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**Critical factors in the implementation of programs targeted to
Aboriginal peoples: the Canadian experience**

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Summary

This paper summarizes the results of a performance audit, Management of Programs for First Nations, completed by the Office of the Auditor General of Canada and reported to Parliament in May 2006. The audit took an innovative approach to the complex area of Aboriginal programs that included applying an evaluation methodology to identify and understand factors critical to the successful design and delivery of programs.

Although the Canadian federal government spent just over \$8 billion in 2004-05 on 360 programs targeted to Aboriginal people that address issues such as housing, health care, education, and economic development, the conditions in many First Nations communities and of many Aboriginal people remain significantly below the national average.

The audit assessed the progress of federal departments in implementing recommendations the Auditor General made in audits reported between 2000 and 2003 on Aboriginal issues. The recommendations focussed on housing on reserves, economic development, third-party management, reporting requirements, health, the food mail program, and land claims.

Overall, progress was found to be unsatisfactory, especially for recommendations most likely to improve the lives of Aboriginal people. The Office's typical audits make observations, but do not get at the "whys"; this audit was different in that it took an evaluative approach and attempted to ascertain some of the reasons for lack of progress.

This innovative approach resulted in the identification of seven factors that appear to be critical to the successful implementation of recommendations, and to the successful design and delivery of programs.

Introduction

This paper first describes Canada's Aboriginal peoples and the nature of their relationship with the Canadian federal government, as well as the federal government's responsibilities to them. It then outlines the mandate of the Office of the Auditor General

and its rationale for undertaking this performance audit. Finally, the methodological approach to undertaking this performance audit, as well as the results of this work, are discussed.

Canada's Aboriginal peoples and the nature of their relationship with the federal government

The Canadian Constitution recognizes three groups of Aboriginal people – Indians, Inuit and Metis – descendants of the original inhabitants of North America. Indians, referred to as First Nations peoples, live throughout Canada.¹ Inuit are the Aboriginal people in northern Canada. Metis are people of mixed First Nation and European ancestry who identify themselves as distinct from First Nations people or Inuit. These are three separate peoples with unique heritages, languages, cultural practices and spiritual beliefs.² Of the nearly one million people in Canada who identified themselves as Aboriginal in the 2001 Census, two thirds are First Nations people.³ As the majority of federal government funding and programming is directed towards First Nations peoples, remainder of this paper utilizes this term.

The relationship as it currently exists between First Nations and the Canadian federal government may be seen as a product of well over 500 years of interaction.⁴ Indeed, so much of what happens today is the result of experiences of the past. Much of this history is defined by treaties between the Crown and First Nations – and much of the relationship by differing views as to whether treaties have been respected.⁵

Starting in 1701, the British Crown entered into treaties to with First Nations. Treaties are defined as solemn agreements that set out promises, obligations and benefits for both parties. Over the next several centuries, treaties were signed to define, among other things, the respective rights of Aboriginal people and government to use lands that Aboriginal people had traditionally occupied. Treaties include historic treaties made between 1701 and 1923 and modern-day treaties known as comprehensive land claim settlements. Treaty rights already in existence in 1982 (the year the Canada's Constitution was passed), and those that arose afterwards, are recognized and affirmed by Canada's Constitution.⁶

The British Royal Proclamation of 1763 prohibited the purchase of First Nation lands by any party other than the Crown. The Crown could purchase land from a First Nation group that had agreed to the sale at a public meeting of the group. Several treaties were signed after the Royal Proclamation. These include the Upper Canada Treaties (1764 to 1862) and the Vancouver Island treaties (1850 to 1854). Under these treaties, the First Nations surrendered interests in lands in exchange for certain other benefits, such as reserves of land, annuities or other types of payments, and certain rights to hunt and fish.⁷

Between 1871 and 1923, the Crown entered into treaties with various First Nations in the Canadian West and North that enabled the Canadian government to actively pursue agriculture, settlement and resource development of these regions. Referred to as the “Numbered Treaties”, as they are numbered 1 to 11, First Nations who occupied these territories ceded vast tracts of land to the Crown. In exchange, the treaties provided for such things as reserve lands and other benefits like agricultural equipment and livestock, annuities, ammunition, clothing and certain rights to hunt and fish. The Crown also made some promises regarding the maintenance of schools on reserves, or the provision of teachers or educational assistance. Treaty Number 6, for example, included the promise of a medicine chest.⁸

