

STA
1726

ÉCOLE NATIONALE D'ADMINISTRATION PUBLIQUE

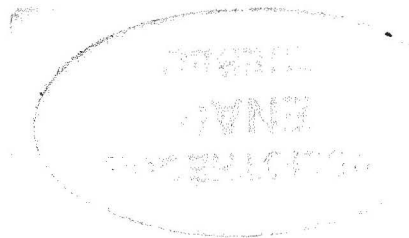
Ministère des Affaires indiennes et du Nord Canada :

Rapport de planification pour l'évaluation du programme des revendications particulières

Mandat pour l'évaluation de l'initiative des terres excédentaires

Description du processus d'évaluation et mise œuvre des standards d'excellence

par
Michel Haineault



**RAPPORT DE STAGE PRÉSENTÉ À L'ÉNAP
EN VUE DE L'OBTENTION DE LA
MAÎTRISE EN ADMINISTRATION PUBLIQUE**

MESURE ET ÉVALUATION DE L'INTERVENTION PUBLIQUE

Québec
Septembre, 2003

Ce rapport est déposé en vue d'obtenir une maîtrise en administration publique de l'ÉNAP avec spécialisation en *mesure et évaluation de l'intervention publique*. Il est l'aboutissement d'une série de travaux réalisés dans le cadre d'un stage de seize semaines effectué du 5 mai au 22 août 2003 au ministère des Affaires indiennes, à Gatineau.

L'Outaouais

Les raisons qui m'ont motivé à m'installer en Outaouais pour effectuer mon stage sont nombreuses. Parmi celles-ci, il y a bien sûr le fait que je désire entreprendre une carrière en évaluation de programmes dans la fonction publique canadienne et que les possibilités d'emploi et de mobilité interne sont beaucoup plus grandes dans cette région que partout ailleurs au pays. Une autre raison pour laquelle je décidai d'effectuer mon stage à Gatineau tient au fait que je connais très bien l'endroit et que certains membres de ma famille s'y trouvent toujours.

Le ministère des Affaires indiennes

Les raisons pour lesquelles je fut attiré par le ministère des Affaires indiennes sont, elles aussi, nombreuses. En premier, il y a le fait que je connaisse assez bien le dossier autochtone. Une autre raison majeure tient aux conversions téléphoniques que j'ai eu avec madame Lorraine Clavel (gestionnaire principal en évaluation) dans les semaines qui ont précédé mon arrivée. Celle-ci m'a indiqué que l'équipe d'évaluation allait probablement grossir sous peu, que des évaluations *in-house* seraient éventuellement réalisées, et que la Direction pour laquelle elle travaille alla se procurer une licence SPSS pour effectuer des analyses statistiques.

Madame Clavel m'a aussi clairement indiqué qu'il ne manquait pas travail là où elle était et que l'équipe était selon elle à la fois dynamique et très diversifiée. Enfin, de part les questions qu'elle me posa au téléphone, je compris qu'elle cherchait quelqu'un qui soit à l'aise avec les diverses techniques d'analyse qualitatives et quantitatives utilisées en évaluation de programmes. Tout ceci fut d'autant plus intéressant lorsque j'appris, par l'entremise de mon école, qu'elle était depuis plus d'un an à la recherche d'un étudiant de maîtrise de l'ÉNAP.

La rencontre tripartite

Le 2 mai 2003, soit quelques jours après avoir signé un bail de location de quatre mois à Hull, je rencontrai pour la première fois mesdames Lorraine Clavel et Nancy Byam du Ministère ainsi que monsieur Filip Palda de l'ÉNAP. En plus de nous permettre de faire plus ample connaissance, cette rencontre devait servir à préciser mon mandat.

Bien que j'ai trouvé chacune de ces personnes fort sympathiques, j'en suis néanmoins ressorti avec un léger sentiment d'inquiétude : mon mandat n'avait toujours pas été précisé. Mesdames Clavel et Byam m'ont bien sûr dit de ne pas m'inquiéter avec cela car le tout serait réglé dans les prochains jours. Après tout, ajoutèrent-elles, il y avait plusieurs évaluations en cours et beaucoup de travail à effectuer...

Mon premier mois de travail

L'accueil qu'on me réserva à mon arrivée fut plutôt tiède, du moins lorsque je compare cet accueil à celui que j'avais eu droit lors de la rencontre tripartite. On m'installa dans un coin et on sembla, du moins pendant les premières semaines de mon stage, m'avoir carrément oublié. Aucun briefing pour me dire comment les choses fonctionnent exactement. En fait, on n'a jamais trouvé le temps pour s'asseoir avec moi et préciser mon mandat.

Bien sûr, plus les semaines passèrent et plus l'ÉNAP me mettait de la pression sur les épaules pour obtenir un mandat clair et satisfaisant.

Rencontre du 26 mai

Monsieur Palda me demanda d'aller le rencontrer à Montréal à la fin du mois de mai afin de « lancer » le stage.

Arrivé sur place, je du lui admettre que je ne savais toujours pas au juste ce qu'on attend de moi et que je doutais fort bien que cela allait changer dans les jours voir même les semaines à venir. Je lui dis aussi que j'avais profité de ces premières semaines de travail pour me familiariser avec les deux évaluations sur lesquelles j'allais éventuellement avoir à intervenir et pour lire quelques-uns des rapports d'évaluation qui se trouvaient sur le site Internet du Ministère.

Monsieur Palda rédigea alors avec moi une offre de service différente et beaucoup plus claire que celle que le Ministère m'avait remise. Il s'agissait en fait pour moi d'effectuer une analyse critique de quelques-unes des évaluations antérieures du Ministère et de proposer par la suite un *consumer guide*, soit un document court et pratique qui aurait pu servir à quiconque aurait été appelé à consulter une évaluation ou à effectuer un contrôle de qualité.

Retour au travail

Madame Nancy Byam (agente principale d'évaluation) finit, environ une semaine après mon retour, par accepter de s'asseoir avec moi. Après m'avoir dit que mon offre de service était inacceptable, parce que d'aucune utilité pour la Direction selon elle, elle m'informa à ma grande surprise que j'étais désormais responsable de la réalisation du *Planning Report* pour l'évaluation du programme des revendications particulières du Ministère. Cela était très différent de ce qu'on pouvait lire sur l'offre de service qu'elle et madame Clavel avaient préparée au tout début de mon stage et sur laquelle on retrouvait des expressions très vagues du genre *will help in* et *will provide assistance for*.

Je communiqua bien sûr immédiatement avec monsieur Palda afin de lui faire part de la nouvelle. Celui-ci accepta le nouveau mandat et me suggéra d'y travailler tout de suite...

Directeur de l'évaluation et Directeur général

Dans les jours et les semaines qui suivirent, la Direction fit connaissance avec un nouveau directeur de l'évaluation et un nouveau directeur général. Très sympathiques, ceux-ci firent preuve d'un dynamisme et d'une ouverture d'esprit hors du commun.

Moi qui n'avais eu droit qu'à de simples *bonjours* de courtoisie jusque là, me voilà en train de parler avec des gens nouveaux de la qualité des rapports d'évaluation, des relations de travail, etc.

De plus, et à ma grande satisfaction, chacun d'eux afficha ses couleurs dès son arrivée en affirmant que la Direction était capable d'offrir de bien meilleurs services que par le passé...

Mes trois derniers mois de travail

Mes trois derniers mois de travail furent beaucoup plus intéressants. Non seulement j'apprécia grandement la présence des nouveaux directeurs et le fait de savoir très bien ce que j'avais à faire, mais voilà que plusieurs de mes collègues de travail se confia et se lia d'amitié avec moi.

Après avoir complété le *Planning Report* pour l'évaluation du programme des réclamations particulières du Ministère, j'entrepris la rédaction du mandat pour l'évaluation de l'initiative des terres excédentaires et je compléta un rapport décrivant le processus d'évaluation et suggérant des idées pour améliorer la mise en œuvre des standards d'évaluation du *Joint Committee on Standards for Educational Evaluation*. J'ai aussi été appelé à donner mes commentaires sur un rapport d'évaluation final et un devis d'évaluation.

Ce rapport de stage comprend les trois travaux les plus longs que j'ai eu à réaliser pendant mon séjour au Ministère, soit (et dans l'ordre) le *Planning Report*, le mandat d'évaluation (ou *Terms of Reference*), et le rapport sur le processus et les standards.

