

2003



Report of the  
**Auditor General  
of Canada**  
to the House of Commons

NOVEMBER

**Chapter 8**  
Indian and Northern Affairs Canada—  
Transferring Federal Responsibilities to the North

125  
OAG  
BVG  
1878-2003



Office of the Auditor General of Canada



**Making a difference . . . for 125 years**

In 2003, the Office marks the 125th anniversary of the appointment of the first independent Auditor General of Canada. Both sides of the House of Commons cheered when the Government of Alexander Mackenzie proposed the 1878 bill that would “free the auditing of Public Accounts from any interference on the part of the administration.” That enlightened legislation laid the groundwork for 125 years of dedicated service to Parliament and to Canadians.

*The November 2003 Report of the Auditor General of Canada comprises ten chapters, Matters of Special Importance—2003, a Foreword, Main Points, and Appendices. The main table of contents is found at the end of this publication.*

The Report is available on our Web site at [www.oag-bvg.gc.ca](http://www.oag-bvg.gc.ca).

For copies of the Report or other Office of the Auditor General publications, contact

Office of the Auditor General of Canada  
240 Sparks Street, Stop 10-1  
Ottawa, Ontario  
K1A 0G6

Telephone: (613) 952-0213, ext. 5000, or 1-888-761-5953  
Fax: (613) 954-0696  
E-mail: [distribution@oag-bvg.gc.ca](mailto:distribution@oag-bvg.gc.ca)

*Ce document est également disponible en français.*

© Minister of Public Works and Government Services Canada 2003  
Cat. No. FA1-2003/2-13E  
ISBN 0-662-35306-4



Chapter

# 8

**Indian and Northern Affairs Canada**  
Transferring Federal Responsibilities to  
the North

*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>	<b>1</b>
<b>Introduction</b>	<b>3</b>
Public governments in the three territories are taking on responsibilities for their jurisdictions	5
Significant number of land claims and associated implementation agreements concluded in the North	5
Canada's changing role in the North	6
Focus of the audit	6
<b>Observations and Recommendations</b>	<b>6</b>
<b>Land claims and implementation agreements</b>	<b>6</b>
For every signed land claim there is an implementation agreement	7
<b>Resolving disputes</b>	<b>8</b>
Implementation committees and other mechanisms are not effective	8
Impact of disputes on land claim agreements	9
<b>Reporting and accountability</b>	<b>9</b>
Lack of performance reporting	10
Sharing of accountability calls for collaboration and commitment	12
<b>Managing federal responsibilities</b>	<b>13</b>
Good management includes meeting activities and obligations—and achieving results	13
The Department does not know the cost of implementing the individual land claim agreements	14
The Department needs to strengthen its co-ordination of the federal government's land claims agreements activities	15
<b>Transferring responsibilities to the Yukon</b>	<b>17</b>
Devolution agreement with the Yukon is complete	17
Management framework was inadequate	18
The Department kept Parliament informed of progress	18
The Department has an opportunity to assess how well it implemented the Yukon devolution	18
<b>Conclusion</b>	<b>19</b>
<b>About the Audit</b>	<b>21</b>





# Indian and Northern Affairs Canada

## Transferring Federal Responsibilities to the North

---

### Main Points

**8.1** Signing a land claim agreement is a major accomplishment. Managing it afterward is an ongoing challenge that requires collaboration by all parties to the agreement. That collaboration must begin with Indian and Northern Affairs Canada (INAC) taking a leadership role in making the claims work. It must also manage federal responsibilities set out under the agreements in a way that achieves results. We found that with respect to the two claims we looked at, the Gwich'in people of the Northwest Territories (NWT) and the Inuit of Nunavut, INAC's performance on both counts has left considerable room for improvement.

**8.2** For example, INAC seems focussed on fulfilling the letter of the land claims' implementation plans but not the spirit. Officials may believe that they have met their obligations, but in fact they have not worked to support the full intent of the land claims agreements.

**8.3** Also, the various mechanisms for managing the claims are not effective in resolving all disputes. Land claims arbitration panels have not dealt with any of the long-standing disagreements since the claims were settled over 10 years ago.

**8.4** In the Yukon, the federal government has successfully transferred many federal responsibilities for lands and resources to the territorial government. But INAC underestimated the time and resources needed to complete the task. It is important that it learn from the Yukon transfer experience as it enters similar discussions with the Northwest Territories.

### Background and other observations

**8.5** Over the last 30 years, Canada's North—the Yukon, Northwest Territories, and Nunavut—has taken a considerable leap forward in its political development. The Department has spearheaded an important initiative to transfer a significant portion of its northern responsibilities to the people of the North. In particular, the Government of Canada has transferred a considerable amount of its control over land and resources to the Yukon government, and it has concluded land claims agreements with many of the First Nations and Inuit across all three territories.

**8.6** Once land claims agreements are signed, managing them well means focussing on not only meeting the specific obligations of the claims but also achieving measurable results against the objectives.

**8.7** When the objectives are specific, all parties to the claims agreements can agree what constitutes results. However, when the objectives are open-ended and future-oriented, as some are in the claims we looked at, matching results with the specific legal responsibilities becomes difficult. When that happens, the mechanisms for managing the agreements—the implementation committees, the arbitration panels, and the accountability reporting—are not effective in bringing important issues to closure.

**8.8** Furthermore, INAC's management framework, which measures success in terms of meetings, events, and activities held, as opposed to results achieved, is not effective. All are required.

**8.9** In the Yukon, the recent devolution exercise saw the federal government transfer its management of lands and resources to the territorial government, the first transfer of such magnitude since a similar transfer to the Prairie provinces in the 1930s. The range of tasks to make this happen included changing legislation; facilitating the movement of federal employees to the Yukon government; and the transfer of properties, assets, records, and agreements.

**8.10** We believe that the Department could have managed the process better. We also believe that it should take stock of its management of the Yukon exercise and apply the lessons learned to its upcoming devolution of responsibilities to the Northwest Territories.