The federal government’s responsibilities for First Nations have evolved

The federal government has had responsibility for "Indians, and Lands reserved for the Indians" since the *British North America Act* of 1867. The *Indian Act*, first enacted in 1876, establishes the framework for this relationship, as do historic treaties. The Act sets out conditions affecting almost all aspects of life in First Nations communities and gives the Minister of Indian Affairs ultimate decision-making power.⁹

The *Indian Act* was enacted at a time when the federal and provincial governments provided far fewer programs and services to Canadians than they do today. The same holds true for historic treaties. Since then, governments, in particular provincial governments, have assumed greater responsibilities for their citizens, through legislation and regulations, in areas such as education, health care, social housing, employment, quality of drinking water, and the environment. The federal government has also gradually assumed a variety of additional responsibilities for First Nations, often parallel to those of the provinces.¹⁰

The government's relationship with First Nations has changed substantially over time, especially in recent decades. Initially, the federal government, primarily through Indian and Northern Affairs Canada and then Health Canada, delivered programs and services directly to First Nations communities. Over time, this changed as the federal government started to delegate the administration of programs to First Nations. In the 1980s, this process accelerated as the government began to transfer or devolve more responsibility to First Nations. While First Nations now deliver many of the programs funded by the federal government, they continue to operate under delegated authority, and the ultimate responsibility for programs still rests with the departments' ministers. The relationship is still evolving, with continued emphasis on the transfer of program administration to First Nations and self-government initiatives. The relationship between Canada and First Nations is considered by the courts as *sui generis*, meaning special and unique.¹¹

The mandate and role of the Office of the Auditor General of Canada

One of the most important roles of Parliament in Canada is to hold the federal government to account for its use of taxpayer dollars. To do this effectively, parliamentarians need objective and fact-based information about how well the government raises and spends public funds.

The Office of the Auditor General is an independent and reliable source of such information. The Auditor General is an Officer of Parliament who reports to the House of Commons. Parliament has granted the Office specific powers and responsibilities, to ensure its independence. The Office carries out audits of some 100 departments and agencies, and some 40 Crown corporations.

The first Auditor General of Canada was appointed in 1878, and the role and mandate of the Office has evolved over time. A seminal point in time for the Office was in 1977, with new legislation, the *Auditor General Act (1997)*, which clarified and expanded the Auditor General's responsibilities. In addition to looking at the accuracy of financial statements, the Auditor General was given the mandate to examine how well the government managed its affairs. As the federal government's legislative auditor, the Office now carries out financial audits, special examinations and performance audits.

Performance audits are systematic and objective examinations of government activities that seek to answer the following questions – Are programs being run with due regard for economy, efficiency, effectiveness and environmental impact? Does the government have the means in place to measure their effectiveness? Performance audits do not question the merits of government policies. Rather, they examine the government's management practices, controls and reporting systems based on its own public administration policies and on best practices. The Office reports its findings, which may include areas that are working well and recommendations for improvement.

Our current Auditor General commenced her 10-year term in 2001. She identified five areas that she wished to focus on during her term, designed to assist the Office in both planning and reporting on the results of our audit work. One of these focus areas is aboriginal issues – with the intent being to contribute to the quality of life and well being of Aboriginal people by focussing our work on the social, economic, and environmental conditions and challenges they face. This strategy resulted in the Office undertaking a number of performance audits. As well, the Auditor General established a Panel of Advisors on First Nations Issues, intended to provide objective advice as the Office undertakes work in this area.

Why the Office of the Auditor General of Canada undertook this audit

According to numerous sources, including the Royal Commission on Aboriginal Peoples, Canada's First Nations communities face persistent challenges such as high rates of unemployment, poverty, and health problems. The federal government is responsible for fulfilling treaty and fiduciary responsibilities to First Nations people—lawful obligations that arise from treaties, the *Indian Act*, and other legislation. It is also responsible for

delivering to First Nations communities social and economic programs that can directly improve the lives of the people living there—programs similar to those provided by the provinces, territories, and municipalities elsewhere in Canada. Despite the number of programs and services targeted to First Nations people that address issues such as housing, health care, education, and economic development, the conditions in many First Nations communities and of many First Nations people remain significantly below the national average.¹²

As well, our audits since 2000 (and indeed before this) observed significant problems and challenges in the design and deliver of programs and services directed to First Nations. Our annual monitoring of progress of departments in implementing our recommendations made in these previous reports indicated that while progress was being made in some cases, in others there was a lack of progress.

