



Aboriginal Affairs and
Northern Development Canada

Affaires autochtones et
Développement du Nord Canada

Aboriginal Affairs and Northern Development Canada

Internal Audit Report

Audit of Consultation and Accommodation

Prepared by:

Audit and Assurance Services Branch

Project #: 14-03

November, 2014

TABLE OF CONTENTS

- ACRONYMS ii
- EXECUTIVE SUMMARY3
- 1. INTRODUCTION AND CONTEXT9
- 2. AUDIT OBJECTIVE AND SCOPE12
- 3. APPROACH AND METHODOLOGY13
- 4. CONCLUSION.....14
- 5. FINDINGS AND RECOMMENDATIONS.....14
 - 5.1. Governance and Strategic Direction.....14
 - 5.2. Stewardship, People and Results and Performance16
- 6. MANAGEMENT ACTION PLAN22
- Appendix A: Audit Criteria.....29
- Appendix B: Applicable Legislation, Regulations, and Policies30

ACRONYMS

AANDC	Aboriginal Affairs and Northern Development Canada
AASB	Audit and Assurance Services Branch
ADM	Assistant Deputy Minister
ATRIS	Aboriginal and Treaty Rights Information System
BC	British Columbia
CAU	Consultation and Accommodation Unit
CIS	Consultation Information Service
DG	Director General
DM	Deputy Minister
DOJ	Department of Justice
LED	Lands and Economic Development
NAO	Northern Affairs Organization
PSD	Policy and Strategic Direction
TAG	Treaty and Aboriginal Government
TB	Treasury Board

EXECUTIVE SUMMARY

Background

An *Audit of Consultation and Accommodation* was included in the 2014-2015 to 2016-2017 Risk-Based Audit Plan approved by Aboriginal Affairs and Northern Development Canada’s (AANDC) Deputy Minister on February 6, 2014. The audit was identified as a priority area due to the significant legal ramifications and liabilities that may result from not adequately consulting with Aboriginal groups when AANDC, on behalf of the Crown, contemplates conduct that might adversely impact potential or established Aboriginal or Treaty rights.

The Government of Canada consults with Canadians on matters of interest and concern to them. Consulting is an important part of good governance, sound policy development and decision-making. Through consultation, the Crown seeks to strengthen relationships and partnerships with Aboriginal peoples and thereby achieve reconciliation objectives. In addition to pursuing policy objectives, the federal government consults with Aboriginal peoples for legal reasons. Canada has statutory, contractual and common law obligations to consult with Aboriginal groups.

The legal duty to consult is based on judicial interpretation of the obligations of the Crown (federal, provincial and territorial governments) in relation to conduct that could adversely impact potential or established Aboriginal or Treaty rights of the Aboriginal peoples of Canada, recognized and affirmed in Section 35 of the Constitution Act, 1982. The legal duty cannot be delegated to third parties.

Good Governance / Policy Reasons	Legal Reasons
<ul style="list-style-type: none"> • Make informed and appropriate decisions • Create and improve working relations with all those affected • Address new business and policy developments 	<ul style="list-style-type: none"> • S.35 Common law requirements • Statutory requirements • Agreements / contractual requirements

The Supreme Court of Canada (SCC) has held that the Crown has a legal duty to consult and, where appropriate, accommodate when the Crown contemplates conduct that might adversely impact potential or established Aboriginal or Treaty rights. This legal duty to consult has been applied to an array of Crown actions and in relation to a variety of potential or established Aboriginal or Treaty rights.

The courts have generally left to government the detailed exercise of implementing processes, procedures and tools that seek to fulfill the legal duty to consult. An awareness of the legal duty and a consideration of when and how it might apply is expected to become part of the government’s daily business. A wide range of consultation practices exist and are being implemented by federal departments and agencies across the country to better fulfill the Crown’s legal duty to consult and, where appropriate, accommodate.

The development of a federal approach to consultation and accommodation is not intended to be a one-size-fits-all approach. Differences in history, geography, demographics, governance, relationships and other circumstances of Aboriginal communities and organizations in Canada are relevant when considering how to address any consultation obligations that may arise. Thus, understanding the historical, geographic and legal context relevant to Crown activities is essential.

Issues addressed in the legal duty to consult are specific to the location and nature of the activity. Consultation procedures and approaches must be adapted to address the different kinds of rights and Crown obligations that are at issue. There is significant variability across the country and differences in contexts can require different approaches to fulfilling the legal duty to consult and, where appropriate, accommodate.

Departmental and agency approaches to consultation should integrate, to the extent possible, the fulfilment of legal duty to consult obligations with departmental policy objectives and with other overarching government policy objectives.

It is important to note that consultation does not always lead to accommodation. The courts have determined that the legal duty to consult is exercised along a wide spectrum, according to the strength of the claim. Fulfilling the legal duty can include simply providing information to the Aboriginal community right up to meaningful involvement which could be as far as obtaining consent. The courts were also clear, however, that this legal duty to consult does not impose a legal duty to reach an agreement and it does not give Aboriginal groups a veto over proposed projects.

Consultation and Accommodation within AANDC

Within AANDC, Sector activities can adversely impact potential or established Aboriginal or Treaty rights and, thus, may trigger a legal duty to consult. AANDC Sectors and some examples where the Crown's legal duty to consult is triggered in relation to rights under Section 35 of the *Constitution Act* include:

- Lands and Economic Development (LED): Additions to Reserve (ATR); reserve creation; and environmental management activities on reserve lands. Before setting apart land as Reserve, AANDC will consider the impact of such action on the Aboriginal or Treaty rights of other Aboriginal Groups;
- Treaties and Aboriginal Government (TAG): negotiating and signing land claim agreements in regions with overlapping claims; and,
- Northern Affairs Organization (NAO): contaminated sites remediation activities; approval of Type A water licences; and, licences to prospect and prospecting permits, mineral leases, mineral claims.

As per the 2007 Government of Canada Action Plan, the Crown has adopted a whole-of-government approach to Aboriginal consultation and AANDC has been mandated to lead the development and support the implementation of this approach. The AANDC Consultation and Accommodation Unit (CAU) was established in 2008 under the Policy and Strategic Direction

(PSD) Sector to provide support to federal departments, agencies and their officials as they work to fulfill their respective legal duties on Aboriginal consultation and accommodation. CAU is now part of the Treaty and Aboriginal Government (TAG) Sector. CAU's primary activities can be subdivided into three main areas: policy and training; consultation information services; and support to partnerships.

