

Indian and Northern Affairs Canada

**Values and Ethics:
An Organizational Risk Assessment**

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Indian and Northern Affairs Canada

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Executive Summary

The objectives of this risk assessment were to identify INAC organizational values and ethics risks and risk drivers related to its management of billions of dollars of grant and contribution program funding. This paper attempts to explain current issues in values and ethics at INAC through an examination of the major cultural forces at work in the organization. The assessment found that regional managers are working today in an environment of dramatically increased accountability for the spending of public funds on and by First Nations while at the same time upholding a departmental culture grounded on the government's Inherent Rights Policy of wanting to foster a relationship of mutual respect, cooperation and self-governance with the same people. It also found that INAC staff believe that one of the unstated but high priority INAC objectives is to "keep the peace" and that, in part, this means that the money needs to "keep flowing." As well, they need to maintain a relationship with representatives of First Nations on a personal level. As a result of these potentially conflicting pressures managers may at times bend policies and authorities.

To address the concerns identified in this study, INAC could take a comprehensive approach requiring major cultural change within the organization that would involve INAC defining the nature of its operational, front-line working relationships with First Nations. Specifically, it could define its expectations of how it wants regions to carry out their various stated and unstated roles, particularly how the department wants regions to relate to First Nations. Part of this effort could involve special training for INAC staff, particularly RDGs, ARDGs and FSOs, on negotiation and mediation skills in the context of First Nations culture. A mentoring and consultation network could also be established, perhaps using trusted retired INAC officials, where confidential advice on how to handle difficult situations can be obtained. At the same time, INAC would need to inform First Nations of the constraints and limitations under which regions operate and ask First Nations to develop their own set of complementary expectations on how they will relate to INAC and its regions.

Similarly, a mutual set of operating expectations could be established between INAC Headquarters program and corporate functions and INAC regions. In addition, it would be desirable for headquarters and regional staff to have the opportunity to spend time in each other's position to ensure mutual understanding of the pressures on INAC decision-making. This would foster collegiality in dealing with problems when they arise.

Fostering ethical conduct in an organization calls for an appreciation of the larger context within which organizations are operating, and also of the particular cultural forces at work within the organization that motivate behavior. Only if these realities are understood can senior management create an optimal working environment in which clear and accepted standards of conduct support the program goals of the organization.

Indian and Northern Affairs Canada

Values and Ethics: An Organizational Risk Assessment

1. Introduction

The objectives of this risk assessment were to:

- Identify Indian and Northern Affairs Canada's (INAC) organizational values and ethics risks,
- Identify the drivers of the risks,
- Assess the impact of the values and ethics risks on INAC management controls, compliance systems, and human resource management,
- Review INAC arrangements to mitigate the risks, and
- Identify options to address any gaps identified.

The risk assessment focused on INAC regional delivery of transfer payments to First Nations below the 60th parallel. This focus was chosen because of the size of the funding and the critical role of INAC regions in delivering INAC transfer payment programs.

This project was undertaken as part of INAC's Risk-based Audit Plan 2008-2009 to 2010-2011 which identified a risk assessment of values and ethics to be completed in 2008-2009.

2. How We Approached This Study

The assessment sought to identify the key organizational cultural factors that could contribute to values and ethics misjudgments by INAC officials and to acts ultimately considered to be wrongdoing. This approach is similar to that used by the Columbia Accident Investigation Board's independent investigation into the February 1, 2003, loss of the Space Shuttle Columbia.¹ It differs from traditional risk analysis that identifies risks in terms of infrastructural vulnerabilities, e.g., information for decision-making, Human Resource capacity and capabilities risk, and program alignment risk.

Our approach focused on examining the context in which funding decisions are made, particularly, the culture of INAC – the values, norms, beliefs and practices that govern how it functions, and its bureaucratic environment, principally, the new accountability regime. We interviewed regional staff, primarily

¹ Columbia Accident Investigation Board, August 2003, http://www.nasa.gov/columbia/home/CAIB_Vol1.html

Regional Directors General (RDGs) and Funding Services Officers (FSOs), and INAC headquarters staff, including program and Corporate Directors General.

The findings reported reflect these discussions. Interviewees were assured that the interview would be confidential and that no attribution would be made to individual INAC officials. Quotes and paraphrases from these discussions are used, however, to illustrate key points.