TOUS CES TRAVAUX FURENT RÉDIGÉS EN ANGLAIS

**Department of Indian and Northern Affairs Canada
Corporate Services
Departmental Audit and Evaluation Branch**

**Prepared by
Michel Haineault**

Specific Claims Program Evaluation

Planning Report

**Project 03/02
August 12, 2003**

TABLE OF CONTENTS

1.	INTRODUCTION.....	3
	1.1 Purpose of the Report.....	3
	1.2 Purpose of the Evaluation.....	3
	1.3 Evaluation Approach.....	3
2.	BACKGROUND.....	4
	2.1 Before 1973.....	4
	2.2 The Specific Claims Policy of 1973.....	4
	2.3 The Canadian Centre for the Independent Resolution of First Nations Specific Claims.....	5
3.	PROGRAM PROFILE.....	7
	3.1 Objectives.....	7
	3.2 The Specific Claims Process.....	7
	3.2.1 The Six Steps.....	7
	3.2.2 The Role of the Indian Specific Claims Commission.....	8
	3.3 Eligible Recipients.....	9
	3.4 Maximum Amounts Payable.....	9
4.	EVALUATION ISSUES & QUESTIONS.....	10
	4.1 Program Rationale and Relevance.....	10
	4.2 Program Success (Achievements of Objectives).....	10
	4.3 Efficiency of the Process.....	11
	4.4 Lessons Learned & Best Practices.....	11
5.	EVALUATION SCOPE & METHODOLOGIES.....	12
	5.1 Evaluation Scope.....	12
	5.2 Methodologies.....	12
6.	GENERAL APPROACH.....	13
	PHASE I: Documentation Review and Database Analysis.....	13
	PHASE II: File Review.....	13
	PHASE III: Key informants' interviews.....	14
	PHASE IV: Focus Groups.....	14
7.	REPORTING STRATEGY & EVALUATION SCHEDULE.....	16
	7.1 Reporting Strategy.....	16
	7.2 Evaluation Schedule.....	16

Annex

List of potential questions for the data collection phase.....	17
--	----

Section 1 - Introduction

1.1 Purpose of the Report

The purpose of this report is to provide a planning tool for the evaluation of the Specific Claims Program.

Included in this report is a summary of the program's background, its profile (including the role of the Indian Specific Claims Commission), the evaluation issues and questions to be addressed, the methodologies, the general approach, and the reporting strategy and evaluation schedule.

1.2 Purpose of the Evaluation

The purpose of the evaluation is to assess the effectiveness and efficiency of the Specific Claims Program and to identify potential improvements.

More specifically, the evaluation will collect information and provide advice that will help in:

- (1) reducing the growing backlog of claims and/or delays in specific claims resolution, and
- (2) assuring a smooth transition to work with the new *Canadian Centre for Independent Resolution of First Nations Specific Claims* (CRC) in 2004-2005; build an effective ongoing partnership with the CRC; and carry out roles and responsibilities associated with implementation of the proposed *Specific Claims Resolution Act* (Bill C-6).

1.3 Evaluation Approach

The Departmental Audit and Evaluation Branch (DAEB) of Indian and Northern Affairs Canada (INAC) will have the overall responsibility to manage the project. The evaluation will be conducted using contracted and in-house resources. The Claims and Indian Government Sector of INAC will provide support to DAEB as the evaluation proceeds.

The methodologies used in the evaluation will include statistical analysis of information in the Specific Claims database; review and analysis of specific claims; a document review of all procedural and policy manuals that relate to the Specific Claims policy and process; interviews with INAC program officials at HQ and regions, Department of Justice (DOJ) lawyers and key stakeholders including representatives of (1) First Nations who have used the specific claims process, (2) the ten Treaty and Aboriginal Rights and Research Centres, and (3) Provincial/Territorial Governments who have participated in the process. Focus groups will also be held.

Section 2 - Background

2.1 Before 1973

Over the past 300 years, the relationship between First Nations and the Crown has most often been defined by treaties. The 1763 *Royal Proclamation* of King George the Third established a framework for undertaking any future settlements of First Nations lands. No settlement of land could be undertaken, thereafter, until the First Nation's interest had been surrendered in negotiations. In 1876, the *Indian Act* formalized the government responsibilities toward First Nations.

It is a well-known fact that Canada has not always honoured its legal obligations. Assertions to outstanding commitments owed by Canada to First Nations remained largely unconsidered by governments well into the 20th century. Between 1927 and 1951, the *Indian Act* made it an offence for a lawyer to receive payment from a First Nation to bring a claim against the Crown without the government's permission. When this provision was repealed in 1951, First Nations began organizing to pursue settlements of their specific claims.

The 1973 decision of the Supreme Court in *Calder v. Attorney General of British Columbia* confirmed that First Nations' historic occupation of the land gave rise to legal rights in the land that survived European settlements. The decision had a major influence on the federal government to undertake, not only first-time negotiation of *comprehensive* land claims, but also new processes for resolving *specific* claims¹.

2.2 The Specific Claims Policy of 1973

Responding to First Nations' growing complaints on how Canada was discharging its responsibilities and on having to go to court so often to settle their grievances, the government established the Specific Claim Policy on August 8, 1973.

In 1974, the Office of Native Claims (ONC) was created within the Department of Indian Affairs with the mandate of (1) reviewing Indian claims arising from government failure to discharge "lawful obligations", and (2) representing the government in negotiations with First Nations.

From 1970 through 1981, of 250 claims submitted, only 12 had been settled. First Nations felt disadvantaged by inadequate research capacities and insufficient funding. Acknowledging that its Specific Claims Policy to date had proved lacking, the government issued *Outstanding Business: A Native Claims Policy* (1982). Under this policy, claimants were required to establish the existence of one of four outstanding "lawful obligations", or of one of two reserve-related circumstances:

1. Current federal policy divides claims into two categories: specific and comprehensive. Specific claims arise from Canada's breach or non-fulfilment of an obligation found in treaties, agreements or statutes (including the *Indian Act*). Comprehensive claims are based for their part on unextinguished aboriginal rights to land where no treaty has been signed. A Treaty Land Entitlement (TLE) claim is a specific claim which deals with the allocations of land to be set aside as reserves as stipulated under historic treaties. First Nations with TLE claims allege that lands were never set aside or, at least, that an insufficient amount of land was set aside to satisfy Canada's treaty obligations.

The four outstanding “lawful obligations” are: 1) the non-fulfillment of a treaty or agreement between Indians and the Crown; 2) a breach of an obligation arising out of the *Indian Act* or other statutes pertaining to Indians and the regulations there under; 3) a breach of an obligation arising out of government administration of Indian funds or other assets; and 4) an illegal disposition of Indian land. The two reserve-related circumstances are: 1) failure to provide compensation for reserve lands taken or damaged by the federal government or any of its agencies under authority; and 2) fraud in connection with the acquisition or disposition of Indian reserve land by employees or agents of the federal government, in cases where the fraud can be clearly demonstrated. (Source: *Outstanding Business*, p. 20)

The claim evaluation process entailed: review by the ONC, referral to the federal Department of Justice (DOJ) for legal advice, ministerial acceptance or rejection of the claim, and negotiation of definitive settlement of accepted claims. In 1982, the government also approved a substantial increase in the funding made available to claimants for their research and negotiation activities.

Subsequent initiatives announced in April 1991 included a joint working group to review specific claims policy and, as an interim measure, creation of a *Specific Land Claim Commission* as an “independent dispute resolution mechanism”. In addition, a fast-track process was put in place for claims under \$500,000. The government also removed that year the exclusion of pre-Confederation claims and increased the value of settlements within the Minister’s approval authority.

2.3 The Canadian Centre for the Independent Resolution of First Nations Specific Claims

Since the specific claim process was adopted in 1973, First Nations and Canada have ratified 246 agreements in every region of the country worth over \$1.4 billion in federal funds.

Despite this success, the current process still needs to be improved: it is long, costly and adversarial. First Nations perceive Canada to be in a conflict of interest because it controls their funding for the process, judges the validity of specific claims against itself and determines the applicable compensation criteria.

In 1996, First Nations entered into a Joint Task Force (JTF) with Canada to renew the specific claims process. After its review of the current process, the JTF made recommendations for long-term improvements. It called for the creation of an *independent* claims body that would focus on mediating any disputes that arise between Canada and First Nations during the negotiation process, and make, as a last resort, final binding decisions to resolve these disputes. Based on this proposal, a federal model for an independent claims body was developed.