Within AANDC, the CAU provides advice and support to Sectors; however, Sectors are responsible for developing processes for fulfilling the Crown's legal duty to consult obligations which fall under AANDC mandate. Sectors have, in turn, developed specific guidelines, tools, and operational procedures with respect to fulfilling this legal duty. The CAU continues to provide support to AANDC Sectors to ensure that they adequately comply with the legal obligations for the duty to consult; helps address issues/concerns and any specific need/requirement on other Department policy or program issues; and, provides positions and feedback on policy and litigation issues.

Audit Objective and Scope

The objective of this audit was to assess the adequacy and effectiveness of AANDC controls for consultation and accommodation and, more particularly, to assist therefore the department with its legal duty to consult obligations, the audit examined the following and recommended improvements where appropriate:

- Governance processes provide overall direction with regard to objectives, approaches, roles and responsibilities and oversight in legal duty to consult obligations;
- Control processes are adequate to ensure effective and efficient consultations that comply with policy, regulatory and legislative requirements; and,
- Risk management processes are in place to identify and mitigate key risks related to legal duty to consult obligations.

The audit scope covered the period between April 1, 2012 and March 31, 2014. Activities examined were limited to those undertaken by the Department in response to informing, communicating and fulfilling the Crown's legal duty to consult obligations, including processes used to determine when a legal duty to consult may arise and how it may be fulfilled.

The scope of the audit included the CAU, AANDC governance processes, and Sectors within the Department where the legal duty to consult activity continues to occur: Lands and Economic Development (LED), Treaties and Aboriginal Government (TAG), and Northern Affairs Organization (NAO). Other Sectors, such as the Education and Social Development Programs and Partnerships Sector (ESDPP), were included within the audit scope in order to examine governance practices used in determining whether a legal duty to consult exists and risk management practices used to reduce the likelihood of engagement activities creating future legal duty to consult obligations.

The audit scope included a review of how Sectors have developed tools, guidelines, processes and practices to assess their legal duty to consult obligations and what controls are in place to

ensure the analysis performed was accurate but did not include an assessment of the outcomes of the consultation process.

The audit scope did not include an examination of how the CAU supports other government departments, nor were other government departments contacted regarding the CAU's role as part of the audit. An AANDC evaluation of the CAU, which covered the period from 2008-2009 through 2012-2013 and included other government departments, was conducted at the same time as this audit.

Audit fieldwork was conducted at AANDC Headquarters and the British Columbia and Manitoba regional offices. The Saskatchewan and Ontario Regions were also interviewed from Headquarters.

The purpose of this report is to transmit to AANDC an assessment of the adequacy and effectiveness of AANDC controls, practices and procedures used in fulfilling the Crown's consultation and accommodation obligations. This report is not a legal assessment of whether AANDC has fulfilled the Crown's legal duty to consult and if appropriate to accommodate, pursuant to Section 35 of the Constitution Act, 1982. This report should be only used by AANDC to identify areas for improvement to processes and controls.

Statement of Conformance

This audit conforms with the *Internal Auditing Standards for the Government of Canada*, as supported by the results of the quality assurance and improvement program.

Observed Strengths

Throughout the audit fieldwork, the audit team observed examples of how controls are properly designed and are being applied effectively by AANDC. This has resulted in several positive findings which are listed below:

- Practices to fulfill legal duty to consult obligations in some regional activities (e.g. LED Additions to Reserve and TAG claims negotiations) have been in place in the British Columbia Region since 2006;
- Sectors (i.e. TAG, LED, and NAO) have integrated the legal duty to consult into their processes and key documents are reviewed and approved by an appropriate decision-making committee (e.g. Overlap Committee, Additions to Reserve Technical Committee), which meet regularly. These committees include Sector senior management and Department of Justice (Justice) representatives;
- Additional guidelines have recently been developed by Sectors which are aligned with departmental consultation guidelines;
- Mechanisms such as working groups, the Consultation Information Service, and the Intra-Departmental Working Group are in place to share information and experiences on the legal duty to consult, including participation from other government departments/agencies and Justice;

- Sectors and Headquarters staff interviewed are aware of CAU's role within the Department and have worked with CAU when guidance or advice was needed on consultation and/or accommodation activities; and,
- Generally, effective recordkeeping and records management practices are established and functioning.

Conclusion

Generally, the audit found that AANDC management controls with respect to the legal duty to consult are in place within Sector processes and in the sample files reviewed the audit did not find any instances where AANDC procedures with regards to legal duty to consult were not being followed appropriately. Some opportunities for improvement were noted which would strengthen management practices in the following areas: department-level coordination of consultation and accommodation; mechanisms used to obtain consistent legal advice and reporting on Justice resource utilization; guidance and clarification to staff concerning some aspects of consultation and accommodation in some Sectors; and, communication related to system (ATRIS Aboriginal and Treaty Rights System) capabilities used in supporting the legal duty to consult.

Recommendations

The audit team identified areas where management controls could be improved, resulting in five recommendations:

1. The Senior Assistant Deputy Minister of Treaties and Aboriginal Government should identify an existing appropriate governance mechanism (e.g. departmental governance Committee) that can allow for formal senior level management strategic discussion and approval on Sector consultation and accommodation policies that could potentially impact other Sectors. Terms of Reference should be modified accordingly and include the sharing of information gathered and held by the respective Sector Branches that can support AANDC and other Crown officials in fulfilling the legal duty to consult.
2. The Senior Assistant Deputy Minister of Policy and Strategic Development, through the renewal process of the Memorandum of Understanding between AANDC and the Department of Justice, should continue to promote the need for consistent legal advice, with regard to Consultation and Accommodation, across Sectors and Regions. This includes identifying departmental leading practices in utilization reports and revising utilization reports to provide the Department with more standardized, detailed, and consistent reporting to AANDC on a project-by-project basis.
3. The Assistant Deputy Minister of Lands and Economic Development should ensure draft operational guidance on consultation and accommodation procedures is finalized, ensure consultation tracking logs are properly retained for audit trail purposes in all active ATR files, and define and communicate procedures specific to environmental assessments.

4. The Senior Assistant Deputy Minister of Treaties and Aboriginal Government should review the processes and practices within each of the Sector's branches (Negotiations West, Negotiations Central and Negotiations East) to determine, based on risk, what controls are necessary to fulfill the Sector's legal duty to consult obligations and, where applicable, identify any areas where controls can be modified to increase consistency across Branches.
5. The Senior Assistant Deputy Minister of Treaties and Aboriginal Government should, as ATRIS functionality evolves, communicate and update the capabilities and limitations of ATRIS in legal duty to consult training and ATRIS user guides, and periodically review ATRIS business requirements to evaluate the feasibility of making future updates to ATRIS.