**The Department has responded.** While the Department agrees with many of our recommendations, it fundamentally disagrees with our view of the way success for implementing land claims should be measured. The Department defines success as fulfilling the specific obligations as set out in the agreements and plans. We believe that results matter too, and that the Department should be giving them more attention.



## Introduction

The North is a frontier, but it is a homeland too, the homeland of the Dene, Inuit and Métis, as it is also the home of the white people who live there. And it is a heritage, a unique environment that we are called upon to preserve for all Canadians. The decisions we have to make are . . . about the protection of the northern environment and the future of northern peoples.

—Mr. Justice Thomas Berger, Report of the Mackenzie Valley Pipeline Commission, 1977

**8.11** In his 1977 report on the Mackenzie Valley pipeline inquiry, Mr. Justice Thomas Berger wrote that before any planning on the building of a pipeline could start, native land claims had to be settled.

**8.12** Today, 26 years later, the Aboriginal people of the Mackenzie Valley are leading the effort to build a pipeline down the Valley. Through land claims agreements, self-government agreements, and devolution, Indian and Northern Affairs Canada, on behalf of the Government of Canada, is leading the federal strategy on a course of nation building in the North at an unprecedented rate.

**8.13** The federal government has concluded an historic transfer of land and resources to the Yukon government of a nature unheard since the transfer of similar responsibilities to Manitoba, Saskatchewan, and Alberta in the 1930s. This year it began negotiations with the Government of the Northwest Territories (NWT) and the Aboriginal Summit to go through a similar exercise in the NWT.

**8.14** In the Yukon, the federal and territorial governments and 8 of the 14 Yukon First Nations have concluded land claims and self-government agreements. In the Northwest Territories, 4 of the 7 Aboriginal groups have concluded land claims agreements. One of these, the Tlicho claim agreement, includes a self-government agreement. Self-government agreements are also being negotiated in the Deline and Beaufort Sea–Mackenzie Delta regions. In the Eastern Arctic, the Inuit signed an historic land claim agreement that led to the creation of the new territory of Nunavut. In short, through a remapping of the way the North is governed, the political make-up of Canada has changed significantly in less than a generation.

**8.15** This chapter focusses on the management of two elements along the path to nation building—the transfer of federal lands and resources to the Yukon government and the implementation of land claims agreements for the Gwich'in people of the NWT and the Inuit of Nunavut (Exhibit 8.1).

**8.16** The management of the transfer of responsibilities to the Yukon government is important because the federal government is embarked on a similar exercise in the NWT. It is important that the federal government learn from the Yukon exercise and apply that knowledge to the transfer of responsibilities in the other two territories. The implementation of land claims agreements is also important. It is the next step after settling land claims in creating new relationships with the Aboriginal people of the North.

**Exhibit 8.1 Nation building in the North—our areas of focus**

**8.17** Land claims agreements are protected by section 35(1) of the Constitution of Canada. In that context, the Supreme Court of Canada stated,

. . . the Constitution should be interpreted in a liberal and remedial way. We cannot accept that that principle applies less strongly to aboriginal rights than to the rights guaranteed by the Charter, particularly having regard to the history and to the approach to interpreting treaties and statutes relating to Indians . . .

—R.v. Sparrow, [1990] 1 S.C.R. 1075, at 1107

**8.18** While the Sparrow decision referred to historic treaties, the Federal Court noted,

When the Crown negotiates land agreements today with the Aboriginals, it need not and cannot have only their interests in mind. It must seek a compromise between that interest and the interest of the whole of society.

Even if we ascribe a fiduciary character to the relationship between the Crown and the Aboriginals, it requires good faith and reasonableness on both sides and presumes that each party respects the obligations that it assumes toward the other.

—Eastmain Band v. Canada (Federal Administrator) (C.A.),  
[1993] 1 F.C. 501

### Public governments in the three territories are taking on responsibilities for their jurisdictions

**8.19** The transition of responsibility for the North to the people of the North is following three streams. The first is represented by the transfer of provincial-like public responsibilities to the public governments of the three territories. The second is constitutionally protected land claim agreements, which provide that constitutionally protected rights of Aboriginal groups apply to lands and resources in a manner that will help their economic growth and self-sufficiency. The third is the move to Aboriginal self-government.

**8.20** Until 1967, the NWT was governed by a council located in Ottawa. Today, it and the other two territories have fully functioning legislatures with representative, responsible governments that are taking on a complete range of provincial-like functions and responsibilities.

**8.21** With devolution coming into effect on 1 April 2003, the Yukon government assumed administration and control of most public lands and natural resources from the Government of Canada. Some federal lands, such as national parks, were not part of the Devolution Transfer Agreement and continue to be run by federal departments. Also, devolution does not affect private lands, including the privately owned lands of the eight First Nations whose land claims have been completed. The administration and control of the other six First Nations' lands have been transferred to the Yukon government with measures in place for protection from third-party interests.

**8.22** With the exception of forestry, for which the Northwest Territories government took responsibility over a decade ago, all other Crown lands and resources in the Northwest Territories, including oil and gas resources, continue to be administered by Canada and are subject to regulation under federal laws. Devolution negotiations with Nunavut over land and resources have not yet begun.

### Significant number of land claims and associated implementation agreements concluded in the North

**8.23** Over the last 20 years, there have been significant changes in the makeup of Northern land claims.

**8.24** In the Yukon, 8 of the 14 Aboriginal groups have ratified land claims agreements and the associated self-government agreements. All 14 groups signed a common final agreement that established the basis for the negotiation of such settlements. The self-government agreements move beyond the management of land and resources and give First Nations more power over the administration of public services such as health and education.

**8.25** In the NWT, the Inuvialuit, Gwich'in, Sahtu, and Tlicho have concluded agreements. The Deh Cho, Akaitcho, and the Northwest Territory Métis Nation are in the midst of negotiations. The eastern Arctic Inuit completed a land claim agreement in 1993, which included an agreement that the separate territory of Nunavut would be proclaimed on 1 April 1999.

