

Indian Specific Claims Commission

2007-2008

Departmental Performance Report

**The Honourable Chuck Strahl, P.C., M.P.
Minister of Indian Affairs and Northern Development
and Federal Interlocutor for Métis and Non-Status Indians**

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SECTION I: OVERVIEW

1. Chief Commissioner's Message

It is my honour to present the Indian Specific Claims Commission's first stand-alone Departmental Performance Report covering fiscal year 2007-2008.

The ISCC operates according to the following four principles:

1. Independence and Impartiality;
2. Equity and Natural Justice;
3. Openness and Transparency; and
4. Importance of Oral History.

These principles guide us in developing and sustaining our relationships, as well as conducting our activities.

The Commission was established by Order in Council in 1991 as a Commission of Inquiry. The Commission's mandate is to conduct inquiries into specific claims disputes between First Nations and the Government of Canada, as well as providing mediation services at any stage of the claims process to foster achievement of positive outcomes.

In fulfilment of its mandate, the Commission has developed a sound reputation for conducting its inquiries and providing mediation services in a balanced and neutral manner that favours neither party in the process. Since its inception in 1991, the Commission has held 81 inquiries involving 92 claims, and issued 70 inquiry reports. It has also provided mediation/facilitation services to 53 specific claims negotiation tables and issued 12 mediation reports.

As Chief Commissioner, I actively support approaches to the issues and concerns of the parties that foster the greatest degree of impartiality and independence so that the credibility and acceptance of our work and findings is beyond reproach.

We at the Commission see our role as bridging different points of view. However, despite all of our best efforts, different perspectives will continue to characterize the specific claims process in Canada for some time. This concept of bridging will remain critical if we are to make collective progress in the specific claims area.

Since 1994, the Commission has called upon the Government to create an independent, permanent body with binding authority to expedite the resolution of First Nation specific claims. With the *Specific Claims Tribunal Act*, there are changes underway. This Tribunal will have decision making powers, a key ISCC recommendation for many years. As well, the Government has indicated its intent to set up a mediation body, another decision that the ISCC supports given its own positive experience with mediation. We stand ready to assist in any way we can with the creation of a lasting solution to reduce delay and address the backlog of cases in the specific claims process.

In parallel to the tabling of Bill C-30 in November 2007, the ISCC's own mandate was amended this last year by Order in Council P.C. 2007-1789. As well as fixing a March 31, 2009 closing date for the ISCC, the Order in Council directed the Commission to cease work on inquiries which had not yet reached the community session phase and stop accepting new claims for



inquiry. If a First Nation requests that the Commission cease its inquiry, it must do so immediately without issuing a final report. The Commission must complete and report on all remaining inquiries by December 31, 2008, and cease all its activities, including those related to mediation, by March 31, 2009.

As the Commission's work wraps up, our focus is on completing the inquiries and mediation files still under way, and ensuring that the knowledge and experience acquired during our 17 years of operation are not lost.

One of the Commission's priorities over the next year will be to help secure new employment for ISCC personnel, who have worked diligently with Commissioners.

The Commission would like to reassure First Nations and Government that the quality of our work will be maintained throughout this challenging period.

Commissioners and staff will continue to work diligently to complete our work within the time allotted, effectively fulfilling the Commission's mandate. We will offer the benefit of our experience over the years to the new tribunal and to the new mediation services organization, once both are formally created.

Renée Dupuis, C.M., *Ad.E.*

Chief Commissioner

2. Management Representation Statement

I submit for tabling in Parliament the 2007-08 Departmental Performance Report for the Indian Specific Claims Commission.

This document has been prepared based on the reporting principles contained in the *Guide for the Preparation of Part III of the 2007–08 Estimates: Reports on Plans and Priorities and Departmental Performance Reports*:

- It adheres to the specific reporting requirements outlined in the Treasury Board Secretariat guidance;
- It is based on the department’s Strategic Outcome(s) and Program Activity Architecture that was approved by the Treasury Board;
- It presents consistent, comprehensive, balanced and reliable information;
- It provides a basis of accountability for the results achieved with the resources and authorities entrusted to it; and
- It reports finances based on approved numbers from the Estimates and the Public Accounts of Canada.