The proposed legislation (Bill C-6) would establish the *Canadian Centre for the Independent Resolution of First Nations Specific Claims* (the Centre):

It would consist of a Chief Executive Officer and two divisions: a Commission to facilitate negotiations and a Tribunal to resolve disputes. In order to assist the parties in reaching a final negotiated settlement, the Commission would be able to draw upon the entire range of dispute resolution processes. All specific claims regardless of value would have access to the Commission. The Commission would also take over the responsibility for receiving and

registering all specific claims, administering research grant funding and negotiation loan funding (functions which are now carried out by INAC). The Tribunal would be available to First Nations as a last recourse. It would make decisions on the validity of and cash compensation for specific claims up to a maximum of \$7 million. Once established, the Centre would replace the current *Indian Specific Claims Commission* (ISCC), which was set up in 1991 as an interim measure to make recommendations on specific claims that have *not* been accepted by Canada for negotiation. (Source: *Briefing Book, Backgrounder*)

The target effective date of the new Centre will be approximately one year from the date the Act receives Royal Assent. Specific claims will not automatically be transferred from INAC to the Commission Division of the Centre. First Nations will be given the option of continuing their claim under the existing process or transferring it to the Commission.

The key differences between the proposed operations of the Centre and those of the current Indian Specific Claims Commission (ISCC) are outlined below:

The Centre: will be a permanent body; its tribunal will be able to make *binding* decisions on the validity and cash compensation for claims valued at up to \$7 million; will oversee the receipt and registration of all new specific claims; will provide a range of dispute resolution services (including facilitated negotiation, mediation, and non-binding arbitration at the request of both parties).

The ISCC: was created as an interim measure; can issue *non-binding* recommendations on the validity of claims and compensation criteria at the request of claimant; claims are currently submitted to INAC (and not to it); can provide mediation and/or facilitation services on all valid specific claims at any stage during the negotiation process (but only at the request of both parties).

Section 3 - Program Profile

3.1 Objectives

The government primary objective with respect to the Specific Claims Program is to discharge its lawful obligation. Negotiations remain the preferred means of settlement by the Minister, just as it has been generally preferred by claimants.

3.2 The Specific Claims Process

3.2.1 The Six Steps

The essential steps in the Specific Claims process are:

- 1) **SUBMISSION:** First Nations research and submit claims. If requested, INAC may provide a contribution to offset these research costs. The Department hopes that by providing First Nations with the necessary funding to participate in the specific claims process, it will provide them with an option for settlement of their claims, which avoids more costly court proceedings.
- 2) **RESEARCH AND ANALYSIS:** The Specific Claims Branch of INAC conducts its own independent research and prepares an analysis of the claim. This work is reviewed by the band and referred, afterward, to Justice Canada who reviews the claim and prepares a legal opinion on its merits.
- 3) **ACCEPTANCE/REJECTION:** The Minister of Indian Affairs decides whether the claim will be accepted, specifies the compensation criteria that will apply where appropriate and advises the First Nation. First Nations with specific claims rejected by Canada have four options: (1) they may accept Canada's decision and abandon the claim; (2) they may request a review of their claim by the *Indian Specific Claims Commission*; and/or (3) they may choose to pursue their claim in court; and (4) they can do further research and re-submit their claim.
- 4) **NEGOTIATION:** When a claim is accepted, the parties proceed to negotiation (on request, INAC provides negotiation loan funding). Negotiators representing the First Nation, Canada, and the province (if applicable), begin negotiations toward a draft settlement agreement.

5) SETTLEMENT: Canada and the claimant agree on a settlement (which is drafted by the DOJ and band lawyers into a formal settlement agreement). The complete agreement is followed by a vote of the First Nation's community. After successful ratification by the community, the Minister seeks authority from TB for settlements over \$7 million to sign the agreement. If land is an element of the agreement, approval of the Governor in Council is also required prior to the Minister signing the agreement. Land is not always a part of the compensation. If it is and Crown land is not a possibility, the agreement may include a provision for the First Nation to acquire land on a willing buyer/willing seller basis, for conversion to reserve land under Canada's *Additions to Reserve Policy*. In no circumstances are third party interests affected.

6) IMPLEMENTATION: The settlement agreement is ratified and implemented. It generally provides for the payment of funds and/or provision of land for the use of the First Nation. Significant portions of settlement funds are structured in the form of trusts to be used for the long-term social and economic development of First Nations communities and to provide clear accountability to members. Finally, the Regional Office is responsible for ongoing monitoring and evaluation of the settlement agreement, as required.

3.2.2 The Role of the Indian Specific Claims Commission

In addition to the specific claims process, Canada, after consulting First Nations' leaders, established an *Indian Specific Claims Commission* (ISCC) in 1991. Created as an interim measure, the Commission was established to provide a review mechanism for claimants whose specific claims have been rejected by Canada.

The Commission has the authority to make *non-binding* recommendations to Canada. More specifically, it has the mandate to inquire and report on (1) whether, in the Commission's view, a claimant has a valid claim for negotiation under the Specific Claims Policy where that claim has already been rejected by the Minister, and (2) the compensation criteria which should apply to settlement negotiations where the claimant disagrees with the criteria determined by the Minister.

If requested, and with the agreement of both parties, the Commission also provides mediation and/or facilitation services to assist them in reaching an agreement. Justice Canada, with the support of the Specific Claims Branch, has the lead in representing Canada before the Commission. The Minister of Indians Affairs determines how Canada will respond to the reports and recommendations of the Commission. If a First Nation is dissatisfied with the Minister's rejection of the specific claim, or with the non-binding recommendations of the *Indian Specific Claims Commission*, it may choose to pursue its claim before the courts. A claim may also be re-submitted if new evidence is found or if it is supported by new judicial decisions.

As of December 31, 2002, the *Indian Specific Claims Commission* had completed 59 inquiries and reported on 55. Of the 59 inquiries, 33 had been settled or accepted for negotiation. The Commission demonstrated the value of developing a complete historical record (including oral evidence and history), of consulting elders, and of involving the community in public hearings. Above all, it has shown that alternative dispute resolution processes do work. Before its creation in 1991, First Nations were unable to challenge government decisions without litigation.

3.3 Eligible Recipients

In accordance with the Specific Claims Policy, Canada does not accept claims filed by Metis or Inuit individuals or communities. Only Indian bands or groups of bands may pursue specific claims under the Policy.

Groups which are currently recognized as Indian bands under the *Indian Act* are therefore eligible to submit claims.

3.4 Maximum Amounts Payable

From a policy perspective, Canada could place a “cap” on settlement amounts for specific claims. However, it should be recognized that doing so could discourage First Nations from seeking resolution of their grievances through the specific claim process. In fact, it could encourage them to pursue their claims through the courts where settlements may turn out to be more expensive.

INAC current budget allocation for specific claims is \$XXX million (2002-2003). The average cost per claim is estimated at \$XXX million (varying a lot depending on the nature of the claim). Canada’s current contingent liability is about \$XXX billion.

Section 4 - Evaluation Issues & Questions

The evaluation will examine five issues: success; impacts; effectiveness; efficiency; and lessons learned and best practices. These issues (and their related questions) will aim at providing advices on (1) how the growing backlog of claims and/or delays in specific claim resolution can be reduced, and (2) how we can assure a smooth transition to work with the new *Canadian Centre for the Independent Resolution of First Nations Specific Claims* in 2004-2005.

FIRST ISSUE: SUCCESS (ACHIEVEMENT OF OBJECTIVES)

- Is there clarity surrounding the purpose of the program?
- How successful has the program been in achieving its objectives (i.e. has the Specific Claims Program been able to discharge lawful obligations to First Nations via Alternative Dispute Resolution)?
- To what extent are First Nations aware of the Program?
- To what extent do First Nations use the program as a dispute resolution alternative to litigation?

SECOND ISSUE: IMPACTS

- What are the outcomes of the specific claims process?
- How has the Specific Claims Program helped First Nations to enhance/develop appropriate structures (e.g. capacity building)?
- To what extent does the Specific Claims Program complement other programs?
- Has the Specific Claims Program demonstrated itself a useful tool for the government to strengthen relationships and/or renew partnerships with First Nations?
- What has been the impact of the Specific Claims Program on reducing liability?
- To what extent does the Specific Claims Program achieve certainty for government and third parties?
- What have been the impacts of the Specific Claims Program on First Nations?
- How do specific claims settlements benefit First Nations communities (social and economic well-being)?

THIRD ISSUE: EFFECTIVENESS

- Are roles and responsibilities for program management clear?
- Are there procedures in place to monitor and manage the program effectively?
- Does management have sufficient information for decision-making and reporting?
- Is the organisation properly structured and organized for the accomplishment of program objectives?
- Is the program managed within budget?
- Are the actual resources (both human and financial) devoted to the program sufficient for the accomplishment of the program objectives?

FORTH ISSUE: EFFICIENCY

- How efficient is the specific claims process?
- Are there ways to make the process more efficient (i.e. reduce backlog of claims and/or delays in claims resolution in a cost-effective manner)?