### Canada's changing role in the North

**8.26** Signing land claim agreements and transferring responsibilities to northern governments is a significant change in the governance of the North and the maturing of Canada as a northern nation. By these actions, the federal government and Canadians are accepting that the North is more than a frontier; it is a homeland for the people who live there. Furthermore, these actions create both an opportunity and a challenge. The opportunity lies in the development of potential wealth from the natural resources of the North for the peoples of the North and for all Canada. The challenge for the Government of Canada is to work with northerners to help them share in that wealth through the transfer of responsibilities and land claim agreements in a way that is sustainable and consistent with their aspirations.

### Focus of the audit

**8.27** Our audit looked at Indian and Northern Affairs Canada's management of, and accountability for, the transfer of responsibilities to the Yukon and for the implementation of land claims agreements for the Inuit of Nunavut and the Gwich'in of the NWT. Although we audited the implementation of land claims agreements in 1998 and did a follow-up in 2001, this is the first time we looked at these issues from a northern perspective.

**8.28** We conducted the audit mainly through the review of documentation available from the Department and from other sources and through interviews with key departmental officials. In addition, we interviewed key stakeholders, including representatives of the three territorial governments and Aboriginal groups.

**8.29** We examined the extent to which Indian and Northern Affairs Canada has processes in place for managing its responsibilities for implementing land claims agreements with the Inuit of Nunavut and the Gwich'in of the NWT. We also looked at how the Department is accountable for these northern responsibilities. We began by examining the management processes as set out in the land claims agreements. We then examined INAC's processes for managing its responsibilities for the agreements. We looked at both aspects because the two processes have to work together for a common goal.

**8.30** Further details on our audit objectives, scope, approach, and criteria are presented in **About the Audit** at the end of the chapter.

## Observations and Recommendations

### Land claims and implementation agreements

**8.31** Land claims agreements clarify the rights of Aboriginal groups to lands and resources in a way that contributes to their economic growth and self-sufficiency. To achieve this, the land claims agreements define a wide range of rights and benefits that generally include ownership of certain lands, a role in the management of heritage resources and parks in the settlement area, resource revenue-sharing, and specific measures to stimulate economic development.

**8.32** The objectives of the two agreements with the Inuit of Nunavut and the Gwich'in of the NWT set out the expectations of the parties (Exhibit 8.2).

**For every signed land claim there is an implementation agreement**

**8.33** Since the signing of the Inuvialuit land claim agreement in 1984, every subsequent claim agreement has had some form of negotiated implementation plan to put the agreement into operation. That takes a number of steps. Once the signing parties agree to the objectives of the claim they negotiate the responsibilities for achieving the objectives, all of which form part of the claim agreement. The next step is to negotiate the implementation plan, which lays out the specific activities that support the obligations and the objectives. If everything works as it should, living up to the activities of the implementation plan leads to fulfilling the obligations and objectives of the claim. (For the Inuit of Nunavut, the implementation plan is a contract; for the Gwich'in, it is a plan. We use the term implementation plan in both cases.)

**8.34** The actions needed to carry out many of the objectives are relatively straightforward. For example, to meet the objective of providing financial compensation, a schedule of payments is established; meeting that schedule achieves the objective. To meet the objective of providing the right to

**Exhibit 8.2 Land claim objectives for the Gwich'in of the Northwest Territories and the Inuit of Nunavut**

Gwich'in (Northwest Territories)	Inuit (Nunavut)
<ul style="list-style-type: none"> <li>• Provide for certainty and clarity of rights to ownership and use of land and resources.</li> <li>• Provide the specific rights and benefits in the agreement in exchange for the relinquishment by the Gwich'in of certain rights claimed in any part of Canada by treaty or otherwise.</li> <li>• Recognize and encourage the Gwich'in way of life, which is based on the cultural and economic relationship between the Gwich'in and the land.</li> <li>• Encourage the self-sufficiency of the Gwich'in and enhance their ability to participate fully in all aspects of the economy.</li> <li>• Provide the Gwich'in with specific benefits, including financial compensation, land, and other economic benefits.</li> <li>• Provide the Gwich'in with wildlife harvesting rights and the right to participate in decision making concerning wildlife harvesting and management.</li> <li>• Provide the Gwich'in with the right to participate in decision making concerning the use, management, and conservation of land, water, and resources.</li> <li>• Protect and conserve the wildlife and environment of the settlement area for present and future generations.</li> <li>• Ensure that the Gwich'in have the opportunity to negotiate self-government agreements.</li> </ul>	<ul style="list-style-type: none"> <li>• Provide for certainty and clarity of rights to ownership and use of lands and resources, and of rights for Inuit to participate in decision making concerning the use, management, and conservation of land, water, and resources, including the offshore.</li> <li>• Provide Inuit with wildlife harvesting rights and rights to participate in decision making concerning wildlife harvesting.</li> <li>• Provide Inuit with financial compensation and means of participating in economic opportunities.</li> <li>• Encourage self-reliance and the cultural and social well-being of Inuit.</li> </ul>

participate in decision making on the use, management, and conservation of resources, the government legislated the creation of institutions of public government. The institutions, which receive funding from the federal government, have boards of directors that include representation from the parties to the land claims agreements. The objective is met by the creation of, and continued support to, these institutions.

**8.35** However, as with many broad agreements arrived at through negotiations, the specific activities needed to meet some objectives are less clear. In those instances, progressing from meeting obligations and activities to achieving results requires the willingness of parties. When that is not enough, processes are needed to ensure that the objectives can be reached.

**8.36** The drafters of the land claims agreements foresaw this and included three processes that would contribute to results:

- a panel to oversee implementation,
- a binding arbitration panel to resolve disputes, and
- annual reporting to demonstrate accountability.

## Resolving disputes

### Implementation committees and other mechanisms are not effective

**8.37** The two land claims agreements feature implementation committees that oversee the implementation process and monitor the status of obligations. The committees also have the responsibility to resolve disputes between the Aboriginal peoples and the federal and territorial governments.

