



# The Indian Claims Commission

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# Key Definitions

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- ▶ **Aboriginal:** includes Indian, Inuit and Métis
- ▶ **First Nation:** refers only to Status Indians
- ▶ **Specific Claims:** alleged Government breach of fiduciary duty, statutes (such as the *Indian Act*) and treaties
- ▶ **Comprehensive Claims:** based on a First Nation's unextinguished Aboriginal title
- ▶ **Treaty:** solemn agreement with mutually-binding obligations between the government and one or more First Nations
- ▶ **Treaty Land Entitlement Claim:** a specific claim involving outstanding land acreages based on treaty land entitlement formula
- ▶ **Surrender:** agreed-upon transfer of Indian land to the federal government, usually for money
- ▶ **Surrender Claim:** alleged breach of a legal obligation when land surrender was taken



# Background

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- ▶ **Royal Proclamation of 1763** confirms Aboriginal rights and states that treaties must precede European settlement.
- ▶ **1812-1921:** Treaties signed with Canada's First Nations.
- ▶ **1927:** Amendment added to *Indian Act* which discourages land claims. Fines are levied against lawyers who raise funds for a claim or represent a First Nation in a claim against Canada.
- ▶ **Beginning in the 1940s,** calls were made for the creation of an independent claims body.
- ▶ **1951:** The *Indian Act* is revised to remove the provision that made it an offence to raise funds or hire a lawyer to advance a land claim without the government's permission.
- ▶ **1973:** Government policy divides First Nation land claims into **specific** and **comprehensive**.



# Background

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- ▶ **1973:** The Supreme Court recognizes the existence of Aboriginal title in the *Calder* case.
- ▶ **1982:** Section 35 of the *Constitution Act, 1982*, recognizes and affirms existing Aboriginal and treaty rights.
- ▶ **1984:** In *Guerin*, the Supreme Court finds that the Crown has a fiduciary obligation to protect First Nations' interests in transactions with third parties.
- ▶ **1990:** In *Sparrow*, the Supreme Court recognizes existing Aboriginal right to fish and interprets Section 35 of the Constitution Act for the first time.
- ▶ **1990:** The Oka crisis raises awareness of land claims.
- ▶ **1991:** The Indian Specific Claims Commission is created.



# Mandate

- ▶ In 1991, as part of its response to the events at Kanesatake/Oka, the government established the ICC by Order in Council as an independent advisory body to:
  - ◆ Hold public inquiries (under the *Inquiries Act*) into specific claims that have been rejected by the government or where there is disagreement regarding compensation criteria;
  - ◆ Provide mediation to help First Nations and government to reach claim settlements.
- ▶ Before the creation of the ICC, First Nations were unable to challenge government decisions without going to court. The Indian Claims Commission has offered an alternative approach for First Nations who desire an independent review of government decisions.
- ▶ Commission work is carried out on the basis of Canada's Specific Claims Policy.
- ▶ Presently 5 part-time Commissioners (including Chief Commissioner) appointed by federal government; 51 staff.



# Inquiry Process

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- ▶ After the Minister of INAC decides to accept or reject a claim, First Nations can request an inquiry when:
  - ◆ The Minister has rejected their claim; or
  - ◆ The Minister has accepted the claim, but there is a disagreement over compensation criteria.
- ▶ Inquiries follow a well established and accepted process (see following page).



# Inquiry Process

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**A First Nation writes to the Commission to request an inquiry. The Commission assesses the claim and makes a decision to accept or deny the request.**

## **Preparation for Inquiry**

- ▶ Once the decision to accept the request has been made, the Commission brings representatives of the First Nation and government together face-to-face, often for the first time, to discuss the rejected claim, plan research, clarify legal issues.

## **Community Session**

- ▶ Commissioners visit the First Nation to hear oral testimony from Elders and other community members.

## **Written and Oral Submissions**

- ▶ Lawyers for the First Nation and government provide submissions on facts and law.

## **Final Inquiry Report**

- ▶ Based on the evidence presented, Commissioners release their findings and recommendations to the federal government, the First Nation, and the public.



# Mediation Process

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- ▶ At any stage in the specific claims process, the Commission may, by mutual agreement of the parties, offer mediation services:
  - ◆ at any stage in the review process at the Department of Indian and Northern Affairs, including before the acceptance or rejection of the claim.
  - ◆ at any stage in the Commission's inquiry process, in order to assist the parties to resolve their differences.
  - ◆ at any stage of negotiations between the First Nation and the government, in order to assist the parties to find a mutually acceptable settlement, including coordination of joint studies that may be required for the resolution of the claim.



# Mediation Process

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**A First Nation and Canada jointly write to the Commission to request its mediation services.**

## **Preparation for Mediation**

- ▶ The Commission reviews the claim and brings representatives of the negotiating parties together face-to-face to discuss the issues and terms of the negotiation and mediation protocol agreements.

## **Negotiation Process**

- ▶ The Commission facilitates discussions on any issue, including 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.

## **Settlement**

- ▶ 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 initialed by the negotiators and ratified by both parties.

## **Final Mediation Report**

- ▶ The Commission reports to the federal government, the First Nation and the public on the outcome of the negotiation.
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# Guiding Principles

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- ▶ Independence and impartiality
- ▶ Fairness and natural justice
- ▶ Openness and transparency
- ▶ Importance of oral history



# Ongoing Caseload and Expenditures by Fiscal Year\*

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<b>Fiscal year</b>	<b>Ongoing Caseload</b>	<b>Expenditures</b>
2000-2001	25 Inquiries and 13 Mediations	\$4.9 million
2001-2002	29 Inquiries and 12 Mediations	\$5.7 million
2002-2003	37 Inquiries and 13 Mediations	\$5.8 million
2003-2004	30 Inquiries and 18 Mediations	\$5.8 million
2004-2005	43 Inquiries and 21 Mediations	\$6.8 million
2005-2006	37 Inquiries and 26 Mediations	\$6.9 million
2006-2007	31 Inquiries and 26 Mediations	\$6.5 million
2007-2008**	34 Inquiries and 27 Mediations	\$6.5 million (budget)

\*The Commission typically completes its work on an inquiry or mediation within a period of time that ranges from two to five years.

\*\*As at October 2007.



# Concluded Inquiries and Mediations

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- ▶ Since its creation in 1991, as of September 2007, the ICC has held 70 inquiries involving 77 claims, and issued 66 inquiry reports. It has also provided mediation/facilitation services to 53 specific claims negotiation tables and issued 11 mediation reports.
- ▶ ICC's success is due to its unique inquiry process and its ability to mediate at any stage of the process.



# Current Statistics

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- ▶ Indian and Northern Affairs Canada (as of March 2007):
  - ◆ over 865 outstanding claims
- ▶ Indian Claims Commission (as of October 2007):
  - ◆ 126 Requests for inquiry accepted
  - ◆ 77 Claims addressed in inquiries
  - ◆ 34 Inquiries in process
  - ◆ 15 Inquiries ended prior to completion
  - ◆ 53 Requests for mediation\facilitation
  - ◆ 27 Current mediation\facilitation files
  - ◆ 17 Claims settled through mediation\facilitation
  - ◆ 9 Mediation\facilitation files ended prior to settlement



# Getting the Message Out

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- ▶ Website: [www.indianclaims.ca](http://www.indianclaims.ca)
- ▶ Publications
  - ◆ Reports: Inquiry or Mediation
  - ◆ Indian Claims Commission Proceedings (ICCP)
  - ◆ Annual Report
  - ◆ Facts on Claims
  - ◆ *Landmark* newsletter

All publications are available on our website in both official languages.



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