishes the title holders' rights must satisfy the s. 35 justification test, and the doctrine of interjurisdictional immunity does not shield title land from provincial law.²⁴ The British Columbia *Forest Act* did not apply to the de-

²⁰ CIRNAC, "Peace and Friendship Treaties (1725–1779)" [S42].

²¹ *Constitution Act, 1982*, s. 35(3) [S4]; *Specific Claims Tribunal Act*, s. 15(1)(b) [S6].

²² *R. v. Marshall*, [1999] 3 SCR 456 and [1999] 3 SCR 533; *R. v. Marshall; R. v. Bernard*, 2005 SCC 43 [S43], [S44].

²³ *Constitution Act, 1867*, ss. 91(24), 109 [S3].

²⁴ *Tsilhqot'in*, 2014 SCC 44, as summarized in Fasken and Bennett Jones bulletins [S18].

clared lands because they were no longer "Crown timber". In *Nuchatlaht* (2026) the Court of Appeal again treated declared lands as outside provincial Crown-land regimes; the Supreme Court will now hear the case.

2.3 SECTION 35 AND THE JUSTIFICATION FRAMEWORK

Section 35(1) of the *Constitution Act, 1982* recognizes and affirms "existing aboriginal and treaty rights". Section 35(2) defines the Aboriginal peoples of Canada to include the Indian, Inuit and Métis peoples; s. 35(3) brings land claims agreements within "treaty rights"; and s. 35(4) guarantees the rights equally to male and female persons.²⁵

THE STRUCTURE OF A S. 35 CLAIM

1. **Existence of the right.** For title: occupation at the assertion of sovereignty that is sufficient, continuous (where present occupation is relied on) and exclusive. For other Aboriginal rights: a practice integral to the distinctive culture before contact (*Van der Peet*, [1996] 2 SCR 507). For treaty rights: the promise, interpreted as above.
2. **Prima facie infringement.** Government action that meaningfully diminishes the right.
3. **Justification.** After *Sparrow* ([1990] 1 SCR 1075) and as restated in *Tsilhqot'in*: the Crown must have discharged its procedural duty to consult and accommodate; must act for a compelling and substantial objective; and must act consistently with its fiduciary obligation, which requires rational connection, minimal impairment and proportionality of effects.
4. **Remedy.** Declaration, damages or equitable compensation, and (where justified) setting aside an unjustified authorization. Title holders' consent avoids the need for justification.

INCIDENTS OF TITLE

As summarized from *Tsilhqot'in*, Aboriginal title confers the right to decide how the land will be used, to enjoy and occupy it, to possess it, to its economic benefits and to manage it proactively. It is held collectively for present and future generations, so the land cannot be used in a way that would substantially deprive future generations of its benefit, and it cannot be alienated except to the Crown.²⁶ These incidents are the content of any restitution claim: what the nation seeks is the restoration of these rights over a defined area, or compensation in lieu.

²⁵. *Constitution Act, 1982*, s. 35(1)–(4) [S4].

²⁶. *Tsilhqot'in* at para 73 as reported in Fasken bulletin [S18].

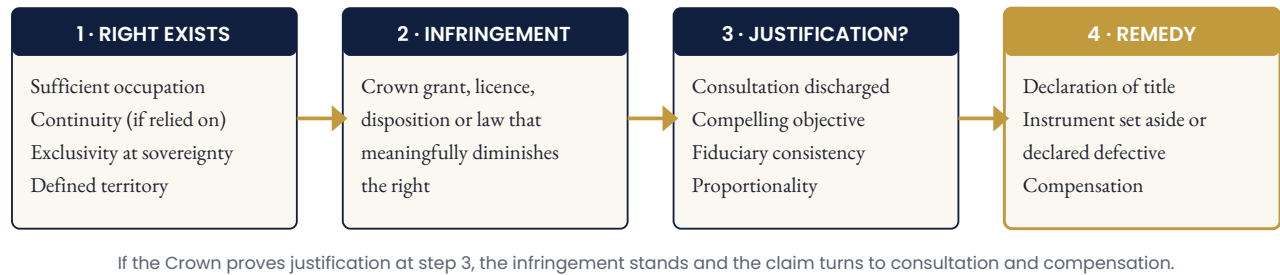


FIGURE 2.1 · The four steps of a s. 35 title claim, per *Sparrow* and *Tsilhqot'in*. Each box corresponds to a group of material facts that must be pleaded and proved.

2.4 THE DIVISIBILITY OF THE CROWN

One monarch now heads several legally distinct Crowns. The King of Canada acts on the advice of Canadian ministers; the King in right of New Brunswick acts on the advice of New Brunswick ministers; the King in right of the United Kingdom acts on the advice of UK ministers. Each "Crown" is a separate legal person for the purpose of rights, obligations and litigation. This is the single most important principle for Tracks 3 and 4.



FIGURE 2.2 · Divisibility of the Crown. Each box is a distinct legal person for litigation purposes; liability and property do not pass between them by reason of the shared monarch.

HOW THE COURTS ARRIVED HERE

AUTHORITY	RELEVANCE
Statute of Westminster, 1931	Confirmed the legislative autonomy of the Dominions; the Federal Court in <i>Commanda</i> treated it as confirming the divisibility of the Crown (para 14).
<i>R. v. Secretary of State for Foreign and Commonwealth Affairs, ex p. Indian Association of Alberta</i> [1982] QB 892 (CA)	The English Court of Appeal held that the Crown's obligations under the 1763 Proclamation and the nineteenth-century treaties had become obligations of the Crown in right of Canada. The application against the UK Secretary of State failed. ²⁷

²⁷ As summarized in *Commanda*, 2018 FC 189 at para 8 [S36], [S39].

AUTHORITY	RELEVANCE
<i>Manuel v. Attorney-General</i> [1983] Ch 77 (CA)	Indian chiefs' challenge to the validity of the <i>Canada Act 1982</i> , including arguments based on the Statute of Westminster and UK treaty obligations, was struck out as disclosing no reasonable cause of action. ²⁸
<i>Canada Act 1982</i> (UK), s. 2	No UK Act passed after the <i>Constitution Act, 1982</i> comes into force extends to Canada as part of its law. The UK Parliament can no longer legislate a remedy for Canada. ²⁹
<i>Commanda</i> , 2018 FC 189	Canadian courts must recognize the UK Crown as distinct and treat it as a foreign government; obligations to Aboriginal peoples have been fully devolved to the Crown in right of Canada, as affirmed by s. 35 (para 16).

The result is that a claim based on what British officials did before Confederation is, in Canadian law, a claim against the Crown in right of Canada (and, for land, the relevant province). The Supreme Court has confirmed that Canada can be held liable for pre-Confederation breaches of colonial Crowns in the specific-claims context.³⁰ That is a reason to sue in Canada, not in London.

2.5 HONOUR OF THE CROWN AND FIDUCIARY DUTY

The honour of the Crown is not a cause of action in itself, but it gives rise to enforceable duties in specific circumstances. The verified cases establish the following.

DUTY	LEADING AUTHORITY	WHAT MUST BE PLEADED
Diligent, purposive implementation of constitutional and treaty promises	<i>Manitoba Métis Federation</i> , 2013 SCC 14; <i>Restoule</i> , 2024 SCC 27	The promise; that it is constitutional or treaty-based; a persistent pattern of inattention or a failure to exercise a discretion honourably; the resulting harm. <i>Restoule</i> requires the Crown to consider increases from time to time and to exercise its discretion liberally and justly.
Duty to consult and accommodate	<i>Haida Nation</i> , 2004 SCC 73; <i>Mikisew Cree</i> , 2005 SCC 69; <i>Clyde River</i> , 2017 SCC 40	Crown knowledge of the right or claim; contemplated Crown conduct; potential adverse effect; the deficiency. Regulators can discharge the duty (<i>Clyde River</i>). The duty does not apply to the law-making process itself (<i>Mikisew Cree</i> , 2018 SCC 40).
Honourable performance of agreements	<i>Quebec (AG) v. Pekuakamiulnuatsh Takuhikan</i> , 2024 SCC 39	An agreement with an Indigenous community entered into in pursuit of reconciliation; a failure to negotiate or perform honourably. The Court upheld an award equal to accumulated deficits (\$767,745.58 against Quebec) as a remedy for breach of the honour of the Crown. ³¹
Sui generis fiduciary duty	<i>Guerin</i> , [1984] 2 SCR 335; <i>Wewaykum</i> , 2002 SCC 79; <i>Southwind</i> , 2021 SCC 28	A cognizable Indigenous interest (classically reserve land) over which the Crown has assumed discretionary control; breach of loyalty, good faith, full disclosure or ordinary prudence; loss. <i>Manitoba Métis</i> found no fiduciary duty where the interest was individual rather than collective.

The honour of the Crown is engaged by what the Crown promised and controlled. It is not engaged merely because a historical wrong occurred.

²⁸ ICLR report, decided 30 July 1982 (Megarry V.-C., Cumming-Bruce, Eveleigh and Slade L.JJ.) [S38].
²⁹ *Canada Act 1982*, s. 2 [S13].
³⁰ *Williams Lake Indian Band v. Canada (Aboriginal Affairs and Northern Development)*, 2018 SCC 4, as described in Law Times and other reports [S70].
³¹ SCC Case in Brief, 2024 SCC 39 (27 Nov 2024) [S26].

This distinction drives the drafting. A pleading that recites colonial history without identifying a promise, an undertaking or a discretionary control over an Indigenous interest will be vulnerable to a motion to strike. The original draft's rule that "colonial history may be context, but each cause of action requires material facts" is correct and is retained in every framework below.

2.6 UNDRIP IN CANADIAN LAW AFTER GITXAAĀ AND KEBAOWEK

The UN General Assembly adopted the *Declaration on the Rights of Indigenous Peoples* on 13 September 2007 (resolution 61/295).³² Several of its articles go directly to restitution:

- **Art. 26:** rights to lands, territories and resources traditionally owned, occupied or used, and a duty on states to give legal recognition and protection with due respect to Indigenous land tenure systems.
- **Art. 27:** a fair, independent, impartial, open and transparent process, developed with the peoples concerned, to recognize and adjudicate land rights.
- **Art. 28:** redress, which can include restitution or, where that is not possible, just, fair and equitable compensation, for lands taken without free, prior and informed consent; compensation should be in lands of equal quality, size and legal status, money, or other appropriate redress, unless otherwise freely agreed.
- **Art. 32(2):** good-faith consultation to obtain free and informed consent before approval of projects affecting lands or resources.
- **Art. 40:** access to just and fair procedures and effective remedies.
- **Art. 46(1):** nothing in the Declaration authorizes action that would dismember or impair the territorial integrity or political unity of sovereign states.³³

FEDERAL IMPLEMENTATION

The *United Nations Declaration on the Rights of Indigenous Peoples Act* (UNDA), assented to 21 June 2021, affirms the Declaration as a universal international human rights instrument with application in Canadian law and requires the Government of Canada, in consultation and cooperation with Indigenous peoples, to take all measures necessary to ensure federal laws are consistent with it (s. 5), to prepare an action plan (s. 6) and to report annually to Parliament (s. 7).³⁴

On 16 October 2026 the Federal Court of Appeal held in *Canadian Nuclear Laboratories v. Kebaowek First Nation*, 2026 FCA 174, that UNDA provides a framework for implementation and does not immediately implement the Declaration's articles; that the federal *Interpretation Act* has no provision requiring statutes to be read consistently with UNDRIP; and that the free, prior and informed consent provisions in arts. 29(2) and 32(2) had not been im-

³² UN DESA, Indigenous Peoples [S60]. The UN page reports the vote inconsistently (143 or 144 in favour, 4 against, 11 abstentions); confirm against the official record before citing a number.

³³ Articles paraphrased from the Declaration as reproduced in the Schedule to S.C. 2021, c. 14 [S5].

³⁴ UNDA, S.C. 2021, c. 14, ss. 2(3), 4–7, current to 30 Sept 2026 [S5].

plemented domestically through UNDA. It set aside the Federal Court's decision (2025 FC 319) and dismissed the First Nation's application.³⁵

BRITISH COLUMBIA

British Columbia's *Declaration on the Rights of Indigenous Peoples Act* (DRIPA) has a different structure, and its *Interpretation Act* contains a provision requiring enactments to be construed consistently with the Declaration. In *Gitxaala v. British Columbia (Chief Gold Commissioner)*, 2025 BCCA 430 (5 Dec 2025, 2–1), the majority held that DRIPA s. 3 imposes a justiciable obligation and declared the province's automatic online mineral-claim registration, established without prior consultation, inconsistent with art. 32(2). The Supreme Court granted leave on 21 May 2026 (docket 42200); no hearing date was set when the docket was checked.³⁶

PRACTICAL READING FOR PLEADINGS

Plead UNDRIP as an interpretive aid and as evidence of the standard the Crown has committed to, not as a freestanding cause of action. In British Columbia, a DRIPA-based declaration may be available, subject to the outcome at the Supreme Court. Federally, after *Kebaowek*, the safer course is to anchor each claim in s. 35, treaty and fiduciary law and to cite UNDA's purposes in support.

³⁵. JFK Law, "UNDRIP's Promise Deferred" (19 Oct 2026) [S34]. **R** A leave application to the SCC may follow.

³⁶. Osler, "UNDRIP in B.C. law" (17 Dec 2025); SCC docket 42200 [S33]. **R**

PART III

VERIFIED JURISPRUDENCE DIGEST

More than thirty decisions, grouped by the element of a claim they prove or defeat. Each card gives the citation, what was decided, how it should be used in the frameworks, and how it was verified.

A. Title · B. Treaties and the honour of the Crown · C. Fiduciary duty and compensation · D. Consultation · E. Limitations, laches and third parties · F. Evidence · G. The Crown, the UK and immunity · H. UNDRIP

A. ABORIGINAL TITLE

Calder v. British Columbia (AG)

[1973] SCR 313 · **S****HELD**

Aboriginal title can exist as a legal right arising from prior occupation, independent of any Crown grant. The Nisga'a claim failed on a procedural ground.

USE

Historical foundation; cite for the source of title in occupation rather than in the Royal Proclamation.

Delgamuukw v. British Columbia

[1997] 3 SCR 1010 · **S****HELD**

Title is a communal interest in land requiring exclusive occupation before sovereignty; only Parliament could extinguish Aboriginal rights before 1982; oral histories must be accommodated and placed on an equal footing with documentary evidence (para 87). New trial ordered.

USE

Evidence protocol (Part XII); provincial incapacity to extinguish title, relied on in *Cowichan*.

R. v. Marshall; R. v. Bernard

2005 SCC 43 · [2005] 2 SCR 220 · **S****HELD**

Mi'kmaq defendants charged with cutting Crown timber in Nova Scotia and New Brunswick failed to establish title (insufficient proof of regular and exclusive use of the cut sites) or a treaty right to log commercially. Convictions restored.

USE

The most important adverse precedent in the Maritimes. Shows that title must be proved with territory-specific evidence; a regulatory-defence posture is a poor vehicle for title. See Part XI.

Tsilhqot'in Nation v. British Columbia

2014 SCC 44 · 26 June 2014 · **S****HELD**

First declaration of Aboriginal title by the Supreme Court, over roughly 1,750 km² of Crown land (secondary sources give figures between about 1,700 and 1,900 km²). Occupation must be sufficient, continuous and exclusive, assessed from the Indigenous perspective and the common law together; regular use of tracts for hunting, fishing and resource harvesting can suffice. Title confers rights to use, possess, benefit from and manage the land. Infringement requires consent or justification; interjurisdictional immunity does not apply.

USE

Core authority for every title paragraph in Drafts 1 and 2. Note that privately owned land was excluded from the declaration.

Cowichan Tribes v. Canada (AG)2025 BCSC 1490 · 7 Aug 2025 · Young J. · **S** **R**

HELD	After a 513-day trial (Sept 2019 to Nov 2023) over a 1,846-acre claim area in Richmond, B.C., title was declared over part of the area (the Cowichan Title Lands), including land held in fee simple. The province lacked jurisdiction to extinguish title; Crown grants of fee simple were an unjustified infringement; the fee simple interests of Canada and the City of Richmond were declared defective and invalid, with that declaration suspended for 18 months. Limitations, laches and bona fide purchaser defences were rejected. Canada and British Columbia were directed to negotiate in good faith; privately held fee simple titles were not invalidated.
STATUS	All parties have appealed; the B.C. Court of Appeal may hear the appeals in 2027. A private owner's bid to reopen the trial was dismissed as an abuse of process on 29 June 2026, and that ruling is itself under appeal. A proposed class action by fee simple owners (filed Nov 2025) was uncertified when last reported. ³⁷
USE	Persuasive authority for restitution against Crown and municipal fee simple; template for pleading defective Crown grants.

J.D. Irving, Limited et al. v. Wolastoqey Nation2025 NBCA 129 · 11 Dec 2025 · **P**

HELD	Drapeau J.A. for a unanimous panel. A declaration of Aboriginal title against the Crown cannot issue over privately owned land without the owners' participation, as a matter of procedural fairness; Aboriginal title and fee simple cannot coexist. The Nation may seek a <i>finding</i> of title over private parcels to support damages and compensation against the Crown, and may seek a <i>declaration</i> over the 30,446 parcels of ungranted Crown land. The claim covers 283,204 parcels in western New Brunswick, of which 252,758 are private.
STATUS	SCC dismissed the Nation's application for leave to appeal on 28 May 2026 (2026 CanLII 50180). ³⁸
USE	Binding in New Brunswick. Drafts for NB must plead a declaration over Crown land and a finding plus compensation over private land.

The Nuchatlaht v. British Columbia2026 BCCA 137 · 2 Apr 2026 · **S** **R**

HELD	The trial judge misapplied the test for sufficient occupation by using an arbitrary 100-metre elevation line and discounting culturally modified trees and post-1846 evidence; title declared over the whole claim area of about 200 km ² on Nootka Island. Intensive use of every part of a territory is not required.
STATUS	Supreme Court of Canada will hear British Columbia's appeal (reported 15 Oct 2026). ³⁹
USE	Supports territorial (rather than site-by-site) pleading of occupation; watch the SCC outcome.

³⁷ Mandell Pinder case summary; Osler; Torys (Jan 2026); Today in BC (29 June 2026); BLG (June 2026) [S27], [S28].

³⁸ 2025 NBCA 129 at paras 1, 7–11 [S29]; Torys (May 2026); Emond (Summer 2026) [S30], [S31].

³⁹ Mandell Pinder summary (1 May 2026); BLG (June 2026); CTV News (15 Oct 2026) [S32].

B. TREATIES AND THE HONOUR OF THE CROWN

R. v. Marshall

[1999] 3 SCR 456; clarified [1999] 3 SCR 533 · 

HELD

The 1760–61 treaties protect a communal right to hunt, fish and gather and to trade the products for necessities (a "moderate livelihood"). The November 1999 reasons confirmed the right is regulable for conservation and other important public objectives and does not extend to logging, minerals or offshore gas by default.

USE

Treaty-interpretation method for the Peace and Friendship Treaties; the treaties' silence on land cession supports title-based claims in the Maritimes.

Grassy Narrows First Nation v. Ontario (Natural Resources)

2014 SCC 48 · 

HELD

Ontario, as the owner of the land under s. 109, may "take up" Treaty 3 lands for development, but must respect the treaty and the honour of the Crown, including consultation.

USE

Confirms the province as the proper defendant for treaty-land administration within its borders.

Manitoba Métis Federation Inc. v. Canada (AG)

2013 SCC 14 · 

HELD

Majority (McLachlin C.J. and Karakatsanis J.): no fiduciary duty, because the interest was individual; but the federal Crown failed to implement s. 31 of the *Manitoba Act, 1870* with the diligence the honour of the Crown requires. Limitation statutes and laches did not bar a declaration on a fundamental constitutional matter (para 140).

USE

Lead the prayer for relief with declarations to minimize limitation risk.

