



**HOUSE OF COMMONS
CANADA**

**CHAPTER 3, INUVIALUIT FINAL AGREEMENT OF THE
OCTOBER 2007 REPORT OF THE AUDITOR GENERAL OF
CANADA**

**Report of the Standing Committee on
Public Accounts**

**Hon. Shawn Murphy, M.P.
Chair**

June 2008



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THE STANDING COMMITTEE ON PUBLIC ACCOUNTS

has the honour to present its

SIXTEENTH REPORT

Pursuant to Standing Order 108(3)(g), the Standing Committee on Public Accounts has considered the Chapter 3, Inuvialuit Final Agreement of the October 2007 Report of the Auditor General of Canada. The Committee has agreed to table this Report as follows:

INTRODUCTION

In 1984, the federal government and the Inuvialuit signed the *Inuvialuit Final Agreement* (IFA), a comprehensive land claim agreement, after 10 years of negotiation. The IFA transferred 91,000 square kilometres of land and \$170 million to the Inuvialuit and, in return, the Inuvialuit relinquished their claim to 335,000 square kilometres that had been part of the original claim.

Comprehensive land claims are based on the assertion of continuing Aboriginal rights and title to lands that have not been dealt with by treaty or other means. The purpose of land claim agreements is to provide certainty for all parties and to clarify the rights of Aboriginal groups to lands and resources in order to facilitate Aboriginal peoples' economic growth and self-sufficiency. Comprehensive land claim agreements provide defined rights, compensation, and other benefits in exchange for relinquishing rights related to title claimed over all or part of the land in question.

The Office of the Auditor General conducted an audit on the federal government's implementation of its obligations in relation to the *Inuvialuit Final Agreement* (IFA)¹. The audit examined the actions taken by Environment Canada, the Parks Canada Agency, Fisheries and Oceans Canada, Public Works and Government Services Canada, and Indian and Northern Affairs Canada (INAC). Specifically, the audit examined federal government activities designed to meet a number of specific federal obligations. The audit also examined how INAC planned for, carried out, and monitored the implementation of Canada's obligations under the IFA. In addition, the audit assessed whether, or how, INAC monitored and reported on the extent to which the IFA's principles were realised.

The Committee held one meeting on 11 March 2008 to examine the Office of the Auditor General's chapter on the IFA. The Committee met with Ronnie Campbell, Assistant Auditor General, and Frank Barrett, Principal, from the Office of the Auditor

¹ Office of the Auditor General of Canada, October 2007 Report, "Chapter 3 – Inuvialuit Final Agreement."

General. In addition, the Committee heard from the following witnesses from INAC: Michael Wernick, Deputy Minister; Michel Roy, Senior Assistant Deputy Minister, Claims and Indian Government; and Terry Sewell, Director General, Implementation Branch.

Action Plan and Status Report

The Committee believes that government organisations should be able to provide an action plan to the Committee prior to a hearing, especially when the audit report has been tabled in Parliament months earlier. However, in this case, Mr. Wernick explained to the Committee that INAC has been working with the Office of the Auditor General on the development of an action plan to ensure that it is setting realistic and concrete deadlines to address the recommendations contained in the report. Mr. Wernick informed the Committee that INAC's action plan would be ready to be distributed to the Committee by 30 April. As this date has passed, the Committee is eager to receive the department's action plan. The Committee agrees with all of the recommendations made in this audit; therefore, to ensure that the department completes an action plan that will assist it in acting on all of the recommendations, the Committee recommends that

RECOMMENDATION 1

Indian and Northern Affairs Canada provide an Action Plan to the Public Accounts Committee as per the commitment made to the Committee by 30 June 2008 that describes how the Department will implement the recommendations made in Chapter 3: Inuvialuit Final Agreement of the Auditor General's October 2007 Report.