Management response

Management is in agreement with the findings, has accepted the recommendations included in the report, and has developed a management action plan to address them.

1. INTRODUCTION AND CONTEXT

1.1. Legal Duty to Consult and Accommodate

An *Audit of Consultation and Accommodation* was included in the 2014-2015 to 2016-2017 Risk-Based Audit Plan approved by Aboriginal Affairs and Northern Development Canada’s (AANDC) Deputy Minister on February 6, 2014. The audit was identified as a priority area due to the significant legal ramifications and liabilities that may result from not adequately consulting with Aboriginal groups when AANDC, on behalf of the Crown, contemplates conduct that might adversely impact potential or established Aboriginal or Treaty rights.

The Government of Canada consults with Canadians on matters of interest and concern to them. Consulting is an important part of good governance, sound policy development and decision-making. Through consultation, the Crown seeks to strengthen relationships and partnerships with Aboriginal peoples and thereby achieve reconciliation objectives. In addition to pursuing policy objectives, the federal government consults with Aboriginal peoples for legal reasons. Canada has statutory, contractual and common law obligations to consult with Aboriginal groups.

The legal duty to consult is based on judicial interpretation of the obligations of the Crown (federal, provincial and territorial governments) in relation to Crown conduct that could impact adversely potential or established Aboriginal or Treaty rights of the Aboriginal peoples of Canada, recognized and affirmed in Section 35 of the Constitution Act, 1982. The legal duty cannot be delegated to third parties.

Good Governance / Policy Reasons	Legal Reasons
<ul style="list-style-type: none"> • Make informed and appropriate decisions • Create and improve working relations with all those affected • Address new business and policy developments 	<ul style="list-style-type: none"> • S.35 Common law requirements • Statutory requirements • Agreements / contractual requirements

The Supreme Court of Canada (SCC) has held that the Crown has a legal duty to consult and, where appropriate, accommodate when the Crown contemplates conduct that might adversely impact potential or established Aboriginal or Treaty rights. This legal duty to consult has been applied to an array of Crown actions and in relation to a variety of potential or established Aboriginal or Treaty rights.

The courts have generally left to government the detailed exercise of implementing processes, procedures, and tools that seek to fulfill the legal duty to consult. An awareness of the legal duty and a consideration of when and how it might apply is expected to become part of the government’s daily business. A wide range of consultation practices exist and are being implemented by federal departments and agencies across the country to better fulfill the legal duty to consult and, where appropriate, accommodate.

The development of a federal approach to consultation and accommodation is not intended to be a one-size-fits-all approach. Differences in history, geography, demographics, governance, relationships and other circumstances of Aboriginal communities and organizations in Canada are relevant when considering how to address any consultation obligations that may arise. Thus, understanding the historical, geographic and legal context relevant to Crown activities is essential.

Issues addressed in the legal duty to consult are specific to the location and nature of the activity. Consultation procedures and approaches must be adapted to address the different kinds of rights and Crown obligations that are at issue. There is significant variability across the country and differences in contexts and strength of claims of Section 35 rights by Aboriginal communities can require different approaches to fulfilling the legal duty to consult and, where appropriate, accommodate.

Departmental and agency approaches to consultation should integrate, to the extent possible, the fulfilment of legal duty to consult obligations with departmental policy objectives and with other overarching government policy objectives.

It is important to note that consultation does not always lead to accommodation. The courts have determined that the legal duty to consult is exercised along a wide spectrum, according to the strength of the claim. Fulfilling the legal duty can include simply providing information to the Aboriginal community right up to meaningful involvement which could be as far as obtaining consent. The courts were also clear, however, that this legal duty to consult does not impose a legal duty to reach an agreement and it does not give Aboriginal groups a veto over proposed projects.

Consultation and Accommodation within AANDC

Within AANDC, Sector activities can adversely impact potential or established Aboriginal or Treaty rights and, thus, may trigger a legal duty to consult. AANDC Sectors and examples where the Crown's legal duty to consult is an obligation in relation to rights under Section 35 of the *Constitution Act* include:

- Lands and Economic Development (LED): Additions to Reserve (ATR); reserve creation; and, environmental management activities on reserve lands. Before setting apart land as Reserve, AANDC will consider the impact of such action on the Aboriginal or Treaty rights of other Aboriginal Groups;
- Treaties and Aboriginal Government (TAG): negotiating and signing land claim agreements in regions with overlapping claims; and,
- Northern Affairs Organization (NAO): contaminated sites remediation activities; approval of Type A water licences; and, licences to prospect and prospecting permits, mineral leases, mineral claims.

The Crown has adopted a whole-of-government approach to Aboriginal consultation and AANDC has been mandated to lead the development and support the implementation of this approach. The AANDC Consultation and Accommodation Unit (CAU) was established in 2008

under the Policy and Strategic Direction (PSD) Sector to provide support to federal departments, agencies and their officials as they work to fulfill their respective legal duties on Aboriginal consultation and accommodation. CAU is now part of the Treaty and Aboriginal Government (TAG) Sector.

CAU's primary activities can be subdivided into three main areas:

- Policy and Training – the CAU policy team develops broad policy guidance and advice, as well as develops modules for the training sessions on various aspects of consultation and accommodation. Both basic and advanced training sessions have been developed and offered in HQ and regionally. To date, training has been given to over 2,700 federal officials, both within AANDC and for other departments.
- Consultation Information Service (CIS) - is a single window which provides information relevant for consultations to external stakeholders, and advisory input for federal departments and agencies with responsibilities for consultation. CIS also manages the Aboriginal and Treaty Rights Information System (ATRIS). ATRIS is an electronic system created by CAU, that brings together information on the location of Aboriginal communities, related profile data, protocol and agreement information, and information pertaining to their potential or established Aboriginal or Treaty rights; and,
- Partnerships - in supporting the whole of government approach, the CAU Partnerships team supports the Crown's negotiations and signings of consultation protocols and Memoranda of Understanding (MOU) with provinces and territories. Within the CAU, Regional Consultation Coordinators (RCCs) liaise with federal government departments, regional/local Aboriginal groups, provinces and territories and industry by establishing and maintaining relationships with other government departments and agencies, provinces and territories, and industry with regards to consultation.