Ontario (AG) v. Restoule

2024 SCC 27 · 26 July 2024 · Jamal J. · 

HELD

The Robinson Treaties' augmentation clause obliges the Crown to consider from time to time whether annuities can be increased without loss and, if so, by how much, exercising its discretion liberally and honourably. No specific fiduciary duty, but the honour of the Crown requires diligent fulfilment. The Crown must increase annuities for the past and engage in time-bound, honourable negotiations with the Superior plaintiffs.

AFTER

Robinson-Huron: \$10 billion settlement announced 17 June 2023 (\$5 billion each from Canada and Ontario; 21 First Nations). Robinson-Superior: no agreement; Crown determined \$3.6 billion (Jan 2025; \$1.8 billion each); Ontario Superior Court (Hennessy J.) found the amount reasonable while criticizing the process and awarded \$40 million in costs (reported 4 Mar 2026); plaintiffs had sought nearly \$36 billion; an appeal was reported.⁴⁰

USE

Model for treaty-promise pleading and for how a declaration translates into compensation.

⁴⁰ SCC Case in Brief [S19]; CIRNAC release (June 2023) [S20]; CIRNAC QP note (10 Sept 2025) [S21]; CP24 (4 Mar 2026) [S22]; SooToday headline [S24]. 

Quebec (AG) v. Pekuakamiulnuatsh Takuhikan2024 SCC 39 · 27 Nov 2024 · 

HELD 8–1. The honour of the Crown applies to the performance of tripartite policing agreements with an Indigenous community. Quebec breached good faith and the honour of the Crown by refusing to renegotiate funding; liable for \$767,745.58 (its share of \$1.6 million in deficits).

USE Settlement and co-management agreements reached during a restitution process are themselves enforceable through the honour of the Crown.

C. FIDUCIARY DUTY AND COMPENSATION***Guerin v. The Queen***[1984] 2 SCR 335 · 

HELD Canada owed the Musqueam a fiduciary duty when it took a surrender of reserve land for lease to a golf club and then leased it on worse terms than agreed. Damages awarded.

USE Foundation for any claim about surrenders, leases or dispositions of reserve land.

Wewaykum Indian Band v. Canada2002 SCC 79 · [2002] 4 SCR 245 · 

HELD The Crown's fiduciary duty is not a general duty over all aspects of the relationship; it attaches to specific Indigenous interests over which the Crown has assumed discretionary control. Before reserve creation the duty is limited to loyalty, good faith, disclosure and ordinary diligence. Limitation periods were applied.

USE Defines what a fiduciary pleading must identify.

Southwind v. Canada2021 SCC 28 · 16 July 2021 · 

HELD Karakatsanis J. for the majority (Côté J. dissenting). Where Canada breached its fiduciary duty in allowing reserve land to be flooded for a hydroelectric project, equitable compensation must reflect what a properly negotiated deal would have produced, valuing the land by its worth to the party taking it, including its added value to the project. The \$30 million trial award was inadequate; reassessment ordered.

USE Primary valuation authority for Schedule E (Part IX).

Williams Lake Indian Band v. Canada2018 SCC 4 · 

HELD The Specific Claims Tribunal reasonably held Canada liable for pre-Confederation breaches by the colonial Crown (British Columbia) concerning village sites pre-empted by settlers.

USE Pre-1867 colonial conduct is answerable in Canada; supports sending Track 3 facts into Tracks 1–2 or the Tribunal.

D. CONSULTATION AND ACCOMMODATION

Haida Nation v. British Columbia (Minister of Forests)

2004 SCC 73 · [2004] 3 SCR 511 · **S****HELD**

The Crown must consult, and where appropriate accommodate, when it has knowledge of a potential right and contemplates conduct that may adversely affect it. The duty varies with the strength of the claim and the seriousness of the impact. Not met on the facts.

USE

Interim protection while title is litigated; ground for judicial review of specific approvals.

Taku River Tlingit First Nation v. British Columbia

2004 SCC 74 · [2004] 3 SCR 550 · **S****HELD**

The duty was met through participation in a lengthy environmental assessment.

USE

Defensive: the Crown will rely on process participation; evidence of the consultation record is essential.

Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)

2005 SCC 69 · **S****HELD**

Taking up land under a numbered treaty triggers the duty to consult; here at the low end of the spectrum, and not met.

USE

Treaty-area consultation claims.

Clyde River (Hamlet) v. Petroleum Geo-Services; Chippewas of the Thames v. Enbridge

2017 SCC 40; 2017 SCC 41 · **S****HELD**

Regulatory tribunals can discharge the Crown's duty to consult. In *Clyde River* the process was inadequate; in *Chippewas of the Thames* it was adequate.

USE

Identify whether a regulator was the Crown's consultation vehicle and whether it was adequate.

Mikisew Cree First Nation v. Canada (Governor General in Council)

2018 SCC 40 · **S****HELD**

The duty to consult does not apply to the law-making process; legislation may be challenged once enacted.

USE

Do not plead failure to consult on legislation as such; plead infringement by the enacted law instead.

Behn v. Moulton Contracting Ltd.

2013 SCC 26 · 9 May 2013 · **S****HELD**

The duty to consult is owed to the Aboriginal group holding the s. 35 rights; individuals may assert it only if authorized by the collective. Raising these defences in a tort action after blockading, without having challenged the licences, was an abuse of process.

USE

Authorization paragraphs in every draft; warns against self-help in place of timely legal challenge.

E. LIMITATIONS, LACHES AND THIRD PARTIES

Canada (AG) v. Lameman

2008 SCC 14 · [2008] 1 SCR 372 · **S**

- HELD** Descendants of the Papaschase Band sued in 2001 over the 1880s scrip and the 1889 reserve surrender. Alberta's limitation period applied to these Aboriginal claims; the claim had been discoverable by the 1970s. Summary judgment dismissed the action.
- USE** Every damages claim needs a discoverability analysis; consider whether a claim is better framed as declaratory (*Manitoba Métis*) or brought as a specific claim.

Chippewas of Sarnia Band v. Canada (AG)

(2000), 51 OR (3d) 641 (CA) · **S**

- HELD** The Band's claim to about 2,540 acres near Sarnia, conveyed without a documented surrender, could not be enforced against current private owners: a 150-year delay and equity's protection of good-faith purchasers were decisive. Leave to the SCC was refused in 2001. Damages claims against the Crown were left to proceed.
- USE** Principal Ontario authority against recovery from private owners; distinguish by facts (notice, conduct, nature of the interest).

Chippewas of Saugeen First Nation v. South Bruce Peninsula (Town)

2024 ONCA 884 · 9 Dec 2024 · **S**

- HELD** The 1855 survey wrongly set the reserve's northern boundary; the disputed part of Sauble Beach is reserve land. The good-faith purchaser defence is not automatic and was reasonably refused on the facts; title reverts, with remedies among the Town, owners and Crowns left to a second phase. The SCC dismissed leave on 28 Aug 2025.⁴¹
- USE** Shows reserve-boundary errors can yield land return even against municipal and private holders in Ontario.

F. EVIDENCE

Delgamuukw (para 87) and Mitchell v. M.N.R.

[1997] 3 SCR 1010; 2001 SCC 33 · **S**

- HELD** Rules of evidence must be adapted so oral histories can be admitted and placed on an equal footing with documents. *Mitchell* holds that such evidence must still be useful and reasonably reliable, and is weighed like other evidence; a claim cannot rest on speculation.
- USE** Plan oral-history evidence early, with elders' consent and appropriate protocols; corroborate with archaeology, archival records and expert testimony (Part XII).

⁴¹ Mondaq summary; CP24 (28 Aug 2025) [S49].

G. THE CROWN, THE UNITED KINGDOM AND IMMUNITY

St. Catharines Milling and Lumber Co. v. The Queen

(1888) 14 App Cas 46 (JCPC) · **S**

HELD Indian title was a personal and usufructuary right; on surrender under Treaty 3 the beneficial interest passed to Ontario, not Canada.

USE Origin of the province-as-owner rule; its characterization of title has since been superseded.

R. v. Secretary of State for Foreign and Commonwealth Affairs, ex p. Indian Association of Alberta

[1982] QB 892 (CA) · **S**

HELD The Crown's obligations under the Royal Proclamation and the treaties had passed to the Crown in right of Canada; the UK Secretary of State was not the proper respondent.

USE The basic answer to Track 3.

Manuel v. Attorney-General

[1983] Ch 77 (CA) · 30 July 1982 · **S**

HELD Claims by Indian chiefs that the *Canada Act 1982* was invalid (for want of compliance with the Statute of Westminster and UK treaty duties) were struck out.

USE English courts will not revisit patriation or UK responsibility for Canadian treaties.

Commanda v. Her Majesty the Queen of Canada et al.

2018 FC 189 · 16 Feb 2018 · **P**

HELD Claim against "Her Majesty the Queen of Canada and the United Kingdom" struck as against the UK Crown for want of jurisdiction. The UK Crown, as a foreign state, is immune under s. 3 of the *State Immunity Act*; courts must treat it as distinct from the Canadian Crowns; the argument that the action was against the Queen personally was rejected (paras 9–18).

USE Direct Canadian authority against Tracks 3 and 4. Counsel should check subsequent history.

Alberta v. Toney

2013 FCA 217 · 18 Sept 2013 · **P**

HELD Majority: the Federal Court lacked jurisdiction over Alberta in an action by a private party; neither the *Federal Courts Act* nor provincial legislation conferred it, and waiver arguments failed.

USE Forum choice: claims needing a province go to the superior court.

Kazemi Estate v. Islamic Republic of Iran

2014 SCC 62 · **S**

HELD The *State Immunity Act* governs foreign-state immunity in Canadian civil proceedings; no implied exception for torture.

USE Read with *Commanda*: any claim against the UK Crown in Canada must fit an express SIA exception.

H. UNDRIP

Gitxaala v. British Columbia (Chief Gold Commissioner)

2025 BCCA 430 · 5 Dec 2025 · S R

HELD	2–1 (Dickson J.A. for the majority; Riley J.A. dissenting). DRIPA s. 3 imposes a justiciable obligation; B.C.'s <i>Interpretation Act</i> s. 8.1(3) creates a rebuttable presumption of consistency; the automatic online mineral-claim regime, established without consultation, is inconsistent with art. 32(2).
STATUS	Leave to the SCC granted 21 May 2026 (docket 42200); hearing not yet scheduled when checked. B.C. shelved proposed DRIPA amendments in 2026.

Canadian Nuclear Laboratories v. Kebaowek First Nation

2026 FCA 174 · 16 Oct 2026 · S R

HELD	Reversing 2025 FC 319: UNDA is a framework that does not directly implement the Declaration's articles; the Canadian Nuclear Safety Commission was not required to implement UNDRIP or apply FPIC; consultation duty at the low end on the facts.
USE	Federal pleadings should not rely on UNDRIP articles as directly enforceable.

READING THE DIGEST

The cards are summaries for orientation. Grades marked S mean the reasons could not be retrieved directly during the check; quote nothing from these cases until the reasons have been read. Cases marked R were under appeal or awaiting the Supreme Court on 22 October 2026.

PART IV

FORUM, PROCEDURE AND THRESHOLD BARRIERS

Claims against the Crown fail more often on procedure than on history. This part sets out the verified rules on forum, naming, notice, remedies, limitation periods, standing and the specific-claims alternative.

4.1 Choosing the forum · 4.2 Naming, notice and service · 4.3 Remedies the Crown statutes permit · 4.4 Limitation periods, laches and good-faith purchasers · 4.5 Standing, authorization and collective proceedings · 4.6 The Specific Claims Tribunal route

4.1 CHOOSING THE FORUM

Three courts and one tribunal are realistic options for a Canadian restitution claim. The right choice depends on who must be a defendant and what remedy is sought.

TABLE 4.1 — FORUM OPTIONS

FORUM	JURISDICTION SOURCE	STRENGTHS	LIMITS
Provincial superior court (e.g. NB Court of King's Bench)	Inherent jurisdiction; concurrent jurisdiction over claims against the federal Crown (CLPA s. 21)	Can hear claims against both Canada and the province and join third parties; where <i>Tsilhqot'in</i> , <i>Cowichan</i> and the Wolastoqey claim were brought	Provincial notice and limitation rules; long trials (513 days in <i>Cowichan</i>)
Federal Court	<i>Federal Courts Act</i> s. 17 (concurrent original jurisdiction where relief is claimed against the Crown)	National reach; experience with Crown and Indigenous litigation (e.g. <i>Southwind</i> trial)	No jurisdiction over a province in an action by a private party (<i>Toney</i>); limited jurisdiction over private defendants
Specific Claims Tribunal	<i>Specific Claims Tribunal Act</i> , ss. 14–16	Binding money awards on defined historical grievances; faster than trial in many cases	Money only; \$150 million cap; no title-based claims; Minister-first process (4.6)
Judicial review (Federal Court or superior court)	Statutory and inherent review jurisdiction	Quick challenge to a specific approval, licence or disposition; consultation remedies	Short deadlines; does not decide title

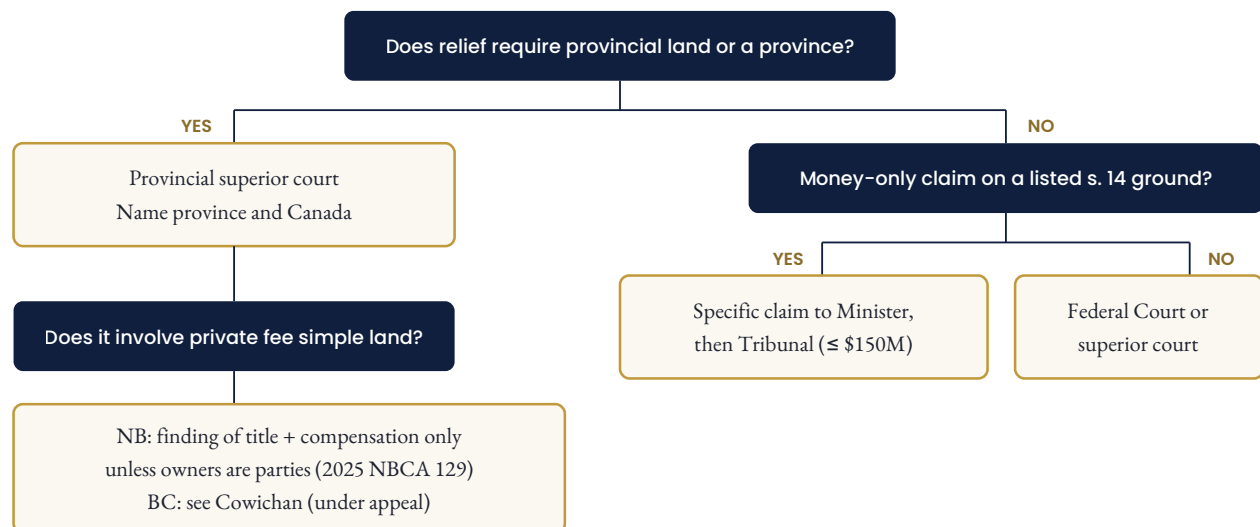


FIGURE 4.1 · Simplified forum decision path. It is an orientation aid only; counsel must also weigh evidence location, judicial experience, cost and strategy.

4.2 NAMING, NOTICE AND SERVICE

Errors here can void a proceeding. The rules below were read from the statutes on 22 October 2026. Other provinces have their own statutes, which must be checked.

TABLE 4.2 — NAMING, NOTICE AND SERVICE OF THE CROWN

CROWN	NAME USED	PRE-SUIT NOTICE	SERVICE
Canada	Proceedings "may be taken in the name of the Attorney General of Canada" (CLPA s. 23(1)); some court forms still use "His Majesty the King"	No general pre-suit notice in the CLPA; interest on unliquidated claims runs from written notice to the Crown (s. 31)	On the Deputy Attorney General of Canada (s. 23(2))
New Brunswick	"the Province of New Brunswick" (PACA s. 11)	Two months' written notice to the Attorney General before the action, stating the claimant, cause of action and court (s. 15(1)); limitation extended by 7 days after the notice period if needed (s. 15(2))	On the Attorney General, Deputy Attorney General or designated solicitor (s. 12)
Ontario	Per <i>Crown Liability and Proceedings Act, 2019</i>	60 days' notice for damages claims (s. 18); action without notice is a nullity (<i>Corrigan</i> , 2023 ONCA 39). Leave required for misfeasance and bad-faith claims (s. 17; upheld on appeal, 2023 ONCA 172; leave to SCC refused 7 Dec 2023)	Per the Act and Rules
Other provinces	Each has a Crown-proceedings statute with its own designation, notice and procedural rules. Do not copy the NB or Ontario wording.		

Sources: CLPA ss. 23, 31 [S1]; NB PACA ss. 11, 12, 15 [S8]; Ontario CLPA 2019 and commentary [S11]; SCC docket 40733 (Poorkid Investments).

4.3 REMEDIES THE CROWN STATUTES PERMIT

Restitution is a remedy, and the Crown statutes shape what a court can order. Three rules matter most.

1 · NO INJUNCTION OR SPECIFIC PERFORMANCE AGAINST THE CROWN

Federally, a court cannot grant an injunction or order specific performance against the Crown; it may instead make an order declaratory of the parties' rights (CLPA s. 22). New Brunswick's rule is the same, and adds that in claims for the recovery of land the court may declare the claimant's entitlement instead of ordering recovery (PACA s. 14(2)–(3)).⁴² A prayer for an order that the Crown "transfer" land must therefore be framed as a declaration of entitlement, with negotiation or implementing legislation as the mechanism for transfer.

2 · NO EXECUTION AGAINST THE CROWN

No execution issues on a judgment against the federal Crown; payment is made out of the Consolidated Revenue Fund on a certificate (CLPA ss. 29–30). In New Brunswick no execution or similar process issues, and payment comes from the Consolidated Fund after the appeal period (PACA s. 17).⁴³

3 · DECLARATIONS CARRY THE WEIGHT

Declarations are the central remedy in modern Crown–Indigenous litigation. *Manitoba Métis, Restoule* and *Cowichan* all turned on declarations, followed by negotiation. Because the Crown is presumed to obey the courts, a

⁴² CLPA s. 22 [S1]; NB PACA s. 14 [S8].

declaration that title exists, or that a grant was defective, is in practice enforceable through compliance and negotiation.

REMEDIES THAT ARE NOT AVAILABLE OR ARE VERY UNLIKELY

- A court order forcing the Crown to convey a specific parcel (no specific performance against the Crown).
- Seizure of Crown property to satisfy a judgment (no execution).
- Land awards from the Specific Claims Tribunal (money only, s. 20(1)(a)).
- A declaration of title over private land in New Brunswick without the owner as a party (2025 NBCA 129).
- Punitive damages before the Tribunal (s. 20(1)(d)).

4.4 LIMITATION PERIODS, LACHES AND GOOD-FAITH PURCHASERS

STATUTORY PERIODS

For claims against the federal Crown arising in a province, the province's limitation law applies as between subject and subject, unless federal law provides otherwise; for causes of action arising outside a province, the period is six years (CLPA s. 32).⁴⁴

TABLE 4.4 — LIMITATION RULES IN THE THREE MOST RELEVANT JURISDICTIONS

JURISDICTION	BASIC AND ULTIMATE PERIODS	ABORIGINAL CLAIMS
New Brunswick	Earlier of 2 years from discovery and 15 years from the act or omission (s. 5); continuing acts treated as occurring each day (s. 6); the Act binds the Crown (s. 3); Crown claims to recover land have a 60-year period (s. 8.1(2)(b)); equitable refusal of relief preserved (s. 25)	No express exclusion for Aboriginal or treaty claims was found in the consolidation checked
Ontario	2-year basic period and 15-year ultimate period	The Act does not apply to proceedings based on existing Aboriginal and treaty rights recognized by s. 35, or to equitable claims by Aboriginal people against the Crown (s. 2(1)(e)–(f)); those are governed by the law that applied before the 2002 Act
Federal (outside a province)	6 years (CLPA s. 32)	Subject to the general case law below

Sources: NB *Limitation of Actions Act* [S9] (note that the consolidation shows inconsistent currency dates); Ontario *Limitations Act, 2002* [S10] (statutory wording confirmed through indexed text; read the current version before relying on it).

