

**INDIAN CLAIMS COMMISSION
STATEMENT OF DUTIES AND RESPONSIBILITIES**

Position Title:	Director, Mediation
Position Number:	ISCC 00200
Unit:	Mediation Unit
Level:	EX-02
Supervisor' Title:	Executive Director
Date:	August 30, 2006

GENERAL ACCOUNTABILITY

The Director, Mediation, is accountable to the Executive Director, of the Indian Claims Commission (ICC) for: developing, implementing and monitoring the framework, and strategic and operational plans for a program of mediation of specific claims by Canada's First Nations which arise when a First Nation alleges that the federal government has not honoured its treaties, agreements or legal responsibilities in instances where negotiations are underway or have failed to produce results; developing internal policies and procedures for the mediation Directorate to ensure consistent professional service to the negotiations; providing expert advice to the Executive Director and Chief Commissioner on policy matters including new or revised legislation regarding specific claims, Cabinet Documents and Treasury Board Submissions and specific claims and negotiating with Central Agency officials as required to obtain needed financial and human resources; meeting with senior leadership of First Nations, First Nations organizations, legal counsel for First Nations and for the Federal Government and senior officials and negotiators working for the Federal Government to explain the services of the ICC for the resolution of specific claims and the potential value of ICC mediation services; directing the process of analysing claims activity, negotiations and prospective impasses and conceptualizing and planning mediation interventions; analysing or directing the analysis of the negotiation positions of both sides and developing or overseeing the development of a diversity of dispute resolution processes appropriate to the nature of the various cases in dispute; chairing the most complex mediation cases, overseeing the provision of mediation services and coaching and guiding ICC's professional mediators on the provision of mediation services aimed at assisting both parties in a dispute in finding acceptable resolutions without recourse to the legal system; coordinating loss of use studies by both sides of the Indian claims process; ensuring the fair and appropriate use of data and information in the resolution of cases; encouraging open dialogue between the parties to a dispute; analysing situations where mediation initiatives have not produced the desired results and searching out alternative processes and solutions; overseeing the creation, publication and maintenance of official reports on mediation processes; monitoring results of the mediation program in relation to plans and adjusting the program, priorities and plans to meet changing demands; producing ad hoc reports on mediation activities; organizing the work of the Directorate, estimating financial requirements, recruiting staff and managing the work of the Directorate.

Note: In the recent past, interventions by the mediation Directorate have resulted in the resolution of 14 First Nations Claims valued at \$280 million dollars. Currently there are 20 claims in mediation which, based on the projected value of those settled, are estimated to be worth \$400 million. The number of claims projected to be in mediation is 40 for an estimated value of \$800 million. In addition there are some 600 claims in the process of analysis and negotiation, many of which require mediation assistance which can contribute to their resolution at the earliest stages of the claims process.

ORGANIZATIONAL STRUCTURE

The Director, Mediation is one of four positions reporting to the Executive Director of the ICC. The others are - Commission Counsel; Director, Liaison and the Director, Corporate Services.

Reporting directly to the Director, Mediation are five (5) positions with responsibilities as follows:

- one Senior Mediation Officer responsible for the conduct of mediation activities;
- one Mediation Analyst responsible for research and analysis of issues related to mediation;
- one Mediation Study Coordinator and Assistant responsible for the coordination of loss of use and other studies initiated by both parties or one of the parties in relation to cases under dispute;
- one Administrative Assistant .

The Director, Mediation also engages or oversees the engagement of numerous professionals under contract to conduct loss of use studies and mediators required to conduct mediation activities on behalf of the Commission.

NATURE AND SCOPE

From colonial times up to the 1920s, the Federal Government of Canada and First Nations entered into treaties which created mutual obligations. Many claims derive from the assertion by First Nations that certain treaty provisions have not been honoured by the Government or there is un-extinguished aboriginal title. Over the years significant effort has been made to resolve claims but the level of resolution did not meet expectations and many claims ended in the courts.

Claims have been divided into two categories; specific and comprehensive. Specific claims arise from the breach or non-fulfilment of government obligations found in treaties, agreements or statutes. Comprehensive claims are those that are based on un-extinguished aboriginal title. The Indian Claims Commission was established to provide First Nations of Canada with a viable alternative to the courts for the resolution of disputes arising out of the specific claims process. It has two basic functions, inquiries and mediation, the latter of which is the responsibility of and is undertaken by the Mediation Directorate of the ICC.

Mediation is a process of dispute resolution whereby the parties elect to meet with an impartial third party, either during the process of claims negotiation or where negotiations have failed to produce results, for the purpose of assisting them in resolving the issues between them. It can be an informal process or it can proceed in a highly structured manner with clearly defined parameters. It must be flexible and requires only that both parties be willing to have a neutral third party assist them in exploring available options. The parties then work with the neutral mediator or facilitator to develop a process that best meets the needs of their particular dispute. Mediation activities cover the full spectrum of claims which are often highly complex with legal and political implications all of which have to be taken into account in seeking solutions acceptable to both parties.