**8.38** These committees consist of senior officials representing the three parties—the federal government, the territorial government, and the organization representing the Aboriginal people for the land claim. For the Inuit of Nunavut, it is Nunavut Tunngavik Incorporated; for the Gwich'in, it is the Gwich'in Tribal Council.

**8.39 Disagreements among implementation committee members.** For committees like these, we expected to find an effective decision making process. We found that the implementation committee for the Gwich'in land claim agreement decides by consensus, while the Nunavut panel needs unanimous consent to arrive at decisions. These processes do not limit effective decision making if there is a willingness to make them work. However, when committee members disagree over such fundamental matters as the relationship between activities, obligations, and objectives, the processes are not effective. It should be noted that the instances of disagreement are outweighed by the areas of agreement. However, when disagreements arise that the parties are unable to resolve, they tend to contaminate relationships and make it difficult to work together for the best interests of all parties.

**8.40 Arbitration panels have not reviewed any disputes.** The land claims agreements established arbitration panels to resolve such differences. The agreements specify that decisions of these panels are binding. They provide for the right to appeal—but only through a court. For the Nunavut agreement, this can happen only when there is “a failure to observe the

principles of natural justice or [when the panel is] otherwise acting beyond or refusing to exercise its jurisdiction.” For the Gwich’in agreement, an appeal can take place only if the arbitrator or arbitrators have erred in law or exceeded their jurisdiction.

**8.41** For the most part, only where each party agrees to be bound by the decisions of the arbitration panel do the disputed issues go to arbitration.

**8.42** Furthermore, federal officials told Nunavut Tunngavik Incorporated that the federal government will not be bound by decisions of the arbitration panel on financial matters and funding levels. They stated that Canada cannot agree to be bound by a funding decision of a third party that could affect appropriations of the Parliament of Canada.

**8.43** Our review of the work of the arbitration panels found that no cases had come before them since the claims were settled over 10 years ago. Yet disputes continue to remain unresolved. Furthermore, if it is true that Canada cannot agree to be bound by a decision of a third party on funding matters, then any money dispute can never be resolved through arbitration. Therefore any belief that arbitration is there to resolve money-related disputes, and make the land claims work more effectively, is an illusion.

#### Impact of disputes on land claim agreements

**8.44** All parties generally agree that many of the obligations in the land claim agreements have been met and have led to positive outcomes. However, when there are disagreements that the oversight framework and the dispute resolution process do not resolve, unhealthy relationships can develop.

**8.45** We looked at four disagreements—two from each of the land claims agreements—between the federal government and Aboriginal peoples (see Unresolved disagreements: Four case studies on pages 10–11). Three of the four disagreements deal with issues that arose from differences over how an obligation should be interpreted in light of the objectives of the land claim. The fourth issue—the funding of the Gwich’in Tribal Council—deals with the nature of the Government of Canada’s financial obligation to the Council under the claim. We chose these four because the issues involved, and how the disagreements are handled, are important to encouraging the self-sufficiency of the Gwich’in and Inuit and enhancing their capacities to participate fully in all aspects of the economy.

#### Reporting and accountability

**8.46 Lack of performance measures.** Because land claims agreements do not contain any milestones or targets, progress toward the objectives and overall performance is also unknown. We found that while the five-year review called for in the Nunavut land claim agreement was unable to arrive at any overall measure of progress toward success, it did point out that a major failure of the first five years was “ineffective implementation.” It indicated that there was a general failure to think in terms of effective management. Under the Gwich’in land claim, the implementation committee decided not to conduct an extensive five-year review but to wait for an eight- to ten-year



review of the implementation plan. The committee subsequently postponed that review, pending negotiations of the implementation plan for the next 10 years of the claim.

**8.47** Finally, while there is a provision in each land claim agreement for a public annual report, the report contains no discussion of these matters or matters covered in the four case studies (see pages 10–11).

### Lack of performance reporting

**8.48** Annual reports on land claims agreements are not helpful in holding the federal government accountable. The implementation committee for each land claim agreement must prepare and submit annual reports to the signatories. We expected annual reports like these to contain information that is useful to stakeholders in holding to account those responsible for meeting the objectives of the claims. They should be able to tell the reader what is working and what is not. Yet the agreements provide no direction on the content of these reports, other than the requirement in the Nunavut agreement that the report include “any concerns of any of the panel members.”

### Unresolved disagreements: Four case studies

The following four areas of disagreement illustrate differences that the processes established by the land claims agreements have been unable to resolve and are important for the economic future of the Inuit and Gwich'in. We acknowledge that we focussed only on four outstanding issues and that many issues have been resolved. However, whether the successes outweigh the disagreements in their impact on the overall performance of the claim is unknown.

#### Inuit of Nunavut

##### ❶ Increasing Inuit employment in government

Under the Nunavut land claim agreement, article 23 calls for increasing Inuit participation in government employment to a representative level in the Nunavut settlement area. Increasing Inuit participation in the delivery of public services is an important component of public policy in Nunavut and an important element in meeting one of the

objectives of the claim—to encourage self-reliance and well-being of the Inuit.

However, at the time of the negotiations, the parties agreed that a representative level would mean a level of Inuit employment within government that reflected the ratio of Inuit to the total population in Nunavut; it would apply within all occupational groups and levels. However, they did not agree on a target date for reaching a representative level or milestones for assessing progress.

As a result, the nature and extent of federal involvement with the other parties to the agreement has been at issue for several years. The five-year independent review called for in the land claim agreement, which was to examine and analyze the obligations and recommend improvements to the implementation process, identified the lack of co-operation between the federal government and Nunavut Tunngavik Incorporated in making article 23 work. The issue of the federal role arose again in the renewal negotiations that were underway at the time of this audit. In

2001, the land claim participants created a working group to discuss the implementation of article 23, including the nature of the federal involvement. The working group was to report in a year. At the time of this audit, that report is still pending.