Name: _____, Diana Monnet

Title: Executive Director, Indian Specific Claims Commission

3. Program Activity Architecture (PAA)

In June 2006 the ISCC sought and received Treasury Board approval of its Program Activity Architecture submission. The ISCC operates with strategic outcome: “Fair resolution of Indian Specific Claims”. The description of the program activity was changed from - “*Indian Specific Claims Commission*” - to - “*Conduct Inquiries and Provide Mediation Services*” in order to provide a more informative description of the Commission’s mandate.

<u>Strategic Outcome</u>	<u>Program Activity</u>
Fair Resolution of Indian Specific Claims	Conduct Inquiries and Provide Mediation Services

4. Summary Information

4.1 Rationale for Department's Existence

The mission of the Indian Specific Claims Commission is to assist First Nations and Canada to resolve specific claims in the context of the Specific Claims Policy. The Commission operates at arms-length of the government and First Nations. It is a commission of inquiry offering to a First Nation, at its request, an independent and neutral process – other than litigation – to inquire into specific claims that have been examined and rejected by the Minister of DIAND or when the First Nation disputes the compensation criteria the government proposes to use in negotiating the settlement of its claim. At any stage of the specific claims process, the Commission can provide mediation or facilitation services to assist the parties in reaching a satisfactory resolution when requested by both the First Nation and Canada. The Commission may also prepare reports from time to time that the Commissioners consider are required in respect of the Commission's activities and the activities of the Government of Canada and the Indian band(s) relating to specific claims.

Depending on the exact nature of the Indian specific claim, the fair resolution of the claim can provide a range of benefits including one or more of the following:

- better legal risk management;
- enhanced safety and security of people and property;
- closure for the First Nation of their historic grievance;
- greater certainty over lands and resources;
- enhanced socio-economic opportunities for First Nations and their neighbours;
- improved relationships between First Nations, governments and communities;
- enhanced international respect for Canada's treatment of its Aboriginal peoples;
- improved knowledge and understanding by the public of historical claims.

4.2 Financial Resources

2007-08 (\$ - dollars)		
Planned Spending	Total Authorities	Actual Spending
6,800,000	7,021,817	6,106,340

4.3 Human Resources

2007-08 – (FTEs)		
Planned	Actual	Difference
49	47	2

4.4 Departmental Priorities

Priority Description	Type	Performance Status
1. <i>Conduct fair and impartial inquiries.</i>	Ongoing	5 Inquiry reports completed and 8 Inquiry Reports were released.
2. <i>Provide mediation services at any stage of a claim.</i>	Ongoing	6 mediations were completed for specific claims under negotiation.
3. <i>Maintain the excellence of ISCC operations while First Nations and Canada continue to discuss alternative approaches for resolving Indian specific claims.</i>	Ongoing	Canada and First Nation leadership have reached an understanding respecting the future approach for accelerating the review and resolution of specific claims in a fair and impartial manner, including the establishment of the Specific Claims Tribunal.

4.5 Program Activities by Strategic Outcome

Program Activity Description	Expected Results	Performance Status	2007-2008 (\$-dollars)		Contributes to the following priority
			Planned Spending	Actual Spending	
Strategic Outcome: Fair Resolution of Indian Specific Claims					
Conduct Inquiries and provide Mediation Services	a. Inquiry Reports; and b. Mediation sessions	a. Successfully met. b. Successfully met.	6,800,000	6,106,340	a. 1 and 3. b. 2 and 3.

4.6 Departmental Performance

Since its inception in 1991, the Commission has held 81 inquiries involving 92 claims, and issued 70 inquiry reports. It has also provided mediation/facilitation services to 53 specific claims negotiation tables and issued 12 mediation reports.

Of the 81 inquiries that the ISCC has completed a report on since 1991, 50 were recommended to the Minister of DIAND for negotiation or further research and/or review. Another 9 were not recommended to the Minister of DIAND for negotiation. And, the remaining 22 were withdrawn, settled or accepted by the Minister of DIAND for negotiation without conducting a full inquiry.