The questions used to initiate the discussion were:

1. What are the values and ethics dilemmas you and your staff encounter in delivering the INAC transfer payment program?
2. What are the pressures that create these dilemmas? Do they relate to: a) the program structure; b) the delivery method, c) legislative requirements, d) central agency requirements, e) the new accountability regime, f) headquarters requirements and level of support, g) relationships with aboriginal communities, or h) staff expectations?
3. How can conflicting pressures be resolved or mitigated?

3. Why Organizational Culture is Important

This study examined how INAC organizational culture may result in violations of rules and procedures, sometimes in a significant way. Why is organizational culture important? The culture of an organization is important because it reflects fundamental ethical values which structure the patterns of thought and perception of its staff. Culture creates the language and work norms summarized in the phrase “the way things are done around here.” It influences the range of choices that managers will view as rational or appropriate in a given situation.

A culture that stresses cost-control, adherence to rules, and meeting project deadlines to the disadvantage of deep organizational cultural values may inadvertently encourage staff to bend rules to achieve program objectives.

The concept of cultural and bureaucratic causes of unethical conduct, as opposed to individual failure, can be debated. Investigations seek the cause of unethical conduct in the failure of individuals. Audits seek the cause in lack of adequate systems and procedures or in compliance failures of individuals.

This study assumes that causal chains can be complex, that things that happen today do not appear *de novo* -- that they are to a significant degree the culmination of events that occur over time. It also assumes that context is important, that ignoring context often misses the essence of the problem and results in a tunnel vision leading to ineffective solutions. For example, when the focus is limited to systems and procedures and violations of policies and rules,

and individual failures, then actions to fix the problem focus on steps to foster individual responsibility or improve systems and procedures. Once these corrective actions are taken they lead to the belief that a problem has been resolved. However, in reality the root causes of the problem remain because in complex systems, few causes are the sole source of the problem.

4. The Evolving Relationship with First Nations

INAC has relationships with over 600 First Nation and Inuit communities. Most Status Indians live in rural communities, about 60 percent of First Nations communities have fewer than 500 residents, and about 40 percent of the Status Indian population is under the age of 20. Thirty-four federal organizations fund about 360 programs and services for First Nations, Inuit and Métis communities. INAC programs include education, social assistance, business development, community infrastructure and governance.

INAC staff work in an evolving policy environment where emphasis shifts between INAC devolving governance responsibilities to First Nations and maintaining accountability for the expenditure of public funds and ensuring, monitoring and reporting on the achievement of the outcomes envisioned by its various programs. Historically, the policy relationship with First Nations has been colonial and paternalistic. This history continues to colour the INAC-First Nations relationship. The continuing need to develop a viable new relationship with First Nations led, in 1995, to the adoption of the Inherent Rights Policy.

The objectives of the Inherent Rights Policy were to build a new partnership with Aboriginal peoples and to strengthen Aboriginal communities by supporting stable and sustainable Aboriginal governments and greater self-reliance. Self-government agreements would allow Aboriginal groups to govern their internal affairs and assume greater responsibility and control over decision-making. This policy anticipated the recommendations of the Report of the Royal Commission on Aboriginal Peoples: People to People, Nation to Nation. The Report proposed four principles as the basis for a renewed relationship: recognition, respect, sharing and responsibility.

First Nations now deliver many programs funded by INAC but they continue to operate under delegated authorities and the ultimate responsibility for programs still rests with INAC.

5. The Evolving Accountability Regime

The current, and still evolving, accountability regime requires greater attention to policies and rules. Recent drivers of this evolution are the:

- Treasury Board's Transfer Payment Policy (October 1, 2008), Management Accountability Framework reporting requirements (Summer 2003), and the Evaluation Policy (April 1, 2009)
- Amendments to the *Financial Administration Act* stemming from the *Federal Accountability Act* designating deputy heads as Accounting Officers, requiring the review of the relevance and effectiveness of programs every five years, and empowering audit committees and audit functions.
- An Office of the Auditor General (OAG) newly empowered by the Federal Accountability Act to inquire and report on recipients of funding agreements, such as grants and contributions.