⁴³ CLPA ss. 29–30 [S1]; NB PACA s. 17(3)–(6) [S8].

⁴⁴ CLPA s. 32 [S1].

CASE LAW

- **Damages claims are exposed.** *Lameman* (2008) and *Wewaykum* (2002) applied limitation periods to Aboriginal claims for damages and equitable relief.
- **Declarations are better protected.** *Manitoba Métis* (2013) held that limitation statutes could not bar a declaration on a fundamental constitutional matter of reconciliation. Commentators have noted that the decision left open whether personal relief, damages or title claims could be barred.
- **Continuing breaches.** Where the Crown's conduct is ongoing (for example, a continuing failure to implement a treaty promise, as in *Restoule*), New Brunswick's s. 6 deeming rule and the general law of continuing breach may restart the clock for each day the breach continues.
- **Discoverability.** Plead specifically when the nation knew, or ought to have known, of the injury, its cause and the Crown's role, and why earlier action was not possible (lack of records, legal prohibitions, Crown non-disclosure).

LACHES AND THE GOOD-FAITH PURCHASER

Equitable defences apply to equitable remedies, and their treatment now varies. *Chippewas of Sarnia* (ONCA 2000) refused relief against private owners because of a 150-year delay and the good-faith purchaser rule. *Saugeen* (ONCA 2024) held that the purchaser defence is not automatic, given the special nature of reserve land, and allowed reversion. *Cowichan* (BCSC 2025) rejected limitations, laches and bona fide purchaser defences altogether. In New Brunswick the issue is largely displaced by the NBCA's procedural rule on private land.

DRAFTING RULE

Put declarations first in the prayer for relief, plead discoverability and continuing breach facts expressly, and keep damages claims against the Crown separate from any relief that would affect private owners.

4.5 STANDING, AUTHORIZATION AND COLLECTIVE PROCEEDINGS

WHO MAY SUE

Title, treaty rights and the duty to consult are collective. The proper plaintiff is the rights-holding community, acting through whatever body it authorizes, which may be an *Indian Act* band council, a hereditary governance system, a nation-level government or a combination. *Behn* confirms that individuals cannot assert collective rights without authorization.⁴⁵ Where the rights-holding group (for example, "the Wolastoqey Nation" or "the Cowichan Nation") differs from any single band, the pleading must explain the relationship and how each component authorized the action. The style of cause in the Wolastoqey leave application ("Wolastoqey Nation at Welamukotuk (Oromocto First Nation) et al.") shows one way of doing so.

⁴⁵ *Behn v. Moulton Contracting Ltd.*, 2013 SCC 26 [S47].

REPRESENTATIVE AND CLASS PROCEEDINGS

Class proceedings have produced large settlements for Indigenous claimants, but generally for claims that are not about title to specific land. The residential-schools *Gottfriedson* Band Class settlement, approved by the Federal Court in March 2023, transferred \$2.8 billion into an Indigenous-led trust to address collective harm to language, culture and heritage.⁴⁶ That model suits a common wrong suffered by many communities. A title claim is different: each nation must prove its own occupation of its own territory, which is why the original draft's caution about a single nationwide class action is maintained.

- **Overlapping claims.** Where territories overlap, consider joint claims, protocols between nations, or notice to neighbouring nations. *Tsilhqot'in* recognized that shared use does not necessarily defeat exclusivity if the claimant controlled access.
- **Coordinated test cases.** Several nations can coordinate strategy, experts and funding while each brings its own claim.

4.6 THE SPECIFIC CLAIMS TRIBUNAL ROUTE

The specific-claims process deals with breaches of "lawful obligations" relating to reserves, treaty land and assets. It is the main non-court route for historical land grievances, but it cannot return land through an award.

TABLE 4.6 — SPECIFIC CLAIMS TRIBUNAL ACT AT A GLANCE

TOPIC	RULE (PARAPHRASED)
Grounds (s. 14(1))	(a) failure to provide lands or assets under a treaty or agreement; (b) breach of duties under the <i>Indian Act</i> or other federal or colonial legislation; (c) breach of duties about reserve lands, Indian moneys or assets, including unilateral undertakings; (d) illegal lease or disposition of reserve land; (e) failure to compensate fairly for reserve land taken or damaged under legal authority; (f) fraud by Crown employees or agents concerning reserve land
Exclusions (s. 15)	Events within 15 years before filing; claims based on post-1973 land claims agreements; listed agreements; program and service claims; agreements with their own dispute mechanism; claims based on Aboriginal rights or title; treaty harvesting rights (with an exception for land or assets)
Preconditions (s. 16)	Claim first filed with the Minister to the minimum standard; Tribunal filing only if the Minister declines, three years pass without a decision, the Minister consents, or three years of negotiation pass without settlement
Awards (s. 20)	Money only; capped at \$150 million; just compensation on court principles; no punitive or non-pecuniary (including cultural or spiritual) damages; benefits received are deducted

Source: *Specific Claims Tribunal Act*, S.C. 2008, c. 22, ss. 14–16, 20, current to 21 June 2026 [S6]. A practitioner primer notes that the Minister can approve negotiated settlements up to \$50 million and that larger settlements need further government approval [S54].

SCALE OF THE PROCESS

In June 2024 Crown-Indigenous Relations told a Senate committee that 712 specific claims had been resolved since 1973 for more than \$15.6 billion, that more than 700 claims were active (379 in negotiation and 213 under assess-

⁴⁶ CIRNAC, "Federal Court approves Band Class litigation settlement agreement" (Mar 2023) [S58]; *Canada (AG) v. Gottfriedson*, 2014 FCA 55 [S74].

ment), and that 302 claims worth more than \$11.6 billion had been resolved "since 2016". The French version of the same answer says "since 2006", so that sub-figure should be confirmed before it is cited.⁴⁷

LAND THROUGH SPECIFIC CLAIMS

Although the Tribunal awards money only, negotiated settlements can include land or money to buy land, which is then added to reserve through the Additions to Reserve process. In October 2025 the B.C. Assembly of First Nations resolved that land return has been part of federal specific-claims policy since 1982 but is rarely applied, and called for pathways to restitution in negotiations.⁴⁸ A nation pursuing land should say so at the negotiation stage and plan the ATR steps early (Part IX).

⁴⁷. CIRNAC written response to the Standing Senate Committee on National Finance, Supplementary Estimates (A) 2024–25 [S53].

⁴⁸. BCAFN Resolution 46/2025 (certified 30 Oct 2025) [S59].

PART V

DRAFT 1 — FEDERAL CROWN (ANNOTATED FRAMEWORK)

A statement-of-claim framework against the Crown in right of Canada, rebuilt paragraph by paragraph with the authority for each element, the evidence required to prove it, and the main risks.

5.1 When to use this track · 5.2 Annotated statement of claim · 5.3 Prayer for relief · 5.4 Risk register

5.1 WHEN TO USE THIS TRACK

Use a federal-only framework where the land or interest at issue is held or administered by Canada (federal Crown land, reserve land and its surrender or management, Indian moneys, federally regulated lands such as port or defence holdings), or where the claim concerns a federal treaty promise or a federal fiduciary undertaking. Where the remedy would affect provincial public land, use Draft 2 and name both Crowns in the provincial superior court (see 4.1).

TYPICAL FEDERAL SUBJECT MATTER	MOST LIKELY CAUSE OF ACTION	LEADING AUTHORITY
Surrender, lease or sale of reserve land	Fiduciary duty; specific claim	<i>Guerin</i> ; <i>Southwind</i> ; SCTA s. 14(1)(c)–(d)
Flooding or expropriation of reserve land	Fiduciary duty; equitable compensation	<i>Southwind</i> ; SCTA s. 14(1)(e)
Unfulfilled reserve-land promise under a numbered treaty	Treaty breach; honour of the Crown	Treaty Land Entitlement agreements; <i>Restoule</i>
Federal Crown land within a title area	Declaration of title; unjustified infringement	<i>Tsilhqot'in</i> ; <i>Cowichan</i> (Canada's fee simple declared defective)
Pre-Confederation colonial breaches	Specific claim or action against Canada	<i>Williams Lake</i> , 2018 SCC 4

5.2 ANNOTATED STATEMENT OF CLAIM

IN THE [FEDERAL COURT / COURT OF KING'S BENCH OF _____ / SUPERIOR COURT OF JUSTICE]

BETWEEN:

[FULL NAME OF RIGHTS-HOLDING NATION OR COMMUNITY], by its [Chief and Council / Hereditary Chiefs / Government], on its own behalf and on behalf of its members

PLAINTIFF

— and —

[ATTORNEY GENERAL OF CANADA / HIS MAJESTY THE KING]

DEFENDANT

AUTHORITY CLPA s. 23(1) permits proceedings in the name of the Attorney General of Canada; s. 23(2) requires service on the Deputy Attorney General. Confirm the style used by the chosen court's forms. In the Federal Court, file under *Federal Courts Act* s. 48.

STATEMENT OF CLAIM — DRAFT FOR COUNSEL REVIEW

I. THE PARTIES AND THE PLAINTIFF'S AUTHORITY

1. The Plaintiff, [name], is an Aboriginal people within the meaning of s. 35(2) of the *Constitution Act, 1982*, and the collective holder of the rights and interests claimed in this action.
2. The Plaintiff brings this action through [governing body], which was authorized to do so by [resolution / law / decision of hereditary leaders] dated [date], a copy of which will be produced.

AUTHORITY *Behn*, 2013 SCC 26: collective rights may be asserted only by the collective or with its authorization.
EVIDENCE Certified resolution; nation's governance law; evidence that each constituent community consented if the nation comprises several bands.

3. The Plaintiff does not purport to represent any other Indigenous nation. Where neighbouring nations have interests in parts of the Claim Area, those interests are described in Schedule C and notice has been given to [nations].
4. The Defendant is sued for the acts, omissions, obligations and property of His Majesty the King in right of Canada, including those of the colonial Crown for which Canada is answerable in law.

AUTHORITY *Williams Lake*, 2018 SCC 4 (Canada liable for pre-Confederation colonial breaches in specific-claims context); *Indian Association of Alberta* [1982] QB 892 (obligations passed to Canada). **RISK** Do not plead that Canada is liable for conduct attributable only to a province; separate it.

II. THE CLAIM AREA

5. This action concerns the lands, waters and resources described by legal description and parcel identifier in Schedule A and shown on the map in Schedule B (the "Claim Area").
6. Schedule B distinguishes, for each parcel, whether it is (a) federal Crown land; (b) reserve land; (c) provincial Crown land; (d) municipal land; (e) privately held fee simple; or (f) subject to leases, licences, rights-of-way or other encumbrances.

AUTHORITY *Tsilhqot'in* (title declared over a defined area; private land excluded); 2025 NBCA 129 (parcel-level treatment of Crown versus private land). **EVIDENCE** Land registry searches (in NB, Service New Brunswick's registry), Canada Lands Survey Records, federal real property inventory, survey plans, GIS layers.

7. This claim seeks relief against federal Crown land and reserve land only. Relief concerning provincial Crown land is sought in [companion proceeding / Draft 2]. No relief is sought against privately held land in this action except a finding of fact relevant to compensation from the Defendant.

RISK Asking for title over private land without the owners as parties will be struck in NB (2025 NBCA 129) and raises fairness objections elsewhere (the *Cowichan* reopening application). Keep private land to a finding plus Crown compensation unless owners are joined.

III. THE PLAINTIFF'S RIGHTS

8. At the time the Crown asserted sovereignty over the Claim Area, being [date and basis, e.g. 1713 / 1759–60 / 1846], the Plaintiff's ancestors occupied the Claim Area sufficiently, continuously and exclusively, as particularized in Schedule C, including by [village sites, seasonal camps, harvesting areas, trails, burial sites, resource management, governance and exclusion of others].

AUTHORITY *Tsilhqot'in* (regular use of tracts for hunting, fishing and harvesting can establish sufficient occupation; exclusivity shown by intention and capacity to control); *Nuchatlaht*, 2026 BCCA 137 (no arbitrary elevation lines; culturally modified trees and post-sovereignty evidence relevant). **EVIDENCE** Oral history under protocol; archaeology; ethnohistory; early Crown correspondence and surveys; place names; expert reports.
RISK *Bernard*, 2005 SCC 43 (title not proved on site-specific evidence in NS and NB).

9. The Plaintiff has maintained its connection to the Claim Area to the present day, and its present occupation is rooted in its pre-sovereignty occupation.

10. In the alternative, or in addition, the Plaintiff holds the following Aboriginal rights in the Claim Area: [harvesting, fishing, governance or other site-specific rights].
11. The Plaintiff is a party to, or successor to a party to, [treaty name and date] (the "Treaty"), under which the Crown promised [the specific promise, quoted from the treaty text and supported by the record of negotiations].

AUTHORITY *Marshall*, [1999] 3 SCR 456 (common intention; historical context); *Restoule* (augmentation clause read as a promise requiring honourable exercise of discretion). **EVIDENCE** Certified treaty text; minutes and journals of negotiations; Indigenous accounts of the treaty; expert historians.

IV. THE DEFENDANT'S CONDUCT

12. On or about [date], the Defendant [granted / sold / leased / took a surrender of / expropriated / flooded / authorized / failed to set apart] [parcel(s)], as particularized in Schedule D.
13. When it did so, the Defendant knew, or ought to have known, of the Plaintiff's rights and interests, because of [petitions, correspondence, reserve allotment records, surveys, earlier claims, Crown reports].

AUTHORITY *Haida Nation* (knowledge, real or constructive); *Guerin* (Crown's discretionary control over surrendered land). **EVIDENCE** Library and Archives Canada RG 10 (Indian Affairs) files and equivalent colonial records; Orders in Council; Crown patents; Indian Affairs annual reports.

14. The Plaintiff did not consent to the conduct described in Schedule D. [If a surrender is alleged: the surrender was invalid because ____ / was obtained without the required assembly or vote / was obtained by misrepresentation / was improvident.]
15. The conduct was not justified. It did not serve a compelling and substantial objective; the Defendant did not consult the Plaintiff; and the conduct was not consistent with the Defendant's fiduciary obligations, did not minimally impair the Plaintiff's rights and was disproportionate in its effects.

AUTHORITY *Sparrow*; *Tsilhqot'in* (justification requires consultation, compelling objective, fiduciary consistency, proportionality). **RISK** The burden of justification is on the Crown once infringement is shown, but particulars of the absence of consultation strengthen the pleading.

V. CAUSES OF ACTION

16. **Aboriginal title.** The Plaintiff holds Aboriginal title to the Claim Area or, alternatively, to the parts of it identified in Schedule A-1. The Defendant's grants and dispositions within the title area are unjustified infringements of that title and, to the extent made without constitutional or statutory authority, are defective.

AUTHORITY *Cowichan*, 2025 BCSC 1490 (Canada's fee simple interests declared defective and invalid; under appeal). **RISK** Persuasive only outside B.C.; appeals pending **R**.

17. **Breach of treaty.** The Defendant breached the Treaty by [specific act or omission], and has failed to implement the Treaty diligently and purposively as the honour of the Crown requires.

AUTHORITY *Manitoba Métis*, 2013 SCC 14 (diligent implementation); *Restoule*, 2024 SCC 27.

18. **Breach of fiduciary duty.** The Defendant assumed discretionary control over [the specific reserve land, surrender proceeds, Indian moneys or other cognizable interest] and breached its duties of loyalty, good faith, full disclosure and ordinary prudence by [particulars].

AUTHORITY *Guerin; Wewaykum* (duty attaches to specific interests over which the Crown assumed control).

RISK *Manitoba Métis*: no fiduciary duty where the interest is individual, not collective.

19. **Breach of the honour of the Crown and the duty to consult.** In respect of the decisions listed in Schedule D-2, the Defendant failed to consult and, where appropriate, accommodate the Plaintiff.

20. **Accounting and equitable compensation.** The Plaintiff is entitled to an accounting of revenues derived from the Claim Area and to equitable compensation measured as described in Schedule E.

AUTHORITY *Southwind*, 2021 SCC 28 (what a properly negotiated deal would have yielded, including value to the taker). **EVIDENCE** Valuation expert; revenue records from federal departments; comparable transactions; interest and present-value methodology.

VI. LIMITATION, DISCOVERABILITY AND EQUITABLE DEFENCES

21. The declarations sought concern fundamental constitutional matters and are not subject to limitation statutes.
22. Further, the Plaintiff did not discover, and could not reasonably have discovered, the material facts of the claims for compensation until [date], because [records were held by the Crown / Indian Act s. 141 (1927–1951) barred raising funds for claims / the Crown denied the obligation until ____].

AUTHORITY *Manitoba Métis* at para 140 (declaration not barred); *Lameman*, 2008 SCC 14 (damages barred where discoverable). **RISK** The former *Indian Act* restriction on claims funding is often pleaded; verify the provision and its dates against the statute before relying on it.

23. The Defendant's breaches are continuing.

5.3 PRAYER FOR RELIEF (DRAFT 1)

THE PLAINTIFF CLAIMS:

1. (a) a declaration that the Plaintiff holds Aboriginal title to the lands described in Schedule A-1;
2. (b) a declaration that the Defendant's interests in the federal Crown parcels listed in Schedule A-2 are subject to, and burdened by, the Plaintiff's title, and that the grants or dispositions listed in Schedule D were unjustified infringements of that title;
3. (c) a declaration that the Plaintiff is entitled to the lands in Schedule A-2, and a declaration that the Defendant must negotiate in good faith, within a time set by the Court, the transfer, recognition or other reconciliation of those lands;

AUTHORITY CLPA s. 22 (declaratory order in place of specific performance); *Restoule* (time-bound honourable negotiation); *Cowichan* (direction to negotiate). **RISK** A court may decline to supervise negotiations; plead the alternative of compensation.

4. (d) a declaration that the Defendant breached the Treaty and the honour of the Crown as particularized in Schedule D;
5. (e) a declaration that the Defendant breached its fiduciary obligations in respect of [interest];
6. (f) an accounting of all revenues derived by the Defendant from the Claim Area;
7. (g) equitable compensation, or alternatively damages, in an amount to be determined in accordance with Schedule E;
8. (h) a finding of fact as to the Plaintiff's Aboriginal title over privately held parcels listed in Schedule A-3, for the purpose only of assessing compensation payable by the Defendant;

AUTHORITY 2025 NBCA 129 at paras 9, 11 (finding, not declaration, for private land, to support compensation from the Crown).

9. (i) pre-judgment and post-judgment interest (CLPA s. 31);
10. (j) costs, including special costs given the public importance of the claim; and
11. (k) such further relief as this Court considers just.

5.4 RISK REGISTER (DRAFT 1)

RISK	LEVEL	WHY	MITIGATION
Motion to strike for want of material facts	High	Pleadings reciting history without specific Crown conduct are vulnerable	Complete Schedules C and D before filing; tie each cause of action to dated conduct
Wrong forum	Medium	Federal Court cannot bind the province (<i>Toney</i>)	Confine Draft 1 to federal land and interests; otherwise use Draft 2
Limitation defence to money claims	High	<i>Lameman</i> ; <i>Wewaykum</i>	Declarations first; plead discoverability, continuing breach; consider specific claim
Failure of title proof	High	<i>Bernard</i> ; multi-year evidentiary burden	Early expert retention; territorial pleading per <i>Tsilhqot'in</i> and <i>Nuchatlaht</i>
Overlapping claims	Medium	Neighbouring nations may intervene or object	Protocols; notice; consider shared or joint claims
Cost and duration	High	<i>Cowichan</i> trial lasted 513 days over four years	Phased trial; test case; litigation funding; parallel negotiation
Changing law	Medium	<i>Nuchatlaht</i> and <i>Gitxaala</i> at the SCC; <i>Cowichan</i> on appeal	Plead in the alternative; re-verify before filing R
Adverse costs	Medium	Courts may award costs against unsuccessful parties; public-interest factors vary	Seek advance or public-interest costs where available; budget for exposure

NOTE ON REMEDIES ACTUALLY ACHIEVED

In the cases verified for this package, land has come back to Indigenous nations through three routes: a court declaration over Crown land (*Tsilhqot'in*, *Nuchatlalt*), reversion of mis-surveyed reserve land (*Saugeen*), and negotiated recognition (Haida Gwaii). Money has come through settlement after declarations (*Restoule*), equitable compensation (*Southwind*) and specific claims. Draft 1 is built to keep all of these routes open at once.