In the interests of reaching claim settlements quickly and efficiently, the Commission offers mediation assistance and alternative dispute resolution to the parties at every stage of the negotiation process which currently entails an inventory of some 600 claims. This is a very broad responsibility covering all aspects of First Nations specific claims against the Federal Government requiring a high level of creativity and innovation and flexibility in developing mediation processes which are unique to each situation and which encompass a wide diversity of claims and situations which are at an impasse and must be resolved if the high costs of ongoing litigation are to be avoided.

Within this framework, the Director, Mediation is accountable for developing a program of mediation for specific claims; developing and implementing strategic plans, and framework and operational plans for the mediation program; providing professional advice on the mediation process and activities to the Executive Director, Chief Commissioner and Commissioners of the Indian Claims Commission. He/she must possess a comprehensive background knowledge of the issues being faced by the First Nations communities across Canada and extensive knowledge of the history and nature of specific claims and the success or failure of a diversity of processes in reaching resolutions. The Director is challenged to project requirements for and plan mediation services in an atmosphere of uncertainty as to the number of and nature of claims which will require mediation and the nature of the mediation required itself.

The Director is responsible for the promotion of the ICC mediation services for specific claims by First Nations where negotiations have failed to produce results. This involves meeting with senior leadership of First Nations, First Nations organizations, legal counsel for First Nations and for the Federal Government and senior officials and negotiators working for the Federal Government to explain the services of the ICC for the resolution of specific claims and negotiation and the signing of protocol agreements between First Nations and Canada.

Many of the First Nations claims are highly complex and sensitive and have significant political implications as evidenced by the regular participation of senior political leadership and high profile legal representatives for both First Nations and Canada in mediation processes. Intricate legal and policy issues often have to be addressed during negotiations and the Director must be capable of understanding and interpreting the political implications of proposed settlements as

well as complex legal opinions and their implications in relation to the results of proposed remedies. These must be grasped quickly and accurately in order to respond in an effective manner during mediation processes for complex claims representing potential payments of many millions of dollars in settlements.

The Director acts as the most senior mediator on behalf of the Commission. He/she must have or obtain a thorough understanding of both the broader and specific issues at stake in relation to each request for mediation, obtain a thorough understanding of the positions of both parties to the dispute, understand the political, economic, cultural, social and legal issues which may have a bearing on the positions of the parties and be skilled in the development and use of strategies and approaches which will assist in leading the parties to common ground which will provide the basis for exploring issues and alternative solutions which will be acceptable to both parties. The Director is challenged to display impartiality, open mindedness and creativity and to be supportive of and assist both parties in a dispute in finding acceptable resolutions without recourse to the legal system. Flexibility must be promoted and open dialogue between the parties to a dispute encouraged. The mediator must demonstrate extensive expertise as a seasoned mediator and earn the respect and trust of the parties involved. He/she must search out, develop and recommend alternatives which are new and unique and which will be of interest to the parties to the negotiations.

The Director oversees the coordination of loss of use studies undertaken jointly by Canada and First Nations or by First Nations. Terms of reference are normally developed for these studies at the negotiating table. The Director must oversee the engagement of professional consultants who are qualified to conduct the work and the monitoring of the work involved and manage activities to ensure that the work continues to reflect the deliberations and directions of the negotiation table, that time lines are maintained, costs are maintained within estimates, deliverables are consistent with the terms of reference of contracts, Elder interview sessions are organized and coordinated with First Nations Elders and other representatives where required and the reception, review and distribution of all reports received from consultants on loss of use studies.

The Director requires both a broad and thorough understanding of First Nations culture, traditions, practices, philosophy and organizations; sensitivities inherent in First Nations claims issues; the areas where gaps or possible detrimental impacts could occur as a result of current entrenched approaches; other Governments approaches to the settlement of claims with their Aboriginal peoples, professional and research organizations and national and international organizations and associations. The Director also requires knowledge of the technical complexities of state-of-the-art developments and advanced concepts in the area of dispute resolution and multiple areas of information/knowledge management to provide direction to research, strategies and mediation processes development.

He/she must demonstrate leadership in recruiting and developing mediators, analysts and mediation study coordination staff who have a good understanding of the broader framework within which mediation is conducted and the ability to research and study specific issues subject

to mediation, understand the positions of the parties to disputes and exercise creativity and innovation in developing and recommending mediation processes which will lead to the systematic resolution of impasses and provide solutions which will be acceptable to both parties and withstand scrutiny.

The Director must represent the interests of both the Federal Government and First Nations in providing impartial mediation services to First Nations claims which can range in value from several million dollars to many millions of dollars in individual cases. In addition to the dollar value of settlements, the Director is challenged to provide solutions to problems which are innovative, which will withstand the test of time and which will be seen to be and which are fair to the parties involved.