In 2011, the CAU updated the *Guidelines for Federal Officials to Fulfill the Duty to Consult*. The updated Guidelines are designed to provide practical advice and guidance to federal departments and agencies in determining when the legal duty to consult may arise and how it may be fulfilled. The content of the Guidelines are informed by the Crown's understanding of the legal parameters of the legal duty to consult and provide policy-based, step-by-step guidance to assist officials in their efforts to effectively incorporate consultations, and, where appropriate, accommodation to government activities and processes.

Within AANDC, the CAU provides advice and support to Sectors, however, Sectors are responsible for developing processes for fulfilling the Crown's legal duty to consult and accommodation obligations. Sectors have, in turn, developed specific guidelines, tools, and operational procedures with respect to fulfilling the Department's legal duty to consult obligations. The CAU continues to provide support to AANDC Sectors to ensure that they adequately comply with the legal obligations for the duty to consult, helps address issues/concerns and any specific need/requirement on other Department policy or program issues, and, provides positions and feedback on policy and litigation issues.

2. AUDIT OBJECTIVE AND SCOPE

2.1. Audit Objective

The objective of the audit was to assess the adequacy and effectiveness of AANDC controls for consultation and accommodation and, more particularly, to assist therefore the Department with its legal duty to consult obligations. The audit examined the following and recommended improvements where appropriate:

- Governance processes provide overall direction with regards to objectives, approaches, roles and responsibilities and oversight in legal duty to consult obligations;
- Control processes are adequate to ensure effective and efficient consultations that comply with policy, regulatory and legislative requirements; and,
- Risk management processes are in place to identify and mitigate key risks related to legal duty to consult obligations.

The audit objective was supported by detailed audit criteria developed and aligned with Treasury Board's Audit Criteria related to the Management Accountability Framework: A Tool for Internal Auditors (March 2011).

2.2. Audit Scope

The audit scope covered the period between April 1, 2012 and March 31, 2014. Activities examined were limited to those undertaken by the Department in response to informing, communicating and fulfilling the Crown's legal duty to consult obligations, including processes used to determine when a legal duty to consult may arise and how it may be fulfilled.

The scope of the audit included the CAU, AANDC governance processes, and Sectors within the Department where the legal duty to consult activity continues to occur and there was significant enough activity for audit testing purposes: Lands and Economic Development (LED), Treaties and Aboriginal Government (TAG), and Northern Affairs Organization (NAO). Other Sectors such as the Education and Social Development Programs and Partnerships Sector (ESDPP) were included in the audit scope in order to examine governance practices used in determining whether a legal duty to consult exists and risk management practices used to reduce the likelihood of engagement activities creating future legal duty to consult obligations.

The audit scope included a review of how Sectors had developed tools, guidelines, processes and practices to assess their legal duty to consult obligations and what controls were in place to ensure the analysis performed was accurate but did not include an assessment of the outcomes of the consultation process.

The audit scope did not include an examination of how the CAU supports other government departments nor were other government departments contacted regarding the CAU role as part of the audit. An AANDC evaluation of the CAU, which covered the period from 2008-2009 through 2012-2013, and included other government departments, was conducted at the same time as this audit.

Audit fieldwork was conducted at AANDC Headquarters and the British Columbia and Manitoba regional offices. The Saskatchewan and Ontario Regions were also interviewed from Headquarters.

The purpose of this report is to transmit to AANDC an assessment of the adequacy and effectiveness of AANDC controls, practices and procedures used in fulfilling the Crown's consultation and accommodation obligations. This report is not a legal assessment of whether AANDC has fulfilled the Crown's legal duty to consult and, if appropriate, to accommodate, pursuant to Section 35 of the Constitution Act, 1982. This report should be only used by AANDC to identify areas for improvement to processes and controls.

3. APPROACH AND METHODOLOGY

The audit was conducted in accordance with the requirements of the *Policy on Internal Audit* and followed the *Internal Auditing Standards for the Government of Canada*. The audit examined sufficient, relevant evidence and obtained sufficient information to provide a reasonable level of assurance in support of the audit conclusion.

The principal audit techniques used included:

- Interviews with Headquarters and Regional management personnel and selected staff in the LED, TAG, NAO and ESDPP Sectors;
- Review of relevant documentation such as:
 - Sector policy guidance, tools, and operational procedures and *Guidelines for Federal Officials to Fulfill the Duty to Consult* which include a description of the legal duty to consult obligations and operational procedures;
 - Terms of Reference, meeting minutes and records of decisions for relevant governance and oversight committees or working groups; and,
- Sample testing of project files selected from the LED, TAG, and NAO Sectors to examine records management and review and approval practices.

The audit criteria developed for this audit are included in Appendix A.

The degree of implementation of legal duty to consult obligations varies across the Department. All three Sectors selected for the audit - LED, TAG and NAO – have applied the departmental guidelines and established legal duty to consult obligations within their processes. Some Sectors are further advanced in their implementation and have been conducting legal duty to consult for many years; other Sectors have only established guidelines and procedures for implementing the legal duty to consult as recently as November 2013.

The British Columbia and Manitoba Regions were selected for site visits for the audit based on the nature, frequency, and complexity of the legal duty to consult obligation occurring in those Regions. TAG West (located in the British Columbia Region) fulfills legal duty to consult obligations in negotiating and signing agreements with overlapping claims and the Lands and

Economic Development Sector in British Columbia has been implementing legal duty to consult in Additions to Reserve creation for several years. As of January 2014, the Manitoba Region started implementing legal duty to consult procedures in Additions to Reserve creation.

4. CONCLUSION

Generally, the audit found that AANDC management controls with respect to the legal duty to consult obligations are in place within Sector processes and in the sample files reviewed, the audit did not find any instances where AANDC procedures with regards to legal duty to consult were not being followed appropriately. Opportunities for improvement were noted which would strengthen management practices in the following areas: department-level coordination of consultation and accommodation; mechanisms used to obtain consistent legal advice and reporting on Justice resource utilization; guidance and clarification to staff concerning some aspects of consultation and accommodation in some Sectors; and, communication related to system (ATRIS Aboriginal and Treaty Rights Information System) capabilities used in supporting the legal duty to consult.

5. FINDINGS AND RECOMMENDATIONS

Based on a combination of the evidence gathered through interviews, the examination of documentation and systems and analysis, each audit criterion was assessed by the audit team and a conclusion for each audit criterion was determined. Where a significant difference between the audit criterion and the observed practice was found, the risk of the gap was evaluated and used to develop a conclusion and to document recommendations for improvement.

