

Chapter

# 5

Management of Programs  
for First Nations

*All of the audit work in this chapter was conducted in accordance with the standards for assurance engagements set by the Canadian Institute of Chartered Accountants. While the Office adopts these standards as the minimum requirement for our audits, we also draw upon the standards and practices of other disciplines.*

# Table of Contents

<b>Main Points</b>	145
<b>Introduction</b>	147
Canada's relationship with First Nations has changed	147
The federal government has added responsibilities over time	148
The government continues to search for solutions to long-standing problems	149
Focus of the audit	149
<b>Observations and Recommendations</b>	150
<b>Progress being realized</b>	150
Improvements have been made in administering health programs funded through agreements	158
Improvements have been made in managing First Nations housing programs	159
The government has established more institutional arrangements for economic development	159
<b>Urgent action needed to implement key recommendations</b>	160
Inadequate monitoring of prescription drug use continues	160
Mould contamination in houses on reserves continues to be a significant problem	162
Reporting requirements still need to be overhauled	163
Deficiencies in implementing comprehensive land claim agreements persist	164
Gaps in the Third Party Manager Policy have not been addressed	165
<b>Critical Factors</b>	166
<b>Factors that appear to have been critical in implementing our recommendations</b>	166
Sustained management attention	166
Co-ordination of government programs	167
Meaningful consultation with First Nations	167
Developing capacity within First Nations	168
Establishing First Nations institutions	168
Appropriate legislative base for programs	169
Conflicting roles of Indian and Northern Affairs Canada	169
<b>Conclusion</b>	170
<b>About the Audit</b>	173





# Management of Programs for First Nations

---

## Main Points

### What we examined

In this follow-up audit, we examined the progress of five federal organizations in implementing 37 recommendations we made between 2000 and 2003 on First Nations issues. The recommendations were included in chapters that covered housing on reserves, economic development, third-party intervention, health care, the food mail program, comprehensive land claims, and reporting requirements for First Nations. We also identified factors that appear to have been critical in successfully implementing our recommendations.

### Why it's important

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. However, even though the federal government spends billions of dollars a year—just over \$8 billion in 2004–05—on 360 programs and services targeted to Aboriginal peoples that address issues such as housing, health care, education, and economic development, the conditions in many First Nations communities and of many Aboriginal peoples remain significantly below the national average.

### What we found

- 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. We found that little had been done to deal with the serious problem of mould in houses on

reserves. We also found that progress has been unsatisfactory in analyzing patterns of prescription drug use and drug-related deaths among First Nations people, implementing comprehensive land claim agreements, eliminating unnecessary reporting required of First Nations communities, and addressing gaps in the Third Party Manager Policy.

- 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. For example, we found that housing programs are now better integrated and many elements are now better managed by the responsible organizations.
- In this audit, we identified seven factors that appear to have been critical in the successful implementation of our recommendations. We found that organizations were more likely to have made satisfactory progress if programs and initiatives were well co-ordinated, received the sustained attention of management, and involved meaningful consultation with First Nations. In many cases, success in implementing our recommendations was linked to the capacity of First Nations to carry out programs in their own communities and to the presence of First Nations institutions that supported the communities' economic and social development. Further, ensuring that programs and initiatives were based on appropriate legislation helped to clarify roles and responsibilities, eligibility issues, and other program elements. Finally, the different roles of Indian and Northern Affairs Canada create at least the appearance of a conflict between the Department's fiduciary responsibilities for First Nations and its obligations to act on behalf of the Crown—a conflict that has an impact on the implementation of our recommendations.

**The government has responded.** The government agrees that the seven factors identified by the Auditor General are important and that where satisfactory progress has been made on the Auditor General's recommendations, one or more of these factors were present. The government's overall response is included at the end of the chapter.

## Introduction

**5.1** According to numerous reports, including the *Royal Commission Report on Aboriginal Peoples*, First Nations people generally face far greater challenges than those faced by the wider Canadian society. While recent years have seen improvements in levels of education and economic development, high levels of unemployment, poverty, and health problems continue to pose challenges.

**5.2** The federal government has established many programs and services for First Nations communities. The Treasury Board Secretariat reports that 34 federal organizations fund 360 programs and services directed to First Nations, Inuit, and Métis communities. Many of the programs directed to First Nations often parallel those delivered by provinces and municipalities in non-First Nations communities. These include programs focussed on education, health care, social assistance, and community infrastructure such as roads. Program delivery is sometimes challenging given that, according to Indian and Northern Affairs Canada data, about 60 percent of First Nations communities have fewer than 500 residents, just under 40 percent of the Status Indian population is under the age of 20, and just over 45 percent of Status Indians live in rural areas and almost 21 percent live in **special access zones** or **remote zones**.

**Special access zone**—A geographic zone where a First Nation has no year-round road access to the nearest service centre (supplies and equipment, a pool of skilled or semi-skilled labour, at least one financial institution, and government services).

**Remote zone**—A geographic zone where a First Nation is located over 350 km from the nearest service centre having year-round road access.

**5.3** According to the Treasury Board Secretariat, the federal government spent almost \$8.2 billion in 2004–05 on these programs and services targeted to Aboriginal peoples. Much of this funding—almost \$5.1 billion—was administered by Indian and Northern Affairs Canada. Health Canada spent about \$1.7 billion on health benefits for First Nations people living on and off reserves and for Inuit. Other federal organizations collectively spent over \$1.4 billion.

**5.4** Funding for First Nations programs has increased in recent years, but not at a rate equal to population growth. Indian and Northern Affairs Canada’s funding increased by only 1.6 percent, excluding inflation, in the five years from 1999 to 2004, while Canada’s Status Indian population, according to the Department, increased by 11.2 percent.

### Canada’s relationship with First Nations has changed

**5.5** 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.

**5.6** The government's relationship with First Nations has changed substantially over the 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.

#### **The federal government has added responsibilities over time**

**5.7** 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. Many of these are carried out through programs that are the responsibility of one department—Indian and Northern Affairs Canada.

**5.8** Indian and Northern Affairs Canada carries out many roles related to First Nations on behalf of the Government of Canada. These roles include negotiating and implementing land claim agreements and the inherent right of self-government; litigating actions on a wide range of issues from Aboriginal rights and title to trust-funds management; managing a wide range of programs; developing strategies, programs, and policies; and fulfilling Canada's obligations under treaties and the *Indian Act*.