PART VI

DRAFT 2 — PROVINCIAL CROWN (ANNOTATED, WITH NEW BRUNSWICK VARIANT)

Most public land in Canada is provincial. This framework names the province as owner of the Crown's beneficial interest and Canada as co-defendant, and shows how the pleading must change to meet New Brunswick's statutes and the Court of Appeal's 2025 ruling on private land.

6.1 Why the province, and why both Crowns · 6.2 Pre-filing steps (NB) · 6.3 Annotated statement of claim · 6.4 Private land and third parties · 6.5 Prayer for relief · 6.6 Province-specific checks

6.1 WHY THE PROVINCE, AND WHY BOTH CROWNS

Section 109 of the *Constitution Act, 1867* vests public lands in the province, subject to "any Interest other than that of the Province". A claim to have public land recognized as title land, or returned, therefore seeks to displace the province's interest. *Grassy Narrows* confirms that provinces administer treaty lands within their borders, subject to the treaty and the honour of the Crown. Canada should be joined because of its s. 91(24) responsibilities, its role in treaty-making and reserve administration, and because some heads of relief (fiduciary breach, specific promises) may lie against it alone.

A combined claim against both Crowns belongs in the provincial superior court, because the Federal Court cannot exercise jurisdiction over a province at the suit of a private party (*Toney*, 2013 FCA 217), while the superior court has concurrent jurisdiction over claims against Canada (CLPA s. 21).

6.2 PRE-FILING STEPS (NEW BRUNSWICK)

#	STEP	RULE AND SOURCE
1	Serve written notice on the Attorney General of New Brunswick at least two months before commencing	PACA s. 15(1): state the claimant's name and residence, the cause of action and the court. Track the date; if a limitation period would expire during the notice period, s. 15(2) extends it to seven days after the notice period ends.
2	Prepare the style of cause naming "the Province of New Brunswick"	PACA s. 11. Crown corporations (e.g. NB Power) are named by their corporate names.
3	Confirm the court: Court of King's Bench	PACA ss. 6, 9.
4	Plan service on the Attorney General, Deputy Attorney General or designated solicitor	PACA s. 12.
5	Serve Canada separately	CLPA s. 23(2): Deputy Attorney General of Canada.
6	Run limitation analysis under the NB <i>Limitation of Actions Act</i>	2 years from discovery / 15 years ultimate (s. 5); continuing acts (s. 6); Crown land recovery 60 years (s. 8.1(2)(b)); no Aboriginal exclusion found.
7	Build the parcel register separating Crown, private, municipal, Crown-corporation and reserve land	2025 NBCA 129 makes the distinction decisive.
8	Decide whether any private owner will be joined	Without the owner, no declaration of title over its land (2025 NBCA 129 at paras 8–9).

Sources: NB PACA [S8]; NB *Limitation of Actions Act* [S9]; 2025 NBCA 129 [S29]; CLPA [S1].

6.3 ANNOTATED STATEMENT OF CLAIM

IN THE COURT OF KING'S BENCH OF NEW BRUNSWICK
TRIAL DIVISION · JUDICIAL DISTRICT OF []

BETWEEN:

[RIGHTS-HOLDING NATION], by [authorized governing body or bodies]

PLAINTIFF

— and —

THE PROVINCE OF NEW BRUNSWICK

— and —

THE ATTORNEY GENERAL OF CANADA

DEFENDANTS

AUTHORITY NB PACA s. 11 (designation of the provincial Crown); CLPA s. 23(1) (federal Crown).**VARIANT** For other provinces, substitute the court and the designation required by that province's Crown-proceedings statute.**STATEMENT OF CLAIM — DRAFT FOR COUNSEL REVIEW****I. PARTIES, AUTHORITY AND NOTICE**

1. The Plaintiff is the rights-holding collective described in Schedule C-1, comprising [communities], each of which has authorized this action by [instrument].
2. The Defendant, the Province of New Brunswick, is sued in respect of the provincial Crown's interest in, and administration of, the provincial Crown lands in the Claim Area, and its grants, licences and dispositions there.
3. The Defendant, the Attorney General of Canada, is sued in respect of the federal Crown's obligations under s. 91(24), the [treaties], its fiduciary obligations and its own lands and interests in the Claim Area.
4. Notice of this action was served on the Attorney General of New Brunswick on [date], more than two months before its commencement.

AUTHORITY NB PACA s. 15. **RISK** Failure to give notice can defeat the action; keep proof of service.**II. THE CLAIM AREA AND ITS TENURE**

5. The Claim Area is described in Schedule A and mapped in Schedule B, divided into: (A-1) ungranted provincial Crown land; (A-2) federal Crown land; (A-3) land held by Crown corporations; (A-4) municipal land; (A-5) privately held fee simple land; and (A-6) reserve land.

AUTHORITY 2025 NBCA 129 at para 1 (Wolastoqey Schedules: 283,204 parcels, of which 30,446 ungranted Crown and 252,758 private). **EVIDENCE** Registry data; Crown land information system; NB Power and other Crown-corporation holdings; municipal assessment rolls.

6. The Plaintiff seeks declarations of title only over parcels in categories A-1 and A-2 and, where the owner is a party, A-3 and A-4. For parcels in A-5 the Plaintiff seeks a finding of title solely to support compensation from the Defendants.

III. THE PLAINTIFF'S TITLE AND RIGHTS

7. Before and at the assertion of Crown sovereignty over the Claim Area, the Plaintiff's ancestors occupied it sufficiently and exclusively, using, governing and controlling access to it, as particularized in Schedule C.

AUTHORITY *Tsilhqot'in; Nuchatlaht*. **RISK** The date of sovereignty must be pleaded with care. In the Maritimes, candidates include the 1713 Treaty of Utrecht and the 1759–63 period; this is contested and requires expert evidence.

8. The Peace and Friendship Treaties concluded between the Crown and the Plaintiff's ancestors between [1725 and 1779] did not surrender the Plaintiff's rights to land or resources.

AUTHORITY CIRNAC, "Peace and Friendship Treaties (1725–1779)" (official statement that Aboriginal peoples did not surrender rights to land or resources); *Marshall* (1999). **EVIDENCE** Certified treaty texts; historians' reports.

9. The Plaintiff's title has not been extinguished. No federal legislation clearly and plainly extinguished it before 17 April 1982, and the Province lacked constitutional authority to do so.

AUTHORITY *Delgamuukw* (only Parliament could extinguish before 1982); *Cowichan* (province lacked jurisdiction to extinguish title; grants did not displace it — under appeal).

IV. PROVINCIAL CONDUCT

10. Between [dates], the Province issued the Crown grants, leases, timber licences, mineral claims and other authorizations listed in Schedule D-1 within the Claim Area, without the Plaintiff's consent and without consultation.
11. The Province knew of the Plaintiff's claim through [petitions, correspondence, prior proceedings, the filing of this claim's notice].
12. The Province continues to authorize activities on provincial Crown land in the Claim Area, as listed in Schedule D-2, that adversely affect the Plaintiff's title and rights.

AUTHORITY *Haida Nation* (duty arises on knowledge of a credible claim); *Tsilhqot'in* (Crown must take appropriate care to preserve the interest pending resolution of a strong claim). **EVIDENCE** Licence registers; Crown land disposition records; correspondence files obtained through the NB *Right to Information and Protection of Privacy Act*.

V. FEDERAL CONDUCT

13. Canada breached its obligations by [failing to protect reserve lands / taking surrenders / failing to set apart promised reserves / failing to act on the Plaintiff's petitions], as particularized in Schedule D-3.

VI. CAUSES OF ACTION

14. Aboriginal title over the parcels in Schedule A-1, A-2 and (where owners are parties) A-3 and A-4, and unjustified infringement by the grants and authorizations in Schedule D.
15. Breach of the honour of the Crown and of the duty to consult in respect of the decisions in Schedule D-2.
16. Breach of fiduciary duty by Canada in respect of [specific reserve land or assets].
17. Compensation from both Defendants for the unjustified infringement of title over all parcels, including those in Schedule A-5, measured as set out in Schedule E.

AUTHORITY 2025 NBCA 129 at paras 9, 11; *Southwind* for measure. **RISK** Apportionment between Crowns is likely to be contested; plead joint and several liability in the alternative.

6.4 PRIVATE LAND AND THIRD PARTIES

The single largest strategic question in a provincial claim is how to treat land that is now privately owned. The verified cases leave three routes.

ROUTE	WHAT IT ACHIEVES	AUTHORITY AND CAUTION
1 · Finding of title plus Crown compensation	Establishes the facts of title over private parcels and recovers compensation from the Crown, without disturbing owners' titles	2025 NBCA 129 (binding in NB; leave refused 28 May 2026). Probably the default everywhere for residential land.
2 · Join specific owners	Allows a declaration (and potentially reconveyance) over large industrial, municipal or Crown-corporation holdings	Owners must be parties (2025 NBCA 129 at paras 8–9). Expect strong defences; equitable defences (<i>Chippewas of Sarnia</i>) may apply outside B.C.
3 · Declaration that Crown grants were defective	Attacks the validity of the Crown's own grants, as in <i>Cowichan</i> ; direct negotiation to reconcile private interests	<i>Cowichan</i> , 2025 BCSC 1490 — under appeal and not followed in NB. Owners' fairness objections were raised in the Montrose application.

WHY ROUTE 1 IS USUALLY RIGHT FOR HOMES AND SMALL HOLDINGS

Every verified negotiated outcome protects private homeowners. British Columbia's recognition of Haida title stated that private property, local government jurisdiction and existing tenures would not be affected, and Canada's 2025 agreement said private title would not be impacted.⁴⁹ When the six Wolastoqey chiefs amended their claim to add J.D. Irving and other industrial landowners, they said publicly that it did not seek to remove ordinary New Brunswickers from their homes and farms, and that the claim pursued compensation from governments plus title over land used by industry.⁵⁰ Focusing restitution on Crown and industrial land, with compensation for the rest, reflects both the law and the practice of successful settlements.

THIRD-PARTY TENURES ON CROWN LAND

Leases, licences, rights-of-way and mineral claims on Crown land are third-party interests that may be affected by a declaration. The pleading should list them in Schedule B, and the prayer should seek declarations "subject to" or "without prejudice to" the rights of identified third parties where that is the strategic choice. In *Tsilhqot'in*, provincial timber licences were found to have been issued in breach of the duty to consult.

⁴⁹ B.C. Government, news release 2024IRR0027-000768 (May 2024); Global News (17 Feb 2025) [S35].

⁵⁰ CBC News, "Wolastoqey chiefs add forestry companies to title claim case" (2021; story 1.6267718) [S75].

6.5 PRAYER FOR RELIEF (DRAFT 2)

THE PLAINTIFF CLAIMS:

1. (a) a declaration that the Plaintiff holds Aboriginal title to the lands in Schedules A-1 and A-2 and, as against any owner who is a party, the lands in Schedules A-3 and A-4;
 2. (b) a declaration that the grants, leases and authorizations listed in Schedule D-1 unjustifiably infringe that title;
 3. (c) a declaration that the Plaintiff is entitled to the lands in Schedule A-1 and that the Defendants must negotiate in good faith, within a time fixed by the Court, the recognition and transfer of jurisdiction over those lands;
- AUTHORITY** NB PACA s. 14(3) (court may declare entitlement in land-recovery claims rather than order recovery against the Crown).
4. (d) a finding that the Plaintiff's title extends to the lands in Schedule A-5, for the purpose of compensation only;
 5. (e) a declaration that the Defendants breached the honour of the Crown and the duty to consult in respect of Schedule D-2;
 6. (f) a declaration that Canada breached its fiduciary obligations in respect of [interest] ;
 7. (g) an accounting of revenues derived by each Defendant from the Claim Area;
 8. (h) compensation, equitable compensation or damages against each Defendant, jointly and severally or as the Court apportions;
 9. (i) interest and costs; and
 10. (j) further relief.

6.6 PROVINCE-SPECIFIC CHECKS

CHECK	WHY IT MATTERS
Crown-proceedings statute	Designation of the Crown, notice, leave requirements, restrictions on remedies (e.g. NB s. 11, s. 15; Ontario s. 17, s. 18).
Limitation statute	Whether Aboriginal claims are excluded (Ontario) or not (NB); special periods for land.
Land titles or registry system	How registered title interacts with Aboriginal title (in <i>Cowichan</i> , B.C.'s <i>Land Title Act</i> did not cure defective grants).
Provincial UNDRIP legislation	B.C.'s DRIPA and <i>Interpretation Act</i> s. 8.1 (subject to the SCC appeal in <i>Gitxaala</i>); other provinces may have none.
Natural Resources Transfer Agreements	Manitoba, Saskatchewan and Alberta: Crown land transferred in 1930 subject to existing trusts and interests; also Treaty Land Entitlement obligations.

CHECK	WHY IT MATTERS
Existing agreements and processes	Modern treaties, reconciliation agreements, consultation protocols or framework agreements that may channel or bar litigation.
Overlapping claims and prior judgments	Res judicata, issue estoppel and abuse of process (<i>Behn</i>); neighbouring nations' claims.

PART VII

DRAFT 3 — UNITED KINGDOM CROWN (THRESHOLD ASSESSMENT)

The original draft asked whether the Crown in right of the United Kingdom can be sued for Canadian land restitution. On the verified authorities, it cannot in either country on the usual theories. This part explains why, preserves a skeleton only for counsel's assessment, and redirects UK engagement to routes that can work.

7.1 Questions presented and short answers · 7.2 Barriers in English courts · 7.3 Barriers in Canadian courts ·
7.4 What a viable UK claim would need · 7.5 Skeleton (not for filing) · 7.6 Alternative UK routes

7.1 QUESTIONS PRESENTED AND SHORT ANSWERS

QUESTION	SHORT ANSWER ON VERIFIED AUTHORITY
1. Are the UK Crown's treaty and Proclamation obligations to Indigenous peoples in Canada still owed by the UK?	No. The English Court of Appeal held in 1982 that they had become obligations of the Crown in right of Canada (<i>Indian Association of Alberta</i> [1982] QB 892, as summarized in <i>Commanda</i> at para 8).
2. Can the UK Parliament be asked to legislate a remedy?	Not as part of Canadian law. Since 1982 no UK statute extends to Canada (<i>Canada Act 1982</i> , s. 2).
3. Does the UK <i>Crown Proceedings Act 1947</i> allow a claim?	Only for liabilities in respect of His Majesty's Government in the United Kingdom (s. 40(2)(b)–(c)). Liabilities in right of Canada are outside it.
4. Can the UK Crown be sued in a Canadian court?	Generally no. It is a foreign state for Canadian courts and is immune under s. 3 of the <i>State Immunity Act</i> unless an express exception applies (<i>Commanda</i> , 2018 FC 189; <i>Kazemi</i> , 2014 SCC 62).
5. Is there any route left?	Possibly, for specific conduct attributable to a present-day UK department that falls within a recognized cause of action and an exception to immunity. No such conduct was identified in the research for this package.

7.2 BARRIERS IN ENGLISH COURTS

THE CROWN PROCEEDINGS ACT 1947

The Act is the statutory basis for most civil claims against the Crown in England and Wales. Its reach is confined in two ways relevant here. First, nothing in it applies to proceedings against the monarch "in His private capacity" (s. 40(1)). Second, except where it says otherwise, it does not authorize proceedings against the Crown for liabilities other than those "in respect of His Majesty's Government in the United Kingdom" (now also the Scottish Administration), and its procedural Part applies only to the Crown in that right (s. 40(2)(b)–(c) and closing words).⁵¹ Any claim based on Canadian treaty obligations is, after 1982, a claim about a liability in right of Canada.

THE 1981–1982 LITIGATION

When patriation was proposed, Indigenous organizations went to the English courts. In *Indian Association of Alberta*, the Court of Appeal held that the treaty and Proclamation obligations had become the responsibility of the Crown in right of Canada. In *Manuel*, decided on 30 July 1982 after the *Canada Act 1982* had been enacted, the Court of Appeal struck out claims challenging its validity on Statute of Westminster grounds and on the basis of UK treaty obligations.⁵² These decisions have not been displaced in any authority located for this package.

LIMITATION, JUSTICIABILITY AND STANDING

Even if a cause of action could be identified, an English claim about eighteenth- and nineteenth-century conduct would face English limitation law, questions of justiciability (courts will not adjudicate the validity of a statute such

as the *Canada Act 1982*, as *Manuel* shows), and standing issues for a foreign collective claimant. These require UK counsel's advice; they are noted, not analysed, here.

7.3 BARRIERS IN CANADIAN COURTS

Commanda v. Her Majesty the Queen of Canada et al., 2018 FC 189, is the closest verified precedent. The plaintiff named "Her Majesty the Queen of Canada and the United Kingdom of Great Britain and Ireland" and intended to sue the Queen as Queen of the UK and successor to George III and Victoria. The Federal Court:

- held that the UK Crown is a foreign state immune from Canadian jurisdiction under s. 3 of the *State Immunity Act*, and that no exception was argued (paras 9–11);
- held that courts are constitutionally bound to recognize the UK Crown as distinct from the Crowns in right of Canada and the provinces, and to treat it as a foreign government (para 14), adding that international law on sovereign equality would bar jurisdiction even without the Act (para 15);
- held that the Crown's obligations to Aboriginal peoples have been fully devolved to the Crown in right of Canada, as s. 35 affirms (para 16);
- rejected the argument that the claim was against the Queen personally (para 17); and
- struck the claim against the UK Crown for want of jurisdiction (para 18).⁵³

The Supreme Court has held that the *State Immunity Act* governs foreign-state immunity in civil proceedings and that exceptions must be found in it (*Kazemi*, 2014 SCC 62). The Act's exceptions (for example, commercial activity or certain claims about property in Canada) do not obviously fit a restitution claim based on historical sovereign acts.

CONCLUSION ON TRACK 3

On the authorities verified, no court in Canada or England is likely to entertain a claim that holds the UK Crown liable for Canadian land restitution on the basis of historical sovereignty, the Royal Proclamation or the treaties. The responsible defendants for those obligations are the Crowns in right of Canada and the provinces.

7.4 WHAT A VIABLE UK CLAIM WOULD NEED

For completeness, a claim against a UK defendant would have to satisfy every element below. If any is missing, the claim should not be brought.

⁵¹ *Crown Proceedings Act 1947*, s. 40, latest revised version on legislation.gov.uk [S12].

⁵² ICLR report of *Manuel v. Attorney-General* [1983] Ch 77 (CA) [S38].

⁵³ *Commanda*, 2018 FC 189 [S36]. Counsel should check for any appeal or later history.

#	ELEMENT	WHAT WOULD HAVE TO BE SHOWN
1	Proper defendant	A present-day UK government department or entity, named as authorized for proceedings (the Cabinet Office publishes the list of authorized departments under s. 17).
2	Conduct attributable to the UK	Specific acts or omissions of that UK entity, not of colonial or Canadian officials whose obligations passed to Canada.
3	Recognized cause of action in the forum	A tort, contract, trust, property or public-law claim recognized in English law, with each element pleaded.
4	Jurisdiction and justiciability	A basis for the English court to hear it; not a challenge to a sovereign act of state or to Canadian constitutional statutes.
5	Time	A claim not barred by English limitation law.
6	Remedy	A remedy that an English court can grant and that would have practical effect (English courts cannot transfer Canadian land).
7	In Canada instead	An express exception in the <i>State Immunity Act</i> covering the claim.