Observations below include both management practices considered to be adequate as well as those requiring improvement. Recommendations for corrective actions accompany areas identified for improvement.

5.1. Governance and Strategic Direction

5.1.1 Departmental Governance of Consultation and Accommodation

Effective department-level governance and coordination mechanisms can be used to assist in the sharing of information related to how the Department strategically coordinates and shares information on common consultation and accommodation activity occurring within the department. Within AANDC, there is an Intra-Departmental Working Group established to facilitate a common understanding of how the Department consults and accommodates and promote coordination and cooperation among Sectors. The Intra-Departmental Working Group meets regularly and is facilitated by the CAU.

Sectors are responsible for integrating the guiding principles and consultation directives from Canada's *Guidelines for Federal Officials to Fulfill the Duty to Consult* into their own day-to-day Audit of Consultation and Accommodation

activities. Sectors have developed specific guidelines in order to provide Sector staff with policy-based guidance to assist in their efforts to effectively incorporate consultations and, where appropriate, accommodation measures into Sector activities and processes. These Sector policies are reviewed and approved by appropriate Sector-level decision-making governance Committee (e.g. Overlap Committee, Additions to Reserve Technical Committee) which meet regularly and are sometimes attended by the CAU.

While Sectors have, on occasion, presented proposed Sector consultation guidelines at Departmental governance Committees (e.g. Departmental Senior Policy Committee), seeking Committee feedback and comment, the audit found that there is no Departmental senior level governance Committee specifically assigned responsibility for departmental decisions on consultation and accommodation and there is no formal requirement for Sectors to seek input or approval from a departmental governance Committee when developing consultation and accommodation guidelines, and if they do, there is no required follow-up by the Committee on actions taken as a result of having presented. Instead, each Sector is responsible to fulfill the Crown's legal duty to consult within their Sector processes.

While the CAU facilitates the Intra-Departmental Working Group, the CAU does not have any formal authority to approve Sector guidelines on legal duty to consult, or to ensure that Sectors fully implement the legal duty to consult. Membership of the Intra-Departmental Working Group is open to AANDC officials who are involved in the consultation and accommodation process and based on meeting minutes reviewed. Intra-Departmental Working Group discussions typically include information updates, but do not discuss strategic issues and participants do not typically include senior management. Interviewees noted that coordination and information sharing within the Department is difficult given that the operationalization of the legal duty to consult lies with each individual Sector.

For AANDC, not having a senior level governance mechanism to oversee and coordinate consultation and accommodation activity creates an increased risk to the Department, given that policy and process decisions in some Sectors can create legal duty to consult requirements for other AANDC Sectors (e.g. negotiated claim settlements in TAG Sector can sometimes include specific or named parcels of land which may have legal duty to consult implications for the LED Sector). In addition, as Sectors are required to make new legal duty to consult policy decisions or further advance their implementation of accommodation measures in other areas (e.g. economic development), without a coordinated approach or departmental-level governance mechanism, there is increased risk that Sectors will adopt different (and perhaps contradictory) approaches in how they choose to implement legal duty to consult and accommodation policies.

Recommendation:

1. The Senior Assistant Deputy Minister of Treaties and Aboriginal Government should identify an existing appropriate governance mechanism (e.g. departmental governance Committee) that can allow for formal senior level management strategic discussion and approval of Sector consultation and accommodation policies that could potentially impact other Sectors. Terms of Reference should be modified accordingly and include the sharing

of information gathered and held by the respective Sector Branches that can support AANDC and other Crown officials in fulfilling the legal duty to consult.

5.2. Stewardship, People and Results and Performance

5.2.1 Legal Advice / Utilization Reporting

The Department of Justice provides an important advisory role to the Department on the legal aspects of consultation policy choices, especially as it relates to providing legal advice across government and as the case law in this area continues to develop. Justice is not responsible for conducting consultations or collecting the appropriate factual information regarding potential or established Aboriginal or Treaty rights and potential adverse impacts of an activity; however, the legal duty to consult is a legal obligation and raises a number of legal issues. It is important for Sectors to work closely with Justice when assessing if and how consultation may need to be incorporated into departmental activities and approaches for identifying and addressing this legal duty.

In most instances, depending on the information gathered and the initial assessment made, it is important that Department officials are able to determine whether a legal duty is triggered and consultation is required. Identifying, in advance, which activities may trigger a legal duty to consult will help staff more efficiently make case-specific initial assessments. Keeping in mind that Section 35 rights are site and group specific and as such could be the associated Crown's legal duty to consult, developing standard departmental consultation approaches and prioritizing questions needing legal clarification on a common consultation issue could also reduce the need for advice on a case-by-case basis and help to streamline requests for legal advice.

A Memorandum of Understanding (MOU) is in place which describes the governance, price and performance regimes between AANDC and Justice for the demand and provision of legal services. Justice service standards and operational indicators are described in an Annex to the MOU. Interviewees noted that legal duty to consult advice provided by the Justice Legal Services Unit to AANDC is considered to be constructive and helpful in most instances. Although Justice strives to ensure that it "speaks with one voice" when advice is provided, those audited noted that more consistency can be achieved in the area of consultation.

While Justice has reportedly implemented internal working groups and databases to help improve the sharing of information on the legal duty to consult among Justice Counsel, to date, this information has not been shared with AANDC. The audit found that there is no mechanism or process in place within AANDC to ensure that a consistent, cross-country perspective or opinion is provided by Regional Justice Legal Counsel on legal duty to consult issues.

As per the MOU, Justice provides the Department a monthly Corporate Statement report summarizing amounts invoiced and supporting information on billings and disbursements. The audit found, however, that the standard utilization reports provided by Justice to Sectors and Regions do not include detailed legal costs on a project by project basis making it more difficult for the Department to track estimated versus actual legal costs or to improve efficiencies by

identifying instances where similar legal advice has been requested by different parts of AANDC. Some Regions have successfully worked with their Regional Justice Counsel to develop more useful, detailed utilization reporting. Frequent changes to AANDC business line structure and different Department reporting needs and requirements have made it more difficult for Justice to develop a standard reporting approach which is considered useful for everyone in the Department.

While duty to consult legal issues and legal frameworks can require unique case-by-case legal advice, without clear expectations to Justice on what consistent, national advice is required on common consultation issues, there is an increased risk that advice provided by Justice to the Department is inconsistent or duplicative, resulting in increased inefficiencies or costs to the Department. Without clearly defined and improved utilization reporting, there is increased risk that the Department will be unable to work with its Justice representatives to ensure efficiency by optimizing resources and tracking budget progress on a project by project basis.

