

May 29, 2023

FMB response to draft evaluation of CIRNAC's Indigenous Institutions and Governance Modernization Branch

Overview

Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC) has prepared an evaluation of its activities in support of First Nations jurisdiction over land and fiscal management. CIRNAC has invited the First Nations Financial Management Board (FMB) to review the evaluation and provide comments.

The following comments and recommendations are based on FMB's review of CIRNAC's activities evaluation. The intent is to ensure an effective and impartial evaluation to support the improvement of government programs and services. The following are the key takeaways and corresponding recommendations:

Evaluation Methodology:

In this report, CIRNAC is evaluating its own performance. While self-evaluation is critical, it may result in blind spots and biases. Self-evaluation cannot determine whether CIRNAC's activities are meeting the needs of First Nations governments. Proper measurement and evaluation of initiatives is essential to the improvement of policy, programs, and services, which leads to reconciliation governments they serve. This approach would provide a more comprehensive evaluation and yield enlightening results.

In this instance, CIRNAC inquired with "28 individuals from First Nations led (sic) institutions and organizations, as well as CIRNAC and other federal departments and agencies..." It is unclear from this how many of the people interviewed were in fact the Rights holders affected by the Governance Modernization Branch. While First Nations-led institutions and organizations may have views on the program effectiveness, they are not the Nations themselves whose jurisdictions over land and Fiscal Management are directly impacted. More importantly, from the perspective of the Rights holders, it may be hard to perceive what progress has been achieved in the timeframe of this evaluation. Work has been slow to advance and progress less than anticipated or hoped for.

In FMB's response to the UNDRIP (United Nations Declaration on the Rights of Indigenous Peoples) Action Plan (UNDA), FMB proposed that the Indigenous Advisory Committee should be part of UNDA evaluation. Likewise, this committee could provide direct feedback from First Nations, whose insights and perspectives can ensure a well-rounded assessment of CIRNAC's performance.

Key Findings:

a) Funding Constraints:

The report rightly identifies the funding constraints faced by First Nations governments and institutions, including a lack of long-term fiscal visibility, with funding originating from both ISC and CIRNAC. Funding must be sufficient, predictable, stable, sustainable and needs based. FMB fully supports the recommendation to strengthen the funding structure of Indigenous governments and institutions. The institutions operating under the First Nations Fiscal Management Act (FMA) require statutory funding to support their long-term planning and responsiveness.

b) Lack of Capacity and Coordination:

The report highlights the challenges faced by the Governance Modernization Branch, characterized by a lack of capacity and coordination between ISC and CIRNAC. Likewise, FMB has observed siloed communication and management between and within the two departments. It appears that workplans have not been developed with specific deliverables to efficiently measure results and outcomes. It likewise appears that CIRNAC is only willing to take a single outcome approach, rather than implementing progressive approaches that might incrementally and slowly lead to a positive outcome for First Nations. The longer First Nations have to wait for outcomes, the longer they are deprived of an improved standard of living. The current approach suggests that CIRNAC has not understood the urgency of the situation.

FMB recommends planning and evaluating initiatives collaboratively, rather than within departmental silos. This approach would promote effective coordination and address the structural issues at hand.

To this end, the Joint Advisory Committee on Fiscal Relations (JACFR) recommendations must be managed and coordinated under one department: CIRNAC. The participation of many government bodies, including but not limited to Natural Resources Canada, the Department of Finance and the Department of Justice, is required for meaningful implementation of the JACFR recommendations. These departments, under the ownership of CIRNAC, must coordinate in a cohesive manner for the required systemic change to occur.

This means establishing a measurable and coherent plan with a clear strategy and understood goals housed under the initiative. To continue to divide responsibilities, goals, expected outcomes, and resourcing among different bureaucratic arms of different departments at this point would be ineffective. Well-coordinated outcomes-based initiatives could help CIRNAC's capacity issues and improve efficiency within both CIRNAC and ISC.

c) Inaccurate Performance Indicators:

The report correctly identifies that the current range of performance indicators used by CIRNAC does not provide an accurate or meaningful measure of success for First Nations engaging in the FMA land and fiscal management options. These indicators ought to have been an early priority. FMB proposes developing performance indicators that offer better insights for First

Nations interested in such options, including an examination of the systemic barriers they face throughout the process.