Because of the need to show real commitment to the IFA, the Committee would like to see the progress made by INAC in implementing the Auditor General's recommendations. For this reason, the Committee recommends that

RECOMMENDATION 2

Indian and Northern Affairs Canada provide the Public Accounts Committee with a status report on its implementation of the

**recommendations contained in Chapter 3: Inuvialuit Final Agreement
of the Auditor General's October 2007 Report by 31 March 2009.**

Land Transfers

The Inuvialuit Settlement Region included 91,000 square kilometres of transferred lands. However, some of the land in the region remained within the control of the Crown. The IFA commits the federal government to return these sites to the Inuvialuit when it no longer needs them. The audit expected INAC to identify when the Crown no longer needed Inuvialuit lands that remained under its control and to return those lands promptly to the Inuvialuit. Of the 20 original parcels of land that remained in the control of the Crown, the audit found that the federal government stopped using 11 complete parcels and two partial parcels of land between 1986 and 2005. However, the audit found that INAC has never decided on a process by which federal organisations could return unneeded lands to the Inuvialuit and that INAC officials could not agree amongst themselves on the process and their roles and responsibilities in it.

The audit also found that INAC had inadvertently transferred land containing municipal structures that belonged to the territorial government, including a section of an airport runway that belonged to Transport Canada. In 1991, INAC agreed to identify lands to transfer to the Inuvialuit in exchange for the airport runway. However, it did not provide land selection criteria to the Inuvialuit until 2002. Since then, INAC has had numerous discussions with the Inuvialuit for an exchange of land for the airport runway. However, INAC has not yet developed a process for actively seeking alternative lands to achieve a land exchange. At the time of the audit, the discussions between the Inuvialuit and INAC had broken down and this issue was before arbitration. The Committee heard from Mr. Wernick that negotiations with the Inuvialuit and other federal parties were now complete, and that the final approval for the transfer of the land would be within the next six months.² The Committee is appalled that it has taken this long to correct the land transfer error. The length of time it took to come to an agreement on the transfer of the land for the airport runway indicates to the Committee that INAC does not see the

² Meeting 21, 1115.

implementation of the IFA as a priority. To ensure that the department follows through on the transfer of land, the Committee recommends that

RECOMMENDATION 3

Indian and Northern Affairs Canada provide confirmation to the Public Accounts Committee that the transfer of land for the airport runway has occurred when final approval has taken place and that all of the parties involved in the transfer are content with the arrangements.

In its response to the audit's recommendation that INAC should develop and implement a clear process for ensuring the timely exchange of lands under the IFA, the department stated that it would document the processes outlined in the IFA for use in future land exchanges and that guidelines would be recommended for each step in the process by April 2009. The Committee finds it disheartening that processes guiding the transfer of lands have not already been established for an agreement that is 23 years old. For this reason, the Committee recommends that

RECOMMENDATION 4

Indian and Northern Affairs Canada accelerate the development of guidelines to transfer lands to the Inuvialuit to 31 December 2008 and provide the Public Accounts Committee with a copy of the guidelines by that date.

Contracting Obligations

The IFA obligates federal organisations to inform the Inuvialuit of contracts that relate to activities that take place in the Settlement Region. When the Inuvialuit submit the best bid on contracts subject to public tender they are to be provided with the contracts. When contracts are not subject to public tender, the Inuvialuit are to be awarded a "reasonable share" of contracts when they can supply the goods and services on a reasonable basis. The IFA also obligates federal organisations to provide the

Inuvialuit with economic opportunities in the Settlement Region. The contracting provisions in the IFA were intended to be an important means of achieving full Inuvialuit participation in the Northern Canadian economy, and Inuvialuit integration into Canadian society.

The audit expected that INAC and Public Works and Government Services Canada (PWGSC) would identify, plan how to fulfill, and act on the federal government's contracting obligations. In addition, the audit expected INAC to coordinate all of the departments involved in meeting the IFA's contracting obligations. Several shortcomings with respect to the IFA's contract obligations were raised during the hearing.

Tracking contracts:

The audit noted that PWGSC had informed the Inuvialuit of most of the contracts that took place in the Settlement Region; however, the Inuvialuit had not been informed of all of the upcoming contracts. Because PWGSC does not track which contracts are subject to which land claims agreements, it was unable to identify the total number of contracts related to the Region. In fact, none of the government organisations involved in the audit had a systematic means of tracking their contracting activities related to notification and contract awards relating to the Inuvialuit Settlement Region. Because of this, they are unable to ensure that they are meeting their contract obligations under the IFA.