### **The government continues to search for solutions to long-standing problems**

**5.9** Over the past 35 years, the federal government has repeatedly acknowledged the need for meaningful change and a new relationship in order to correct long-standing problems. Beginning with the White Paper on Aboriginal Issues in 1969, the federal government has made numerous attempts to redefine its relationship with First Nations people and Inuit; several of these attempts were in reaction to First Nations themselves putting pressure on the government for changes. Other efforts include a Native Agenda in 1990; a Royal Commission on Aboriginal Peoples (RCAP), reporting in 1996; Gathering Strength: Canada's Aboriginal Action Plan, the government's response to the RCAP report, in 1998; the Canada-Aboriginal Peoples Roundtable, which began in 2004; and the First Ministers' Meeting on Aboriginal Issues, in November 2005. Despite these efforts, long-standing problems remain.

### **Focus of the audit**

**5.10** Since 2000, we have issued several chapters on programs and services for First Nations. In this audit, we assessed how the federal government has responded to our recommendations in several of those chapters, and we identified seven factors that appear to have been critical in successfully implementing our recommendations and realizing meaningful change.

**5.11** We examined progress made by five federal organizations—Indian and Northern Affairs Canada, Health Canada, Canada Mortgage and Housing Corporation, the Treasury Board Secretariat, and Industry Canada—in responding to 37 recommendations in seven chapters completed between 2000 and 2003. Some of these chapters have also led to hearings by the House of Commons Standing Committee on Public Accounts, which subsequently led to the Committee's publishing reports containing recommendations. We followed up on recommendations in three reports from the Committee; these correspond to 21 of our recommendations. While we are not the auditors of First Nations, we did consult with a limited number of First Nations representatives. More details on the audit objectives, scope, approach, and criteria are included in **About the Audit** at the end of the chapter.

## Observations and Recommendations

**5.12** We expected that federal organizations would have made significant progress in implementing the 37 recommendations in seven chapters published between 2000 and 2003. We assessed the organizations' progress in implementing each recommendation as either satisfactory or unsatisfactory, taking into consideration the complexity of each recommendation and the time elapsed since we made the recommendation (Exhibit 5.1).

**5.13** Overall, we were not satisfied with the progress made by the five federal organizations. We found that they made unsatisfactory progress in implementing 15 recommendations—generally those most likely to improve the lives of First Nations peoples. Although progress in implementing 22 recommendations was satisfactory, implementation was not complete for all but 3 of them. These 22 recommendations tend to be more administrative in nature and to have less direct impact on the lives of First Nations people.

### Progress being realized

**5.14** Our recommendations cover a wide range of programs and issues. Some of these recommendations are more administrative in nature, requiring federal organizations to take action on issues directly under their control. We found that the five organizations we examined are making satisfactory progress in implementing the majority of these, such as those related to the improved administration of health programs. Other recommendations are more complex and often require federal organizations to work closely with First Nations to develop the means to implement them. We found that federal organizations have been less successful in implementing many of these recommendations.

**5.15** Improvements to First Nations programs have resulted from the implementation of recommendations in three areas: health programs, on-reserve housing, and the establishment of institutions to support First Nations economic development. However, much remains to be done to fully implement these recommendations.

**Exhibit 5.1 Assessment of progress in implementing our recommendations**

This list identifies each of our recommendations in chronological and numeric order, beginning with our 2000 Report, Chapter 15, Health Canada—First Nations Health: Follow-up, through to our 2003 Report, Chapter 10, Indian and Northern Affairs—Third-Party Intervention. Each recommendation is associated with a specific paragraph number in the relevant report; this number is shown in the left column for reference.

Paragraph number	Recommendation	Our assessment of progress	Progress
<b>2000 Report, Chapter 15, Health Canada—First Nations Health: Follow-Up</b>			
15.29	Health Canada should ensure that its program structure reflects the manner in which community health programs are actually delivered.	Health Canada realigned its program structure in 2002 to deliver three clusters of community health programs. The Department renewed its program authorities for community health programs in 2005, identifying specific objectives for each program.	●
15.31	Health Canada should continue to work with First Nations to ensure that the contribution agreements are clear about specific objectives and activities that First Nations will undertake. It should continue its efforts to encourage First Nations to define measures of success.	Contribution agreements we reviewed described the objectives of programs and activities that First Nations are to undertake. Measures of success are not well defined, although Health Canada is working with First Nations to improve them.	●
15.33	Health Canada should ensure that it receives all the activity reports required under contribution agreements. It should work closely with First Nations to improve the activity reports so that they provide information on results achieved.	Health Canada monitors and follows up to ensure that it receives activity reports as required by contribution agreements. More efforts are needed to develop outcome-focussed measures of success.	●
15.41	Health Canada should work more closely with First Nations to ensure that updated community health plans that meet the basic requirements are prepared, and that they form the basis of both initial and renewed transfer agreements.	Health Canada now requires that community health plans are prepared as required in health transfer agreements. In the sample we reviewed, Health Canada engaged First Nations and affiliated Aboriginal agencies in the development of plans.	●
15.43	Health Canada should ensure that the audit requirements under transfer agreements are met.	In the sample we reviewed, Health Canada required that the audit requirements of the transfer agreements be met.	●
15.45	Health Canada should continue to work with First Nations to improve the measurement of the services provided and of expected changes to health. These measures should be included in the annual reports, and the Department should ensure that these reports are provided.	Health Canada is working with First Nations but, in the files we reviewed, had not ensured that annual reports include measures of the services provided to First Nations communities or expected changes to health.	○
15.50	Health Canada should ensure that First Nations conduct the required evaluations of the achievement of program objectives and that future evaluations will determine the extent to which the transfer initiative contributes to improving the health of First Nations.	In the files reviewed, transfer agreements contained requirements to have evaluations of the achievement of program objectives. Health Canada receives evaluations from First Nations, but these evaluations vary in their reporting of the achievement of measurable health outcomes.	●

● **Satisfactory** — Progress is satisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.

○ **Unsatisfactory** — Progress is unsatisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.

