

RESULTS AT A GLANCE

Evaluation of the Exceptional Contracting Limits Authority 2015-2016 to 2019-2020

Introduction

- The Exceptional Contracting Limits Authority (ECLA) allows the Minister of Crown-Indigenous Relations to enter into and renew non-competitive contracts with Contract Federal Negotiators (CFNs) for negotiations with Indigenous parties, and Crown Deponents (CDs) and Expert Witnesses (EWs) required for litigation.
- The authority provides Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC) the ability and flexibility to award and amend contracts, and to maintain the continuity of CFNs, CDs, and EWs. This supports the department's mandate to re-engage in a renewed nation-to-nation relationship with Indigenous peoples and to move forward with reconciliation and resolution.
- Management and oversight of the ECLA are dispersed across four sectors, based on the two authority streams: litigation and negotiations. The operational and administrative relationship with contractors rests with the business line project authorities/case managers. The authority, as with all contracts, is processed through the procurement hubs with the project authority/case managers leading the process.

Program Resources

- Expenditures for ECLA were approximately \$14.9 million over the evaluation period.

Expected Results and Outcomes

- The ECLA contributes to the following CIRNAC results:
 - Indigenous peoples determine their political, economic, social and cultural development.

- Past injustices are recognized and resolved.

What the evaluation found

- There is a continued need for negotiations and litigation activities. The ECLA serves as a key mechanism to appoint external negotiation and litigation resources. There has been a continued need to supplement CIRNAC's capacity with these types of external resources, a need that is expected to continue.
- The ECLA is managed in a similar fashion as a program, with robust governance, management, and financial management structures, an important factor facilitating the achievement towards the ECLA outcomes.
- There is a limited pool of appropriately qualified and diverse CFNs, CDs, and EWs.
- The ECLA has been instrumental in contributing to the advancement of key files through the appointment of CFNs, CDs, and EWs with the appropriate expertise, knowledge and experience.
- The ECLA is widely viewed as the most economical and efficient procurement arrangement available to efficiently appoint CFNs, CDs, and EWs.

Recommendations and Responses

- It is recommended that CIRNAC:**
1. **Establish the extent to which the ECLA is expected to support GBA Plus goals of promoting equality, diversity, and inclusion, and the implications on applying GBA Plus to negotiation and litigation. Incorporate these**

requirements into a recruitment and retention strategy to meet business needs and GBA Plus targets.

Response: Treaties and Aboriginal Government (TAG) sector will undertake several reviews to analyze common characteristics of CFNs while drawing on experience with integrating GBA Plus at negotiation tables. The sector will also work closely with the Chief Finances, Results and Delivery Officer (CFRDO) procurement services to incorporate the pathways identified into recruitment and retention strategies for CFNs.

The Policy and Strategic Direction (PSD) sector will work with the departmental GBA Plus champions to determine how the ECLA can support the goals of GBA Plus within the Department. For any pathways that are identified, PSD will work with the Department of Justice to develop strategies to promote GBA Plus goals while also meeting the business needs and reconciliation mandate of the Department.

2. Reassess the requirement for a performance measurement framework, considering

alternatives that are more suitable for monitoring a contracting mechanism.

Response: In Consultation with CFRDO procurement services, PSD will determine if more appropriate performance indicators for contracts can be used to monitor ECLA Expert Witness and Crown Deponent contracts.

Though the ECLA has modified its performance indicators and results in the recent policy renewal process, in consultation with CFRDO, TAG will take the opportunity presented through this Management Response and Action Plan to work with procurement services to determine if more appropriate performance indicators for contracts can be used to monitor ECLA CFN contracts.

About this evaluation

The evaluation focused on CIRNAC's implementation of the ECLA from April 1, 2015 to March 31, 2020. It included 30 key informant interviews, a document review, and a performance and data file review.