Recommendation:

2. The Senior Assistant Deputy Minister of Policy and Strategic Development, through the renewal process of the Memorandum of Understanding between AANDC and the Department of Justice, should continue to promote the need for consistent legal advice with regard to Consultation and Accommodation across Sectors and Regions. This includes identifying departmental leading practices in utilization reports and revising utilization reports to provide the Department with more standardized, detailed, and consistent reporting to AANDC on a project-by-project basis.

5.2.2 Guidance on Consultation and Accommodation

It is important that departmental policies and guidelines are developed and implemented, and are aligned with the Crown's policies and guidelines for consultation and accommodation. Sectors are expected to approach Aboriginal consultation with the awareness that they may be required to access their own records during the consultation process and demonstrate the completeness and integrity of the process at a later date.

Within the Department, Sectors have developed specific guidelines in order to provide Sector staff with policy-based guidance to assist in their efforts to effectively incorporate consultations and, where appropriate, accommodation into Sector activities and processes. In some Sectors, the legal duty to consult obligation has been fulfilled for many years; while other Sectors have only started implementing legal duty to consult as recently as January 2014. As such, sample testing was performed in the following Sectors for the following purposes:

- LED - to assess how LED implemented legal duty to consult following regional practices which were in place prior to LED ATR Guidelines (British Columbia) and to assess how LED has implemented the LED Interim ATR Guidelines (Manitoba);
- TAG West/Central/East Branches - to assess how legal duty to consult has been implemented following the TAG Guidelines for negotiators; and,

- NAO - to assess how legal duty to consult has been implemented following the Departmental Guidelines, as no NAO-specific guidelines are used. Legal duty to consult activities which were performed prior to devolution to the Government of Northwest Territories in April 2014, but no longer remained an AANDC responsibility after devolution were not examined.

In addition to site visits to British Columbia and Manitoba regions, interviews were also conducted with LED staff in the Ontario and Saskatchewan regions.

Generally, the audit found that in the sample files reviewed, AANDC procedures with regards to legal duty to consult are being followed appropriately and effective recordkeeping and records management practices are established and functioning. The audit found that there is currently a need for further clarity and guidance in Sectors' operational procedures with regards to the legal duty to consult and accommodate as described below:

Lands and Economic Development (LED)

- Within the LED Sector, *Interim Guidelines and Procedures on Implementing the Legal Duty to Consult in the Context of Additions to Reserve and Reserve Creation* ("ATR Interim Guidelines") were first implemented in November 2013. The ATR Interim Guidelines include suggested templates such as a: pre-consultation report; initial inquiry letter; follow-up letter; and, a consultation tracking log. The ATR Interim Guidelines also include the risk levels and associated consultation steps and the roles and responsibilities of ATR Officers. At the time of this audit, these ATR Interim Guidelines were not yet finalized and did not provide sufficient direction regarding accommodation options. Interviewees noted questions remained, particularly in the areas of "negotiating" and providing or implementing accommodation measures. In June 2014, at the end of audit fieldwork, LED started revising the guidelines such that they now include preliminary guidance on accommodation; however, these revised guidelines had not been finalized at the time of audit completion, nor had they been presented at a senior level governance Committee.
- With respect to consultation tracking logs, the audit found that a consultation tracking log was not always used to track the legal duty to consult correspondence with First Nations. The audit also found that a completed consultation tracking log was not always retained with the project file. Given that the ATR process can take several years to complete and an ATR project file can be transferred to different ATR Officers throughout its life-cycle, without consistent and up-to-date file documentation, there is a risk that knowledge on the status of consultation activity will not be appropriately communicated or transferred between ATR Officers; and,
- Lastly, further clarification is required by LED on consultation activities related to environmental assessments for projects led by First Nations which are entirely on reserve. With the revisions to the *Canadian Environmental Assessment Act* (CEAA, 2012), AANDC is now responsible for evaluating the environmental effects of a project on reserve lands that is not a designated project as defined in CEAA 2012. Self-

governing and First Nations Land Management (FNLM) First Nations manage their own environmental reviews. The audit found that some Regions and Headquarters are developing guidelines to assist with this legal duty to consult obligation but these guidelines had not been widely communicated or shared with other Regions.

Treaty and Aboriginal Government (TAG)

- Within the TAG Sector, the audit found that TAG Sector processes vary between Branches. For example, TAG Negotiations West makes use of ATRIS Screening Report in order to identify the First Nations that should be consulted while TAG Negotiations East and Central do not. TAG Negotiations West also makes use of a Committee to approve consultation documents (e.g. consultation plan). TAG Negotiations Central and East rely on Justice throughout the consultation process but do not have committees that approve consultation documentation. It was also noted that Branches have developed their own templates for consultation documents. While the audit recognizes that some Branch practices and controls may exist due to Regional geographic differences or risk levels, there may also be an opportunity to share leading practices between Branches and to reassess risk levels in order to identify opportunities to possibly streamline controls, where deemed appropriate.

Without clear, complete and consistent guidance to staff, there is increased risk that staff will not be able to fulfill the Department's consultation and accommodation obligations as expected.

Recommendation:

3. The Assistant Deputy Minister of Lands and Economic Development should ensure draft operational guidance on consultation and accommodation procedures is finalized, ensure consultation tracking logs are properly retained for audit trail purposes in all active ATR files, and define and communicate procedures specific to environmental assessments.
4. The Senior Assistant Deputy Minister of Treaties and Aboriginal Government should review the processes and practices within each of the Sector's branches (Negotiations West, Negotiations Central, and Negotiations East) to determine, based on risk, what controls are necessary to fulfill the Sector's legal duty to consult obligations and, where applicable, identify any areas where controls can be modified to increase consistency across Branches.

5.2.3 Aboriginal and Treaty Rights Information System (ATRIS)

Developing and implementing an inventory of information on the location and nature of established or potential Aboriginal and Treaty rights was a key aspect of the 2007 Action Plan on Aboriginal Consultation and Accommodation. Accordingly, a web-based information system to provide information on Aboriginal communities and their potential or established Aboriginal and Treaty rights was established. The AANDC Aboriginal and Treaty Rights Information System (ATRIS) is intended to be used as a research tool that can be used to view, gather and query "baseline information" regarding Aboriginal treaties, rights, claims, legal proceedings,

geographic and other related subject matter (e.g. what existing or potential rights may exist within the vicinity of a proposed government or industry initiative). ATRIS is funded entirely by AANDC and was launched in 2011.