Currently, a committee of senior officials made up of the Deputy Minister from Indian and Northern Affairs Canada, the Chief Executive Officer of Nunavut Tunngavik, and the Deputy Minister of Executive and Intergovernmental Affairs in Nunavut are also trying to resolve this issue.

##### ❷ Encouraging Inuit competition in the Nunavut marketplace

Whereas article 23 focusses on public sector employment, article 24 focusses on building a local economic capacity among the Inuit of Nunavut. The objective of article 24 is for the federal government to support and assist Inuit firms as they compete for government contracts. It does this through a procurement policy that focusses on increasing participation by Inuit firms in



**8.49** When we looked at the annual reports, we found that they were not results-based; they focussed primarily on activities and events rather than on useful accountability information. For example:

- They contained no overview of how outstanding obligations will be implemented and how they relate to objectives.
- There were no planned timelines for implementing performance targets.
- There was no information on performance, particularly against objectives.
- There was no process to ensure accuracy of the reported information, including information from other departments.

**8.50 Basic principles of good reporting.** In our May 2003 Report, Chapter 1, Rating Departmental Performance Reports, we included five attributes that demonstrate good public reporting (Exhibit 8.3). Our review of the annual reports on the land claims agreements found none of those attributes.

#### Unresolved disagreements: Four case studies (continued)

Nunavut business opportunities. The five-year review of the claim interpreted the objective to mean strengthening the Inuit's economic capabilities and removing systemic barriers to their participation in Nunavut.

Because the progression from activities to obligations to results in moving toward the objectives is not clearly spelled out, disagreement continues over the federal government's responsibilities to strengthen Inuit capability to participate in the marketplace.

Federal government contracting is one way to increase Inuit participation. However, there is no agreement on the mechanisms to be used to increase that participation. Neither is there any agreement on how employment-generating programs such as the Aboriginal Business Procurement Policy, which was created independently of the land claim agreement, will contribute to meeting the agreement's objectives.

#### Gwich'in of the NWT

##### ③ Support for the traditional economy and encouragement of Gwich'in employment

In the Gwich'in claim, chapter 10 indicates that federal economic development programs should take into account the objective of maintaining and strengthening the traditional Gwich'in economy and encouraging Gwich'in economic self-sufficiency.

As with article 24 of the Nunavut land claim agreement, the focus of chapter 10 is the economic prosperity of the Gwich'in. However, how this chapter is to be implemented, including the role and form of federal government contracting, is in dispute.

Furthermore, the Gwich'in and the federal government disagree over the obligation to meet every three years to review the effectiveness of the employment creation measures. We were unable to find any three-year review of effectiveness. Now, ten years after the obligation was agreed to, a

committee has been established to look into the disagreement, but it is still at the stage of resolving definitions.

##### ④ Gwich'in Tribal Council funding

The fourth disagreement is over the existence and extent of federal financial support for the Council under the claim. The Gwich'in believe that the spirit and intent of the claim entitles them to receive core funding as the governing body for the land claim.

The federal government counters that while it has funded the Council, it has no obligation under the claim to do so. Furthermore it says that it is not willing to debate the adequacy of its funding to the Council, given its position that it has no funding obligation in the first place. We note that the federal government has proposed a substantially increased funding package for the next 10 years. The Council has accepted this increase in funding but all parties understand that its acceptance does not compromise its claim that the amount is inadequate.

**Exhibit 8.3 Attributes of good reporting**

- Organizational context and strategic outcomes are clear
- Performance expectations are clear and concrete
- Key results are reported against expectations
- Performance information is credible and balanced
- Use of performance information is demonstrated

**8.51** In our December 2000 Report, Chapter 19, Reporting Performance to Parliament: Progress Too Slow, we noted three factors that contribute to weak reporting by federal departments and agencies:

- Basic principles of good reporting are not understood or applied.
- Performance reporting takes place in a political environment.
- Few incentives exist for good reporting and few sanctions for poor reporting.

**8.52** We did not audit whether the parties to the land claim agreements understand the basic principles of good reporting, but it is clear that they are not applying them to the annual reports. We also believe that the weaknesses in the implementation process contribute to the weak state of reporting. Finally, while the annual reports are tabled in Parliament, they are given little attention. The consequence of the weak state of reporting is poor accountability.

**8.53 Recommendation.** Indian and Northern Affairs Canada should work with the other signatories of the land claims agreements to overhaul the annual reports of the Gwich'in and Nunavut land claims agreements and make them more results-based.

**Department's response.** The Department agrees. Through the implementation committees, the Department will work with the other parties to the agreements to strengthen reporting through the annual reports to ensure an accurate and realistic account of progress on implementation to readers. The Department agrees that there must be a shared will of all parties to overcome their differences.

**Sharing of accountability calls for collaboration and commitment**

**8.54** In our April 1999 Report, Chapter 5, Collaborative Arrangements: Issues for the Federal Government, there was a study of collaborative arrangements established by federal departments and agencies to deliver federal programs or services. This study provides a framework for understanding accountability when there are two or more parties to agreements such as land claims. We identified credible reporting as a key

element of effective accountability. That study also indicated that along with credible reporting, good accountability requires several other conditions:

- clear and agreed-upon expectations;
- clear roles and responsibilities;
- balanced expectations and capacities; and
- reasonable review, program evaluation, and audit.

**8.55** We found several areas where these conditions are weak. For example, the four areas of disagreement in the case studies illustrate an expectation gap between the federal government and the land claims beneficiaries. We also found that the decision making process for resolving difficult issues demonstrates that roles and responsibilities are not clear.

**8.56** Arrangements where there is a sharing of accountability require the will of all parties to overcome their differences. One of the parties must also assume a leadership role. Leadership needs to be based on levels of expertise and involvement, and established through action, commitment, and co-operation with other partners. In our view, the federal government has the resources and the capacity to assume the leadership role, if not an implicit obligation. However, it cannot do so without the willingness of all the parties.