During the hearing, the Committee was astonished to hear that INAC could not give one example of an untendered contract given to someone in the Inuvialuit Settlement Region. Mr. Wernick told the Committee that INAC had "not done a great job of tracking and tracing [contracts] in the past."³

³ Meeting 21, 1200.

The audit recommended that the organisations involved in the IFA should work with the Treasury Board Secretariat to develop and enhance systems and procedures to enable them to monitor their compliance with the IFA’s contracting provisions. Mr. Wernick told the Committee that INAC has “worked closely with the Treasury Board Secretariat and Public Works and Government Services Canada to ensure that contract practices across the government reflect our commitments as a government.”⁴ He also stated that an amendment to the Contracting Policy would be finalized within the next fiscal year and that the systems to monitor compliance will be brought in line with the updated policy. The Committee believes that this should be done and as such recommends that

RECOMMENDATION 5

Indian and Northern Affairs Canada provide the Public Accounts Committee with a copy of the updated Treasury Board Contracting Policy and that INAC provide an explanation of how the updated policy reflects the obligations stated in the *Inuvialuit Final Agreement* in its annual report on this Agreement.

Defining reasonable share:

The IFA states that federal organisations should award a “reasonable share” of contracts not subject to public tender related to the Settlement Region to the Inuvialuit. The audit noted that INAC has not yet defined what is meant by the term “reasonable share.” Without defining this term, INAC cannot demonstrate the extent to which federal contracting in the Settlement Region supports the economic objectives of the IFA.

In December 2007, INAC obtained legal advice from the Justice Department as to the definition of “reasonable share”. The department sought a legal opinion because it did not want to expose the government to litigation on this matter. Mr. Sewell stated that “the next step is to consult with other signatories to the Agreement to see how close [their] minds are on the interpretation of ‘reasonable share’”.⁵ According to Mr. Sewell,

⁴ Meeting 21, 1115.

⁵ Meeting 21, 1155.

INAC has a responsibility under the land claim agreement to consult with the other partners to come to a mutual conclusion as to the interpretation of “reasonable share”. This being so, the Committee believes that, in fairness to the Inuvialuit, the department must resolve the definition of “reasonable share” in as timely a manner as possible. For this reason, the Committee recommends that

RECOMMENDATION 6

Indian and Northern Affairs Canada work with its partners in the *Inuvialuit Final Agreement* to clearly define “reasonable share” by 31 December 2008 and provide a copy of this definition to the Public Accounts Committee.

Though the Committee agrees with the provision of the IFA that states that a “reasonable share” of untendered contracts should be awarded to the Inuvialuit, it is concerned that this provision could be abused. Current Treasury Board policy indicates that contracts under the value of \$25,000 can be awarded without public tender. The Committee would like assurance that the untendered contracts subject to the “reasonable share” provision are priced in a similar manner to those untendered contracts that are awarded elsewhere in government. Consequently, the Committee recommends that

RECOMMENDATION 7

Indian and Northern Affairs Canada ensure that the untendered contracts awarded under the “reasonable share” provision of the *Inuvialuit Final Agreement* be priced in a similar manner to other untendered contracts by including this in the definition of “reasonable share”.

The fact that it has taken INAC 23 years to seek a legal opinion on what is meant by “reasonable share” is embarrassing. When this is taken together with the department’s inability to provide one example of an untendered contract at the hearing, it is difficult not to come to the conclusion that INAC has not taken its obligations on contracting seriously since the signing of the IFA. The Committee believes firmly that in order to

have the best opportunities possible, the people in the Inuvialuit Settlement Region must be given the required access to contracts that take place in their Region.

Economic Measures Review

The IFA required that INAC and the Inuvialuit complete a review of the effectiveness of the section of the IFA that deals with economic measures in the year 2000. This economic review is required to be repeated every five years until the federal government believes the economic objectives of the Agreement have been met adequately.

The audit found that INAC completed an economic review with the Inuvialuit in 2001 which found that the economy of the Settlement Region had not improved since the signing of the IFA. In addition, the review found that the economic objectives had not been met and that the Inuvialuit were falling behind their Northern neighbours. After INAC had not replied to the review after 17 months, the Inuvialuit proposed 26 recommendations in response to the economic review. INAC agreed to implement four of the recommendations and consider eight others. However, the audit found that INAC had not followed through on any of its commitments.