From April 1, 2007, to March 31, 2008, the Commission completed the following five inquiries: (i) Lower Similkameen Indian Band [*Vancouver, Victoria and Eastern Railway Right of Way*]; (ii) Lucky Man Cree Nation [*Treaty Land Entitlement Phase 2*]; (iii) Roseau River Anishinabe First Nation [*1903 Surrender*]; (iv) Sandy Bay Ojibway First Nation [*Treaty Land Entitlement*]; and (v) Saulteau First Nation [*Treaty Land Entitlement and Lands in Severalty*].

Reports on the Roseau River Anishinabe First Nation [*1903 Surrender*], Sandy Bay Ojibway First Nation [*Treaty Land Entitlement*] and Saulteau First Nation [*Treaty Land Entitlement and Lands in Severalty*] inquiries were released in this reporting period.

Reports on the Lower Similkameen Indian Band [*Vancouver, Victoria and Eastern Railway Right of Way*] and Lucky Man Cree Nation [*Treaty Land Entitlement Phase II*], were completed and will be issued early in the 2008-2009 fiscal year.

In addition, the Commission released reports on five inquiries completed in previous reporting periods. These are: (i) the Blood Tribe/Kainaiwa [*Big Claim*]; (ii) Kluane First Nation [*Kluane National Park and Kluane Games Sanctuary*]; (iii) Opaskwayak Cree Nation [*Streets and Lanes Claim*]; (iv) Paul First Nation [*Kapasiwin Townsite Inquiry*]; and (v) Sakimay First Nation [*Treaty Land Entitlement*].

From April 1, 2007, to March 31, 2008, the Commission completed the following six mediations: (i) Fort Pelly Agency [*Pelly Haylands Claim Negotiations*]; (ii) George Gordon First Nation [*Treaty Land Entitlement Negotiations*]; (iii) Metepenagiag Ni'kmaw Nation [*Hosford Lot and Red Bank Reserve 7*]; (iv) Michipicoten First Nation [*Pilot Project*]; (v) Muskoday First Nation [*Treaty Land Entitlement Negotiations*]; and (vi) Sturgeon Lake First Nation [*Treaty Land Entitlement Negotiations*]. Reports on the completed mediations will be issued in the 2008-2009 fiscal year.

All of the Commission's reports can be found on our website at www.indianclaims.ca.

**SECTION II: ANALYSIS OF PROGRAM ACTIVITIES BY
STRATEGIC OUTCOME**

1. Analysis by Program Activity

Strategic Outcome

Fair Resolution of Indian Specific Claims

Program Activity Name

Conduct Inquiries and provide Mediation Services - In 2007-2008, the ISCC completed 5 Inquiry reports. It also released a total of 8 Inquiry Reports, of which 5 are from Inquiries completed in the previous years. The ISCC completed six mediations for parties in negotiation that requested this service.

Financial Resources

2007-2008 (\$ - dollars)		
Planned Spending	Authorities	Actual Spending
6,800,000	7,021,817	6,106,340

Human Resources

2007-2008 (FTEs)		
Planned	Actual	Difference
49	47	2

SECTION III: SUPPLEMENTARY INFORMATION

1. Departmental Link to Government of Canada Outcome Areas

Within the Government-as-a-Whole Framework, the ISCC is classified within the Spending Area of Social Affairs. The ISCC's strategic outcome is linked to the Government of Canada (GoC) Outcome Area entitled: "A diverse society that promotes linguistic duality and social inclusion". There are eleven federal organizations, including the ISCC, that contribute to this GoC outcome area through their respective strategic outcomes and program activities. For additional information, please go to the Whole-of-Government Planning and Performance website at:

<http://www.tbs-sct.gc.ca/ppg-cpr/home-accueil-eng.aspx>

This website provides links to these 11 Departments and Agencies DPRs.