## Managing federal responsibilities

### Good management includes meeting activities and obligations—and achieving results

**8.57** Filling a leadership role begins with committing to make it happen. For the Department, that includes not only a willingness to work with the other parties but also to manage its own responsibilities with a view to achieving success. We examined the way the Department managed its responsibilities for implementing the two land claims agreements. Without measuring progress under the agreements, the Department cannot meet a key accountability requirement to demonstrate success. Overall, we found its management process inadequate.

**8.58** In our September 1998 Report, Chapter 14, Indian and Northern Affairs Canada: Comprehensive Land Claims, we noted that the Department has a land claim obligations system (LCOS) database for managing land claims agreements. The database tracks progress, status, critical dates of projects, and activities of all federal departments that have responsibilities under land claims agreements. We noted in 1998 that the database was too general to be useful in assessing the status of certain obligations. In addition, the database tracks only activities and processes, not the results produced and the costs incurred.

**8.59** This audit made the same findings. We found that the LCOS database lists the specific actions the federal government is taking to meet each obligation but not whether they represent progress toward full implementation of the agreements.

**8.60** As a result, the LCOS database is not useful in helping management know whether its activities have any bearing on meeting the objectives of the claims agreements. Furthermore, in our discussions with officials it became

clear that the Department is focussed on following the letter of the obligations in the implementation plan and not on linking the obligations to results and overall performance.

**8.61** In the Treasury Board of Canada Secretariat's *Results for Canadians: A Management Framework for the Government of Canada*, the federal government recommends managing for results, not solely by activities. It calls for managers to look beyond activities and outputs and focus on the impacts of their programs. We could not find anything within the LCOS database that tracks results in a way that "...allows [the Department] to serve Canadians better by distinguishing program strengths and weaknesses and providing guidance on what does and does not work." This would include such tools as milestones and targets to track the impact of federal activities on land claim agreements obligations and objectives.

**8.62** In our 2001 Report, Chapter 12, Follow-Up of Recommendations in Previous Reports, we reviewed the progress made on our findings and recommendations from the 1998 Report on land claim agreements management. In that follow-up, we noted that the Department was developing a new monitoring system, the Treaty Obligation System, as a possible replacement for the LCOS database. The Department informed us during this audit that the Treaty Obligation System is not effective enough to replace the LCOS database.

**8.63 Recommendation.** Indian and Northern Affairs Canada should amend the land claim obligation system (LCOS) database to ensure that it focusses not only on obligations but also on results and that it provides measurable milestones and targets to gauge progress.

**Department's response.** A decision was made to replace the LCOS database. A project proposal has been submitted for approval to the Information Technology Committee and funds have been identified to design and develop a new obligations reporting system. The audit's recommendations and comments will be integrated to the extent possible in the design of this new system.

#### **The Department does not know the cost of implementing the individual land claim agreements**

**8.64** Managing for results requires paying attention to an initiative from its beginning to its end. It means defining clearly the results to be achieved and delivering the program or service. It also means costing the obligations and reporting on those costs in ways that make sense to Canadians.

**8.65** When each of the two land claim agreements we reviewed received royal assent, a range of activities began. We expected that the Department would have kept Parliament informed of its spending on each of these two claims. The Department would have tracked its direct and overhead costs and gathered the same information from the other departments involved.

**8.66** We were unable to find any such financial reporting for either of the agreements, nor were we able to find any process to capture financial

information for management purposes. We noted that when the two implementation plans were signed the parties agreed there would be capital transfers of \$1.12 billion to the Inuit of Nunavut to be paid out between 1990 and 2007 and \$141 million to be paid out to the Gwich'in between 1992 and 2007. We also noted that there would be ongoing activity to carry out its federal responsibilities under claim. Yet there is no reporting on the costs of these activities.

**8.67** However, Indian and Northern Affairs Canada and many other departments involved in the claim understood that there would be incremental increases in their budgets to cover implementation costs. Yet the costs of managing land claims is reported only in INAC's 2003-04 *Report on Plans and Priorities*. This report provides the total planned spending for implementation but no reporting on the spending plans for either agreement. Although the Department claims the government's costs of managing the land claims agreements are insignificant, we could not find any information to support this claim.

**8.68** In our audits of the land claim agreement process in 1998 and again in 2001, we recommended that the Department collect and report on this information. Furthermore, the Standing Committee on Public Accounts agreed that this kind of information should be reported.

**8.69 Recommendation.** Indian and Northern Affairs Canada should track and report the costs of delivering the federal activities for each claim, including the overhead for itself and the other departments involved.

**Department's response.** The Department reports the vast majority of the costs of implementing land claim agreement obligations in the annual reports for individual land claim agreements. The Department does not believe it would be possible, or particularly useful, to force federal departments to start keeping track of every operating and maintenance dollar spent on an agreement-by-agreement basis. The Department's current reporting practices fulfill the 1998 Report recommendation to the extent possible. Also, there are areas where delivering government programs under legislation meets, or contributes to meeting, land claim obligations. In these instances it is more important to meet the obligation than to try to determine whether or not it is an additional cost of delivering the obligation.

#### **The Department needs to strengthen its co-ordination of the federal government's land claims agreements activities**

**8.70** Indian and Northern Affairs' departmental act gives it wide-ranging responsibilities for co-ordinating Canada's activities in the Yukon, the Northwest Territories, and Nunavut. We expected the Department to understand clearly those responsibilities.

**8.71** The Department informed us that it works with other government departments to ensure that all contribute to completing the obligations assigned to the federal government in the implementation plan.

**8.72** The need to co-ordinate federal activities for the land claims agreements is well-illustrated in chapter 10 of the Gwich'in agreement which provides for economic measures, and in article 24, which provides for strengthening Inuit economic capability. Both provisions require the Department to co-ordinate the activities of many departments.

**8.73** Among those activities is the contracting by federal departments for goods and services. We expected the Department to have a clear process in place for managing this and for measuring success in meeting the objectives. This would have included a process for working with the two lead departments: Public Works and Government Services Canada (PWGSC) and the Treasury Board Secretariat.

