

## RESULTS AT A GLANCE – Evaluation of the Cabinet Directive on the Federal Approach to Modern Treaty Implementation

### Introduction

- The Cabinet Directive on the Federal Approach to Modern Treaty Implementation was adopted in 2015. The Cabinet Directive calls for a whole-of-government approach to managing Canada's modern treaty obligations and defines the roles and responsibilities of the federal government. It establishes an operational framework for the management of the Crown's modern treaty obligations and it requires the Government to enhance awareness, accountability, and oversight of modern treaty obligations.
- A modern treaty is a nation-to-nation relationship between an Indigenous people, the federal and provincial crowns and, in some cases, a territory. Modern treaties are established to define rights of Indigenous signatories in areas, such as land and resource rights, self-government, culture and language, fiscal relationships, etc. They are intended to improve the social, cultural, political, and economic well-being of the Indigenous peoples concerned. Modern treaties not only define the relationship between the Crown and Indigenous peoples, treaty rights are constitutionally protected and have the force of law that is binding on all – including federal legislation and policy.
- Canada is currently a signatory to 25 modern treaties, the scope of which includes thousands of obligations that the Crown must fulfill. While some of these obligations can be identified as the responsibility of a specific department or agency, others are the responsibility of many or even all departments and agencies. Accordingly, a whole-of-government approach is, in some cases, required to address these cross-cutting obligations, as well as any issues or risks that may impede their implementation.

### Expected Results

- Collectively, the requirements and expectations established in the Cabinet Directive aim to strengthen federal accountability, oversight, and awareness of the Crown's modern treaty obligations. Ultimately, the Cabinet Directive is intended to advance reconciliation with Indigenous peoples, strengthen relationships and foster strong socio-economic outcomes for Indigenous peoples across Canada, and prevent and manage costly legal and financial risk.

### What the evaluation found

- The Cabinet Directive remains relevant based on current government directions and in the context of expanding and evolving relationships and agreements with Canada's Indigenous peoples. There is a continued need for whole-of-government oversight and dialogue to foster understanding and awareness across departments, which in turn helps to strengthen federal accountability for their obligations under modern treaties.
- Early successes include the educational / awareness mechanisms and the Assessment of Modern Treaty Implications (AMTI) that, together with the Deputy Minister's Oversight Committee (DMOC), have increased understanding and commitment at different levels of the federal government.
- More attention should be placed on monitoring and coordination, both of which are critical enablers of an informed, accountable whole-of-government approach to modern treaty implementation.

## Recommendations and Responses

**It is recommended that Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC):**

- 1. In the context of the new Deputy Ministers' Committee on Indigenous Reconciliation, as well as the evolving discussions on the introduction of independent oversight mechanisms, review and adjust the DMOC Terms of Reference.**

*Response:*

The Policy, Planning and Coordination Branch (PPCB) will: review current Terms of Reference for DMOC and the Deputy Minister Committee on Reconciliation; work with the Policy and Strategic Direction Sector to assess mandate, membership of both committees to ensure alignment between function and role; and revise Terms of Reference to DMOC.

- 2. Ensure that the policy function within the Implementation Sector is appropriately equipped and positioned to support DMOC in their directional role under the Cabinet Directive.**

*Response:*

CIRNAC announced a reorganization, including moving the Modern Treaty Implementation Office (MTIO), which serves as the secretariat to the DMOC, into the PPCB, thereby enhancing policy capacity. It is anticipated that this realignment will help to better support DMOC in effectively conducting its role. The recommendation to use DMOC as a body to set policy priorities for the Implementation Sector should be assessed for pros and cons before determining its utility.

- 3. Make the completion of the Modern Treaty Management Environment a priority, putting in place robust project management practices to ensure that key tasks are planned and executed.**

*Response:*

To address data and Modern Treaty Management Environment (MTME) functionality issues, the Implementation Sector modified the MTME organizational structure, which now employs a shared responsibility between the Consultation and Accommodation Unit, responsible for system development, maintenance, upgrades, and MTIO, responsible for policy and content.