Strategic Outcome: Fair Resolution of Indian Specific Claims				
Program Activity	Actual Spending 2007-08 (\$ - dollars)			Alignment to Government of Canada Outcome Area
	Budgetary	Non-budgetary	Total	
Conduct Inquiries and provide Mediation Services	6,106,340	—	6,106,340	A diverse society that promotes linguistic duality and social inclusion

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2. Financial Information Tables

Table 1: Comparison of Planned to Actual Spending (including FTEs)

(\$ - dollars)	2005–2006 Actual	2006–2007 Actual	2007–2008			
			Main Estimates	Planned Spending	Total Authorities	Actual
Conduct Inquiries and provide Mediation Services	6,876,146	6,533,756	6,733,000	6,800,000	7,021,817	6,106,340
Total	6,876,146	6,533,756	6,733,000	6,800,000	7,021,817	6,106,340
Less: Non-respendable revenue	---	---	N.A.	---	N.A.	---
Plus: Cost of services received without charge	693,000	678,000	N.A.	667,000	N.A.	606,400
Net Cost of Program	7,569,146	7,211,756	N.A.	7,467,000	N.A.	6,712,740
Full-Time Equivalents	46	45	N.A.	49	N.A.	47

Table 2: Voted and Statutory Items

Vote or Statutory Item	Truncated Vote or Statutory Wording	2007–2008 (\$ - dollars)			
		Main Estimates	Planned Spending	Total Authorities	Actual
50	Program expenditures	6,136,000	6,203,000	6,476,313	5,560,836
(S)	Contributions to employee benefit plans	597,000	597,000	545,493	545,493
(S)	Spending of proceeds from the disposal of surplus Crown assets	---	---	11	11
	Total	6,733,000	6,800,000	7,021,817	6,106,340

Table 3: Loans, Investments, and Advances (Non-budgetary)

Not applicable - The Commission does not provide any loans nor does it make investments or advances to outside parties.

Table 4: Sources of Re-spendable and Non-Re-spendable Revenue

Not applicable - The Commission does not operate any programs or services that produce revenues.

Table 5: Revolving Funds

Not applicable - The Commission does not have a Revolving Fund.

Table 6: User Fees/External Fees

Not applicable - The Commission does not provide any goods or services that require the collection of fees.

Table 7: Details on Project Spending

Not applicable - The Commission did not have any project spending in 2007-2008.

Table 8: Status Report on Major Crown Projects

Not applicable - The Commission did not have any project spending in 2007-2008.

Table 9: Details on Transfer Payment Programs (TPPs)

Not applicable - The Commission does not have any transfer payment program authority.

Table 10: Foundations (Conditional Grants)

Not applicable - The Commission does not have any transfer payment program authority.

Table 11: Horizontal Initiatives

Not applicable – The Commission is an independent organization that operates at arms-length from government.

Table 12: Sustainable Development Strategy

Not applicable - The Commission was established as a Commission of Inquiry in 1991 by Order in Council. In fulfilling its mandate, the Commission does not operate and/or provide projects, programs, and services that might directly impact the goals and objectives of the government's Sustainable Development Strategy.

Table 13: Response to Parliamentary Committees and External Audits

Not applicable - There were no Parliamentary Committee Reports or External Audits directed specifically to the Indian Specific Claims Commission.

Table 14: Internal Audits and Evaluations

There were no internal audits or evaluation of the Indian Specific Claims Commission in 2007-2008.

Table 15: Travel Policies

Comparison to the Treasury Board of Canada Secretariat *Special Travel Authorities*

Not applicable – The Indian Specific Claims Commission follows the rates and allowances outlined in the Treasury Board Travel Directive.

3. Claims Process and Stages of Inquiry

The Commission operates at arms-length and is independent from government. It is a commission of inquiry offering to First Nations a process, other than litigation, to inquire into specific claims that have been examined and rejected by the Minister of DIAND, or when the First Nation disputes the compensation criteria established by the Minister for that particular claim.

In this regard, it is important to note that the Commission does not operate as a court and is not, therefore, bound by the strict rules of evidence, the limitation periods in which claims can be brought nor other technical defences that might present obstacles to resolving the First Nation's claim against the Crown. This flexibility enhances the Commission's ability to conduct its inquiries in a fair and impartial manner in order to expedite the process of making recommendations to the Minister of DIAND regarding a First Nation's specific claim or objection to the compensation criteria. This process fosters the development and implementation of innovative solutions that can resolve complex and contentious issues of policy and law related to Indian specific claims.

