

RESULTS AT A GLANCE

Evaluation of CIRNAC's Negotiation of Treaties, Self-Government Agreements and Other Constructive Arrangements Program FY2013-14 to FY2020-21

Introduction

- The Treaties and Aboriginal Government (TAG) Sector within Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC) administers the Negotiation of Treaties, Self-Government Agreements and Other Constructive Arrangements Program (referred to as the Negotiations Program herein), which is a key program under the Department's core responsibility area of Crown-Indigenous Relations.
- The Negotiations Program supports Canada's commitment to the negotiation of treaties, self-government agreements and other constructive arrangements to reconcile Indigenous rights with the sovereignty of the Crown. The intent of the program is to co-create an enabling environment where Indigenous groups can exercise their inherent and treaty rights, and improve the political, cultural and socioeconomic conditions within their communities.

Program Resources

The evaluation reviewed the following funding streams:

- Contributions to support the Indigenous Nation Rebuilding Initiatives
- Contributions to supply services in Indian Government Support and to build strong governance, administrative and accountability systems
- Contributions to support the negotiation and implementation of treaties, claims and self-government agreements or initiatives
- Contributions for the purpose of consultation and policy development
- Contributions to promote social and political development in the north

- Grants to reimburse treaty negotiation loans to Indigenous groups who have settled a comprehensive land claim
- Expenditures for the Negotiations Program were approximately \$1.85 billion over the evaluation period.

Expected Results and Outcomes

- The Negotiations Program's activities and outputs are intended to contribute to the following outcomes: Canada and Indigenous groups work together in new fiscal relationships and co-develop solutions regarding the implementation of rights through discussions and negotiations, Indigenous groups rebuild their nations and have jurisdiction over their affairs, and Nation-to-Nation, Government-to-Government and Inuit-to-Crown relationships are improved.
- The ultimate program outcome and departmental result is that Indigenous peoples determine their political, economic, social and cultural development.

What the evaluation found

- **Relevance:** Legal imperatives dictates a continued need for the negotiation of treaties, self-government agreements and other constructive arrangements. While Indigenous groups have expressed cautious optimism of Canada's reforms to the Negotiations Program, there is widespread concurrence that mutually agreed arrangements between Indigenous parties and the Crown remain relevant and are in the collective interests of all Canadians.
- **Design and Delivery:** Policy, program and process improvements introduced over the evaluation period have contributed to substantially improving the negotiations process. However, with the introduction of the new RIRSD approach, delivery and

governance limitations have surfaced regarding the federal mandating and transparency relating to approval processes, the coordination of OGDs and PTs at the negotiations table, and the recruitment and retention of negotiators.

- **Efficiency and Economy:** The introduction of many improvements – most notably co-developed solutions during the early stages of negotiations through the RIRSD approach – improved the efficiency and economy of the negotiations process. While these have required additional upfront effort and resources, there have been substantial downstream benefit. Most importantly, negotiations have been expedited and the conditions have been created for improved cost containment.
- **Results-Based Management:** While components of a results-based approach were found, a stable performance framework at the program level, informed by stakeholders, to clarify interests, expectations and results, including service standards, was found to be largely absent.

Recommendations and Responses

It is recommended that CIRNAC:

1. **Improve governance structures and processes by streamlining decision-making and mandating processes, considering devolving funding authorities, and:**
 - **provide advice and support to OGDs to further adherence to reconciliation principles;**
 - **expand FSC-Policy mandate, TOR and membership to include Indigenous representation to be actively involved in negotiations program decision-making.**

Response: The Treaties and Aboriginal Government sector will look for opportunities to improve collaboration, including exploring ways for Indigenous participation to help enhance decision-making. The sector will undertake a review of the mandate and activities of the Federal Steering Committee on section 35 Rights and approval processes to identify opportunities to streamline processes, reduce

barriers and help accelerate the settlement of agreements.