7.5 SKELETON (NOT FOR FILING)

[COURT TO BE IDENTIFIED ONLY AFTER A WRITTEN OPINION FROM UK COUNSEL]

PROPOSED CLAIMANT: [authorized nation]

PROPOSED DEFENDANT: [authorized UK department, if any]

THRESHOLD PARTICULARS — FOR COUNSEL'S ASSESSMENT ONLY

1. The specific act or omission of the proposed defendant is [], occurring on [date], evidenced by [document held at The National Archives, Kew, reference].
2. That conduct is attributable to the proposed defendant, and not to the Crown in right of Canada or a province, because [].
3. The cause of action is [], whose elements are [].
4. The claim is within time because []; is justiciable because []; and the remedy sought, [], can be granted by the court.

RISK If any paragraph cannot be completed with evidence, the track should be closed. Do not plead general colonial history as a substitute.

7.6 ALTERNATIVE UK ROUTES

Closing the litigation route does not close UK engagement. The following are lawful, low-cost and can produce evidence and political support for Canadian proceedings.

ROUTE	WHAT IT CAN ACHIEVE	PRACTICAL STEP
Archival research	Colonial Office and related records can prove Crown knowledge, promises and dealings, which are material facts for Drafts 1 and 2.	Commission archival searches at The National Archives (Kew) and Library and Archives Canada; record full references for Schedule D.
Freedom of information	Requests to UK departments for records not yet public.	Use the UK <i>Freedom of Information Act 2000</i> with specific, dated requests; counsel to advise on exemptions.
Parliamentary engagement	Questions, petitions or debate can place the historical record before Parliament and encourage disclosure or acknowledgment.	Work through sympathetic members of either House; no legal effect in Canada.
Engagement with the monarch as King of Canada	Symbolic and diplomatic. During the May 2025 visit, the King held audiences with Indigenous leaders at Rideau Hall and the Speech from the Throne opened with a land acknowledgement. ⁵⁴	Requests are made through the Governor General and Canadian ministers, who advise the King in right of Canada.
Doctrine of Discovery	The Vatican formally repudiated the doctrine on 30 March 2023. A comparable acknowledgment from Canadian or UK governments would support reconciliation arguments.	Advocacy, not litigation. ⁵⁵

⁵⁴. 2025 royal visit to Canada (26–27 May 2025), secondary summary [S64].

⁵⁵. Vatican News (30 Mar 2023) [S61].

PART VIII

DRAFT 4 — CHARLES III PERSONALLY (THRESHOLD OPINION)

The original draft treated a personal claim against Charles III as a concept requiring a threshold opinion before any filing. This part supplies the research that opinion would start from. On every verified authority, the answer is that the claim should not be brought.

8.1 Questions and short answers · 8.2 Personal immunity in UK courts · 8.3 Canadian courts · 8.4 What is, and is not, the King's personal property · 8.5 Risks of naming him · 8.6 Recommendation and do-not-file skeleton

8.1 QUESTIONS AND SHORT ANSWERS

QUESTION FROM V1.0	SHORT ANSWER
1. What specific personal conduct is alleged, distinct from the conduct of any Crown?	None identified. Treaty-making, land grants, reserve administration and legislation were all acts of government, now attributed to the Crowns in right of Canada and the provinces. Charles III has reigned only since September 2022.
2. What cause of action makes him personally liable?	None identified. Being head of state, or the successor to monarchs in whose name colonial acts were done, is not a recognized basis of personal liability.
3. Which court has jurisdiction over him personally?	In the UK, the Sovereign has personal immunity from being sued, and the <i>Crown Proceedings Act 1947</i> expressly excludes proceedings against the monarch in a private capacity. In Canada, the Federal Court rejected the premise that such a claim is personal and struck it against the UK Crown on state-immunity grounds.
4. What assets could satisfy a judgment?	Only property he owns personally. The Crown Estate, the Duchy of Lancaster, the Sovereign Grant, the Crown Jewels and most of the Royal Collection are not his personal property in the relevant sense.
5. Should he be named?	No. See 8.6.

8.2 PERSONAL IMMUNITY IN UK COURTS

The House of Commons Library's 2025 briefing on the Crown and the constitution lists among the Crown's legal prerogatives that the Sovereign has personal immunity from prosecution or from being sued for a wrongful act.⁵⁶ The *Crown Proceedings Act 1947*, which opened the Crown to ordinary civil claims, deliberately left that immunity untouched: nothing in it applies to proceedings against the monarch in his private capacity (s. 40(1)).⁵⁷

The practical effect is that there is no procedure in English law by which a claimant can sue Charles III personally for a civil wrong, let alone for historical acts of state done by predecessors. Claims against the Crown proceed against authorized government departments or the Attorney General, which are entities of the Crown in right of the UK, not of the King personally.

8.3 CANADIAN COURTS

In Canada the question has been tested. In *Commanda* the plaintiff argued that the action was against the Queen in her personal capacity as successor to George III and Victoria. The Federal Court called that position untenable and treated the claim as one against the UK Crown, which it struck for state immunity.⁵⁸

⁵⁶ D. Torrance, *The Crown and the constitution*, House of Commons Library Briefing CBP-8885 (4 Aug 2025), p. 22, s. 3.1 [S14].

⁵⁷ [S12].

⁵⁸ *Commanda*, 2018 FC 189 at paras 7, 17–18 [S36].

Two further points would have to be addressed by any Canadian opinion:

- **Dual role.** The same person is King of Canada. Claims against the King of Canada are claims against the Crown in right of Canada and are governed by the CLPA, which defines "Crown" as the Crown in right of Canada. That is Track 1, not a personal claim.
- **Foreign head of state.** As King of the United Kingdom, he is the head of a foreign state for Canadian courts. Whether common-law head-of-state immunity *ratione personae* would add to the statutory immunity for private acts was not resolved in the sources checked, and is an open question for counsel. It does not need answering unless a genuine private act within Canada were alleged.

8.4 WHAT IS, AND IS NOT, THE KING'S PERSONAL PROPERTY

The original draft warned against conflating personal assets with Crown, trust or public holdings. The verified official statements make the distinction concrete.

TABLE 8.4 — CLASSIFICATION OF ROYAL HOLDINGS

HOLDING	LEGAL CHARACTER (AS STATED BY OFFICIAL OR VERIFIED SOURCES)	PERSONAL ASSET?	SOURCE
The Crown Estate	Not the personal property of the monarch; managed by an independent body; profits paid to the Treasury for the public	NO	Royal Household [S15]
Sovereign Grant	Public funding for official duties, set by reference to Crown Estate profits; 12% reference rate for 2026–27 (£137.9 million), with the Royal Trustees proposing 20.5% from 2027–28	NO	Royal Trustees, Sovereign Grant Review 2026 [S17]
Duchy of Lancaster	Portfolio held in trust for the Sovereign in that role; income (the Privy Purse) used mainly for official expenditure; assets cannot be sold for personal gain	INCOME ONLY, PARTLY	Royal Household [S15]; Full Fact [S16]
Duchy of Cornwall	Provides income to the heir, now the Prince of Wales, not the King	NO	Royal Household [S15]
Occupied royal palaces; Crown Jewels; most of the Royal Collection	Official or held in right of the Crown; cannot be sold by the King	NO	Royal Household [S15]
Sandringham and Balmoral estates	Owned by the King personally, inherited from his mother	YES	Royal Household [S15]; Full Fact [S16]
Private investments	Personal; amounts not public. Published estimates of personal wealth vary widely (Full Fact reported estimates from about £600 million to about £1.8 billion in 2023, the latter disputed by his spokesperson)	YES	Full Fact [S16]

Even the assets that are personal sit in the United Kingdom, where the owner cannot be sued personally. A Canadian judgment, if one could be obtained, would have to be recognized and enforced in a UK court against a defendant immune there. No lawful enforcement route has been identified.

WHY THIS MATTERS FOR THE ORIGINAL "PERCENTAGE OF FORTUNE" CONCEPT

v1.0 correctly stated that it made no claim that any percentage of the King's fortune was recoverable. The verified material confirms that, beyond the immunity barriers, the large public figures sometimes quoted for "royal wealth" mostly describe the Crown Estate and other holdings that are not the King's personal property. Restitution figures should be built from the land and revenues at issue (Schedule E), not from estimates of a person's wealth.

8.5 RISKS OF NAMING HIM

RISK	EXPLANATION
Early strike-out	As in <i>Commanda</i> , a court can strike the claim at the threshold, often with costs.
Adverse costs	Costs follow the event in most Canadian and English courts; a struck claim can create liability for the other side's costs.
Contamination of strong claims	Joining a non-viable defendant can lead a court to view the whole pleading as political, inviting motions to strike on other counts.
Abuse-of-process findings	Courts police proceedings brought for collateral purposes; <i>Behn</i> shows the doctrine applies in Indigenous-rights cases.
Credibility and relationships	Negotiations with the Canadian Crowns depend on credibility; a symbolic claim can damage it.
Service and diplomatic friction	Purported service on a foreign head of state raises diplomatic issues and will not confer jurisdiction.

8.6 RECOMMENDATION AND DO-NOT-FILE SKELETON

RECOMMENDATION

Do not name Charles III personally in any proceeding. On the verified authorities there is no personal cause of action, no court with jurisdiction over him personally, and no lawful route to his personal property. The objectives that motivate the concept (acknowledgment, restitution, compensation) are better pursued against the Crowns in right of Canada and the provinces (Drafts 1 and 2), through negotiation (Part IX) and through the non-litigation routes in Part X.

If a nation's leadership nonetheless wishes to explore the question, it should obtain written opinions from both Canadian and English counsel answering each question in 8.1 before any document is prepared for filing.

DO NOT FILE · THRESHOLD QUESTIONS ONLY

**MATTERS COUNSEL MUST BE ABLE TO COMPLETE WITH EVIDENCE BEFORE
ANY PERSONAL CLAIM IS CONSIDERED**

1. The personal act, omission, undertaking or receipt of Charles III is [], on [date], proved by [], and it is distinct from any act of a Crown because [].
2. The recognized cause of action is [], and every element is satisfied by [].
3. The court with jurisdiction over him personally is [], because [], notwithstanding CPA 1947 s. 40(1), the Sovereign's personal immunity and *Commanda*.
4. The asset to satisfy a judgment is []; it is personal property (not Crown Estate, Duchy, public or trust property) because []; and the enforcement route is [].

RISK If any of these cannot be completed, the matter ends here. On the research for this package, none can.

PART IX

REMEDIES, VALUATION AND RESTITUTION MECHANISMS

What nations have actually obtained, through which mechanism, and how compensation is now measured. The record shows that declarations open the door, and that land and money usually come through negotiation that follows.

9.1 Documented outcomes · 9.2 Returning land · 9.3 Measuring compensation · 9.4 Negotiated recognition ·
9.5 Treaty Land Entitlement and Additions to Reserve · 9.6 Schedule E methodology

9.1 DOCUMENTED OUTCOMES

Table 9.1 brings together the verified outcomes cited in this package. It shows the range of remedies available and the mechanism that produced each. Amounts are in Canadian dollars unless noted.

TABLE 9.1 — VERIFIED RESTITUTION AND COMPENSATION OUTCOMES

MATTER	DATE	MECHANISM	OUTCOME	GRADE
Tsilhqot'in title	2014	SCC declaration	Title over about 1,750 km ² of Crown land	S
Nuchatlaht title	Apr 2026	BCCA declaration	Title over about 200 km ² of Crown land on Nootka Island; SCC appeal pending	R
Cowichan title	Aug 2025	BCSC declaration	Title over part of a 1,846-acre area; Canada's and Richmond's fee simple declared defective (suspended 18 months); direction to negotiate	R
Saugeen / Sauble Beach	Dec 2024; leave refused Aug 2025	ONCA; reserve boundary	Disputed beach is reserve land; title reverts; compensation issues in Phase II	S
Haida Gwaii title	May 2024; Feb 2025	B.C. statute and agreement; federal agreement	Haida title recognized across Haida Gwaii by B.C. (royal assent 16 May 2024) and by Canada (Big Tide agreement, Feb 2025; \$59 million capital transfer; five-year transition); private title unaffected	O
Robinson-Huron annuities	June 2023	Settlement after trial and appeal	\$10 billion (\$5 billion each, Canada and Ontario) for past annuities; 21 First Nations	O
Robinson-Superior annuities	Jan 2025; Mar 2026	Crown determination after <i>Restoule</i> ; judicial review	\$3.6 billion; held reasonable by ONSC with criticism of process; \$40 million costs to plaintiffs; appeal reported	R
Lac Seul (<i>Southwind</i>)	July 2021	SCC; equitable compensation	\$30 million trial award held inadequate; reassessment ordered on project-value basis	O
Pekuakamiulnuatsh	Nov 2024	SCC; honour of the Crown in agreements	Quebec liable for \$767,745.58	O
Gottfriedson Band Class	Mar 2023	Class settlement (Federal Court)	\$2.8 billion to an Indigenous-led trust for collective cultural and language harms	O
Specific claims (all)	1973 – mid-2024	Negotiation and Tribunal	712 claims resolved; more than \$15.6 billion	O
Elsipogtog 1824 claim (NB)	2020 – ongoing	Specific claim negotiation	Canada acknowledged breach in 2020; \$30 million advance paid; settlement reported close in July 2025	R

9.2 RETURNING LAND

The verified cases show four distinct ways land comes back. Each requires a different pleading and a different evidentiary record.

1 · DECLARATION OVER CROWN LAND

Where title is proved over ungranted Crown land, the declaration itself changes the legal position: provincial Crown-land statutes such as forestry regimes no longer apply in the ordinary way (*Tsilhqot'in*; *Nuchatlaht*). The nation's practical control then follows through implementation agreements. This is the route preserved for the Wolastoqey Nations over 30,446 Crown parcels.

2 · REVERSION OF RESERVE LAND

Where land was wrongly excluded from a reserve or taken without a valid surrender, a declaration that the land is reserve land returns it to federal jurisdiction for the nation's use (*Saugeen*). Equitable defences may block recovery from private holders in some cases (*Chippewas of Sarnia*).

3 · DEFECTIVE CROWN GRANTS

Cowichan declared the Crown's own and a municipality's fee simple interests defective. If upheld, the route lets nations recover land the Crown still holds, or holds through public bodies, even after it was granted. Its treatment of private owners remains under appeal.

4 · NEGOTIATED TRANSFER

Most land returned outside litigation comes through agreements: recognition of title (*Haida*), treaty land entitlement (Saskatchewan, Manitoba), specific-claim settlements with land-purchase funds, and modern treaties. Courts can encourage this by declaring entitlement and directing good-faith negotiation.

9.3 MEASURING COMPENSATION

Southwind is now the leading authority on the measure of equitable compensation where the Crown, in breach of fiduciary duty, allows Indigenous land to be taken or damaged. The majority held that compensation must reflect what a properly negotiated deal would have achieved, valuing the land by what it was worth to the party seeking it, including its value to the project for which it was taken, rather than only its market value at the time.⁵⁹

TABLE 9.3 — HEADS OF COMPENSATION TO CONSIDER

HEAD	BASIS	NOTES
Value of land taken	Equitable compensation (<i>Southwind</i>); just compensation (SCTA s. 20(1)(c), (e))	Include value to the taker, not only market value
Loss of use	Revenues and opportunities lost during the period of dispossession	SCTA s. 20(1)(e)–(h) sets valuation rules for reserve lands before the Tribunal
Revenues derived by the Crown	Accounting; disgorgement where available in equity	Timber dues, royalties, lease and sale proceeds
Unpaid treaty benefits	Treaty and honour of the Crown (<i>Restoule</i>)	Annuities, reserve land, implements, agricultural benefits
Cultural and spiritual loss	Available in some court proceedings; excluded before the Tribunal (s. 20(1)(d))	Requires careful, culturally appropriate evidence
Interest and present value	Equity; CLPA s. 31; provincial rules	Method is often the largest single driver of the final figure

⁵⁹ SCC Case in Brief, *Southwind v. Canada*, 2021 SCC 28 [S25].

The gap between the Robinson-Superior plaintiffs' claim of nearly \$36 billion and the Crown's \$3.6 billion determination shows that valuation method, not entitlement, can decide most of the outcome.

9.4 NEGOTIATED RECOGNITION: THE HAIDA MODEL

British Columbia's *Haida Nation Recognition Amendment Act, 2024* received royal assent on 16 May 2024. It recognized Haida Aboriginal title throughout Haida Gwaii and supports the "Rising Tide" title lands agreement, under which the Council of the Haida Nation and the province negotiate a staged transition toward Haida jurisdiction. The province stated that private property, local government jurisdiction and existing tenures, leases and permits are not affected.⁶⁰

In February 2025 Canada signed the "Big Tide" agreement recognizing Haida title over the islands' lands, freshwater beds and foreshore to low tide, described by the federal minister as the first federal recognition of title through negotiation. It provided a \$59 million advance capital transfer and began a five-year transition; reserves remain under federal jurisdiction pending further negotiation, and the minister said private title would not be affected.⁶¹

LESSONS FOR OTHER NATIONS

- Title can be recognized without a trial, by legislation and agreement, where the evidence is strong and the government is willing.
- Protecting private owners and existing tenures was central to political feasibility.
- Implementation is staged over years and requires governance capacity, which the federal agreement funded.
- A credible litigation position, pending or prepared, strengthens negotiating leverage; Draft 1 and Draft 2 are designed to be filed or held in reserve.

⁶⁰ B.C. Government news release 2024IRR0027-000768 [S35].

⁶¹ Global News (17 Feb 2025) [S35].

9.5 TREATY LAND ENTITLEMENT AND ADDITIONS TO RESERVE

TREATY LAND ENTITLEMENT (TLE)

Where a numbered treaty promised reserve land by formula and the Crown provided less, TLE agreements supply the shortfall, usually through land purchase and conversion to reserve.

- **Saskatchewan.** Framework Agreement signed 22 September 1992 by Canada, Saskatchewan and 25 First Nations; 11 more have since been validated. Governments committed \$440 million over 12 years (70% federal, 30% provincial initially). By August 2016, 23 of the original 25 had met their "shortfall acres".⁶²
- **Manitoba.** Framework Agreement signed 29 May 1997 by Canada, Manitoba and the TLE Committee of Manitoba; 21 First Nations (six not yet ratified) plus eight individual settlements. Total entitlement 1,423,110.29 acres, of which 669,906.96 acres (about 47%) had been converted to reserve as of 31 March 2025.

63

Manitoba TLE · acres converted to reserve vs. total entitlement (31 Mar 2025)



Specific claims · resolved since 1973 vs. active inventory (June 2024)



FIGURE 9.1 · Progress indicators. Sources: ISC Manitoba TLE page [S57]; CIRNAC response to Senate committee [S53]. Bars are drawn to scale within each row.

ADDITIONS TO RESERVE (ATR)

Land obtained through TLE, specific-claim settlements or purchase becomes reserve land only through the federal ATR process. The current policy directive dates from 2016; Crown-Indigenous Relations has been co-developing a redesign since a 2019 mandate. Engagement summarized by the department records more than 900 recommendations and recurring complaints that the process is slow, complex, costly and lacks timelines, with third-party interests, environmental assessments, municipal service agreements and consultation cited as sources of delay. No replacement policy had been reported in the material checked.⁶⁴

For a restitution strategy, ATR matters because a court declaration or a settlement does not by itself make purchased land into reserve land. Plan the ATR steps (surveys, environmental site assessments, third-party interests, municipal agreements) when negotiating, and seek commitments on timelines.