**8.74** Indian and Northern Affairs Canada informed us that it carries out this function by reminding other departments of their obligations for contracting. It also indicated that it continues to try to influence the Secretariat and PWGSC to address their obligations. It further informed us that it believes that Treasury Board procurement policies are consistent with land claim agreements. Yet the parties to the agreement continue to disagree over this matter. Subsequent to the audit being completed, department officials notified us that they have been working closely with federal and Nunavut Tunngavik officials to create a steering committee to resolve the issues surrounding article 24 and government contracting.

**8.75** At the time of the audit, we noted questions being raised about the Department's ability to manage this area in the minutes of an implementation committee meeting in Nunavut. The minutes also drew attention to the Department's lack of monitoring of contracts as complicating the implementation of the objectives of article 24.

**8.76** We believe that the Department has not been effective in co-ordinating federal responsibilities to achieve results for chapter 10 and article 24 of the Gwich'in and Nunavut land claims agreements. Furthermore, at the time of the audit, the Department had no system for knowing if other departments and agencies were violating any of the provisions of the agreements and no plan to address that problem.

**8.77 Recommendation.** Indian and Northern Affairs Canada should strengthen its co-ordinating framework to ensure that the Government of Canada meets federal responsibilities under the land claims agreements.

**Department's response.** The Department has a co-ordinating role in the implementation of land claim agreements and it is carried out through its relationships with other government departments, claimant groups, territorial governments, and boards and committees established pursuant to the land claims agreements.

This year, the Department restructured and streamlined the Federal Steering Committee on Self-Government and Comprehensive claims, as part of our Performance Management Framework, with the objective of establishing a shared federal vision. The Department will continue to work with this committee to ensure that implementation issues are brought to the attention of senior officials in federal departments.

## Transferring responsibilities to the Yukon

### Devolution agreement with the Yukon is complete

**8.78** We examined whether the Department had processes for managing its responsibilities for devolution to the Yukon, and how accountable it is for those responsibilities.

**8.79** Devolution to the Yukon consisted of two main phases. The first was negotiating the areas to be transferred; the second was implementation, which included working out the details for the transfers. Our audit focussed on the implementation phase and only on the federal side of that process. We decided to look at this for two reasons. First, this devolution exercise was an historic event that marked a significant step in nation building. Second, the Department is engaged in a similar process in the Northwest Territories. The Department can apply any lessons from this audit to the Northwest Territories devolution.

**8.80** In September 1998, the Government of Canada, the Yukon government and the Yukon First Nations signed the Yukon Devolution Protocol Accord. This accord set the parameters for negotiating the transfer to the Yukon government of provincial-type responsibilities included in Indian and Northern Affairs Canada's Northern Affairs Program.

**8.81** On 29 October 2001, the governments of Canada and the Yukon signed the Yukon Northern Affairs Program Devolution Transfer Agreement. The agreement was implemented on 1 April 2003 when the *Yukon Act* came into effect. The key tasks that were part of the implementation covered a broad range of complex areas (Exhibit 8.4).

**8.82** On that date, approximately 260 federal employees had accepted employment with the Yukon government. Under the Agreement, the federal government gives the Yukon government \$36 million each year for operating costs for the administration and control of land and resources in the Yukon. It gives the Yukon government approximately \$27 million over five years for costs incurred prior to devolution and as one-time transition funds to carry out its new responsibilities.

#### Exhibit 8.4 Key tasks for the implementation of the Yukon Northern Affairs Program Devolution Transfer Agreement

- Transfer of responsibilities previously carried out by the Northern Affairs Program in the Yukon
- Preparation for passing and repealing of federal legislation
- Transfer of federal employees
- Transfer of properties, assets, contracts, and records
- Transfer of fire suppression responsibilities
- Transfer of certain environmental matters including responsibilities for assessment and remediation of contaminated sites



### Management framework was inadequate

**8.83** This was a complex undertaking that resulted in a positive outcome. Because it was so complex, with so many broad areas of activity, we expected the Department to have conducted a risk management review before implementing the agreement. This would have meant having a management framework to identify projects, develop timelines and milestones, and generally identify and lessen risks. Indian and Northern Affairs Canada and the Yukon government were jointly responsible for implementing the Devolution Transfer Agreement. They had several working groups and plans in place, but still the Department underestimated the time and the resources needed to complete the tasks. A comprehensive management framework would have made the process run more smoothly with less stress on the people involved.

### The Department kept Parliament informed of progress

**8.84** Throughout the transfer of responsibilities, the Department kept Parliament informed of changes to the timetable. But, because the Department managed the transfer as part of its regular business, it had no specific budget to manage the process. As a result, it did not report on the costs to implement the transfer.

### The Department has an opportunity to assess how well it implemented the Yukon devolution

**8.85** The last time there was such a significant transfer of responsibilities for land and water resources before this one was some 70 years ago. That was when the federal government transferred similar responsibilities to the Prairie provinces. The Department is now engaged in a similar exercise in the Northwest Territories. We expect the Department to assess its implementation of the Yukon transfer to improve the process. We understand that it is planning such an exercise.

**8.86 Recommendation.** Indian and Northern Affairs Canada should conduct a “lessons-learned” evaluation of its management of the Yukon devolution exercise.

**8.87 Recommendation.** Indian and Northern Affairs Canada should ensure that it has an adequate management framework for the implementation phase of the Northwest Territories devolution.

**Department’s response.** The Department agrees. The transfer of land and resource management responsibilities to the Yukon government was an extremely important and complex undertaking. Despite this complexity and the path-breaking nature of many aspects of the initiative, the implementation process went remarkably smoothly due in large measure to the dedication and co-operation of involved officials, both federal and territorial.

There is no doubt, however, that improvements could and should be made when similar agreements are implemented in the Northwest Territories and Nunavut in the future.