The Office decided to undertake a follow-up performance audit to assess progress federal departments had made to responding to our recommendations. However, it decided to pursue a somewhat different methodological approach that typically utilized for follow-up performance audits – one that relied not only on performance audit methods and approaches, but that also borrowed from program evaluation methodology.

The audit methodology

The first part of the audit involved utilizing the Office’s established performance audit methodology – identifying audit objectives, setting out the scope, establishing audit criteria, and undertaking examination work. Our audit objectives were to assess the progress that federal departments had made in implementing our recommendations in seven previous reports on First Nations programs; and to identify, as a result of this assessment, the factors that enabled or impeded federal organizations in their efforts to implement our recommendations. Our criteria were that we expected each federal organization to have: implemented the recommendations for which they are responsible; implemented the recommendations within the time frames and according to the commitments originally made; set out revised time frames in which to implement recommendations, where original time frames or commitments had not been met; and identified barriers to their implementation, where revised time frames had not been set out for implementing recommendations.

For each of the 37 recommendations for which we assessed progress, we reviewed files, statistics, and other documentation that organizations submitted to our Office as part of our ongoing monitoring. We then conducted interviews and reviewed documentation at the headquarters of key federal organizations delivering programs and services to First Nations. We also conducted interviews and detailed file reviews in selected regional offices of these organizations. As well, we established an audit advisory committee, composed of external experts in the field of First Nations issues, to provide us with objective advice and guidance as we undertook the audit. Figure 1 sets out an example of our assessment related to one of the recommendations.

As part of this audit, we went a step further than is typically the case. In most performance audits there are audit observations but not an attempt to get at the “whys” – the deeper reasons behind observations. However, given the lack of progress on key recommendations, and the fact that in some cases several years has elapsed with little change, the auditors attempted to get at some of the deeper reasons for the lack of progress.

Based on our audit findings we sought to identify factors that appeared to have been critical in the successful implementation of our recommendations. We then interviewed senior officials across government who provided their views on factors they considered important to improve the lives of First Nations people at a more general and broad-based level than our specific recommendations. We also gained the perspectives of selected First Nations representatives, both at program-specific and more general levels. Finally, our cumulative observations, gained through numerous audits and over several years, were also reflected in this assessment.

Figure 1: Example of reporting of progress in implementing a recommendation

Audit	Recommendation	Our assessment of progress	Rating
Federal government support to First Nations – Housing on Reserves	Indian and Northern Affairs Canada, Canada Mortgage and Housing Corporation, and Health Canada, in consultation with First Nations, should develop a comprehensive strategy and action plan to address the problem of mould on reserves.	Indian and Northern Affairs Canada, Canada Mortgage and Housing Corporation, and Health Canada have not developed a comprehensive strategy and action plan aimed at mitigating mould in houses on reserves. Instead, each federal organization is active with its own program, which collectively entails education, training, assessments, renovations, and research on mould and prevention techniques. Without a strategy and action plan, the scale of the problem has not been identified, priorities for action have not been established, and there is no comprehensive plan for co-ordinating departmental efforts or monitoring overall progress.	Unsatisfactory — Progress is unsatisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.

The audit findings

Overall, the federal government's progress in addressing our 37 recommendations on First Nations issues has been unsatisfactory. While the issues are extremely complex, federal organizations had agreed with most of our recommendations and had committed to taking action. We found their progress on 15 of our recommendations to have been unsatisfactory. These are generally the recommendations that are most important to the

lives and well-being of First Nations people. Progress to date has been satisfactory on 22 of our recommendations, although in most cases implementation is not yet complete. These recommendations tend to be more administrative in nature and have less direct impact on the lives of First Nations people. In the following paragraphs key findings by area are summarized.¹³

Health programs: The audit found improvements in the administration of health programs funded through agreements – the preparation and use of community health plans, increased controls to ensure that funding is used effectively and targeted to community practices. However, we found that the government has been slow to monitor the use of prescription drugs, to intervene where potentially in appropriate use of prescription drugs was observed.¹⁴