The purpose of ATRIS is not to provide a defined list of which Aboriginals need to be consulted and the level of consultation - the purpose of ATRIS is to provide factual information on potential and/or established rights. Crown officials from Federal, Provincial and Territorial Governments are provided access to ATRIS to assist them in determining whether a legal duty to consult exists and the extent of the consultation that is required. Furthermore, the public, including private industry and Municipal Governments, also has access to ATRIS for research or general information relating to Aboriginal and Treaty rights.

ATRIS is still considered a relatively new system that was developed initially in 2011 by integrating multiple types of information from different sources. The CAU expects ATRIS to continue to evolve as new information is made available. In that regard, ATRIS has recently been updated and is now in its second version (Version 2.0 in April 2013 and Version 2.2 in March 2014). It is CAU's intention to integrate additional information from other Departments, provinces and territories in future software releases and to add more land claims and assertion records to ATRIS regularly.

The CAU did recognize that the system might not be intuitive to all users, because of its uniqueness in optimizing the use of map technology to represent interactive data, and because of the limitations imposed by government standards when developing a web application. To mitigate this, CAU has been providing training sessions to all government officials since its inception, and monthly training sessions to the public since April 2014. A question period is provided at the end of each training session. ATRIS users are also encouraged to use the feedback form available in ATRIS to inform CAU on system improvements and general feedback. ATRIS training is based on the functions of the version that is current at the time of the training. Once additional functions are added and new versions released, the training is adjusted to reflect the new features. At any time, ATRIS users can send an email to the ATRIS and/or CIS generic mailbox if they have any questions about the use of the system or its content.

The audit interviewed AANDC staff who are expected to use ATRIS (but not ATRIS users in other government departments, Provinces and Territories, industry or the public) to inquire about the support ATRIS provides in fulfilling their legal duty to consult responsibilities. At the time of the audit, Version 2.0 was included in the audit scope - Version 2.2 was introduced at the end of the audit period (March 2014). While the audit found that interviewees felt that ATRIS is generally viewed as a helpful information source, some interviewees reported that the system was insufficient for their needs and various other sources were still necessary to supplement the information. Additional sources identified in the Regions included customized software tools, provincial systems, in-house and/or local expertise, and Department of Justice Lawyers. Even though a disclaimer is included in ATRIS which states that "... *the data is subject to change without notice. AANDC does not warrant or guarantee that the information is accurate, complete or current at all times*" not all interviewees felt ATRIS provided the

information required to identify the Aboriginal groups that need to be consulted and many interviewees were not aware that ATRIS was intended only as a source of 'baseline information'. Not all interviewees understood the limitations of ATRIS and how to ensure they were looking at the relevant information indicating that CAU ATRIS training material has not always provided clear communication of capabilities and limitations.

As with any system which is scalable and targeting multiple user groups as is the case with ATRIS (e.g. regions, other government departments, public, AANDC), it is important for the Department to clearly define what is considered 'baseline information' and to provide updated description of the ATRIS capabilities, boundaries, and limitations in training material. Given that sources of information for legal duty to consult continue to evolve, it will be important for management to follow the departmental IM/IT Portfolio Management Framework process when making decisions on what new ATRIS system capabilities and features should be funded by AANDC and reassess what is considered 'baseline information'.

Without continued, clear and updated description of the ATRIS capabilities, boundaries, and limitations in training material, there is increased risk that staff may not clearly understand how ATRIS is intended to be used in fulfilling their legal duty to consult obligations. In addition, without periodic reassessment of ATRIS business needs, features, and functionality requirements, there is increased risk of escalating costs in attempting to satisfy user needs for a diverse group of stakeholders.

Recommendation:

5. The Senior Assistant Deputy Minister of Treaties and Aboriginal Government should, as ATRIS functionality evolves, communicate and update the capabilities and limitations of ATRIS in legal duty to consult training and ATRIS user guides, and periodically review ATRIS business requirements to evaluate the feasibility of making future updates to ATRIS.

6. MANAGEMENT ACTION PLAN

Recommendations	Management Response / Actions	Responsible Manager (Title)	Planned Implementation Date
<p>1. The Senior Assistant Deputy Minister of Treaties and Aboriginal Government should identify an existing appropriate governance mechanism (e.g. departmental governance Committee) that can allow for formal senior level management strategic discussion and approval on Sector consultation and accommodation policies that could potentially impact other Sectors. Terms of Reference should be modified accordingly and include the sharing of information gathered and held by the respective Sector Branches that can support AANDC and other Crown officials in fulfilling the legal duty to consult.</p>	<p>The Treaties and Aboriginal Government sector will explore and identify an existing and appropriate governance mechanism for senior level discussions on consultation and accommodation. The Consultation and Accommodation Intradepartmental Working Group Terms of Reference will be adjusted to support senior level management strategic discussions and approvals.</p>	<p>Senior Assistant Deputy Minister of TAG</p>	<p>Status: Update/Rationale: As of 31/03/2015:</p> <p>The Treaties and Aboriginal Government sector has been working with the Policy and Strategic Direction sector to implement this recommendation, including facilitating a discussion at the Directors General policy Committee (April 2, 2015). The Consultation and Accommodation Intradepartmental Working Group Terms of Reference will be updated during the annual in-person meeting in June 2015 and Treaties and Aboriginal Government will continue to work with the policy and Strategic Direction sector to implement this</p>

Recommendations	Management Response / Actions	Responsible Manager (Title)	Planned Implementation Date
			<p>recommendation.</p> <p>AES: Recommend to close. Closed.</p>

Recommendations	Management Response / Actions	Responsible Manager (Title)	Planned Implementation Date
<p>2. The Senior Assistant Deputy Minister of Policy and Strategic Development, through the renewal process of the Memorandum of Understanding between AANDC and the Department of Justice, should continue to promote the need for consistent legal advice, with regard to Consultation and Accommodation, across Sectors and Regions. This includes identifying departmental leading practices in utilization reports and revising utilization reports to provide the Department with more standardized, detailed, and consistent reporting to AANDC on a project-by-project basis.</p>	<p>The Senior ADM Policy and Strategic Development Sector will bring the issues of consistency of legal advice and standardized, detailed and consistent reporting on legal costs to the attention of the Department of Justice for their consideration.</p>	<p>Senior Assistant Deputy Minister of PSD</p>	<p>Status: Request to close - Completed</p> <p>As of December 2014, the Senior ADM Policy and Strategic Direction Sector has brought these issues to the attention of the Assistant Deputy Attorney General, Aboriginal Affairs Portfolio. These issues are also being addressed through the Treasury Board / Justice exercise called “Legal Services Review”.</p> <p>AES: Recommend to close. Closed.</p>