Recent reports of the OAG and of INAC Audit and Assurance Services reflect the increased emphasis on compliance with authorities and policies and on measuring performance and situate the cause of problems in individual failure or inadequate policies and financial and management controls.

INAC regional staff indicated that they are aware that INAC headquarters is under pressure from central agencies and the Office of the Auditor General to fully implement an enhanced accountability regime. INAC headquarters program and corporate staff are seen by regional staff as tending to give primacy to authorities and policies and the need for accountability rather than the on-going need of maintaining a reasonable working relationship with First Nations. INAC regions, while accepting the need for accountability, see the evolving accountability regime as increasingly limiting their discretion and ability to maintain the relationship.

6. What INAC Staff Told Us

INAC regional staff, particularly RDGs and FSOs, see themselves as the front-line representatives of the Department and the Government of Canada to communities that define themselves as "Nations." Funds and resources are provided to these Nations by INAC on behalf of the Government of Canada via transfer payments characterized in a variety of grant and contribution programs and agreements or through capital projects with INAC retaining ultimate responsibility and accountability. In this approach, First Nations are, in a sense, "delivery agents" of INAC programs.

INAC regional staff indicated that they are guided by the values of self-government, partnerships, devolution, consultation and consent and these principles guide their relationships with First Nations. Regional staff use the phrase "maintaining the relationship" to summarize these values, although, when asked, they frequently cannot explicitly define what the phrase means, or the implications of those values for their conduct as officials.

INAC does not have a policy that clearly articulates its relationship with First Nations. Thus, staff develop their understanding of the relationship and of the importance of policies based on their own experience, values, and on the values of their peers, their interaction with First Nations, and the expectations of First Nations.

First Nations are Political Entities. INAC officials stated that First Nations view transfers of funds and resources as constitutional and treaty entitlements. As one official put it “They see the money and resources are theirs in the first place.” Another official summarized the perspective of First Nations’ in the following manner.

What they want is government to government – they don’t want to talk to bureaucrats who tell them what they can do with the dollars, they don’t want to report to INAC. Ultimately what they see is they are sovereign, have their own governments, autonomous, managing as well as other governments. You should transfer the dollars to First Nations like a province and they will send a report once a year.

Regional staff indicated that at the working level First Nations representatives develop their own understanding of their relationship with INAC regional staff and INAC authorities and policies. Regional staff also believe that while First Nations are aware that INAC officials are bound by authorities and policies, most do not have a full understanding of this framework and the constraints it creates.

INAC staff reported that one of the unstated but high priority INAC objectives is to “keep the peace” and that, in part, this means that the money needs to “keep flowing.” As well, they need to maintain a relationship with representatives of First Nations on a personal level. As a result, one corporate INAC official observed, regions develop their own sub-policies and different types of processes emerge.

Regional staff observed that as INAC becomes more prescriptive on how First Nations should manage programs, First Nations are becoming increasingly upset – “they are trying to figure out what it’s all about – they see a lack of trust. The consequence is more negative meetings and political blow back.” As a result, they note, it becomes increasingly difficult to accomplish anything because of the “rules.”

INAC regions indicated that the motivations of Chiefs in Council are aspirational, political and personal. Thus, Chiefs in Council see a good part of their job as putting pressure on INAC front-line staff to find dollars. INAC regions also noted that Chiefs talk to each other to compare the benefits that other First Nations are receiving from INAC and that disparate practices among the regions can lead to pressures for similar funding across regions.

INAC regions stated that they understand that First Nations, as recognized political entities, can and do go outside the regional-First Nation relationship to bring their needs and demands for funds, and complaints about individual INAC staff, particularly RDGs, to senior headquarters officials, including the Deputy Minister and to Ministers. INAC regions are well aware that Chiefs can write to the Prime Minister, and can hence apply political pressure at any level.

Regions expect to get support from Ottawa when they have said “no” to Chiefs, and Chiefs subsequently go to Ottawa. “Everybody has to be on the same page,” one regional official stated. There was no consensus among regional staff that a region could depend on Ottawa for support, and they noted that variations in regional practices may make it difficult to support a “no” decision on a request already approved elsewhere.