Housing on reserves: The audit found improvements made in managing First Nations housing programs, including the better integration of various programs. However, it also observed that mould contamination in houses in reserves continues to be a significant problem.¹⁵

Land claims: The audit found that the federal government has not evaluated comprehensive land claims agreements, meaning that it has not measured and reported on whether the implementation of land claim agreements has been successful.¹⁶

Reporting requirements: The audit found that a lack of meaningful action by the federal government to reduce the unnecessary reporting burden placed on First Nations communities and to develop more efficient procedures for obtaining information required.¹⁷

Economic development: The audit found the federal government, in consultation with First Nations, has identified, planned, legislated, and begun to establish new First Nations institutions which, among other things, are intended to provide First Nations with the access and private capital enjoyed by other governments.¹⁸

Factors that appear to have been critical in implementing our recommendations

As a result of our follow-up audit work, as well as interviews with senior officials across the federal government, we identified seven factors that appear to have either enabled the successful implementation of our recommendations or, by their absence, hindered their implementation and, in turn, impeded significant change in the lives of First Nations people.

Sustained management attention. Management's sustained attention is critical to realizing substantive change in government generally. Officials we interviewed emphasized that sustained attention on the part of senior management will be required to effect lasting change. While much remains to be done in many areas, the continued attention, leadership, and commitment of senior management to sustained action are required if the

government is to successfully implement all our recommendations and make First Nations programs more effective.¹⁹

Co-ordination of government programs. Co-ordination among federal organizations delivering similar programs is crucial to efficient and effective programming and to implementing many of our recommendations. These recommendations point to the need for organizations to co-ordinate their programs and the requirements they place on First Nations. Senior federal officials we interviewed emphasized that the lack of a co-ordinated approach to First Nations programs is often a problem. They also noted that programs, many of which are similar, are typically "stove-piped"—that is, they are narrowly defined and often overlap and duplicate each other. Our findings indicate that it is possible for federal organizations, working with First Nations, to co-ordinate the planning, management, and delivery of programs.²⁰

Meaningful consultation with First Nations. We found that meaningful consultation often contributes to or results in significant change. Meaningful consultation refers to open engagement and dialogue between the federal government and First Nations on the objectives to be achieved and the means of attaining these. More than half of our recommendations highlight the importance of organizations moving forward in consultation with First Nations. For the most part, we found that federal organizations made satisfactory progress in implementing recommendations that included engaging in meaningful consultation with First Nations.²¹

Developing capacity within First Nations. The federal government's success in implementing many of our recommendations has depended in large part on the capacity of the First Nations to carry out the implementation of programs in their communities. In our previous chapters on housing on reserves, third-party intervention, and economic development, we noted the need for more effective capacity development of First Nations. The government agreed with our recommendations and has started to work with First Nations to develop the institutions required to provide them with the technical support they need to deliver effective programs. Federal officials we interviewed stressed the importance of capacity building and development as a means to improve delivery of programs.²²

Establishing First Nations institutions. We found that establishing First Nations institutions is important to improve the health and the economic and social development of First Nations communities. Several senior officials we interviewed noted the importance of developing a stable and professional First Nations public service to administer programs devolved by the federal government, and that establishing First Nations institutions could facilitate this. Several First Nations institutions recently developed hold promise for greater investment and economic opportunities in First Nations communities. Given the need and importance of such institutions, and the interest of First Nations in developing them, the opportunity exists to establish more of these institutions.²³

Appropriate legislative base for programs. A legislative base for programs clarifies respective roles and responsibilities, eligibility, and other program elements. For example, in the area of prescription drug use analysis and the potential for serious harm caused by the misuse of prescription drugs, we noted the absence of specific enabling legislation and recommended that the Department seek a renewed mandate to clarify the authority base, purpose, and objective of the program. In this case, the absence of a legislative base caused confusion among government officials and clients about the jurisdiction, allocation of responsibilities, and rights of the Department and clients. Senior officials have also noted the importance of such a mandate for identifying and clarifying the rights and obligations of both the federal organization and its clientele.

Often, existing legislation is seen as inadequate in today's complex and rapidly changing environment. For example, the *Indian Act*, established in 1876, is widely considered to be an outdated piece of legislation that, for the most part, does not address current issues. Housing, education, and health and safety are examples of areas where legislation now exists provincially but where there is little federal legislation that applies to First Nations.