Recommendations	Management Response / Actions	Responsible Manager (Title)	Planned Implementation Date
<p>3. The Assistant Deputy Minister of Lands and Economic Development should ensure draft operational guidance on consultation and accommodation procedures is finalized, ensure consultation tracking logs are properly retained for audit trail purposes in all active ATR files, and define and communicate procedures specific to environmental assessments.</p>	<p>Interim Addition to Reserve Consultation Guidelines were completed and implemented in November 2013. The Lands and Economic Development Sector is updating these interim guidelines in consultation with Regional Offices, Treaties and Aboriginal Government and the Department of Justice. The Guidelines will include templates, sample letters and a Consultation Tracking Log that will be an evergreen document used to record Addition to Reserve consultation and accommodation efforts. The Guidelines will be made available online.</p> <p>The Lands and Economic Development Sector is developing, in consultation with Treaties and Aboriginal Government and Regional Offices, an operational guide on consultation and accommodation specific to project reviews (assessments) on reserve. The guide will incorporate the "Updated Guidelines for Federal Officials to Fulfill the Duty to Consult", and include information on how to maintain and track Aboriginal consultation logs using the Integrated Environmental Management System</p>	<p>Assistant Deputy Minister of LED</p>	<p>Update/Rationale: Completed (March 31, 2015 targets)</p> <p>As of 31/03/2015:</p> <p>The Assistant Deputy Minister, Lands and Economic Development Sector, approved the new <i>Reserve Creation / Addition to Reserve Duty to Consult Guidelines</i> in February 2015. The Guidelines include templates, sample letters and a consultation tracking log. The Guidelines are available on the Department's Collaboration website in both official languages. In addition, guideline training has been completed in the Quebec and Ontario Regions and an overview of the Guidelines has been developed for external partners.</p> <p>A draft Environmental</p>

Recommendations	Management Response / Actions	Responsible Manager (Title)	Planned Implementation Date
	(IEMS).		<p>Review Operational Consultation and Accommodation Guide was completed and shared with Treaty and Aboriginal Government and regional offices. Terms of References have been drafted and participants solicited to launch an intradepartmental working group to review and finalize the guide.</p> <p>AES: First phase of implementation completed. Final phase of implementation underway.</p>

Recommendations	Management Response / Actions	Responsible Manager (Title)	Planned Implementation Date
<p>4. The Senior Assistant Deputy Minister of Treaties and Aboriginal Government should review the processes and practices within each of the Sector's branches (Negotiations West, Negotiations Central, and Negotiations East) to determine, based on risk, what controls are necessary to fulfill the Sector's legal duty to consult obligations and where applicable, identify any areas where controls can be modified to increase consistency across Branches.</p>	<p>The Treaties and Aboriginal Government sector will again review processes and practices within its branches and make the appropriate improvements, consistent with existing tools such as guidance for consultation processes on Agreements-in-Principle and Final Agreements, in light of evolving case law.</p>	<p>Senior Assistant Deputy Minister of TAG</p>	<p>Status: Ongoing.</p> <p>Update/Rationale: As of 31/03/2015:</p> <p>Research and analysis of consultation approaches at negotiation tables continues to be assessed with guidelines and best practices currently under development.</p> <p>AES: This is an ongoing activity that TAG undertakes on a regular basis. Recommend to close. Closed.</p>
<p>5. The Senior Assistant Deputy Minister of Treaties and Aboriginal Government should, as ATRIS functionality evolves, communicate and update the capabilities and limitations of ATRIS in legal duty to consult training and ATRIS user guides, and periodically review ATRIS business requirements to evaluate the feasibility of making future updates to ATRIS</p>	<p>The Treaties and Aboriginal Government sector will continue to update ATRIS users through webinar training and guidance (e.g. next release of ATRIS will include a "What's New" function). Information on ATRIS and the other sources of information will also continue to be provided and updated in the training on the duty to consult. The Treaties and Aboriginal Government</p>	<p>Senior Assistant Deputy Minister of TAG</p>	<p>Status:</p> <p>Update/Rationale: As of 31/12/2014:</p> <p>Version 2.4 (mid-December 2014) includes a "What's New" page within the "Help" tab and a basic overview of how the system works has been</p>

Recommendations	Management Response / Actions	Responsible Manager (Title)	Planned Implementation Date
	<p>sector will regularly meet with IM/IT to ensure cost benefits are considered in further addition to ATRIS.</p>		<p>added to the welcome page. Enhancements to consultation training materials will provide a primer on what information is available through ATRIS and tips on how to use the system. Dedicated ATRIS webinars (public-monthly, federal officials only-biweekly) are scheduled for 2015 and additional training tools and outreach strategies will be considered for development in Q4 and Q1 (2015-16).</p> <p>AES: Recommend to close. Closed.</p>

Appendix A: Audit Criteria

To ensure an appropriate level of assurance to meet the audit objectives, the following criteria were developed to address the objectives as follows:

Audit Criteria	
Governance and Strategic Direction	
1.1	Effective governance processes are in place to determine when legal duty to consult arises, oversee the Department's fulfillment of Crown legal duty to consult obligations, and manage associated risks.
1.2	CAU authority, responsibility and accountability are clear and communicated.
Stewardship	
2.1	Sector policies and guidelines are adequate and effective and aligned with AANDC Guidelines for legal duty to consult.
2.2	Processes are in place to stay informed of changes regarding legal duty to consult and updates are communicated in a timely manner.
2.3	Record keeping and information management practices adequately support legal duty to consult obligations.
People	
3.1	Expertise and tools are in place to support legal duty to consult across the Department.
Results and Performance	
4.1	Lessons learned activities are performed and there is sharing of leading practices across the Department.

Appendix B: Applicable Legislation, Regulations, and Policies

The following authoritative sources were examined and used as a basis for this audit:

1. *Guidelines for Federal Officials to Fulfill the Duty to Consult – Guiding principles and Directives*
2. *Guidelines and Procedures on Implementing the Legal Duty to Consult in the Context of Additions to Reserve and Reserve Creation (LED)*
3. *Guidelines for Negotiators (TAG)*
4. *Fulfillment of the Duty to Consult: A Guide for TAG Northwest Negotiators (TAG)*
5. *Section 35 of the Constitution Act, 1982*