⁶² ISC, "Treaty Land Entitlement in Saskatchewan" (modified 12 Aug 2025) [S56].

⁶³ ISC, "Treaty Land Entitlements in Manitoba" [S57].

⁶⁴ CIRNAC, "Pathways to Additions to Reserve Policy reform" (Oct 2024; data to Apr 2025) [S55]. **R**

9.6 SCHEDULE E METHODOLOGY

Schedule E (template in Appendix A) should set out, for each parcel or group of parcels:

1. the date and nature of the taking or infringement and the Crown entity responsible;
2. the interest lost (title, reserve, treaty benefit) and its extent;
3. the valuation basis: market value at taking, value to the taker (*Southwind*), revenue streams, or replacement land;
4. the Crown revenues derived (timber, minerals, leases, sales), from Crown records obtained through disclosure or access requests;
5. the period of loss and the interest or present-value method, with the legal basis for compounding if claimed;
6. deductions or benefits received (required before the Tribunal by s. 20(3));
7. apportionment between Crowns and, where relevant, third parties (s. 20(1)(i) before the Tribunal);
8. the experts responsible and their qualifications; and
9. sensitivity analysis showing how the figure changes with each key assumption.

DATA GOVERNANCE

Valuation often draws on harvesting data, traditional-use studies and community economic information. Keep such data under the nation's control, disclose it only as needed, seek confidentiality orders where appropriate, and follow OCAP[®] principles (Part XII).

PART X

NON-LITIGATION AND INTERNATIONAL AVENUES

Domestic litigation is slow and costly. These routes run alongside it: statutory accountability under UNDA, UN treaty bodies, the Inter-American system, and political and archival work in the United Kingdom.

10.1 UNDA accountability tools · 10.2 UN Human Rights Committee · 10.3 Inter-American Commission · 10.4 Political and institutional routes · 10.5 Comparing the routes

10.1 UNDA ACCOUNTABILITY TOOLS

Although *Kebaowek* (2026 FCA 174) limits UNDA's direct effect in litigation, the Act creates continuing statutory duties that a nation can use outside court:

- **Section 5 (consistency of laws).** The Government of Canada must take, in consultation and cooperation with Indigenous peoples, all measures necessary to ensure federal laws are consistent with the Declaration. A nation can identify specific federal laws or policies (for example, the specific-claims cap or ATR rules) and formally request review under s. 5.
- **Section 6 (action plan).** The Act required an action plan within two years of coming into force; it includes accountability, monitoring and review measures. Nations can press for measures on land restitution within that plan.
- **Section 7 (annual reports).** The Minister must report to Parliament each year within 90 days after the fiscal year; reports are referred to committee. Committee hearings are a venue for evidence and testimony.⁶⁵

Article 28 of the Declaration, which UNDA affirms as having application in Canadian law, calls for redress including restitution, or where that is not possible, just, fair and equitable compensation. It provides the policy standard against which federal processes such as specific claims (money only before the Tribunal) can be measured. The BCAFN's 2025 resolution relies on exactly this argument.⁶⁶

10.2 UN HUMAN RIGHTS COMMITTEE

Canada accepts individual and group communications under the Optional Protocol to the International Covenant on Civil and Political Rights. The leading Canadian precedent on land is *Chief Bernard Ominayak and the Lubicon Lake Band v. Canada* (Communication No. 167/1984). In views adopted in March 1990, the Committee found that historical inequities and more recent developments, including resource development, threatened the Band's way of life and culture, and constituted a violation of article 27 (rights of minorities to enjoy their culture) so long as they continued. It considered that the remedy Canada proposed should be one the Committee deemed appropriate under article 2.⁶⁷

FEATURE	IMPLICATION
Exhaustion of domestic remedies	Generally required; a nation must show domestic routes are exhausted or ineffective.
Nature of outcome	"Views", not binding judgments; persuasive and politically significant.
Timing	Years, not months.
Best use	Ongoing cultural harm from resource development on unrecognized lands; pressure for negotiation.

⁶⁵. UNDA, S.C. 2021, c. 14, ss. 5–7 [S5].

⁶⁶. BCAFN Resolution 46/2025 [S59].

⁶⁷. Human Rights Committee, Communication No. 167/1984, views of 26 March 1990, para 33 [S62].

10.3 INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Canada is a member of the Organization of American States and is subject to the Commission's jurisdiction under the American Declaration of the Rights and Duties of Man (Canada has not ratified the American Convention). In *Hul'qumi'num Treaty Group v. Canada*, six First Nations in British Columbia petitioned in May 2007, alleging violations of the rights to property, culture and equality arising from the loss of their traditional territories and the effects of logging. The Commission agreed in 2009 to consider the merits; a merits ruling was still awaited according to the representatives' published material.⁶⁸

The case is significant because it squarely challenged Canada's treatment of lands granted to private interests. Its duration also illustrates the main limitation of the route: slow, non-binding outcomes. It can complement domestic litigation where domestic remedies are inadequate, particularly for privately held lands that courts in some provinces will not touch.

10.4 POLITICAL AND INSTITUTIONAL ROUTES

ROUTE	WHAT IT OFFERS	VERIFIED ANCHOR
Specific claims (with land)	Negotiated settlements can include land-purchase funds or Crown land, then ATR	SCTA; BCAFN Res. 46/2025; ISC TLE pages
Recognition legislation	Province or Parliament recognizes title by statute, as B.C. did for Haida Gwaii	<i>Haida Nation Recognition Amendment Act, 2024</i>
Reconciliation and framework agreements	Staged transfer of jurisdiction; shared decision-making; revenue sharing	Rising Tide and Big Tide agreements
Federal real property disposals	When Canada disposes of surplus federal land, Indigenous interests can be raised early	Check current federal disposal policy before relying on it
Parliamentary committees	Evidence on UNDA reports, specific claims and ATR	UNDA s. 7 (reports referred to committee)
UK archival and parliamentary work	Evidence and acknowledgment; no legal effect in Canada	See Part VII.6
Church and institutional acknowledgment	Moral and historical acknowledgment of the doctrines underlying dispossession	Vatican repudiation of the Doctrine of Discovery, 30 Mar 2023

10.5 COMPARING THE ROUTES

TABLE 10.5 — RESTITUTION ROUTES COMPARED

68. University of Arizona Indigenous Peoples Law & Policy Program, case page [S63]. R

ROUTE	CAN RETURN LAND?	CAN AWARD MONEY?	BINDING?	TYPICAL TIME	COST
Title action (superior court)	Yes (Crown land)	Yes	Yes	5–15 years	Very high
Judicial review	Indirectly	Rarely	Yes	1–3 years	Moderate
Specific claim (negotiated)	Through settlement terms	Yes	By agreement	3–10+ years	Moderate (funding available)
Specific Claims Tribunal	No	Yes ($\leq$ \$150M)	Yes	Several years after filing	Moderate
Recognition agreement / statute	Yes	Yes	By agreement or law	Years	Moderate
UN HRC / IACHR	No	No	No	Many years	Low–moderate
UK routes	No	No	No	Variable	Low

Times and costs are indicative ranges drawn from the matters discussed in this package (for example, the 513-day *Cowichan* trial and the 2007–present Hul'qumi'num petition), not statistics.

PART XI

CASE STUDY: NEW BRUNSWICK AND WABANAKI TERRITORIES

New Brunswick lies within the territories of the Wolastoqiyik, Mi'kmaq and Peskotomuhkati, all parties to Peace and Friendship Treaties that did not cede land. It now has the country's most developed appellate ruling on private land and title, and active claims that show how Drafts 1 and 2 apply in practice.

11.1 Treaty and legal context · 11.2 The Wolastoqey title claim · 11.3 Mi'kmaq claims in southeastern New Brunswick · 11.4 Procedural map for New Brunswick · 11.5 Lessons

11.1 TREATY AND LEGAL CONTEXT

The Peace and Friendship Treaties, concluded between 1725 and 1779 with Mi'kmaq, Wolastoqiyik (Maliseet) and Peskotomuhkati (Passamaquoddy) peoples across what are now the Maritimes, the Gaspé and Maine, were aimed at peace, trade and the reduction of conflict. The Government of Canada's own description states that the Indigenous parties did not surrender rights to land or resources under them.⁶⁹ In *Marshall* (1999) the Supreme Court read the 1760–61 treaties to protect a communal right to harvest and trade for a moderate livelihood, which the Government of Canada describes as potentially affecting 35 First Nations in Nova Scotia, New Brunswick, Prince Edward Island and the Gaspé.⁷⁰

The same territory produced the leading adverse title decision. In *Marshall; Bernard* (2005), Mi'kmaq defendants charged with logging on Crown land in Nova Scotia and New Brunswick did not establish title, because the evidence of regular and exclusive use of the specific cut sites was insufficient.⁷¹ The lesson the Wolastoqey Nations drew, as their pleadings show, was to bring a civil title action on a full evidentiary record rather than defend regulatory charges.

WHY THE ABSENCE OF CESSION MATTERS

In numbered-treaty territory, the Crown usually relies on a written cession clause. In Peace and Friendship territory there is no such clause, so the question becomes whether Aboriginal title was proved and whether it was ever lawfully extinguished. Before 1982 only clear and plain federal legislation could extinguish title (*Delgamuukw*); provinces could not (*Cowichan*, under appeal).

11.2 THE WOLASTOQEY TITLE CLAIM

SCALE AND PARTIES

Six Wolastoqey Nations claim Aboriginal title over the western half of New Brunswick. According to the Court of Appeal, Schedule A to the claim lists 283,204 parcels, of which 30,446 are ungranted Crown land and 252,758 are privately owned. The industrial defendants named in the amended claim included New Brunswick Power Corporation, Acadian Timber, Twin Rivers Paper, H.J. Crabbe & Sons, AV Group NB and J.D. Irving, Limited with about nineteen related entities.⁷²

⁶⁹ CIRNAC, "Peace and Friendship Treaties (1725–1779)" [S42].

⁷⁰ Government of Canada, *R. v. Marshall* page [S43].

⁷¹ *R. v. Marshall; R. v. Bernard*, 2005 SCC 43 [S44].

⁷² 2025 NBCA 129 at para 1 and the statement of claim as recited [S29].

Wolastoqey claim · 283,204 parcels by tenure (2025 NBCA 129, para 1)

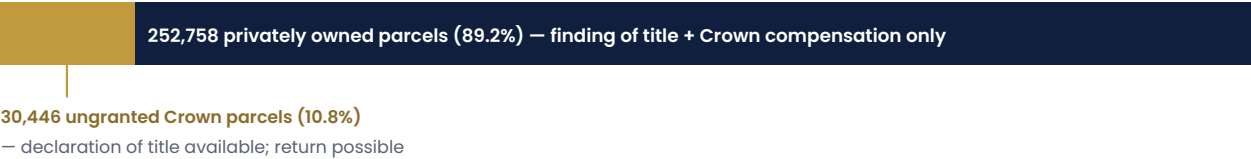


FIGURE 11.1 · Composition of the Wolastoqey claim by parcel count, drawn to scale. Parcel counts are not areas: Crown parcels are typically much larger than private parcels, so the share of land area held by the Crown is greater than the share of parcels.

PROCEDURAL HISTORY

DATE	STEP	EFFECT
2020	Claim filed in the Court of Queen’s (now King’s) Bench	Six Nations claim title over more than half of the province
2021	Claim amended	Industrial landowners added; chiefs state that ordinary homes and farms are not targeted ⁷³
2024	2024 NBKB 203	Claims against private corporate landowners struck; their lands remained in issue as a potential remedy
11 Dec 2025	2025 NBCA 129	No declaration over private lands without owners as parties; finding of title available for compensation; declaration available over Crown land
28 May 2026	SCC leave refused (2026 CanLII 50180)	NBCA ruling final; underlying title claim against the Crowns continues

HOW THE CLAIM MAPS ONTO THIS PACKAGE

- **Draft 2 structure.** The Wolastoqey claim names both Crowns in the provincial superior court, matching Part VI.
- **Parcel register.** The schedules separate Crown and private land, which turned out to be decisive.
- **Remedy split.** After 2025 NBCA 129, the claim seeks a declaration and potential return of Crown land, and compensation for private land, the structure built into the Draft 2 prayer for relief.

11.3 MI’KMAQ CLAIMS IN SOUTHEASTERN NEW BRUNSWICK

THE ELSIPOGTOG TITLE CLAIM

In November 2016, Elsipogtog First Nation filed an Aboriginal title claim in the provincial court, described as made on behalf of the Mi’kmaq Nation and covering a large part of southeastern New Brunswick, roughly one third of

⁷³. CBC News [S75].

the province.⁷⁴ Its current procedural status was not established in the sources checked and should be confirmed from the court file. **R**

THE 1824 RESERVE SPECIFIC CLAIM

Separately, Elsipogtog has pursued a specific claim over the loss of reserve land: according to the community, an 1824 description gave the reserve about 51,200 to 54,000 acres along the Richibucto River, while the present reserve is about 4,600 acres. Canada acknowledged in 2020 that it had breached its obligations and agreed to negotiate; a \$30 million advance has been paid, and in July 2025 a settlement was described as close, with a community referendum possible in 2026.⁷⁵ **R**

The two Elsipogtog matters illustrate the parallel-track approach recommended in Part XII: a specific claim for a defined historical loss of reserve land, which can settle with money and possibly land, alongside a broader title claim that would take years to try.

11.4 PROCEDURAL MAP FOR NEW BRUNSWICK

ISSUE	NEW BRUNSWICK RULE	SOURCE
Court	Court of King's Bench	PACA ss. 6, 9
Provincial Crown's name	"the Province of New Brunswick"	PACA s. 11
Pre-suit notice	Two months' written notice to the Attorney General	PACA s. 15
Remedies against the province	No injunction or specific performance; declarations; in land claims, declaration of entitlement	PACA s. 14
Execution	None; payment from the Consolidated Fund	PACA s. 17
Limitation periods	2 years / 15 years; continuing acts; no Aboriginal exclusion found	<i>Limitation of Actions Act</i> ss. 5, 6
Private land	No declaration without the owners as parties; finding for compensation available	2025 NBCA 129
Federal Crown	Attorney General of Canada; serve the Deputy Attorney General	CLPA s. 23
Treaty context	Peace and Friendship Treaties; no land cession	CIRNAC; <i>Marshall</i>
Adverse title precedent	Title not proved on site-specific evidence	<i>Bernard</i> , 2005 SCC 43

11.5 LESSONS

1. **Bring title as a planned civil action, not as a defence.** *Bernard* shows the risk of testing title on a thin record.

⁷⁴. Global News (9 Nov 2016) [S66].

⁷⁵. NB Media Co-op (17 July 2025) [S65].

2. **Separate tenures from the start.** The Wolastoqey schedules made it possible for the court to preserve the Crown-land claim while removing private land from declaratory relief.
3. **Expect private land to become a compensation question.** In New Brunswick, that is now the law.
4. **Use the specific-claims route for defined reserve losses.** Elsipogtog's 1824 claim shows that historic reserve losses can be acknowledged and negotiated without a title trial.
5. **Coordinate across Wabanaki nations.** Overlapping territories and shared treaty history make protocols among Wolastoqey, Mi'kmaq and Peskotomuhkati nations important before any filing.

PART XII

COORDINATED STRATEGY AND EVIDENCE PROTOCOL

A single political objective can be pursued through legally separate proceedings. This part turns the analysis into a phased work plan, an evidence protocol that respects Indigenous data sovereignty, and a decision matrix for the four tracks.

12.1 Phased plan · 12.2 Defendant and remedy matrix · 12.3 Evidence protocol · 12.4 Expert evidence · 12.5 Governance, funding and communications

12.1 PHASED PLAN

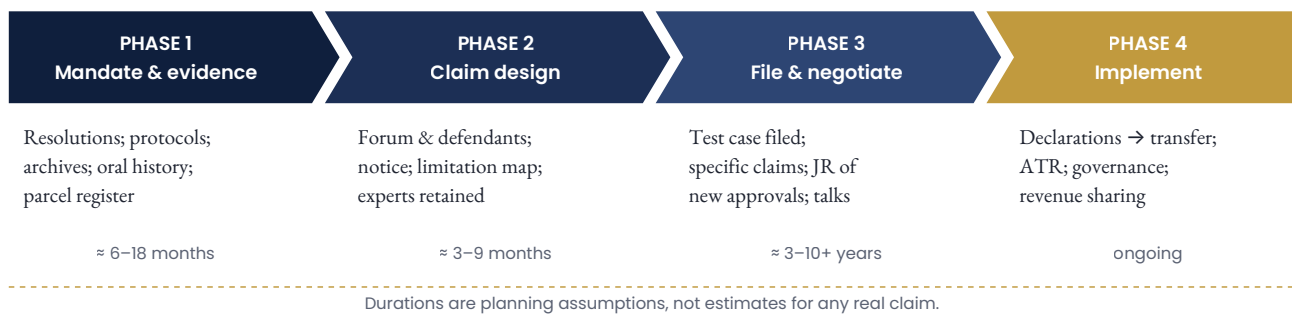


FIGURE 12.1 · Phased plan. Negotiation runs alongside litigation from Phase 3 onward.

PHASE 1 — MANDATE AND EVIDENCE

1. Obtain a formal mandate from each participating nation through its own governance process, specifying the territory, the remedies sought, settlement authority and who instructs counsel.
2. Adopt an evidence and data protocol (12.3) before any interviews or archival work begin.
3. Build the parcel register (Schedule B) from registry, Crown-land, federal-property and municipal data.
4. Commission preliminary historical, ethnographic, archaeological, cadastral and economic scoping reports.
5. Identify neighbouring nations with overlapping interests and open protocol discussions.

PHASE 2 — CLAIM DESIGN

1. Choose the forum and defendants using Part IV and the matrix in 12.2.
2. Map limitation exposure claim by claim; decide which heads are declaratory and which seek money.
3. Diary notice periods (two months in New Brunswick; 60 days in Ontario for damages).
4. Decide the treatment of private land (Part VI.4).
5. Retain experts and settle the valuation framework (Schedule E).

PHASE 3 — FILING AND NEGOTIATION

1. File a defined test case on the strongest Crown-land or treaty claim.
2. File specific claims for defined reserve-land or treaty-asset losses in parallel.
3. Use judicial review and consultation rights to protect the Claim Area from new dispositions while the case proceeds.
4. Open without-prejudice negotiations with both Crowns on a framework for recognition, transfer, co-management and compensation.

PHASE 4 — IMPLEMENTATION

1. Convert declarations and settlements into land transfers, ATR, jurisdiction and revenue-sharing agreements with enforceable milestones.
2. Build governance capacity and land-management systems for returned land.

12.2 DEFENDANT AND REMEDY MATRIX

TABLE 12.2 — THE FOUR TRACKS AFTER VERIFICATION

ISSUE	FEDERAL CROWN	PROVINCIAL CROWN	UK CROWN	CHARLES III PERSONALLY
Recommendation	PROCEED where facts fit	PROCEED (primary track)	DO NOT LITIGATE ; archival and political routes	DO NOT NAME
Conduct	Federal acts, treaty and fiduciary obligations; colonial obligations now Canada's	Grants, licences, dispositions and administration of provincial land	Would need specific present UK conduct; none identified	Would need personal conduct; none identified
Land scope	Federal parcels; reserve land	Provincial Crown parcels; private land by finding (NB)	None	None
Forum	Federal Court or superior court	Superior court (with Canada)	None identified (CPA s. 40; SIA; <i>Commanda</i>)	None identified (CPA s. 40(1); personal immunity)
Main barriers	Limitations for money; proof	Notice; limitations; private land; proof	Immunity; divisibility of Crown	Immunity; no cause of action; no reachable assets
Remedies	Declarations; equitable compensation; accounting; negotiated transfer	Declarations; entitlement; compensation; negotiated transfer	Disclosure; acknowledgment (non-legal)	None

12.3 EVIDENCE PROTOCOL

INDIGENOUS DATA SOVEREIGNTY

The First Nations Information Governance Centre's OCAP[®] principles (Ownership, Control, Access and Possession) set the standard for how First Nations data should be collected, protected, used and shared.⁷⁶ In litigation, they translate into practical rules:

- The nation owns the evidence it generates (interviews, maps, traditional-use studies) and decides what is disclosed.
- Counsel and experts hold copies under written agreements that restrict use to the proceeding.
- Sensitive material (sacred sites, burial locations, restricted knowledge) is disclosed only under confidentiality orders, sealing or redaction where the court permits.
- Possession of originals remains with the nation, in a secure repository it controls.