Although the IFA states that INAC and the Inuvialuit must complete an economic review every five years until the economic objectives of the IFA have been met, the audit found that INAC has taken no action to initiate more economic reviews. INAC officials told the auditors that the Inuvialuit were not interested in having INAC complete another review until it had begun to take action on the results of the first economic review.

The audit recommended that INAC should meet its responsibilities related to the economic review by assessing reasons for lack of progress in addressing the first review, taking actions to respond to the first review and leading the completion of a joint economic review every five years as required by the IFA. The department responded that it had established a working group which would, among other things, assess reasons for

the lack of progress in responding to the first economic review by March 2009. The Committee finds the initial time delay in responding to the first economic review completely unacceptable. In addition, it has some problems believing it would take until March 2009 for INAC to assess its inaction on an economic review that took place in 2001.

During the hearing, Mr. Wernick told the Committee that INAC had provided funding to the Inuvialuit to allow them to assess the economic development opportunities and potential in each one of the six Inuvialuit communities. The assessment is to be completed in the 2008-2009 fiscal year. While the Committee is pleased to learn of this economic assessment of the Inuvialuit communities, it remains appalled concerning the department's commitment to acting on the results of the previous review. The Committee vehemently believes that a strong economy is vital to sustainable communities. In order to increase the department's accountability, the Committee believes it is necessary for the department to publicly report on its progress in not only completing the assessment but in responding to any issues raised in the assessment. For this reason, the Committee recommends that

RECOMMENDATION 8

Indian and Northern Affairs Canada include in its annual reports on the *Inuvialuit Final Agreement* a status report on the progress of the economic assessment and, once the assessment has been completed, status reports on the response to issues raised in the assessment.

Monitoring Achievement of Principles

The IFA begins with the statement of three principles which are described as the basic goals expressed by the Inuvialuit and recognised by Canada. These principles are:

1. To preserve Inuvialuit cultural identity and values within a changing Northern society;
2. To enable the Inuvialuit to be equal and meaningful participants in the Northern and national economy and society; and

3. To protect and preserve Arctic wildlife, environment and biological productivity.

When the IFA was signed in 1984, INAC was appointed as the lead department to coordinate implementation, while other federal organisations were responsible for fulfilling obligations related to their portfolios. In 1990, the Office of the Auditor General audited the Northern Affairs Program and noted that INAC had not monitored achievement of the IFA's economic principle. INAC responded by developing an economic evaluation framework in 1994 which was designed to monitor the achievement of the IFA's economic objectives. However, the audit found that INAC had not applied this economic evaluation framework.

Again, in 2003, in an audit of the transfer of federal responsibilities to the North, the Auditor General found that in implementing its obligations in two other comprehensive land claim agreements, INAC had focused not on the spirit and intent of the agreements, but instead on the letter of its obligations. This audit found that INAC was taking a similar position with regard to the principles of the IFA.

The audit expressed concern that INAC is not focused on achieving the goals of the IFA. According to the audit, INAC officials described the principles of the IFA as being Inuvialuit principles, not the principles to which Canada adheres. For this reason, INAC officials emphasised that the IFA does not impart any federal obligation to realise these goals. In fact, INAC has expressed reluctance to monitor and report progress towards achieving the principles of the IFA because so doing would imply that an obligation exists. In addition, INAC also expressed concern that monitoring progress on achieving these principles could lead to the expectation that INAC would take responsibility for achieving these principles. As Mr. Wernick stated before the Committee: "the department has probably been trained, due to the fact that [it is] often sued about implementation issues, to be very, very cautious in accepting something as an obligation, because [INAC] might end up in court."⁶

⁶ Meeting 21, 1205.

There was some discussion during the hearing about whether or not there was a disagreement between the Office of the Auditor General (OAG) and INAC about the nature of the principles. The audit chapter states that INAC “has taken no action to ensure that progress toward achieving the principles of the agreement is monitored. In fact, officials stated that they do not view this as the Department’s responsibility.”⁷ Mr. Campbell from the OAG explained that the original disagreement lay in the fact that “in [INAC’s] view, you measure progress through measuring implementation of the individual objectives, rather than by looking at the overall goals of the agreement.”⁸ This issue was resolved, however, and INAC stated that it would indeed monitor progress towards achieving the principles of the agreement. Mr. Wernick stated that INAC would develop performance measures related to the three principles and would report on them.