**Exhibit 5.1 Assessment of progress in implementing our recommendations (continued)**

Paragraph number	Recommendation	Our assessment of progress	Progress
15.64	Health Canada should more closely monitor pharmacists' overrides of drug utilization warning messages and undertake rigorous analysis on an ongoing basis to assess the effectiveness of the messages.	Health Canada monitors pharmacists' overrides of drug utilization warning messages based on a risk profiling process. This monitoring leads to various queries, audits, and, in some cases, Health Canada's refusals of payment.	●
15.69	In cases where it identifies a significant pattern of inappropriate use of prescription drugs, Health Canada should continue to perform a rigorous follow-up with Non-Insured Health Benefits clients, physicians, pharmacists, and professional bodies. Health Canada should ensure that it has the means to implement this action.	For five-and-a-half years (May 1999 to November 2004), Health Canada did not conduct drug use evaluation (DUE) analysis to identify significant patterns of inappropriate use of prescription drugs and was therefore not in a position to follow up with clients, physicians, pharmacists, and professional bodies. More recently, Health Canada resumed certain types of DUE analysis, but it is not yet able to identify reduction of inappropriate use of prescription drugs due to its interventions. It also began to follow up with community and health care professionals. The Department established a Drug Utilization Advisory Committee to develop and recommend a comprehensive program to promote safe, effective, and efficient use of drugs.	○
15.71	Health Canada should systematically gather data on prescription drug-related deaths of First Nations individuals in all regions.	Although Health Canada committed to liaise with provinces and territories on prescription drug-related deaths, we found no evidence that it has done so. Health Canada told us that this measure to assess prescription drug misuse was not feasible and could not be implemented.	○
15.74	Health Canada should continue to build on its existing strategies to address the combined problem of prescription drug abuse and solvent and alcohol abuse, and increase efforts in community health programs relating to prevention, community education, and treatment of prescription drug addiction.	Health Canada has continued to focus on the combined problems of drug, alcohol, and solvent abuse through community health programs. These include producing and promoting educational programs and developing new tools to combat emerging drug abuse problems such as crystal methamphetamine.	●
15.89	Health Canada should enforce the contract requirements for audit of pharmacy and dental care providers and reporting by the contractor. The Department should continue to take steps to strengthen verification of claims and audits of providers.	Health Canada now enforces the contract requirements for audits of pharmacies and dental care providers. Audits of pharmacies have increased significantly.	●
15.97	Health Canada should establish clear program criteria and minimum standards for medical transportation benefits without delay. It should also undertake audits of medical transportation expenditures based on an assessment of risks.	Fully implemented. In 2003, Health Canada developed and implemented a Medical Transportation Policy Framework to clarify key program criteria and revised it in 2005. The Department has also conducted risk-based audits on medical transportation expenditures.	●

● **Satisfactory** — Progress is satisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.

○ **Unsatisfactory** — Progress is unsatisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.

**Exhibit 5.1 Assessment of progress in implementing our recommendations (continued)**

Paragraph number	Recommendation	Our assessment of progress	Progress
15.100	Health Canada should ensure that it completes an evaluation of each of the Non-Insured Health Benefits transfer pilot projects, as well as an overall evaluation of the pilot exercise.	Health Canada has conducted evaluations on each of the Non-Insured Health Benefits pilot projects established between 1996 and 2003. It has produced a draft overall evaluation of the pilot exercise, which it plans to finalize in 2006.	●
<b>2001 Report, Chapter 12, Follow-Up—Indian and Northern Affairs Canada—Comprehensive Land Claims (1998 Report, Chapter 14)</b>			
12.121	Indian and Northern Affairs Canada should enhance the achievement of certainty by addressing differing expectations relating to rights, capacity, and implementation of claim settlements.	There are still fundamental disagreements between the parties involved on the meaning of “certainty.” There are also differing interpretations on the implementation of settlements. Indian and Northern Affairs Canada has made an effort to build capacity within First Nations, but more is required.	○
12.121	Indian and Northern Affairs Canada, together with other settlement parties, as applicable, should expedite the treaty process and ensure adequate rigour in determining the nature and amount of assets to be included in the settlement.	Six agreements have been signed since our last audit of 2001. These have averaged 29 years to finalize. Four of these agreements are from the Yukon, where 11 of 14 outstanding claims have been signed. There are more than 50 claims outstanding elsewhere in Canada. The Department has told us that it has established guidelines and procedures that it says will ensure rigour in determining the nature and amount of assets to be included in settlements.	○
12.121	Indian and Northern Affairs Canada should strengthen implementation plans, improve reporting, and conduct evaluations of settlement impact.	Indian and Northern Affairs Canada developed guidelines for implementing land claim agreements in 2004. They refer to the need for government to track obligations and activities, but do not propose that implementation plans focus on objectives and measurement of results. We also reviewed the implementation plans for three agreements signed in 2005. We found they do not set objectives, but rather commit the federal government to specified activities supporting obligations. The Department maintains that the focus on objectives can be achieved outside the medium of implementation plans. It has promoted results-based management in the annual reports produced by implementation committees through conducting results-based planning and reporting workshops during 2005. As well, in response to our 1998 chapter, the Department completed a Comprehensive Claims Evaluation Framework in 2002. It now has a draft plan for the evaluation of the impacts of comprehensive land claim agreements. The plan indicates that a pilot evaluation of a land claim agreement will be completed by February 2007.	○

● **Satisfactory** — Progress is satisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.

○ **Unsatisfactory** — Progress is unsatisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.

**Exhibit 5.1 Assessment of progress in implementing our recommendations (continued)**

Paragraph number	Recommendation	Our assessment of progress	Progress
12.121	Indian and Northern Affairs Canada should report the complete costs of reaching and implementing settlements and compare them with relevant budgets.	Indian and Northern Affairs Canada stands by its previous assertions that it tracks costs sufficiently, although it does not track departmental administration costs or the costs to other departments. It states that the small amount of additional information gained from changing its systems would not be worth the investment needed.	○
<b>2002 December Report, Chapter 1, Streamlining First Nations Reporting to Federal Organizations</b>			
1.61	The federal government should consult with First Nations to review reporting requirements on a regular basis and to determine reporting needs when new programs are set up. Unnecessary or duplicative reporting requirements should be dropped.	Federal departments generally recognize the need to reduce the reporting burden, and there have been isolated efforts to consolidate reports. However, the overall reporting burden on First Nations has not been reduced.	○
1.64	The federal government should use the most efficient procedures to submit and process reports required from First Nations, and should work with First Nations communities to file reports electronically where it is practical to do so.	The Treasury Board Secretariat is leading an effort to consolidate reporting requirements of First Nations, but improvements have yet to be realized. Indian and Northern Affairs Canada is leading an initiative to facilitate electronic reporting for many communities but has yet to implement it.	○
1.87	The federal government should undertake a review of program authorities to streamline the programs and better allocate program responsibilities among departments and other federal organizations.	The Treasury Board Secretariat is currently leading a review of all federal government programs for First Nations communities. Through this review, the Secretariat has identified 360 programs and services targeted to Aboriginal peoples and delivered by 34 federal organizations. Work is in progress to consolidate program terms and conditions where appropriate.	●
<b>2002 December Report, Chapter 11, Other Audit Observations—Indian and Northern Affairs Canada—Food mail program</b>			
11.55	Indian and Northern Affairs Canada should undertake a review of the location of its major entry points.	Indian and Northern Affairs Canada has not undertaken a review of the major entry points for the food mail program, as previously recommended. Instead, it reviewed only one of the program's entry points. It has no immediate plans to review any others, but the Department indicates that based on the results of pilot projects under way in three communities, it is exploring the merits of program amendments, including a review of additional entry points.	○

● **Satisfactory** — Progress is satisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.