A specific claim starts with a First Nation that has researched its claim and submitted it to the Minister of DIAND together with any supporting documentation. DIAND'S Specific Claims Branch performs its own research and, with the involvement of the Department of Justice, assesses the merits of the claim to determine if the claim establishes an *outstanding lawful obligation* on the part of the government, as defined in the Specific Claims Policy. If the federal government does not believe it has an outstanding lawful obligation, the First Nation's claim is denied and the Minister of DIAND informs the First Nation that it will not negotiate settlement of the claim. In this instance, apart from accepting the decision of the Minister, the First Nation has two options that it can pursue; it can seek a remedy from the appropriate court, or it can request the Commission to conduct an inquiry.

There are five stages to the Commission's inquiry process:

1. **Initial Request for Inquiry** – The Commission reviews the First Nation's request for an independent inquiry and, if it agrees to accept the specific claim for review and assessment, a panel of three Commissioners is formed to hear the inquiry.
2. **Preparation for Inquiry** – Briefing material is prepared and sent to all of the parties in advance to facilitate discussion. Counsel for both parties is asked to state the issues to be addressed by the inquiry, from which the Commission staff will attempt, in consultation with counsel for the parties, to generate a single list of issues. A planning conference is held among the parties and their counsel. In many instances, the need for further research is identified. If there is no consensus by the parties on a single list of issues, this matter is placed before the panel for decision.

3. **Staff Visit and Community Session(s)** – Commissioners and staff attend a session or series of sessions in the First Nation’s community to hear directly from Elders and other knowledgeable members of the First Nation. In some instances, expert witnesses may be called upon to present evidence or testimony and are subject to cross examination by the other party.
4. **Written and Oral Submissions** – Both parties present submissions to the panel.
5. **Commissioners’ Final Report** – The panel of Commissioners consider the evidence, testimony and submissions presented to them and issue a final report that contains their findings and recommendation that the Minister of DIAND not reconsider the decision to deny the specific claim, or that the Minister of DIAND accept the specific claim for negotiation.

These five stages typically take between two to five years to complete depending on the number and complexity of the issues being considered and on the parties involved.

The Commission’s terms of reference also permit it to prepare reports, from time to time, that the Commissioners consider are required in respect of the Commission’s activities and the activities of the Government of Canada and the Indian band(s) relating to specific claims.

4. Mediation/Facilitation Process

At the request of either Canada or the First Nation and with the consent of both, the Commission can provide or arrange for mediation assistance at any stage of the claims process. Depending on the nature of the claim, the Commission offers a broad range of alternative dispute resolution services tailored to suit the particular needs of the parties. The Indian Claims Commission provides facilitative mediation services that are culturally sensitive, informal, non-threatening, and flexible. Together with the mediator, the parties decide how the mediation process will be conducted.

There are four steps in the Commission’s mediation process;

1. **Preparation for Mediation** – The Commission reviews the claim being negotiated and brings representatives of the negotiating parties together face-to-face to discuss the issues and terms of the negotiation and mediation protocol agreements.
2. **Negotiation Process** – The Commission facilitates discussions on compensation, assists the parties by coordinating the gathering of information including land appraisals and joint loss of use studies, and monitors the parties’ decisions and undertakings.

3. **Settlement** – When and after the negotiating parties reach an agreement in principle, lawyers for the First Nation and Canada work together to draft a final settlement agreement which is initialled by the negotiators and ratified by both parties.
4. **Final Mediation Report** – The Commission reports to the federal government, the First Nation and the public on the outcome of the negotiation.

5. Contacts

Indian Specific Claims Commission

P.O. Box 1750
Station B
Ottawa, Ontario
K1P 1A2

Telephone: 613-943-2737

Facsimile: 613-943-0157

T.T.Y: 613-943-3772

Internet: www.indianclaims.ca

E-mail: feedback@indianclaims.ca

SECTION IV: OTHER ITEMS OF INTEREST

1. Reports of inquiries and mediations concluded by the ISCC

The ISCC maintains a website that can be accessed to provide the reader with details on the status of claims for which the Commission has completed its inquiry or mediation activities. A copy of the report for each inquiry or mediation is available from our website at:

www.indianclaims.ca.