FIFTH ISSUE: LESSONS LEARNED AND BEST PRACTICES

- What are the main lessons learned and best practices?
- What are the potential improvements concerning the operation of the program?
- How can the program be improved to better ensure achievement of program objectives through more effective operations?
- What best practices will ensure an effective transition to work with the new CRC and assumption of roles and responsibilities associated with implementation of Bill C-6 (proposed *Specific Claims Resolution Act*)?

Section 5 - Evaluation Scope & Methodologies

5.1 Evaluation Scope

The evaluation will involve every regions of Canada, except Nunavut, and will focus on a five-year period (April 1, 1998 to March 31, 2003). If deemed necessary, the evaluation will also look at what went on earlier. A review of the procedural points of contact between Specific Claims Branch and legal services unit will be performed. This will not include the assessment of legal services provided by the Department of Justice.

5.2 Methodologies

The evaluation will use multiple lines of evidence:

- **Document and database review and analysis**
- **File review**
- **Key Informants Interviews**
- **Focus Groups**

Section 6 - General Approach

The evaluation will be divided into four consecutive phases. The consultant (who will conduct each one of them and who will be assisted by internal resources from INAC to the extent possible) will have to produce interim reports before submitting his or her final report.

An on-going discussion with program and DAEB officials will be held to make sure everybody understands the findings obtained so far and to decide on how to address the work remaining.

PHASE I: Documentation Review and Database Analysis

The following list shows all the documents that will have to be reviewed by the consultant:

Documents to be reviewed
Procedural and Policy Manuals that relate to the Specific Claims Policy and Process
Evaluation, audit and other reports provided by INAC, First Nations, the Joint Working Group...
Bill C-6 (latest version) and related documents

The consultant will also provide information drawn from an analysis of the Specific Claims Database that is needed for the conduct of this project (e.g., First Nations whose claims have been rejected, First Nations who negotiated and did not get a settlement, etc.).

This review should provide an overall understanding of the program and its actual and proposed for the future processes. It should also help in stressing out the major problems encountered so far and the challenges facing both government officials and First Nations' representatives.

PHASE II: File Review

Comprehensive file reviews will be done after the completion of the first phase in order to validate and further document some of the findings obtained so far. It will also help in identifying issues such as length of time to complete the process, delays encountered, policy and legal issues, resource issues as well as emerging issues. The review should identify time delays from both the Crown and First Nations' perspectives.

Files will be discussed with and approved by program and DAEB officials before being retained. It will include a sample of at least **XXX** communities who have reached a settlement or are presently negotiating a claim. The sampling will be done so that best, average and worse case scenarios are included.

All necessary documents will of course be provided to the consultant to allow an in-depth analysis of the negotiations that took place.

PHASE III: Key informants' interviews

Phase III of this project is intended to provide information that cannot be obtained from any document, file and/or database that may exist. It will build from the previous phases and, in that sense, add to the understanding of what exactly went on, how things were really perceived, and how the process could be more efficient.

If needed, preliminary interviews will be held with some of the key stakeholders listed below. However, the main purpose of this phase is not to get a general understanding of the program and of its actual process but, rather, to provide new insights insofar as the *efficiency* of the process and the *impact* of settlements are concerned. Key informants interviews will also be of great value in determining what could be done to make things better.

If deemed necessary, the consultant will use an iterative approach; that is, an approach that will allow him or her to “test” ideas proposed by one negotiating party by asking the other one.

The following list of First Nations should be interviewed:

Interviews (telephone & in-person) with First Nations representatives
First Nations who have completed the specific claims process
First Nations who have not had the opportunity to participate in the process
First Nations who have chosen not to participate and who used another process such as litigation

First Nations selected for interviews will correspond with the files selected for review and analysis in phase II. These interviews will be done to obtain information on First Nations knowledge and perceptions of the specific claims process, the impacts of the specific claims policy, and the obstacles they encountered during negotiation. First Nations' lawyers are welcomed to participate.

Interviews will also be done with INAC officials at headquarters and in every regions of Canada, except Nunavut. These interviews will focus on issues such as the purpose, objectives and effectiveness of the specific claims program, the efficiency of the process, and the best practices and lessons learned.

Interviews (telephone & in-person) with INAC officials at HR and regions
Specific Claims Branch
Negotiators
Litigation Resolution Management Branch in Policy and Strategic Direction Sector
Lands Directorate in Lands and Trusts Sector
Communication Branch
Research Funding Directorate
Special Claims Unit

Officials from the following OGDs will be asked to participate in an interview:

Interviews with Other Governmental Departments
Department of Justice
Public Works Government Services (information relating to land appraisals)
Natural Resources Canada
Treasury Board
PCO

Finally, the following organisations will be contacted to participate in an interview:

Interviews with other organisations and officials
Indian Specific Claims Commission
First Nations legal counsel (file specific claims on behalf of First Nations)
Treaty and Aboriginal Rights and Research Centres
Provincial / Territorial Governments
Research firms on standing offer list with the Specific Claims Branch

The consultant will provide a list of XXX potential candidates for interviews and will be to some extent autonomous in choosing them.

PHASE IV: Focus Groups

Two focus groups will be held (in eastern and western Canada) and will to the extent possible involve the presence of 5 to 10 persons already interviewed (e.g., government officials, negotiators, band representatives, and so on). It will have the main purpose of testing potential solutions (to the growing backlog of claims and delays encountered in the process) that have emerged from an analysis of the previous phases.

The consultant, after an in-depth analysis of the findings obtained so far, should have in his or her possession shared ideas on how to improve the process and obtain better results. This is why it is of the highest importance to get answers as early as possible on how things could be improved in the future.

Section 7 - Reporting Strategy & Evaluation Schedule

7.1 Reporting Strategy

The final report will include four chapters: *Introduction*, *Method*, *Results* and *Discussion*. It will also include an appendix where recommendations to increase the efficiency of the process and to assure a smooth transition with the new CRC will be gathered. This appendix will distinguish recommendations on the ground of how easy they could be implemented. The most easy to implement recommendations would be those that are shared by both parties and would not involve modifications to the policy and substantial increase to the budget.

A draft version of this report will be submitted to INAC officials for review before being finalized.

7.2 Evaluation Schedule

The evaluation of the Specific Claims Program should be completed by February 2004. The following table illustrates a proposed schedule to meet this target.

Specific Claims Program Evaluation (May 2003 to February 2004)

	May	June	July	Aug.	Sept.		Oct.		Nov.		Dec.	Jan.		Feb.
	1-31	1-30	1-31	1-31	1-15	16-30	1-15	16-31	1-15	16-30	1-31	1-15	16-31	1-28
Terms of Reference														
Planning Report														
Statement of Work														
Request for Proposal														
Retain Consultant														
Document and Database Analysis														
Discussion of Interim Report #1														
File Review														
Discussion of Interim Report #2														
Key Informants Interviews														
Discussion of Interim Report #3														
Focus Groups														
Discussion of Interim Report #4														
Draft Report														
Revision and Comments														
Final Report														

Note: Tools will be submitted for discussion with Interim Reports.

ANNEX: List of potential questions for the data collection phase

The sub-questions listed below are provided only as pointers of what the evaluation report could address. They are neither mandatory nor complete.

How many First Nations used the specific claims process? How many went directly to courts? Why do some First Nations use the process while others don't and go straight to the courts (in what ways do they differ from one another)?

How many claims have been submitted to the Fast-Track process?

Was money an issue in deciding to use the process (as oppose to litigate)? How many First Nations cannot afford to go to court? Would First Nations have used the process as often has they did if they had more money?

[To claimants who used the process] Would you have gone straight to the courts if you had more money?

[To claimants who used the process] Was there for you other alternatives but to use the process and settle for less then what you were hoping for (assuming, of coarse, that the results weren't or would not have been completely satisfying)?

How many claims (that used the process) have been settled so far? How many have been settled each year? How many have been settled through the Fast-Track system?

How big is the backlog today? How did it evolved since 1973? How big is it going to be in the near future?

Did the provision of money helped build a capacity? Has it provided for instance employment opportunities that would have been inexistent without it?

How did the level of satisfaction of First Nations (who used the process) evolved since the implementation of the policy? Is the level of satisfaction with the process the same regardless of the fact that there was (or was not) a settlement reached?

What percentage of all settled claims to date was done so to the full satisfaction of claimants? As this percentage been the same each year? If not, why?

In how many cases was it impossible for a band to acquire land despite the fact that their original grievance was over alienated land? In these cases, what was the settlement agreement based on? To what extent did it help settle their grievances?