○ **Unsatisfactory** — Progress is unsatisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.

**Exhibit 5.1 Assessment of progress in implementing our recommendations (continued)**

Paragraph number	Recommendation	Our assessment of progress	Progress
<b>2003 April Report, Chapter 6, Federal Government Support to First Nations—Housing on Reserves</b>			
6.38	Indian and Northern Affairs Canada and Canada Mortgage and Housing Corporation, in consultation with First Nations, should reach a broad agreement on their respective roles and responsibilities in addressing the housing shortage on reserves.	Fully implemented. Indian and Northern Affairs Canada and Canada Mortgage and Housing Corporation, in collaboration with the Assembly of First Nations and regional First Nations organizations, have jointly developed a management control framework that defines their respective roles and responsibilities for addressing housing shortages on reserves.	●
6.44	Indian and Northern Affairs Canada and Canada Mortgage and Housing Corporation should streamline their program structure and delivery.	Indian and Northern Affairs Canada and Canada Mortgage and Housing Corporation, in consultation with First Nations representatives, jointly developed a new allocation methodology for the Budget 2005 housing initiative to streamline processes for clients and allow more efficient cash management and flexibility in planning.	●
6.48	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.	○
6.53	Indian and Northern Affairs Canada and Canada Mortgage and Housing Corporation, in consultation with First Nations, should provide reasonable assurance that all federally subsidized housing on reserves meets the National Building Code.	In the two regions we examined, the files of Indian and Northern Affairs Canada and Canada Mortgage and Housing Corporation indicate that the appropriate codes and standards were met, including those in the National Building Code.	●
6.64	Indian and Northern Affairs Canada and Canada Mortgage and Housing Corporation, in consultation with First Nations, should ensure that community housing plans are used as intended by the 1996 housing policy.	Indian and Northern Affairs Canada and Canada Mortgage and Housing Corporation have made improvements in their use of community housing plans. Documentation indicates that these housing plans are being used to share information and co-ordinate funding between the two federal entities. These plans are also being considered in the allocation of funds from the Budget 2005 on-reserve housing program. Canada Mortgage and	●

● **Satisfactory** — Progress is satisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.

○ **Unsatisfactory** — Progress is unsatisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.

**Exhibit 5.1 Assessment of progress in implementing our recommendations (continued)**

Paragraph number	Recommendation	Our assessment of progress	Progress
		Housing Corporation has also developed training aids and has begun to deliver training to First Nations' housing providers.	
6.74	Canada Mortgage and Housing Corporation should strengthen its internal controls for subsidy payments and, in consultation with First Nations, ensure compliance with operating agreements.	Canada Mortgage and Housing Corporation has improved its monitoring and internal control mechanisms for housing subsidy agreements. This includes a review and sign off of financial statements, and enhanced site visits and physical inspections.	●
6.79	Indian and Northern Affairs Canada and Canada Mortgage and Housing Corporation, in consultation with First Nations, should define, collect, and use reliable information to manage on-reserve housing assistance.	Indian and Northern Affairs Canada and Canada Mortgage and Housing Corporation (CMHC), working in conjunction with the Assembly of First Nations, have adopted a revised allocation methodology to better define, collect, and use information for on-reserve housing. Although the Department and CMHC have improved their process for obtaining accurate information for on-reserve housing, more is needed to verify its accuracy.	●
6.84	Indian and Northern Affairs Canada should seek approval from the Treasury Board for the terms and conditions of the 1996 housing policy. The Department should provide its regional offices with sufficient guidance and training to ensure that the policy is properly understood and applied consistently.	Fully implemented. Indian and Northern Affairs Canada obtained approval from the Treasury Board on the terms and conditions of the 1996 housing policy in March 2005. Regions were informed of the formal approval during national workshops.	●
6.88	Indian and Northern Affairs Canada should evaluate its interim policy on shelter allowances and approve a final policy with necessary changes resulting from the evaluation, while taking into account approved funding levels.	Indian and Northern Affairs Canada completed an evaluation of its interim shelter allowance policy in April 2005. The Department is developing a national strategy on shelter allowances based on the outcome of this evaluation.	●
6.94	Indian and Northern Affairs Canada, in co-operation with Canada Mortgage and Housing Corporation, should improve its reporting to Parliament. It should clearly articulate its expected results; report on costs, program performance, and results; and clarify how the reported outputs have an impact on the critical housing shortage.	Indian and Northern Affairs Canada has worked with Canada Mortgage and Housing Corporation to identify how many housing units it plans to build and improve, what has been built, and how much the program costs. However, it has not identified how well the program is working to alleviate the critical housing shortage on reserves.	○

● **Satisfactory** — Progress is satisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.

○ **Unsatisfactory** — Progress is unsatisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.

**Exhibit 5.1 Assessment of progress in implementing our recommendations (continued)**

Paragraph number	Recommendation	Our assessment of progress	Progress
<b>2003 November Report, Chapter 9, Economic Development of First Nations Communities—Institutional Arrangements</b>			
9.82	The federal government should support First Nations in identifying, planning, and implementing institutional arrangements that take advantage of economies of scale where possible, and that are appropriate to the First Nations' economic development circumstances and visions.	Indian and Northern Affairs Canada has an action plan for its economic development programs resulting from a new structure to increase community economic capacity. In addition, the Department has identified, planned, and begun to implement four new First Nations institutions to support economic development and capacity.	●
9.90	Under the leadership of Indian and Northern Affairs Canada, federal organizations should develop horizontal performance information for economic development programming that is outcome-focussed and relevant to the performance information needs of First Nations.	Indian and Northern Affairs Canada has identified outcome-focussed performance information for its Community Economic Development program. However, the Department has yet to measure and report against these performance measures.	○
<b>2003 November Report, Chapter 10, Other Audit Observations—Indian and Northern Affairs Canada—Third-Party Intervention</b>			
10.46	Indian and Northern Affairs Canada should address the elements missing from its new Third Party Manager Policy, namely provision for First Nations input, chief and council capacity building, and dispute resolution.	Indian and Northern Affairs Canada has not addressed elements missing from its 2003 Third Party Manager Policy. The Department is developing a new policy, which may be in place by April 2006. This policy is expected to include provisions for First Nations input, chief and council capacity building, and dispute resolution. Until then, these provisions are not formally available to First Nations subject to this policy.	○
10.47	Indian and Northern Affairs Canada should develop a strategy and action plan for implementing the new Third Party Manager Policy.	Indian and Northern Affairs Canada has developed an action plan to implement its 2003 policy. In September 2005, the Department also began to develop a new strategy to accompany the new policy expected in April 2006. The Department informs us that it plans to have an action plan in place by the time the new policy is approved.	●
10.48	In consultation with First Nations, Indian and Northern Affairs Canada should conduct an evaluation of third-party manager intervention.	Indian and Northern Affairs Canada has not conducted an evaluation of the effectiveness of third-party manager intervention, although it has conducted compliance reviews. As such, the new policy being developed (planned for April 2006) does not benefit from a formal evaluation of third-party management process.	○