⁷⁶ FNIGC, OCAP[®] brochure [S67].

ORAL HISTORY

Courts must accommodate oral histories and place them on an equal footing with documentary evidence (*Delgamuukw* at para 87), while assessing whether they are useful and reasonably reliable (*Mitchell*). In *Cowichan* and *Nuchatlaht*, oral history was weighed with archaeology, culturally modified trees and archival records. Plan for:

1. Early recording of elders' evidence, with informed consent and cultural protocols, including commission evidence for elders who may not be able to testify at trial.
2. Documenting the chain of transmission: who holds the history, how it was passed down, and its place in the community's own laws.
3. Corroboration with independent sources wherever possible.
4. Translation and interpretation by qualified, independent interpreters.

REPOSITORY STRUCTURE

FOLDER	CONTENTS	ACCESS
01 Mandate	Resolutions, governance laws, retainer agreements	Leadership, counsel
02 Land	Parcel register, registry abstracts, surveys, GIS layers, maps	Counsel, cadastral expert
03 Archives	Treaties, Orders in Council, patents, correspondence, Indian Affairs records, UK colonial records, with full citations	Counsel, historians
04 Oral history	Recordings, transcripts, consents, protocols (restricted)	Nation-designated custodians; counsel by permission
05 Expert	Reports, data, peer review	Counsel, experts
06 Crown conduct	Licences, dispositions, consultation records, access-to-information results	Counsel
07 Valuation	Revenue data, appraisals, models	Counsel, valuation experts
08 Verification log	For every authority and fact: source, date checked, grade, checker	Counsel, research team

12.4 EXPERT EVIDENCE

DISCIPLINE	QUESTIONS THE EXPERT ANSWERS
Ethnohistory	Who occupied the area at sovereignty; patterns of use, governance and exclusion; treaty context
Archaeology	Physical evidence of occupation and its dating; culturally modified trees; village and resource sites
Anthropology and Indigenous law	Land tenure, governance and the nation's own laws about territory and access
Historical geography and survey	Reserve boundaries, survey errors, the chain of Crown grants (as in <i>Saugeen</i>)
Linguistics	Place names as evidence of occupation and use
Valuation and economics	Land value, value to the taker, revenue streams, interest and present value (Schedule E)
Environmental science	Effects of development on the land and the exercise of rights

12.5 GOVERNANCE, FUNDING AND COMMUNICATIONS

- **Settlement principles.** Agree in advance, within each nation, the outcomes that would be acceptable, how overlapping claims will be handled, and how settlement proceeds and land will be held for future generations.
- **Funding.** Specific-claims research and negotiation funding is available within limits (practitioner guidance reports up to \$40,000 per claim per year for research and loans up to \$200,000 per year for negotiation).⁷⁷ Title litigation usually requires the nation's own resources, litigation funding or advance-costs applications.
- **Public communications.** The Wolastoqey and Haida experiences show that public concern centres on private homes. Clear statements of what is and is not sought reduce opposition and support negotiation.
- **Verification discipline.** Before any filing, re-run the verification log for every authority marked **R**, and note-up all cases.

⁷⁷ JFK Law, Specific Claims Primer (July 2025) [S54]. Confirm current CIRNAC funding guidelines.

APPENDICES

TOOLS, AUTHORITIES AND SOURCES

Fill-in schedules for the pleadings, a jurisdictional quick reference, the pre-filing checklist, the table of authorities with verification grades, a glossary and the full list of sources consulted.

A. Evidence Schedules A–E · B. Jurisdictional Quick Reference · C. Pre-Filing Checklist · D. Table of Authorities
· E. Glossary · F. Sources Consulted

APPENDIX A — EVIDENCE SCHEDULES A–E (TEMPLATES)

These templates correspond to the schedules referred to in Drafts 1 and 2. They are working tools for the evidence team; they are not court forms. Every entry must cite a document in the evidence repository (Part XII.3).

SCHEDULE A — PARCEL REGISTER

REF.	PARCEL ID (PID)	LEGAL DESCRIPTION	TENURE CATEGORY	REGISTERED HOLDER	ENCUMBRANCES	RELIEF SOUGHT	SOURCE DOC.
A-1.001			Prov. Crown			Declaration	
A-2.001			Fed. Crown			Declaration	
A-3.001			Crown corp.			If party	
A-4.001			Municipal			If party	
A-5.001			Private			Finding only	
A-6.001			Reserve			As pleaded	

Tenure categories follow Part VI.3. In New Brunswick, the distinction between A-1/A-2 and A-5 determines whether a declaration is available (2025 NBCA 129).

SCHEDULE B — MAP AND TENURE OVERLAY

Base map and projection	
Claim Area boundary source	
Tenure layers (registry date)	
Third-party tenures (leases, licences, mineral claims, rights-of-way)	
Overlapping claims shown	
Sensitive sites (withheld / generalized)	
Cartographer and certification	

SCHEDULE C — TITLE, RIGHTS AND TREATY EVIDENCE

ELEMENT	PROPOSITION	EVIDENCE	TYPE	WITNESS / EXPERT
Date of sovereignty			Historical / legal	
Sufficiency			Oral / archaeological	
Continuity			Oral / documentary	
Exclusivity			Oral / documentary	
Treaty promise			Treaty text / minutes	
Non-extinguishment			Legislative history	
Authorization (C-1)			Resolutions	

SCHEDULE D — CROWN CONDUCT

REF.	DATE	CROWN ENTITY	ACT / OMISSION	PARCELS AFFECTED	KNOWLEDGE EVIDENCE	CONSULTATION / CONSENT
D-1.001		Province				
D-2.001		Province	(ongoing authorization)			
D-3.001		Canada				

SCHEDULE E — LOSS AND REMEDY METHODOLOGY

Interest lost and period	
Valuation basis (market / value to taker / revenue / replacement)	
Crown revenues derived (by source and year)	
Interest and present-value method; legal basis	
Deductions and benefits received	
Apportionment between Crowns	
Non-pecuniary heads (if forum permits)	

Sensitivity analysis (key assumptions)	
Expert(s) and qualifications	

APPENDIX B — JURISDICTIONAL QUICK REFERENCE

TOPIC	FEDERAL CROWN	NEW BRUNSWICK	ONTARIO
Statute	<i>Crown Liability and Proceedings Act</i> , R.S.C. 1985, c. C-50	<i>Proceedings Against the Crown Act</i> , R.S.N.B. 1973, c. P-18	<i>Crown Liability and Proceedings Act</i> , 2019, S.O. 2019, c. 7, Sch. 17
Name of Crown	Attorney General of Canada (s. 23(1), permissive)	"the Province of New Brunswick" (s. 11)	Per Act and Rules
Service	Deputy Attorney General of Canada (s. 23(2))	Attorney General, Deputy AG or designated solicitor (s. 12)	Per Act and Rules
Pre-suit notice	None general; written notice starts interest (s. 31)	Two months (s. 15)	60 days for damages (s. 18); nullity if missed
Leave	—	—	Misfeasance / bad-faith claims (s. 17)
Court	Federal Court or provincial superior court (FCA s. 17; CLPA s. 21)	Court of King's Bench (ss. 6, 9)	Superior Court of Justice
Injunction / specific performance	Not available; declaration (s. 22)	Not available; declaration; entitlement in land claims (s. 14)	Check Act
Execution	None (s. 29); CRF payment (s. 30)	None (s. 17(6)); Consolidated Fund	Check Act
Limitation	Provincial law; 6 years outside a province (s. 32)	2 / 15 years; continuing acts; no Aboriginal exclusion found	2 / 15 years; s. 35 and equitable Aboriginal claims excluded (s. 2(1)(e)-(f))
Private land	—	No declaration without owners (2025 NBCA 129)	<i>Chippewas of Sarnia; Saugeen</i>

Only the federal, New Brunswick and Ontario rules were verified for this package. For other provinces, add columns only after reading the statutes.

APPENDIX C — PRE-FILING CHECKLIST FOR COUNSEL

MANDATE AND PARTIES

- ☐ The rights-holding collective is identified, and each component has authorized the action and the remedies sought.
- ☐ Overlapping nations are identified; protocols or notice are in place.
- ☐ Each defendant is legally responsible for the acts and relief pleaded against it; no defendant is named for symbolism.
- ☐ Track 3 (UK Crown) and Track 4 (Charles III) are closed unless written UK and Canadian opinions identify a tenable claim.

FORUM AND PROCEDURE

- ☐ Forum selected with regard to *Toney* (no Federal Court jurisdiction over provinces) and CLPA s. 21.
- ☐ Crown styled as required (CLPA s. 23; NB PACA s. 11; other provinces' statutes).
- ☐ Pre-suit notice served and proved (NB two months; Ontario 60 days); limitation extension rules diarized.
- ☐ Service plan for each Crown confirmed.

FACTS AND EVIDENCE

- ☐ Schedules A–E complete; every parcel classified by tenure.
- ☐ Each cause of action is tied to dated, particularized Crown conduct (Schedule D).
- ☐ Title elements (sufficiency, continuity, exclusivity, date of sovereignty) supported by evidence and expert reports.
- ☐ Treaty promises quoted from certified texts and supported by negotiation records.
- ☐ Oral-history evidence gathered under protocol, with consents and corroboration.
- ☐ OCAP[®]-consistent data agreements signed with counsel and experts.

LAW AND REMEDIES

- ☐ Limitation, discoverability, continuing-breach and laches analysis completed for each head of relief.
- ☐ Declarations lead the prayer; money claims separately justified.
- ☐ No injunction or specific performance sought against the Crown; land transfer framed as declared entitlement and negotiation.
- ☐ Private land treated in accordance with provincial law (finding plus compensation in NB unless owners joined).
- ☐ Valuation method (Schedule E) reflects *Southwind* and the forum's rules.
- ☐ Specific-claims eligibility assessed in parallel (SCTA ss. 14–16, 20).
- ☐ Prior judgments, settlements, modern treaties and agreements reviewed for bars.

VERIFICATION

- ☐ All authorities noted up; all **R** items re-checked (Cowichan, Nuchatlaht, Gitxaala, Kebaowek, Restoule-Superior, Elsipogtog).
- ☐ All pinpoints confirmed against the reasons, not summaries.
- ☐ Annotations, placeholders and DRAFT markings removed only after counsel's sign-off.

APPENDIX D — TABLE OF AUTHORITIES WITH VERIFICATION STATUS

Grades: **P** primary text read · **O** official summary or publication · **S** reputable secondary source read · **S-i** citation and gist confirmed from search-index listings only · **R** re-check (live matter). Source numbers refer to Appendix F.

CANADIAN CASES

CASE	CITATION	GRADE	SOURCE	USED IN
<i>Alberta v. Toney</i>	2013 FCA 217	P	S37	I, IV, VI
<i>Behn v. Moulton Contracting Ltd.</i>	2013 SCC 26	S	S47	III, IV, V
<i>Calder v. British Columbia (AG)</i>	[1973] SCR 313	S	S50	II, III
<i>Canada (AG) v. Gottfriedson</i>	2014 FCA 55	P	S74	IV
<i>Canada (AG) v. Lameman</i>	2008 SCC 14; [2008] 1 SCR 372	S	S46	III, IV, V
<i>Canadian Nuclear Laboratories v. Kebaowek First Nation</i>	2026 FCA 174 (rev'g 2025 FC 319)	S R	S34	I, II, III
<i>Chippewas of Sarnia Band v. Canada (AG)</i>	(2000), 51 OR (3d) 641 (CA)	S	S48	III, IV, VI
<i>Chippewas of Saugeen First Nation v. South Bruce Peninsula</i>	2024 ONCA 884; leave ref'd 28 Aug 2025	S	S49	III, IX
<i>Clyde River (Hamlet) v. Petroleum Geo-Services</i>	2017 SCC 40	S-i	S71	II, III
<i>Chippewas of the Thames First Nation v. Enbridge</i>	2017 SCC 41	S-i	S71	III
<i>Commanda v. Her Majesty the Queen of Canada et al.</i>	2018 FC 189	P	S36	I, II, III, VII, VIII
<i>Cowichan Tribes v. Canada (AG)</i>	2025 BCSC 1490	S R	S27–28	Passim
<i>Delgamuukw v. British Columbia</i>	[1997] 3 SCR 1010	S	S50–51	II, III, XII
<i>Gitxaala v. British Columbia (Chief Gold Commissioner)</i>	2025 BCCA 430; SCC 42200	S R	S33	II, III
<i>Grassy Narrows First Nation v. Ontario (Natural Resources)</i>	2014 SCC 48	S-i	S69	III, VI
<i>Guerin v. The Queen</i>	[1984] 2 SCR 335	S	S50	II, III, V
<i>Haida Nation v. British Columbia (Minister of Forests)</i>	2004 SCC 73; [2004] 3 SCR 511	S	S50	II, III, V, VI
<i>J.D. Irving, Limited et al. v. Wolastoqey Nation</i>	2025 NBCA 129; leave ref'd 2026 CanLII 50180	P	S29–31	Passim
<i>Kazemi Estate v. Islamic Republic of Iran</i>	2014 SCC 62	S-i	S68	III, VII
<i>Manitoba Métis Federation Inc. v. Canada (AG)</i>	2013 SCC 14	S	S45	II, III, IV, V
<i>Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)</i>	2005 SCC 69; [2005] 3 SCR 388	S	S50	II, III
<i>Mikisew Cree First Nation v. Canada (Governor General in Council)</i>	2018 SCC 40	S-i	S72	II, III
<i>Mitchell v. M.N.R.</i>	2001 SCC 33	S-i	S52	III, XII
<i>Nuchatlaht (The) v. British Columbia</i>	2026 BCCA 137	S R	S32	II, III, V, IX

CASE	CITATION	GRADE	SOURCE	USED IN
<i>Ontario (AG) v. Restoule</i>	2024 SCC 27	O	S19–24	Passim
<i>Quebec (AG) v. Pekuakamiulnuatsh Takuhikan</i>	2024 SCC 39	O	S26	II, III, IX
<i>R. v. Marshall</i>	[1999] 3 SCR 456; [1999] 3 SCR 533	O	S43, S50	II, III, XI
<i>R. v. Marshall; R. v. Bernard</i>	2005 SCC 43; [2005] 2 SCR 220	S	S44	II, III, XI
<i>R. v. Sparrow</i>	[1990] 1 SCR 1075	S	S50	II, V
<i>R. v. Van der Peet</i>	[1996] 2 SCR 507	S	S50	II
<i>Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council</i>	2010 SCC 43	S	S50	I
<i>Southwind v. Canada</i>	2021 SCC 28	O	S25	Passim
<i>Taku River Tlingit First Nation v. British Columbia</i>	2004 SCC 74; [2004] 3 SCR 550	S	S50	III
<i>Tsilhqot'in Nation v. British Columbia</i>	2014 SCC 44	S	S18	Passim
<i>Wewaykum Indian Band v. Canada</i>	2002 SCC 79; [2002] 4 SCR 245	S-i	S73	II, III, IV
<i>Williams Lake Indian Band v. Canada</i>	2018 SCC 4	S-i	S70	II, III, V

UK AND PRIVY COUNCIL CASES

CASE	CITATION	GRADE	SOURCE	USED IN
<i>Manuel v. Attorney-General</i>	[1983] Ch 77 (CA)	S	S38	II, III, VII
<i>R. v. Secretary of State for Foreign and Commonwealth Affairs, ex p. Indian Association of Alberta</i>	[1982] QB 892 (CA)	S	S36, S39	II, III, VII
<i>St. Catharines Milling and Lumber Co. v. The Queen</i>	(1888) 14 App Cas 46 (JCPC)	S	S40	II, III

INTERNATIONAL

MATTER	REFERENCE	GRADE	SOURCE	USED IN
<i>Ominayak and Lubicon Lake Band v. Canada</i> (UN HRC)	Comm. No. 167/1984 (1990)	P	S62	X
<i>Hul'qumi'num Treaty Group v. Canada</i> (IACHR)	Petition 2007; admissibility 2009	S R	S63	X
UN Declaration on the Rights of Indigenous Peoples	A/RES/61/295 (2007)	P	S5, S60	II, X

LEGISLATION

INSTRUMENT	PROVISIONS RELIED ON	GRADE	SOURCE
<i>Constitution Act, 1867</i>	ss. 91(24), 109	P	S3
<i>Constitution Act, 1982</i> (incl. Charter s. 25)	ss. 25, 35, 35.1	P	S4
<i>Crown Liability and Proceedings Act</i> , R.S.C. 1985, c. C-50	ss. 2, 21–25, 29–32	P	S1
<i>Federal Courts Act</i> , R.S.C. 1985, c. F-7	ss. 17, 19, 48	P	S2
<i>Specific Claims Tribunal Act</i> , S.C. 2008, c. 22	ss. 14–16, 20	P	S6
<i>United Nations Declaration on the Rights of Indigenous Peoples Act</i> , S.C. 2021, c. 14	ss. 2, 4–7; Schedule	P	S5

INSTRUMENT	PROVISIONS RELIED ON	GRADE	SOURCE
<i>Interpretation Act</i> amendments (Bill S-13), S.C. 2024	Non-derogation clause	O	S7
<i>Proceedings Against the Crown Act</i> , R.S.N.B. 1973, c. P-18	ss. 6, 9, 11, 12, 14, 15, 17	P	S8
<i>Limitation of Actions Act</i> , S.N.B. 2009, c. L-8.5	ss. 3, 5, 6, 8.1, 25	P	S9
<i>Limitations Act, 2002</i> , S.O. 2002, c. 24, Sch. B	s. 2(1)(e)–(f)	S-i	S10
<i>Crown Liability and Proceedings Act, 2019</i> , S.O. 2019, c. 7, Sch. 17	ss. 17, 18	S	S11
<i>Haida Nation Recognition Amendment Act, 2024</i> (B.C.)	Recognition of title	O	S35
<i>Constitution Act, 1930</i> (Natural Resources Transfer Agreements)	Prairie Crown lands	S-i	S76
<i>Crown Proceedings Act 1947</i> (UK)	ss. 17, 40	P	S12, S77
<i>Canada Act 1982</i> (UK)	s. 2	P	S13
<i>Sovereign Grant Act 2011</i> (UK) — Royal Trustees' Review 2026	Reference percentage	P	S17
Royal Proclamation, 7 October 1763	Indian lands provisions	S	S41

APPENDIX E — GLOSSARY

Aboriginal title. A collective, constitutionally protected interest in land arising from occupation at the assertion of Crown sovereignty; confers rights to use, possess, manage and benefit from the land.

Additions to Reserve (ATR). The federal process by which land is added to an existing reserve or a new reserve is created.

Declaration. A court order stating the parties' legal rights, without itself ordering action; the principal remedy against the Crown.

Divisibility of the Crown. The principle that the Crown in right of the UK, of Canada and of each province are distinct legal persons.

Duty to consult. The Crown's obligation, grounded in the honour of the Crown, to consult and where appropriate accommodate before acting in a way that may adversely affect asserted or established rights.

Equitable compensation. Monetary relief for breach of fiduciary duty, measured to restore what was lost (see *Southwind*).

Fee simple. The fullest form of private land ownership in the common law.