In other cases, new legislation has served to provide a sound foundation for initiatives. The government has brought forward legislation for the successful conclusion of land claims and the development of new institutions. In addition, Indian and Northern Affairs Canada and First Nations have also co-operated in developing the *First Nations Land Management Act*, *First Nations Oil and Gas and Moneys Management Act*, and the *First Nations Commercial and Industrial Development Act*. We found that the processes leading to the successful legislation in these instances had the following common elements: First Nations proposed the legislation to address roadblocks to progress they had identified, and the legislation resulted from successful negotiations and addressed First Nations needs. We noted that the legislation assisted the federal government in meeting its stated policy objectives, and the legislation includes the provision for optional participation of individual First Nations.²⁴

Conflicting roles of Indian and Northern Affairs Canada. In many of the areas we examined in this audit, Indian and Northern Affairs Canada relates to First Nations in several different roles, sometimes at cross-purposes with one another. Senior government officials told us that they recognize that there is at least the appearance of conflict in the many roles that the Department is required to fulfill.

We noted this potential for conflict in the Department's roles in the area of negotiating and implementing land claim agreements, where the legalistic and narrow interpretation used to negotiate land claim agreements seems to have spilled over into their implementation. In our past work, we found that Indian and Northern Affairs Canada took the position that its responsibilities related to the implementation of land claim agreements should be defined by what the agreements state its obligations to be. First Nations have said that there must be a federal commitment to achieve the broad objectives of the land claim agreements and self-government agreements within the context of the new relationships, as opposed to the federal government strictly complying

with narrowly defined obligations. We believe that these differing roles of the Department create at least the appearance of a conflict and may have resulted in an erosion of trust between the Department and First Nations over time.²⁵

Conclusion

The Office of the Auditor General's performance audit on the management of programs for First Nations was undertaken not only to follow up on whether previous audit recommendations had been implemented, but also in order to identify factors that appear to have been critical to the successful implementation of our recommendations. This audit utilized performance audit methodology but relied on some of the methodology employed in program evaluators. Ensuring that these factors are fully considered when adjusting existing programs and implementing new ones will make a significant difference in the lives of First Nations people.

¹ The Constitution Act, 1982, Section 35.

² Indian and Northern Affairs Canada. "Information – Definitions", March 2000, pages 1-2.

³ Statistics Canada. 2001 Census: analysis series. Aboriginal peoples of Canada: A demographic profile. Catalogue no. 96F0030XIE2001007, page 6.

⁴ Report of the Royal Commission on Aboriginal Peoples - Highlights. Chapter 1: Looking Forward, Looking Back, page 1.

⁵ Office of the Auditor General of Canada. Study of Accountability Practices from the Perspective of First Nations. 1996 (September), paragraph 13.19.

⁶ Indian and Northern Affairs Canada. Treaties with Aboriginal People in Canada. March 2000, page 1.

⁷ Indian and Northern Affairs Canada. Treaties with Aboriginal People in Canada. March 2000, page 1

⁸ Indian and Northern Affairs Canada. Treaties with Aboriginal People in Canada. March 2000, page 2.

⁹ Office of the Auditor General of Canada. 2006 Status Report. Chapter 5. Management of Programs for First Nations. Paragraph 5.5.

¹⁰ Chapter 5, paragraph 5.7

¹¹ Chapter 5, paragraph 5.6

¹² Chapter 5, Main Points

¹³ Chapter 5, paragraph 5.13

¹⁴ Chapter 5, paragraphs 5.16 – 5.19, 5.28 – 5.33

¹⁵ Chapter 5, paragraphs 5.20 -5.23, 5.34 – 5.36

¹⁶ Chapter 5, paragraphs 5.40 – 5.46

¹⁷ Chapter 5, paragraphs 5.37 – 5.39

¹⁸ Chapter 5, paragraphs 5.24 – 5.26

¹⁹ Chapter 5, paragraph 5.51

²⁰ Chapter 5, paragraph 5.52

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- ²¹ Chapter 5, paragraphs 5.53 – 5.54
²² Chapter 5, paragraph 5.55
²³ Chapter 5, paragraph 5.56
²⁴ Chapter 5, paragraphs 5.57 -5.59
²⁵ Chapter 5, paragraphs 5.60 5.61