● **Satisfactory** — Progress is satisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.

○ **Unsatisfactory** — Progress is unsatisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.

**Improvements have been made in administering health programs funded through agreements**

**5.16** Health Canada has made satisfactory progress in implementing the majority of recommendations we made in our 2000 audit, which focussed on managing programs funded through agreements. Since 2000, we have seen some significant improvements in the administration of these programs. For example, after several years of effort, Health Canada revised its medical transportation policy to clarify program eligibility and benefits. The Department also implemented a risk-based audit framework to better manage its medical transportation benefits.

**5.17** The preparation and use of community health plans have also improved. As part of the process for transferring health programs to communities, First Nations are required to develop community health plans. These are intended to identify community health-related priorities, programs to be undertaken, and the roles and responsibilities of the Medical Officer of Health Services and other professionals. These health plans are to be prepared prior to Health Canada entering into or renewing transfer agreements with First Nations.

**5.18** In 1997 we found that renewed transfer agreements were often not based on updated community health plans, and we recommended that this basic requirement be met before any new and renewed transfer agreements were signed. In 2000 we looked at this issue again and found that Health Canada was still sometimes approving transfer agreements without updated community health plans. Without such plans, Health Canada had little assurance that health funding was being effectively targeted to community health priorities.

**5.19** In this audit, we found that the administration of program requirements has improved in several respects. Community health plans are now updated, and First Nations conduct audits prior to renewal of transfer agreements. Health Canada also revised the terms and conditions for community health programs to ensure that requirements are adhered to. More generally, Health Canada has increased the controls in its administration of transfer and contribution agreements to ensure that funding is used effectively and targeted to community practices. Again, while progress is satisfactory, the original recommendations, except for one, have not been fully implemented.

### **Improvements have been made in managing First Nations housing programs**

**5.20** Numerous studies have noted that poor housing negatively affects the health, education, and overall social conditions of individuals and communities on reserves. In 2001 Indian and Northern Affairs Canada estimated a shortage of about 8,500 on-reserve housing units and that an additional 44 percent of the existing 89,000 houses on reserves required renovations. According to the Department, the housing stock generally deteriorates more rapidly on reserves, due mainly to substandard construction practices or materials, lack of proper maintenance, and overcrowding.

**5.21** In 2003 we audited the federal government's delivery of housing programs on First Nations reserves. We found that Indian and Northern Affairs Canada and Canada Mortgage and Housing Corporation (CMHC) had not clearly defined what the programs were intended to achieve in terms of reducing the critical housing shortage; nor had these organizations defined a time frame for achieving this. We also found that the funding mechanisms and programs were very complex and that the Department, CMHC, and First Nations did not agree on their respective roles and responsibilities.

**5.22** In this audit, we found that the programs are now better integrated. This was achieved in consultation with First Nations, in response to their concerns. We also found that Indian and Northern Affairs Canada and CMHC had strengthened the management of many elements of their housing programs.

**5.23** For example, to help facilitate the implementation of the Department's housing policy, CMHC worked with participating First Nations to develop community housing plans that link housing funds and programs with training, job creation, work opportunity programs, and economic development activities. In 2003 we found that these plans were not being used as intended and their implementation was not being monitored. In this audit, we found that Indian and Northern Affairs Canada and CMHC are now using community housing plans to identify the housing stock and as a tool to make decisions on new units to be built or units to be renovated. While this represents considerable progress, serious problems, notably mould contamination, remain (see paragraphs 5.34 to 5.36).

### **The government has established more institutional arrangements for economic development**

**5.24** The 1996 *Royal Commission Report on Aboriginal Peoples* documented substantial gaps between Aboriginal and non-Aboriginal

peoples in Canada for key economic indicators. In 2003 we examined the role of institutional arrangements in sustaining economic development. We identified various barriers to economic development, such as First Nations' lack of access to economic development resources, lack of access to federal business support, and lack of approaches to institutional development. We recommended that the federal government support First Nations in identifying, planning, and implementing institutional arrangements, appropriate to First Nations' economic development arrangements, circumstances, and visions.

**5.25** In this audit, we found that the federal government has developed a new program structure to provide greater flexibility in responding to communities' economic development requests. In consultation with First Nations, it has also identified, planned, legislated, and begun to establish four new First Nations institutions, which, among other things, are intended to provide First Nations with the access to private capital enjoyed by other governments.

**5.26** We view the establishment of institutions as an important step in assisting First Nations' economic development. Considering other audits we have reported in recent years (Drinking Water in First Nations Communities, 2005 Report of the Commissioner of the Environment and Sustainable Development; Indian and Northern Affairs Canada—Education Program and Post-Secondary Student Support, November 2004 Report of the Auditor General), we believe additional opportunities may exist for creating institutions in areas such as health and safety, and education.

### Urgent action needed to implement key recommendations

**5.27** We found that some of the recommendations that would likely make a significant difference in the lives and well-being of First Nations people and Inuit were not being implemented or that progress was unsatisfactory. These include recommendations on conducting prescription drug use analysis and analyzing prescription drug-related deaths, developing a strategy and action plan for addressing mould in houses on reserves, eliminating unnecessary reporting required of First Nations communities, implementing land claim agreements, and addressing gaps in the Third Party Manager Policy.