Fiduciary duty (Crown). A *sui generis* duty arising where the Crown assumes discretionary control over a specific, cognizable Indigenous interest.

Finding of title. A factual determination that title exists over land, without a formal declaration, used to support compensation (2025 NBCA 129).

Honour of the Crown. The constitutional principle requiring the Crown to act honourably in its dealings with Indigenous peoples; gives rise to specific duties.

Justification. The Crown's burden to show that an infringement of a s. 35 right serves a compelling and substantial objective and is consistent with its fiduciary obligations.

Laches. An equitable defence based on unreasonable delay causing prejudice.

Limitation period. A statutory time limit for starting a claim.

OCAP[®]. First Nations principles of Ownership, Control, Access and Possession of data (FNIGC).

Peace and Friendship Treaties. Treaties (1725–1779) between the British Crown and Mi'kmaq, Wolastoqiyik and Peskotomuhkati peoples; no land cession.

Section 35. The provision of the *Constitution Act, 1982* recognizing and affirming existing Aboriginal and treaty rights.

Specific claim. A claim that Canada failed to meet a lawful obligation concerning reserves, treaty land or assets; may go to the Specific Claims Tribunal.

State immunity. The rule that a foreign state is immune from a domestic court's jurisdiction unless an exception applies (in Canada, the *State Immunity Act*).

Treaty Land Entitlement (TLE). Agreements to provide reserve land owed under numbered-treaty formulas.

UNDA / DRIPA. Federal and British Columbia statutes implementing the UN Declaration on the Rights of Indigenous Peoples.

APPENDIX F — SOURCES CONSULTED

All sources were accessed on 22 October 2026 unless noted. Grades as in Appendix D. Where a court site refused automated access, the secondary source actually read is listed.

STATUTES AND OFFICIAL LEGAL TEXTS

- S1** *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50 (current to 30 Sept 2026). <https://laws-lois.justice.gc.ca/eng/acts/C-50/>
- S2** *Federal Courts Act*, R.S.C. 1985, c. F-7, ss. 17, 19, 48. <https://laws-lois.justice.gc.ca/eng/acts/F-7/section-17.html>
- S3** *Constitution Act, 1867*, ss. 91(24), 109. <https://laws-lois.justice.gc.ca/eng/const/page-3.html>
- S4** *Constitution Act, 1982*, ss. 25, 35, 35.1. <https://laws-lois.justice.gc.ca/eng/const/page-12.html>
- S5** *United Nations Declaration on the Rights of Indigenous Peoples Act*, S.C. 2021, c. 14 (current to 30 Sept 2026). <https://laws-lois.justice.gc.ca/eng/acts/U-2.2/FullText.html>
- S6** *Specific Claims Tribunal Act*, S.C. 2008, c. 22 (current to 21 June 2026). <https://laws-lois.justice.gc.ca/eng/acts/S-15.36/page-2.html>
- S7** Department of Justice Canada, "S-13 Royal Assent: Upholding Section 35 rights through a non-derogation clause in the federal Interpretation Act" (Nov 2024). <https://www.canada.ca/en/department-justice/news/2024/11/s-13-royal-assent-upholding-section-35-rights-through-a-non-derogation-clause-in-the-federal-interpretation-act.html>
- S8** *Proceedings Against the Crown Act*, R.S.N.B. 1973, c. P-18. <https://laws.gnb.ca/en/document/cs/P-18>
- S9** *Limitation of Actions Act*, S.N.B. 2009, c. L-8.5. <https://laws.gnb.ca/en/document/cs/L-8.5>
- S10** *Limitations Act, 2002*, S.O. 2002, c. 24, Sch. B (site requires JavaScript; wording confirmed from indexed text). <https://www.ontario.ca/laws/statute/02i24>
- S11** *Crown Liability and Proceedings Act, 2019*, S.O. 2019, c. 7, Sch. 17; WeirFoulds LLP, "Suing the Crown in Ontario: Special Rules Apply" (14 Feb 2023); SCC docket 40733. <https://www.ontario.ca/laws/statute/19c07c> · <https://weirfoulds.com/suing-the-crown-in-ontario-special-rules-apply> · <https://www.scc-csc.ca/cases-dossiers/search-recherche/40733/>
- S12** *Crown Proceedings Act 1947* (UK), s. 40, latest revised; Cabinet Office catalogue page. <https://www.legislation.gov.uk/ukpga/Geo6/10-11/44/section/40> · <https://www.gov.uk/government/publications/crown-proceedings-act-1947>
- S13** *Canada Act 1982* (UK), s. 2. <https://www.legislation.gov.uk/ukpga/1982/11/section/2>
- S76** *Constitution Act, 1930* (Natural Resources Transfer Agreements), primary documents collection. <https://primarydocuments.ca/constitution-act-1930/>
- S77** Cabinet Office, List of Authorised Government Departments under s. 17, Crown Proceedings Act 1947 (2026). https://assets.publishing.service.gov.uk/media/6a903d2ff5b35599aecd18eba/List_of_Authorised_Government_Departments_2026.pdf

JUDGMENTS, DOCKETS AND COURT SUMMARIES

- S18** *Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44; Fasken Aboriginal Law Bulletin (26 June 2014); Bennett Jones, "Implications of the Supreme Court Decision on Aboriginal Title" (July 2014). <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/14246/index.do> · <https://www.fasken.com/en/knowledge/2014/06/aboriginallawbulletin-20140626>
- S19** Supreme Court of Canada, Case in Brief, *Ontario (AG) v. Restoule*, 2024 SCC 27. <https://www.scc-csc.ca/judgments-jugements/cb/2024/40024/>
- S25** Supreme Court of Canada, Case in Brief, *Southwind v. Canada*, 2021 SCC 28. <https://scc-csc.ca/judgments-jugements/cb/2021/38795/>
- S26** Supreme Court of Canada, Case in Brief, *Quebec (AG) v. Pekuakamiulnuatsh Takuhikan*, 2024 SCC 39. <https://scc-csc.gc.ca/pdf/cb/2024/40619-eng.pdf>

- S29** *J.D. Irving, Limited et al. v. Wolastoqey Nation*, 2025 NBCA 129 (11 Dec 2025). <https://www.courtsnb-courtsnb.ca/content/dam/courts/pdf/appeal-appel/decisions/2025/12/2025-12-11-j.d.irving-limited-et-al-v-wolastoqey-nation-2025-nbca-129.pdf>
- S33** SCC docket 42200 (Gitxaala). <https://www.scc-csc.ca/cases-dossiers/search-recherche/42200/>
- S36** *Commanda v. Her Majesty the Queen of Canada et al.*, 2018 FC 189. <https://decisions.fca-caf.ca/fc-cf/decisions/en/306823/1/document.do>
- S37** *Alberta v. Toney*, 2013 FCA 217. <https://decisions.fca-caf.gc.ca/fca-caf/decisions/en/62837/1/document.do>
- S38** *Manuel v. Attorney-General* [1983] Ch 77 (CA), ICLR listing. https://www.iclr.co.uk/document/1981002853/casereport_88617.html
- S39** "British Court of Appeal Dismisses IAA Case", *Saskatchewan Indian* 12:1 (Jan 1982). <https://iportal.usask.ca/node/607>
- S52** *Mitchell v. M.N.R.*, 2001 SCC 33 (index listing). <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/1869/1/document.do>
- S62** UN Human Rights Committee, *Ominayak and Lubicon Lake Band v. Canada*, Comm. No. 167/1984. <https://hrllibrary.umn.edu/undocs/session38/167-1984.html>
- S74** *Canada (AG) v. Gottfriedson*, 2014 FCA 55. <https://decisions.fca-caf.gc.ca/fca-caf/decisions/en/67028/1/document.do>

GOVERNMENT AND OFFICIAL PUBLICATIONS

- S14** D. Torrance, *The Crown and the constitution*, House of Commons Library CBP-8885 (4 Aug 2025). <https://researchbriefings.files.parliament.uk/documents/CBP-8885/CBP-8885.pdf>
- S15** The Royal Household, "Royal Finances". <https://www.royal.uk/royal-finances-0>
- S17** Royal Trustees, *Sovereign Grant Act 2011: Report on the Sovereign Grant Review 2026* (June 2026). https://assets.publishing.service.gov.uk/media/6a3cedc833bc5beefd3c49ae/Report_of_the_Royal_Trustees_Sovereign_Grant_Review_2026.pdf
- S20** CIRNAC, "Robinson Huron Treaty Leadership, Ontario and Canada announce proposed settlement" (June 2023). <https://www.canada.ca/en/crown-indigenous-relations-northern-affairs/news/2023/06/robinson-huron-treaty-leadership-ontario-and-canada-announce-proposed-settlement-and-next-steps-in-treaty-annuities-court-case.html>
- S21** CIRNAC, Question Period Note CIR-2025-QP-2916 (10 Sept 2025). <https://search.open.canada.ca/qpnotes/record/aandc-aadnc%2CCIR-2025-QP-2916>
- S35** B.C. Government, news release 2024IRR0027-000768 (May 2024); Global News, "Canada recognizes Aboriginal title over Haida Gwaii" (17 Feb 2025). <https://news.gov.bc.ca/releases/2024IRR0027-000768> · <https://globalnews.ca/news/11021941/haida-gwaii-title-federal>
- S42** CIRNAC, "Peace and Friendship Treaties (1725–1779)". <https://www.rcaanc-cirnac.gc.ca/eng/1360937048903>
- S43** Government of Canada, "R. v. Marshall". <https://ciranac-rcaanc.gc.ca/eng/1100100028614/1539611557572>
- S53** CIRNAC written response, Standing Senate Committee on National Finance (June 2024). https://sencanada.ca/Content/Sen/Committee/441/NFFN/briefs/SuppsA-25_CIRNAC_SpecificClaims_b.pdf
- S55** CIRNAC, "Pathways to Additions to Reserve Policy reform". <https://www.rcaanc-cirnac.gc.ca/eng/1760099540587>
- S56** ISC, "Treaty Land Entitlement in Saskatchewan". <https://www.sac-isc.gc.ca/eng/1100100034825>
- S57** ISC, "Treaty Land Entitlements in Manitoba". <https://www.sac-isc.gc.ca/eng/1305306991615>
- S58** CIRNAC, "Federal Court approves Band Class litigation settlement agreement" (Mar 2023). <https://www.canada.ca/en/crown-indigenous-relations-northern-affairs/news/2023/03/federal-court-approves-band-class-litigation-settlement-agreement0.html>
- S60** UN DESA, "United Nations Declaration on the Rights of Indigenous Peoples". <https://social.desa.un.org/issues/indigenous-peoples/united-nations-declaration-on-the-rights-of-indigenous-peoples>
- S67** First Nations Information Governance Centre, OCAP[®] brochure (2022). https://fnigc.ca/wp-content/uploads/2022/10/OCAP_Brochure_20220927_web.pdf

SECONDARY SOURCES, COMMENTARY AND NEWS

- S16 Full Fact, "Claims about King Charles's inheritance need context" (6 June 2023). <https://fullfact.org/online/King-Charles-inheritance/>
- S22 CP24 / Canadian Press, "Judge affirms \$3.6B treaty settlement" (4 Mar 2026). <https://www.cp24.com/news/canada/2026/03/04/judge-affirms-36b-treaty-settlement-for-first-nations-in-northwestern-ont/>
- S23 APTN News on the \$3.6 billion determination (Jan 2025); note that it misdates the SCC decision. <https://aptnnews.ca/?p=257123>
- S24 SooToday, "First Nations to appeal \$3.6 billion treaty annuities decision" (headline only; page not retrievable). <https://www.sootoday.com/local-news/first-nations-to-appeal-36-billion-treaty-annuities-decision-12121768>
- S27 Mandell Pinder, Cowichan case summary; Osler, "Aboriginal title and private property: divergent approaches"; Torys (Jan 2026). <https://www.mandellpinder.com/cowichan-tribes-v-canada-attorney-general-2025-bcsc-1490-case-summary/> · <https://www.osler.com/en/insights/blogs/indigenous/aboriginal-title-and-private-property-divergent-approaches-in-cowichan-and-wolastoqey/>
- S28 Today in BC (29 June 2026); BLG, "Recent developments in Aboriginal title litigation" (June 2026). <https://todayinbc.com/2026/06/29/court-declines-to-reopen-cowichan-tribes-case-to-add-private-landowner-montrose/> · <https://www.blg.com/en/insights/2026/06/recent-developments-in-aboriginal-title-litigation>
- S30 Torys, "SCC declines to hear Wolastoqey Nation appeal" (May 2026). <https://www.torys.com/our-latest-thinking/publications/2026/05/scc-declines-to-hear-wolastoqey-nation-appeal>
- S31 Emond Harnden, "Wolastoqey Litigation Update" (Summer 2026). [https://www.emond.ca/Emond/media/Downloads/Wolastoqey-Litigation-Update-Summer-2026-\(1\).pdf](https://www.emond.ca/Emond/media/Downloads/Wolastoqey-Litigation-Update-Summer-2026-(1).pdf)
- S32 Mandell Pinder, *Nuchatlaht* case summary (1 May 2026); CTV News (15 Oct 2026). <https://www.mandellpinder.com/nuchatlaht-v-british-columbia-2026-bcca-137-case-summary/>
- S33 Osler, "UNDRIP in B.C. law" (17 Dec 2025); Today in BC (21 May 2026). <https://www.osler.com/en/insights/blogs/indigenous/undrip-in-b-c-law-court-of-appeal-confirms-immediate-effect-and-targets-mineral-claim-regime/>
- S34 JFK Law, "UNDRIP's Promise Deferred: The FCA Overturns Federal Court in Kebaowek" (19 Oct 2026). <https://jfkclaw.ca/insight/undrips-promise-deferred-the-federal-court-of-appeal-overturns-federal-court-in-kebaowek/>
- S40 "St Catharines Milling and Lumber Co v R", Wikipedia. https://en.wikipedia.org/wiki/St_Catharines_Milling_and_Lumber_Co_v_R
- S41 "Royal Proclamation of 1763", Wikipedia. https://en.wikipedia.org/wiki/Royal_Proclamation_of_1763
- S44 East Coast Environmental Law, case brief, *R. v. Marshall*; *R. v. Bernard*. <https://www.ecelaw.ca/case-briefs/r-v-marshall-r-v-bernard-2005-scc-43>
- S45 TheCourt.ca, "SCC Expands on the Honour of the Crown in Manitoba Métis Federation" (26 Mar 2013). <https://www.yorku.ca/osgoode/thecourt/2013/03/26/12233/>
- S46 Réseau DIALOG, *Canada (AG) v. Lameman*. <https://jurisprudence.reseaudialog.ca/en/case/canada-attorney-general-v-lameman/>
- S47 Fasken Aboriginal Law Bulletin, *Behn* (9 May 2013). <https://www.fasken.com/en/knowledge/2013/05/aboriginallawbulletin-20130509>
- S48 "Chippewas of Sarnia Band v Canada (AG)", Wikipedia. [https://en.wikipedia.org/wiki/Chippewas_of_Sarnia_Band_v_Canada_\(AG\)](https://en.wikipedia.org/wiki/Chippewas_of_Sarnia_Band_v_Canada_(AG))
- S49 Mondaq, "Drawing a Line in the Sand" (Saugeen); CP24 (28 Aug 2025). <https://www.cp24.com/news/canada/2025/08/28/supreme-court-dismisses-appeal-of-sauble-beach-land-claim/>
- S50 TDS Law, "Selected Leading Aboriginal Law Decisions"; Nova Scotia Office of L'nu Affairs, "Key Court Cases". <https://www.td-slaw.com/resource/selected-leading-aboriginal-law-decisions/> · <https://novascotia.ca/abor/resources/key-court-cases/>
- S51 Criminal Law Notebook, "Oral Aboriginal History Evidence". https://criminalnotebook.ca/index.php/Oral_Aboriginal_History_Evidence
- S54 JFK Law, Specific Claims Primer (July 2025). <https://jfkclaw.ca/wp-content/uploads/2025/07/Specific-Claims-Primer.pdf>

- S59** BC Assembly of First Nations, Resolution 46/2025 (certified 30 Oct 2025). https://www.bcafn.ca/sites/default/files/uploads/resolutions/2025_46_AGM_Resolu-tion_ENSUR-ING%20CANADA%20AND%20BRITISH%20COLUMBIA%20ENABLE%20LAND%20RESTITUTION%20AS%20A%20WIDELY%20AVAILABLE%20REMEDY%20IN%20SPECIFIC%20CLAIMS%20SETTLEMENTS.pdf
- S61** Vatican News, "Vatican formally repudiates Doctrine of Discovery" (30 Mar 2023). <https://www.vaticannews.va/en/vatican-city/news/2023-03/vatican-formally-repudiates-doctrine-of-discovery.html>
- S63** University of Arizona IPLP Program, Hul'qumi'num Treaty Group case page. <https://law.arizona.edu/hulquminum-treaty-group>
- S64** "2025 royal visit to Canada", Wikipedia. https://en.wikipedia.org/wiki/2025_royal_visit_to_Canada
- S65** NB Media Co-op, "Elsipogtog close to final settlement in 1824 illegal taking case" (17 July 2025). <https://nbmediacoop.org/2025/07/17/elsipogtog-close-to-final-settlement-in-1824-illegal-taking-case-video/>
- S66** Global News, "Mi'kmaq First Nation files land claim for vast portion of New Brunswick" (9 Nov 2016). <https://globalnews.ca/news/3057843/mikmaq-first-nation-files-land-claim-for-vast-portion-of-new-brunswick>
- S68** TheCourt.ca, "Torture and the Limits of Sovereign Immunity: Kazemi" (13 Oct 2014) (index listing). <https://yorku.ca/osgoode/thecourt/2014/10/13/torture-and-the-limits-of-sovereign-immunity-kazemi-estate-v-islamic-republic-of-iran>
- S69** Bennett Jones, "Supreme Court Decision in Keewatin Confirms Provincial Ability to Take up Treaty Lands" (July 2014) (index listing). <https://www.bennettjones.com/Insights/Blogs/2014/07/Supreme-Court-Decision-in-Keewatin-Confirms-Provincial-Ability-to-Take-up-Treaty-Lands>
- S70** Law Times, "Canada could be held responsible for band's pre-Confederation claim" (index listing). <https://www.lawtimes-news.com/case-law/supreme-court-of-canada/canada-could-be-held-responsible-for-bands-pre-confederation-claim/265658>
- S71** Torys, "SCC Confirms Regulatory Bodies may Fulfil Crown Duty to Consult" (July 2017) (index listing). <https://www.torys.com/en/our-latest-thinking/publications/2017/07/scc-confirms-regulatory-bodies-may-fulfil-crown-duty-to-consult>
- S72** Gowling WLG, "Crown's duty to consult with Indigenous peoples" (2018) (index listing). <https://gowlingwlg.com/en-gb/insights-resources/client-work/2018/crown-s-duty-to-consult-with-indigenous-peoples>
- S73** First Nations Governance timeline, *Wewaykum* [2002] 4 SCR 245 (index listing). <https://fngovernance.org/timeline/waywaykum.htm>
- S75** CBC News, "Wolastoqey chiefs add forestry companies to title claim case" (2021). <https://amp.cbc.ca/lite/story/1.6267718>

CLOSING NOTE AND COLOPHON

CLOSING NOTE

This package is a briefing aid for Indigenous governments and qualified counsel. It does not assert that all Crown lands are legally recoverable, that all Indigenous nations share one claim, that the United Kingdom Crown is liable for Canadian land status, or that Charles III's personal wealth is available to satisfy any judgment. Each proposition requires separate legal and evidentiary analysis by counsel acting on a nation's instructions.

The law described here was moving quickly in 2025 and 2026. At least six matters relied on were under appeal or before the Supreme Court of Canada when checked. Re-verify before use.

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COLOPHON

PREPARED BY	Marie Seshat Landry · CEO & Founder, Landry Industries Inc. · Moncton, New Brunswick
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