2. **Work with OGDs to improve coordination and help improve accountability:**
 - **expand FSC mandate and TOR to be more involved in the coordination of OGDs and foster accountability against clear requirements amongst OGDs; and**
 - **introduce practical principles to guide operational deliberations, and OGD coordination and accountability.**

Response: The Treaties and Aboriginal Government sector will engage the Federal Steering Committee on section 35 Rights to advance a coherent, whole-of-government approach across federal partners involved in section 35-related negotiations and will explore new strategies to guide operational deliberations for working effectively with OGD partners.

3. **Modernize the policy framework to advance consistent approaches and pathways to timely resolution of repeat issues, and to assist Indigenous parties to better navigate the complex negotiations process and options available to them.**

Response: The Treaties and Aboriginal Government sector will work with partners to develop specific actions in support of co-developed approaches for the implementation of the right to self-determination through negotiated agreements, new policies and legislative mechanisms and undertake regular monitoring and assessment of negotiation tables to identify common issues and opportunities for policy reform. It will continue to support the implementation of the *Recognition and Reconciliation of Rights Policy for treaty negotiations in British Columbia (RRR Policy)*, and where there is interest, engage with negotiation partners elsewhere in the country for using the approaches found in the RRR Policy. The sector will also continue working on a governance funding continuum that builds from the co-developed approach for comprehensive self-government, that match the priorities of Indigenous groups.

4. **Establish a long-term plan to secure and retain skilled and experienced negotiators, address the lengthy onboarding process, and consider table succession planning.**

Response: The Treaties and Aboriginal Government sector will continue to assess and enhance its recruitment, skills and knowledge development, and retention planning to ensure the long-term sustainability and implementation of the negotiations program, including the consideration of specialized training to support and promote rights-based negotiations to ensure a consistent approach is applied to the negotiation process.

5. **Improve information sharing, subject to what is allowable, including with all parties at and across negotiations tables, and within CIRNAC, in order to provide updates on progress through the mandating process.**

Response: In collaboration with First Nations, Inuit and Métis partners, the Treaties and Aboriginal Government sector will explore the development of a public statement of Canada's rights-based approach for the negotiation of treaties, agreements and other constructive arrangements to replace the Comprehensive Land Claims and Inherent Right Policies. The Sector will also review and update related materials on CIRNAC's external website, review tools for sharing information with negotiation participants and roll-out the implementation and use of the Results Based Information System (RBIS) within the sector and externally with Other Government Departments.

6. **Improve the performance measurement process to allow it to be informed by all stakeholders, including Indigenous groups and OGDs, streamlining monitoring and reporting in order to improve central coordination, and maximize the use of RBIS to ensure data is readily available for program management.**

Response: The sector will ensure that greater reflection on what is heard from

Indigenous partners at negotiation tables is incorporated in the 2023-24 PIP, which is currently being revised and finalized, and as well, will work to ensure that greater reflection on what is heard from Indigenous partners is incorporated in future iterations. The sector will also continue to leverage existing internal tools, including table monitoring mechanisms, to assess progress at negotiation tables and will continue to explore options to improve RBIS, including enhancing the user experience.

About this evaluation

The evaluation focused on how CIRNAC's Negotiation of Treaties, Self-Government Agreements and Other Constructive Arrangements Program is delivered by the Treaties and Aboriginal Government (TAG) sector, and covered the period of April 1, 2013 to March 31, 2021. An Evaluation Working Group was convened to guide the evaluation process and to ensure diverse perspectives were reflected in the evaluation, with members from the evaluation team and representatives from various branches, including Negotiations West, Central, and East Branch, the Fiscal Branch, and the Policy Development and Coordination Branch.

Findings are based on the analysis of data from a document review, a review of performance data, 40 key informant interviews and 9 in-depth case studies of Negotiation Tables – which included an additional 40 interviews with representatives from GC, Indigenous organizations, and provincial and territorial representatives. The evaluation strived to ensure that a balanced perspective would be achieved in its data collection through the prioritization of identifying Indigenous representatives to interview to ensure for adequate Indigenous perspectives as part of key informant interviews and case studies.