#### Inadequate monitoring of prescription drug use continues

**5.28** Through its Non-Insured Health Benefits program, Health Canada funds prescription drugs for eligible First Nations people living on and off reserves and for Inuit. In 1997 and in subsequent audits, we identified that the Department was slow to intervene where potentially

inappropriate use of prescription drugs was observed and that it was not monitoring the number of prescription drug-related deaths of those covered by its drug benefits program.

**5.29** In our 2000 audit, we found that Health Canada had started conducting analysis of prescription drug use. This intervention, involving follow-up with clients, physicians, pharmacists, and professional bodies, had some positive impact. However, the Department stopped conducting this analysis in May 1999 because management was unsure of the appropriateness of doing so without either a legislative mandate that would explicitly allow for this type of analysis, or client consent, which would grant permission to the Department to analyze private health information. We also found that the Department had not analyzed data on drug-related deaths of its clients. In 2001 officials informed the Public Accounts Committee that it expected to resume analysis of prescription drug use for 70 percent of its clients within the year, after it had received consent. Even though we identified publicly reported information on prescription drug-related deaths of First Nations people—information that was available to Health Canada, the Department told the Committee that it was not within its purview to gather data on deaths related to prescription drugs.

**5.30** In our 2004 audit of the management of federal drug benefits programs, we found that Health Canada had not conducted any analysis of prescription drug use since 1999. Instead, it had spent the previous four years trying to obtain client consent. It had obtained consent for only about 25 percent of clients before stopping this effort in March 2004. We found that the number of clients obtaining more than 50 prescriptions over a three-month period (a criterion used by some provincial bodies to identify cases for review) had almost tripled compared with what we found in our 2000 audit.

**5.31** Part of the reason that Health Canada sought consent before conducting analysis of prescription drug use was that it did not have a legislative base for its program, which would have identified rights and obligations of the Department and its clients. We first identified this issue in a 1993 audit, in which we found that the program's authority was unclear due to the absence of specific enabling legislation. We found that the Non-Insured Health Benefits program lacked definitions of purpose, expected results, and anticipated outcomes. We recommended that Health Canada seek from the government a renewed mandate for the Non-Insured Health Benefits program to clarify the authority base, purpose, and objective of the program.

**5.32** In 1997 we found that, instead of seeking enabling legislation, the Department had proposed only a renewed policy mandate. This did not address the need to clarify the authority base, rights, and obligations of the Department. In 2000 we again observed that there was still no specific legislation for the Non-Insured Health Benefits program, even though the program entailed more than \$530 million in annual expenditures.

**5.33** In this audit, we found that Health Canada still does not gather data on prescription drug-related deaths. Nor has it sought enabling legislation for its Non-Insured Health Benefits program. In November 2004, the Department resumed its analysis of prescription drug use, but, at the time of our audit, it was not yet able to identify reductions of inappropriate prescription drug use due to its intervention. Its current approach is only to seek consent, on a case-by-case basis, from those clients for whom the Department has not already done so, before informing health providers or pharmacists of concerns related to prescription drugs. There is still no enabling legislation for the Non-Insured Health Benefits program, and the rights and obligations of the Department and its clients have not been defined.

#### **Mould contamination in houses on reserves continues to be a significant problem**

**5.34** Mould is a fungus that, under certain conditions, produces poisonous substances that can cause headaches, dizziness, and nausea. Indian and Northern Affairs Canada has identified the main factors contributing to mould in housing as a lack of proper care and maintenance, inadequate air circulation and ventilation, poor site selection and drainage, overcrowding, and improper construction. For several years, mould contamination has been identified as a serious health and safety problem in First Nations communities.

**5.35** In 2003 we found that Indian and Northern Affairs Canada, Canada Mortgage and Housing Corporation, and Health Canada organized and were participating in a committee intended to address the mould problem. However, none of these federal organizations had fully assessed the extent of mould contamination in houses on reserves and the full cost of remediation, or developed a comprehensive strategy or action plan to address the problem.

**5.36** In this audit, we again found that despite the activities of the committee, no federal organization has taken responsibility for assessing the extent of the problem and developing a comprehensive strategy for addressing it. Although Health Canada is responsible for health and safety, its programming is restricted to research and expert

inspections when called upon to determine if the dwelling is fit to live in and advise on the corrective action required. Canada Mortgage and Housing Corporation provides education and training workshops, and Indian and Northern Affairs Canada provides financial contributions to support housing renovations, including activities to correct mould buildup. However, without management's sustained attention, facilitated by a strategy or action plan, the scale of the problem has not been identified, priorities for action have not been established, and no overall plan for co-ordinating federal organizations' efforts or monitoring overall progress has been developed. Without a strategy and action plan to address this problem, First Nations communities may continue to experience premature deterioration of their housing stock and negative health effects on their people.

### **Reporting requirements still need to be overhauled**

**5.37** In 2002 we looked at the amount of reporting required of First Nations by federal organizations. We estimated that four federal organizations required at least 168 reports annually from First Nations communities—many with fewer than 500 residents. We found that many of these reports were unnecessary and, moreover, were not used by the federal government. We recommended that the government review reporting requirements and eliminate those that were duplicate or unnecessary, use the most efficient procedures to submit and process reports required from First Nations, and undertake a review of program authorities.

**5.38** After more than a year of little progress by federal departments to reduce the reporting burden in response to our recommendations, the Treasury Board Secretariat took the lead to organize interdepartmental sessions and to map out the extent of federal involvement with First Nations. As a result, it determined that 34 federal organizations currently deliver 360 programs and services targeted to Aboriginal peoples. It also linked funding to programs and, for the first time, was able to report on programming by federal organizations.

**5.39** This broad analysis by the Treasury Board Secretariat confirms the seriousness of the problem we identified in 2002. In our current audit, we found that meaningful action by the federal government is still needed to reduce the unnecessary reporting burden placed on First Nations communities and to develop more efficient procedures for obtaining information required. Officials told us that Indian and Northern Affairs Canada alone obtains more than 60,000 reports a year from over 600 First Nations. As we noted in 2002, the resources

devoted to the current reporting system could be better used to provide direct support to communities.

### **Deficiencies in implementing comprehensive land claim agreements persist**

**5.40** Comprehensive land claims relate to Aboriginal rights and title to land that have not been dealt with by treaties or other legal means. Settling comprehensive land claims involves negotiating and implementing complex, modern treaties. In 1998 we audited Indian and Northern Affairs Canada's role in reaching and implementing comprehensive land claim agreements. Among other things, we found that implementation plans were inadequate or non-existent, and we observed that the Department tracked only activities and processes, not results produced and costs incurred. We recommended that the Department strengthen implementation plans, improve reporting, and conduct evaluations of the implementation of land claim agreements.