While the full rollout and implementation of the MTME remains an Implementation Sector priority, there remain significant challenges associated with obtaining regular input from other Government Departments (OGDs). These challenges include resource constraints, as well as broad understanding of functions and responsibilities of OGD officials in tracking and monitoring obligations. Roll-out of the system will proceed, while concurrently assessing resource requirements in tandem with OGDs.

- 4. Make the completion of the Performance Measurement Framework a priority and develop a fulsome data collection strategy within a reasonable period of time.**

*Response:*

The completion of the Performance Measurement Framework remains a sector priority. However, its development has been hindered by capacity issues facing the MTIO and Indigenous partners. Indigenous partners have a critical role to play in measuring implementation outcomes and in gathering primary data specific to their respective treaties. Indigenous capacity may be addressed through the Collaborative Fiscal Policy Development Process, though the level of investment is contingent upon policy decisions. Federal departments will also continue to be engaged to provide relevant data already being collected by them. MTIO has been working closely with other data collection activities underway in CIRNAC and across the federal system, and will continue to collaborate with other federal partners to streamline a data strategy.

- 5. Clarify and document processes for the clear and consistent identification, escalation and resolution of cross-cutting issues and disputes.**

*Response:*

Efforts to identify, escalate and resolve cross-cutting issues and disputes will recognize that: agreements generally contain a dispute resolution process; Treaty Management Directorates remain the first point of contact in efforts to resolve any dispute or issue with a treaty holder; and processes are unique to each individual agreement. MTIO will continue to work with partners to evolve a process for managing and coordinating issues, including raising issues to DMOC for direction.

**6. Strengthen the mechanisms by which the MTIO, departments and agencies can be held accountable to DMOC for the commitments made in response to the Committee’s direction and requests. This could include the introduction and regular use of an action log or other similar mechanisms.**

*Response:*

Mechanisms to enhance accountability to DMOC will be considered as part of the review of the Committee’s mandate, consistent with the response to the first recommendation in the Management Response and Action Plan.

**7. Establish a quality assurance function within the MTIO that is responsible for the periodic assessment of departmental/agency compliance with the AMTI process. Through this or other means, identify, harvest and share lessons learned in support of continuous improvement. Update the Cabinet Directive to reflect this as a role of MTIO.**

*Response:*

In winter 2020, MTIO completed a review of AMTIs concluded across government. Efforts will continue to support and/or enhance this review with the view of improving federal capacity. The implementation of this recommendation may require discussion with, and concurrence of, officials across government, including: central agencies, the DMOC on Modern Treaty Implementation.

**8. In collaboration with modern treaty holders, clarify and document expectations for engagements when conducting an AMTI, including how AMTI consultations relate to other triggers for engagement and to the principles of Cabinet secrecy.**

*Response:*

MTIO will continue to work with members of the Land Claims Agreements Coalition, other treaty partners, central agencies, and federal officials to revise guidance on AMTI-related consultation and engagement. The goal of amending the guidance is to assist federal officials in identifying and triaging key types of proposals where consultation or engagement should be undertaken. This guidance will clarify that the AMTI, in and of itself, is not an engagement or consultation tool; it is intended to ensure ministerial decisions take potential treaty implications into consideration for more effective policy or program development.

**9. MTIO should work with the Canada School of Public Service, departments, agencies, and modern treaty**

**holders to enhance the support provided with a view to strengthening awareness and capacity across the federal government.**

*Response:*

MTIO will continue to work with the Canada School of Public Service and other stakeholders to enhance the responsiveness of training and meet client needs. Training specific to federal executives will be developed and offered.

Department-specific training will continue, as will working with requesting departments to tailor the training to their specific needs.

### **About this evaluation**

The scope of the evaluation encompassed the activities established by the Crown-Relations and Northern Affairs Canada under the Cabinet Directive that support the whole-of-government approach to modern treaty implementation. The evaluation is intended to foster development and improvement and to assess the extent to which the Cabinet Directive, since its implementation in 2015, has realized early successes and results.