The report also fails to address the main barrier to Additions to Reserve (ATR): the role of municipalities. The current ATR process is narrow and bureaucratic. First Nations bear the burden of consulting and negotiating with municipalities and there is little to no incentive for municipalities to support ATRs. The Government of Canada needs to support First Nations in the ATR process and incentivize other levels of government to participate in ATRs. First Nations require training, expertise, and support to create or take advantage of conditions where both municipalities and First Nations can benefit from an agreement. Until this issue is addressed, the ATR process will continue to be ineffective.

In addition, please note a correction on Page 7, under Figure 3, to accurately reflect the statistics regarding First Nations' involvement in the Framework Agreement and scheduling under the FNFMA. The correct statement should read: "51% are scheduled and 38% are involved in the FA."

Conclusions and Recommendations:

a) Enhancing Capacity:

While CIRNAC recommends enhancing the capacity of the Governance Modernization Branch, FMB disagrees that bureaucratic growth is the solution to improved effectiveness. FMB has observed that aversion to risk prevents meaningful change and leads to a preference for incremental improvements instead of systemic change.

Rather than focusing solely on increasing capacity within CIRNAC, FMB strongly encourages redirecting resources towards Indigenous institutions and First Nations capacity. First Nations institutions are an immense success, an approach based on Indigenous-led solutions rather than an expansion of programs or Department capacity. Continuing to invest in Indigenous institutions would yield higher returns and empower Indigenous communities to take the lead in land and fiscal management initiatives.

Institutional support for First Nations governments spurs capacity development in communities and strengthens internal governance systems. With this sort of development, First Nations become less and less reliant on government programs, instead having the means to know, exercise, and maintain their own rights and means to govern. A path with options towards self-determination and fiscal autonomy should be the goal, rather than propping up government programs.

b) Co-development of Policies:

CIRNAC recommends engaging with other federal departments and agencies, including collaboration with Indigenous institutions for policy co-development. There is not enough mention of First Nations themselves, the Rights holders. Article 3 of UNDRIP asserts the right to self-determination for Indigenous peoples and Article 4 the right to self-government. As

development of initiatives discussed in this report are entirely about Nations management over lands and governance, a greater effort to have First Nations governments involvement and feedback must be a priority.

FMB proposes an improvement to the co-development process on governance modernization. In the current process, government leads policy research and development and asks Indigenous institutions for comments, often on short notice. Meetings are frequently cancelled as progress has not occurred and priorities appear to be on the back burner, especially as it relates to the Default Management reform. This has been both a slow and indecisive approach. Instead, Indigenous thought leaders and institutions should be leading policy development. This approach would ensure that Indigenous perspectives are at the forefront, fostering more meaningful and effective policies. It would also lead to faster results, as Indigenous institutions are focused on providing results to the Rights holders and seeing their Nations' situations improve. Indigenous institutions feel the real pain caused by further delays that continue to deny Nations their most basic needs.

FMB recommends leveraging the ongoing development of the new policy on ATR as an opportunity for Indigenous-led co-development. Collaboration between the FMB and the Governance Modernization Branch can yield valuable recommendations to inform the new policy on ATRs, if CIRNAC lets Indigenous institutions lead the policy development.

c) Shared Information Management System and Performance Indicators:

FMB recommends the implementation of a shared information management system and/or database to improve capacity and collaboration. This approach would ensure that all departments have access to consistent and up-to-date information, promoting more efficient and coordinated efforts.

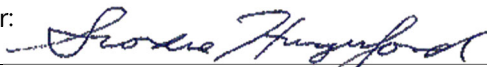
Additionally, FMB recommends performance indicators that provide better insights for First Nations interested in land and fiscal management options. These indicators should highlight successful examples and illuminate the systemic barriers faced by those engaged in the process.

d) JACFR recommendations led and coordinated by one government body: CIRNAC

FMB recommends that CIRNAC take the leadership and responsibility for ensuring the implementation of the JACFR recommendations. While the involvement and participation of the central government bodies will be required (including but not limited to NRCAN, Department of Finance, Department of Justice, etc.), CIRNAC is the logical leader to see these recommendations brought to fruition. Failure to assign ownership will slow and perhaps even prevent achieving the successful implementation of the JACFR recommendations.

FIRST NATIONS FINANCIAL MANAGEMENT BOARD

Per:



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