**5.41** The Public Accounts Committee issued several recommendations after considering our audit. These recommendations directed the Department to establish indicators and a timetable for measuring and reporting the economic benefits produced as a direct result of settlements; include specific provisions for timely and periodic impact evaluations; provide information in its annual performance report on the outcomes achieved as a result of comprehensive land claim agreements; and specify how it would improve its monitoring of, evaluation of, and reporting on the implementation of comprehensive land claim agreements.

**5.42** The Department responded that it would develop an evaluation framework to evaluate the social and economic benefits of land claim agreements, and it would consider including such information in its performance report. It further stated that it expected to have made significant progress by December 1999 in developing a multi-year plan to evaluate the implementation of land claim agreements.

**5.43** In 2001 we followed up on this audit and found that the Department needed to continue its efforts to strengthen implementation plans and accelerate its efforts to evaluate the implementation of agreements. We also noted the difficulty in achieving certainty and the length of time needed to reach agreements. In addition, in a 2003 audit of Indian and Northern Affairs Canada's management of the land claim agreements for Inuit of Nunavut and the Gwich'in of the Northwest Territories, we noted that managing land claims well means focussing not only on meeting

specific obligations of the claims but on achieving measurable results against objectives.

**5.44** In our current audit, we found that in 2004 the Department had published guidelines for implementation in response to our 1998 recommendation that the Department strengthen implementation plans, improve reporting, and conduct evaluations of the implementation of land claim agreements. These guidelines refer to the need for the government to track obligations and activities, but they do not propose that implementation plans focus on objectives and measuring results.

**5.45** We also reviewed the implementation plans for three agreements signed in 2005, with a view to determining whether they focus on objectives and results, not only on obligations and activities supporting obligations. We found that the plans do not set out objectives, such as reducing unemployment rates to specified levels, but rather commit the federal government to specified activities supporting obligations, such as establishing a community services agency. The Department maintains, however, that the primary role of implementation plans is to ensure that all obligations of the parties are identified and addressed through agreed-upon activities, and that it is pursuing the measurement and reporting of results outside the medium of implementation plans (for example, promoting results-based management in annual reports produced by implementation committees through conducting results-based planning and reporting workshops).

**5.46** Indian and Northern Affairs Canada has not evaluated the implementation of land claim agreements, as we recommended in 1998. Only in 2002 did the Department prepare a Comprehensive Claims Evaluation Framework. It now has a draft plan for evaluating the impacts of comprehensive land claim agreements. The plan indicates that a pilot evaluation of a land claim agreement will be completed by February 2007. In our opinion, without a focus on objectives and results, along with the evaluation of their attainment and impacts, the federal government does not have a means of measuring, reporting, and ensuring the successful implementation of land claim agreements.

#### **Gaps in the Third Party Manager Policy have not been addressed**

**5.47** When a First Nations community delivering a program or service under a funding arrangement with Indian and Northern Affairs Canada fails to meet its obligations, the Minister has the right to

intervene. At the highest level of intervention, the Department selects a third party to take over the management of the funding arrangement until the problems are resolved. In 2003 we identified various deficiencies in the Department's administration of the third-party management process. One of these was the lack of a strategy for building the capacity of First Nations management to end third-party management.

**5.48** We recommended that the Department address missing elements from its Third Party Manager Policy, adopted in 2003—namely, provision for a dispute resolution mechanism, building of capacity of chiefs and councils, and provision for First Nations input in the third-party manager selection process.

**5.49** In this audit, we found that the Department has not revised its 2003 policy. Instead it has proposed to have provisions for these missing elements in a new policy expected in April 2006. Similarly, the Department has not evaluated the effectiveness of third-party manager intervention as we had recommended. As such, the new policy being developed does not benefit from a formal evaluation of the third-party management process. Further, the present policy still does not include a strategy to build the capacity of First Nations management to end third-party management.

## Critical Factors

### Factors that appear to have been critical in implementing our recommendations

**5.50** 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 and Inuit.

#### Sustained management attention

**5.51** Management's sustained attention is critical to realizing substantive change in government generally. We saw this in Health Canada's revisions to its medical transportation policy and audit processes. Similarly, it is because of management attention that federal organizations have finally started to take action to begin implementing recommendations in two cases where progress has not been satisfactory. In the first case, after five-and-a-half years of not conducting analysis of prescription drug use, the focussed attention of

senior management resulted in Health Canada implementing a new program for analysis of prescription drug use. In the second case, the Treasury Board Secretariat took responsibility in 2004 to begin rethinking how government programs and services are structured, in the context of the expenditure and management reviews launched in Budgets 2003 and 2004. This initiative responded to the concerns raised in our 2002 chapter on streamlining First Nations reporting to federal organizations. 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 both these areas (analysis of prescription drug use and structuring of government programs and services), 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.

### **Co-ordination of government programs**

**5.52** 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. We also noted this in our 2002 chapter on streamlining First Nations reporting to federal organizations and in our 2003 chapter on housing on reserves. However, efforts related to some of our recommendations (for example, those on the administration of the housing and economic development programs) indicate that it is possible for federal organizations, working with First Nations, to co-ordinate the planning, management, and delivery of programs.

### **Meaningful consultation with First Nations**

**5.53** 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 (for example, many of the recommendations in our 2003 chapter on housing on reserves).

**5.54** We also found that the absence of meaningful consultation can impede successful implementation of our recommendations. For example, in its efforts to conduct analysis of prescription drug use, Health Canada sought to obtain consent from clients to conduct analysis using their private drug records. This initiative resulted in the Department obtaining consent from only about 25 percent of its First Nations clients after four years of effort, by the time the initiative was cancelled in March 2004. First Nations attributed this failure to Health Canada's not taking into account the need for community engagement in monitoring and addressing risks associated with prescription drug use.

### **Developing capacity within First Nations**

**5.55** 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 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.

### **Establishing First Nations institutions**

**5.56** 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. As referred to earlier (paragraph 5.25), the four 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.

### Appropriate legislative base for programs

**5.57** 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. We noted that Health Canada has not sought a legislative mandate for its Non-Insured Health Benefits program. 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.

**5.58** 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.

**5.59** 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.

### Conflicting roles of Indian and Northern Affairs Canada

**5.60** 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.

**5.61** 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.

## Conclusion

**5.62** Federal organizations have made unsatisfactory progress in implementing almost half of our recommendations, generally those addressing issues having the greatest impact on the lives of First Nations people and Inuit. These include recommendations on analyzing prescription drug use and related deaths, developing a strategy and action plan for addressing mould in houses on reserves, eliminating the requirements for unnecessary reports from First Nations communities, implementing comprehensive land claim agreements, and addressing gaps in the Third Party Manager Policy.