In how many cases First Nations had to negotiate to have the land returned to them (the land that they had proven was theirs when entering into the negotiation process)? In how many cases were they told that the land was not negotiable for return? How many First Nations entered the negotiation process with having, as their main objective, the return of the land that they had proven was theirs?

How many claims have been rejected since 1973 (specify by year)?

What are the short and long-term potential outcomes of the program? Have they always been the same? To what extent have they been reached?

Has research money and exposure to legal counsel provided First Nations with some long-term benefits? If so, how?

To what use was the provision of cash employed? To what extent did it help acquire goods and services that were out of reach prior to the settlement?

Are First Nations who had settlements in place for quite some time better socially and economically compared to those who had a settlement agreed on only recently (in other words, how long does it take to improve the well-being of communities)?

Did the settlements have any unintended impacts?

What were your goals when entering the negotiating table?

How many First Nations would not have gone straight to the courts if they had known the existence of the program?

What are the roles of INAC HQ in the negotiation and implementation phases? What are the roles of the regions?

What are the roles of INAC (HQ and regions) after a settlement is reached? What are the expectations of First Nations in this regard?

How accurate and detailed are the data on which one can report?

How can we explain the delays caused by the other party?

What are the main objectives and attitudes of the other party when approaching the negotiating table?

Is there a mechanism in place to ensure that the implementation occurs as planned and within a reasonable timeframe? If so, what has been its success so far? If not, why isn't there one? Would it still be possible to put one in place that would be efficient?

Can the Officials administering the program address the full range of grievances First Nations have against the government? If not, why is that and what could be done to at least come closer? Is it just a question of not having enough human and/or financial resources?

How long does it normally take for the implementation of an agreement to occur? How could this be explained?

How many agreements were not implemented as planned? In how many cases was this involving land?

What were the annual costs of administering the claims process (for each year since the policy was implemented)? How do they compare with the annual claims settlements?

[To claimants who used the process] To what extent have you been able to get answers from INAC to your questions? How would you explain this? Does the internal structure of the Department have anything to do with it?

Is the process going to be more rapid and satisfying for both parties after the creation of the new CRC?

What changes, if any, could be made to the process that would help in reducing the growing backlog (specify for each of the six steps)? Would any of those changes be possible without modifying the current policy and/or increasing the budget substantially? If so, how?

What could the other party do to improve the efficiency of the actual process? What could you do? Would any of these changes be possible without modifying the policy and/or increasing the budget substantially?

Would it be possible to add flexibility in the application of the negotiation process so that First Nations would see the other party as being able to compromise or appreciate differing and unique claims? If so, could this be done without bringing legal changes to the policy?

What could be done to make sure each party understands, not only one another, but also what's at stake (specify for each steps of the process)?

Would an improvement in the support given to First Nations who have little experience in research, negotiations and claims settlement processes (an improvement that would increase their level of "know-how" when entering negotiations) change their attitudes and/or expectations towards the process and the government?

Would it be possible to reduce the number of "checks and balances" at the valuation stage? If so, could this be done without bringing changes to the actual policy? Could it be done without getting each time the approval of the higher authorities of the Department?

Would it be possible to lighten up the intensive scrutiny of the facts and data that is actually done by both INAC and DOJ by creating some sort of a "memory" based on past settlements and historical documents (what about the creation of a Process Centre or a Centre of Expertise)?

Is there a third party involved to monitor and make sure the conditions of the agreements are met? If not, would it be possible to have one and, if so, who could it be and what would his role be ideally?

Would it be possible to remove the confrontation that occurs most of the time during negotiations of a claim without creating an independent body?

What are the strengths of the actual process? Why do more than half of the settlements reached so far have been done so only in the past few years?

Have the main problems encountered with the process been addressed somehow in 1982 and/or 1991? If so, did it help? Are there phases of the actual process better now than before? Are there phases that are better working now than others?

How long and how hard were the negotiations with First Nations who made sure their respective communities were greatly involved? Does a well-informed community have anything to do with the length of the process?

Why do some First Nations take so long to respond to a proposal?

What were the expectations and attitudes of claimants who were provided with a lot of support (that is with a lot of "know-how") compared with those who weren't? Are there between these two groups substantial differences in the number of claims settled, the time taken to do so, and the overall level of satisfaction?

Has the level of communication between parties improved recently? If so, how?

What are the main reasons why settlements resolve (or don't resolve) outstanding grievances?

Are there any lessons to learn from the new roles and responsibilities of the regions in the negotiation process? If so, what are they?

What lessons can be learned from past specific claims' audits and evaluations? Have these audits and evaluations always stated the same problems (in other words, to what extent do the problems of the early days have changed with the amendments brought forward in 1982 and 1991)?

What are the crucial and new developments in case law? Will they have long-term effects on the way the claims are negotiated and settled? If so, in what way?

Are there any lessons to be learned from other countries? For instance, what lessons (if any) can be learned from the American and New Zealander quasi-judicial bodies that have been created in the past to assist in the resolution of claims?

How important is it to speed-up the process anyway? Is it the most important thing to do? If not, what is then?

What could be done to speed-up the process when a claim is sent to the Department of Justice? Would a new and separate process dealing only with claims involving large sums of money (and/or large portions of land) make a difference? (the idea here is to see to what extent the presence of "dramatic" claims explains, at least partially, why the actual process is so slow and difficult)

Would it be possible to establish clear protocols of intents and activities without the presence of independent arbitrators or mediators? If so, by who and how? If not, why?

Could the roles and responsibilities of the regions in the negotiation process be changed so that it would significantly assist in a timely implementation of settlement agreements?

Would it be possible to go ahead with the idea of putting in place some sort of a “one-stop shopping” within INAC were First Nations could address all of their questions and concerns with respect to specific claims’ negotiation and settlement? To what extent would it be complicated and expensive to do so?

Would better sharing of information between communities speed-up the process somehow? If so, how?

What could be done to make sure First Nations differentiate the sense of grievance related to a specific claim and the sense of grievance caused as a result of other issues between the Crown and themselves? What has been done or what could be done to make sure First Nations understand that the claims process was not established to “fix” everything that is wrong with their communities?

What could be done to make the notion of extinguishment or “full and final release” more acceptable to First Nations? Do you think the way the notion is perceived as anything to do with the length of the process?

What else could be done to get rid of the historical mutual mistrust that exists between the two parties? How hard would it be and how long would it take for these ideas to be put in place in an effective way?

Are there other practices, never used before, that could help in achieving an effective transition with the new CRC?

Terms of Reference

Evaluation of the Surplus Federal Real Property Initiative

Purpose: The purpose of this evaluation is to provide findings that will feed into the renewal of the 1998 authority, expected by April 2004.

Background: In order to sustain progress in negotiations with Aboriginal groups, the Surplus Federal Real Property Initiative allows INAC to transfer surplus federal real properties into its inventory after reaching a Framework Agreement with any Aboriginal group in negotiations under the Comprehensive Claims Program. It's assumed that the risk of litigation would be reduced if the Department was able to put a surplus property on the table when negotiating and finalizing a comprehensive claim. Surplus federal real properties can therefore be seen as negotiating tools.

A property is declared surplus by a custodial department when it decides that it is no longer needed for program requirements. In accordance with Treasury Board policy, a notice of excess is then circulated on a priority basis to federal departments. Once INAC receives a notice for a property situated within an area subject to negotiations under the Comprehensive Claims Program, it notifies and consults any potentially interested or affected Aboriginal groups. If an interest is expressed by a claimant group, INAC seeks Claims and Indian Government and Corporate Services authorization to enter in a MOU with the claimant group. When a MOU is signed, INAC then makes all necessary arrangements for the transfer of the property into its inventory.

Surplus federal real properties can be routine or strategic in nature. Routine properties are usually smaller in size and of less value than strategic properties. INAC normally acquires a routine surplus property in its entirety if it is desired by an Aboriginal group and if the Department determines that the property meets its own selection guidelines.

Strategic properties are generally larger in size and are considered to have a significantly increased value potential upon re-zoning. They are also related to government and community sensitivities. The Canada Lands Company (CLC) normally handles the disposal of strategic properties on behalf of custodian departments through a strategic disposal mandate approved by Treasury Board.

In the event of a breakdown in negotiations for an extended period, INAC may decide that a property should no longer be held. Under this circumstance, the Department will simply declare it surplus and dispose of it through the normal TB disposal process. Similarly, INAC may decide that a property should no longer be held for claim settlement purposes in cases where the total costs of holding such a property exceeds 50% of its acquisition cost.