First Nations Capacity to Manage Programs. INAC staff indicated that building the governance capacity of First Nations is a key objective of INAC and First Nations. Almost all First Nations provide services to their members under delegated authority from INAC although the department retains responsibility for ensuring due diligence. INAC regions indicate that many First Nations do not yet have sufficient capacity to manage programs. This situation, they said, places INAC regions in the difficult position of reconciling accountability demands and maintaining the relationship with First Nations. As a result, regions told us that they may bend the rules to allow funding to continue rather than cut off needed funds.

The Role of Regions and RDGs. Regions indicated that they represent INAC at the working level. RDGs are the senior field representatives. RDGs indicate that they do not receive mentoring or special training in negotiation or mediation within a First Nation context. Their skill set is based on their experience.

INAC regions believe that First Nations see them, particularly RDGs, as being there to serve them, that the funds they receive are their funds, not those of taxpayers’. RDGs play several roles walking a fine line between political representative of the Government of Canada, administrator of public funds, and representative of First Nations to Ottawa. RDGs also indicated that they have to deal with dissident factions within First Nations, and that sometimes it is hard to figure out what is behind the discord, whom to believe, and whether there is a real problem. One INAC official describes the RDG’s “span of control and span of problems” as being “off the charts.”

RDGs indicated that they are concerned that the reductions in discretion flowing from the evolving accountability regime will put them in the position of messenger rather than manager. They also indicated that they are concerned that a result of taking away management discretion will be “technocratic decision-making” which will favour those First Nations with the capacity to submit strong proposals.

INAC officials also reported that their relationship with First Nations may be complicated by INAC's practice of obtaining the input of First Nations on the appointment and performance assessment of RDGs and ARDGs.

INAC regions indicated that they do not believe that INAC headquarters and central agencies have a good sense of the impact of policies and rules on regions and their relationships with First Nations. INAC regions note that when First Nations don't use funds within the parameters of the terms and conditions of agreements, the regions will be held accountable. In part, the regions attribute instances of lack of compliance by First Nations to the fact that First Nations do not have a good understanding of the impact of funding agreements. They told us that there is no protocol to orient them and no arrangement for transmission of information to new council and new members. And, if regions choose to not transfer funds for accountability regime reasons, regions believe that this would not be accepted as a legitimate reason for not delivering the program.

Funding Service Officers (FSOs). FSOs believe that they are the front-line of INAC in relation to First Nations. They deal directly with elected First Nations representatives and INAC relies on them to protect the taxpayers' interest while maintaining a relationship with communities that expect to be treated as sovereign governments, and who may see the FSO as their representative to Ottawa.

FSOs told us that they do not have special training, that they "develop their skills as they work, they pick up the phone, they learn from contacts."

FSOs note that they are dependent on regional senior management to support them, and that First Nations that are dissatisfied with an FSO can issue a banning order barring the FSO from the reserve. Sometimes, FSOs told us, regions respond by changing FSOs rather than deal with the substantive issue of disagreement.

Gray Zones. INAC regions reported that the funding for mandatory programs has not kept pace with population and cost increases. In the past INAC has taken advantage of gray areas – areas where program authorities can be argued to be subject to interpretation -- to move funds between programs to address priorities.

First Nations "hate you when you're not flexible, but when you don't follow rules it's a slippery slope," said one interviewee. The Manitoba Region forensic audit report illustrates what can happen. The construction of the Governance House Project illustrates this point. The report found that this project did not qualify for funding under the program authority used by the Manitoba region. In response, Manitoba regional officials explained that the authority used was a "pretty wide open authority," but agreed that from the vantage point of 2008 the spending in early 2006 "looks like it doesn't fit." However, they noted,

You know, you can't just start applying today's rules to yesteryear. There was a convention of practice and you're – you know, this isn't quite as clear cut as it may look. ...there was far more flexibility in the systems. ...Now, there are still gray zones, but the gray zone used to be very large and that has been ratcheted down (p.50).

Still, the quotation from Ron Evans, Grand Chief of the Assembly of Manitoba Chiefs in the forensic audit report indicates the extent to which violations of authorities and policies appear to have become an accepted and a long-standing practice.

Evans is quoted as saying:

...INAC Manitoba's director and other senior managers often made side deals with bands outside the rules to ensure the bands got the funding they needed for housing, education, child care or other programs. (p.28)

Regions told us that greater emphasis on financial controls is narrowing gray areas and reducing their capacity to make up short falls in mandatory programs, e.g. social assistance or education, or to continue to provide funding to areas where funding has been stopped due to the failure of the First Nation to file a necessary report.