**5.63** Federal organizations are making satisfactory progress in implementing other recommendations; however, most of these are not yet fully implemented. These recommendations tend to be more administrative in nature and have less direct impact on the lives of First Nations people and Inuit.

**5.64** We identified seven factors that appear to have been critical in the successful implementation of our recommendations. These include the sustained attention of management, co-ordination of government programs, meaningful consultation with First Nations, development of First Nations capacity, establishment of First Nations institutions, development of an appropriate legislative base for programs, and consideration of the conflicting roles of Indian and Northern Affairs

Canada. In our view, ensuring that these factors are fully considered when adjusting existing programs and implementing new ones will make a significant difference in the lives of Aboriginal people.

**Government's overall response.** The Government of Canada agrees that the seven factors identified by the Auditor General are important. It is clear that where satisfactory progress has been made on the Auditor General's recommendations, one or more of these factors were present. In addition, they constitute an increasingly important part of the government's approach for the broader Aboriginal agenda. Examples include the following:

- The First Ministers Meeting of 24–25 November 2005 in Kelowna, British Columbia demonstrated a willingness of the federal, provincial, and territorial governments and national Aboriginal organizations to develop a common Aboriginal agenda for the future in important areas such as housing, health, education, and economic opportunities. Moving forward will continue to require sustained management attention.
- The Aboriginal Horizontal Framework initiative of the Treasury Board Secretariat provides an excellent base for determining the effectiveness of government programs and increasing the level of co-ordination to minimize gaps and overlap.
- The consensus-based decision making displayed at the Kelowna First Ministers Meeting by leaders of federal, provincial, and territorial governments and national Aboriginal organizations is a prime example of meaningful consultation with First Nations and other partners, including Aboriginal partners.
- Progress made in establishing legislative authorities in partnership with First Nations through the *First Nations Oil and Gas and Moneys Management Act*, the *First Nations Fiscal and Statistical Management Act* and the *First Nations Commercial and Industrial Development Act* contributes to the establishment of appropriate First Nation institutions and will assist in developing the capacity of First Nations.
- With respect to the last two critical factors cited, namely the establishment of a legislative base for programming, and addressing the conflicting roles of Indian and Northern Affairs, the federal government continues to examine new approaches to improving the way its responsibilities are delivered and has made important recent advancements in legislative and regulatory renewal on reserve, in partnership with First Nations.

While the government's actions are consistent with the factors identified, resolving Aboriginal issues remains an extremely difficult challenge, characterized by complex jurisdictional issues. Taking on major reforms is complex, requires staging over time, and is supported by the establishment of strong governance and accountability measures in First Nations communities. As First Nations communities are unique in their history, geography, socio-economic conditions, internal capacity, vision, and priorities, our approaches must be tailored to meet these diverse and distinctive attributes of First Nations people.

The Government of Canada is pleased to continue to take the critical factors into account when developing approaches aimed at securing a better future for Aboriginal peoples.

## About the Audit

### Objectives

Our audit objectives were

- to assess the progress that Indian and Northern Affairs Canada, Health Canada, Canada Mortgage and Housing Corporation, the Treasury Board Secretariat, and Industry Canada have 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.

### Scope and approach

This follow-up audit assessed the progress of the five above-noted federal organizations in responding to 37 recommendations in seven reports of the Office of the Auditor General published from October 2000 to November 2003. We did not follow up on the progress of two additional recommendations made in the reports as they are not currently applicable. The seven reports are the following:

- October 2000, Chapter 15, First Nations Health Follow-Up
- November 2001, Chapter 12, Follow-Up of Recommendations in Previous Reports: Indian and Northern Affairs Canada—Comprehensive Land Claims (1998, Chapter 14)
- December 2002, Chapter 1, Streamlining First Nations Reporting to Federal Organizations
- December 2002, Chapter 11, Other Audit Observations: Indian and Northern Affairs Canada—Food Mail Program
- April 2003, Chapter 6, Federal Government Support to First Nations—Housing on Reserves
- November 2003, Chapter 9, Economic Development of First Nations Communities—Institutional Arrangements
- November 2003, Chapter 10, Other Audit Observations: Indian and Northern Affairs Canada—The Department needs to improve third-party intervention

Additional chapters referred to include Transferring Federal Responsibilities to the North (November 2003 Report of the Auditor General, Chapter 8), Management of Federal Drug Benefits Program (November 2004 Report of the Auditor General, Chapter 4), Education Program and Post-Secondary Student Support (November 2004 Report of the Auditor General, Chapter 5), and Drinking Water in First Nations Communities (2005 Report of the Commissioner of the Environment and Sustainable Development, Chapter 5).

The chapters containing the recommendations we assessed had the following attributes:

- They were published from 2000 to 2003. We considered this time frame appropriate for recommendations to still be relevant, while it also allowed sufficient time for meaningful progress to have been made.

- They addressed a wide variety of issues that dealt with government priorities, including the need to support First Nations capacity, deliver programs more effectively, and monitor performance.
- They focussed on several federal organizations so we could assess how well their programs and activities were integrated.

We also reviewed recommendations from the House of Commons standing committees on Public Accounts and on Health as they relate to the chapters within the scope of our audit. The Public Accounts Committee published three reports and the Health Committee published one report. We tracked progress on 21 of the recommendations included in these reports.

For each chapter and recommendation, 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 all five federal organizations. We also conducted interviews and detailed file reviews in the British Columbia and Ontario regional offices of Indian and Northern Affairs Canada, Canada Mortgage and Housing Corporation, and Health Canada. In addition, we interviewed a limited number of First Nations representatives, seeking their perspectives on progress, barriers, and effective practices.

To consider fully the factors that we identified that appear to have been critical in the successful implementation of our recommendations, we interviewed senior officials who provided their views 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, are also reflected in this assessment.

### **Criteria**

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.

These criteria were derived from numerous past audits and are consistent with Office methodology. All the organizations in the scope of our audit have agreed to them.

### **Audit work completed**

Audit work for this chapter was substantially completed on 16 December 2005.

**Audit team**

Assistant Auditor General: Ronnie Campbell

Principal: Glenn Wheeler

Director: Frank Barrett

Esther Becker

Sophie Chen

Martha Fortier

Kevin McGillivray

Frances Smith

For information, please contact Communications at (613) 995-3708 or 1-888-761-5953 (toll-free).