Among other things, the authority of 1998 gave INAC an increased period, from 120 days to 240 days from the end of the surplus notice, to make arrangements to acquire a property. It was expected that this extended time frame would help eliminate situations such as the one where surplus federal real properties were disposed of in the midst of negotiations because Aboriginal groups did not have enough time to react. The new authority also increased the department's acquisition authority from \$250,000 to \$750,000. In most cases, INAC will contract with PWGSC to manage the property and to make the best economic use of it while negotiations are ongoing¹.

The envelope for acquisition of routine and strategic surplus federal real properties was approximately \$41 million for the last five-year period (1999-2000 to 2003-2004).

Objectives: The purpose of this evaluation is (1) to determine if the objectives of the initiative are being met, (2) to see if the new authority of 1998 made any difference, and (3) to identify and recommend measures that will improve the acquisition, management and disposition of surplus federal real properties for the purpose of negotiations under the Comprehensive Claims Program.

Scope: The evaluation will be national in scope. It will assess the contribution of both strategic and routine properties to the negotiation process and will include a pre- and post-1998 authority comparison. Interviews will be done in-person in HQ and BC, and by phone in other regions.

¹ Holding costs paid by INAC will not be passed on to Aboriginal groups at time of settlement.

Issues: The evaluation will address the issues outlined below:

Relevance

1. Does the initiative still address an actual need for the department? Is it still relevant to First Nations?

Success

2. Has the initiative been effective as a tool to move comprehensive claims' negotiations forward?
3. Has the initiative been effective at encouraging Aboriginal groups to regard land claims negotiations as preferable to litigation?
4. Did the new authority of 1998 (and the approved terms and conditions regarding identification, acquisition, management and disposition of surplus federal real properties) improve relationships between the negotiating parties?
5. Did the authority of 1998, and in particular the Framework Agreement and the holding costs for doing business, help enhance Aboriginal desire and capacity to conduct and conclude negotiations under the Comprehensive Claims Program?

Lessons Learned and Recommendations

6. Should any aspects of the initiative and/or process be changed to make them more effective?
7. Are there lessons to be learned and/or best practices to be retained?

Approach: The evaluation will be managed by DAEB and will be conducted using contracted and in-house resources. It will include a planning phase during which the questions will be refined and the methodology will be developed in detail in consultation with Comprehensive Claims Branch representatives.

The methodology will include two steps. The first will assess the data quality, completeness and accuracy. The second one may include:

- a review and analysis of documents and databases pertaining to the Surplus Federal Real Property Initiative and to the Comprehensive Claims Program;
- case studies (including analysis of claims files and in-depth interviews where deemed necessary);
- interviews with INAC officials (HQ and Regions), negotiators and lawyers (from both parties), and TBS, PWGSC, and DOJ representatives;
- interviews with key stakeholders such as representatives of (1) First Nations who used the Acquisition and Holding of Surplus Federal Real Properties for Comprehensive Claims settlement, and (2) Canada Lands Company (CLC).

Resources & Timeframe: It is estimated that the evaluation will cost up to \$65K. The Comprehensive Claims Branch will be responsible for 60% of this cost and DAEB will be responsible for 40%. The evaluation will begin in September 2003 and will be completed by January 2004. The Claims and Indian Government Sector of INAC will provide support to DAEB and the consultant as the evaluation proceeds.

Approved by:

Michel Roy
Assistant Deputy Minister
Claims and Indians Government

Date

**Department of Indian and Northern Affairs Canada
Corporate Services
Departmental Audit and Evaluation Branch**

**Prepared by
Michel Haineault**

The evaluation process of INAC

Final Report

**National Capital Region
September 22, 2003**

TABLE OF CONTENTS

1. INTRODUCTION.....	5
1.1 The author's role within INAC.....	5
1.2 The challenges of the Evaluation Services Directorate for the future.....	5
1.3 The mandate of this report.....	6
 2. METHODOLOGY.....	 7
2.1 Document Review.....	7
2.2 Key informants' Interviews.....	8
 3. RESULTS.....	 9
3.1 The context in which the Evaluation Services Directorate operates.....	9
3.1.1 The <i>Evaluation Policy</i> and the <i>Policy on Transfer Payments</i>	9
3.1.2 The role of the Evaluation Services Directorate within INAC.....	10
3.2 The evaluation process used within INAC.....	11
3.2.1 Branch Planning.....	11
3.2.2 Project Planning.....	12
3.2.3 Contracting.....	13
3.2.4 Conduct / Reporting / Closure.....	14
3.2.5 Follow-up.....	16

Please consult the diskette after reading this report

LIST OF ACRONYMS

ADM	Assistant Deputy Minister
AEA	American Evaluation Association
ATIP	Access to Information and Privacy
CES	Canadian Evaluation Society
DAEB	Departmental Audit and Evaluation Branch
DAEC	Departmental Audit and Evaluation Committee
DM	Deputy Minister
ÉNAP	École Nationale d'Administration Publique
ESD	Evaluation Services Directorate
INAC	Indian and Northern Affairs Canada
RDG	Regional Director General
RMAF	Results-based Management and Accountability Framework
SoW	Statement of Work
TBS	Treasury Board Secretariat (TB : Treasury Board)
ToR	Terms of Reference

FORWARD

This report (along with the diskette) was prepared between July the 26th and September the 22nd, 2003. **Its objective is to meet the needs and requirements of both the Indian and Northern Affairs Canada (INAC) and l'École Nationale d'Administration Publique (ÉNAP).**

After describing the steps followed within INAC for doing evaluations, the author provides a new process and ten checklists for improving the implementation of the evaluation standards of the Joint Committee on Standards for Educational Evaluation. It should be noted that the new process and the ten checklists were written in Excel. The reader is therefore invited to consult the diskette after reading this report.

I would like to thank all the people within the Departmental Audit and Evaluation Branch of INAC who have provided me with some input for the conduct of this project, namely Mrs. Hélène Grondin and MM. David Hubka and Bernard Hategekimana.

INTRODUCTION

1.1 The author's role within INAC

I was hired by the Departmental Audit and Evaluation Branch (DAEB) of INAC as a coop student on May 5th, 2003. My first few weeks within the Department were boring, as I had no clear mandate given to me prior to my arrival. By the time I was told to do the Planning Report for the evaluation of INAC's Specific Claims Program, I had not much to do but to read about the program and about anything else I could find on the Web (or elsewhere) that, I thought, would help me understand what went on exactly with this Branch and the Department as a whole.

1.2 The challenges of the Evaluation Services Directorate for the future

All reading material that I looked at, and all the people to whom I had a chance to talk to, increased my understanding of the dynamics involved and the multiple evaluation challenges facing both INAC in general and the Evaluation Services Directorate (ESD) of DAEB in particular.

Based on the readings that I did during my first three or four weeks upon arriving there, and on the additional documents and persons that I consulted for the purpose of this report, I came to the conclusion that there is still a lot of work to be done before DAEB becomes "the best shop in town".

This conclusion of mine is based on a number of observations that I have; observations, which I believe should be raised here before going any further.

The first of these observations concerns the presence of a new team. I was struck to say the least when I learned during my first day of work that almost every evaluator within ESD had been in post for less than a year. Of course, new blood often brings new and refreshing ideas to an organisation. Well, without disputing this, I nonetheless have to admit that it also brought there some level of confusion. Who exactly does what, and when, is still not clear in a lot of minds. Furthermore, the presence of new blood and, with it, of people having different backgrounds and approaching evaluation in different ways, makes it pretty difficult for newcomers like I was to understand how the Directorate operates. To put it differently, it's pretty hard to understand what's going on and how things have to be done when nobody speaks the same language.

Another observation that I had when I started working there refers to the role of ESD within INAC. To a newcomer like I, it seemed pretty obvious that neither program managers nor ESD knew exactly what to expect from the other. For instance, who between program managers and ESD decides that an evaluation is *high priority*? Who between program managers and ESD decides that an Advisory Committee should be put in place? Confusion is also obvious when we start thinking about the role ESD is supposed to play in preparing and implementing RMAFs.

A third observation that I have and which brings me to say that there is still a lot of work to be done before DAEB becomes “the best shop in town” concerns the absence of clear guidelines when ESD deals with consultants or clients. First, it’s not clear how or, at least, on what ground a consultant is chosen. Second, it’s not clear how and when an evaluation’s budget is established. And third, it is not clear how we do (or even if we do any) quality control of evaluation reports. If clear guidelines do exist, where are they...

1.3 The mandate of this report

Following a meeting that I had on July 19th, 2003, with Mr. Jacques Bérard, Director of ESD and Mrs. Chantal Roy, Senior Evaluation Manager, I undertook this project of (1) describing the evaluation process used within INAC, and (2) suggesting ideas on how ESD could improve the implementation of the evaluation standards of the Joint Committee on Standards for Educational Evaluation.