The Department accepts the recommendation that a lessons-learned exercise be undertaken with respect to the Yukon devolution. As noted in the chapter, preparations for such an exercise are already well underway. Ways in which to strengthen the implementation management framework will be one of several areas to be examined during this process. The Department plans to complete the lessons-learned exercise by early 2004 so that the collective experience from the Yukon devolution will be available well before planning begins for devolution implementation in the other territories.

## Conclusion

**8.88** Indian and Northern Affairs Canada's processes for managing its responsibilities under the land claims agreements in Nunavut and for the Gwich'in of the Northwest Territories and for transferring federal responsibilities to the Yukon were incomplete.

**8.89** The land claims agreements included specific obligations. The Department focussed too heavily on managing these. It had neither clear milestones with which to assess performance, nor feedback mechanisms to assist in improving federal performance.

**8.90** For devolution to the Yukon, the Department had some management activities, but it did not have an adequate overall management framework for planning and managing the implementation. Although the transfer exercise had a positive outcome, the lack of such a framework exposed the Department and the federal government to risks that the tasks needed to complete the undertaking were either not identified or managed in a logical timeframe.

**8.91** The Department is fulfilling its accountability responsibility to Parliament for the Yukon devolution. However, this was not the case for the two land claims agreements we looked at.

**8.92** Indian and Northern Affairs, in co-operation with the land claims agreements' beneficiaries and the territorial governments, is accountable to the Parliament of Canada, the territorial assemblies, and the agreements' recipients for managing the federal responsibilities under the land claims agreements. While the Department cannot act alone to make the agreements successful, it clearly needs to have a strategic focus for the objectives and obligations as set out in the agreements. It also needs to take a leadership role and work with the other two parties to develop a work plan that moves towards meeting those objectives. We believe a starting point would be better reporting to Parliament on the Department's accountability responsibilities under the land claims agreements.

**8.93 Meeting the spirit of the agreements.** Land claims agreements are about clarifying rights to lands and resources in a way that will help the economic growth and self-sufficiency for the agreements' beneficiaries. They also establish obligations on the part of the federal government and the other signatories to the agreements. Yet the Department managed the two claims

we looked at by focussing solely on the letter of the obligations, appearing not to take into account their objectives or the spirit and intent of the agreements. By managing without determining how best to meet the objectives, the Department has contributed to a sense of frustration that has developed between the beneficiaries and the federal government.

**8.94 Co-operation among all parties.** The success of the land claims agreements in contributing to the long-term economic prospects of the beneficiaries is not the sole responsibility of the federal government. These agreements require all parties to work together in the best interests of both the beneficiaries and all Canadians. When goodwill breaks down, it often indicates a failure to co-operate among all the parties. As the Eastmain decision stated, that co-operation should reflect “. . . good faith and reasonableness on both sides and [presume] that each party respects the obligations that it assumes toward the other.”

**Department’s response.** The comments on the emphasis on obligations instead of objectives represent an area of fundamental disagreement between the Department and the Office of the Auditor General.

While the Department does not dispute the importance of meeting the objectives of the agreements, it must be recognized that all parties have determined that the best way to meet the objectives is to fulfill the obligations as set out in the agreements and detailed in the implementation plans. Therefore, the success of implementation must be defined through the fulfillment of those obligations.

## About the Audit

### Objectives

The objectives of the audit were to assess the extent to which

- Indian and Northern Affairs Canada has processes in place for managing its responsibilities for devolution to the Yukon and for the implementation of land claims agreements for the Inuit of Nunavut and the Gwich'in of the Northwest Territories, and
- the Department is accountable for these northern responsibilities.

### Scope and approach

We carried out our audit primarily at Indian and Northern Affairs Canada headquarters and included visits by the audit team to the Department's regional offices in Whitehorse, Yellowknife, and Iqaluit.

The audit team interviewed personnel in the Department and reviewed relevant documents on the management processes of the three areas included in the audit—the Yukon devolution, the Nunavut land claim agreement, and the Gwich'in land claim agreement. We also interviewed key stakeholders.

### Criteria

The criteria for the audit included expectations that the Department managed the transition of governance to the North by the following:

- Clearly defining its roles and responsibilities for managing the transition to northern governance.
- Clearly outlining its activities and tasks:
  - having a clear vision, discussing strategic and operational plans with relevant stakeholders, and keeping the Department informed;
  - having appropriate resources to carry them out;
  - having the capacity to carry out its legislative responsibilities to co-ordinate federal responsibilities under the land claims agreements;
  - conducting timely performance reviews;
  - using its performance information to improve future performance; and
  - supporting its key results with credible information.
- Reporting its performance expectations to Parliament in a clear, structured, and timely format.
- Reporting key results against expectations in a clear, structured, and timely format.

### Audit team

Assistant Auditor General: Ron Thompson

Principal: Jeff Greenberg

Director: Martin Ruben

Mary-Jo Jacksic

Catherine Johns

Stacey Wowchuk

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



# Report of the Auditor General of Canada to the House of Commons—November 2003

## Main Table of Contents

	Matters of Special Importance—2003
	Foreword and Main Points
<b>Chapter 1</b>	Information Technology: Government On-Line
<b>Chapter 2</b>	Accountability and Ethics in Government
	<b>Government-Wide Audit of Sponsorship, Advertising, and Public Opinion Research</b>
<b>Chapter 3</b>	The Sponsorship Program
<b>Chapter 4</b>	Advertising Activities
<b>Chapter 5</b>	Management of Public Opinion Research
<b>Chapter 6</b>	Protection of Cultural Heritage in the Federal Government
<b>Chapter 7</b>	Human Resources Development Canada and the Canada Employment Insurance Commission—Measuring and Reporting the Performance of the Employment Insurance Income Benefits Program
<b>Chapter 8</b>	Indian and Northern Affairs Canada—Transferring Federal Responsibilities to the North
<b>Chapter 9</b>	Economic Development of First Nations Communities: Institutional Arrangements
<b>Chapter 10</b>	Other Audit Observations
<b>Appendices</b>	