The Director plays a key role in providing expert advice to the Executive Director on policy and strategic matters affecting all specific claims which are worth billions of dollars as well as on legislation, Cabinet Documents, Submissions to Treasury Board and reports to Parliament, especially with regard to mediation and settlement of specific claims.

The Director also represents the Commission internationally in fora where issues of native peoples claims are the subject of international study and deliberations.

The Director is further challenged to build organizational mediation capacity, assign work within the Directorate and sustain the momentum for mediation activities which can be of a high degree of urgency and require sustained attention over significant periods or, in some cases, which can be drawn out and spread over several months or years.

The Director must develop and nurture a wide range of contacts among First Nations, Indian and Northern Affairs Canada, other federal departments and agencies, provincial and territorial governments, the private sector and international organizations. There is a requirement to continually demonstrate impartiality, demonstrate fairness, balance and persuasiveness in order to develop and maintain the credibility of the Directorate and build its reputation as a fair mediator of disputes between parties where there are significant cultural, economic and social differences.

The Director must demonstrate character, stature, experience and the wisdom in obtaining the trust and confidence of both First Nations and the Federal Government as well as excellent communication skills to explain the ICC and its mediation services and to enter into agreements with First Nations and Canada to provide mediation services.

He/she must oversee the production of official mediation reports for publication, produce regular reports to the Executive Director, Chief Commissioner and Commissioners and hoc reports on mediation activities; make top quality written and oral presentations to Commissioners at formal meetings of the Commission, at Management Committee and to other internal and external groups and oversee the creation and maintenance of official records on mediation processes.

The Director must monitor results of the program in relation to plans and adjust the mediation program and priorities to meet changing demands; organize the work of the Directorate, estimate financial requirements, recruit staff and manage the work of the Directorate.

DIMENSIONS

FTE's	6	
Direct Budget	1.5 million	
Contract Professionals	Equivalent to 10 FTE's	
Anticipated Number of active Mediation Cases and estimated value.	40	1 billion
Number and estimated value of claims in negotiation where mediation services may be required.	600	15 billion

SPECIFIC ACCOUNTABILITIES

1. Develops a framework for the provision of mediation services in support of the specific claims of First Nations in relation to the breach or non-fulfilment of government obligations found in treaties, agreements or related statutes where negotiation has failed to produce results.
2. Estimates requirements for mediation services and loss of use studies conducted jointly by Canada and First Nations or by First Nations and develops strategic and operational plans designed to ensure the provision of effective mediation of claims.
3. Represents the ICC through communication to First Nations, Canada and the legal community of the availability of the ICC mediation services and negotiation of agreements to provide mediation services.
4. Designs and develops an organizational structure, budgetary estimates and projections; prepares and defends submissions for resources; monitors expenditures; budgets for a diversity of mediation interventions, adjusts budgets to meet changing requirements and re-allocates resources.
5. Develops policies and procedures to ensure the effectiveness and efficiency of the program, reviews their effectiveness and develops new policies, procedures and other measures to ensure the continuous improvement of the program.

6. Provides expert professional advice on the mediation process and activities to the Executive Director, Chief Commissioner and Commissioners of the Indian Claims Commission; provides direction to the process of analysing claims activity, negotiations and prospective impasses and plans mediation intervention.
7. Provides expert policy advice to the Executive Director, Chief Commissioner and Commissioners on matters related to legislation, Cabinet Documents, Treasury Board Submissions and reports to the Governor in Council and Parliament.
8. Provides oversight to the analysis of the negotiation positions of both sides and to the development of a diversity of dispute resolution processes appropriate to the nature of the various cases in dispute and designed to lead to the resolution of differences between the parties.
9. Conducts mediation activities, chairs meetings of the parties for complex and significant claims and provides professional leadership to the delivery of mediation services designed to assist both Canada and First Nations in finding acceptable resolutions to a wide variety of cross-cultural claims disputes without recourse to the legal system.
10. Provides direction to the coordination of loss of use studies by both sides of the Indian Claims process; oversees the engagement of professional contractors, reviews results and ensures the fair and appropriate use of data and information in the resolution of cases.
11. Encourages open dialogue between the parties to disputes; analyses situations where mediation initiatives have not produced the desired results and searches out alternative processes and solutions.
12. Represents the ICC at a wide range of professional, expert conferences, meetings and workshops to explain the work of the ICC in the resolution of specific claims and, in particular, the ICC mediation services available.
13. Monitors results in relation to plans and adjusts the mediation program plans and internal procedures and priorities to meet changing demands and to bring about improvements on continuous basis.
14. Directs the production of final published reports on every completed negotiation as well as regular and ad hoc reports on mediation activities.
15. Oversees the creation and maintenance of official records on mediation processes.
16. Organizes the work of the Directorate, estimates financial requirements, recruits staff and manages the work of the Directorate.