The Committee is saddened by the conclusions that could be drawn from INAC’s fear of being sued over accepting the principles of the IFA. It is troubling to believe that INAC has been more concerned in the past about being sued as opposed to acting in the best interests of the Inuvialuit. Because it has taken several audits by the Office of the Auditor General to encourage the department to begin to measure its progress towards achieving the principles of the IFA, the Committee would like to see evidence that INAC is now ready to act on the Office’s recommendations. For this reason, the Committee recommends that

RECOMMENDATION 9

Indian and Northern Affairs Canada report on the progress made in achieving the *Inuvialuit Final Agreement’s* principles in its annual report on this Agreement.

Accountability

⁷ Office of the Auditor General of Canada, October 2007 Report, “Chapter 3 – Inuvialuit Final Agreement.” Paragraph 3.83.

⁸ Meeting 21, 1140.

The audit found that INAC does not monitor or report progress against obligations. The Committee recommended in 1988 that INAC publish an annual implementation report which would list the activities of federal participants and other signatories in relation to the *Inuvialuit Final Agreement*. However, by the time the audit was completed, INAC had still not published any reports for fiscal years 2004-2005 and 2005-2006. Mr. Sewell stated that INAC's target is to complete the 2004-2005 annual report by the spring of 2008.⁹ The target for a combined two year report for 2005-2007 is the summer of 2008.

Mr. Wernick blamed the tardiness of the annual reports in part on the fact that the reports are joint reports. That is, the department must wait until the other organisations involved in the IFA have completed their sections before issuing the annual report. The Committee is incredulous that a report for the fiscal year 2004-2005 will only be issued in 2008, three years later. The Committee believes that INAC should either urge its partners to be timelier in their participation in the writing of the annual report or issue its own annual report in a timely manner detailing the department's progress with respect to the implementation of the IFA and then supplement the report with information from the other organisations as necessary. This latter option has the advantage of giving the Inuvialuit a timely opportunity to understand what the federal government has done in their region. For this reason, the Committee recommends that

RECOMMENDATION 10

Indian and Northern Affairs publish its own annual report in a timely manner detailing its progress in the implementation of the *Inuvialuit Final Agreement* even if it does not have information from the other organisations involved in the Agreement. This annual report should also document which partner organisations have not provided information in time to be included in the report.

Mr. Wernick stated that a timely annual report is an absolutely essential accountability tool for the department to show how it is monitoring progress toward achieving the principles of the IFA. However, the Committee does not believe that an

⁹ Meeting 21, 1235.

accountability tool can be of any real use if it released three years late. For the department to actually use the annual reports as accountability tools, it must issue more timely reports.

The OAG conducted an audit in 2002 on the amount of reporting required of First Nations by federal organizations. The audit found that many of the reports were unnecessary and were not used by the federal government. In a 2006 status report, the OAG was told that INAC alone obtains more than 60,000 reports a year from over 600 First Nations. The federal government places many reporting requirements on First Nations to improve their accountability for the support they receive from the government. However, there does not appear to be any substantial mechanisms within INAC to ensure its accountability to its clients. The department is supposed to publish annual reports on the implementation of land claims agreements, but it has a poor track record: it has been consistently late in publishing these reports.

The Committee believes that the department must be held to account for its seemingly lackadaisical approach to the implementation of the ongoing obligations of the IFA. One of the ways to hold departments to account for their activities is through the Departmental Performance Reports (DPRs). The DPRs' purpose is to present a report on results and accomplishments in order to provide Parliamentarians with knowledge and understanding of the government's stewardship of public resources. For the DPRs to be useful, they must be balanced: this requires the department to acknowledge where performance did not meet expectations, provide the necessary explanations as to why, and describe the corrective actions that will be taken in the future

INAC reported in its 2006-2007 Departmental Performance Report that

1. New approaches and tools will need to be developed in the areas of comprehensive claims and self-government to be more responsive to the needs of First Nations and Inuit and to the evolving legal and political landscape¹⁰; and

¹⁰ Indian and Northern Affairs Canada, *2006-2007 Departmental Performance Report*. p. 18.