It should be noted right away that part of this work was started in 1998.

METHODOLOGY

Given the short period of time to do the work (less than two months), I decided to write down immediately all the ideas that I had in mind and to see, afterward (that is after reading a bit more and talking to people), if any of these ideas were still interesting. Of course, this approach made me realise that some of them had to be forgotten or, at least, rethink, and that others, which I never thought of, were interesting and ought to be included.

2.1 Documents Review

The following thirty documents and web sites have been consulted during that period:

- Departmental Directive 4-1 (INAC)
- Departmental Directive 4-2 (INAC)
- DAEB Brochure on Project Processes (INAC)
- Evaluation Policy (TBS)
- Policy on Transfer Payments (TBS)
- Guide for the Development of RMAF (TBS)
- Guidance for Strategic Approach to RMAF (TBS)
- Good Practices Guide to Developing Evaluation Plans (TBS)
- Program Evaluation Methods: Measurement and Attribution of Program Results (TBS)
- The Program Evaluation Standards (Joint Committee on Standards for Educational Evaluation)
- What the Program Evaluation Standards say about Designing Evaluations (Joint Committee on Standards)
- Guiding Principles for Evaluators (Task Force on Guiding Principles for Evaluators)
- CIDA's Evaluation Guide (CIDA)
- CES Guidelines for Ethical Conduct (Canadian Evaluation Society)
- Evaluation. A Systematic Approach (Peter H. Rossi & Howard E. Freeman)
- Evaluation Plans and Operations Checklist (Daniel L. Stufflebeam)
- A Checklist for Developing and Evaluating Evaluation Budgets (Jerry Horn)
- Evaluation Contracts Checklist (Daniel L. Stufflebeam)
- Key Evaluation Checklist (Michael Scriven)
- Utilization-Focused Evaluation (U-FE) Checklist (Michael Quinn Patton)
- Evaluation Values and Criteria Checklist (Daniel L. Stufflebeam)
- Guiding Principles Checklist for Evaluating Evaluations (Daniel L. Stufflebeam)
- Guidelines for Developing Evaluation Checklists (Daniel L. Stufflebeam)
- Institutionalizing Evaluation Checklist (Daniel L. Stufflebeam)
- American Evaluation Association web site (www.eval.org)
- Canadian Evaluation Society web site (www.evaluationcanada.ca)
- TBS Centre of Excellence in Evaluation web site (www.tbs-sct.gc.ca/eval)
- CIDA's Performance Review Branch web site (www.acdi-cida.gc.ca/perfor-e.htm)
- Audit and Evaluation Branch of Natural Resources Canada web site (www2.nrcan.gc.ca/dmo/aeb)
- HRDC's Evaluation and Data Development Branch web site (www11.hrdc-drhc.gc.ca/pls/edd/hrdc.main)

The purpose of the documents and web sites review was (1) to get a clear picture of the context in which ESD operates, (2) to understand the evaluation process used within INAC, and (3) to have new ideas on how the Directorate could improve the implementation of the evaluation standards of the Joint Committee on Standards for Educational Evaluation.

2.2 Key Informants' Interviews

Mrs. Hélène Grondin (Manager, Information Technology Audit and Review) was interviewed on August the 6th, 2003. The purpose of this 2½-hour interview was to clarify all aspects of the evaluation process used within INAC that remained obscured in my mind, and to “test” some of the ideas that I had.

Informal interviews done for the same reasons with Mr. David Hubka and Mr. Bernard Hategekimana were also held on several occasions during the month of August 2003.

I would like once again to thank all of them for their inputs and support.

RESULTS

The environment in which INAC operates has changed significantly during the last ten years. Today, almost 90 percent of its total expenditures are managed or administered by First Nations or other Aboriginal institutions.

3.1 The context in which the Evaluation Services Directorate operates

The tabling of *Results for Canadians: A Management Framework for the Government of Canada* in March 2000 reinforced the commitment toward continuous management improvement and accountability. To ensure adequate implementation of this framework, the Treasury Board Secretariat (TBS) funded and managed several initiatives. It also decided that it was time to modify some policies and to create new ones.

Two of these policies (the *Evaluation Policy* and the *Policy on Transfer Payments*) had and still have major implications on the annual workload of the Directorate. Before describing the evaluation process used within INAC, I thought it would be a good idea to clarify what these two policies are all about. This would help in understanding why ESD had to go through a major restructuring of its staff recently.

3.1.1 The *Evaluation Policy* and the *Policy on Transfer Payments*

The Evaluation Policy supports the generation of accurate, objective and evidenced-based information to help managers make sound, more effective decisions on their policies, programs and initiatives. (Evaluation Policy, p.2)

This TBS policy is therefore pretty clear: **the information has to be credible to be helpful**. Otherwise, why bother? It is also pretty clear when it says that *public service managers are expected to define anticipated results, continually focus attention towards results achievement, measure performance regularly and objectively, and learn and adjust to improve efficiency and effectiveness*. (Evaluation Policy, p.2)

If DAEB is to become “the best shop in town”, evaluation must find its way into the life cycle’s management of INAC’s policies, programs and initiatives. There is just no other way around.

Establishing ongoing performance monitoring and evaluating issues relating to both the early implementation and administration of a program and the relevance, results and cost-effectiveness may sound off-putting at first glance, but when it is known why and how they can help an organisation, then they become much more appealing. After all, evaluation is there to help managers attain better results.

The *Policy on Transfer Payments* requires for its part that TB submissions include a RMAF for all transfer payment programs. RMAFs are documents that demonstrate the department's intention to measure performance against key results commitments on an ongoing basis and periodically through evaluation. The responsibility for developing them rests with the programs filing the submissions.

Transfer payments are transfers that are made from an appropriation to individuals, organizations or other levels of government without any compensation in return. Departments must obtain Treasury Board's approval of the *terms and conditions* prior to creating or renewing any transfer payment program. It should be noted that all approved *terms and conditions* for existing transfer payment programs continue to apply until the earlier of their expiry date or March 31, 2005. Normally, these programs will be approved for no more than five years at which point a new submission will have to be filed.

Departments must develop policies and procedures for adequate monitoring of results achieved under contribution agreements and for obtaining suitable information from recipients and from third parties delivering programs to ensure departmental accountability. (Policy on Transfer Payments, p.15)

Because nearly 90 percent of INAC's total expenditures are made through transfer payments, the department deals with a large number of TB authorities. Over the next four years, it is anticipated that more than 60 authorities will have to be renewed. This of course will have major implications on the workload of DAEB and ESD.

3.1.2 The role of the Evaluation Services Directorate within INAC

DAEB operates under the functional authority of the Departmental Audit and Evaluation Committee (DAEC), which is chaired by the Deputy Minister (DM) / Associate Deputy Minister and composed of all seven Assistant Deputy Ministers (ADM), the Director General of DAEB, one Regional Director General (RDG), the Director of the Communications' Branch, and a representative from the Office of the Auditor General. DAEC's main mandate is to approve DAEB's activities, such as its annual (or three-year) Work Plan, specific Terms of Reference (ToR), Final Reports and related Action Plans.

ESD's mandate (one of the actual four Directorates of DAEB) is to provide objective and informative services to INAC's senior managers for accountability and results-based management purposes. Its services include:

- a) helping DAEB in preparing its annual (or three-year) Work Plan based on departmental concerns and a risk-based analysis;**
- b) conducting evidence-based evaluations; and**
- c) working with managers, First Nations, and other stakeholders to help them enhance the design, delivery and performance of their policies, programs, and initiatives.**

In order for independence and objectivity to remain intact, its staff is not allowed *to be directly involved in operating, developing, implementing, or revising departmental programs, policies, systems, procedures, or processes.* (Departmental Directive 4-1, p.4)

3.2 The evaluation process used within INAC

INAC follows five phases to do evaluations. These phases are:

- 1) DAEB Planning**
- 2) Project Planning**
- 3) Contracting**
- 4) Conduct / Reporting / Closure, and**
- 5) Follow-Up**

Regional and sectorial Audit & Evaluation Coordinators are key players for the completion and success of all ESD evaluation projects. Their responsibilities have been discussed and agreed-upon in the past.

3.2.1 Branch Planning

Each spring, DAEB reviews and updates its annual (or three-year) Audit and Evaluation Work Plan. This plan briefly describes each project which will start or be completed by the end of this (and the next) fiscal year(s).