Other Factors that Affect Compliance with Authorities and Policies. INAC staff noted several general factors that can affect compliance with authorities and policies. INAC staff told us that on a personal level, they do not like violating authorities and policies, but that variations from authorities and policies can result from them taking risks to solve a problem that needed to be solved.

At times, they said, the Ministers may make unbudgeted commitments to First Nations for which the department then has to scramble to find funding. "If the Minister wants something, people will sometimes do the wrong thing to deliver on it." However, they also noted, it is important to keep in mind that Ministers may also make commitments for humanitarian reasons, because they are doing the morally right thing, although as a result administrative rules are broken."

INAC staff also emphasized that it has to be recognized that INAC is the agency of last resort for First Nations. Traditionally, First Nations view the federal government as having full responsibility for First Nations. INAC staff indicated, that in practice, this means that INAC may have to step in to meet basic needs of First Nations despite not having the clear program authority in particular cases. Similarly, INAC may have to step in because federal partners are hesitant to act.

7. Conclusion

The objectives of this risk assessment were to identify INAC organizational values and ethics risks and identify the drivers of the risks. This paper attempts to explain current issues in values and ethics at INAC through an examination of the major cultural forces at work in the organization. It shows that regional managers are working today in an environment of dramatically increased accountability for the spending of public funds on and by First Nations while at the same time upholding a departmental culture of wanting to foster a relationship of mutual respect and cooperation with the same people.

INAC staff reported that they focus on respect for aboriginal peoples and fostering self-governance through the devolution of responsibility. In the past, INAC regions had a large degree of autonomy and discretion. They used this discretion to manage the relationship with First Nations. Fulfilling this management responsibility may have required in some instances not fully respecting authorities and policies in order to address the needs and demands of First Nations who may not have the capacity to manage the delegated authority and funds transferred to them. In some cases, audits and management reviews discovered mismanagement of programs, both in Ottawa and in regions, as a result of practices that varied from official rules, but which INAC staff believed responded to the needs and demands of First Nations.

Since the problems in Human Resource Development Canada and the Sponsorship affair, Parliament and the Government of the day have taken increasing steps to strengthen the accountability regime within which program managers operate. As a result, the regions have lost (and are continuing to lose) a significant amount of their management discretion. Regions believe that their regional management discretion is being excessively narrowed and that this has the potential to significantly reduce their capacity to manage the relationship with First Nations.

To address the concerns identified in this study, INAC could take a comprehensive approach requiring major cultural change within the organization. INAC could define the nature of its operational, front-line working relationships with First Nations. Specifically, it could define its expectations of how it wants regions to carry out their various stated and unstated roles, particularly how the department wants regions to relate to First Nations communities. Part of this effort could involve special training for INAC staff, particularly RDGs, ARDGs and FSOs, on negotiation and mediation skills in the context of First Nations culture. A mentoring and consultation network could also be established, perhaps using trusted retired INAC officials, where confidential advice on how to handle difficult situations can be obtained. At the same time, INAC would need to inform First Nations of the constraints and limitations under which regions operate and ask First Nations to develop their own set of complementary expectations on how they will relate to INAC and its regions.

Similarly, a mutual set of operating expectations could be established between INAC Headquarters program and corporate functions and INAC regions. In addition, it would be desirable for headquarters and regional staff to have the opportunity to spend time in each other's position to ensure mutual understanding of the pressures on INAC decision-making. This would foster collegiality in dealing with problems when they arise. A good statement of the approach to establishing a mutually clear set of expectations between INAC and First Nations and between INAC regions and INAC headquarters could be "This is how we are going to work together. I'll respect you, you respect me. I'll tell you what I can do and what I can't do. You tell me what you can do and what you can't do." This approach would allow INAC staff to follow the advice of one senior INAC official who argued that the appropriate way of dealing with pressures to vary from policy is to say "I can't do this under the circumstances."

Fostering ethical conduct in an organization calls for an appreciation of the larger context within which organizations are operating, and also of the particular cultural forces at work within the organization that motivate behavior. Only if these realities are understood can senior management create an optimal working environment in which clear and accepted standards of conduct support the program goals of the organization.