2. In the implementation of comprehensive land claims and self-government agreements, INAC recognizes that it must work more effectively with federal, provincial/territorial and Aboriginal partners to find practical solutions to the issues and challenges in an effort to avoid the initiation of legal action.¹¹

The Committee does not believe this is balanced reporting of INAC's performance with respect to its implementation of comprehensive land claims agreements, especially given the numerous Auditor General reports that have consistently highlighted the poor performance of the department in this area. While the Committee recognises that the DPRs cannot include all of the details of the challenges departments face, it does believe that only including statements such as the above provides a skewed picture of the performance of the department.

The Committee was told that the department does have a website that provides the details of its comprehensive land claim agreements.¹² However, the website does not provide any performance information. Without this information, it is difficult to hold the department to account for its performance in implementing not only the IFA, but all comprehensive land claim agreements. In order to provide a more balanced reporting of the department's activities with respect to the IFA, in addition to its other comprehensive land claims agreements, the Committee believes that INAC should make better use of the availability of online reporting. Doing so would improve the accountability of the department so that Aboriginal groups could be confident that the department recognises its own responsibilities in the implementation of comprehensive land claims agreements. For this reason, the Committee recommends

RECOMMENDATION 11

Indian and Northern Affairs Canada include a link in its Departmental Performance Report to an online report that includes details of its own results-based performance in the implementation of comprehensive land claims agreements.

Conclusion

¹¹ *Ibid.*, p. 21.

The Deputy Minister of INAC, Mr. Wernick, said in his opening statement to the Committee that “the point of reaching land claim settlements is to give the communities covered by the agreement the tools for self-reliance so that they can take control of their own futures, participate in economic and development opportunities, and create their own businesses.”¹³ The Committee wholeheartedly agrees with this statement and was pleased to learn of the obligations that INAC has met of the *Inuvialuit Final Agreement*. However, after studying audits such as the one examining INAC’s implementation of the IFA, the Committee is doubtful of INAC’s own commitment to this statement.

On the day of its hearing on the issue of the implementation of the *Inuvialuit Final Agreement*, the Committee was generally dissatisfied with the incomplete answers given by the Deputy Minister, Mr. Wernick. During some of the exchanges with the members of the Committee, Mr. Wernick appeared to confuse the issues being addressed. For example, he seemed reluctant to state whether INAC received any complaints from the Inuvialuit concerning INAC’s progress in implementing the IFA. In addition, the Committee was disappointed by the lack of information Mr. Wernick and the Director General of the Implementation Branch, Terry Sewell, were able to provide during the hearing, especially related to the issue of untendered contracts.

Mr. Wernick also stated in his opening remarks that

any failure on our part to fully abide by the terms of the *Inuvialuit final Agreement* not only undermines the relationship with this aboriginal community, but also diminishes the hard-won credibility of the federal government as it enters into negotiations on agreements with other Aboriginal communities.¹⁴

The Committee agrees with this statement, and worries that the performance of INAC to date in implementing its long-term obligations under the IFA may indeed hurt the credibility of the federal government. Given the importance of building trust and

¹² Indian and Northern Affairs Canada website, “Agreements.” Online at <http://www.ainc-inac.gc.ca/pr/agr/>.

¹³ Meeting 21, 1215.

credibility with Aboriginal groups as the federal government continues to sign comprehensive land claims agreements, the Committee sincerely hopes that INAC will respond and act on all of the recommendations of the Auditor General.

¹⁴ Meeting 21, 1110.

APPENDIX A LIST OF WITNESSES

Organizations and Individuals	Date	Meeting
Department of Indian Affairs and Northern Development	2008/03/11	21
Michel Roy, Senior Assistant Deputy Minister Claims and Indian Government		
Terry Sewell, Director General Implementation Branch		
Michael Wernick, Deputy Minister		
Office of the Auditor General of Canada		
Frank Barrett, Principal		
Ronnie Campbell, Assistant Auditor General		

REQUEST FOR GOVERNMENT RESPONSE

In accordance with Standing Order 109, the Committee requests that the Government table a comprehensive response to the report.

A copy of the relevant *Minutes of Proceedings* ([Meetings Nos. 21, 33, and 35 including this report is tabled](#)).

Respectfully submitted,

Hon. Shawn Murphy, M.P.
Chair