The annual (or three-year) Work Plan exercise aims to:

- 1) identify organizational priorities as well as modifications to INAC and government priorities; and**
- 2) perform a strategic analysis in order to determine the most efficient use of available (and limited) resources.**

The process for planning evaluation projects is done by involving senior management at Headquarters and regional levels. Senior managers have the responsibility for identifying and defining their needs. For this, they submit a *one-page* document to DAEB for each of their evaluation needs. This document (which, in the past, was sent after the *preliminary project list* had been approved by DAEC) briefly describes the program's rationale and budget, and includes suggested issues to be addressed, suggested regions to be involved, and estimated cost for doing the evaluation.

The five project selection criteria (central agency requirements, legislative requirements, departmental priorities, renewal of authorities and targeted risk units) were used for the first time last year for selecting the most urgent projects to be undertaken. Lower-rated projects have a lesser chance of DAEC's approval or, if approved, they may be delayed should a higher-rated project need to be inserted.

The timing and importance of the next renewal of authorities (and the related requirements for program evaluations) have had so far the biggest impact on the Branch workload since, like I said earlier, renewal of authorities represents almost 90% of the department's total expenditures.

The steps taken by DAEB to develop its annual (or three-year) Work Plan are outlined below²:

1. Consultations within DAEB to determine the status of current projects and departmental priorities
2. DAEB *call letter* to sectors and regions to get their evaluation needs
3. Development of the *preliminary project list*, which can be considered the first draft of the annual (or three-year) Work Plan
4. DAEC approves DAEB's *preliminary project list*
5. DAEB's annual (or three-year) Work Plan is drafted after consultations with potential clients of their *one-pages*
6. DAEC reviews and approves the annual (or three-year) Work Plan. This authorize DAEB to develop Terms of Reference (ToR) for projects included in the plan
7. DAEB staff is assigned to various projects included in the Work Plan
8. Copies of the approved Work Plan are sent to each ADM, RDG, Audit & Evaluation Coordinator, and the Centre of Excellence in Evaluation. Then it is posted on the Intranet

3.2.2 Project Planning

The prerequisite for undertaking any evaluation is to have a ToR in place. This document briefly describes the background of the program to be evaluated, and the evaluation purpose, scope, issues, approach, resources and timeframe. Terms of reference are signed by the ADM responsible for the program or the RDG if the evaluation is regional in nature. They will be translated from English to French before the ADM (or RDG) signs them if the ADM (or RDG) is French, and after DAEC's approval if the ADM (or RDG) is English.

2. It should be noted that steps 3 and 4 were skipped last year.

The steps to have them in place are the following:

1. A draft ToR is prepared by an evaluator from ESD (in consultation with the Director and the Senior Evaluation Manager responsible for the project)
2. Often, a Committee is formed to guide the project. Sometimes, more than one Committee is created (e.g., Advisory Committee, Steering Committee, Working Committee and/or Interdepartmental Committee)
3. The regional or sectorial Coordinator's comments and the comments of the Committee(s) of the draft ToR are requested
4. The coordinator and Committee(s) comments are analysed and often included into the ToR
5. The Director, Director General and ADM (or RDG) comment and sign the draft ToR (routing slip)
6. DAEC reviews and approves the draft ToR. This step represents the final "go-ahead" for a project. A pre-authorization can be obtained from the DM prior to submitting the draft ToR to the DAEC when time is short. When a ToR is pre-authorized by the DM, the evaluation starts right away (before the next meeting of the DAEC)

Once a ToR is approved by the DAEC (or pre-authorized by the DM), a Planning Report is written by an evaluator from ESD (in consultation with the Senior Evaluation Manager responsible for the project). The Planning Report is a detailed plan for the evaluation. It includes the program background and profile, and defines in greater details the issues and questions outlined in the ToR, the methodologies to be used, and the general approach, reporting strategy and evaluation schedule for carrying out the work.

The Evaluation Committee normally reviews the Planning Report at length before it is sent to the consultant.

3.2.3 Contracting

Contracting is a key element in DAEB evaluation process. Numerous tools and agreements have been put in place over the years to make it more simple.

Consultants can be and often are hired from the Branch's evaluation *standing offer list*. This list, which is established every three years through a competitive bidding process, allows DAEB to quickly put in place contracts. A second alternative at the Branch disposal is to undertake a specific (and much longer) bidding process (e.g., MERX).

Regardless of the option taken, contracting will always go through the following three steps:

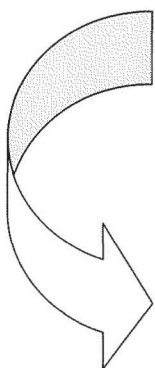
1. ESD writes a *Statement of Work* (SoW), which describes the background of the program and includes the evaluation objectives, issues and questions, approach and deliverables. The SoW also describes the support INAC will provide during the conduct of the evaluation
2. ESD solicits and evaluates the bid (or bids). Often, a local consultant is recommended by the Coordinator
3. The contract is awarded and the consultant hired

Unsuccessful bidders are told why they haven't been chosen (when requested).

3.2.4 Conduct / Reporting / Closure

Conducting an evaluation project normally involves the following steps:

1. A data collection phase, which usually includes a visit (or visits) to the region(s) outlined in the Planning Report
2. Data analysis
3. Approval of the evaluation findings by DAEB and the Committee(s)
4. A *Draft Evaluation Report*



Often, a Progress Report is produced by the consultant and the client is debriefed during the conduct of the evaluation. Sometimes, more than one Progress Report is produced.

Upon receiving the *Draft Evaluation Report*, ESD will review and, if need be, redraft the report before asking the ADM (or RDG) for an *Action Plan*, and before submitting the report to the DAEC at the next meeting, along with a *Project Brief*.

The broad steps taken by ESD to make sure the report is ready to go to the DAEC are outlined below:

1. The *Draft Evaluation Report* is received from the consultant
2. ESD reviews (and re-drafts, if need be) the report
3. The Report is sent to the Committee (if there is one) before being circulated for comments and approval to the Director, DG and ADM (or RDG)
4. The *Draft Evaluation Report* (or *Re-Draft Evaluation Report*) is circulated for comments and approval to the Director, DG and ADM (or RDG)
5. A *Final Draft Evaluation Report* is produced
6. An *Action Plan* is prepared by the program to address the recommendations of the consultant found in the *Final Draft Evaluation Report*
7. A *Project Brief* is written by ESD
8. The *Final Draft Evaluation Report* along with the *Project Brief* and the *Action Plan* are tabled at the next DAEC meeting(s)
9. DAEC may suggest items for further consideration or research. It may also approve the *Final Draft Evaluation Report* as it is

Before the approved evaluation report is made available to interested parties (such as the Centre of Excellence in Evaluation), a Routing Slip is circulated within DAEB to make sure that it meets the Communication Branch, *ATIP*, and editing and publishing requirements³.

The broad steps that have to be followed before a report can be released and posted on the Internet are outlined below:

1. DAEC approves the *Final Draft Report*
2. Recommendations made in the evaluation report are entered in the follow-up system (along with the implementation date of the proposed actions)
3. *ATIP* Letter is sent out for verification
4. DAEB sends a letter to the ADM (or RDG) responsible for the program evaluated and to the DG of the Communication Branch for Q & A
5. DAEB completes (or arranges for) the editing, translation and conversion
6. The report is sent to the Minister for approval and release date

3. An example of a Routing Slip can be found in CIDM (#157152). It should be noted that three months was considered enough at one point to get all the signatures needed.

All evaluation reports, which are not restricted, will be made available to the general public electronically and in both official languages. Any report, which, on the contrary, contains confidential or other restricted information, which should be protected under the provisions of the *Access to Information and Privacy Acts (ATIP)*, will not be made available to the public. (Departmental Directive 4-1, p.8)

A *Client Survey Questionnaire* measuring satisfaction is sent out.

3.2.5 Follow-up

ADMs and RDGs are responsible for implementing corrective actions with respect to approved evaluation recommendations. The *Action Plan* that they have to prepare describes the actions that will be done and specifies target dates and well as the titles of the manager(s) that will (or are) going to be responsible for the implementation.

When in the opinion of the Director General of DAEB, the proposed corrective action to be undertaken does not satisfy the intent of the recommendation(s) made, the proposed action plan is referred back to the implementing manager for revision. In the event that subsequent proposed action(s) fail to satisfy the intent of the recommendation(s), the Director General of DAEB will inform DAEC accordingly and request further direction. (Departmental Directive 4-1, p.9)

The Director General of DAEB will send a letter to the regional or sectorial Audit & Evaluation Coordinator for any outstanding recommendation, and provide a bi-annual report to the DAEC until appropriate corrective actions are implemented.

The reader is now invited to consult the diskette for the author's new evaluation process and ten checklists for improving the implementation of the standards of the Joint Committee on Standards for Educational Evaluation.

The reader will also find on the same diskette a file in Excel of the *current* evaluation process.