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Speaking Points for November 15, 2005

Good Afternoon

Thank you for inviting me here today. I have a very brief opening statement.

The claims process in Canada has a long history that has been shaped by many events. Similarly, the forces that led to the creation of the Indians Claims Commission began many years ago. In the interests of time, let me begin in 1990.

As you know, violence erupted in Kanesatake/Oka, Quebec over a land claim. The federal government responded with a Native Agenda, including a commitment to accelerate specific claims settlement.

In 1991, the Indian Specific Claims Commission, known as the Indian Claims Commission, was created by Order in Council as a Commission of Inquiry under the Inquiries Act. In 1992, the Commission's mandate was revised and several additional Commissioners were appointed. Commission work is carried out on the basis of Canada's Specific Claims Policy.

From 1991 through 2004, the Prime Minister was designated as the appropriate Minister for the ICC for purposes of the *Financial Administration Act*. Effective July 2004 this was changed when the Government designated the Minister of Indian and Northern Development as the appropriate Minister for purposes of the *Financial Administration Act*. The ICC currently has five Commissioners, including myself, the Chief Commissioner. The staff supporting the Commission in its work is professional and hard working.

Before the creation of the ICC, First Nations were unable to challenge government decisions without going to court. The Indian Claims Commission offers an alternative approach for First Nations who desire an independent review of government decisions.

Our role is to respond to requests that are made after the Minister has made a decision to accept or reject a claim. More specifically, our mandate is twofold:

- 1) First, upon the request of a First Nation, to hold a public inquiry to review the Minister's decision when:
 - a) The Minister of INAC has rejected their claim; or
 - b) The Minister has accepted the claim, but there is a dispute over how to establish compensation.

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- 2) Second, upon mutual agreement of a First Nation and INAC, to provide mediation support at any stage of the claims process to assist the parties to reach a claim settlement.

Let me quickly summarize the principles that guide our day-to-day activities.

- 1) First and most importantly, independence and impartiality as a quasi-judicial body. These critical principles guide our inquiry processes from the very start right through to our recommendation as to whether or not there is an outstanding obligation due to a First Nation from the Government of Canada.

With regard to mediations, there are no more important qualities than impartiality and independence as we attempt to bring parties together to reach a satisfactory agreement. Without these qualities, our attempts to mediate would be fruitless.

- 2) Fairness and Natural Justice: Our inquiry process often presents the first opportunity for the parties to meet. The Government review of the claim is based solely on documents. An inquiry is a quasi-judicial process, the fairness of which requires appropriate time allotments for parties to make submissions in sequence.

Our process is community-based: We engage the parties in planning the inquiry, following which staff visit the communities to explain our process and interview elders. The panel then holds a hearing in the community. Finally, the elders' evidence and documentary evidence are the subject of written submissions by counsel for the parties, who then appear to make oral presentations to the panel, grounded in the evidence and the law. The panel then deliberates to produce its report and recommendation.

- 3) Openness and transparency. We are committed to operating in an open, transparent manner. We issue reports after each inquiry and mediation, in addition to our annual report. We are authorized as well to issue a report at any matter related to specific claims.

We communicate through a variety of means including our web site, newsletters, our various reports and through participation at conferences. Perhaps more than most public organizations, we travel to the communities we deal with to ensure that distance is not a barrier to being heard.

- 4) The importance of oral history. We meticulously collect the oral history relevant to an inquiry by visiting the communities in question and listening to the oral testimony of band members and in particular of band elders. If I may, we are very proud of this practice at the ICC. Collecting and considering oral testimony represents a unique contribution of the ICC, and has benefited both First Nations and the Canadian public in general.

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The Supreme Court of Canada has recognized the importance of according equal weight to oral testimony as to any other form of evidence presented to a tribunal.

5) Perhaps more philosophically, we see our role as bridging different perspectives. The ICC plays a unique role in Canada as we work between parties with opposing viewpoints during inquiries and with parties with different perspectives during mediations.

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.

Conclusion

In conclusion, we believe that the ICC has had significant success since 1991. Yet it is clear that serious challenges remain. We strive to ensure that our process has the confidence of all parties.

I would be happy to respond to any of your questions or comments.